

TELFORD & WREKIN COUNCIL

CABINET 29 JUNE 2017

ACADEMY CONVERSION PROCESS: PROPOSED RECOUPMENT OF COSTS

**REPORT OF ASSISTANT DIRECTOR: EDUCATION & CORPORATE PARENTING
LEAD CABINET MEMBER – CLLR SHIRLEY REYNOLDS**

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

1.1 The report seeks to re-iterate the importance of the Local Authority maintaining close and effective relationships with schools and seeks to promote our services to all schools including those who may decide to convert to academy status in the future.

1.2 The 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 to seek approval to a proposal to secure a contribution from schools, dependent upon the circumstances of the school.

1.3 The recoupment of monies towards the Council's costs associated with the academy transfer process will be within a range of £4,500 and £6,500 and this contribution will be subject to annual review.

2. RECOMMENDATIONS

2.1 Cabinet approves the principle of the recoupment of the local authority's costs from schools in relation to the academy conversion process from September 2017

2.2 Cabinet delegates the Cabinet Member for Education and Skills and the Assistant Director – Education and Corporate Parenting to determine the level of charge to be levied dependent upon individual school factors and also to take responsibility for reviewing charges on an annual basis.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	In the long term this proposal will assist the City Council in ensuring that it can continue to meet its statutory responsibilities regarding the academy conversion process.
	Will the proposals impact on specific groups of people?	
	No	

TARGET COMPLETION/DELIVERY DATE	September 2017	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	We are required to carry out the necessary financial, legal and HR tasks necessary for academy conversion, so the proposed charges will assist the Council's financial position by contributing towards the cost of the resources necessary to undertake this work.
LEGAL ISSUES		<p>Legal Power – Principle legislation comprised of the Academies Act 2010 gives any educational institution ability to apply to the Secretary of state for conversion to an Academy. Section 10 of the education and Adoption Act 2016 sets out a statutory duty that is imposed on Telford & Wrekin Council, and it is legally obliged to facilitate the process of conversion to academy status within a specified time period. No legislation precludes the Local Authority from charging the educational institution for the costs associated with the conversion process.</p> <p>Rationale for Charging and mitigating challenge: Inevitably there will be increased demands on Council Officer time and resources generally when dealing with the intricacies of a complex project which invariably Academy conversions tend to be. Charges must be reasonable and be on a cost recovery basis only. Borough T&W must be able to demonstrate this with transparent cost scheduling. The costs associated more specifically with PFI academy conversions, is arguably substantially higher due to the contractual complexities involved. However, under no circumstances can Local Authorities benefit from this and cannot make any profit. A separate report will follow detailing implications for specific sites.</p> <p>Statutory Guidance and mitigating challenge: Borough T&W must have regard to any Department of Education statutory guidance. Recent guidance includes safeguarding the</p>

		<p>Local Authorities position in permitting them to protect their financial position from liabilities caused by the action or in action of governing bodies.</p> <p>Reciprocal rights to educational institutions place a requirement on Local Authorities to conduct <i>meaningful consultation</i> before proposed changes take effect, and also consulting on any intention to amend the circumstances in which reasonable costs can be recovered in the future.</p> <p>Commercial Transfer Agreement and Land and property structures/ownership will be addressed in accordance with prescribed legal formalities and the law relating to these areas.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	Each academy conversion is unique and officers will continue to ensure that the interests of the Council are protected and any liabilities dealt with in an appropriate manner.
IMPACT ON SPECIFIC WARDS	No	

PART B) – ADDITIONAL INFORMATION

4 CONTEXT

4.1 The Academies Act 2010 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 (LA) control. They are able to set their own pay and conditions for staff, and are able to buy in private services; including buying back services from the LA should they so wish.

4.2 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. The on-going funding of the Academy Trust is contingent upon the conditions in its Funding Agreement being met.

4.3 There is no statutory requirement for any formal relationship between Local Authorities and academies beyond that which is required for the delivery of statutory duties, such as the making and reviewing of SEN statements, securing sufficient education in an area and provision of home-to-school transport for eligible children.

4.4 However, councils continue to play a key strategic role locally and Telford and Wrekin recognises that there are significant advantages for both academies and Local Authorities in constructive partnership working, not least

in ensuring that all academies remain committed to putting Children and Young People first by raising aspirations. We are also keen to foster effective relationships in order to encourage all schools and academies to buy back Local Authority services which are well-established and provide value for money.

In Telford and Wrekin there are currently 11 academies:

Phase	Number
Primary	4
Secondary	7
Special	0

4.5 The process of converting to an academy involves the following steps:

- The school or schools make an expression of interest to the Department for Education (DfE) who then confirm that they are acceptable and give the green light for the process to start;
- Employment and HR procedures including all consultation under the TUPE Regulations 2006 with staff and trade unions to ensure that all employees of the converting schools, employed immediately before the conversion, will have their contracts of employment transferred to the new academy;
- Approval of the application by the Secretary of State which triggers the start of legal formalities;
- Other practical issues including arranging to change all service suppliers arrangements to the new academy and changing banking and insurance arrangements and associated site and building transfer arrangements;
- The Secretary of State's final approval and signing of the Funding Agreement

5.0 RATIONALE FOR CHARGING

5.1 The workload associated with each academy conversion will vary according to the complexity of the conversion. However, it is significant and the Council will continue to require additional resources to ensure that the increased workload associated with 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. It is likely that more academy transfers will go ahead over the next 1-2 years. It is therefore important that the Council agree now the resources that are required and seek to recover these costs from the school that are undergoing the process.

5.2 Academy conversions can take about three months pre-conversion (but may take longer, depending upon the complexity of the situation and how quickly the transfer of staff, assets and land can be negotiated with the Council) and four months post conversion (regarding the financial closure of the LA School accounts and transfer to the new charitable company). The DfE has issued model documentation which is intended to make the process more straight forward.

5.3 When entering into an Academy conversion, schools receive a grant from the DfE of up to £25,000 towards their conversion costs. The Council receives no direct source of funding to cover the costs linked to Academy conversions, however, there is a great deal of officer time required to ensure smooth transfer arrangements are undertaken within a reasonable timeframe.

Until now Telford and Wrekin has absorbed the associated costs of the transfer process within existing resources. Given both financial and staffing pressures the current position is unsustainable and therefore we propose the Council should seek to recoup costs associated with the Academy conversion process without reducing school budgets, as the funding is provided separately by Central Government. It is proposed that the council will recoup a contribution towards their costs which will be within a range of £4500 to £6500 with the maximum contribution being capped at £6500.

5.4 The contributions will support the following increased workload:

Area	Description
Legal and Property	To act on behalf of the Council during the Academy transfer process. This may involve purchasing external legal advice where insufficient internal capacity exists to manage the transfer workloads. To date the Council has drafted the lease documentation based upon the standard model DfE lease. Telford and Wrekin Legal Services will be responsible for acting on behalf of the Council in preparation of the Commercial Transfer Agreement and Land Ownership Transfer Agreement (Lease).
Finance	Finance will provide the following support during the transfer process: <ul style="list-style-type: none"> • 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. • Managing the finance related processes for T&W when transacting with schools / Academies /DfE. • Provision of financial advice around transfer arrangements. • Verification of any financial aspects of transfer negotiations.
Employment and HR	The transfer of contracts of employment, historic terms and conditions, supporting staff and trade union meetings and payroll transfers to comply with TUPE regulations.
Project Management	Co-ordination of the conversion process which includes initial DfE response, version agreements CTA and final sign off, school meetings and liaison with the DfE, external solicitors, Council officers, etc

5.6 Several authorities already make a charge to recover the costs of conversion (see below) and it is understood that other LAs are looking at their cost recovery policy also.

Local Authority	Charge
Staffordshire	£6,000
Norfolk	£5,550
Shropshire	£6,750
Leicester City	£5,000
Coventry	£4,250 - £6,750
West Sussex	£15,694 - £19,644
Birmingham	£3,500 - £10,000
Derby City	£7000 (£25 000 PFI)

6.0 LEGAL IMPLICATIONS

There are two main aspects to an academy transfer agreement between the Council and a new academy. These are the Commercial Transfer Agreement (CTA) and the Land Ownership (Lease) documentation.

Commercial Transfer Agreement

The Commercial Transfer Agreement (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 trust. It has the Council as an extra party and the DfE requires a converting school to agree terms with the LA. 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 takes the place of the old governing body to ensure that there is a continuance of relevant services and facilities.

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 Council and therefore impact on all schools (School Standards and Framework Act 1998);

- the transfer of contracts and assets – staffing, including terms and conditions;
- the CTA details all contracts in force including those negotiated by the Council 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 the Council is the employer;
- agreement concerning any credit union loans from the Council.

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 require that the freehold owner of the school or schools grants the new academy trust a 125 year lease. The long lease is based upon the DfE model lease and the conveyancing process should be straightforward in most cases. In all cases the process will involve the Council considering and deducing its freehold title to the academy and amending the model lease to reflect each individual lease (i.e. all necessary rights granted and reserved particular to that school site). There are different arrangements for church schools. It is worth noting that although the recommended lease term is 125 years it can be brought to an end if the relevant Funding Agreement is terminated.

7. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

None

8. PREVIOUS MINUTES

None

9. BACKGROUND PAPERS

None

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