

Cabinet
Council

29 November 2011
6th December 2011

Name of Cabinet Member:

Cabinet Member (Education) - Councillor Kelly

Director Approving Submission of the report:

Director of Children, Learning and Young People

Ward(s) affected:

All

Title:

The City Council's Policy on Local Authority Maintained Schools converting to Academy Status and the establishment of University Technology Colleges and Free Schools.

Is this a key decision?

Yes

The proposed Policy itself does not have a direct financial impact on the City Council or a significant direct impact on residents or businesses in two or more electoral wards in the City. However, it does have an impact on whether schools decide to apply for Academy status which will subsequently impact on residents across the City and the finances of the City Council. It is therefore deemed to be a key decision.

Executive Summary:

Under the previous Government conversion to Academy status was used as a strategy to improve under-performing schools or where capital investment was required to refurbish or open a new school. Under this policy Woodway Park converted to Grace Academy and Sidney Stringer School became Sidney Stringer Academy. An Academy is no longer maintained by the Local Authority and becomes accountable to the Academy sponsors or Academy Governors.

The current coalition Government's policy, through the Academies Act 2010, is significantly different in purpose and in process for gaining Academy status. The current policy is to enable all maintained secondary and primary schools to stop being Local Authority controlled schools and become Academies, independent of the Local Authority. Schools apply directly to the Department for Education (DfE) who is the decision maker. There is no requirement to consult with the Local Authority and the Local Authority has no decision making role or power of veto. The Local Authority is required by the DfE to facilitate land and asset transfer arrangements on a 125 year lease.

The Academies Act 2010 allows the Secretary of State to require under-performing schools that are eligible for intervention to convert to Academies. In law schools that are eligible for intervention are those in Special Measures, subject to a Notice to Improve or in default of a

Statutory Warning Notice issued by the Local Authority. The Education Bill 2011 (currently at Committee Stage, House of Lords) will, if passed, extend the option to convert to Academy status to post 16 education and to schools that offer alternative provision, including special schools and pupil referral units. There is pressure on Local Authorities to convert schools that are not achieving the Government's floor standards to Academies. This is either as a sponsored Academy or with a partner Academy that is outstanding or good, including secondary schools partnering with primary schools.

There are 8 secondary Academies in Coventry; Grace, Sidney Stringer, Whitley Abbey, Blue Coat, Finham, Tile Hill Wood, Westwood and Woodlands. No Primary or Special Schools have applied to become Academies and there is little interest from primary and special schools in pursuing Academy status.

On 1 October 2010 Cabinet Member (Education) approved a report recommending the City Council's principles for working with Academies under the Academies Act 2010. The report was considered by Scrutiny Board 2 on 14 October 2010. The option approved was that 'local schools, providers, agencies and the Local Authority continue to invest in a collaborative and partnership based approach to improving the outcomes achieved by all students, including the most vulnerable students, whatever the national arrangements for school organisation'. The option of the City Council taking a position which encouraged Coventry schools to become Academies was dismissed and the principles neither directly opposed or supported Coventry Schools becoming Academies.

Recommendations:

Cabinet is requested to recommended that the Council:

1. Adopt option 4 and oppose the forced conversion of Local Authority maintained Schools to Academies.
2. Publish a statement to all Coventry School Governing Bodies and Headteachers outlining the reasons for the City Council's concerns about maintained schools converting to Academy status and re-iterating the benefits of being part of the Local Authority family of schools.
3. Continue to maintain strong and effective partnership working between the Local Authority and schools that have converted to Academies and continue to promote and facilitate structures that enable strong school to school collaboration. This will support the City Council delivering its statutory responsibilities as an advocate and champion for all children and young people across the City enable the Local Authority to strategically plan and manage education provision and deliver the City's Educational Improvement Strategy.
4. Oppose the imposed conversion of any under-performing school to an Academy and propose alternative structures, including formal governance arrangements through hard and soft federations and stronger school to school collaborations, including with the City's Teaching School.
5. Request that the Governing Body of each Academy in Coventry has at least one Local Authority Governor as part of the Governing Body's membership and constitution.
6. Request that Governing Bodies of Academies formally sign up to the principles of working in partnership with the Local Authority, including their commitment to the agreed priorities of the Overcoming Barriers to Learning Strategy.

7. Request that the Assistant Director: Education and Learning or his representative attend a meeting of every school Governing Body where Academy Conversion is under discussion. The purpose of this is to present the reasons why the City Council is not in favour of maintained schools changing their structural arrangements and to outline the implications for the school and the City, particularly regarding transfer of assets, finance and access to services. It will also set out any impact on investment in capital programmes or any co-location proposals.

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List of Appendices included:

None

Other useful background papers:

Report to Cabinet Member (Education) and the Children, Young People, Learning and Leisure (Scrutiny Board 2) in October 2010 titled *Coventry City Council Principles for Working with Academies and Free Schools*.

Report to Cabinet Member (Education) on a petition opposing the conversion of maintained schools to Academy status, September 2011.

Briefing paper to Scrutiny Board 2, 15 September 2011, on Academies and University Technical Colleges.

All reports available from Governance Services

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes – 6th December 2011

Report title:

The City Council's Policy on Local Authority Maintained Schools converting to Academy Status and the City Councils' Principles working with Academies.

1. Context (or background)

1.1 The current Government's policy, through the Academies Act 2010, is significantly different both in purpose and in process for gaining academy status than the previous Government's policy.

The current stated policy is to:

- eventually enable all maintained secondary and primary schools to become Academies.
- make the process for applying to become an Academy as simple as possible without the previous requirement to consult with the Local Authority. Schools apply directly to the Department for Education (DfE) who is the decision maker. There is no requirement to consult with the Local Authority and the Local Authority has no decision making role or power of veto. The Local Authority is required to facilitate land and asset transfer arrangements on a 125 year lease.
- approve all Academy applications from schools graded as outstanding or good by Ofsted unless they have substantial financial deficit or other exceptional circumstances.
- encourage groups of schools to become Academies in 'Academy Chains' with outstanding and good schools supporting satisfactory or under-performing schools, which also become Academies.

1.2 In line with the Secretary of State for Education's statement in May 2011 the DfE are moving forward with plans to convert under-performing schools to Academy status. There is pressure on Local Authorities to convert maintained schools that are not achieving the Government's floor standards to Academies. In Coventry this could apply to a small number of primary schools that have been below the Government's floor standard for performance at the end of key stage 2 for one or two of the last five years. No Coventry primary school has been below the floor standard consecutively for 5 years, but two schools have been consistently below prior to meeting the floor standard in 2011. The performance of schools below the Government's floor standards are likely to come under scrutiny by the DfE.

2. Options considered and recommended proposal

2.1 Option 1: Support the conversion of Local Authority maintained schools to Academies

2.1.1 Under this option the City Council would support the development of a system where schools become Academies and competition between independent Academies and Local Authority maintained schools is viewed as a key driver for school improvement. This option is not recommended for Coventry given the clear evidence that well planned collaboration and partnership working, with and between schools and other stakeholders, is the key to securing rapid improvement in rates of progress and attainment for all children and young people across the City. This collaboration and partnerships is best facilitated by schools being maintained by the Local Authority and working coherently together and not in opposition.

2.1.2 This option is likely to lead to the fragmentation of the education system across the City in a market forces model which has the potential to have a detrimental impact

on the education of the City's children and young people because schools are not part of the Local Authority family of schools. There is a risk that Academies will distance themselves from the Local Authority causing the relationship to fracture and partnership working more difficult. This will reduce the impact of what can be achieved collectively by all schools working in strong collaboration.

2.2 Option 2: Neither Oppose nor Support the conversion of Local Authority Maintained Schools to Academies

- 2.2.1 Under this option the City Council neither oppose or support conversion to Academy status and local schools, providers, agencies and the Local Authority are encouraged to invest in a collaborative and partnership based approach to improving the outcomes achieved by all children and young people, including the most vulnerable students, whatever the national arrangements for school organisation.
- 2.2.2 There has been a high level of commitment to this way of working which has led to those schools changing their status, for example to become an Academy or Trust, wishing to remain in partnership with the City Council and other schools. This has included a clear and demonstrable commitment from each participant to pursue policies that maximise the life chances of all students living in Coventry not only the pupils that attend an individual school.
- 2.2.3 The White Paper in advance of the Academies Bill sets out four key Local Authority roles: champion of choice by ensuring there are sufficient high quality schools places, co-ordinate fair admissions, promote social justice by being the champion and advocate for the most vulnerable children and young people and challenge schools which fail to improve. These functions are likely to be more difficult to achieve under the new legislative framework even in a situation where the partnership between Academies, schools and the Local Authority is real and strong.

2.3 Option 3: Oppose the conversion of Local Authority maintained Schools to Academies

- 2.3.1 Under this option the City Council is opposed to Academy Conversion. The conversion brings financial risk with significant implications of reduced funding for the Local Authority and therefore the ability to deliver services for all of its schools. The City Council also has assets taken out of its control as it is required to lease land and school buildings to an Academy.
- 2.3.2 There is the potential for the fragmentation of the strong partnership model of working collaboratively with all schools in the City. The City Council's commitment to protect the most vulnerable and challenge children and young people of the City is at risk if any Academy adopts policies that are not fully inclusive, particularly in relation to the admission, transfer and exclusion of pupils and the ability to make provision for children with Special Educational Needs and Disabilities. There are also threats to a loss of democratic Governance and public accountability when schools become Academies.
- 2.3.3 The risks to this option are that schools will convert to Academies irrespective of the City Council's policy and may distance themselves further from the Council increasing the fragmentation to the education system and the impact of market forces. It may make opposing forced conversion with the DfE more difficult.
- 2.3.4 The advantages of engaging with the DfE where it is proposing conversion to Academy status for under-performing schools are that the Local Authority and the

school may retain a greater degree of influence in the selection of sponsors and the Local Authority may not bear any costs associated with improving the school once converted to an Academy. The disadvantages are that the schools are no longer Local Authority maintained and all assets will transfer to the Academy Trust. If schools are unwilling to convert the productive partnership may be affected if the Local Authority is seen as supporting DfE policy in opposition to a school's preferred option. There would be trade union opposition and there may be opposition from local communities.

- 2.3.5 The advantages of proposing alternative collaborative structures rather than conversion to Academy status for under-performing schools are that the schools will remain maintained by the Local Authority, the Local Authority will retain the confidence of the schools and will retain control in relation to the collaborative structure. The position of the Local Authority is likely to be strongly supported by the Trade Unions. The disadvantages are that if an Academy Order is issued the Local Authority will have limited influence in the selection of sponsors and the Local Authority will retain the responsibility for improving the schools and the cost associated with it.

2.4 Option 4: Oppose the forced conversion of LA maintained schools to Academies, and encourage other maintained schools to remain part of the LA family of schools. Oppose the establishment of University Technology Colleges and Free Schools in the City.

- 2.4.1 Coventry has a diverse school system, with academies, trust schools, faith schools, single sex schools and LA maintained schools at secondary level. These schools work collaboratively with the Local Authority and each other, and it is this collaborative approach that has contributed to improved standards across the city at secondary level.
- 2.4.2 Coventry has no primary schools that have changed their status. Primary schools also work collaboratively with each other and the LA, and there are many examples of this improving outcomes for children.
- 2.4.3 Coventry City Council believes this collaborative approach, along with our Overcoming Barriers to Learning programme, which is the best way to improve education for all young people within the City.
- 2.4.4 Coventry will seek to encourage all schools to remain with their current structural arrangement, as we do not believe that structural changes in themselves will improve educational outcomes.
- 2.4.5 Where school governing bodies agree to convert to Academy status, the LA will seek to continue working with the school in a collaborative way.
- 2.4.6 Coventry City Council does not believe that there is currently a need for a new secondary school in the city. The council is concerned that any new free school, academy, or UTC could be damaging to other schools in the city, and Coventry City Council will not actively pursue the creation of any free school, academy, or UTC within the city.
- 2.4.7 If any free school, Academy or UTC is established in the City, the City Council will seek to engage with the providers in order to minimise the detrimental effects on other schools in the city and to encourage collaboration with existing schools and the

LA, and to encourage that school to work in a positive and constructive way with other schools in the city.

2.5 Cabinet and Council are recommended to approve option 4.

3. Results of consultation undertaken

3.1 There has been no formal consultation undertaken in relation to the issues discussed in this report. There was a presentation of the issues to Scrutiny Board 1 during September 2011. The Cabinet Member (Education) received a report on a petition opposing conversion of maintained schools to Academy status on 21st September 2011. Following the City Council agreeing the policy position we will consult with schools, trade unions and key stakeholders on the implications.

4. Timetable for implementing this decision

4.1 If approved the recommendations will be implemented with immediate effect. Implementation will be monitored by the Cabinet Member (Education).

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

Academies receive their funding directly from the Young Person's Learning Agency. Academies receive additional funding to maintained schools, as they get a share of the central funding spent by Local Authorities on education-related services. This additional money reflects the different responsibilities of Academies.

Currently the DFE operate a recoupment model to recover funding from the Local Authority for Academies. The mechanisms of this are:

- The school's budget share (as per local funding formula) subject to minor adjustments is recovered by the DFE.
- A proportion of the funding is also deducted from the centrally spent Dedicated Schools Grant (DSG), and recovered by the DFE – using the planned expenditure recorded in Table 1 of the Section 251 Budget Statement and pupil numbers for the Academy.
- The Local Authority Spend Equivalent Grant (LACSEG) is also recouped from the Local Authority's core spend (Local Authority Formula Grant) on central education functions.

The school's budget share reflects what the Local Authority would have given the school had they been Local Authority maintained; therefore there is no direct financial impact from this element of the transfer. There is a financial impact as a result of the other two areas of transfer and our ability to mitigate against the impact on LA maintained schools is dependent on us either being able to market these services to Academies and receive income or reduce the service to reflect the loss of the Academies without having an impact on LA maintained schools.

We have some concerns about the way in which additional funding for Academies is currently calculated. In July the DfE published the "Consultation on the basis for the decision on the appropriate amount of Academies Funding Transfer for 2011-12 and 2012-13", which proposed the basis of calculating the LACSEG. The Local Authority submitted a technical response to the consultation and is yet to hear the outcome. In addition the School

Funding Consultation, which ended on the 11th October, also proposed changes in the way Academy funding is topsliced in the future. We will keep up to date on the DfE position in relation to how funding will be removed from the Local Authority for Academies in the future and the potential implications.

One of the main concerns is that the basis for the additional funding topslice is completely per pupil driven. This does not reflect the cost basis for central services, which will be largely staffing, and therefore not wholly pupil number driven. In addition it does not reflect other important factors that may have an impact on a school's usage of a service (e.g. deprivation, performance). In addition we have, with schools agreement, held resources to pay for services or provision where economies of scale can be achieved by the collective use of the resource (e.g. licenses & subscriptions), or the unpredictability of how and when costs may fall (e.g. maternity and other staffing cover). In the event of large numbers of schools becoming Academies we may have to delegate the funding to schools which would end the ability for schools to benefit from the collective provision.

We have had clarification from the DfE Capital Review team that there will be no priority for capital given to schools that become Academies under the new system.

The Local Authority will be working with Service providers to ensure that we can continue to offer services to Academies (including additional services that are centrally retained) where appropriate. We plan to ensure that the services are costed appropriately and to minimise the impact on our ability to deliver services to other schools.

5.2 Legal implications

Under section 3(1) of the Academy Act 2010 the Governing Body of a maintained school in England may apply to the Secretary of State for an Academy order to be made in respect of the school.

Under section 4(1) "[t]he Secretary of State may make an Academy order in respect of a maintained school in England if:

- a) the governing body of the school make an application under section 3, or
- b) the school is eligible for intervention (within the meaning of Part 4 of EIA 2006)".

Previous legislation requiring consultation has been removed, although Trust Schools still have to consult the Governors and Trustees. If the Local Authority were to have particular concerns about conversion, it could write to the Secretary of State to raise those concerns, but there is no legislative requirement in the Academy provisions requiring him to take notice of this. The only other challenge the Local Authority could make to conversion of any school to Academy status would be via judicial review proceedings, but there would have to be grounds for any such application.

S149 of the Equality Act 2010 (the Act) introduced a public sector equality duty which requires Governing Bodies to have due regard in exercising their functions to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act; advance equality of opportunity between those sharing protected characteristics (age, disability, gender identity, sex, race, religion or belief, sexual orientation) and; foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Governing Bodies who fail to undertake a proper consultation risk failing to be able to demonstrate that they have had proper regard to the duty under the Act as a result it is possible if challenged that the decision to convert to academy status could be quashed.

6. Other implications

6.1 How will this contribute to the achievement of the Council's Key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Structure)?

The creation of Academies has the potential to significantly reduce the City Council's ability to pursue its corporate objectives to support and celebrate our children and young people and ensure that they are safe, achieve and make a positive contribution to the City. This is particularly true with respect to the City's capacity to pursue policies which maximise the life chance of all children and young people, particularly the most vulnerable and challenging. There is a risk that Academies will distance themselves from the Local Authority and relationships between schools and with the Local Authority will fracture.

In practical terms the significant implications of this for the LA relates to:

- The ability to collect and analyse key comprehensive data about individual students and school performance. This enables us to target intervention and resources, and challenge and support schools that are not performing well.
- Securing Academy commitment to fully inclusive admissions, transfer and exclusion policies that are not to the detriment of other schools and children and young people across the City. This is particularly important with respect to pupils with SEND (Special Educational Needs and Disabilities), LAC, transient pupils and those that demonstrate challenges to being educated in mainstream schools.
- Enabling schools to play a full part in the local partnerships with other schools, the City Council and other local providers and agencies and agreeing working practices to support the principles and practice of high achievement and inclusion for all.

In Coventry, all schools and Academies are currently committed to work in partnership with other schools and the Local Authority and invest considerable time and resource in this. This level of partnership and collaboration is not an easy option as it requires schools to be prepared to work together to arrive at policies that are supportive to an individual school whilst at the same time not damaging to another education provider. This commitment is tested in the challenging environment of day to day decisions for example on admissions, exclusions and in-year school transfers.

6.2 How is risk being managed?

A position of the Local Authority not working in strong partnership with all Schools and Academies further risks them distancing themselves from the Local Authority and the relationships fracturing which will be to the detriment of Children and Young People within the City. Any break down in the strong partnership and collaboration between the family of schools in Coventry including Voluntary Aided and Controlled Schools, Trust Schools, Local Authority Maintained Schools and Academies, with the Local Authority reduces the ability of the Local Authority to access information and intelligence and influence decision making. This impacts on the Local Authority's ability to deliver a coherent education strategy across all phases and providers in the City.

These risks will be managed by the Local Authority seeking to work in partnership with the school and regard it as part of the family of schools in Coventry as set out in recommendation 3. Recommendations 5 to 7 propose more direct communication between the City Council and Governing Bodies. This will enable the rationale for the City Council's position to be made clear and request Governing Bodies of Academies to formally sign up to the principles of partnership working with other schools and the Local Authority.

Primary and special schools are smaller institutions and do not have the same capacity or infrastructure as secondary schools to manage some of the risks associated with not being supported by the Local Authority as a maintained school. Primary and special schools recognise these risks and areas of vulnerability and are therefore much more cautious about considering Academy Status. The Local Authority would discuss these risks with the Headteacher and Governors of any primary or special school seeking advice on becoming an Academy.

An Academy is no longer maintained by the LA and the land and buildings transfer to the Academy. If there were significant Health and Safety or Business Continuity issues in an Academy this could result in numbers of children and young people not being in school. The implications of this are being discussed with Headteachers as we implement protocols for providing City Council Services to Academies.

One of the main risks is financial. This is that the impact of Academies affects the Local Authority's ability to continue to deliver services to all schools. The action to mitigate this is by having a clear policy on providing and charging for services to Academies that takes into account these factors and looks to continue a clear partnership way of working with Academies which is not to the detriment of other schools and the City Council. Officers are working to determine this future policy and Scrutiny Board 1 has established a 'task and finish' group to recommend a business model and charging policy for Academies.

The Local Authority will be responding to the Government's current consultation on *School funding reform: Proposals for a fairer system* to try and ensure that a transparent and fair Methodology is implemented for the funding of maintained schools and Academies.

6.3 What is the impact on the organisation?

When a school converts from a Local Authority maintained school to an Academy, staff are entitled to transfer under the same terms and conditions of employment. The transfer would be in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Where the School Governing Body is the employer, for example, VA and Trust schools, the school governing body is responsible for undertaking staff and trade union consultation. Best practice would suggest that consultation with staff and trade unions should be for at least 30 days.

Teachers working in an Academy will fall within the scope of the Teachers Pension Scheme (TPS). Teachers transferring to an Academy would simply continue their membership of the scheme. As the employer, the Academy would be responsible for remitting contributions to the TPS and for all other responsibilities that fall to employers who employ teachers. Support staff within schools fall within the scope of the Local Government Pension Scheme (LGPS). As the employer, the Academy are obliged to offer LGPS membership to their staff and all transferring staff will continue their membership of the scheme. The Academy would have responsibility for meeting the employer contributions to the LGPS. Any shortfall in the pension scheme (TPS and LGPS) will need to be met by the Academy.

6.4 Equalities / EIA

The purpose of having a clear approach to working with Academies is to ensure that any equalities impact is minimised where a school decides to become an Academy. An amendment to the Academies Bill requires that all Academy funding agreements must include details of their obligations in regards to children with SEND – the 'SEN obligations'. These obligations mirror the governor's duties contained in Part IV of the Education Act 1996. This makes it clear that an Academy is expected to behave as if they were a

maintained school in meeting the needs of children with SEN and is an important move towards parity.

The Local Authority will strive to ensure that we maintain our strong partnerships in the city, as we believe that all Children and Young People in the City benefit from being part of the family of schools. We would wish to seek to continue the arrangements and agreements in relation to areas such as SEN and inclusion, exclusions, and overcoming barriers to learning to ensure that no parts of the City or children and young people are disadvantaged by the arrangements.

6.5 Implications for (or impact on) the environment

If schools are converted to Academies this will have an impact on the Council's climate change targets. Academies will be responsible for their own assets and as such the Local Authority will have no ability to influence how these facilities are used or the energy efficiency of these buildings. In terms of the Council's carbon emissions target Academies are currently counted in the Council's Green House Emissions Report and so we would see a significant reduction in the Council's carbon emissions in relation to this target if any schools move from Local Authority control to being Academies. However, under the Carbon Reduction Commitment (a Government operated scheme whereby large public and private sector organisations have to report on and pay allowances based on their carbon emissions) Academies will still be included as part of the Council's carbon emissions. Given this, under the CRC the Council would be paying for the carbon emissions of Academies without being able to exert any influence over these emissions.

6.6 Implications for partner organisations?

There are currently very strong partnership and collaborative arrangements between Schools, Academies, FE providers and work based learning providers across the City which have a positive impact on the range and quality of provision and outcomes for children and young people in Coventry. Any fracturing of the partnership and particularly in collaborative arrangements will have a negative impact on provision, opportunity and outcomes for children and young people.

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