

**An Examination of the Theoretical Basis of the
Academies Act 2010**

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Abstract

Reform of the education system in England is a popular political activity, with changes to 'improve' education featuring on most governments agendas. In 2010 the Coalition Government enacted the Academies Act to introduce greater choice and competition within the schools' system, in the expectation that this would drive improved performance. The Act ostensibly relied on Caroline Hoxby's theories on competition within education to underpin the changes it implemented. However, this Thesis will explore whether the Act is consistent with Hoxby's work and whether the Act can be said to be underpinned by academic theory. It will ultimately demonstrate that the introduction of the Act is not supported by academic theory and as a result, it would have been more efficient for the Government to work with the pre-existing system to drive improvement. This Thesis will demonstrate that the Act fails to incorporate key features of Hoxby's work and so the Government could not rely on Hoxby to underpin the Act. However, the system produced by the Act was, unintentionally, consistent with the work of Albert Hirschman and so a new system as set out by the Act could be underpinned by Hirschman's work. The Act however altered the existing schools' system, rather than creating an education system from scratch. As such, using the work of Ronald Coase, this Thesis will demonstrate that the implementation of the Act was not the most efficient use of public resources open to the Government. As a result, the decision to implement the Act cannot be underpinned by academic theory. This discussion demonstrates the importance of careful consideration by Government of academic work before implementing new legislation to ensure the best use of limited public resources.

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Declaration

I confirm that the thesis is my own work, that it has not been submitted in substantially the same form for the award of a higher degree elsewhere. To the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference has been made.

I confirm that the thesis does not exceed the permitted word count.

Chapter 1: Introduction

Part 1 - Overview

Introduction

This Thesis considers the Government's reasoning behind the development of the Academies Act 2010, which re-designed the schools landscape in England, focussing on the theoretical model underpinning this change. Using the work of three relevant theorists; Caroline Hoxby, Albert Hirschman and Ronald Coase, it explores the extent to which the Government considered the impact of the proposed legislative changes, as well as the degree to which the Act aligned with these theories. A review is important for three reasons; first, the development of a new educational landscape involves significant public funds during a period of economic hardship. Secondly, education represents a cornerstone of our society and economy. As such, ensuring that the next generation are sufficiently educated to promote the long-term prosperity of the country must be seen as a priority. Finally, the learning drawn from this exercise can be applied both to future decisions on education, and on wider Government policy developments.

The Thesis considers the motivations and theory adopted by the Government when developing the Academies Act and explores the extent to which they align with one another. It will challenge the suitability of the Government's approach, demonstrating that the Act, while ostensibly supported by academic theory, was not consistent with the theory the Government relied on. It will show that whilst the overall aims of the Act can be justified by reference to other theories, the Government's failure to consider the need for a market in education ultimately means that the quasi-market developed by the Act cannot be supported. This Thesis will therefore demonstrate that the creation of the Academies Act does not represent a positive development in Education, either in terms of school performance or system efficiency.

Theories

This section introduces the theorists discussed in this Thesis and provides a brief overview of their work, which is further explored in later Chapters. It provides an overview of the arc of this Thesis and the assessment of the Act.

To develop the analysis of the Academies Act this Thesis will explore the works of three key theorists, beginning with Caroline Hoxby. Hoxby is an American economist who has written extensively on the topic of choice and markets within American schools and colleges. Choice being the exercise of parents selecting one school and rejecting another. Her work in relation to schools explores the impact of both traditional forms of choice, such as moving to a new house to get into another school area,¹ referred to as Tiebout choice,² as well as newer forms of choice in the US system, such as voucher programmes and charter schools. In analysing the implications of choice, Hoxby's work has shown that choice improves both attainment of pupils within schools which rely on choice and attainment of pupils in schools in the surrounding area.³ Further, Hoxby's data has more recently considered the effect of choice on productivity of schools exposed to competition.⁴ Here her work demonstrated that school choice had the effect of improving the productivity of all schools in areas that were exposed to competition. As a result, she argued that competition and choice within education was the 'tide that lifts all boats'.⁵ In Chapter 2 this Thesis will demonstrate how the Government sought to improve attainment and productivity in education. Having been exposed to an oversimplification of Hoxby's work developed by Sturdy,⁶ the Government purported to rely on Hoxby's theory to underpin the Act. This Thesis will go on to explain how, through reliance on Sturdy's work, the Government missed key features of all of Hoxby's work, such as random admissions criteria and an acceptance of school failure. As a

¹ Thus parents chose to change their circumstances to meet school admissions criteria.

² After the work of Tiebout in Tiebout, C.M, 'A Pure Theory of Local Expenditures', 1956, *The Journal of Political Economy*, 64, 5, 416-424.

³ Hoxby, C.M, *The Economics of School Choice* (2003), The University of Chicago Press, p323.

⁴ See for example Hoxby (2003), p339, productivity being another term for efficiency, i.e. doing more for the same cost, or doing the same for less cost.

⁵ Hoxby (2003), p339.

⁶ Sturdy, E, Freedman, S, *Choice? What Choice? Supply and Demand in English Education* (2007), Policy Exchange

result, the system developed by the Act cannot be considered consistent with Hoxby's work and the Government's approach cannot be said to build on Hoxby.

Having demonstrated that Hoxby's work was inconsistent with the Academies Act, this Thesis will move to consider the work of Hirschman as an alternative to Hoxby. The use of Hirschman recognises that the Government never considered Hirschman's work, but this Thesis will argue that Hirschman's theories can be applied to make the Act operate in line with the Government's original intentions. Hirschman's work explores markets generally rather than the education sector.⁷ That said, his consideration of mechanisms which allow firms to survive temporary reductions in quality are applicable to the system developed by the Act. As a result, Hirschman's work addresses a major hurdle for the Government's use of Hoxby's work – the politically untenability of widespread school closures. Hirschman's work identifies two options open to parents when quality at a school declines – exit, i.e. moving to another school, and voice, i.e. complaining to management about the reduction in quality.⁸ It considers how each of these options work alone and together before examining an 'optimum' level of each.⁹ As will be shown in Part 2, education in England developed from a market to a publicly provided system, where exit was restricted. As a result, the system operated on voice alone as a way of addressing quality failings. In introducing the Act, the Government opened up the possibility of exit and so by using Hirschman's theory the Government could find a balance of voice and exit, known as loyalty, which generates the desired outcome. Whilst achieving the correct balance of voice and exit remains challenging, Hirschman's work will be shown to underpin the Act if the appropriate balance can be maintained, recognising that this underpinning was not the Government's intention and is therefore a fortunate coincidence.

Hirschman's work explains how a new system balancing exit and voice can be developed, however, the Government was not creating a new system, but updating and developing an existing system. As a result, to robustly underpin the Act the Government needed a theory which addressed not just the final position, the quasi-market for

⁷ Hirschman, A, *Exit, Voice, and Loyalty* (1970), Harvard University Press, p2.

⁸ Hirschman (1970), p3.

⁹ Hirschman (1970), p76.

education, but also the reason for moving from the state managed system to the quasi-market. It is therefore necessary to consider the work of Coase, which explores the nature and cost of undertaking transactions in the market as opposed to internally within a 'firm'.

Coase's work explores the nature of markets as systems through which a price mechanism,¹⁰ rather than a controlling consciousness,¹¹ directs resource allocation in order to develop the most efficient system. Coase recognised that Pareto optimality, the ideal and most efficient use of resources, is impossible to achieve in the real world because the acquisition of knowledge and undertaking exchanges on a market all come with costs.¹² For example, buying a house comes with professional fees, tax and significant time from both the buyer and seller. As a result, successful property transactions involve more than the buyer having the purchase price to hand. Coase looked to develop a 'real world' system for evaluating how markets work which incorporated an acceptance of all these additional 'transaction costs'.¹³ This system can then be used to compare markets to alternatives, i.e. firms, state provision etc., to establish the most efficient use of resources. This Thesis will adopt his methodology to consider if the quasi-market developed by the Academies Act was more efficient than the previous state provision.

Limitations of Analysis

Having provided an overview of the arc of the discourse in this Thesis, this section sets out the limits of that discourse. This is important to contextualise assessments made in the remaining Chapters and to ensure that the reader is clear on the parameters of discussions.

This Thesis explores educational governance through a regulatory and economic lens, as a result the Academies Act is evaluated as a tool to increase efficiency and

¹⁰ Coase, R.H, *The Firm, The Market and The Law* (1988), The University of Chicago Press, p34.

¹¹ Coase (1988), p35, i.e. an entrepreneur co-ordinator for businesses.

¹² Coase (1988), p115

¹³ Coase (1988), p38

improvement.¹⁴ This assumes that decisions are made on the basis of a logical evaluation of the solution that gives the greatest reward for the resources available.¹⁵ However, it is accepted that such an approach is not always representative of the real world. Governments have motivations other than efficiency and improvement, such as spending priorities, fulfilling manifesto commitments, increasing understanding and acceptance of diversity, or other policy considerations.¹⁶ Many such considerations are valid, and this Thesis does not seek to place a value on, or measure these considerations, however the focus on efficiency, in accordance with the works of Hoxby, Hirschman and Coase,¹⁷ should enable limited resources to be used most effectively to produce general public benefits in the core function of schooling – to educate future generations. This is the primary concern of this Thesis, and its findings should be considered within that context.

In addition, this Thesis considers academic material and developments in Government policy up until January 2019. By this point there had been substantial changes in Government priorities, reflecting a number of Government structures, two Prime Ministers and a multitude of Secretaries of State for Education. After this date, the continued development of education policy generally, as well as the wider context of Brexit and then the Coronavirus pandemic has made a detailed discussion of developments within the confines of this Thesis impractical. The continued development of academy policy, in particular the Government's later preference for chains to group together in 'clusters',¹⁸ poses particular challenges to its original preference for a quasi-market system, which are discussed in Chapter 3. It may be that this will subsequently be seen as a turning point in Government policy away from markets and back towards a controlling consciousness operated by chains.¹⁹ As a result,

¹⁴ Noting that the measures for quality and improvement are imperfect. On which see below.

¹⁵ In line with Coase's assessment of the choice between firms and the market in Coase (1988), p55.

¹⁶ <https://www.bbc.co.uk/news/education-47357372> last visited 06.10.19.

¹⁷ See Chapters 3 and 4 respectively.

¹⁸ See for example Department for Education, *Multi-Academy Trusts; Good practice guidance and Expectations for Growth* (December 2016), p22

¹⁹ The ambition for chains is set out by the former Secretary of State here: <https://www.gov.uk/government/speeches/education-secretary-speech-to-the-confederation-of-school-trusts> last visited 7.10.21, it is however unclear the extent to which this will be realised following his recent replacement.

whilst it is recognised that discussions on education, including ensuring social mobility through education, the value of examinations and how best to educate children continue to play a key part in political discourse, these are not explored beyond January 2019.

Part 2 – Educational Context

The Education System

This section briefly considers the history of the English education system, highlighting key developments. In doing so it will demonstrate that English education systems develop on top of each other, with each new system never entirely replacing the previous system. Thus in 2010 the education landscape in England was already a confusing mix of systems and school types, making the idea of whole system change appealing, though noting the Academy Act's failure to achieve this.

While provision of education is now accepted as a fundamental area of state involvement,²⁰ along with, for example, defence,²¹ education within England developed independently of the state until 1833, prior to which the private and voluntary sectors were the exclusive providers of education.²² Consequently, there was no uniform model of school governance nor an overarching system of regulation for the education sector. The lack of a structure for educational governance is a feature that continues to permeate the development of the school system in England.

The closest England has come to a wholesale reorganisation of schools was the Education Act 1944. The 1944 Act swept away previous arrangements and brought all state funded schools within the supervision of Local Education Authorities (LEAs), introducing county, voluntary controlled and voluntary aided schools. Circular 10/65

²⁰ See for example Deacon, A, *Perspectives on Welfare* (2002), Open University Press, p4.

²¹ See Fitzpatrick, T, *Welfare Theory*, 2nd Edition (2011), Palgrave MacMillan, p18, though it is acknowledged that views on the extent of state interference with citizens' lives are varied, see for example Gooding, R.E, *Reasons for Welfare* (1988), Princeton University Press, p4.

²² This was entirely consistent with the local and often charitable provision of other, now public, services at the time. Though all of these areas were evolving around the 1830s – see Adamson, J, W, *English Education 1789-1902* (1964), Cambridge University Press, p13-14.

was intended to replace two-tiered grammar and secondary modern schooling. The number of grammar schools declined, and secondary moderns were completely replaced by comprehensive schools, although the basic framework of school types persisted.²³ As a result, prior to the introduction of academies the country was mostly made up of various forms of comprehensive schools, reflecting the basic structure developed by the Education Act 1944,²⁴ although grammar schools were retained in some areas.²⁵ The educational landscape remained unequal, with the private sector educating approximately 7% of pupils.²⁶

Set out at Appendix 1 is a table showing the various forms of school in 2014.²⁷ As can be seen, the role of the LEA in educational governance was significant, particularly in community and voluntary controlled schools. LEAs acted as a controlling consciousness, directing allocation of school places, and exerting significant control over budgets, standards, and operations within schools. As a result, the schools system operated under a bureaucratic model, which contrasts with the quasi-market model developed under the Academies Act. The next section will consider the development of market concepts within school governance.

The Development of Academies

Having briefly explored the pre-academy landscape, this section will consider how the idea of academies was developed, starting with the creation of city technology colleges and progressing through city academies to the new academies developed by the Act. This section will demonstrate whilst the operation of individual academies was well

²³ Chitty, C, *Education Policy in Britain*, 3rd Edition (2014), Palgrave Macmillan, p30.

²⁴ See Section 9 of the Education Act 1944 and Alexander, L, Taylor, G, *County and Voluntary Schools* (1977), Councils & Education Press Ltd.

²⁵ E.g. Kent, see <http://www.kent.gov.uk/education-and-children/schools/school-places/kent-test> last visited 03.08.16, notwithstanding Circular 10/65.

²⁶ Statistics from the Independent Schools Council <http://www.isc.co.uk/research/index> , last visited 14.4.2015.

²⁷ Department for Education, *Schools, Pupils and their characteristics: January 2014* (12 June 2014), available at: <https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2014> last visited 01.07.15.

established by 2010, the system wide potential of academies had not been explored until the dawn of the Act.

As discussed above, the removal of the role of LEA is a key feature of the Academies Act which prioritises market factors over a controlling consciousness in the form of the LEA. The academy style of school governance, free from LEA control, was first introduced by City Technology Colleges (CTCs) in 1988.²⁸ CTCs were designed to be technology-based secondary schools, funded directly by central government and industry sponsors.²⁹ They were thus the first true break from LEA control by publicly funded schools since 1944 and became the English template for the academy model of individual school governance.³⁰

In terms of structure and governance CTCs were formed as a company limited by guarantee and owned by the relevant sponsors.³¹ Agreements were put in place with central government for the funding of the schools, with the sponsor meeting any additional costs.³² CTCs employed their own staff and were exempt from national agreements on teachers' pay. They were able to set their own term dates, opening times and curriculum.³³ CTCs were developed by Kenneth Baker to uncouple education and LEA control,³⁴ but were also intended to act as catalysts to improve education generally and more specifically within the inner cities.³⁵ At the time of the introduction of CTCs, schools were heavily controlled by the LEA, as referenced in the discussion of the Education Act 1944 above. It was thought that removal of LEA control, and a focus on vocational qualifications, would provide improvement in schools' educational performance.³⁶ Changes were increasingly applied to the remaining schools, such as

²⁸ Section 105, Education Reform Act 1988, replaced by Section 482 of the Education Act 1996.

²⁹ Technology based in that their focus was meant to be on areas such as ICT, design, engineering, etc.

³⁰ Adonis, A, *Education, Education, Education Reforming England's Schools* (2012), Biteback publishing, p56-57.

³¹ For example, the governing documents of Thomas Telford Schools, available at <http://www.ttsonline.net/Uploads/documents/Important%20Documents/MemorandumArticlesAssociation.pdf> last visited 05.08.16.

³² Section 105, Education Reform Act 1988.

³³ Walford (1991), p3.

³⁴ Walford (1991), pvii.

³⁵ Walford (1991), p158.

³⁶ Walford (1991), p2.

increased delegations, as control was eroded from LEAs.³⁷ CTCs spearheaded the move to give schools greater independence, in order to raise educational standards. Their operational freedom was subject only to the supervision of their sponsors, whilst other maintained schools had limited independence and were subjected to supervision through statutory delegations from LEAs. The removal of LEA influence and increase in school autonomy became the policy characteristic. However, there were only 15 CTCs in England,³⁸ consequently LEAs continued have a critical role in the schools' system, particularly in relation to admissions policy. As an example of a school structure the CTCs therefore provided a tested template, however, their value as a basis for a school system was substantially constrained by the limited scale of their rollout.

After the election of the Labour Government in 1997, Andrew Adonis was appointed as policy advisor for education. In line with Baker, he considered LEAs unable to effectively manage schools.³⁹ Adonis' view was that "comprehensives failed on governance."⁴⁰ LEAs were bureaucratic,⁴¹ governors' skills were weak and the result was unambitious leadership resulting in poor performance.⁴² To address these issues, Government amended the Education Act 1996 in the Learning and Skills Act 2000.⁴³ The Education Act 1996 was a wide ranging act focussed primarily on the role of the LEAs and on school funding, school structures and a small part on CTCs.⁴⁴ However, Lord Adonis' amendments to the Learning and Skills Act 2000, which otherwise focussed on further education and sixth form provision, widened section 482 of the Education Act 1996 to facilitate the creation of city academies. Labour's new city academies were free, charitable, independent secondary schools run by companies limited by guarantee and owned by a sponsor,⁴⁵ initially a business or philanthropic individual or group but subsequently including dioceses, universities, and LEAs.⁴⁶ Much like CTCs, academies

³⁷ See part II, Chapter V of the Education Act 1996.

³⁸ Adonis (2012), p56.

³⁹ Adonis (2012), p20.

⁴⁰ Ibid.

⁴¹ Here in the pejorative sense of overly process driven. See Adonis (2012), p20.

⁴² Ibid.

⁴³ Section 130 Learning and Skills Act 2000.

⁴⁴ Section 482, Education Act 1996 (version in force 11 November 1996-28 July 2000).

⁴⁵ Section 482, Education Act 1996 (version in force 28 July 2000-25 July 2002).

⁴⁶ Chitty (2014), p144.

were freed from a substantial amount of legislation as well as from LEA control, with direct supervision from Government. The detail of how each city academy was run, was subject to negotiation and so arrangements varied widely.⁴⁷

City academies mostly replaced failing schools however, with the change in government, and the introduction of the Academies Act 2010, schools rated as outstanding and good by Ofsted,⁴⁸ were permitted to become new academies.⁴⁹ In addition the ability to become an academy was extended to all schools (primary & secondary) creating the possibility of system wide change in governance.⁵⁰ The specific nature of new academies, i.e. their legal form and contractual relationship with central Government, remained the same as city academies and CTCs. However, while at the micro level of the structural arrangements of individual academies the two pieces of legislation are very similar, the Academies Act differs from the Education Act 1992 at the macro level. The City Academies programme, as the Labour Party made clear in debates over the Academies Act,⁵¹ was about improving *individual* failing schools,⁵² through the introduction of business acumen and governance to drive improvement, hence the need for a business sponsor.⁵³ The focus was at a micro level, notwithstanding that such a programme could have eventually resulted in system wide change, that was, ostensibly at least,⁵⁴ not the point of the amendments. The legal framework was orientated towards making structural changes to individual schools. Conversely, from the outset the Academies Act was designed to achieve system wide change. While this was achieved by structural changes to individual schools at the micro level, the focus of the legislation was explicitly at the macro-level, with general principles invoking

⁴⁷ Wolfe, D, 'Academies and the Law', in Gunter, H, the *State and Education Policy: The Academies Programme* (2012), Continuum International Publishing, p22-23.

⁴⁸ The Office for Standards in Education, Children's Services and Skills, on which see below.

⁴⁹ Stratton, A, Vasagar, J, "Michael Gove: academies bill needs to be rushed through to improve schools", *The Guardian*, 19 July 2010.

⁵⁰ Paton, G, "Michael Gove: academies will be the norm in England", *The Telegraph*, 27 May 2010.

⁵¹ See HANSARD, HL, 719, 509 - 510, 7 June 2010 comments by Baroness Morgan of Drefelin.

⁵² See Benn, M, *School Wars: The Battle for Britain's Education* (2012), Verso, p79. This in turn represented an acceptance that 'market mentality' developed by business could drive improvement where public sector mindsets could not. See for example the discussions on governance in Adonis (2012), p13.

⁵³ Such as Adonis (2012) p133.

⁵⁴ See for example HANSARD, HL, 719, 509, 7 June 2010, comments by Baroness Morgan of Drefelin in contrast to Adonis (2012), p180.

sweeping changes and a distinct lack of detail.⁵⁵ Improvement for the Academies Act was system wide, not individual, as a result the focus was distinctly more competitive, and more susceptible to the harsh realities of markets.⁵⁶ This is because the competitive impact of academies could be felt more widely as academisation became easier.⁵⁷ This Thesis therefore argues that the point of the Act is not to set out the arrangements for each school, this is achieved via ancillary documents,⁵⁸ but to set out the government's vision for the education system as a whole.

Whilst the changes brought in by the Academies Act were wide-ranging the Act itself was sparse, described as having an "elegant simplicity",⁵⁹ with the detail in the funding agreements and supplemented by judicial decisions.⁶⁰ It was also passed quickly, prompting accusations that the Bill was being "railroaded" through Parliament.⁶¹ The result was that the Academies Act did not specify a great deal about academy schools. Their company Articles of Association, for example, are not spelled out in statute or delegated legislation, though the Department for Education eventually developed a standard template.⁶² Obligations in respect of parental preference on admissions, delegation of funds, conduct of schools, governance make-up and national curriculum were not expressed to apply to academies in the Act, theoretically they were therefore free of the hierarchical control which evolved around maintained schools.⁶³ To address this point, the Department of Education compelled academies to comply with these

⁵⁵ See for example the scant detail of the nature of the 'other person' in Section 1 of the Academies Act 2010.

⁵⁶ Though on this see below.

⁵⁷ For example contrast the conversion requirements of city academies with those of academies created under the Academies Act – see Jones, K, *Education in Britain 1944 to the Present*, 2nd Edition (2016), Policy Press, p195.

⁵⁸ See the model articles produced by the Department for Education available at <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association> last visited 13.9.17.

⁵⁹ Wolfe, D, 'Schools: The Legal Structures, The accidents of History and the Legacies of Timing and Circumstance', 2013, *Ed Law* 100. Alternatively, the Government was simply in too much of a rush to dedicate sufficient time to a more comprehensive piece of legislation.

⁶⁰ Wolfe (2013), p100, and see *ML v Tonbridge Grammar School; SB v West Bridgford Academy* [2012] ELR 508. Though judicial supplements are unlikely to have been intentional.

⁶¹ Stratton (2010) *The Guardian*.

⁶² See <https://www.gov.uk/government/collections/academy-conversion-process#model-memorandum-and-articles-of-association> last visited 21.07.2015.

⁶³ See the School Standards and Framework Act Sections 49 & 86, Education Act 2002 Sections 21 & 78.

provisions in their funding agreements.⁶⁴ The use of contractual obligations within the funding agreement generally reasserts the traditional levels of school control, bringing academies in line with maintained schools. However, the funding agreement itself, as a contract, is in theory negotiable and many academies, especially in the early years of city academies, were able to negotiate out of obligations imposed on all maintained schools.⁶⁵ Academies therefore followed in the footsteps of the CTCs in departing from historic relationships with LEAs as well as continuing the piecemeal development of the school system which has been a feature of education since before state involvement. However, where previous developments were small scale and school focussed, the Academies Act was aimed at system wide change from the outset.

Part 3 – Key Concepts

Introduction

Having considered the background to the development of the Academies Act this Part will consider the key ideas used to evaluate and analyse the Act. Explaining and discussing these concepts at this stage will enable a more robust assessment of the value of the Act against the theories considered in Chapters 2-4, thus enabling a more robust assessment of the academic underpinnings of the Act. As each concept is innately ambiguous, it requires clarification before being usefully explored further. This involves the adoption, for the most part, of a number of Government assertions necessary to enable analysis of the Academies Act in context. However, it is recognised that the interpretation of these key concepts was not without academic controversy.⁶⁶ Set out below are the key concepts and related assertions, together with a brief analysis of their advantages and drawbacks. It is recognised that analysis of these concepts could be further developed, however this is beyond the scope of this Thesis.

⁶⁴ <https://www.gov.uk/government/collections/academy-conversion-process#model-funding-agreements> last visited 21.07.2015.

⁶⁵ Wolfe, D, 'Academies and the Law', in Gunter (2012), p22.

⁶⁶ from fundamental views on choice, markets and comprehensives, see Benn (2012) pXIII, to the nature of improvement and diversity, see Chitty (2014), p72.

The key concepts discussed below are:

- Competition
- Outcomes/attainment
- Efficiency/Productivity and
- Improvement

Each concept will be discussed in turn, during which key assertions, including on the role of Ofsted and the value of exam results, will be drawn out. This Part will set out how each concept will be interpreted in the remainder of this Thesis and so frame the discussions to come.

Competition

This section will explore the nature of competition as operated in this Thesis, through a discussion of the barriers, such as admissions, which limit the scope of competition. This section will demonstrate how exit and entry are vital to competition and how they can be altered to facilitate, or impede, competition, thus allowing or repressing the operation of a market. Competition is arguably a straightforward concept, being a situation where more than one entity strives to obtain a limited resource. This section will consider how competition, and related concepts such as markets and choice, can be interpreted in education, where provision is compulsory, and key features of competition have historically played only minor roles. These additional concepts include markets, choice, and exit. This section will explore how these concepts can be mapped onto the educational landscape to understand the challenges and changes produced by the Act. It will show that within education competition is closely tied to admissions, as without the ability for parents to select schools there cannot be competition between schools. The admissions process was not changed by the Act, though the role of admissions authorities was fragmented. As a result, a system designed for LEA's controlling consciousness is now dispersed to generate market behaviours. Finally, this section will consider other changes the Government could have made to increase competition, recognising that the Academies Act was not the only method to generate a more competitive environment.

Where the process for acquiring those resources is regulated then competition plays out within a market.⁶⁷ Markets for goods and services have several common features, a key one being choice.⁶⁸ That is, that purchasers can determine which organisation they purchase the relevant product from. Successive governments appear to have assumed that all parents understand how school choice works. However, this is not the case and expression of choice is especially poor for those who face social, economic, or educational deprivation.⁶⁹ Much like advertising the simplification of changing bank accounts, the Government needs to actively promote choice to parents if it expects all parents to embrace it. Choice, and so competition requires active participation by consumers thus parents need to be given the tools to select schools and understand that, like other purchases their decisions need not be permanent.⁷⁰ Choices can therefore be made and changed,⁷¹ as patterns of behaviour and events alter. To accommodate this, economists frequently discuss ‘exit’, that is the ability of to move away from one supplier.⁷² Thus for there to be competition there must, for the purposes of this Thesis, be the ability to exit. Chapters 2-4 will explain in detail that within education, exit is achieved in two ways, firstly through ‘pure’ exit, i.e. moving from one school to another, and secondly via ‘contingent’ exit, by choosing not to send a child to the school the state anticipates they will attend (i.e. the local school). However, as education is compulsory,⁷³ pupils must still receive the ‘product’ that schools offer. As a result, in order to exit one school, parents must be able to have their child admitted to another.⁷⁴ School admissions therefore becomes central to the idea of competition in the education market, as without admission there can be no exit and thus no competition.

School admissions, and thus competition, are regulated by the School Standards and Frameworks Act 1998 (the 1998 Act) together with the School Admissions Code (the

⁶⁷ In whatever form regulation may take, see Ayres, I, Braithwaite, J, *Responsive Regulation: Transcending the Deregulation Debate* (1992), Oxford University Press, p3.

⁶⁸ Culyer, A.J, *The Economics of Social Policy* (1973), Martin Robinson & Company Ltd, p17.

⁶⁹ Burgess, (2006), p9.

⁷⁰ Though this is not always fully appreciated by economists – see the criticism of Hoxby in Chapter 3.

⁷¹ As discussed in Andrews, P.W.S, *On Competition in Economic Theory* (1966), St Martin’s Press, p126.

⁷² See for example Hirschman (1970), p4.

⁷³ Education and Skills Act 2008, section 1,

⁷⁴ Or explore other education options, such as home schooling – see below.

Code), produced by the DfE in accordance with section 84 of the 1998 Act.⁷⁵ Together they require admissions authorities to first admit every pupil whose parents have expressed a preference that they attend a particular school, so far as possible. Second the 1998 Act requires admissions authorities to develop an admissions policy and to set the number of pupils to be admitted to each school to ensure “the provision of efficient education or the efficient use of resources”.⁷⁶ The number of pupils to be admitted to each school is published each year and becomes the PAN (or Published Admission Number). Thereafter applications to enter the school are subject to the numbers admitted as against the PAN. Thus, parents are provided with the ability to express preferences, as a limited form of choice, though not an express right, to determine which school their child will attend. The emphasis of the 1998 Act is on ensuring that schools are appropriately resourced, not that parents’ get what they want. Choice is therefore a secondary concern, which is entirely consistent with the pre-academies model for education, which focused on the controlling consciousness of the LEA over markets for education.

The focus on efficiency over choice allowed admissions authorities, mostly LEAs, to control pupil distribution and therefore prevent competition between schools. This can be seen during a normal admission round, i.e. admission into the first year of the school’s range,⁷⁷ where each school must admit pupils up to the school’s PAN in accordance with parents’ preference. Until schools reach capacity, parental choice determines pupil placement, and the educational market operates like any other commodity market. However, if the school is oversubscribed then it must apply oversubscription criteria, such as admitting the closest pupils, or pupils of a designated

⁷⁵ The latest version being Department for Education, School Admissions Code: Statutory guidance for admission authorities, governing bodies, LEAs, school adjudicators and admission appeals panels (December 2014), the “Admissions Code”, available at <https://www.gov.uk/government/publications/school-admissions-code--2> last visited 21.07.15.

⁷⁶ DfE (December 2014), at p9. School Standards and Framework Act 1998, section 86. Admissions to academies are not regulated by the Act or Code directly however each academy funding agreement requires that the Academy comply with the Code subject to agreed variations, a topic discussed more in relation to Old Style Academies in Wolfe, D, “Academies and the Law”, in Gunter (2012), p19-38. See appendix 1 for a list of admissions authorities.

⁷⁷ Thus into year 1 for primary schools and year 7 for high schools.

faith, etc.⁷⁸ Pupil numbers are therefore pre-determined by admissions authorities and once a school is 'full', that is it has received applications up to its PAN, entry is restricted and a parent's right to send their child to the school is qualified. LEAs, and to a lesser degree other admission authorities,⁷⁹ are therefore able to control PAN to ensure that each school is allocated sufficient pupils to operate, irrespective of the wishes of parents. Efficiency, as determined by the LEA, therefore takes priority over choice and so the system is controlled by a controlling consciousness, the LEA, rather than market forces.

For all admissions outside of normal admission rounds ("in term admissions"), in effect any pupil who has exited from another school,⁸⁰ except those progressing to middle, secondary or high school in accordance with admission authority policies, parents must demonstrate that entry to the school would not "prejudice the provision of efficient education or the efficient use of resources".⁸¹ Schools are able to disregard the PAN for in term admissions. Any increase in pupil numbers because of in term admissions do not increase the schools PAN. As funding is allocated per pupil, in term admissions means additional money,⁸² without binding the school to a higher annual admissions rate. Such an advantage is qualified in the case of primary education, as the class size is restricted by statute.⁸³ In term admissions are not as common as entry via normal admission stages, as a result impact is normally smaller scale and so less likely to influence wider system balance.⁸⁴ However on an individual school scale extra pupils would mean bigger classes, and so a potential reduction in quality,⁸⁵ or more classes and so more teachers resulting in a significant increase in costs. Admissions authorities and schools need to balance these factors when considering applications for entry, hence the considerations over 'prejudice'. Where the PAN is already achieved it is likely that applications would be resisted on the basis that the school has already considered and set the optimum

⁷⁸ Woods, D, *Business, Finance & Legal Services 2010* (2009), College of Law Publishing, at p8.

⁷⁹ See Appendix 1

⁸⁰ Pure exit.

⁸¹ School Standards and Framework Act 1998, Section 86(3).

⁸² As school funding is linked to pupil numbers.

⁸³ School Standards and Framework Act 1998, section 1.

⁸⁴ Hoxby (2005), p57.

⁸⁵ As each pupil gets less contact time with the teacher.

level of pupils to achieve a satisfactory or desirable cost:quality ratio, meaning any additional pupils would be prejudicial. In term admissions rules were not altered by the Academies Act. Thus, whilst the Government sought to introduce 'competition' it did so without altering the overall admissions process, which was designed and operated to ensure the smooth and efficient running of schools, rather than to reflect parents' choices. The introduction of academies as their own admissions authorities dilutes the role of LEAs as controlling minds, but as will be shown in later chapters, this does not dilute the admissions authority primary objective of efficiency.

Whilst the Government did make an amendment to the 1988 Act,⁸⁶ it did not take the opportunity to revise the admissions system to put competition at the heart of school admissions. As such an opportunity to increase the availability of school places was lost. The Government could have implemented a system like Hoxby's examples and introduced a lottery-based system of admissions for Academies to ensure that academies would not be able to 'cream skim' students either with better results, i.e. through exam based admissions, or with more affluent families, for example by selecting more desirable postcodes for catchment areas.⁸⁷ Whilst this would have required some controls to ensure that all pupils were admitted to an appropriately local school, this would have made admissions systems fairer for parents and so have increased opportunities for contingent exit to schools viewed as better or more appropriate for children. Alternatively, the Government could have reduced the availability of current admission arrangements for selectivity, such as eliminating the ability of religious schools to select on the basis of religion. Such an approach would mean that all pupils who wish to attend the school would have an equal opportunity to do so. Institutions could either then rely on the quality of their provision, and their religious views, to encourage applications from families with similar beliefs, or see the intake of those with other beliefs as an opportunity to introduce them to new ideas.

Improved in term admissions, and so increased competition for existing pupils, could be created by standardising the curriculum more, for all schools, or working to a more

⁸⁶ Schedule 2, Paragraph 9, Academies Act 2010

⁸⁷ Thus maximising the chances of pupils coming from more well off, better educated families – though naturally this is a generalisation.

modular curriculum. Each maintained school is bound by the national curriculum and academies are required to follow the broad themes of the curriculum via their funding agreements.⁸⁸ However, the curriculum, even within maintained schools, remains broad, with a range of potential areas of study for the same course, set by the various exam boards.⁸⁹ Examinations occur at the end of the year for most years on the full years' curriculum. As a result, moving schools mid-year may result in a change of exam board which could have a detrimental impact on a pupils performance – as they may not have learnt what is on the final exam. Pupils are therefore restricted to moving schools at the end of each academic year, provided that their course does not span multiple years – such as GCSEs and A-Levels.⁹⁰

To address this the Government could have standardised the curriculum to a greater extent. This would mean that wherever and whenever pupils move, they could be assured that they would not have to learn a new syllabus. Such an approach however has limitations, for example it assumes that all subjects will be taught by all schools. Whilst this may not be an issue for primary schools and for the first 3 years of secondary school, after that it becomes more complex. Smaller secondaries will not have the funding to support this range – especially when classes are optional. As a result, whilst this option would have been consistent with an increase in competition, it could be seen as a reduction in choice for parents and pupils choosing schools on curriculum differences. Curriculum variety post the Academies Act has increased, with the introduction of more vocational qualifications. However, if the Government were to make the points at which pupils are able to move between syllabus and exam boards more frequent, this need not represent a barrier to competition. A move to more modular forms of teaching, so that there is a test or coursework at the end of the term, would still permit a pupil to move from one school to another with relative ease. Whilst such an option may allow for greater diversity it presents a similar challenge for years

⁸⁸ As discussed in Chapter 3.

⁸⁹ UCAS identify five exam boards on their website, see <https://www.ucas.com/undergraduate/applying-university/filling-your-application/what-do-if-you-dont-have-copies-old-exam-certificates> last visited 27.05.19.

⁹⁰ Which are both 2 years.

10 and above as it does not address optional courses being guaranteed at new schools.⁹¹ In addition, the Government has moved away from modular teaching towards a greater emphasis on final stage examination.⁹² The government could therefore reduce barriers to exit based on curriculum to enable greater choice within the pre and post Academies Act systems. However, it is unlikely that these barriers could be completely removed without further substantial consideration of the options.

Competition and markets are also confined by geography, and so markets in education will exist only in so far as it is practicable for pupils to travel to and from school in the day. As a result, isolated communities and rural areas are unlikely to experience as much competition as urban areas – a point noted by Hoxby who’s research focussed exclusively on urban environments as a result.⁹³ In England, the arrangements prior to the Academies Act (which remain current today) allow for transportation costs to the nearest qualifying school to be paid from public funds,⁹⁴ meaning that parents are not required to pay to transport their children to and from school. However, a ‘qualifying’ school is usually designated as the school whose catchment area the family home is located in, provided the child is eligible to attend.⁹⁵ In short, parents get free transport for their children only if they attend their local school. As will be shown, families with lower incomes tend to send their children to local schools.⁹⁶ This is the case even when the nearest school is not a good school,⁹⁷ however, higher earning families are less likely to send their children to poor quality local schools.⁹⁸ The conclusion drawn from this is that where the local school is not a good school, higher earning and higher social class parents are able to move their children to schools which are further away, and therefore accept additional costs in the form of transportation costs. Parents on lower incomes

⁹¹ though subjects could be made more generic, i.e. ‘history’ to allow pupils to take modules in different periods, thus mitigating this risk.

⁹² See for example the discussion on this at <https://www.cife.org.uk/article/the-new-a-level-and-gcse-exams/> last visited 24.04.19.

⁹³ Hoxby, C.M, ‘Does Competition among Public Schools Benefit Students and Taxpayers?’, 2000, *The American Economic Review*, 90, 5, 1209-1238, p1221

⁹⁴ See <https://www.gov.uk/free-school-transport>, last visited 09.02.19.

⁹⁵ i.e. it is not selective, or if it is selective the child has a place, see for example <https://www.cumbria.gov.uk/eLibrary/Content/Internet/537/43166104228.pdf> last visited 09.02.19.

⁹⁶ See Chapter 3.

⁹⁷ Or not a good fit for their child, see for example *PA v Lewisham LBC* [2018] EWCA Civ 1721.

⁹⁸ See discussions on the work of Burgess in Chapter 3.

appear less able to either get into good schools further away, or less able to absorb the additional transportation costs that are associated with not selecting the closest school. Thus, transportation costs act as a barrier for exit for lower income families.

In order to increase competition, and to allow legitimate competition between schools and choice for parents, the current approach to transportation costs could have been replaced. Some limits on transportation costs incurred by the public purse should be maintained, however, if the aim of the Academies Act is to use competition to drive improvement, then parents must be able to legitimately choose between local schools. For example, the system could be modified to provide free transport to the nearest outstanding school within 10 miles and good school within 5 miles,⁹⁹ or the nearest good/outstanding school if there are no good or outstanding schools within this range.¹⁰⁰ They could also have free transport to any school with an Ofsted rating better than their nearest school between that and the closest good/outstanding school. Thus, if the local school was inadequate and there was a requires improvement school 3 miles away, a good school 4 miles away and an outstanding school seven miles away, parents would get free transport to any of these schools, enabling greater choice and so competition. Such an approach would therefore promote choice and competition. This would have worked in the pre-academies system as well as post the Academies Act.

Whilst the majority of education is provided by the state, admissions into other public sector schools (public schools) are not the only options open to parents. Public schools 'compete' not just with other public schools, who collectively educate over 90% of pupils,¹⁰¹ but also, at least in theory, with the private sector and home schooling. Next, this chapter will explore the extent to which competition exists within the education system between public, private and home schooling and demonstrate that whilst

⁹⁹ Figures used for ease only –analysis would be required to ensure that these are appropriate. The appropriate areas are likely to vary between urban and rural locations given the distribution of schools.

¹⁰⁰ This would need to be measured at the point the pupil starts at the relevant school, and be maintained even if a year down the line there is a closer, better alternative. Otherwise this may force a change in schools in a non-standard entry year.

¹⁰¹ With 7% going private and 0.5 home schooled.

present, the threat posed to public education by private schools and home schooling is relatively minor, given the significant barriers to both private and home schooling.

Looking first at private schooling it is clear that for many parents the cost is prohibitive. In 2014 Independent Schools Council schools charged an average annual fee of £12,582 per pupil for day attendance,¹⁰² but more prestigious private schools charge significantly more than this; Eton College for example charged £42,501 as a basic fee, with additional activities costing extra.¹⁰³ In August 2019 the average salary for the UK was £29,588,¹⁰⁴ as a result, attendance at Eton is clearly out of most families' price range and attendance at the average private school would absorb more than 42% of average earnings.¹⁰⁵ Thus, whilst some schools will genuinely compete with the private sector, for less economically well-off families, private education is not a realistic option. The threat of private competition faced by public schools will depend on the demographics of local families; in affluent areas private competition may be a credible threat to public schools, however in other areas private competition is generally unrealistic. A further barrier to private competition is that, in addition to charging fees, the majority of private schools operate as fee paying grammar schools. Parents must therefore have both the financial resources to afford a place and a gifted child, or further resources to pay for additional tuition for exams. As a result, whilst private schools may compete with the public sector, and arguably will impact on the entire sector by removing 7% of pupils, for most parents, private schools do not represent a viable choice, as barriers to admission are too great. The overall impact of private school competition on the public school sector is therefore likely to be limited.

The second alternative to public education which schools must compete against is home schooling children. This is an option which has increased in popularity recently with 48,000 pupils home schooled in 2017-18, though this represents only 0.5% of the school

¹⁰² Broughton, N, et al., *Open Access: An Independent Evaluation* (2014), The Social Market Foundation, p15.

¹⁰³ See <https://www.etoncollege.com/currentfees.aspx> last visited 24.08.19.

¹⁰⁴ Based on the average weekly salary of £569 multiplied by 52, see <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2018>, last visited 24.08.19.

¹⁰⁵ Ignoring the impact of inflation on 2014 prices

aged population.¹⁰⁶ Home schooling is a labour intensive option for parents and will usually result in one parent having to stay home rather than working. Parents will have to teach a wide range of subjects, which, particularly as children get older, may prove challenging.¹⁰⁷ In addition, parents do not receive funding to support the purchase of books, etc. and so whilst there is the possibility of saving on transportation costs, for example, this may not offset the cost of materials.¹⁰⁸ Home schooling can also be isolating, with children not gaining the same level of exposure to other young people their age. It naturally interferes with social interaction and could impact on the development of a rounded child with strong social skills, and therefore fails to meet some parents' priorities. Home schooling represents a huge challenge for parents to reach the appropriate quality of education and requires a dedication of time to ensure that social interactions continue. These considerations appear to represent a greater barrier to entry than private education,¹⁰⁹ and as a result the extent to which this option effectively competes with the public sector generally is again limited.

It can therefore be seen that alternatives to public education are extremely cost, time and/or labour intensive. They require a substantial commitment from parents, which many are not in a position to make. Public schools are therefore the only viable option for many parents, and so ensuring that the admissions system works to achieve the Government's aims is vital to ensure exit, and thus competition, within the education market.

To the extent that competition is created by the Academies Act, the driver is limited parental choice. As a result, competition is predicated on an assumption that schools, and the Government as the creator and regulator of the education market, know what

¹⁰⁶ <https://www.bbc.co.uk/news/uk-england-42624220> last visited 25.08.19. This has increased substantially following the Coronavirus pandemic, see <https://www.bbc.co.uk/news/education-57255380>, last visited 04.10.21.

¹⁰⁷ Consider for example how many non-teachers are likely to feel comfortable teaching 11 GCSE or 4 randomly selected A-Levels.

¹⁰⁸ <https://www.kent.gov.uk/education-and-children/educating-your-child-at-home/our-guide-to-elective-home-education#tab-1> last visited 24.08.19.

¹⁰⁹ Based on pupil numbers.

parents want. That is, the outcomes from schooling that parents seek for their children. This assertion is considered in the next section.

Outcomes/attainment

This section will discuss the impact and intended effect of the Academies Act on the concepts of outcomes and attainment. It will demonstrate that the Government has a narrow view of what outcomes and attainment are, focussing only on exam results and Ofsted ratings. This produces a narrow interpretation of 'good' schools which potentially limits the extent to which the markets created by the Act will operate. These limits will be explored, and suggestions made on how a more representative view of 'good' could be developed, should the Government be so minded. For the purposes of Chapters 2-4, this interpretation will be applied faithfully in recognition of the parameters set by the Government.

Educational outcomes are, at the most basic level, the acquisition of knowledge by pupils.¹¹⁰ Outcomes can be as simple as, and are frequently expressed as, exam results. Thus, the educational outcome for a pupil could be achieving 3 A-Levels.¹¹¹ Here the outcome of education is the attainment of the pupil of their exam grades, and thus outcomes and attainment are linked, in that the outcome is attained by a pupil. Outcomes can also be attained by schools, for example in the form of Ofsted results.¹¹² Thus the outcome of a school's development of its leadership team could be that it attains an increased Ofsted rating. These are currently set at 'inadequate', being the lowest outcome, 'requires improvement', 'good', with 'outstanding' being the highest outcome. Government considers these two measures of school outcomes are the

¹¹⁰ Reezigt's framework focuses both on attainment and efficiency, see Reezigt, G.J, Creemers, B.P.M, 'A comprehensive Framework for Effective School Improvement', 2005, *School Effectiveness and School Improvement*, 16, 4, 407-424, p420.

¹¹¹ Rhodes, C, Brundrett, M, 'Leadership development and school improvement', 2009, *Educational Review*, 61, 4, p361, this links into attainment, see below.

¹¹² Mincu, M.E, 'Teacher Quality and School Improvement: what is the role of research?', 2015, *Oxford Review of Education*, 41, 2, 253-269, p263 and Leithwood, K, Jantzi, D, McElheron-Hopkins, C, 'The Development and Testing of a School Improvement Model', 2006, *School Effectiveness and School Improvement*, 17, 4, 441-464, p445.

primary methods of assessing attainment.¹¹³ Government's conceptualisation of a good school is one where pupils achieve high test results and Ofsted rate the school as outstanding. This position is not without criticism and these two key measures for the Government are discussed further below. However, it should be noted that Andrews has argued that the percentage of price (or in this case quality) conscious consumers need not be large to have a significant impact on market behaviour, with consideration given to figures as low as 10%.¹¹⁴ Thus, whilst it is clearly incorrect to assume that all parents will base their choice of school on one or two measures alone, Andrews' work would support a demonstrable impact to a minority of parents sharing the Government's measure of attainment.¹¹⁵

Exam results

Exam results are a primary measure of attainment for the Government. However, this section will demonstrate that, notwithstanding the Government's reliance on exam results, in practice they are an unreliable measure of attainment which is incapable of comparison between pupils or over time. Thus, whilst this Thesis will use exam results as a measure of attainment, in line with Government practice, this section will acknowledge their failings as a meaningful measure.

Exam results are used to measure outcomes in two ways; firstly, for an individual pupil exam results ostensibly permit a comparison of that pupil against others in their year group and pupils in previous years.¹¹⁶ Secondly exam results for each school are compiled into league tables, allowing parents and others to identify which school achieved the most top marks in the relevant exam. This encourages the perception held by Government that schools which get the most top marks are 'better' schools and so pupils who go there are more likely to perform well in their exams.

¹¹³ This approach has been prevalent since at least the introduction of City Academies, see for example Adonis' assessment of Hackney Downs school based on a "demining inspection report" and GCSE results, Adonis (2012), p1.

¹¹⁴ Andrews (1966), p102.

¹¹⁵ Ibid.

¹¹⁶ Though on this see below on the limitations of exam result comparisons.

Arguments for measuring attainment via exam results are based on the tracking of school performance to show how much pupils have learned.¹¹⁷ It is argued that what pupils learn, and how much, is key to ensuring that the next generation are productive. Society and the economy continue to function because young people grow up, get jobs and pay taxes.¹¹⁸ Measuring what pupils learn through testing is therefore an appropriate method of assessing the ability of the school to achieve the desired outcomes, namely an increase in knowledge and skill for the pupil. However, measuring attainment through exam results is not without criticism, which in recent years has increased given the focus on pupils' wellbeing and mental health.¹¹⁹ A strong criticism of exams is that they do not test what pupils know, but how they cope under pressure and their memory.¹²⁰ Whilst these skills are not without value, managing pressure and having a photographic memory does not mean a person is excellent at English literature. There is concern exams cannot accurately measure learning, and so reliance on exam results to measure attainment may not be reliable.

A second concern is that a focus on exams can lead to 'teaching to test', where schools focus on ensuring that pupils pass exams, rather than providing them with a broader education in the topic. Such behaviour has been regularly cited by educationalists and others as a risk when the importance of exam results is overemphasised.¹²¹ In addition the decisions of exam boards, can also lead to criticism by employers that whilst pupils may achieve high exam results, they do not possess the necessary skills and knowledge to succeed in the workplace. Thus, whilst students as a whole may get higher marks in their GCSEs or A-Levels, the employability of young people may not increase, and could decline, as pupils fail to acquire softer skills, such as research, time management and the ability to handle criticism.¹²² Undue focus on exam result may therefore have a

¹¹⁷ Hutchings, M, Francis, B, De Vries, R, *Chain Effects: The Impact of Academy Chains on Low Income Students* (July 2014), The Sutton Trust, p27.

¹¹⁸ See Lawson, J, Silver, H, *A Social History of Education in England*, 3rd Edition (1973), Methuen & Co Ltd, p365.

¹¹⁹ Though this was a concern even in the early days of public education, see Barnard, H.C, *A History of English Education from 1760*, 2nd ED (1971), University of London Press Limited, p266-267 for a discussion on this in 1902.

¹²⁰ This being the "high stakes testing" discussed in Chitty (2014), p165.

¹²¹ Benn (2012), p132.

¹²² Such concerns were raised in the 1970's, see Chitty (2014), P34.

detrimental impact on wider social measures of attainment. A further criticism can be made of the English exam system arising from the number of exam boards which set curriculums and design and mark exams.¹²³ Critically the exam boards all set individual grade boundaries, which fluctuate dependant on average performance. As a result, an increase in the percentage of pupils achieving top grades is not a direct comparison with previous years. In addition, further variations arise between exam boards. For example, in 2019 to get an A in A-Level Physics with Edexcel a pupil would need to achieve a mark of 59%.¹²⁴ By comparison with OCR the boundary for an A was set at 76%.¹²⁵ Similar disparities existed across a range of subjects, meaning that schools' choice of exam board, rather than their ability to educate children, could directly correlate to their position in league tables. Thus, even same year comparisons on performance between schools are not necessarily an indication of comparable quality. Where exam results are not capable of comparison, either across a year or between years, their value as a measure of attainment or outcomes is fundamentally degraded. This absence of consistency could of course be corrected by having a single exam board, or by centrally fixing grade boundaries to ensure consistency across exams and over time. This would allow fairer comparisons and so enable more accurate conclusions to be drawn about the quality of teaching in schools without the risk of strategic manipulation of results through exam board selection.

Finally, until the introduction of Progress 8, exams assessed a final score achieved by a pupil without reference to their entry level ability.¹²⁶ This issue will be explored in Chapters 2 and 3 below, but highlights schools were, and to an extent are still, able to design ways of ensuring that they are more likely to attract pupils with a high level of ability on entry, thus making it easier to teach them to achieve higher grades. This can include, for example, focusing on attracting socio-economic groups who on average do better in exam results and discouraging those that on average do worse.¹²⁷ For example,

¹²³ see <https://www.ucas.com/undergraduate/applying-university/filling-your-application/what-do-if-you-dont-have-copies-old-exam-certificates> last visited 27.05.19.

¹²⁴ see <https://www.bbc.co.uk/news/health-49347539>, last visited 22.08.19.

¹²⁵ Ibid.

¹²⁶ Hutchings (2014), p27.

¹²⁷ See a discussion on selection in Benn (2012), p88.

pupils in receipt of free school meals, which are means tested, are as a group more likely to score poorly in exams.¹²⁸ Reductions in the numbers of these pupils is often used as a criticism of academies that increase their league table positions.¹²⁹ This long standing social link between class and exam performance is discussed further in Chapter 3, however, it should be noted at this stage that significant volumes of academic work on education have linked background and performance, thus in any situation, the value of the end result, without considering the starting position and levels of extra-curricular support, is clearly limited.

There is a basic logic in testing pupils to assess the ability of schools to teach, as has been shown above. Whilst this approach can be criticised, Government continues to rely heavily on exam results as a measure of attainment. A study by Chisesi found that over 60% of parents selecting a new school chose a school with improved test scores, and thus one of perceived improved quality, suggesting that the Government's measures are considered by parents. Chapters 2-4 will consider attainment as perceived by the Government, in keeping with the context of the Government's decision-making process.¹³⁰

Ofsted results

The Office for Standards in Education, Children's Services and Skills, referred to as Ofsted, was created by the Education (Schools) Act 1992 with responsibility for the organising of inspections to maintain and enhance standards within schools.¹³¹ Their inspections are used by the Government to measure outcomes within schools and are used to determine when schools can choose, or be forced to convert under the Academies Act. This section will demonstrate that Ofsted inspections are of limited

¹²⁸ Andrews J, Robinson, D, Hutchinson, J, *Closing the Gap? Trends in Educational Attainment and Disadvantage* (August 2017), Education Policy Institute, p6.

¹²⁹ Benn (2012), p108.

¹³⁰ Chisesi (2015), p214.

¹³¹ See Section 5 and Section 8 of the Education Act 2005 and Regulation 3 of the Education (School Inspection) (England) Regulations 2005 (as amended). See also Jones, K, Tymms, P, 'Ofsted's role in promoting school improvement: the mechanisms of the school inspection system in England' (2014), *Oxford Rev Educ*, 40, 3, 315-330, at p320. See further Rosenthal, L, 'Do school inspections improve School quality? Ofsted inspections and school examination results in the UK', 2004, *Econ Educ Rev*, 23, 143-151, p145, its duty to inspect is now contained within section 5 of the Education Act 2005.

value and can be too infrequent to contribute meaningfully to discussions of school quality. Improvements could be made to the approach and reporting of Ofsted results, these are discussed below. However, as with exam results the Government is committed to using the current assessments as a measurement of outcomes, and so Chapters 2-4 will accept this position to facilitate discussions on the Government's approach.

Ofsted inspections are based on its inspection framework,¹³² resulting in a school being graded as outstanding, good, requires improvement or inadequate.¹³³ Ofsted's ethos is that inspections drive improvement.¹³⁴ Improvement is measured through improved outcomes for young people, i.e. attainment, which given the limited measures used by Governments insinuates a strong link to exam results.¹³⁵ This ambition is, however, tainted by historic research demonstrating that Ofsted actually have a small, but noticeable, negative impact on the exam results of schools they inspect.¹³⁶ This impact was not offset by performance in the following year, and thus it was argued that, notwithstanding Ofsted's published aims, their work does not lead to increased attainment in schools.¹³⁷ Indeed some have gone so far as to say that Ofsted is "devastating" for education as a result of their bureaucratic approach, and a lack of fair-mindedness by inspectors.¹³⁸ Even after reform in 2012 strong criticism continues that the role of Ofsted does not lead to increased attainment or productivity.¹³⁹ Ofsted is, therefore, ostensibly a measure of school attainment, however, the reliability of that

¹³²The 2019 framework is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801429/Education_inspection_framework.pdf last visited 28.08.19.

¹³³ Ibid.

¹³⁴ Improvement being an increase in attainment and/or productivity, as set out below. See the Ofsted Strategy 2017-22, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/648212/Ofsted_strategy_2017-22.pdf last visited 28.08.19.

¹³⁵ Ibid, see p5.

¹³⁶ Rosenthal (2004), p150.

¹³⁷ Ibid.

¹³⁸ Welham, H, "Teacher Tom Bennett on Why Ofsted should be Abolished", *The Guardian*, 11 January 2015.

¹³⁹ Baxter, J, Clarke, J, 'Farewell to the tick box inspector? Ofsted and the changing regime of school inspections in England', 2013, *Oxford Rev Educ*, 39, 5, 702-718, p703.

measure, and the effect it has on schools, though more in relation to staff than pupils,¹⁴⁰ is questionable.

Ofsted's inspection framework purports to measure four areas: quality of education, behaviour and attitudes, personal development and leadership and management. This includes the range of curriculum and additional development taught, the expertise of teachers, the environment and values instilled in pupils and how schools are managed to achieve increased outcomes. Ofsted therefore have a part in preventing teaching to test, for example, as well as looking at school governance.¹⁴¹ This range should give a more meaningful assessment than exam results alone. However, this assumes that Ofsted are able to set out, in relatively detailed terms, what each school must do to ensure that attainment and efficiency increase. This is clearly not the case,¹⁴² and instead Ofsted measure against what is, at that time, believed to foster improved attainment.¹⁴³ Ofsted results therefore tell parents how well the school conforms to current government expectations. As expectations change the value of comparisons over time become questionable, and so the value of an Ofsted rating to the parent of an 11 year old new starter may be substantially reduced by the time that child takes their A-Levels, due to change in the inspection framework, attitudes on teaching methods or on governance.¹⁴⁴

A further criticism of the value of Ofsted ratings is the period within which inspections are completed. Perhaps surprisingly inspections are not annual, at least not for all schools. Schools which are rated at 'inadequate' or 'requires improvement' are inspected much more frequently than those that are rated 'outstanding', and can go up to a decade without reinspection.¹⁴⁵ Assessments can change very rapidly,¹⁴⁶ and while

¹⁴⁰ Rosenthal (2004), p146.

¹⁴¹ Which many have identified as being critical to performance, see Adonis (2012), p20, who asserted that "Comprehensives failed on governance." As a key motivator for academies.

¹⁴² Otherwise conflicting views like those of Benn and Adonis would be rendered moot.

¹⁴³ See the discussion on changes in views on this in Baxter (2013), p702-718.

¹⁴⁴ Though some suggest that the impact of Ofsted grading are short lived, at least in the first instance, see Camina, M, M, Iannone, P, 'Housing Mix, School Mix: Barriers to Success' (2014), *Journal of Education Policy*, 29, 1, 19-43, p29.

¹⁴⁵ Though this is now set to change, see <https://www.bbc.co.uk/news/education-49540258>, last visited 01.09.19.

¹⁴⁶ Ibid.

Ofsted results tell parents how well schools conform to the relevant standards at a set point in time, parents and governments tend to read these as an absolute assessment of quality that persists long after the inspection is over.¹⁴⁷ Schools will, for example, advertise their Ofsted successes until the next inspection as badges of continuing quality, whereas they will argue unfairness when these high assessments are removed.¹⁴⁸ Ofsted results are therefore potentially misleading in what they measure, have questionable accuracy,¹⁴⁹ and are of reducing value over time without making this clear to parents as consumers. As a measure of quality therefore Ofsted results range from good measures,¹⁵⁰ to positively misleading.¹⁵¹

Ofsted grades currently represent a method of assessing attainment, efficiency and improvement which is less tied to pupil output and attempts to be a more rounded assessment. However, they are tied to changing educational and political attitudes and can be out of date and easily misinterpreted by parents. As has been shown above there is obvious room for improvement. Nevertheless, it is the main mechanism through which the Government assesses the performance of schools in the operational mechanics of the Academies Act. Therefore, as with exam results above, Chapters 2-4 will accept the Government's approach in using Ofsted ratings to examine attainment and output, before a more critical view is resumed in Chapter 5.

Other measures

Despite the Government's position exam and Ofsted results are not the only outcomes for education. This section recognises the other outcomes of education which are harder to measure, and so relatively ignored in Government discussions of outcomes and attainment. These can include macro and micro benefits from education for society and individuals. Such measures include the production of civil and productive members of society, even where the school is graded poorly by Ofsted and/or the pupil achieves

¹⁴⁷ As noted above (op cit fn126), the Government has just announced this approach is changing, however, this does not diminish the criticism of its historic approach.

¹⁴⁸ See for example the statement by William Howard School in 2016 in relation to their Ofsted Report – available here: <http://www.williamhoward.cumbria.sch.uk/about/ofsted-reports/> last visited 4.4.19.

¹⁴⁹ See for example Welham (2015).

¹⁵⁰ When standards reflect parents' areas of concerns and inspections are recent

¹⁵¹ For example, for the parents who sent their children to William Howard in 2015.

low, or no, qualifications.¹⁵² Thus educational outcomes can include assisting the next generation to conform to social norms,¹⁵³ such as obeying the law, leading to a reduction in crime.¹⁵⁴ Outcomes could include increasing social mobility, increasing productivity and driving economic growth, through the production of valuable members of the workforce, thus reducing unemployment – which, depending on the economy and nature of exams, may be completely independent from the ability to produce high test scores.¹⁵⁵ On a more micro level, outcomes can include increasing confidence, self-worth and happiness in pupils.¹⁵⁶ As to the macro outcomes, the behaviour of the government in general ties these to Ofsted and exam results.¹⁵⁷ The more micro outcomes are regularly absent from Government rhetoric and quality measures such as inclusion and wellbeing, are not currently formally reported on.¹⁵⁸ Measurements of quality are always likely to be subject to complications and will never be perfect,¹⁵⁹ however, given the limitations of the Government’s current measures there remains room for improvement. Measuring areas such as pupil wellbeing, in an age where mental health issues for young people is particularly pronounced,¹⁶⁰ may allow parents who are less concerned with their child becoming a doctor and more concerned with them being happy and well-rounded to have a better range of information with which to make an informed decision on school quality – thereby facilitating competition. Equally, recording each instance of bullying and how it was resolved,¹⁶¹ would allow schools to analyse trends in the behaviour of their pupils to ensure that bullying support

¹⁵² For example, Richard Branson, see <https://www.virgin.com/richard-branson/my-career-was-my-education> last visited 29.08.19.

¹⁵³ Such as reducing intolerance – see for example the ‘No Outsiders’ programme, though as with this example, these aims can prove controversial. See <https://www.bbc.co.uk/news/uk-england-48351401> last visited 20.08.19.

¹⁵⁴ Smith, F, *A History of English Elementary Education 1760-1902* (1931), University of London Press, p1.

¹⁵⁵ See for example the discussion of a ‘knowledge economy’ in Ball, S.J, *The Education Debate*, 2nd edition (2013), The Policy Press, p23.

¹⁵⁶ Chitty (2014), p9.

¹⁵⁷ See for example Conservative Party, *Raising the Bar, closing the gap, Policy Green Paper No.1* (20 November 2007).

¹⁵⁸ Though substantial issues may appear in the text of Ofsted reports, this is not necessarily represented on the dashboard of gradings.

¹⁵⁹ As perfect information, like zero transaction costs, is not available in the real world, see Coase (1988), p114

¹⁶⁰ See for example <https://www.theguardian.com/society/2019/apr/17/mental-health-young-people-england-crisis-point-teacher-school-leader-survey> last visited 25.05.19.

¹⁶¹ Or indeed if it was resolved.

and prevention is targeted. Publishing statistics would encourage schools to address bullying and offer an additional measure of safeguarding for children. As a result, the Government could address improving school choice and other social challenges through developing more holistic measures of attainment. Given that parents are normally committing their child to at least 5 years at a school an assessment based on a single week is hardly sufficient for a well-informed decision – particularly when that week may have been several years ago.

To make informed choices in a more realistic schools market parents need easy access to reliable information on performance over time. Current data can provide this, within the limitations discussed above, in that one can review historic Ofsted results and league table entries, however this is labour intensive. If the Government wishes parents to act more like consumers in a market, and thereby improve competition, it needs to ensure that reliable and comprehensive information on their options is available quickly and easily. This means, whilst Government did not amend its current measures of attainment when developing academies, this option should still be explored. This could include merging Ofsted reports, league tables and other forms of assessment in one place.¹⁶² Such an approach would enable a quick reference guide for parents to assess the best school in their area. It would also help to combat the increasing importance advertising is playing in schools, with some schools having undertaken significant marketing activities, either to advertise their strengths or offset any weaknesses.¹⁶³ Naturally such an approach should also recognise that schools have differing priorities, and as a result consideration could be given to a structure similar to the university league tables, with an overall score, as well as a score for areas of particular importance, such as academic success, sporting success, inclusion, wellbeing etc. This approach would enable parents to understand local school performance quickly and easily, thereby keeping transaction costs low. Covering a broad range of issues will also increase the likelihood of covering areas that parents are particularly concerned with,

¹⁶² Other forms of quality assessment could be drawn from university quality measurements, including pupil satisfaction, next steps records – how many to college, apprenticeships, university etc. the central location should probably be online, perhaps utilising the .gov website.

¹⁶³ See for example William Howard Schools discussion on its 2016 Ofsted report, available here: www.williamhoward.cumbria.sch.uk/about/ofsted-reports/ last visited 03.03.19.

ensuring that the Government's narrow view on quality does not disadvantage parents with contrary views, a topic discussed in the next section.

Thus, outcomes and attainment are the results of education, with the Government focussing almost exclusively on those that are relatively easy to measure,¹⁶⁴ namely exam results and Ofsted ratings, rather than macro benefits to the economy and society which require long-term assessment. The value of such an approach is that the Government can assess outcomes and attainment of pupils to acquire relatively quick feedback on the performance of providers of education. These limited measures of outcomes and attainment are therefore preferred as yardsticks of teachers' and schools' ability to deliver their objective – to educate the next generation.¹⁶⁵

Efficiency/Productivity

This section will consider the concept of efficiency, called productivity by Hoxby,¹⁶⁶ which represents a school's value for money. It will explore how efficiency is measured within education and the relationship between efficiency and competition, precursing the discussions on the value of model changes in Chapter 4. In education, efficiency measures the cost of providing educational outcomes and pupil or school attainment. Efficiency is a comparative measure, comparing schools or performance over time. As a result, if a school's Ofsted results increase without additional funds then both attainment and efficiency increase,¹⁶⁷ as the school is able to do more for the same money.¹⁶⁸ Equally efficiency helps to balance unequal comparisons, for example comparing attainment between private and public schools, where the per pupil spend is frequently unequal.¹⁶⁹ Given that the aim of the Government is to produce a market without price, in that public schools do not charge parents to educate pupils,¹⁷⁰ efficiency can be seen as a critical factor in evaluating the market. This is because finding

¹⁶⁴ Though on which see below.

¹⁶⁵ Irrespective of their appropriateness for this use.

¹⁶⁶ See Chapter 2.

¹⁶⁷ Noting the limitations of comparing Ofsted results over time discussed above.

¹⁶⁸ Or has gotten better at hitting the short term targets by saving money and time not working on long term objectives which are not assessed.

¹⁶⁹ See Broughton (2014), p15 & 61.

¹⁷⁰ Though as discussed in Chapter 4 this does not mean that education is 'costless' for parents, simply that private school fees are not charged for core provision of education.

ways of increasing attainment without a corresponding increase in funds, or relative to 'competitors' in the form of other public schools who will have the same per-pupil income, is the result that successive governments have sought when amending the education system.¹⁷¹

In times of austerity, where resources are reduced or where increases in income do not keep pace with inflation, efficiency can take on another form: to maintain attainment with less resources. Thus, increased efficiency allows schools to continue to be assessed as outstanding by Ofsted, or to continue to achieve high exam results for pupils, with a reduced relative budget.¹⁷² Efficiency therefore entails a parallel between funding and attainment, through ensuring that the school is 'lean', i.e. does not waste resources,¹⁷³ and through other measures such as economies of scale and other synergies.¹⁷⁴

There is a potential tension between efficiency and competition, as competition requires exit, which in turn requires schools to have capacity to admit additional pupils. As a result, if a school achieves its PAN there is potentially no space for an additional pupil. As discussed above, arguments about prejudice to the school and pupil then come into play in order to determine whether or not to admit the pupil.¹⁷⁵ This challenge is primarily focussed on school funding. Schools are funded based on the number of pupils admitted. As a result, if the school is staffed for 300 pupils it could be expected to have a PAN of 300 to ensure that the staffing and budget are as efficient as possible. Where the school has fewer pupils, the allocation of resources will be inefficient, and cuts may be required which could impact on the schools' ability to admit the full PAN at a later date. Capacity within schools is therefore wasteful, as it represents an under use of resources. Schools which offer superior quality teaching to their neighbours can expect to have sufficient applicants to ensure that they are not exposed to wasted capacity, whereas schools with poorer quality relative to their neighbours will be forced to shoulder

¹⁷¹ See for example Ball's discussion on competition starting at Ball (2013), p138

¹⁷² Or to continue to provide a safe, happy environment for pupils, or contribute to civil society, etc.

¹⁷³ i.e. commit resources on things that do not increase attainment.

¹⁷⁴ Synergies being the merger of multiple activities to create a cost saving.

¹⁷⁵ See Chapter 3.

greater inefficiency caused by over-capacity.¹⁷⁶ Setting their own PAN is a key advantage to academies over community schools. It allows good schools to grow at a rate they are comfortable with to ensure efficient use of funds. However, this exposes competitors to potentially increased inefficiency if, as a result of an academies expansion, they are no longer able to achieve their PAN. A competitive environment with this potential constant rebalancing, as opposed to a more static system governed by a controlling consciousness, may nevertheless be the most productive option, and therefore the most efficient, if attainment and outcomes are sufficiently increased. Whether or not this is achieved is discussed further in Chapter 4.

Improvement

This section will consider what is meant by the term ‘improvement’, and how this Thesis will measure improvement and therefore assess the output of the Academies Act. Improvement is a popular word in education literature, and in discourses on the Academies Act 2010. However, improvement is innately subjective. For example, has a school improved when the test results go down, but the Ofsted score goes up? Does a school improve by offering more choices in subject areas and activities, or by focusing on ensuring that pupils receive a ‘core’ education?¹⁷⁷ In light of the above on attainment and efficiency this Thesis will operate on the basis that improvement can be seen as one of two options, either:

- An increase in attainment; or
- An increase in efficiency

Given the successive Governments’ austerity programme throughout the first nine years of the Act,¹⁷⁸ and the limits on school spending,¹⁷⁹ improvement through increased efficiency is becoming increasingly important. It is important however to be

¹⁷⁶ Assuming that pupils are not forced to attend lower quality schools as a result of better schools not expanding.

¹⁷⁷ And what would be the ‘core’?

¹⁷⁸ and the likely renewed austerity in light of the cost of Coronavirus measures.

¹⁷⁹ See for example <https://www.bbc.co.uk/news/education-47585803>, last visited 28.08.19.

mindful of the limitations of this approach. Firstly, as improvement is linked to the Governments' measures of attainment, 'improvements' may not actually 'improve' student experience or parental views of the school. As with the discussions on attainment, focus on Ofsted and exam results can lead to a situation where schools improve in the eyes of parents, without being seen as improving by the state – through, for example, making students happier, but not better in exams. The Government's aim to drive improvement through competition can only be realised to the extent that consumer demand encourages 'improvement' as the Government measures it, and thus where consumer demand does not align with the Government's version of improvement, it is unlikely that parental choice will drive improvement. Thus, the Government assumes that schools with strong exam results and good Ofsted ratings will be the ones parents send their children to. If parents pick schools for other reasons, the Government's understanding of competition linked to improvement fails. This is discussed further in Chapter 3. Another complicating factor for the concept of improvement, is that as at the enactment of the Academies Act, the school system was already improving as a whole.¹⁸⁰ That is, the percentage of higher Ofsted rates schools was already climbing, and pupils as a whole were already doing better in exams, etc.¹⁸¹ It is therefore not correct to think of education as stationary and any improvement resulting from the Act being a positive sign, rather improvement should exceed the relative level of existing improvement in order for the system introduced by the Act to be superior to the previous system. That is, the rate of improvement should accelerate. Whether or not this has in fact happened will be discussed further in Chapter 4. Thus, in this Thesis improvement is the increase in attainment or efficiency above the pre-academy rate.

Part 4 – Summary

¹⁸⁰ Brought to an apparently abrupt end in 2019, see <https://www.bbc.co.uk/news/education-49534720> last visited 01.09.19.

¹⁸¹ By the Governments assessments in any event. As discussed, there are complications with comparisons across year groups.

This Chapter has provided a brief introduction to the context and key concepts surrounding an exploration of the theoretical basis of the Academies Act. It has shown that the education landscape has evolved from a primitive market to a state controlled model, and then, with the introduction of academies, the system has moved once again more towards a more tightly regulated market reliant on greater competition between schools. In doing so successive governments have aimed to increase attainment and productivity and so drive improvement at an ever-faster rate. The discussions that follow will analyse the ambitions of the Coalition Government in the creation and development of the Academies Act. It will consider the workings of the Act both at a practical level and through the lens of the theories of Hoxby, Hirschman and Coase to understand the extent to which the Act can be said to be coherent in light of the above theorists' work.

Chapter two will consider the Government's reasoning for the development of the Academies Act,¹⁸² which was ostensibly to produce an increased rate of school improvement through the introduction of consumer choice, and therefore a market in education. It will then demonstrate that the Government relied heavily on an interpretation of the work of Hoxby to establish the link between increased improvement and competition. Hoxby had developed a theory of school improvement driven by competition based on case studies of charter and voucher systems in the United States. Her work appears to demonstrate that competition can be used to increase pupil performance and school efficiency at a system wide level.¹⁸³ Chapter two will then explore how Hoxby's ideas were adopted and adapted by the Government to provide an academic basis for the Academies Act, before concluding that the Government's adaptations meant reliance on Hoxby was not appropriate nor did Hoxby provide a viable academic basis for the Act.

Chapter three will accept that the Government could not use Hoxby to achieve its goals and will instead assess whether the work of Hirschman can be used to underpin the effects of the Academies Act. It will start by considering the areas of Hoxby's work which

¹⁸² See Chapter 2.

¹⁸³ Though Hoxby's work is not without criticism or limitations, as discussed in Chapter 2.

are not compatible with the Government's approach and will then set out how the work of Hirschman provides a more appropriate alternative to Hoxby. Hirschman's work discusses the importance of consumer responses to declines in quality without a corresponding impact on price.¹⁸⁴ As a result, it is particularly relevant to the public education system, where education is funded by the state, and thus 'price', i.e. cost to the public is constant.¹⁸⁵ Hirschman's analysis is therefore found to be an appropriate mechanism through which to explore the concept of market driven 'improvement' via the empowerment of consumers within the education governance framework.

Having established that the option of enacting the Academies Act was theoretically underpinned, Chapter four will then consider if that was the most efficient way for Government to drive improvement. It considers the work of Coase, which explores the cost dynamics of both the market and bureaucracy in the context of a perfect system and, by contrast, the real world.¹⁸⁶ Coase emphasises that in choosing between these systems, the correct solution is the one which is most efficient.¹⁸⁷ This discussion, when applied to the education system and the model of educational governance produced by the Academies Act, allows a consideration of the effectiveness of the system as a public service, both pre- and post- the implementation of the Academies Act. The Chapter considers the extent to which the new system of governance produced by the Act can be considered to be a better model of governance than the system it replaced. As a result, having established the creation of the Academies Act was a legitimate option, by reference to academic theory, Chapter 4 will explore whether it was the right option in light of Coase's framework. The Chapter will consider if the Act has generated a sufficient level of additional improvement to justify the costs associated with the changes it has brought about, or in the alternative, whether successive Governments could have increased improvement within the system in other ways. This Chapter will demonstrate that the introduction of the Academies Act has not achieved the level of

¹⁸⁴ See Hirschman (1970), p4

¹⁸⁵ Though it is recognised that there are other 'costs' in education which may not be so equally distributed, i.e. transportation costs.

¹⁸⁶ Coase (1988), p95-119.

¹⁸⁷ Thus, Firms will expand while that option is more efficient than using the market, see Coase (1988), p44.

improvement necessary to outweigh the costs created by the Act, and thus the introduction of the Act was not consistent with Coase's work. Nevertheless, this Chapter will demonstrate that the costs of repealing the Academies Act and undoing the changes created by it are too great to be efficient. As a result, this Chapter concludes that to move forward the schools' system should look to develop the current academy system rather than replace it.

Over the course of this discussion there will be frequent references to attainment, efficiency/productivity and improvement which must be considered in light of the content of this Chapter. It must be reiterated that this Thesis does not seek to blindly accept Government assessments of improvement, etc. on which many rational criticisms have been levied. Instead, these assessments will be used to demonstrate that, even on the Government's own criteria, their approach can be subject to legitimate criticism.

Further definitions of terms are provided in the Glossary at Appendix 2 of this Thesis.

Chapter 2: Policy Objectives

Introduction

Chapter 1 explored the broad context of the Academies Act 2010. Chapter Two will set out the Government's theoretical basis for the Act. It will explore and consider the Government's reasoning for changing the education system and why Academies were perceived to provide a resolution. The Chapter will demonstrate that the Government believed it was creating a system consistent with the work of Caroline Hoxby. However, this Chapter will go on to demonstrate that the Government failed to understand Hoxby's work and, as a result, developed an academised system without key components of Hoxby's work. These omissions mean the Academies Act is not compliant with Hoxby's theories on markets in education, and so this Chapter will conclude that, contrary to the Government's intentions, the Act is not underpinned by framework offered by Hoxby.

Part 1: Government Policy & the Influence of Caroline Hoxby

Introduction

To assess the extent to which the Government's intentions and the subsequent Act diverge from Hoxby's work, it is first necessary to understand what the Government wanted. This part will demonstrate that the Government sought to use school freedoms and new education providers, in line with CTCs and city academies, together with greater competition and choice, to drive increased improvement in education. In choosing these tools, the Government's approach was consistent with its wider 'big society' agenda, where Government intended to do less, and other parts of society filled the gap. Exploring the concept of the big society first, this part will consider how each of these factors in turn influenced the Act before considering the extent to which it aligned to Hoxby's work later in the Chapter.

Academies and the Big Society

This section will explore the idea of the ‘Big Society’ as set out by the Government, by reference to its three core elements. The concept of the “Big Society” was first expressed in the Conservative Party Manifesto of 2010 and its main elements were:

- Opening public service provision up to voluntary, charity and social organisations.
- Encouraging and enabling social action by individuals; and
- Community empowerment.¹⁸⁸

This section will consider the extent to which academies can be viewed as consistent with the Big Society, and areas where the academies programme and the Big Society appear to diverge.

The City Academies programme resonates with a number of ‘Big Society’ themes, including greater involvement by voluntary and charitable organisations.¹⁸⁹ However expanding academisation through the Academies Act enabled greater community participation in schools, by reallocating control to the local community.¹⁹⁰ Further, the introduction of free schools, which could be set up by voluntary organisations, charities or parents,¹⁹¹ has the potential to move the provision of education away from more traditional public sector bodies – LEAs – and towards a wider and more varied set of public, private and voluntary bodies, including universities,¹⁹² private individuals and charitable organisations.¹⁹³ The introduction of free schools opened school provision to a greater extent to a variety of third sector organisations. In addition, the option to open up a new free school, even if not actioned, gives parents and other interested parties greater choice of provision when considering their options and so allows for greater risk

¹⁸⁸ House of Commons Library, *The Voluntary Sector and the Big Society*, Briefing Paper 5883 (13 August 2015).

¹⁸⁹ Following the Labour Government’s widening of the pool of potential sponsors beyond businesses.

¹⁹⁰ Depending on the directors & members of the academy, discussed below.

¹⁹¹ Hansard, HL, 719, 1187, 21 June 2010, Lord Hill.

¹⁹² A group whose involvement continues to be encouraged, see; Morgan, J, “Theresa May: universities must set up schools to have higher fees”, *The Times*, 09 September 2016.

¹⁹³ Though by March 2015 there were only 255 free schools, see House of Commons Education Committee, *Academies and free schools: Government Response to the Committee’s Fourth Report of Session 2014-15* (18 March 2015), The Stationery Office Limited, p1.

of movement of pupils within the sector,¹⁹⁴ encouraging greater engagement with parents and communities.¹⁹⁵ The Act therefore can be seen as aligned to these Big Society themes.

However, this was not a foregone conclusion. The initial draft of the Academies Bill limited the minimum number of parent governors to one. This was then revised to two following a debate in the Lords.¹⁹⁶ A single, or even 2,¹⁹⁷ parent governors does not encourage or enable widespread social action by individuals as there are simply not enough protected spaces on the governing bodies for parents to engage in any great scale. Whilst guaranteed parental involvement on governing bodies remained limited, the majority of academy directors are appointees of the members in standard Articles of Association.¹⁹⁸ Interested parents are theoretically able to become appointed directors rather than parent-directors, thus encouraging more parents to become engaged, and without competition.¹⁹⁹ However, this would be subject to the members discretion, so for example a community school that becomes an academy may choose to have a number of parent governors over and above the statutory minimum, By comparison, a voluntary controlled school that becomes an academy may have only dioses representatives as appointee directors, reducing parental involvement to the minimum. Whilst the Act therefore guarantees minimum engagement,²⁰⁰ ensuring some community engagement in line with the Big Society, it creates only the option for wider community engagement, without ensuring that wider engagement is achieved. The Act therefore has the potential to drive forward the Big Society, but does not force the change.

¹⁹⁴ Though where a new school is being formed movement would not be immediate, as will be seen in Chapter 3, this results in reduced barriers to entry, thus increased possibilities of exit.

¹⁹⁵ On which see below, this currently assumes that Hoxby's criteria will result in improvement.

¹⁹⁶ Hansard, HC, 514, 820, 26 July 2010, Mr Gibb.

¹⁹⁷ Given that Regulation 13 of the School Governance (Constitution) (England) Regulations 2012 put the minimum number of governors at 7 for maintained schools (which all academies excluding free schools will start off as). Though, note that voluntary aided schools will have considerably more than 7 governors, and parent governors will therefore make up a very small minority of the governing body – see Regulation 14.

¹⁹⁸ See <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association>, last visited 24.02.17.

¹⁹⁹ See Schedule 1 of the School Governance (Constitution) (England) Regulations 2012.

²⁰⁰ Which is no more than was guaranteed pre 2010

Theoretically, free schools in particular represent an option for greater parent engagement in education, via the development of their own schools. However, parent led free schools have always been a minority, one that continues to decline as the academy system develops.²⁰¹ It may be appropriate to consider free schools in the context of engaging with other organisational actors within education, such as charities, universities, and businesses. Whilst free schools enable potential individual social action, in reality they are more aligned to public service provision, voluntary, charity and social organisations.

A criticism of the Big Society and academies in particular is that academies are not linked to the democratic process and so their management is not open to democratic scrutiny in the form of elections.²⁰² As a result they have been seen as less accountable and so less connected with community empowerment, contrary to Big Society themes.²⁰³ This comparison assumes that LEAs have a substantial degree of control over schools in their area, but following devolution of budgets etc. this is not the case.²⁰⁴ As it is not appropriate to consider an arm of government as the 'community',²⁰⁵ community must be considered in light of the third sector and other social bodies or groups. As academies move control of converting schools away from LEAs and towards this type of organisation,²⁰⁶ the academies programme promoted by the Coalition Government satisfies this element of the Big Society. Such an approach ties in with the Conservative 2007 Green Paper which expressed a need to devolve "power from the state to citizen" and so devolution below Local Government would be necessary to achieve this.²⁰⁷ The shift in power towards alternate private suppliers, and also the consumer, is consistent with a move away from a controlling consciousness, i.e. state machinery, and towards

²⁰¹ With parent led applications for free schools increasingly unlikely to be successful, see Whittaker, F, "Parent-led free schools in steady decline", *SchoolsWeek*, 22 April 2016, available at: <http://schoolsweek.co.uk/parent-led-free-schools-in-steady-decline/> last visited 27.02.17.

²⁰² Potentially leading to a democratic deficit, as identified in Hansard, 517, 07 June 2010, the Lord Bishop of Lincoln. They therefore do not participate in community engagement in traditional ways – i.e. democratic accountability of local Councillors.

²⁰³ See for example discussions in Ball (2013), p221.

²⁰⁴ Hansard, 544, 01 June 2010, baroness Morris.

²⁰⁵ Ball (2013), p221.

²⁰⁶ Notwithstanding the questionable control by LEAs, particularly in relation to finance following the effect of Section 49 of the School Standards and Framework Act 1998.

²⁰⁷ Conservative Party (2007), p6.

a market-like environment. This would align more with market based theories, such as that offered by Hoxby, where choice and competition fuel improvement through the threat of closure if not enough pupils are persuaded to attend the school.²⁰⁸ This contrasts with a more bureaucratic model where places are allocated centrally to ensure that each school has enough pupils to remain viable.²⁰⁹ In the English scenario, this can be seen where LEAs and Dioceses were able to set supply of school places to ensure that demand was not exceeded, thus ensuring survival of poorer quality schools.²¹⁰ Whilst this level of control was able to ensure a degree of efficiency, it was not consistent with Big Society aims or competition, discussed below. As a result, the Academies Act 2010 encouraged the Big Society policy objective pursued by the Government.

Freedom

This section considers the concept of freedom and autonomy, which has been central to the genesis of academies, it will explore the possibilities for greater freedom offered by academisation and the extent to which the Act aligned with Government ambitions.

Freedom from the restrictions and controls placed on other forms of school has always been a central theme of the academy lineage. Freedom for individual schools from a central controlling consciousness is seen by successive governments as necessary to enable market behaviours.²¹¹ As a result, to achieve greater improvement the Coalition Government maintain that school freedoms were a necessary component. Forms of freedoms include freedom over admissions,²¹² freedom over the curriculum and financial freedom.²¹³ Freedom over the curriculum in particular offered academies the ability to differentiate themselves from other local schools and so offer a wider range

²⁰⁸ See Chisesi (2015), p200.

²⁰⁹ Such as in district based systems in the USA, see Hoxby, C.M, 'Rising Tide', 2001, *Education Next*, 69-74, p71, and which may, prima facie, appear more efficient.

²¹⁰ See for example the Admissions Code.

²¹¹ See for example Adonis (2012), p20

²¹² Removing the role of LEAs as admission authorities.

²¹³ Financial freedom included receiving the whole school budget each year rather than having the LEA top slice for services it provided. The majority of these freedoms were theoretically open to maintained schools as well, limiting the value of the Act.

of 'products' i.e. courses, to each pupil as a result of the absence of overarching regulatory control on education, in the form of the detailed national curriculum. This differentiation through course content was first trialled in City Technology Colleges, which had substantial freedoms in comparison to other maintained schools at that time,²¹⁴ and in theory would have competed with local schools for pupils, though on a much smaller scale than the present academies programme. Lord Adonis was clear that, based on the success of the City Technology Colleges,²¹⁵ the city academies should have an equivalent level of freedom to innovate and deviate from regulations and restrictions.²¹⁶ This freedom was again seen as essential in driving improvement within the schools which were converted.²¹⁷ However, the social value of the city academies was seen as being within the converted school, i.e. making a poor school better, rather than considering the external effects on the wider system.²¹⁸ The causal link between freedoms and improvement, however uncertain it may be, was therefore accepted both by Labour and the Conservatives by 2010,²¹⁹ though Labour subsequently withdrew from the idea by obliging city academies to follow some aspects of the national curriculum.²²⁰ The Conservatives' 2007 Green Paper is, therefore, unsurprisingly explicit on its intention to give academies substantial freedoms, with the only constraints being those imposed on independent schools,²²¹ and, listed later on, the admissions code.²²² The 2010 manifesto continued to promise freedoms for academies, linking city academy success at achieving improvement to these freedoms.²²³ In the parliamentary debates ministers were also keen to protect these freedoms, resisting amendments imposing the national curriculum amongst other matters to guarantee academies the desired

²¹⁴ 1980s.

²¹⁵ Adonis, (2012), p56.

²¹⁶ Adonis (2012), p11.

²¹⁷ Conservative Party (2007), p43 and comments by Baroness Morgan at Hansard, HL, 719, 510, 7 June 2010 that "there is a good argument... for successful schools to be given more autonomy and flexibility".

²¹⁸ See Hansard, HC, 514, 123, 19 July 2010, Mr Coaker.

²¹⁹ See for example Benn (2012).

²²⁰ See Hansard, HC, 514, 492, 21 July 2010, Diana Johnson.

²²¹ Conservative Party (2007), p43.

²²² Conservative Party (2007), p44.

²²³ Conservative Party, Invitation to Join the Government of Britain; The Conservative Manifesto 2010 (2010), p53.

level of flexibility.²²⁴ As a result, it is clear that the Coalition Government, and in particular the Conservative Party, had a policy objective of increasing freedom for innovation within the Academies Act 2010.²²⁵ This objective was based on the link between improvement and these freedoms as documented by studies into city academies and City Technology Colleges. However, such a view was not without its critics who have argued that 15 City Technology Colleges and less than 10 years of city academies were not sufficiently robust examples, being small scale and for a relatively short duration, to enact a system wide change.²²⁶ Even Hoxby cautioned against over reliance on a 'new' system of school governance, and that was in reference to a system approaching 20 years of development.²²⁷ As a result the argument that reliance on such a small scale sample for whole system change was premature, carries considerable weight. That is of course not to say that the evidence would not support the result, but simply that the evidence was not sufficient to reasonably guarantee the intended result. As discussed in Chapter 1, freedom to innovate in relation to the national curriculum also creates a barrier to exit, by preventing pupils from continuing their studies if their courses are not offered at surrounding schools, as a result, whilst such freedom can encourage choice and competition, there remains the potential that diverging sufficiently from the national curriculum will reduce the possibility of exit.

Competition, Choice and the Academies Act 2010

This section explores the importance of competition in the development of the Academies Act through an examination of the use of competition and choice rhetoric. It will show that, in line with the concepts discussed in Chapter 1, competition and choice were seen by the government as interchangeable, given the link between pupil

²²⁴ See for example the debate on including PSHE in the curriculum starting at Hansard, HL, 720, 228, 7 July 2010.

²²⁵ i.e. reducing restrictions and controls over academies to allow them to explore different ideas and options not available to maintained schools. Ironically, most academy 'freedoms' are available to maintained schools.

²²⁶ Benn (2012), p4.

²²⁷ Hoxby (2003), p339.

places and funding, and their intention with the Academies Act was to increase parental choice and competition within the schools' sector.

The Thesis asserts that the Government used both choice and competition to develop improvement within education. However, the importance of competition was downplayed once the Conservatives took power. It was, nevertheless, critical to the theoretical construct of the Act and the theory relied on by the Government. Competition was downplayed because the Government recognised a key difficulty with the idea of competition within education: competition requires losers; not every business can succeed and as a person joins one consumer group; they will reject another. Thus, competition requires failure in order to facilitate success. This necessity can cause complications for politicians as advocating for a competitive 'market' for education, given that this necessarily requires schools to fail, and opens the possibility of "whole cohorts of children [passing] through helplessly declining schools".²²⁸ Intentionally, through system design, consigning some pupils to such a fate is contentious, and a serious political matter to contend with.²²⁹ Nevertheless, this part will demonstrate that competition was central to the development of the Act, though not to the implementation of the Act. This incoherence of the Government's approach to development and implementation will be explored further in Chapters 3 and 4 through discussions on facilitating exit from failing schools and also encouraging schools to develop approaches to reduce the risk of exit.

In 2007, while in opposition, the Conservative Party were quite open about competition, stating that academies "will compete with surrounding LEA schools".²³⁰ This demonstrated that competition was a major factor in the Party's education policy. However, towards 2010, and the election, discussions on competition receded, with all references to competition in education gone by the 2010 manifesto.²³¹ However, competition continued to play a key role in Conservative Party policy, with 'competition'

²²⁸ Crouch, C, *Commercialisation or Citizenship: Education Policy and the Future of Public Services* (2003), Bell & Bain Limited, at p33.

²²⁹ See for example the delicacy of discussions on Ministers motivations in Hansard, HC, 42, 19 July 2010.

²³⁰ Conservative Party (2007), p37.

²³¹ Conservative Party (2010), p51-53.

rebranded as ‘choice’. The distinction between choice and competition being whether or not a provider who is not chosen suffers a detriment. In the case of schools, a school which is not chosen by sufficient parents will have less pupils and so less funding. As a result, choice in the schools system necessitates the creation of competition for a limited resource – pupils. As such, whilst competition was rebranded as choice, in practice they are synonymous. This can be seen in the Policy Exchange, a centre-right think tank closely associated with David Cameron’s Conservative party,²³² paper on the potential for academy expansion.²³³ This paper advocated the expansion of choice within the schools’ sector through developing the academies programme. The paper develops the emphasis on school choice set out by David Cameron in 2005 by aiming to make school choice a reality for a greater number of parents within England.²³⁴ It promotes the expansion of the ability to convert to academy status to a wider range of schools, not just those that qualified under the City Academies programme, as well as the development of Multi Academy Trusts.²³⁵ The papers justification for the use of competition within the schools sector is based on research by Hoxby on the impact of Charter Schools in the United States, which, along with Swedish free schools, represent international comparators to the academies programme.²³⁶

Hoxby’s work on Charter Schools, referred to by Sturdy and discussed below,²³⁷ looks at the comparative effects of charter schools on pupils. It indicates that the introduction of competition within the school’s system produced an environment where all schools increased productivity, not just the new charter schools.²³⁸ Hoxby’s findings, taken at their widest,²³⁹ were that an increase in choice, and therefore competition given funding arrangements, can induce schools to increase productivity and so boost the academic performance of pupils.²⁴⁰ This can be seen as the antithesis of the

²³² See <https://www.theguardian.com/politics/2008/sep/26/thinktanks.conservatives>, last visited 06.10.2021

²³³ Sturdy (2007).

²³⁴ Sturdy (2007), p9.

²³⁵ Sturdy (2007), p21.

²³⁶ See for example Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

²³⁷ Sturdy (2007), p11.

²³⁸ Hoxby (2003), p287.

²³⁹ And see Part 3 on the importance of the detail of Hoxby’s work.

²⁴⁰ Hoxby (2003), p339.

bureaucratic system discussed by Friedman which reduced productivity.²⁴¹ Thus, Sturdy argued, the development of choice, and with it competition, would lead to improvement within the school's sector in England.²⁴² Besides the subsequent adoption of many of the recommendations produced by the Policy Exchange, the closest to Ministerial endorsement this approach received was a reference to Hoxby and Rockoff's work by Michael Gove in relation to the gains achieved by disadvantaged children in charter schools.²⁴³ Here Gove cited work which compares productivity of Charter Schools and non-charter schools through an analysis of pupil performance for pupils who applied to three Charter Schools in Michigan, USA. Their conclusion was that Charter Schools increased the performance of their pupils and so had a positive impact on their productivity.²⁴⁴ Thus, whilst throughout the entire Parliamentary process leading to the creation of the Act, not a single Minister mentioned the word 'competition',²⁴⁵ competition was clearly in the minds of Government Ministers. Further, the findings by Hoxby could be consistent with the Government's stated approach during Parliamentary debate, which was to "raise standards across all schools and to invite new providers into the system, particularly in areas ... in which there is parental dissatisfaction with existing provision."²⁴⁶

Further evidence of the Government's intention to develop a system involving greater competition can be found in a discussion between Michael Gove, Chris Woodhead, and Daniel Johnson from 2010 where Michael Gove sets out the type of competition he wishes to see in schools:

²⁴¹ Friedman, M, Friedman, R, *Free to Choose* (1980), Harcourt Publishing, p155.

²⁴² Sturdy (2007) p9.

²⁴³ Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

²⁴⁴ Hoxby, C.M, Rockoff, J.E, "Findings from the City of Big Shoulders", 2005, Education Next, available at http://educationnext.org/files/ednext20054_52.pdf, last visited 12.6.17, p58.

²⁴⁵ See Hansard for the Academies Act 2010, available at: <http://services.parliament.uk/bills/2010-12/academieshl/stages.html>, last visited 24.02.17, though the opposition made frequent reference to competition.

²⁴⁶ Hansard, HC, 514, 430, 21 July 2010, Mr Gibb.

“The ultimate goal is not to have the maximum level of competition. The goal is to have the maximum level of competition consistent with certain guarantees and principles of equity and a certain role for the state.”²⁴⁷

As a result, it is clear that the Minister intended for greater competition to form part of the system, but not that the system would become a pure market without the continued involvement of the state, such as the private market for education. This acknowledges the potential conflicts between markets and social goods, such as education, which the state is expected to provide.²⁴⁸ The implications of this conflict between Hoxby and ‘social goods’ are discussed in Part 3 of this Chapter.

As set out above, parental choice received rather more emphasis from Ministers during the parliamentary debates.²⁴⁹ Ministers emphasised that they had “made it clear that we want to improve choice in education”.²⁵⁰ Such an approach was less controversial than the introduction of greater competition within the school’s system as parental choice, or rather parental preference, was introduced as a feature of the English school’s system in 1998.²⁵¹ As a result it is reasonable to conclude that the Academies Act 2010 was intended to increase parental choice in line with previous Conservative pledges to expand places and choice.²⁵² Choice and competition are related, however, it is possible to have choice without competition. For example, had the Government fixed school funding without reference to pupil numbers, this would lead to increased choice but not to competition between schools. Such a situation could encourage schools to hold vacant places meaning they could reduce costs associated with teaching and so generate more available income for other projects.²⁵³ Schools would not feel a need to fill all their places in order to survive, and so there would be no competition and no competitive motivation to improve.²⁵⁴ Such a scenario is however not what the

²⁴⁷ Birbalsingh, K, et al., *The Gove Revolution: Transforming England's Schools*, 2013, Standpoint, p600.

²⁴⁸ Crouch (2003), p8.

²⁴⁹ And had been widely praised since 2007, see Conservative Party (2007), p7.

²⁵⁰ Hansard HC, 514, 479, 21 July 2010, Mr Gibb.

²⁵¹ Section 86, School Standards and Framework Act 1998.

²⁵² Conservative Party (2007), p36.

²⁵³ As less pupils could mean less teachers and so a reduced payroll cost but without an equivalent reduction in income.

²⁵⁴ Though that is not to say that there may not be other motivations to improve.

government wished to achieve, as the Minister made clear that “All schools need to drive up standards to retain their pupils and remain viable”.²⁵⁵ Thus, the Government had been clear that choice was to increase, and survival of schools relied on attracting and retaining pupils.²⁵⁶ Further, the Government referred to academic work on the implications of competition within schools and so it is clear that they intended to introduce a market for education within the school’s sector.²⁵⁷

It can therefore be concluded that the Government intended to develop a stronger market for education, building on the 1998 Act, in order both to improve choice and, through the operation of competition between schools, increase improvement, as discussed in Chapter 1. This was grounded in the works of Caroline Hoxby on Charter Schools in the USA, which will now be considered in Part 2.

Part 2: Hoxby & Competition in Education

Introduction

Hoxby has made considerable contributions to discussions on choice and markets within the American Education system.²⁵⁸ As discussed above, her work has had significant effects on the shaping of education policy beyond America. This Part will examine Hoxby’s assessments of choice on improvement, in the form of attainment of results by pupils, and on productivity. It will examine Hoxby’s assertions that competition increases both attainment and productivity both in the light of her own work and others’ analysis of it.²⁵⁹ This Part will demonstrate Hoxby’s findings that improvement in attainment and productivity can be achieved through the use of market structures. As a result, it will conclude that Hoxby’s theories on competition driving improvement could be used to underpin a market-based system in England. Part 4 will then move on

²⁵⁵ Hansard, HC, 514, 479, 21 July 2010, Mr Gibb – reference here is to attainment, but viability clearly draws in references to efficiency.

²⁵⁶ Which is consistent with Hoxby’s work discussed below.

²⁵⁷ Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

²⁵⁸ See details of her articles to 2014 at http://web.stanford.edu/~choxby/hoxby_cv.pdf, last visited 12.06.17.

²⁵⁹ Both supportive and critical.

to consider the extent to which Hoxby's theories discussed in this Part were applied by the Government. It will show that the Government's misinterpretation of Hoxby's ideas resulted in a divergence between the Academies Act and Hoxby's work resulting in the Act being unable to draw support from her findings.

Hoxby & American Education

This section will very briefly outline the structure of the US education system to enable a better understanding of Hoxby's work. It will show that the US and English systems have many similarities, as do charter schools and academies. However, there are also significant differences in the operations of both systems.

Hoxby's work explores the effects of competition in the American education system. Much like the English system, the US system operates with three distinct routes for educational provision: public schools, private schools, and home schooling. The private sector in the US is slightly larger than in England, educating 12% of pupils,²⁶⁰ however this incorporates religious schools which form part of the public schools' sector in England.²⁶¹ Traditionally choice in the US system was largely constrained,²⁶² for the period considered by Hoxby's work parents could send their children to the local district school, apply for a place in a charter school (if there was a local charter school) or go private.²⁶³ As a result, Hoxby focuses on 'traditional' school choice, i.e. moving house to relocate into a better school district,²⁶⁴ before expanding to consider the development of charter schools and voucher programmes.²⁶⁵ Public school admissions in the US are therefore substantially different to England,²⁶⁶ with a stronger focus on catchment based admissions for district schools and lotteries for charter schools.²⁶⁷ By contrast in England maintained schools are obliged to comply with the Admissions Code, a

²⁶⁰ Hoxby (2003), p308

²⁶¹ Hoxby (2001), p71

²⁶² Though this is changing, see Chisesi (2015), p199

²⁶³ Hoxby (2005), p56 Home schooling is also an option

²⁶⁴ Hoxby (2000), p1210

²⁶⁵ See below

²⁶⁶ In the time period considered by Hoxby

²⁶⁷ Hoxby (2005), p55

requirement which was subsequently imposed on academies as well. English schools, pre and post 2010, therefore have a much wider variety of admission requirements and a stronger emphasis on parental preferences and choice.²⁶⁸

Charter schools themselves also have many similarities with academies. They can be set up by parents and community groups,²⁶⁹ much like free schools, and as with all publicly funded schools in England, their income is based on pupil numbers.²⁷⁰ They also enjoy a much greater level of independence from traditional actors in US education, much like academies and CTCs.²⁷¹ However, as will be discussed below, the charter schools considered by Hoxby all have one primary admission method; a lottery,²⁷² whereas academies have a range of oversubscription criteria they can choose to apply.

As a result, the US and English systems can be said to be similar, however, right from the start there were differences, particularly with the base level of choice given to parents.

Impact of Competition on Attainment

This section considers Hoxby's work on the impact of competition on attainment of pupils within schools exposed to competition. Specifically, it considers the impacts of Tiebout choice,²⁷³ which pre-dates charter schools and was historically the primary method for expressing choice in the US system.²⁷⁴ It will then go on to consider Hoxby's analysis of the impact of voucher programmes and charter schools on choice and competition within the American education system. It will demonstrate that competition improves the performance of all schools in an area, not just those who lose or obtain pupils.

²⁶⁸ Section 86, School Standards and Framework Act 1998

²⁶⁹ Hoxby (2005), p52

²⁷⁰ Ibid, p52

²⁷¹ Hoxby, C, "Covering the Costs," in Finn, C, Sousa, R, *What Lies Ahead for America's Children and Their Schools*, 2014, Hoover Institution Press, p163

²⁷² Hoxby (2005), p55.

²⁷³ See Tiebout (1956).

²⁷⁴ Hoxby (2000), p1210, this was also an important early form of choice in England.

Tiebout choice theorises that consumers of public services will move to an area where local taxes and services are as close as possible to what they wish to pay and the services they wish to receive.²⁷⁵ As a result, on this reasoning, citizens who want low taxes and small government will move to an area where the local government provides few services and has low local taxes. This thinking suggests that citizens who want more public services, and are prepared to pay for them, will move to areas with more services and more taxes.²⁷⁶ The concept of Tiebout choice has existed for a substantial period of time in comparison to charter schools and vouchers. Thus, an assessment of this form of choice provides far more historical data on the effects of competition than can be offered by more modern programmes. As a result, examining both Tiebout choice and vouchers and charter schools allows an assessment of the implications of choice with a smaller risk associated with limited data,²⁷⁷ to the extent that relevant contextual factors remain consistent. Thus, this combined analysis may be able to show that competition motivates schools to achieve improvement and may be able to identify common themes in beneficial competition scenarios,²⁷⁸ but it is unlikely to be able to recommend a specific vehicle for achievement of improvement via competition, as the vehicle changes throughout Hoxby's studies.²⁷⁹ This section will therefore consider if competition drives improvement in attainment. From this analysis, it will then look at the overarching factors present in Hoxby's case studies which may be relevant to attempts to design a competitive system which drives improvement in attainment.

Tiebout Choice and improvement in attainment

This section will explore the nature of Tiebout choice and its competitive effect on attainment, via an analysis of Hoxby's studies. It will show that Hoxby's work supports the effect of Tiebout choice, however that work is subject to substantial qualifications which materially hinder the value of the overall findings. It will conclude that whilst Hoxby's work on Tiebout choice is indicative, it cannot be considered conclusive.

²⁷⁵ Tiebout (1956), p416-424.

²⁷⁶ Tiebout (1956), p418.

²⁷⁷ Hoxby (2000), p1210.

²⁷⁸ That is, circumstances which create competition facilitating improvement.

²⁷⁹ See for example, Hoxby (2000) and Hoxby (2003).

When charter schools were in their infancy, and the city academies programme in the UK was just starting to develop, Hoxby undertook an examination of the impact on both taxpayers and pupils of competition as it existed between American schools concluding that competition had a positive impact on attainment and efficiency, though neither the theory of Tiebout choice or Hoxby's work have been without criticism.²⁸⁰ Hoxby examined the level of Tiebout choice present in the district and the attainment and productivity of those districts to consider whether there was a correlation between choice, attainment and efficiency.²⁸¹ Hoxby then considered other variables, such as pupil-teacher ratios, which could be related.²⁸² She postulated that parents would move to those school districts that delivered the level of school quality that they were willing to pay for and thus optimise their private interests.²⁸³ The movement of children, and funding associated with children, would then encourage districts to become more efficient in order both to maximise available funds and stave off school closure.

Hoxby's findings showed in areas where Tiebout choice was greater, student average reading and mathematics scores in national tests were higher.²⁸⁴ The effect of Tiebout choice on attainment was however limited.²⁸⁵ Hoxby also found that an absence of Tiebout choice increased spending per pupil in the district, without a corresponding increase in attainment. The increase in Tiebout choice was found to increase the productivity of school districts; those school districts with higher Tiebout choice could achieve the same results as districts with lower levels of Tiebout choice, but for less money per pupil.²⁸⁶ This is expanded by explaining that schools with more competition re-allocate funds away from other inputs and towards measures that either increase

²⁸⁰ for example, her analysis focussed on urban school districts with specific natural boundaries, watercourses, used to enable appropriately similar comparators to be identified and so could not be said to be representative of the American system as a whole.

²⁸¹ Hoxby (2000), p1210.

²⁸² Hoxby (2000), p1232.

²⁸³ Hoxby (2000), p1211.

²⁸⁴ Hoxby (2000), p1228.

²⁸⁵ Hoxby (2000), p1228.

²⁸⁶ Hoxby (2000), p1232.

productivity or are popular with parents, such as reducing teacher-pupil ratios.²⁸⁷ Hoxby found, on less robust evidence than her main findings, that the effect was less significant for minority students, but still present,²⁸⁸ and that greater financial autonomy increased the effects of Tiebout choice.²⁸⁹ Hoxby concluded that Tiebout choice slightly improved attainment and more significantly improved productivity in the districts examined, with impacts, unsurprisingly stronger in more affluent areas where its exercise is more viable.²⁹⁰

Whilst noting Hoxby's findings it is recognised that Tiebout choice contains some obvious limitations, the first of which is that it is not free. The exercise of Tiebout choice comes with financial and other costs. Tiebout choice is restricted to the financially better off because they have the capital to pay the costs associated with its exercise,²⁹¹ as well as a reduced social cost in moving. Thus, for example, Tiebout choice assumes a family can afford to buy a house in a more expensive school district or can afford the conveyancing fees and estate agent fees in moving, or the application fees for a new tenancy.

Further, this Thesis would assert that vary rarely will people move jobs and schools, leaving friends and other attachments to live elsewhere *just* because they can pay slightly less tax, or receive a few more public services. Even where they are minded to, the costs of moving will significantly reduce the value of any short-term savings produced by a move.²⁹² Even if these costs are overlooked a person considering moving would have to be confident that the environment s/he is moving to is relatively stable – that an election or other event would not cause the tax/services policy to change causing the benefits of the move to become obsolete shortly after it is completed.

²⁸⁷ Hoxby (2000), p1232 though such an analysis presents the appearance of a 'teaching for test' style of education which prioritises exam results over options to create a more comprehensive educational product and more rounded pupils which take resources from curriculum education. Such a risk is considered in Crouch (2003), p28.

²⁸⁸ Hoxby (2000), p1233 a smaller sample limiting the robustness of the overall finding.

²⁸⁹ Hoxby (2000), p1234.

²⁹⁰ Which were mostly white, hence why the impact was lower for ethnic minority students.

²⁹¹ See for example Nechyba, T.J. "Introducing School Choice into Multidistrict Public School Systems" in Hoxby (2003), p146. Such costs include conveyancing and other fees which can be considered transaction costs.

²⁹² Assuming one moves to experience lower taxation.

Therefore, while a legitimate argument in theory, Tiebout choice is unlikely to reflect the real world sufficiently to materially influence decision making.²⁹³ This viewpoint is supported by work by Lin and Crouch, which demonstrated that in Indiana changes in local school funding through taxation had less of an impact on pupil attainment than changes to State funding through taxation.²⁹⁴ As a result the extent to which Tiebout Choice may realistically impact on school choice appears dampened. This is because transaction costs in a move would be more significant when the move is greater, hence why Hoxby and Tiebout focus on urban areas where moves for school reasons can more readily be made without a corresponding detriment to other factors. Accordingly, the relevance of Tiebout Choice is restricted as expressions of strong Tiebout Choice would require funding alternatives to have significant effects, which, according to Lin and Crouch, would require a change in State.²⁹⁵

Hoxby's work on Tiebout choice was also subject to criticism as her base data cannot be reproduced. Several years after publication of the article based on her modelling and use of natural boundaries, Rothstein attempted to recreate her model, achieving significantly different results based on a revised methodology.²⁹⁶ Hoxby comprehensively explained anomalies in Rothstein's re-run modelling, which, whilst exonerating Hoxby from a material error in modelling also demonstrated that re-analysis of her initial results was now impossible due to the Federal Government's revisions of raw data.²⁹⁷ Thus whilst attempts to undermine Hoxby's modelling have not borne fruit, it is now clear that it is no longer possible to access Hoxby's original data and so an entirely new study,²⁹⁸ or more likely studies, would be required to confirm or

²⁹³ That is not to say that parents would not move for a better school, as they do; see Francis, B, Hutchings, M, *Parent Power? Using money and information to boost children's chances of educational success* (December 2013), The Sutton Trust, however, this is more probably a move associated with the school, rather than the wider public service benefits & costs.

²⁹⁴ Lin, T-C, Couch, A, 'The Impact of Federal, State and Local Taxes on Student Achievement in Public Schools: The case of Indiana', 2014, *Applied Economics Letters*, 21, 3, 220-223, p222.

²⁹⁵ Ibid.

²⁹⁶ Rothstein, J, 'Does Competition among Public Schools Benefit Students and Taxpayers? Comment', 2007, *The American Economic Review*, 97, 5, 2026-2037, p2036.

²⁹⁷ Hoxby, C.M, 'Does Competition among Public Schools Benefit Students and Taxpayers? Reply', 2007, *The American Economic Review*, 97, 5, 2038-2055, p2054, see also Merrifield, J, 'School Choice Evidence and its Significance', 2008, *Journal of School Choice*, 2, 3, 223-259, at p232.

²⁹⁸ Ibid.

disprove her results. Given the growth of charter schools and the developments in non-Tiebout choice initiatives since 2000,²⁹⁹ such studies in the US are unlikely to be feasible. Thus, whilst Hoxby's work has not been disproved, it is not capable of verification and so must be considered of limited value.

Charter schools and improvement in attainment

Next this section will consider Hoxby and Jonah Rockoff's work, explored the link between charter schools and student attainment. It will assess their May 2004 study of charter schools in Chicago,³⁰⁰ concluding that, as with Tiebout choice above, Hoxby's work is indicative but not conclusive on the link between competition and attainment. Hoxby and Rockoff's original idea was developed in 2004 and then was further developed in 2005 in a paper analysing the impact of the same charter schools on performance in Chicago.³⁰¹ Their work found that charter school students outperformed their counterparts in district schools by a significant margin, indicating that charter school's need to attract pupils to survive drove greater attainment for their pupils. However, their work is considered indicative only due to the infancy of the Chicago charter school programme and the small-scale sampling undertaken.

The articles focus on three charter schools overseen by the Chicago Charter School Foundation; two run by American Quality Schools and one by Edison Schools, a for profit organisation.³⁰² The schools all designed their own 'mission' and curriculum, but were subject to similar staffing restrictions and received 75% of the average district per-pupil funding for each pupil attending the school.³⁰³ All three schools operated a lottery-based admissions system, unless a sibling was already in attendance.³⁰⁴ Hoxby and Rockoff were therefore able to compare the performance of those applicants that were 'lotteried-in' (i.e. got a place in the school via lottery) with those that were 'lotteried-out' (i.e. applied but did not get a place), to ensure that the control group for their

²⁹⁹ i.e. the voucher programmes discussed below.

³⁰⁰ Hoxby, C.M, Rockoff, J.E, 'The Impact of Charter Schools on Student Achievement', 2004, NBER Conference Paper.

³⁰¹ Hoxby (2005).

³⁰² Hoxby (2005), p53.

³⁰³ Hoxby (2005), p53.

³⁰⁴ Hoxby (2005), p55.

performance measures represented a group with similar visible and non-visible characteristics.³⁰⁵ The results of this research were that students who were lotteried-in outperformed lotteried-out pupils by a statistically significant margin.³⁰⁶

However, their research, whilst helpful, is subject to limitations. Firstly Hoxby and Rockoff were clear that the variation in forms of charter schools could have varying results, and that the findings from these three schools could not be applied to all charter schools.³⁰⁷ In addition the authors note that the particular charter schools examined, set up in the 1990s,³⁰⁸ and the wider charter school movement, were still in their infancy when the article was written.³⁰⁹ Hoxby has since discussed at length the risk of drawing conclusions from initial results that may be distorted by the appeal of a new school, which may reduce as the school beds into the wider system.³¹⁰ As a result, it is possible that the energy of new institutions is what drives the increased performance of these schools rather than the need to attract pupils to survive.

The size of the study, which considered just 2,448 pupils across the three schools, all of which were overseen by the same organisation,³¹¹ was limited. There is therefore the potential that improvement within those schools could be attributable to factors which are specific to charter schools in Chicago, with the Chicago Charter School Foundation as an overseer or indeed as a result of specific factors for those three schools – two of which were operated by the same organisation.³¹² Further when considering lotteries Hoxby acknowledges that “Large lotteries work best”.³¹³ Smaller lotteries, and in particular lotteries for entry to grades which are not standard entry grades – that is when pupils move from one primary school to another rather than starting in the first year of primary school – introduce a greater risk that, although random, the results have produced a lotteried-in group which is not comparable to the lotteried-out group.³¹⁴

³⁰⁵ Hoxby (2005), p55.

³⁰⁶ Hoxby (2005), p57.

³⁰⁷ Hoxby (2005), p58.

³⁰⁸ Hoxby (2005), p53.

³⁰⁹ Hoxby (2005), p52.

³¹⁰ Hoxby (2004), p5.

³¹¹ Hoxby (2005), p53.

³¹² Ibid.

³¹³ Hoxby (2005), p56.

³¹⁴ Hoxby (2005), p57.

Hoxby's model cannot therefore produce acceptable comparators for all entry grades and so whilst her work can consider the performance of pupils who applied for entry at the start of their relevant academic careers, it does not consider the impact of those who move. Hoxby's work is a snapshot and does not look at the impact of change, such as changes in quality of schools, parents' preferences, developments in education or the impact of more competitive behaviour from other schools 'luring' existing pupils away.³¹⁵ It assumes that once a school has a pupil, the pupil will remain.³¹⁶ As a result, there is only an 'initial' market in pupils' education, i.e. when parents first choose a school, not an ongoing requirement to ensure consumer satisfaction throughout the school life of each pupil. This will be expanded in Chapter 3 where we will consider Hoxby's approach as one of contingent-exit only (i.e. exit before arrival), with no possibility of pure-exit (i.e. exit once in a school).

Finally, Hoxby and Rockoff's data is further limited when consideration is given to the tracking data for lotteried-out students. Hoxby is able to trace the performance of lotteried-out students only where they remain in public schools in Chicago. As a result, parents must be sufficiently concerned about the education of their children to put the effort into applying for the charter school, as only those who apply are entered into the lottery,³¹⁷ but not so concerned, and financially fortunate, as to consider removing their children from the public school system or exercising a significant level of Tiebout Choice by relocating to an area outside of the Chicago boundary. If one assumes that most more affluent and engaged parents will pay for private education if necessary, or that they will relocate, as suggested by Hoxby,³¹⁸ to ensure quality education, then Hoxby's sample removes a key group of parents from the analysis. As a result, Hoxby's sample of lotteried-out students consists of the mid-ground parents, those engaged enough to apply but not so financially well-off as to undertake considerable expense to ensure quality of education for their child. Having said that, the areas considered by Hoxby

³¹⁵ Although this methodological limitation is acknowledged by Hoxby, see Hoxby (2005), p58, she assumes that moving schools shows pupils are "struggling socially or academically".

³¹⁶ Restricting choice to an initial decision. Such an approach is challenged in Chapter 3.

³¹⁷ Hoxby (2005), p54.

³¹⁸ Hoxby (2000), p1233.

were made up of a high proportion of social deprivation,³¹⁹ as a result since the most active parents tend to be from more affluent economic backgrounds,³²⁰ parents with a sufficient level of concern for education to exercise Tiebout choice or go private may make up a considerably small minority which may not significantly alter Hoxby's results. Whilst this study therefore presents positive indications of the effects of competition on improvement, there are significant variables which are not accounted for, which could materially influence results. Hoxby's findings that charter schools have a positive impact on attainment should, therefore, be viewed as indicative, but not conclusive with further research required to verify or disprove the hypothesis generated by the results.

Impact of Competition on Productivity

This section will consider Hoxby's work on the correlation between competition and system-wide increased productivity through analysis of her 2003 assessment of voucher and charter school systems. It will show that whilst Hoxby's identification of attributes necessary to create system wide improvement are promising, further work is required to conclusively establish a link.

In 2003 Hoxby released a book considering the impact of school choice on productivity which concluded by considering whether school choice could be "the tide that lifts all boats", that is, a driver of system wide improvement.³²¹ The Chapter focusses on a voucher system in Milwaukee and Charter Schools in Michigan and Arizona.³²² Its aim is to demonstrate that choice increases productivity within the education system generally, making all schools, or all remaining schools,³²³ more productive and leading

³¹⁹ Hoxby (2005), p54.

³²⁰ See discussions on alertness of parents in Chapter 3 together with the evidence presented in Burgess, S, et al. 'School Choice in England: Background Facts', 2006, *CMPO Discussion Paper 06/159*, at p11.

³²¹ Hoxby (2003), p287.

³²² Ibid.

³²³ As Hoxby acknowledges that the choice for schools will be to respond to competition or close, as considered below in relation to Hirschman and Government policy.

to a rise in education standards,³²⁴ thereby providing a justification for the use of markets in educational provision.

To reach this conclusion Hoxby uses the National Assessment of Educational Progress as a long-term measure for the national attainment of all pupils in her study.³²⁵ Indexing the value of the Dollar to its 1999 value to ensure consistency, Hoxby sets a target of the 1970-71 academic year for productivity, being around 65% higher than the productivity levels at the time.³²⁶ She then accounts for factors, not related to choice, which could impact on productivity, in order to account for the fall in productivity from 1970-71.³²⁷ These included an examination of the change in demographics in the USA, including race, parental education and wealth.³²⁸ Hoxby concludes that these do not account for the change in productivity and so it must be school conduct which has led to the decline, thus improved school conduct could reverse it.³²⁹ This however still leaves many factors for a decline in productivity left unaccounted for.³³⁰ As a result, as with Hoxby's previous works, this study should be considered indicative on the value of competition, rather than definitive, with a clear need for further research.

Notwithstanding these limitations, having concluded that a decline in productivity can be resolved by schools, Hoxby considers the impact of the introduction of vouchers and charter schools on model district public schools, both in direct competition with the new systems and those which remain detached, for example because of their rurality, from the direct competitive effects of these new systems. Hoxby theorised that, provided a loss of pupils reduces income for district schools,³³¹ competition faced by district schools would have the effect of driving motivation to increase productivity.³³² This is because income per pupil would remain fixed and so in order to increase the school's appeal to parents, and retain sufficient funds to remain viable, schools would have to become

³²⁴ Hoxby (2003), p288.

³²⁵ Though this measure can be used for the whole of the USA.

³²⁶ Hoxby (2003), p289.

³²⁷ Hoxby (2003), p289.

³²⁸ Hoxby (2003), p291.

³²⁹ Hoxby (2003), p292.

³³⁰ Such as curriculum development, diagnosis of behavioural issues and approach to disabilities.

³³¹ Hoxby (2003), p301.

³³² Ibid.

more productive to focus more on what parents want.³³³ Schools which do not face direct competition would not necessarily improve initially and so may then suffer increased Tiebout choice, thereby feeling the effect of competition and motivation to improve.³³⁴ Here Hoxby's work can be seen as consistent with that of Andrews, who asserted that the risk of new entrants into a market could operate as a form of price control.³³⁵ As Andrews demonstrated the market may develop a standard level of price,³³⁶ and in this case productivity, but provided the new entrant can work at this level and still give a better offering than the existing providers the odds of long term success are improved, and thus the area will be more attractive to those education providers looking to expand.

Having established the model, Hoxby tests it using three case studies. Her first study reviews the impact on vouchers in Milwaukee which were introduced in the early 1990s. Vouchers are only available to the poorer students within the area, and were worth up to \$5,106 per student.³³⁷ When a pupil moved into a private school using a voucher the school s/he exited from lost half of the value of the voucher.³³⁸ Vouchers were initially limited to 1% of enrolment, then 1.5% from 1993 and from 1998 this was increased to 15%.³³⁹ As a result the potential impact of competition remained small given the limited impact on schools of losing pupils. Whilst these percentages meant that losses suffered were unlikely to be significant, the increase to 15% can still be considered significant in terms of expanding choice. The 'market' is nevertheless still constrained by the limited recourse to exit available. In addition, because of the cap on fees, and the relative differences in education for primary and secondary levels, with primary education being

³³³ Ibid.

³³⁴ Ibid, though note the earlier discussion on concerns with the viability of Tiebout Choice, above.

³³⁵ See Earl, P.E, 'Epilogue: Whatever happened to P.W.S. Andrews's industrial economics?' in Lee, F.S, Earl, P.E, *The Economics of Competitive Enterprise: Selected Essays of P.W.S. Andrews* (1993), Edward Elgar, p405.

³³⁶ Lee (1993), p412.

³³⁷ Hoxby (2003), p315 though it is unclear if private schools have to accept the voucher.

³³⁸ Hoxby (2003), p316.

³³⁹ Ibid.

able to be provided more cheaply, in 1999-2000 90% of vouchers were used for primary level education.³⁴⁰

In analysing the impact on productivity of vouchers Hoxby found that those schools with no competition continued to improve productivity in line with historic trends, those with some competition increased productivity ahead of historic trends and those in direct competition increased productivity significantly ahead of historic trends.³⁴¹ Hoxby established, through analysing only attainment growth rather than productivity in her formula, that attainment developed along similar lines to productivity.³⁴² Thus Hoxby demonstrated that in Milwaukee the voucher programme had spurred district schools into increasing their productivity through increasing attainment whilst maintaining costs at the existing rate.

Hoxby then turned to her first charter school programme in Michigan which was set up in 1994.³⁴³ The system for Michigan, as with Chicago discussed above,³⁴⁴ was based on lottery entry as is customary with charter schools,³⁴⁵ thus preventing the charter schools from selecting pupils with similar educational needs. The charter school was given the basic rate of funding per pupil for the area and the district which lost the pupil had its funding reduced by the basic rate.³⁴⁶ As a result the impact on competition was much more significant than in Milwaukee. As with the previous study Hoxby analysed the historic and projected trends of district schools which both faced and did not face competition from charter schools.³⁴⁷ The results were in line with those found in Milwaukee; that there was a statistically significant impact on productivity caused by the introduction of charter school competition to a district school.³⁴⁸ As with Milwaukee, the productivity results were then reformulated to ascertain whether the results represent a fall in costs or an increase in attainment and Hoxby found that the

³⁴⁰ Ibid. Interestingly this approach of competition at primary level first is the reverse of the development of academies in England, which were initially exclusively secondary level.

³⁴¹ Hoxby (2003), p322.

³⁴² Ibid.

³⁴³ Hoxby (2003), p323.

³⁴⁴ See Hoxby (2000).

³⁴⁵ Hoxby (2003), p296.

³⁴⁶ Hoxby (2003), p324.

³⁴⁷ Hoxby (2003), p328.

³⁴⁸ Hoxby (2003), p332.

productivity increase was attributable to an increase in attainment within the schools facing competition.³⁴⁹

Hoxby then turned to consider the impact on attainment of charter schools in Arizona, which were introduced in 1994.³⁵⁰ At the time of Hoxby's research, Arizona had the highest enrolment by percentage in charter schools in America,³⁵¹ however this remains below the 15% eligible for vouchers in Milwaukee. The results of Hoxby's examination of schools in Arizona was equivalent to that of Michigan, that competition both increased productivity and attainment.³⁵² Hoxby therefore concludes that at a macro level the impact of competition on both productivity and attainment was a positive and significant increase. Competition made schools more productive by increasing attainment without increasing costs. However, noting that the potential upheaval caused by a shift to a competitive system could result in pupils ending up in worse schools than they are currently in, Hoxby then calculates, based on improvement levels in Milwaukee, that it would take 4.5 years to offset the detriment for a pupil displaced from the best school to the worst as a result of her system.³⁵³

Hoxby's methodology for the assessment of changes in productivity and attainment examines money in and results out only. Hoxby found, when threatened with the risk of closure, schools will divert resources to survive, and most schools in those circumstances improved test results.³⁵⁴ Funding to pay for the improvement in results was reallocated from within existing schools' budgets, meaning cuts to extra-curricular activities such as after-school clubs, school trips, etc. as these may not have a direct impact on attainment, although may impact on pupil and staff enjoyment, wellbeing and morale.³⁵⁵ Alternatively funding for maintenance or repairs may have been diverted in order to drive the rise in attainment. Hoxby does not provide details but they are

³⁴⁹ Ibid.

³⁵⁰ Hoxby (2003), p333.

³⁵¹ Ibid.

³⁵² Hoxby (2003), p336.

³⁵³ Hoxby (2003), p337.

³⁵⁴ See for example Hoxby (2003), p336, exposing schools to the risks discussed in Chapter 1, which are not considered by Hoxby.

³⁵⁵ Though on this see for example Reezigt (2005), p412 on the importance of positive working environments for school improvement.

relevant to the impact on productivity of markets as, for markets to be a valid option increases in productivity and attainment must be sustainable. The diversion of maintenance budgets to fund additional teaching staff has long term implications through increased capital expenditure to replace buildings, with reduced motivation of staff and pupils working in poor conditions, and eventually risk of insolvency. Hoxby's study is relatively short term, and so some of these impacts may not be visible in her data.³⁵⁶ As a result, Hoxby can demonstrate an initial improvement in productivity and attainment, but her data is not sufficient to demonstrate long term improvements in performance.

Hoxby's methodology for considering private competitors can be further criticised. Hoxby identifies district schools are subject to competition from the charter or voucher programmes. Saiger has pointed out that the low values of vouchers, i.e. the amount the US government will pay in exchange for a voucher, is not necessarily linked to the charges that the private school would demand from non-voucher parents.³⁵⁷ As a result, Hoxby's analysis concerns the effect of competition from private institutions that are willing or able, via subsidies or reserves to operate at potentially below the marginal cost of provision for the relevant pupils. The analysis therefore assumes competition only from the lower end of the private sector price spectrum. If it is assumed that quality follows price, then Hoxby measures the competitive impact of the less able private schools with no consideration of the impact of full scale competition with the private market. Thus, to say that schools are improving in this environment does not mean that they are operating efficiently in the wider education arena. As a result, Hoxby's work cannot be seen to be supportive of wholesale competition particularly with the private sector, as a result of improving productivity.

Finally, Chisesi presents a further qualification on Hoxby's work. In line with theories such as Hirschman,³⁵⁸ Chisesi argues that his statistics can only be considered consistent

³⁵⁶ See for example Merrifield (2008), p229 who argues that the results provided are transitional only and do not necessarily reflect the stable outcomes of choice initiatives.

³⁵⁷ Saiger, A, 'The Role of Empirical Research in Informing Debates About the Constitutionality of School Choice', 2006, *Journal of School Choice*, 1, 3, 123-144, p136.

³⁵⁸ Hirschman (1970).

with Hoxby's work where it is acknowledged that not all parents are as motivated to seek out high performing schools as others.³⁵⁹ Hoxby's work requires parents to exercise choice based on the attainment and efficiency of schools. Where that is not in fact parents' primary motivation,³⁶⁰ Hoxby's theory does not accurately predict the outcome of parental choice.³⁶¹ While therefore Hoxby's work may be applicable on a larger scale, where attainment and productivity are not material, there is a danger that Hoxby's work would misdirect us as to the outcome of choice initiatives.³⁶²

The work considered by Hoxby above can be summarised as demonstrating that given the right conditions, competition can have a positive impact on improvement and productivity of schools.³⁶³ Essentially her examples require that schools/districts can make decisions independently, that the funding streams follow pupils, that exit is a viable option (along with low barriers to entry to the schools' market) and that allocation of pupils to places is not distorted by selectivity. This Thesis would argue that whilst Hoxby's research is indeed promising as to the impact of competition and choice on productivity and improvement, further, and larger,³⁶⁴ detailed examinations of schools, and consideration of longer term impacts, are necessary before her conclusions can be fully accepted. Nevertheless,³⁶⁵ Hoxby's indicative work could be used to underpin a change in educational policy to develop greater competition, providing it notes the risks of competition, for example that its effects can cause perceived injustice,³⁶⁶ as well as the limitations of her work.³⁶⁷ Hoxby's theory could therefore underpin the development of a competition-based system of education, provided the criteria discussed above form part of that policy.

³⁵⁹ Chisesi, L.J, 'Competition for Students in a Local School District', 2015, *Journal of School Choice*, 9, 2, 197-218, p214.

³⁶⁰ As discussed in Chapter 1

³⁶¹ Chisesi (2015), p214.

³⁶² Though, as discussed in Chapter 1 Chisesi is supportive of exam results being relevant to parental choice.

³⁶³ Here 'can' is used because overall this is what the evidence implies. That is not to say however that with the additional research, discussed above, an alternative position would be more appropriate.

³⁶⁴ See for example Merrifield (2008), p224 on the risks of existing small scale work. Though it is acknowledged that Hoxby herself recognised this limitation, see Hoxby (2001), p74.

³⁶⁵ Provided policy makers are aware that there is a risk, her work is not conclusive.

³⁶⁶ See for example Hoxby (2000), p1209.

³⁶⁷ See for example Hoxby (2005), p52.

Part 3: Hoxby & Government Policy

Introduction

This Part will build upon the theories discussed in Part 2 and demonstrate how the Coalition Government attempted to apply Hoxby's work to justify the objectives of the Academies Act 2010. It will demonstrate how Sturdy adapted and simplified Hoxby's work, notwithstanding Hoxby's cautions, into a misleading set of requirements embraced by the Government.³⁶⁸ This section will also consider the extent to which the Government has diverged from the systems studied by Hoxby and the extent to which the resulting systems can be supported by Hoxby's work. It will conclude that the system implemented by the Act failed to incorporate critical features of Hoxby's work and as a result, cannot be underpinned by Hoxby. Thus, the theory identified by the Government as the basis for the Academies Act is insufficient, leaving it unsupported.

Sturdy

This section will consider the adaptation of Hoxby's work by Sturdy, considering the key factors Sturdy drew from Hoxby. It will show that Sturdy's interpretation of Hoxby was incomplete, and as a result, fundamental aspects of her work failed to be incorporated into the Government's plans. As discussed above, Sturdy's work for the Policy Exchange has been closely linked to the development of Government Policy for the Academies Act.³⁶⁹ Sturdy simplified Hoxby's work down to three critical features required to achieve her conclusions, these were:

- Independent Management;
- Funding which follows pupils; and
- A fluid supply of schools.³⁷⁰

³⁶⁸ See below.

³⁶⁹ Sturdy (2007).

³⁷⁰ Sturdy (2007), p11.

This was an oversimplification of Hoxby's work which has introduced misunderstanding into Government policy development. As set out above, Hoxby's work is far more complex than Sturdy suggests. For example, Hoxby works from examples which have specific characteristics within the US education system, such as lottery admissions systems. As this is not a feature of the English system, and Sturdy is silent on its importance, it could be assumed that the use of lotteries for admissions is irrelevant. However, setting admissions criteria, as discussed above, allows schools to influence pupil composition, enabling quasi-selection in a way which is alien to the US system. This selection means that it is possible to insulate schools from a proportion of the risk of competition – for example, by setting catchments to favour more financially well-off areas, or on academic ability as with grammar schools. As a result, English schools are able to manipulate the system to reduce the risk of failing to achieve their PAN, and so the motivational impact of competition is reduced. With a different set of pressures and motivations it is therefore incorrect to assume that the English system could achieve Hoxby's results without further analysis. This lack of evidence on the applicability of his abbreviated ideas to the English system is not developed by Sturdy and therefore lost to the Government when considering the system wide design in the Academies Act. As a result, notwithstanding direct references to Hoxby's work,³⁷¹ the Government's view of Hoxby's work was distorted by Sturdy's oversimplification, leading to a failure to implement key requirements of her work.

Hoxby and English Education

This section will explore the similarities and differences between the UK and US education systems. It will show that following the Act, despite many similarities, there remained a significant gap between the systems which Hoxby's work could not bridge. Within the UK government in 2000, there was already an acknowledgement of the existence of a form of Tiebout choice in England.³⁷² Indeed the ability of some to move homes in order to improve the prospects of their children was considered elitist - a

³⁷¹ HANSARD, HC, 514, 32, 19 July 2010, Michael Gove.

³⁷² Adonis (2012), p44.

throwback to grammar school education (where this is not still in existence).³⁷³ Therefore rather than being a celebrated expression of competition, it was viewed as a stain on social mobility.³⁷⁴ As a result, particularly in the Labour party, Tiebout choice was not considered to improve standards as Hoxby's research suggested.³⁷⁵ Whilst there was a statutory, qualified, right for parents to exercise choice,³⁷⁶ choice was stifled by LEA barriers to competition, much like in Milwaukee at the birth of their voucher system.³⁷⁷ As a result, the environment in England was somewhat similar to that of the US prior to the introduction of voucher systems and charter schools, though with a wide variety of admissions practices.³⁷⁸ This addition meant the English system had a somewhat greater degree of choice than the pre-charter and voucher US system, notwithstanding that such choice was not universally available and could be restricted by LEAs.

The City Academy programme had embraced independence and economic freedom, as Hoxby recommended, but merged it with an emphasis on good governance.³⁷⁹ As a result, whilst some of Hoxby's elements could be seen in the English system, the purpose of this inclusion was to allow alternate governance models to be developed in order to drive improvement.³⁸⁰ The Academies Act itself reflects a substantial number of the key features of Hoxby's work, such as independence and continued linkages between funding and pupil numbers. The similarities between charter schools and new academies are vast,³⁸¹ including independence from traditional bodies that managed education, such as school districts or LEAs. However, some fundamental differences exist which jeopardises the ability of academies to replicate the results found by Hoxby. The first and most critical difference is admissions procedures. Charter schools mainly

³⁷³ Benn (2012), p69.

³⁷⁴ Ball (2013), p135.

³⁷⁵ With standards remaining low even where there was 'choice', see Adonis (2012), p45.

³⁷⁶ Section 86, School Standards and Framework Act 1998.

³⁷⁷ Being limited to 1%, see Hoxby (2003), 316.

³⁷⁸ See the Admissions Code for examples of admissions practices.

³⁷⁹ Adonis (2012), p123.

³⁸⁰ Adonis (2012), p13. The limited number of schools also inhibited the macro change envisaged by Hoxby.

³⁸¹ To the extent that charter schools or academies as a body can be said to be similar – there are wide discrepancies between individual examples in both groups.

admit via lottery.³⁸² As a result, all parents who want their children to attend the charter school apply and, if fortunate, get a place. If not, they will go to the relevant district school, another charter school, subject to that lottery, or a private school, if that is affordable.³⁸³ Therefore, without charter schools or the capital to pay for private education or move, there is no substantial choice in the US system.³⁸⁴ By contrast in England, as discussed in Chapter 1, the Admissions Code sets out the methods within which schools may apply oversubscription criteria to decide which applicants get places in schools. Admissions authorities set oversubscription criteria, whilst having regard to parental preferences.³⁸⁵ Therefore in England there are schools that take children based on faith, proximity to the school, special educational needs, because they are in care and for a variety of other reasons. This is ultimately a matter of social policy, with children in care, for example, given greater weighting in the consideration.³⁸⁶ This pre-existing ‘policy interference’ with admissions may be seen as the reason that “certain guarantees and principles of equity”, referred to by Michael Gove when considering the limits of competition, was seen by the Government as so important.³⁸⁷ Unlike the US, English admissions prior to the Act were already a complex mix of parental choice, public policy and local preference. The importance of these various factors varies between political persuasions,³⁸⁸ however in a system of layered development it would be uncharacteristic for a government to wipe away all of these influences to move to a lottery system, especially given the enduring prohibition on pure lotteries.³⁸⁹ A pure lottery would remove protection for care leavers, for example, and so would arguably violate the government’s ‘principles of equity’.³⁹⁰ Given that academies were intended to expand school independence it may have been politically untenable to restrict the

³⁸² Hoxby (2003), p296.

³⁸³ Though Hoxby has shown that increased choice in the public sector reduces private options in the area, therefore as charter schools increase there could be a paradoxical reduction in choice with a retreat in private schools, see Hoxby (2000), p1237.

³⁸⁴ Unless the State in question has a voucher or other local programme.

³⁸⁵ Section 86 of the School Standards and Framework Act 1998.

³⁸⁶ See the Admissions Code, p10.

³⁸⁷ Birbalsingh (2013), p600.

³⁸⁸ See for example Ball (2013), p3.

³⁸⁹ See for example the current Admissions Code which still prohibits lotteries as the main oversubscription criteria.

³⁹⁰ Though it would also allow greater alignment with Hoxby.

use of oversubscription criteria to less than that for maintained schools. As a result, the Government's application of 'principles of equity' requires that academies at least imitate foundation schools, and so set their own admissions criteria and be their own admissions authority. This is where the Government, eventually, arrived.³⁹¹ The consequence of this is that academies have more freedom to select their pupils through manipulation of their oversubscription criteria than charter schools.³⁹² As a result, charter schools are unable to undertake cream-skimming and other forms of selectivity,³⁹³ and are therefore not comparable to academies. Hoxby does not have to consider these issues in evaluating the performance of charter schools, because they cannot distort their intake to the same level as academies. Academies can intentionally increase segregation in localities,³⁹⁴ and so are more likely to produce distortions in performance based on segregation factors.³⁹⁵ Mechanisms to prevent this are not considered by the Government, perhaps because Hoxby does not explore them,³⁹⁶ and so the system developed legitimate criticisms which its 'grounding' theory, Hoxby's work, is unable to address. The Government's compromise between competition and equity, or rather competition and the historic policy landscape of English education, results in a structure which, through departing the confines of Hoxby's studies, has an unsupported entry requirement, and thus barrier to exit, which fundamentally alters the policy outcomes for the education system. As a result, it cannot be concluded based on Hoxby's work that the academies programme would result in a tide that lifts all boats.

Remaining in the general field of admissions, the application process for schools, in main entry years, in the US and England has a further key difference. In the US, each child will attend their local district school, unless they obtain a place at a charter school or pay for private education. Parents choose whether to stay with the option they have or apply for a lottery elsewhere. In England, parents may select up to three preferences,

³⁹¹ Though the Admissions Code was not applicable to the first city academies, it now applies to all academies see Wolfe, D, 'Academies and the Law', in Gunter (2012), p4.

³⁹² See for example the discussion on this in Chitty (2004), 3rd ED, p121.

³⁹³ 'Cream skimming' being the development of a system through which the school is more likely to admit more academically gifted pupils, and thus have a natural advantage in exam league tables.

³⁹⁴ Hoxby (2005), p57.

³⁹⁵ Benn (2012), p108.

³⁹⁶ Because she did not need too.

but ultimately when they apply, they do not have the security of a backstop school.³⁹⁷ As a result, the US system is a choice based system which is in essence a comparison, asking ‘do I like that better than what I already have’. By comparison, the English system has much less certainty, as a result parents are asked, in effect, to ‘spin the wheel’.³⁹⁸ There are further unknowns which impact on choice decision making. For example, a US parent who knows that their child will go to the third best school in the area may apply for the best and second best (if they are charter schools) in the hopes of a chance of an improved education for their child and can do so without risking the ‘safety net’ of the third best school. By comparison, a parent in England does not have that safety net, as a result applying for the top three schools, hoping that their child will get in to one of them risks not getting in to any and so could result in their child being sent to an unpopular, lower quality, school elsewhere. This places both sets of parents in a different position in relation to risk,³⁹⁹ as the reference point for the US parent is known, the district school, whereas for the English parent it is unknown, or at best suspected, but without guarantee.⁴⁰⁰ English choices may even change from ‘where would you like to go’ to ‘where do you want to avoid’ if there is an especially poor local school, that is assuming geography allows a choice – on which see below. Because people feel losses more than gains of the same size,⁴⁰¹ the strategy for managing the choice of school evolves into one of risk management and loss aversion.⁴⁰² As a result in the US, tactical applications to avoid schools would be much more locally based, i.e. limited to the local district school. By contrast, uncertainty in the English system may increase tactical applications, as parents lack the reference of a default school, therefore the choice that parents exercise, even if academy admissions were not capable of cream-skimming, comes from a different psychological perspective to US parents. This change of question is not addressed by Hoxby or the Government. Further research on the application of risk based decision making to admissions is therefore needed to remove the assertion

³⁹⁷ Although in some areas such a backstop may be decipherable based on local admission criteria.

³⁹⁸ An ironic scenario given the restriction on admission lotteries.

³⁹⁹ See Fischhoff, B, Kadvan, J, ‘Risk: A Very Short Introduction’ (2011), *Oxford University Press*, p76.

⁴⁰⁰ LEA’s will know that there are enough spaces in the system, and may be able to anticipate allocation at a high level, but again, without the absolute certainty of the US system.

⁴⁰¹ Fischhoff (2011), p75.

⁴⁰² Fischhoff (2011), p77.

that the question facing parents alters choices,⁴⁰³ and so causes a system where choices work differently – i.e. in a way which may not result in wholesale improvement of the system. Such additional research should also consider the application of this form of decision making to rural areas in contrast to urban ones, where it is likely that geography and transportation costs, as discussed in Chapter 1, may further influence the use of tactical applications by parents.

The above discussion demonstrates the material differences between the English and Hoxby's models and as a result, it is currently not open to the Government to argue that Hoxby's theories support the assertion that the Academies Act 2010 would result in a system-wide improvement in educational quality.

Part 4: Summary

This Chapter has considered the work of Caroline Hoxby on the US educational system. It has reviewed how this work has been interpreted, particularly by Sturdy,⁴⁰⁴ and how this has developed within the Conservative Party. This Chapter has demonstrated that on their rise to power in 2010 the Conservative led Coalition Government enacted the Academies Act on the basis of an oversimplified interpretation of Hoxby's work. It has shown that the interpretation used reduced Hoxby's work to a basic form which ignores critical features of the US system. Such features are not part of the English system and so, given these differentials, particularly in relation to admissions, Hoxby's findings are not directly applicable to the system created by the Academies Act 2010. As a result, the Act is not supported, and the asserted outcomes of the Act cannot be grounded in existing work by Hoxby. Further work is required before an argument can be robustly made that the Academies Act will implement improvement in the English education system through market forces.

The next Chapter will consider an alternative theory and the extent to which it can be used to underpin the Act retrospectively, having regard to the performance of

⁴⁰³ As made by Fischhoff, see Fischhoff (2011), p76.

⁴⁰⁴ Sturdy (2007).

academies since 2010. It will not, however, be argued that such theories were the Coalition Governments *raison d'etre* for the Act, but rather will consider, given where the education system in England is currently positioned with regard to competition and market forces, whether they can fill the gap left by the misapplication of Hoxby.

Chapter 3: Hirschman

Part 1: Introduction

Chapter two established the aims of Government in developing the Academies Act 2010 as well as reviewing the work of Hoxby. It concluded the Act cannot be grounded in existing work by Hoxby as a result of the Government's reliance on Sturdy's abbreviation, and misinterpretation of Hoxby's work. Having established that Government failed to achieve what it thought it was doing – developing a system comparable to Hoxby's studies, this Chapter will consider the work of Albert Hirschman as a possible alternative theory to underpin the Academies Act 2010. It explores Hirschman's theories of exit, voice and loyalty in the context of primary and secondary education in England.⁴⁰⁵ It will commence by considering the foundations of exit and voice before applying these concepts to the schools system. It will then assess the impact of academies on the roles of exit, voice and loyalty within English education. This Chapter will conclude with an assessment of how the introduction of academies has altered the exit, voice and loyalty dynamic and the overall value of this dynamic within the sector. It will show that whilst it was not the Government's intended basis, Hirschman's theory can underpin the Act, thus providing theoretical legitimacy to the system.

Hoxby: Drawbacks for Government

This section will review the limitations of Hoxby's work, as set out above, as an underpinning for the Academies Act. Having acknowledged that the Government did not achieve a Hoxby based system, this section will then move on to set out the essential elements necessary for any theory to retrospectively underpin the Act.

As discussed in the previous Chapter, a key driver of the academy programme was the introduction of competition into a "closed-system" where places were based on anticipated pupil numbers, ensuring that each pupil received a place in a school.⁴⁰⁶ The

⁴⁰⁵ Hirschman, (1970).

⁴⁰⁶ Burgess (2006), p14.

aim of academies, as with the Education and Inspections Act 1996 and 1998 Act, was to create a more market-based system. Thus, good schools would get bigger, take over or set up more schools,⁴⁰⁷ whereas ‘bad’ schools would improve or risk losing pupils, shrinking and ultimately closing if they failed to recover and could no longer afford to go on.⁴⁰⁸ The aim therefore is to take a traditional approach to market creation by facilitating exit to stimulate competition,⁴⁰⁹ within the confines of equity and fairness.⁴¹⁰ However, the system which the Government developed was not the system analysed by Hoxby. An alternate theory is therefore required to underpin the Act. In considering alternative theories to Hoxby’s work it is therefore important to first consider why Hoxby’s theories are not applicable to the Academies Act, before identifying a market theory which would address these issues. As discussed in the previous Chapter when attempting to use Hoxby’s work to the Academies Act, Hoxby’s theories suffer significant drawbacks, in particular;

1. Hoxby’s model of behaviour for admissions processes of academies assumes that admissions would be lottery based (i.e. random), which is not the case under the Academies Act;⁴¹¹
2. Hoxby assumes that exit in education may only occur when starting a new school stage, i.e. primary or secondary school, with movement within school periods being an anomaly;⁴¹²
3. Hoxby’s theory accepts the micro-level detriments of her work, with such detriments being ‘overshadowed’ by the macro-level benefits,⁴¹³ which is a politically untenable position.⁴¹⁴

⁴⁰⁷ By becoming Multi-Academy Trusts and sponsoring failing schools or setting up free schools.

⁴⁰⁸ Though as discussed in Chapter 2, school closures was not a desired outcome for the Government, and as a result maintained schools were ‘closed’ and replaced with a sponsored academy.

⁴⁰⁹ Smith, W, Rowland, J, ‘Parent Trigger Laws and the Promise of Parental Voice’ (2014), *Journal of Social Choice*, 8, 1, 94-112, p95.

⁴¹⁰ Birbalsingh (2013), p600, noting the apparent contradiction between markets and equity and fairness.

⁴¹¹ Or indeed any admissions system for public schools in England – see the Admissions Code.

⁴¹² Hoxby (2005), p58.

⁴¹³ See for example Hoxby (2003), p333.

⁴¹⁴ See Chapter 2.

Dealing first with the issue of admissions, all of Hoxby's charter school case studies involved an admissions process based primarily on a lottery.⁴¹⁵ By contrast the English system expressly prohibits the use of lotteries as primary oversubscription criteria.⁴¹⁶ Instead, schools base their oversubscription criteria on, for example, religion, distance from the school, results,⁴¹⁷ sibling location and other matters.⁴¹⁸ These considerations are set locally and are capable of manipulation in order to manufacture a predisposition towards certain families, for example by selecting a catchment area of predominantly affluent neighbourhoods to increase the chances of pupils having greater educational advantages, and consequently produce better exam results.⁴¹⁹ Whilst US schools are forced to be passive recipients of pupils,⁴²⁰ the English market is substantially less regulated, enabling English schools to subvert the market for their own gain.⁴²¹ Hoxby's work does not, and in fairness cannot be expected to,⁴²² take account of this lack of regulation. As a result, her work does not address the educational challenges associated with this inequality of opportunity.

Turning to the second failing, Hoxby's emphasis on school choice as a single event is not prima facie irrational, as a significant number of pupils attend the same school for the duration of that type of schooling.⁴²³ However, pupils in England (and America) can move schools, and do move schools, though not to the same level as new starters in entry years.⁴²⁴ In a system governed by exit, as Hoxby proposes, the lack of exit post entry should be intolerable. Without providing for exit during education Hoxby asserts that parents will go to great lengths (including moving home) to ensure that their children attend a good school from the main entry years. But at the same time, she

⁴¹⁵ Although with some regard to sibling groups, see Hoxby (2005), p55.

⁴¹⁶ See the Admissions Code, p15.

⁴¹⁷ In the case of grammar schools.

⁴¹⁸ See Admissions Code p10.

⁴¹⁹ See for example Smeeding, T, M, Erikson, R, Jantti, M, *Persistence, Privilege, and Parenting: The Comparative Study of Intergenerational Mobility* (2011), Russell Sage Foundation, p56 on the effect of family class on results.

⁴²⁰ See Hoxby (2003), p333.

⁴²¹ By for example using pupil selection to promote higher league table positions than the level of improvement in a child's knowledge the school actually provides – as discussed in Chapter 2 this is moderated by the move to Performance 8 measures.

⁴²² As Hoxby's work relates to the US, not English, education systems.

⁴²³ See Hoxby (2005), p58.

⁴²⁴ This is the same as the US, see Hoxby (2005), p57.

doesn't expect parents to react if the quality of schooling dramatically declines after entry. Since Hoxby does not demonstrate that parents' interest in the quality of education declines once a school is chosen, exit during education is therefore a logical necessity and an empirical reality.⁴²⁵

Finally, whilst Hoxby writes for policy makers,⁴²⁶ she writes for an American audience and so does not address the political context within which policy is created in England. Hoxby assumes that a macro-level improvement to educational attainment and productivity can justify a small number of pupils being subject to worse education over several years.⁴²⁷ Such a view may be consistent with general utilitarian views of the greater good, and at a system level recovery from declines in quality is not important if a replacement provider will rise from the ashes of the failed school.⁴²⁸ However, it makes for an uncomfortable truth for politicians to tell voters that a vote for them means their child could suffer in a declining school. This political untenability can clearly be seen in the Government's attempts to soften the impact of the market on education,⁴²⁹ and the Secretary of State for Education's comments on the limitations of the market.⁴³⁰ As a result, Hoxby's theory necessitates something which English politicians cannot defend – intentionally worsening educational prospects for some pupils.⁴³¹

Thus, whilst the Government desired a market-based system,⁴³² any theory which is put forward as better able to address the unique characteristics of the English system must be able to:

1. Allow for greater selectivity in the admission of pupils;

⁴²⁵ Albeit not necessary for all pupils, Ibid.

⁴²⁶ For example, see Hoxby's warnings at p152 in Hoxby, C, "Covering the Costs," in Finn, C, Sousa, R, *What Lies Ahead for America's Children and Their Schools*, 2014, Hoover Institution Press.

⁴²⁷ Worse, as these pupils would need to be subject to the worst allocation in choice, i.e. remain in failing schools until they close, as well as be subject to "barely plausible" reductions in learning. See Hoxby (2003), p337. This number is considered small due to the necessity of better local schools and the substantial improbability of being realised.

⁴²⁸ See Hirschman (1970), p2.

⁴²⁹ See for example House of Commons Library (2015), p12 on the importance of replacing market behaviour with collaboration.

⁴³⁰ Birbalsingh (2013), p600.

⁴³¹ Many of which are likely to be less privileged based on Hirschman's theory discussed below.

⁴³² Conservative Party (2007), p37.

2. Incorporate changes in schools during educational stages (e.g. years 8, 9 & 10);
3. More realistically represent the options open to parents if the school is not improving sufficiently;
4. Ensure that “no child is left behind” to a greater extent than Hoxby.⁴³³

However, such a theory must also bear some resemblance to Hoxby, in that it must still aim for improvement of the education system as a whole and it must be based on choice and market principles, as these features of Hoxby’s work aligned with the Government’s intentions and are reflected in the Academies Act. As a result, this Chapter, like Chapter 2, will still focus on achieving a market based system of education in line with the aims of the Academies Act.

Hirschman

Having outlined the requirements for a replacement theory, this section will introduce the work of Hirschman as an alternative to Hoxby. It will provide an overview of Hirschman’s work, which will be explored further in the remaining parts of the Chapter, and will assert that Hirschman’s theory is capable of underpinning the Act.

In his work on exit, voice and loyalty,⁴³⁴ Hirschman considered how consumers respond in market economies to declines in quality, when the price of goods remains constant.⁴³⁵ Hirschman asserted that there was an option other than exit – the expression of voice. He considered the relative effectiveness of these two options and how they can combine. In doing so, Hirschman developed a theory of loyalty, which anticipates how consumers respond to reductions in quality and how providers can manage responses to survive dips in quality, thus recovering rather than closing. As with Hoxby, Hirschman’s theory is intended to apply in a market-based environment. However, Hirschman’s focus on recovery from declines provides a model in which improvement can continue without mistakes and failures leading to unavoidable closure.⁴³⁶

⁴³³ i.e. that children are not left for over 4 years in a school providing inadequate quality education.

⁴³⁴ Hirschman (1970), p22.

⁴³⁵ Hirschman (1970), p23.

⁴³⁶ Which could in turn lead to a risk averse system which is reluctant to innovate for fear of failure – the opposite of what the Government intended. See for example the importance of encouraging innovation in House of Commons Library (2015), p11.

Moreover, in the context of a system that is already improving,⁴³⁷ this can be interpreted as improving *as quickly or faster than* competitors from a dip or slower improvement. As has been shown in previous Chapters, the Government's chosen method for improving the education system more quickly was to introduce a market mechanism, believing that the market would spur schools into greater improvement in both attainment and efficiency.⁴³⁸ Whilst the Government's reliance on Hoxby's work to demonstrate the speed of improvement was flawed in its specific application to English schools, Hoxby's work does indicate that, in very specific instances, competition may promote improvement.⁴³⁹ What the Government therefore requires is a theory of market competition which opens up the possibility of exit, to drive improvement,⁴⁴⁰ but which paradoxically gives *more* choice to parents and schools than Hoxby allows, and at the same time reduces the likelihood of school failures by building in safeguards to prevent closure and poor education for cohorts of pupils in schools about to close. Assuming that improvement can be driven by competition, the Government's call for greater choice, and at the same time its contrary need to prevent closures by restricting market forces, is resolved by Albert Hirschman's theory.

Hirschman and Hoxby have very similar theories in relation to the importance of exit, as without exit there cannot be a market as consumers do not have a choice in service provision.⁴⁴¹ However, whereas Hoxby sees exit as the sole solution to creating a successful market, Hirschman does not – he even goes so far as to lament the traditional overreliance of American economists on exit.⁴⁴² Instead, in his work on the recovery of firms that have suffered an inevitable lapse in quality,⁴⁴³ Hirschman identifies a second mechanism through which consumers can express their discontent with declines in quality; voice - the ability to protest or complain.⁴⁴⁴ He then goes on to consider ways through which these two mechanisms may be regulated to arrest declines.⁴⁴⁵ As a result,

⁴³⁷ As the English system was, see Benn (2012), p114-115.

⁴³⁸ See Chapter 2.

⁴³⁹ However, see the limitations discussed in Chapter 2.

⁴⁴⁰ In line with Hoxby.

⁴⁴¹ See Hirschman (1970), p21.

⁴⁴² Hirschman (1970), p16.

⁴⁴³ As no firm is perfect, Hirschman (1970), p1.

⁴⁴⁴ Hirschman (1970), p30.

⁴⁴⁵ Hirschman (1970), p21 onwards.

Hirschman's more general theory, and his consideration of more than exit, produces a system which is better suited to direct application to education within England than that of Hoxby. Hirschman provides for non-starter year entry, as well as explaining why it may not be used,⁴⁴⁶ giving schools a chance to recover rather than closing. By not basing his theory on an educational market he also assumes that schools (or firms in general) will actively hunt for the best customers by competitively structuring catchment boundaries and other oversubscription criteria. Thus, Hirschman addresses the failings with Hoxby identified above and is best placed to provide an underpinning for the Act.

Requirements for Exit and Voice

This section will introduce in more detail Hirschman's approach to exit and voice, which will then be considered in more detail in Parts 2 and 3 respectively. It will outline the necessary assumptions for voice and exit to operate effectively and how these are demonstrated within the English schools system.

Hirschman's work is premised on the assumptions that firms are imperfect and so will at some point suffer a decline in the quality of the products or services that they offer – whether this is in a market or a monopoly, or otherwise.⁴⁴⁷ Such an assumption must be correct if we consider the imperfect nature of the world.⁴⁴⁸ If this assumption were incorrect businesses would not become insolvent, whereas 16,090 did in the UK in October to December 2018.⁴⁴⁹ As a result, Hirschman considers how consumers and business management respond to declines in quality and the impact that has on the firm.⁴⁵⁰ Hirschman's work is therefore concerned with how to save a failing firm in a market, the effect of which could be to reduce the micro level issues caused by Hoxby's theory and so represent a viable alternative to underpin the Act.

Hirschman's theory on how firms can recover from declines makes two assumptions:

⁴⁴⁶ By reference to the other options open to parents.

⁴⁴⁷ Hirschman (1970), p1.

⁴⁴⁸ As even big businesses make errors - See, for example, <https://www.independent.co.uk/news/business/news/samsung-galaxy-note-7-recall-exploding-phones-profits-a7382786.html>, last visited 29.3.19.

⁴⁴⁹ <https://www.gov.uk/government/collections/insolvency-statistics>, last visited 29.3.19.

⁴⁵⁰ Hirschman (1970), p2.

1. That the demand of a product or service is declining as a result of quality declines; and
2. That consumers are able to act on that decline in a way which will motivate a management response.⁴⁵¹

Dealing first with demand, this can be defined as “the quantity that buyers wish to purchase at each conceivable price”.⁴⁵² In the context of education, with the exception of private schooling, supply is free at the point of delivery, and so price cannot be a determining factor on demand.⁴⁵³ Alternatives to price differentiation for services include “vertical” differentiation through quality, or “horizontal” differentiation through alternative product offerings, such as different courses.⁴⁵⁴ Within pre-A-Level education, i.e. throughout compulsory education to GCSE, school freedom to express horizontal differentiation through the teaching of different curriculums has been substantially hindered by the introduction of the National Curriculum in 1988,⁴⁵⁵ though as discussed above, a variety of exam boards do create differing syllabuses which schools can use, creating enough variation to make moving schools problematic part way through a course. As a result, for the main starter years whilst there remains some horizontal differentiation, for example in the choices of modern foreign languages, the general standardisation of the curriculum, particularly in compulsory subjects, has emphasised the importance of vertical differentiation based on quality, and the means of measuring it. Consequently, measures of demand can be linked to quality and thus a decline in demand can be associated with a corresponding decline in quality.

Quality within education, as discussed in Chapter 1, is measured by school league tables, Ofsted inspections,⁴⁵⁶ and via more general measures such as the experience of older

⁴⁵¹ Hirschman (1970), at p22.

⁴⁵² Woods (2009), p37.

⁴⁵³ Though note that price and cost to parents are not the same, see Chapters 4 & 5 on costs associated with education, i.e. transport costs.

⁴⁵⁴ Woods (2009) at p38.

⁴⁵⁵ Collins, N, “How the National Curriculum has Evolved”, *The Telegraph*, 20 January 2011, though as discussed, academies have some freedoms here.

⁴⁵⁶ There is strong debate about as to the actual value of these as a measure of quality, see for example Jones (2014), p315-330, however, for the purposes of the current argument we will assume that the results do in fact measure quality.

siblings, relatives, and friends.⁴⁵⁷ League tables measure proportions of pupils gaining particular ranges of grades, for example the percentage of pupils that gain five grades between A* and C at GCSE. Ofsted inspections examine the quality of teaching, achievement, behaviour and leadership. A decline in quality using these two measures is therefore a public and measurable event.⁴⁵⁸ As set out in Chapter 1, this Chapter focuses on declines in Ofsted ratings and exam results in line with other educationalist research.⁴⁵⁹ Research suggests that perception of the quality of teaching and educational provision is likely to have the most significant effect on changes in demand for school places,⁴⁶⁰ However, Chapter 1 has acknowledged that these are not the only measures of quality likely to be relevant to parents.

A decline in quality for the purposes of this Chapter must also be further refined by recognising that the Government's reliance on Hoxby,⁴⁶¹ and Sturdy,⁴⁶² did not focus on the prevention of further declines in education, but rather on raising system wide educational performance.⁴⁶³ As a result, a 'decline' for the purposes of Hirschman's work can also be seen as a perceived decline relative to a school's competitors,⁴⁶⁴ i.e. a failure to improve at a corresponding rate to competitors.⁴⁶⁵ Thus a decline is also a failure to improve at a rate equal to the next best alternative, resulting in the next best alternative ultimately becoming the best alternative, if the rate of improvement is not increased.⁴⁶⁶

⁴⁵⁷ As discussed in Chapter 1.

⁴⁵⁸ For more on ratings see Ofsted, *School Inspection handbook* (January 2015), p38-39.

⁴⁵⁹ See for example Burgess (2006).

⁴⁶⁰ For example, quality of teaching was the most important factor when considering sending children to private school in Francis, (2013), p21. It is also possible that public ratings may themselves have an impact on school management which reduces the need for parents to exercise voice or exit in order to stem decline or improve the school as this level of public accountability could impact on parental preferences for future admissions rounds. As a result, whilst measurable school declines in quality may impact on parents it may also mitigate the need for parental action to address the failings, See for example a discussion on the "far reaching and generally adverse consequences" of a failed inspection in Rosenthal (2004), p145.

⁴⁶¹ Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

⁴⁶² Sturdy (2007), p11.

⁴⁶³ See for example Hoxby (2001), p69, which focussed on developing a system of system wide improvement.

⁴⁶⁴ Hirschman notes that decline is a comparative measurement, see Hirschman (1970), p4.

⁴⁶⁵ Though this assumes that all schools are improving, an assertion supported by Benn (2012), p114.

⁴⁶⁶ And thus exits from the first provider, see Hirschman (1970), p15.

The second requirement for exit and voice is that the parents are able to take some action aimed at stemming the decline from school managers; head teachers and governors.⁴⁶⁷ Parents may respond to declines using a range of methods, however, in order for the actions of parents to arrest a decline they must engage with the school in some way, i.e. exit and voice.⁴⁶⁸ Once they have been engaged by parents, governors and heads must respond in order to address parents' concerns if declines are to be stemmed.⁴⁶⁹ This again can be broken down into two requirements, firstly governors must be capable of responding, i.e. have the ability to effect change. This requires that the relevant power rests with the governing body, for example a complaint about the national curriculum to the governors is unlikely to result in an increase in quality in the curriculum, as this matter is beyond the governors' control. Therefore, governors must be appropriately empowered to address the issues raised. Secondly it requires that the governing body is competent to respond, i.e. that they have the necessary skills and resources to affect a change which is within their remit. This requires governors to recognise for example that parents are moving their children because of poor quality at the school, not because they are simply moving away. This capacity can therefore be altered by how parents engage – voice, i.e. complaining, can be much more direct and useful than simply exiting without explaining to governors why the pupil is being withdrawn. Thus, governors must recognise that there is a problem and what that problem is. Provided these two requirements are satisfied, sufficient applications of appropriate quantities of voice or exit, or a combination of the two, will, according to Hirschman, result in the ceasing of quality decline, and generating improvement.⁴⁷⁰

Alert & Inert Consumers

⁴⁶⁷ Hirschman (1970), p4.

⁴⁶⁸ Ibid, though see below on loyalty. See also Ball (2013), p198-202 on parental involvement. Exit would equate to engagement for the purposes of this point.

⁴⁶⁹ Hirschman (1970), p4.

⁴⁷⁰ Though as has been noted, the message sent with voice is usually clearer than with exit (though Hirschman notes Friedman's apparent disagreement with this proposition at Hirschman (1970), p17, and so to respond adequately to exit managers & governors may need more skill than in responding to voice. See Smith (2014), p99.

This section will explore Hirschman's view that consumers, i.e. parents, respond to declines differently based on how important levels of quality are to them. It will explore how Hirschman classified consumers as 'alert' or 'inert' and how this theory of varying responses to declines applies to education. It will consider a range of attributes and show that the level of alertness may be generally tied to social class, but that this may relate more to chances of success in expressing exit or voice, rather than any group of parents expressing general disinterest in the quality of education their children receive.

Hirschman's theory on exit, voice and loyalty depends on the quality of goods or services received being capable of evaluation.⁴⁷¹ As discussed in Chapter one, quality for the purposes of this Chapter is the level of attainment or efficiency of a school at any point in time.⁴⁷² Quality is relevant because Hirschman asserts that changes to quality do not affect demand amongst a pool of consumers equally.⁴⁷³ Consumers, i.e. parents, are divided for the purposes of Hirschman's examination into two categories, inert and alert. Alert parents are those who are most conscious of changes in the quality of education, these parents will identify and respond to degradation of quality relatively quickly. By contrast inert parents are less willing or able to act on changes in quality and as a result are more likely to act more slowly, or not at all.⁴⁷⁴ Thus the effectiveness of any recovery mechanism will depend on the make-up of alert and inert parents – as the alert parents will provide feedback and the inert parents will give the school time to act on that feedback. This division is relatively simplistic, and Hirschman himself recognises that the relationship is more of a scale than distinct classification.⁴⁷⁵ Educationalists and empirical data,⁴⁷⁶ discussed below, suggests that it is possible to divide parents generally into 'alert' or 'inert' bands, or rather to say that certain parents are more likely to be more alert or inert than others at any given time. Further it is possible to predict,

⁴⁷¹ Hirschman (1970), p4.

⁴⁷² See Chapter 2. As discussed in Chapter 1 it is recognised that these measures have limitations.

⁴⁷³ Hirschman (1970), p24.

⁴⁷⁴ It may also be the case that measures of quality are not the appropriate measures for these parents and thus they may only be inert in relation to Ofsted/league tables, but would be highly alert in relation to their child's particular results for example.

⁴⁷⁵ Hirschman (1970), p15.

⁴⁷⁶ Please note that as this Thesis was being written up in 2019-21, developments beyond early 2019 are not considered.

in general terms, the features leading to alertness or inertness as discussed below.⁴⁷⁷ Educationalists have for some time drawn a parallel between income, occupation and professional attainment, pointing out that those families that are least well off generally have parents who are less educated, earn less and are less likely to have careers in the professions.⁴⁷⁸ Thus it appears that the more alert parents are likely to be those who are better educated, earn more and have professional careers. This assertion will be unpicked further below.

Turning first to parental education, some argue that parents who are more educated are therefore more familiar with the procedures and protocols of the education system, and as a result, are more easily able to navigate the path to a better quality education for their children.⁴⁷⁹ It is further argued that less educated parents lack the knowledge and experience of the education system to achieve their desired outcomes.⁴⁸⁰ This argument would suggest that either, parents who undertook higher qualifications are, as a result, more alert to changes in the quality of education, or that parents are not 'less quality conscious' but rather simply lack the understanding, experience and ability, gained via more advanced educational experience, to facilitate change. As a result, better educated parents could care more about the quality of education provided to their children or all parents could be equally quality conscious and the measure of alertness versus inertness is derived from the ability to *successfully* undertake action to bring about change. This second option therefore assumes that better educated parents are better able to get what they want for their children from the current education system. Importantly all parents would notice the drop in quality and as a result the ability to move from inert to alert depends on attaining the support, confidence and

⁴⁷⁷ It should be emphasised that these general trends are just that. What follows is not purported to be a definitive assessment of a parents' alertness based on certain factors, rather an assessment of trends as identified by researchers. For a "rare" example of this trend not being followed see Camina (2014), p36-37.

⁴⁷⁸ Smeeding (2011), p1 & Smyth, J, Wrigley, T, *Living on the Edge: Rethinking Poverty, Class and Schooling* (2013), Peter Lang Publishing, p37.

⁴⁷⁹ Smyth (2013), p143, see also Camina (2014), p33 which implies a similar argument, and at p39 with more overt statistical data, and Smith (2014), p99.

⁴⁸⁰ Smyth (2013), p120.

experience necessary to undertake successful action.⁴⁸¹ However, in either scenario, higher levels of education would increase the probability of parents demonstrating alert behaviours.

A second theory on the link between alertness and income is expressed through occupation.⁴⁸² Some assert that parents groom their children for similar types of occupation as themselves.⁴⁸³ This is a suggestion supported by the identified higher likelihood of common professions between parents and children.⁴⁸⁴ As a result parents in occupations which require a higher level of education, for example doctors, may push their children to do better and are therefore more likely to value the quality of education, in order to maximise their child's chance of success.⁴⁸⁵ Alternatively, as with education above, they may have developed more confidence and people skills to persuade decision makers to give them what they want. Linked to this theory it has been argued that parents who have suffered long periods of unemployment, or have short term, low skilled jobs may suffer from a lack of motivation or from a sense of pointlessness as they do not see achievement in school as translating into gainful employment thereafter and so the quality of education is a less relevant concern.⁴⁸⁶ In addition the hopes and expectations of parents for their children could be expressed in less career orientated ways, for example to be happy or to "succeed in life".⁴⁸⁷ This expectation could be the same for professional parents, but their life experience ties this more directly to education. This would suggest that all parents recognise the importance of quality education, however, professional parents believe more strongly that higher performance in school leads to "success in life" and so are more quality conscious in relation to education, thus supporting the link between career and alertness.

⁴⁸¹ Smyth (2013) at p124. This includes having the ability to make choices work, i.e. being financially able to move house or transport children to avoid geographical disparities along the lines of the NHS, see Ramesh, R, "NHS Postcode Lottery Survey Reveals Wide UK Disparities", *The Guardian*, 09 December 2011

⁴⁸² Smyth (2013), p37, see also Francis, (2013), p4.

⁴⁸³ Smyth (2013) at p110.

⁴⁸⁴ Smeeding (2011), p141.

⁴⁸⁵ Smeeding (2011), p141.

⁴⁸⁶ Smyth (2013), p74.

⁴⁸⁷ Smyth (2013) at p125.

Finally there is the theory that finance plays a key part in setting alertness in parents.⁴⁸⁸ That is that parents with the time and ability to transport their children to distant schools have more ‘real’ admissions options than those who rely on the LEA to transport their children, especially where the LEA restricts pupils entitlement to free transport by, for example, setting a geographical radius or specifying the pupil must attend the nearest school.⁴⁸⁹ As will be seen below this argument would see private school parents as the ‘most alert’ as they are able to afford sending their children to the ‘best’ providers of education.⁴⁹⁰ This theory would resonate with Hoxby’s work on Tiebout choice, discussed above, given the costs associated with moving school districts to improve educational opportunities for pupils. As set out in Chapter 1, it is open to the Government to implement revised transportation arrangements to enhance social mobility, and this would be a positive way of considering the link between parent finances and alertness.

All of these arguments have been tied into discussions on class, to argue that middle and upper classes tend to be better educated, have more professional, stable jobs, and earn more and as a result are more ‘quality conscious’ than their working class counterparts.⁴⁹¹ Lower middle and working class parents have been suggested to demonstrate “a more passive acceptance that the local schools were ‘OK’”.⁴⁹² Theoretically, therefore, parents can be split into two groups – alert and inert – with the general dividing factor as class. This theoretical division of parents was examined during the progression of the Education and Inspections Bill 2006 through Parliament by Burgess who published ‘background facts’ on the state school choice debate using data from the National Pupil Database held by the Department for Education (DfE).⁴⁹³ Within

⁴⁸⁸ Gorard, S, Taylor, C, Fitz, J, ‘Does School Choice Lead to ‘Spirals of Decline?’ (2002), *J Education Policy*, 17, 3, 367-384, p368. See also Di John, J, ‘Albert Hirschman’s Exit-voice Framework and its Relevance to Problems of Public Education Performance in Latin America’ (2007), *Oxford Development Studies*, 35, 3, p297.

⁴⁸⁹ Gorard (2002) at p368, Di John (2007), see for example: <http://www.northyorks.gov.uk/article/26071/School---travel-support> last visited 22.08.15..

⁴⁹⁰ Though perhaps not the only ones who would choose private schools, but for lack of funding, see Francis (2013), p23.

⁴⁹¹ Camina (2014), p36, see also Francis (2013), p5.

⁴⁹² Camina (2014), p38.

⁴⁹³ Burgess (2006).

his review of the schools pupils could attend Burgess did not take account of any characteristic of the schools other than distance and admissions gender.⁴⁹⁴ As a result whilst the data did not identify an all-girls school as the closest for a boy it may have identified a faith school with an alternative faith to the pupil, or a school that has reached or exceeded its PAN as an admissions option. The data is therefore able to assist in relation to larger changes to structures and to major admissions events, such as the move to secondary education, however the application of the schools data to in-term transfers is much more limited. Thus, this data, though helpful, must be treated with some caution.

Burgess' work can be used to argue that less well-off families who rely on free school meals (FSM) are more likely to travel shorter distances and are more likely to attend one of their nearer schools.⁴⁹⁵ FSM pupils' closest schools are also less likely to be good schools and so they are more likely to attend a poor school.⁴⁹⁶ Thus, parents who are less well-off are either unwilling or unable to express exit or voice and must therefore be more likely to be inert.⁴⁹⁷ This assertion is then examined when distance, school quality and FSM status are compared, with Burgess reporting a "striking" finding.⁴⁹⁸ Burgess identifies that non-FSM pupils are "increasingly likely to attend" local schools with higher levels of quality in comparison with FSM pupils.⁴⁹⁹ Conversely FSM pupils who live near good schools are "unlikely to attend" those good local schools.⁵⁰⁰ At the other end of the scale where the quality of the school is poor, non-FSM pupils are "unlikely to attend".⁵⁰¹ This data supports the argument that parents of non-FSM pupils are more likely to be alert to quality issues.⁵⁰² Further statistics on pupils who do not attend their nearest schools show that two thirds of non-FSM pupils attend better schools than their nearest school where as the figure is only half for FSM pupils.⁵⁰³

⁴⁹⁴ Burgess (2006) p4.

⁴⁹⁵ Burgess, (2006), p9.

⁴⁹⁶ Ibid.

⁴⁹⁷ That is, be less quality conscious or less able to express exit or voice successfully as discussed above.

⁴⁹⁸ Burgess (2006) p11

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² Ibid, though as discussed there are limitations to Burgess' work.

⁵⁰³ Burgess (2006) p11.

Finally Burgess concludes that FSM pupils are “30% more likely to attend their low-scoring local school than an otherwise-identical pupil from a better-off family”.⁵⁰⁴ The data presented by Burgess demonstrates that contingent exit to better schools is an option expressed by parents of FSM and non-FSM pupils.⁵⁰⁵ However, where that contingent exit is expressed, non-FSM parents are more likely to send their children to a better school. Geography will influence questions over distance travelled, but as discussed above, the possibility of restricted choices for FSM parents could play a part here. For example, the availability of free transportation could influence the likelihood of parents electing to exit from their local school. As set out in Chapter 1, revisions to free school transport arrangements could easily address this barrier. Whilst percentage statistics for local school attendance were higher for non-FSM pupils,⁵⁰⁶ it should be borne in mind that FSM eligibility makes up a low proportion of school pupils, and is based on the receipt of benefits. As a result, there is the potential for a wide divergence in socio-economic status between parents in the non-FSM category.⁵⁰⁷ Thus alertness within the non-FSM category may diverge widely as those at the lower economic end of the group may be as restricted as FSM parents in expressing exit. As a result, the data is indicative, not conclusive. Nevertheless, the data can still be interpreted as supporting the argument that the more economically well off the family, the more likely parents are to be alert or successfully implement exit or elicit recovery via voice, or in the alternative, the less economically well off the family the more likely parents are to be inert, fail to achieve exit or voice.⁵⁰⁸

⁵⁰⁴ Burgess (2006) p14, though class is arguably the most pervasive influence on school performance, see Dearden, L, Ferri, J, Meghir, C, *The Effect of School Quality on Educational Attainment and Wages* (2000), Institute for Fiscal Studies WP 00/22, p2 and Francis (2013). Thus an ‘otherwise-identical pupil’ may be an unsupportable proposition. Nevertheless, the data remains influential, if not unquestionable.

⁵⁰⁵ For example, as a result of applying to, and getting in to, schools other than a school which the child would be eligible for, because of catchment areas. See Part 2 below.

⁵⁰⁶ Burges (2006), p25.

⁵⁰⁷ 17% in nursery and primary schools and 14.6% in secondary schools in England in 2014, see Department for Education, *Schools, Pupils and their characteristics: January 2014* (12 June 2014), p6, available at: <https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2014> last visited 01.07.15.

⁵⁰⁸ Burgess has written more recently on this topic, however, this work is not considered as it was published during writing up.

Hirschman's assessment of consumers as having a sliding scale of quality consciousness, from alert to inert, is therefore present within the education market, and moreover can be generally linked to considerations of education, income and class. This is relevant because a greater number of alert parents could be seen as beneficial to ensuring declines in quality are recognised and addressed, however, Hirschman has identified that an overly alert consumer base creates a more volatile market, as schools will receive a much greater amount of fast feedback, in the form of exit or voice.⁵⁰⁹ If schools cannot encourage voice amongst parents, discussed in Part 3 of this Chapter, then the result will be that failings will cause more exits quickly and thus become more likely to lead to 'tipping points' that prevent schools from recovering and force faster closures, as the number of inert parents is not sufficient to give it time to resolve the issues. Greater alertness, without first addressing the balance between exit and voice, could therefore create greater instability of the school market and result in more school closures, contrary to the Government's intentions. Therefore, whilst increased alertness may be considered beneficial to improved quality, an over-abundance of alert parents at an early stage in the development of a market system would impede Government's intentions to create only a threat of exit. The importance of the mix of inert and alert parents for exit, and then voice, will now be explored below.

Part 2: Exit

This Part will discuss the nature of exit within a market system and how this applies to education. It will consider the various forms of school structure and how each either enables or restricts the ability of parents to express exit. It will find that whilst the system created by the Academies Act does create the possibility of expanded exit, it also provides ways for schools to restrict and circumvent exit. To allow the market mechanisms originally envisaged by Government, as well as Hirschman's theory, to operate schools must substantially resist creating or maintaining barriers to exit. Given

⁵⁰⁹ Hirschman (1970), p24.

that the Act creates potential for a market, without guaranteeing its appropriate use, this appears to be a substantial risk for the Government.

Exit in an educational context, is when a pupil is withdrawn from a school. In creating a market system, the Government wished to create a system where exit and choice were possible,⁵¹⁰ but, as discussed above, not a system where exit was likely to result in tipping points preventing recovery and resulting in substantial school closures.⁵¹¹ Exit was therefore introduced into the system as a threat to drive improvement, rather than as an option to do away with substantial numbers of lower quality schools. Thus, parents can choose to move their children to other schools and the Government hoped that the risk of this exit, and associated reductions in funding, was sufficient to drive improvement. This section will examine in more detail how exit operates in the academised school system, starting with consideration of when exit occurs before discussing the required effects of exit and constraints on exit within education.

Contingent exit

Contingent exit was briefly discussed in Chapter 1; however, this section will expand upon that discussion and explore how contingent exit operates within the schools system to enable identification of quality declines.

Because schools and LEAs are generally able to anticipate demand, based on birth records or primary school numbers, schools normally have an idea of the number of pupils eligible to join within their local area and so how many they are likely to admit.⁵¹² All pupils are nominally allocated an expected school, in that the LEA ensures that there is a place for each pupil in accordance with their statutory duty.⁵¹³ This nominal place will however be contingent on the pupils parents applying for that particular school.⁵¹⁴ As discussed, parents can select another school through the preference system, and the

⁵¹⁰ See for example Jones (2016), p194.

⁵¹¹ Birbalsingh (2013), p600.

⁵¹² Especially where oversubscription criteria are geographically based.

⁵¹³ Section 14 of the Education Act 1996. This does not mean that there are student names allocated to individual schools, but rather that the number of pupils requiring admission will be correlated to the local PANs.

⁵¹⁴ Or not receiving a place at an alternate school

pupil may then never enter the contingent-school. Thus, parents express contingent exit.

Hirschman's theory is focused on actual delivery of services/goods and so assumes that the consumer is already receives services from the provider and so will directly experience quality decline.⁵¹⁵ This contrasts with Hoxby's consideration of exit as happening before the parents become a customer of the school, through choosing not to send their child there in the first place.⁵¹⁶ As Hoxby has shown, parents can respond to declines in quality of a school prior to their children attending.⁵¹⁷ Such decisions can be informed through measurements of quality and improvement such as league tables and Ofsted reports.⁵¹⁸ Thus, whilst Hirschman's assumption is that customers will be existing recipients of goods and services in order to measure quality, and will 'activate' when quality drops sufficiently, this can be equally applied to potential customers, who will 'activate', in the form of contingent-exit if, at the point in time at which they make an assessment of quality, it is lower than the *pari passu* alternatives open to them.⁵¹⁹ Potential customers are therefore able to express exit before entry. Whilst contingent-exit is not explored by Hirschman, his theory can be consistently applied to the phenomenon so long as schools continue to expect a set number of pupils to be admitted.

As discussed above, the incorporation of contingent-exit and 'pure' exit, as discussed by Hirschman, into a theory on markets in education is a more appropriate reflection of the real world and thus represents a more legitimate theory for the evaluation of markets in education. As a result, exit must be considered both in terms of pure and contingent-exit to avoid 'blackboard economics'.⁵²⁰

Impact of Exit

⁵¹⁵ Hirschman (1970), p24.

⁵¹⁶ Hoxby, 2005, p58.

⁵¹⁷ Through selecting better schools, see for example Hoxby (2005), p56-7.

⁵¹⁸ Though as noted above there are some factors, such as how happy a child will be in the school, which cannot be objectively measured.

⁵¹⁹ Or they are willing to suffer a greater detriment elsewhere rather than accept quality at that level – i.e. pay for their child to attend private school.

⁵²⁰ Coase (1988), p154.

Having established the forms of exit that Parents can express, this section will explore the possible impacts of exit, both positive and negative. It will also expand on ultimate risk associate with exit, closure, and how that risk could be realised in a market system.

The effect of exit on a school can be beneficial,⁵²¹ for example fewer pupils in each class would mean more time for each of the remaining pupils which could result in higher attainment.⁵²² In the case of disruptive pupils their exit could again have a positive impact on performance of the remainder of the pupils.⁵²³ However, for the purposes of Hirschman's theory, in order for exit to drive improvement, there must be some detriment to the school which makes managers pay attention to the reasons for the loss. This detriment is achieved through the link between pupil numbers and school income. Thus, whilst an exit may result in more time for other pupils in a class, it will also result in less funding for the school.⁵²⁴ Whilst a single exit may therefore be tolerated within school margins, multiple exits, and thus larger losses, will result in the need to reduce overheads for example by combining classes to reduce teacher numbers. This in turn would create larger class sizes resulting in less teacher time per pupil, potentially damaging pupil performance. Exit however, on whatever scale, will be ineffective if the pupil is easily replaced i.e. where there is strong demand by parents to attend the school. Popular schools may therefore be better placed to weather temporary dips in quality as long as parents continue to apply. Remote or specialist schools may have a similar, or potentially stronger, resistance to drops in demand provided that the alternatives come with sufficiently significant drawbacks – such as a long commute. However, where declines in quality are not addressed all of these schools may eventually succumb to a reduction in pupil numbers, as more parents express contingent exit and go elsewhere. Where a decline in quality is significant enough, or has spiralled as a result of previous exits, there will come a point where the costs of running the school cannot be covered through funding from existing pupils and further cuts cannot be made. At this point a school would become, in effect, insolvent

⁵²¹ Hirschman (1970), p24.

⁵²² See Burkhari, P, Randall, E,V, 'Exit and Entry: Why Parents in Utah Left Public Schools and Chose Private Schools', 2009, *Journal of School Choice*, 3, 242-270, p258 on the value to parents of smaller class sizes.

⁵²³ Burkhari (2009), p258.

⁵²⁴ Hirschman (1970), p23.

and would be forced to close. During the spiral towards closure, as costs are reduced to reflect reductions in income, those pupils that remain are most at risk of receiving a poor education.

As can be seen from the above, the requirements for Hirschman's theory on exit are satisfied by the reality of the schools system, as whilst there be small benefits associated with exit, the ultimate effect of large scale exit for schools is synonymous with businesses, i.e. closure.

Entry as a constraint on Exit

The exit discourse painted a picture where dissatisfied parents simply moved their children to another school in protest at the poor, or reducing, quality of their original choice. This section will explore the extent to which that is realistic in the current system. It will explain how barriers to entry into other schools constrain exit and so restrict the operation of a schools market.

Exit from a school is constrained by the Education Act 1996, which prescribes the period of time during which every child is compelled to receive schooling in one form or another.⁵²⁵ It may therefore be possible to exit the particular school during this period, however it is not possible to exit the wider education system, and so education operates as an essential market, in the same way as policing or the need for healthcare. To exit one provider, a pupil must be admitted to another.⁵²⁶ The effect of this is that the 'market' for compulsory education will remain relatively stable year to year with a relatively predictable level of pupil numbers nationally within school years.⁵²⁷ As a result, it is possible for the state, via admissions authorities, to plan school places to ensure that there is room for every child to attend a school in the relevant area.⁵²⁸ This practice does not facilitate exit when exit is reliant on entry. Thus, where there are

⁵²⁵ Education Act 1996, sections 7 & 8.

⁵²⁶ Home schooling is a possibility to avoid this, however, although take-up of home schooling is increasing levels remain relatively low by comparison to maintained v academised figures, see Yorke, H, "Number of Children Home Taught Doubles in Six Years Amid Increased Competition for School Places", *The Telegraph*, 07 July 2017, available at: www.telegraph.co.uk/education/2017/07/07/number-children-home-taught-doubles-six-years-amid-increased/ last visited 26.02.18.

⁵²⁷ Accounting for those who go private, home school or unlawfully exit education.

⁵²⁸ As discussed above.

barriers to entry in the form of restrictions on admissions, through a general lack of vacant capacity or unfavourable over-subscription criteria, this acts as a barrier to exit from schools.

Barriers to entry into schools are erected via school admissions. The operation of PAN, oversubscription criteria and the prejudice test discussed in Chapter 1 mean that where schools are community or voluntary controlled, LEAs will have had regard to the PANs of all schools in their area to achieve an optimal balance, and so transfers between schools would disrupt not only the balance of the entry school but also the exit schools.⁵²⁹ Refusing in-term applications from pupils within the area therefore ensures that all schools continue to operate as efficiently as possible, and so LEAs, as the main admissions authorities prior to academisation, may heighten barriers to entry to prevent pure and contingent-exits, from causing the tipping point where improvement no longer becomes feasible and school closure becomes the only option. A study of school declines from 1989-1999 found that only one school in England reached this tipping point, and the authors identified the role of LEAs as critical in preventing the tipping point being reached through a control of admissions, PANs and strategic school closures to ensure supply tracked demand.⁵³⁰ As a result the previous schools system enabled LEAs and admissions authorities to actively stifle entry to new schools and thus inhibit exit.⁵³¹ Whilst admissions authorities decisions are subject to parents right to appeal, comments by Friedman in 1955 that in general parents can only move schools when “changing their place of residence”,⁵³² remain an accurate reflection of the challenge associated with in term admissions until at least 2010.⁵³³ Drawbacks of Tiebout Choice, as discussed in Chapter 2, therefore remain relevant.⁵³⁴

⁵²⁹ Religious institutions may also make a general assessment for the needs of all of their schools in an area and comments on LEA influence will apply equally to the Church of England, Catholic Dioceses, and so on, in respect of voluntary aided schools.

⁵³⁰ Gorard (2002), p380.

⁵³¹ However, it should be noted that under the post-Academies Act system in an area with only one academy chain running all the schools, i.e. clustering, there is the potential that these barriers to exit could be re-created if not appropriately regulated. Such regulation has yet to be put in place.

⁵³² And so expressing a form of Tiebout choice.

⁵³³ Friedman, M, “The Role of Government in Education” in Solo, R.A, *Economics and the Public Interest* (1955), Rutgers University Press, p129, Benn (2012), p76.

⁵³⁴ i.e. costs associated with moving as discussed above.

Even where an overarching controlling consciousness does not restrict exit, there are many barriers to entry within the English system beyond geography, one of the oldest being selection. Prior to the introduction of comprehensive education, pupils either went to a grammar school, if they scored high enough in their exams, or a secondary modern, if they did not. Whilst in some parts of the country Grammar systems continue to operate,⁵³⁵ all secondary moderns are now comprehensive schools. As a result, exit options continue to be more limited in these areas as a pupil would only be eligible to apply to entry of the grammar schools if he or she had successfully passed the relevant exams. Another historic restriction is religion, with religious schools able to restrict a proportion of their places to those of the relevant faith,⁵³⁶ thus these schools will have fewer places available to pupils who do not share their religious belief.

Where barriers in the schools system are too high parents may consider private schooling. However, this comes with the cost and potentially selectivity constraints discussed in Chapter 1. Thus, fees operate for many as an effective barrier to entry.⁵³⁷ As a result, private schools, which historically sit at the top of the league tables,⁵³⁸ only generally prove a realistic option for more wealthy parents.⁵³⁹ As discussed earlier in the Chapter, a more privileged financial and class position tends to indicate an increased likelihood of parents being alert. As a result, private education can be seen to generally absorb more alert parents in an area, where quality is higher than public sector alternatives.⁵⁴⁰ Home schooling is also an option for effecting exit, however, as discussed above this is a highly labour intensive option which requires considerable free time from parents, again raising significant barriers to entry.

⁵³⁵ i.e. Kent.

⁵³⁶ As set out in the Admissions Code.

⁵³⁷ See for example Burkhari (2009), p257, for an example which demonstrates that private schools in the American, case study were mainly higher earners.

⁵³⁸ Along with selective maintained schools, though in recent years the shift in private school examinations to qualifications not recognised by the Government has caused them to decline dramatically, see Yorke, H, "GCSE Results 2016: The Top 100 Secondary Schools", The Telegraph, 19 January 2017, available at: www.telegraph.co.uk/education/2017/01/19/gcse-results-2016-top-100-secondary-schools/ last visited 26.02.18.

⁵³⁹ See Francis (2013), p20.

⁵⁴⁰ Which is not the case in all parts of the country, see The Sutton Trust, *Open Access: A Practical Way Forward: New Developments* (June 2014), p41.

The overall picture is therefore that oversubscription criteria, controlling consciousness and cost all restrict parents ability to effectively move their children to alternate schools, either via exit or contingent exit, and thus entry into a new educational setting operates as a highly effective barrier to exit.

Academies

This section will consider how the introduction of academy schools has influenced the availability of exit within the 'market' for education in England. It will show that academies generally have opened the potential for both increased and reduced exit in schooling. Academies have a variety of forms which can alter their impact. As a result, this section will focus on converter academies and later sections will then explore the impact of free schools and chains whose different features alter their impact.

Converter academies replace existing schools, so do not automatically increase the capacity of the system. Thus, in terms of capacity, there is no immediate change when a school converts and so the availability of exit is not automatically altered. As a result, changes in the availability of exit come from the operation of academy freedoms post conversion, which can both increase and reduce exit potential. On the potential to reduce exit, this can be demonstrated in relation to horizontal differentiation discussed above. This is because academies do not have a statutory obligation to comply with the national curriculum,⁵⁴¹ but simply to have a broad and balanced curriculum as set out in the funding agreement. This presents an opportunity to restrict in-year transfers by making the curriculum sufficiently different from neighbouring schools that pupils could not reasonably catch up if transferring whilst in a key stage. For example, by using a different exam board to other local schools.⁵⁴² A high level of catch-up time caused by a change in topics for pupils is likely to demonstrate prejudice suffered by the receiving school if the pupil were to be admitted.⁵⁴³ Therefore, a carefully selected curriculum, by reference to the local education market, would facilitate a barrier to exit, which, given the levels of freedom for academies, could be more easily erected than for maintained

⁵⁴¹ See the Academies Act 2010.

⁵⁴² Though this option is in theory open to all schools.

⁵⁴³ Allowing the academy to reject admissions and strengthening the schools position on appeal.

schools. Secondly, since academies are their own admissions authorities, and so set their own PAN, there is a risk that admissions arrangements become more restrictive, via a reduction in PAN or more challenging oversubscription criteria. Conversely academies can increase capacity for exit, by increasing their PAN, widening their oversubscription criteria, or by deciding to accept in term admissions. This would be especially effective where demand for places is high.

Each converter academy therefore has the ability to increase or reduce barriers to exit within their local market. Thus, at a local level the effects of conversion will vary. However, at a macro level the impact of academisation, subject to discussions on chains below, is to move decisions on places away from LEAs, and the allocation of as many places as there are pupils, towards markets driven by demand. They do this by allowing governors of schools which are over-subscribed to expand in response to demand, thus enabling the 'invisible hand' of the market to drive PAN.⁵⁴⁴ Increases in PAN for higher quality academies will then reduce the number of pupils at lower quality schools with which it competes and so drive those schools to increase their performance in response to the exit, including contingent-exit, of pupils.⁵⁴⁵ Such a change is likely to be slow, with PAN unlikely to increase dramatically for fear of a reduction in quality caused by increased numbers.⁵⁴⁶

The introduction of converter academies, if managed in accordance with Hirschman's theories, should have led to a gradual and ad hoc expansion of competition nationally resulting in an increased role of competition to provide a 'tide that lifts all boats'.⁵⁴⁷ Unlike Hoxby's predictions, such a process would give poorer quality schools time to respond to this change and improve quality thus aligning to the Government preference to avoid mass school closures.

Free schools

⁵⁴⁴ As Hoxby demonstrated they would at Hoxby (2003), p229.

⁵⁴⁵ Or face closure.

⁵⁴⁶ And indeed, an examination of chain expansion has suggested gradual growth is the most stable form, see Hutchings, (2014), p51.

⁵⁴⁷ Hoxby (2003), p287.

Having discussed the impact of converter academies to develop gradual systemwide change, this section will discuss the potentially rapid impact on exit of free schools. It will explore how free schools have the capacity to create explosions of potential exit within an area and thus speed up the process discussed above.

Hirschman has argued that the combination of exit and voice can result in the alert being the first to exit rather than to express voice; that is, it is simpler and faster to go elsewhere than to complain, and so that is what parents do.⁵⁴⁸ Arguably this is exactly what free schools do,⁵⁴⁹ parents dissatisfied with their current school club together and start a new one. Thus, the alert move on and the inert are left with deteriorating provision, with a school which is now near to a brand new school, potentially tempting away future parents, and so lead to contingent-exit of the next generation of pupils and a depletion of alert parents. The primary impact of free schools is therefore that they dramatically increase provision. As they do not automatically result in a school closing,⁵⁵⁰ the number of places in an area increases disproportionately to the level of demand (as all students would currently have places at other schools). As a result, there is additional capacity in the system which should allow exit from other schools to be made easier.⁵⁵¹ There is therefore no gradual change as with other academies, but a 'big bang' style shift in local provision. With additional capacity the system will act like a free market sooner, with LEAs immediately unable to control supply of places as well as before. Thus, within a free school's area of effect it is more probable that failing schools will reach the 'tipping point' and be forced to close as LEAs will not have time to gradually compensate through PAN alterations in other schools. Depending on the size of the new free school, exit would in this scenario cease to be an effective tool for improvement in poorer schools as the scale of exit could render improvement impossible. However, this theoretical scenario can be tempered in two ways, first, if new free schools are not perpetually opened this state of flux could result in current

⁵⁴⁸ Hirschman, (1970), p45.

⁵⁴⁹ In theory – though in practice most free schools are not opened by parents. Having someone else set up and operate the school (as long as quality is higher than the existing school) will however only reduce barriers to entry for alert parents – because the demands on their resources are reduced.

⁵⁵⁰ Through conversion or take over by a sponsor.

⁵⁵¹ How much easier will depend on the set up and development of the free school.

failing schools being closed which will reduce the capacity of the system back down in line with demand, once again balancing admissions in the system as a whole. Any future deterioration will then need parents to again leave and open a free school to create immediate change and potentially cause another poor-performing school to close. This cycle would eventually become more apparent to school leaders and so force them to look more closely at quality control and seek to engage parents in other ways, for example via voice.⁵⁵² The second tempering of this scenario is the acceptance that for the commodity in question, easier exit via easier entry into another school is still not costless. Whilst transferring to another school may have other benefits, for example being closer to home, etc. the emotional cost on pupils of losing friends and having to make new ones, subtle changes in curriculum meaning catch-up lessons are required, etc. mean that there will always be barriers to exit, and so even with greater freedom on admissions continuing barriers mean parents are unlikely to move pupils for the first minor slip in quality, and so the remaining barriers may encourage voice to prevent spirals of exit.

As well as increasing capacity in the system as a whole free schools have the potential to lead to segregation of alert and inert parents, as the alert parents develop free schools and move on, or demonstrate sufficient demand for a third party to open a free school,⁵⁵³ leaving the inert parents behind. The effect of this could be that the schools which are left behind do not receive feedback on performance from parents via exit or voice and thus are unable to recognise further declines in quality, thus hindering recovery. As discussed above however there are other quality feedback mechanisms within the schools sector, for example Ofsted and league tables, and as a result the school is unlikely to be totally unaware of the quality decline. Though schools may be unaware that parents consider the decline intolerable. As a result, this may produce a more challenging environment for recovery of the existing school and increase the

⁵⁵² Though by this point it is likely that the political damage of mass school closures would have materialised and Government would look to address quality declines in other ways – i.e. increased funding, thus enabling additional resources for schools to improve rather than close. This outcome is however beyond the scope of this discussion.

⁵⁵³ As the majority of free schools are not parent run, it is more likely that a third party charity, university or other school would open the free school thus giving parents an alternative with less work required.

chances of the school being replaced by a sponsored academy, or receiving a new sponsor. By contrast the free school may have an overabundance of alert parents, meaning that even minor quality declines are felt intensely and may cause further exit, or contingent-exit in the case of younger siblings.⁵⁵⁴ Such an alert/inert distribution may mean that small issues with quality result in swift escalations which reduce the time governors/directors will have to respond to those concerns. As a result, free school lifecycles could be short lived unless they are able to attract more inert parents and develop a more balanced mix of inert and alert parents.⁵⁵⁵

Free schools which start with small PAN and grow gradually may be able to mute these impacts,⁵⁵⁶ thus allowing other schools to respond more effectively to exit, however, such a response would then impede further growth of the free school, without attainment being significantly higher than the other schools in its market. As a result, creators of free schools would be advised, in accordance with Hirschman's theories,⁵⁵⁷ to grow fast before competitors can respond. This would, reduce the effect of the recovery mechanism offered by Hirschman and so impede Government policy to have only a threat of closure rather than actual school failure. To address these competing interests the Government has a restrictive policy on the development of free schools, which in particular looks at the capacity within the proposed market to prevent unavoidable closures.⁵⁵⁸ This can be seen as an example of the Government's preference for a qualified market, effectively clipping the wings of the free school model and preventing them from realising their full market potential.⁵⁵⁹ Though a measure requiring less regulation by Government to address the exit issue would be to allow free schools only where there is a clear need for a new school, rather than just poor quality

⁵⁵⁴ Hirschman (1970), p24.

⁵⁵⁵ Based on the discussions above, such divisions may also appear as class segregation which may have other undesirable impacts on social cohesion and mobility.

⁵⁵⁶ As they do not create as many opportunities for entry and thus maintain barriers to exit.

⁵⁵⁷ Hirschman (1970), p50.

⁵⁵⁸ Department for Education, *Free Schools Applications: Criteria for Assessment Mainstream, Studio and 16 to 19 School* (July 2016), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579912/Info-Free_schools_applications_criteria_for_assessment_for_mainstream_studio_and_16_to_19.pdf last visited 27.02.18, p22 in particular on the need to show there are more pupils at the under performing school than will be taken by the free school, thus leaving the underperforming school with pupils.

⁵⁵⁹ As discussed by Gove at Birbalsingh (2013), p600.

provision, and to alter the management of existing schools where performance is poor – as is currently the case with sponsored academies.⁵⁶⁰

Chains

This section will consider the impact on the availability of exit by academy chains. Chains are groups of academy schools that are linked together, usually by being owned by a single multi-academy trust (MAT). As a result, they have one core management team which can exert minimal, or substantial, control over each school, depending on each MATs preference. This section will show that, like other academies, chains can increase or restrain exit, however, under the latterly developed Government policy for ‘clustering’,⁵⁶¹ i.e. locating chained schools near each other, it is more likely that chains will impede exit.

Academies generally have been shown to increase diversity within the schools ‘market’ by allowing more organisations a greater say over admissions within an area, thereby breaking up the controlling influence of the LEA. Chains can assist with this break-up but can also subvert it. Authors have noted that chains tend to either group together, all in one location or in clusters of two or three, or space themselves out over a wide area.⁵⁶²

Chains that spread out over a wider area can increase variety within each LEA area by offering an established ‘brand’ of education with a particular style and methodology which is usually already established. For city academies and sponsored academies which join chains, these schools are usually already failing or in difficulty and so the chain’s brand offers more certainty to parents which can allow for more confidence in relation to exit, either from the failing school or other schools in the area. Conversely however, chains which cluster in an area can reduce the possibility of exit by taking over all available alternatives. For example, in Workington, Cumbria, a new sponsored academy replace two failing maintained secondary schools within the town.⁵⁶³ The result of this

⁵⁶⁰ See Section 4 of the Academies Act 2010.

⁵⁶¹ Department for Education (December 2016), p22

⁵⁶² Hill, R, Chain Reactions: a think piece on the development of chains of schools in the English School System (2010), National College for School Leadership, p4.

⁵⁶³ <http://www.williamhowardtrust.org/our-academies/workington-academy/> last visited 16.06.15.

is that parents within Workington will have three options for secondary education for their children:

- The new academy
- A catholic secondary school (provided they meet the relevant criteria)
- A school in one of the neighbouring towns, approximately 7-21 miles away⁵⁶⁴

Parents unwilling or unable to transport their children to neighbouring towns,⁵⁶⁵ who are not able to secure places at the Catholic School, will have no choice but to send their children to the new Workington Academy. This example demonstrates that the clustering of chains can also restrict the availability of exit as in Workington the chain is the only realistic option for the majority of parents.

The extent to which a chain restricts the ability of parents to exit will however depend on the level of control exercised by the chain's lead school or Sponsor.⁵⁶⁶ MAT chains control can be exceedingly tight. Within a MAT there is usually a Board of Directors who run the MAT and then below them a Local Governing Body for each academy.⁵⁶⁷ The MAT is the legal entity which holds the contracts for the provision of education with the Department for Education. The Directors are therefore in total control of the MAT, subject only to the company's Members.⁵⁶⁸ As a result, the Directors, at one extreme, could allow the Local Governing Body (LGB) only an advisory role, to make recommendations but not influence decision-making. At the other, they could delegate all functions of the academy to the LGB. Edison Learning recommends that 70-75% of the secondary school model for academies should be dictated by the MAT and the Harris academy chain dictates structures, systems and policies to its academies, although each academy can adapt them where necessary.⁵⁶⁹ Chains can therefore be more controlling

⁵⁶⁴ For options in Cockermouth, Whitehaven and Keswick.

⁵⁶⁵ As there will be a closer alternative and so transport will not be freely provided by the LEA.

⁵⁶⁶ For the Workington Academy this will be the William Howard Trust, which at the time of takeover was an Ofsted rated outstanding academy from Brampton. The Sponsoring academy has however since declined see <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/137252> last visited 27.02.18.

⁵⁶⁷ Although LGB's are not always used and the Directors and Local Governors can be the same people, see below for further details.

⁵⁶⁸ Whose strategic role is more limited in accordance with the Companies Act 2006 – over involvement risks members becoming shadow directors in accordance with Section 251 of the Companies Act 2006.

⁵⁶⁹ Hill (2010), p14.

than the LEAs that they replace, or much more relaxed, giving comparable freedoms to converter academies. However, whilst the approach chains as a whole take may be inconsistent, the more control each chain exerts over its academies, and the more they cluster, the more they will restrict parents' ability to exit from the chain's provision. Chains are able to have a more beneficial impact on exit than converter academies through the provision of a track record improving quality of choice, but at the same time, where they are tightly controlled and cluster, can remove exit from the chain completely within the relevant geographical area.

More recently the Government has been keen to encourage MATs as the standard form of academy,⁵⁷⁰ and with clusters being seen as the most efficient form of MAT style, allowing the sharing of resources much more easily, the impact of MATs may be to reduce overall choice and move away from a market towards monopolies within locations. Monopolies would increase the need for voice, discussed below, to be engaged to allow feedback mechanisms for decline, and so the level of control, at local level, for each MAT school would be critical to ensure that Hirschman's recovery mechanism could operate. Without this pre-disposition towards delegation, MATs would create a system where markets are replaced by control by companies, rather than by LEAs. Such a system would not be compliant with the express intentions of the Government on development of the Academies Act because it will result in the removal of meaningful choice given that an academy in a chain can have less freedom than maintained schools.⁵⁷¹ As a result, whilst a chain that spreads itself thinly may encourage exit and competition by offering a tried and tested 'brand' of education, chain clustering creates the potential for corporate controlling consciousnesses to replace the LEAs in education. Such an approach would be contrary to the initial aims of the Academies Act 2010; however, clustering does currently represent Government policy and so demonstrates the evolution of Government approach over time, with efficiency offered through synergies being valued more than the perceived improving

⁵⁷⁰ As set out by Sir David Carter in his speech "Working Together to Drive Improvement" at the Academies Show, Birmingham, 22 November 2017. See also Department for Education (December 2016)

⁵⁷¹ Maintained schools being guaranteed certain freedoms by the Schools Standards and Framework Act 1998 whereas the Academies Act 2010 affords chained academies no such protection.

effects of competition.⁵⁷² The overall competitive potential of chains may therefore have been reduced over time by the shift in Government policy towards MATs which cluster, over independent academy schools.

Part 3: Voice

This Part will explore the nature of voice within the schools' system. It will show how voice has played a role in education quality for a number of years, for example via parent governors, though its influence was not considered sufficient to drive the levels of improvement sought by the Government. It will then move on to explore how the Academies Act, through the introduction of various forms of academy, has increased the potential for voice to effect change, but also how there remains significant potential for academies to constrain voice. As with exit, this section will show the effect of the Act is to create potential for voice, with individual academies deciding how to implement that potential. As a result, the success or failure of Hirschman's theory to underpin the Act will be based on the behaviour of a multitude of schools, rather than a clear direction from Government. As with the introduction of exit, this represents a risk for the Government.

Voice has been defined as "any attempt at all to change, rather than escape from, an objectionable state of affairs".⁵⁷³ Such actions within education could include questioning teachers at parents' evenings, calls to the school or LEA, meetings with the head, becoming a governor of the school, volunteering to help at the school or simply engaging in questionnaires and the provision of feedback. Action can be achieved by a single individual, multiple individuals or through collective action.⁵⁷⁴ As discussed above, voice is not an option considered by Hoxby, who focusses exclusively on the potential of exit.⁵⁷⁵ This focus on exit is a limitation that any alternate theory for underpinning the Act needs to overcome and this section will demonstrate how

⁵⁷² Department for Education (December 2016), p22

⁵⁷³ Hirschman, (1970), p30.

⁵⁷⁴ Di John (2007), p309.

⁵⁷⁵ See above & Chapter 2.

Hirschman's work on voice satisfies that test. This Part will consider how voice operated within schools and how various forms of academy altered this arrangement.

Voice within Schools

This section will consider the operation of voice within the school sector pre-Academies Act. It will show that whilst voice could be exercised, its operation was not considered sufficient by Government who looked to introduce exit as a result. Voice is not a new phenomenon within the school sector. Prior to the introduction of choice, and where exit is still substantially constrained, voice represents the only tool that parents had to improve quality, which has been used for decades.⁵⁷⁶ As Hirschman notes "The voice option is the only way in which dissatisfied customers or members can react whenever the exit option is unavailable".⁵⁷⁷ Thus voice is not a 'market mechanism' for addressing declines in quality, but rather a political mechanism which will influence the running of the market.⁵⁷⁸ On this basis all those who cannot gain admission to an alternative school must resort to voice if they wish to attempt to prevent further decline in the quality of their child's education. It is argued that voice has an inelastic relationship with exit,⁵⁷⁹ so in the pre-academy schools system, with its high barriers to exit, voice should have represented a strong force for preventing continuous decline. However, given the Government's desire to introduce the possibility of exit to drive improvement it can be inferred that the role of voice in the absence of exit was not sufficiently effective in preventing declines in quality and leading to improved attainment.⁵⁸⁰ Voice as the residue of exit was therefore insufficient to address the mischief targeted by the Academies Act, thus the Act is a statement by the government that education institutions and LEAs, as the 'managers' of the maintained school sector failed to adequately respond to voice.

⁵⁷⁶ Through for example representations to elected members at the relevant LEA, which was perceived to give LEA control of schools political legitimacy, see Wolfe, D, 'Academies and the Law', in Gunter (2012), p35.

⁵⁷⁷ Di John (2007), at p33.

⁵⁷⁸ Hirschman (1970), p15.

⁵⁷⁹ Di John (2007), p33.

⁵⁸⁰ H.M. Government, The Coalition: Our Programme for Government (May 2010), p28.

Where voice is the only mainstream option, whose impact is merely irritating, as whilst officers and governors may need to respond to complaints and concerns, pupils, and therefore funding, is secure for the duration of that stage of education, there is arguably little motivation to improve,⁵⁸¹ other than to reduce the level of irritation from complaints. Thus, the power of voice depends on the extent to which complaints can be made to disturb management to the point at which they become motivated to act, and before the parent becomes frustrated and gives up.⁵⁸²

Academies

This section will explore the effect academies have on voice. In particular it will consider whether converter academies promote the use of voice as a recovery mechanism. It will show that converter academies have the potential to increase voice, but also the potential to restrict it beyond what is open to maintained schools.

City academies, new academies and free schools (on which see below) are all set up as companies limited by guarantee.⁵⁸³ The members are usually the sponsor, the religious organisation, or a selection of the governing body, though by 2016 the latter has lost favour with the Government.⁵⁸⁴ With the exception of Parent Governors the composition of the governing body is at the discretion of the school/sponsor that sets it up and the members usually appoint the majority of the governors. The members will always retain the ability to dismiss any or all directors.⁵⁸⁵ The result, much like commercial companies, is that ultimate control of the school rests with the members of the academy company, however directors (governors) have day-to-day management responsibility. Directors may act in response to expressions of voice to concerns relating to day-to-day management, but not to issues that are reserved to members. Directors

⁵⁸¹ See Hirschman (1970), p55.

⁵⁸² As at some point, even the most alert parent will either give up or revert to more complex exit mechanisms such as Tiebout choice or private schooling, though en masse movement would not be a viable assumption based on the capacity of the private sector and the costs of Tiebout choice.

⁵⁸³ See the model Articles of Association, available at: <https://www.gov.uk/government/collections/academy-conversion-process#model-memorandum-and-articles-of-association> last visited 19.04.2014.

⁵⁸⁴ With the Department for Education favouring members who are not also directors, thus creating a greater division of functions allowing greater scrutiny of primary decision makers. See, Department for Education (December 2016), p19

⁵⁸⁵ Companies Act 2006, section 168.

can take decisions on recruitment of teachers, curriculum, etc. which are likely to represent many drivers on quality but are unable to take decisions such as to convert the academy to a MAT to create economies of scale. Each academy's member may be more or less hands on, however, where members restrict themselves to traditional member functions, such as approving accounts, appointing directors and updating the Articles of Association, directors *should* be free of purported restrictions from the LEA and without new restrictions from members. They should therefore have the freedom to innovate and respond to voice.⁵⁸⁶ It is therefore possible that the conversion to academy status would make schools more receptive and responsive to voice and so lead to an increase in voice within the school as well as the possibility of an increase in exit of the system.

Conversely however sponsored or faith academies become subject to the overarching control of external members who would be able to dictate to a much greater extent than the LEA could have. As a result, they may set out more rigid requirements in relation to key areas such as curriculum, behaviour, school structure, etc. which could lead to a less responsive or receptive governing body and so restrict the ability of voice to impact on schools' decline. Here members could use direct control, or more likely, would appoint directors who are willing to comply with their vision for the school, thus while the directors may *prima facie* retain their authority, in practice they comply with the preference of their appointing members. As a result, as well as the increased potential to respond to voice through new freedoms there is also a risk of 'director capture' preventing directors from being receptive to voice.

In addition to the above, the rules on governing body composition do not apply to academies, in order to comply with the general policy of giving academies greater freedom to run themselves. Thus, whether there is additional freedom to respond or not, directors of academies are not bound to have the same level of ability as maintained schools.⁵⁸⁷ Whilst therefore voice could be increased by the conversion to academy status and the creation of a company structure, it is also feasible that voice

⁵⁸⁶ This freedom will also facilitate responses to exit.

⁵⁸⁷ Though there is naturally a benefit to members to appoint competent directors.

could be restricted further. The success of an application of voice would therefore rest on the composition of the academy membership, meaning that the relative certainty of the LEA's influence is replaced by the uncertainty of member inclination, an inclination which could evolve over time as the members are replaced or as sponsors change policy.

Free schools

This section will explore the impact on voice of free schools. As free schools are created by a number of organisations it will show that for some, voice will operate as with converter or chained academies. However, where parents create a free school there is an initial burst of substantial voice exercisable by those parents. Whilst this may decline over time, as pupils move on, as with exit, free schools created substantial potential for the success of voice.

As discussed above the creation of free schools by parents is an absolute expression of exit from the previous school and is therefore arguably not beneficial to voice. However, once parents express their desire to exit and create their own school, they become empowered with an extreme level of voice in the new academy – as members. Whilst free schools are therefore an expression of exit from a failing school, when set up by parents they bind the most alert parents to the new school through the company guarantee and bestow them with a level of voice otherwise unknown to the school system. No other academy or school structure guarantees such a significant level of parental voice within the management of the school. Whilst this level of voice may not be immediately necessary, in that a free school cannot be created in a position of decline, should decline occur those most likely to take notice of the quality failings are also those who are most able to do something about it. Parent led free schools therefore enable exit and subsequently enable voice for those who are the most likely to attempt to use it.

As with all systems, however, this focus of response power within the hands of the most alert may not last, as alert parents may become more inert once their child moves on

to another school or leaves education for example.⁵⁸⁸ In this situation an extreme level of voice for alert parents is replaced by control of inert members and/or directors who may be reluctant to alter the composition or practices of 'their school'. In the alternative parent-members may make decisions for the free school which favour their children specifically, to the detriment of other pupils at the free school. For example, if member-parents' children are more active than academic, funding could be focussed on sporting activities to the detriment of academic learning which could damage other pupils' education.⁵⁸⁹ As with other academies there is no method of 'evicting' the membership, and so members and directors overstaying their welcome could prevent the innovation and development of schools leading to a decline in standards as requirements of pupils and parents develop. Parent led free schools in their lifetimes could therefore prove to be the champions of exit, followed by the champions of voice and finally extreme examples of decline.

The above considers free schools developed by parents. However most free schools are created by others, such as other schools, universities, etc. As a result, the impact on voice for these schools is more likely to reflect that of chain schools discussed below, or converter academies above. This is because the special characteristic of parent led free schools is the involvement of parents. Non-parent led free schools, whilst having the same impact on exit as parent led free schools, will lack the same voice potential because there is nothing fundamentally different in the link between ultimate controllers and parents to other schools.

Chains

This section considers the potential impact of chains on voice. As with exit, this section will demonstrate, the impact of chains can vary widely. Whilst chains can restrain voice, they also have the ability to rely on a small number of parents to effect chain wide improvements via voice, depending on how receptive managers are. Ultimately this

⁵⁸⁸ This ties in with the requirement for parent governors whose children leave the relevant school mid-governorship to be ineligible for re-election as parent governors once their term as a governor comes to an end, see the School Governance (Constitution) (England) Regulations 2012, Regulation 6.

⁵⁸⁹ Though this would create differentiation with competing schools.

section will show that the value of voice in a chain will be determined by the level of delegation to local governing bodies.

As was seen above in chains the directors continue to hold day-to-day management of all the schools, but may delegate some of these functions to regional committees or to individual local governing bodies.⁵⁹⁰ Alternatively they may retain all powers and simply receive advice and recommendations from local governing bodies.⁵⁹¹ Either way, the starting point for engagement with voice is that the local governing body, i.e. the 'managers' on the ground of the school in decline, do not automatically have any power to address concerns raised by voice. It is only through the discretionary delegation of this power by directors that they become able to respond to voice at a local level. For larger chains regional committees may receive some of the decision making power which for smaller chains would go to the local governing body. As a result, as chains get larger, and central MAT management need to develop processes for controlling the MAT as a whole, there is the potential for an increase in bureaucracy through the proliferation of committees, leading to a less effective voice reception. A MAT's discretion on delegation and potential for increased bureaucracy therefore endanger the ability of the MAT to successfully listen and respond to voice.⁵⁹²

Unlike exit, however, the issue of voice receiving the attention of the correct level of management is assisted by clustering. MATs that cluster together are more easily able to communicate, and parents with concerns can more easily meet with senior managers when they are all relatively close together. Further, schools that are closer together are more likely to be able to share resources, such as teachers and training events, making addressing concerns easier. For example, where there are concerns about the quality of teaching in one MAT school, the MAT can send teachers from a neighbouring school to assist in their free periods. This would not be possible if one school were in London and

⁵⁹⁰ See the Model Articles of Association, Article 100 and 104, available at <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association> last visited 17.6.15.

⁵⁹¹ Hill (2010), p20.

⁵⁹² An issue that could have been resolved through legislation or the production by the DfE of a compulsory form of delegation for MATs required as part of their funding agreement.

the other in Newcastle. Thus, clustering enables more joint working to respond to concerns.

Where chains do have sufficient methods in place to identify issues via voice, even if those methods are available only in some of their schools, this will allow alert parents in those schools to identify and report quality concerns. Directors may then use this learning to prevent declines across the MAT. Thus, with appropriately responsive management structures in place MATs could rely on a relatively small number of alert parents across some or all of their academies in order to prevent decline and generate MAT wide improvement. However, this theory would only work so far as the issues in all MAT schools which caused declines in quality were the same. If one school in a chain does not have effective voice mechanisms and suffers a decline due to something not raised in other schools, a chain with selective voice receipt processes would be unable to effectively respond to the declines in that school. As discussed above, there are other mechanisms to identify declines, for example Ofsted inspections, league tables and exit. However, the advantage of voice over exit is that voice clearly identifies the issues whereas exit merely suggests there are issues. As a result, whilst the absence of effective voice would not prevent management from eventually realising that there was a problem, they would not have the benefit of knowing what *the* problem was as quickly.

Academy chains, in contrast to parent led free schools, are willing to constrain voice in the form of parent governors. For example, in 2010 the Cabot Learning Federation had three academies.⁵⁹³ Each academy had a local governing body of 13 Local Governors, two of which were parents, giving parents approximately a sixth of the vote, local representatives as a whole were at a minority to sponsor representatives, which is not uncommon. At Director level, one parent Local Governor sat on a Board of 11, providing less than a tenth of the voting rights and collectively with the other non-Sponsor Directors (the chairs of the LGBs) represented a third of the total voting rights.⁵⁹⁴ Thus parent representatives, who are primarily charged with addressing parental concerns,

⁵⁹³ Hill (2010), p16.

⁵⁹⁴ Hill (2010), p20.

had, in reality very little power in comparison to sponsors. Chains can therefore be seen as innately damaging to the potential of effective voice, by isolating management power away from those within the school that parents would, on a day-to-day basis, raise concerns with. In addition, their ability to generate bureaucracy and limit parental involvement creates further bars to voice. Whilst non-parent directors are able to respond to voice, more parent directors increase the chances of information reaching the board and also of shared experience enabling greater understanding of the relevant issues. Where chains choose to engage in voice it is still possible for voice to become a receptive recovery method, and where voice reaches the appropriate level, a small number of alert parents across a MAT can prevent comparable declines over a much greater number of schools than may have been achievable with individual academies. Ultimately the level of delegation operated in chains will play a pivotal role in determining whether or not voice is a viable and productive recovery method.

Part 4: Combining Exit and Voice

As has been discussed above, the introduction of academies and increased choice into the schools system did not create an exit- or voice-only system, but a system which relies on both exit and voice. Both exit and voice were capable of being expanded and constrained by an academised system, with specific academy structures, such as free schools and chains, playing especially important roles in the extent to which voice and exit can operate. Whilst Hirschman argued that these two options could generate effective recovery methods,⁵⁹⁵ he also noted that their combination, if not effectively managed, could prove toxic as the two options can work against each other to inhibit effective responses by management.⁵⁹⁶ This Part will now consider the relationship between exit and voice as alternate and interconnected recovery mechanisms before going on to consider the concept of loyalty as the balance between the two which is most likely to meet the governments requirements set out above. It will show that if the

⁵⁹⁵ Hirschman (1970), p4.

⁵⁹⁶ Hirschman (1970), p45.

Government can encourage schools to achieve loyalty, it will generate a system which meets the requirements set out in Part 1 of this Chapter.

Exit in Preference to Voice

This section will consider the scenario where, in the event of a decline, exit is expressed in preference to voice. It will show that in this scenario the effect of academisation is to reduce barriers to exit overall and so more parents will express exit, with an increased risk that the associated loss of funding would cause a spiral of decline for the worst local school leading to school closure. Thus, exit in preference to voice would not result in the Government's ambition of a market without mass school closures and pupils trapped in spiralling institutions.

As Hirschman notes, the exercise of exit is easier and cleaner than voice,⁵⁹⁷ and so where exit and voice are both viable options, exit is likely to take preference.⁵⁹⁸ Thus parents are more likely to move their children than complain. For this to occur however it assumes that there is a better quality alternative to exit to.⁵⁹⁹ This requires firstly that there is a better alternative, meaning declines in quality of the best school in an area will not cause exit as long as the next best alternative is still considered to offer lesser quality education. In addition, as discussed above, entry into another better school must be a viable alternative. Where the above two alternatives are satisfied parents could be expected to move from schools with lower quality education, with more alert parents moving first and more inert parents later, until all activated parents have moved schools. As discussed above, the education system pre-2010 was based on LEAs ensuring there were enough spaces in their area for each pupil. Thus, capacity constraints reduced exit by prohibiting entry. In a quasi-market system developed by the Academies Act individual academies can alter their own PAN.⁶⁰⁰ So when a 'better' school has a quality dip, the next best school can now expand its PAN to increase the chances of contingent exit (and exit) to enable it to poach pupils from the previously better school. The effect of this would be that the previously better school would have

⁵⁹⁷ Hirschman (1970), p30.

⁵⁹⁸ Hirschman (1970), p76.

⁵⁹⁹ Actual or perceived, Hirschman (1970), p27.

⁶⁰⁰ Where they are not in a MAT.

more capacity and so could take more pupils from worse schools in the area (if any). Ultimately the net result of this is that the worst school in the area has a reduced number of pupils, and so moves closer to becoming financially unviable and potentially closing, as set out by Hoxby.⁶⁰¹

As discussed in Part 1 of this Chapter the Government's intention was not to create an environment where pupils would be sent to and trapped in institutions that were failing. As a result the recovery potential of Hirschman's theory is critical to aligning to the Government's ambition. Given that exit in preference for voice impedes recovery by increasing the number of exiting parents and thus risking instability, another balance is required to allow successful recovery.

Exit to Relieve Voice

Having established exit as the primary expression of dissatisfaction does not generate an environment conducive to recover mechanisms, this section will explore the reverse scenario – where voice is the primary expression. It will show that in 2010 and for a time thereafter this may have been a realistic scenario, given the relative unfamiliarity with exit, especially pure exit, in education. It will show that exit to relieve voice weakens both exit and voice and whilst the most alert may eventually exit, system wide increases in improvement are unlikely, and improvement generally may even decline as expressions of dissatisfaction become increasingly irrelevant to school managers.

In the above discussion parents were generally assumed to be aware that exit was an option and to consider it in response to declines. Further, when exit was available parents were assumed to move. Much like mortgage or energy providers, schools were therefore susceptible to exit by anyone who was motivated to consider their options. Such a familiarity with the possibility of exit on the part of parents does not however happen overnight. Thus, a criticism of the exit based model is that it assumes that with the onset of academisation all parents have acquired an increased understanding of exit within the schools system and are now willing and able to put their newfound skills into

⁶⁰¹ See Chapter 2.

practice. Given that the education system has only had extremely limited exit options historically, mainly by going private or through Tiebout choice, it seems more likely that parental confidence with exit would be initially quite low, with this gradually growing as the system beds in. In such a scenario it would therefore be wrong to assume that voice would be subservient to pure exit, as parents would be unfamiliar with exit. Given that pure exit is a new and unfamiliar option it is therefore more likely that exit would be subservient to voice.⁶⁰² In such a scenario where quality declines parents will gradually engage in voice as the level of quality reduces below their relevant threshold. Complaints and other grumblings will come into the management of the school as they did in a pre-academy system.

Given the Government's concern with the effectiveness of voice in the pre-academy system, the exercise of voice alone would presumably not be sufficient to stem the decline, or speed up improvement, and thus voice will not be sufficiently effective. The most alert parents will then look to exit and will move to an alternative school. This movement will then deprive the declining school of its most vociferous complainants and so relieve management of the grumblings caused by their complaints.⁶⁰³ As a result, unless the school continues to decline sufficiently to engage other parents to explore voice or exit, pressure on management from parents will reduce and they will have less motivation to stem absolute or relative declines in quality.⁶⁰⁴ Further, because movement within schools comes first from the most alert, and from the schools perspective the most difficult parents, there will be little motivation for other schools to increase their PAN to make exit more available. As an increase in PAN will result in more parents who are 'prone' to complain, that is, who are more likely to exercise voice earlier when they perceive a decline in quality.⁶⁰⁵ If management are comfortable, there is therefore no motivation to increase spaces and thus invite more complaints if and when a mis-step is made. Moreover as a market, ensuring that exit has only limited capacity, will mean that each school will be able to jettison their most troublesome

⁶⁰² Contingent-exit would remain familiar, but would potentially be more readily available.

⁶⁰³ Hirschman (1970), p60.

⁶⁰⁴ Assuming that inert parents did not express voice, rather than not effectively expressing voice.

⁶⁰⁵ Hirschman (1970), p59.

parents without risking serious financial implications arising from exit.⁶⁰⁶ While exit remains relatively undiscovered, exit is therefore useful only as a valve on complaints and neither exit or voice would be effective in stemming decline within a school. As a result, in this scenario neither voice nor exit would operate as effective recovery methods and the system developed by the Act would not in fact promote greater improvement, as the only change would be to allow serial complainants to leave. In such a scenario general levels of improvement may in fact decline, as the effect of the Act would be simply to weaken voice – the only method of expression open to parents pre-academisation.

As a result, the creation of a voice led system appears both unachievable in the long run, as parents become more aware of exit, and contrary to the Government’s intention, given that it wished to enhance improvement.

Loyalty: The Silver Bullet

This section explores the concept of loyalty, which is used by Hirschman to describe a situation where exit is freely available, but where voice is the preferred initial response by alert parents to declines in quality. This section will consider how loyalty can be developed within the schools’ market and how it is applicable to the various types of academies. It will demonstrate that a system with a general appreciation of loyalty will allow Hirschman’s recovery mechanism to be effective and thus will align with the Government’s requirements as set out in Part 1 of this Chapter. It will however note that achieving and maintaining loyalty is a complex exercise and as a result there remains a constant risk that the appropriate balance will be lost, resulting in a renewed risk of declining schools closing.

The balance of exit and voice is a complex and potentially unstable flaw in the appropriateness of Hirschman’s theory to meet the ambitions of central government. It operates on an individual level, and so can vary between parents within a single school. As a result, the Government cannot control the balance, it can only create the

⁶⁰⁶ Hirschman (1970), p60.

environment for an optimum balance to be created. The optimum balance of exit and voice is an environment where both are freely available, but, unlike the above, voice is exercised in preference to exit. Thus the environment the Government needs to create is one where exit is freely available, and whilst there may be more exit, as discussed above, the effect of the Act is not to guarantee this, but that parents, having identified an issue, are so confident that schools will respond to voice that rather than going through the effort of finding a new school and moving their children, instead contact managers and explain the problem, trusting that it will then be resolved. This is Hirschman's solution; loyalty.⁶⁰⁷ Loyalty acts as a stabiliser in the market system producing a core of committed but quality-aware consumers who choose not to exit in order to facilitate improvement.⁶⁰⁸ The principle of loyalty requires that alert parents have the option to exit, but instead choose to exert voice. Their motivation to revert to voice is based on a combination of the perceived effectiveness of voice and the costs of exit.⁶⁰⁹ Some parents may suffer high costs for expressing exit, such as incurring travel costs for school transport, so may be more willing to attempt voice as a first step in responding to a decline in quality as they judge the risk of failing to stem the decline as one worth taking in the light of the additional long term costs of school transport.⁶¹⁰ However, this is not loyalty - loyalty requires that parents are not subject to barriers to exit, but choose not to exit. Loyalty involves the assessment of risk, cost and reward and to be present parents must consider that voice is likely to have an impact on the school's decline.⁶¹¹ Ensuring that voice is a legitimate and effective mechanism for addressing parental concerns, and that parents are aware of this,⁶¹² is therefore essential to the application of loyalty. Thus, loyalty stems from the publicised effectiveness of voice, in the light of alternative remedies, that is, that parents see other parents concerns being resolved.⁶¹³ Given that the introduction of greater potential for exit flows from Central

⁶⁰⁷ Hirschman (1970) p78.

⁶⁰⁸ Smith (2014), p100.

⁶⁰⁹ Hirschman (1970), p77.

⁶¹⁰ Hirschman (1970), p49.

⁶¹¹ Hirschman (1970), p78.

⁶¹² As if parents' perceptions are that voice would not be effective, they are unlikely to weigh the attempt as worthwhile.

⁶¹³ Hirschman (1970), p80.

Government's perception of a failure of voice, this requirement of loyalty seems paradoxical. However, when exit is understood only as a threat,⁶¹⁴ voice must inevitably respond to this threat by becoming more effective.⁶¹⁵ Exit operates as a threat because, when a parent raises a concern, school governors and heads know that if they do not address that concern the parent could move their child to another school. Thus, governors know that ignoring complaints and concerns has a consequence, i.e. a reduction in pupils, and therefore funding, as well as an increased chance that next time parents will just leave without explaining the problem.

In an ideal model, where voice fails to address concerns, exit will replace voice as the mechanism parents use to address the decline and the threat of exit will become a reality,⁶¹⁶ thus moving the effect of the Academies Act away from the Government's intentions and towards Hoxby.⁶¹⁷ However, if exit is still constrained, as whilst the Act removed the LEA as a controlling consciousness, it did not guarantee increased exit within the schools environment, then the threat of exit becomes more remote and parents concerns become less urgent. As a result, the balance risks slipping back to exit to relieve voice as discussed above.

Hirschman's theories of exit and voice must, therefore, be seen through the prism of loyalty in order to achieve the Government's aims with the Academies Act. While therefore generating possibilities of exit the Academies Act must also increase, or at least not diminish,⁶¹⁸ the ability for parents to express voice as well as the potential effectiveness of voice. As discussed above, there are examples of extreme increases in voice, for example in parent led free schools, but also reductions in voice, especially in chains where parents can be entirely excluded from MAT boards. The outcome the Government needs for Hirschman's theory to support the Act is that when a school begins to decline and alert parents become concerned, their attachment to the school

⁶¹⁴ The threat need only be in the minds of school managers, it does not require parents to expressly threaten exit – though this is likely to increase the effectiveness of voice, see Hirschman (1970) p82.

⁶¹⁵ Hirschman (1970), p83.

⁶¹⁶ Loyalty is therefore different to barriers to exit, as exit remains a viable option.

⁶¹⁷ As actual exits will start to occur and so the risk of closure becomes more real as income declines with pupil numbers.

⁶¹⁸ As the Governments view that voice is failing may come from management responses rather than parents' ability to express voice.

and their belief that the school will listen to them if they raise concerns, encourages them to attempt voice first. This could be in the form of becoming a governor,⁶¹⁹ through complaints, visits to the Head Teacher or through some other mechanism. These mechanisms must be sufficiently simple for the parent to engage with as loyalty involves weighing the merits of exit and voice and finding that voice should be used first. Simple and effective methods of exercising voice therefore maximise the potential for loyalty and so reducing the effort involved in voice therefore increases the chances of voice being the chosen expression of concern by parents. With the exception of membership of the school's management team, the Academies Act is silent on methods for encouraging voice. Whilst this may allow schools to innovate and make use of their freedoms to allow creative and novel expression of voice, it also presents the risk that academies will implement barriers to voice, which will reduce loyalty and increase exit. As a result, whilst the Act allows the possibility of loyalty, especially in relation to parent led free schools, it does not expressly encourage or lead schools to it. Whilst it is acknowledged that the Government did not consider Hirschman's work when creating the Act, subsequent amendment to policies and procedures, such as guidance on complaints, parent governors, etc. could significantly enhance the possibility of loyalty arising and thus increase the potential for successful recovery within the quasi-market.

On increasing voice, as discussed above, the introduction of free schools, as well as significantly increasing the availability of exit, gives parents who found the free school a significant level of voice far in excess of what was offered to parents previously. However, the Academies Act does not require that parents set up free schools, and indeed many free schools are not parent led,⁶²⁰ therefore the increased power of voice for parents in free schools happens almost by default for parent led free schools rather than design. The benefit of free schools is greater parental involvement, but only if the free school is developed by parents, which as discussed above involves significant effort on their part. Thus, while the power of voice will increase where parents exit to develop their own free school, this increase relates to their power as members, and so the

⁶¹⁹ Though again, this could be challenging in some academy forms

⁶²⁰ See Whittaker (2016).

loyalty generated is exclusive to them. Alert parents who move to free schools developed by other alert parents may expect that the school will more readily respond to voice as the interests of parents and managers are aligned – i.e. they all have children attending the school, thus quality is an issue which impacts on all of them. This comradery can increase parents’ initial perceptions that voice will elicit the correct response and stem a decline, however, such perceptions would need to be realised for parents to continue to value voice as a recovery mechanism. If expressions of voice proved ultimately ineffective, parents would still be able to resort to exit.

Within converter academies the requirement to have at least two parent governors preserves the potential for voice via membership of management at the same level as maintained schools.⁶²¹ However, the removal of the LEA as the ‘appointing power’, transferred to the academy’s Members, creates variances in the ability to join management as an expression of voice. As discussed above, some academies may actively encourage greater parental involvement in management than others, be that as formal parent governors, or simply by filling other posts with individuals who happen to be parents. Only in chains do we see a significant potential for major reductions in voice within academies. As discussed above the use of management structures and committees, together with the ability to push parent governors down to LGB level,⁶²² could stifle the power of voice.⁶²³ There is therefore a prima facie case that chains demonstrate that the Government was not in fact aiming at a loyalty-based system. The expansion of chains, at the Government’s encouragement, is however a recent phenomenon,⁶²⁴ and so the use of chains as voice impeding on a system wide scale may represent subsequent Government’s intentions but is not necessarily the intentions of the Government which developed the Academies Act. Indeed, it has been argued that the Act was the brainchild of Michael Gove, who’s priorities are set out above, and as a dominant use of chains clearly stifles both exit and voice, their ongoing prominence,

⁶²¹ See The School Governance (Constitution) (England) Regulations 2012, Regulation 6.

⁶²² See the Model Articles of Association, Article 53, available at <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association> last visited 17.6.15.

⁶²³ This option can be seen in the DfE Model Articles of Association, Article 104.

⁶²⁴ See Hill (2012), p2.

under a different Secretary of State for Education and Prime Minister, is unlikely to reflect Gove, and therefore the Government's, intentions in 2010. Whilst the increase in the use of chains has not required amendment to the Act, this Thesis would argue that is because of the brevity of the Act, potentially reflecting the rushed implementation discussed at Chapter 1. A change in emphasis from converter academies to chains was therefore achievable simply by a change in preference of the Secretary of State, and therefore a change in conversion recommendations at the DfE, who issue academy orders and therefore have control over how schools convert.

As with most features for academies it is however wrong to say that chains always impede the relevance of loyalty. As has been shown above some chains develop in clusters and so the effect of this could be to reduce the importance of loyalty within the schooling system, as when true exit is not an achievable option, loyalty is arguably irrelevant.⁶²⁵ However, where chains exert loose control over individual academies, thus allowing divergences in performance and scope for management control, loyalty may still be relevant even within clusters. This is because, whilst true exit, i.e. from the chain, may still not be achievable, if the causes for the fall in quality are not dictated by the chain itself then moving to another academy within the chain would still constitute an effective exit.⁶²⁶ Whilst the chain may not perceive an impact on finance as a whole, subject to how the academies are funded, the failing academy may still feel the impact of the exit, thus allowing an effective impact to be made.⁶²⁷ In addition, chains which control a mix of primary and secondary academies should arguably be the most dependant of all schools on loyalty. This is because all their pupils and parents will be given the option to exit the academy chain at the end of Key Stage 2. As with other chains this risk can be lessened by clustering, however, effective clustering over primary and secondary schools would require significantly more resources to be focussed in one area, as a result of the need to control the primary and secondary spheres. This would make such chains more susceptible to local variations in birth rates and population and

⁶²⁵ As loyalty requires the possibility of exit, see Hirschman (1970), p77.

⁶²⁶ Provided the group allowed the individual school to feel the financial loss that came with the loss of a pupil.

⁶²⁷ However, it is unlikely that a chain would allow a declining school to reach the 'tipping point' for closure.

so could represent a higher risk strategy for chain management. These chains, except by super-clustering,⁶²⁸ cannot restrict exit, in the form of contingent exit, as effectively for the transfer from Key Stage 2 to 3 and so need a greater proportion of parents to actively choose to stay within the chain. This requires parents to believe that the schools provide quality education and will respond to voice if quality declines.⁶²⁹ Therefore, chain structures, in specific circumstances, can be seen to promote loyalty and be more susceptible to the effects of loyalty. However, as discussed above chains can also significantly impede voice and exit thereby making loyalty a less relevant factor in education. Given that chains ability to restrict voice and exit is likely to be easier, especially in light of the Governments promotion of clustering, this Thesis takes the view that overall chains are more likely to impede loyalty, however this is a general position which will not apply in all cases.

The Coalition Government's reluctance to force the introduction of greater levels of voice, other than those which happen by default through the expression of exit, as in the case of free schools set up by parents, infers that the mischief addressed by the Academies Act is not the absence of viable methods through which voice can be expressed, but rather though the failure of management to respond, or be seen to respond, to the expressions of voice. As a result, the creation of voice as the primary choice over a freely available exit appears to be expected to occur by virtue of the invisible hand of the market rather than the Government's express will.⁶³⁰ Given the scenario discussed above, where exit would be unfamiliar to parents, the expansion of choice rhetoric,⁶³¹ i.e. the encouragement of parents' rights to exit if quality declines, should be seen as a motivator to encourage schools to master effective response to voice while exit is establishing. This strategy of expressly and publicly developing exit as a motivator clearly comes with risks, as schools who do not adapt and increase their responses to voice while exit is still developing will see the threat of exit become a reality once exit is fully established in parents minds as a legitimate option.

⁶²⁸ i.e. controlling both primary and secondary (and A-Level) education in a geographical area.

⁶²⁹ Hirschman (1970), p79.

⁶³⁰ See for example the absence of express provisions in the Academies Act.

⁶³¹ See as seen in Conservative Party (2010).

Nevertheless, a proportionate use of chains,⁶³² as with the previous Government's use of sponsors, can be seen as a secondary safety net in this scenario by ensuring that schools who are unable to respond to voice efficiently are given a second chance through takeover by another school which has significantly better quality of provision. This however relies on effective school-to-school improvement.⁶³³ In this light, the Academies Act can be seen as an attempt to recover declines and drive improvement via the introduction of the threat of exit, balanced with voice and loyalty and with chains operating both within this market and as a safety net for the new market, picking up the role of the LEA. Whether the appropriate balance has ever been achieved is questionable, and with the evolving policy favouring chains more strongly, it is possible that the appropriate conditions for loyalty will never be achieved. Notwithstanding this, the Act itself does open up the possibility for Hirschman's theory to operate effectively thus providing the outcomes the Government sought, as set out in Part 1 of this Chapter.

Part 5: Summary

At the start of this Chapter we had established that the Coalition Government's reliance on Hoxby was unsound and that for the Academies Act to have theoretical legitimacy an alternate theory was required. This theory had to operate effectively within the English education landscape, i.e. reflect the English admissions system and a more comprehensive system of options open to parents. It also had to allow for 'pure', that is in-year, exit and ensure that pupils were not stranded in failing schools. It has been argued in this Chapter that Hirschman's work on exit, voice and loyalty satisfies these requirements. Hirschman's theory allows oversubscription criteria to be used as a form of selection as well as relying on in year exit in addition to contingent-exit. His discussions on voice demonstrate the wider options open to parents, over and above the exit option discussed by Hoxby. Further, his theory as a recovery mechanism to

⁶³² This Thesis does not consider a preference for chains to be 'proportionate'.

⁶³³ The effectiveness of school-to-school improvement is beyond the scope of this Thesis, however, it is noted that whilst school to school improvement can be effective, it can also fail.

allow schools to reverse declines in quality sits comfortably with the Government's desire to facilitate exit as a threat to empower voice, thus ensuring, so far as possible, schools do not actually spiral into decline and closure. As with Hoxby's empirical work in the US, the effect of Hirschman's theory can be seen in aspects of the workings of the Academies Act 2010 so far, and thus it does appear that Hirschman's work can be used to explain how the Government's actions could result in a functioning market which drives improvement – albeit unintentionally, given that the Government does not appear to have been cognisant of the work of Hirschman during development of the Act.

As has been noted above, the use of Hirschman's theory is however not without risk, mis-balancing exit and voice can result in systems which fail to effectively allow recovery from declines. Moreover, the response of individual schools to exit and voice is an essential factor in the success of Hirschman's recovery mechanisms, and thus legislation alone, without buy-in from schools, encouraged by appropriate policy incentives from the DfE, would not result in a market system which avoids substantial closures. Given that the Government were not intentionally applying Hirschman's work, the dangers of mis-balancing exit and voice appear to have passed them by, and whilst only a small number of schools appear to have closed as a result of any mis-balance, this cannot be credited to the Government's market management. Rather, the Government's continuation of the city academy practice of using chains as a recovery mechanism for failing schools provides a secondary defence against spirals of decline and school closures, and can be credited with preventing school closures as well as further demonstrating the Government's intention to balance the market with equity.⁶³⁴

As a result, the Academies Act 2010 can be said to be consistent with Hirschman's theory, as it allows the possibility for a loyalty promoting system, and so, more through luck than design, the legislation is underpinned by an appropriate market theory. However, as discussed above, more could be done to promote the occurrence of loyalty from parents. This Chapter has also demonstrated that the implementation of the Academies Act has the net result of further motivating school management to respond

⁶³⁴ Birbalsingh (2013), p600.

to voice. The introduction of exit has been muted by the Government's refusal to allow significant numbers of schools to permanently close, as even when schools fail to respond to declines, the result is that management is changed. Thus, the ultimate threat of closure is more accurately expressed as a threat of management change, thereby prompting management to respond to voice to a greater degree.

As voice existed within the education system within England prior to the introduction of the Academies Act and the introduction of substantially more exit, and thus the creation of a market, this Chapter poses an important question – was the introduction of markets, unintentionally supported by Hirschman, a necessary or proportionate response to the perceived need to increase the effectiveness of voice? The next Chapter will consider the Academies Act in light of the work of Ronald Coase to consider whether this level of Government intervention within education in England can be justified. It will then move on to look at whether other changes to the education system could have achieved a similar or better outcome.

Chapter 4: Coase

Part 1: Introduction

In Chapter three this Thesis considered the theoretical legitimacy of the Government's introduction of the Academies Act 2010. It found that while the Act was not underpinned by Hoxby, as the Government expected, however it was, unintentionally, underpinned by Hirschman. Thus, in developing a new system of education in England, the Act's shift towards a quasi-market could be justified by relevant market theory. However, Hirschman's theory merely supported the creation of a market-based system, it did not underpin the move from an existing system, based on a controlling consciousness, to a market. As a result, whilst Hirschman's work could support the development of an entirely new system for school governance, it is silent on whether moving from an existing system to a new market-based one is appropriate. To address the gap this Chapter will consider the work of Ronald Coase in relation to the efficient operation of markets. Coase examined the nature of markets and where they are used, and not used, in the real world. Coase's work therefore allows an exploration of the extent to which the use of a market system within education was a necessary or proportionate response to the aim of greater improvement and efficiency within the school system.⁶³⁵

Whilst the previous two Chapters looked forward at how the Act works and what happens in schools as a result, this Chapter will look backwards at the system pre-2010 and the changes resulting from the introduction of the Act. The Chapter will first consider the appropriateness of markets and bureaucracy (i.e. a controlling consciousness) as methods of allocating resources by reference to Coase's work on the nature of the firm. This will demonstrate that a market for education could prove to be an efficient system of resource allocation. The extent to which the market developed by the Government is an efficient system of resource allocation will then be considered in parts 3 and 4 of this Chapter, exploring the concept of transaction costs. Part 3 will

⁶³⁵ i.e. is a market *required* to drive greater improvement, or is the use of markets an option in a range of options which achieve the highest levels of improvement, without any one of those options being materially better than the others?

consider how the Government allocated existing and new transaction costs when moving to an academised system, and the extent to which such allocations were, or could be, efficient. Part 4 will then explore the capital costs of moving from a maintained system to an academised system and consider the costs and benefits achieved by this change. This Chapter will then consider the overall cost-benefit assessment of academisation in light of Coase's theories and will conclude that, based on evidence available to date,⁶³⁶ the creation of an academised system of education does not represent an efficient use of resources or a necessary or proportionate step to improve educational performance via increased voice or otherwise. As a result this Chapter will find that whilst markets can successfully deliver improved education, the introduction of the Academies Act in 2010 was not the most efficient way to improve the schools system and the Government should instead have explored other, more efficient, options.

Part 2: Systems of Resource Allocation

Introduction

Wherever there are finite resources and multiple demands there must be a system for determining which resource is consumed where. This Part will consider the traditional options for the allocation of resources in civil society,⁶³⁷ being allocation via a market or allocation by a controlling consciousness, such as government.⁶³⁸ Whilst both options are legitimate methods of resource allocation this Chapter will consider whether one option provides a more efficient outcome than the other in relation to schools.

Markets & Bureaucracy

This section explores the nature of markets and bureaucracy, that is, systems where a controlling consciousness directs resources. It will explain Coase's work on how to determine whether a market or bureaucracy is the appropriate method for resource

⁶³⁶ As at April 2019.

⁶³⁷ Thus, we will not be considering resource allocation by nature or for example by physical force.

⁶³⁸ See for example Ayres & Braithwaite (1992), p3.

allocation. This section will then apply this to the schools system in England and conclude with the test the Government should have applied prior to determining that the Academies Act was required.

In his work on the nature of the firm, Coase explored the elements of a market.⁶³⁹ He identified that within the market structure, where the allocation of resources was predominantly controlled by the price mechanism,⁶⁴⁰ not all entities relied upon that price mechanism. There were structures which allocated resources based on the preferences of the entrepreneur-co-ordinator.⁶⁴¹ These structures were labelled 'firms' and can be seen to incorporate a range of business structures in the real world – being every structure which involves the employment of staff.⁶⁴² Within a firm each potential entrepreneur enters into a contract of service with the entrepreneur-co-ordinator, rather than a contract for services,⁶⁴³ and thus agrees to provide services to the entrepreneur, as they direct.⁶⁴⁴ This in turn enables the entrepreneur to direct the work of the employee and so, for example, move the employee from menswear to home-goods in a department store. Coase argues that within these islands of consciousness the invisible hand of the market is subverted, to varying degrees,⁶⁴⁵ by the entrepreneur-co-ordinator.⁶⁴⁶ Coase goes on to explore when a firm will arise out of a market of sole-traders and concludes that the existence of a firm is dependent on the relative costs of contracting for services and employing staff to undertake those services.⁶⁴⁷ Thus, to determine if a firm is the appropriate vehicle each entrepreneur will consider the costs of entering into various contracts for services against the costs of employing the necessary staff to undertake the work. Importantly for the purposes of this Thesis, Coase identifies that this is not just a question of whether potential

⁶³⁹ Coase (1988), p33.

⁶⁴⁰ Coase (1988), p34.

⁶⁴¹ Coase (1988), p35.

⁶⁴² As a firm is dependent upon the surrender of the opportunity to 'go it alone' by one person in preference to receiving a wage and accepting the instructions of another, see Coase (1988), p54.

⁶⁴³ As would occur on the market between sole traders, as a result a potential entrepreneur becomes an employee, and each entrepreneur co-ordinator becomes an employer.

⁶⁴⁴ Coase (1988), p54.

⁶⁴⁵ Coase (1988), p36.

⁶⁴⁶ Coase (1988), p35, i.e. the sphere of influence within which the allocation of resources is dictated by entrepreneur co-ordinator preference rather than the price mechanism.

⁶⁴⁷ Coase (1988), p38.

employee X will accept less in wages than in contracted payments in exchange for certainty of income, to the extent that ongoing employment is certain, but rather that in entering into the various contracts for services the entrepreneur incurs a cost for contracting.⁶⁴⁸ This cost is over and above whether X will work at a reduced rate for increased certainty and includes the cost of locating X and drawing up and re-negotiating the contracts for each various service with X. That is not to say that a contract would not be required to make X an employee, as one would be,⁶⁴⁹ but rather that these costs may be less because a contract for employment incorporates a greater degree of flexibility and continuity than a contract for discrete services. Of course, there will be other costs associated with the employment of staff rather than contracting for their services, for example national insurance, pensions contributions, holiday and sick pay, maternity pay, etc. most of which is statutory and thus cannot be avoided.⁶⁵⁰ However, whether an individual is employed or self-employed she will need to factor in these potential costs, for example people who are self-employed still get sick, still have children and go on holiday, they are still required to make national insurance contributions and whilst they do not have to have a pension,⁶⁵¹ it would remain prudent to do so.⁶⁵² Thus it is likely that the majority of these costs will be priced into the fee for services rendered under a contract, just as risk and other considerations are priced into contracts. Use of the market therefore involves costs, which have been traditionally labelled transaction costs,⁶⁵³ and the firm will be the vehicle of choice for a potential entrepreneur when he perceives the costs of engaging staff to be less than the transaction costs of the market.⁶⁵⁴

⁶⁴⁸ Coase (1988), p38.

⁶⁴⁹ And Coase acknowledged that contracts would still be required for firms, see Coase (1988), p39. Examples of which could include employment contracts, partnership agreements and shareholder agreements for example.

⁶⁵⁰ For example, Section 6 of the National Insurance Act 1946.

⁶⁵¹ Noting of course that staff can also opt out of pensions, but unlike an employer a self-employed person is not required to provide a pension scheme.

⁶⁵² As she may wish to or have to depending on the type of service performed, stop working before she dies.

⁶⁵³ Coase (1988), p6.

⁶⁵⁴ Coase (1988), p38.

Applying this to education, prior to the introduction of the Academies Act we have seen that the primary and secondary education system was a bureaucracy with the LEAs and Central Government acting as the controlling consciousness to direct the provision of education within their area, though with some statutory delegation of budgets and functions.⁶⁵⁵ The pricing mechanism played no part in the allocation of resources which were managed purely by this controlling consciousness. This can be seen as a large firm with the allocation of resources being determined to various extents by a central entrepreneur. For example, the LEA's Director of Children's Services would ultimately determine the amount of top-slicing from each schools' budget,⁶⁵⁶ including for example how much would be needed for the LEA improvement service.⁶⁵⁷ Within schools funding may be linked to pupil numbers but may also be subsidised by the LEA's budget allocation, meaning that schools with small numbers which would otherwise be unviable are able to remain open. These decisions would be based on the political environment and the perceived value of 'local schools' rather than on whether or not allocation of a resource to that school represented the best use of that resource. That is, it is irrelevant whether the £10,000 given to a small school of 20 pupils would have had an equal benefit to 40 pupils if allocated to the neighbouring larger school. Pareto optimality is therefore not necessarily the aim in resource allocation. Such an approach, as argued by Hoxby,⁶⁵⁸ can result in significant inefficiency. The introduction of markets by the Academies Act has had the effect of removing LEA oversight resulting in the retreat of the controlling consciousness and the pricing mechanism coming to the fore.⁶⁵⁹ This introduction is more limited than traditional markets, as the Government, not schools, sets the price per pupil.⁶⁶⁰ Nevertheless, following linking funding to pupil places, in expanding choice and competition the Government has removed the

⁶⁵⁵ See for example Section 49 School Standards and Framework Act 1998. Given that the majority of controls over schools were statutory, LEAs, and to a lesser extent the Department of Education, lacked the relevant control to be considered 'the state' in all circumstances, as the state can change the rules and regulations applicable. Where these exist as primary legislation, only Parliament can fulfil that role.

⁶⁵⁶ i.e. deductions from school budgets before transfer to the school to pay for central services. In consultation with schools forum – see Section 47A of the School Standards and Framework Act 1998.

⁶⁵⁷ Which remains a statutory duty of the LEA, see Section 13A of the Education Act 1996.

⁶⁵⁸ See Hoxby (2003), from p287.

⁶⁵⁹ Though still without a cost at the point of delivery for parents

⁶⁶⁰ See for example the discussions on premium funding for disadvantaged pupils in Rowland, M, A *Practical Guide to the Pupil Premium* (2014), John Catt Educational Limited.

bureaucracy of the states controlling consciousness and replaced it with the market. As set out by Hoxby,⁶⁶¹ the price mechanism now operates as a driver for efficiency to ensure that schools are able to get as much out of the resources they receive as they can. They do this to ensure that they continue to attract pupils and thus continue to receive resources and survive.⁶⁶² Thus, the threat of closure has become a motivator which plays a greater role in resource allocation.⁶⁶³ The effect of the Academies Act is therefore that the school system has, in the language of Coase, moved from the firm to the market.

The previous Chapter concluded that the Government's purpose for the introduction of markets was to use the threat of exit to stimulate greater improvement.⁶⁶⁴ The government did not want exit on any significant scale to actually occur.⁶⁶⁵ Therefore the previous Chapter concluded that in order to resolve the quandary of needing exit but not wanting it used, the Government could look to stimulate loyalty, and thus make schools more responsive to voice to drive recovery from relative and actual declines in quality. Thus, whilst the Government could not accurately be said to be based on Hoxby's work,⁶⁶⁶ the Government's aim was still to bring about a 'tide that lifts all boats'.⁶⁶⁷ The previous Chapter demonstrated that such an approach was underpinned as a potential model to deliver education, and so it was open to the Government to consider whether or not to introduce markets to achieve their aims. However, Coase's work on the nature of the firm would require that the Government had first considered the relative costs of bureaucracy and markets prior to determining that markets, however valid, were the appropriate mechanism to drive improvement. In determining that Academies were the right answer to the problem of stimulating relative and

⁶⁶¹ Hoxby (2003), p296.

⁶⁶² though in chains some subsidising is still possible. But this would require other schools to be even more efficient in order to free up funds as unlike LEAs chains do not have access to other wide-ranging powers to generate income, such as local taxation, though limited hiring out of school premises is possible.

⁶⁶³ See Chapter 3. Whilst the possibility of exit must exist to make the threat meaningful, encouraging loyalty and therefore empowering voice allows market pressures with reduced risk of exit.

⁶⁶⁴ Ibid.

⁶⁶⁵ Birbalsingh (2013), p600.

⁶⁶⁶ As set out in Chapter 2.

⁶⁶⁷ Hoxby (2003), p287.

absolute improvement the Government would therefore need to show that its approach was as academically underpinned and that the market and its transaction costs were a more optimal solution than the previous bureaucracy and its costs.

Part 3: Allocating Transaction Costs

This Part will explore the nature and allocation of transaction costs, i.e. the costs associated with an exchange, within the schools system both pre and post the Academies Act 2010. It will demonstrate that the academised system has the potential to be more efficient than its predecessor, however, by January 2019 it was not possible to conclude that the revised system was more efficient than the pre-academies allocation of transaction costs. Thus, the reallocation of transaction costs caused by the Act did not demonstrably result in increased efficiency.

Transaction Costs

This section will expand on the previous discussions on the nature of transaction costs, explaining in greater detail what they are and how they arise, by reference to Coase's work. This will enable the next section to apply the discussion on transaction costs to the education system in England.

In his work *The Problem of Social Cost*, Coase first envisages a world where all market transactions are costless to demonstrate the level of efficiency which can be achieved.⁶⁶⁸ However, he accepts that this world does not reflect reality.⁶⁶⁹ In reality, transactions involve costs including costs of gathering information, negotiating, and documenting transactions. To demonstrate the existence of transaction costs in the real world Coase gives the example of the rancher and farmer operating side by side.⁶⁷⁰ Coase considers the financial implications of both the rancher and the farmer if the rancher's cattle stray onto the farmer's land and damage his crops, examining the

⁶⁶⁸ Coase (1988), p97.

⁶⁶⁹ Though this perhaps obvious point is sometimes lost on the reader, see Coase (1988), p114.

⁶⁷⁰ Coase (1988), p97.

potential implications for each party where liability rests with each in turn.⁶⁷¹ In each case Coase identifies that it is possible for the parties to come together to find an arrangement, either through fencing or paying for the other party to reduce the size of herd or cultivation, in order to maximise the benefits to both parties.⁶⁷² In doing so Coase demonstrates that in a costless world the legal distribution of rights and liabilities as between the parties is irrelevant, because in every scenario the parties are able to form a bargain to alter the arrangement to their mutual benefit. Here though, Coase assumes not just an absence of transaction costs but also perfect knowledge of the other parties' costs, as each party is aware of the financial position of the other. For this world to be completely free from transaction costs this is a necessity, as the costs of discovering this information, both financially and in time, would be eliminated as transaction costs. In a world without transaction costs Coase asserts that the distribution of legal rights and remedies is therefore irrelevant. Coase then applies the rancher/farmer scenario to the real world. In doing so he demonstrates that in the real world transactions which would have been made in the costless world do not always happen. This is because the cost to one party of the transaction costs involved in reaching a deal are sufficient to prevent the deal from representing value for money. Thus, transaction costs operate as a barrier to achieving the optimal relationship between parties to a potential transaction. For example, in education, moving to a new school may be the best outcome for a child, however the transaction costs involved in moving house, or in paying for transport to the new school, for new uniforms and books etc. may result in costs which are unaffordable, as a result the pupil stays in a worse school than they would if there were no transaction costs. The law's function of assigning rights and liabilities is therefore fundamental in the relationship between the parties, as the assignment of rights results in the assignment of transaction costs to alter rights. Thus, where parents are liable for the cost of transporting pupils, local schools, even if of poorer quality, will represent a cost saving to parents. When assessing their options in light of all costs and benefits, parents may not select the best school for their child. This is because the optimal solution in the real world is the one that represents

⁶⁷¹ Coase (1988), p97 & 102.

⁶⁷² Coase (1988) p104.

best value when all costs are combined. Thus, transaction costs can block the arrangement and the party without the legal right will be worse off.

Whilst Coase's assessment can be accused of being overly simplistic, for example by failing to recognise the accumulated benefits of some solutions over time, it demonstrates that the introduction of transaction costs can impact on the efficiency of parties' various options. As a result, the allocation of legal rights, and thus transaction costs, determine the extent to which transactions can be undertaken in the real world.

Transaction costs in Education

The rancher/farmer example is somewhat removed from the relationships in education, which involve the Department for Education, LEAs, Academy Chains, Schools and Parents. The example is also heavily weighted towards price. However, the principles are easily transferrable. This section will apply Coase's work on transaction costs to education to demonstrate that they remain critical to the assessment of options for schools. This can be done by re-visiting the above discussion on the provision of home to school transport.⁶⁷³ The Government's current system requires LEAs to provide free home to school transport to all pupils who attend their geographically closest school. Thus, if parents could apply to send their child to school A, 5 miles away, or school B, 10 miles away they may consider the availability of free transport when deciding which school to apply for. School A would cost nothing, and school B could cost, say, £100 per term.⁶⁷⁴ In that scenario the parents would need to establish; do they have £300 a year to spend on transport? If so, is the educational provision or pupil experience at school B of sufficient additional quality to be worth £300? If either answer is 'no' then the parents will apply to school A in preference to school B. If the parents sent their child to School B because the quality was sufficiently better to justify the £300, and the LEAs bus had a spare seat then it is possible that a deal could be struck between the LEA and the parents to reduce the cost of transport to the parents. For example, if the LEA would take the child the last 5 miles for £50 per term, and the cost of taking the child the first

⁶⁷³ And school to home. See Chapter 1

⁶⁷⁴ This may be the cost of the detour for a parent's journey to work, the cost of an additional specific journey for a parent and/or the cost of reducing work time to make the journey.

five miles was only £25 per term to the parents,⁶⁷⁵ then the parents would, in a world with no transaction costs, do the deal. However, in the real world the parents would need to be aware of the spare capacity, would no doubt need to enter into an agreement with the LEA and may incur additional transaction costs which mean that the deal does not happen, as the time alone in calling the LEA each week or term throughout a child's time at a school may add up to a significant cost.⁶⁷⁶ Thus, with transaction costs it is unlikely that the parents would reduce their £300 per annum cost and they, and the LEA, may both be worse off.

For parents who did not have £300 available to spend on transport they will go to school A,⁶⁷⁷ even if the quality of education is significantly worse, as the alternative is not viable. This cost is 'offset' by the saving that the government makes in not having to transport the child the extra five miles.⁶⁷⁸ However, given the tendency of less economically well off parents to send their children to their nearest school, and the tendency of this group to dominate poorer quality schools,⁶⁷⁹ school transport represents a barrier to exit. As explained in Chapter 1, the Government could remove this by providing free transport to the nearest school, or nearest good or outstanding school where the nearest school is not at least good. In that case if School A is rated as "requires improvement" and school B is "outstanding" according to Ofsted, then the parents would be entitled to free transport to either school. In this scenario the choice between schools would not be impacted by the cost of transport and the quality of education could play a larger role in choice for all families, rather than just those which can afford transport costs. The change would necessitate a greater strain on the public purse, with LEAs having to arrange for transport, potentially from further afield, which would come at a greater cost.⁶⁸⁰ The additional costs could be significant, especially

⁶⁷⁵ For example, because the last five miles was the most heavily congested and incurred the London congestion charge or an equivalent.

⁶⁷⁶ Or vice versa for the LEA to have a member of staff ring round parents to offer up the place.

⁶⁷⁷ Assuming they get a place.

⁶⁷⁸ Whilst the word 'offset' is used, this does not denote that the value of 5 miles transport is, in fact, equal to the potential difference in educational attainment. Simply that the 5 mile saving is the 'benefit' associated with the cost to the child's education. If the parents had sent the child to School B, the saving to the government would have been even greater, as the cost of transport would have been £0.

⁶⁷⁹ See Burgess (2006), p11.

⁶⁸⁰ Though this could motivate LEAs to invest more in school improvement programmes.

where a single pupil lived much further away than their peers. In such a scenario it may be beneficial for the LEA to look at making a payment to parents for transport rather than arranging for it directly.⁶⁸¹ As with the example above, the LEA would need to locate the relevant pupils and offer their parents a sum which is sufficient for them to transport the child, but less than the cost of the LEA arranging transport.⁶⁸² However, unlike the parents, the LEA will be able to identify the most costly pupils to transport and so have the details necessary to do a deal. They are therefore arguably in a better position to offer a bargain as their transaction costs in acquiring relevant information would be lower. As a result, altering the legal position to give more pupils a right to free school transport, or a contribution towards parents' costs of transport, would represent a more efficient allocation of resources.

Transfer of Costs

In each scenario therefore, there is a cost of transport, and in both cases, there is the possibility of reducing that cost via a deal with the other party, if parents and LEAs are so minded.⁶⁸³ The difference in the scenarios is the allocation of rights and obligations as determined by the Government, i.e. the allocation of the cost of transport for a school which is not the pupil's closest. The Government has set the legal position impacting on the nature and burden of costs for each party, which, but for the impact of transaction costs, could be changed. However, as set out by Coase, in the real world, transactions with high transaction costs may be too costly to undertake. Thus, the initial allocation of rights becomes the final allocation irrespective of blackboard optimality.

In the same way the legislation prior to the Academies Act 2010 distributed the allocation of rights and costs between the many actors involved in education. This section will consider how the Act moved costs between actors in the schools' system and whether this increased or reduced the efficiency of the transaction.

⁶⁸¹ Akin to a direct payment for social care.

⁶⁸² Though here other factors, such as environmental impacts and political policies, could come into play to prevent this.

⁶⁸³ For the purposes of this discussion we have ignored the possibility of parents grouping together to reduce costs without recourse to the LEA, but that of course is also an option.

With the introduction of markets within education the distribution of transaction costs has been altered. Coase's principles would seek to ensure that the allocation of rights and responsibilities were sufficient to maximise the possibility of efficiencies being created without prohibitive transaction costs. As a result, the reallocation of rights and responsibilities should be done in a way that maximises either efficiencies, or the possibility of market transactions to ensure efficiencies. Efficiencies in this context can either be savings to the overall education budget which maintain attainment, increases in attainment whilst maintaining costs at the same level or an increase in attainment which comes with an increase in cost that represents best value for that expenditure.⁶⁸⁴ The potential shifts in transaction costs from the Act can impact both public and private expenditure as discussed below.

Funding costs

This section will consider the costs involved in providing funding for schools and whether or not the academy system, as at January 2019, had reallocated these costs in a more or less efficient way than their pre-2010 allocation. It will show that whilst a fully academised system may be more efficient, the hybrid model of pre-and post-2010 structures which still operated in January 2019 did not improve efficiency.

Prior to the introduction of academies, the DfE would distribute funding for schools to LEAs, who would in turn distribute funds to individual schools, less a proportion for their centralised costs.⁶⁸⁵ Here the DfE would have had to assess the number of pupils in the relevant area, work out the value of the payment to the LEA based on those figures, making adjustments for additional payments for example for pupils with additional needs, and then arrange for a transfer to each LEA in England. The LEA would then repeat this process in relation to each school in its area. Where schools become converter academies the DfE would calculate the allocation for each academy and make the payment direct to them. Whilst this may take some additional work from the DfE, this is not new work, as it would have previously been undertaken by the LEA. This work

⁶⁸⁴ I.e. the extra money could not produce a larger increase in attainment if spent elsewhere in the education system.

⁶⁸⁵ Known as 'top slicing'.

therefore moves from the LEA to the DfE. Equally, the number of payments made by the DfE would increase significantly, as there are tens of thousands more converter academies than LEAs. However, if all schools became academies there would be a net decrease in bank transfers, as all the previous transfers by the DfE would stop and the DfE would adopt the transfers undertaken by the LEA. As a result, if a banks charge for bank transfers, which would be a form of transaction cost, the transaction costs involved in distributing school budgets would reduce and thus this part of the system would become more efficient as a result of the Academies Act if all schools became academies.⁶⁸⁶ However, if the schools were part of a chain and each school in the chain had its own bank account, then the role of the LEA would be replaced by the role of the Chain and there would be no saving in bank transfer transaction costs. Equally in a mixed system the original DfE transfers to LEAs would continue, for so long as there were maintained schools in their area, as a result there would be no saving in the number of transfers. Whilst therefore a purely academised system could increase efficiency, a mixed system simply reallocates costs with no overall saving.

Public & private costs

As well as moving costs between public bodies the Academies Act also re-allocated costs between public and private interests. This section will consider the effect of the Act on costs between the state and third parties. For example, voluntary aided schools required that the relevant foundation, usually a church diocese, contributed 10% of the capital costs of the school.⁶⁸⁷ Whereas for a religious academy the total capital costs are covered by the state.⁶⁸⁸ As a result the introduction of a fully academised system,⁶⁸⁹ should lead to a reduction in costs to religious bodies.⁶⁹⁰ Though this does not necessitate an increase in attainment or efficiency in itself, the caveat to this is that

⁶⁸⁶ This was briefly Government policy, however the Government has since retreated from this position. See <https://www.theguardian.com/education/2016/may/06/government-backs-down-over-plan-to-make-all-schools-academies>, last visited 1.4.19.

⁶⁸⁷ School Standards and Framework Act 1988, Schedule 3, Paragraphs 3&5.

⁶⁸⁸ Academies Act 2010, section 2.

⁶⁸⁹ As originally planned but now unlikely to occur.

⁶⁹⁰ As they are not required to contribute capital funding.

selection on the basis of religion is restricted.⁶⁹¹ Thus, whilst the cost to the public purse increases, the potential for pupils of any or no religion to attend schools of a specific denomination increases, and given the tendency of religious schools to have better results,⁶⁹² this approach should result in reduced barriers to entry for high performing schools. Interestingly at the commencement of the academies programme, with city academies, the sponsor was required to make a capital investment in the school,⁶⁹³ and so this could have reduced the capital burden on the state by transferring costs to the individual or organisation who would have control of the school. A dearth of sponsors willing to pay this amount, however, resulted in this position being reversed.⁶⁹⁴ Reductions in external funding to increase competition through the lowering of barriers to entry may therefore represent a more optimal use of public money to promote competition.⁶⁹⁵

Additional Costs

As well as costs between parties the Act also creates new costs to the system and increases the need for other costs. These will be discussed in this section which will show that whilst there are some examples of increased efficiency, there are other occasions where improved efficiency has not been achieved as a result of the new transaction costs created by the Act.

Parents & schools

This section will explore the additional costs created by the Academies Act for parents and schools as a result of the need to advertise to attract pupils, it will explore whether these costs can be considered efficient and/or more efficiently allocated. It will show that whilst the Act does create additional costs, if the Act resulted in increased levels of improvement, and the difference between alert and inert parents is the success in expressing exit or voice, not the attempt to express one or the other, then they may be

⁶⁹¹ See for example <https://humanism.org.uk/2018/05/11/humanists-uk-wins-government-u-turn-on-50-cap-on-faith-school-admissions/> last visited 4.4.19.

⁶⁹² The Sutton Trust, University Admissions by Individual Schools (February 2008), p12.

⁶⁹³ Adonis (2012), p81.

⁶⁹⁴ Adonis (2012), p96.

⁶⁹⁵ Provided competition results in improvement.

efficient. Otherwise the changes made by the Act result in increased costs to all parties without a corresponding benefit, thereby reducing the efficiency of the system.

The introduction of academies and free schools expands the potential for choice in the system.⁶⁹⁶ School income is linked to the number and type of pupils that attend the school. Thus, having the ability to draw in parents becomes more important to ensure financial sustainability, as schools cannot rely on the LEA allocating them pupils irrespective of the quality of the school. Good schools which convert to academy status will have greater control over admissions and so may increase their income by increasing pupil places, reducing demand at poorer quality schools. As a result, the advertising and marketing of schools becomes an important area for schools in order to ensure a stable or growing level of admissions. Marketing could be used either to emphasise the educational outputs of the school,⁶⁹⁷ or to stress the other benefits of the school which may off-set comments from Ofsted or league table results which are less positive.⁶⁹⁸ Either way, schools are required to act more like commercial enterprises than organisations which deliver a public good. As a result, marketing and ‘spin’, which may create a misleading impression without a more rounded assessment of schools, as discussed in Chapter 1, become core tools for schools to secure income. Harnessing the power of marketing is not however a costless exercise. The introduction of competition therefore introduces additional marketing costs which are not found in a bureaucratic allocation model. Thus, schools are required to divert income towards a new expense that, but for the market system advanced by the Act, would not be payable. This increase in marketing also increases costs to parents, as it has increased information for parents to consider before choosing a school, increasing the need to fact-check disparities in information.⁶⁹⁹ This increases the time cost for parents and may also increase financial costs, such as taking time out of work and transport costs to attend open days etc. As discussed above, the costs of acquiring and verifying information are

⁶⁹⁶ As there should be lower barriers to entry in religious schools, the possibility of new free schools, etc.

⁶⁹⁷ See for example Rockwood Academies prospectus, available here: <http://www.rockwood-academy.co.uk/our-academy/prospectus/> last visited 8.4.19.

⁶⁹⁸ See for example the statement by William Howard School in 2016 in relation to their Ofsted Report – available here: <http://www.williamhoward.cumbria.sch.uk/about/ofsted-reports/> last visited 4.4.19.

⁶⁹⁹ Such as one school claiming to be the best in the area because of Ofsted results with another claiming the same based on league table results.

transaction costs and so as these increase, so do the total value of transaction costs incurred by parents in exercising choice. The justification for increased levels of choice is that it generates increased improvement.⁷⁰⁰ As we have seen, choice increases the value of transaction costs and so is an efficient use of resources only if improvement increases via increased attainment or efficiency. Parents must therefore either see an increase in results, i.e. pupils achieving higher grades, or costs elsewhere, for example the cost to LEAs in administering the admissions process, should reduce by an amount equal or greater than the extra costs to parents and schools. If neither of these results are achieved, then the introduction of academies would not be efficient.

In previous Chapters we have discussed the general characteristics of those parents who are more likely to be alert to quality changes and so more likely to have children attending better schools. As a result, in the pre-academy quasi-market for education this group of parents were already manoeuvring their children sufficiently to acquire a good education for their children.⁷⁰¹ In contrast, parents who were less economically and socially well-off were the ones who were unable, for a variety of reasons, to successfully express exit or voice,⁷⁰² and so it was generally their children that were keeping poorer quality schools viable. As a result, to increase competition, and therefore improvement in accordance with Chapter 3, the Act should have lowered the barriers to choice faced by less well-off parents.⁷⁰³ Such a system could reduce transaction costs to make the ability to choose a school, and/or move school, easier. This could have been achieved via the reform of Ofsted grades and league tables to produce a more rounded quality assessment, similar to those applied to universities, as discussed in Chapter 1. Without this, increasing marketing, and therefore creative advertising for schools, increases time and other costs for parents to review, assess and cross reference data.⁷⁰⁴ Transaction costs in making informed choices therefore increase for all groups. As a result, the system created by the Government would not align with the goal of increasing choice. The Government would no doubt respond that

⁷⁰⁰ Conservative Party (2010), p53.

⁷⁰¹ See for example discussions in Chapter 3.

⁷⁰² Either at all or successfully.

⁷⁰³ As alert parents were already expressing choice or enforcing their choice more successfully.

⁷⁰⁴ Assuming parents identify and review available information before making a decision.

whilst information costs increase, the odds of effective expressions of exit also increase, and thus the system will operate to generate improvement, and so be efficient. Such an assertion is however subject to the assumption that more inert parents did collect information before the academised system, and that the difference between inert and alert parents was success rates in achieving exit,⁷⁰⁵ not the failure to attempt it in the first place. This is consistent with the discussions in Chapter 3, and therefore indicates that the increased cost to parents is efficient.

LEAs

This section will consider the impact of the Academies Act on LEAs, though a discussion on their revised roles and the ability of LEAs to achieve synergies where only some of their functions are removed. It will show that the partial removal of the LEAs role in education has reduced their ability to achieve synergies, without a corresponding increase in synergy elsewhere. As a result, the system has become less efficient.

A key feature of the Academies Act is the declining role of the LEA, with the majority of its functions and obligations being reallocated, save in relation to transport, improvement and ensuring sufficient school places.⁷⁰⁶ However, LEAs were able to produce efficiencies when undertaking their previous and continuing roles, for example in relation to improvement, budget delegation etc. they were well placed to monitor schools and sufficiently impartial, as a result of delegated budgets etc,⁷⁰⁷ to identify and respond to issues in schools. For converter academies this role was not fulfilled, as the DfE could not replicate the involvement of the LEA on such a wide scale. Whilst chains had an over-arching board to identify and consider issues at school level, chain management was relatively unsupervised, with Ofsted not evaluating chains as a whole,⁷⁰⁸ and chain boards not incentivised to publish failings in their schools.⁷⁰⁹ As a result in 2014 the Government introduced the role of the Regional Schools

⁷⁰⁵ Or pre-exit.

⁷⁰⁶ Section 6 of the Academies Act 2010.

⁷⁰⁷ Though some educationalists would argue not so impartial as to manipulate admissions to allow failing schools to continue to provide poor educational services. See Chitty (2004), p79.

⁷⁰⁸ Though Adonis expressed a preference for this when academies were found to be in difficulty, see Adonis (2012), p 254.

⁷⁰⁹ Particularly where this could impact on admissions and therefore funding.

Commissioner to provide greater oversight of academies,⁷¹⁰ and then all schools.⁷¹¹ Whilst this plugs a gap it arguably does not create the same level of efficiency as having these functions undertaken by LEAs who were able to generate synergies between a wider number of roles.⁷¹²

The availability of synergies is arguably a relevant consideration in the allocation of transaction costs, as synergies such as economies of scale may assist in reducing the overall value of transaction costs to the point at which the transaction becomes economically viable in the real world. The removal of the LEA can result in a lack of economies of scale, especially for converter academies.⁷¹³ This is a considerable challenge for the academised system, as where each school would require its own contracts, there is less opportunity for economies of scale in terms of price and transaction costs. Thus, unless there are significant benefits to attainment, a market of converter academies would result in additional costs not met by additional improvement and would therefore be an inefficient allocation of resources. Contracting transaction costs could be addressed by the government streamlining the procurement process, for example through use of framework agreements, which Crown Commercial Services produce on a regular basis.⁷¹⁴ However, this approach reduces but does not eliminate the transaction costs and since LEAs also have access to these frameworks the overall cost to acquire a system for schools would still increase.

Chains

Chains, with their similarity to LEAs in terms of coordinating multiple schools, have the ability to recover economies of scale lost to converter academies. However, the effect of their use is to remove the schools from the market, replacing the invisible hand with a controlling consciousness. The Government's increased promotion of chains and their

⁷¹⁰ House of Commons Library, Regional Schools Commissioners, Briefing Paper 7308 (29 August 2017), p3.

⁷¹¹ Ibid.

⁷¹² For example, the oversight gained from managing admissions and improvement. Synergies in this context being the ability to reduce the costs of two activities by doing both of them.

⁷¹³ This was clearly recognised by the Government in 2016 when their Good Practice Guide emphasised synergies as a key benefit of chains. See Department for Education (December 2016), p11

⁷¹⁴ See for example the frameworks listed at: <https://www.crowncommercial.gov.uk/agreements> last visited 4.4.19.

efficiencies suggests that the original allocation of transaction costs with schools, rather than a larger body, was not efficient.⁷¹⁵ As a result, the original design for academies as standalone converter academies within an education market may have allocated rights inefficiently, and the shift in priorities towards chains can be seen as reconstituting the LEAs with a different quasi-private rather than public ethos. The effect of this is however to reduce competition and thus either the previous allocation of resources did create an efficient system of higher costs and higher attainment, but the higher costs were not sustainable, or the higher costs involved did not result in a sufficiently great increase in attainment to make expenditure efficient.

Findings

This section has demonstrated that the shift to an academised system resulted in some transaction costs reducing, others increasing, and some new costs being created. It also moved liability for costs between the various actors involved in education, including government, parents, and LEAs. This section has shown that in some circumstances such redistributions could be efficient, but if the relevant criteria are not met then redistribution will lead to inefficiencies, as the transaction costs of making a bargain to achieve a more Pareto efficient distribution of resources will impede the transaction. Whilst some increased costs could be considered efficient in light of other benefits, based on the above, the Academies Act has not clearly increased the efficiency of the education system.

Part 4: Efficient Allocation of Resources

Introduction

The second question that flows from Coase's work on transaction costs is do the benefits of change outweigh the transaction costs involved in changing the system? As has been discussed earlier, in a costless world bargains between parties, such as the

⁷¹⁵ See <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/258/25808.htm> for example last visited 11.8.16.

farmer and rancher, would occur wherever a bargain could be done to put each in a better position, in comparison with a situation without a bargain.⁷¹⁶ However, the effect of transaction costs is that they can reduce the overall benefit of a deal to the point where it no longer becomes efficient for one party to participate in the bargain.⁷¹⁷ Thus, where an agreement between the rancher and farmer involves costs such as spending time and money analysing profit margins to determine the optimum size of herd and payment to be made, these transaction costs may increase overall costs to the point where one party simply installs a fence, rather than attempting the bargain.

In order to determine whether or not the move from maintained schools to academies was efficient we therefore need to understand:

1. the costs involved in moving from one structure to the other;
2. the benefit of academisation, i.e. increased attainment, efficiency, etc; and
3. the alternatives, that is, what else could the money at one have been spent on?

This Part will explore these three topics to establish if the development of academies can be said to be efficient notwithstanding the effect of transaction costs discussed in the previous Part. It will show that the development of the Academies Act was not an efficient use of resources and that, whilst counterfactual scenarios have limitations, it is likely that alternate arrangements, such as simply spending funds on struggling schools, would have achieved greater system wide benefits.

Costs of conversion

Converting from a maintained school to an academy is not a costless exercise,⁷¹⁸ and as has been seen above, the value of these transaction costs is a relevant factor when determining whether a transaction is worthwhile.⁷¹⁹ As a result it is critical to the evaluation of the efficiency of the development of an academised system to understand

⁷¹⁶ Coase (1988), p104.

⁷¹⁷ Coase (1988), p114.

⁷¹⁸ As would be expected from Coase's work.

⁷¹⁹ Coase (1988), p115.

the values involved. This section will give rough valuations of the costs of conversion, based on official estimates and public records. It is not intended to be definitive, and is not necessarily a comprehensive assessment of the costs involved in re-organising the education system, however, this section should have sufficient indicative value to allow a high level assessment of the overall costs and benefits of the Academies Programme.

In 2016, when forced academisation was contemplated, the Labour party estimated that the cost of converting all schools to academy status would be over £1.3 billion.⁷²⁰ This was based on a parliamentary question response which set out that the Department for Education had spent £323m converting 4,897 schools to academy status between 2010 and 2016.⁷²¹ At the time the Department did not argue with the figures, however denied that there would be a funding shortfall.⁷²² Since 2016, the House of Commons Public Accounts Committee has reviewed the cost of converting schools to academies.⁷²³ The Committee found that the Department for Education had spent £745 million on converting 6,996 schools to academies.⁷²⁴ This would give an average cost of conversion of £106,489.42 per school, significantly more than the 2016 Labour Party estimate. The Committee identified that there were 13,886 maintained schools remaining at January 2018,⁷²⁵ and so the cost of converting the remaining schools, based on the updated figure, would be £1.48bn.⁷²⁶ That would bring the total cost of conversions to £2.2bn.⁷²⁷ However, the comparison between the 2016 and 2018 figures may show that the average cost of conversion is increasing, which could be an effect of inflation or could relate to the increased complexity of the schools converting, or a growing inefficiency with the conversion process itself. If the cost of conversion continues to grow then it is likely that the total cost of creating a fully academised

⁷²⁰ Burns, J, "Academy plan could cost £1.3bn, says Labour", BBC, 3 April 2016 available at <http://www.bbc.co.uk/news/education-35945542>, last visited 11.08.16.

⁷²¹ Burns (03 April 2016).

⁷²² Burns (03 April 2016).

⁷²³ House of Commons Committee of Public Accounts, *Converting Schools to Academies; Fifty-Second Report of Session 2017-19*, 4 July 2018.

⁷²⁴ House of Commons Committee of Public Accounts (4 July 2018), p4&8.

⁷²⁵ House of Commons Committee of Public Accounts (4 July 2018), p8.

⁷²⁶ To two decimal places, £1,478,712,086.12 in total.

⁷²⁷ To two decimal places, £2,223,712,086.12 in total.

system will outstrip the £2.2bn figure above, especially given that that figure has grown by over £800m in two years.

The figures are further complicated by the costs included in the calculation. The 2018 figures for example do not include the costs of setting up free schools.⁷²⁸ The Department for Education has noted that the creation of free schools is a particularly expensive way of generating school places and can cost up to 51% more than expanding existing schools.⁷²⁹ This increase is mostly attributable to the need to purchase land,⁷³⁰ which is frequently done at a price above the Government valuation.⁷³¹ Thus, it could be safely assumed that the 476 free schools would cost in excess of the £106,489.42 average conversion cost. Even if this was not the case the inclusion of free schools at average conversion cost would increase the total cost by £50.69m.⁷³² Added to this the Government intend to open 500 new free schools during the 2015-20 parliament,⁷³³ meaning an additional expenditure of £53.24m.⁷³⁴

The total cost to the Department for Education for full conversion and to open up existing and targeted free schools is £2.33bn.⁷³⁵ Whilst this may represent the total projected cost to the Department for Education,⁷³⁶ this is still not the total cost to the public purse. LEAs also incur a cost in relation to conversions as they are required to undertake land and other transfers. The Committee estimate that the cost to LEAs is between £6,400 and £8,400 for each conversion.⁷³⁷ Taking the mid-point figure of £7,400 that would be a cost of £51.77m to date,⁷³⁸ and an additional cost of £102,76m to full academisation.⁷³⁹ This would bring the total cost to date to £856.46m,⁷⁴⁰ and the

⁷²⁸ House of Commons Committee of Public Accounts (4 July 2018), p4.

⁷²⁹ In a secondary school, see House of Commons Committee of Public Accounts (24 April 2017), p5.

⁷³⁰ House of Commons Committee of Public Accounts (24 April 2017), p5.

⁷³¹ Though the department stress, not necessarily above market value, see House of Commons Committee of Public Accounts (24 April 2017), minutes, Q160&161.

⁷³² To two decimal places, £50,688,963.92 in total.

⁷³³ This fixed five year term was subsequently shortened

⁷³⁴ To two decimal places, £53,244,710 in total, though it is arguable that some of these new schools may need to be opened with or without the Academies Act to facilitate places.

⁷³⁵ To two decimal places, 2,327,645,760.04 in total.

⁷³⁶ Noting the qualifications with these figures.

⁷³⁷ House of Commons Committee of Public Accounts (4 July 2018), p6.

⁷³⁸ To two decimal figures, £51,770,400 in total.

⁷³⁹ To two decimal places, £102,756,400 in total.

⁷⁴⁰ To two decimal places, £856,459,363.92 in total.

estimated total cost of the academised system to £2.48bn.⁷⁴¹ Whilst this figure may seem significant, it is only a small proportion of the £58.4bn annual budget of the Department for Education in 2010 and therefore in reality only represents a small proportion of the cost of education in England.⁷⁴²

The next section of this Chapter will consider what successive governments have obtained for that sum in relation to educational and financial improvement before the Chapter goes on to assess costs and benefits and establishes an overall position of the value for money of the Academies Programme.

Benefits of conversion

As has been set out in previous Chapters the ambition of the Government in developing the Academies Act 2010 was to accelerate improvement, which, as discussed in Chapter 1, could mean:

- An increase in attainment; and/or
- An increase in efficiency.⁷⁴³

This section will explore, through reference to various studies, the extent to which such improvements can be accurately measured and whether it can be said that increased improvement has been achieved because of the Academies Programme. It will show that all studies considered by this Thesis have limitations which materially constrain the credibility of their findings. Nevertheless, the theme of these studies is that there is no, or at best only a slight, increase in improvement as a result of the introduction of Academies.

To undertake the above measuring financial and academic performance of academies, maintained schools, and the system as a whole is therefore key to identifying the benefits associated with the transaction costs discussed above. Dealing first with attainment, as has been set out in earlier Chapters there are several ways of measuring

⁷⁴¹ To two decimal places, £2,482,172,560.04 in total, subject to the comments on accuracy of figures above, this is probably therefore a conservative figure.

⁷⁴² [Department for Education spending review - GOV.UK \(www.gov.uk\)](http://www.gov.uk) last visited 8.11.21

⁷⁴³ For example, see Rhodes (2009), p361-374.

increases in educational outcome, including increases in examination results and Ofsted ratings. Almost all measurements however come with specific challenges and criticisms, meaning that there is to date no irrefutable evidence of performance of academies by comparison to maintained schools.⁷⁴⁴ There are however increasing numbers of studies examining the effect of academisation which are considered below.

Browne Jacobson Academy Survey

One of the first surveys of academy conversions was published in 2012 by Browne Jacobson.⁷⁴⁵ This report was based on the views of headteachers, rather than on an analysis of tangible evidence of improvement.⁷⁴⁶ Whilst the report painted a relatively rosy picture of the academy landscape, it was based solely on opinions. The report did demonstrate a sizable optimism of the value of improving performance via academies, with 23% of schools citing better pupil outcomes as their main reason for conversion,⁷⁴⁷ and all academies surveyed saying that conversion would improve outcomes significantly or very significantly.⁷⁴⁸ Clearly optimism could create new enthusiasm to drive improvements in outcomes, at least in the short term, but no evidence of this was provided. The report does reference research into positive performance impacts on city academies of conversion,⁷⁴⁹ however, city academies are sponsored academies, which as discussed are likely to be easier to improve than converter academies.⁷⁵⁰ Further caution has been raised by some academics of the value of measuring anticipated performance of new academies by reference to their city academy predecessors.⁷⁵¹ As a result, whilst the report demonstrates optimism in a new system, it does little to actually measure the outcomes of the changes to school governance. As a result the

⁷⁴⁴ Not that this has prevented commentators from drawing conclusions, see for example see for example discussions on academies in Benn (2012), p 134.

⁷⁴⁵ Browne Jacobson LLP, *Academies – Driving Success Through Autonomy*, 2012.

⁷⁴⁶ Browne Jacobson LLP (2012), p4.

⁷⁴⁷ Browne Jacobson LLP (2012), p6.

⁷⁴⁸ Browne Jacobson LLP (2012), p10.

⁷⁴⁹ Browne Jacobson LLP (2012), p10.

⁷⁵⁰ As they start from a lower base point, thus there is far greater capacity to quickly implement improvement measures.

⁷⁵¹ Machin, S, "Academies: old research is being wrongly used to validate them", *The Guardian*, 09 April 2012

report is of little value for the purposes of this Thesis, it remains however one of the earliest ‘assessments’ of the academies programme.

Angel Solutions

A recent study on performance of academies and maintained school was produced by Angel Solutions and considers the Ofsted results of maintained schools, academies as a whole, converter academies, sponsored academies and free schools over the period 2005-2017.⁷⁵² Their methodology is predominantly based on that of Ofsted, although subsequent sections make slight variations to measure the general patterns of Ofsted results in various types of school.⁷⁵³ Their general finding is that maintained schools have a higher percentage of good and outstanding Ofsted graded schools in comparison to academies, and various sub-sets of academies.⁷⁵⁴ The report then goes on to show that the level of improvement, meaning increase in Ofsted ratings, in maintained schools is larger than the academy average, though less than sponsored academies and free schools.⁷⁵⁵ Finally the report looks at good and inadequate schools progression between 2013 and 2017, examining the differences between those that converted to academy status, as converter academies for the good schools and sponsored academies for the inadequate ones, and the development, or regression, of schools over time.

The study has been used by others to conclude that LEA maintained schools are better at delivering improvement than academies.⁷⁵⁶ This would suggest that there are no benefits to academy conversion, and further, that academisation is actually detrimental to improvement, thus should not be undertaken even in a zero-transaction cost world. However, the report by Angel Solutions highlights a number of problems in comparing academies and maintained schools, which could fundamentally damage the reliability of their results. Firstly, there is the issue of numbers, when considering academies and

⁷⁵² Angel Solutions, *Inspection Statistics: LA-Maintained Schools & Academies (2018)*, available at: <https://www.local.gov.uk/sites/default/files/documents/Academies%20and%20LA%20maintained%20schools%20-%20June%202018%20Minor%20Revisions.pdf> last visited 22.07.18, p1.

⁷⁵³ Angel Solutions (2018), p4-5.

⁷⁵⁴ Angel Solutions (2018), p4.

⁷⁵⁵ Angel Solutions (2018), p12.

⁷⁵⁶ Burns, J, “Councils beat academy trusts at boosting failing schools”, BBC, 05 July 2018, available at: <https://www.bbc.co.uk/news/education-44698272> last visited 22.07.18.

maintained schools as a whole, even in Angel Solutions 2017 work there were more than twice as many maintained schools as academies.⁷⁵⁷ Thus, while it was accurate to say that a sponsored academy was eight times as likely as a maintained school to be inadequate,⁷⁵⁸ it is also accurate to say that twice as many maintained schools were inadequate as sponsored academies.⁷⁵⁹ This issue is emphasised when examining primary schools, where the ratio is closer to 3-1.⁷⁶⁰ The performance of an individual school matters more for academies than maintained schools, and a single failing school, or a MAT collapse, could have a considerable impact on overall performance of the group.

Looking at improvement in Ofsted ratings Angel Solutions note that the increase in maintained schools ratings is at 6%, which is larger than the academy average of 4%.⁷⁶¹ However, sponsored academies and free schools have larger increases than maintained schools,⁷⁶² meaning that converter academies bring down the improvement statistics. This is hardly surprising, as converter academies can either be outstanding, meaning they cannot improve their Ofsted rating, or good, giving them only one place to improve by. The statistics therefore mask a problem faced by many commentators, that since the Academies Act created two pathways to academy conversion, converter and sponsored, creating a fair comparison between the range of maintained schools and academies has become exceedingly complex.

By their very nature, sponsored academies should have a higher percentage of inadequate and requires improvement schools, as it is when they are placed into special measures that maintained schools are forced to convert. Thus, sponsored academies will traditionally start life in the lower Ofsted brackets. Pointing this out adds nothing to the improvement conversation. In the same way, pointing out that converter academies Ofsted results do not improve much also adds very little given that they have a reduced scope for improvement. Considering trends since 2013 in good and inadequate schools

⁷⁵⁷ Angel Solutions (2018), p4.

⁷⁵⁸ 1% of maintained schools against 8% of sponsored academies, Angel Solutions (2018), p4.

⁷⁵⁹ 180 maintained schools against 94 sponsored academies.

⁷⁶⁰ Angel Solutions (2018), p6.

⁷⁶¹ Angel Solutions (2018), p12.

⁷⁶² 11% and 7% respectively, Angel Solutions (2018), p12.

has similar complications. The discussion on inadequate schools appears to demonstrate that maintained schools improve faster than sponsored academies.⁷⁶³ However, this conflicts with Angel Solutions own results on improvement for 2015-17,⁷⁶⁴ which could indicate that sponsored academy improvement in 2013 & 2014 was poor but is now increasing. As the report fails to identify when the sponsored academies converted, it is more likely that the timing of conversion has impacted on results. Thus in 2013 all of the schools assessed were inadequate. The maintained schools would have been improved relatively quickly, to save themselves from special measures and forced conversion. The 212 that converted represented those that, in the Department for Education's eyes,⁷⁶⁵ could not be saved by the LEA. They could be seen as having more complex performance challenges so conversion may have facilitated more fundamental shifts in practice, ethos, and provision.⁷⁶⁶ These conversions could have occurred in 2013 or later, meaning that sponsors had less time to improve performance, thereby resulting in an unequal playing field, and thus damaging the viability of the results as accurate comparators.

The consideration of good schools suffers significantly from the maintained school category being twenty-five times bigger than the academy group,⁷⁶⁷ thus being subject to the criticism discussed above. Further, for converter academies conversion to single academy trusts has in recent years been replaced by a preference to convert to multi-academy trusts,⁷⁶⁸ meaning that converter academies must focus both on their own performance and on the performance of any failing schools they take on. This dual focus can impact on the Ofsted rating of the original converter,⁷⁶⁹ and means that officers of

⁷⁶³ Angel Solutions (2018), p17.

⁷⁶⁴ Angel Solutions (2018), p12.

⁷⁶⁵ Presumably, given that they forced conversion.

⁷⁶⁶ Taking their lead from the new sponsor as opposed to the LEA schools would be more accustomed to working with. If this was not the case, then it is unclear why the LEA would not have assisted them sufficiently to lift them out of the inadequate banding.

⁷⁶⁷ Angel Solutions (2018), p15.

⁷⁶⁸ See <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/258/25808.htm> for example last visited 11.8.16.

⁷⁶⁹ See for example the decline in standards at William Howard School in 2016, available at <http://www.williamhoward.cumbria.sch.uk/about/ofsted-reports/> last visited 14.4.19.

the MAT are significantly more stretched than in a maintained school, thus presenting an unfair disadvantage.⁷⁷⁰

Whilst therefore Angel Solutions work indicates that LEAs are more successful at generating improvement than academies, their failure to account for variables which prevent fair comparisons, as discussed by Hoxby,⁷⁷¹ results in an unreliable outcome.

The Impact of Chains

In contrast to the above two reports looking at a specific time, the Chain Effects series has been published annually between 2014 and 2017,⁷⁷² giving a more trend-based assessment of performance.

The focus of the 2014 report is very narrow in the context of the academy system, as chains at the time made up less than half of all academies and the report is further narrowed in relation to low income students.⁷⁷³ In order to find a stable research pool the report considered the performance of only 31 chains,⁷⁷⁴ meaning that extrapolation from their results to a wider picture of academy chains presents a material risk of error. The chains examined also include several which were set up under the city academy programme, such as the Harris Federation, as a result these chains may have cultural and other benefits deriving from the Labour Government's policies, which did not use competition as a method of driving improvement.⁷⁷⁵ The report concludes that academy chains are on average increasing improvement for disadvantaged pupils at a rate greater than the average for all mainstream schools, however, it also notes "enormous variation between chains."⁷⁷⁶ Slightly more than half of academy chains were ahead of the average for all maintained schools however the chains considered by

⁷⁷⁰ Though naturally, as the MAT grows greater funding should allow more 'corporate' officers focusing their time across schools, such as executive directors, as well as head teachers.

⁷⁷¹ See for example Hoxby (2004), p3.

⁷⁷² Hutchings (2014).

⁷⁷³ Hutchings (2014), p11.

⁷⁷⁴ Hutchings (2014), p14.

⁷⁷⁵ These schools are also likely to have benefited from greater investment as a result of the labour Governments programme, and as a result may have an advantage over other schools, see HANSARD, HL, 719, 509 - 510, 7 June 2010 comments by Baroness Morgan of Drefelin.

⁷⁷⁶ Hutchings (2014), p4.

the report had a much higher use of equivalent qualifications than all other school categories.⁷⁷⁷ The attainment of chains was generally speaking low, but clearly split between low gap and low attainment,⁷⁷⁸ and low gap and high attainment,⁷⁷⁹ suggesting that some academy chains were working well to improve attainment for all, whereas others were clearly failing both disadvantage and non-disadvantage pupils in comparison to maintained schools.

The 2017 report for secondary schools contains 48 academy chains which together have 244 sponsored academies and 38 converter academies.⁷⁸⁰ As a result, it is less likely that an individual academy or chain would be able to significantly impact on results, in comparison to the 2014 report, however, relative to the total number of academies, the number considered remains small.⁷⁸¹ The report shows that the majority of sponsored academies within the chains considered by the report have attainment levels below the average for all maintained schools.⁷⁸² This is the case for both disadvantaged and non-disadvantaged pupils.⁷⁸³ Further, 25 of the 48 chains had academies which had been in the chain for at least 3 years which were below the Department for Education's floor standard.⁷⁸⁴ 16% of the academies considered were below this standard, in comparison to 9% of all maintained schools.⁷⁸⁵ This figure is however a reduction from 2015, and the number of academies in this category are reducing more than twice as fast as maintained schools.⁷⁸⁶ In relation to converter academies within the chains considered by the report,⁷⁸⁷ the majority of these had performance results akin to those of the sponsored academies, which was considerably out of step with the converter academy

⁷⁷⁷ Hutchings (2014), p30 & 31. Note also that the criticism of an 'all maintained schools' comparison discussed above would also apply here.

⁷⁷⁸ That is, a low gap between the attainment of disadvantaged and non-disadvantaged pupils.

⁷⁷⁹ Hutchings (2014), p35.

⁷⁸⁰ Hutchings, M, Francis, B, Chain Effects 2017: The Impact of Academy Chains on Low Income Students (June 2017), The Sutton Trust, p12.

⁷⁸¹ Hutchings (2017), p15.

⁷⁸² Using the Attainment 8 measure, see Hutchings (2017), p23.

⁷⁸³ Hutchings (2017), p34.

⁷⁸⁴ That is, below the minimum expected in terms of progress measured by progress 8 standards, see Hutchings (2017), p23 & 24.

⁷⁸⁵ Hutchings (2017), p23.

⁷⁸⁶ Between 2015 & 2016, see Hutchings (2017), p23.

⁷⁸⁷ By which they mean good or outstanding academies which chose to join the chain. These were first considered in the 2017 report.

average.⁷⁸⁸ The authors suggest that this relates to the pupil characteristics, with composition of the converter academies in the chains analysed being closer to the rest of the chain rather than the converter average.⁷⁸⁹ However, this may also be linked to the management style of the chain and the level of control held in determining factors which influence improvement. The chains were found to be better for lower attaining pupils than higher attaining pupils and as a result this may reflect an approach to education which chains adopt in relation to sponsored academies.⁷⁹⁰ Such an approach would apply to converter academies within the chain if it flowed from a chain level policy rather than being delegated to the individual school.

The 2017 report also considered small-scale data from primary schools.⁷⁹¹ Like the data for secondary schools it shows that performance is lower in sponsored academies than in mainstream schools, and that a greater percentage of the academies are below the 'floor standard' than all mainstream schools.⁷⁹² As with the Angel report, these reports continue to compare the performance of sponsored academies with all maintained schools.⁷⁹³ As discussed this is not a useful comparison as sponsored academies start from a lower baseline in terms of attainment than the average school.⁷⁹⁴ Unlike the Angel reports however the Chain Effects reports attempt to mitigate this by considering only academies that have been in a chain for at least three years,⁷⁹⁵ thus this report does allow chains some time to improve performance before measuring them against the average for all schools.⁷⁹⁶ Whilst this delay does not equate to the erasure of the starting point for the academy, the Department for Education has said that it would expect the impact of conversion to start to be shown in results after 3-4 years,⁷⁹⁷ though, as discussed above, the trend analysis does show faster progression from below

⁷⁸⁸ Hutchings (2017), p52.

⁷⁸⁹ Hutchings (2017), p52.

⁷⁹⁰ Hutchings (2017), p5.

⁷⁹¹ Hutchings (2017), p54.

⁷⁹² Hutchings (2017), p57 & 58.

⁷⁹³ Hutchings (2017), p15.

⁷⁹⁴ As the average school in 2018 has a good Ofsted rating, annual reports for schools as a collective can be found here <https://www.gov.uk/government/collections/ofsted-annual-reports> last visited 4.4.19.

⁷⁹⁵ Hutchings (2017), p11.

⁷⁹⁶ Though at the cost of numbers eligible for comparison.

⁷⁹⁷ House of Commons Committee of Public Accounts, *Capital Funding for Schools; Fifty-seventy Report of Session 2016-17*, 24 April 2017, minutes, Q117.

the floor standard in sponsored academies than in all mainstream schools.⁷⁹⁸ Numbers of schools below the floors standard are also arguably a more appropriate comparison than all maintained schools, as all schools considered are at a more equitable starting point, i.e. below the floor standard. As a result, the report does show some improvement but also emphasises the position of most sponsored academies as below average, even after three years. The value of this analysis is more likely to be in the assessment of time taken to 'turn-around' a failing school, rather than in the comparison with the national average, which as discussed, is not an equitable comparison.

House of Commons reports

The House of Commons Education Committee considered the impact of academies and free schools in its fourth report of Session in 2014/15.⁷⁹⁹ The report drew on the work of several other educationalists as well as inviting submissions from a range of interested parties, including academy trusts, anti-academy groups, academics and educationalists.⁸⁰⁰ The report stressed that "current evidence does not allow us to draw conclusions on whether academies in themselves are a positive force for change".⁸⁰¹ Whilst therefore noting the representations of the Sutton Trust and other interested parties,⁸⁰² the Committee did not argue that 5 years into the new, and costly, system the Government had erred in the decision to promote competition, although the Committee did note the OECDs view that collaboration is better than competition at reaching improvement.⁸⁰³ They therefore left open the possibility that academies have been a success and have resulted in increased attainment and efficiency. Equally, five years after the new system was put in place the cross party committee failed to conclude that academies were having a beneficial result, notwithstanding political support from both the Conservative and Labour Parties. The programme had been in

⁷⁹⁸ Between 2015 & 2016, see Hutchings (2017), p23.

⁷⁹⁹ House of Commons Education Committee, Academies, and free schools (21 January 2015), The Stationery Office Limited.

⁸⁰⁰ House of Commons Education Committee (21 January 2015), p78-80.

⁸⁰¹ House of Commons Education Committee (21 January 2015), p3.

⁸⁰² House of Commons Education Committee (21 January 2015), p23.

⁸⁰³ House of Commons Education Committee (21 January 2015), p19.

place for half a decade, and a significant number of pupils would have gone from year 7 to the end of their GCSEs in academies.⁸⁰⁴ Some cautious optimism, or pessimism, should be reasonably expected. However, the absence of a firm, or even initial, view one way or the other is testament to the complexity of measuring performance and improvement within the English education system. As discussed above, tests designed to prove or disprove the impact of academies on attainment have a multitude of potential weaknesses which expose them to the creation of flawed results, thereby discrediting the findings. The only certainty which the Committee could find is that the programme has not been such a success, or a disaster, as to clearly point to either outcome.

General difficulties with measuring performance

As can be seen from above, measuring academy performance is an increasingly difficult task which threatens the ability of researchers to definitively determine whether or not academies are having a positive impact on attainment. As discussed in Chapter 2, Hoxby offered a clear methodology for her analysis of attainment and improvement in American schools in order to inform her conclusions on the impact of competition in the American system.⁸⁰⁵ Importantly Hoxby warns of the dangers of comparing changing features, such as results,⁸⁰⁶ and notes a trend to fail to account for differences between comparable institutions which may impact on results.⁸⁰⁷ Whilst Hoxby's methodology is not applicable to the English system, as admissions for example, are substantially different, her caution on methodology for drawing comparisons remains valid. This section will therefore explore some of the challenges faced by educationalists attempting to evaluate the impact of academies on the education system in England through comparisons with other schools. It will show that the current design of the system for comparing performance in England builds in distorting factors and sets out how some of these could be mitigated to produce a more reliable comparison.

⁸⁰⁴ Though admittedly, not a large number by comparison to all pupils in maintained schools.

⁸⁰⁵ Or rather, in the States considered in Hoxby's research. See Hoxby (2003), p302.

⁸⁰⁶ Hoxby (2003), p305.

⁸⁰⁷ Hoxby (2003), p295.

Firstly, in relation to academies and the identification of comparators, it has been noted that sponsored and converter academies are significantly different institutions.⁸⁰⁸ Sponsored academies will inevitably have lower results and Ofsted ratings, as they have been forced into conversion as a result of their poor performance and a perceived inability of the maintained system to turn these schools around.⁸⁰⁹ Whilst their results may be low, their ability to improve, i.e. increase exam success and Ofsted Ratings, is significant, as ‘when you hit rock bottom, the only way is up!’⁸¹⁰ thus, there improvement statistics, once a turnaround is effected, should be significant. Converter academies by contrast are good or outstanding schools which are likely to have above average, or at least average, exam results. They are already a ‘success’ and so have been given greater freedom through the Academies Act.⁸¹¹ Their ability to improve, alongside good and outstanding maintained schools, is likely to be more limited, as there is less scope for improvement than with sponsored academies.

Comparing either of these types of academy with all maintained schools has significant difficulties.⁸¹² To test if an academy produces better results, greater improvement or efficiency than a maintained school, the academy and the maintained school should be the same in every way except their status.⁸¹³ The group ‘all maintained schools’ is made up of all maintained school averaged out, meaning that the group consists of all the outstanding maintained schools and all of the inadequate ones, along with all in-between. When looking at just sponsored academies for example, a comparison with all maintained schools is clearly unfair, as it compares outstanding, good, requires improvement and inadequate maintained schools against schools that were so poor that they were withdrawn from the maintained category. In 2017, 91% of maintained schools were good or outstanding,⁸¹⁴ with only 1% rated inadequate.⁸¹⁵ Comparing sponsored academies against all maintained schools therefore compares schools which

⁸⁰⁸ See for example Hutchings (2014), p11-12.

⁸⁰⁹ Unlike the schools considered in Angel Solutions comparator list, discussed above.

⁸¹⁰ As pointed out in Hutchings (2014), p11-12.

⁸¹¹ Section 1 of the Academies Act 2010.

⁸¹² As was done by Hutchings above, see Hutchings (2014), p4, notwithstanding her cautionary comment on this point on p11-12.

⁸¹³ i.e. academy v maintained.

⁸¹⁴ Angel Solutions (2018), p4.

⁸¹⁵ Angel Solutions (2018), p4.

have vast differences beyond that of governance structure. As a result, this lack of a like for like comparison endangers the results generated as it cannot be conclusively proven that some other factor caused the change or condition attributed to school structure. A comparison between maintained schools and sponsored academies therefore needs to focus on the 1% of maintained schools that were rated as inadequate. A true comparator needs to be a maintained school that's performance is so poor that it is threatened with academy conversion and then recovers.⁸¹⁶ This threat is required to demonstrate that the school has dropped to a level where it is at the starting point for all sponsored academies and is therefore a fair comparator. Improvement of the maintained school as against a sponsored academy would therefore be attributed to the work of the sponsor or the maintained system and thus, subject to the below, is a fairer comparison of the two systems.⁸¹⁷

The challenges in a comparison between converter academies and all maintained schools are similar to those of sponsored academies, if slightly less pronounced given that most maintained schools are classed as good.⁸¹⁸ As with sponsored academies, the effect of using the all maintained schools category as a comparator is that schools are compared to schools with unequal starting positions, which can distort the results produced. Rectifying this problem is however significantly easier for converter academies, as conversion is a choice. Thus, a fair comparator, again subject to the additional challenges discussed below, would be a school that was the same as the converter academy prior to conversion, but did not convert when the academy chose too.⁸¹⁹

Much like the academy spectrum, maintained schools are a diverse range of entities. The result is that there can be, and are, large variations between the types of school in the category. For example, as well as including a multitude of structures,⁸²⁰ special and mainstream schools, the group also includes a variety of school admissions criteria,

⁸¹⁶ Though without receiving additional support beyond that an LEA would normally offer.

⁸¹⁷ Provided the funding levels open to both the LEA and chain were generally comparable.

⁸¹⁸ By Ofsted rating, in 2017, see Angel Solutions (2018), p4.

⁸¹⁹ But could have had it wished to do so.

⁸²⁰ i.e. community, voluntary controlled, voluntary aided, foundation schools.

including fully and partially selective based on academic ability, religion, etc. Prior to academisation the value of comprehensives has been a fierce battleground for both educationalists and politicians.⁸²¹ The result is that comparisons between maintained schools can be unequal, let alone between maintained schools and academies. Thus, comparing a converter academy that was formally a community comprehensive, to a maintained grammar foundation school is likely to yield substantially different results to a comparison against a community comprehensive in a deprived location. This therefore demonstrates the danger of average comparators. However, the advantage of averaging is that it develops a result where there is a better chance that variations are muted simply by gross numbers – for example the impact of grammar schools on the all maintained schools group is likely to be small simply because of the small number of grammar schools in existence.⁸²² This sort of averaging however requires a significant volume of institutions, and as has been seen above,⁸²³ this generates further problems for general comparisons between academies and the maintained sector, given the originally small number of academies. For example, the work of the Sutton Trust above examined just 31 academy chains.⁸²⁴ The result of this is that variations in a small number of schools caused by factors unrelated to the school structure can have a larger impact on the overall performance of the class than in a bigger cohort. As a result, academy figures where the numbers are disproportionately small in comparison with the comparator group, must be treated with some caution.

Time has also proven to be a challenge to producing a fair comparison of performance. Many commentators and reports have argued that there has not been sufficient time to truly measure the impact of academisation.⁸²⁵ As a result, any changes in performance, efficiency or improvement may be the result of initiatives commenced prior to the school's conversion. It is therefore not appropriate to attribute the resulting

⁸²¹ Benn (2012), p xvii.

⁸²² Educating approximately 7% of pupils, statistics from the Independent Schools Council <http://www.isc.co.uk/research/index>, last visited 14.4.2015.

⁸²³ See discussions on Angel Solutions report.

⁸²⁴ Hutchings (2014), p4.

⁸²⁵ This was the case even with city academies, see Whitty, G, 'Education(al) Research and Education Policy Making: is Conflict Inevitable?', 2006, *British Educational Research Journal*, 32, 2, 159-176, p166 and this has proven a long standing issue, see House of Commons Education Committee, (21 January 2015), p3.

change to academisation. Equally however, it is not possible to simply wait for more effects to present themselves for two key reasons; firstly, the Coalition Government and subsequent Conservative Governments have faced criticism that they are ‘speeding into the unknown’, and that they do not have the necessary data to support the rapid academisation of schools.⁸²⁶ Consideration of the impact of academisation is therefore required to ensure that the programme represents positive change, and if the negative is proven, the sooner academies are shown to be bad for the system, the sooner corrective measures can be taken. Secondly, waiting presumes that policy will progress, and then pause to evaluate the impact of the latest change before progressing again. This is ‘blackboard policy making’,⁸²⁷ and not how English educational policy works. In reality policy changes, adapts, develops, and grows both organically and sporadically in response to a range of political stimulus. Such change can be seen with the policy U-Turns on grammar schools resulting from a change in Conservative Party leadership and then election results.⁸²⁸ Similarly the academy programmes policy continues to develop, most recently with a greater shift towards schools joining chains.⁸²⁹ The result is that consideration of the general freedoms of academies for example, which were considered fundamental to the success of academies at the start of the programme,⁸³⁰ have reduced in significance, as in chains there is the potential for much less freedom than for a converter academy or maintained school.⁸³¹ The amount of freedom each school has to innovate could conceivably impact on performance.⁸³² Thus early improvements made by academies which have since tailed off or plateaued, may reflect maintained schools catching up, or a reduction in the availability of academy freedoms in general resulting from a growth in chains. Reasons for changes in performance are therefore potentially caused by changes to academy policy, forcing a comparison

⁸²⁶ See House of Commons Education Committee (21 January 2015), p42.

⁸²⁷ To adapt Coase’s “blackboard economics” see Coase (1988), p154.

⁸²⁸ See for example <https://www.telegraph.co.uk/news/2017/06/21/seven-manifesto-pledges-theresa-may-had-axe-queens-speech-election/> last visited 14.4.19.

⁸²⁹ See for example <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/258/25808.htm> last visited 11.8.16.

⁸³⁰ See for example Adonis (2012), p13.

⁸³¹ As the individual freedoms of each school are dictated by the chains scheme of delegation, the content of which is a matter for the chain.

⁸³² And Adonis was particularly clear on his belief in this point, see Adonis (2012), p13.

between early and later academies rather than between maintained and academised systems.

The passage of time has wider implications as over time the measures used to evaluate performance have also changed. The development of measures from 5 A-C's to 5A*-C including Maths and English, to Progress 8 mean that it is increasingly difficult to measure current years against previous years, as the data collected is not truly comparable. This is compounded by the availability of 'equivalent' qualifications.⁸³³ It has been argued that equivalent qualifications are less rigorous than GCSEs which means that schools can obtain the same ranking in league tables, and be seen to have achieved the same performance, with substantially less effort.⁸³⁴ Such a position would naturally be adopted in a market situation as an organisation could reduce overheads whilst being perceived to maintain quality, for so long as the equivalent was viewed as such and thus would have greater resources to allocate elsewhere, allowing greater potential to attract new pupils. While academies are able to set their own admissions policies and PAN, there is a greater benefit to them adopting this strategy, and some studies have found that the use of equivalent qualifications is considerably higher in some academies.⁸³⁵ The use of potentially less challenging equivalents therefore opens up the possibility of market manipulation to distort parental preferences in a way that is not possible in the market system considered by Hoxby.⁸³⁶

Hoxby's work also presents another challenge for measuring the performance of academies as an alternative to maintained schools. Hoxby's work argues that competition can be the tide that lifts all boats,⁸³⁷ meaning that the impact of a competitive school structure, in her case charter schools,⁸³⁸ was to force improvement in the non-comparative schools as well.⁸³⁹ In the English system this would mean that

⁸³³ That is, qualifications that are not, for example, GCSEs, but which are considered by the Government to be of a similar level.

⁸³⁴ See Wolf, A, *Review of Vocational Education* (2012), Department for Education, see also Benn (2012), p115.

⁸³⁵ Hutchings (2014), p42.

⁸³⁶ As that relied on a lottery, see Hoxby (2005), p55.

⁸³⁷ Hoxby (2003), p287.

⁸³⁸ See Hoxby (2003).

⁸³⁹ Hoxby (2003), p287.

the existence of academies, and the introduction of competition that they represent, would drive the remaining maintained schools to improve their performance. This was the express intention of the Government when developing the Academies Act.⁸⁴⁰ As a result, whilst the conversion of all maintained schools to academies would result in more direct freedom to compete expressed by all schools, the mere existence of academies in an area, and free schools in particular,⁸⁴¹ allows increased freedom to expand PANs and so increase the danger to schools of not being able to attract sufficient pupils. This pressure therefore drives the need for all schools impacted to improve, or rather improve at a faster rate, to ensure that they receive sufficient applications. Comparing an academy and a maintained school in a particular area to measure the academies performance against the maintained school is therefore unfair, as the existence of the academy, according to Hoxby,⁸⁴² impacts on the performance of the maintained school. Thus, like for like comparisons in a single geographic area are potentially misleading as to the total benefits of the academised, or semi-academised, system. This challenge on cause and effect was, in an alternate form, discussed by Benn,⁸⁴³ who argues that the improved results of academies relate to the academies changing their admissions practices rather than providing improved teaching. Benn focuses in particular on the percentage of children eligible for free school meals, and notes that this percentage reduces following conversion.⁸⁴⁴ As FSM pupils are less likely to perform well in exams,⁸⁴⁵ Benn argues that improved results stem from improved initial ability on admission.⁸⁴⁶ Whilst this logic may hold some weight, the increase in non-FSM pupils is a result of more parents *choosing* to send their pupils to the academy, and so to demonstrate that if intake was the essential criterion then the performance of other local schools should have reduced – as more able children went elsewhere, thus leaving a harder cohort to educate. Without this data Benn’s hypothesis cannot be proven, and if the surrounding local schools maintained their output, or improved it,

⁸⁴⁰ See for example Adonis (2012), pxi.

⁸⁴¹ See Chapter 3.

⁸⁴² Hoxby (2003).

⁸⁴³ Benn (2012), p110.

⁸⁴⁴ Benn 92012), p108.

⁸⁴⁵ As discussed in Chapter 2.

⁸⁴⁶ Notwithstanding comments by Tony Blair to the contrary discussed at Benn (2012), p77.

then it could be argued that, in line with Hoxby's theory,⁸⁴⁷ the surrounding maintained schools increased improvement as a direct response to the academy 'cream skimming' their better pupils. But if all pupils are getting a better education, does the school they attend, academy or maintained, matter? Therefore is the only measure that really matters whether the system as a whole is improving at a faster rate than it was in 2009? Though again, as was discussed above, with all the associated changes to measures, systems and funding since 2009, can any increase or decline in improvement really be attributed to the introduction of academies alone?

Proponents and opponents of academy schools therefore face considerable challenges in demonstrating the impact of academies on improvement, performance, and other measures. All of the studies considered to date have suffered from at least one of the deficiencies discussed above. As a result, whilst this Thesis will work on the basis of the available evidence to date, it is clear that this evidence is not beyond reproach, and conclusions drawn from it will need to be considered in the light of any future, more comprehensive, studies on the impact of academies. That warning provided, those studies have either demonstrated no material change in performance, or a slight improvement or decline. As a result, over a decade on from the introduction of the Academies Act, the conclusion that can be drawn is that a significant shift in system wide school performance, attributable specifically to the developments produced by the Act, has not occurred.

Financial performance

If it cannot be conclusively shown that academies have resulted in increased attainment, the Academies Act may still have produced increased efficiency in order to generate system wide improvement. This would be achieved by maintaining outputs whilst reducing costs. This section will explore whether academies have increased or reduced the efficiency of the schools system in England. It will show that there whilst there are ideological views on the efficiency of LEAs and the wider public sector, in the context of education the public sector tends to be more efficient than the private sector.

⁸⁴⁷ Hoxby (2003), p287.

Whilst LEAs did have room for efficiencies in 2010, the development of academies has led to considerable differences between academies financial management rather than a consistent improvement or reduction in efficiency. However, overall there is limited, indicative evidence of a slight increase in efficiency resulting from conversion.

Reducing costs should be achievable in all schools as every school undertakes budget setting and contracting. Thus, both academies and maintained schools could, for example, re-negotiate their printer contracts to reduce annual subscription cost. Alternatively, schools could change their culture, for example by emphasising the environmental benefits of not printing documents and so reduce printer usage, again achieving a saving which could increase efficiency. Finally, both types of school could 'invest to save' and purchase laptops or tablets for every member of staff and pupil, thereby allowing a shift to a 'paperless school', reducing print costs, and potentially increasing efficiency.⁸⁴⁸

Arguments have been raised historically that academy freedoms mean that academies have greater potential to develop new ways of working which are more efficient than those in the maintained school sector.⁸⁴⁹ Under the city academy programme this is clearly visible with sponsors bringing private sector business skills to turn around under-performing schools.⁸⁵⁰ The implicit argument here being that the private sector is more efficient than the public sector, or that LEAs, which were responsible for school budgets, were particularly inefficient. Both of these possibilities are discussed below.

Dealing with the second possibility first, the academies programme has long been seen as government side-lining the role of LEAs in education.⁸⁵¹ Sponsored academies are the schools that LEAs could not turn around, and are claimed to represent a failing on the part of LEAs.⁸⁵² The timing of the Academies Act aligned with the Coalition Government's introduction of austerity measures to reduce the national deficit and this

⁸⁴⁸ Though in each scenario there are transaction costs and the potential for other revenue costs to arise which may reduce the benefit produced, and thus impact on efficiency.

⁸⁴⁹ Adonis (2012), p13.

⁸⁵⁰ Adonis (2012), p56-7.

⁸⁵¹ Or rather, moving them away from 'direct' provision, see Chitty (2004) p81.

⁸⁵² See for example Adonis (2012), p53.

included significant cuts to ‘inefficient’ LEAs.⁸⁵³ By the end of 2014, it has been asserted that LEAs were providing the same services for less, and that residents were satisfied with their performance,⁸⁵⁴ thus implying that there was indeed inefficiency that could be reduced. Nevertheless, the process for identifying inefficiency within LEAs has been criticised as far less than robust,⁸⁵⁵ and at worst could be seen as ideological.⁸⁵⁶ Arguments have also been made that Central Government had lessons to learn from LEAs, implying that any inefficiency on their part was not out-of-step with the rest of the public sector.⁸⁵⁷ Debates over the relative inefficiencies of the public sector are beyond the scope of this Thesis and for our purposes it is sufficient to acknowledge that Local Government did, in 2010, generate inefficiencies which could be addressed to improve overall efficiency.

Converter academies receive their entire budgetary allocation to spend on goods and services to enable them to run their schools. By contrast, maintained schools receive their budgetary allocation less a top-slice retained by the LEA to deliver centralised services. Thus, with a greater level of control over spend, converter academies have greater scope to increase efficiency, as they are able to look for savings in the top-sliced areas of spend that maintained schools have no control over. However, the top-slicing activities of LEAs are subject to regulation, in the form of the School and Early Years Finance (England) Regulations,⁸⁵⁸ and as a result top-slicing can only be undertaken for specific activities,⁸⁵⁹ and only with the specific approvals. These include the approval of the relevant Schools Forum,⁸⁶⁰ which is made up of representatives of the relevant schools for the LEA’s area.⁸⁶¹ Thus, whilst LEAs can top slice school budgets for a range

⁸⁵³ Unknown author, “Council prudence”, 19 December 2014, *The Telegraph*, available at: <https://www.telegraph.co.uk/news/politics/11302183/Council-prudence.html>, last visited 09.09.18.

⁸⁵⁴ Ibid

⁸⁵⁵ Channel 4 News, *Fact Check: Councils in a Pickle over Cuts?*, 02 March 2011, <https://www.channel4.com/news/factcheck/councils-in-a-pickle-over-cuts>, last visited 09.09.18.

⁸⁵⁶ See for example the discussion of neo-liberalism in West, A, Bailey, E, “The Development of the Academies Programme: ‘Privatising’ School-Based Education in England 1986–2013”, 2013, *British Journal of Educational Studies*, 61, 2, 137-159.

⁸⁵⁷ Channel 4 News, (02 March 2011).

⁸⁵⁸ School and Early Years Finance (England) Regulations 2018.

⁸⁵⁹ Schedule 2, School and Early Years Finance (England) Regulations 2018.

⁸⁶⁰ Regulation 12, School and Early Years Finance (England) Regulations 2018.

⁸⁶¹ Section 47A, School Standards and Framework Act 1998.

of activities, including HR advice to school governors,⁸⁶² the level of top-slicing is approved by representatives of the schools whose budgets are to be impacted. As a result, were the LEA to propose blatantly disproportionate deductions from school budgets, the schools themselves would have the power to block the deduction.⁸⁶³ The scenarios where a school would be better off without LEA top-slicing are where:

- The school does not require the relevant service; or
- The school could provide the service for itself, or commission the service for itself, at a lower cost than the LEA charges.

In relation to the first, whilst this is possible, the provision of the service centrally, and at a cost to all schools in the area, would suggest that the majority of schools either need the service, or accept the wisdom of having the service to hand if required.⁸⁶⁴ As to the second point, this returns to considerations of the efficiency of LEAs. In relation to purchasing, it is usually anticipated that organisations which buy in greater quantities are best able to demand the lowest price.⁸⁶⁵ Thus it would be anticipated that a LEA, purchasing for hundreds of schools in its area, should be able to achieve better value than a single school going to the market to make a purchase. Indeed, in relation to chains, this is the view taken by Central Government, i.e. that grouping together is the most efficient way to purchase goods and services.⁸⁶⁶ Further, LEAs, by virtue of their range of responsibilities, can be expected to have significantly more staff than schools and most academy chains. As a result, it is more likely that they would have in-house legal teams, appeals teams, procurement teams, etc. to provide expert advice in a range of areas which does not have to be bought in.⁸⁶⁷ Purchasing exercises, such as procurements compliant with the Public Contracts Regulations 2015, can therefore be undertaken at a relatively low cost per school, as the cost of these teams is split over a

⁸⁶² Schedule 2, Paragraph 64, School and Early Years Finance (England) Regulations 2018.

⁸⁶³ Though subject in some cases to a right of appeal to the Secretary of State, see School and Early Years Finance (England) Regulations 2018.

⁸⁶⁴ Improvement services for example offer all schools a safety net from quality drops, even if not used by all schools.

⁸⁶⁵ Hence the use of Crown Commercial Frameworks discussed above.

⁸⁶⁶ See for example Department for Education, Multi-Academy Trusts; Good practice guidance and Expectations for Growth (December 2016), p11.

⁸⁶⁷ For example, Cumbria County Council and North Yorkshire County Council both have all three of these teams.

variety of functions and schools. By contrast, delegated functions and activities undertaken by academies will need to utilise more limited in-house resources,⁸⁶⁸ or purchase services from external providers. This difficulty can be lessened through use of centrally procured frameworks,⁸⁶⁹ however, these frameworks are still not sufficiently user friendly that staff without an understanding of contracts or procurement, or infrequent users of frameworks could easily and effectively make use of them without support.⁸⁷⁰

Even where the external provider is the LEA, for traded services with schools LEAs are permitted to generate a profit,⁸⁷¹ and as a result there is the possibility that the school will not achieve the same level of efficiency as if the service was provided by the LEA via the top-slice.⁸⁷² Thus, greater control of school budgets, especially for converter academies that do not form chains, does not necessarily result in increased efficiency, unless LEA or public sector expenditure is fundamentally less efficient than private sector spending. As set out above, Hoxby asserts this is the case in comparison to profit and not-for profit organisations.⁸⁷³ However, the legitimacy of this assertion in relation to education in England could have been tested in advance of the introduction of the Academies Act through comparisons with independent schools.⁸⁷⁴

⁸⁶⁸ As to date no chain has reached the size of a LEA - the largest chain in 2014, the Academies Enterprise Trust had 77 schools before reducing to 68, see Hutchings (2014), p11, by contrast Cumbria County Council had 260 schools in 2016, see <http://www.cumbria.gov.uk/childrensservices/schoolsandlearning/lis/schools.asp> as at August 2016, last visited 10.08.16.

⁸⁶⁹ Such as those produced by Crown Commercial Services, use of which was a major strand to the Department of Education's efficiency saving for schools plan, see House of Commons Committee of Public Accounts, *Financial Sustainability of Schools; Forty-ninth Report of Session 2016-17*, 22 March 2017, p10.

⁸⁷⁰ See for example the order form for framework RM1042 available at <https://www.crowncommercial.gov.uk/agreements/RM1042>, though this is improving, see RM3804 available at <https://www.crowncommercial.gov.uk/agreements/RM3804>.

⁸⁷¹ Local Authority (Goods and Service) Act 1970 and, for example The Local Authority (Goods and Services) (Public Bodies) Order 1975.

⁸⁷² Where it is likely that schools forums would push harder to receive services at cost or a lessened profit.

⁸⁷³ Hoxby (2003), p300.

⁸⁷⁴ As academies are a type of independent school and independent schools are run by the private and voluntary sector, as a result they should have greater efficiency than LEAs or the public sector if that group is innately inefficient.

A recent study on the effect of private as against public school performance has been undertaken by Durham University.⁸⁷⁵ This study looked at performance from the start of primary school until completion of GCSEs for those schools forming part of the Independent Schools Council.⁸⁷⁶ This restriction, to just under half of all private schools, necessarily limits the extent to which the conclusions produced by the report can be more widely applied.⁸⁷⁷ The study considered performance of pupils over a range of years and found that GCSE performance in private schools is superior to that of public schools by around two grades.⁸⁷⁸ This did not control for other factors, such as prior academic ability,⁸⁷⁹ and once other factors had been controlled for the increase produced by private as opposed to state schools in terms of GCSE results represented 0.64 of a grade,⁸⁸⁰ which would equate to an additional two years schooling.⁸⁸¹

In 2014 Independent Schools Council schools charged an average annual fee of £12,582 per pupil for day attendance.⁸⁸² In state schools the average day cost per pupil per year was estimated at £6,000.⁸⁸³ As a result the private system of education is more than twice as expensive as the public education system. It would, therefore, be more efficient to extend schooling by two years than to replicate the private sector model.⁸⁸⁴ Thus, whilst maintained schools produce less impressive attainment than private schools, they remain the more efficient use of funds. This position appears to be in direct conflict with Hoxby, and the expectations of Central Government.⁸⁸⁵ However, Government expectations based on Hoxby would be that for-profit institutions would have a greater motivation to maximise efficiency, and so could be expected to be more efficient on average. Independent schools within England are, for the most part, not-for-profit. Even

⁸⁷⁵ Ndaji, F, Little, J, Coe, R, A Comparison of Academic Achievement in Independent and State Schools (January 2016), Durham University.

⁸⁷⁶ Ndaji (2016), p13.

⁸⁷⁷ As it is unclear if this association represents a fair cross-section of private schools.

⁸⁷⁸ Ndaji (2016), p24.

⁸⁷⁹ Which Ndaji found to be the single biggest contributor to GCSE results, Ndaji (2016), p27.

⁸⁸⁰ Ndaji (2016), p38.

⁸⁸¹ Ndaji (2016), p41.

⁸⁸² Broughton (2014), p15.

⁸⁸³ Broughton (2014), p61.

⁸⁸⁴ Though this ignores the wider cost to the economy via jobs market, benefit entitlement etc. which would need to be considered in a genuine review.

⁸⁸⁵ Conservative Party (2010), p51.

when sponsors from the private sector are invited into run academies, they do so on a not-for-profit basis as academies, along with most other independent schools, have charitable status and so cannot declare dividends, for example. The expectation that private sector mentality would create greater efficiency, also assumed that motivations towards efficiency would be the same as in the private sector, which was not the case. There is, therefore, no theoretical basis to explain why academy schools should be more efficient than a maintained school. In fact, Hoxby suggests that they should be as efficient as each other, as both types of school would fall into the same, not-for profit, category.⁸⁸⁶

Nevertheless, in 2018 significant attention was drawn to the financial performance of the biggest chains of academies,⁸⁸⁷ with the suggestion that academy schools were more likely to be in deficit than maintained schools. This claim was examined further by the House of Commons Committee of Public Accounts in their report on academy school finances.⁸⁸⁸ The article highlighting the issue claimed that over half of the largest trusts had raised warnings about finances and that a substantial number of the schools in these trusts were in deficit.⁸⁸⁹ The Committee noted the importance of financial prudence required by academies, with academies having a combined budget in 2015-16 of £20 billion.⁸⁹⁰ Notwithstanding the value of their income, the Department for Education's accounting processes were criticised as not being sufficiently granular to allow effective comparison and judgment on performance.⁸⁹¹ The Committee were critical of the ability of academy owners, in particular private businesses, to undertake related party transactions which opened up a risk of financial abuse that the Department for Education were not effectively managing.⁸⁹² This was a particularly concerning finding given that 40% of academies were involved in related party

⁸⁸⁶ As incentives will be the same, see Hoxby (2003), p300.

⁸⁸⁷ Mansell, W. Savage, M, "Top academies sound alarm as crisis looms", The Guardian, 27 January 2018, available at: <https://www.theguardian.com/education/2018/jan/27/schools-academy-trusts-warn-pay-staffing-public-spending>, last visited 15.9.18.

⁸⁸⁸ House of Commons Committee of Public Accounts, *Academy Schools' Finances; Thirtieth Report of Session 2017-19*, 26 March 2018.

⁸⁸⁹ Mansell (2018).

⁸⁹⁰ House of Commons Committee of Public Accounts (26 March 2018), p8.

⁸⁹¹ House of Commons Committee of Public Accounts (26 March 2018), p9.

⁸⁹² House of Commons Committee of Public Accounts (26 March 2018), p5.

transactions.⁸⁹³ It also criticised the high salaries that academy trusts paid to their staff, which were well in excess of what could be expected within maintained schools.⁸⁹⁴ This all suggested serious mismanagement of funds. The Committee found that academies as a whole had a deficit of £50m.⁸⁹⁵ All of this appeared to support the conclusion drawn by the Guardian that academies were failing to manage their finances. However, evidence provided to the Committee demonstrated that the academy sector as a whole had reserves of £3.2 billion,⁸⁹⁶ over six times the system deficit. It is therefore clear that there was sufficient funding in the system to operate effectively, just that the distribution was not equal. This should be expected within a market, with some providers failing whilst others amass reserves enabling growth. Moreover, the Committee had previously heard that 4% of academy trusts were in deficit,⁸⁹⁷ in comparison to 5.5% of all schools.⁸⁹⁸ This would suggest that the proportion of maintained schools in deficit must be higher than 5.5%, and in the 16-17 financial year the Department for Education put this figure at 9%.⁸⁹⁹ As a result, the evidence presented to the Committee suggests that notwithstanding the high use of related party transactions or the high salaries in some academy trusts, less academy trusts are in deficit than maintained schools, suggesting that they are better able to manage their finances.

Academy chains are able to re-distribute funds between schools,⁹⁰⁰ and so deficit management could be attributable to their ability to offset one schools deficit using another more successful schools surplus, thus reaping further rewards of economies of scale. However, between 2011/12 and 2014/15 the number of single academy trusts in

⁸⁹³ House of Commons Committee of Public Accounts (26 March 2018), p9.

⁸⁹⁴ House of Commons Committee of Public Accounts (26 March 2018), p10.

⁸⁹⁵ House of Commons Committee of Public Accounts (26 March 2018), p13.

⁸⁹⁶ House of Commons Committee of Public Accounts (26 March 2018), p13.

⁸⁹⁷ House of Commons Committee of Public Accounts, *Financial Sustainability of Schools; Forty-ninth Report of Session 2016-17*, 22 March 2017, minutes, Q132.

⁸⁹⁸ House of Commons Committee of Public Accounts (22 March 2017), minutes, Q127.

⁸⁹⁹ House of Commons Committee of Public Accounts (26 March 2018), minutes, Q23 – Note, this looks at a different financial year and with increased strain on budgets deficits are likely to have increased, see Q24.

⁹⁰⁰ House of Commons Committee of Public Accounts (26 March 2018), minutes, Q40.

deficit, who would be unable to pool resources, halved.⁹⁰¹ This suggests that academies are more efficient than maintained school as they are better able to manage deficits. Such a conclusion, however, must be seen in the context of the discussions on comparators above. Single academy trusts are all good or outstanding schools which chose to be academies. These schools should already have a firm understanding of proper resource allocation in order to have outperformed other maintained schools. It should therefore not be surprising that the number in deficit reduced. Further, academies who are forced to convert do not retain any existing deficits, which are instead passed to the LEA to fund.⁹⁰² As a result, academy chains do not take on historic debts which maintained schools may have been forced to absorb as a result of a range of circumstances over the history of the school.

Income for schools is predominantly sourced from the Department of Education, via LEAs for maintained schools. However, schools are also able to generate funds themselves, for example through venue hire, community use of facilities, etc. In 2014/15 maintained schools generated 3.6% of their income (£903.1 million) with academies generating 4.3% of their income (£680.3 million).⁹⁰³ This could indicate that academies are making better use of their resources, by generating a greater percentage of their income through non-government means, and given that they are vastly outnumbered by maintained schools the real figures being £223 million out seems remarkably close at first glance. This could further imply that academies are more entrepreneurial than community schools, reflecting the greater involvement of business and the more commercial focus stemming from company status. However, as most academy sponsors are educational providers,⁹⁰⁴ this would seem unlikely. Further, most secondary schools are now academies,⁹⁰⁵ and secondary schools are more likely to have larger estates with greater resources for hiring out and community use. These figures

⁹⁰¹ Comptroller and Auditor General, *Financial Sustainability of Schools*, 14 December 2016, National Audit Office, p12.

⁹⁰² Such deficits were valued at £7.8 million in 2016-17, see Comptroller and Auditor General (14 December 2016), p9.

⁹⁰³ Comptroller and Auditor General (14 December 2016), p5.

⁹⁰⁴ See FOI response reference FOI 2019-0016727, Appendix 3.

⁹⁰⁵ House of Commons Committee of Public Accounts, *Converting Schools to Academies; Fifty-Second Report of Session 2017-19*, 4 July 2018, p4.

may therefore represent resource allocation between schools rather than entrepreneurial behaviour.

Given that the difference between all schools and academies in deficit is so slight, the small difference in non-government income in terms of percentages, and the risks discussed above, the evidence could be said to be indicative that academies are a slightly more efficient structure than maintained schools. However, this difference appears small, and remains far from conclusive. As a result, it cannot be conclusively shown that the academy model has increased financial efficiency within the schools sector.

Alternatives to Conversion

The final stage of considering the Academies Act in light of Coase's work is to consider the alternative options open to the Coalition Government in 2010. The academy programme has cost at least £856.46m since 2010 and the total cost is estimated to be at least £2.48bn for full academisation. Could this money have been more efficiently invested? This section will explore potential counterfactuals to understand if the allocation of resources as set out in the Act was the most efficient option available to the Government. Whilst noting the limitations of this analysis, it will indicate that there were more efficient uses for the funding used to develop the acadmeised system and as a result, this section concludes that the development of the Act was not in line with Coase's work on efficient resource allocation.

The Department for Education has been clear that counterfactual assessments of performance are difficult to achieve.⁹⁰⁶ As a result, the assessment of what else could have been done is necessarily going to be imprecise and should therefore be considered only as indicative rather than definitive. There are an infinite number of possible scenarios for a counterfactual comparison, however, for the purposes of this section we will consider two. Firstly, the scenario where the Academies Act and associated drivers, namely competition and increased choice, were never conceived. In this scenario the education system would have simply continued with maintained schools and the pre-

⁹⁰⁶ House of Commons Committee of Public Accounts (04 July 2018), p12.

2010 levels of choice. Secondly, we will consider a scenario where the drivers behind the Act remained, but where the Government looked at achieving those aims without moving away from the pre-existing maintained system.

A system without competition

This scenario will consider the performance of a system which operated on the same basis as the pre-2010 education system.⁹⁰⁷ It will assume that improvement can be achieved via methods other than the potential of exit to drive increase in voice, as discussed in Chapter 3. Such methods include a greater emphasis on Ofsted and improvement systems within LEAs. To that end, in 2006 the National Audit Office set out that:

“A straightforward case of weakness in a small primary school can sometimes be turned around at little cost, whereas a large secondary school with complex problems within both the school and its local community, together with a long record of poor performance, can cost £500,000 or more to turn around.”⁹⁰⁸

‘Turn around’ is an ambiguous statement, but in this context will be taken to mean improving an inadequate, or requires improvement school to a standard sufficient for Ofsted to rate it as good. As at that point the school can legitimately be said to have ‘turned a corner’ and no longer be a poor school.⁹⁰⁹ Given that costs change over time, and for the purposes of this unscientific assessment, it is assumed that the average cost of improving poorly performing schools is £500,000 from 2010 until 2017. In 2010 there were 20,098 maintained schools in England,⁹¹⁰ made up of 16,971 primary schools and 3,127 secondary schools. Of the schools inspected by Ofsted that year, 11% were

⁹⁰⁷ Without city academies expanding further.

⁹⁰⁸ Comptroller and Auditor General, *Improving Poorly Performing Schools in England* (11 January 2006), national Audit Office, available at <https://www.nao.org.uk/wp-content/uploads/2006/01/0506679.pdf>, last visited 11.08.16, p15.

⁹⁰⁹ Naturally, there is a risk that this interpretation is not correct, which would impact on the assessments set out below.

⁹¹⁰ Department for Education, *Statistical First Release: Schools, Pupils and their Characteristics January 2015* (11 June 2015), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433680/SFR16_2015_Main_Text.pdf, last visited 03.07.16, p16.

outstanding, 46% were good, 38% required improvement and 6% were inadequate.⁹¹¹ If this is reflective of the general makeup of schools,⁹¹² then 8,844 schools would have either been rated at inadequate or requires improvement. On our rough assessment, the money spent to date on conversions to academy status could therefore have turned around 1,714 schools, that is all the inadequate schools and just over 500 of the 'requires improvement' schools. The funds needed to convert the entire system could turn around 4,964 schools, that is over half of all 'requires improvement' and 'inadequate' schools.

In 2017 there were 21,950 schools, and of those inspected by Ofsted 21% were outstanding, 68% were good, 9% required improvements and 2% were inadequate.⁹¹³ As a result, if we assume the report is reflective of the sector as a whole,⁹¹⁴ the number of schools categorised as requires improvement or inadequate was 2,415. This figure is significantly less than the figure produced through redirecting conversion funds. However, given that the performance of schools generally has been improving for some time, this should be accounted for.

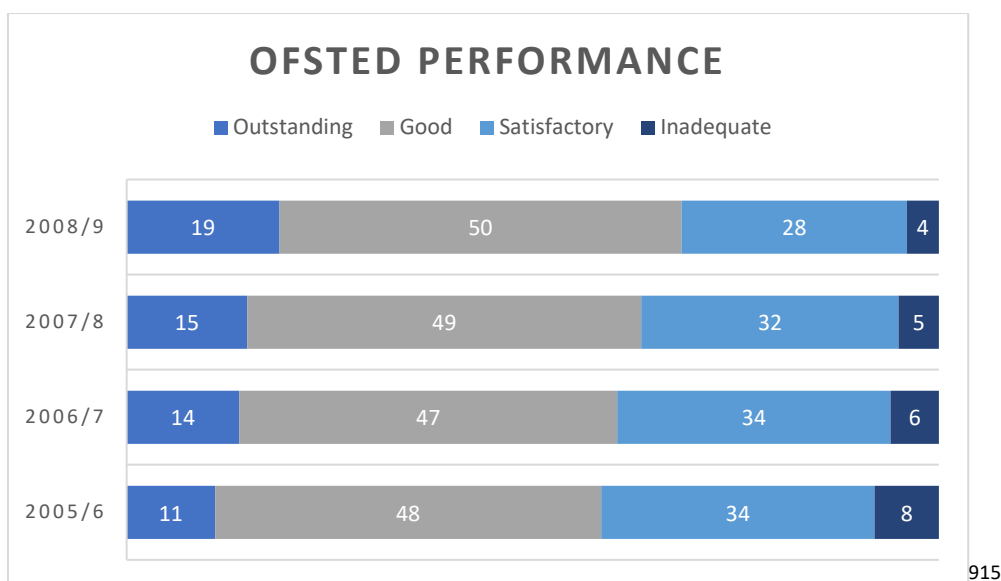
In the period between 2005/6 and 2008/9 the performance of schools inspected by Ofsted was as follows:

⁹¹¹ Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills* (22 November 2011), p42.

⁹¹² And such an assumption would be subject to the qualifications in the Ofsted report.

⁹¹³ Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2016/17* (13 December 2017), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666871/Ofsted_Annual_Report_2016-17_Accessible.pdf, last visited 22.09.18.

⁹¹⁴ As above, see the Ofsted report for the limitations of such an approach.



As can be seen there was an identifiable trend towards improvement. The number of schools classed as inadequate halved over this period, with the number of outstanding schools almost doubling.⁹¹⁶

This improvement appears to have taken a step back in 2009/10 as a result of the changes to the Ofsted regime. However, the 2005/6-2008/9 figures do allow some assessments of the level of improvement that can be expected following the changes to the inspection regime, thus allowing us to anticipate the level of improvement from 2009/10-2016/17.

The anticipated percentages and the actual 2016/17 figures are set out below⁹¹⁷:

	Outstanding	Good	Requires Improvement	Inadequate
Anticipated	32	48	23	-2

⁹¹⁵ Ofsted, *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2008/09* (24 November 2009), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248116/0011.pdf, last visited 22.09.18.

⁹¹⁶ the standard was different from the current Ofsted measurements, with the Ofsted measurements replaced in the 2009/10 assessments, resulting in a reduction in the percentage of outstanding and good schools See Ofsted (22 November 2011), p42.

⁹¹⁷ To the nearest whole number for the anticipated figures, combined with the negative figure for inadequate schools leading to a total in excess of 100%.

Actual figures	21	68	9	2
Difference	-9	+20	-14	+4

Thus, there are more inadequate and good schools than anticipated and less requires improvement and outstanding schools. The figure for inadequate schools is a negative, as the reduction rate would have brought the figure down to 0 prior to 2016/17. As a negative is impossible, this will be treated as 0,⁹¹⁸ and two percent removed from requires improvement, on the basis that the drive to improve would not have evaporated but rather moved on to the next worst classification. Thus, in relation to inadequate and requires improvement schools, there are 12% less in the system than anticipated. In 2016/17 this represents 2,634 schools. As discussed above, the money spent to date on academy conversion could turn around 1,714 schools, meaning that, on our rough and ready assessment 920 inadequate or requires improvement schools are better off now than they would have been based on pre-academy projections and the reallocation of conversion funds. However, on the outstanding side, 1,971 schools,⁹¹⁹ are worse off than they would have been in a non-academy system. Overall therefore, on these figures, there are 1,051 schools which are worse off as a result of the Academies Act 2010. As discussed above, this assessment is not intended to be comprehensive, and is merely illustrative. Its conclusions should therefore be read as indicative that a significant number of schools could have been better off overall if the Academies Act was not implemented and funding was instead spent on existing improvement measures.

Competition within the maintained sector

This scenario accepts the conclusions of Chapter 3, that an increase in voice will result in increased improvement, and therefore considers the scenario posed by Chapter 3, mainly an alternative way of developing an increased voice system, based on a market,

⁹¹⁸ Or statistically 0, as absolute 0 is unlikely to be realistically achievable.

⁹¹⁹ 9% of schools.

but without the legal structure of an academy. Many commentators have noted that many academy freedoms could be exercised by maintained schools.⁹²⁰ As a result they have argued that the conversion of maintained schools to academies is an unnecessary step.⁹²¹

Prior to the introduction of academies parents were given the right to express a preference for a school under section 86 of the School Standards and Framework Act 1998. Choice as a concept was therefore not linked to the creation of academy structures. Funding based on pupil numbers was also not a result of the academies programme.⁹²² As a result the potential for exit, voice, and loyalty to play a part in market-based education exists within the maintained sector. Moreover, greater independence from the LEA in relation to admissions already existed for voluntary aided and foundation schools. Thus, it is possible that greater independence could have been achieved through amendments to the level of control LEAs had over maintained schools, without changing the maintained status of these schools. This could have been achieved via statutory delegations.⁹²³ As a result it would have been possible for all of the freedoms enjoyed by converter academies to have been replicated without the need for the Academies Act 2010. This means that the process of setting up a company, transferring land, buildings, and contracts, etc. would not have been necessary, and thus, the conversion costs outlined above for converter academies could have been avoided.

However, the solution is more difficult in relation to sponsored academies. Whilst the rising tide may drive improvement across the board, there will always be some schools who improve slower than the average, or who misstep and decline. As a result, there will continue to be a need to develop a system for addressing the minority of schools that begin to fail. Prior to city academies, failing schools looked to the LEA to implement improvement processes and whilst some did improve,⁹²⁴ others did not and an

⁹²⁰ See for example, Leo (2010), p118.

⁹²¹ Leo (2010), p149.

⁹²² See for example the approach to the pupil premium discussed in Rowland (2014), p9.

⁹²³ See for example, section 49 School Standards and Framework Act 1998.

⁹²⁴ See for example some of those considered in Angel Solutions (2018), p19.

alternative arrangement for improvement would therefore be required. In March 2017 1,765 of the 6,087 academies were sponsored academies.⁹²⁵ As discussed above, based on a loose assessment of the figures, the money spent to date on conversions to academy status could have turned around 1,714 schools. As a result, if the government had legislated to allow further delegations to maintained schools, without introducing new legal entities in the form of academy trusts, there would have been sufficient funds available to improve the performance of almost all of the schools forced into sponsored academy status by March 2017. Since 48% of sponsored academies were not considered good or outstanding by Ofsted this means that 823 schools could have had the funds required to improve them if the Academies Act were not introduced. As a result, on a basic assessment of data, these schools appear worse off as a result of the Government's policy.

However, such a statement requires some qualifications. First, the above assumes that the introduction of greater freedoms into the maintained sector would be costless, i.e. there would be no expense required to make the change. As discussed above, Coase has demonstrated is unlikely to be the case in the real world.⁹²⁶ Whilst we can say that the set-up and transfer costs of academies would not be required, this does not necessitate that there would not be further costs for the LEA and schools in the administration of further delegations. Moreover, whilst increased funding allows greater resources to achieve improvement and turn around schools, 'throwing money' at a problem, without a structured plan, is unlikely to make it go away efficiently.⁹²⁷ Improvement is now understood to require governance and collaboration.⁹²⁸ LEA processes were clearly not working and so the Government would have had to develop another solution for implementing governance improvements for failing schools. This scenario is therefore more complex, and therefore more qualified than the first.

⁹²⁵ Hutchins (June 2017), p8.

⁹²⁶ See Coase (1988), p114.

⁹²⁷ Though some may say that is what the academised system did...

⁹²⁸ House of Commons Committee of Public Accounts (4 July 2018), p12.

As discussed, the above analysis of two scenarios represents a very rough estimate of alternate options. Counterfactuals are by their nature, impossible to prove,⁹²⁹ and the above is by no means a comprehensive appraisal of alternate options. The above, whilst indicative, should therefore be treated with caution and further research on the alternatives to an academised system should be explored before definitive conclusions are drawn.

Findings

Overall, this Part indicates that the introduction of the Academies Act was not the most efficient allocation of resources open to the Government. As a result, the Act's development is not consistent with Coase's theory. However, it should be noted that some of the assessments undertaken in this Part are very rough guides and further research would be required to definitively assess efficiency. For example, current evidence on costs of conversion is incomplete, and likely underestimates the total cost to the public purse of the introduction of the Academies Act. The academic benefits of the academised system are also unclear, with changes in measures and complications in drawing effective comparisons hindering an accurate assessment of academic benefits of academies. Financial benefits are slightly clearer, however these too come with caveats in relation to the appropriateness of comparisons. Thus, the costs and benefits of the system cannot at this stage be definitively assessed. Those that can be explored indicate that the academised system has not led to a significant groundswell of academic improvement or financial efficiency. Academies are, on average, on a par with their mainstream counterparts and whilst there are some shining examples of excellence,⁹³⁰ there are also considerable failings. Counterfactual possibilities are, by their very nature, inaccurate and subject to considerable criticism, however those considered above indicate that the academy system does not represent the best use of resources, either for improvement via increased voice or otherwise. Noting all of these caveats, this Part clearly indicates that the academy system does not represent an efficient use of resources. As a result, the application of Coase's theory finds that the

⁹²⁹ House of Commons Committee of Public Accounts (4 July 2018), p12.

⁹³⁰ As is true for almost every type of school

Government should not have introduced the Academies Act as a driver for improving the education system, as there were more efficient ways to achieve their goals.

Part 5: Summary

This Chapter has considered the Academies Act in light of the work on markets and transaction costs of Ronald Coase. It has explored the options for distributing finite resources within civil society, mainly markets and bureaucracy, and has established that the choice between the two will be determined by the transaction costs incurred by each option. Where transaction costs for the market are less than with a bureaucracy the market should be used, and vice versa. This Chapter noted that the distribution of liabilities in a transaction will impact on the ability to undertake exchanges to move to the optimal distribution of resources. As a result, the initial allocation of costs by Government was important in ensuring that the system runs efficiently. As we have seen, the distribution of liabilities within the maintained sector was significantly altered with the introduction of academies, and such re-distributions would only prove to be efficient under specific circumstances. These circumstances required that attainment increased, or schools became more efficient as a result of academisation.

Next this Chapter examined the costs of conversion and noted that a full assessment of costs was not possible. However, based on the cost information available the total conversion costs were projected as a rough estimate. This then led to a discussion on performance, both in terms of attainment and improvement academically as well as financial performance. It was noted that changes in Government policy on the measurement of test results had caused considerable difficulty in measurements over time, as had changes to Ofsted ratings and considerations. Further academic and professional examinations of results have used methodologies which do not fully account for all the factors necessary to ensure that a suitably fair comparison of performance is made. Nevertheless, initial indications are that academies have not led to a groundswell of improvement within schools. Nor have they led to a significant increase in financial performance.

Two alternatives to the Academies Act were then considered as rough counterfactuals, noting the difficulties with such an exercise. This suggested that overall a small but significant number of schools had lost out as a result of the Academies Act. As a result, this Chapter has found that the redistribution of liabilities caused by the Academies Act was not efficient and that the use of public funds in creating academies was also an inefficient use of money. Thus, whilst Chapter 3 demonstrated that the use of academies could legitimately be expected to drive improvement, this Chapter has concluded that the option to use the systems created by the Academies Act was not efficient and that there were more efficient options open to the Government. As a result, this Chapter concludes that the Academies Act's implementation was inconsistent with Coase's theories on appropriateness of markets and bureaucracy. Whilst therefore the creation of a new education system based on Hirschman's work was a legitimate option, altering the pre-academies education system in England by introducing the Academies Act was not consistent with Coase's theory on use of markets or bureaucracy and as such the Act in context is not underpinned by academic theory.

Chapter 5: Conclusion

This Thesis has explored the theoretical underpinnings for the Coalition Government's introduction of the Academies Act 2010 as a mechanism through which the market could be used to drive improvement in education. This Chapter will review the findings of the previous Chapters and draw them together in a final conclusion for this Thesis.

Chapter one

Chapter One introduced the education landscape within England. It demonstrated how the education system developed from a private market to public provision through layered, piecemeal development introduced over time. It set out the pre-Academies Act position on education, with a system mostly controlled, subject to delegations, by LEAs, which was steadily improving.

The Chapter then moved on to explore key concepts within this Thesis starting with competition. It set out how competition requires the ability to exit from schools, which in turn requires pupils to enter either another public school, pay for private education or be home-schooled. It demonstrated that choice and competition are related but not necessarily comparable concepts. Choice was shown to be separate from competition where parental choices do not impact schools. However, given the link between pupil numbers and funding, choice and competition within the English system were broadly comparable.

The Chapter then discussed the concepts of outcomes, attainment, efficiency, productivity, and improvement. It demonstrated that the Government relied heavily on exam results and Ofsted reports, which contained considerable difficulties. It also set out the risk associated with such a narrow range of measures in what was a much more complex field of choice for parents. While this Thesis has embraced the Government's definition of these concepts for the purposes of assessing alignment with the Government's strategy, it recognised that this was not without risk. Wider understanding of the priorities of parents, as well as broader reporting by schools, is necessary to ensure that the Government aligns its measures with parents' priorities for market or choice-based systems to be successful.

Chapter two

Chapter two explored the Government's intention to develop a market for education where competition was used to drive improvement within the confines of "certain guarantees and principles of equity".⁹³¹ It considered the difference between new and city academies, with the Coalition Government aspiring for system wide change rather than turning around individual failing schools.

Chapter two discussed the priority for improvement within education, through its relationship with the Government's wider policies. Reasons presented here included allowing social mobility and responding to the crisis in public sector financing through the introduction of competition and, in effect, self-help. This idea of community

⁹³¹ Birbalsingh (2013), p600.

supporting social aims was explored within the context of the Coalition Governments “Big Society”, where the potential for a wide range of sponsor organisations running schools linked to the desire of the Government to encourage charities and communities to provide public services. Such an approach was particularly relevant in the introduction of free schools, allowing parents and non-state groups to provide alternative education, and the rejection of traditional forms of accountability via LEAs. This tied in with considerations around freedom, both of parents to exit and of individual schools to innovate to improve.

Consideration was then given to the idea of choice and competition. It was shown that while competition was initially an express consideration, the Government underplayed this whilst passing the Academies Bill, instead focusing on choice.⁹³² Competition is however a fundamental part of the policy behind the Act. To this end Government used the work of Sturdy to demonstrate the legitimacy of such an endeavour by reference to academic theory. Sturdy represented a simplistic version of the work of Caroline Hoxby as a solution to producing a ‘tide that lifts all boats’,⁹³³ i.e. a system of competition which improves all participants in the market. The Chapter considered how Government attempted to adopt these simplified versions of Hoxby’s work, even referencing Hoxby as the Academies Bill progressed through Parliament,⁹³⁴ to justify the development of an academised system of education in England, though as was discussed later in the chapter, the Government failed to incorporate critical elements of Hoxby and so cannot be said to have truly embraced her work.

Next Chapter two considered Hoxby’s findings and their applicability to the English education system. This firstly involved a discussion of an ‘unofficial’ school choice mechanism discussed by Hoxby – Tiebout choice. This theory assumed that school places were dictated by the location of the family home, and thus to express choice parents would move to a new house to move schools. Whilst Hoxby found this evidence compelling, and there is some merit to the idea, the practical application of this activity as wider social behaviour was questioned. Tiebout choice was not considered to be a

⁹³² See Chapter 2.

⁹³³ Hoxby (2003), p339.

⁹³⁴ Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

freely available or widespread method of responding to changes in school performance. Chapter two therefore considered Hoxby's work on the link between competition and attainment of pupils. The Chapter reviewed Hoxby's findings that Charter schools increased attainment in comparison with the relevant focus group. However, it was noted that Hoxby's study had limitations,⁹³⁵ such as the immaturity of the system, and the low numbers considered, as well as the difficulty of applying her work to in-year admissions. Hoxby had introduced a crucial factor in the admissions process – the use of lotteries to admit pupils to charter schools, a characteristic not reflected in the English system pre or post academies. Hoxby therefore developed a system which indicated, but not definitively proved, that the charter schools examined increased pupil attainment against the control group.

Next the link between competition and productivity (efficiency) was explored. This work focusses on a voucher system in Milwaukee and Charter Schools in Michigan and Arizona.⁹³⁶ An important limitation for application of similar studies to England was also identified – Hoxby's measure of performance, the National Assessment of Educational Progress which is the long-term measure for the national attainment of all pupils in the USA. It was noted that, because of successive Governments' interference in the education system in England, an equivalent constant measure of attainment was not available. As has been shown, comparison of results between years, and even between exam boards, is problematic in England, seriously dampening any attempt to demonstrably replicate Hoxby's results in England. Hoxby assumed that, based on the differences in spend between 1970 and the date of her study, costs had increased significantly, and output had not kept pace, that this demonstrated that the education system had become inefficient and so there was sufficient slack in the system to increase efficiency and thus make better use of public money. Hoxby analysed what she expected to happen when schools within a system were exposed to competition, both expressed and in the form of Tiebout choice, and her theory was supported by the work of other economists.⁹³⁷ Having established a theory Hoxby then moved to test it by

⁹³⁵ Which Hoxby was clear on, as discussed in Chapter 2.

⁹³⁶ Hoxby (2003), p287.

⁹³⁷ For example Lee (1993), p405.

reference to her three sample areas. In each case Hoxby found that at a macro level the impact of competition on both productivity and attainment was a positive and significant increase. Hoxby did however recognise that in any competitive system there would be both winners and losers and estimated that it would take 4.5 years for the worst damage to children's education to be reversed.⁹³⁸ This represented a severe impediment to the political acceptance of her work, which was not picked up in Sturdy's analysis.⁹³⁹ Further, Hoxby's analysis, whilst compelling, was not without points for concern, including her failure to fully account for teaching to test, and schools ignoring wider educational activities which may assist pupils culturally, socially, personally, but not academically, which were likely to suffer in a drive for 'efficiency'. The Chapter therefore determined that whilst Hoxby's research is promising, further detailed examinations of schools, and consideration of longer-term impacts, is necessary before her conclusions can be fully accepted.

Having accepted that Hoxby's work was of indicative value the Chapter examined the extent to which the Government truly relied on Hoxby to underpin the Academies Act in academic theory. The Chapter considered that Sturdy's simplification of Hoxby's work failed to ensure that key aspects of Hoxby's case studies were reproduced. Thus, whilst the Government directly cites Hoxby as providing academic legitimacy to the Academies Act,⁹⁴⁰ her work and the Act are not compatible. Hoxby's samples all had fundamental differences to the market developed by the Academies Act. Key to this were the charter school admission arrangements - Hoxby's charter schools all used lotteries, whereas in England the Admissions Code continued to provide a wide range of admissions regimes.⁹⁴¹ Further, the inability of the English system to accurately and consistently measure attainment meant that actually testing Hoxby's theory in England was not possible on the available data.

This Chapter found that whilst the Government sought to rely on Hoxby as the academic underpinning for the Academies Act, Hoxby's work was not without criticism and was

⁹³⁸ Hoxby (2003), p337.

⁹³⁹ Sturdy (2007).

⁹⁴⁰ Hansard, HC, 514, 33, 19 July 2010, Mr Gove.

⁹⁴¹ See the Admissions Code, and commentary such as Benn (2012), PXIII.

not applicable to the English system. Chapter two therefore concluded that Hoxby's work was not capable of academically justifying the Academies Act. The Government's intentions were therefore not underpinned by an appropriate theory of competition and so this Thesis next moved to consider the extent to which other theories could offer the Act unintentional support.

Chapter three

Chapter three acknowledged, as set out in Chapter 2, that what the Government intended to do, rely on a market theory to justify the changes to the education system in England, had not worked. Its purpose was therefore to consider whether another theory could, unintentionally, support the changes implemented by the Act. The search for a theoretical basis for the Academies Act commenced by reviewing the drawbacks of applying Hoxby's work to the English system, including the mis-match of admissions arrangements, her focus on main-year admissions and her tolerance for the implications of schools failing. The Chapter then moved on to identify a theory that would address these points and considered the work of Albert Hirschman as offering an appropriate solution. Hirschman's work explored consumer responses to declines in quality when price remains constant and how these could be used to enable firms to recover from declines. Thus, Hirschman's focus was on how firms within a market could recognise and respond to declines in the quality of their products, with a view to continuing to operate. As was identified, had the Government considered Hirschman's work, they would likely have found the idea of a market with a recovery mechanism very appealing to prevent the third issue with Hoxby's work – the acceptance of school failure.

The Chapter then briefly summarised the key ideas in Hirschman's theory – the recovery mechanisms; exit and voice as well as the nature of quality and consumer sensitivity to quality. Hirschman identified that some consumers, reflecting the behaviour of some parents, were more quality conscious than others. Thus, consumers and parents could be placed on a scale between 'alert' (very responsive) and 'inert' (not responsive) to changes in quality. Hirschman theorised that as quality declined each consumer would reach a point where they would not tolerate the decline in quality any further and would express either the market option of exit, to move to a new provider, or the political

option of voice, that is making their dissatisfaction known to management without exiting in the hope that quality improved.

Exit was discussed in two forms, contingent-exit (i.e. rejecting an expected school, such as the local school) and true exit, i.e. moving schools following a period at the relevant school. Contingent-exit was considered at length by Hoxby, but Hirschman's theory also embraced true exit thus addressing the second drawback with Hoxby's work – the inability to account for exit outside of key transition years (i.e., the move to high school in year 7). The relative strength of exit within the pre and post Academies Act market was considered by the Chapter as well as the impact of exit – which could be both beneficial and detrimental depending on the circumstances. Because schooling of pupils is a legal requirement, the main constraint to exit within the pre-academies market was considered to be entry to a new school, as without entry, there could be no exit. This led to a discussion on the admissions system in England and the range of oversubscription criteria applied by schools as well as the behaviour of admissions authorities. It was demonstrated that allowing greater exit was, for the most part, not a priority of the pre-Academies Act system and that as a result capacity was sufficiently constrained by LEAs, as the main admissions authorities, to contain exits and preserve attendance at poorer schools.

The introduction of the Academies Act made academy trusts their own admissions authorities. The Chapter therefore moved on to consider the effects of academy schools in relation to exit. It found that the freedoms afforded to academy schools, such as to set their own PAN, allowed the potential for both an increase and decline in the availability of entry and thus exit – where schools increased capacity there would be more places for dissatisfied parents to go, where good academies reduced their PAN more pupils would be pushed to the worse schools in the area. However, the removal of an over-arching role for the LEAs in relation to admissions allowed this flexibility to be created. Thus, the section concluded that, with correct management by the Government, academies could be used to promote exit through reduced barriers to entry.

Two specific forms of academies were then considered. Firstly, free schools were identified as having the greatest potential impact on local markets. These schools

created, relatively quickly, a significant expansion of places within an area as they are new schools and so do not replace existing maintained schools. Thus, free schools have the ability to significantly reduce local barriers to exit. However, such significant bursts of capacity could simply have the effect of forcing the least popular school to close, thus resolving the excess capacity in an area and restoring the previous barriers to exit, until a new free school is set up. This would simply develop a potentially expensive ‘boom and bust’ system of school capacity without permanently reducing barriers to exit. Free schools also had the capacity to result in the segregation of alert and inert parents, with alert parents considered more likely to set up a free school,⁹⁴² and being more likely to successfully express exit and move their child. Thus, the system could become overly polarised, resulting in perceived apathy with deteriorating quality in one school and parents overly eager to exit a new school whose quality declines, leading to reduced opportunities to correct failings once identified. Free schools therefore addressed an issue in terms of capacity making exit viable, however, unless controlled they threatened the stability of the market and increased the chances of schools closing – contrary to the Government’s intentions.

The second type of academy structure considered were chains. Chains were identified as groups of schools that have a common form of management and/or control. The Chapter identified that chains have a tendency to ‘cluster’ or take over schools in a set geographical area – a behaviour more recently endorsed by the Government.⁹⁴³ This behaviour however risks reducing competition and creating greater barriers to exit. This is because chains can give individual schools substantial or very little autonomy. Where there is substantial autonomy the clustering of chain academies could be irrelevant, and the system would operate as if they were all individual academy trusts. However, chains are in reality unlikely to allow their schools to reach a tipping point to close. As a result, even chains that cluster but have substantial delegations may act more like an LEA and restrict admissions in an area to protect their unpopular schools. Further, chains are likely to create a common ethos and brand. Where this ethos is the cause of a decline

⁹⁴² Though the Chapter noted that most free schools were not set up by parents

⁹⁴³ See for example comments by Sir David Carter in his speech “Working Together to Drive Improvement” at the Academies Show, Birmingham, 22 November 2017.

in quality, the entire chain could be expected to suffer a decline and so the effect of clustering creates further barriers to exit. Chains also have the potential to exceed the control of LEAs in the maintained sector as there are no statutory delegations from a chain to individual schools. As a result, whilst chains did not necessarily result in barriers to exit, their clustering and potential levels of control make it a significant possibility. Chains were found to have significant potential to both expand and constrain entry and thus barriers to exit.

Chapter three then moved to consider Hirschman's second response mechanism – voice. It was recognised that voice had been a feature of the English schools system for some time, however, voice was not considered by Government to be sufficiently effective to drive improvement, as schools always had the choice to ignore voice while other threats, such as exit, were not available. The introduction of academies created the potential for the position of voice to both improve and decline. The structure of academies, as companies limited by guarantee, meant that they were not accountable to the electorate unlike maintained schools. The role of parent governors, and their relative importance on academy boards was also considered, with the Government's minimum requirements for parent governors varying over time. The chapter found academies were free to increase parent engagement through greater representation on the board, but it was also easier for members of an academy to side-line and silence parent governors.

As with exit, the implications on voice of free schools and chains were also considered. On free schools, it was noted that where the school was set up by parents,⁹⁴⁴ voice could be dramatically expanded, with a material number of extra parents on the board and parent members of the academy company. Parent-managers may also be significantly more alert to the concerns of other parents and so could be substantially more responsive to voice. However, the level of voice is unlikely to be stable – with the children of parent members and directors eventually leaving and managers potentially hardening against voice. Where free schools can create bursts of responsiveness to

⁹⁴⁴ Though the vast majority are not – see Appendix 3, where parents would presumably fall within the 'other' category.

voice, chains are capable of doing the alternative. In multi-academy trusts for example, one board manages the entire trust, with local governing bodies, or advisory boards, given a varying amount of autonomy for each school. As was shown, the role of parent governor could be created at their local level rather than the board, and thus, parents could be completely excluded from chain wide decision making. Where chains do not delegate significant amounts of control, voice could also be ineffective because the local governing bodies would be unable to resolve issues raised by parents. Chain directors could be more difficult to engage with than local governing bodies, creating increased barriers to voice for parents. Chains could therefore frustrate voice in a similar way to exit if their governance structures are not responsibly regulated.

Chapter three then moved on to consider how exit and voice responded when put together. It found that where exit and voice were both viable options, exit was normally preferred. The consequence of this is that the system did not necessarily operate in such a way to promote the recovery of failing schools. Using voice as a second-best alternative to exit did not achieve the Government's desired outcome, as the system works largely in line with pre-academy models or Hoxby's theory depending on the availability of exit. Where exit acts only as the residue of voice, Chapter three found that voice itself will again decline in importance, with exit being used to remove the most troublesome parents and reduce motivation to remove barriers to exit and promote greater choice. The optimal balance of exit and voice was recognised by Hirschman as a challenging concept, and so he introduced the concept of loyalty which allowed parents recourse to exit, but encouraged them to express voice instead. The promotion of loyalty therefore creates a threat of exit, if voice is not responded to, and so encourages schools to respond to voice. Thus, much like the Coalition Government's aim, loyalty produces exit as motivation to empower voice, thus a market system where voice is used and responded to, but without parents actually needing to resort to exit. This balance was recognised as incredibly challenging to achieve, but if the Government

invested sufficient political will,⁹⁴⁵ Hirschman's theory could offer the Academies Act an academically supported model to drive improvement.

Hirschman's theory of exit, voice and loyalty therefore provided a theoretical backdrop on which the Academies Act can be considered. The concepts of choice and parental empowerment, tied to theoretical consequences of poor performance, but without the disruption, headlines and political fallout produced by mass school closures, was all accounted for in Hirschman's theory and aligned to the Government's aims discussed in Chapter two. As a result, the Chapter concluded that the Academies Act could be underpinned by Hirschman, notwithstanding Government's complete failure to recognise this.

However, examining the position critically, all the Government had actually achieved via the Academies Act was to encourage schools to pay more attention to parents when they exercised voice – a pre-existing recovery method. This Chapter therefore acknowledged that the Act could be underpinned by Hirschman's work, but left an important question unanswered – mainly was the Act a necessary and proportionate response to ensuring that schools acted on voice?

Chapter four

As was discussed in Chapter one, the education landscape prior to the introduction of the Academies Act was somewhat muddled, with layer after layer of reform and change overlapping with previous systems which were not completely repealed – such as the continued existence of a limited number of grammar schools. Whilst there was some choice within the system, the admissions system created a significant barrier to entry which constrained parents' ability to express contingent or true exit. Thus, the system was closer to a bureaucratic model, with a controlling consciousness, rather than a market system and the invisible hand.

⁹⁴⁵ Recognising that at this stage no political will had been exerted, because the Government had not considered Hirschman's work.

Picking up on the conclusion of Chapter three, Chapter four considered the work of Ronald Coase, on the interplay and implications of bureaucratic and market systems as well as the appropriateness of governments intervening in social activities, with a view to determining if the development of a market system was the appropriate response to the Government's need to increase the rate of improvement. Coase, whilst not opposed to either model of service provision, maintained that in choosing between markets or bureaucracy the costs and benefits of each had to be considered in order to establish which was more efficient, or rather the least worst option – as Coase clearly demonstrated that optimal efficiency in the real world was an impossibility.⁹⁴⁶ Coase's theory explained the impossibility of optimal efficiency through the effect of transaction costs – the costs involved in making deals to efficiently use resources, which could prevent otherwise efficient transactions from happening.⁹⁴⁷ Thus when considering the development of a market for the efficient use of resources, consideration needed to be given to the initial application of legal rights, to ensure that as many efficient transactions as possible are able to occur. To this end Chapter four considered the allocation of costs developed by the Academies Act and those that existed prior to 2010. In particular, transportation costs were considered where it was suggested that the allocation of these costs to LEAs may have the effect of allowing greater use of resources. Other costs, such as the cost of funding academies and maintained schools were explored. This section concluded that the effect of the Act was not to eliminate costs or improve their initial allocation and thus improve efficiency through transaction costs reductions or increased achievement of transactions.

Next the Chapter explored the process of academisation. The Chapter considered the costs involved in converting maintained schools to academies. It was noted that the exact figures for all costs were not available and thus some conservative estimates were employed, based on data from the Government and educationalists.⁹⁴⁸ As a result, this exploration was indicative, not definitive. the indicative costs of conversion were

⁹⁴⁶ Coase (1988), p114.

⁹⁴⁷ Coase (1988), P115.

⁹⁴⁸ See Chapter 4.

estimated at approximately £856.46m,⁹⁴⁹ and the estimated total cost of the academised system was up to £2.48bn.⁹⁵⁰ To consider whether this represented an efficient use of public funding, the Chapter explored the benefits of academy conversion as assessed by a variety of academic and state research papers. All of these papers had particular drawbacks in relation to their comparisons and methods, demonstrating again the difficulty of actually measuring key concepts in the education sphere such as ‘improvement’. This review demonstrated, with some caution given the difficulty of accurately measuring and comparing performance,⁹⁵¹ that academy schools as a whole were on average level with the maintained sector in terms of improvement, though there were significant variations between academies given the multiple facets of academies. As a result, the Chapter could not find a marked improvement in quality resulting from the public expenditure on academy conversion.

Having considered whether academies had higher levels of improvement, the Chapter then moved on to consider whether they were more financially efficient. Academy finances were exceptionally varied, with some chains having significant deficits and others amassing considerable reserves. The Chapter considered evidence from the Public Accounts Committee to review the position of academies and schools generally and found that as a general position, it could be said that academies were more entrepreneurial, generating more income from their assets, and the sector had significant reserves. There was indicative evidence of academies being more efficient than maintained schools. However, this difference was slight and represented a huge variation between academies and chains, some of which were guilty of considerable financial misconduct.⁹⁵² Thus, the Chapter found that the Academies Act developed a new form of school governance which cost a substantial amount of public money, but which had failed to materially eclipse maintained schools in terms of improvement or efficiency.

⁹⁴⁹ To two decimal places, £856,459,363.92 in total.

⁹⁵⁰ To two decimal places, £2,482,172,560.04 in total.

⁹⁵¹ See Chapter 4.

⁹⁵² See for example discussions in the House of Commons Committee of Public Accounts, Academy Schools’ Finances; Thirtieth Report of Session 2017-19, 26 March 2018.

The Chapter then considered what the Government could have done with this funding if it had not invested in the conversion of maintained schools. The risks associated with counterfactual possibilities and the limitations of their reliability were acknowledged before the Chapter moved on to consider alternate uses for the funding allocated to academisation. In considering the potential counterfactual scenarios it used data produced by the National Audit Office to consider the cost of improving the Ofsted rankings of schools within the previous maintained sector.⁹⁵³ This suggested that the funds used for conversion could have been better spent on improving inadequate and requires improvement schools within the pre-existing governance structure. This analysis concluded that 1,051 schools are worse off as a result of the introduction of the Academies Act 2010. Given the number of schools in England, this figure was not considered substantial, but was still considered significant.

Chapter four concluded that the redistribution of liabilities caused by the Academies Act was not efficient and that the use of public funds in creating academies was also an inefficient use of money, as there were more efficient options open to the government. Whilst the introduction of the Academies Act was a legitimate option open to the Government (as a result of its consistency with Hirschman), the Government's decision to implement the proposed Act was inconsistent with Coase's theories on appropriateness of markets and bureaucracy, and the decision was therefore not underpinned by supporting academic theories. Consequently, the development of the Academies Act did not represent the best use of public funds in comparison to the other available options.

Moving Forward

Given the popularity of educational reform discussed in Chapter 1, it is only a matter of time before it is considered again. How then can Governments move forward from the current semi-academised system in a way that maximises efficiency? As has been shown above, taking sufficient time to thoroughly consider academic theories and their

⁹⁵³ Comptroller and Auditor General (11 January 2006), p15.

application to the English system is vital to prevent further missteps such as the reliance on Hoxby. This section considers some suggestions drawn from earlier Chapters which merit further consideration in any reform.

Firstly, the Government should learn a key lesson from the reforms developed by the Academies Act; structures are not important. Whilst the structure of the schools' system can be relevant, this Thesis has shown that many of the freedoms and 'advantages' of new academies can be replicated in a maintained schools' system with the LEA continuing with its pre-2010 role. As a result, increasing choice and competition does not rely on having an academised or LEA controlled system. Thus, increasing statutory delegations to maintained schools and implementing equivalent compulsory delegations in chains would both generate greater freedoms for schools to expand PANs and allow them to respond to exit and voice.⁹⁵⁴ This is not an invitation for Government to overhaul school structures once more, i.e. by spending further money abolishing academies, rather a recommendation that school structures are left alone while Government priorities other reforms. Given the layering of historic structures in the pre-2010 system, an additional layer in the form of academies should not prove problematic.

Chapter 3 found that Hirschman's theory on exit, voice and loyalty can produce the necessary environment to achieve the Governments original ambitions. As a result, the Government should consider the detail of how Hirschman operates within the existing English system. Detailed examination of how schools behave, what parents want and how competition operates across geographical boundaries should enable the Government to alter its behaviour to encourage loyalty within individual schools. Currently the emergence of loyalty is a quirk, the production of a system not intended to generate loyalty. If, however the Government actively encouraged the production of loyalty then schools may become more responsive and parents more engaged. This would reduce the number and extent of school declines and so create the environment for levels of improvement to finally exceed pre-2010 forecasts.

⁹⁵⁴ Though delegations for schools which are rated as requires improvement or inadequate should reasonably differ from good or outstanding schools to recognise the required levels of support.

Having considered Hirschman's theory, the Government should reflect on the admissions structures in England. Ensuring more delegated control over PANs for both maintained schools and chain academies would allow individual schools more power to expand or contract because of market forces. This increases the chances of greater capacity within the system, enabling parents to have more viable choices when considering exit or contingent-exit. Equally reforming oversubscription criteria to reduce barriers to entry would increase the number of viable alternatives for parents and may prevent tactical applications to poor schools, in order to avoid the worst local schools.⁹⁵⁵ An example of reform could include the removal of oversubscription criteria based on religion. Given the higher levels of performance in religious schools, this would allow greater general access to better schools, but need not alter curriculum or religious ethos, allowing state funded religious education to continue. As a result, reform to the Admissions Code and control of PANs could generate an environment where there is greater choice and exit, thus moving closer to the balance required for loyalty.

Increased support for parents would also help promote the conditions for greater loyalty within the schools' system. Reducing transportation costs, for example by allowing free transport to the nearest outstanding school, and every school in between, would mean that increased choice would not be as constrained by parents' financial circumstances. Thus, choice would be expanded, social inequalities reduced, and the circumstances discussed in Chapter 3, where LEAs, rather than parents, look to initiate transactions to reduce their costs, would be engaged.⁹⁵⁶ This approach would therefore reduce transaction costs, increase competition and so efficiency as well as arguably reflecting Michael Gove's "principles of equity."⁹⁵⁷ Support for parents could go further with a revised role for the LEAs as guardians of parents interests, given the transfer of their functions to Schools Commissioners. LEAs could provide resources and support to show parents how to complain, select and move schools and support them to engage with school leaders. This could combat some of the potential drawbacks faced by inert parents in Chapter 3 and so increase the chances of successful voice/exit.

⁹⁵⁵ As discussed in Chapter 3

⁹⁵⁶ LEAs paying parents not to use LEA provided home-school transport.

⁹⁵⁷ Birbalsingh (2013) P600

Ultimately the quality of information about schools needs to improve across the board, to combat misinformation and marketing activities by more affluent schools. This could be achieved by the Government first understanding more about parents' priorities and then reforming the role of Ofsted to measure more of these. League tables could then be built into this new measure to provide a dashboard of performance for each school. As discussed in Chapter 1, such a dashboard could consider issues including instances of bullying, pupil satisfaction, building and facility quality, sporting achievements and extra-curricular activities as well as current measures of performance. If LEAs are given a role as champions of parents' interests, they could also feed into new measures on responsiveness to parental concerns, which would further empower voice. A more rounded assessment of quality should enable parents to make more informed decisions, tailored to their priorities, and putting all the relevant data in one place will reduce transaction costs faced by parents when considering schools.

Moving forward the Government have a range of options to explore when considering how to increase current levels of improvement. Given the recognised potential for Hirschman's theories to enhance performance this Thesis would recommend the above to the Government for consideration. As discussed, any further improvement activities should be sufficiently researched and developed before implemented to maximise value for taxpayers money.

Final Conclusion

This Thesis has explored the nature of the English education system and the rise and development of academies introduced under the Academies Act 2010. It has shown that the Act inappropriately relied on the work of Hoxby and thus was not aligned to the Government's stated academic underpinnings. Nevertheless, the work of Albert Hirschman could be used to justify the Government's approach and achieve the overarching aims of the Act.

However, when examined in the context of Coase's work, it is clear that the introduction of the Act was not an efficient use of public funds and has resulted in around 1000 schools in England being worse off than they otherwise could have been, had the

Government used funding differently. Going forward, this inefficiency could be improved, through greater alignment between Government activities and Hirschman's theories, as discussed above. Such an alignment could have been implemented via the pre-2010 maintained system and as a result the Government's aim of greater choice and strengthening voice did not, and will not, require the Act. Thus, the Government's focus on structures within the education system has resulted in an inefficient use of public funds. Moving forward, assuming governments continue to value competition to drive improvement, the emphasis on academies as a competitive school structure should be abandoned and greater focus given to understanding and supporting parents as well as reducing barriers to school admissions. This does not mean the abolition of academies; the wasted funding so far has come from the money spent on changing structures, and so spending more money to change them back will not promote increased improvement. Thus, the English education system's assortment of school types should continue until such time as a sufficiently well researched and tested alternative arises. The recommendations of this Thesis involve the Government taking a more robust approach to academic models and research and committing to embracing fully solutions which achieve the Government's desired result.

The review of the Academies Act has demonstrated that when governments fail to fully consider the theories they choose to rely on when developing legislation and associated policies, errors are made, and the intended results are unlikely to be achieved. Further, that in order to understand society's motivations, Government should seek to explore all relevant factors, not just those easiest to measure. This should serve as a stark reminder that, in future, policies and legislation should be fully and robustly researched, analysed and aligned with the relevant theories before being implemented. Whilst the amounts of money wasted by the Governments' failures are not significant in terms of overall public spending, successive Coalition and Conservative Governments have allowed thousands of schools to improve less than they could have done had the Coalition Government properly examined Hoxby's theory and aligned their policy to it,⁹⁵⁸ or another relevant theory, or had subsequent governments taken corrective

⁹⁵⁸ Assuming that Hoxby is correct that her theory will lead to improvement

action. It can only be hoped that in developing statutory or policy responses to address the issues identified in this Thesis, the Government take this reminder to heart.

Appendix 1 – Table of English schools in 2014

Type of School	Religious Character	Employer	Owner of Land	Funding Source	Admissions (subject to Code) ⁹⁵⁹	Selective	Curriculum Setting	% of Primary Schools 2001/2	% of Secondary Schools 2001/2	% of Primary Schools 2014	% of Secondary Schools 2014
Community schools	No	LEA	LEA	LEA	LEA	No (excluding Grammar Schools)	National Curriculum	62.5	62.7	51.2	22.3
Foundation schools	Few	Governing body	Governing body or a charity	LEA	Governing body	No	National Curriculum	2.1	17.5	3.8	9.5
Voluntary aided schools	Almost all	Governing body	Trustees hold land on trust for school	LEA (90%) and other body 10%	Governing body	No	National Curriculum	21	16	20.5	9.7

⁹⁵⁹ The Admissions Code.

Voluntary controlled schools	Almost all	LEA	Trustees hold land on trust for school	LEA	LEA	No	National Curriculum	14.4	3.3	13.8	1.5
Academies	Few	Academy Trust	Academy trust – legal interest varies	Direct from DfE via funding agreement (& sponsorship funds for city academies)	Academy Trust (Some city academies vary Code)	No (unless previous school was)	Academy Trust	0	0	10.7	56.9
City Technology College	No	College Company	College Company	Direct from DfE via funding agreement	Governing body	Yes	Governing body	0	0.4	0	0.09
Private Schools	Some	Head teacher with backing of	Governing body and head teacher	Privately funded through fees from parents	Governing body and head teacher	Yes	Governing body	Excluded	Excluded	Excluded (approximately 7% of pupils attend Private Schools)	

		governing body		(may also have charitable trust funds)						
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Appendix 2 – Glossary

Types of School

Maintained School	A community school, voluntary controlled school, voluntary aided school, grammar school or foundation school
Community School	Schools funded and run by the LEA without religious designation or foundation status
Foundation School (previously Grant Maintained Schools)	Schools which are run by a charitable foundation and funded by the LEA
Voluntary Aided School	A school which is funded by the local authority and by a charitable organisation, normally a religious institution, and run by the charitable organisation
Voluntary Controlled School	A school which is funded by the local authority but which is run by a charitable organisation, usually a religious institution
Private School	A school operated outside of the public sector and funded in whole or part by fees
Grammar School	A school funded by the local authority which operates an academically selective admissions policy
Secondary Modern	A maintained school which admitted pupils whose test results did not enable them to go to a grammar school. All secondary moderns have now become community schools
City Academy	Academies set up by the Blair & Brown Labour Governments
New Academy	An academy school set up under the Academies Act 2010

Converter Academy	A new academy which was formally an outstanding or good with outstanding features school which elected to convert to an academy without a sponsor
Sponsored Academy	A new academy which was sponsored by a DfE approved sponsor in order to convert to academy status
Free School	A new academy which did not replace a pre-existing school on creation but was set up as a completely new school.
Academy	A city academy or new academy
City Technology College (CTC)	Independent selective schools funded by Government and run through charitable companies which specialised in technology and practical skill and were set up by sponsors in urban areas by the Conservative Government under the Education Reform Act 1988
Special Schools	Community or foundation schools which provide education for pupils with Special Educational Needs
Independent schools	Academies, private schools, City Technology Colleges and other schools not maintained by the LEA
Faith school	A voluntary aided, voluntary controlled, private school or academy which has a religious character and is controlled by a religious institution
First School	A school in a three-tier school system which takes pupils from year one to year four
Middle School	A school in a three-tier school system which takes pupils from year five to year eight
High School	A school in a three-tier school system which takes pupils from year nine to year eleven (and sixth form if the school has the facilities)

District School	An American school which is controlled by the school district it is located in and which accepts pupils based on their location within its catchment area
Charter School	An American pre-cursor to the Academy. A school, which is given a licence from the relevant authority for the State/District in which it is based. Charter Schools are usually free, normally admit by lottery and must compete with District Schools to draw pupils away in order to survive.

Terms used

Academy Trust	The company limited by guarantee which is the legal mechanism through which an Academy operates
Admissions Code	The code produced by the DfE which sets out which Admissions Criteria may be applied and how to apply relevant criteria
A-Level	The General Certificate of Education Advanced Level taken following Key Stage 4 & before university. The two-year programme is made up of the first 'AS' year and the second 'A2' year, both of which provide a qualification.
Appointed Governor	A Governor appointed to the post by the Local Authority, Foundation, Diocese, Members or other controlling interest
Chain	A group of two or more academies which have linked governance arrangements, via a Multi-Academy Trust, Umbrella Trust, Sponsors or otherwise.

Department for Education (DfE)	The Government Department with responsibility for schools from time to time. During the development of academies the Department has had several names however it will be referred to as the Department for Education or DfE throughout.
GCSE	General Certificate of Secondary Education, the standard set of qualifications taken at Key Stage 4 in a range of subjects.
Governor	A member of the governing body of a school, may also be a director and trustee in Academy Trusts.
Governing Body	The corporate entity, in the case of non-Academy and CTC schools, responsible for running the school. Takes the form of the board of directors/trustees for academies.
Free School Meals (FSM)	An entitlement to free meals at school where parents receive any of a range of benefits, e.g. income support, universal credit, jobseekers allowance.
Local Governing Body	A committee of the Multi Academy Trust board of directors which may be advisory or have some control over an academy in the MAT, subject to the scheme of delegation.
Members	The members of the Academy Trust as defined by the Companies Act 2006
Multi-Academy Trust (MAT)	An academy company whose articles of association permit it to run more than one Academy
Ofsted	The Office for Standards in Education, Children's Services and Skills which evaluates and regulates provision of services to young people.
Oversubscription Criteria	The criteria that each school uses to evaluate applications where it is oversubscribed, for example giving priority to Pupils of a specific religion. Oversubscription Criteria must comply with the Admissions Code.

PAN	Published Admissions Number. The number of pupils a school will admit per year group. Where applications exceed the PAN the school will apply its Oversubscription Criteria to admit the PAN number of pupils from the applicants.
Parent Governor	A parent of a pupil at the relevant school who is elected by the other parents, or co-opted where there are insufficient candidates, onto the Governing Body of the school. Parent Governors are required at all types of school.
Regional Schools Commissioners	Regional directors of the Department for Education able to exercise the functions of the Secretary of State in relation to under performing schools (from 2015) and academy governance.
SATs	Standard Assessment Tests which form part of the National Curriculum and measure performance at the end of Key Stages 1 & 2. SATS previously measured performance at the end of Key Stage 3 but these were abolished in 2008.
Sponsor	An individual, statutory or corporate entity who is given control of an Academy, usually with the intention to improve attainment. The Sponsor will be the main Member of the Academy Trust
Synergy	The production of a cost efficiency as a result of an organisational merger, i.e. through staff reductions, economies of scale, etc.
Umbrella Trust	A holding company for multiple Academy Trusts
Voucher Programme	A system where the state provides a subsidy to pupils to attend a private school. Programmes vary widely including ranges in level of subsidy, type of school covered and types of pupil the programme is open to.

School Timeline

School Year	Pupil Age	Key Stage	Exams	Comments
0	3-5	0		Nursery & reception, possible staggered commencement of schooling, dependant on date of birth
1	5-6	1		Start compulsory education at Primary (2 tier) or First School (3 tier)
2	6-7	1	SATs	
3	7-8	2		
4	8-9	2		Move to Middle School (3 tier)
5	9-10	2		
6	10-11	2	SATS	Sit 11+ (Selective)
7	11-12	3		Move to Secondary School (2 tier)
8	12-13	3		Move to High School (3 tier)
9	13-14	3	Internal exams only	
10	14-15	4		
11	15-16	4	GCSE/EBacc	Finish Secondary/High School
12	16-17	5	AS	Alternative options, including apprenticeships, available instead of sixth form

13	17-18	5	A2	Completion of compulsory education.
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Published Results

Acronym	Meaning
5A*-C GCSE	The proportion of pupils at the school, expressed as a percentage, obtaining at least 5 GCSE's at A*-C. This measure includes equivalent qualifications (e.g. EBacc)
5A*CEM	The proportion of pupils at the school, expressed as a percentage, obtaining at least 5 GCSE's at A*-C including English and Maths. This measure includes equivalent qualifications (e.g. EBacc)
Progress 8	A measure of performance in eight subjects including Maths and English introduced in 2016.

Appendix 3 – FOI Response reference FOI 2019-0016727

FOI 2019-0016727 CRM:0189014

ACCOUNT, Unmonitored <Unmonitored.ACCOUNT@education.gov.uk>

Tue 14/05/2019 16:10

To: Mason, Alistair <a.mason2@lancaster.ac.uk>

Dear Alistair Mason,

Thank you for your request for information (FOI 2019-0016727), which was received on 28/04/2019

You requested:

On your sponsor application form (available here: <https://www.gov.uk/government/publications/academy-sponsor-application-form>), to sponsor an academy school, you ask (on page 3) "How would you describe your organisation?" Have you compiled a breakdown of these results, so that you can say for example 'X% (or [number]) of all sponsors are Secondary Schools', and if so please could I have a copy of this break down?

I have dealt with your request under the Freedom of Information Act 2000.

Here is the breakdown of approved sponsors by sponsor type.

Sponsor Type	Number of Approved Sponsors	Percentage of Approved Sponsors
Academy Converter	799	67.1%
Business Sector	23	1.9%
Charitable Sector	92	7.7%
Diocese/Archdiocese	86	7.2%
Education Business	29	2.4%
FE Sector	62	5.2%
Free School	13	1.1%
Government Organisation	3	0.3%
Independent School	7	0.6%
Local Authority	1	0.1%
Other	17	1.4%
Prospective Academy Converter	36	3.0%
PRU	1	0.1%
Sixth Form Centre	1	0.1%
Special School	6	0.5%
University	15	1.3%
Grand Total	1191	100.0%

Source: Academy Sponsor Contact List, available at <https://www.gov.uk/government/publications/academy-sponsor-contact-list>. This information is updated quarterly.

If you have any queries about this letter, please contact us. Please remember to quote the reference number above in any future communications.

If you are unhappy with the way your request has been handled, you should make a complaint to the Department by writing to me within two calendar months of the date of this letter. Your complaint will be considered by an independent review panel, who were not involved in the original consideration of your request.

If you are not content with the outcome of your complaint to the Department, you may then contact the Information Commissioner's Office.

Yours sincerely,

Data and Insight Team

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