

THE BAKER CLAUSE

ONE YEAR ON

BRIEFING



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and Joe Dromey**

January 2019

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This paper was first published in January 2019. © IPPR 2019

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ABOUT THIS PAPER

This paper explores school compliance with legislation aimed at ensuring providers of technical education have access to students throughout their time in secondary education in order to inform them of the options available. It aims to promote the efficiency of education by ensuring high quality careers advice, and to relieve poverty and unemployment by ensuring all young people are able to choose the right path and to achieve their potential.

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ACKNOWLEDGEMENTS

The authors would like to thank Gateshead College for their support with the project. We would like to thank Judith Doyle, Olly Kendall, and Clare McNeil for their comments on the report. We would also like to thank the Association of Colleges for helping distribute the survey.

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Citation

If you are using this document in your own writing, our preferred citation is:
Hochlaf D and Dromey J (2019) *The Baker clause: One year on*, IPPR. <http://www.ippr.org/research/publications/the-baker-clause-one-year-on>

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SUMMARY

The government is seeking to transform the technical education system to ensure that all young people can achieve their potential. Central to delivering this will be ensuring that young people are aware of the options available, and that they can pick the path that is right for them.

Since January 2018, secondary schools across England have been required by law to allow other education and training providers access to their pupils to inform them of technical and vocational qualifications. This regulation is known as the Baker clause after its author, Lord Baker.

A year on from its introduction, compliance with the Baker clause remains very poor. Just two in five schools are complying with the requirements of the legislation and most vocational providers say it has made no difference.

If we are to deliver on the promise of the Baker clause, the government should make Ofsted responsible for checking compliance, as part of a greater focus on careers guidance. Beyond enforcement of the Baker clause, more could be done to deliver on its aims, including providing a single online resource for information on pathways, engaging parents in careers advice, and giving local authorities a duty to support partnership working across schools and education providers.

KEY FINDINGS

1. Ensuring young people understand the options available is vital to improving our technical education system and ensuring all young people have the opportunity to succeed

- The government is seeking to improve the technical education system so that all young people are able to achieve their potential and develop the skills they will need in the economy of the future. Alongside this, government is also seeking to deliver parity of esteem, so that technical education is equally valued and respected.
- The Baker clause – which came into effect a year ago as part of the Technical and Further Education Act 2017 – aims to ensure that technical and vocational education providers can access schools in order to inform young people of their options. Schools are required to publish a ‘provider access statement’ which sets out the process for this.
- The Baker clause aims to overcome the incentives in the education funding system that motivate schools to retain their pupils – and the funding that comes with them – even if there may be better options for them at other providers.
- Making a success of the Baker clause will be vital if we are to deliver parity of esteem, and to make a success of the government’s wider reforms to the system, including T-levels.

2. One year on from its introduction, compliance with the Baker clause has been very poor

- Few schools are complying with their statutory duties set out in the Baker clause. We found that **just two in five schools (37.6 per cent) published a provider access statement**. Despite this, the Department for Education (DfE) is yet to take formal action to enforce compliance.

- Most technical education providers think that the Baker clause has failed to deliver on its aims. Seven in 10 (70.1 per cent) say that it is difficult to access schools in their area and less than one in three (31.3 per cent) say that the situation has improved in the last year.
- Poor compliance is due both to the incentive for schools to retain their pupils, and to the lack of enforcement of the Baker clause.

3. Government should take action to enforce compliance, and introduce further reforms to ensure young people can choose the right path

- In order to ensure greater compliance – both with the letter and the spirit of the regulations – **Ofsted should be responsible for assessing compliance** with the Baker clause as part of an increased focus on careers information, advice and guidance.
- In order to ensure young people and their parents can find out all of the options available to them, **a single online resource toolkit should be developed** for young people and their families.
- In recognition of the vital role parents play in shaping and informing young peoples' decisions, **local authorities should be required to write to every parent at key points to inform them of the options available** for their child, including in technical education.
- In order to support wider collaboration between providers, **local authorities and combined authorities should be given a new duty to support partnership working across education providers in their area** so that all young people get the information they need to make the right decision.

INTRODUCTION

In recent years, there has been an increasing focus on the need to improve the technical education system in England. Successive governments have recognised the importance of a high-quality technical route to ensure that all young people can achieve their potential, and to ensure that the next generation of young people entering the workplace are equipped with the skills they need to succeed in the economy of the future.

Over the last few years, the government has acted not only to improve the quality of technical education, but also to ensure that it is recognised as equally valid and important as traditional academic routes. Following the landmark Sainsbury Review into technical education, which called for a “coherent technical education option”, the government has embarked on an ambitious programme of reforms aimed at improving the system (UK Government 2016).

Building on the recommendations of the Sainsbury Review, the government introduced the Technical and Further Education Act 2017. This new legislation is designed to reform technical education, promoting the “knowledge skills and behaviours” necessary to meet the demands of employers and to raise productivity (UK Government 2016a).

Incorporated into the act is an amendment proposed by the former education secretary, Lord Baker. Having come into effect on 2 January 2018, the new law, commonly known as the Baker clause, stipulates that schools must ensure that a “range of education and training providers” have access to pupils from year 8 to year 13, so that they can be informed about what technical education and apprenticeship opportunities are available (DfE 2018).

The aspiration of the Baker clause is to ensure that all young people can obtain all the information they need about the breadth of education and training opportunities available, so that they can make the right decisions about their next steps. It is designed to address the reluctance among some schools to allow access to other education providers – who are their competitors in attracting students on to courses.

However, there has been growing concern that compliance with the legislation has been poor. One year on from the introduction of the Baker clause, this report explores the impact of the new legislation. It sets out what can be done to improve compliance with the Baker clause and to deliver on the aspirations of the legislation by ensuring that all young people understand the range of options and can make the right choices that reflect their passions, skills and aspirations.

The report is structured as follows.

- **Chapter 1** sets out the context, summarising the state of technical education in England, and why the Baker clause was introduced.
- **Chapter 2** explores the evidence on compliance with the Baker clause based on new surveys of schools and technical education providers and interviews with key stakeholders.
- **Chapter 3** sets out recommendations to ensure compliance with the legislation, as well as other measures to ensure that all students can make informed choices about their education and training.

1. VOCATION, VOCATION, VOCATION

THE BAKER CLAUSE AND REFORMS TO TECHNICAL EDUCATION

THE IMPORTANCE OF TECHNICAL EDUCATION

Having a high-quality vocational and technical education system is vital both for young people and for the economy.

First, a high-quality vocational system helps young people to achieve their potential. It should provide young people with a ladder of opportunity and equip them with the practical skills they need to develop and progress so that they can build a successful career.

Second, a high-quality vocational system is necessary for employers and a successful economy. Vocational education should reflect the needs of employers and industry, giving young people both the fundamental skills required to continue learning, and the industry-specific technical skills that employers require. Technical education should be dynamic, bringing the latest practices into the classrooms and workplaces.

REFORMING TECHNICAL EDUCATION

In recent years, there has been a growing focus on improving England's technical education system. The Sainsbury Review of 2016 clearly set out how the current system was excessively complex, with too many qualifications that were not all valued by employers and did not meet the needs of young learners (UK Government 2016).

In response, the government has set out an ambitious series of reforms to deliver "a dynamic, high-quality technical option, which is grounded in engagement with employers, fits soundly with the rest of the system and is responsive to the changing needs of the economy" (DfE 2017).

As part of the reform of technical education, government is introducing 'T-levels': a new qualification that is intended to be the technical equivalent of A-levels. By September 2020, three T-level courses will be taught, and a further 22 courses rolled out in stages from 2021 across different sectors, with young people benefitting both from technical education, and from a work experience placement (DfE 2018a). The aim of T-levels is to simplify the technical pathway, and to give young people the skills they need to progress to higher level technical education or to an apprenticeship (DfE 2018b). Ensuring young people are aware of these new qualifications, and that they have access to high quality careers information, advice and guidance, will be vital to ensuring the success of T-levels.

In addition to rolling out T Levels, government is also seeking to boost the number of young people taking apprenticeships. The government has an ambition to

deliver three million apprenticeship starts by 2020, and it has introduced the apprenticeship levy in order to boost employer investment in apprenticeships.

The government is also seeking to boost the esteem of technical education, and to encourage young people to consider vocational routes. Technical education has long been compared unfavourably to academic routes and is perceived by many to be of inferior quality.

Ensuring young people are well informed about all their options is important both to boosting participation in technical education and to achieving parity of esteem between academic and technical routes.

THE BAKER CLAUSE

Incorporated into the Technical and Further Education Act is an amendment proposed by the former education secretary, Lord Baker. The Baker clause, which came into effect on 2 January 2018, stipulates that schools must ensure that a “range of education and training providers” have access to pupils from year 8 to year 13, so that they can be informed what technical education and apprenticeship options are available (UK Government 2018). In addition, schools are expected to produce a policy document for publication on their website, stating their arrangements to allow access to students.

“This will help our young people make better-informed and more confident decisions at important transition points”

Lord Baker

“I want this new legislation to be the start of a change in how schools and parents look at what young people do in future and give all pupils access to these exciting career options”

Anne Milton MP, minister of state for apprenticeships and skills

The purpose of the Baker clause was to overcome the incentives for student retention in the school funding system, and to improve the information available to pupils. The amendment garnered cross-party support and was accepted by the government (Hubbly and Foster 2017).

Given that schools are funded largely on a per-pupil basis, with schools receiving up to £4,000 for every post-16 student, there is a strong interest for schools to retain their pupils through to key stage 5 (UK Government 2015). The result is a focus on pupil retention, rather than supporting students and their families to understand the options available so that they can make fully-informed decisions about what is in their best interests.

This is of particular concern given the relatively poor state of careers advice for pupils, which Lord Baker described as being “very primitive” in many schools, suggesting that it is generally “far down the list” of the issues that occupy a headteacher’s time. This concurs with the findings of the House of Commons sub-committee on education, skills and the economy that highlighted the inadequacies of careers education, information, advice and guidance across schools in England, which is seen as contributing to skills shortages and damaging productivity (House of Commons, 2016).

Through compelling schools to provide access to other providers, the Baker clause aims to overcome the financial incentive schools have to retain their students, while also addressing the widespread lack of information, which has fuelled negative perceptions of technical education. Ensuring that all pupils are aware of the education and training paths available so that they can make the right decision on their future – whether that be staying on in school, pursuing a technical course at a further education college or taking an apprenticeship – is essential for achieving the best possible outcomes for young people.

Having examined the background to the Baker clause, in the next chapter we go on to examine its impact, one year on.

2.

ACCESS DENIED

THE CHALLENGES OF IMPLEMENTING THE BAKER CLAUSE

MEASURING COMPLIANCE

In the year since its introduction, there has been growing concern over the extent to which schools are complying with the Baker clause.

There have been a number of assessments of the level of compliance. Within the first month of the Baker clause coming into effect, an investigation by Schools Week found that only two of the 10 largest multi-academy trusts (MATs) had conformed to their legal responsibility (Robertson 2018). A further investigation by FE Week conducted in the summer of 2018 found that not a single MAT had 100 per cent compliance at all their schools (Allen-Kinross 2018).

DfE commissioned their own investigation by the Association of Education and Learning Providers (AELP) in summer 2018 to assess the experience of technical education providers. This found that just 5 per cent of providers had found all schools in their area were complying, and that 20 per cent said none of their local schools were complying (Allen-Kinross 2018).

In response to growing concern about low levels of compliance, the skills minister has called on providers to report on schools in their area who fail to comply with the Baker clause and warned of 'direct intervention' in schools which refuse to comply (Milton 2018; Burke 2018). As yet, no direct intervention has taken place.

In order to assess the impact of the Baker clause one year on from its introduction, we carried out the following.

- **A school survey** – we conducted a survey of 101 schools to assess current levels of compliance with the Baker clause. 10 schools were randomly selected within each region of England. The remaining schools were located in the constituencies of the secretary of state for education and the minister of state for apprenticeships and skills. We checked each school's website for a provider access statement, and where none was visible, we contacted schools to request whether they had a statement. Schools that did not have a visible statement and did not reply were assumed to not be complying.
- **A provider survey** – we conducted an online survey of 68 technical education providers in England, including FE colleges and university technical colleges (UTCS). While the school survey allows us to understand levels of compliance with the letter of the law, the provider survey provides vital information to help understand whether schools are complying with the spirit of the law and cooperating with other providers to ensure young people understand their options.
- **Stakeholder interviews** – in addition to the surveys, we carried out interviews with key stakeholders in the sector, including the Association of Colleges and AELP who represent providers in the sector, and Lord Baker.

This research represents the largest assessment to date of the extent of compliance with the Baker clause.

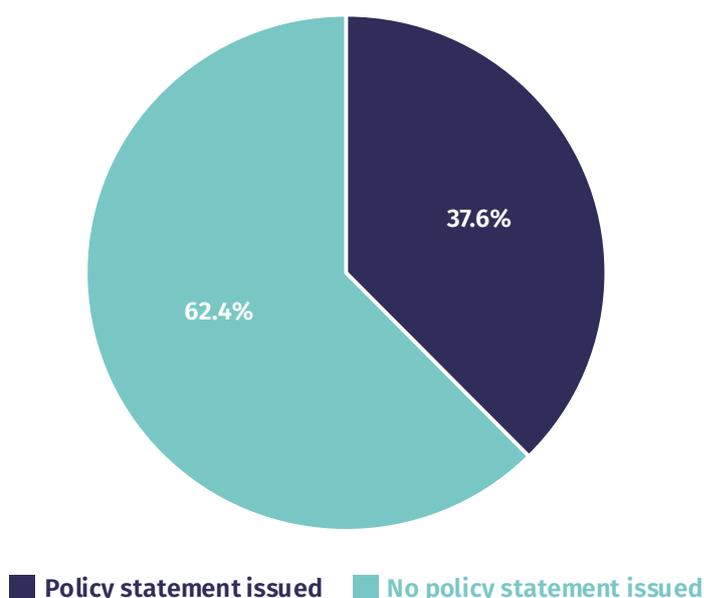
BREAKING SCHOOL RULES: COMPLIANCE WITH THE BAKER CLAUSE AMONG SCHOOLS

Our assessment found that compliance with the Baker clause remains very limited.

We found that fewer than two in five (37.6 per cent) of the 101 schools we examined were complying with the Baker clause by publishing a provider access statement.

FIGURE 2.1

Fewer than two in five schools are complying with the Baker clause by publishing a provider access statement



Source: IPPR school survey

This represents a widespread failure of schools in England to meet the basic statutory expectations of the Baker clause. While we found that there seems to have been some improvement among schools at MATs, a large majority of schools in England are still not complying.

In our sample, compliance was found to be stronger in the North East, where eight schools had issued a statement. In London, only one school out of 10 was found to be complying.

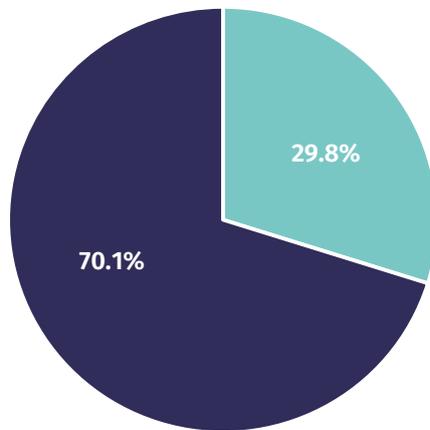
PROVIDER PROBLEMS: PERCEPTION OF COMPLIANCE AMONG TECHNICAL EDUCATION PROVIDERS

In addition to the school survey, we conducted a provider survey to assess their experiences of the Baker clause, and their perceptions of its impact. 68 further education providers – a combination of colleges and UTCs – responded to our survey.

As figure 2.2 shows, despite the introduction of the Baker clause, seven in 10 (70.1 per cent) providers stated that they found it difficult to access schools in their local areas.

FIGURE 2.2

Seven in 10 technical education providers find it difficult to access their local schools to talk to pupils about their offer



■ It is easy to access our local schools and talk to pupils about our offer

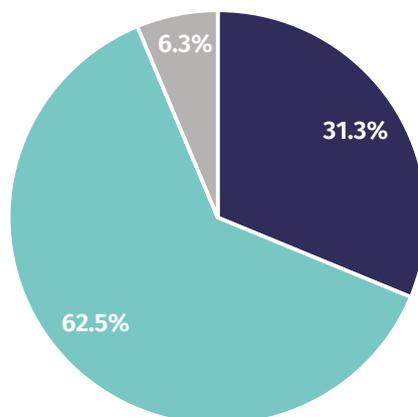
■ It is difficult to access our local schools and talk to pupils about our offer

Source: IPPR provider survey

Worryingly, relatively few technical education providers reported access to schools as having improved in the year since the introduction of the Baker clause. As figure 2.3 shows, fewer than one in three (31.3 per cent) technical education providers said that they had found it easier to access schools in order to engage with pupils since the legislation was introduced, with most (62.5 per cent) saying there has been no difference, and 6.3 per cent saying it has actually become more difficult.

FIGURE 2.3

Fewer than one in three technical education providers say it has become easier to access local schools since the introduction of the Baker clause



■ It has become easier to access local schools since January

■ It hasn't changed

■ It has become more difficult to access local schools since January

Source: IPPR provider survey

While the 31 per cent of providers who have found it easier to access pupils suggests that the Baker clause has had some positive impact, it still seems that there has been a broad failure of the Baker clause to live up to its expectations.

Providers themselves largely see the Baker clause as failing to deliver its aims. One in four (25 per cent) agree that the Baker clause has achieved its aim of making it easier for providers of technical education to access schools so that they can meaningfully engage and inform pupils of the opportunities available to them. Six out of 10 providers (60.2 per cent) disagree.

SELECTIVE COMPLIANCE

Beyond the low levels of compliance with the letter of the law, there is evidence that – even among schools which do have a provider access statement – compliance with the spirit of the law may be even more limited.

A number of providers highlighted selective compliance with the Baker clause. Providers raised concerns that they were being given access to certain students, including those who performed less well in academic subjects and students that schools did not want to attend their sixth forms. This in part reflects the negative and damaging perceptions among some that technical education is of inferior quality, rather than a different but equally valuable part of the system.

While the legislation sets out that schools should allow access to pupils in year 8 through to year 13, many respondents said that access was restricted to young people in year 11 and above.

“Schools let us speak to specific year 11’s and not those they deem fit for sixth form at their school.”

Survey respondent, FE College, East

“Our schools see technical education as a second choice only suitable for weaker students.”

Survey respondent, FE College, South East

BAKER BARRIERS: EXPLAINING LOW COMPLIANCE WITH THE BAKER CLAUSE

Providers highlighted several issues in explaining low levels of compliance with the Baker clause.

First, many providers identified the perverse incentives under the school funding system. As we set out in chapter 1, given schools are being funded per pupil, and given many are under increasing financial pressure, many schools seem to be unwilling to allow other providers access to their pupils in case they choose to leave the school.

“It is in the schools’ interests to retain learners for funding, rather than lose them to further education.”

Survey respondent, FE College, North West

Second, many providers highlighted the lack of any real consequences from failure to comply with the Baker clause. Again, as we set out in chapter 1, enforcement has so far been very limited. While the DfE has warned schools that it may resort to direct intervention if compliance continues to be poor, at the time of writing, no action has been taken against schools for non-compliance. Providers said they believed that the lack of enforcement meant that schools were happy to ignore their requests for access.

3.

OPENING THE DOORS

MAKING THE BAKER CLAUSE WORK

One year since the Baker clause came into effect, it's clear that compliance with the legislation remains very poor. Most schools do not publish provider access statements, and even where schools do allow access, providers are often only allowed to engage with limited groups of students. Few providers believe access to schools has improved and most see the Baker clause as having failed to deliver its aims.

In this chapter, we put forward some recommendations to improve compliance with the Baker clause. Beyond that, we also set out what else could be done to ensure compliance with the spirit of the legislation and to support greater collaboration between schools and providers, in order to ensure all young people are aware of the opportunities available to them.

IMPROVING ENFORCEMENT

As discussed in chapter 2, the lack of enforcement of the Baker clause, combined with strong financial incentives to retain students, has limited schools' compliance with the Baker clause and meant many schools are ignoring their statutory duty.

The current approach to enforcing the Baker clause is ineffective. The DfE has warned providers that they face direct intervention if they refuse to comply with the Baker clause. But at the time of writing, no such direct intervention has taken place, and it appears that schools do not feel under any pressure to comply. Even if the DfE were to take a more directive approach and to force schools to produce a provider access statements, this alone may not engender a more open and collaborative culture between schools and other providers.

At present, Ofsted inspections include a limited examination of careers education, advice and guidance (CEIAG) provision within schools. Outstanding schools are expected to have high-quality, impartial careers guidance that helps pupils make informed choices about which courses suit their needs and aspirations, and which prepare them for the next stage of their education and training (Ofsted 2018). However, this forms a very limited part of the Ofsted inspection framework; no grading is made of the quality of CEIAG, and no assessment is made of the extent of compliance with the Baker clause.

In order to ensure a greater focus on compliance – both to the letter and the spirit of the regulations – **Ofsted should be responsible for assessing compliance with the Baker clause as part of a new category on careers guidance.**

This should be included under the 'personal development, behaviour and welfare' section of Ofsted reports, with inspectors required to state whether schools are complying with the specific requirements of the Baker clause as part of a wider assessment of their careers' guidance. As part of this assessment, Ofsted should speak to local technical education providers to understand how effectively the school works with them, and to incentivise schools to work in partnership with them.

Under this system, careers guidance in schools would be ranked between ‘inadequate’ and ‘outstanding’. Schools that either receive an ‘inadequate’ rating on careers information, advice and guidance, or who are not complying with the Baker clause, should be ineligible to receive an ‘outstanding’ rating in the relevant category, which would feed through into their overall rating. This would incentivise schools both to comply with the requirements under the Baker clause, and to ensure that they deliver a high standard of careers guidance more broadly.

This January, Ofsted will launch a consultation on changes to the inspection framework. This represents an opportunity for Ofsted to include an assessment of compliance with the Baker clause during inspections, as part of a greater focus on the quality of careers advice.

However, while it is important that schools deliver high-quality careers advice, we must also acknowledge that many face severe funding constraints. Therefore, government should also ensure that schools are sufficiently funded to provide high quality careers CEIAG.

DEVELOPING AN ONLINE RESOURCE TOOL TO IMPROVE ACCESS TO VOCATIONAL AND TECHNICAL EDUCATION ROUTES

UCAS is a highly effective service focused on providing information for those thinking of pursuing higher education. Not only does it facilitate the application process, it provides clear and comprehensive information about institutions, the courses they offer and their entry requirements.

While UCAS does provide some information on alternative routes, including apprenticeships, no similar system exists which provides comprehensive information about education and training options at Key Stage 5. This makes it difficult for students and parents to find out about all the options for education and training available to them in their local area.

To ensure young people have the information they need to make the right choice, **a new online resource should be developed for young people setting out the education and training options available to them in the local area.**

This would simplify the process through which students obtain information on their next steps, just as UCAS helps people understand higher education options. Students would be able to search for providers and courses in their local area including:

- schools and sixth form colleges offering academic options
- further education colleges, UTCs and other providers offering T-levels and other vocational and academic courses
- apprenticeships.

While many students travel large distances to university, the vast majority of young people choose an option at age 16 in their local area. The online resource tool should therefore be searchable by area, allowing young people and parents to identify all the courses and providers locally.

In 2017, the government’s careers strategy highlighted the importance of a single, digital resource to provide information for young people on their options (DfE 2017a).

Such a resource would address the underlying aspirations of the Baker clause: to ensure students are as well informed as possible to make the decisions that affect their future and to raise the value and understanding of technical education.

Having a single, searchable online repository of information would help to encourage greater engagement with potential options.

INVOLVING PARENTS

Parents play a crucial role in shaping the decisions of their children on education and training pathways and on their future careers. Over half of parents (58 per cent) say that they have been approached by their children for careers advice (GTI 2015).

In order to support parents to understand the options available, local authorities should be required to write to every parent at key points to inform them of the options available to their child including in technical education.

This could help build on the current legislation that requires local authorities to write to the parents of 13-year-old children about local UTCs, which was implemented to help encourage applications (Long and Bolton 2017)

Local authorities should decide themselves what information to include in this letter, but, at the very least, it should include information and contact details of providers in the local area, and a summary of the pathways available, including the option of T-levels and apprenticeships. This should also signpost the UCAS-inspired online resource , which should provide information on all the options available in a local area.

SUPPORTING COLLABORATION AND PARTNERSHIP WORKING

An education funding system that incentivises schools to retain students and prevent them from understanding other options has created animosity between schools and other providers and undermines incentives to collaborate. While government could do more to promote compliance with the Baker clause, this alone will not address the wider problem of a failure among providers to work in partnership.

Local authorities and combined authorities should be given a new duty to support partnership working across education providers in their area in order to ensure all young people get the information they need to make the right decision about their future pathway.

Instead of relying on the DfE to address provider complaints, local authorities should work with Ofsted to deal with non-compliance. Local authorities would have a better understanding of the local context, and a closer relationship with the schools involved.

In addition to helping to address non-compliance, local authorities should also take a more proactive role to help build relationships, which is in the mutual interest of students, schools and other providers. This could include organising education and careers fairs, at which providers can engage with young people ahead of key decision points.

CONCLUSION

Improving our technical education system will be vital if we are to meet the skill needs of our future economy and ensure that all young people are able to achieve their potential and build successful careers.

The Baker clause was designed to help overcome funding incentives in the system and ensure that all young people are aware of the options available to them – including through technical education. Despite positive intentions to help improve the understanding of technical routes, a year on from its introduction, it is clear

that the Baker clause has failed to achieve its aims. Compliance has been limited, and most technical education providers still find it difficult to access schools in order to inform young people of their options.

If we are to deliver on the aims of the Baker clause, we need to improve enforcement. Instead of relying on case-by-case enforcement by a remote DfE, Ofsted should play a more proactive role both in ensuring compliance and in making a wider assessment of the quality of careers education, advice and guidance.

Beyond enforcing compliance, there is more that can be done to deliver on the aims of the Baker clause. Given their central role in shaping decisions, parents should be engaged and informed about the opportunities available to their children, including through technical education.

A UCAS-inspired online resource tool should be developed to support young people and their parents understand the variety of options available to them.

Local authorities should play a central coordinating role at the heart of the system, with a responsibility for encouraging collaboration and partnership working between schools and other education and training providers.

Together these changes can not only help ensure that schools are fulfilling their statutory duty, but will also help to improve awareness of technical education and thereby help tackle the long-standing under-valuing of this critical part of our education system.

We still have a long way to go before technical education is seen as an equal to academic routes, and more needs to be done to invest in the quality of training and facilities so that the next generation have the skills they need to pursue the career path they want. But making the Baker clause work would be an important step to achieving a more diverse education system that provides real opportunity for every student.

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