

## **Children and Families Committee**

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<b>Date of Meeting:</b>	12 July 2021
<b>Report Title:</b>	<u>School Organisation</u> : Academisation of Schools
<b>Report of:</b>	Ged Rowney, Interim Director of Children's Services
<b>Report Reference No:</b>	CF/01/21
<b>Ward(s) Affected:</b>	All

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### **1. Executive Summary**

- 1.1 This report captures the processes by which schools across Cheshire East can, if they choose, convert their status from a maintained school to become an Academy School. Over recent years, the conversion rates of schools have reduced due to previous conversions and the national 'expectation' is that converting schools now join an existing multi-academy trust (MAT) rather than convert to a single academy trust (SAT).
- 1.2 This report does not, at this point, respond to the recent national communication relating to the government's vision for every school to be part of 'a family of schools in a strong multi academy trust'. The Local Authority will be meeting with its maintained schools in the near future to discuss this concept as all CE schools, regardless of their status, already have the opportunity to be part of a strong family of schools for the benefit of all CE learners.
- 1.3 An established cross council officer group, chaired by the Education Head of Service, ensures a corporate approach is adopted to support academy school conversions as there are council wide implications. This is particularly, but not exclusively, where the local authority is the landowner and the staff employer and where there are existing trading arrangements with a range of Council services.

1.4 It is proposed that Committee agree the delegation for current and future conversions including academy leases jointly to the Director of Children Services and the Executive Director of Place. If there are matters that are not resolved within the delegations, then a report would be presented to Committee as required. Committee will receive a forward plan at each meeting highlighting conversions due to take place and confirmation of the conversions that have taken place

1.5 This report outlines the legislative framework through which academy conversions take place to give confidence to Committee members that there is a robust process followed to ensure compliance is met.

## **2. Recommendations**

2.1 That the committee delegates the Executive Director of Children's Services in consultation with Chief Finance Officer and Monitoring Officer authority to take all steps necessary to agree and execute the commercial transfer agreement, novation of third party contracts, Shared Use Agreements/Facilities Access Agreements, staffing and information transfer.

2.2 Delegates to the Executive Director of Place in consultation with Chief Finance Officer and Monitoring Officer to take all steps necessary to agree and execute any transactions in relation to land, facilities or shared use agreements.

2.3 Notes that the Chief Finance Officer has authority to take all steps necessary to agree, transfer and adjust relevant budgets and allocate balances in accordance with Department for Education Guidance

2.4 No delegation may be exercised to execute any agreement in 2.1,2.2 or 2.3 where:

- a) the school has a deficit of £100k or there is any significant impact on the Medium Term Financial Strategy
- b) there are substantive third party land interests
- c) any public funds are to be reclaimed under section (land contributions)
- d) any current or proposed legal claim has been identified
- e) where and indemnity is sought against Cheshire East Council on any matter.

2.5 Approve in principle the academy transfer of Bosely Primary School and Audlem Primary Schools

## **3. Reasons for Recommendation**

- 3.1 The Council's consent is not required for the School to convert to an Academy and if the Council does not cooperate with the conversion process and negotiate and enter into lease arrangements and a CTA, the Secretary of State has the power to make transfer schemes under the Academies Act 2010. This is in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council.
- 3.2 An Academy Proprietor is entitled to expect the lease of all the premises and facilities which the school uses and which premises or facilities are owned by the Council. However, some premises and facilities are shared with other Council services. These areas are a matter for negotiation and if agreement cannot be reached then the Council should make application to the Office of the School's Adjudicator on or before the conversion date seeking resolution of the dispute.
- 3.2 It is therefore preferable for the Council to reach agreement with the Governing Body of the School and the Trust and enter into the lease arrangements and a CTA in respect of these matters, rather than be subject to transfer schemes which may be made by the Secretary of State. This agreement will be overseen and scrutinised by various specialist service teams including legal and property services in order to present the case to the Director of Children Services for final approval.
- 3.3 In summary, the recommendations as outlined will allow for the Committee to be fully confident that appropriate steps are being taken to meet the requirements of the Academies Act and maintain an overview of academy conversions across the borough.

#### **4. Other Options Considered**

- 4.1 Refusal to approve the proposed delegation and to bring reports to Committee on an individual basis for each academy conversion. This is not thought to be the best use of resources as individual reports would be very similar in nature.
- 4.2 Failure to cooperate and negotiate and enter into the lease and CTA could result in the Secretary of State making transfer schemes which would be binding on the Council. Therefore, Committee decision making power is limited.
- 4.3 Failure to complete the statutory transfers and title registrations could jeopardize the conversion process.
- 4.4 There remains an option for maintained schools to federate in either a soft or hard structure. This allows for formal collaborative working without the need to achieve academy status. Some maintained schools are considering this option.

## 5. Background Information

- 5.1 As of May 2021, of the 156 CE schools, 65 (42%) are maintained and 91 (58%) are made up of academies (sponsored and converters) and free schools. The majority of our secondary schools are academies.
- 5.2 There are just over 40 separate academy trusts across CE some of which span across Local Authority borders. As an example, one of our largest trusts is the 'Aspire Trust' with 9 CE primary schools mostly located in the north of the borough.
- 5.3 Since academisation was introduced, Schools must ensure that all necessary legal and structural arrangements are in place should the governing body take the decision to become an academy. Once the Local Authority has been informed of an application to convert, a series of steps are taken by LA service teams which require detailed work to ensure full compliance is in place ahead of an agreed conversion date. In summary, these steps include:
- a. Ensuring land transfer arrangements are in place in terms of the site boundaries and any potential disputes or restrictions.
  - b. Financial management of all accounts is accurate and compliant.
  - c. Traded services through CHES are effectively transferred.
  - d. HR support is provided as appropriate for transfer of staff.
  - e. Legal documentation is prepared, and agreements finalised ahead of proposed conversion date
- 5.4 Currently, there are three schools wanting to convert as from 1<sup>st</sup> September 2021. The specific details of these three schools are:

### Audlem Primary

Lease agreed – issues relating to the onsite nursery and its potential expansion will be addressed post conversion

CTA – not expecting any complications – awaiting final agreement.

TUPE – completed – no issues.

Finance – will be reviewed around final balances ahead of conversion – no issues expected.

### Bosley Primary

The Diocese own the school building and there is no current lease for school playing field which has third party ownership.

Upon conversion, the Trust will need to establish a new lease for the playing field and agree own terms.

CTA expecting no issues.

TUPE – completed – no issues.

## **6. Consultation and Engagement**

- 6.1 Section 5 of the Academies Act 2010 requires the school's governing body to consult with “such persons as they think appropriate” about whether the school should convert into an academy. The process is generally flexible, and schools have broad discretion as to how it is carried out.

## **7. Implications of the Recommendations**

### **7.1 Legal**

- 7.1.1. The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an academy. The report sets out the implications if the Council fails to cooperate and enter into a lease and CTA.
- 7.1.2. The CTA is negotiated and drafted by Legal Services and the Council's CTA is closely aligned to the DfE standard template. Where there is shared use on the school site, a Shared Use Agreement or a Facilities Access Agreement is drafted using the Council's standard agreements.

### **7.2 Finance**

- 7.2.1 The Academy will be responsible for all outgoings related to the land to include public liability and premises insurances or participation in the DfE Risk Protection Arrangement, and repairs / maintenance.
- 7.2.2 The Council will retain a landlord role, but the leases will contain provisions for recovering costs for approvals required under the terms of the leases e.g. for alterations.
- 7.2.3 When a school is to join an academy trust (AT) of an external sponsor and open as a sponsored academy, the law requires that the surplus will transfer to the AT. Where a school with a deficit is to join the AT of an external sponsor and open as a sponsored academy, the deficit remains with the LA, to be funded from its core budget. The local authority has separate processes to review the carry forward balances and forecast balances for maintained schools.

- 7.2.4 The Trust will receive its funding direct from the DfE. Government funding for CE maintained schools will be reduced proportionately.
- 7.2.5 The CTA includes standardised text that confirms the Council remains liable for any pre conversion costs and the academy is responsible for post conversion costs. It must be noted that any cash balance or local bank account balance remains the property of the Council (excluding any local school funds).
- 7.2.6 The Finance Service has to complete a “final balance” calculation for each conversion to ensure all costs and funding are correctly allocated. This can be complex and it must be agreed with the school within three months of conversion. Given the nature of funding it is better for conversions to take place on 1<sup>st</sup> April.

### **7.3 Policy**

- 7.3.1 The implementation of academy conversion is undertaken in accordance with national legislation as per the various Education Acts as referred to earlier in this report.

### **7.4 Equality**

- 7.4.1 An Equality Impact Assessment (EqIA) has not been completed because no service, policy or organisational changes are being proposed.

### **7.5 Human Resources**

- 7.5.1 The Council employees in respect of the School will transfer from the Council to the Academy under TUPE regulations. The school's HR provider ( often bought back through a CE dedicated HR service for Schools) will deal with the human resource implications with the Council keeping a watching brief to ensure all statutory requirements are met and often responds where Union concerns are raised.

### **7.6 Risk Management**

- 7.6.1 The management of risk is governed by the structured legislative process which is followed; this ensures due diligence is undertaken at all stages.
- 7.6.2 The structured meeting of Local Authority Teams tries to ensure, wherever possible, that sufficient time is given to complete academy transfers in a realistic timescale and through robust legal processes.

## 7.7 Rural Communities

7.7.1 There are no direct implications for rural communities. However, small schools joining together to create a Multi- Academy Trust does not always provide the economies of scale to generate a more viable option

## 7.8 Children and Young People/Cared for Children

7.8.1 There is, in most cases, no impact on learners unless the conversion to an academy involves a sponsorship route where this can result in the potential for changes to senior staff, change of school ethos and practicable changes to school name or uniform.

## 7.9 Public Health

7.9.1 There are no direct implications for public health.

## 7.10 Climate Change

7.10.1 There are no direct implications for climate change.

<b>Access to Information</b>	
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Appendices:	None
Background Papers:	<a href="https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools">https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools</a>

