

**Report to:** Schools Forum

**Subject:** School Academy Transfers

**Date of meeting:** 12 December 2012

**Report by:** Mike Stoneman, Strategic Commissioning Manager

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## **1. Purpose**

- 1.1 The purpose of this report is to provide the Schools Forum with 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 inform of the proposal to secure a contribution from schools towards the Council costs associated with the academy transfer process.

## **2. Recommendation**

- 2.1 It is recommended that the Schools Forum note the content of this report and the following recommendation to Cabinet.
- a. that the Council seek a contribution of £5,000 from the converting school, towards the costs associated with the academy transfer process on the following basis:

The contribution will be capped at £5,000. This will be deducted from the schools account at the beginning of the transfer process. In extreme circumstances the Council may seek an additional contribution if costs significantly exceed the capped figure of £5,000. This will be discussed and negotiated with the School before any further deductions are implemented.

## **3. Background**

- 3.1 The Academies Act 2010 was passed on 27 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 will be independent of Local Authority control. They will be

able to set their own pay and conditions for staff, and will be able to buy in private services; including buying back services from the Local Authority should they so wish.

- 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, and a draft model funding agreement for headteachers and governors is now available from the DfE.
- 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 (LAs) and academies beyond that which is required for the delivery of LA 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. 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;

#### **4. Summary of Academy Transfer Process**

- 4.1 The process of converting to an academy involves the following key stages:
  - 1. The school or schools making expressions of interest to the Department for Education (DfE) and the DfE then confirming that they are acceptable and giving the green light for the process to start
  - 2. 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
  - 3. Approval of the application by the Secretary of State which triggers the start of legal formalities
  - 4. 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
  - 5. The Secretary of State's final approval and signing of the Funding Agreement.

- 4.2 The workload associated with each Academy conversion will vary according to the complexity of the conversion. However, it is significant and the Local Authority will 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 Local Authority agree now the resources that are required and seek to recover these costs from the schools that are going through the process.

## **5. Forming the Academy**

- 5.1 Academy conversions can take about three months, 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 Local Authority. The DfE has issued model documentation which is intended to make the process more straight forward.
- 5.2 When entering into an Academy conversion, schools receive a grant from the DfE of up to £25,000 towards their conversion costs.
- 5.3 The Local Authority 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.
- 5.4 Following discussion with other Local Authorities, it is clear there are various approaches that have been taken. Some Local Authorities have absorbed the associated costs of the transfer process within existing resources, whilst, others such as Swindon, Norfolk and Medway have charged for LA Officer time (all capped at £5,000). Locally, Hampshire CC and West Sussex CC has to date absorbed these costs, whereas Southampton City Council is now actively considering the option of charging on a similar basis to the approach Portsmouth City Council is now proposing.

## **6. Legal Agreements required**

- 6.1 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.

### **Commercial transfer agreement**

- 6.2 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 or academies. It has the Local

Authority as an extra party and the DfE requires a converting school to try to agree terms with the Local Authority.

6.3 Depending on circumstances, the final settlement of the Commercial Transfer Agreement 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 Portsmouth City Council (PCC) 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 CTA covers the transfer of
  - contracts and assets
  - staffing, including terms and conditions
- the CTA details all contracts in force including those negotiated by PCC 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 PCC is the employer
- the CTA also includes agreement concerning any loans from PCC.

### **Land Ownership**

6.4 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 (the Local Authority) 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.

6.4 It is worth noting that 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.

## 7. Local Authority Costs incurred

7.1 The academy conversion process requires extra resource, for which the school is given an allocation towards transfer costs; although some of the costs can be offset against existing internal service level agreement arrangements, to mitigate some of the additional costs incurred, the LA proposes to secure a contribution of up to £5,000 for each conversion.

7.2 The contributions will support the following increased workload:

Area	Description
<b>Legal and Property</b>	<p>To act on behalf of the LA during the Academy transfer process. This may involve purchasing external legal advice where insufficient internal capacity exists to manage the transfer workloads. The Academy provider will be expected to lead on the drafting of legal documentation associated with the transfer process. PCC Legal Services will be responsible for:</p> <ul style="list-style-type: none"> <li>• acting on behalf of the LA in preparation of the Commercial Transfer Agreement and Land Ownership Transfer Agreement.</li> </ul>
<b>Finance</b>	<p>Finance will provide the following support during the transfer process:</p> <ul style="list-style-type: none"> <li>• Assist in the closure of 'old school' accounts and determining the final schools balance.</li> <li>• Ensure required closure processes are completed, e.g. bank accounts, purchase cards, petty cash and outstanding income.</li> <li>• Managing the finance related processes for PCC when transacting with schools / Academies / DfE.</li> <li>• Provision of financial advice around transfer arrangements.</li> <li>• Verification of any financial aspects of transfer negotiations.</li> </ul>
<b>Employment and HR</b>	<p>The transfer of contracts of employment, historic terms and conditions and payroll transfers to comply with TUPE regulations.</p>
<b>Project Management</b>	<p>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, LA officers, etc.</p>