

ACADEMY CONVERSION COST RECOVERY

Report of the Director for Education, Work and Skills

1. INTRODUCTION AND PURPOSE OF THE REPORT

- 1.1. The report sets out the Local Authority's proposal to charge maintained schools for the costs of conversion to become an Academy School on a full cost recovery model.

2. BACKGROUND & CONTEXT

- 2.1. The Academies Act, 2010 received Royal assent on 27 July 2010. It gives all maintained schools the opportunity to become academies, which are independent of local authority 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 local authority should they so wish.
- 2.2. 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 head teachers and governors is available from the Department for Education ("DfE").
- 2.3. In its White Paper: 'Opportunity for all: strong schools with great teachers for your child' the DfE set out clear ambitions for all schools to operate under one trust led governance structure by 2030.
- 2.4. There are currently 8 of 14 secondary schools in Stockport which are academies and 11 of 85 primary schools which are academies. This small number of academy conversions have taken place over the last 10 years demonstrating that to date there hasn't been any real traction to the academisation agenda in Stockport.
- 2.5. Despite the historic context, the White Paper appear to have provided a catalyst with three academy conversions taking place in the last 12 months and a further 12 conversions are expected to occur in the next 12 months within the borough.

3. ACADEMY CONVERSION

- 3.1. The process of converting to an academy involves the following key stages:
 - the school makes an expression of interest to the DfE, which confirms that it is acceptable and giving authority for the process to start;
 - employment and HR procedures including all consultation under the TUPE Regulations, 2006 with staff and unions commence 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 - except the head teacher of a sponsored academy);

- approval of the application by the Secretary of State starts the legal process of conversion;
- land and employee transfer processes commence, and all other relevant issues – for example, changing all banking, insurance and service suppliers' arrangements to the trust; and
- finally, the Secretary of State grants approval of the trust, with a closing date for the closure of the school and an opening date for the academy school, through the signing of a funding agreement.

3.2. The conversion process has a cost. This will vary from school to school, depending on, for example, the number of staff, whether land transfer is complex, and any contractual issues, including those arising from schools with private finance initiative (PFI) funded projects.

3.3. Parliament's committee of public accounts noted that:

- Local authorities can incur significant costs when schools become academies, which affects their capacity to support their remaining maintained schools. The department does not collect data on the costs incurred by local authorities in supporting the conversion process.
- A survey by the Local Government Association suggests that the average cost to local authorities, in terms of staff time and spending on things such as legal fees, has been between £6,400 and £8,400 for each maintained school that becomes an academy. Some local authorities have chosen to charge schools the fees to recover these costs; evidence suggest the charges may range from £2,500 to £20,000 per school.

3.4. The workload associated with each academy conversion will vary according to the complexity of the conversion. However, it is significant and the council requires sufficient 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's liabilities are transferred appropriately to the new academy.

4. FULL COST RECOVERY PROPOSAL

4.1. Schools converting to an academy are entitled to a DfE grant of £25,000 towards their conversion costs, or £35,000 if the school is subject to PFI funding. Local authorities receive no direct funding to cover the costs linked to academy conversions; however, a significant amount of officer time is required to ensure smooth transfer arrangements are undertaken within a reasonable timeframe. Therefore, many local authorities now levy a full cost recovery charge on schools for this work.

4.2. It is proposed that a full cost recovery model of charging y is adopted to ensure that costs that fall outside of existing contracted services (for example that are already covered for in a service level agreement between a school and the local authority) for the following activities:

- Legal and property: to act on behalf of the local authority during the academy transfer process in order to finalise the Commercial Transfer Agreement (CTA) and the lease. This may involve purchasing external legal advice where insufficient internal capacity exists within the council's legal team to manage the transfer workloads.
- Finance officers have a wide range of tasks, as follows:
 - assist in the closure of 'old' school accounts and determining the final school's balance;
 - ensure required closure processes are completed, e.g. bank accounts, purchase cards, petty cash and outstanding income
 - manage the finance related processes for the council when transacting with schools, academy trusts or the DfE;
 - provide financial advice relating to transfer arrangements; and
 - verification of any financial aspects of transfer negotiations.
- Human resources: the transfer of contracts of employment, historic terms and conditions and payroll transfers to comply with TUPE regulations.
- Project management and co-ordination of the conversion process. This includes:
 - the initial response to the DfE, version agreements for CTA and final sign off, school meetings and liaison with the DfE, internal legal team and possibly external solicitors.
 - The work and costs involved are significant for a standard transfer but much increased in transfers involving PFI agreements or where there are complex land use issues.

4.3. An established cost recovery calculator tool (used widely across the Council) will be used to calculate the cost incurred to internal teams. An obligation will be inserted into the CTA Commercial Transfer Agreement which places a requirement on the school to draw down (utilise) the £25,000 conversion grant from the DfE and prioritise its spend towards covering the local authority's costs. Costs will be assessed and charged to the schools upon completion of the legal documents associated with the conversion.

4.4. Where a conversion is delayed or deferred, the council will determine on a case-by-case basis whether costs the council has incurred to date during the process of conversion will be charged to school.

5. FINANCIAL CONSIDERATIONS

5.1. The academy financial support grant of £25,000 is paid into the school's existing bank account shortly after the academy order is issued and is intended to cover the costs of conversion. The local authority receives no funding. As referred to above there will be a requirement in the CTA that these funds are used to settle the local authority's costs.

5.2. Local authority maintained schools carrying a budget deficit may still convert and the local authority must absorb the deficit allowing the school to close and reopen under the academy trust. In cases where a significant deficit is held, the local authority can seek to postpone the conversion until such time that a deficit is considered to be reasonable. In contrast however a school holding a budget surplus may convert carrying over their surplus into the academy trust.

5.3. The proposals will ensure that the local authority is reimbursed for the costs it incurs in facilitating academy conversions, which is becoming more important, the more schools that we are seeing convert to academies.

6. LEGAL CONSIDERATIONS

6.1. The Academies Act 2019 as amended by the Education Act 2011 governs the establishment of Academies. There is a statutory duty on the local authority to facilitate conversion to Academy status within a specified period of time. There is nothing in the legislation to suggest that the local authority cannot charge the school for the cost of conversion. Legally, the council must not make a profit from the charges that it raises for the costs of the conversion and this is ensured by the use of the Balancing the Cost of Service formula and an appropriate time and cost recording system which can record time spent and external costs incurred (if any).

6.2. S.93 Local Government Act 2003 allows Local Authorities to charge for services provided where (a) the Authority is authorised, but not statutorily required, to do so and (b) the person receiving the services has agreed to the provision of services.

6.3. The decision is a matter for the Cabinet Meeting under the Council's Scheme of Delegation.

7. EQUALITY CONSIDERATIONS

7.1. The recommendations in this paper relate to the charging of schools for work required of the council for which the school gets a direct government grant. Therefore, there will be no differential impact on any group with protected characteristics.

8. ENVIRONMENTAL CONSIDERATIONS

8.1. There are no environment impacts as a consequence of the recommendations in this paper.

9. BACKGROUND PAPERS

9.1. There are none.

10. RECOMMENDATIONS

10.1. The Scrutiny Committee be asked to note the report and provide any comments.

10.2. The Cabinet will be asked to resolve that:-

- a) approval be given to the proposed cost recovery policy as detailed in the report;
- b) authority be delegated to the Director of Education, Work and Skills, in consultation with the Cabinet Member for Children, Families & Education, to

determine what works and costs may be charged to the school, indicated in Section 4 of the report;

- c) Delegated authority be given to determine whether a school may be charged for a delayed or deferred conversion be given to the Director for Education, Work and Skills.