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Cabinet Member for Education

20 January 2016

**Name of Cabinet Member:**

Cabinet Member for Education - Councillor D Kershaw

**Director Approving Submission of the report:**

Executive Director of Place

**Ward(s) affected:**

None specifically.

**Title:**

**Academy Conversion Process: Proposed Recoupment of Costs**

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**Is this a key decision?**

No - Although the matter within the report can affect all Wards in the City it is not anticipated that the impact will be significant and it is therefore not deemed to be a key decision

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**Executive Summary:**

The purpose of this report is to provide 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 initially capped at a maximum of £6,750 towards the Council's costs associated with the academy transfer process. The level of contribution will be subject to annual review.

**Recommendations:**

The Cabinet Member for Education is requested to approve the recoupment of the Local Authority's costs in relation to the academy conversion process with immediate effect and subject to annual review.

**List of Appendices included:**

Appendix 1: Proposed Charges.

**Background papers:**

None

**Other useful documents:**

None

**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?**

No

## Report title: Academy Conversion Process: Proposed Recoupment of Costs

### 1. Context (or background)

- 1.1 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.
- 1.2 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.
- 1.3 There are different versions of the model to reflect the circumstances of different types of school. The on-going funding of the Academy Trust is contingent upon the conditions in its Funding Agreement being met.
- 1.4 There is no statutory requirement for any formal relationship between LA's 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, LA's continue to play a key strategic role locally and Coventry recognises that there are significant advantages for both academies and LAs in constructive partnership working.
- 1.5 In Coventry there are currently 32 academies:

<b>Phase</b>	<b>Number</b>
<b>Primary</b>	16
<b>Secondary</b>	14
<b>Special</b>	2
<b>TOTAL</b>	32

- 1.6 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) who then confirm that they are acceptable and give the green light for the process to start;
  2. Employment and HR procedures including all consultation under the TUPE Regulations 2006 with staff and trade 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.
- 1.7 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 schools that are going through the process.

## **2. Options considered and recommended proposal**

- 2.1 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.
- 2.2 When entering into an Academy conversion, schools receive a grant from the DfE of up to £25,000 towards their conversion costs.
- 2.3 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.
- 2.4 Following discussion with other LA's, it is clear there are various approaches that have been taken. Some LA's have absorbed the associated costs of the transfer process within existing resources, whilst, others such as Birmingham, Portsmouth Swindon, Norfolk and Medway charge for LA officer time.
- 2.5 Given both financial and staffing pressures the current position is unsustainable and therefore the Council should now seek to recoup all of its costs associated with the academy conversion process.

## **3. Results of consultation undertaken**

- 3.1 A consultation document was circulated on 30th June 2015 inviting comments on these proposals with responses requested by no later than Tuesday 21 July 2015. Only five responses were received two of which supported the introduction of a charging arrangement; the remainder seeking clarification on the position of trust schools.
- 3.2 A report was also taken to a meeting of the Coventry Schools Forum on 17<sup>th</sup> September 2015 where there was unanimous support for the introduction of charging by the Local Authority for academy conversions.

## **4. Timetable for implementing this decision**

- 4.1 Subject to the approval of the Cabinet Member for Education, the charging arrangement would be introduced with immediate effect.

## **5. Comments from Executive Director of Resources**

### **5.1 Financial implications**

- 5.1.1 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 Council proposes to initially secure a contribution of up to £6,750 for each conversion as set out in appendix 1. This level of contribution will be subject to annual review.

5.1.2 The contributions will support the following increased workload:

Area	Description
<b>Legal and Property</b>	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. Coventry 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).
<b>Finance</b>	Finance will provide the following support during the transfer process: <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 Coventry 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>	The transfer of contracts of employment, historic terms and conditions, supporting staff and trade union meetings and payroll transfers to comply with TUPE regulations.
<b>Project Management</b>	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.

5.2 Legal implications

5.2.1 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**

5.2.2 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 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.

5.2.3 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**

5.2.4 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 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.

5.2.5 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.

## **6. Other implications**

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

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.

### **6.2 How is risk being managed?**

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.

### **6.3 What is the impact on the organisation?**

None

### **6.4 Equalities / EIA**

Public authority decision makers are under a duty to have due regard to 1) the need to eliminate discrimination, 2) advance equality of opportunity between people who share a protected characteristic and those who do not 3) foster good relations between persons who share a relevant protected characteristic and people who do not (public sector equality duty - s 149(1) Equality Act 2010). The applicable protected characteristics are disability, gender reassignment; race, religion or belief, sex; sexual orientation, pregnancy or maternity.

Decision makers must be consciously thinking about these three aims as part of their decision making process with rigour and with an open mind. The duty is to have “due regard”, not to achieve a result but to have due regard to the need to achieve these goals. Consideration being given to the potential adverse impacts and the measures needed to minimise any discriminatory effects.

**6.5 Implications for (or impact on) the environment**

None.

**6.6 Implications for partner organisations?**

None.

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**Academy Conversion Process: Proposed Charges****Community Schools:**

<b>Activity</b>	<b>Charges</b>
<b>Governance:</b> <ul style="list-style-type: none"> <li>Process guidance, financial/HR support, Cabinet Report and associated consultation process and asset and site related diligence.</li> </ul>	<b>£3,500</b>
<b>Costs associated with legal processes:</b> <ul style="list-style-type: none"> <li>Formulation, Agreement and Execution of Commercial Transfer Agreement and 125 year lease.</li> </ul>	<b>CTA - £1,500</b> <b>Lease - £1,750</b>
<b>TOTAL</b>	<b>£6,750</b>

**Voluntary Aided (VA) Schools:**

For VA Schools it is not necessary to enter into a standard 125 year lease arrangement for the school buildings or a CTA in respect of staff transfer so therefore no charge will apply.

<b>Activity</b>	<b>Charges</b>
<ul style="list-style-type: none"> <li>Sometimes it is necessary for additional areas of the site (playing fields etc) to be leased to ensure continuation of education on sites a Cabinet Report and associated consultation process is required.</li> <li>Formulation, Agreement and Execution of 125 year lease (playing fields etc).</li> </ul>	<b>Governance - £2,500</b> <b>Lease - £1,750</b>
<b>TOTAL</b>	<b>£4,250</b>

**Voluntary Controlled (VC) Schools:**

<b>Activity</b>	<b>Charges</b>
<b>Governance:</b> <ul style="list-style-type: none"> <li>Process guidance, financial support, Cabinet Report and associated consultation process.</li> </ul>	<b>£3,500</b>
<b>Costs associated with legal processes:</b> <ul style="list-style-type: none"> <li>Formulation, Agreement and Execution of Commercial Transfer Agreement.</li> </ul>	<b>CTA - £1,500</b>
<b>TOTAL</b>	<b>£5,000</b>

Sometimes with VC Schools it is necessary for additional areas of the site (playing fields etc) to be leased to ensure continuation of education on sites.

<b>Activity</b>	<b>Charges</b>
<ul style="list-style-type: none"> <li>Formulation, Agreement and Execution of 125 year lease (playing fields etc).</li> </ul>	<b>Lease - £1,750</b>
<b>TOTAL including charges above for VC Schools</b>	<b>£6,750</b>

Notes:

1. Trust Schools already hold the freehold title to their sites and employ the staff and therefore no charges would normally apply.

2. Fees would be agreed with individual schools or Multi Academy Trusts/ Companies in advance of the work commencing.