Profit-Making Free Schools

Unlocking the Potential of England's Proprietorial Schools Sector

James Croft

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Proprietorial schools have been overlooked for too long. I hope that this effort to bring their collective achievement to public notice will give rise to further study. They offer much from which other schools may learn.

James Croft, April 2011

James Croft is an independent education researcher, communications consultant and freelance journalist. He can be contacted via email at james.croft@adamsmith.org

Executive Summary

The government has identified the need to expand the market as the most promising route to raising educational standards in the UK. Expansion would address structural inefficiencies in supply, increase competition among different education providers, and broaden the scope for parental choice in education. An unanticipated surge in the birth rate in recent years and a lack of available capital to finance the development of the necessary surplus capacity in the system have presented particularly challenging circumstances in which to expand the education market. Thus far, ministers have shown a reluctance to come to terms with the implications of these challenges for Free School development, baulking at the potential political fallout that might ensue from allowing companies to open schools themselves and run them at profit.

This paper considers the case for new schools in the context of these challenges, examining in particular whether fears about an extension in the private sector's remit in schools are justified, and revisiting the question of whether profit necessarily compromises educational outcomes. Building on other studies that have scrutinized the performance of for-profit education management companies overseas, Part 2 investigates the little-known English proprietorial school tradition and offers a profile of these schools for the first time as constituting a sector in their own right. Concluding the report, Part 3 considers ways of unlocking the sector's spare capacity and harnessing its entrepreneurial energy in service of wider policy goals.

Part 1: The challenge of expanding capacity through new schools

Frustrated demand and inadequate supply in the UK schools 'market'

- 15.4% of parents nationally did not secure a place at their first preference school for 2011-12.
- One in ten pupils are now educated in schools that have exceeded their capacity.
- On DfE projections, pupil numbers will rise by 8% by 2014-15.
- This indicates a need for an additional 350,000 places by 2014-15, mainly at the primary level.

New schools ought to be an important part of the solution, but so far the progress of Free School development has been disappointing.

The progress of Free School development

- The Conservatives had originally set their sights on 3,000 new schools, which they hoped would expand overall capacity by 222,000 places (or 15% of provision based on today's pupil numbers).
- 700 initial expressions of interest (March 2010) have issued in just 323 actual applications, with only 41 proceeding to business case stage, and just a handful set to open in September 2011.

The introduction, effectively, of competitive tendering to the new application process for 2012, such that proposals will now be judged on their relative merits before being granted funds to proceed, is a tacit acknowledgement that *the scale of development will be limited by the lack of capital at the DfE.*

The capital problem

- The DfE capital budget is set to fall by 60% to £3.4 billion by 2014-15 – a considerably greater reduction than the public sector average of 29%.
- If local authorities allocate half of the £800 million 'basic need' funding allowance for 2011-12 to new schools (and this level of investment is sustained over the coming years), *and*

government continue with a centrally administered capital fund for new schools on present levels (£150 million), over 18 years (the time taken for Sweden's Free Schools to gain their 10% market share, and the projected time it would have taken BSF to overhaul England's school estate) this would suggest a projected budget of £7.85 billion. BSF's was £55 billion.

- Even with this increase in 'basic need' funding (which has come at the price of reduced budgets for maintenance and repairs), this constitutes a massive capital shortfall.

- The James capital review offers some ways forward, but the success of new school development is still contingent on reform of the Use Classes Order making it easier for buildings currently used for other purposes to be converted to schools, and on the development of 'revenue-financing' alternatives to PFI.

Free Schools look set to have only a 'statistically minor' impact unless ministers are prepared to facilitate the contribution of profit-making businesses.

Awkwardness about profit

- The commissioning of private sector organisations to manage public service delivery in hospitals, prisons and care homes is nothing new in the UK.

- There are, furthermore, precedents in education, notably in early years and Special school provision, for entrusting private providers with the care of the youngest and some of the most vulnerable individuals in society.

- For-profit nurseries now account for approximately 74% of market provision.

- Proprietorial independent special schools have focused their efforts on catering for pupils with acute SEN, more complex (including medical) needs, and/or those displaying more challenging SEBD requiring specialist services.

- In respect of academies and Free Schools, however, the government has sought to maintain a delicate political compromise by insisting that these be governed by trusts operating as companies limited by guarantee, on a not-for-profit basis; educational management organisations are limited in the role they can play.

This is an artificial construct: *there is no evidence to suggest that trust governance guarantees solid educational outcomes, neither for that matter is there evidence to suggest that for-profit management necessarily compromises standards.*

Part 2: A profile of the proprietorial school sector

The untapped potential of proprietorial (for-profit) independent schools

Proprietorial schools include those run on more traditional sole proprietor and family partnership models as well as those owned and operated by chains.

- There are 489 mainstream proprietorial schools in England educating at the statutory age, making provision for 82,528 pupils.

- The average number of pupils is 205. 78% have less than 250 pupils on roll.

In many ways these schools embody what aspirant Free School groups hope one day to become:

- 83% are non-selective – often scoring highly on value-added measures of pupil attainment.

- 80% are situated in urban or sub-urban contexts, with significant clustering in the vicinities of Manchester, Leeds, Birmingham/Coventry and Greater London, as well as in South and South West coastal towns, and with correspondingly socially and ethnically diverse pupil intakes.

- 41% operate on fee levels less than, or on a par with, the national average per pupil funding in the state-maintained sector. On average, fees are approximately £7,500 annually. Fees at the more accessible end of the spectrum attract a high proportion of first-time buyers of independent education.

- A traditional interest in breadth and balance in the curriculum, and in ensuring the widest possible appeal, have tended to incline these schools towards the educational centre ground. So while there are 32 Montessori schools, just two in addition to these offer a markedly 'alternative' education. Just 1% are 'confessional' faith schools.

Welcome initiative

With a high proportion of new entrants in recent years, the market has also become increasingly competitive.

- A staggering 200 of these schools (of 489) were established or changed hands over the past decade: there were 42 start-ups versus 158 takeovers, meaning that 9% of the total are new schools, in addition to 32% which experienced a change of ownership.

- While the impact of the larger chains has been particularly marked (39.5% of all activity), so too has the contribution of aspirant chains of between 3 and 5 schools (12.5%), and that of incorporated business interests generally (28.5%).

- A number of overseas-based chains, with capacity to do much more, have gained a foothold in the English market over the decade, while nursery-based chains have led the way in expanding their provision into the statutory age.

- Expansion up, or down, a stage of education from the initial competency is not limited to nursery-based providers. Fully 84% of proprietorial schools overall have expanded their provision either up or down a stage from their initial competency. Notably, of the 72% of schools that are essentially preparatory (up to the age of 13), 80% of these also make provision for the early years.

- 29% are specialised for a niche market – this in addition to the numerous Special schools and schools set up specifically and exclusively to cater for SEBD, excluded for the purposes of this study.

With this experience, these school businesses are well-equipped to respond to opportunity in the Free School market.

Quality first

Finally, *the performance of these schools at inspection indicates that the need to make a profit focuses minds on educational outcomes*. Putting quality first is the most important condition for the possibility of a successful proprietorial school business.

- Proprietorial schools, even those at the lower end of the fee spectrum, inspected by Ofsted 2007-10 significantly outperformed the 'all independent schools' group of which they constitute a subset on all key teaching and learning-related criteria. Those inspected by ISI 2006-09 were discovered to have done so on three of the five criteria relating directly to pupils' education.

Significant spare capacity

- While proprietorial schools as a whole have just 15% of all pupils educated in the independent sector (82,528 of 562,885), they carry fully 25% of all available independent sector capacity (14,702 of 58,343 spare places).

- Furthermore, the most significant degree of unfulfilled potential lies in good proprietorial schools charging fees at the lower end of the fee spectrum. Historically, the impact of a complex of factors peculiar to this market has been such that it has often been difficult for these schools to set their fees competitively, with the result that a school may be in effect 'over-subscribed', and yet continue to carry surplus places.

The correlation that has been observed in the state sector between the standard of education and spare capacity – on which assumption the DfE has based one of its key 'Additional criteria for existing independent schools seeking to become Free Schools' – does not hold in the Independent sector.

Part 3: Policy recommendations

Proprietorial schools have delivered outstanding results where they have been allowed to operate. The government should unlock this potential in order to meet growing demand in the coming years, with a view to introducing a steadily greater degree of choice for parents and increasing competition among schools.

Government-funded bursary scheme

- There are 58,343 unfilled places in mainstream independent schools in England – the majority of these are in good schools, whose pupils achieve at higher levels than the national average.

- The government should unlock this spare capacity and incentivise schools to make better use of other available space by offering government-funded bursary provision for 'looked after' pupils and those qualifying for the pupil premium. Take-up should be at the instigation of schools; admissions should be streamlined with local authority processes; in the event of over-subscription, allocation should be by computerised ballot.

- Per pupil funding on a bursary basis has the added advantage of offering a way to facilitate a more gradual transition to Free School status. Currently, parents of pupils attending the predecessor school are not expected to have to pay fees following the transition to Free School status. This was an unnecessary and short-sighted concession, which should be rectified for 2012 admission.

Conversion to Free School status

- The requirements of the new Free School applications process are altogether too prescriptive. If choice and competition are indeed inherently beneficial, as the Conservatives have consistently argued in and out of office, then audited accounts showing sound financial management, together with evidence of demand, ought to be sufficient criteria for existing good schools not in need of capital investment. Providing such schools have some spare capacity to bring to the equation, they should be automatically approved on a value for money basis every time.

- A shorter list of requirements for *pre-approval* (as for state-maintained–academy conversions) ought to be introduced in place of the criteria published for 2012, and the competitive tendering stage discarded.

- A change of legal personality ought not to be required.

- Proprietors should not be required to relinquish ownership of their businesses in order for their schools to convert.

Lifting the requirement for a charitable vehicle

- Freedom of form widens participation. A range of different legal frameworks, commercial and otherwise, have been made use of by non-charitable trust independent schools. A number of different company types are employed; a good number of proprietorial businesses furthermore choose to remain unincorporated. Each framework leverages the assets, resources and goodwill accessible to proprietors in different ways.

- Existing providers should not be required to change their company structure or trading framework in order to be able to operate Free Schools. Sole traders and self-employed partnerships should not be required to incorporate.

- The sector is developing its own models of best practice; any attempt formally to recognise them as such, or to insist on such models as requirements of Free School participation, would be self-defeating.

- Proprietors should be given leeway to develop structures of governance and management that are appropriate to their talents, resources and circumstances.

- It is commitment to educational outcomes that the government should be examining, not an organisation's ability to affect formal compliance.

Conclusion: for-profit or bust

- As is evidenced in this profile of the activity of the past decade in the proprietorial schools sector, markets develop in response to opportunity.

- In Sweden, while the enthusiasm of not-for-profit innovators was important at the beginning, that idealism and drive petered out over time, giving way to more sustainable commercial interests. Today, 64% of all Swedish Free Schools are run by joint-stock companies. Applications for new licenses now come almost entirely from for-profit operators.

The Secretary of State has said that he wants to give the idealists a chance, but idealists need capital too. *There is no reason why brilliant and innovative educationists cannot effectively partner with able businesspeople, for-profit. There is every reason to believe, to the contrary, and on the evidence, that for-profit incentive will in fact work to lift pupil attainment.*

1 The challenge of expanding capacity through new schools

Introduction

The government has identified the need to expand the market as the most promising route to raising educational standards in the UK. Expansion would address structural inefficiencies in supply, increase competition among different education providers, and broaden the scope for parental choice in education. An unanticipated surge in the birth rate in recent years and a lack of available capital to finance the development of the necessary surplus capacity in the system have presented particularly challenging circumstances in which to expand the education market. Thus far, ministers have shown a reluctance to come to terms with the implications of these challenges for Free School development, baulking at the potential political fallout that might ensue from allowing companies to open schools themselves and run them at profit.

This paper considers the case for new schools in the context of these challenges, examining in particular whether fears about an extension in the private sector's remit in schools are justified, and revisiting the question of whether profit necessarily compromises educational outcomes. Building on other studies that have scrutinized the performance of for-profit education management companies overseas, Part 2 investigates the little-known English proprietorial school tradition and offers a profile of these schools for the first time as constituting a sector in their own right. Concluding the report, Part 3 considers ways of unlocking the sector's spare capacity and harnessing its entrepreneurial energy in service of wider policy goals.

Frustrated demand and inadequate supply in the UK schools 'market'

For choice and competition to work effectively as mechanisms for driving educational improvement, on the demand side service users need be aware of their choices, equipped to choose by the provision of accessible information, and free of constraint in making their decisions. On the supply side, the market needs to be able to accommodate a diversity of independent providers, be flexible in respect of allowing new entrants, exits, mergers and acquisitions, and provide adequate incentives to encourage suppliers to compete.[1] Such conditions pertain in the UK schools market only to a very limited degree.

While some, qualified,[2] progress has been made on the demand side in the provision of the information parents need to exercise choice effectively (both in respect of league tables and inspection), and limited scope for decision has been incorporated into the admissions system for a number of years now, supply-side reforms have been slow to follow.[3] This has skewed the effect of informed choice in unintended and inequitable directions. Developed frameworks of accountability that spare poorly performing schools the ultimate consequences of failure make them progressively harder to turn around, thereby lengthening their demise. If schools are not able to expand or contract according to demand, some will inevitably become oversubscribed, leading to an undesirable reliance on rationing mechanisms to determine outcomes.

1 Frontier Economics, 'Choice and competition in Public Services: a guide for policymakers' (London: Office of Fair Trading, 2010), p. 10.
2 See pp. 23-4.
3 Provision for the publication of school inspection reports was introduced under the terms of the Education (Schools) Act 1992. Provision for league tables and the expression of preference was first made under the terms of the Conservatives' 1988 Education Reform Act.

Under the current system of allocating places, parents are given the opportunity to specify an order of preference for between three and six schools. However, with constraints on capacity at successful schools (and with spare capacity concentrated in under-performing schools), in practice admissions outcomes are settled by the application of oversubscription criteria that generally prioritise siblings and those in closest proximity to the school.[4] The application of these criteria in practice ties school choice to residence, and thereby house prices. Demand for good schools raises the premium paid for houses within their catchment areas, putting access to these schools, over time, steadily further beyond the reach of relatively poorer families.[5]

Those not fortunate enough to have a good community school where they live who then apply to schools outside of the locality consequently find they are very often refused. Although the majority (84.6%) of parents in England secured places for their children at their first-preference secondary schools for the 2011-12 academic year, this still means that the aspirations of one in six were frustrated. In London, one in three missed out on their first choice. In some local authority areas, only 50% of parents manage to get their children into their first-preference schools.[6] In 2008-09, more than 88,000 appeals were made by parents who were unhappy with the schools to which their children had been assigned.[7]

Of those that were admitted to their first choice schools, many will have ended up in schools that technically have exceeded the capacity of their premises. According to research by the *Financial Times* published in September last year, one in ten of all pupils in England are now educated in schools which would be deemed 'overcrowded' according to the DfE's criteria,[8] with the problem particularly acute in London primaries. According to the latest DfE statistics, of 16,964 local authority maintained primary schools, 3,444 (or 20.3%) were either full or had pupils in excess of school capacity, compared to 19.8% in 2009. Similarly, of 3,122 local authority maintained secondary schools, 916 schools (or 29.35%) were either full or had pupils in excess of school capacity, compared to 28.7% in 2009.[9]

The ability of the current system to accommodate parental choice is already stretched to the limit. A surge in the birth rate in recent years means that, according to local authority forecasts, the number of primary pupils is set to further increase nationally between 2009/10 and 2014/15.[10] According to DfE pupil projections, pupil numbers will rise by 8%. According to *The Daily Telegraph* ministers have been told that primary schools will have to find an additional 350,000 places.[11]

For reasons that will become apparent, the dual effects of this increase are likely to be a rise in overcrowding and reinforcement of the already well-established tendency for schools reaching their statutory ceiling to spread excess demand to neighbouring schools through the employment of oversubscription criteria. The redistributive effect of over-reliance on these mechanisms, however, means that poorly performing schools are effectively spared the consequences of failure. The effect has been illustrated by Allen and Burgess who compare the growth rates of secondary schools always in the top quartile of their local (LA) quality distribution with those always in the bottom quartile, and those in the middle half, in England over the past decade.[12] In a healthy system, high-performing schools ought to grow more rapidly than average schools, but in fact, schools in the top quartile grew barely more than the middle half: the median growth rates were 10.3% versus 7.0% respectively. Correspondingly, Sibieta, Chowdry and Muriel found that while best performing schools fill 96–100% of their places, the worst still manage consistently to fill 89–93% of their capacity. 'In England's "musical chairs" system,' they conclude, 'a coasting school may fill most of its capacity regardless of performance.'[13]

A number of supply-side impediments contribute to this problem. The schools funding system disincentivises, rather than promoting,

4 Voluntary aided and foundation schools with a religious affiliation may give preference to people of their particular faith. Some former grammar schools, now comprehensive, have retained the right to select a proportion of their intakes by ability. Some specialist schools are permitted to select up to 10% of their intake by aptitude. A. Smithers and P. Robinson, 'Worlds apart: social variation among schools' (Sutton Trust, 2010), pp. 4-5.

5 A 2001 study by Gibbons and Machin found that a 10% improvement in the proportion of children achieving Level 4 in Key Stage 2 SATS correlated with a rise in house price premiums of between 5.2 and 8.4% depending on the region. See S. Gibbons and S. Machin, 'Valuing primary Schools' (Centre for the Economics of Education, 2001). In 2009 a study of this phenomenon, Nationwide Building Society found that the same level of improvement correlated with prices rises of between 2.6 and 4.6% (http://news.bbc.co.uk/1/hi/business/8374053.stm).

6 'Gibb: Admissions statistics show there are too few good schools', DfE, 17th March 2010 (see: http://www.education.gov.uk/inthenews/pressnotices/a0075687/gibb-admissions-statistics-show-there-are-too-few-good-schools). See also 'DfE Statistical Release: secondary School Applications and Offers in England March 2011'.

7 'School admissions appeals data', *Guardian DataBlog*, 10th June 2010 (see: http://www.guardian.co.uk/news/datablog/2010/jun/10/school-admission-appeals). In addition to being very expensive, the appeals process is protracted and time-consuming, hence the lag on the release of statistical data.

8 Schools are deemed overcrowded when they exceed their official capacity figure by 4%. 'Full classes put vision for schools at risk', *Financial Times*, 3rd September 2010 (http://www.ft.com/cms/s/0/d63efd64-b77c-11df-8ef6-00144feabdc0.html#axzz1DvSx8aZx).

9 'DfE statistical release: school capacity 2010', 30th November 2010 (see: http://www.education.gov.uk/rsgateway/DB/STR/d000982/osr33-2010v3.pdf).

10 Only five authorities forecast falling numbers over the next five years. At the secondary level, local authorities' forecasts indicate a fall in the overall number of secondary pupils nationally by 2016/17, though with strong regional variations. 'DfE statistical release: school capacity 2010', 30th November 2010.

11 'Primary schools short of 350,000 places', *The Daily Telegraph*, 3rd September 2010 (see: http://www.telegraph.co.uk/education/primaryeducation/7981150/primary-schools-short-of-350000-places.html).

12 R. Allen and S. Burgess, 'The future of competition and accountability in education' (London: 2020 Public Services Trust at the RSA, 2010), p. 17.

13 L. Sibieta, H. Chowdry and A. Muriel, 'Level playing field? The implications of school funding' (CfBT Education Trust, 2008), p. 60.

growth of capacity. A funding model designed in principle to relate primarily to fluctuations in pupil numbers, which ought to motivate schools to grow and suggest others for closure, has been made less effective than it might have been. This has happened with the introduction of the Minimum Funding Guarantee from 2005–06, and with local authorities' practice of multi-year budgeting from 2006–07 and introduction of mechanisms that flatten deprivation funding from central government in order to redistribute funding across all schools and thus ensure their smooth cash flow.[14] In terms of capital funding, to the extent that central government remains reliant on local authorities 'to prioritise how their formulaic funding is spent',[15] and that the same commitment is given to all schools regardless of their performance, it is questionable whether increases in 'basic need' funding slated for 2011-2012 will be allocated to expanding provision and to the development of new schools as envisaged.[16] Given the corresponding decrease in the budget for repairs, there are real doubts as to how responsive local authorities will prove to the challenge of expansion.

Expansion has historically been further discouraged by budgetary pressure from central government and the Audit Commission to keep surplus places to a minimum.[17] DCSF guidance during the period 1996–2010 repeatedly stated that if a school expands, the local authority should take action to reduce capacity elsewhere. In local authority inspections, Ofsted and the Audit Commission set criteria for a 'good' authority, which included achieving a low number of surplus places. The Admissions Code advises authorities along the same lines.[18]

Expansion of spare capacity requires up-front investment and a preparedness to incur risk. As Sturdy and Freedman,[19] and Sibieta et al[20] have argued, the emphasis on cost control created a risk-averse environment in which to assess new school applicants' projections of expected pupil volumes, in the process established by the Education and Inspections Act 2006. As a consequence, despite the 2005 White Paper's pledge of support for parents wishing to put the case for a new school, only a handful of such 'need-based' applications were successful between 2006 and 2010.[21] For the most part the process for new schools start-ups instigated under the terms of the Act was tightly controlled by local authorities, which rarely initiated competitions unless pressed to do so by sheer force of pupil numbers, preferring academies (which they could co-sponsor or otherwise exert greater influence over) or, alternatively, the expansion of existing foundation or community schools.[22] Following central government guidance during the period, local authorities were predisposed to control the supply of new school places in order to manage surpluses that might arise as a consequence. As Sibieta et al concluded their study: 'Placing the supply of new school places under the control of a body charged with minimising costs from surplus places [was not] an arrangement likely to foster a dynamic supply side.'[23]

For competition to work, and parental choice to have effect, we need a market framework that will enable successful schools to grow, failing schools to close, and significant new capacity to be brought to the system. The figures indicate that we are far from a situation in which such conditions pertain. Between 2003–04 and 2005–06 fewer than 2% of schools (both primary and secondary) either entered or exited the market.[24] In a healthy system it would be reasonable to expect a much higher turnover. The authors found that the Swedish schools system saw more than twice this level of entry and exit over the same period. Analysis in Part 2 of new school openings and takeovers alone in England's proprietorial (or 'for-profit') independent schools sector in the period 2000-2010 is suggestive of a 4.5% turnover, which would be higher were it to take account of closures also.

Complex though they may be, these problems are not insurmountable. The systemic disincentives to expand discussed earlier are being addressed via various measures designed to ensure that what has become an 'increasingly unresponsive'

14 Sibieta et al, 'Level playing field?'; H. Chowdhry, E. Greaves and L. Sibieta, 'The pupil premium: assessing the options', IFS Commentary 0113 (London: IFS, 2010). Proposals for schools funding reform put forward in the 2010 White Paper, particularly those concerning the Pupil Premium, are expressly designed to address these failings.
15 Funding is delivered through a 'single capital pot' to make it easier for local authorities to join up their allocations with other capital resources and increase flexibility. See DfE guidance for school governors on capital funding: http://www.education.gov.uk/b0065507/gttl/capital/capital-funding
16 See p. 13.
17 See Teachernet's overview of guidance from 1996 to 2009: http://www.teachernet.gov.uk/management/tsp/primarytoolkit/objectives/targets/
18 DCSF 'Decision-makers' Guidance for establishing a new maintained mainstream school' (2009) and 'School Admissions Code' (February 2010), p. 15. See Fazackerley, A., Wolf, R. and Massey, A. 'Blocking the Best: obstacles to new, independent state schools' (Policy Exchange, 2010), p. 19 for further analysis.
19 E. Sturdy and S. Freeman, 'Choice? What choice? Supply and demand in English education' (Policy Exchange, 2007), p. 27.
20 Sibieta et al, 'Level playing field?', p. 63.
21 Elmgreen School, a comprehensive in West Norwood; Bolnore Village primary, a primary in Sussex; JCoSS, the Jewish Community secondary School in Barnet; and East Barnet comprehensive.
22 Since September 2006 there were 154 applications for exemptions from competition to the Department for Children, Schools and Families (DCSF), 89% of which were granted. In the same period there have been only 47 competitions. Where competition was unavoidable, local authorities were able to take advantage of legislative provisions that allowed them to submit bids of their own, while at the same time being responsible for the consultation process. Unsurprisingly therefore, there were only two cases where a local authority submitted a bid and did not win it (Fazackerley et al, 'Blocking the best', p. 18). See Sturdy and Freeman, 'Choice? What choice?', p. 33 for an account of one such absurd competition, in Haringey in 2006. For another good account of the local authority monopoly of the process, see D. Meyland-Smith and R. Evans, 'A guide to school choice reforms' (Policy Exchange, 2009), pp. 12–15.
23 Sibieta et al, 'Level playing field?', p. 64.
24 Ibid., p. 59.

funding system is based in future on 'the characteristics and needs of pupils in the school now' (i.e. reflective of a school's present actual composition).[25] Plans for a national funding formula, by 2013 to be administered by a new Education Funding Agency, appear promising. Meanwhile, the academy conversion process set in train by the 2010 Academies Act will work to ensure that a greater proportion of funding is devolved directly to schools, such that they should be better incentivised to add capacity, as well as being put in a position squarely to face the consequences of their own pupil shortfalls. However these structural transitions will take time. With physical constraints on capacity within the existing schools estate now much more difficult to overcome with the strictures imposed on the DfE's capital funds, new schools – demand-led, on as wide as possible a range of delivery models, and leveraging other sources of capital – are, or should be, an important part of the solution.[26]

The government's Free Schools predicament

If Free School reforms are to have impact, however, the pace and scale of new school development is everything – and in this regard there is clearly cause for concern.

As of 8th March 2011, 700 expressions of interest in the period to the Spring of 2010 had issued in just 323 actual applications, with only 41 having progressed to business case stage or beyond. Scrutiny of these applications has led to the Free School team having to second numerous additional project managers from elsewhere in the Department, increasing the number of staff working on Free School applications to 97, and this before taking account of the liberal use made of external project management suppliers.[27] Allowing for teething issues, this level of progress is an improvement on the laborious undertakings of previous administrations, but it is far from the schools revolution anticipated.

Changes to the application process announced by the DfE on 17th March look set to slow things down further, so long as commercial providers are excluded. With the administrative costs of quality control escalating, rolling applications have now been ditched in favour of a two-week applications window from mid-May 2011 for school groups wishing to open schools in September 2012. In a further effort to raise the bar, initial proposal and business case stages were merged into a single, more demanding application, with more articulate 'minimum requirements'. Groups meeting these requirements will now be judged against each other and scored on the strength of their proposals, before a selection of applicants are interviewed by a panel of officials, financial experts, education advisers, headteachers, and other consultants.[28]

In so far as the Free School policy aimed to empower parents, teachers and other community representatives to set up schools of their own, it is difficult not to read this as an admission of defeat. At the Free School 'Founders' Day' conference at which officials tested the waters, widespread 'shock and dismay' was evident among group representatives, forcing even Toby Young, a prominent advocate of the Free School policy, to concede that 'it just got a lot harder for parents to set-up schools'.[29] It looks likely that many such groups will now be deterred from applying – which 'test of resolve' is clearly the intention. The process remains at the instigation of parent groups, but ministers hope that by expanding the remit of education management organisations (EMOs) such as E-Act, ARK and the Harris Federation, without whom it will be difficult for parent groups to manage, or fund, proposal development, they will spread the cost and raise the quality of applications.

As Toby Young has pointed out, though, there is a trade-off involved in this move with respect to diversity of supply. The programme will henceforth be heavily reliant on the operational capabilities of a limited number of trust-based EMOs. When asked to justify why ministers had not taken the logical step of expanding the range of delivery models and providers through more straightforward accommodation of transparently commercial enterprises, Gove responded that he wanted 'to give the idealists rather than the capitalists a chance'.[30] As this paper seeks to explain, this is a luxury he cannot afford. Idealists need capital too.

There is no doubting what ministers would like to be able to achieve. The Conservatives initially set their sights on 3,000 new schools, which they hoped would expand overall capacity by 222,000 places.[31] While it should be noted that even this ambitious target does not come close to the estimated 350,000 places required, at the primary level alone, and by 2014-15, it

25 2010 White Paper, 'The importance of teaching': 8.2.
26 See Allen and Burgess, 'The future of competition', pp. 21-23.
27 As of 15th February 2011. 'This is equivalent to 94.92 FTE (full-time equivalent) people.' Written Answers to Questions, 15th March 2011, Column 174W (See: http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110315/text/110315w0001.htm#11031575000007).
28 See 'Free Schools in 2012: how to apply', 17th March 2011, under the Free Schools section of the DfE website.
29 See *The Telegraph*, 18th March 2011 (http://blogs.telegraph.co.uk/news/tobyyoung/100080451/it-just-got-a-lot-harder-for-parents-to-set-up-schools/?utm_source=twitterfeed&utm_medium=twitter).
30 Spectator Conference, 15th March 2011, as reported by Patrick Watson of Montrose Public Affairs Consultants Ltd (see: http://montrose42.wordpress.com/2011/03/23/free-schools-and-profit-2/).
31 Policy Green Paper No. 1 (2008) 'Raising the bar: closing the gap', p. 9.

nevertheless exceeds the 10% share achieved by Sweden since 1992, equating to roughly 15% of all compulsory age provision on today's pupil numbers.

This was certainly bold, but the more important question at this stage is whether it is financially feasible. The narrowing of the window in which to lodge applications for September 2012, and even more especially the introduction, effectively, of competitive tendering for the available funding for Free Schools, would seem a tacit acknowledgment of the lack of capital, and may bode ill for hopes of seeing a viable 'revenue-financing' model emerge to fund future development (see pp. 14-15).

There were questions raised about whether the numbers stacked up even before the government's Comprehensive Spending Review (CSR) got underway last year.[32] We now know that the capital budget is set to fall by 60% to £3.4 billion by 2014-15, in what the *Financial Times* described as 'one of the tightest financial settlements in Whitehall'.[33] This amounts to more than twice the percentage reduction than the public sector average (29%). By way of comparison, the NHS's is a mere 17%.[34]

Ahead of the CSR results, it was announced early in July that the lavish £55 billion BSF programme, which had aspired to a comprehensive rebuild of England's 3,500 secondary schools over 18 years, was to be terminated. Little detail has yet emerged on which of its 700 halted projects will be enabled to proceed. These difficult decisions were postponed to await the outcome of the James review of capital expenditure launched in July 2010, but not published until April 2011.[35] While the review contains useful proposals for achieving better value procurement, which James believes could reduce capital cost of development by up to 30%, it is clear that for the foreseeable future, on the Department's limited resources alone, renovation, refit and new build will proceed at a much slower pace than that to which we have become accustomed.[36]

In September it was suggested by the Local Government Association (LGA) and the Association of Directors of Children's Services (ADCS), based on a jointly conducted survey of local authority cost projections, that a minimum of £15 billion of investment would be necessary in the period to 2015 merely to ensure the structural soundness and safety of the existing schools estate.[37] Reluctant to make any longer term commitments, the DfE's response in December was to pledge for 2011-12 £858 million for councils, for the maintenance of the schools and Sure Start centres for which they are responsible, and £196 million for voluntary-aided schools, leaving just a £185 million in 'devolved formula capital' for other state schools – roughly 80% less than the average £960 million annual budget allocated to the latter category since 2008.[38]

In recognition that provision of new places had to be the priority, the further decision was taken to double to £800 million the amount of funding available to councils to spend on 'basic need' – that is, in fulfilment of their statutory duty to ensure a school place for every child. The expectation is that this funding will be allocated in part to existing schools to add classrooms, with the remainder being used by councils to finance the development of Free Schools. This is in addition to the £150 million pledged to support new school start-ups in 2011-12, to be administered centrally. Although the government have not specified a timescale for the realisation of their plans for Free Schools, estimating that local authorities might allocate half of their basic need funding to new schools, and presuming the central fund is also continued, over an 18 year period (the number of years it took Sweden to develop its present level of provision), on an inflationary rate of 2 per cent, from £550 million in the first year, this suggests a total projected spend of just £7.85 billion.

For a budget of this proportion to be feasible, two conditions must prevail. First, the government must secure the required changes to the Use Classes Order (UCO) to make it easier for buildings currently used for other purposes to be converted to schools. Though the Conservatives have purportedly had a legal team working on this issue since the summer of 2009, and the Free School and Academies Team at the DfE had hoped for an early resolution, it was not until March 2011 that the Chancellor gave assurances that this matter would be taken in hand. (At the time of writing, it was not clear whether in the case of schools this will take the form of a widening of certain Use Classes in the UCO or of an extension of developers' rights for changes of use between use classes in Part 3 of the Second Schedule to the The Town and Country Planning (General Permitted Development) Order 1995, or both).[39]

The delay forced DfE officials in the White Paper to pledge further capital support for the securing of premises in order to meet their commitments to successful Free Schools applicants already in process.[40] As a result, pioneer Free Schools have cost

32 'New schools nice, but at what price?' IFS, June 2010. See http://www.ifs.org.uk/publications/4998
33 'Coalition sums mask severity of schools cuts', *Financial Times*, 29th October 2010.
34 'Capital questions', *Education Investor*, March 2011, p. 28.
35 'Deadline missed for Free School reforms', *Financial Times*, 28th February 2011 (http://www.ft.com/cms/s/0/eabce644-4371-11e0-8f0d-00144feabdc0.html#axzz1HuOEim7S).
36 'James Review: the industry's reaction', *The Architects' Journal*, 14th April 2011. See also Sebastian James, 'Review of Education Capital', April 2011.
37 BBC News, 23rd September 2010.
38 'The clock's ticking', *Education Investor*, February 2011, p. 26. See 'Schools capital allocations for 2011-12', 13th December 2010, DfE.
39 'What did the budget do for us?', Martin Goodhall's Planning Law Blog, 24th March 2011 (see http://planninglawblog.blogspot.com/).
40 Paragraph 5.25, p. 59.

considerably more than was allowed for in initial budgeting. A BBC report for the Today programme recently found that the £50 million allocated to support school start-ups in the first year, intended to meet the cost of feasibility studies and legal fees, was already well past committed.[41]

Without planning reform, Rachel Wolf of the NSN has commented recently that Free Schools would only ever be a 'niche programme' and the department's capital budget would become 'a serious problem'.[42] This matter needs to be resolved soon: the current 'presumption' in favour of new school applicants, in its provisions for their refusal should adverse planning impacts on the local area outweigh the desirability of establishing a school, is not nearly tight enough as a mechanism for facilitating more straightforward change of use, even with the promise of swift action from the Planning Inspectorate in response to appeals. The DfE does not have the capital resources to front the cost of purchasing land and buildings on an ongoing basis. This knowledge was already deterring would-be applicants before even the recent changes to the process were announced.

The second condition for the possibility of successful implementation is related. The underlying question as to whether the government is really to shoulder the full capital cost of new school development has yet to be resolved. Present guidance on the question of whether the Department will make capital funding available for refurbishment answers simply in the affirmative: for those projects requiring up-front capital outlay funds will be made available through a revived Standards and Diversity Fund (originally established in 2008 for the promotion of new schools).[43] This is clearly a stop-gap solution. Without a coherent framework in place for an alternative to the Private Finance Initiative (PFI), according to which some or all capital costs might be met by private sector investors, it is hard to envisage how development will be sustainable over the long-term.

Under early PFI contracts, one fifth of all capital costs of City Technology Colleges were met by private business sponsors, who own or lease the buildings, with remainder of the capital costs, and all running costs, met by the Department. The later City Academies were also backed by private sponsors, though the emphasis shifted increasingly towards philanthropy. In return for an 'investment' of 10% of the academy's capital costs (generally up to the hilt of the maximum £2m), sponsors were given influence over the process of establishing the new school, including responsibility for the appointment of the head and senior management team, and powers to appoint governors to its governing body. They were also able to influence the development of the school's curriculum, ethos, specialism and building design – in this way 'showcasing' their services to the wider market.

Unfortunately, this sponsorship model as a means of meeting capital costs has all but exhausted the resources of the most desirable sponsors. The story of its demise is now familiar. Barely had the programme got underway, when some multi-academy sponsors were pressed to apply to the DCSF for a reduction in the fees. The up-front requirement was revised downward to £500,000 during 2007-08, with the remainder of the cost spread over a five year period, and the total endowment investment for the fourth and subsequent new academies reduced to £1.5 million for multiple-academy sponsors.[44] From 2007 the number of paying sponsors (educational institutions, such as independent schools and universities were exempted from this requirement), began to drop off.[45] By 2008 PricewaterhouseCoopers (PwC) were warning that plans for expansion of the programme might be derailed by the challenge.[46] In September 2009 the necessity of a financial contribution was dropped altogether.[47]

In an indication of waning enthusiasm among sponsors, a 2010 National Audit Office (NAO) report on academies revealed that of the 45 that had been pledged endowment contributions between 2007-08 and 2009-10, more than half had not received any of these contributions by March 2010. The NAO found that the proportion of endowments owed to academies which opened in 2007-08 was no lower than that owed to academies opening in 2009-10, 'indicating that the Department had been unsuccessful in enforcing payment schedules and collecting older debts from sponsors'.[48]

Such being the state of affairs, there is little mileage in seeking to develop the sponsorship model further as a means of meeting capital costs. Going forward, the government is right to court the

41 Six of the 35 schools scheduled to open in September said that the Department had promised to buy or has bought land or buildings for them and to meet other building costs; a further nine had secured land or buildings at minimal cost to themselves and had been told the Department would meet the costs of any new build or renovation necessary. While the reporter found some evidence of good value procurement, such as a £5 million new primary planned for north London, other developments, such as the £28 million refurbishment of the Bolingbroke Hospital site in Wandsworth, involved considerable capital outlay (BBC Today Programme, 7th February 2011. Listen again at http://news.bbc.co.uk/today/hi/today/newsid_9389000/9389341.stm).

42 'Deadline missed for Free School reforms', *Financial Times*, 28th February 2011 (see: http://www.ft.com/cms/s/0/eabce644-4371-11e0-8f0d-00144feabdc0.html#axzz1FWoAvVqn).

43 See 'Free Schools FAQs – Funding and premises' on the Department's website.

44 NAO, 'DfE Academies programme: Report by the Comptroller and Auditor General HC 288 Session 2010–2011' (NAO, 2010), p. 15.

45 Meyland-Smith and Evans, 'Guide to school choice reforms', pp. 17-18.

46 PricewaterhouseCoopers, 'Academies Evaluation – 5th Annual Report' (Department for Children Schools and Families, 2008), p. 12.

47 'Academy up-front payment dropped', BBC News, 7th September 2009 (see: http://news.bbc.co.uk/1/hi/8238502.stm).

48 NAO, 'Report', pp. 15-16.

ongoing contribution of trust-based sponsors on the education management model, but in accordance with the present remit, these will only supply operational capability. Even that will not work without the government making the necessary arrangements for the provision of buildings and facilities, and underwriting capital costs accordingly.[49]

The government needs to develop workable new models for private sector financing of public sector development in order to succeed. PFI contracts are now widely recognised as having had their day. They were poorly designed and, from local authorities and civil servants' perspective almost impossible to manage. The cost of servicing what are effectively off-balance sheet loans has escalated out of all proportion to their value. Clearly, and especially in the present economic climate, we need simpler models that enable us to restrict infrastructural development to what we can afford. This means development must be revenue-financed and within the framework of a more straightforward landlord-tenant relationship. The government needs access to economically refurbished buildings that are fit for purpose; it does not need to own those buildings. Contracts need to be structured in such a way as to ensure that landlords rise to their responsibilities, and authorities and other agencies, as tenants, are allowed proper get-out clauses.[50]

For such a framework to be viable for new schools, it needs to be recognised that the risks associated with the educational challenges of establishing, developing and sustaining successful schools cannot be bundled up with those associated with real estate development and passed off on the developer. Companies set up by parents, teachers and/or other community groups are not in a position to provide the contractual guarantees that commercial developers require to front the investment required for refurbishment, let alone new build. The educational outcomes simply cannot be guaranteed, even with an EMO in the frame. So long as the government holds the purse strings and reserves the right to withdraw the school's license, developers will be deterred from fronting investment. Lest the importance of this be passed over, it should be noted that early exploratory discussions between a major school chain and a consortium of private equity backers and pension funds over the possibility of allocating up to £500 million to Free School development stalled last summer on this very issue.

The DfE therefore needs a framework in which it is clear that it carries all risk associated with demand for the facility. The most straightforward way of conveying this message is for the government to take on the leasehold directly. If pupil numbers fail to materialise, and subsequently the school fails, then the Department should be clear and unambiguous that it will bear the consequences. These might include having to pay rent on empty buildings, if a new Free School 'tenant' cannot be found immediately to take the place of its predecessor.

Should the government succeed in relaxing local planning constraints, in developing an efficient alternative to the PFI along revenue-financing lines, and in making effective contractual distinction between the provision of school facilities and educational management, the groundwork will at least have been laid for a modest level of new school development over the next ten years. This will perhaps be sufficient for the government to avoid embarrassment, but not to avoid the 'statistically minor' impact that Graham Stuart, chair of the Commons Education Select Committee, has predicted.[51] In the meantime, increasing numbers of existing schools will fill up beyond the capacity of their buildings to accommodate them; class sizes will escalate; good and, in time, some mediocre schools will become increasingly oversubscribed; and the aspirations of more and more parents will be frustrated. Ministers will not come close to achieving the 5-10% surplus capacity across the system once considered a condition for the possibility of success.

If Free Schools are to be more than a curiosity a decade from now, ministers will need to adopt an altogether more proactive and realistic approach to development, embracing the contribution of a much wider diversity of school suppliers on a broader range of delivery models, including profit-making businesses.

Awkwardness about profit

The commissioning of private sector organisations to assist with public service delivery is nothing new. Why exclude profit-making companies from operating schools funded by the taxpayer when they already play a full part in provision publicly funded hospitals, prisons and care homes?[52] There are precedents in education – notably in PVI early years provision and in Special school provision (see case studies over) – for entrusting private providers with the care of the youngest and some of the most vulnerable individuals in society.

Public opinion seems willing to live with the degree of influence already exerted by commercial interests in respect of the design

49 Sir Bruce Liddlington (E-ACT) quoted in an interview for *Education Investor*, 17th September 2010.
50 See 'It is time to derail the PFI gravy train', *The Telegraph*, 18th January 2011 (http://www.telegraph.co.uk/news/politics/8267472/It-is-time-to-derail-the-PFI-gravy-train.html).
51 'Free Schools will stay 'minor' without for-profit providers, says chair of key MPs' committee', *TES*, 11th February 2011 (see: http://www.tes.co.uk/article.aspx?storycode=6069910).
52 Meyland-Smith and Evans, 'Guide to school choice reforms'; D. Bassett, A. Haldenby, W. Tanner and K. Trewhitt, 'Every teacher matters' (Reform, 2010).

and construction of classrooms and of the learning environment itself. Teachers seem generally grateful of the contribution made by commercial resource providers also, in equipping schools with ICT and the teaching and learning resources they require. Proposals to allow companies to run schools, however, have generally been received with a much greater degree of disquiet. In seeking to understand why, when differences in Labour and Conservative policy on the issue were put under the spotlight last year, one commentator described the prospect as a move from tolerating the exceptions to making them the rule.[53]

At present, under the Academy model, trusts governing schools must operate as companies limited by guarantee, on a not-for-profit basis (as charities, though exempt from Commission oversight). They may subcontract out day-to-day service provision, for a set ‘management fee’, to education management organisations, but retain ultimate responsibility for the school’s welfare. In what is seen as an important check on the pursuit of profit in this framework, EMOs must administer budgets transparently and directly for the purposes prescribed, precluding firms from increasing their margins through further cost efficiencies. EMOs remain accountable to governors for all aspects of their service provision; their contracts are performance-related, with governors/company directors retaining the right of termination and of contracting alternative providers.

Relaxing these constraints by removing the requirement for a charitable vehicle would involve trusting commercial providers to govern themselves, to ensure, for example, that investment in infrastructure kept pace with increases in pupil numbers and that costs would be managed in such a way as not to compromise standards of teaching and learning. The unions argue that private sector public service providers make their profits at taxpayers’ expense. They argue that the pressure of having to extract a profit for the benefit of shareholders may have an adverse effect on employee terms and conditions. Government policy in relation to the expansion of Academies, and wider moves announced in the White Paper to give headteachers generally more flexibility in setting pay and conditions, already seem likely to lead to a steady downgrading of the status of the National Teachers Main Scale and Teacher’s Pension Scheme to that of guidance only, and to greater experimentation with performance or contribution-related pay. Unions fear that this process would only be further accelerated if academies and Free Schools were opened up directly to profit.

Opponents of profit hold that the same drivers will compromise investment in classroom resourcing, at the frontline of service delivery. Given the lack of leverage on price, with per pupil funding to be determined by central government in line with state school subsidies, there are particular worries about the impact of the inevitable dominance of school chains in this regard, adept at pursuing economies of scale as a means to increase profit.

Policy case study 1: Private, Voluntary and Independent (PVI) early years provision

The development of early years provision was a key policy commitment of Labour’s 1997 White Paper *Excellence in Schools*. From 1998, Early Years and Childcare Development Plans were set in train in each local authority area to meet the challenge of providing all parents and carers of four- (and later three-) year-olds access to free part-time places for their children at centres of their choosing. The development of local area partnerships with private and voluntary providers, whose input would be crucial to the program’s success, was seen as an essential element in the strategy for implementing these plans. Funding for the development and subsidy of provision, the mainstay of which is ‘free entitlement’ funding, was to be channelled to providers through local authorities, whose responsibility (since made a statutory duty under the terms of the Childcare Act 2006) it would be to monitor and manage the market and ensure an adequate supply of good places. Local authorities themselves were considered (and remain) the providers of last resort.[54] Ambitious targets were set for the provision, nationally, of 1.6 million additional childcare places by 2004, extended by a further 250,000 places by 2006.

In designing the framework for delivering these ambitious goals, policymakers were deliberately non-prescriptive on the question of which types of provider they wanted to see emerge, the nature of their governance arrangements, and on what they deemed the most appropriate approach to management, knowing that without responsive private sector supply they would fall well short of delivering on their promise in the timeframe. Accordingly, both small businesses, which make up the majority of all PVI providers, as well as corporate for-profit providers, were able to play their part. Across the UK as a whole, Laing Buisson, the healthcare sector analyst, estimates that for-profit nursery provision now accounts for approximately 74% of the market.[55]

53 ‘Educating children should not be for profit’, Comment is free, *The Observer*, 4th April 2010.
54 See DCSF, ‘Securing Sufficient Childcare: statutory guidance for local authorities in carrying out their childcare sufficiency duties’ (2010) for the most recent guidance (http://www.education.gov.uk/publications/standard/publicationdetail/page1/DCSF-00274-2010).
55 Children’s Nurseries UK Market Report 2010. (http://www.laingbuisson.co.uk/ProductsServices/MarketReports/tabid/380/CategoryID/7/List/1/SortField/3/Level/1/ProductID/393/Default.aspx). With thanks to the National Day Nurseries Association.

Policy case study 2: Acute Special Education Needs (SEN) and Social, Emotional and Behavioural Difficulties (SEBD) provision

Since the Warnock Review of 1978, public policy has generally supported the inclusion of as many children with SEN as possible in mainstream schools, on a continuum of provision that includes Special schools when their services are required. Successive governments supported this approach, which resulted in the closure of many Special schools and greater integration of provision into the mainstream.

From the mid-1990s however, dissatisfaction among many parents grew at the paucity of Special schools and the unsuitability of many mainstream schools for their children, and this began steadily to express itself in a growing demand for specialist facilities.[56] From local authorities' standpoint the cost of integrating children with acute needs into mainstream classrooms – far greater than those associated with the alternative strategy of concentrating resources for specialist provision in specially purposed facilities – has increasingly necessitated a broader approach to provision.

The responsiveness of private providers to this developing demand has been particularly important. The Second Report of the Balchin Commission found that though '9,000 special school places [had] been lost since 1997 and there [were] 146 fewer maintained special schools',[57] there had nevertheless been 'a net gain of 73 special schools established in that period … due to the independent sector's enterprise and farsightedness.' Over 219 independent Special schools had opened in the period to fill the gaps created by the closure of state Special schools.[58]

SEN Statistics derived from the Annual School Census and SEN2 published in the DfE Statistical First Release June 2010 indicate that in the 2009-10 academic year, the percentage of pupils with SEN statements placed in independent Special schools was 4.3%. A high proportion of these are owned and operated by commercial providers such as On Track Education Services,[59] My Choice Schools,[60] Castle Care,[61] and Continuum Care.[62] Pupils catered for in these settings tend to be those with acute SEN, more complex (including medical) needs or those displaying challenging behaviours that require specialist services.[63] They are funded, almost exclusively, through the home local authority, on a per pupil basis, following assessment and in relation to their needs.

Despite the obvious simplicity and responsiveness of this system, in the latest SEN Green Paper, the government appear to have taken the retrograde step of restricting the instigation of special Free Schools to parents and other community representatives, requiring now, in accordance with processes already set in train, the creation of a charitable vehicle.[64]

Are these fears justified? At times the rhetoric appears to run away with itself. A commendable esteem for our public services issues in the suggestion that commercial interests and a commitment to quality are fundamentally incompatible. The reality, of course, is that a company which sets out to make money without satisfying its customers will fail. The profit generated by a commercial service provider depends upon the satisfaction of its customers: in schooling, this economic incentive works to lift pupil attainment. Chris Woodhead maintains that in Cognita's case this means that 'every commercial decision is driven by a fundamental educational imperative: will what we are about to do or not do result in an improvement to the education our pupils receive?' The company will, in the long run, only generate profits only if it becomes known for running effective schools. 'We know that to succeed we have to convince our parents that a Cognita school should be the school of choice. This means offering the best possible education at the most competitive price.'[65]

The absence of the profit motive in the traditional framework of public service delivery does not mean that public service workers

56 Commission on Special Needs in Education: First Report 2005, Second Report 2007 (see: http://www.conservatives.com/pdf/specialneedsreport2007.pdf).
57 Ibid., p. 14 (from parliamentary answers given by Jim Knight MP to David Willetts MP on 4th December 2006 and 29th January 2007).
58 Ibid. (from a parliamentary answer given by Parmjit Dhanda to David Willetts MP on 6th December 2006).
59 See http://www.ontrackeducationservices.co.uk/
60 See http://www.my-choice-homes.com/School.htm
61 See http://www.castlecaregroup.co.uk/
62 See http://www.continuumgroup.org.uk/About_us.asp
63 Claire Dorer, NASS, email correspondence.
64 DfE, 'Support and aspiration: a new approach to special educational needs and disability' (2011).
65 *A Desolation of Learning* (Pencil-Sharp Publishing, 2009), pp. 171-2.

do not think about money, nor as is sometimes suggested that they are wholly and exclusively motivated by the public interest. In the same way, the degree to which proprietors, and those that work for them, are actually motivated by profit, or otherwise preoccupied with matters financial, varies also. Part 2 infers from the level of fees across the proprietorial sector the degree to which such schools are 'for-profit, but not for profit', finding almost half of those educating pupils at the statutory age to be charging fees below £6,864 and as such unlikely to be making what is generally regarded as a 'reasonable return'.[66] They are nevertheless content to continue schooling.

The return on investment is of course correlated to the scale of the operation, but even at scale, the margin tends to remain modest. Swedish chain Kunskapsskolan's profit margins are shown, alongside that of key competitor Internationella Engelska Skolan (IES), in Figure 1 and Table 1 – neither exceed 10%, and this, it should be noted, only after considerable front-loaded capital investment. The investment model is clearly long term, low yield. On this basis it would seem difficult to maintain that this constitutes 'profiteering'. Indeed, several commentators have argued that the profit margins involved suggest rather that 'the motive is much more clearly 'pedagogical than profitable'.[67]

In respect of pay and conditions, in that unions exist to uphold the interests of all members, it is hardly surprising that they should be opposed to reforms designed to give schools greater freedoms to pay some teachers more and others not so well, however sensible the rationale. Neither is it surprising that teachers themselves should be reluctant to transition to a performance-related model. Nevertheless, traditional salary systems that pay simply on the basis of hours or days worked, without attempting to build in stimuli to behaviours linked to achieving organisational goals, and which thus pay all the same, regardless of performance, in that they are inherently less demanding, look increasingly difficult to justify in face of systemic and persistent under-performance in our schools. Researchers from the University of Bristol tracking the impact of the Threshold scheme following its introduction in English schools in 2000 found that it had resulted in improved test scores and average value-added increases of close to 40% of a grade per pupil.[68] While the majority of teachers in our schools work hard and are committed to what they do, we need a system that encourages fuller participation and greater consistency in achieving their high standards.

Would relaxing the constraints on profit by removing the requirement for a charitable vehicle accelerate the use of performance-related pay scales in academies and Free Schools? Evidence from the US confirms that adoption of performance-related incentives, such as merit pay, pay-for-performance, and rewards for professional development, has been markedly greater in schools managed on a for-profit basis, than in not-for-profits.[69] Charter schools of this type 'are less likely to use a salary schedule

Figure 1: Profit margins 2002-2011

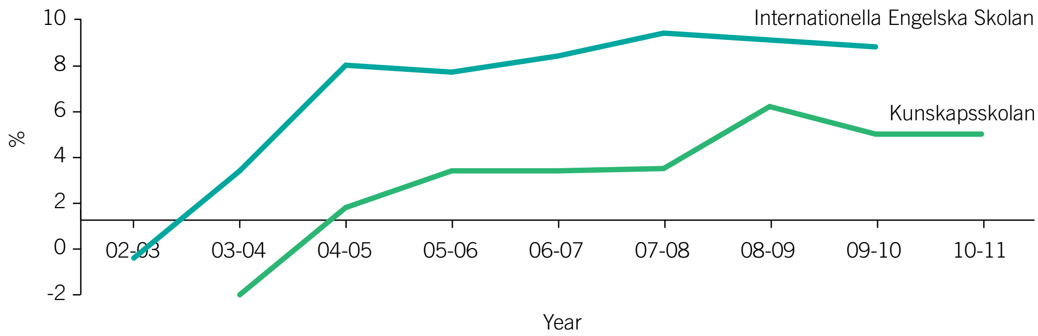


Table 1: Profit margins 2002-2011

	2002-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	
%	-0.4	3.4	8.0	7.7	8.4	9.4	9.1	8.8		IES
		-2.0	1.8	3.4	3.4	3.5	6.2	5.0	5.0	Kunskapsskolan

66 G. Humphries, 'The mtm consulting independent education sector report 2010: trends, forecasts and scenarios to 2030' (mtm consulting, 2010), p. 75.
67 N. Cowen, 'Swedish Lessons: how schools with more freedom can deliver better education' (Civitas, 2008), p. 15; also J. Tooley, P. Dixon and J. Stanfield, 'Delivering better education: market solutions for educational improvement' (Adam Smith Institute, 2003); J. Astle, 'A very conservative revolution: Tory education policy examined' (CentreForum, 2009); Meyland-Smith and Evans, 'Guide to school choice reforms'.
68 A. Atkinson, S.M. Burgess, B. Croxson, P.A. Gregg, C. Propper, H. Slater, and D.J. Wilson, 'Evaluating the impact of performance-related pay for teachers in England', *Labour Economics*, 16, pp. 251-261. See also 'GCSE boost from performance pay', BBC News, 9th December 2005 (see http://news.bbc.co.uk/1/hi/education/4509642.stm).
69 H. Brown, 'Incentives in U.S. charter schools: for-profit and non-profit choices', *Journal of School Choice* 2:4, pp. 415-439, esp. pp. 415 and 431.

and are more likely to reward excellence in teaching, offer non-financial benefits, to reward professional development, and to use the disincentive of dismissal.'[70]

In the UK independent school context, while pay incentives are often employed to encourage teachers to shoulder additional responsibilities, there has been surprisingly little further experimentation with 'extrinsic' incentives related to productivity or achievement, even among proprietorial chains. Independent schools, and proprietorial schools in particular, in the UK generally rely on the 'intrinsic' incentives, or environmental benefits, of smaller class sizes, better behaved children, greater professional freedom (particularly with relation to national curriculum requirements), and better facilities. While the majority of schools do offer the Teacher's Pension Scheme (TPS)[71] and aim to pay at an enhanced level to that of national pay scales in the maintained sector, this is less likely to be the case in lesser-known trust schools and in proprietorial schools, which tend to offer more affordable 'defined contribution' schemes in keeping with private sector norms.[72] Excepting the chains, whose salaries are more in line with those at mid-level trust schools, pay is believed to be equivalent or lower than in maintained schools, and does not always include standard provision for an annual basic increase.[73]

The lesson of proprietorial schools, profiled in Part 2, is that many teachers, particularly those approaching retirement and spouses who are second income earners, find their terms and conditions of employment better suited to a fuller lifestyle with time and energy for family life and more varied community commitments. A positive and appreciative community, in which teachers enjoy high levels of autonomy and 'ownership', encourages many to go the extra mile and put in the additional hours sometimes required, without feeling the need to demand additional pay. Whether they are thereby 'worse-off' is a matter of perspective: in this regard, it is worth noting that on average British teachers earn £1,045 a year more than their European counterparts,[74] and yet the perception is very much otherwise.

What of classroom resourcing? Again, the issue is not how much is spent, but how efficiently. A recent study by the Washington-based Center for American Progress comparing student maths and reading test results with levels of district spending in over 9,000 school districts across the country found that 'even controlling for demographic factors, there was no clear relationship between spending and results'.[75] If the objective for schools is to increase output in relation to their budgets, then studies employing input-oriented models of efficiency, such as that undertaken by Waldo (2007), are presuppositionally flawed.[76] By comparing available resources and student attainment, on the other hand, The National Education Association (NEA) has shown that independent (i.e. free) schools are more efficient than municipal ones.[77] The locus of savings is the back-office, the functions which are discharged centrally, so freeing up time, attention and resources for the classroom.

A key strategy in this regard, notably among school chains, has been to migrate curriculum delivery to on-screen and online formats, with a view to developing more efficient pedagogy. Such developments are accompanied by a corresponding emphasis on personalisation of learning backed up by investment in increasing contact time between staff and pupils. At Swedish school chain Kunskapsskolan, for example, the emphasis is very much on students working with their tutors to identify and develop their most effective methods of learning and to progress at a pace appropriate for the individual. Learning goals are continually negotiated, with a step-by-step program encouraging them to take steadily greater responsibility. There is very little classroom teaching as such, at least on the traditional model; students typically work by themselves, or in small groups, on modular subject-based study that is IT enabled. Teachers spend an average of 27.5 hours/week engaged in teaching and facilitating the learning of pupils, compared with the 20 hour municipal norm.[78] Teachers at Internationella Engelska Skolan, a key competitor, are similarly attentive. Each is responsible for mentoring a small group of students, to each of which they give personal attention and support. Parents are telephoned every second week to update them on their child's progress and attainment. Four times per year, each student and his/her parents receive a written report, with suggestions for improvements and extra support.

The key issue is not how much profit commercial operators might make, but whether by virtue of their operating framework they are able to extract better value from the resources available, and deliver better results. Public sector services having traditionally

70 Ibid., p. 429.
71 Independent schools are not required to offer TPS. They must offer a scheme, though of which type is at their discretion.
72 A 'dipstick' survey of 25 proprietorial schools conducted by mtm consulting found that 27% 'required' their teachers to be in the Teachers' Pension Scheme' and 23% paid teachers on the National Teachers' Main Scale. 'Proprietorial schools: an mtm consulting survey' (2010), p. 4.
73 Comment from Bill Brown, The Education Partnership (http://www.theeducationpartnership.org.uk/).
74 'Changes planned to link teachers' pay to performance', *The Independent*, 16th November 2010 (see: http://www.independent.co.uk/news/education/education-news/changes-planned-to-link-teachers-pay-to-performance-2135008.html).
75 Ulrich Boser, 'Return on Educational Investment: A District-by-District Evaluation of U.S. Educational Productivity' (Washington: Center for American Progress, 2011) (see: http://www.americanprogress.org/issues/2011/01/educational_productivity/report.html).
76 As noted by G. Sahlgren, 'Schooling for money: Swedish education reform and the role of the profit motive' (IEA, 2010), p. 8.
77 Skolverket, 2005, as discussed in Sahlgren, 'Schooling for money', p. 8.
78 Kunskapsskolan (see: http://www.kunskapsskolan.co.uk/).

been offered on a monopoly basis, and rarely subject to the discipline of having to be priced for the market, the concept of value remains underdeveloped. In the absence of effective market indicators, the size of the budget afforded becomes a proxy. In this way 'funding in' is equated with the value of (in this case) 'education out', so that the money spent on a child becomes the most important indicator of the value of the education they have received, and for that matter of the contributions of everyone involved in the provision of the service.

By contrast, the need to make a profit, within the framework of accountability to shareholders, encourages competition in the market, and in the process, the development of market intelligence. In this way private sector service providers become adept at interpreting the dynamics of the relationship between price and a whole range of other factors, including the timeliness and efficiency of delivery, and the quality of service. They learn to gauge the value of their services to service-users, and to read and anticipate their responses to alterations and additions to the offering. As firms become more and more focused on meeting customer needs, they innovate and specialise, which in turn brings greater efficiency gains for the market as a whole.

So do commercial firms deliver better results? There is no doubting the impressive educational performance of the larger chains. In the UK context, Cognita reported last year that on their most recent inspections all 43 of its UK schools had consistently been judged either good or outstanding on key teaching and learning-related criteria.[79] Statistics supplied for this study by Sweden's leading school chains show them consistently outperforming municipal schools.[80] In response, critics ask whether these results do not obscure the mediocre performance of more provincial owner-operated schools.

In the absence of studies of the effect of the profit-motive, this question has until recently been difficult to answer. In the US, Hill and Welsh used school-level data to compare for-profit and non-profit charter schools in Michigan, finding no difference in test scores between the two types of school.[81] Other than this, Peterson and Chingos were able to find 'no systematic evaluations of individual test score gains that estimate relative impacts under similar operating conditions'.[82] Similarly, Sahlgren unearthed just one study of the relative impacts of for-profit and not-for-profit management – that of Chumacero and Paredes, analysing Chilean voucher reform.[83] In respect of standardised test performance at 4th grade, they showed that pupils in for-profit voucher schools scored 3-15 points higher than their peers in government schools. While non-profit schools performed higher than for-profits on this study, their findings were sufficient to prove fears of the profit motive in education to be unwarranted.

Peterson and Chingos' study, of the Philadelphia School Reform Commission's intervention 2002-08, broke new ground. Their research examined individual test score data in maths and reading from 2001 to estimate the relative impacts of the different management frameworks. The study encompassed all 30 elementary and middle schools contracted out to for-profit EMOs, and all 16 contracted out to not-for-profits, in addition to the 71 schools remaining under regular school district management. The impact of not-for-profit management, when compared with regular school district management, was negative in respect of both maths and reading, and more markedly so in maths (albeit statistically significant in only the first year after the intervention began). The impact of for-profit management, on the other hand, was generally positive, though only in maths was it deemed statistically significant. In comparing the relative performance of for-profit and not-for-profit EMOs however, Peterson and Chingos commented as follows:

> The differential impact of for-profit and non-profit management is especially sizable. Using the estimates given above, students in schools under for-profit management gained between 70 per cent and greater than a full year's worth of learning in math more each year than they would have had the schools been under non-profit management. All of these differences are statistically significant. In reading, students learned approximately two-thirds of a year more in a for-profit school than they would have had the school been under non-profit management. All but one of the differences are statistically significant.[84]

Sahlgren's study, published later in the year, provided an even more comprehensive school-level data-set, this time comprising all Swedish schools with at least 15 9th-grade students on roll between 2005 and 2009. The data-set amounted to 6,935 observations (1,543 schools) and included 725,195 students out of a total of 737,788 graduating in that period, excluding only Special schools and those that do not conform to the standard grading practice.

79 Cognita, *Teaching Excellence*, 3, p. 2.
80 See Appendix 1, p. 56.
81 C. Hill and D. Welsch, 'For-profit versus not-for-profit charter schools: an examination of Michigan test scores', *Education Economics* (2008).
82 'Impact of for-profit and non-profit management on student achievement: the Philadelphia Intervention, 2002-08', Program on Education Policy and Governance Working Papers Series PEPG 09-02 (Harvard University, 2010), p. 7.
83 Sahlgren, 'Schooling for money', p. 13; Chumacero, R. A. and Paredes, R. D. 'Should For-Profit Schools Be Banned?' MPRA Paper 15099 (University of Munich, 2008).
84 'Impact of for-profit and non-profit management', p. 4.

Sahlgren set out to test the 'deterioration thesis' – that is, that the profit motive steadily compromises educational standards over time. Having coded the schools according to ownership structure, straight statistical-profiling showed significant differences in the performance of for-profit, not-for-profit and municipal schools. For-profit independent schools did better than municipal schools and not-for-profit independent schools did better than for-profit schools. In the regressions however, controlling for a wide range of demographic, socio-economic and other contextual factors that influence grades, post-reform for-profit and non-profit independent schools emerged showing more similar positive effects on the average school GPA, raising it by 5.61 points and 6.16 points respectively.[85]

Applying further controls for (regional) municipality variables, non-profit independent schools raise the average GPA by 5.74 points, whereas the for-profit schools raise it by 4.50 points.[86] The impact of the for-profit independent schools was strongest where there were high numbers of pupils from low socio-economic backgrounds, increasing the average school GPA by 11.64 points, compared with non-profits' 4.39 points.[87] For-profit schools were further shown to be beneficial for students from all backgrounds, with the largest effect for students from low-educated families.[88] Accordingly, the performance of for-profit independent schools should serve as a guideline for municipal schools regarding minimum acceptable levels of student achievement.[89]

In a subsequent study, appended to a later version of the 2010 paper, Sahlgren addresses the problem of endogeneity – that even after controlling for these variables it might still be the case that pupils in Free Schools may be more, or less, able, motivated, etc. than those in municipal schools. Citing Tegle's study, which suggests that not taking this into account would be to significantly *underestimate* the positive effect of Free Schools generally, Sahlgren explains that he initially decided not to apply controls addressing this phenomenon so as to err on side of caution in testing the deterioration thesis.[90] After employing Instrumental-Variable models explicitly designed to deal with endogeneity, the influence of both for-profit and non-profit Free Schools was found to be much stronger, increasing the GPA by 33.74 and 33.86 points respectively and representing an increase of 16.3% in comparison with municipal schools.[91]

In summary, not only did Sahlgren's results overturn the deterioration thesis, but they also strongly suggest that, taking endogeneity into account, for-profit and non-profit schools are equally good at raising standards.

Against this background, Part 2 of this study provides evidence of a positive effect of for-profit management on standards (see pp. 36ff.). As part of a wider effort to supply a statistical profile of England's mainstream independent proprietorial (for-profit) school sector, school-level inspection results are compared with those for all independent schools. Proprietorial schools inspected by Ofsted 2007-10 are revealed as having significantly outperformed the 'all independent schools' group on all key teaching and learning-related criteria, and those inspected by ISI between 2006-09 to have done so on three of the five criteria relating directly to pupils' education.

85 A dummy variable was included to control for the influence of the more exclusive independent schools established prior to the 1992 reforms.
86 Sahlgren, 'Schooling for money', p. 18.
87 Ibid., p. 19.
88 Note the contrast with the findings of the more widely publicised study of the overall Free School effect by Böhlmark and Lindahl which found the positive effect for pupils with low-educated parents or an immigrant background to be 'insignificant'. Böhlmark, A. and Lindahl, M. 'The Impact of School Choice on Pupil Achievement, Segregation and Costs: Swedish Evidence', IZA Discussion Paper No. 2786 (Bonn: Institute for the Study of Labor, 2007).
89 Sahlgren, 'Schooling for money', p. 20.
90 Ibid., p. 24. Tegle, S. 'Påverkar förekomst av friskolor betygen i grundskolan? - En statistisk analys av samtliga elever i årskurs 9 år 2006' (Stockholm: Svenskt Näringsliv, 2010).
91 Sahlgren, 'Schooling for money', p. 25.

2 A profile of the proprietorial school sector

Proprietorial schools: from the nineteenth century to the present

Michael Gove is not the first minister to recognise the potential contribution that independent schools might make to the provision of state education. Inasmuch as independence fosters pedagogical experimentation, and regulation conformity of practice, the reasons for his interest are obvious. From a school entrepreneur's perspective, the political benefits of state-funding and mainstream recognition are likewise easy to understand. A brief consideration of the history of proprietorial schools is sufficient to demonstrate the formidable nature of the challenge of reconciling the two.

In their heyday in the nineteenth century, 'private' schools, owned and managed by the proprietor(s) for profit, played a critical role in widening access to education for the emerging middle classes. Prior to the development of state-funded elementary education, made compulsory for children to age 10 by the Education Act 1880 (and progressively extended to age 14 in a succession of Acts thereafter), these schools provided for many the only affordable means of 'secondary' (i.e., beyond state elementary) education. Thousands of schools sprang up, the majority of which in domestic premises, to cater to the demand. With no official registration process, only the barest of infrastructure for inspection, and without the advantages of the charitable trust schools (Eton, Winchester, Uppingham, etc.) or grammars maintained by endowment, these schools owed their continuing existence solely to the reputations they were able to establish in their own right.

Proprietorial schools became known for their broad and progressive curricular in comparison to the essentially classical education offered by charitable trust and endowed grammar schools. Embracing developments in mathematics and the sciences, and recognising the importance of modern languages also, they offered an education that was both more applied and relevant to the expanding business and commercial life of the metropolitan areas. In a mark of the significance of their contribution, several witnesses to the Bryce Commission on secondary education (1894-5) spoke of the effective use many proprietors had made of their freedoms in introducing educational innovations to English school practice.[92]

To differentiate themselves from the ill-qualified and unscrupulous, and ensure they would be accommodated in the developing plans for state secondary education, in this period many of the more professionally-minded proprietors associated – either with The Private Schools Association (PSA), from 1879 (later the Independent Schools Association), or, from 1892, with the Independent Association of Preparatory Schools (IAPS). While the majority of proprietors remaining independent of association argued otherwise, those who joined gradually coalesced around the view that concession on inspection would ensure their official recognition and might even enable them to receive Treasury funding (as was mooted in a Bill of 1900).

A parliamentary committee was formed by the PSA in 1896, and it was largely due to its lobbying that the amendment to the 1902 Bill was enacted stipulating that the new 'LEAs' should 'have regard to any existing supply of efficient schools' in the development of secondary provision. Unfortunately, the Act stopped short of defining what constituted an 'efficient' school, let alone of providing the resources necessary to carry out the necessary inspections, or of enabling Treasury funding for commercially run schools. The LEA two-penny rate being not nearly adequate to

92 See the Bryce Report (1895), c7862, V, 14-16. Memorandum by Dr R. Wormell 'On the contributions of private school teachers to the improvements of educational method'. Referenced by Donald Leinster-Mackay in 'Pioneers in Progressive Education: some little-known proprietary and private schools exemplars', University of Western Australia 1980. With thanks to the Education Society, UK, Faculty of Education, University of Winchester.

cover costs, the resources of proprietorial schools were left largely untapped, save when grants were awarded to subsidise those pupils training to be teachers. Having reached a peak of 1,526 members in December 1903, the PSA went into sharp decline, and by 1913 the roll stood at just 282 member schools.[93]

The problem of recognition bequeathed by the 1902 Act was to dog proprietorial schools for the next half century until the provisions of Part 3 of the 1944 Act came into force in 1955, giving rise to an intense spate of registrations in the years that followed. In the intervening years, because these schools were generally not officially recognised by inspection, they struggled to make their voice heard in debates on a range of issues from the development of national exams to the accreditation of teachers. Meanwhile, the resources now brought to bear in the development of state secondary schools, not least for the provision of pensions (for which proprietorial school teachers were deemed ineligible until 1926), put proprietorial schools at a considerable disadvantage in what was for them a completely altered marketplace.[94]

At the same time, the reputation of the sector as a whole continued to suffer from association with ‘inefficient’ schools and occasional revelations of worse. While the associations insisted that schools of the former type were very much in a minority, and in steady decline since the provisions of the 1918 Act, requiring new schools to remit information on their organisation, came into force, and while membership of these associations was recognised in most quarters as conferring a mark of ‘efficiency’, much was yet made of exceptions to the rule among the thousand or so proprietorial schools yet remaining independent of association.[95]

As the state infrastructure developed, calls from the left for the closure of proprietorial schools – from the Labour-dominated Education Committees, an increasingly assertive parliamentary party, and in the press – mounted throughout the 1920s and 30s. For their part, Conservatives sought to defend the libertarian principle and the economic contribution made by private schools, advocating for the associations’ cause in respect of inspection. In 1932 a departmental committee of the Board of Education finally ruled that private schools should be inspected according to the same criteria as state schools, but, lacking the finances and the political will to proceed, no legislation was forthcoming.[96]

For those schools that survived the estate requisitioning and evacuations of the war years, and the drastic reductions in pupils on roll that such entailed, the 1944 legislative settlement gave independent schools for the first time status in their own right, implicitly affirming the right of parents to choose the school best suited to their children’s needs, whether fee-paying or otherwise. A registrar of independent schools was appointed whose task it was first to provisionally register and then to ensure that in due course each school would be properly inspected. The parameters of inspection were drawn and a tribunal set up to hear appeals. While these arrangements did not solve the problem of recognition, the legal affirmation of their right to exist was sufficient to ensure proprietorial schools’ political survival in what were to prove difficult years to come.[97]

The closing decades of the twentieth century saw the numbers of proprietorial schools decline, consistent with wider trends in the independent sector as a whole and generally reflective of an overall decline in the birth rate. The increasingly outspoken opposition of the Labour Party also took its toll, however, issuing in proposals in 1965 to channel independent education into the comprehensive system, and in successive union manifesto commitments against their continuing existence throughout the seventies. While some pre-empted closure by opting for charitable status, generally retaining ownership and leasing the buildings in order to maintain a connection with their schools, many proprietors, particularly those of smaller schools, were predisposed to wind up their operations when recession hit the economy in the early 1980s. This trend was to continue through the recession of the early 1990s.

The Major government’s reform of the inspectorate under the Education (Schools) Act 1992 signalled a direction of travel that many proprietors who had held out for recognition through inspection ultimately proved unwilling to follow. Figure 3 (p.29), shows the high number of schools changing hands in this period as, facing the prospect of increasing state regulation, proprietors sold up in increasing numbers to younger proprietors and new chains better equipped to manage the administrative demands of ensuring regulatory compliance. As the shift from quality assurance to quality control took effect in the independent sector, for others the burden of keeping up with the implications of developments in the state sector and of self-evaluation – effectively an audit of the degree to which a school conforms to officially recognised pedagogy – became important drivers of the tendency for proprietors to split the proprietor-head role and delegate some of their responsibilities to a headteacher.

‘Recognition’, on a level playing field, when it was finally achieved, thus came at a price for proprietorial schools, as for other, trust-based, independent schools. In an insightful analysis of Ofsted’s impact on the private sector, Anastasia de Waal concludes that

93 Bryan Maybee, *Pro Liberis: the Independent Schools Association 1878-2010* (ISA/John Catt Educational, 2010), pp. 10-17, esp. pp. 16 and 33.
94 Ibid., pp. 35-52.
95 PSA Conference Proceedings, January 1933. *Pro Liberis*, p. 55.
96 Maybee, *Pro Liberis*, pp. 52-60.
97 Ibid., pp. 61-82.

private schools now find themselves 'in the perverse situation in which they are compelled to comply with DfES regulation in order to retain their reputations as good schools, and thereby their market popularity – popularity and success which was *not* gained by fulfilling DfES criteria'.[98]

For choice and competition to function as effective mechanisms to drive up educational standards, parents must be supplied with accurate information to inform their choice of schools. To the degree to which inspection reports assist to this end, their reports are useful reading. How effectively Ofsted inspections in particular 'capture' the quality of schools though is an open question and ministers need to take note of the consequences for the independence of academy conversions and Free Schools and their scope for truly innovative practice.[99] Above all, we need an inspectorate, and inspection criteria, that will foster and encourage innovation, rather than curtail it.

The proprietorial school sector today

For reasons that will become clear, this report is the first to profile English proprietorial schools as comprising a sector in their own right. The attractiveness of this market to new schools providers has been much discussed in recent years, as has the potential of replicating their models in the Free School context, and yet the nature and common traits of proprietorial schools in general have received comparatively little attention. This seems surprising, given that even a little knowledge of the independent sector is sufficient to identify them as sharing many of the characteristics of Free Schools. It is still more curious, given the persistent controversy over the place of profit in education, that the significance of the English tradition of the family-run proprietorial school is consistently passed over in the debate.

One of the reasons for this has been the difficulty of distinguishing these schools from independent schools as a whole, and from other non-trust schools in particular. However, since The Education (Independent School Standards) (England) Regulations 2003 made it schools' duty to disclose and the Department's duty to keep records of 'proprietors'[100] for the purposes of ensuring they are CRB-checked, a reliable register has now been established. For this study, this information and Annual School Census responses to questions on the nature of ownership and governance were provided by the International Education and Boarding Team (IEBT) at the DfE.

Analysis of the data on English schools revealed a total of 537 non-trust schools providing mainstream education at the statutory age.[101] By cross-checking the company, institution and other organisational names supplied in the Census and in inspection reports (and checking school names where such were not supplied) against Companies House records, a range of different legal frameworks, commercial and otherwise, were discovered among non-trust schools. A breakdown of the number of schools managed under each type is given in Table 2.

The range of different frameworks deemed appropriate illustrates well the different circumstances of their principal stakeholders and how freedom of form may widen participation. In addition to 342 Private Limited Companies (PRI), a number of other company types are employed, which leverage the assets and resources at their disposal in different ways.

Table 2: Non-trust schools by type

Private limited companies (PRI)	342
Private companies limited by guarantee (LBG)/ No share capital (NSC)/ Use of limited exemption	16
Private companies limited by guarantee (LBG)/ No share capital (NSC)	10
Limited Liability Partnerships (LLP)	9
Private Unlimited Companies	5
Community Interest Companies (CIC)	1
Public Limited Companies (PLC)	1
Total	**384**

98 De Waal, *Inspection, Inspection, Inspection: how Ofsted crushes independent schools and independent teachers* (Civitas 2006), pp. 32-62, esp. p. 40.

99 Consider, in addition to those raised by De Waal, questions posed on self-evaluation, for example, by John MacBeath, 'A new relationship with schools?' in *Inspecting the Inspectorate: Ofsted under scrutiny* (Civitas 2008), pp. 33-41. De Waal finds that while ISI inspections are not affected by these issues to the same degree, because they are designed to go 'above and beyond' to analyse strengths and weaknesses outside the regulations and incorporate a 'peer review' element, Ofsted's supervisory and monitoring role nevertheless exerts a strong standardising influence on provision. See 'Freedom with strings attached', p. 65 ff.

100 Somewhat confusingly, for the purposes of the Education Act 2002, regulations made under the Act, and consequently in the nomenclature of the DfE, 'proprietor' means 'the person or body of persons responsible for the management of the school and includes individual proprietors or formally constituted boards of governors, directors or trustees'. In this report, the term shall be used in its traditional sense, in reference to the owner of a school that operates for profit, without the need of a charitable trust vehicle.

101 This excludes Special schools and schools set up specifically and exclusively for the purpose of providing for children with social, emotional and behavioural difficulties (SEBD) – hereafter likewise all references to the number of proprietorial schools in England providing education at the statutory age.

Private Unlimited Companies, of which there were five, give their members or shareholders joint, several and unlimited obligation to meet any insufficiency in the assets of the company in the event of the company's formal liquidation, and are therefore not generally formed unless owners are confident of themselves and their business model and have reason to believe that there is a very low risk of insolvency. Directors of Unlimited Companies are not required to publish their accounts, so they need to be confident that there is sufficient capital in or generated by the business for them to avoid having to approach general lenders such as high-street retail banks in order to finance future development.

By contrast, Limited Liability Partnerships (LLPs) facilitate agreement of the collective responsibilities of members while limiting their liability for each other's actions. Members cannot lose more than they invest and pay tax only in relation to disbursements through the LLP. Private companies limited by guarantee (LBG) are primarily used by non-profit organisations that, because of the nature of their work, require legal personality. Members act as guarantors, undertaking to contribute a nominal amount to covering costs in the event of a winding up. LBGs exercising the 'use of limited exemption' (UOLE) may not distribute profits to their members. While LBGs without this provision may do so, in practice many waive this requirement, preferring to see any profits reinvested into the enterprise. Given that six of the ten non-trust schools in the study population operating as LBGs without UOLE provision were religious schools, charging only nominal fees (five below £3,000, one £4,455) and thus likely to be benefiting from free rent and/or voluntary assistance in their enterprise, we include only the remaining four in our more focused study of for-profit schools.

Also worth noting, there was one community interest company (CIC). This is a new type of company, introduced by the Companies (Audit, Investigations and Community Enterprise) Act 2004, designed for social enterprises that want to use their profits and assets for the public benefit, but whose organisation would benefit from the relative freedoms of the non-charitable company form. Under this arrangement company assets and profit are 'locked in' to the company and tied to its social purpose.

Of 384 schools whose company type was identifiable with reference to Companies House records then, 361 are 'for profit'. This leaves 150 of 537 schools whose ownership structure and purpose – whether sole traders/partnerships or community/voluntary organisations – is not immediately apparent. Of course Companies House does not hold information on sole traders, nor self-employed partnerships. Given that community and voluntary organisations do not have to register with the Charity Commission, distinguishing these from small business enterprises therefore involved a degree of informed judgement. Where DfE data on proprietors gave only the name of an individual, by building a picture of the nature of each of these remaining schools, taking in information from the introductions to inspection reports, and from school websites (where school proprietors generally identify themselves as such), 22 were judged to be community or voluntary organisations. All of these are religious schools, which, going by the number of pupils on roll and the level of fees (17 of which charging less than £3,000 a year) are unlikely to be doing more than covering costs, or ameliorating the losses of their host organisations, their being reliant on premises provided by their communities of worship and/or volunteer staff. A number also invite donations to support the running of their schools and/or capital investment.[102]

Excepting the three City of London schools overseen by governors representing the City of London Corporation, it may confidently be assumed that the remaining 128 schools are owned and operated by sole traders or as partnerships. Accordingly for-profit and not-for-profit non-trust schools break down by type as shown in Table 3. A total of 489 schools in England offer compulsory age schooling on a for-profit basis.

Table 3: For-profit and non-profit non-trust schools by type

For-profit	
Private limited companies (PRI)	342
Sole traders/partnerships	128
Limited Liability Partnerships (LLP)	9
Private Unlimited Companies	5
Private companies limited by guarantee (LBG)/ No share capital (NSC)	4
Public Limited Companies (PLC)	1
Total	**489**

Non-profit	
Community voluntary organisations	22
Private companies limited by guarantee (LBG)/ No share capital (NSC)/ Use of limited exemption	16
Private companies limited by guarantee (LBG)/ No share capital (NSC)	6
City of London Corporation	3
Community Interest Companies (CIC)	1
Total	**48**

102 In a further indicator of these schools status, it was noted that of the 30 non-trust schools in all which presently charge less than £3,000 annual fees, 8 of the remaining 13 are LBGs. Among the other five, one is a Private Limited Company and the other four, although clearly not motivated by profit, appear to be commercial, and are thus included as for-profit enterprises.

Case study: The New Model School Company

The New Model School Company (NMS) offers a particularly creative example of pragmatic use of the company vehicle. NMS, which now has three schools in London, was set up as a limited company on a model expressly designed to keep fees (currently between £5,500 and £6,500) as low as possible and thus ensure that as many children as could practically be accommodated would benefit. Accordingly the initial share offer limited each shareholder to a single share to give as many supporters as possible a real stake in the project and in order fully to capitalise on the fund of goodwill behind their enterprise. Fifty-one shares of £100 were issued, at a nominal 5% annual return, enabling the directors to leverage £51,000 in interest free loans, to be repaid at the directors' discretion. Transparency as to the nature of the undertaking and the motivations of key stakeholders has enabled the group to benefit from gifts, donations and 'soft' loans from individuals and charitable organisations, secure the enthusiastic participation of parents and other volunteers, and to win the support of teachers prepared to go the extra mile in conditions which the directors are the first to acknowledge have often been stretching.

Pioneering a model now advocated for Free Schools, new schools expect to rent space in community centres, church halls or other converted premises for several years until such time as they are ready for the longer-term commitment of moving to purpose-built or refurbished premises. Such moves to date have only been possible due to generous charitable and philanthropic support. The company's extensive bursary provision, bringing an education characterised by unusually rigorous teaching and thorough pedagogy within the reach of numerous parents who would not otherwise be able to afford it, is subsidised along similar lines. For Founder-Director Robert Whelan, however, these gifts and soft loans the company has received would not have been forthcoming to anything like the same degree without their having made use of the company vehicle to apply the discipline of the market to their charitable purpose.

NMS is now in its sixth year of trading, operationally self-sustaining, and sanguine about its early-year losses, which it aims steadily to reduce over the next few years.[103]

To repeat a point made earlier, the choice of company or alternative trading vehicle may be taken primarily to reflect the thinking or advice given as to the most effective way of leveraging the assets, energies and resources, both material and in terms of personnel, at directors' disposal. That is, 'for profit' describes the terms under which stakeholders are engaged, crucially offering the prospect of a return on investment, or a reward commensurate with the level of risk assumed. It does not necessarily describe the motivation of those involved.

Organisational and structural trends

As any headteacher knows, running a school is a labour of love, requiring dedicated service and long-term commitment. Proprietorial heads take this commitment even further by investing capital of their own, over extended periods of time. Traditionally, the greater proportion of proprietorial schools were owned and managed by sole proprietors or as proprietorial partnerships. In that neither of these trading forms provides any legal distinction between the owner(s) and the business, this was a straightforward statement of the nature of the relationship between proprietor and customer – in essence, a relationship of trust in which the proprietor is directly responsible to his or her clients. Owners own the assets of the business and receive all profits, but they also carry unlimited responsibility for all losses and debts. In this way, the degree of risk assumed by the proprietor is the client's guarantee that he/she will give their best attention and energies to securing for pupils the highest possible quality of education on the resources available.

103 See the Company's 2010 Annual Report at http://www.newmodelschool.co.uk/files/New_Model_School_Annual_Report_2010.pdf.

To further strengthen that commitment, spread the burden of the risk, and offer a form of added insurance of the quality of provision, many such partnerships traditionally have taken the form of, or evolved to become, family businesses. Family firms tend to be more interested in the long-term view – in stewardship and sustainability rather than maximising short-term returns – so they are an important source of stability in any market, and indeed their influence on the proprietorial schools sector has always been marked in this regard.

On the basis of information on the family connection from the full Annual School Census data-set, inspection reports and school websites, it is clear that 30% of all proprietorial schools in England today are family businesses, owned and operated by married partners, by one or both parents and/or one or more of their children, or by siblings. This includes 44 (or 34%) of the 128 schools owned and operated by sole traders or partnerships. Examples include Pattison College,[104] Coventry (est. 1949), sole-proprietorial responsibility for which passed to Elizabeth McConnell, daughter of founder Betty Pattison, in 2003; the remarkable development of Thomas's London Day Schools[105] by David and Joanna Thomas and their sons, Tobyn and Ben; the (LLP) partnership between members of the Price family at Merton Court Preparatory School,[106] in Kent; Magdalen Court School,[107] established in 1991 and run by the Jenner Family Trust, with the hands-on participation of several members of the family; and Alleyn Court,[108] owned and run by the Wilcox family for four generations since its foundation in 1904.

The impact of rising operating expenditure associated with maintaining salaries at competitive levels, meeting the requirements of developing employment and health and safety legislation and keeping pace with the changing requirements of inspection has, however, led to a marked structural shift in the market towards corporatisation and in favour of new school chains.

Analysis of data assembled from inspection reports, school websites, company histories, and a range of other sources pertaining to the number of years since the last significant[109] change of proprietor suggests the following conclusions may be drawn:[110]

- While 17% of proprietorial schools overall are run on a sole proprietor or self-employed partnership basis with no family connection, just 10% of new school openings and takeovers between 2000 and 2010 were this type (i.e. 'unincorporated other', Figure 2, over)

- While 30% of proprietorial schools overall are family-run, just 9.5% of new school openings and takeovers between 2000 and 2010 were attributable to this type

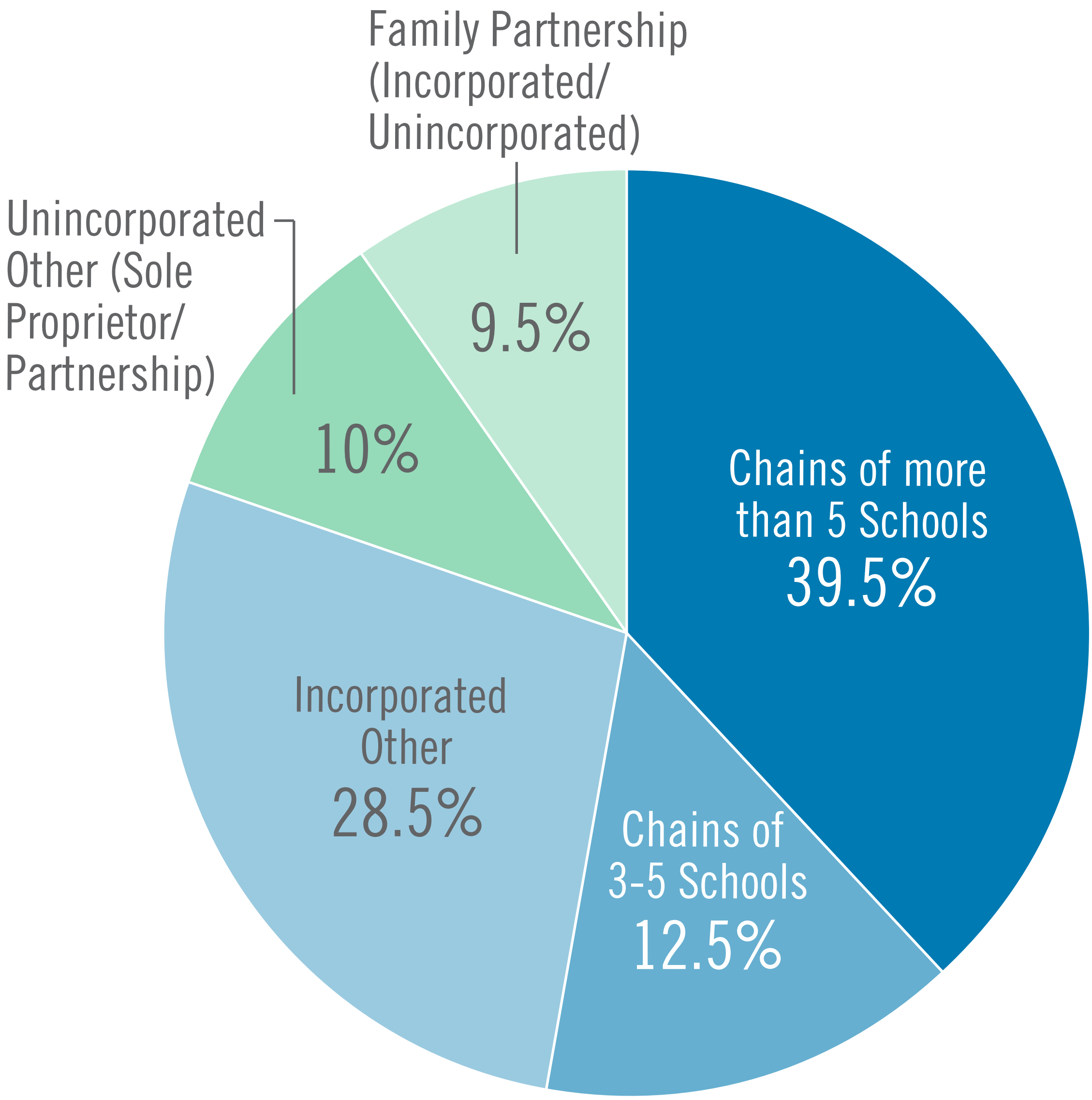
- By contrast, while 74% of proprietorial school businesses overall are incorporated, 87% of new school openings and takeovers between 2000 and 2010 were at the instigation of incorporated businesses

- Chains of three or more schools (i.e. including the sum of the activity represented by both the larger and smaller chain segments in Figure 2, over), which now own and operate 25% of proprietorial schools overall,[111] have together been responsible for 52% of all new school start-ups and takeovers in this period.

Figure 2, over, shows the percentage of new school openings and takeovers 2000-2010 by type.

104 See http://www.pattisoncollege.webspace.virginmedia.com/index.html and the fuller case study on p. 36.
105 The first of this group of schools, Ranelagh Kindergarten, Pimlico (now Thomas's Kindergarten), began life in 1971. Its success, and that of the Kensington Court Lower School (now Thomas's Kensington) founded six years later, led to the development of further schools. Today the group comprises four prep schools and two kindergartens and educates 1,850 children. It is run simply as an (unincorporated) partnership between the schools' four principals. See http://www.thomas-s.co.uk/history.html
106 See http://www.mertoncourtprep.co.uk/
107 See http://www.magdalencourtschool.co.uk/
108 See 'Keep it in the family', *TES*, 8th July 2005 (http://www.tes.co.uk/article.aspx?storycode=2115199) and John Wilcox's account in *Impressions of a family school: 100 years of Alleyn Court* (2005).
109 In cases where proprietorship passes from one generation to the next within the same family, or when a sole proprietor incorporates his/her business, for example, these were not deemed 'significant' changes of ownership. In instances where schools were sold from one chain to another however (as in GEMS' acquisition of Nord Anglia's portfolio in 2004), or where the ownership of a group of schools was transferred from one private equity firm to another (as in Sovereign Capital's sale of the Alpha Plus Group to Delancey, the specialist investment advisor, in 2007), these were judged to be 'significant'.
110 Of the 489 proprietorial schools identified, 61 schools had to be excluded from this analysis due to insufficient data.
111 This includes international school chains, but excludes the Claire's Court, Eaton House and Thomas's school groups.

Figure 2: Percentage of new school openings and takeovers 2000-2010 by type



The impact of just a handful of large chains is evident, but what is equally striking about this graphic is what it reveals of the entrepreneurial energy of assertive new proprietors ('incorporated other') and aspirant chains of between three and five schools, which taken together comprise 41% of all market activity over the last decade, surpassing the combined achievement of the better known providers.

Table 4 shows the number of schools opened or taken over in this period attributable to each type.

Table 4: Number of new schools and takeovers 2000-2010 by type

Chains of more than five schools	79
Chains of between three and five schools	25
Incorporated other*	57
Unincorporated other (sole proprietors / partnerships)	20
Family partnerships (incorporated/unincorporated)	19
	200

**including LLPs, etc.*

The ratio of new school openings relative to takeovers was approximately 1:4, representing 42 start-ups versus 158 takeovers in the period. The DfE 'opening' date is perspicuous in reflecting the actual date of opening only from 2003. Prior to this, new school openings may be distinguished from takeovers with reference to the interval between this date and the date of the most recent change of ownership. The takeover of educationally sound but financially unsustainable schools has clearly been the dominant market-entry strategy adopted, representing in each case the most straightforward route to ensuring continuity of provision.

Bearing in mind the 61 exclusions already referenced, this means that at least 32% of all open proprietorial schools in England experienced a change of ownership over the past decade. A further 9% are new schools, generally utilising the premises of previously closed educational facilities.

Figure 3, showing the number of years that schools have been with their present proprietors, illustrates the acceleration of new school openings and takeovers over the decade in relation to more established businesses.

The effect has been to drive down the average age of a proprietorial school business, as shown in Figure 4.

Figure 3: Number of years with present proprietor

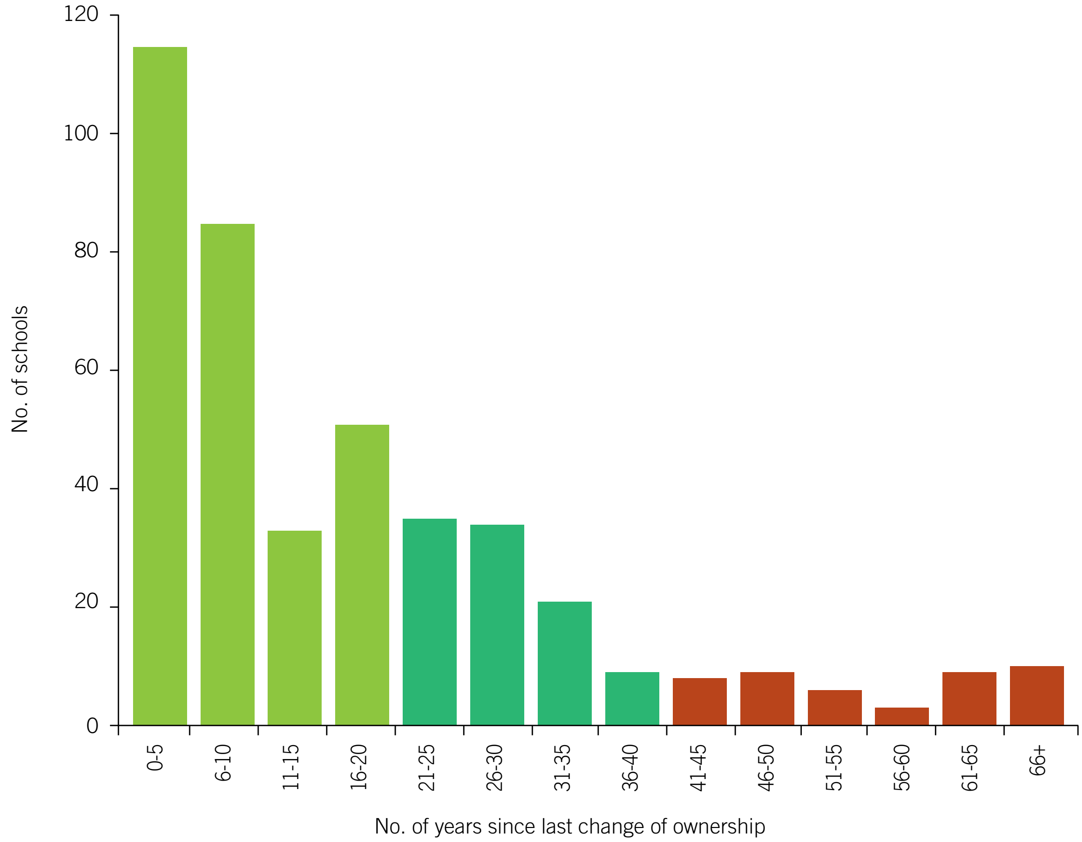


Figure 4: Average age[112]

112 The average age since the date of registration is based upon the DfE opening date as found in the EduBase records, which in fact reflects changes in policy with relation to inspection, rather than the date on which the school actually opened its gates. The age by opening date is based on the date of establishment schools themselves give.

If the new schools and takeovers of the last decade are excluded, the average age based on the number of years with the present proprietor comes to 25 years. According to PricewaterhouseCoopers (PwC), this is in line with what one would expect of a market heavily influenced by family ownership: PwC's *Family Business Survey 2009-10* found the average age of the family-run businesses they surveyed to be 24 years. It appears then, that corporatisation of the sector has begun to drive the average age towards that of limited company businesses – which according to information services company Experian is 9 years.[113]

Returning to the activity of the last ten years, Table 5 shows the number of each type of proprietor responsible for these new school openings and takeovers.

Again, the significant contribution made by 11 little-known, aspirant chains of between three and five schools should be noted. These 11 emerging chains were responsible for 25 openings and takeovers – 12.5% of all market activity on this indicator. In this group, the contributions of Montague Place Limited,[114] The Really Great Education Company Limited, and The New Model School Company are notable.[115] In addition, among the 'incorporated other' group (i.e. those start-ups and takeovers that were attributable neither to chains, nor family business enterprises), a number of other aspirant new companies were identified, including London Preparatory Schools and the Hampstead Hill Group of Schools.[116]

Among the larger chains, in addition to Cognita, the Alpha Plus Group, and GEMS, a number of overseas-based chains moved in to 'mainstream' statutory-age provision in this period, with capacity for expansion. The international giant Beaconhouse[117] entered the market in this period, having successfully acquired the beleaguered Newlands School, Seaford, in September 2009, as also did International Education Systems (IES),[118] with the acquisition of Grantham Preparatory School in May 2004, and Schiller International University Group, with the opening of Wickham Court School, Bromley, in 2002.

Table 5: Number of proprietors responsible for new school openings and takeovers 2000-2010 by type*

Chains of more than five schools	8
Chains of between three and five schools	11
Incorporated other	50
Unincorporated other (sole proprietors / partnerships)	20
Family partnerships (incorporated/unincorporated)	19

** excludes those that have entered and exited the market in this period*

How disruptive is the market to children's education?

Contrary to the impression one might get from the media, unplanned closures are extremely rare, and even less likely in the proprietorial school sector. If succession is the structural weakness of the sector as a whole (relative, at any rate, to state-maintained schools), proprietors more than compensate for this by effective long-term business planning, and are much less likely than trust schools to borrow against the surety of their estates or future earnings to make up for declining pupil rolls. Having typically invested in their communities over a lifetime, the school and its community are the proprietor's legacy, and the primary concern in the event of sale is to ensure their future. The extent to which proprietors have been successful in achieving seamless transfers of their assets is witnessed in the high proportion of schools which continue to give their original founding (or 'opening') date as much earlier (the average being 48 years).

113 Research undertaken for this study by Experian indicates that the average age of all limited company businesses that are still active today (though including those under 2 years, a high proportion of which are eventually dissolved without trading) is 8.95 years. For limited company businesses that died over the last 10 years, excluding those dissolved within 2 years (i.e. that did not trade), the average age at death for that period was 7.5 years.
114 See http://www.montagueplace.co.uk/
115 See http://www.newmodelschool.co.uk/
116 See http://www.londonpreparatoryschools.co.uk/
117 See http://www.beaconhouse.edu.pk/
118 See http://www.iesedu.com/

Table 6: School chains and other groups

	England, schools only	All UK, incl. nurseries and 6th forms	Incl. overseas
School chains			
Cognita Ltd	42	[46]	(58)
Alpha Plus Group Ltd	16	[21]	
GEMS UK Ltd	12		(61)
Happy Child Ltd	4	[17]	
Alpha Schools Ltd	4		
The Chamberlain Group Ltd	3	[4]	
Milton Keynes Preparatory School Ltd	3	[4]*	
The New Model School Company Ltd	3		
The Really Great Education Company Ltd	3		
Oak Tree Schools Ltd	3		
House Schools Group Ltd	3		
Montague Place Ltd	2	[3]	
Beaconhouse Educational Services Ltd	2	[5]	***
International Education Systems Ltd	1**	[3]	(8)
King's Educational Group	1		(6)
Kinder Nurseries Ltd	1	[9]	
Eveline Day Nursery Schools Ltd	1	[6]	
Oxford Montessori Schools	1	[4]	
SPL Education Ltd	1	[4]	
The Roche School Ltd	1	[4]	
Families of schools			
Thomas's	4	[6]	
Claires Court Schools Ltd	3		
Eaton House School Ltd	3		
14-19/International			
Bellerby's Educational Services Ltd	4		
ACS International Schools Ltd	3		
Mander Portman Woodward Ltd	3		
David Game Group	3	[16]	(18)
International School of London	2		(3)
Schiller International University Group	1		(6)
Total	**132**		

** Includes MKPS's unique educational facility 'The Farm', designed to facilitate teaching 4-11 year-olds environmental studies, sport and fitness, information and communication technology, music, drama and horticulture.*
*** Only Grantham Preparatory School, among IES's three English schools, is included here because the other two, as discussed above, are run discretely on a charitable basis.*
**** It is estimated that across the developing world Beaconhouse schools, operated under the auspices of various ancilliary and subsidiary companies, educate between 250,000 and 300,000 children. Estimates of the number of Beaconhouse schools vary.*

This period also saw the arrival of new nursery-based providers into the market, following the lead of Eveline Day Nurseries, established some 42 years ago before opening its day school in Tooting Bec in 1990. Kent-based nursery provider Kinder Nurseries Ltd,[119] with nine day nurseries, opened its own primary – Meredale Independent School, Rainham – in 2005. Meanwhile, Happy Child Ltd,[120] having opened their first prep school, Aston House School, in 1995, has gone on to acquire three others between 2004 and 2007.

Table 6 quantifies the provision of school chains and other groupings operating schools in England, together with their wider commitments across the UK as a whole, and internationally.

119 See http://www.kindernurseries.co.uk/default.aspx
120 See http://www.happychild.co.uk/schools/

Consolidation at what cost?

The growth of the commercial chains over the decade has certainly been dramatic. In an interesting comparison, mtmconsulting observe in their 2010 Sector Report that between 2002 and 2009 the numbers of chain-owned and managed schools more than doubled, 'far outstripping the growth of trust-based federations, which had been static over the previous two years'.[121] There is no doubting that this timely entry of venture capital into the market has brought about a necessary consolidation at the most competitively challenged end of the market. But at what cost?

There are those among the more traditional proprietors who view these developments with concern. Fears have been expressed that commercialisation will raise class sizes, limit the curriculum and compromise the range and quality of extra-curricular offerings, to the detriment of the distinctive character and ethos for which proprietorial schools are known. This is in part to overestimate the importance of class size in relation to educational attainment, a tendency to which independent schools in general are prone. But it is also to overlook the great variety of ways in which the chains have made economies of scale work to the benefit of their schools. Consider Milton Keynes Preparatory Schools' 'Farm' – a centrally located, multi-functional educational facility for environmental science, horticulture, ICT, music and drama, resourcefully shared by each of group's three schools. Or the New Model Schools Company's employment of specialist French and music teachers who work in and between each of the group's three schools so that these subjects may be enjoyed as part of the curriculum for all their pupils, not just those in situ at one school. Or Cognita's subject-based teacher training days for staff across the group to gather and explore inspired ideas for more creative Maths teaching, for example.

Most importantly, however, it is also to underestimate the level of demand from the state sector for better teaching and greater focus on the core of the curriculum to which these chains, like the Free Schools, are responding. Educationally aspirant middle class parents are more interested in securing for their children a solid grounding in the basics than they are in an extensive extra-curricular programme and will make sacrifices in this regard if they have to. In this light, the effect of chain entry might well be to focus minds on what matters most and thus strengthen proprietorial schools' traditional commitment to ensuring the widest possible access to the education they provide.

The proprietorial sector in overview

There are 489 independent mainstream proprietorial schools in England educating at the statutory age, educating a total of 82,528 pupils. These schools are:

- 72% 'preparatory' (up to 13)
- average size: 205 pupils[122]
- 83% non-selective[123]
- 80% urban or sub-urban[124]
- mainly secular (only 1% 'confessional' faith schools)
- average fees: c. £7,500 (£3000 – £15,000)[125]
- high proportion of first-time buyers among parents
- socially and ethnically diverse in terms of pupil composition

121 Humphries, 'Sector Report 2010', p. 83.
122 Based on 2010 pupil numbers available for 478 of the full 489 schools. The remainder are excluded in this calculation due to omission of these numbers in their last Annual School Census forms.
123 Those schools deemed to be pursuing a policy of soft-selection were excluded; those judged to be genuinely assessing for pupil profiling/diagnostic purposes are included.
124 DfE criteria.
125 The handful of exceptions whose fees exceed this upper end figure are international and/or boarding schools.

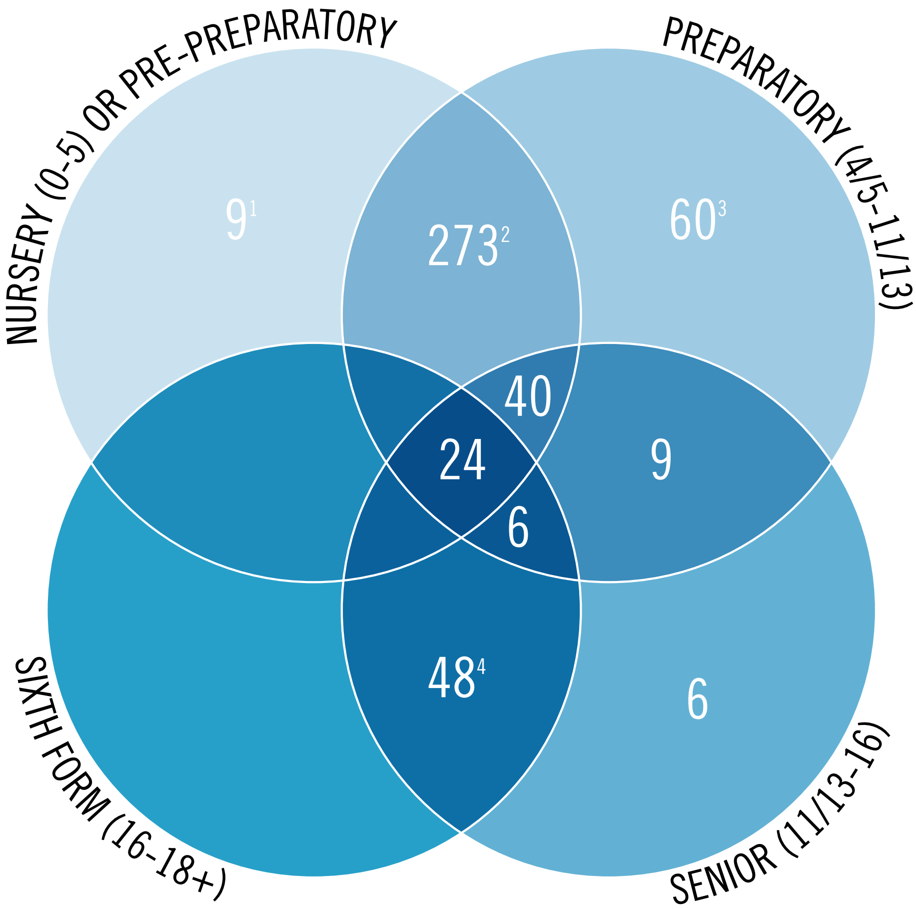
Expansion by stage and specialisation

The movement of nursery-based chains into preparatory age schooling, as a natural extension to their early years' provision, draws attention to another significant area of development within the sector. As Figure 5 illustrates, there has been particularly significant expansion at the interface between the nursery/pre-prep and preparatory stages. This expansion is not limited to nursery and pre-prep providers acquiring new schools. The lion's share of the development has come from proprietorial schools historically rooted at the preparatory end of the school spectrum expanding down into the early years on site, or through the acquisition of adjacent premises. There are good examples even among even among quite small schools – including the outstanding quality of early years provision developed by Bicker Prep, Boston[126] and St Crispin's transition to all-through (2-16) provision with the acquisition of nearby Grange Nursery School in 2009[127] – as well as more ambitious developments, such as St Peter's School, Exmouth's expansion into the early years since 2006 under the auspices of SPL Education Ltd – now operating Tic Toc, Acorns and ABC Nurseries in Exmouth and Exeter and aspiring to add to their growing portfolio.[128]

Remarkably, of the 72% of proprietorial schools overall that are essentially preparatory (to the age of 13), 80% of these now also make provision for the early years. In that this, of course, is where demand in demographic terms is strongest we should expect to see significant expansion in this area in the years to come.

The graphic below shows the expansion of provision in response to this and other demand. Table 7 (p.34) shows the number of schools extending their provision across two or more stages of education.

Figure 5: Expansion by stage



1 Pre-preps (4-8) only
2 Includes those schools comprised of Nursery/Kindergarten and Pre-Prep (0-8); Nursery/Kindergarten and Preparatory (0-11); and Nursery/Kindergarten and Preparatory (0-13) (i.e. spanning two stages)
3 Includes both Preparatory/Junior schools (4-11) and Preparatory schools (4-13)
4 Includes Seniors including Sixth Forms (11-18) and 14-19 Colleges

126 See http://www.bickerprep.co.uk/nursery.htm
127 See http://www.stcrispins.co.uk/welcome/Welcome.htm
128 See http://www.stpetersprep.co.uk/

Table 7: Number of schools by stage[129]

	Span two or more stages	Single stage only
All through (0-18)	24	
All through (0-16)	40	
All through (4-18)	6	
Pre-Prep (4-8)		9
Nursery/Kindergarten and Pre-Prep (0-8)	47	
Nursery/Kindergarten and Preparatory (0-11)	195	
Nursery/Kindergarten and Preparatory (0-13)	31	
Preparatory or Junior (4-11)		35
Preparatory (4-13)		25
Preparatory/Junior and Senior (4-16)	9	
Senior/Secondary (11-16)		6
14-19 Colleges	14	
Senior including Sixth Form (11-18)	34	
Total	**400**	**75**

The provision of a startling 84% of proprietorial schools now spans more than one stage of education. Fifteen per cent of these have expanded such that they now span three stages. Twenty four schools extend their all-through provision from infancy into the sixth form.

The sector also demonstrates a high degree of specialisation. Fully 29% of mainstream proprietorial schools have either developed a specialism, or cater to a distinctive niche market – and this of course excludes Special schools and those set up specifically and exclusively to cater for SEBD (see p. 17). Among those that are included in the study population, nine specialise in supporting mild to extreme severity SEN and SEBD within a mainstream context. Avon House School, Woodford Green[130] and Bredon School, Tewkesbury,[131] both CReSTeD accredited, provide outstanding examples.

Case study: The Northwood Schools Group[132]

Broomwood Hall School was founded in September 1984 by Mrs Katharine Colquhounand and has been developed as a family businesses in proprietorial partnership with her husband Malcolm. Starting with 12 pupils aged 4 to 5 in an upstairs room above Broomwood Road Methodist Church, Wandsworth, the school grew in each of the first three years of its existence with the addition of a new class of 4 year olds. Over the years since then, the school has expanded greatly and acquired additional premises. It now has an Upper School for girls aged 8 to 13 and two Lower Schools for boys and girls aged up to 8, the smaller near Tooting Common, and the larger split between two sites near to the Upper School. Since 1993, from the age of 8 years old, when almost all the girls transfer to the Upper School, boys progress to nearby Northcote Lodge, accommodated in premises bought and developed especially for the school by Mr and Mrs Colquhoun in 1992.

In 2006, Mrs Colquhoun ceased to be head of the Broomwood Hall School and the responsibility for the whole was divided among separate headteachers appointed to lead each of the three schools. These three heads, together with the head of Northcote Lodge, and the proprietors, form the board of directors responsible for running all four schools, through a limited company, Broomwood Hall School Ltd. Ownership of the buildings remains in the hands of the proprietors alone. An additional building has recently been acquired and converted to extend provision for the Upper School.

129 Where schools have expanded their provision on separate sites, now operated as independent schools in their own right (and considered separately for inspection purposes), but which act as feeders or are effectively the next stage(s) in an all through progression, they are counted only once. Downsend, Leatherhead, for example, together with its three pre-preparatory 'Lodges', is therefore considered as a single entity spanning both Nursery/Kindergarten and Preparatory stages.
130 See http://www.avonhousedyslexiacentre.org/
131 See http://www.bredonschool.org/index.php?option=com_content&task=view&id=21
132 ISI inspection report, 2008, p. 1. See also http://www.broomwood.co.uk/generalinfo/About_the_School.php/ and the Northcote Lodge site at http://www.northcotelodge.co.uk/generalinfo/The_Story_of_Northcote_Lodge_27.php

Case study: Arnold Lodge School

Arnold Lodge was originally established in 1864 as a boarding school for boys to age 13 when pupils from a Dame School nearby were taken into the care of the school's first proprietor, Mr Alfred Kirk. An admirer of Thomas Arnold of Rugby School, Kirk's broad and progressive curriculum embraced science, modern languages and drawing and proved popular among Leamington's rapidly expanding middle classes. In the later twentieth century, even as the school's reputation grew, demand for all boys boarding provision nevertheless steadily declined. Responsive to these trends, the school gradually evolved to its present fully co-educational, day school form. The present owners, two cousins in partnership, took over the school in 1999, bringing new vision and expertise, and refurbishing and restructuring the facilities to better suit the school's requirements going forward. The school stayed ahead of regulatory developments and achieved strong results at inspection, but suffered nonetheless from the declining popularity of the 13+ Common Entrance exam.

Although few in number, enough parents were taking the decision to move their children to independent senior schools at age 11, or on to local grammar and state-maintained comprehensive schools, for the proprietors to question the school's sustainability in the long-term on the preparatory model. In 2007, with the number of pupils on roll at 267 against a capacity figure of 411, seeing a niche opportunity, they took the bold decision to extend provision to 16, becoming one of just a handful of all-through schools in the county. A core curriculum was devised consisting of Maths, English Literature and Language, French, and Coordinated (Double) Science, Religious Studies and ICT, to be supplemented by a range of optional subjects, including Geography, History, Food Technology, Art, Spanish, Media Studies, Drama, and Physical Education. Further development of the programme would be demand-led, with the focused core curriculum offering supported by extending the school's already outstanding enrichment programme. With this development now consolidated and the first cohort of senior school students due to sit their exams this summer, a new head, David Williams, has been appointed to take forward the proprietors' plans for expansion.

Notably, there are 47 proprietorial boarding schools in England. This relatively high market share (a minimum of 6.5% based on an all-UK estimate of a total of 725)[133] reflecting one of the sector's traditional strengths. Sixteen of these boarding schools, however, also cater for international students, mainly at the secondary level and beyond into the sixth form, which reflects more recent development in response to the steady increase in demand from overseas. Although the majority of the 32 schools catering to this market were established in the 1970s or 80s (the average date of opening, according to the schools' own records, is 1985), interest remains lively, with ten takeovers and four new school openings in the past decade. While clearly dominated by chains focused on the 14-19 stage (see Table 6, p. 31), 14 of these school also cater for children below the age of 13.[134]

Overall, there are 25 single-sex schools, comprising 14 all-boys and 11 all-girls, as well as two schools – Brockhurst and Marlston House, Newbury,[135] and Eaton House, The Manor, London – which seek to combine the best of both single-sex and co-educational education.[136] While the sector is braced for continuing decline in demand for single-sex schooling, having consolidated their presence in this niche market these schools appear to be well-placed to meet the challenge. On the strength of their tradition in this regard, and their reputations for educational excellence generally, 12 of these 27 are reviewed in *The Good Schools Guide*; two others are listed in the top 50 of the *Sunday Times* Top 200 Preparatory Schools. Nineteen of these schools are members of associations. Among more recent entrants, Alpha Plus have taken a particular interest in this niche, acquiring five single-sex pre-prep and prep schools, in addition to opening the Falcons School for Girls in 2000, and Wetherby Prep for boys in 2004.

In so far as schools based on distinctively 'alternative' educational philosophy or pedagogical method go, in contrast with independent trust schools, which include all the UK's Steiner schools and a host of religious schools influenced by faith-based pedagogies, self-identification on this basis among proprietorial schools is rare. Proprietorial schools' traditional concern for breadth and balance in the curriculum and their interest in ensuring the widest possible appeal, have tended to incline them historically towards the educational centre ground. Accordingly, the steady development of Montessori-based schools in the sector reflects the approach's acceptance in the educational mainstream.

133 The *Boarding Schools Directory & Guide 2011* gives an estimate of 700+ (The Independent Schools Network/ Gabbitas, 2011). See http://www.boardingschools.co.uk/
134 Only those international proprietorial schools also educating pupils from the UK at the statutory age were included in the study population.
135 See http://www.brockmarl.org.uk/
136 See http://www.eatonhouseschools.com/

Interestingly the average age of the 32 Montessori-based schools, according to the opening dates given by the schools themselves, is just 20 years (cf. Figure 4, p. 29). Rochester Independent College stands out as a notable 'alternative' exception for its informal ethos and relaxed learning environment, though rigorous teaching and a strong focus on preparation for assessment, recognised in a recent outstanding Ofsted report, suggest that it might be better characterised as akin to a successful Swedish Free School.[137] In respect of religious affiliation, just 1% of schools in this characteristically secular sector, are 'confessionally' faith-based.

Finally, there are two choir schools – Polwhele School, serving Truro Cathedral,[138] and Bramdean School, Exeter[139] – whose commitment to excellence in this regard has had an evident impact on their levels of academic attainment also. A further nine performing arts schools, including Pattison College, Coventry (see below), the Corona Theatre School, Kew,[140] Redroofs, Maidenhead[141] and, the most recently founded, Young Dancers' Academy ballet school in Shepherd's Bush,[142] are known to provide outstanding specialist tuition which lends impetus to, rather than detracting from, pupils' academic progress.

Educational performance

The statistical profile of proprietorial school inspection results that follows offers an illuminating comparison with inspection results for all independent schools that is sufficient to overturn the thesis that for-profit management compromises educational outcomes. Having obtained from Ofsted and the ISI numerically rendered inspection judgements for 162A inspections, proprietorial schools inspected by Ofsted 2007-10 are revealed to have *significantly outperformed* 'all independent schools' on all key teaching and learning-related criteria. Those inspected by ISI 2006–09 are shown to have outperformed the 'all independent school' group on three of the five criteria relating directly to pupils' education, development and behaviour – and this in spite of the fact that those proprietorial schools in association are 81% non-selective, while according to a recent ISC study,[143] 87% of all association schools are selective.

Schools not in association comprise 65% of all proprietorial schools. Almost all – 297 of 489, or 61% – were captured in the Ofsted data-set for 2007-10, excepting only those inspected during 2006-07 and scheduled for a visit in the first six months of 2011 and those recently registered but not yet fully inspected. The results

Case study: Pattison College, Coventry

Pattison College is a small, all-through, family-run school in a residential area of Coventry. Established in 1949 by Betty Pattison originally for talented pupils wishing to make a career of the theatre, over the years the specialism in dance and drama, speech, performance and music has been fully integrated into a steadily more demanding academic curriculum. The experience of practice and performance, and the discipline and hard work it involves, is recognised and valued by pupils for its role in building their confidence and teaching them important life skills, regardless of their ability. From the age of four, all pupils are given specialist teaching in speech, drama and music, with senior school pupils mentoring younger ones and sixth form students of musical theatre acting as assistant teachers for their specialist classes. High expectations of behaviour and participation in all aspects of school life help to foster a culture that celebrates achievement in all areas. Having led efforts over many years to develop the school's core curricular provision and to consolidate the school's reputation for attainment at the school leaving age, proprietor Elizabeth McConnell was rewarded in 2006 when Pattison College was rated seventh nationally according to the DfES Value-Added Measure. Since then the school has achieved 100% A-C grades in 2008 and 2010. All pupils leave the school with solid grounding in English Literature, English Language, Mathematics, 21st Century Science (Double Award), French, History, Geography, and Art or ICT.

137 See the school's website at http://www.rochester-college.org/flash.htm and 'The focus at Rochester is on the best possible exam results', *The Independent*, 23rd September 2010 (http://www.independent.co.uk/news/education/schools/the-focus-at-rochester-is-on-the-best-possible-exam-results-2086700.html).
138 See http://www.polwhelehouse.co.uk/choir/chorister-life
139 See http://www.bramdeanschool.com/
140 See http://www.coronatheatreschool.com/
141 See http://www.redroofs.co.uk/
142 See http://www.youngdancersacademy.co.uk/
143 'The "Others": A Structural and Demographic Portrait of non-ISC Independent Schools', Kristen DiLemmo, *ISC Bulletin* 27, pp. 9-12.

for these 297 proprietorial schools were compared with all 1,170 independent schools inspected by Ofsted in this period.

Finding a significant enough body of inspection results for proprietorial schools in association for comparison with those of all independent schools in association was more challenging because ISI inspected schools less frequently in this period than did Ofsted, and because the criteria were changed in 2006. However 81 schools inspected on the 2nd cycle (2006-09) were offered by ISI, for comparison with the results for all the 171 schools inspected in this period. Those inspected thereafter, and those last inspected in 2005 and as of mid-December 2010 yet to be inspected, were excluded. The results are displayed over the following two double-page spreads.

Figure 6: Ofsted 162A inspection results: all independent 2007-10 (%)

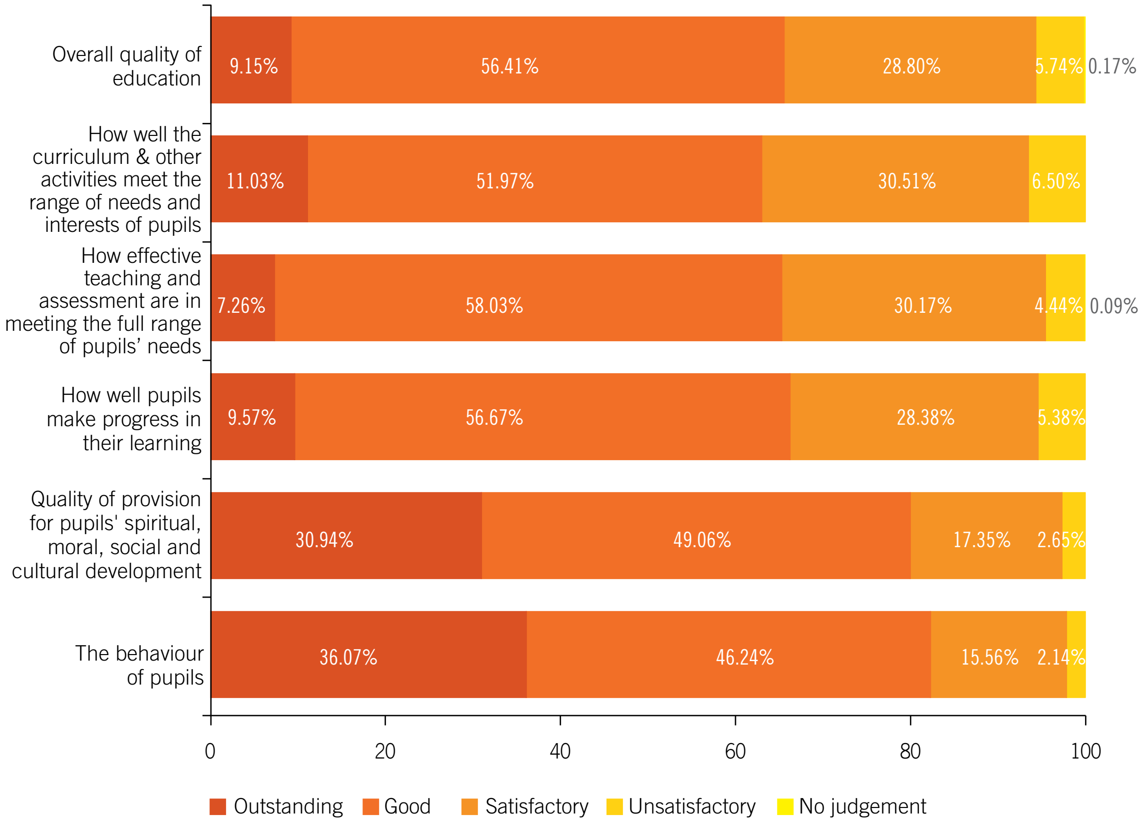


Table 8: Ofsted 162A inspection results: all independent 2007-10 (%)

	Overall quality of education (%)	How well the curriculum and other activities meet the range of needs and interests of pupils (%)	How effective teaching and assessment are in meeting the full range of pupils' needs (%)	How well pupils make progress in their learning (%)	Quality of provision for pupils' spiritual, moral, social and cultural development (%)	The behaviour of pupils (%)
1 – outstanding	9.15	11.03	7.26	9.57	30.94	36.07
2 – good	56.41	51.97	58.03	56.67	49.06	46.24
3 – satisfactory	28.80	30.51	30.17	28.38	17.35	15.56
4 – unsatisfactory	5.47	6.50	4.44	5.38	2.65	2.14
0 – no judgement	0.17	0.00	0.09	0.00	0.00	0.00

** i.e. all 1170 independent schools inspected by Ofsted in this period, inclusive of those undertaken in the year 2010-11 to date.*

Figure 7: Ofsted 162A inspection results: all proprietorial 2007-10 (%)

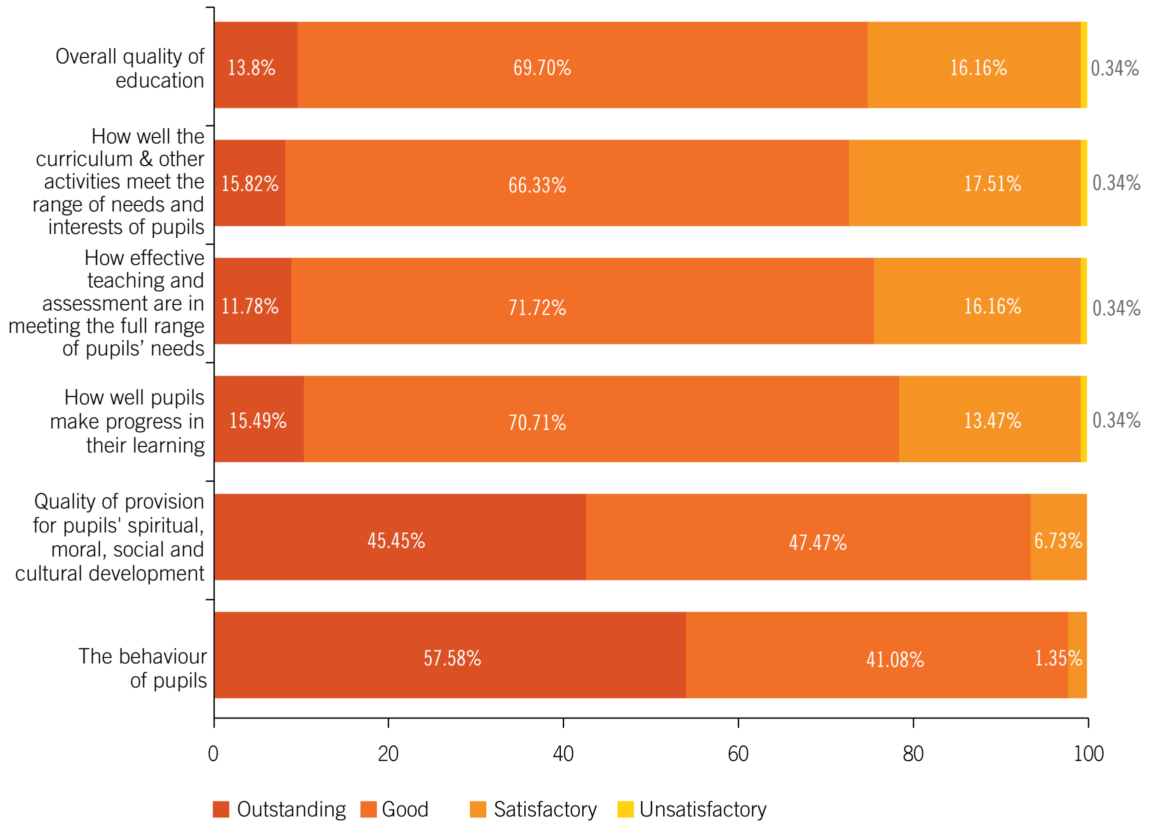


Table 9: Ofsted 162A inspection results: all proprietorial 2007-10 (%), showing the degree to which proprietorial schools outperform all independent schools

	Overall quality of education (%)	How well the curriculum and other activities meet the range of needs and interests of pupils (%)	How effective teaching and assessment are in meeting the full range of pupils' needs (%)	How well pupils make progress in their learning (%)	Quality of provision for pupils' spiritual, moral, social and cultural development (%)	The behaviour of pupils (%)
1 – outstanding	13.80	15.82	11.78	15.49	45.45	57.58
2 – good	69.70	66.33	71.72	70.71	47.47	41.08
3 – satisfactory	16.16	17.51	16.16	13.47	6.73	1.35
4 – unsatisfactory	0.34	0.34	0.34	0.34	0.34	0.00

Degree to which proprietorial schools outperform all independent schools

10%+ 4-9%

Figure 8: ISI inspection results: all independent 2006-09 (2nd cycle) (%)

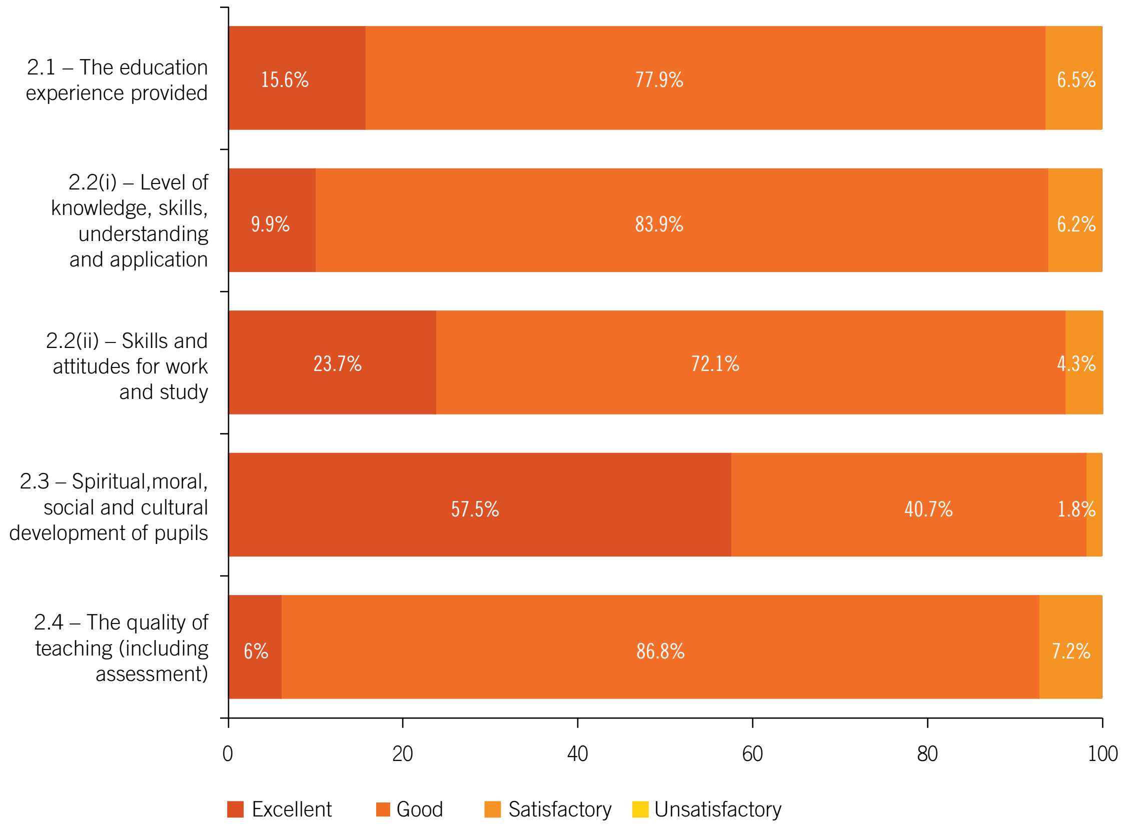


Table 10: ISI inspection results: all independent 2006-09 (2nd cycle) (%)

	2.1 – The education experience provided	2.2(i) – Level of knowledge, skills, understanding and application	2.2(ii) – Skills and attitudes for work and study	2.3 – Spiritual, moral, social and cultural development of pupils	2.4 – The quality of teaching (including assessment)
1 – excellent	15.6	9.9	23.7	57.5	6.0
2 – good	77.9	83.9	72.1	40.7	86.8
3 – satisfactory	6.5	6.2	4.3	1.8	7.2
4 – unsatisfactory	0.0	0.0	0.0	0.0	0.0

Figure 9: ISI inspection results: all proprietorial 2006-09 (2nd cycle) (%)

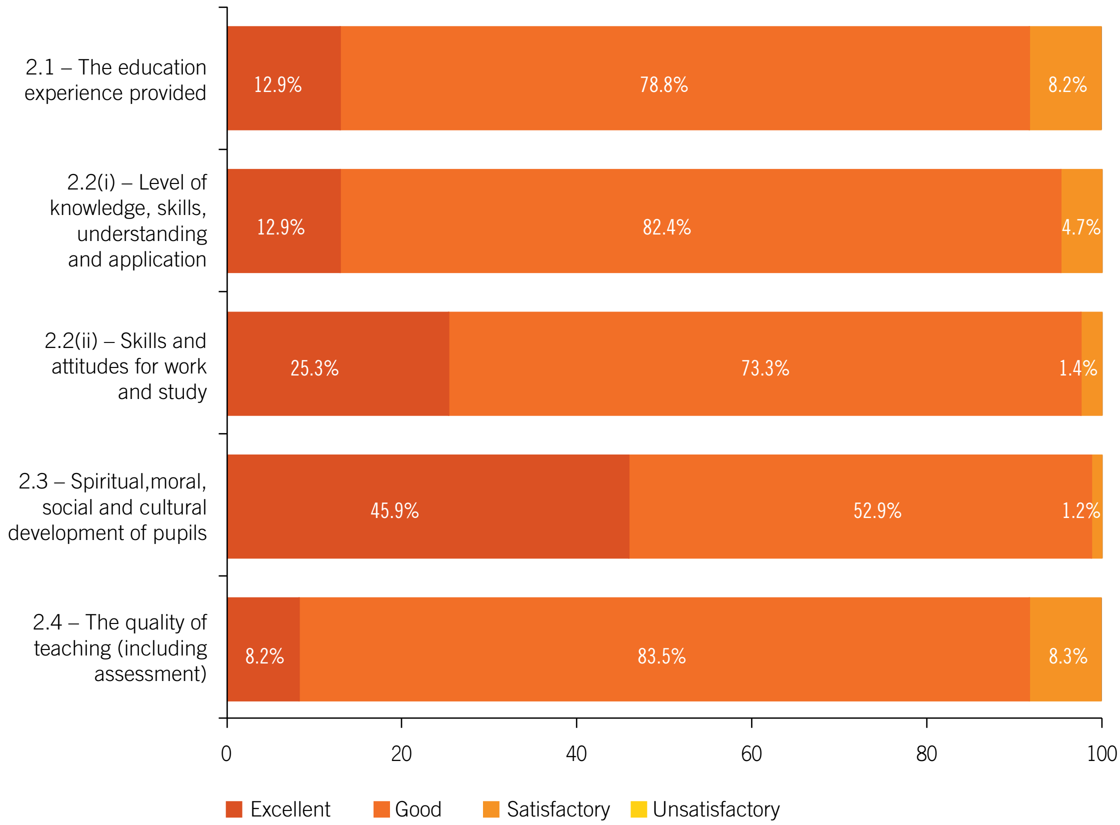


Table 11: ISI inspection results: all proprietorial 2006-09 (2nd cycle) (%), showing the degree to which proprietorial schools outperform all independent schools

	2.1 – The education experience provided	2.2(i) – Level of knowledge, skills, understanding and application	2.2(ii) – Skills and attitudes for work and study	2.3 – Spiritual, moral, social and cultural development of pupils	2.4 – The quality of teaching (including assessment)
1 – excellent	12.9	12.9	25.3	45.9	8.2
2 – good	78.8	82.4	72.3	52.9	83.5
3 – satisfactory	8.2	4.7	2.4	1.2	8.2
4 – unsatisfactory	0.0	0.0	0.0	0.0	0.0

Degree to which proprietorial schools outperform all independent schools
10%+ 4-9%

Is the halo effect sufficient to 'explain away' these findings?

These results are certainly startling. When asked for their reactions to the findings, interestingly a spokesperson for one of the inspectorates raised questions about a possible 'halo effect' in independent school inspection attributable to the size of the school and its setting. How relevant are these factors to the interpretation of the results for proprietorial schools? In respect of the latter, given that fully 80% of these schools are to be found in urban or sub-urban environments, and that their priority is more often to ensure a higher standard of teaching and curricular attainment than to invest in extensive extra-curricular programmes, the 'charming' effect of spacious grounds and breath-taking facilities is not perhaps as relevant as it might be for other independent schools. The size of the school may be more so: in that 72% of proprietorial schools overall are preparatory (to the age of 13), many are also smaller than the all independent school average. The average number of pupils on roll is 205. Overall 78% have less than 250 pupils on roll. This compares with an average of 308 in an equivalent data-set, containing all mainstream independent schools in England educating pupils at the statutory age.[144]

The theory is that simply by virtue of their size, smaller schools may be rated more positively than is warranted in terms of the degree to which pedagogy and learning are actually personalised in this context. In practice though, inspectors are routinely briefed to be alert to this issue and to compensate for it accordingly. In ISI inspected schools, the comparison is between an 81% non-selective group of proprietorial schools in association and an 87% *selective* group of all association schools. Judgements relating to how well pupils progress in their learning (Ofsted) and to their level of knowledge, skills, understanding and application (ISI) take into account the most reliable and objective measures of pupil attainment we have (standardised aptitude tests, common entrance, and 14-19 examinations). Bearing this in mind, it is difficult not to draw the conclusion that for-profit management must focus minds on educational outcomes. Unless one wants to dismiss these factors and conclude also that inspections are subject to systematic bias in favour of small schools, it would seem that these results ought to be treated as substantially reliable.

Trust schools are a mixed bag: they include many well-intentioned, but pedagogically misguided local community enterprises; but they also include well-resourced, higher-end charitable trust schools like Eton, Harrow and Winchester. Proprietorial schools by contrast, are clearly less so, as the impact of the high percentage of good to outstanding schools on the satisfactory 'bottom line' testifies.

The need to make a profit clearly focuses minds. Between September 2009 and October 2010 structured interviews with 147 heads and proprietors of stand-alone schools of this type[145] conducted by Bill Brown of The Education Partnership revealed that while their overriding strategic priorities were clearly oriented towards educational and business performance respectively, achieving outstanding Ofsted/ISI inspection results was top of both lists: 97% of all heads and 80% of all proprietors agreed on this priority. Brown felt that for the remainder it may well have been the case that the achievement of such was such an obvious priority as hardly to be worth mentioning.[146]

As these summary inspection results show, there is no conflict between profit and educational standards. Putting quality first is rather the most important condition for the possibility of a successful proprietorial school business.

Schools charging less than £6,864: a look at the most competitive end of the market

Based on figures given in the DCSF's 2009 Departmental Report,[147] adjusted by applying ONS and HM Treasury deflators, and excluding capital spending, the IFS last year projected that the level of current spending per pupil for 2010-11 would in the state-maintained sector be in the region of £5,580.[148] The Department's plan at that time indicates a figure of £6,160 inclusive of capital spending, and a maintenance ('revenue only') figure of £5250.[149] Updated figures for 2010-11 indicate a figure of £6,240 per pupil in real terms (2009-10 prices) for revenue

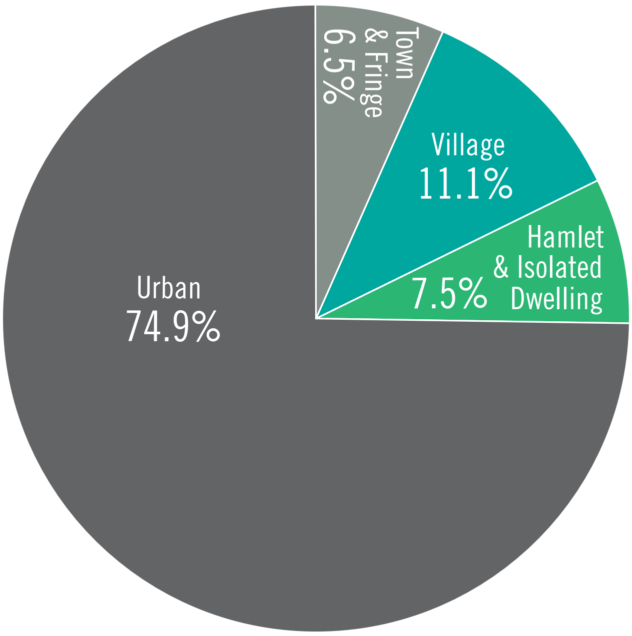
144 This equivalent data-set contained 1849 schools, of which 1825 provided pupil numbers for the 2009-10 annual school census.
145 Fourteen of those interviewed fulfilled both roles, and in these instances their responses were counted twice.
146 58% of proprietors interviewed identified knowing the weaknesses of their competition as important, compared with just 27% of heads; while 82% of proprietors thought it important to be able to exploit this in a way that convinces potential customers, compared with just 46% of heads. 73% of proprietors were concerned with managing financial resources as efficiently as possible, with 48% specifically mentioning maximising the additional revenue benefit of making facilities available to the wider community – compared with 41% and 17% of heads respectively. For their part, heads were concerned with achieving good results at inspection (97%), ensuring that pupils made it to the right senior schools (86%), and developing their extra-curricular offering (89%), while proprietors evidently were less concerned with these matters (80%, 69%, and 72% respectively). 'From surviving to thriving', unpublished consultation paper, Bill Brown, The Education Partnership (see http://www.theeducationpartnership.org.uk/).
147 DCSF, 'Departmental report 2009', Cm. 7595 (DCSF, 2009).
148 Chowdry, H., Greaves, E., Sibieta, L. (2010) 'The Pupil Premium: Assessing the Options' IFS Commentary C113. London: IFS, p. 7.
149 DCSF, 'Departmental report', Table 8.7, p. 182.

and capital combined, and £5,320 per pupil in real terms (2009-10 prices) in terms of revenue only.[150]

Taking these figures as the first two of three benchmarks, a detailed investigation of fees charged by proprietorial schools was undertaken to discover whether any of the 489 proprietorial schools offering mainstream provision at the statutory age were doing so on a comparable financial basis. In the first instance the ISBI's comprehensive online search facility was used to exclude schools which would be clearly over the threshold.[151] Then, with reference to school websites (almost two thirds of which published details of their fees), ISC profiles and Ofsted inspection reports, those looking likely to qualify for inclusion were confirmed and borderline cases clarified. Where the latter sources gave a range of fees inclusive of early years and/or post-16 provision, the interval was used to calculate an average annual rise, which in turn was used to estimate the fees at entry level and upon school leaving age. The mean figure between high and low was then taken as the figure for benchmarking purposes, adjusted as necessary to allow for fees increases of 5 per cent a year.[152]

Consideration was given to whether any additional fees might significantly skew the findings. As in the state sector, it is common practice for proprietorial schools to charge for school lunches, peripatetic music lessons and some extra-curricular excursions, but there was little to suggest such charges were any more than cost-covering. Only two of the schools found to be making provision on a comparable financial basis to their state-maintained competitors offered boarding – though neither in sufficient numbers nor at such fee levels as to suggest any subsidy of the core offering.[153] Schools evidenced a high level of transparency in regard to fees and other charges, and almost always published policies and procedural information in respect of such matters on their websites.

Figure 10: Urban/rural context (by population density)



These factors taken into consideration, of the 489 proprietorial schools included in the study population, 87 were found to be educating their pupils for less than the 'revenue only' maintenance figure of £5,320 (33 of which by £1,000 or more), at the same time apparently able to make a modest profit. A further 71 were doing so for less than the combined revenue and capital figure of £6,240. In addition, according to a third benchmark, allowing for total fee remissions of up to 10 per cent,[154] a further 41 were found to be educating their pupils on fees less than £6,864, on a comparable basis to that of schools in the state-maintained sector. This represents 41% of all proprietorial schools.[155]

The demographic context and regional distribution of these schools is shown in Figures 10 and 11, illustrating significant clustering in urban areas of high population density, and particularly in the vicinities of Manchester, Leeds, Birmingham/Coventry and Greater London, as well as in South and South West coastal towns.

150 Department for Education, 7th December 2010, email correspondence. Statistics now publicly available at http://www.education.gov.uk/rsgateway/DB/TIM/m002012/index.shtml

151 See http://www.isbi.com/isbi-searchform.asp

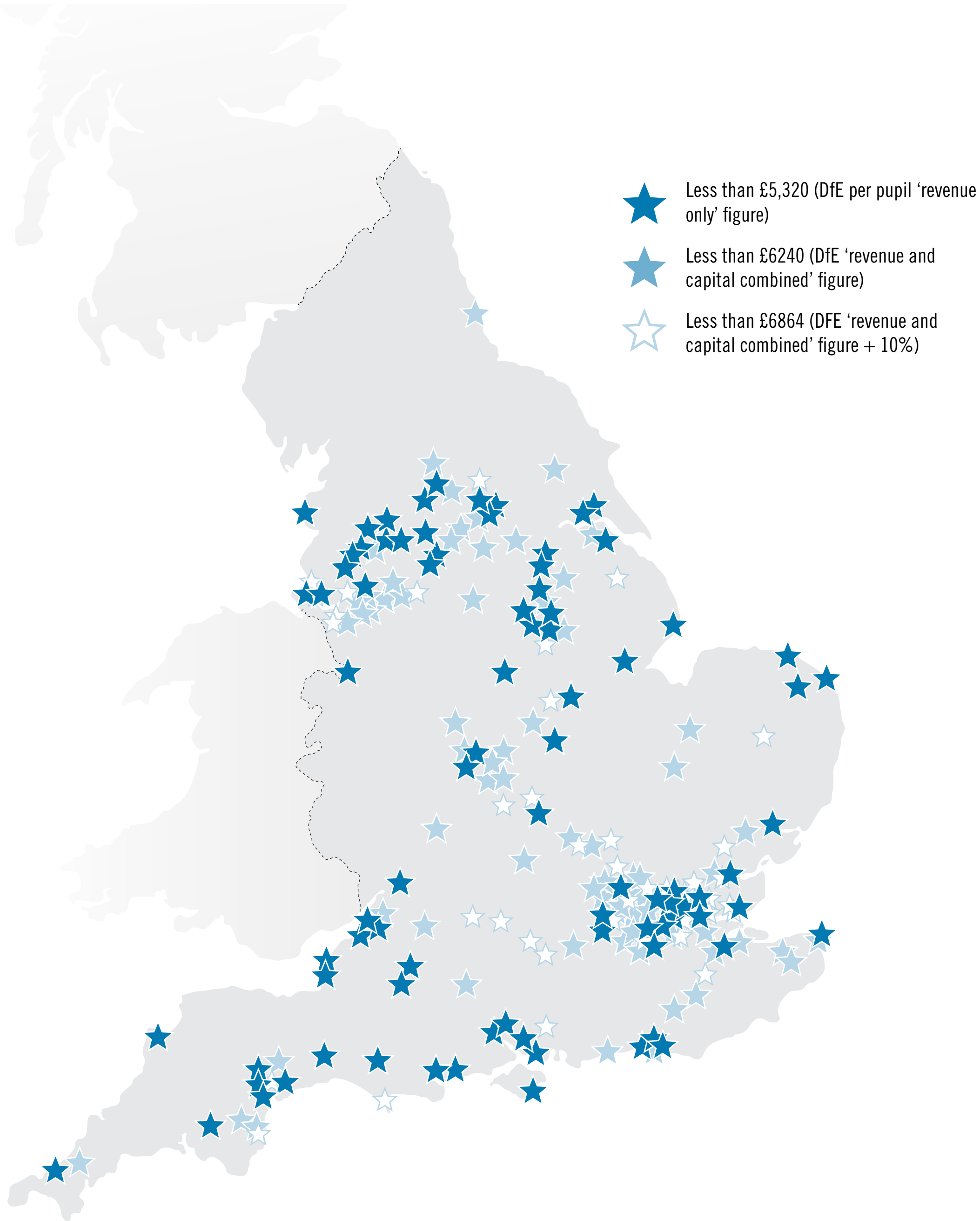
152 ISC Census figures for the three years to 2009-10 indicate an average annual increase of 5.36% for schools in association, but it is likely to be less for proprietorial schools overall. An Autumn 2009 'dipstick' survey of proprietorial schools undertaken by mtm consulting found that 2/3 of respondents had raised fees by less than 2%, while 8% had foregone any increase at all. About a quarter had raised fees by between 2-5% ('Proprietorial schools: an mtm consulting survey', January 2010).

153 Of course, state-maintained boarding schools also charge top-up fees. With the cost of boarding in each of the two schools being just £2,000 and £9,000 more respectively, these were both well within the range of boarding fees charged by these schools. See the State Boarding Schools Association (sbsa) fee guide at http://www.sbsa.org.uk/downloads/parents_guide.pdf. This is several years out of date; the most recent parent's guide does not give fees.

154 A 2010 report by the Sutton Trust found that on average total fee remissions in the year 2009-10 were equivalent to 7.8% of schools' total income, but also that there was a big variation between schools (Davies, P., Noble, J., Slack, K. and Vigurs, K. 'Fee remissions and bursaries in independent schools: a report for the Sutton Trust' (Institute for Education Policy Research, Staffordshire University, 2010), pp. 3, 15). While more than a quarter of schools offered less than 5% in fee remissions, another quarter offered more than 10%. Proprietorial schools' aggressive use of commercial discounting, in addition to standard bursary provision, inclined Bill Brown, of the Education Partnership, who has worked closely with the sector over more than two decades, to feel that 10% would be nearer the mark as a benchmark of the average across all proprietorial schools.

155 The average fee is c. £7,500 on a range of between £3,000 and £15,000. The handful of exceptions whose fees exceed this upper end figure are international and/or boarding schools.

Figure 11: Regional distribution of lower-end fee schools



To a significant extent this pattern of distribution continues to reflect the historical circumstances of the foundation of many schools of this type, which was closely related to burgeoning urban middle class demand for education beyond the elementary level prior to and during the period which saw the introduction of 'secondary' state education. Reflecting the distinctive value placed on non-selective entry which is characteristic of proprietorial schools as a whole, and one reason for their continuing appeal among first generation buyers of independent education, only 15 of the total of 199 schools charging fees less than £6,864 are academically selective.[156]

How do these schools perform in inspections and against other quality measures? Figure 12 and Table 12, the last in the sequence, show the degree to which the performance of proprietorial schools charging fees under £6,864 reflects that of all proprietorial schools inspected by Ofsted. For this comparison, only schools inspected by Ofsted could be tabulated because ISI declined to supply school-level numerically rendered inspection judgements. Results are included in this summary overview for 134 of the 297 schools whose results were shown in Figure 7 and tabulated as Table 9 on p. 39, and the degree to which they reflect the performance of the larger 'all proprietorial' group is indicated.

156 A further five emphasised the role faith played in shaping their ethos and values to a potentially selective degree. In three other cases performing arts specialisms mean that auditions are an important part of the admissions procedure.

Figure 12: Ofsted 162A inspection results: proprietorial schools under £6,864 inspected 2007-10 (%)

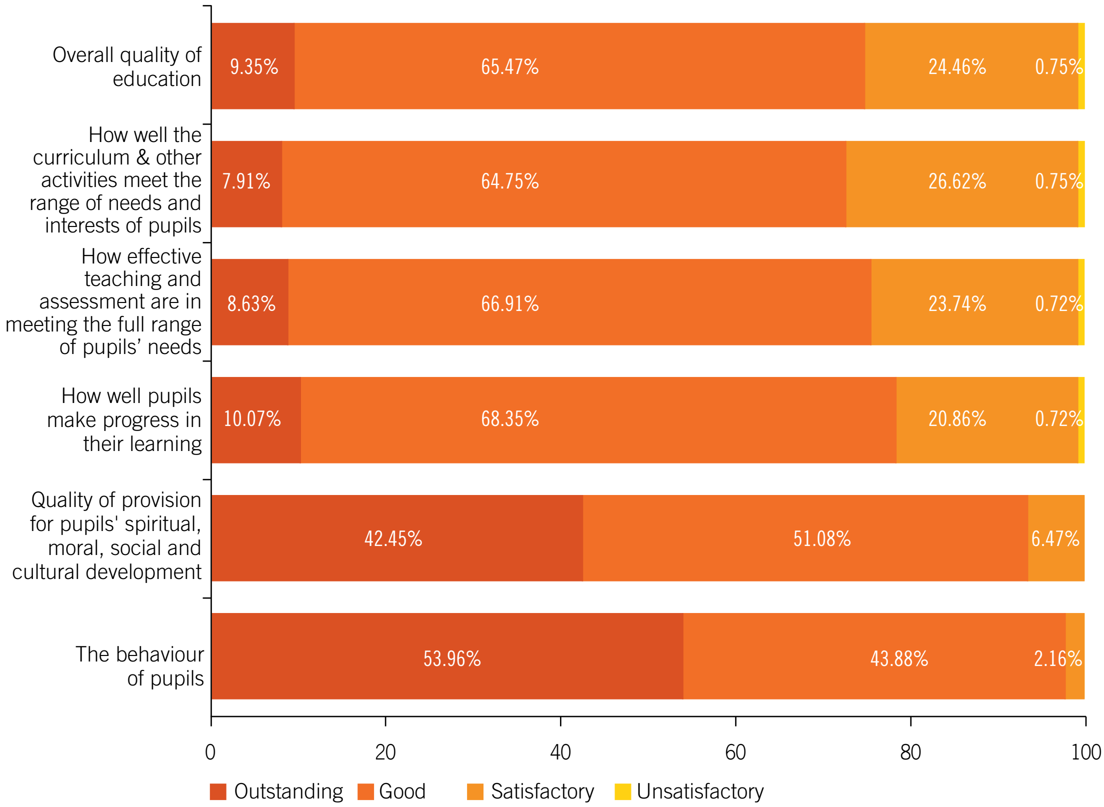


Table 12: Ofsted 162A inspection results: proprietorial schools under £6,864 inspected 2007-10 (%)

	Overall quality of education (%)	**How well the curriculum and other activities meet the range of needs and interests of pupils (%)**	**How effective teaching and assessment are in meeting the full range of pupils' needs (%)**	**How well pupils make progress in their learning (%)**	**Quality of provision for pupils' spiritual, moral, social and cultural development (%)**	**The behaviour of pupils (%)**
1 – outstanding	9.35	7.91	8.63	10.07	42.45	53.96
2 – good	65.47	64.75	66.91	68.35	51.08	43.88
3 – satisfactory	24.46	26.62	23.74	20.86	6.47	2.16
4 – unsatisfactory	0.75	0.75	0.72	0.72	0.00	0.00

The impact of lower fee income on educational performance is not as great as one might anticipate. A higher proportion of these schools were judged satisfactory against these key indicators at the bottom end of the fee spectrum than the proportion of schools in the 'all proprietorial' group including higher-end schools. However, on the quality of their provision for pupils' spiritual, moral, social and cultural development, and on the behaviour of pupils, taking the percentage of good and outstanding together, schools at the lower end of the fee spectrum outperform the 'all proprietorial' schools group. This would appear to indicate that they are both strongly values-led, and also that an awareness among pupils of the cost of their education, and the sacrifices that their parents are making to enable them to benefit, leads them to value their education in a way that they would not otherwise. In turn this leads to higher standards of behaviour.

But what is more striking, comparing these results with those for 'all independent' schools inspected by Ofsted, shown graphically in Figure 6 and Table 8 (p.38), is that as a group these schools at the lowest end of the fee spectrum *significantly outperform* the competition.

These 134 schools inspected by Ofsted between 2007-10 include 103 schools judged either good or outstanding on the overall quality of their education; 99 judged as such for how well the curriculum and other activities meet the range of needs and interests of pupils; 104 for the effectiveness of teaching and assessment; and 107 for the progress pupils make in their learning. Schools judged outstanding across the board included Bicker Prep School and Early Years, Boston;[157] Hill Head Preparatory School, Fareham;[158] Bowdon Preparatory School for Girls, Altrincham;[159] and Yorston Lodge School, Knutsford.[160]

There is good reason, furthermore, to suppose that had the remaining 65 been inspected according to the same criteria (such that the full complement of all 199 schools, including those presently inspected by the ISI, could be assessed together), the relative performance of these schools would be strengthened in comparison to all proprietorial schools. Taking the ISI's verdicts on 'the education experience provided' (used only on the 2nd cycle) as a summary judgement, a further 24 association schools charging fees under £6864, which were judged either 'good' or 'excellent', might be included. A further 9 of these 65 schools have either been reviewed in the *Good Schools Guide* or were featured in *The Sunday Times* Schools Guide Top 200 Preparatory Schools 2010. Of the latter, St Anne's Preparatory School, Cambridge,[161] achieved an impressive 30th position; St Hilda's School, Harpenden, a notable 40th position;[162] Forest School, Altrincham, 96th; and St Helens College, Uxbridge, a close 97th.

Hale Preparatory School, Altrincham

Hale Preparatory is a co-educational, non-selective independent school for children aged 4-11 years that has earned a reputation for fostering and drawing out the academic potential of all pupils. Over many years, working closely with their teaching staff, the proprietor, Mr John Connor, and his assistant head, Mrs Pat Soper, have cultivated an ethos that is encouraging and inclusive, together with high standards of teaching and learning based on a pedagogy that is both subject-specialised and whole-class oriented. Specialist subject teaching is introduced in the Infants with Science, French, Drama, Music and Games; by Year 3 all teaching (by this time including Numeracy and Literacy, History and Geography) is offered in subject specialised classrooms. A subject specialist teacher dedicates one period a week to skill-based ICT instruction and another to making cross-curricular links, thus freeing subject teachers to focus on subject content. Teachers are responsible for the development of their own curriculum, which is regularly reviewed by either the proprietor or the assistant head. They are encouraged to prepare their own resources rather than to rely on generic materials, and to keep the class together as much as possible, rather than differentiating activities based on pupils' past performance or differing ability.

At its last inspection, ISI observed teaching that 'was often challenging and always at a level that demanded pupils to think and question', with 'lessons conducted at a good, brisk pace'. All pupils are presented with the same exercises, giving everyone an opportunity to show what they can do. The emphasis is on self-discipline and learning to work independently. High expectations are cultivated of every pupil, and excellence is enabled by dedicated staff who provide additional support at lunchtimes and after school for those that require it. More able students are given additional enrichment activities and extended work. Lessons are of a demanding 50-minute duration. In all things, achievement is celebrated, without making pupils in any way conscious of how they fall short. This ethos extends throughout life at Hale, with all having opportunity to represent the school at games and to participate in a wide array of clubs and extra-curricular activities.

Pupil's extraordinary achievements in SATs at KS1 and 2 in the period 2001-07, with the great majority achieving a whole level above the government's expected standard, are shown in full on the school's website. Yet the comparison seems of almost incidental interest to the school's proprietor.[163] In 2007, he ceased to enter pupils for the tests having concluded that they no longer provided a helpful picture of pupils' progress and levels of attainment. To provide a more accurate picture the school has adopted the Performance Indicators in Primary Schools (PIPs) measure administered by the Education Department at Durham University. These annual tests, taken by pupils in all years, in seeking to build up a picture over time of pupils' ability in relation

157 See http://www.bickerprep.co.uk/
158 See http://www.hill-head-prep-school.co.uk/
159 See http://www.bowdonprep.org.uk/
160 See http://www.yorstonlodge.com/
161 See http://www.stannesprep.essex.sch.uk/
162 See http://www.sthildasharpenden.co.uk/
163 See http://www.haleprepschool.com/page9.htm

to their prior attainment, are pupil focused, as opposed to being benchmarked to national norms. This is but one example among many of how he, the senior management team and staff seem constantly to be on the look-out for ways to improve on what they have been able to achieve to date. Mr Connor is also an ISI inspector and he and Mrs Soper have co-authored several sets of teacher support materials to help prepare pupils for 11 and 12+ verbal reasoning exams, and to provide clear instruction for teachers in KS2 maths method too.

In the academic year 2009-10, the PIPs results showed 26% of all pupils reflecting levels of attainment considerably higher than could reasonably be expected, 25% higher than could reasonably be expected, and 45% in line with reasonable expectations. Accordingly, in the 2009-10 11+ exams for entry to Altrincham's grammar schools, 80% of pupils were offered places, compared with an average borough figure of 30% – an extraordinary achievement for a non-selective school, and on fees considerably less than the DfE's national 'revenue and capital combined' per pupil funding allocation.

Capacity analysis

Do proprietorial schools have the spare capacity to make a difference though? Based on annual census returns for 2009-10, Figure 14 shows the capacity of 'good' proprietorial schools charging fees of less than £6864, those 'good' schools charging fees greater than this benchmark, the spare capacity of those judged only 'satisfactory', and of proprietorial schools as a whole in relation to total independent school capacity. Pupil numbers are tabulated in Table 13.

For the purpose of this assessment, a broader definition of what constitutes a 'good' school was adopted to include all schools averaging good to outstanding on Ofsted's key teaching and learning-related criteria, association schools inspected on the 2nd cycle whose educational provision was judged to be of good quality, and those appearing in *The Sunday Times* Top 200 Preparatory /Top 500 Senior Schools or receiving a *Good Schools Guide* review. Schools were designated 'satisfactory' when they dropped to this level on any single Ofsted criteria (without a compensatory outstanding judgement on another criteria), or if they scored as such on ISI's 'quality of the education experience provided' criteria interpreted here as a summary judgement, with none of the aforementioned redeeming quality marks. As previously, schools in association inspected in the course of the 2009-10 academic year and thereafter, and those last inspected in 2005 and as of mid-December 2010 yet to be inspected, were excluded, along with those schools not in association recently registered, but not yet fully inspected. These were left unclassified.

Figure 13: Proprietorial school capacity as a subset of all independent school capacity

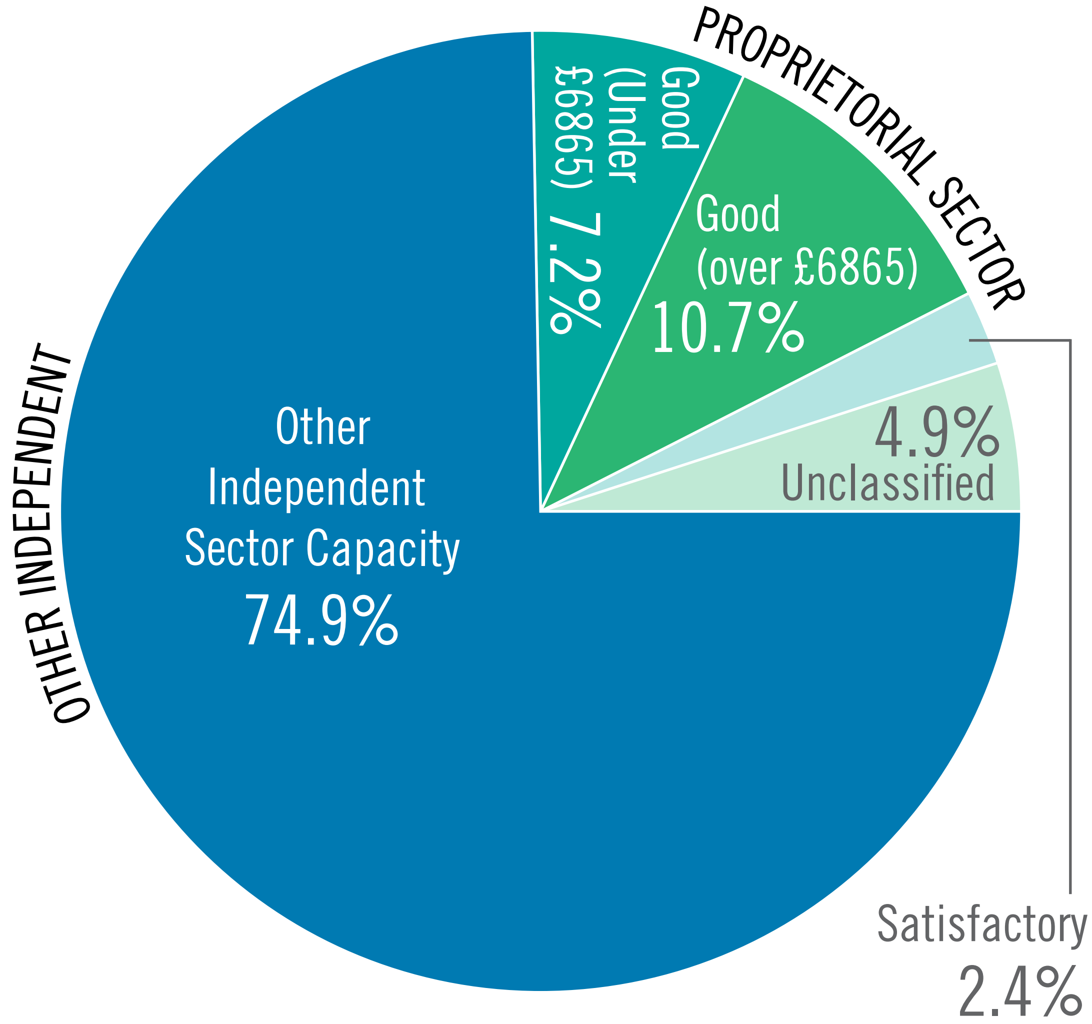


Table 13: Pupil numbers versus capacity

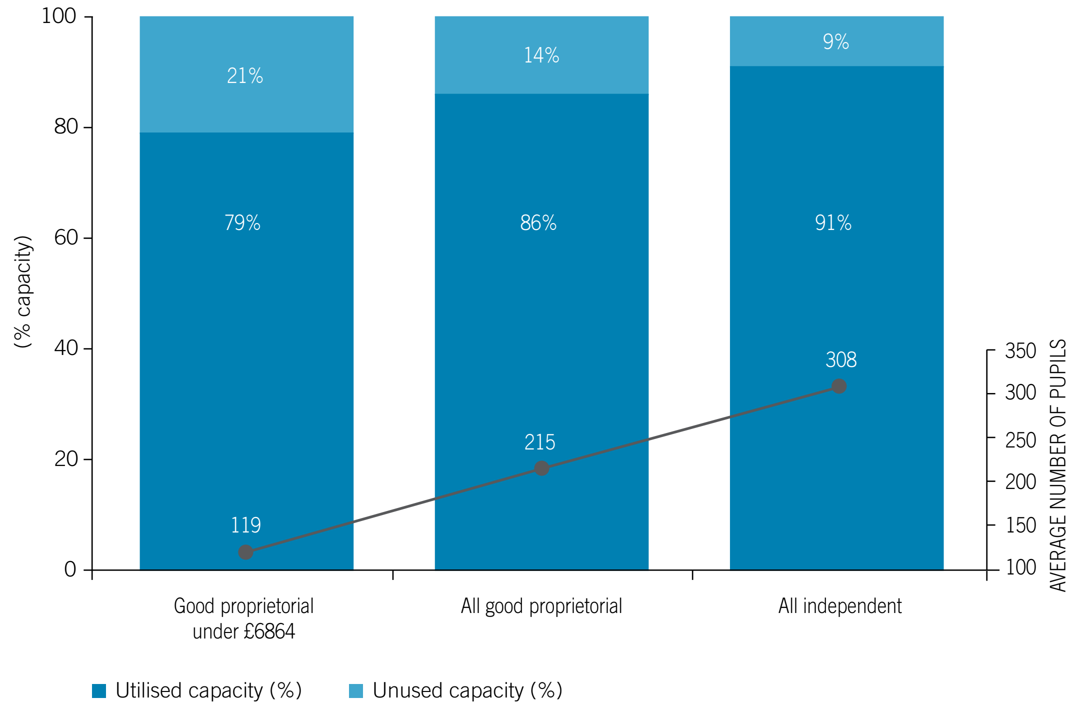
	Total no. of pupils	Potential no. of pupils	Spare capacity
Good, under £6,865	16,186	20,408	4,222
All good proprietorial (incl. of the above)	65,343	75,792	10,449
All proprietorial (incl. of the above)	82,528	97,230	14,702
All independent (incl. proprietorial)	562,885	621,228	58,343

All independent school pupil numbers are based on equivalent criteria to those used to define the proprietorial school study population, i.e. including only 'mainstream' schools educating pupils at the statutory age in England. Special schools and those set up specifically and exclusively to cater for pupils with SEBD. The total number of schools was 1849, pupil numbers for 1825 of which are included here. The remainder were excluded due to omission of pupil numbers in their last Annual School Census forms.

The conclusion is striking: while proprietorial schools as a whole have just 15% of all pupils (82,528 of 562,885), they carry fully 25% of all available independent sector capacity (14,702 of 58,343 spare places).

Furthermore, as Figure 14 shows, if the total number of pupils in each of these groups of schools is measured against their overall capacity, the most significant degree of unfulfilled potential relative to overall capacity can clearly be seen to lie in good proprietorial schools charging fees at the lower end of the fee spectrum.

Figure 14: Capacity analysis



Note: The all proprietorial average is 205.

Size matters

There appears to be a relationship between size and available capacity. It may be the case that small schools at the lower end of the fee spectrum, having initially aspired to greater numbers, reach sustainable, if not greatly profitable, pupil numbers, and then find it difficult to break through a ceiling in their market. Given the currency in the wider independent sector of the idea that smaller class sizes help to raise standards of educational attainment, and the increasing emphasis on personalisation in recent years, such schools may content themselves with remaining small, or even come to celebrate their size as part of what makes their schools unique, thus discouraging efforts to expand. The strongly values-led nature of these school enterprises (as indicated by the quality of provision for pupils' spiritual, moral, social and cultural development (see Table 12), may be a contributory cause or effect of this tendency.

In a related finding, mtmconsulting estimate that as many as 60% of prep schools (which comprise 72% of proprietorial schools),[164] 'are not able to make a reasonable return'[165] – the suggested definition of 'reasonable' being a 10% investment surplus before depreciation and tax.[166] At the same time as raising interesting questions of motivation, this also poses the question of whether proprietors would choose to break out of this stalemate given the opportunity to do so. In this respect it is worth noting the presence of Montague Place, the Oak Tree Schools Group and Chamberlain Schools at this end of the market, as well as a number of GEMS schools, finding opportunity and profit in the low-cost schools proposition.

Clearly the correlation that has been observed in the state sector between the standard of education and spare capacity – on which assumption the DfE has based one of its key 'Additional criteria for existing independent schools seeking to become Free Schools' – does not hold.[167] The highest concentration of spare capacity lies in some of the most successful schools operating under the most competitive of market conditions.

164 Includes all schools educating pupils up to the age of 13, but not beyond. See Figure 5, and Table 7, pp. 33-4.
165 Humphries, 'Sector report', p. 75.
166 Ibid., p. 75. Interestingly this accords with what we know of the profit margins of commercial Free School operators in Sweden, as discussed earlier. At scale, the margin becomes viable. See p. 18.
167 With respect to the popularity of the school the document reads, 'our expectation is that the school is at or near maximum capacity in terms of pupil numbers'. See 'Free Schools in 2012: How to apply', p. 8.

Welcome initiative, untapped potential

Proprietorial schools – both those run on more traditional models and those owned and operated by chains – are well positioned to respond to the Free School challenge. 83% non-selective, typically secular, with fees at the most accessible end of the spectrum, attracting a high proportion of first-time buyers, 80% urban or sub-urban, distributed liberally across some of our most wanting metropolitan areas, and socially and ethnically diverse in pupil composition – these schools in many ways already embody the aspiration of what many of the new Free Schools hope one day to become. Bearing in mind that 72% are preparatory (up to the age of 13) and that 80% of these also make provision for the early years, they also offer spare capacity and the potential to expand where demand is strongest.

With a high proportion of new entrants in recent years, the market is also becoming increasingly competitive. A staggering 200 of these schools (of 489) were established or changed hands over the past decade: there were at least 42 start-ups versus 158 takeovers, meaning that at least 9% of the total are new schools, in addition to the 32% which experienced a change of ownership. While the impact of the larger chains has been particularly marked, so too has the contribution of aspirant chains of between 3 and 5 schools, and that of incorporated business interests generally. A number of overseas-based chains, with capacity to do much more, have gained a foothold in the English market over the decade, while nursery-based chains have led the way in expanding their provision into the statutory age. Fully 84% of proprietorial schools overall have expanded their provision either up or down a stage from their initial competency. 29% are specialised for a niche market. With this experience, these school businesses are well-equipped to respond to opportunity in the Free School market.

In terms of educational performance, furthermore, evidence from Ofsted and ISI 162A inspections clearly overturns the thesis that the profit motive must compromise educational standards. On key teaching and learning-related criteria, proprietorial schools (even those at the lower end of the fee spectrum) consistently out-perform all independent schools taken together, showing a positive effect of for-profit management on the quality of educational provision and pupil attainment.

Finally, in a direct challenge to the government's assumption that spare capacity necessarily relates to the standard of provision, due to peculiar challenges relating to their position in the market, as a group the best of the most cost-efficient proprietorial schools carry the highest percentage of capacity with relation to their pupil numbers. Taken as whole, proprietorial schools provide for 15% of all pupils at independent schools, but they carry 25% of the sector's overall capacity.

At the time of writing, the government stands at a crossroads resembling that facing policymakers charged with planning the development of state secondary education at the turn of the nineteenth century. Will the plans for new independent schools accommodate existing supply? In face of pressing basic need and bearing in mind the strictures on the DfE's capital funds, and in pursuit of a greater degree of choice and competition in the market, Part 3 considers the potential of opening up the supply of good school places from the independent sector as a whole, as well as, most promisingly, ways of unlocking the spare capacity for growth and latent aspiration of the traditional proprietorial schools sector, and of releasing the pent-up energies of for-profit chain providers.

3 Policy recommendations

Introduction

No recent government has been successful in finding a way effectively to unlock the resources and capacity of the independent sector to bring them into service of wider education policy objectives. The last real attempt to do was the Assisted Places Scheme, established in 1980 by the first Thatcher government, which sought, on a means-tested basis, to widen access to independent education via selective entry. Much later, aware of the impasse with regard to long-term sustainability in which increasing numbers of such schools were finding themselves, Labour offered the option of conversion to an academy, while at the same time applying pressure on trust schools via the Charity Commission's new requirements for 'public benefit'.

Thus far, taking account of Andrew Adonis's embarrassment at the poor response to his effusive overtures of 2007, which resulted in just six independent school academy conversions, the Coalition's approaches too have been cautious, and they have met, understandably, with similarly lukewarm response.[168] In November of last year, *The Times Education Supplement* found David Hanson (IAPS), David Levin (HMC), and Gillian Low (GSA) all unenthused – put off, it seems, by the nebulous nature of the government's expectations and the lack of real incentive to convert, let alone to sponsor a school start-up.

The issue of course is that there is no 'offer' as such, nor as yet a coherent strategy for engaging the sector. The government's professed openness to Free School applications from independent schools falls well short even of Adonis's 'summons to responsibility'. Expressing openness to hearing Free School proposals is not the same as inviting them. Given the structural problems with supply and the urgency of the need to expand provision, a more creative and proactive approach is required. What can the government do to raise its game?

Government-funded bursary scheme

There are 58,343 unfilled places in mainstream independent schools in England, the vast proportion of which are in good schools, whose pupils achieve at higher levels than the national average.[169] Historically, the impact of a complex of factors peculiar to this market has been such that it has often been difficult for these schools to set their fees competitively, with the result that a school may be in effect 'over-subscribed', and yet continue to carry surplus places. Batley Grammar offers a good example of this predicament,[170] as does Moorlands School, Luton.[171]

The government is wrong, however, to conclude that these situations are unusual. Part 2's capacity analysis (pp. 48-9) gives evidence that the correlation that has been observed in the state sector between the standard of education and spare capacity – on which assumption the DfE has based one of its key 'Additional criteria for existing independent schools seeking to become Free Schools' – does not apply in the independent sector.[172] In respect of proprietorial schools, the highest concentration of spare capacity lies in some of the most successful schools operating under the most competitive of market conditions.

How can this spare capacity be unlocked? Not all schools will want to convert; in view of early casualties, those interested

168 HMC Conference, 2007.
169 See Table 13, p. 48.
170 See Appendix 2, p. 57.
171 'School inundated with calls after fees are lifted', *Luton & Dunstable Express*, 28th March 2011 (see: http://www.luton-dunstable.co.uk/News/School-inundated-with-calls-after-fees-are-lifted.htm).
172 With respect to the popularity of the school the document reads, 'our expectation is that the school is at or near maximum capacity in terms of pupil numbers'. See Appendix 3.

to explore this option will be further inclined to adopt a 'wait and see' approach to policy development. A 'half-way house' option, offering the advantages of an independent school education to 'looked after' pupils and those qualifying for pupil premium, on a per pupil basis, would therefore seem to have many advantages.

Clear criteria should be specified such that good schools that are financially solvent, and can evidence demand they are unable to meet on their present fee-paying basis, can be confident of success. Taking account of a range of factors – including the school's socio-economic composition, pupil shortfalls over preceding years, and the requirements of the Charity Commission's 'public benefit' test – schools would decide upon how many places they would like to offer and then apply for funding on a per pupil basis to a central government authority. Qualifying schools would then be added to local authorities' lists so that applications could be managed in conjunction with the process already established for state school admissions. This would require a level of up-front commitment on the part of schools, but would have the advantage of giving them the opportunity to plan for and manage the likelihood of surplus places well in advance of the start of the next academic year. The administration of central government funding for the scheme would work with already established processes, through local authorities until the transfer to the Education Funding Agency planned for 2013-14.

Priority would be given to 'looked after' pupils and to those qualifying for the pupil premium. Parents/guardians would express their preferences on the local authority application form much as they do now, but anticipating that the number of places offered at each school might be relatively small – certainly in the early years as the process is embedded – and that a great many schools would wish to participate, procedures for allocation places according to these priorities would need to be streamlined. To keep things as simple as possible, while ensuring fair and equitable allocation in, the event of over-susription wider use of computerised random allocation would seem the best option.[173] To be practical, this would probably need to be run ahead of sorting by first, second, and third choice state-maintained schools.

Whether the government will see significant take-up among non-selective schools depends in part on its willingness to extend the principle already operative in the early years and Special contexts, of leaving the means of provision (state-maintained, private (for-profit), voluntary, or otherwise) at the discretion of local authorities, to the mainstream school context.

Per pupil funding on a bursary basis has the added advantage of offering a way to facilitate a more gradual transition to Free School status. Currently, parents of pupils attending the predecessor school are not expected to have to pay fees following the transition to Free School status. This was an unnecessary and short-sighted concession. A more gradual transition, according to which existing pupils continue to pay and pupils entering the school under new admissions criteria would be funded by government on a per pupil basis, in due course according to the new national funding formula, would have better reflected the government's overall priorities. Unfortunately, the government has thus played into the hands of its critics in respect of the charge that, in such circumstances, Free School conversion in effect amounts to a subsidy of private education from which only the affluent middle classes will benefit. It is not too late to implement an approach that is both more equitable and more efficient for 2012 and beyond.

Conversion to Free School status

If the government's initial criteria for what would constitute a successful Free School application from the independent sector were not articulate enough, its new requirements are altogether too prescriptive, without offering the guarantees an already functioning school needs to make the transition.[174]

Some of these criteria are as one would expect, and helpful insofar as they go. Early independent schools were mistaken if they ever thought that the purpose of the policy was to rescue satisfactory schools from the consequences of their own mediocrity. It is the comparative, contextual factors that are the problem, and how the relative merits of applications in this regard may be assessed. If choice and competition are inherently beneficial as the Conservatives have consistently argued, then surely audited accounts showing sound financial management, together with evidence of demand ought to be sufficient for existing good schools? Given that these are schools whose capital requirement is already met, providing they have some spare capacity to add to the equation at the comparative stage they should win hands down on the value for money case every time.

If there is evidence of demand, do they really need to be performing 'significantly better than other schools in the local area at the relevant key stage'? Wouldn't 'above national average' have been good enough if, that is, the government had genuine conviction in the Free School effect? This seems a blatant attempt to control the statistical outcomes. As is illustrated by

173 Allocation by ballot is actually already allowed within the current Admissions Code, after giving priority to children in care and those with statements of special educational needs, both as the sole means of allocating places or alongside other oversubscription criteria. See Smithers and Robinson, 'Worlds apart', p. 15, who present a convincing case for the lottery, or 'ballot' as they would prefer to call it, as 'in principle, the fairest method of allocating school places'.
174 See Appendix 3 extract from 'Free Schools in 2012: How to apply'. The full document is available for download from the DfE's Free Schools webpage.

the situations of Batley Grammar school and Moorlands School, Luton, and evidenced in Part 2's capacity analysis (pp. 47-9), the government is wrong, furthermore, to assume a necessary link between the standard of education and spare capacity. A degree of spare capacity might usefully be added to a shorter list of criteria for *pre-approval* (see below), but it should not be taken as a fool-proof indicator of popularity or demand. In respect of levels of disadvantage and deprivation, the Department faces real challenges in terms of assessing Free School applications on this basis generally: how do you judge the relative merits of a primary faith school project in a disadvantaged urban area and a human-scale secondary school in an area of rural deprivation? Given this difficulty, which the Department has surely foreseen, why subject independent school applicants to this when they do not require an injection of capital funding?

The new framework is less about ensuring that only high quality schools are approved than it is an implicit recognition of the lack of capital resources to fund development, and of the need to reduce the administrative cost of processing poor quality applications and manage the political risks of any of the early Free Schools failing. These considerations seem to have eclipsed considerations both of basic need in response to rising pupil numbers and beyond that of widening the scope of parent choice and furthering competition among schools as a key driver of educational improvement. The introduction, effectively, of competitive tendering – judging the merits of each year's applicants relative to one another – is particularly revealing in this regard. There is no logic to this requirement for independent schools whose capital requirements are already met, unless it is born of a political concern not to be seen to be working in too collaborative a fashion with the privileged independent sector.

Independent schools apply on a fundamentally different basis to aspirant Free School group applicants. They are already going concerns, going about the business of providing the best possible education they can for their customers. The Free School invitation appeals to these schools' sense of public-spiritedness in the hope of inspiring them to take the step to broaden access to their privileged standard of education. It would be inconsistent with the nature of the Free School initiative for the government to incentivise conversions, but the government could take the more appropriate action of offering a degree of guarantee of the outcomes of the application process to help schools shoulder its demands and ameliorate the risks of refusal inherent in the present framework. Once the backlog is cleared and 2012's applicants are through the system, a better approach going forward therefore, would be for the Department to 'pre-approve' for conversion (just as all outstanding, and then all good state-maintained schools were for academy conversion) all independent schools meeting the following criteria:

- good to outstanding judgements on key inspection criteria (as in the present framework)
- pupil attainment above the national average at the relevant key stage
- no significant outstanding issues on compliance with the independent school standards (as in the present framework)
- three years' audited accounts evidencing sound financial management (as opposed to just two in the present framework)
- evidence of solid demand, including from those unable to afford present fees and/or interested in the Free School proposition, and demographic/market research indicating future sustainability
- 10%+ spare capacity

The value for money case in these circumstances is obvious. A change of legal personality, as in the transition to the Academy Trust, in order to bring further development under the oversight of the Secretary of State, should not be required. Schools with a track record of prudent financial management and forward planning do not need the Secretary of State to approve of their plans to raise capital for investment; neither should they be limited in their ability accrue operational surpluses to this end. Their present freedoms in respect of managing revenues and expenditure should be preserved as far as is possible.

Finally, allowance should be made for schools who feel they could lodge a strong application based on other performance measures and/or extenuating circumstances. In the framework elucidated here, the volume of applications would be more manageable than they were in the first year.

Lifting the requirement for a charitable vehicle

Education is patently not the exclusive preserve of charitable groups. Nor indeed, as the history of proprietorial schools demonstrates, has it ever been. Globally, across the developing world, as James Tooley's research has amply demonstrated, private enterprise is responsible for educating the great majority of school-children.[175] Against this background, the argument that education is an 'inherently charitable activity' rings hollow.

175 See, in particular, *The Beautiful Tree* (Cato Institute, 2009).

Far more fundamentally than they are charities, schools are businesses. Whether their revenues come from fees or, in the case of state schools, whether it is the taxpayer who foots the bill, they need to be substantially resourced, and then tightly managed. The important question is how efficiently their budgets are managed, and then, should they find themselves with an operational surplus, or profit, how they invest the extra. The track record of proprietorial schools in terms of reinvesting profit into growing capacity and expanding their provision upwards into prep and senior education and downwards into prep and early years has been demonstrated.[176] This pattern of behaviour appears to contrast markedly with that of their trust-based rivals.[177]

These distinctions have not been lost on the Charity Commission, whose pragmatism on this question is to be commended. Two pathways that have been explored are worth mentioning by way of illustration. One precedent has been established by private-equity backed International Education Systems, which was permitted to take over first St John's, Sidmouth, and then Holy Trinity, Kidderminster, charitable schools – both of which had been struggling under burdens of increasingly unmanageable debt – by stepping in to the role of sole member for each of the trusts and governing them accordingly.[178] Another has been developed by the Cognita schools group, which has been able to acquire the assets and business of a succession of trust schools, while simultaneously capitalising their trust funds for the provision of bursaries.[179] Schools acquired in this way to date include Cranbrook College, Ilford; Glensesk School, East Horsley; St Claires, Porthcawl; Ffynone and Oakleigh Houses, Swansea; and Downside and West Dene (now Cumnor Girls), Croydon. Each of these schools is now run for profit, with only their trusts now coming under Charity Commission oversight. The government could do worse than to learn a lesson from this enlightened pragmatism.

By checking against Companies House records, a range of different legal frameworks, commercial and otherwise, were discovered to have been made use of by non-trust independent schools.[180] The range of different frameworks deemed appropriate illustrates well the different circumstances of their principal stakeholders and how freedom of form may widen participation. A number of different company types are employed; other proprietorial businesses choose to remain unincorporated: each leverages the assets and resources at their disposal in different ways.

Accordingly, just as applications for conversion from proprietorial independent schools should be welcomed, without requiring that proprietors relinquish ownership of their businesses, so too should applications from commercially based enterprises be welcomed. Existing providers should not be required to change their company structure or trading framework in order to be able to operate Free Schools. Sole traders and self-employed partnerships should not be required to incorporate. As is indicated by the increasing tendency among stand-alone school businesses to incorporate anyway (see p. 27), to split the proprietor/head role,[181] and to create their own boards of advice to replicate some of the more useful functions of governing bodies,[182] the sector is developing its own models of best practice; any attempt formally to recognise them as such, or to insist on such models as requirements of Free School participation would be self-defeating.

Proprietors must be given leeway to develop structure of governance and management that are appropriate to their talents, resources and circumstances. On the basis of the conclusions offered in this report, the government can feel confident that Free Schools and proprietorial schools share the same ultimate aims and values – regardless of their legal personality or form of governance. Insistence on particular forms does not bring any greater guarantee of the outcomes. It is commitment to educational outcomes that the government should be examining, not an organisation's ability to affect formal compliance.

176 See Figure 5, p. 33.
177 Mtm consulting believe that the increase in annual capital expenditure at independent schools between 1998 and 2008, from £672 to £1,521 per pupil (rising most rapidly in the period since 2005) was due in the main to what they describe as an 'arms race' between schools for bigger and better facilities, which Edmund Lazarus and Chris Woodhead attribute squarely to trust schools. See Woodhead, *Desolation*, pp. 172-3.
178 Phone interview with Andrew McEwan, Director, International Education Systems. See http://www.iesedu.com/default.aspx
179 'Feeling uncharitable', *The Economist*, 1st December 2007.
180 See Table 2, p. 24.
181 Jake Anders, Matthew Adshead and Bill Brown, 'Expert counsel', *Funding for Independent Schools* (see: http://www.fismagazine.co.uk/strategic/governance/proprietors.html). See also p.42 and note 145.
182 Ibid.

Conclusion: for profit or bust

As the figures given in Tables 4 and 5 for new school start-ups and takeovers in the proprietorial sector over the past decade demonstrate, markets develop in response to opportunity. In-depth study of that sector's development in this period reveals individual entrepreneurs, SMB enterprises, and aspirant chains of schools with spare capacity, resources for growth and keen interest in the Free School market.[183] Larger private equity-backed chain enterprises active in this market have spoken openly of their interest. These and others such as Nord Anglia,[184] Kunskapsskolan[185] and Internationella Engelska Skolan[186] clearly have much to contribute. Were present market constraints to be lifted, new providers would undoubtedly emerge.

Without this policy development, there are real concerns that the progress of the programme will slow further. While the enthusiasm of not-for-profit innovators was important at the beginning in Sweden, that idealism and drive petered out over time, giving way to more sustainable commercial interests. For many people, time to volunteer, especially in straightened economic times, is after all a luxury, and charitable funds easily spent are not so easily replenished. The prospect of a return on investment on the other hand encouraged much wider participation than would otherwise have been the case in Sweden, and inclined for-profit providers to expand to other municipalities also.[187]

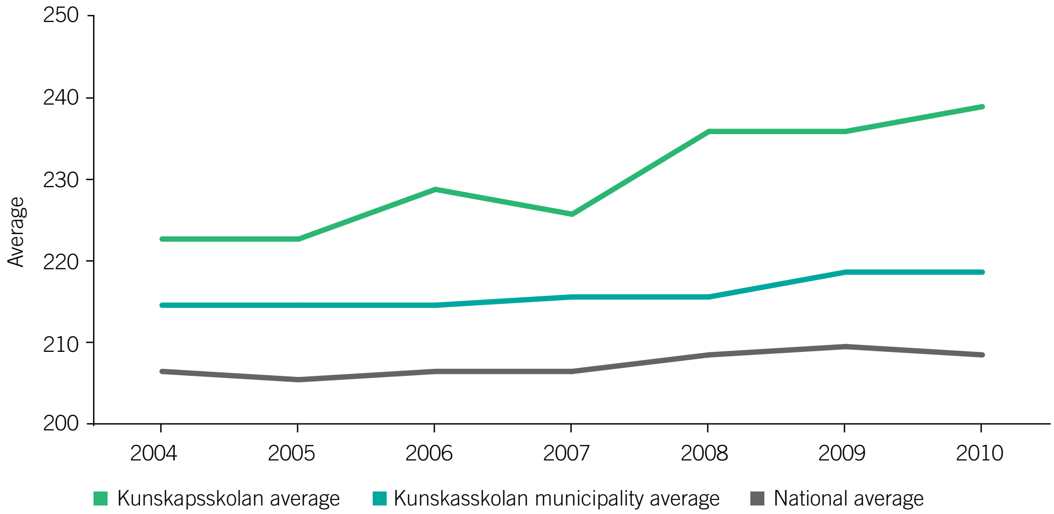
In consequence, for-profits' market share has grown rapidly in recent years. According to a 2007 report by Sweden's Ministry of Finance (SOU), the percentage share for joint-stock companies in 2004-05 was 52%.[188] By 2007-08, according to figures from the Swedish Association of Independent Schools, that figure had risen to 64%.[189] The market share of joint-stock companies at the upper-secondary school level has grown most significantly of all. By 2009, according to The Swedish Schools Inspectorate, of a total of 1,671 licenses awarded at this level, two-thirds (1,114) had been awarded to for-profit operators.[190]

Reflecting on this experience, one of the architects of the policy (now advisor to the Swedish Prime Minister), Mikael Sandström, told CentreForum in 2008: 'If I have been disappointed with any of the independent providers it's the not-for-profits who, with no commercial incentive to expand, have been less effective at identifying untapped parental demand and slower to set up new schools.' Given the degree to which sponsorship resources are already depleted in England,[191] and that in surveys of levels of formal volunteering across Europe the UK invariably trails some way behind Sweden,[192] if he is not prepared to countenance profit, the Secretary of State should begin bracing himself for similar disappointment. Idealists need capital too. The bold alternative course of action yet open to him is to lift the present restrictions and so ensure they gain the backing they deserve.

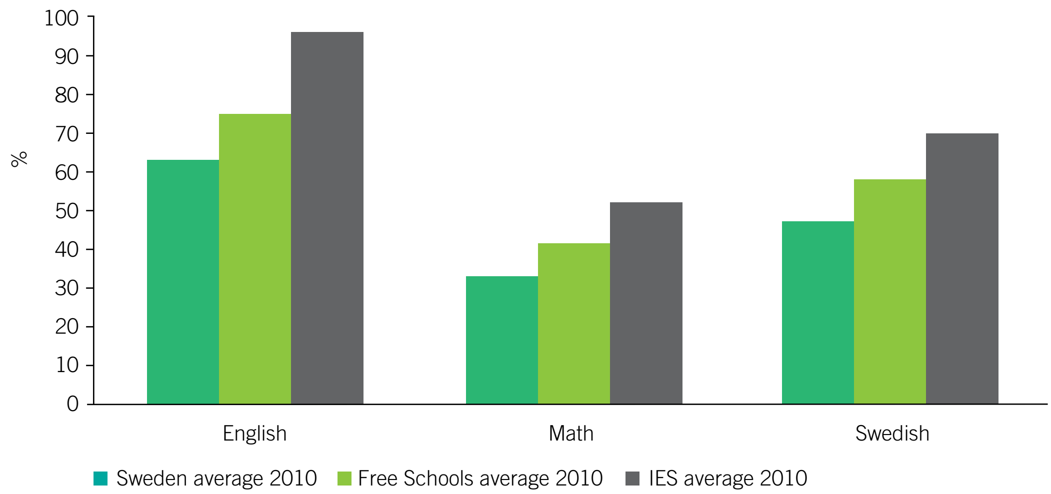
183 See Table 6, p. 31.
184 See http://www.nordanglia.com/
185 See http://www.kunskapsskolan.co.uk/kunskapsskolanintheuk.106.13ed45fa118bfee467380001484.html
186 See http://www.engelska.se/
187 Sahlgren, 'Schooling for money', pp. 21-2.
188 'Tjänster utan gränser? Internationalisering av offentliga sektorns tjänster', Statens Offentliga Utredningar SOU 2007: 95, p. 125 (http://www.regeringen.se/content/1/c6/09/38/81/410290d6.pdf)
189 'Friskolorna i siffror' (Swedish Association of Independent Schools, 2009) (http://www.friskola.se/Om_friskolor_Friskolorna_i_siffror_DXNI-25907_.aspx).
190 Meyland-Smith and Evans, 'Guide to school choice reforms', p. 24.
191 See p. 14.
192 Daniel Stevens, 'International 'volunteering league tables': their value in understanding progress towards a 'big society', Institute for Volunteering Research Thinkpiece, March 2011.

Appendix 1

Kunskapsskolan GPA vs Municipality and National Averages



Internationella Engelska Skolan (IES) % of VG/MVG National Tests 2010 (A and B Grade)



Note: IES Swedish results include Swedish as Second Language

Appendix 2

Batley Grammar

Batley Grammar is a non-selective, co-educational, all-through independent school (2-18) serving a socially diverse local community. The majority of pupils are of Asian or white British family origin, with a small number of Chinese pupils also. Results of standardised tests indicate a wide range of pupil ability. At ISI inspection, in this context the impressive achievement of junior school pupils in standardised tests in relation to the national average was noted, as was the above-average pupil attainment at GCSE and A level. The school clearly benefits from a capable management team and board of governors and enjoys the support of an appreciative parent body.

Though the school has aspired to be the local school of choice, since going independent in 1978 its fees (presently £8847 a year) have consistently proved beyond the reach of many prospective parents. The school's ISC Catchment Area Analysis indicates that the demographic make-up of its intake is atypical for an independent school, with one third of households coming from the MOSAIC group D and a third of its 6th form receiving the Educational Maintenance Allowance (EMA). Unable to meet the demand for bursaries, the school increasingly found itself turning away as many pupils as it accepted.

Batley applied to become a Free School primarily with a view to widening access to its high standard of education among local families. Fortunately the capacity of its buildings to accommodate many more pupils than are presently on roll will offset reduced levels of per pupil funding, so that this goal may be achieved without too extensive an overhaul of its cost base. The school presently has just under 370 pupils on roll, against a DfE capacity figure of 500, but the existing buildings have the potential to accommodate 672.

When news of its intentions became public, the school was inundated with enquiries. As of the end of January over 1,600 people had registered an interest in applying – four and a half times the current school roll of 350.

Appendix 3

Additional criteria for existing independent schools seeking to become Free Schools[193]

Only existing independent schools that already provide high quality places will be considered. If independent schools do not meet the following minimum criteria, their applications will be rejected:

- For schools inspected by Ofsted, the Bridge Schools Inspectorate or the School Inspection Service, judgements of good or better in each of the following areas of its latest inspection report:
  (i) the quality of education;
  (ii) safeguarding pupils' welfare, health and safety; and
  (iii) promoting the spiritual, moral, social and cultural development of pupils.

- For schools inspected by the Independent Schools Inspectorate, judgements equivalent to good or better in each of the following areas of its latest inspection report:
  (i) the quality of academic and other achievements;
  (ii) the contribution of curricular and extra-curricular provision;
  (iii) the contribution of teaching;
  (iv) the quality of the pupils' personal development;
  (v) the contributions of arrangements for welfare, health and safety; and
  (vi) the effectiveness of governance, leadership and management.

- There are no significant outstanding issues on compliance with the independent school standards; and

- The existing trust has a good track record of managing their accounts (see section 8).

If an existing independent school meets these criteria, we will take into account not just the information included in the application form but wider contextual factors, including:

- examination performance, both in absolute and relative terms compared to other state schools (our expectation is that the school should perform significantly better than other schools in the local area at the relevant key stage);

- the popularity of the school (our expectation is that the school is at or near maximum capacity in terms of pupil numbers);

- the appeal of the Free School to parents who do not currently have children at the school, especially from more disadvantaged homes;

- the level of deprivation in the area - in the event of two similar applications, those from more deprived areas will be prioritised;

- overall cost – including judgements on revenue and capital cost estimates; and

- value for money.

193 'Free Schools in 2012: How to apply', p. 6.

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ADAM SMITH INSTITUTE

23 Great Smith Street
London SW1P 3BL