

MUNICIPAL YEAR 2016/2017 REPORT NO. 30

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Schools Forum 8 March 17

REPORT OF:
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	Item: 4c
Subject: School Academy Transfers – Contribution towards Costs	

1. EXECUTIVE SUMMARY

This report provides an overview of the academy conversion process, the responsibilities and obligations that apply to the Local Authority, including an indication of the resources needed to meet these requirements, and with the cessation of the Education Services Grant to inform the Schools Forum of the proposal to secure a contribution towards the Council costs associated with the academy transfer process.

2. RECOMMENDATIONS

The Forum is asked to the contents of this report and:

- (a) Comment on the proposal to charge for a contribution towards the costs incurred by the Council when schools convert to an academy.
- (b) Agree to the inclusion of a clause in the Scheme for Financing that a charge of £5k plus £2 per pupil will be incurred as a contribution towards costs upon conversion.

3. BACKGROUND

- 3.1 The Academies Act 2010 was passed in July 2010. It gives all maintained schools the opportunity to become academies. Those in the first tranche of new publicly funded academies opened in September 2010. They are independent of Local Authority control and able to set their own pay and conditions for staff.
- 3.2 All academies established by the Secretary of State enter into a contract (the Funding Agreement) with a charitable company, which is often referred to as the Academy Trust. The funding agreement provides the framework within which the academy must operate. Further information and details of the Funding Agreement can be found on the DfE website.
- 3.3 There are different versions of the model to reflect the circumstances of different types of school, such as primary, secondary and special. The ongoing funding of the Academy Trust is contingent upon the conditions in its funding agreement being met.
- 3.4 There is no statutory requirement for any formal relationship between local authorities and academies beyond that which is required for the delivery of LA statutory duties. However, LAs will continue to play a key strategic role locally and there will be significant advantages for both academies and LAs in constructive partnership working. All academies are required to participate in coordinated school admissions for primary reception and secondary transfer.
- 3.5 The remainder of this report details the academy transfer process and also the proposal to secure a contribution towards the Council costs associated with the academy transfer process.

4. SUMMARY OF ACADEMY TRANSFER PROCESS

- 4.1 The process of converting to an academy involves the following key stages:
 - (i) The school or schools making expressions of interest to the Department for Education (DfE) and the DfE then confirming their acceptance.
 - (ii) Employment and HR procedures including all consultation under the TUPE Regulations 2006

with staff and unions prior to the conversion. Upon the conversion, all employees of the converting schools, employed immediately before the conversion, will have their contracts of employment transferred to the new academy

- (iii) Approval of the application by the Secretary of State which triggers the start of legal formalities
- (iv) Other practical issues including the arrangements for all service suppliers to the new academy and changing banking and insurance arrangements and associated site and building transfer arrangements
- (v) The Secretary of State's final approval and signing of the Funding Agreement.

4.2 While the workload associated with each Academy conversion may vary according to the complexity of the conversion it is still significant. To manage the increased additional workload, the Council is required to identify additional resources to ensure that the academy transfer process is undertaken in a reasonable timescale, as well as ensuring that the Council liabilities are transferred appropriately to the new academy.

Since the Government's withdrawal of the White Paper, it is uncertain how many schools will convert, but with the cessation of the ESG, it is important that the Council agrees now the resources that are required and seeks to recover these costs from the schools that are going through the process.

5 FORMING THE ACADEMY

- 5.1 Academy conversions can take a minimum of three months depending upon the complexity of the situation and how quickly transfer of staff, assets and land can be negotiated with the Council.
- 5.2 When entering into an Academy conversion, schools receive a grant from the DfE of up to £25k towards their conversion costs.
- 5.3 Legal Agreements

There are two main aspects to an Academy transfer agreement between the Local Authority and the new Academy. These are the Commercial Transfer Agreement (CTA) and the Land Ownership documentation.

(a) Commercial transfer agreement (CTA)

The CTA is the agreement dealing with the transfer of assets and liabilities from the governors of the old school or schools to the new academy or multi academy trust. It has the Council as an extra party and the DfE requires a converting school to try to agree terms with the Council. Depending on circumstances, the final settlement of the CTA can be a much more time consuming exercise than the other documentation. The agreement covers the following areas:

- ensures that all liabilities that were the responsibility of the converting school/governing body transfer to the new academy;
- ensures that liabilities that the Council had for the converting school, up until conversion, are covered. This is necessary as the governing body of the old school ceases to exist on the day before conversion and without this agreement any liabilities incurred by the governing body of the old school would default to the local authority and therefore impact on all schools (School Standards and Framework Act 1998);
- the transfer of contracts & assets and staffing- including terms and conditions
- details all contracts in force including those negotiated by the Authority on behalf of all schools – the majority of contracts will transfer to the academy
- the governing body also needs to provide staffing information including terms and conditions, copies of contracts, details of each employee etc. This information will need to be verified where Enfield is the employer
- any loan agreements with the Council.

(b) Land Ownership

When the Secretary of State for Education signs the Funding Agreement, an order will be made in relation to land ownerships. Depending on the pre-conversion category of school, the

Secretary of State will either require relevant freeholds to be transferred or that the Council grants the new academy(ies) 125 year leases of the relevant school sites. The leases are fairly standard documents and the basic conveyancing process should be straightforward. There are different arrangements for church schools.

Although the basic lease term is 125 years, it can be brought to an end if the relevant Funding Agreement is terminated. There may be other matters necessitating supplemental documentation. Some will comprise 'novation agreements' where the current governing body has contracts with third parties for the supply of services or facilities and those contracts have to be 'novated' by fresh agreements under which the new academy or academies take the place of the old governing bodies to ensure that there is a continuance of relevant services and facilities.

6. COUNCIL COSTS

6.1 The academy conversion process requires extra resources, for which the school is given an allocation towards transfer costs. With the cessation of the ESG there is now a need to seek a contribution towards these costs.

Information gathered from other local authorities indicates that there are varieties of approaches being undertaken, but most other local authorities if not already charging are considering seeking a contribution towards costs. Based on the local costs and practice in other local authorities it is proposed to secure a contribution of £5k plus £2 per pupil for each conversion.

6.2 The contributions will support the following increased workload:

- (i) Legal and Property: To act on behalf of the Authority during the Academy transfer process in order to finalise the CTA and the lease. This will involve purchasing external legal advice where insufficient internal capacity exists to manage the transfer workloads.
- (ii) Finance: To:
 - Assist in the closure of 'old School' accounts and determining the final schools balance;
 - Ensure required closure processes are completed, e.g. bank accounts, purchase cards, petty cash and outstanding income;
 - Manage the finance related processes when transacting with schools / Academies / DfE;
 - Provide financial advice relating to transfer arrangements;
 - Verify any financial aspects of transfer negotiations.
- (iii) Employment and HR: The transfer of contracts of employment, historic terms and conditions and payroll transfers to comply with TUPE regulations.
- (iv) Project Management and co-ordination of the conversion process, which includes initial DfE response, preparation of CTA agreements and final sign off, school meetings and liaison with the DfE, external solicitors, LA officers, etc.

7. CONCLUSION

The work and costs involved are significant for a standard transfer, but much increased if the transfers involves PFI and BSF agreements or where there are complex land use issues or more than one school.

The proposed contribution is considered to be a reasonable proportion of the £25,000 provided to converter schools to cover the cost of conversion. It will not cover all of the costs, particularly for the legal work which will need to be applied. There exists no internal resource for this extra work so the Authority will incur costs either in employing a resource, or externalising the work. Based on initial discussions, the indicative costs incurred by the LA are estimated to be at least £10,000.

It is proposed to operate the new charge from the start of the 2017/18 financial year. The charge will apply to all schools converting after 1 April 2017.