

# Free schools and the Big Society

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I'm often asked what the low point was in the course of setting up the West London Free School. It was when Jonathan Fingerhut, a 55-year-old marketing executive from Kentish Town, came to talk to our steering group. This was on November 30, 2009, and at that stage we didn't have a clue what we were doing. I'd written an article for *The Observer* three months earlier, saying I wanted to start a "comprehensive grammar" in Ealing and a group of local parents had volunteered to help. But, after the initial burst of enthusiasm, it had begun to dawn on us that setting up a state secondary school is a mammoth undertaking. There were initially 15 people in the group, but, by the time November 30 rolled around, we were down to single figures. The whole project was in danger of fizzling out.

I thought a pep talk from Jonathan was just what the doctor ordered. He was an ordinary dad with no background in education, yet he had successfully led the efforts of a group of parents in North London to establish a liberal, Jewish comprehensive – or JCoSS, as it's now called. He'd faced down a multitude of opponents, and a brand new school was now being built by the Government on Castlewood Road in New Barnet. If anyone could revive my group's flagging spirits, it was him.

"Don't take this the wrong way," he began, "but before you embark on this journey you have to ask yourselves whether this is really something you want to do. Because it took my group ten years to set up JCoSS. That's ten years of mind-numbing, backbreaking labour. Ten years of our lives we can never get back."

This was not going to plan.

"But Jonathan," I said. "Presumably, if you'd known you'd have a brand new school at the end of it, a school embodying your vision, you wouldn't have done anything any differently. It's all been worth it, right?"

He looked at me sceptically.

"Are you joking? My kids are too old to go the school, I'm virtually bankrupt, and I've seriously damaged my health. No, if I'd known then what I know now, I never would have gone down this road in the first place."

I realised afterwards that Jonathan had been driven half-mad by the sheer difficulty of trying to set up a taxpayer-funded school under the last government.

JCoSS is a voluntary-aided school, but my group decided our best bet was to try and set up an academy. Unfortunately, back in 2009, there was no mechanism in place whereby groups of parents could engage with the academies set-up process.

Part of the problem is that officials were used to dealing with other officials – they didn't have the vocabulary to communicate with civilians like me. A week before Jonathan Fingerhut's "pep talk", I'd had my first meeting at the Department for Children, Schools and Families. I came out with my head spinning. Apparently, my group was engaged in an effort to set up a 4FE (4 Form Entry) PPS (Parent Promoted School), and our fate turned on whether we could convince PFS (Partnerships for Schools) that the PPP (Pupil Place Planning) of Ealing Council's DCS (Director of Children's Services) had underestimated the expected increase in demand for secondary school places in the borough over the next ten years. If we could, BSF (Building Schools for the Future) might fund a "new build". Or would the money come from SCS (Schools Capital Stream)?

Oftentimes, I would come out of a meeting with officials feeling like a spaceman who'd spent the previous two hours trying to dock with a space station that had only been designed to dock with other space stations. There was simply no portal through which a group of unpaid volunteers could enter the bureaucratic labyrinth.

That changed when Michael Gove became the Secretary of State for Education. Now, there is a process and – surprisingly – it works. At the time of writing, over 80 free schools are either open or in the pre-opening phase. Some of them are being run or set up by multi-academy sponsors like ARK and Harris, but others, like the West London Free School, have been set up by non-professionals: parents, teachers, community groups. Free schools have been described as "a flea-bite of annoyance" by Mary Bousted, General Secretary of the Association of Teachers and Lecturers. But some of those fleas are unpaid amateurs. It's the Big Society in action.

There are three reasons this particular Big Society programme works so well, I think.

First, over 100 civil servants in the Department for Education (DfE; previously the Department for Children, Schools and Families) have been tasked with delivering free schools. I had a brief conversation with Iain Duncan Smith and he asked me whether the civil servants in the department were obstructing the policy. But it's a common misunderstanding to think of bureaucrats as getting in the way of the Big Society. On the contrary, their support is essential if the Big Society is to work. Without the support of the Free Schools Directorate – without civil servants being available to take free school groups by the hand and guide them through the process – the policy wouldn't be successful.

Second, the programme isn't designed to save money. Free schools deliver a public service that would otherwise be delivered by the state, but at the same cost to the taxpayer as the state-run public service. The West London Free School's

annual revenue budget is calculated using broadly the same formula as the revenue budget for a local authority-maintained school. Some cynics have dismissed the Big Society as a fig leaf designed to conceal the Tory-led Coalition's cuts agenda. In the case of free schools at least, that isn't true.

Could the programme be designed in such a way to save the taxpayer money? One way would be to do what the Centre-Right Coalition did in Sweden in 1992 – it made it possible for commercial companies to set up, own and operate free schools. The revenue budgets of those schools are no different to the revenue budgets of Sweden's municipal schools, but the cost of setting them up is borne entirely by the private providers.

The present government has decided not to allow this, and it's unlikely to happen while the Conservatives continue to share power with the Liberal Democrats. But could there be a hybrid model whereby a free school is owned by a charitable trust, but the charitable trust outsources the management of the school to a commercial provider who, as in Sweden, pays the set-up costs?

My group thought that could work, and we ran what we thought of as a legally-robust procurement process. We put together a glossy looking invitation to tender and published a notice in the *Official Journal of the European Community* informing all interested parties of this opportunity.

The upshot was that we were deluged with proposals from all the usual suspects in the education field: Edison Learning, CfbT, Cognita, GEMS, Nord Anglia, Serco, IES and Kunskapsskolan.

Before shortlisting, I thought it would be prudent to ask the DfE's legal team if they would stand behind us in the event of a legal challenge by a disappointed bidder. Naturally, they wanted to know more about the procedure we'd followed, so I turned over all the proposals to them, along with our evaluations and a detailed log of all the meetings we'd had.

After several weeks the DfE's lawyers got back in touch to say they thought the tender process we'd run was extremely professional – really very impressive. Unfortunately, it wasn't quite impressive enough. To be on the safe side, we ought to run the entire process again from scratch.

Christ on a bike!

It had taken six months of endless meetings to get to this point. Did we really have to go through all that again? And how would the bidders react if we asked them all to re-submit on the grounds that we'd cocked up first time round? It wouldn't exactly inspire confidence.

Okay, I said. If we do agree to re-run the process, will you tell us what we did wrong the first time and advise us how to do it properly this time?

Oh no, they said. We couldn't possibly do that. It's not our place to tell you what to do. You've asked for our opinion about whether the process you've run is legally-robust and we've given you our answer. Beyond that, we cannot comment.

They did make one helpful suggestion, though: Why didn't we hire a firm of

specialist procurement lawyers to oversee our tender? Indeed, they thought the DfE might be prepared to cover our legal costs.

Okay, now we were getting somewhere. If we did that, and the specialists signed off on the tendering process, would the DfE's lawyers then be prepared to stand behind us in the event of a challenge?

Er, no. The official position was that, if we wanted to press ahead and enter into a partnership with an established provider, the DfE wouldn't stand in our way. But if we were challenged, we'd be on our own.

At this point, I thought it would be prudent to get some independent legal advice. Just how great was the risk of being taken to court?

The news wasn't good. Not only was there a risk of being challenged by a disappointed bidder, a risk that we could mitigate but not eliminate by re-running the process, there was also a risk of being challenged by a politically-motivated individual put up to it by one of the militant left-wing groups that opposed free schools.

We decided we didn't want to be the canary in the well.

After our aborted attempt to outsource the management of the West London Free School, I concluded that the only way it could work would be if the DfE put a process in place to enable proposer groups to procure the services of education providers in a risk-free way. That inevitably means setting up a procurement framework, and legally indemnifying all the participants. Nothing to stop the Secretary of State asking his officials to do that, but I suspect he lacks the political will. It would look like a sneaky way to allow for-profits to run free schools – privatisation by the back door. He also has a visceral dislike of procurement frameworks.

The third reason why this particular Big Society programme works is that entrusting voluntary groups with responsibility for setting up schools doesn't require a huge leap of faith by politicians or civil servants. Post-set-up, these schools will be run by head teachers and their senior leadership teams, not unpaid volunteers. Yes, some members of the free school proposer group will become governors of the school-in-question, but there's nothing particularly unusual about non-professionals being members of school governing bodies.

The free schools are an example of the Big Society Lite. The delivery of a public service isn't being wholly entrusted to a bunch of amateurs; it's also being entrusted to seasoned professionals, i.e. the teaching staff. The only bit the amateurs are being entrusted with, post-set-up, is the bit amateurs have always been entrusted with, namely, governing the school.

So my conclusion is that the reason this particular Big Society programme works is because (a) there's a dedicated team of civil servants to nursemaid the volunteers; (b) the programme isn't designed to save money; and (c) the clueless amateurs aren't being entrusted with the delivery of the public service in question.

Can we draw any conclusions from the success of the free schools

programme about the potential success of the Big Society in general? The most encouraging thing about it is that there's no shortage of willing volunteers. I never had any problem recruiting experts willing to give up their time and labour for free and, at the time of writing, over 1,000 voluntary groups are actively engaged in trying to set up free schools. The manpower is certainly there.

But even if the Coalition lasts until 2015, it's unlikely we'll see more than 500 free schools established over the lifetime of this Parliament. That's less than 2.5 per cent of the total number of taxpayer-funded schools in England – and that's on the most optimistic projection. And while the level of academic attainment in free schools might well turn out to be above average, the service they provide won't have been delivered at a reduced cost to the taxpayer.

My reluctant conclusion is that proponents of the Big Society can draw little succour from the success of this programme. We won't truly know whether this particular policy can deliver more for less until the DfE allows commercial companies to participate more fully in the provision of taxpayer-funded education.