COMMISSION ON SCHOOL REFORM

Response to Scottish Government's consultation: Empowering Schools

January 2018

Membership of the re-convened Commission on School Reform is as follows:

- **Keir Bloomer (Chair)**: Education Consultant and former Director of Education
- **Rowena Arshad:** Head of Moray House School of Education
- **Sarah Atkin:** Currently works in a secondary school, formerly a Parent Council Chair and researcher for education conferences.
- **John Barnett:** Business consultant and former Parent Council Chairman
- **Jamie Cooke:** Head of RSA Scotland
- **Jim Goodall:** Former Head of Education and Community Services at Clackmannanshire Council and Lib Dem councillor at East Dunbartonshire Council
- **Frank Lennon:** Former Head of Dunblane High School
- **Dorothee Leslie:** Vice Principal Curriculum and Academic Planning, Fife College
- **Cllr Paul McLennan:** SNP Councillor in East Lothian
- **Ross Martin:** Economic Agitator with experience in a variety of roles in education-including school teacher, voluntary tutor, chair of local education authority, member of college board & university court, Chair of a charity, and, most importantly, a parent and former student.
- **Louise Stevenson:** Performance Adviser with Inspiring Scotland's 14-19 Programme
- **Lesley Sutherland:** Board member, the Centre for Scottish Public Policy

Empowering Schools Consultation

Response of the Commission on School Reform

Preamble

The government aspires to create a "school and teacher-led system". The Commission wholeheartedly supports this objective. This means a system in which schools have very high levels of autonomy within a minimal national strategic framework. It requires a tier of governance at a very local level. This is currently missing from the proposals. Within such a system the incentives to innovate must be greater than those to play safe through conformity. There will inevitably be greater diversity. The roles of other stakeholders, especially local authorities, will need to be redefined. Parents and young people will need to be reassured that the new arrangements will work better than the old. This will involve careful monitoring, honest evaluation and will best be done over a period of time.

Introduction

The Commission has long advocated that most of the key decisions about the education of children and young people should be made in schools. It, therefore, supports wholeheartedly the government's intention of empowering schools.

In complex systems such as education, positive change depends on liberating the creativity of the workforce within the context of nationally agreed objectives. Innovation and well-judged risk-taking need to be encouraged. Governance and accountability mechanisms should be simple and transparent and should build on the strong feelings of responsibility of schools to young people, their parents and the wider community. It follows that aspiring to empower schools is admirable but insufficient. Greater school autonomy needs to be seen in the context of creating a coherent model for improving processes of change.

Wherever possibly, decisions should be taken by those most affected by them and who have the best knowledge of local circumstances. Within the governance structure of the school education system, this means headteachers. The idea of a Headteachers' Charter' is thus highly welcome. It follows, of course, that headteachers should have a duty to empower others within schools, particularly class teachers. This point is not mentioned in the consultation paper but should feature in the Charter itself.

In its response to the first and most important section of the current consultation which deals with the Headteachers' Charter, the Commission has thus focused on trying to ensure that the Charter will work as intended. Specifically, it is concerned that:

- Schools, through headteachers, should be genuinely empowered and that their freedom of action should not be susceptible to erosion by local authorities, national agencies or the government itself,
- Effective accountability mechanisms should be put in place at a local level, and
- Existing inconsistencies in the proposed legislation should be resolved and proper clarification should be provided where the way in which the new governance arrangement would work is insufficiently clear.

The Commission also supports the intentions of the sections dealing with Parental and Community Engagement and with Pupil Participation. However, it does not believe that these sections, at any rate as currently described, will have much impact and, indeed, it doubts whether these are matters best dealt with by legislation as opposed to a focus on changing the culture of the system.

In its response to the earlier consultation the Commission, like most respondents, was unconvinced by the merits of the proposed Regional Improvement Collaboratives. However, in the interim, the government has altered its proposals in ways of which the Commission generally approves. Furthermore, as the

collaboratives have now been established and are in the process of beginning their work, the Commission is now concerned to ensure that they work effectively and, in particular, that they emerge as sources of support for schools rather than a further controlling tier of governance.

The final section of the consultation paper deals with the establishment of a proposed Education Workforce Council for Scotland. The Commission can see merits in this idea but considers that too little thought has as yet been given to the very extensive practical issues involved in such a far-reaching proposal. It believes that the government would be well advised to detach this proposal from the legislation and undertake a separate consultation following more detailed consideration of what would be involved in the establishment of such a Council.

The Commission is concerned that the paper makes no reference to cost of any of its proposals. Neither is there any mention of how the effects of what will be major changes in governance will be monitored and evaluated. It hopes that more detail will be provided on these matters before any legislation is introduced into Parliament.

Headteachers' Charter

The section of the paper dealing with the Charter makes an important statement of intention. The government indicates a desire "to create a genuinely school and teacher-led system". Decisions should be made "by those working with young people, their parents and communities". This is an intention that the Commission shares. Ultimately, the test of the success or otherwise of the forthcoming legislation will be whether this aim is met.

The paper makes clear that it would wish to see school empowerment extend to four key areas in particular:

- Curriculum for Excellence
- Improvement
- Staffing
- Funding

The Commission would comment on the four sub-sections dealing with these matters as follows.

Curriculum for Excellence

It is interesting that the reference is specifically to 'Curriculum for Excellence', rather than merely 'Curriculum'. Scotland does not have a national curriculum and it would be unfortunate if the forthcoming legislation were to have the – possibly unintended – effect of putting one in place.

The history of English education since 1988 demonstrates the risks posed by a prescriptive national curriculum. Capricious and ill-judged ministerial interventions, frequently related to the detailed content of the curriculum, have led to periodic reversals of policy with consequent confusion and wasted effort. Clear curricular objectives (as set out in the four capacities and the seven curriculum principles), combined with giving schools extensive discretion over how they are achieved, offer a much better way forward.

The reference to Curriculum for Excellence is unhelpful in another way also. Much depends on what is meant in this context by 'Curriculum for Excellence'. The paper provides a short summary of what it describes as "a national framework for the design of learning and teaching in schools". This refers to the seven curricular principles of Curriculum for Excellence and to the Experiences and Outcomes and Benchmarks but does not mention the four objectives (or capacities). There is, thankfully, no reference to the many thousands of pages of guidance that were allowed to accumulate.

The Commission would be happy to see the objectives and curriculum principles (and, in addition, the objectives or capacities) established as a basic national framework. It accepts that, as pupils progress through the schooling system, they will inevitably participate in courses that are defined by set syllabuses. However, it would not see it as appropriate for Experiences and Outcomes or Benchmarks to be included in any

national framework. Their inclusion is to confuse ends and means. It is reasonable to determine a minimal set of requirements that schools should pursue but they should be free to determine the means by which they should pursue them.

The consultative paper appears to be taking this approach but it will be important to be clear from the outset about the scope of the framework. The Commission believes that the elements of such a framework should consist of:

- The objectives (capacities), curriculum principles and values of Curriculum for Excellence,
- The objectives of Getting it right for every child (GIRFEC), and
- The four priorities of the National Improvement Framework (NIF) including the reference to Developing Scotland's Young Workforce.

Headteachers would be obliged to adhere to the elements of the framework but would otherwise have control of curricular matters. The phrase used at the top of page 8 of the paper that it is for "headteachers to decide how best to design their local curriculum in line with the national framework" describes well what is required. The word 'curriculum' has to be construed broadly as including pedagogy as well as matters of content and structure.

It is also important that schools should be able to design their curricula to take account of local circumstances, including local and national economic circumstances. They should be able to use vocational qualifications as appropriate (probably in collaboration with the college sector locally). Although not part of the current consultation, it is worth noting that there is a tension between the emphasis placed on raising attainment which is usually measured in terms of traditional SQA qualifications and policy commitments in relation to Developing Scotland's Young Workforce.

The Commission agrees with the government that headteachers' discretion in this area should not be limited by local authority requirements as has often been the case in the past. The example of a number of local authorities that put a ceiling on the number of examination subjects that young people could study in S4 is a good case in point.

Furthermore, particularly in the secondary sector, it should not be unreasonably constrained by somewhat outmoded definitions of categories of registration employed by the General Teaching Council for Scotland (GTCS). Tensions continue to exist in the secondary sector (and, in some cases, at the primary/secondary interface) between acceptance of the general principles and purposes of Curriculum for Excellence and the constraints imposed on innovative curriculum design by GTCS regulations on subject qualifications, especially as they related to the phase of broad general education in S1-3. If the curriculum is to be genuinely school-led, it will be essential to empower headteachers to implement curricula in which subject boundaries are no longer as rigid as has traditionally been the case.

The difficulty arises from the fact that the relationship between the objectives and curriculum principles of Curriculum for Excellence and the subject-centredness of the secondary curriculum was not adequately explored before schools were expected to implement the concept of a broad general education in the early secondary years. This must be done as a matter of urgency, ideally through a school-led review of all aspects of the development and timetabling of curriculum designs that would fulfil the aim of a broad, general education.

Qualifications at the end of S4 are now a well-developed part of the system but what constitutes broad, general education in S1-3 is neither well-understood nor imaginatively developed. Years of focus on Experiences and Outcomes, Benchmarks and thousands of pages of guidance have provided little clarification. The effort required of secondary teachers to bring in the new qualifications have left little time for work on the S1-3 curriculum despite the fact that this has been for decades the part of the secondary curriculum most in need of reform.

It is, however, clear that the nature of teachers' qualifications continues largely to determine what they may be required to teach. The consultation paper fails to recognise this as an important constraint on headteachers' ability to determine the curriculum. It is right to refer to "local restrictions on the organisation of subjects" which may be imposed by local authorities and restrict headteachers' flexibility in leading learning and teaching. The omission of any reference to the greater restriction resulting from GTCS regulations is difficult to understand, particularly in a context in which interdisciplinary learning is an important element within Curriculum for Excellence.

The stringent requirements set by the GTCS of 80 SCQF credit points, 50 of which "must be as part of a degree" together with the list of subjects in which it recognises secondary teaching qualifications continues to influence the ability and willingness of schools (and individual teachers) to develop the S1-3 curriculum through the introduction of interdisciplinary learning. It perpetuates the fragmentation of the curriculum by sustaining the practice of timetabling three discreet social subjects and three sciences in the early secondary years. It is important to emphasise that the Commission does not dissent from the view that secondary teachers should be appropriately qualified. However, it believes that recognising the ability of teachers to teach in cognate areas to their main area(s) of specialism is essential to a realisation of the curricular vision of Curriculum for Excellence.

If the Charter guarantees that, subject to a minimal national framework, schools will be free to take the major decisions in relation to the curriculum, this will be a major step forward. It will, of course, transfer to school level some very substantial responsibilities. Currently, it is not clear how headteachers will be made accountable for the decisions they make. It would be difficult to make the line of responsibility run to the local authority without running the risk of a return to local authority control of the curriculum. The Commission believes that the absence of any local accountability mechanism represents a significant gap in the current proposals.

It would wish to see the introduction of a new kind of School Council or Partnership and Governance Board to which headteachers would require to give account of the use of their significantly enhanced powers. These Councils could operate at either school or cluster level. If constituted at cluster level, they would be able to pool the resources of several schools and thus act as local improvement collaboratives. To ensure sound governance from the outset, these Boards should be established at the same time as additional powers were passed to headteachers.

The Boards could include elected and officer representatives of the local authority, parents, staff and the community. In order to ensure their effectiveness in the challenge function, Boards should include peer headteachers. There should also be space for co-opted members. Independent schools have benefitted greatly from the expertise such Boards can offer. For this reason, the Commission is inclined to favour cluster, rather than individual school, Boards in order to attract high calibre members. It is realistic to hope that around 350 cluster Boards would be able to recruit sufficient people of high quality and with a wide range of expertise. It is scarcely likely that over 2500 individual school Boards will succeed in doing so.

Such an approach has the merit of clarity and simplicity. It would not preclude the use of school staff or other headteachers as critical friends, nor constructive dialogue with the regional collaborative, as suggested in the paper. It would avoid, however, the confusion that could arise from local authorities having an employer and management role as is also suggested in the paper.

The paper is right to lay emphasis on the role of constructive challenge. Headteachers are going to be given very significant new powers and responsibilities. Inevitably some will adapt to the new circumstances more quickly and successfully than others. While challenge will always be important, it will be particularly so in the early years of the new arrangements. Challenge by peers is likely to be the most effective. However, the involvement of senior local authority staff

and, less frequently, HMIe will be helpful. It is, however, vital that challenge from these sources is supportive rather than judgmental or potentially controlling.

Improvement

Again, the early paragraphs of this sub-section make a very strong and welcome statement about what is intended. We are told that, "within the context of the National Improvement Framework schools' priorities should have primacy and these should not be overridden by alternative priorities set by local government". It therefore follows that, "Schools should be supported in their improvement activity by local authorities working through the Regional Improvement Collaborative". The Commission fully agrees with these sentiments and hopes that they will find effective expression in the legislation.

The paper is unclear on the role of local authorities in the future. It is important that greater clarity emerges prior to the legislation being introduced into Parliament. Increasingly, schools will be responsible for improvement but it is important that local authorities should retain a responsibility to support improvement

The government has made plain that school staff, including headteachers, will continue to be employed by local authorities. Certain consequences follow. Local authorities will deal with a wide range of HR issues; grievance, discipline, dismissal and conditions of service. They will formally engage new staff although they will have no important role in choosing them, (subject to a small number of exceptions mentioned below).

It is also clear that authorities have a supportive function in relation to schools, partly discharged through the new collaboratives. It is important that the respective roles of the local authority and the collaborative are clarified. The Commission assumes that local authorities will provide support in relation to finance, property, HR and similar matters while the collaborative will be concerned with educational support. This would seem a reasonable division of responsibilities. However, the paper does not make clear whether the local authority would have any residual educational support function. The introduction of collaboratives makes this unnecessary.

There is also a lack of clarity in relation to the 'challenge' function. Headteachers will, no doubt, welcome supportive and well-informed challenge from any source. However, it is important to distinguish between challenge and control. Local authority officers should have a right to ask questions and offer opinions but not override the decisions of headteachers in relation to matters devolved to schools.

The Commission believes that local authorities should have a function in representing the public good. In part, this could be discharged through representation on Partnership and Governance Boards. However, it is also important that dissatisfied parents and others with complaints against a school should have a place of resort. Local authorities, while unable to bring about changes directly, should have an entitlement to investigate and to refer matters to Boards for resolution.

In this connection, it is important to recognise that a "school and teacher-led system" will be much more diverse. Overall, this will be a strength. The system will be able to learn, as it cannot at present, from a collective experience that is rich and varied. However, there need to be mechanisms in place that allow those who are dissatisfied with school-level decisions to be heard and see their concerns addressed. It is worth noting that this is not a strength of the current arrangements.

The paper spends some time discussing the statutory duty to improve education and requirements to draw up improvement plans. It concludes that the improvement duty should remain with local authorities (to be largely discharged through the collaboratives), while the responsibility to produce improvement plans should pass from authorities to the collaboratives. The Commission sees these as matters of little consequence. Improvement is not produced by

imposing unenforceable statutory duties. Furthermore, there is little evidence that the multitude of plans that have been required over recent years have played any important role in raising standards.

In the Commission's view, it is much more important to have in place effective change mechanisms and a positive and supportive culture. The proposed reforms have the potential to address both of these matters. A minimal national strategic framework accompanied by substantial delegation of decision-making to school level can provide the basis for much more effective change mechanisms than have been in place in Scottish school education in recent decades. The Commission has advocated this approach to promoting change since the time of the publication of its report, *By Diverse Means* in March 2013. At the same time, empowering schools and thereby raising the standing of headteachers and the profession more generally can do much to improve the organisational culture of the system.

Making progress in these areas, however, depends on government exercising its powers wisely and with restraint. If a reduction in control by local authorities simply results in increased control by central government and its agencies, rather than genuine empowerment of schools, the position will be worse than before with crucial decisions being made more remotely and by bodies that are less accountable.

Staffing

Once more, the sub-section starts with a general statement of principle with which the Commission strongly agrees. The paper states, "It is the headteacher who should decide who works in their school and the staffing and management structure within which they work". It is made clear that, while headteachers should consider staff who require to be redeployed within the authority, they will not be required to accept them, thus resolving in a satisfactory way the contentious issue of compulsory transfer of teachers.

The unpopularity of compulsory transfer processes with headteachers derives from their suspicion that other heads use transfer to off-load unsatisfactory teachers. Although this is by no means always the case, there are sufficient instances to justify caution on the part of potentially receiving schools. Removal of the transfer mechanism is thus likely to give reassurance not merely to headteachers who will increasingly be held responsible for the functioning of their schools but also to those parents aware of how transfer is open to misuse. It will also indirectly have the benefit of improving the effectiveness of processes for improving or dealing with unsatisfactory performance.

Current mechanisms are unsatisfactory, partly because of the overlapping roles of the GTCS and the employing authority and partly because of the division of employer responsibilities between the headteacher and the director of education. If schools cease to be obliged to accept compulsory transferees, local authorities will have to consider how they will deal with the problem. It seems likely that many will decide that the original school should keep the teacher and that he/she should be charged against its staff complement. This potentially sets up a virtuous circle. The school has a greatly increased incentive to tackle the problem. Over time, potential receiving headteachers will feel confident (which, at present, they do not) about teachers offered for transfer.

The paper is also clear that headteachers should have control over staffing and management structures, subject presumably to overall budgetary constraints to be set by their local authorities. It says little about how this is to be achieved. Devising a management structure requires the ability to determine salary levels. It is incompatible with current procedures for job sizing. For this and other reasons, the government will require to curtail the influence of national agreements in relation to matters where the delegation of decision-making powers is to take place. In the same way, developing a staffing structure presumes the power to determine numbers of staff of each kind and to

move resources in either direction between teaching and other staff or between staffing and supplies. Local authority practice in relation to such virement varies greatly. The government's proposals require that it should be increased to a uniformly high level.

The issues raised in the last paragraph are of the greatest importance. The paper states that the local authority as employer "will ensure *recruitment decisions* are consistent with employment law and with national agreements on pay on conditions" (our emphasis). Assuming that the requirement to conform with national agreements is limited to 'recruitment decisions', this statement may possibly be consistent with the high level of delegation of staffing decisions to school level that the paper advocates. However, f the requirement to conform goes further, headteachers' powers in relation to staffing will in practice be extensively constrained. This is an issue that the legislation will require to tackle unambiguously.

The Commission has no problem with some local authority or regional level co-ordination in relation to the allocation of probationer staff or the provision of placements for ITE students. (These are the small number of exceptions referred to on page 7.) It is unclear what is meant by "shared recruitment exercises at local authority or regional level" and the Commission would want to be satisfied that this does not involve an unacceptable restriction of headteachers' right to choose staff.

Funding

The overall statement of principle made near the beginning of this sub-section is rather weaker than in the case of previous sub-sections. We are told that, "Headteachers should have more of a say in how the budget allocation to their school can be used" and "There should be transparency in how those allocations are calculated". The Commission believes that 'more of a say' hardly covers what is required in relation to the delegation of budgetary control. There are some obvious limitations on the ability of headteachers to spend school money. They must do so lawfully and in a manner that keeps within budgetary limits. There are some requirements in relation to procurement processes. However, subject to these relatively modest constraints, headteachers should have full control of the delegated budget.

The Commission agrees with the second part of the statement. Local authorities should allocate budgets to schools in a transparent way. In relation to crucial parts of the budget such as the allocation of resources for teacher staffing, this will normally be done through the use of formulae related to pupil numbers, possibly with some weighting to take account of, for example, disadvantage. It is also important to emphasise that the way in which any given part of the budget is calculated at the point of allocation should not determine how the allocation is used. Thus, a school may decide to use a greater or a smaller sum to engage teachers than is contained in the allocation. This is currently the practice in many local authority areas but only around the margins. Thus, the allocation formula may generate a sum equivalent to a number of full-time teachers plus a fraction, with the school being free to use other resources to make the fraction up to a whole number or alternatively round down its teacher complement and use the small resource thus released for some other purpose. Under the new dispensation, schools' level of discretion will require to be much greater than this, as the paper recognises.

The paper indicates that, "Procurement processes should support headteachers while making sure that the relevant legal obligations of the local authority, including procurement law, are met". This is an appropriate view. Schools must obviously comply with the law. However, the local authority's own procurement regulations are a different matter. Often local authority arrangements obtain very good value for money. However, on some occasions – minor repairs and electrical work are frequently cited examples – schools find themselves obliged to meet much higher costs than could be obtained locally. This is a complex area. The best outcome would be agreement between the authority and schools on

the best way forward. The default position, however, should be that schools are bound by procurement law but not by local authority policy.

It will be important to determine what matters should be included within school devolved budgets and which should be retained centrally by the authority. The paper makes a start to this process. It suggests that the authority should retain the budgets for specialist services, the provision of additional support needs, spending on the school estate and school transport. Once again, this is a complex area that requires more detailed examination than it can be given here. However, the Commission supports the general approach taken by the paper. Authorities should certainly retain the budgets for capital expenditure, major maintenance, high tariff ASN, costs arising from PFI/PPP arrangements, school transport, the cost of supply teaching staff beyond a stated threshold and non-domestic rates. There may be other matters that should fall into the same category. However, schools should be able to manage their own affairs in relation to minor maintenance, minor ASN costs and buying in specialist services beyond a stated level. Their devolved budgets should include sums for these purposes.

These examples are intended to be illustrative rather than comprehensive. The Commission believes that there is a need for a more detailed study before the legislation is finalised.

Supporting empowered headteachers

Headteachers have always enjoyed significant decision-making powers in relation to wide range of school-based issues. Most headteachers have coped well with these responsibilities. Even so, the pace and the nature of change in the system has required a growing focus on leadership development, particularly for aspiring heads but to some extent also for those already in post.

The government's proposals will significantly extend headteachers' powers, especially in relation to the curriculum, staffing, budgets and collaboration with other schools and agencies. In addition, the new arrangements will create new relationships within the system, particularly with the Regional Improvement Collaboratives.

All of this will clearly require an expansion of professional development opportunities for heads and those wishing to become heads in the future. It will be important not to underestimate the scale of what is needed. There will need to be a clear view of the qualities, skills and knowledge that leading empowered schools will require. Some headteachers will already possess these attributes but others will need more support or, at the very least, reassurance about their capacity to take on an extended role.

It is worth mentioning that it is not only headteachers and aspiring headteachers who will require some support and professional development. Others, such as parents, who will play an enhanced role in the future, will need at the very least to be kept well informed and to be provided with support when they consider it necessary.

In the Commission's view, this essential preparatory work will be made much more manageable if the implementation process is gradual, rather than all schools moving to the new arrangements in lockstep fashion.

It is important that there is a good range of opportunities available and that heads and others are free to choose. It should not be assumed that these need to be provided by agencies of the state, as the popularity of Columba 1400, Tapestry and others demonstrates. This point is nowhere acknowledged in the consultation paper but should feature in the Charter.

It is also vital that courses develop leadership as opposed to the capacity to carry out tasks and responsibilities determined by others. Divergent thinking, considered risk-taking, systems thinking and the capacity to innovate should all be encouraged.

The paper refers to the need to ensure that the new arrangements do not involve unnecessary

bureaucracy or additional workload. The Commission agrees with this and believes that the introduction of genuine school empowerment has the capacity to reduce unnecessary workload. Much effort, both at school and local authority level, is currently taken up by writing plans, seeking permission, commenting on plans and so forth. As confidence develops among headteachers there is a great deal of time that could be saved from these kinds of activities and put to better use.

Developing confidence among school leaders has to be an essential component of the government's reforms. This, however, is an issue that gets very little attention in the paper. It is assumed that headteachers will welcome their new responsibilities and will have the capacity to carry them out effectively from the outset.

It may well be the case that most heads would welcome greater decision-making powers in principle but many are apprehensive about whether there is the in-house capacity in their schools to meet all of the new demands. This anxiety is more evident in the primary than the secondary sector for the very good reason that the management capacity of most primary schools is very limited. After allowance has been made to ensure that every class has a teacher, the remaining human resource is often very small. It is not uncommon for the headteacher to be the only person in a promoted post. Sometimes that head may also be carrying a part-time teaching commitment. By contrast, every secondary school has a management structure. The amount of management time available, both for the school centrally and for departments or faculties can be quite considerable.

There are also concerns about expertise. Some headteachers are worried about lack of financial expertise and seek greater support in this area than is currently available in many local authorities.

The Commission believes that these concerns can be addressed in a satisfactory way although it would like to be reassured that government has taken the costs into account. While there are resources that could be redirected from local authority offices, the Commission does not believe that this is a zero-sum game. Empowering schools should lead to better governance but it will not lead to cheaper governance.

The best way of addressing headteacher concerns would be to reinforce the role of school clusters in the new arrangements. The consultative paper makes several references to clusters – generally in favourable terms – but it does not provide any formal place for them. The Commission believes that this is a matter that deserves serious attention before the draft legislation is published. (There are many definitions of 'cluster'. The Commission uses the term to refer to a grouping of a single secondary school, its associated primaries and other educational establishments in the area.)

There will be diverging views on the role of clusters. Certainly, the way has not been adequately prepared for clusters to replace individual schools as the main unit of organisation of the system. There are, however, various ways in which schools could come together in groups, sharing some part of their management capacity. The Commission suggests that the cluster should be used as the basis for the local tier of governance through empowered Boards as suggested earlier in this response. This would have at least four major benefits:

- The management capacity of the cluster as a whole would be able to meet the new responsibilities placed on schools. Small schools could be effectively supported.
- Clusters promote collaboration among schools and continuity of education across sectors. (Secondary schools in particular will also require to collaborate with schools outwith their clusters.)
- The cluster heads as a group could provide some of the challenge by critical friends advocated in the consultation paper, and

- There is a good chance of being able to constitute 350 or so high calibre cluster Boards with access to supportive external expertise. It is almost inconceivable that this could be achieved for 2500+ individual schools.

The paper does not say anything about the process of implementation. The impression given is that, from a stated date, all headteachers will receive new powers and the new arrangements will apply throughout the country. If this is, indeed, what is intended, the Commission believes that important opportunities to test and refine the proposals will be missed. Such is the scale of the intended changes that a lockstep approach risks serious implementation failures.

Whatever new governance structures are introduced, the scale of the changes and the range of preparedness and willingness in the system is so great that the government would be well advised to consider phasing them in rather than introducing them in a lockstep fashion to every school. A lockstep approach runs the risk of grudging compliance from unwilling schools and those which feel unready. Risk-averse schools and local authorities, might find some comfort in conformity – every school being in the same boat. However, the fact that not one of the 32 local authorities has supported the government proposals for greater autonomy for schools is deeply disappointing. It indicates an aversion to diversity and radical reform. In such circumstances, simultaneous implementation of significant change across the entire system could be dangerous.

On the other hand, an incremental approach, opponents might argue, would divide schools into early and late adopters with possible implications for equality if early adopters were to experience advantages or disadvantages. However, it would also be almost certain to create a more dynamic culture of innovation. By contrast, mandating that every school accept the greater autonomy at the same time irrespective of sector, size or readiness is likely to embed a grudging compliance into the culture of Scottish schools which will exacerbate the deep scepticism about the central management of change that continues to pervade the school system after the implementation of Curriculum for Excellence.

The Commission, therefore, is convinced that the greatly preferable approach would be to pilot the proposals in a limited number of schools and progress to fuller implementation following evaluation of these pilots and, if necessary, adjustments to the proposals themselves.

It would be possible to identify a significant number of secondary schools or primary/secondary school clusters across the country willing to pilot the changes over a period of one, two or three school sessions. This would have the double benefit of making the provision of support more manageable and ensuring a higher level of commitment and enthusiasm for the changes. It would also make setting up an independent evaluation of the changes, from which lessons could be learned, more feasible. This would require the government to set a new timescale for the proposed changes in the Bill that would be different from the closing the gap timescale.

Compelling schools, whose own self-evaluation concludes that they are not ready or lack the capacity, to accept greater autonomy without clarifying the accountability mechanisms, risks creating a dangerous backlash. The proposals to increase significantly school autonomy, including a legislatively-backed Headteachers' Charter, are genuinely innovative and to be welcomed. They represent a historic opportunity to change the culture of Scottish education. However, the top-down, mandatory, lockstep approach undermines the government's claim that the case for change is about moving towards "a school and teacher-led system". Schools need not only new decision-making powers but the professional capacity and confidence to use them. Crucially, if the government is serious about moving to a school-led system, then schools should be allowed to evaluate their readiness to take on the new powers. Professional confidence cannot by mandated to schools by statutory instruments.

Before closing this section, the Commission considers it important to comment on quality assurance mechanisms. At the time of introducing radically new governance arrangements, it is vital that their effect is carefully monitored. In part, this is a matter of improving the quality and transparency of the data that is available on the performance of the system as a whole and of individual schools. However, it will also be important to review the role of inspection. Most members of the public almost certainly assume that inspection is a beneficial process that helps to maintain or even raise standards and that the focus should be on inspecting individual schools in order to give reassurance and information to existing and prospective parents. Each of these assumptions is open to question.

It is clear that the frequency of inspections is quite inadequate to ensure the availability of a current inspection report on every school and early years centre. (Reports remain current for perhaps around three years at best while the present inspection cycle is more like twenty years.) Unless the size of the inspectorate were to be hugely expanded, this will always be the case. In any event, very frequent inspection would almost certainly have a seriously disruptive effect on schools.

The assumption that it is inspection of individual schools that is most important is very questionable. Thematic inspections of aspects of the system as a whole play a very important role, by generating evidence on the quality of the system and about standards generally. Assessing the success or otherwise of policy across the board is at least arguably more important than evaluating its implementation in an individual institution.

In a context of seeking to create "a school and teacher-led system" there must be doubt about whether 'inspection' by those assumed to know better is, the right approach. Certainly, successful systems like the Finnish are able to assure quality in much more collaborative and collegiate ways.

The Commission has no wish to advance definite views on inspection at this stage but rather to argue that, in the course of putting into place radically new governance arrangements built on the basis of empowering schools, the future role of inspection needs to be considered afresh, preferably as part of a restructuring of Education Scotland.

Summary

The Commission strongly supports the government's intention of empowering schools by increasing the decision-making powers of headteachers. It believes that the proposed Headteachers' Charter can provide an appropriate vehicle for achieving this objective. It agrees that schools should be empowered particularly in relation to the curriculum, staffing and funding and considers that improvement will follow from such empowerment.

It hopes that, in taking forward its proposals, the government will pay attention to the need to:

- Keep any national curriculum framework genuinely strategic and strictly limited,
- Develop an effective tier of governance at school or cluster level,
- Clarify the future role of local authorities and prevent their overriding headteachers' decisions on delegated matters,
- Distinguish between a legitimate challenge function and reassertion of local authority control over delegated matters,
- Focus on introducing effective change mechanisms based on a limited national framework and extensive empowerment of schools,
- Use the new arrangements to promote a positive culture throughout the system,
- Adopt a phased basis of implementation of the new arrangements, allowing for piloting, evaluation and refinement of the approach,
- Ensure that headteachers use their enhanced powers in an open manner, involving and consulting with staff, parents, pupils and others,

- Ensure that any impact of national agreements on headteachers' decisions on staffing matters is kept to a minimum,
- Limit any constraint on headteachers' control of the curriculum arising from GTCS definitions of subject qualifications,
- Ensure that school budgets allow for the maximum level of virement between different areas of expenditure,
- Define a limited category of areas of expenditure to be retained centrally by local authorities,
- Expand the availability of appropriate professional development opportunities for headteachers and aspiring headteachers,
- Ensure that these opportunities encourage genuine leadership rather than conformity,
- Reassure headteachers regarding their management capacity, and
- Use clusters in order to maximise the capacity available to headteachers.

Parental and Community Engagement

Given that arrangements at school, local authority and national level for consulting with parents are very varied, the Commission would want to be convinced that consultations such as the present one are organised in a manner that offers a prospect that parental opinion will be sampled in ways that reflect the views of parents as a whole including those that are "hard to reach". It is not convinced that that is the current position.

Delegating increased decision-making powers to school level should be a stimulus to improving parental engagement and links between schools and their communities. Indeed, it is on activities of this kind that empowering people close to the effects of the decisions they make and aware of local circumstances s likely to have early and positive effect.

The consultation paper usefully summarises many of the most obvious benefits of parental engagement. Headteachers are already generally persuaded of these and keen to improve engagement with parents. It is not clear that marginal strengthening of statutory responsibilities will bring significant benefits. Indeed, the impulse to resort to law-making suggests a command and control approach which is at odds with the kind of culture in which collaboration and partnership thrive.

The Commission does not object to the specific actions suggested in the consultation but questions the need for them to be reinforced by statute. Most headteachers are keen to improve parental engagement and links with the community. They will welcome assistance from their collaboratives on these matters. Evidence of success in other schools is likely to be a more effective persuader of reluctant heads than changing the duty to "inform and consult" to a duty "to work in a collaborative way". A requirement to update parental involvement strategies every three years is more likely to produce bureaucracy than improvement.

It is not that the suggested amendments to the 2006 Act are objectionable. Rather they suggest an approach to promoting change that is still excessively based on control rather than empowerment and trust. On the other hand, the intention to take a broad view of the definition of parental engagement and emphasise the importance of parental engagement in learning and family learning is very welcome (but does not need statutory underpinning). In the list of suggested actions, the only one that would seem to require legislative change is the clarification of the application of the 2006 Act to early learning and childcare settings. The permissive approach to this issue outlined in the paper is appropriate.

The section concludes with a reference to wider action, including the development of a national action plan on parental engagement and family learning. The production of national guidance on these issues would be welcome. However, an action plan suggests the writing of policy at an inappropriate level of detail. If schools are to be empowered and innovation is to be encouraged, the impulse to control through the production of anything that is likely to be seen as mandatory requirements must be resisted.

There is also a reference to the introduction of a home/school link worker in every school. While the intentions lying behind this suggestion are laudable, home/school link workers are not the only way of taking them forward. This is an example of confusing ends and means. It also runs quite contrary to the statements made in the section of the paper dealing with the Headteachers' Charter that heads should be free to determine the staffing structure for their school. It also seems highly likely that there will be significant resource implications that are not acknowledged or provided for.

Pupil Participation

The consultation paper gives a good summary of the educational benefits of pupil participation in influencing decisions that affect their learning and lives. It correctly indicates that there are many good existing models of pupil participation although it mentions only pupil councils and parliaments. These are, in the view, of the Commission far from being the best examples. It is more important that pupils have a say in decisions that directly affect them as individuals than that they participate in pseudo-political assemblies. These are, in any case, invariably the concern of small minorities.

The paper's short list of principles of participation is much more promising. The Commission agrees that collaboration and dialogue, authenticity and inclusion should lie at the heart of any school approach.

The only specific proposal in this section of the paper is to include in the forthcoming legislation a general duty on headteachers "to promote and support pupil participation in specific aspects of education and school life". We are not told what the specific aspects might be, nor whether they are to be specified in the legislation. On the whole, it would probably be preferable if the legislative requirement were to be confined to a general duty to promote and support participation; any attempt to be more specific risks restricting the extent of participation by focusing on a limited number of areas of activity and, by implication, excluding others.

In any event, the Commission is unconvinced about the effectiveness of this kind of legislation. Participation by pupils in decision-making that affects them has been a welcome and increasing feature of school life over the last decade or so. This has happened, in the absence of any legislative requirement, because of changes in the culture in schools (and, indeed, in society more widely). It will become even more established in the future if the culture is right. No amount of legislative exhortation will make any difference if this is not the case. The proposed general duty is, however, unobjectionable. The only downside is to encourage a belief that something important has been accomplished when, in fact, the essential and difficult task of culture change remains incomplete.

The paper seeks views on whether there should be additional legislative duties put on local and central government to support young people in influencing policy. The Commission sees little merit in tokenism of the kind that has allocated five places on a rotating basis to young people on the new Scottish Education Council. There is, however, real merit in ensuring that young people have the opportunity to participate in consultations relating to education. It is even more important that the views of pupils on their experience of school and of learning are sought out during school inspections and on other appropriate occasions. None of this requires any new legislation.

Regional Improvement Collaboratives

At the time of the earlier consultation on governance, the Commission was unconvinced of the merits of the proposed Regional Improvement Collaboratives. In the interim, the proposals have been significantly amended and the collaboratives have been established. In these new circumstances, the Commission believes that the main issues now are to ensure that the collaboratives work as effectively as possible and that they are focussed on supporting schools in

accordance with schools' own perceptions of their needs.

The paper contains an important reassuring statement. We are told that the collaboratives will provide access to support "based on the needs schools have identified". It is also welcome that the section contains nothing that implies that schools are to be answerable to collaboratives. If anything, the implication is that the collaboratives will have responsibilities towards schools, being expected to help provide the support schools require.

There remains, however, a suspicion that the collaboratives are seen as, or might develop into, a new tier of control, in effect replacing the diminished level of control to be exercised by local authorities in the future. The Commission would be wholly opposed to any such trend. The emergence of collaboratives as, in effect, regional education authorities would be the worst of all possible worlds. Schools would not be empowered as the government is proposing while the new controlling bodies would be much less accountable than the old.

In a sense, the future development of the collaboratives will be a crucial test of the sincerity of the government's intentions. Empowering schools has the capacity to create new and much more successful mechanisms for promoting change and improvement. It can lead to what the Deputy First Minister describes in his introduction as "a school and teacher-led system, centred on the child". Realising such a vision, however, depends on stifling the political impulse to control, whether at national or regional level.

The paper indicates an intention to include in the proposed legislation "underpinning for national and local government participation in the new Regional Improvement Collaboratives". It is suggested that it might be desirable to require local authorities to participate and that there could be future statutory guidance on the operation of the collaboratives.

It is not clear why any of this is necessary. The collaboratives have already been set up. All local authorities are involved. None of this has required legislation.

The collaboratives are currently largely untested. The Northern Alliance has a track record of some success during its several years of existence on a purely voluntary basis. The Tayside Collaborative has existed for less time and, so far as the Commission is aware, its achievements are correspondingly fewer. The other collaboratives have only been established in the last few months. It is impossible to say whether or not this will prove a successful initiative. At this stage, it would be very unwise to enshrine in legislation anything that might later need to be modified or even undone.

The paper says little about the governance arrangements for the collaboratives. The reader is likely to be left with the impression that the only participants in running them will be local authorities and, through Education Scotland, central government. The important contribution that could be made by the college and university sectors and possibly by other partners is ignored. This contribution can take many forms – enriching the curriculum, proving expertise, linking schools into research etc. Part of the process of empowering schools has to involve improving their access to greater knowledge and support.

Many important questions are left unanswered. Will local authorities be obliged to hand over their improvement staff to the collaboratives? Will collaboratives be able to insist that authorities contribute proportionately to collective activities? Will they, in effect, be able to impose a levy on their constituents? Can individual authorities reject the improvement plan of their collaborative? What happens then? As collaboratives become an established part of the educational scene, it is inevitable that questions of this type will arise. The government would be well advised to have answers ready.

The paper indicates that each collaborative will "have a detailed Regional Improvement Plan in place by January 2018" and should be required "to publish reports about what has been achieved

as a result of those plans". In other words, the full bureaucratic apparatus that has burdened Scottish school education is to be reproduced at regional level. It is, in any event, difficult to see how anything but the most anodyne of plans can be produced by collaboratives that are supposed to respond to needs identified by schools. If collaboratives are genuinely customer-focused, they can plan how their organisations will work and put in place the necessary personnel and budgets but their agenda will be set for them by the schools who are their customers. Talk of mandatory plans and reports serves merely to reinforce suspicions that collaboratives are seen as mechanisms for control as much as support.

The paper gives the impression that the recently-established collaboratives are to be fixed for the long-term and that schools will be free to draw support only from the collaborative for their area. Neither of these assumptions is likely to make collaboratives more innovative or customer-focussed. Local authorities should be free to move from one collaborative to another if they feel this would be in the interests of their schools. In the same way, schools should be able to access support from other collaboratives, possibly on a paying basis. The key consideration should be that schools should be able to secure whatever they consider is the most effective support for their needs as they have identified them.

The Role of the Chief Inspector and Education Scotland

The notion that collaboratives will 'report' to the Chief Inspector is not reassuring. Keeping the Chief Inspector aware of developments and activities is legitimate but formal reporting suggests that the idea of the collaboratives as part of a mechanism of national control, centred in Education Scotland, that was such an objectionable feature of the original government proposal is not yet dead. Government requires to make clear that such an approach is not its intention.

The references in the consultation paper to the Chief Inspector again bring into focus the place of Education Scotland in the new arrangements. The Commission, like many others, believes that Education Scotland remains a deeply flawed organisation, in significant measure because there is an irreconcilable conflict of interest built into its constitution and remit. It is not possible to maintain the necessary independence of the inspectorate while keeping it as a constituent part of a body that also has responsibilities for policy development and for support to schools. The fact that the government does not recognise this conflict does not mean that it is not there and very evident to most commentators.

The recently-published civil service survey of Education Scotland staff clearly indicates that staff confidence in their own organisation, already at a dismally low level, has fallen still further in the past year. There is no reason whatsoever to believe that the organisation has the capacity to fulfil the role the government continues to envisage for it.

The Commission hopes that the opportunity will now be taken in advance of the finalisation of the legislation to review the functions of Education Scotland and re-establish an independent inspectorate. It also believes that the development of policy (or of guidance that has much of the status of policy) is the function of government and should be undertaken, not by a national agency, but by the Learning Directorate. This may require an enlargement of the curriculum section but, within the context of a review of Education Scotland, this would not involve additional cost.

Regardless of the nature of their future relationship with Education Scotland, the test of whether collaboratives are working is not whether they can write a convincing report on the execution of their plans but whether schools judge that they are receiving much improved support services. It is on this that the collaboratives' attention should be focussed. The government should carefully monitor the level of school satisfaction with the new arrangements. This would best be done by commissioning independent research.

The Commission notes with regret that the only sources of support to schools mentioned in the paper are national and local government. In practice, the position is much more complex. Schools value support from universities and colleges and from a range of private and third sector providers. They are able to access these providers without the agency of collaboratives or, indeed, their own local authorities. It would be a very retrograde step if the introduction of collaboratives were to have the effect of reducing the opportunities open to schools. It is important that the government should give reassurance on this point.

Education Workforce Council for Scotland

The idea of setting up a workforce council for all professionals working in education was not part of the original governance consultation but emerged in the 'Next Steps' document. The Commission sees considerable merits in the idea but considers that the proposals are still at an early stage of development. As the forthcoming legislation is to be concerned essentially with governance, there is no pressing reason why the establishment of an Education Workforce Council for Scotland should be included in it. The Commission, therefore, considers that this part of the proposed legislation should be withdrawn and be dealt with separately, following further consultation and careful exploration of the very considerable logistic complexities involved.

The following comments are offered on the basis that the government may decide nevertheless to proceed with legislation on the workforce council at this stage.

The Commission agrees that establishing a workforce council will recognise the role and status of several professional and para-professional groups within education who lack that recognition at present. This, in turn is likely to promote professional learning among those groups and help to raise standards of practice. Increased opportunities for professional learning could make it possible to create new career pathways enabling, for example, early years practitioners who meet the standards to progress into teaching. The Commission would, therefore, support the Purpose and Aims of the proposed council as set out in the consultation paper.

It is important, however, to emphasise that the establishment of a council will, in itself, accomplish nothing of importance. What is crucial is how the council would operate and how its work would be supported and resourced.

There is always a risk that professional bodies will act in the interests of the profession rather than of the public. This risk is clearly substantially increased if the council is effectively controlled by the profession. The government is, therefore, right to suggest that, in any new council, professionals should not constitute a majority. Given the greater interest of the professionals in the work of the council and their greater likelihood of attending regularly (as the case of the GTCS demonstrates), it will be necessary to ensure that those representing the public interest (possibly through a number of constituencies) are in an appreciable majority.

The consultation paper indicates seven professional groups that would be registered with the council and suggests that ministers should be given powers to amend this list. It is not altogether clear whether registration would be a condition of employment, as is currently the case with teachers. The Commission assumes that this would be the intention although there would need to be transitional arrangements for those groups for which there is currently no initial qualifications requirement. For example, it would be necessary to allow the employment of unregistered persons as classroom assistants, possibly on condition of their then taking steps to meet a minimum professional requirement. If the council were to succeed in its aim of improving professional standards, this kind of requirement would reduce over the years.

There might be merit in allowing voluntary registration for groups, such as speech and language therapists, some of whose members work extensively with children and young people,

but whose professional focus is neither purely educational nor confined to young people.

The consultation paper offers an extensive list of functions for the proposed council. These include:

- Keeping a register of practitioners
- Establishing professional standards
- Establishing standards of education to be required of practitioners
- Ensuring appropriate standards of conduct
- Promoting and accrediting professional learning
- Supporting the operation of the various professions

These are essentially the functions of the GTCS and would be appropriate to the new council.

The list also includes a small number of other functions related to providing advice to ministers and contributing to policy. These are less necessary but are unobjectionable. There is also a function concerning the promotion of family and community links which appears somewhat out of place as it relates to a specific educational policy. Its inclusion begs questions about the status of other policies and is, therefore, inappropriate. Otherwise the Commission agrees with the suggested functions.

The problem with the proposal lies in the number of groups to be included, their very varying circumstances and, as a consequence, the great complexity of making arrangements that will suit all. The consultation paper recognises this when it suggests that the implementation of the registration arrangements should be staggered "in order to allow the appropriate time for planning and preparation". The proposals are also certain to be controversial with some teachers seeking to retain their separate status and the in-built vested interest of the GTCS. It is also unclear how far the proposals will be welcomed by less qualified groups, despite the potential advantages to them.

Many of the groups to be included within the scope of the proposed council have no history of being organised or regulated in the way that is suggested. Some have no entry qualifications or educational standards, few opportunities for professional learning and no pathways for career advancement. It is difficult to see how a council can be established before the government is in a position to indicate how it hopes to see these issues tackled and, thereafter, to consult those affected.

In all of these circumstances, the Commission believes that much more preparatory work should be undertaken before any attempt is made to legislate. To proceed at this stage with this complex and in some ways peripheral set of proposals could seriously delay or even endanger the passage of the main parts of the legislation.

Conclusion

The government is proposing to establish a "school and teacher-led" system of education. This would be the most significant reform of school governance since the Act of 1929 saw local authorities replace ad hoc school boards. It would have the potential to transform the culture of the system and the way in which it is led and managed by encouraging initiative at school level and passing greatly increased decision-making powers to those most directly affected and most aware of local circumstances. It could create a modern agile system of governance, appropriate to the needs of a period of rapid change.

However, it is not inevitable that this will be the outcome. To maximise the benefits from its proposals, the government should take on board the recommendations made above on pages 3, 5, 11 and 13 and, in particular:

- Ensure the maximum degree of genuinely delegated decision-making to school level,
- Establish a tier of governance at local (i.e. school or, preferably, cluster) level,
- Minimise the extent to which national agreements are permitted to constrain headteachers' control of staffing and staffing structures,
- Avoid the possibility of collaboratives turning into a new level of governance,

- Ensure that collaboratives are customer-focused and responsive to schools' identified needs,
- Reform Education Scotland, and
- Establish a clear but minimal framework of national policy requirements.

The government's intentions include some proposals for legislation, particularly in relation to Parental and Community Engagement and Pupil Participation, that are unnecessary. The resort to legislation where it is not needed suggests a lingering fondness for command and control approaches that are not compatible with the overall thrust of the government's proposals. Furthermore, legislation is difficult and time-consuming to amend or repeal.

It is also important to avoid unnecessary bureaucracy. There is little evidence that massive amounts of planning and reporting that have been required in recent years have had any significant impact, beneficial or otherwise. Drawing up plans is assumed to be a proxy for thinking and reflection. Too often it is merely a burdensome requirement to reiterate pious intentions and well-worn phrases. Every attempt should be made to avoid introducing new requirements as part of the proposed legislation.

In conclusion, the Commission commends the government for its intention to establish a "school and teacher-led system" and supports those parts of the current proposals that may lead to this outcome.