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Choice and diversity in governance in the English alternative provision sector: Implications for educational equity

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Abstract

Despite the continued global prevalence of discourses of educational inclusion, young people across local, national and international contexts continue to be educated outside of mainstream schools. In England, a diverse market of providers—known as alternative provision (AP)—cater for many of these young people. Unlike the mainstream school sector, where diversity of provision has been positioned as a key facilitator of parental choice and improved standards, there is limited evidence on how diversity and choice operate in the AP sector. This paper contributes to addressing this gap by analysing the range of organisations operating under the auspices of AP and their associated governance and regulatory mechanisms. Document analysis of the approved list of AP in a case study local authority demonstrates a diverse set of organisation types and associated governance arrangements, with a common focus on compliance and a lack of accessible publicly available information. We argue that as a result, the most disadvantaged children and families may be underserved in relation to diversity and choice policy imperatives. We conclude by highlighting potential consequences of poorly understood governance in AP for the achievement of equity goals—consequences which are of relevance across international educational contexts.

KEYWORDS

alternative provision, governance, inclusion and exclusion, inequity and social justice

Key insights

What is the main issue that the paper addresses?

The paper explores the neglected issue of legal status, governance and associated issues of equity in the diverse organisations that fall under the auspices of alternative provision in England.

What are the main insights that the paper provides?

Our analysis finds a highly diverse set of organisation types and associated governance arrangements, with a common focus on compliance and a lack of accessible publicly available information. The paper argues that the inaccessibility and complex nature of these arrangements contributes to the most disadvantaged children and families being underserved.

INTRODUCTION

Whilst global education discourses promote ideals of inclusive, equitable and quality education for all (Ainscow et al., 2019; United Nations, 2022), significant populations of young people educated outside of mainstream school continue to exist in many countries around the world (Mills & McCluskey, 2018). The existence of these educationally excluded populations is a cause for concern, as they are more likely to have poorer educational experiences and outcomes (Arnez & Condry, 2021; Department for Education, 2022b; Done & Knowler, 2023; Obsuth et al., 2022). In the English context, many such learners are catered for in the alternative provision (AP) sector. This population includes young people of compulsory school age who do not attend mainstream or special schools due to permanent exclusion and health-related issues (Department for Education, 2018a). The AP sector caters for some of the most disadvantaged learners in the English education system, including those eligible for free school meals, from minoritised ethnic groups and those identified as having special educational needs and disabilities (SEND) (GOV.UK, 2024; Thomson, 2021). For some, AP may offer respite or complement the work of mainstream schools, whereas some young people are educated exclusively in AP (Thomson, 2024).

The full size and scope of the AP sector in England is unclear, with different types of AP placements—rather than pupils—being recorded in different ways (Care Quality Commission and Ofsted, 2024; GOV.UK, 2024; Thomson, 2024). For the school year 2023/2024, there were an estimated 26,900 pupils in state-funded AP, 26,400 in school-arranged AP and 47,600 in local authority (LA)-funded placements in non-state-funded AP (GOV.UK, 2024). Due to the complexity in this data collection, these figures should not be added for an overall total population for the AP sector, as some young people may be counted under more than one of these categories. A diverse set of organisations operate under the auspices of AP in England, varying on the basis of legal status, governance arrangements, cost, educational aims, curriculum and qualifications, staffing, accountability and inspection regimes

(Pennacchia & Thomson, 2018). Yet unlike the mainstream school sector, where diversity of provision has been positioned as a key facilitator of parental[1] choice and improved standards (Department for Education, 2022a), very little is discussed or known about the rationale for, information about or outcomes that stem from England's diverse AP market.

This lack of crucial information is striking for several reasons. First, a diversity of provision as a means of creating opportunities for parental choice has been a key underlining principle of education reform since at least the 1980s in England (Courtney, 2015). Second, there is a significant body of evidence deciphering how families are differently positioned within school choice landscapes, which finds parents from lower socio-economic groups less likely to have the knowledge capital, resources, confidence or time to make and/or act on informed decisions about which school to select for their child (Allen et al., 2014; Greaves, 2024; Vincent, 2001). Third, these debates about the inequities of how choice operates become particularly stark when we consider the parents of young people who have been excluded from school or who are being moved into AP.

For instance, in school admissions legislation, parents have a right to 'express a preference for a particular school', yet in fair access panels—which place children at risk of/ excluded from school—there is 'no duty to comply with parental preference' (Department for Education, 2021: 4). Evidence suggests that AP is rarely a choice for pupils or parents, rather children are placed there by commissioning schools or LAs[2] (Gazeley, 2010; Thomson & Pennacchia, 2014). This is perhaps related to the historical positioning of AP as a 'second' or indeed 'last chance', often 'for reasons far beyond personal choice' (Page, 2021: 6). Finally, parents report feeling powerless through exclusionary processes; 'as mere observers to a decision that has radical implications for their son's/ daughter's future education… [and] voiceless in… decisions regarding future education options' (Done, 2022; Feingold & Rowley, 2022; Martin-Denham, 2022; McDonald & Thomas, 2002: 118).

We posit that such evidence and debates make it important to provide greater critical analysis of the diversity of the AP sector in England. A relatively unexplored area of such diversity relates to the types of AP organisations operating, and their associated governance and accountability mechanisms. We know, for instance, that for-profit, charitable and state-maintained organisations all operate in this space (Department for Education, 2013; Mills & Thomson, 2022; Ofsted, 2016), yet their associated legal, governance and regulatory systems have not been mapped. Moreover, there is an absence of understanding of how these features of diversity may relate to the quality of educational offer. Conceptualising these aspects of diversity is becoming increasingly important given growing debates about the risks associated with unclear regulation and accountability, particularly in relation to so-called 'unregistered' AP.[3] It is also likely to have important implications for educational equity, as it alerts us to issues of parity in terms of how parents are equipped with information to navigate an education sector characterised by diversity.

In this context we consider the position of a parent trying to navigate the AP market in a local area, to understand what kinds of provision are on offer and to compare the provision their child has been offered with what else might be available. We take the position that parents in AP should have the same rights to accessible information as those in the mainstream. Our hypothesis is that a diversity of types of AP organisations, and a lack of easily accessible information, acts as an additional barrier that contributes to people from disadvantaged groups being underserved.

We analyse the different kinds of AP on offer in a single LA-approved list of providers, alongside an analysis of online information. We assess whether it is possible to understand from publicly available information what similarities and differences exist between different organisational types, their governance and accountability regimes, and whether there is any link made with the quality of educational offer. The overall picture we report is one of

considerable complexity and limited public information sharing, which has important implications for educational equity.

The paper begins with a review of the research context and evidence base informing our analysis, before the methodology is described. We then present the key findings from our review before making three central arguments about the implication for understanding the diversity of the AP sector through an educational equity lens. Our conclusions outline further important avenues for research, particularly given the global prevalence of educational exclusion and school diversity, choice and self-governance policy rationales.

RESEARCH CONTEXT AND EVIDENCE BASE

For readers not familiar with the way AP operates in England, some background context is useful. AP has become an important part of the education landscape in England, educating the growing number of young people who mainstream schools are unable or unwilling to cater for (Timpson, 2019). AP is a growing and diverse market (Department for Education, 2018b; Thomson & Pennacchia, 2014) which serves some of the most marginalised young people in England (GOV.UK, 2024; Thomson, 2021). The diversity in the AP system is connected with a broader education policy logic operating in England and internationally, through which policymakers:

> … have embraced a pair of closely linked ideas about how to improve their public education systems. First is the idea that parents should have the right to choose the schools that their children attend. Second is the notion that schools should be self-governing so they can distinguish themselves and thereby offer parents a range of choices.
>
> (Fiske & Ladd, 2017: 31)

Parental choice has been a driver of English education policy since the Education Reform Act (1988). Whilst remaining within a state system, funding would now follow students through their school trajectory, in turn positioning parents as customers and thus requiring schools to compete for their business (Ball, 1990). Central to this marketised model of education is the role of inspections undertaken by the Office for Standards in Education, Children's Services and Skills (Ofsted) (see, e.g., Clapham et al., 2016). Ofsted is a non-ministerial, independent body that undertakes inspections of educational institutions including independent schools, state schools, academies and childcare facilities in England. Although independent of government, Ofsted is accountable to Parliament because central government provides its funding and Ofsted's actions must also be explained to the Education Minister.

For parental choice to operate within this accountability-driven market, schools must be able to differentiate themselves; a policy logic that has resulted in some 70–90 different school types in England (Courtney, 2015). The actors and entities involved in providing public education have diversified, transferring responsibility and assets away from public providers towards corporate, religious and philanthropic organisations (Ball & Junemann, 2012; Courtney, 2015). The establishment of free schools and academies has taken ownership and control of schools away from LAs and shifted to new kinds of organisations, running new kinds of schools within the state sector. This landscape is further complicated by the growth of multi-academy trusts, which offer greater diversity outside of the LA and yet at the same time merge schools into larger trusts, leading paradoxically to uniformity and reduced choice for parents (Baxter & Floyd, 2019).

For authors including Fiske and Ladd (2017), Wilkins and Gobby (2024), Clapham (2024) and Wilkins and Mifsud (2024), this diversification has been underpinned by an autonomous

school governance model, through which funding is allocated directly to schools rather than via local democratically elected education authorities. As more schools are directly accountable to central government, the importance is raised of government having opportunities to report against consistent criteria across schools, and steer behaviour from the centre (Ozga, 2009). The accountability—and disciplinary—landscape that emerges (see Ball, 2003) includes elements aimed at ensuring schools meet a consistent minimum threshold of standards, are legally compliant and have governance systems in place with clear lines of decision-making and responsibilities.

In this paper we explore the types of organisations and systems of governance in AP and consider the role of the LA in the sector.

DIVERSITY, CHOICE AND SELF-GOVERNANCE IN THE AP SECTOR

The policy logics outlined above have had various, including potentially unintended, effects on how the AP sector has developed in England, particularly in relation to its growth, diversity and implications for equity. The policy logics of choice and self-governance, and ensuing messiness of the state education system, has reproduced and legitimised social divisions (Ball, 2018). There are two aspects of this that have relevance to the present analysis. First, the logics ensuing from this system have played a role in the growing phenomenon of school exclusion and the requirement for an AP sector to cater for those outside of mainstream school (Pennacchia, 2024). The accountability approaches that have accompanied the self-governing school model—particularly benchmark data targets and comparison between schools—have created a sharper focus on performance, which has often been at the expense of inclusion (Lupton & Hayes, 2021), with students pushed out of the mainstream because they are deemed detrimental to school performance (Partridge et al., 2020).

Second, as noted in the introduction, evidence maps the ways choice mechanisms in schooling have entrenched educational inequalities. Meanwhile, the evidence on parental interactions with school systems when their child has been excluded or is being moved to AP highlights experiences of powerlessness (Timpson, 2019). Parents describe a lack of support and advocacy on their behalf through the exclusion process, whilst some professional discourses operating in this space position parental deficit as an important lens to understand why children come to be excluded (Care Quality Commission and Ofsted, 2024; Gazeley, 2012). AP is used following, or to avoid, school exclusion and so this move often happens at a time of crisis and with little planning (Timpson, 2019). Such circumstances mean that parents typically have 'little or no choice' (Page, 2021: 67) if or where their child attends AP. Some AP explicitly states that they cannot be chosen or applied to directly by parents, requiring referral through a commissioning body such as a school or LA. Meanwhile, the multifarious and uneven nature of AP means that even where choice is available, options are likely to be unclear. Parental choice policy logics are one facet of a broader 'responsibilisation' of parents that has emerged through a moulding of rational and calculating neo-liberal subjects (Vincent, 2001). The result seems to be that less well-positioned parents have become highly responsibilised for the emotional, social, educational and physical development of their child (Vincent, 2001), whilst experiencing school exclusion and AP allocation processes as disempowering and confusing.

DIVERSITY AND CHOICE: PURPOSEFUL OR SERENDIPITOUS POLICY?

In the context of mainstream schooling, speeches, policies and legislative changes over time indicate a broad cross-government trajectory, whereby principles such as diversity of

provider, self-governance and parental choice have been purposefully utilised as levers to improve educational quality (Courtney, 2015). The proliferation of new types of schools has complicated the state school sector, nonetheless maintained schools are expected to comply with a range of governance and accountability mechanisms common to all schools. In contrast, we characterise the diversity of the AP system as somewhat more unplanned, inadvertent and serendipitous. The current system results from a mixture of intentional and unintentional policies, historical sector neglect and, more recently, quick policy interventions to get a handle on the sector as discourses of risk intensify (Department for Education, 2022c, 2023; Wilkins & Gobby, 2024). Policy indicative of this trend may be the proliferation of new school types, which has resulted in the extension of the academy and free school models into the AP sector. Furthermore, the trajectory of mainstream education policy has normalised both system complexity and the idea that public education can be provided by a range of different entities, resulting in:

> … a plural, and fragmented, array of diverse providers, contractors, and agencies, set within a plethora of mediating partnerships. Much of this array—its management, ownership, and relations—is occluded or opaque and differentially effective.
>
> (Ball, 2018)

This might be one reason why the AP sector has been left to become so complex and poorly understood: such complexity is an extension or by-product of broader school reform, which 'perpetuates and exacerbates the messiness and incoherence' (Ball, 2018) in the education system.

Finally, as with the mainstream sector, it appears to be accepted that 'school choice' markets operate imperfectly, because they depend on what provision is actually available in the area,[4] parents *knowing* what is available, how it differs and in what ways this matters, and parents having the skills and resources to navigate the decision-making process. For instance, choice of AP might be limited as there are some LAs with no provision judged as good by Ofsted (Gill et al., 2017). Meanwhile, there is no single source of information on AP and what it means to be, say, an AP academy rather than a charity which runs an AP. It is here that the present analysis is situated and aims to bring sharper focus.

THE PRESENT STUDY

Our study aims to bring greater clarity to the diversity of the AP sector, connecting this into broader debates about policy rationales of choice, diversity and governance and their implications for educational equity. There are various aspects of diversity in the sector (see Thomson & Pennacchia, 2014), and we focus on one of these—the legal status of the provision. Legal status is one important way of categorising school/provision type because it:

> … sets differentiated parameters for areas such as the curriculum, governance, employment policy, pupil selection and employees' pay and conditions, which are organisationally and educationally consequential.
>
> (Courtney, 2015: 803)

In our case, we focus on legal status because it has implications for the neglected area of governance in AP and the contested area of regulation in the sector.

Indeed, despite national government positioning governance as crucial to provision of high-quality education for disadvantaged children, AP governance has been a neglected arena. The

term 'governance' is widely used in education, without agreement on a firm definition, although the Department for Education (DfE) tend to use governance to mean management approaches focused on holding senior leaders to account for the financial and educational performance of the school (Wilkins & Mifsud, 2024). According to national government, strong governance in educational settings includes—but also moves beyond—legal compliance, and is evidenced by strategic leadership, high accountability, skilled governors with clearly defined roles and responsibilities, clear and transparent reporting, and ongoing evaluation of the effectiveness of governance (Department for Education, 2024). Our methodology allows us to focus in particular on transparency of publicly available information and compliance with regulatory demands. Governance is increasingly positioned as key to the quality and effectiveness of educational institutions whilst, conversely, poor governance is equated with institutional risks and failure (Ball & Junemann, 2012; Department for Education, 2022b).

We hypothesise that an analysis of organisation types and related governance and regulation holds potential insights about the internal and external checks and balances that exist in the AP system and the lines of decision-making and accountability which seem important to understand given the growing number of (mostly disadvantaged) children attending AP. AP is currently a site of heightened visibility in policymaking, and concerns about risks and poor quality in the sector (Department for Education, 2022c, 2023). It is therefore somewhat surprising that the governance arrangements and models that exist in this varied sector have been given little consideration, including in national government's SEND and AP Improvement Plan policy document (Department for Education, 2023) and in a sector-informed toolkit to inform quality in AP (Centre for Social Justice, 2022). This paper aims to shed some light on the complexity of types of provision and to ask how to maintain the unique strengths of AP whilst also ensuring high-quality and equitable education, public information and good governance is in place.

METHODOLOGY: MAPPING THE AP GOVERNANCE SPACE

As investigating AP governance arrangements is a new and underexplored area, we developed our own methodological approach (Matthews et al., 2024 undertook a similar piece of work analysing websites in relation to public policy). Our analysis centred on the 'approved provider' AP list in a single LA. We take this LA as a starting point for analysis, to elicit what may be found through such an exploration. As there is no comprehensive central record of what kinds of organisations are running AP nationally, or of who attends, it is not possible to take an LA as typical or to offer a representative sample and we do not make this claim. Instead, we focus on one LA in order to develop a methodology, to highlight complexities and to generate questions for further study.

All AP providers on this list have successfully tendered to be an approved provider and can subsequently be commissioned to provide school places for young people within the LA jurisdiction (this process is explained in more detail below). We used a document analysis approach (Bowen, 2009; Morgan, 2022) to find, select, review, analyse, interpret and synthesise publicly available documents about these provisions. Document analysis identified 29 AP organisations listed as 'approved providers' by a unitary LA in England. On closer examination, we discounted two providers from consideration, which Companies House had listed respectively as a dormant company and a dissolved company, leaving us with 27 organisations included in the analysis for this paper.

Our analysis was undertaken in January–March 2023 and focused on the internal institutional governance arrangements in each AP, and their alignment with wider systems and regimes of governance and regulation, including Ofsted inspections, LA regulation and governance expectations that stem from their legal organisational status, for instance being

a registered charity (see, e.g., Wilkins & Mifsud, 2024 for a more detailed examination of governance systems). We analysed their registration with official bodies such as Companies House, The Charity Commission and Ofsted, which we regarded as important forms of external governance and accountability. These organisations require the submission of annual reports, accounts or inclusion in quality inspection cycles; reporting on the income and scale of their enterprise; and providing information regarding governors, trustees and directors as part of demands to be transparent. Based on this, several important distinguishing characteristics of the governance structures of the AP were identified (Table 1).

In their review of LA information on the Local Offer, Matthews et al. (2024) found that required information was often absent and that LA websites lacked accessibility features. This study takes a similar approach and asks what information is publicly available about the nature and quality of AP governance in one local area, as shown in Table 1. We visited the websites of each AP and recorded any reference to their systems of governance, both internal and external. The former might refer to institutional policies, details of governing bodies and any documentation pertaining to core functions of governing—such as setting organisation mission and strategy, scrutinising decision-making and supporting the financial solvency of the organisation. The latter includes alignment with wider regulatory systems such as inspection by Ofsted or the Independent Schools Inspectorate. Although only partial representations of governance activity, we nonetheless view these public details as offering important clues and insights as to the perceived role, status and importance attributed to governance in particular institutions and sectors.

In the following section, we present our main findings based on this analysis.

FINDINGS: BRINGING CLARITY TO THE DIVERSITY OF GOVERNANCE ARRANGEMENTS WITHIN THE AP SECTOR

Our key finding is that a highly diverse set of governance arrangements are apparent across the AP in our sample. This diversity stems from two key factors: diverse AP organisational types and diverse alignment with wider regulatory systems. This is presented in Table 2.

Table 2 indicates the legal organisational status of the 27 AP providers on the approved list we analysed, along with definitions explaining the legal expectations for regulation and other forms of governance for an organisation of this type. We found six organisation types in the sampled LA approved provider list. During analysis we found that each AP that was a registered charity were also registered as private companies limited by guarantee, with no share capital. This is because charities must meet one of 13 agreed purposes described in the Charities Act (2011)—making money from trading is not one of these.

These organisations therefore appeared to have also formed parallel private companies, which allowed them to generate profit and reinvest these to aid the advancement of the not-for-profit activities. Such organisations operate under parallel governance regimes: the Charities Act (2011) and the Companies Act (2006). We would therefore expect to see governance features which reflect both regimes. For instance, the registered charity which is also a limited company by guarantee will have a legal constitution setting out its charity's purpose. Meanwhile, the limited company by guarantee which is also a registered charity would operate under Memorandum of Association and Articles of Association, which articulate the 'rules about running the company agreed by the shareholders or guarantors, directors and the company secretary' (GOV.UK, n.d.-b). In this instance, the charity board would have trustees who would also be listed as directors of the charitable company at Companies House. This dual status is also true of AP academies, which are part of multi-academy trusts (MATs).[5] The legal governance of a MAT is the same as the legal governance of a registered charity AP. MAT governance comprises a

TABLE 1 Online search details.

	Item	Description
Section a: Information sought from alternative provision (AP) websites		
1.	Registration	Charities Commission, Companies House, tells us if the AP is legally constituted, unconstituted or part of an organisation (e.g., a project within a school)
2.	Location of registered office and operations	Is the AP a local organisation, or an organisation entering the area which has national reach? How activities, services and curriculum are delivered (e.g., at home, at premises, online, outdoors)
3.	Background to the AP	About us—gives an insight into founding motivation and the story behind the enterprise
4.	Years active	Date founded, registered and track record
5.	Trustees or directors	Number, names, experience and length of service
6.	Board papers	Evidence that the Board shown meets, how often and with what annual cycles of business
7.	Executive team/senior managers	Headteacher, CEO, key staff, Director's Welcome
8.	Volunteers	What role if any the AP assigns volunteers
9.	Business documents	For example, constitution, charitable objects, strategy and risk register, safeguarding policy, complaints procedures
10.	Funding and income	Indicative of the scale of enterprise and how it is funded
11.	VAT registration	This implies income. Organisations above a set income have to register with HMRC to pay VAT
12.	Target market and numbers	Scale of the operation. Who does the AP believe to be its customer?
13.	Operating frequency and timings	Daily, weekly and at what times the AP operates. Timetable and term dates posted on the website
14.	Ofsted	Whether AP says it is Ofsted registered or registering—see Section c. Latest Ofsted report, if applicable
15.	Local authority	Evidence of LA governance and regulatory checks on the organisation
16.	Activities	What provision or activities are on offer (e.g., subjects, qualifications, age range of pupils). Are qualifications awarded by the AP or award body? Generalist or specialist AP?
17.	Admissions policy and referral process	What details are given about the admissions and referral routes? Who can refer and how?
18.	Reviews	Does the website give reviews from former pupils, parents or commissioners?
19.	Website currency	Is the information posted up-to-date?
Section b: External information sought from Charities Commission and Companies House websites		
1.	Registration	Date registered. Companies House registration category of business. Company recorded as: active, dormant, dissolved. Charity recorded as: registered, struck off, inactive or ineffective. This told us if there was a difference between the operating status of the charity and their listing by the LA (which there was in two instances)
2.	Registered office and locations	Where is the registered office, does this match the website and is it up-to-date? Areas the AP operates in
3.	Registered years	Date the organisation registered with the Charities Commission or Companies House

T A B L E 1   (Continued)

	Item	Description
4.	Trustees or directors	Number and names of trustees/directors. The number of directors with 'significant control'. Note that the same charity trustees can be company directors. This depends on the legal identity of the organisation (e.g., charity, company limited by guarantee)
5.	Business documents	Charity information and company information
6.	Funding and income	Total income. Total spend. The income accounts reported to the Charities Commission and the date they reported. Charities report to the Charities Commission 10 months after their financial year ends. Limited companies must report to Companies House 9 months after their financial year ends. The financial year usually starts on date of registration as a charity or company
Section c: Information sought from Ofsted website		
1.	Registered or not registered	Is this organisation registered with Ofsted? If so, when was it registered and when was the last Ofsted inspection?
2.	Additional information from Ofsted report	Reviewed Ofsted report for information that may be relevant to this study and not found by reviewing the AP website, the Charities Commission or Companies House website. For instance, change of legal name prior to an Ofsted inspection (on roll/off roll) and an AP operating beyond its DfE pupil numbers

trust board of charity trustees under the Charities Act (2011) and company directors who have responsibilities under the Companies Act (2006).

WEBSITE ANALYSIS: THE PUBLIC FACE OF GOVERNANCE IN AP

We analysed each organisation's website for public-facing information about governance structures and processes, associated documents which might provide clues as to how the provision operates, such as policies and governing board member lists, and information about how the provision is regulated or held to account. Whilst we recognise the value of other types of information available on some of the websites examined, such as curriculum, approach to teaching and the school day (also often absent or hard to find), this is not the primary focus of our research. Instead, we take governance as our focus, as an overlooked aspect of the varied and growing AP sector. Our website analysis highlights a varied and complex picture.

Maintained schools and academies in England are expected to publish, as a minimum, a list of governance-related materials on their website to ensure this information is publicly available (National Governance Association, 2023). The quality and coverage of this public-facing information can be checked as part of an Ofsted inspection. However, we found highly variable practices concerning if and what governance-related information is featured. It was common for AP to present the names of directors or founders and their vision or mission statement on the website, alongside a list of policies on areas such as safeguarding and behaviour. However, only one provider made explicit mention of governance processes. This was the only AP academy on our sampled list, which included a detailed set of governance information on its website, including instruments and articles of governance and up-to-date financial and audit records. This perhaps speaks to the organisational identity of an AP academy, and the related expectations for governance and reporting, which mirror those of any mainstream school. We return to the implications of this lack of public information about governance in the discussion section.

TABLE 2 Types of organisation and regulation.

Organisation type (number in our sample)	Description	Associated governance and regulatory regimes
Limited company (14)	A company is a limited company (Companies Act, 2006) if the liability of its members is limited by its constitution. It has a legally separate identity from the people who own it. Company finances are separate from the personal finances of its owners. It has shareholders. After paying tax, the company can keep any profits that it makes	• Incorporated at Companies House, an executive agency of the Department for Business and Trade, which dissolves companies, registers company information and makes the information it registers available to the public. Companies House is not a regulator; it is a company registrar • A director of a limited company is responsible for: following the company's rules as shown in its articles of association; keeping company records; filing accounts and company tax returns; and informing other shareholders if they might personally benefit from a transaction the company makes (GOV.UK, n.d.-c)

Registered charity (2)	An institution which is established for one of 13 charitable purposes (see Charities Act, 2011), one of which is 'the advancement of education for the public benefit'	• Registered with The Charity Commission, the independent regulator of charities for England and Wales, which is responsible for the registration of charities and ensuring their trustees understand and comply with charity law
		• Has a board of trustees who have six main duties (GOV.UK, 2018):
		  1. Ensure the charity is carrying out its purposes for the public benefit
		  2. Comply with the law and charity's governing document
		  3. Act in the charity's best interests
		  4. Manage the charity's resources responsibly
		  5. Act with reasonable care and skill
		  6. Ensure the charity is accountable

Private company limited by guarantee, without share capital (7)	The company is not owned by shareholders who have shares and profit from the performance of the company	• Registered with Companies House • A charitable company has members who act as guarantors with limited liability for debt in the event that the business is dissolved

Community interest company (CIC) (2)	A CIC is a limited liability company, which means the liability for its debts is limited. It is incorporated under the Companies Act (2006) by the Registrar of Companies with the specific aim of carrying out activities that provide benefit to a community (Department for Business, Energy and Industrial Strategy, 2016)
	• CICs can take one of three legal forms (Department for Business, Energy and Industrial Strategy, 2016):
	  ○ Company limited by guarantee without a share capital
	  ○ Private company limited by shares
	  ○ Public company limited by shares
		• CICs are registered with Companies House and regulated by The Office of the Regulator of Community Interest Companies
		• A CIC does not have a board of trustees like a charity. However, it must have at least one director
		• The CIC Regulator decides whether an organisation is eligible to become, or continue to be, a CIC. It is responsible for investigating complaints—taking action if necessary—and overseeing the CIC's community purpose and use of its assets (GOV.UK, n.d.-a)
		• Reporting on stakeholder involvement is integrated into the CIC's governance through the community interest company report. A CIC may establish a stakeholder group to scrutinise its work and progress (our CIC do not show this group)

(Continues)

TABLE 2 (Continued)

Organisation type (number in our sample)	Description	Associated governance and regulatory regimes

Multi-academy trust (MAT) (1)	Academies are state schools that are not controlled by the LA. Academies receive funding directly from the government and are run by an academy trust. MATs are not-for-profit companies that run more than one academy under contract with the Department for Education (Haves, 2022)	• MAT governance comprises a trust board of charity trustees under the Charities Act (2011) and company directors who have responsibilities under the Companies Act (2006)
		• MATs structure their governance into three layers:
		  1. *Members* (akin to company shareholders); they have ultimate control over the academy trust
		  2. *Trust-level governing boards with trustees* responsible for the same three core governance functions performed by the governing body in a maintained school: setting the direction, holding the headteacher to account, ensuring financial probity. They also oversee local boards operating individual academy schools
		  3. *Local governing bodies with local governors*: local bodies, which technically function as committees of the Trust Board. They have delegated responsibilities for overseeing a particular school within the MAT. The board of trustees can decide which powers to delegate and retains overall accountability for all academies in the MAT (Governors for Schools, n.d.)

Organisation programme (1)	This is one programme within a larger, registered charity with a manager and whose revenue was £148K in 2022	We can say little about the governance operating in this AP. The programme has a manager who will report to someone as it sits within a larger charity

ALIGNMENT WITH WIDER REGULATORY SYSTEMS

Table 3 outlines which of our sampled AP was also registered with Ofsted. In our sample of 27 schools, 9 were registered with Ofsted, whilst 18 were unregistered. AP providers are only required to register with Ofsted if they provide full-time education for five or more pupils of compulsory school age, or for one or more pupils of that age who are looked after by an LA or have an Education, Health and Care Plan (Department for Education, 2019).

The UK[6] government states that most AP is delivered through organisations which are regulated in the same way as schools, including state-maintained pupil referral units, AP academies, registered independent schools and general hospital schools (Department for Education, 2022c). AP that has the status of an independent school can be inspected either by Ofsted or by the Independent Schools Inspectorate (Ofsted, 2023), although our sample did not include any AP registered as an independent school.

However, the government also note that some AP continues to:

> … be delivered in unregistered settings which fall outside any existing designation as a "school". These include a wide range of providers, from dedicated tutoring companies and online providers to bespoke vocational training and therapeutic support. This provision, commonly known as unregistered AP, is highly valued by some commissioners.
>
> (Department for Education, 2022c).

TABLE 3 Status of registration with Ofsted.

Type of organisation	Total on list	Total Ofsted registered	Total unregistered
Registered charity	2	2	0
Limited company	14	3	11
Private company limited by guarantee without share capital	7	3	4
Community interest company	2	0	2
Multi-academy trust	1	1	0
Organisation programme	1	0	1
Total	**27**	**9**	**18**

Concerns have been raised by Ofsted and the national government about the continued presence of AP which is not registered, including some which meets the requirements for registration. This focus on 'unregistered provision' has been a dominant discourse about AP in recent years (Department for Education, 2022c; Ofsted, 2022). Whilst recognising that such provision can 'offer a crucial "hook" back into learning for children and young people with complex needs who require bespoke packages of education, training, and support' (Department for Education, 2022c: 3), the UK government has voiced concerns about the risks associated with such provision. It has argued that LAs are not consistently undertaking suitable checks on quality, safety or appropriateness of placements. Whilst there is a 'lack of local oversight and transparency about how the placements are managed', children in AP are 'less visible' and more 'at risk' (Department for Education, 2022c: 3). For these reasons, we argue that the varied nature of governance in AP and lack of public information about it is a further aspect of the ways in which young people educated outside of the mainstream may continue to be underserved. It is in this context that LAs have been under growing pressure to develop their commissioning and regulatory processes around AP, and it is this process that we turn to next.

THE LA-APPROVED AP LIST

Whilst the 27 AP providers in our sample were regulated in different ways, one consistent feature they shared was that they had all been through the LA tendering process to become an approved provider of AP. There are several consequences, demands and expectations of being on this list, which we have identified from an analysis of the application form, provider specification and tendering instruction documents publicly available on the LA website. The LA puts out an invitation to tender to be an approved provider, for which institutions must go through a compliance process that centres on completing a form (see Table 4) and the AP will also receive a site visit.

The registration form for LA approval asks for detailed responses and checking, and in the guidance document the LA stresses the importance that applicants are 'explicit and comprehensive in their responses'. Applicants are told that the 'questionnaire … will be the single source of information on which their responses will be assessed'; therefore, indicating that policies are 'in place' is clearly likely to improve their chances of being accepted as an approved provider, whilst it is less clear how follow-up checks are undertaken and the extent to which the quality of the educational offer and outcomes of the provision are considered.

Once deemed to be 'fully compliant', providers are included in an AP directory; as a result, AP can be commissioned by the LA and schools to deliver AP to children and young

TABLE 4 Registration process for LA-approved AP list.

Area of check	Details: What is the LA checking?
Professional standing and business conduct history	• Bankruptcy, criminal offences, misconduct in business or unpaid taxes • Published business accounts for the previous 3 years • Whether any similar previous contracts have been terminated • If the organisation is registered and licensed 'appropriately'
Insurance	• If the organisation has or is willing to take out employer's liability, public liability and professional indemnity insurance
Health and safety	• Former prosecutions for health and safety • Relevant health and safety policies in place • Compliance with health and safety legislation
Safeguarding	• If the organisation has a safeguarding policy • If relevant staff are DBS checked
Equality and diversity	• If the organisation has an equality and diversity policy • If the organisation has been found in breach of equality law in the last 3 years
Policies and procedures	• Gives a long list of required policies, including: admissions, attendance, complaints, data protection and how additional funding for vulnerable children (Pupil Premium) is spent
Modern slavery	• If the organisation meets the criteria for the Modern Slavery Act to apply and, if so, if the organisation is compliant with this act
Business continuity	• Presence of a business continuity plan
Alternative education provision service specification	• A description of the educational offer is sought, including: qualifications offered, capacity, 'types of students' attending and their previous attainment, attendance procedures and destinations data

people. Reports from these organisations, such as compliance and evaluation reports, are shared with local schools to inform their commission decisions around AP. To maintain their place on this list, each AP must supply updated information each year and are also expected (but not required) to attend half-termly AP network meetings and DSL meetings to stay up-to-date with relevant information.

DISCUSSION: MAKING SENSE OF THE DIVERSITY OF ORGANISATION TYPES AND THE IMPLICATIONS FOR EDUCATIONAL EQUITY

Our analysis demonstrates some of the diversity and complexity present in the AP sector. In the following subsection we discuss the potential implications of this for the most disadvantaged learners and their families, before we outline future research that would be required to test and refine these arguments in relation to the national AP picture.

Argument 1: Shortcomings in publicly available information, alongside the complexity of the system, may exacerbate the disadvantage experienced by educationally excluded pupils and their families

Our analysis of the organisations on one LA-approved AP list presents a varied and complex picture of AP governance which raises important issues. First, this multiplicity of arrangements is not well understood. This is part of a legacy of the AP sector operating as a peripheral feature of the educational landscape, often serving an 'out of sight, out

of mind' function in relation to some of the most marginalised children and young people (Hill, 2023; Taylor, 2012). The sector has become more visible and interesting to the government in recent years, but the associated data capture and level of understanding has been slow to catch up (Thomson, 2022). There is little sense of how organisational diversity matters in terms of the educational experiences and outcomes of the children and young people who attend AP. It is unclear, for example, how a particular organisational 'type', or set of governance and regulatory mechanisms, might be more effective than another in the AP space.

We argue that the complexity of the AP sector may be problematic in terms of the way information is made publicly available. This combines with the concerns we have outlined about publicly available information, and the choice and autonomy parents of excluded children are able to exercise. As noted, diversity, choice and accountability have been key principles of English education policy since the 1980s and continue as prevalent present-day discourses surrounding the expansion of self-governing schools. To ensure parents can make informed choices about which school their child attends, the system requires the production of inspection reports and accountability data and regulatory systems to ensure quality and compliance.

However, as Ball (2013: 3) notes: 'the more fuzzy and patchy the system of schools, the more difficult it is for those without the "right" cultural assets to navigate their way through'. Our analysis depicts the fuzziness and complexity of the AP system, alongside a lack of publicly available information for deciphering this complexity. This reaffirms our earlier concern that, despite the existence of a varied AP market, principles of educational choice are weaker for children and young people—and their parents—once they are outside of mainstream schooling provision. The nature of AP providers—who runs them and how they are regulated—is much less clear than for mainstream settings. These concerns resonate with a broader evidence base, which suggests that children in AP have little choice about where they attend (Thomson & Pennacchia, 2014) and that the right of the parent to select a school is weaker when their child is without a school place outside of normal school admission rounds (Pennacchia, 2024). It indicates a lack of parity in how parents and young people are equipped with information within the system.

We are not arguing that a lack of public-facing information about how these organisations are run and regulated is necessarily evidence of poor governance, or that having good information is alone sufficient to indicate effective governance. Our exploratory methodology does not allow us to make this claim, and we are aware that much information sharing between families and AP is likely to be tacit and informal, although the subsequent research we signal in our conclusion would enable us to evidence this more clearly. However, patchy publicly available information does have important implications for the extent parents—who may be particularly concerned about the education of their child after a period of exclusion, missing school or disengagement—are informed about (and empowered to decide) the AP their child attends. If informed educational choice is an important principle for parents in general, it should equally apply to the parents of children accessing AP. This might be even more important given the diversity and complexity of AP organisation types. The complexity we have identified seems more likely to entrench the powerlessness of parents in the exclusion process than empower them.

We note that the evidence base on good practice in AP shows that staff are often effective at building relationships with parents (Care Quality Commission and Ofsted, 2024; Feingold & Rowley, 2022), yet this occurs once a child has had their AP place agreed. As such, there remain issues of parity if the parents of children being moved to AP are not equipped with information to understand key aspects of how AP operates prior to a placement being assigned or chosen.

Argument 2: Approved AP aligns in variable and patchy ways with national regulatory systems

Our findings indicate that the diverse AP sector operates in patchy ways, aligning inconsistently with broader governance and regulatory systems. We identified six different organisation types providing AP in our sample, which equates to six different sets of expectations with regard to internal governance and alignment with wider regulation, for instance through The Charity Commission or Company's House.

We have also shown the balance of those provisions that are registered with Ofsted in our sample, which has important implications for current debates about how the sector should be regulated and accountable (Care Quality Commission and Ofsted, 2024; Department for Education, 2023; Hill, 2023; Morfin & Prescott, 2022). Ofsted registration is one important avenue for articulating the forms of governance in AP and those in mainstream schools, remembering that Ofsted inspection explores all key aspects of a school/provision's work.

However, as Clapham (2024) outlines, the way Ofsted currently inspects governance has been critiqued over many years (the governors in his paper argue that Ofsted should focus more on the development of school governing bodies rather than acting as a disciplinary mechanism). Whilst involvement in Ofsted inspections might bring with it a more systematic focus on governance, it is also the case that the inspection system is currently facing widespread criticism, with accompanying and very live discussions about how to reform it. Criticisms relate to: the reliability and validity of inspection judgements; the effects of high-stakes inspection processes which are causing high levels of pressure and stress amongst the school workforce; and Ofsted's selective use of evidence to inform its view and position on what constitutes effective practice (Menzies & Quilter-Pinner, 2023; Perryman et al., 2023).

It is also worth noting that whilst Ofsted reports are a recognised format of conveying information about schools to parents (Menzies & Quilter-Pinner, 2023), the quality of these reports has been significantly criticised (Clapham, 2024). In relation to AP, there has been particular concern that the Ofsted framework, and its application, is not sufficiently supple to capture the difference the AP sector makes to the lives and learning of young people. All of this highlights the contested role Ofsted currently plays across the English education system. Currently, the relationship between AP and the inspectorate forms part of a larger debate about the purpose, function and structure of Ofsted.

Argument 3: The LA-approved list: Foregrounding compliance and risk management

The consistent area of regulation all 27 AP providers in our sample were involved in was being included on the LA-approved provider list. We want to make two observations about this process in relation to what it tells us about AP governance. First, the application form that AP must compete to be included on the approved list suggests that the LA approach to AP governance is centred on compliance, statutory duty and risk management. Applicants are required to 'tick' to signify that a particular policy or procedure is in place, or that a particular action will be in place if they succeed in making it onto the approved provider list. This compliance-centred process can establish threshold expectations, which must be exceeded for the provider to be a recognised and commissioned provider of AP. Compliance mechanisms are particularly favoured when there is an emphasis on minimising harm or risk, for instance when vulnerable populations are implicated (Wilkins & Gobby, 2024). This may be important to providers, but also appealing to commissioners; for example, it offers a straightforward mechanism for removing AP from the list if necessary.

However, evidence suggests that compliance orientations to governance work can result in 'doing the document' (Ahmed & Swan, 2006); indeed, Taylor's (2012) review found evidence of this approach, with 'LA [staff] … more interested in ticking boxes off on a clipboard than assessing the real quality of the AP' (Taylor, 2012: 8). Ticking a box to confirm a policy or process is in place reveals little about the content of the policy, how it is enacted and the processes in place for overseeing and revising it. These are all key elements that a governing board or board of trustees would be expected to play a role in scrutinising and overseeing, and which would feature in annual cycles of governance business in other educational institutions such as mainstream schools and colleges. Finally, compliance-oriented approaches can focus on meeting minimum expectations rather than improved or innovative practice (see Clapham & Vickers, 2017).

Alongside the application form, our sample LA backs up the need for compliance with annual visits. As 'risk' dominates policy discussions about AP (Department for Education, 2019, 2022c), this focus on compliance is perhaps a logical response from an LA trying to demonstrate it has oversight of the quality and safety of local AP. However, given this focus on compliance and risk management, it is perhaps even more striking that there is no explicit mention of governance in any of the documents associated with tendering to be included on the approved provider list. Governance—and the governance of governance—could here provide an additional layer of assurance for the LA that policies are not only in place but are subject to a process of oversight. We suggest that 'mature' governance (Clapham, 2024) goes beyond compliance, offering strategic planning and development with clear lines of decision-making and responsibility.

It is important to reiterate that this finding does not mean that the AP providers in our sample are not well governed, but it highlights some limits to the available evidence that this is the case. Again, if these are thought to be important checks and balances in relation to mainstream schools, their variability is somewhat striking in a sector that caters for some of the most disadvantaged learners in English education.

Finally, the LA approval process collates a lot of information, but it is not clear how this is made available to parents of children who may attend AP. Rather—in a landscape dominated by discussions of risk—the audience for this information appears to be agencies who may call upon the LA to account for their decision-making around commissioning of AP.

CONCLUSION

We conclude the paper with three further comments. First, whilst this paper begins to bring much-needed clarity to the variability of under-researched elements of the AP sector, we would position this as a starting point for further analysis. A significant remaining question is whether different types of AP organisation are associated with safer, higher-quality or more equitable provision, and whether any of this results from the existence of more mature governance processes (see Clapham, 2024) in some parts of the system, or fit-for-purpose regulatory processes.

Further in-depth qualitative research would shed light on the extent to which parents are included in decision-making processes about the education of a child who is being moved out of a mainstream setting—as well as the extent and quality of the information made available to them both formally and tacitly. This is particularly important given evidence that parents of educationally excluded children are often viewed as a barrier to their child's education rather than an active agent in it (Page, 2021), which is perhaps one reason why public information on what is available remains limited. We take the position that parents whose child is educated in AP have the same right to accessible information as those in

mainstream school, and suggest that a lack of clarity presents an additional barrier for this already marginalised group.

Second, at a time when the AP sector is dominated by discussions of risk, we want to make clear that we are not arguing that this complex landscape and variable alignment with regulatory processes necessarily means that provision is risky or poor quality. We think there is a more nuanced argument to be made here, particularly given that regulatory regimes such as Ofsted are currently subject to a range of critiques themselves. However, the point remains that we still do not have an adequate, systematic understanding of what is happening across the AP sector, and that is a problem—both for the safety and quality of education, but also for the sector being able to push back on risk-dominated discourses and articulate the value of its work (Day Ashley & Pennacchia, forthcoming). Given the growing public profile of AP, and government ambitions to formally bring it into 'an inclusive special educational needs and disabilities sector' (Department for Education, 2023), it seems increasingly important to have a robust evidence base on AP. Case studies of specific LAs and their AP offer may be useful at this point. This corpus should include exploration of what diversity means, how this impacts on the educational and broader outcomes of disadvantaged young people and what a fit-for-purpose regulatory system looks like.

Finally, our analysis contributes new insights into how the most disadvantaged children and families may be unfavourably positioned in relation to diversity and choice policy imperatives. The question of parity is crucial here. In the sampled LA there are 27 providers, and therefore parents and children in this jurisdiction theoretically do have a choice. However, we would venture that there is a tacit rationale operating in the system at present, which suggests that once students are being moved out of the mainstream education system and into AP, choice is no longer understood as a fundamental entitlement.

The information available about different providers appears to be written with commissioners, rather than parents, in mind. Further research is needed to understand how decisions are made about which AP a child is referred to, how much scope there is for parents to be involved in actively choosing and what information they would need to be able to do this. If well-informed choice is deemed to be a right of parents in general, then this should include parents of educationally excluded children. What is crucial here is the likelihood that many families involved with AP are experiencing forms of disadvantage and have often become disenchanted with the education system. As such, it is perhaps even more important that efforts are taken to clearly communicate the benefits and limitations of educational choices of offer—including AP—and to convey how we know these provisions are safe, high quality and suitable for each individual child.

CONFLICT OF INTEREST STATEMENT
There is no conflict of interest to declare.

DATA AVAILABILITY STATEMENT
The data that support the findings of this study are available on FigShare at https://figshare.com/articles/dataset/Choice_and_diversity_in_governance_in_the_English_Alternative_Provision_sector_Implications_for_educational_equity_b_b_Alternative_Provider_Websites_docx/26117179?file=47280262.

ETHICS STATEMENT
The project received a favourable ethical opinion from the NTU Research Ethics Committee.

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Endnotes

[1] Throughout the paper, we use parent to mean parents, carers and family members, in particular who have decision-making responsibilities.

[2] A local authority is a tier of local government responsible for services for people and businesses in defined areas, including social care, schools, housing and planning. The local authority has a statutory duty to provide an education placement for all children in the area it covers.

[3] Unregistered AP are not included in national inspection arrangements (Department for Education, 2022c).

[4] A call for evidence on use of unregistered AP found that: '… half of respondents also reported that unregistered alternative provision is used due to a lack of alternative provision and special school places' (Understanding the use of unregistered alternative provision—May 2024; publishing.service.gov.uk).

[5] A multi-academy trust is a group of aligned educational academies that come together to form a trust. Academies in the UK school system are educational institutions that rely on state funding directly from the Department for Education. When they join a trust, funding is shared between the schools under an Academy Funding Agreement. Changes over time to the academy system have led to a variety of routes to academy status, and different legal forms such as sponsor/convertor (see West et al., 2023 for a more detailed explanation).

[6] Education is a devolved responsibility in Scotland, Wales and Northern Ireland, so the UK government legislates only for education in England.

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