

Report of the Participation Manager

Report to the Chief Officer, Learning Improvement

Date: 2nd of March 2018

Subject: Transfer of South Leeds Academy to The Cockburn Multi-Academy Trust



Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Middleton Park		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

The Project Team (including Children's Services, Legal Services and PPPU) have negotiated the transfer documentation and agreed a commercial position in preparation for the academy transfer of South Leeds Academy from Delta Academies Trust (**DAT**) (formerly known as the School Partnership Trust Academies (**SPTA**)) to Cockburn Multi Academies Trust (**CMAT**) on 1st April 2018. All issues have been resolved to the Project Team's satisfaction and the formalisation of the transfer is recommended in preparation for the transfer.

Recommendations

It is recommended that the Chief Officer, Learning Improvement:

- Note the negotiations held with Solicitors acting on behalf of Delta Academies Trust, DfE, Cockburn Multi Academy Trust and Investors in the Community (Leeds Schools) Ltd;
- Give authority for the following Agreements to be executed and completed to enable the Academy to transfer on the 1st April 2018:
 - Deed of Variation of the PFI Project Agreement (**PFI DoV**);
 - Deed of Novation and Variation (**DoNV**) of the academy documents, namely;

- Commercial Transfer Agreement;
- Principal Agreement; and
- School Agreement.

together with any other documentation required to complete the transfer; and

- Give authority for any other necessary action to be taken to effect the transfer

1 Purpose of this report

- 1.1 The report provides a summary of negotiations to date, advises on issues and risks and requests the Chief Officer, Learning Improvement to:
- Note and approve the negotiations held with the DfE, and Solicitors acting for DAT, CMAT and the PFI Consortium.
 - Approve the signing of the key documentation required to enable the South Leeds Academy to become part of the CMAT on 1st April 2018.

2 Background information

- 2.1 South Leeds High School opened in 2006 following a full new-build construction funded through PFI credits under the Leeds Combined Secondary School Project (**CSSP**).
- 2.2 At the meeting held on the 4th March 2009, the Executive Board approved the publication of a statutory notice to close South Leeds High School on the 31st August 2009 and for South Leeds Academy to open on the South Leeds Site from the 1st September 2009 to be operated by South Leeds Academy Trust (**SLAT**).
- 2.3 It was proposed that on 1st October 2013, the SLAT would transfer all of its rights and obligations to the SPT, such that South Leeds Academy would become part of the SPTA Multi Academy framework. However, due to issues between the SLAT, SPTA and DfE (which LCC were not party to), the transfer was put on hold until such time that the issues were resolved.
- 2.4 The aforementioned issues were resolved and the transfer to SPTA happened on the 1st September 2015 and South Leeds Academy became part of the SPTA Multi Academy framework as originally intended.
- 2.5 In 2016 following an OFSTED report the SPTA entered into a partnership agreement with Outwood Grange Academies Trust and rebranded as Delta Academies Trust (**DAT**).
- 2.6 Due to continuing concerns regarding poor pupil attainment and progress, the Regional Schools Commissioner has decided that South Leeds Academy would be better served by a more locally based MAT and the school should transfer to the CMAT.

3 Main issues

- 3.1 To enable the South Leeds Academy to transfer to CMAT on the 1st April 2018, the Secretary of State must enter into a legally binding supplementary funding agreement in respect of the South Leeds Academy with CMAT.
- 3.2 The PFI DoV is required because the South Leeds Academy is one of the Leeds Combined Secondary PFI Schools and therefore any formal changes are required to be incorporated into the PFI contract and requires the consent of the PFI funders.
- 3.3 As the Regional Schools Commissioner now wishes the school to become part of the CMAT, the DoNV has also been negotiated and agreed between the Secretary of State, LCC, DAT and CMAT to allow the previously negotiated documents relating to South Leeds Academy to be novated and varied i.e.

- Principal Agreement;
- Commercial Transfer Agreement; and
- School Agreement;

3.4 The Long Term Lease in respect of the site of the South Leeds Academy will also be assigned by DAT to CMAT;

3.5 The PFI DoV and DONV have been subject to negotiation between the various parties and it is intended that these agreements will be sealed or signed by LCC, DAT, CMAT, the Secretary of State and the PFI Contractor as appropriate.

3.6 Below is an outline of the main issues that have been concluded on each of the above Agreements.

3.7 Deed of Variation and Novation of the Academy Documents

3.7.1 The DoNV transfers all the obligations and liabilities of DAT under the academy documents to CMAT. It also varies the academy documents to recognise such transfer as appropriate. The academy documents that LCC are party to and which are novated and varied are:

3.7.2 *Principal Agreement*

- The parties to the Principal Agreement will be LCC, DfE and DAT. The Principal Agreement governs the relationship between the DfE, DAT and the LCC, and in particular the risk of failure of DAT to make payments to the LCC (including those supporting the Project Agreement Unitary Charge) under the School Agreement. The DfE also offer an indemnity to the LCC where such payments are not made by DAT.
- Note that a new Principal Agreement has not been negotiated. The Principal Agreement had already been agreed when the school converted to South Leeds Academy in 2009 and this document will now be novated to CMAT through the DoNV.

3.7.3 *Commercial Transfer Agreement (CTA)*

- The purpose of the Commercial Transfer Agreement is to provide for risks and information obligations for the parties relating to staff, assets and contracts. It provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.
- The existing Commercial Transfer Agreement previously negotiated in 2009 will continue to be in place for this transfer and will be novated to DAT through the DoNV.

3.7.1 *Schools Agreement*

- Community Schools subject to PFI arrangements are maintained schools subject to LEA influence under education legislation. Once an academy is established the LEA will have no control of the funding or otherwise. In light of the fact that the academy will have limited assets beyond the school and equipment, if liabilities arise under the PFI contract due to the acts or omissions of the academy, these will fall to the City Council, since it remains a counterparty to the PFI Agreement. The DfE model has been developed to balance the Authorities' concerns over their substantial financial risk in a PFI scheme, whilst at the same time preserving an academy trust's independence and ability to run a high performing school.

- The School Agreement sets out in much clearer terms the relationship between an academy and LEA, and replaces the Governing Body Agreement. It provides for a continuing academy financial contribution towards the PFI Unitary Charge (similar to when it was a maintained school) and practical interface processes between the academy and the City Council.
- [For South Leeds, this document was negotiated before CSLT agreed the corporate position to charge PFI Academies an annual fee for ongoing management of PFI contracts and therefore no costs can be recovered from South Leeds Academy (or the multi-Academy trust).]
- The existing Schools Agreement previously negotiated in 2009 will continue to be in place for this transfer and will be novated through the DoNV.

3.7 Deed of Variation to the PFI Contract

- 3.7.1 The PFI DoV is between the LCC and Investors in the Community (Leeds Schools) Ltd (the **PFI Contractor**).
- 3.7.2 The purpose of the Deed is to ensure that the PFI contract covers the CMAT as an insured party under the Required Insurances under the PFI contract, but also adds CMAT as a City Council Related Party whose actions are the responsibility of LCC.
- 3.7.3 To ensure that the Deed accommodates any future academisation, transfer to foundation status or transfers from one academy trust to another in respect of any of the schools under the CSSP PFI project, further amendments have been made so that any relevant academy trust or foundation with all be an insured party and City Council Related Party as set out above.

3.8 Long Term Lease

- 3.8.1 The South Leeds Academy's existing 125 year lease from LCC previously negotiated in 2009 and assigned to DAT in 2015 will be assigned to the CMAT on the transfer date.

3.1 **Consultation and Engagement**

- 3.2 Any required consultation will have been carried out by the Regional Schools Commissioner.

3.3 **Equality and Diversity / Cohesion and Integration**

- 3.3.1 The DfE have undertaken an Equality Impact Assessment in relation to the Academies Bill and have also completed a Race Impact Assessment in relation to the Academies Programme – both of these are publicly available on the DfE's website.
- 3.3.2 This report does not pertain to a Key or Major decision and the documents being negotiated are only for granting permission for the Academy to assign existing documents, therefore a further screening for this transfer is not considered to be required.

3.4 **Council policies and Best Council Plan**

- 3.4.1 The 'Leeds for Learning' policy is an ambitious city-wide commitment to achieving a child friendly city that drives school improvement and reflects the new relationship with schools, the integrated children's services and the changes to national policy and funding.

- 3.4.2 The Local Authority has a duty to promote high standards and champion educational excellence. The relationship between the authority and its schools must influence the city wide agendas such as 'improve attainment and close the achievement gap', 'improve attendance and develop positive behaviour' and to 'create a life ready for learning'; all of which are aspirations from the Children and Young People's Plan. We will continue to apply the cycle of monitor, evaluate, challenge and support with schools in order that they become strong and capable of contributing to the key priorities of the city.

3.5 **Resources and value for money**

- 3.5.1 LCC incurred extensive costs relating to legal, finance and project management for the original school to academy transfer.
- 3.5.2 Children's Services has again incurred costs in relation to the workstream associated with the assignment and novation of the existing documentation, the main cost being incurred from the PFI Contractor and their advisors for approving the Deed of Variation of the PFI Contract.
- 3.5.3 It should be noted that this assignment / Novation does not change the City Council's obligation to manage the PFI contract. Due to South Leeds being an earlier conversion, we do not have the opportunity to recover any of our costs for this ongoing management.

3.6 **Legal Implications, Access to Information and Call In**

- 3.6.1 Legal implications are outlined above in 3.0 Main Issues.
- 3.6.2 This is an Administrative decision on the basis that this report relates only to the novation or assignment of existing documentation.
- 3.6.3 This report does not contain exempt information under Access to Information.

3.7 **Risk Management**

- 3.7.1 Negotiations around the transfer documents have been handled by legal and contract specialists in Legal Services and PPPU who have given appropriate due diligence and advice. No risks have been identified which have not been raised within the body of the report. No future risks have been identified which are not mitigated through the transfer documents.

4 **Conclusions**

- 4.1 The key documents are now agreed and ready for sealing/signing as appropriate.

5 **Recommendations**

It is recommended that the Chief Officer, Learning Improvement:

- Note the negotiations held with Solicitors acting on behalf of Delta Academies Trust, DfE, Cockburn Multi Academy Trust and Investors in the Community (Leeds Schools) Ltd;
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together with any other documentation required to complete the transfer; and

- Give authority for any other necessary action to be taken to effect the transfer

6 Background documents¹

6.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.