

DERBYSHIRE COUNTY COUNCIL**CABINET****20 September 2018****Report of the Strategic Director for Children's Services****CONVERSION OF MAINTAINED SCHOOLS TO ACADEMY STATUS –
(Young People)****1. Purpose of Report**

To update Cabinet on the steps taken to facilitate maintained schools in adopting Academy status and confirm approval to undertake the necessary administrative measures for future conversions.

To seek approval to revise the charges currently levied in respect of work undertaken by the Authority to facilitate conversions.

2. Information and Analysis**2.1 Background**

Academies are state-funded schools that are independent from Local Authorities and are directly funded and controlled from the Department for Education (DFE). Academy status was created by the Learning and Skills Act 2000. The Academies Act 2010 allows all maintained schools to convert to academy status and the Council has a legal duty to facilitate the conversion process. The Education and Adoption Act 2016 enables the Secretary of State for Education to require the adoption of Academy status by schools failing to meet certain performance measures such as coasting schools. At 31st May 2018, the number of academies and maintained schools in Derbyshire is as set out below.

Sector	Open Academies	In pipeline	LA Maintained	Total	% open/pipeline academies
Primary	48	13	289	350	17.4
Secondary	25	7	13	45	71.1
Special	0	4	6	10	40.00
PRU	0	3	0	3	100.0

Total	73	27	308	408	24.5
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When the paper is considered, many of the schools in the pipeline will have converted and others will have received Academy Orders therefore these figures represent a point in time. The number of Academies within Derbyshire has grown steadily and this is expected to continue.

In order for a maintained school to become an Academy, a number of legal documents need to be agreed. The principal documents are outlined below:

- **Commercial Transfer Agreement (CTA):** this document deals with employment issues, live contracts and some other liabilities and benefits that need to transfer from the school to the Academy. Sometimes, Multi-Academy Trusts (MATs) will not agree to a school taking Academy status as part of the MAT unless the Council gives an indemnity against certain losses, e.g. employment liabilities. This is sometimes in the Council's interests, and in these circumstances, indemnities are agreed and captured in the CTA.

Also, where a school has a capital project, which has been identified or for which approval has been given, the Council is required to continue to implement the project because the premise behind adopting academy status is that a conversion should not leave a school in a better or worse position. Such projects are detailed in the CTA.

- **Site lease:** where the Council is the freehold owner of a site used by a maintained school, the DFE requires that the Academy be granted a 125-year lease of the site at a nil rent based on its model form of lease to an Academy. There is no scope to impose different terms unless the Academy and the DFE agree. Reservations can, however, be imposed in relation to any rights that the Council may require over the site in relation to adjoining land remaining within its ownership.
- **Assignment of lease or underlease:** where the Council leases part or the whole of a school site from an external body, there will be a requirement to novate (transfer) the benefits of that lease to the Academy or sublet it, as appropriate. If required under the terms of an existing lease to the Council, this can also involve obtaining the landlord's consent by way of a licence to assign or underlet. The landlord's legal costs incurred will be paid by the Council.
- **Leases of Children's Centres:** some school sites have children's centre provision which is to continue post conversion. Ongoing arrangements are documented either by way of a lease or a licence.

In relation to the property matters referred to above, the Council's Director of Property provides advice in relation to appropriate terms, reservations or other interests that may need to be documented, in order that the Director of Legal Services can finalise the necessary documentation for each conversion.

Currently, approval to enter into the legal documentation has been given either by way of delegated authority of the Director of Legal Services or the obtaining of a CAB/Co report from the Cabinet Member for Council Services. The preparation of and the obtaining of reports is a time-consuming process and can involve significant officer time, which can make meeting the DFE deadlines on conversions challenging. Given that the number of conversions has already increased and is likely to increase further moving forwards, approval is sought to streamline the governance process and to assist officers in facilitating conversions.

2.2 Charging for conversions

Cabinet considered a paper on 26 July 2016 (Cost Recovery of Work Associated with Academy Conversion) which outlined the costs of carrying out the work associated with a conversion and agreed to levy a flat rate charge of £6,000 on schools adopting academy status. It is now timely to review this charge, both to reflect the impact of inflation and also to more accurately reflect the differences in the work associated with different types of schools converting.

The work involved in facilitating the conversion of a foundation or voluntary aided school is usually less than that for a community or voluntary controlled school, as the Council does not own the buildings nor does it employ the staff. Consequently, it is proposed that the conversion charges be amended as follows:

Community and voluntary controlled schools (ex-PFI) - £6,200
Foundation and voluntary aided schools (ex-PFI) - £5,000

An assessment of the officer time associated with a conversion indicates a cost of up to £8,400 per school which could be charged to a community or controlled school, and up to £6,800 to Foundation and Aided Schools.

However, some of the functions undertaken are designed to protect the long-term interests of the Authority and the proposed below-cost figures reflect this. Also, the charges need to remain affordable for the schools concerned, each of which receives a £25,000 conversion grant from the DfE when the Academy Order is approved. The grant is intended to be a contribution towards the costs associated with converting to an academy.

It is recognised that some community and voluntary controlled schools are already part-way through the conversion process, and it could be regarded as unreasonable for the Authority to levy a higher charge on these schools at short notice.

It is therefore proposed that the higher charges be applied to community and voluntary controlled schools which are not yet subject to an academy order. The reduced charges to voluntary aided and foundation schools would take immediate effect.

The time, and thus cost, associated with the conversion of the schools subject to a Private Finance Initiative (PFI) contract can be substantially higher due to the contractual complexities involved. There are also external legal costs for these conversions that the Authority would seek to recover. An additional charge over and above the amounts shown above would be levied on the basis of an assessment of the extra work involved. These would be determined on a case-by-case basis.

For schools not covered by PFI contracts, the workload associated with a conversion can, and does, vary according to the complexity of the process in each individual conversion. Accordingly, it is proposed that, in exceptional circumstances, the Strategic Directors for both Children's Services and Commissioning, Communities and Policy be authorised to vary the charge to a school where they deem this to be reasonable in the light of the individual circumstances.

3. Financial Considerations

As contained in the report. Through the Academy Conversions, the Authority will reduce its financial liability for maintenance and the contracts associated with the maintained schools.

4. Legal Considerations

Upon instruction from the Strategic Director for Children's Services and, where appropriate, the Director of Property, the Director of Legal Services shall arrange to complete all legal documentation necessary to facilitate a conversion process by a school to an Academy where an Academy Order is in place from the Secretary of State for Education.

5. Other Considerations

In preparing this report the relevance of the following factors has been considered:- prevention of crime & disorder, equality of opportunity, environmental, health, human rights, human resources, property, transport and social value considerations

6. Key Decision No

7. Call In

Is it necessary for the call-in period to be waived in respect of the decisions being proposed in the report? No

8. Background Papers

The background papers are held in the Development and Children's Services Accounts Sections

9. Officer Recommendation

That Cabinet:

- (i) Notes the progress of academy status within Derbyshire;
- (ii) Approves the Council entering into any Commercial Transfer Agreement, lease, sublease, licence or other document that is required and any surrender of an existing lease that may be required in respect of all academy conversions within Derbyshire;
- (iii) Approves the revised charges as set out in section 2.2; and
- (iv) Authorises both the Strategic Directors for Children's Services and Commissioning, Communities and Policy to revise the charges in individual cases, where they deem this reasonable.

**Jane Parfrement
Strategic Director for Children's Services**