

SURREY COUNTY COUNCIL**CABINET****DATE: 16 JULY 2019****REPORT OF: MRS JULIE ILES, CABINET MEMBER FOR ALL-AGE LEARNING****LEAD OFFICER: DAVE HILL, EXECUTIVE DIRECTOR FOR CHILDREN, FAMILIES, LIFELONG LEARNING AND CULTURE****SUBJECT: PROPOSAL TO CHARGE MAINTAINED SCHOOLS FOR THE COSTS OF CONVERSION TO BECOME AN ACADEMY SCHOOL****SUMMARY OF ISSUE:**

There are costs for the Department for Education (DfE), maintained schools and their maintaining authorities when a school converts to become an academy. Schools are given a grant to contribute to their costs but local authorities get no financial support.

Local authorities must either bear the full cost of the work they undertake by law to facilitate transfers of status, or charge the converting school the costs, which they are entitled to do. Cabinet is asked to consider these issues and the recommendation to charge.

RECOMMENDATIONS:

Cabinet should approve:

- 1 Charging schools for the costs to the council on an 'averaged' basis.
- 2 A charge of £6,000 for a community or voluntary controlled school, £5,000 for a voluntary aided school (which does not require HR service input); £4,000 for foundation or trust schools (which do not require human resource or property service input); and charges to be negotiated on a case by case basis for private finance initiative (PFI) schools.
- 3 The delegation of the authority to review the charge annually by the cabinet member for all-age learning.
- 4 The annual consideration of charges, taking account of any inflation or deflation in the specific areas of work, is delegated to the executive director and that Surrey County council's constitution is amended to allow the scheme of delegation to reflect this.
- 5 Charges to be levied for any new school formally requesting to convert to academy status (upon receipt of approval from the DfE) from 1 September 2019

REASON FOR RECOMMENDATIONS:

The costs nationally of schools converting to become academy trusts (or becoming a part of an existing trust) are high. The House of Commons committee of public accounts estimated in its report, published in July 2018 and entitled 'Converting schools to academies', that the cost to the government of conversions had been £745,000,000 since 2010.

The committee noted that the full cost of conversion, including spending by schools and local authorities, is unclear. Surrey County Council, unlike many other top-tier councils in England, has not adopted a policy of charging for the costs it bears relating to such transfers. This currently means that the burden is shifted from general taxation to the council tax payer in Surrey. It also has an effect on the resources available for other council priorities.

For these reasons, it is proposed to charge schools, on the basis set out in recommendations above, for the costs to the council of conversions, on an averaged basis.

DETAILS:

Background

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. 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 DfE.
3. 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.
4. 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. A brief search showed the following charges levied by a range of councils.

Council	Charging level
Staffordshire CC	£6,000 – flat fee for all conversions – estimated cost is £12,300
Portsmouth city council	£5,000 – with the provision for extra charges if costs exceed this
Swindon BC	£5,000 – capped (Norfolk CC and Medway BC also have this cap)
Blackburn with Darwen	£5,000 to £6,500 for primaries, £6,000 to £7,500 for secondaries
Plymouth city council	£7,000 – flat contribution

5. 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 fees to recover these costs; evidence suggest the charges may range from £2,500 to £20,000 per school.

6. Work undertaken by Surrey County Council officers has estimated the cost to the council to be on average £6,909 for a community or voluntary controlled school, £5,813 for a voluntary aided school (which does not require HR service input); £4,422 for foundation or trust schools (which do not require human resource or property service input); and charges to be negotiated on a case by case basis for PFI schools. These estimates form the basis for charging, which have been pitched at a level that cannot be interpreted as income-generating.

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

Forming the academy

8. Academy conversions usually take about three months, but may take longer, depending on the complexity of the situation and how quickly the transfer of staff, assets and land can be negotiated between the council and the school. The DfE has issued model documentation, which is intended to make the process more straightforward.

9. When entering into an academy conversion, schools receive a grant from the DfE of £25,000 towards their conversion costs, or £35,000 if the school concerned is subject to private finance initiative (PFI) funding. Local authorities receive no direct 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. Therefore, many local authorities now levy a charge on schools for this work. The charges made by a sample of LAs is shown above under paragraph 4.

Legal agreements required

10. There are two main aspects to an academy transfer agreement between the local authority and the school. These are the commercial transfer agreement (CTA) and the land ownership documentation.

Commercial transfer agreement

11. The 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.
12. Depending on circumstances, the final settlement of the CTA can be a much more time consuming exercise than the other documentation. The agreement ensure all liabilities transfer; including contracts and any loans by the council to the school.

Land ownership

13. When the secretary of state for education signs the funding agreement, an order will be made in relation to land ownership. 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 125 year leases of the land.

Local authority costs incurred

14. The academy conversion process requires extra resource, for which the school is given an allocation towards transfer costs (see paragraph 9 above). To mitigate the costs falling to the council, the report recommends a charge on the converting school, as set out in recommendation 2 of this report. The contributions will support the following work.
15. **Legal and property:** to act on behalf of the LA during the academy transfer process in order to finalise the CTA and the lease. This will involve purchasing external legal advice where insufficient internal capacity exists to manage the transfer workloads.
16. **Finance** officers have a wide range of tasks, as follows:
 - assist in the closure of 'old' school accounts and determining the final schools 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
 - Verify of any financial aspects of transfer negotiations.
17. **Human resources:** the transfer of contracts of employment, historic terms and conditions and payroll transfers to comply with TUPE regulations.
18. **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 and external solicitors.
19. 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, hence the additional charge allowed for in recommendation 2.
20. It is proposed to operate the new charges for any conversion commencing after the cabinet has approved them.

CONSULTATION:

21. Surrey's Schools Forum was informed about the proposal on 12 June 2019 and discussed the principles for charging. No objections were raised and it was acknowledged that a grant was received by schools for conversion.

RISK MANAGEMENT AND IMPLICATIONS:

22. There is a risk of a maintained school objecting to the charge. However the government has made clear that LAs are entitled to levy reasonable charges for the cost of the work, and the council can cease work if a school's governors refuse to pay, and take the money from the school's budget if it refuses to pay at the end of the process.

Finance and value for money implications:

23. An exercise was undertaken in 2017 to establish the costs to the council of schools converting to academy status. The total cost for community and voluntary controlled schools was £6,909; for voluntary-aided schools (where there are no human resources costs, since the council does not employ the staff) it was £5,813; and for foundation schools (where the council does not employ staff, nor own the land) it was £4,442.
24. The proposed charges of £6,000, £5,000 and £4,000 for community and voluntary controlled, voluntary aided and foundation schools respectively did not cover the full cost of conversions in 2017. Staff costs have increased by over four per cent since then.
25. The table below shows the number of conversions by school type In the 2018/19 financial year, and projects the cost (using the 2017/18 financial year cost base) and the projected income. The final column shows the total net cost in the 2020/21 financial year (which would be the first full financial year of charging if agreed by cabinet) based on the number of conversions in the financial year 2018/19.

School type	Conversion cost	Total cost	Total projected income 2020/21	Total net cost 2020/21
Community / VC	£6,909	(19) £131,271	£114,000	£17,271
VA	£5,813	(2) £11,626	£10,000	£1,626
Foundation	£4,422	(1) £4,422	£4,000	£422
total		£147,319	£128,000	£19,319

26. In summary, there is still a net cost to the council of conversions in each category, and a total projected net cost (assuming the number of conversions stated) of £19,319. While there is still a net cost, it is £128,000 less than the cost to the council in 2018/19. Accounting for an estimated five per cent increase in costs between 2017/18 and 2020/21, the net cost, assuming the same number and type of conversions, will be about £27,000. The gross cost to the council would therefore be about £155,000, with the net cost of approximately £27,000. While there might be some cost efficiencies applied, there is no chance of the Council profiting from conversions.

Section 151 Officer commentary

27. The council is facing a very serious financial situation, whereby there are still substantial savings to be delivered to achieve a balanced budget in the current year and a sustainable budget plan for future years. Children, Families, Lifelong Learning and Culture is on a major transformation journey to improve services for children and families. This involves reviewing all areas of expenditure and considering whether it complies with the council's priorities.

28. The purpose of the report is to establish a charging scheme to recover costs from schools that choose to academies. Such schools already obtain a grant of £25,000 and whilst it is considered not sufficient for a school to cover all costs it is intended to incentivise them to be cost-effective in their transition. On the other hand local authorities also incur costs and receive no additional support for doing so. As such it is entirely appropriate to consider as charging scheme whereby the council receives a contribution to its costs for supporting the academisation process. Extensive analysis of previous transfer confirms that the proposed charging scheme is appropriate to recover costs and does not seek to make a profit. These charges will need to be reviewed on a regular basis to ensure that they keep in line with the actual costs incurred by the council.

Legal implications – monitoring officer

29. In coming to a decision on this issue the Cabinet needs to take account of all relevant matters. The weight to be given to each of the relevant matters is for the Cabinet to decide. Relevant matters in this context will include the statutory requirements on the council arising from the Academies Act, 2010, policy considerations, the medium term financial plan, the council's fiduciary duty, and any relevant risks including any damage to reputation and relationships with converting schools.

30. The council owes a fiduciary duty to its council tax payers, analogous to that owed by trustees responsible for looking after property belonging to other people. Accordingly, in deciding to spend money a local authority must take account of the interests of council taxpayers who have contributed to the income and balance those interests against those who benefit from the expenditure. It will also need to act in a prudent way having regard to the short and long term consequences of the decision.

Equalities and diversity:

31. The proposal relates 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.

WHAT HAPPENS NEXT

Should cabinet approve the recommendations, schools that commence the process of conversion into a trust, or joining a trust, will be charged as per the recommendations.

Contact officer: Liz Mills, Director of Education, Lifelong Learning and Culture

Consulted: There has been internal consultation with the Cabinet Member for All-Age Learning

Sources / background papers: Parliament's committee of public accounts report: converting schools to academies inquiry, 11 July 2018;

Various media articles, council committee reports on charging schools for academy conversions