BUILDING SCHOOLS FOR THE FUTURE: THE ACCOUNTABILITY CHALLENGES OF JOINT VENTURES BETWEEN THE PUBLIC AND PRIVATE SECTORS

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INTRODUCTION

In 2003, the UK's Labour government launched the Building Schools for the Future (BSF) programme with £45 billion to rebuild or refurbish every one of the 3,500 secondary schools in England between 2005-20. BSF is part of a wider capital strategy within the central government Department of Children, Schools and Families (DCSF) that will see total capital investment in schools in England increase from £6.4bn in 2007-08 to £8.2bn in 2010-11. It is billed as the biggest school rebuilding programme since Victorian times and the most ambitious of its kind anywhere in the world.

While Partnerships for Schools (PfS) is responsible for the delivery of the BSF policy programme, a Local Education Partnership (LEP) is the new vehicle for procuring and delivering services under BSF. The LEP is a partnership between a local authority, a private sector company and PfS — all of whom will own a stake in the LEP, although the government expects the private partner to hold the majority stake. This joint venture will plan, commission and deliver the entire programme of work within a Local Authority (LA) as the sole procurer and service provider. It will enable the delivery of new investment through a mix of different procurement routes, including the Private Finance Initiative (PFI), conventional funding and the Academies programme. It will integrate and manage a diverse range of services and supply chain subcontractors, including ICT provision, under a long term contractual agreement. BSF therefore extends the transformation of public authorities from providers into the procurers and regulators of public services that began in the 1980s with the outsourcing of 'non-core' services and more recently partnerships with the private sector. Thus, although BSF is ostensibly a capital investment programme, the LEP will manage both the LA's capital and its revenue budget.

Nevertheless, ownership and responsibility for all aspects of education and the budget remain with the public authority under the LEP model. There is therefore is a split between ownership and responsibility on the one hand and control on the other. The increasing amount of public money to be spent outside direct state control via such joint ventures in health, education, regeneration and social services raises questions about whether the system of public expenditure reporting and disclosure, designed in earlier times and recently reformed to bring it in line with private sector corporate governance and accounting practices, can or indeed does deliver accountability for public monies.

This paper focuses on this LEP model and the associated governance and disclosure arrangements that flow from joint ventures in the context of education, which have received less attention than PFI. It examines the BSF programme and the accountability challenges posed by BSF in terms of both the policy itself and the accounting issues. This is of increasing importance given that joint ventures are one of the mechanisms that blur the boundaries between the state and the market. Furthermore, since Britain is a global leader in the use of Public Private Partnerships (PPP), this new development and its implications for accountability for public money have international relevance.

The paper first places the policy within the broader context of educational reforms under successive Conservative and Labour governments and notes some of the problems of governance, reporting and accountability experienced with some of the policy's precursors, such as Education Action Zones (EAZ) and the Academies programme, reported by the National Audit Office (NAO). Secondly, it explains the PFI and BSF policy programmes and locates the objectives and *modus operandi* of BSF as a development of the preceding reforms, and describes the ownership funding streams and management of the LEP. Thirdly, the paper briefly discusses literature from the private sector that highlights the parent organisations' loss of control over joint ventures and concerns about the transparency of the related financial reporting. Fourthly, drawing on these private sector experiences it discusses the accountability problems posed by BSF. Finally, the paper draws some conclusions about the potential problems in tracking the flow of public monies to which the policy may give rise.

THE THRUST OF EDUCATIONAL REFORMS OF THE LAST 30 YEARS

Conservative governments 1979-1997

One of the first pieces of legislation introduced by the Conservatives after their return to power in 1979 was the 1980 Education Act, which formed part of their broader attempt to dismantle the welfare state. It marked the start of a trend for central government to direct and control what went on in state schools. The legislation relegated school meals, first introduced in 1906 in order to combat malnutrition, to a non-essential service. The outsourcing of the schools meals service was part of a broader contracting out of all non-professional services such as cleaning and garden maintenance, aimed at breaking the Local Authorities' monopoly of service provision by forcing them to put out all their manual services to tender and accept the lowest bid. Although the form and process of contracting out has changed under Labour, the government has continued to emphasise and expand contracting out for public services.

One of the Conservatives' most significant measures in 1989 changed the funding and management of schools by taking control of the schools' budget away from local government, where it was vested in the Local Education Authority (LEA), and reducing the LEAs' powers and role. The schools would henceforth control their own budgets, largely based upon per capita funding, and teach according to a national curriculum. While the specific arrangements and the different elements of central government funding delegated down to the LEAs have changed over time, this results in significant variations between the local councils, and gives them little discretion over how the money can be spent. This, plus the variation in local funding, means that schools around the country may find themselves in very different financial positions.

Head teachers became responsible for the cost of their staff, consumables and educational and social services provided either by the LEAs - for central services relating to children and the estate - or outside suppliers. The schools were encouraged to compete for pupils via "parental choice" - and hence income – with the publication of league tables of exam results and other performance indicators. In essence, head teachers found themselves running businesses as well as schools. To manage their budgets, they were forced to encourage older and more expensive teachers to retire and replace them with newly qualified and therefore cheaper staff.

The reconstitution of schools as businesses was accompanied by the establishment of Ofsted, the Office of Standards in Education, as a schools inspection and regulator, to replace the system of local authority inspections alongside sample visits by Her Majesty's Inspectorate for Schools (HMI), to ensure compliance with government policy and to drive up standards. This meant that the regulatory body was no longer, like the HMI, independent of the Secretary of State, but could be used to push through other government policies. Inspections and checks on schools' staff were contracted out and three companies, from an original list of 120 recognised contractors, now dominate the school inspections industry.

The Conservative government encouraged the sale of school land and playing fields, claiming they were surplus to requirements. By the time the Labour government came to power in 1997, more than 5,000 had been sold and the practice has continued, albeit at a slower rate. Schools too have merged or been closed[i]. The figures are quite stark. Since 1984, 2,659 of 20,020 primary schools in England have closed. Most of these closures occurred between 1984 and 2003 when pupil numbers were rising significantly. The number of secondary schools has fallen by 25 percent since 1984, despite a fall in pupil numbers of only 9%, and these have been in the last few years. While no systematic data is available about the proceeds from these sales and closures, the sale of the school estate has unquestionably funded a considerable proportion of the schools budget. But the closure and merger of schools in the context of rising pupil numbers in turn means that head teachers are managing ever larger schools and revenue budgets.

The Conservatives introduced a number of other measures aimed at opening up schools to the private sector. Their City Technology Colleges (CTCs) programme was aimed at getting businesses involved in running vocational schools. Although only 14 CTCs had been established by 1997, they provided the model for the incoming Labour government's Academy programme. Another initiative enabled Grant Maintained (GM) and Voluntary Aided schools, and later LEA schools in the secondary sector to develop curricula specialisms such as arts, business and enterprise, engineering, humanities, languages, mathematics and computing, music, science, sports and technology, geared to the needs of business with the aid of private sponsorship and matching government funding. By 2007, more than 80 percent of schools had "specialist status". Lastly, PFI would provide a means whereby public authorities would contract with the private sector to design, build, finance and operate new

[i] http://www.dcsf.gov.uk/rsgateway/DB/VOL/v000891/Chapter1.xls accessed 08/02/2010

buildings and the accompanying support services in return for an annual payment over thirty years.

Labour governments 1997-2010

The incoming Labour government built on the foundations laid by the Conservative government, which although it had piloted and set in place the arrangements for fragmenting the school system and creating a market in education, had been unable to transform the education sector. While many of the measures lacked coherence and others failed in terms of the stated objectives and had to be withdrawn, they paved the way for further measures aimed at reducing the role of LAs in directing, controlling and providing services to schools and increasing corporate control of education in both policy formulation, management and service delivery. The most significant of these for setting the context for BSF and accountability in this new environment, are now explained.

Firstly, one of the most important reforms was the reorganisation of educational services at local government level. Following the 2004 Children Act, LEAs were subsumed into a LA directorate usually known as Children's Services whose responsibilities include those of the former LEA plus the former Children's Social Services. This served to increase the variability between local authorities as they each organised their services in different ways, and reduce the visibility of education.

Secondly, the government has encouraged via a system of sticks and carrots the expansion of outsourcing. Outsourcing now includes the schools' back office functions, ICT and technical support, the organisational management of schools such as admissions, enrolment and attainment databases, as well as what one contractor, Tribal, calls "turnaround services", or support for weak or "failing" schools, help with preparation for Inspections and responses to policy changes. The government has adopted the US model of Charter schools to outsource the management of schools to private contractors.

But outsourcing, which is now worth £2 billion a year, goes far beyond outsourcing of back office functions in schools. Outsourcing in Children's Services at LA level may include the LAs' school improvement and development services, the Teachers' Pension Scheme, management and education ICT services, and human resources, as well as the contracting out of policy programmes. Much of the provision for children with special educational needs, like pupil referral units, is now delivered outside the mainstream public system, with private companies providing specialist residential care and children's services. The same companies provide programmes of work based learning for school leavers, return to employment skills, LearnDirect, JobCentre Plus and prison education. Not only has ICT for schools become a major market, it gives the companies access and control over both the content and approach to what is taught in the classroom.

In 1998, the government extended the role of Ofsted to use Inspections to identify 'failing schools' and 'failing local authorities', for which there would be "zero tolerance", and bring in private companies to manage failing schools and LEAs. The first LEA to be outsourced was Hackney, following an Ofsted inspection, which found it to be inadequate, and subsequent discussions with consultants, typically the global financial consultancy firms such as PwC and KPMG, hired by the Department for Education and Science (DfES), the DCSF's predecessor. The contract to run the School Improvement Service was awarded to Nord Anglia. By 2003, there were at least 44 other "interventions" by the DfES at Bradford, Haringey, Southwark, Swindon, Waltham Forest and Walsall. Most of these involved outsourcing to private firms and not for profit organisations. These companies, as well as running the then LEAs, also deliver the LAs' school services.

In 2002, the government extended the arrangements for the outsourcing of failing schools and failing LEAs to allow the LEAs to contract out all the functions other than the strategic ones of planning and budget approval, and encouraged the process through other policy initiatives such as Best Value Reviews and the DfES "New Models" pilot. Some Local Authorities have therefore bundled together a range of services including, for example housing benefit, IT, human resources, financial services as well as education, and/or joined with other neighbouring authorities to form a 'strategic partnership' and outsourced the package as one contract, which can make it difficult to identify those LAs which have outsourced their educational services. In 2001, HBS won a bundled 12 year contract worth £267 million from Bedfordshire County Council, later terminated due to poor performance, at a cost of £6.75 million.

Outsourcing now extends to the supply of core professional services through Teacher Supply Agencies. Whereas LAs used to have a "bank" of teachers who could be called upon to cover for absent staff, long term sickness and unfilled vacancies, this function is now largely carried out by private companies at a cost of at least £600 million a year.

Thirdly, the government has introduced a number of schemes to increase the role of the private sector in schools. One of the first was the establishment of statutory EAZs. Although the scheme was abandoned after a few years, it served to pilot ideas that would be developed later. An EAZ was a corporate body with charitable status run by a forum of partners, with an emphasis on the private sector. It consisted of a cluster of schools in deprived areas, although the schools remained part of the LEA, whose stated aim was to develop "imaginative approaches" to raising educational standards in deprived areas. The forum would bring £250,000 annual funding from its partners into the schools as well as £750,000 from the LEA. It would bid for funding to run other educational services and would be free to change teachers pay and conditions. But the EAZs, unable to attract much private funding, were very dependent upon the LEAs they were meant to supersede. As a result, they were closed in 2005, after a very critical report of their financial and governance arrangements by the National Audit Office (NAO, 2001).

Another measure involved the replacement of the Conservatives' policy of building CTCs with Academies, a programme initially targeted at failing schools in deprived inner city areas, but later expanded to include rural areas as well. While central government not the LAs would fund and maintain Academies, they would seek financial sponsors from the private sector to provide 20 percent of the expected capital cost (£10 million) of the school, specialise in particular subjects and be independently managed, with governors from the private sector on the governing board. With 170 schools said to be 'failing' in 2005, the government envisaged that 200 Academies would be established by 2010. In the event, although the programme has provided “business opportunities” for the construction and project management companies, little corporate money has been forthcoming, echoing the experience of EAZs and CTCs.

The programme has proved expensive (NAO, 2007a). Seventeen of the first 26 academies had capital cost overruns and the capital costs have typically been £25-40 million not the expected £10 million, compared with £20-22 million for the cost of new secondary schools. The government has also provided additional start up funding for up to four years of £1.6 million for each of the first 12 Academies. But the NAO (2007a) raised concerns over their sustainability in the light of their requirement of higher funding per pupil, uncertainty about the cost of maintaining their innovative buildings, the availability of start up funding and the very limited ability to open up their facilities to the local community due to taxation regulations. Nevertheless, the private sector has played a key role in managing these Academies, which operate as independent schools, free to set their own pay and conditions for teaching staff and exclusion policies for students, and follow their own, not the national, curriculum.

The government introduced another important measure aimed at increasing the role of the private sector in schools. It sought to overcome the reluctance of the private sector to take over school management, which offered little opportunity for profit in the context of single schools and government control via a new legal framework for schools. The 2006 Education and Inspections Act allowed schools to federate and to establish a new type of corporate entity, a Trust school. It thereby extended the arrangements for Foundation schools introduced in 1998, which would be free to employ their own staff, set their own admission policies, own the school’s land and buildings and set up joint ventures with the private sector. In effect, assets paid for by the state pass into the hands of Trustees, leading to the further outsourcing of educational services and a greater reliance on third party income and/or restricted use of previously shared facilities. Furthermore, transforming schools into Trust schools paves the way for the private sector to control the core professional staff, their wages and conditions. Approximately 2% of primary schools and 15% of secondary schools in England are now Foundation schools, the precursor for Trust status.

Fourthly, the government has redistributed funds away from the direct funding of Children’s Services, and has started to contract directly with private and third sector organisations or new statutory bodies for the delivery of educational services. This has included the contracting out of policy programmes such as careers advice, National Learning Strategies for literacy and numeracy (worth £177.5 million), Gridclub, Teachers Television (worth £20 million), School Improver Advisor Initiative, Diploma Gateway, Individual Learning Accounts (now terminated), Children’s Trusts Accounts (£430 million), Education Smartcards (£100 million), Careers Advice, and so on.

While much of the education industry as a whole is made up of private companies whose leading personnel are former public officials and many of the institutions are - at least formally - public agencies. These include the British Council, the Learning Skills Development Agency (LSDA), the Qualifications and Curriculum Agency (QCA) or even public institutions, such as schools, which spend part of their time acting as businesses and selling their services. As their managerial and marketing posts are large filled by private sector personnel and they are constantly forming new hybrid organisations that may function as clients, partners or competitors of private sector firms, the line between public and private is becoming increasingly blurred.

Similarly, many of these policy initiatives and programmes have been designed by, awarded to and evaluated by financial advisors such as the financial and business services consultancy, PwC (Shaoul *et al.*, 2007). For example, PwC produced a report advising the government on how to develop a *Market for Disabled Children's Services* (PWC, 2007). A number of "interventions" at LEA level cited earlier involved firms providing consultancy advice who later went on to become a "strategic partner". The NAO (2006) said many of the consultancies' services did not represent value for money. It recommended that, "Public bodies should start with the presumption that their own staff are best suited to do the work" (NAO, 2006, p9) and that "Public bodies must be smarter when it comes to understanding how consulting firms operate and in sharing information about their performance" (NAO, 2006, p10). In the diplomatic language of the parliamentary spending watchdog, barred by statute from criticising government policy, this represents a strong indictment of the use of consultants and the turn to private sector delivery of public services.

Several inter-related issues flow from this review in the context of accountability. Firstly, there has been continuous and ongoing change in the organisation and financial management of the educational authorities, schools and educational services. Secondly, school education is no longer a specific local authority unit but part of a broader Children and Social Services and as such there is no one organisational form across all Local Authorities. Thirdly, central government has taken ever greater control of both the budget itself and how it is spent, contracting directly with the private sector for a range of services to be provided to schools and local government. Fourthly, the sector has become increasingly fragmented, responsibilities have been dispersed and budgets devolved. Fifthly, outsourcing has increased and is a significant element of the educational budget at both school and Local Authority level. Lastly, the private sector is gaining increasing direct control over public monies via the financial consultancy industry and new corporate structures, and conflicts of interests abound. All of these changes serve to increase the levels and complexity of the revenue and expenditure flows and to render the reporting task, scrutiny, and comparisons between organisations and over time, more difficult.

PFI AND BSF - INVESTMENT PROGRAMMES

It is in this context that accountability for the government's capital investment policies and programmes need to be located. By 1997, the school estate in Britain was obsolete and dilapidated, unsuited to contemporary needs and teaching methods: 3,500 schools were in need of remodelling or rebuilding at an estimated cost of £45 billion, an amount the incoming Labour government claimed it could not afford. It therefore ramped up the Conservatives' policy of using the private sector to design build finance and operate new schools, hospitals, roads and prisons under PFI. It provided the LEAs with the cash to pay for the cost of the new build via a system of annual PFI credits, but typically for about 17 years only (as opposed to the 30 years of the contract). But PFI proved particularly problematic in the context of the extension and refurbishment of schools, and even new build, because the private sector only wanted large contracts for new build rather than refurbishment, which was seen as too risky.

The government's solution was to "bundle" multiple schools within an LEA together to make one large project. But with the cost of private finance so much higher than public finance, the affordability of the annual payments to the private sector was a problem. The solution was to “rationalise” school provision. In other words, close and sell off schools, typically the ones on more valuable sites, irrespective of their age and condition, leading to the closures of some of the best provided schools, as in Glasgow.

PFI in schools was further complicated by the fact that the LEAs would pay for the building element and the schools would pay the service element of the contract, leading to friction between the LEAs and schools. By March 2009, 123 PFI contracts had been signed with a capital value of £5 billion and an estimated £22 billion in annual payments over 30 years[ii]. While this is a considerable sum in the context of schools, it pales by comparison with other sectors. With PFI in schools proving difficult to get up and running, in 2004 the government launched the BSF programme to rebuild or refurbish every one of the 3,500 secondary schools in England. The intention was to use PFI for new build and BSF for refurbishment/expansion.

While BSF is presented as an alternative method of financing school construction, it actually expands the role of the private sector much further than under PFI as it is, according to the Treasury (2006), more “flexible” than PFI. BSF is not just about building or refurbishing schools. The LA must review every aspect of its provision, including provision for older pupils aged between 14 and 19, extended school and community provision, and plans for Academies and Trusts, and integrate the building programme with service delivery, including new ICT infrastructure, school management, educational support and school transport.

The LEP model is therefore set to make LAs into commissioners of educational services, which is the government’s policy across a range of public services, most notably health. It provides the route for the private sector to extend its control of the schools’ assets across local government as a whole. The LA will increasingly turn to the LEP for advice, support and consultancy for educational services. In effect, BSF provides a new vehicle for the entry of the private sector into key educational support services.

These policy and organisational changes had been foreshadowed by the Education Minister who stated that he wanted to see the end of the “monolithic” model of public services—a euphemism for the government’s aim of ending universal public provision in education, health and social services (DES, 2004, p3). The government wanted an entirely different type of local education system to ensure schools had “the freedom to shape and reshape the offer to meet different and changing needs” (DES, 2004, p4). The new model of education envisaged by the government “cannot just be a partnership of state providers—the voluntary and community sector, business, and private enterprises need to be part of this partnership to provide joined-up services” (DES, 2004, p4).

In essence, the government would dismantle LA control over schools and open the way for significantly extending the role of private capital and private sponsors in education. The government intends to make all schools responsible for the ownership and management of their own buildings and the employment of staff. It is seeking to extend the role of the private sector by encouraging the transfer to the public sector of

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[ii] http://www.hm-treasury.gov.uk/d/pfi_signed_projects_list.xls (accessed 08/02/2010)

various forms of partnerships, contracting relationships and joint venture arrangements commonly used in the private sector. It is to the organisation of these joint ventures that the paper now turns.

LEP ownership, management and funding streams

Nationally, PfS is responsible for the delivery of the BSF policy programme. PfS is a national level joint venture 50% owned by the DCSF and Partnerships UK (PUK). PUK is itself a PPP with the major players in the PFI/PPP industry whose private sector owners are corporations with a commercial stake in the broader PPP policy. PUK is one of an increasing number of privately run bodies that are assuming ever greater direct control over the planning, direction and implementation of public policy (Shaoul *et al*., 2007). PfS's objectives are financial as opposed to educational: to ensure the delivery of the BSF goals and a financial return to its two members. Annual corporate targets, which influence the size of the bonus pool for senior staff, focus on timely delivery, but these targets ought to be balanced with maintaining affordability of the programme and achieving effective outcomes (NAO, 2009). PfS provides risk capital for BSF via a limited liability partnership, Building Schools for the Future Investments LLP (BSFI), and will also invest in associated PFI projects.

The organisational structure of the planning and commissioning process is extremely complex as Diagram 1 shows. Under BSF, the LA is expected to find a private partner, typically a construction or IT company, to deliver the capital building programme and the services under the BSF project. It then forms a Local Education Partnership Company, which develops investment plans for the secondary schools to be implemented over an extended period. Procuring a LEP takes a long time and is costly; typically £9m - £10m to procure a partner and design the first projects (NAO, 2009). The LA enters a Strategic Partnering Agreement with the LEP, which will be commissioned to undertake each project through a Strategic Partnering Board, established to allow stakeholders influence over the operation of the LEP. The LEP has exclusive rights for ten years, with a possible five year extension, to develop proposals for and deliver the design and build of BSF schools in a designated LA area. Each LEP is structured as a joint venture owned 10% by a Local Authority, 10% by BSFI and 80% by a private sector partner chosen via a competitive process.

Insert diagram 1 about here

Each LEP would include at least one Academy school in its building programme, and in practice, public money from the BSF programme has been dependent upon including Academies within the investment plans. PfS's BSF Guidance states that, "Academies – and new or reformed schools including Academy features – should form a key part of BSF plans" and "Plans containing bold innovation in the use of Academies…. will be more likely to progress quickly through project development to the final approval of funding"[iii]. However, it also seems that the main way of avoiding forming a partnership with the private sector is to include a substantial number of Academy schools in the programme, as Manchester has done. In other words, LAs must choose between PFI,

[iii] http://www.teachers.gov.uk/_doc/12328/BSF%20FAQ.doc, BSF Questions and Answers, p8, accessed 08/02/2010

BSF, the Academies programme or some other private sector route if they need to build new or refurbish and expand existing schools.

With the separation of ownership and management, funding streams have become diversified. As Diagram 2 shows, education related revenue and capital budgets flow from the DCSF into the LA, which will have other funding sources for its various local services. The bulk of the education revenue budget comes through the Dedicated Schools Grant (DSG), which is ring fenced so that LAs can only apply this resource for the benefit of schools.

The majority of capital funding is allocated by formula directly to schools or LAs. Virtually all of the LAs' capital funding comes through the Single Capital Pot. BSF is the exception, for which LAs make separate bids, which are prioritised on the basis of educational and social need (CIPFA, 2008). In 2007/8 the Single Capital Pot comprised 12 types of capital support (CIPFA 2008), to which the LA may add a further capital sum raised from local sources.

Insert diagram 2 about here

The revenue budget is administered by Children's Services, as part of its responsibilities. The ring fenced DSG forms the Schools Budget, part of which may be held within the LA for schools-related central expenditure. The balance, known as the Individual Schools Budget, is allocated by means of a formula, devised by the LA and approved by the DCSF, to individual schools. In 2007-8, in addition to the DSG, there were a further 34 education specific and special revenue grants available (CIPFA 2008) which are allocated to schools or held by the LA depending on a number of variables, such as whether they are ring fenced, school or pupil specific or area based.

In relation to BSF, specific government capital grants for the projects are made to the LA for construction payment. The LA may also make a capital contribution raised through local borrowing. Revenue payments are made to the service contractor as a monthly unitary payment, the amount of which can change due to, amongst other items, contract variations or performance deductions. The unitary charge is funded from the delegated service and maintenance part of the Individual Schools Budget, the overall Schools Budget and a special government grant. Diagram 3 shows the projected funds flow for a BSF project.

Insert diagram 3 about here

JOINT VENTURES

In the private sector where joint ventures are relatively common, hundreds of research studies have noted that they are challenging to manage, especially if partners have different objectives (Pearce,1997), and provide conflicting recommendations for their management (Beamish and Lupton, 2009). From a business perspective, successful achievement of the financial and strategic goals of the parent organisations is not guaranteed. For example, some 50% of joint ventures fail to meet the parent companies' financial and strategic goals, and announcements of a new joint venture lead to a fall in the parents' share price in nearly half of cases (CalPERS, 2009), although what constitutes an appropriate measure of performance may be unclear

(Griffith, 2008). As such this private sector experience raises questions about whether joint ventures can effectively deliver public services and whether performance can be measured.

Since many private sector joint ventures are between a foreign investor and a local business, much of the research literature examines the lack of success or drivers of success in terms of the problems in establishing such relationships in foreign countries with different legal and financial environments, and the subsequent operational difficulties due to different national or organisational cultures. While the set up and national culture difficulties are not directly relevant to BSF joint ventures, there may well be organisational culture differences between the public and private partners that could affect operational efficiency and effectiveness.

More pertinently, as Drucker argues, one reason for the problems associated with joint ventures is the parent organisations' loss of control that is inherent in the model:

> "Businesses used to grow in one of two ways: from grass roots up or by acquisition. In both cases, the manager had control. Today businesses grow through alliances, all kinds of dangerous liaisons and joint ventures, which, by the way, few people understand" (Drucker, 1993).

This loss of control affects not only the achievement of financial and strategic goals but also the processes of accountability for the underlying project. Joint venture governance is much more challenging than corporate governance in a single entity for reasons associated with joint ventures' board composition and decision-making processes, the resource flows from the shareholders, and the structure of the management team (CalPERS, 2009). Beamish and Lupton's (2009) review of joint venture governance and control shows mixed evidence about the impacts of imbalance in ownership proportions on performance. However crucially, they cite evidence from Dhanaraj and Beamish (2004) suggesting that in an international context very small stakes below 20% signal a lack of commitment by the parent and increase the probability of joint venture failure. Notably in BSF both the LA and BSFI have stakes of just 10%.

The issue of whether and how to reflect information about a jointly controlled investee in the financial statements of investor firms has been debated extensively. Internationally there has been divergence in regulations, both in terms of the choice of accounting method and the disclosure of related party transactions, especially the materiality level that triggers such disclosures. Essentially the debate is about how far along the spectrum from single-line equity accounting to proportionate consolidation regulators should go (O'Hanlon and Taylor, 2007), and whether supplementary information should be provided. The US and UK regulators have taken the view that joint ventures should be accounted for by equity accounting.

However, with the move by both public and private sector organisations in the UK to IFRS accounting, the relevant regulator is the International Accounting Standards Board (IASB), which is about to complete a review of joint venture accounting. Until recently the IASB advocated the use of proportionate consolidation, although *IAS 31 Interests in Joint ventures* also permitted equity accounting. But one purpose of the review process was to remove this choice of accounting treatment which is considered an impediment to high quality reporting of joint arrangements. Both accounting techniques have their advantages and disadvantages, and there appears to be no definitive reason, other than disclosure, to prefer one or the other (Lambert and Lambert, 2000).

Nevertheless, in December 2005, the IASB decided to remove the option in IAS 31 of using proportionate consolidation in favour of equity accounting, which represents a reversal of the IASB's earlier preference. From an accountability perspective, the proportionate consolidation technique may provide misleading information because it might imply more control than is exercised in practice. But the critique of equity accounting may be even more significant: a body of literature expresses concern that equity accounting may provide inadequate information about important activities: it may conceal the level of investor firm debt by allowing investees to be used as an off-balance sheet financing mechanism (Bierman, 1992). However, the disclosure of supplementary information may reduce information asymmetry and level the playing field among participants in the equity market (Lim *et al.* 2003).

Comments received by the IASB in response to the public exposure of its draft proposals suggest that reporting requirements for joint ventures are not straightforward. For example, Ernst and Young (comment CL 39) argue that the regulations are so complex that divergence in practice is inevitable. From the perspective of users of financial statements such divergence is usually considered unhelpful and in the context of public accountability undermines the ability to compare organisations.

BSF AND ACCOUNTABILITY

Although the reform of the public sector raises questions about the ability of financial reporting to provide the scope of information that is needed for accountability and responsible corporate governance, there is a dearth of research into the role of financial accounting in corporate governance (Sloan, 2001), and therefore little in relation to PPPs or specifically BSF. However, studies of PPPs in roads and health in the UK show that there is a lack of disclosure in both the public and the private sectors (Edwards *et al., 2004;* Shaoul *et al.,* 2008). In the private sector, this is especially associated with the regulations that protect close company status and associated related party transactions. In the public sector, there are disclosure gaps at all phases of PPP projects, and external scrutiny is of an *ad hoc* and patchy nature (Shaoul *et al,* 2008). It is probable that similar gaps in disclosure occur in relation to the new partnership forms of organisation such as joint ventures.

Some literature is available in relation to joint venture arrangements in the UK health sector under the Local Improvement Finance Trusts (LIFT) programme that are similar to those for BSF. Aldred (2006) identifies six key areas where joint venture arrangements used in healthcare may be of concern. These include extra layers of bureaucracy, the private profit motive, inflexibility as the procurer is locked into long term contracts, conflicts of interest within the partnership structures, failure to demonstrate value for money and the outsourcing of staff. Aldred has examined the healthcare programme from a sociological perspective, finding tensions and ambiguities in the approaches to and implementation of this programme, with contradictions between the rhetoric and the reality (2007a, 2007b), and with risks and benefits that are unevenly distributed (2008). She concludes that this policy creates rhetorical and practical problems for a welfare regime (2007c).

Two NAO reports provide evidence of the practical problems affecting LIFT projects. Delivery has not met overly ambitious timetables (NAO, 2005), and the urgency to complete one joint venture deal led to confusion about the roles and accountabilities of the Department of Health and the service provider (NAO, 2007b). However, there is apparently an incentive to press on with the programme even in the event of significant problems because, as the NAO (2005) notes in relation to LIFT, if the model is to work efficiently a continuous flow of developments is needed.

In addition, the accountability arrangements for LIFT projects need to be strengthened (NAO, 2005). In particular the NAO notes that there is no one body to oversee the Strategic Partnering Board, and that guidelines are needed to improve accountability and minimise tensions that arise because public sector employees are fulfilling several conflicting roles in the LIFT structure. Furthermore, the NAO (2007b) also questioned the independence of the advisors to the public sector, who were simultaneously in discussion with the single bidding private partner about establishing the joint venture company. This is especially concerning because the NAO acknowledges that it does not comment on the quality of the advice received from these advisors, only on how the public entities use the advice.

Several important accountability issues for BSF, the associated organisational arrangements and the relevant financial reporting flow from this. Firstly, the multiple organisations involved in these structures add cost and complexity but have not as yet delivered value. Early evidence shows that the cost of establishing the first LEPs has been high and that they have had difficulties establishing effective working arrangements and relationships between the LA and the private sector partners (NAO, 2009). The NAO (2009) reports that it will be challenging to scale up the programme from the early projects to deliver all 3,500 schools. While costs savings may occur on repeat procurements, most LAs have not reached this stage (NAO, 2009). The involvement of multiple organisations also creates possibilities for overlapping roles on the one hand or avoidance of responsibility on the other. Conflicts of interest between organisations are possible, and from a public interest perspective there is an inherent conflict between the roles of investment and procurement held by PfS.

Secondly, there is a lack of competition inherent in the model. Under PFI, the bidding partners compete for the whole project, although subsequent amendments may occur that are not subject to competitive processes. But under BSF, the prospective private sector partners compete only to provide the initial block of investment, which may be quite small. The LEP contract is for a minimum of 10 years with an option to renew for a further 5 years, during which time the private partners have the first right of refusal for subsequent projects, whether they are BSF funded or not. That is, the winning bidder enjoys a monopoly position allowing it to develop and implement new proposals in the designated LA area for periods of up to fifteen years. Thus, the organisational structure is designed to facilitate private sector initiation of projects that were traditionally driven by the public sector under conditions of no competition. Therefore, not only, as in PFI, is public money controlled outside the public sector, but BSF exacerbates the concerns that have been raised about the lack of competition in PFI and the lock in to long term relationships (Lonsdale, 2005). The NAO (2007) note that potential bidders fear that because the incumbent joint venturer has access to privileged information they cannot compete on a level playing field. Irrespective of whether such access exists, the perception of privilege may inhibit competition, to the detriment of the public.

Thirdly, the quality of accounting information may have declined. LEPs are limited liability companies, which are predominantly owned by private sector organisations, and will report and be audited as such, rather than as statutory bodies. Furthermore, LEPS are shell companies, typically with no employees, that sub-contract the construction and facilities management elements of the contract to their related companies. Consequently, only limited accounting information is reported in the LEP accounts and it is impossible to trace the public expenditure into the related companies because these have multiple sources of income.

The LEP's private sector majority shareholder will account for the LEP as a joint venture, using the more opaque equity method of accounting, associated with a lack of transparency in the literature. As the LA's shareholding is less than the 20% normally associated with giving investors significant influence, the LA is likely to account for the investment at cost only, thereby denying the public information. Significantly, the cost of the infrastructure will be off the public sector's balance sheet. This is important because it is probable that other LEPs will follow the lead of the first BSF project in Bristol, where the LEP's accounts show a financial debtor. The accounting policies indicate that the asset underlying the contract is not an asset of the company because the risks and rewards of ownership are deemed to lie principally with the LA[iv] . That is, the public sector balance sheets will not show assets, and associated liabilities, despite the fact that the public sector appears to hold the risks of ownership. Therefore the LEP mechanism can be used to circumvent the changes that have been made in public sector accounting to bring PFI projects onto public sector balance sheets.

Fourthly, the multiplicity of companies and public sector organisations involved in the provision of services, increases the complexity of financial reporting and reduces stakeholders' ability to hold government to account. In terms of the public sector, the schools covered by the LEP may include not only those that are to receive BSF investment, but also all the secondary schools and even primary schools in the area. "In general, the LEP will…… maintain the new and remodelled schools – including facilities management and ICT – under a long term partnership agreement"[v]. The LEP could also replace the educational support services previously provided by the LEA, facilities management services such as school meals, cleaning, building repairs and maintenance. The LEP's remit may also include the delivery of health care and regeneration services. That is, its activities may cross traditional boundaries, not only within the LA but also between other public sector organisations. A BSF project may also involve more than one LA partner. Thus in addition to the complex web of related private sector companies, whose financial statements must be accessed to follow the trail of public expenditure in PFI (Shaoul *et al.*, 2008), BSF adds expenditure flows from multiple public sector organisations. Importantly, the NAO (2009) notes that PfS has been slow to collect and disseminate information relating to

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[iv] Bristol PFI Ltd Financial Statements for year ended 31st December 2008.

[v] http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/bsf/aboutbsf/leps/ accessed 11/02/2010

the costs of BSF schools needed for benchmarking purposes and recommends that data collection be speeded up.

Furthermore, the reorganisation of LAs that has combined education with a range of other children's services adds to the accounting complexity. Previously it was possible to compare budgeted and actual costs across LEAs in different LAs because they had very similar roles and responsibilities. But such comparisons are more complex under the new arrangements, because the roles and responsibilities of Children's Services vary considerably between LAs.

Finally, it may be more difficult for the public to obtain information about the performance of these privately provided projects than for traditional procurements. The Freedom of Information (FoI) Act 2000 only applies to public not private sector entities, and, as in PFI, the contracts between the public authority and the LEP Company include commercial confidentiality clauses, which the public authority may use to avoid disclosure. A BSF project run by the Bristol LEP Ltd., which became the subject of a complaint to the Information Commissioner's Office (ICO), the independent authority tasked with upholding the right to information in the public interest, provides an interesting insight as to how BSF accountability operates in practice.

A FoI request was made to Bristol City Council, the relevant public authority, in relation to ICT procurement for the BSF schools managed by Bristol LEP Ltd. However, the Council withheld the cost of the ICT arrangements citing the Act's provisions for information provided in confidence and commercial interests (ICO, 2009). The Council also refused to provide a copy of its agreement with the LEP. Furthermore, when a request was made that the council explain its decision making processes that led to the acceptance of the confidentiality requirements in the contract, a process it is legally required to conduct, this request too was refused (ICO, 2009). From an accountability perspective the ICO's report on the scope and chronology of the case provides the following interesting information:

- the Council uses the argument that public interest in disclosure is low to justify non-disclosure to an interested party (paragraph 8)
- the records of meetings are not available electronically (paragraph 18)
- the Council did not search for information requested under FoI up to the statutory 18 hour time limit because there was no guarantee that information would be found if such a search had been conducted (paragraph 18); and
- the LEP subcontracted the ICT and 130 other contracts arising from this BSF and *the Council is not a party to any of these contracts* (paragraph 24) [emphasis added]

Eventually the ICO determined that the ICT costs and the partnering agreement with the LEP should be disclosed. But the timeframe of this request is relevant. The original requests were made to the council on 1st November 2006. The complainant first wrote to the ICO on 29th May 2007, but the ICO's findings were only issued on 27th May 2009, some 30 months after the original requests. Such a long time frame raises questions about the value of the information to the complainant.

In summary, accountability is affected by the context of continuous and ongoing change in education. The fragmentation of the education sector over time has spawned a multitude of income and expenditure flows so that the accounting information needed to hold government to account is dispersed and the trail of public money lacks transparency. BSF enables the participation of the private sector in many new types of outsourced services and places control of new initiatives in private hands. Conflicts of interest abound so that there is a correspondingly greater need for strong accountability processes. But since BSF adds to the multitude of organisations involved in education, it reduces the clarity of financial reporting with the concomitant adverse impact on accountability. Significantly, the LEP shell company that controls expenditure offers a new mechanism for off balance sheet financing of public infrastructure now that PFI projects are expected to be on balance sheet under IFRS. The continuing processes of change that the sector has been subject to undermine comparative analysis over time. In particular, the folding of education into a broad Children's Services function and the variation in organisational forms across local government may undermine a traditional mechanism of accountability – the comparison of costs across LAs.

CONCLUSIONS

Accountability for capital investment policies and programmes to provide infrastructure of a public nature must be located and understood in context. This analysis of BSF provides a British based example of how restructuring aimed at reducing the scale and scope of the public sector in favour of the private sector has the potential to reduce accountability for taxpayers' money. While the practices adopted elsewhere may vary in their detail, the nature of the reforms has international relevance since governments in many countries have a similar ultimate goal of a smaller public sector. The generic *modus operandi* adopted in the UK and its impacts on public accountability will therefore have parallels elsewhere.

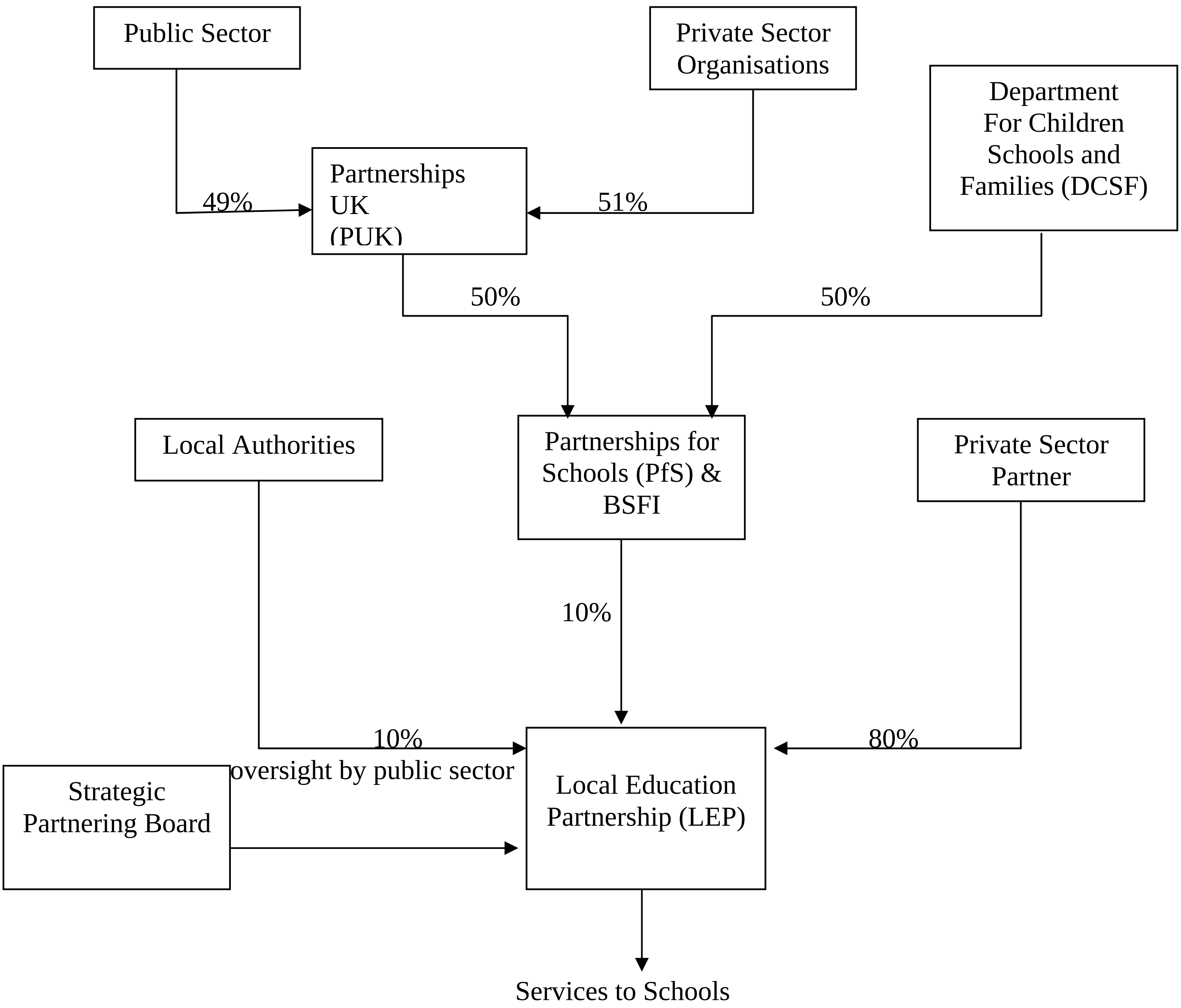
Essentially, the process begins with a fragmentation of the education sector. Ownership and responsibility are separated from control and cash flows are centrally directed towards nationally determined initiatives that restrict local discretion while giving a superficial appearance of decentralisation. Although government rhetoric declares that private sector involvement brings the benefit of competition, the BSF case shows that in practice competition will give way to a legally binding monopoly after the first tranche of investment.

These new joint venture structures add complexity to the predecessor PFI schemes that were already complex. The structures are difficult to identify and because each network involves several organisations structured as joint venture based PPPs it is unclear where the decision making power actually lies. But the public sector's small stake is a clear signal that the private sector is in control. The effect is to disperse service provision through a vast network of both public and private organisations, requiring 130 contracts for just one LEP. This creates the potential for conflict of interest, duplication of effort and denial of responsibility for problems, adding costs and reducing accountability. Ultimately, the LA is responsible for the delivery of a service provided by contracts to which it is not even a party.

There has a domino effect on reporting. Financial and other performance related information is fragmented because it is held in multiple organisations, and disclosed, if at all, in any of numerous sets of financial statements, websites or other sources. It is therefore difficult if not impossible to follow the money trail, and to hold national or local government to account for public expenditure. Significantly, the government has not extended FoI to private companies delivering public services, although the legislation contains such a provision.

Beamish and Lupton (2009) call for further research into joint ventures between non-traditional partners, that is non-corporate partners, and using primary, as opposed to secondary data, that examines the joint ventures from the perspective of all partners. In particular they argue that joint ventures between non-traditional partners may face more instability because the goals of the partners may vary in fundamental ways. Further research that examines the joint venture partnerships established under BSF and similar initiatives is clearly in the public interest even if as yet they are only of interest to accounting academics.

Diagram 1
Structure of LEP Public Private Partnership



Source: Adapted from National Audit Office (2005)

Diagram 2
Capital and Revenue Flows

Department for Children Schools and Families (DCSF)

Revenue Budget ↓

Mainly Dedicated Schools Grant (DSG)

+ Revenue Stream of 35 specifically targeted initiatives.

Capital Budget ↓

Single Capital Pot (Capital Stream of 12 specifically targeted initiatives)

BSF

Local Authority

Education Budget Central government + locally raised tax

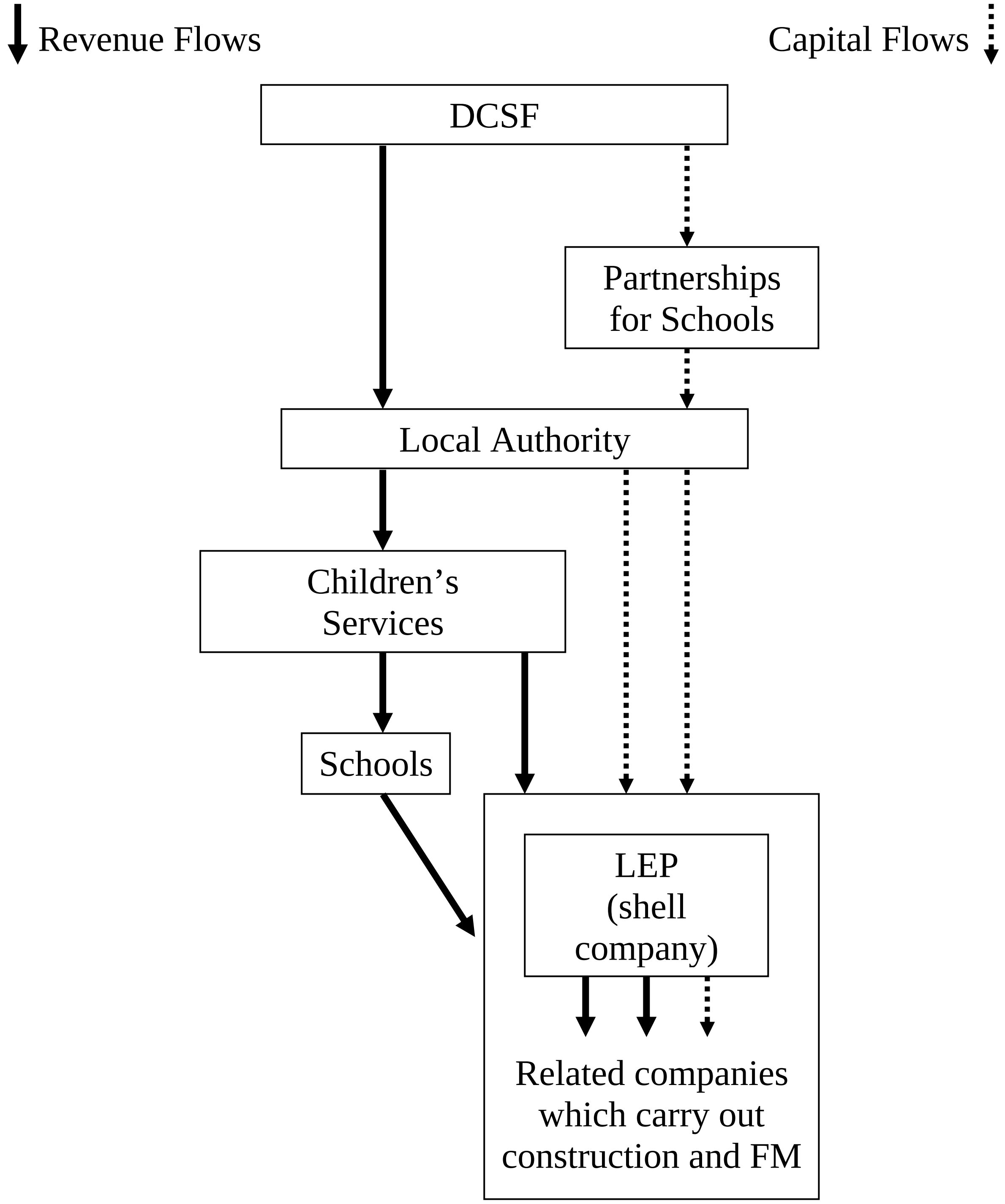
↓

Children's Services

↓

Schools

Diagram 3
Projected Funds Flow for a BSF Project



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