

Governors' Agenda

Number **Thirty Seven**

Summer Term 2007

A Governors' Journal produced by David
& Irith Sassoon for Governors of Schools
associated with

Schools Support Services Ltd

SCHOOLS SUPPORT SERVICES LTD

This Term's Issue

Editorial Are British Children Happy?	Page 2
Leading Schools in the 21st Century Report of Pricewaterhouse Cooper	Page 3
Trust Schools	Page 7
Admissions and the new Code of Practice	Page 8
Glossary of Terms Used in This Issue	Page 10
Legal Update for Schools	Page 11

Editorial

Are British Children Happy?

A large part of my time at school was a miserable experience for me. I grew up in Kolkota (called Calcutta at that time), India, at an English-medium, all-boys' school established by Methodist missionaries and modelled on the British public school system. The key reason for my misery was that I – like many of my friends were – was terrified of the draconian discipline to which we were subjected. While boys were sometimes praised when they achieved well and brought credit to the school with their exemplary behaviour, more often than not, they were severely castigated for failing to achieve 'proper' standards in their work and behaviour with public humiliations, long detentions and corporal punishment – either smacking or caning.

Often, I looked on helplessly as one or more of my friends were given six of the best and the thought crossed my mind: "There but for the grace of G_d, go !!" This was why I resolved early in life, when I became a teacher, that promoting children's happiness was for me going to be a very high priority. This, in no way, meant that achieving high standards was to be a casualty of that happiness; far from it. When children are challenged (provided that they see the relevance of what they are doing), they will be happy. I believed that fervently and the practice has borne this out.

I welcomed the legislation that proscribed corporal punishment in this country from all maintained schools in 1987 and was jubilant when more recently it was banned from independent schools as well. The seminal DFES publication issued in 2003 was titled *Excellence and Enjoyment*. More recently, the *Every Child Matters* (ECM) Agenda set out one of the five key aims for a young person, i.e. that the child must be happy and achieving.

So why is it that a Unicef study of 21 industrial countries discovered that Britain's children's are the unhappiest? Not only do they drink the most, smoke more and have sex with greater frequency than their peers in other countries; they are also unhealthy (obesity has featured prominently in the press for some considerable time), dislike school more and are the least satisfied with life. Forty indicators were brought together in this study, which included relative poverty, child safety, educational achievement, relationships with parents and drug misuse.

That British children spent little time eating meals with their parents and mistrust their classmates add to the bleak picture. The United Kingdom is at the bottom of the wellbeing league table in *Report Card 7: An overview of Child Wellbeing in Rich Countries*.

Professor Bradshaw, one of the authors of the report, asserts that the sharp rise in child poverty from 1979 to 1999 and the increasing numbers of young people not in education, employment and training (the NEETs) are proving daunting and difficult to reverse despite the big increase in spending on health and education. Amongst the most worrying of findings, according to him, was the British children's perception that they are among the worst off. Those aged 11 to 15 fell into the bottom six countries for enjoying school life and feeling satisfied with their lot.

The Netherlands headed the league table and Scandinavian countries – Sweden, Denmark and Finland in 2nd, 3rd and 4th positions respectively - dominated the top half. Children from the United Kingdom and the United States languished at the bottom of the table in the last two positions.

Professor Sir Albert Aynsley-Green, the Children's Commissioner in England, hoped that this report would prompt Britain to look at the underlying causes of failure to nurture happy, healthy children.

However, Ofsted countered this finding with a survey of its own on 30,000 children (from the ages of nine to 15) who revealed that they were mostly happy. Only 5% were found to be unhappy. Altogether, 47% said that they were very happy and felt safe at school with similar numbers saying they were "quite happy and safe".

Ofsted surveyed the children on-line over the past year as part of the joint area reviews on local authorities. Of the 13 questions covering children's health, happiness, involvement in the community and school events and schoolwork, the one on the enjoyment of life elicited the most positive responses. The happiest children were in Kensington and Chelsea in London.

Boys appeared to be happier than girls. However, one in seven children felt that the areas around their schools were unsafe and most wanted more protection from bullies and gangs. Many, who said that they were not doing very well academically, wanted their lessons to be more exciting and others wished that their classmates would behave.

Asked what would make their life more enjoyable, most said, "Having more money to buy the things I want." Hmmm. It appears that it takes much more than the abolition of corporal punishment to make our British school children happy.

Leading Schools in the 21st Century

Report of Pricewaterhouse Cooper

I Introduction

In April 2006, the DfES commissioned Pricewaterhouse Coopers to undertake an independent research study on school leadership. The aims of the study were to provide a comprehensive and independent account of the existing, emerging and potential models of headship and the wider leadership team that that were effective in raising standards.

II Headteachers

PwC is very complimentary in its findings on headteachers. There is a lot about which headteachers can be proud, according to the report. Ofsted estimates that 80% of headteachers provide good, very good or outstanding leadership. Surveys carried out by the National College for School Leadership (NCSL) revealed that society thinks that headteachers (compared to chief executives in other professions and businesses) provide particularly good examples of leadership.

However, PwC stresses that there is no room for complacency. The report warns that many school leaders (i.e. headteachers and members of the senior leadership teams) "are struggling to meet all the demands currently being placed on them" created by the Every Child Matters (ECM) agenda, workforce remodelling and the new 14-19 curriculum that will lead to a raft of 15 vocational diplomas. The reader can now add the requirement for all schools to have Disability Equality Schemes. (For secondary, the deadline passed on 4 December 2006 and for primary schools, the deadline is 3 December 2007.)

School leadership, according to PwC, has six focuses.

(a) Strategic Direction and Ethos

PwC judged that many school leaders are struggling to deal with the various strategic issues with which they are confronted. In part, this has been caused by the huge volume of operational minutiae which they have to manage on a daily basis. However, some school leaders appeared to be "more comfortable with an operational role than a strategic one".

(b) Teaching and Learning

Headteachers' feeling with regard to teaching and learning is one of frustration. This is understandable as headteachers came into schools as teachers in the first place. However, because of all the other leadership and management tasks with which they are confronted, they have little or no time to teach. They teach a lot less than they used to. A little over 25% do not teach at all in timetabled lessons and "most of the rest teach for fewer than five hours per week".

(c) Developing and Managing People

While developing and nurturing people and their talents is a given key strategic issue in any organisation, the evidence that PwC garnered is that there is much to be done, though many headteachers have embraced the challenge. When they were asked what their priorities were to take their schools forward - staff management, recruitment and retention were far down the list. In the private sector, human resources management and development are the bedrock on which all leadership is based.

(d) Networking and Collaboration

League tables tend to drive schools apart. However, the DfES is constantly exhorting schools to collaborate and the government has imposed legislation which is predicated on schools collaborating with one another and other agencies. Federating is one example. The most powerful driver, of course, is the *Extended Schools Prospectus* (published in 2005), which signals that all schools should be offering a core set of extended services, including childcare, parenting support and other specialist services such as speech therapy and mental health services) by 2010.

Meeting this imperative will require school leaders to collaborate effectively with one another and other agencies to promote holistic educational provision for our children which is fit for purpose. Many schools have restructured their staffing to prepare for the day. They have done this by including colleagues from the administrative and support staff in their senior leadership teams. This is likely to become the norm over time.

Notwithstanding, many headteachers, according to the report, appear to be struggling to respond "and most recognise the need for training and support. Indeed the development and management of extended services was the single most important future training requirement highlighted by headteachers" according to the report.

(e) Operations

Many headteachers, according to PwC, are far too involved in operational and delivery matters at the cost of being strategic. The research generated stories of several, for example, unblocking toilets, filling dishwashers and supervising pupils before and after school. Sometimes doing such was justified as it stemmed from a lack of resources - especially in the primary sector. But in many cases, operational detritus was part of the leadership mindset.

(f) Accountability

According to PwC, "tasks related to accountability were the most time-consuming of all". Headteachers had invented the word, "initiativitis", to express their frustration with the number of policy initiatives with which they had to deal and the inconsistencies

among them.

The report was critical of headteachers' desire for stability, which is not enjoyed by any other organisation in the public and private sector. The kaleidoscope of a fast-changing world with all its complexities is very much the zeitgeist of our time and school leaders, like leaders in other organisations, must embrace it. However, PwC stresses that they have every right to expect such changes to be promulgated coherently and in a joined-up manner by government and its agencies.

III Governance

And where do governors features in school leadership? one may well ask. PwC stridently states that the governing body represents an important element of school leadership as the strategic, accountable body. However, whether or not all governing bodies (if not most) are promoting strategy and accountability is questionable. The findings of the consultants suggest that many governing bodies fall short of carrying out the role for which they were designed and hints the current models are not sustainable.

One in five headteachers described her/his governing body as ineffective and a similar proportion as very effective. Differing levels of confidence and skills among governing bodies were the main reasons for this variation.

(a) Barriers to good governance

In particular, the recruitment and attendance of school governors at meetings were major problems identified.

In headteacher surveys, respondents made the following remarks.

1. It is difficult to recruit governors and they don't have time to commit.
2. It is difficult to recruit people with appropriate calibre and skills. *(A number of headteachers described their governing bodies as ineffective because governors were inexperienced and had insufficient skills and knowledge.)*
3. Although I have an excellent Chair, I rarely see other governors. They generally only attend meetings and then rarely do they prepare, e.g. read any documents issued in advance.
4. I am finding it difficult to get quality people to do a quality job.
5. A lack of willing volunteers to fill posts means a lot of pressure is put on a few.
6. Attendance has been a big issue that you come across in rural schools.

Governors, on the other hand, identified the huge workload as a major problem in recruiting sufficient and able governors. A little under half (46%) in a survey averred that they worked over 100 hours each year as a governor, i.e. three working weeks, against 14% who reported that they worked under 20 hours. Governors in rural areas were more likely to work harder than those in the inner cities and conurbations.

One former headteacher identified the main barriers for governance as a lack of confidence, skills and time. Schools already have considerable autonomy and are likely to be given even more. In such

a setting, it is vital for governing bodies to comprise members who understand what's happening and are able to put the checks and balances in the system, explains one stakeholder.

When governors were asked about how they could best support their headteachers, they focused on their strategic role (23%), improved working relationships (22%) and through training and better briefing.

(b) Modernising governance

If matters are to improve according to the PwC, report, the following issues should be addressed.

- (i) It should be made easier for people to become governors.
- (ii) Enhance the skills and knowledge of governors
- (iii) The infrastructure should enable effective working among the school partners – i.e. the local authority, the leadership team, governors and other stakeholders.
- (iv) Governors should be rewarded.
- (v) There should be new structures of governance.

(i) Making it easier to become a governor

The time commitment required for governors is a disincentive for volunteers. Suggested solutions include

- † encouraging businesses to make it easier for governors to attend meetings during the day and giving them time off for their duties; and
- † the use of school facilities to provide child care places for governors during meetings.

(ii) Enhancing skills and knowledge

With new responsibilities being placed on the shoulders of governors, their effectiveness can be secured only if they are properly equipped through knowledge, understanding and skills to develop insights into good governance. Many governors surveyed stated that they wanted more training in order to support school leaders of the future better.

There were mixed views about recruiting governors solely on the basis of their knowledge and skills. Some of the stakeholders wanted a more skills-based approach while others wished to retain the element of community representation, though these two were not necessarily exclusive.

(iii) Better partnership working

The Education and Inspections Act 2006 has given local authorities an increased strategic role from May 2007 to promote choice, diversity, fair access, sufficient school places and standards of pupils' achievement and attainment. As part of the raising standards function, the local authority will appoint (if it has done so already)

School Improvement Partners (SIPs) and take decisive action where schools are failing.

These arrangements will run alongside the introduction of Children's Trusts. By 2008, all local authorities would have established Children's Trusts or equivalent as part of the Every Child Matters agenda.

These initiatives are impacting on how governing bodies are working. Many governors – according to PwC survey – thought that the new schools' relationships with local authorities had resulted in extra support from LAs through SIPs and regular reports on the performance of their schools.

Some local authority officers, on the other hand, were distinctly unhappy about the greater autonomy that governing bodies had. They felt that it made supporting schools more difficult and created problems for children wishing to move schools. Other potential problems which they raised included increased industrial relations difficulties, inconsistent performance management and perceived abuse of flexibility around the rewards system – especially for headteachers.

With regard to Children's Trusts (where they had been established), there were several pluses. There was a greater degree of children's well-being, more information-sharing protocols, better identification of children at risk or in difficulties and on case management, lower levels of fixed term and permanent exclusions and better attendance (report of the University of East Anglia and the National Children's Bureau – NCB, 2005).

(iv) Rewarding governors

In surveys, many respondents thought that the increasing demands on governing bodies and the resultant extra time commitment required should be rewarded. A member of a governing body in a large rural secondary school said that good people were precluded from joining. They should thus be paid for their time. A deputy head of a medium-sized rural primary school remarked: "I think it is a cheek to think that people should give up their time and take on the role. This is outdated and outmoded; people should be rewarded for this responsibility."

In a survey of governors carried out in 2005, the National Governors' Association (NGA) discovered that 32% of governing bodies do not have an expenses policy and 10% have a policy of not claiming expenses.

(v) New Models of Governance

With the appointment of executive headteachers over two or more (some federated) schools, the structure of governing bodies needs to adapt, possibly with the creation of "meta" governors. Governors appointed to a governing body overseeing several schools could offer economies of scale. An umbrella governance structure would be a solution to meet the needs of the Every Child Matters agenda.

This apart, the Trust School model offers even more opportunities for change. Governing bodies that wish to go down the Trust route will have new freedoms to enable trusts appoint governors from

partner organisations which could include further and higher education and business foundations.

IV Recommendations

(a) For headteachers

The consultants asked the DfES to review the policy and practice relating to school leadership in order to simplify accountabilities for headteachers and facilitate greater distributed leadership specifically. Among other things, this will involve the following.

- (i) Opening up the post of headship to those within a school that do not have qualified teacher status. In this regard, we will need primary legislation.
- (ii) Related to (i) above will be a requirement to extend the provision of training and licensing to leaders who do not have QTS
- (iii) Every school should identify and designate a head of teaching and learning where this is not the same as the headteacher.
- (iv) Review the resource implications of moving towards a more distributed leadership model, in particular, the incentives for members of the wider SLT (that could include the Bursar, for instance) and workforce to take on additional responsibilities.
- (v) Clarify the accountabilities of executive headteachers and the headteachers of schools in the partnership.
- (vi) Encourage school leaders to structure their functions with clear and distinct responsibilities and accountabilities and communicate these structures to parents and the wider community.
- (vii) Include a greater emphasis on distributed leadership in the National Standards for Headteachers and in qualification and training design.
- (viii) Legitimise and promote models that support shared accountability and work-life balance such as co-headship.

(b) For governors

The DfES was invited to examine a number of key issues in relation to governance that had been identified in the PwC study and which have an important impact on school leadership. They included the following.

- (i) Review the size and composition requirements of the governing body, balancing the necessity to reflect the various constituencies, i.e. parents, staff, local authority, faith bodies, with the increasing need for people who have the range of skills, knowledge and experience.
- (ii) Act on the implications for school governance of the emergence of the multi-agency involvement in schools, driven by the ECM and 14-19 agendas.

- (iii) Develop ways in which the government, NGA, LAs and schools can best work with employers and employer organisations to increase the pool of potential governors who have the right skills to offer.
- (iv) Construct a *modus operandi* to make possible the *pro bono* contributions of the private sector to school governance, by focusing on support to those schools with the greatest levels of need and build on the existing work of the School Governors One Stop Shop (SGOSS).
- (v) Provide guidance on the roles and responsibilities of governors in regard to their strategic involvement in the school and the wider accountabilities in relation to extended services.

V Commentary

One of the most important tasks that a governing body carries out is that of appointing the headteacher. The kind of leadership that the headteacher gives the school, research has demonstrated, is the most important factor influencing the school's successes in relation to

- † setting the vision;
- † motivating and developing staff;
- † creating an organisation where pupils are encouraged and challenged to exploit their potential, becoming lifelong learners and not simply jumping through test and examination hoops;
- † providing opportunities for all, whatever the gender, ethnicity or cultural background, the bright and less able, those who are financially and socially secure and the less well off, the able-bodied and those with disabilities;
- † linking the school to the wider community which it serves; and
- † securing accountability of all who serve the school, including the headteacher.

The school pays a heavy price if governors appoint an inappropriate headteacher – and this is not simply in financial terms.

Just as Ofsted ruled that satisfactory teaching is not sufficient, it is increasingly becoming a truism that being a good headteacher is not good enough. Pupils, parents, governors, local authorities, the government and society generally expect more of headteachers. Leading schools in the twenty-first century is daunting. School leaders are required to be visionary and inspirational, reaching for the sky with their heads in their clouds while keeping their feet firmly planted on the terra firma of reality.

The PwC report is to be welcomed. However, there is a real danger that copies will be placed on civil servants' bureaucratic shelves and be lost. Ministers are likely to be caught up in endless new crises and initiatives and not give consideration to proposals that require all of us to "think outside the box".

The most controversial proposal is that schools could well be led by headteachers who don't have QTS. The suggestion has elicited cries of horror. In the United States of America, schools for as many years as I can remember have been led in a twin-track man-

ner, with one person taking charge of the curriculum and another of administration.

With a larger number of schools becoming federated, it is possible to envisage a Chief Executive-type figure being appointed *primus inter pares* and two senior colleagues on the second tier for the federated schools, one taking charge of the curriculum and the other for administration.

Kerry Callaghan (38) from St Helens, Liverpool, is the first non-teacher to have secured her National Professional Qualification for Headteachers (NPQH) in January this year. She attracted considerable flak in her final residential component of the course from her fellow-trainees. "Some of them were downright rude because I wasn't a teacher," she remarked. "They made me feel as if I did not know what I was talking about." However, Cameron Sheeran, her headteacher at the Cowley Language College, praised Callaghan for the considerable contribution she had made to the senior leadership team and the 15 years' experience she had had of schools.

Callaghan first worked in administration in the chemical industry before returning to her old school in St Helens as a technician, moving into computers and finance, gaining an accounting qualification and then becoming business manager of Cowley Language College to take responsibility for a £10 million annual budget.

Senior managers are often appointed to positions in different industries about which they know little or nothing. The most recent case is the appointment of Sir John Lyons as Chair of the Board of Governors of the BBC. He is on record as stating that he watches very little television. However, it is acknowledged that he has transferable skills in leadership, governance and management. Why should schools be any different? one may well ask.

Yet, one cannot readily dismiss the criticism that many in teaching make of the suggestion that schools can be led by those without QTS. The key function of schools is to promote teaching and learning. School leaders devoid of exemplary pedagogic experience could end up lacking credibility.

The other recommendations are much less controversial though (probably) as difficult to achieve. The direction in which schools have been running since Jim Callaghan's Ruskin speech in 1976, when he signalled that the secret garden of education had to be opened up, has remained unchanged. The concept of the extended school will become a reality by 2010. This will require greater partnership working between governors and headteachers (on the one hand) and professionals from other disciplines (on the other); it will also entail new governance structures.

Too many governing bodies have been preoccupied with filling in vacant places, i.e. having "bums on seats". It is time for schools to consider recruiting governors who have specialist skills and are prepared to give of their time?

If this is to be achieved, (serious) attention needs to be given to remunerate governors – at least for expenses – and/or encourage companies such as the BBC and HSBC to provide their employees, who are school governors, time off with pay as part of their *pro bono* function.

Trust Schools

Under the Education and Inspections Act 2006, schools are now able to establish Trusts and apply for foundation status. Alan Johnson, the Secretary of State for Education and Skills, announced on 30 November 2006 that a school will be eligible for funding of up to £10,000 to defray the costs of setting up a Trust. In addition, the school will be able to get:

- † advice from the Specialist Schools and Academies Trust (SSAT) and the Youth Sport Trust (YST);
- † help with the paperwork through a Trust schools "toolkit" and model documentation (currently being tested by the Trust School pathfinders).

Since November 2006, 50 schools have been working towards the Trust status through the Pathfinder Programme. They are cooperating with the Department for Education and Skills to develop the Trust school model, refining the process of acquiring Trusts and demonstrating how the concept can support schools in different ways.

Trust school arrangements

A range of different models will be available and each school will be able to choose the arrangement that suits it best. An individual school or a group of schools (for example schools that are in the same area, spread across the country or share a specialism) could choose to work with a Trust.

Each Trust school will be a foundation school supported by a charitable foundation or Trust, which will appoint governors to the school's governing body. The school will be funded in exactly the same way as other local authority maintained schools.

A Trust school will employ its own staff, and manage its own land and assets. Trust schools will also be able to set their own admission arrangements. As in other schools, these arrangements must be in line with the School Admissions Code.

Potential partners

A school Trust will share the school's aims for its pupils, know its community and be able to provide support in raising standards. Some types of organisations which might want to form a Trust school include:

- † universities and further education colleges;
- † educational charities;
- † business foundations;
- † community groups;
- † local authorities;
- † other local stakeholders.

Microsoft is supporting Trust schools. Stephen Uden, Head of Citizenship in the Microsoft Public Sector, said that Microsoft see Trust schools "as a natural way to ensure appropriate business involvement in education". It provides his company with an "opportunity to demonstrate how technology can support the process of teaching and learning as well as helping students acquire

the skills they need to succeed in the 21st century knowledge-based economy".

Where a Trust school is sponsored by a business, the level of involvement of the latter depends upon the needs of the school and the resources available. Businesses can receive help from the SSAT to develop and establish links with schools with whom they want to work by contacting the Trust Schools Team, SSAT, 16 Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP; trustschools@sssatrust.org.uk; 020 7802 2967. All Trust schools will have to promote good local community and race relations, and follow the Race Relations Act and the Disability Discrimination Act.

Forming a Trust school

A school's governing body will decide if it wants the school to become a Trust school, who it wants to work with, and how many governors it wants the Trust to appoint.

The Trust may be a charitable body which already exists, or it may be necessary to establish a new Trust. A new Trust might be formed by a single organisation or a group of organisations.

Those who wish to establish a Trust to which a school may belong will have to publish the Memorandum and Articles of Association. The requisite forms can be obtained by telephoning Companies House (0870 33 33 636) or can be downloaded from their website, www.companieshouse.gov.uk

The DfES has drawn up the Model Memorandum and Articles of Association, which can be secured from the SSAT or the DfES directly.

Parents and other local stakeholders must be consulted before any decision is made. The governing body will then publish formal proposals.

If the school's local authority considers that parents' views have not been taken into account, or has concerns about the Trust's impact on standards, it can refer the proposal to the Schools Adjudicator.

New schools will be able to include Trust arrangements as part of their proposal for setting up. The Government expects that most new schools will be set up as Trust schools.

The Government has appointed a Schools Commissioner, Sir Bruce Liddington, to encourage the development of new Academies and Trust schools, and to promote local choice for parents. Sir Bruce Liddington, former headteacher of Northampton Schools for Boys, has held a number of posts at the Department for Education and Skills. These included leading the Advisers Unit and the New Projects Unit.

Admissions and the new Code of Practice

1. Introduction

The new Code of Practice for Admissions was promulgated in February 2007. While it took effect immediately, admissions authorities – i.e. local authorities and the governing bodies of foundation, voluntary aided and Trust schools – are required to devise admissions criteria in accordance with the Code to take effect from the start of the academic year 2008/9. The process, however, began in autumn 2006.

Admission authorities have to comply with or abide by Code rather than have regard to - it a sea change from the former regimen. As part of their funding arrangements, academies must also operate in accordance with the admissions legislation and the Code. Under paragraph 1.15 of the Code, an academy must consult annually in the same way as other admission authorities do but must not alter its admission arrangements without the approval of the Secretary of State. However, the admissions arrangements for an academy will fall outside the scrutiny of the Admissions Adjudicator.

2. Rationale of the Code

The provisions within the Code are comparable to those of the 10 commandments in a number of respects - except that there are more than 10.

- (a) The aims of the Code are to make the admissions system more transparent, equitable and accessible to parents.
- (b) Admissions authorities that act in breach of the Code will receive short shrift at the hands of the Adjudicator.
- (c) There are a several imperatives included - generally described by the words "must" and "must not". Admissions authorities ignore them at their peril. The only latitude they have is when the word "should" pops up.
- (d) There are many, many more "must not"s than "must"s.

Every admissions authority (with the exception of that of a grammar school) must offer any child, whatever her/his ability, parental status, condition or admissions criteria, a place if there are vacancies in the appropriate year group. This also applies to a school that reserves places by ability.

However, where there are more applications than places available, the authority will be required to apply its criteria for admissions. These criteria will have to stand up to the Code's scrutiny. In devising the criteria for admissions, an admissions authority is under a duty to heed these "must not"s.

An admissions authority must not

- † interview the parents of pupils seeking admission to the school;
- † take account of a parent's financial status, marital position, work she or he does, educational background or social status;
- † give *first preference first* which in the past caused parents to play admission games with their children's future and load the dice against those parents without social, cultural, intellectual or financial capital;
- † give priority to children on the basis of their particular interests, specialist knowledge or hobbies, albeit a school is allowed to select up to 10% of pupils with an aptitude for the specialist subject in which the school specialises;
- † take account of the contents of reports on children when they are at primary and nursery school – to glean knowledge about their behaviour, attendance, attitude and achievements;
- † discriminate against children with special educational needs or disabilities;
- † allocate places on the basis that children may have had siblings or former relatives at the school, including siblings who may be at the school at the time when allocations are to be made but will no longer be there when the applicants join;
- † take account of the behaviour and attitudes of other members of the children's families;
- † give priority to children whose parents are members of staff of the school;
- † give priority to children on the basis of when the applications are received;
- † give priority to children on the grounds that their parents are more willing or able to support the school financially; and
- † have policies, such as one on school uniforms, that make it prohibitive for the parents of poorer families to secure entry for their children to that school.

3. Criteria for Admissions

Where the number of applications exceeds the number of places, the admissions authority is required to have criteria for admissions that take account of another raft of commandments within the

Code of Practice. The Code exhorts admission authorities to ensure that the criteria they establish are not only fair and objective but also simple for the parents to understand. While the Code surprisingly refrains from giving a list of criteria for admissions, it proposes those that smack of good practice.

- (a) Under Section 324 of the Education Act 1996 (which is highlighted in the Code), the admissions authority must take a child directed to it by the local authority, who has a statement of special educational needs where the statement names that school. A school must admit such a child whether or not there are places.
- (b) An admission authority must give top priority to children in care. However, in a faith school, the children in care are those who come from families that espouse and live in accordance with the ethos promoted by the faith school. If the faith school has criteria for admitting children not of that faith, then children in care not of that faith will be placed at the top of the criteria for children not of that faith.
- (c) Siblings are to be given priority because of the importance of keeping families together. Siblings will include half and step brothers and sisters so long as they live at the same address - but not cousins. This should be clarified in the criteria for admissions as families from the Indian sub-continent often describe their cousins as brother and sisters.
- (d) Arrangements will need to be made for children for whom it is essential to be admitted to a *specific school* because of special circumstances to do with significant medical, social or special educational needs. Applications should be supported, where possible, with a recommendation in writing from a recognised professional of senior status such as a medical consultant, headteacher of the current school or other appropriate officer.

The recommendation for the specific school should demonstrate knowledge of the school in terms of resources and organisation which deems it essential for the named pupil to be admitted. The criterion must relate to the **child's (and not any members of the child's family's)** medical, social and special needs.

- (e) Distance from the school is a very good objective criterion. In this connection, it is possible to define a catchment area. When determining distance, the time it takes to reach the school with public transport and the routes chosen could be helpful yardsticks. The admissions authority will have also to indicate (especially if the school is a large one and/or on more than one site), to what point in the school the distance will be measured. Distance is a useful tie-breaker for all the other criteria.

Where the child lives with parents with shared responsibility, the admissions authority should clarify how the home address will be determined in a fair manner. Will it, for instance, be predicated on which parent has care and control of the child and/or with whom the child lives for the greater part of the week?

- (f) The Code states that random allocations of places can be good practice for schools in urban areas, particularly for secondary schools, but not for schools in rural areas. While one can readily understand the rationale for having random selection in urban schools – i.e. to make the schools accessible to children from all backgrounds rather than those who can afford properties in the areas served by schools perceived to be “good”, the Code does not explain why it would not be suitable to have random selection for rural schools. The admissions authority must clarify to parents how the random selection will be made.

[Brighton and Hove City Council plans to go down this route with its eight community secondary schools. The Director of Children's Services, writing in the Times Educational Supplement (TES), states that “there are large areas of the city that have no access to their nearest schools while others have a choice of up to three”. He remarks that “this geographical unfairness divides the city between those who can afford to live near the popular schools and those who cannot” implying that the real reason for the random sample is to make popular schools available to families from the disadvantaged social strata. Commentators are bemused. Could not all schools be raised to the standards of the best or is that a Gordian Knot that we will never untie?]

4. Responsibilities and Powers of the Local Authority (LA)

The local authority has many duties with which to comply under the Code. It has to

- (a) formulate and consult on a scheme for each academic year to coordinate admission arrangements for all maintained schools within the area - including boarding schools, but not maintained special or nursery schools);
- (b) publish the admission arrangements for all maintained schools and academies in the area and make this information available to parents;
- (c) object to unfair admission arrangements in the area;
- (d) establish arrangements for those outside the normal admission round;
- (e) compile an “In-Year Fair Access Protocol”;
- (f) provide assistance and advice to the parents of children of all ages in the area – establishing a Choice Advice Service;
- (g) provide free transport to secondary school age pupils from low income families to any one of the nearest suitable schools, where the distance travelled is between two and six miles;
- (h) provide transport to the nearer school preferred on grounds of religion or belief where this is between two and 15 miles;
- (i) establish an Admissions Forum to “provide a vehicle for ad-

mission authorities and other key interested parties to discuss effectiveness of local admission arrangements.... Admission authorities of all maintained schools and academies must have regard to any advice offered by the Forum." (Paragraph 4.9 of the Code)

In addition, the local authority has the power to

- † vary the admission arrangements within the same academic year in limited circumstances;
- † work with neighbouring areas to ensure consistency of admission arrangements; and
- † direct schools to admit children in care.

5. Admissions Forum

Every LA must have an Admissions Forum which is responsible for monitoring compliance with the Code.

- (a) The Admissions Forum has the power to publish a report on the effectiveness of the local admissions arrangements to refer any objections to the Schools Adjudicator, whether it considers admission arrangements to be unfair or not in accord with the Code.
- (b) The core membership of the Forum comprises representatives from the local authority, City Technology Colleges, umbrella faith groups, parents, the local community, academies and community, voluntary controlled, foundation schools. It is regrettable that there is no obligatory provision in the Code for a Forum to have representatives from the disabled community or people with expertise of supporting SEN and disabled pupils and students. This is a missed opportunity which is not in accord with the Equality Act 2006. However, there is nothing to stop the local authority from making such provision.
- (c) The Admissions Forum must meet twice annually, but it is left

to the Forum to decide the frequency of such meetings.

- (d) The Forum may issue advice based on the agreed views of the representatives as a whole – i.e. where there is a majority vote. Similarly, the Forum may object to any admission arrangements to the Schools Adjudicator when they have a majority vote to do so.
- (e) The LA is required to publish the Forum's advice on schools admissions on its website and send copies to all admission authorities in the area.

6. Commentary

The principles that underpin the Code of Practice are fairness, simplicity and transparency. There are many provisions within it that will promote these principles such as the abolition of interviewing and parents prioritising schools of their choice. Bringing academies within the purview of the Code is also welcome. Having an Admissions Forum policing each area and a Schools Adjudicator to secure equity and fairness will help.

On the debit side, no mention has been made of banding within the Code, which will leave schools in a state of limbo. Also, there are many that are uncertain about the wisdom of allowing admissions authorities to select randomly. The country has its eyes focused on Hove and Brighton to see the result of such a policy. The Jeremiahs are sure that all eight secondary schools will opt for foundation status thus becoming their own admissions authorities, which will defeat the purpose. Other pundits are of the view that there should be a greater thrust to making all schools excellent and popular, instead of creating a lottery for parents to opt for the few that do well.

Finally, the members of the Admissions Forum will be overloaded with school representatives at the expense of the community. Redressing the balance for representation of special needs and disability has been an opportunity missed.

Glossary

ASCL -	Association of School and College Leaders	NPQH -	National Professional Qualification for Headteachers
ATL -	Association of Teachers and Lecturers	Ofsted -	Office for Standards in Education
CTC -	City Technology College	PAT -	Professional Association of Teachers
DfES -	Department for Education and Skills	PwC -	Pricewaterhouse Coopers
ECM -	Every Child Matters	QTS -	Qualified Teacher Status
IBB -	Independent Barring Board	RIG -	Review and Incentive Group
LA -	Local Authority	SEN -	Special Educational Needs
LSCB -	Local Safeguarding Children's Board	SGOSS	School Governors One Stop Shop
NCB -	National Children's Bureau	SI -	Statutory Instrument
NCSL -	National College for School Leadership	SIPs -	School Improvement Partners
NEET -	Not in Education, Employment and Training	SLT -	Senior Leadership Team
NEOST-	National Employers Organisation for School Teachers	SSAT -	Specialist Schools and Academy Trust
NGA -	National Governors' Association	TES -	Times Educational Supplement
		YST -	Youth Sports Trust

Legal Update for School

The new Code for Schools Admissions apart, several legislative imperatives are affecting the work of schools. Outlined below are some of the key ones.

(1) Safeguarding Vulnerable Groups Act 2006

This Act lists all the people who ought not to be allowed to work with children and also deals with those who will not be allowed to work with vulnerable adults. In charge of the list will be the Independent Barring Board (IBB). The IBB takes over responsibility once exercised by the Secretary of State for Education and Skills and more recently by senior civil servants in the DfES.

The IBB places a person on the barred list if it is satisfied that she/he has engaged in relevant conduct

- † which endangers or is likely to endanger a child;
- † which, if repeated against or in relation to a child, would endanger or be likely to endanger that child;
- † involving sexual material relating to children (including the possession of such material);
- † involving sexually explicit images depicting violence against human beings (including the possession of such images);
- † of a sexual nature involving a child, if it appears to the IBB to be inappropriate; and
- † incites another to harm a child.

If one is on the IBB list, one will not be able to

- † child-mind;
- † inspect schools;
- † teach, train and instruct children (unless incidentally);
- † provide most types of advice, guidance, treatment or therapy to children;
- † monitor the internet for children;
- † drive a bus or other vehicle to transport children;
- † be a governor, local education authority cabinet member, a Director of Children's Services, a trustee of a children's charity, or a member of the Local Safeguarding Children Board (LSCB).

Those in charge of relevant activities must notify the IBB under sections 35 to 50

1. if any of their people present a risk (or might present a risk) of the type that this Act intends to prevent and
2. if they have relevant information that the IBB wants.

(2) Violent Crime Reduction Act 2006

This new Act could not have been promulgated at a more

appropriate time, given the increased incidence of knife crime perpetrated by young people on young people – especially in and around the London area. The Act encourages intervention by the Police into matters of internal school discipline.

Section 45 of the Violent Crime Reduction Act 2006 will, when it takes effect, amend the Education Act 1996 by inserting a new section 550AA, which will apply to both, maintained and independent schools. In addition, section 482 will mirror similar provision for academies.

These sections give school and academy headteachers and those authorised by the headteachers the legal power to search their pupils on the premises (or elsewhere under the auspices of the institutions) for offensive weapons. The pupils may not be required to remove any clothing except outerwear. Headteachers cannot require their staff to conduct searches; only authorise them to do so. However, they may require security staff to search.

There are safeguards for the pupils. Searchers must be of the same sex as the pupils. Each search carried out by a member of staff, must be witnessed by another colleague, also of the same sex. The upshot of this caveat means that a class teacher working alone may not require a pupil to empty her/his bag: only in the presence of another staff member.

If a section 550AA search of a pupil or of her/his possessions reveals any offensive weapon or knives or evidence in relation to an offence, the school **must** call the police. There is no discretion and no scope of internal school discipline.

(3) Infant Class Sizes

The Education (Infant Class Sizes) (England) (Amendment) Regulations 2006 (SI 2006 No 3409) came into force in February 2007 and amend those regulations promulgated in 1998 in regard to "excepted pupils" who may breach the limit of 30 infants per teacher. Hitherto, an infant class size of 30 could be exceeded only if the local authority placed a pupil in that class who had a statement of special educational needs which prescribed the school to which the class belonged.

Under the current regulations, there are two more categories. First "looked after" children may be admitted outside a normal admissions round even where the number in the

infant class is already 30. Second, a child may be admitted into an infant class of 30 at a school if there are no other suitable schools within reasonable distance from the home. However, a pupil cannot be treated as falling within this category unless the relevant local authority confirms that she/he does.

(4) Charities Act 2006

The Charities Act 2006 will affect independent schools, all of whom currently have charitable status on the grounds of a presumption of providing public benefit, i.e. alleviating poverty, or promoting religion or education. The Act removes that presumption; independent schools will have to demonstrate that they provide public benefit.

In early March 2007, the Charities Commission (www.charity-commission.gov.uk) published draft guidance on what is meant by public benefit. Consultations on the draft will close in June 2007. Final guidance will be published in October following which there will be a further three-month consultation period with charities affected by the abolition of the public benefit presumption and fee-charging charities, with final guidance issued in June 2008.

In its draft guidance, the Charities Commission has distilled four main public benefit principles.

- † The benefit must be identifiable.
- † The work undertaken by a charitable organisation must benefit the public or a section of the public;
- † People on low incomes must be able to benefit.
- † Any private benefit must be incidental.

The Commission also identified five key citizens' standards in regard to benefits:

- † responding to needs;
- † enhancing lives;
- † promoting education and development;
- † fostering a sense of community; and
- † providing guardianship of heritage and fostering values for future generations.

The guidance will give independent schools a handle to demonstrate what precisely they do to merit being described as charities. It should not be seen by independent schools as restrictive. In fact, many have already taken steps in the right directions by widening access through extended credit terms or lower fees based on a means test. Schools, however, will have to provide evidence and this is most likely to come via the accounting systems.

Exploring and extending partnerships with local state schools and local authorities would be another way of meeting the new requirements to demonstrate *pro bono* credentials. Independent schools could provide access for state

pupils to specialist classes or courses not available in the state sector. Alternatively (or in addition to this), independent schools could second specialist staff for a part of the week to state schools to teach subjects such as Mandarin Chinese, Russian or, if push comes to shove, Citizenship.

Sport is another area that could come into the equation. State schools could be included in sporting leagues that are currently the exclusive territory of the independent sector. Perhaps opening up sporting facilities to the wider community during school holidays would be yet another initiative that will carry merit.

(5) Performance Management

The new regulations on performance management in schools for headteachers and teachers published in February 2007 will take effect from September 2007. These will require every school to revise its policy and review arrangements annually.

The Review and Incentive Group (RIG) – comprising the Association of School and College Leaders (ASCL), Association of Teachers and Lecturers (ATL), the National Association of Schoolmasters Union of Women Teachers (NASUW), the Professional Association of Teachers (PAT), the National Employers Organisation for School Teachers (NEOST) and the DfES – has produced a model policy that can be downloaded on www.teachernet.gov.uk

The new policy will have to cover the following legislative requirements:

- a) state what results the policy is intended to achieve and how these will be measured;
- b) show how the school's arrangements for school teacher performance management link with those for school improvement, school self-evaluation and school development planning;
- c) show how the school will seek to achieve consistency of treatment and fairness between those teachers with similar experience or levels of responsibility;
- d) set out the timing of the cycle;
- e) include a classroom observation protocol;
- f) provide performance management training to be made available as the need arises;
- g) state the arrangements for monitoring and evaluating the policy; and
- h) specify any ancillary or supplementary procedures necessary for the operation of the performance management of teachers at the school in accordance with these Regulations.