

Oakwood Primary School

School Agreement

– Ongoing Management of PFI Contracts Post-Conversion to Academy Status

Leeds City Council – 7th May 2013

Background

Leeds City Council have considered it necessary to develop a proposal in respect of the School Agreement which will allow it to provide ongoing management of the PFI contract and ongoing support to PFI schools converting to academy status, whilst also providing a degree of cost recovery for LCC to compensate for some of the funding lost as a result of the academy conversion. This proposal has been submitted to, and approved by, Children's Services Leadership Team and will be rolled out to all future academy conversions of PFI schools including Oakwood Primary School.

Proposal

The proposal is a two-tier model, as follows:

1. **Set Fee** – LCC will provide an overall service to the academy for the set fee. In effect this is the management of the PFI contract on behalf of the Academy and the complying with additional obligations pursuant to the academy documentation.
2. **Additional Fee** – in addition to the Set Fee, LCC will charge the actual cost of providing specified services to be listed in the School Agreement (see below).

This approach results in the Academy receiving the same service from LCC as received by maintained schools, but simply allows LCC to recover the funding that has been lost post conversion to cover that level of service and also recover the costs of undertaking the additional obligations of LCC under the School Agreement and other academy documentation. It also provides the opportunity for LCC to recover the actual cost of taking forward any action requested by the Academy, which the Authority may have chosen not to pursue for a maintained school, but which it is obliged to do under the School Agreement.

Calculating the Set Fee

To calculate the Set Fee, LCC have considered the total costs that it would need to recover from the PFI academies in order to continue to provide the relevant management services to the academies pursuant to the PFI and academy contracts, should all PFI schools convert to academies.

This has been calculated by estimating the overall cost of the time spent on managing PFI contracts by the Contract Management Team within Children's Services (currently consisting of 8 staff, of varying grades, spending 30% to 90% of their time on PFI management). From this amount, LCC have then deducted the amount of funding that it estimates it still receives from the DfE on conversion for the management of PFI contracts and other Asset Management functions (£1 per pupil).

LCC have then considered how to equitably share this cost between all 29 PFI schools within its 6 projects/contracts. It has therefore looked at factors such as:

- (1) pupil numbers at each school (and therefore the funding that each academy would receive);
- (2) the time allocated to each school by the Contract Management team, which in turn is affected by (amongst other factors):
 - a. the number of schools in the programme overall;
 - b. how the schools are divided between projects/contracts;

- c. whether they are a Primary or High school; and
- d. the level of specific school issues.

On the basis of the above, it has been determined that the appropriate and equitable Set Fee for Oakwood Primary School is £5,000 per annum. The fee level being proposed is set for the remaining duration of the PFI contract, which is due to expire on 31 July 2030 except for annual indexation increases in line with RPI. Under circumstances whereby there is a reduction in resource availability which impacts on the level of service/ management provided to all PFI schools and Academies, the fee charged will be adjusted accordingly.

Additional Fee

The above Set Fee would exclude the provision of specified services. These would be charged to the Academy at the actual reasonable and proper cost of providing such service (where applicable). The applicable costs that would be recoverable are as follows:

1. Where a Change with a value of between £5,000 and £100,000 is requested by the Academy pursuant to clause 26.2 of the School Agreement, LCC reserves the right to charge its internal management costs in processing such Change under circumstances whereby the complexity of the proposed Change requires a disproportionate amount of time to be spent processing the change (such as, but not limited to, attending specific design/scoping meetings, processing changes/amendments to scope). Where such Change requires legal and professional input, the costs of any reasonable professional advice (internal or external including without limitation legal costs) properly incurred will be charged. In either case, LCC would advise the Academy of the proposed fee in advance of carrying out any such work, and if the costs cannot be agreed, then LCC may decline to submit the Change to the PFI Contractor. Both parties shall act reasonably in seeking to agree the amount of the proposed fee.
2. Where a Change with a value in excess of £100,000 is requested by the Academy pursuant to clause 26.2 of the School Agreement, the costs charged would be the internal management costs of LCC in processing such Change together with the costs of any reasonable professional advice (internal or external including without limitation legal costs) properly incurred. LCC would advise the Academy of the proposed fee in advance of carrying out any such work, and if the costs cannot be agreed, then LCC may decline to submit the Change to the PFI Contractor. Both parties shall act reasonably in seeking to agree the amount of the proposed fee.
3. Where LCC is pursuing or continuing a dispute under the dispute resolution procedure in the Project Agreement on behalf of the Academy *at the request* of the Academy or determination of DfE pursuant to clause 4 of the School Agreement (i.e. whether or not LCC agrees to take it forward or in effect is obliged to take it forward), the costs charged would be the costs of any reasonable professional advice obtained (internal or external including without limitation legal costs) properly incurred (and apportioned to the other PFI Schools in accordance with the benefit to such schools). Note that LCC will not seek to recover its internal management costs (Children's Services) in this regard. LCC would advise the Academy of the proposed fee in advance of the professional advice being sought, and if the costs cannot be agreed, then LCC shall not be obliged to issue or continue the dispute. Both parties shall act reasonably in seeking to agree the amount of the proposed fee.

Note the following:

- a. The cost consequences to LCC are the same regardless of whether they agree to take forward the claim or they are obliged to do so (as they assume their own internal management costs for Children's Services in both scenarios). Therefore there is no benefit in LCC refusing to take forward a dispute for cost reasons.

- b. The Academy will have the benefit of LCC's view of the prospect of success but should they disagree or choose to ignore such view, LCC's risk is limited to its own internal management costs and not professional fees.
- c. The Academy would retain the benefit (financial or otherwise) of a successful dispute that it has instructed LCC to pursue.
- d. LCC is protected from liability for professional fees in respect of expensive disputes that LCC believes have no prospect of success (as there are cost consequences to the Academy).

4. Where LCC is:

- o Enforcing collateral warranties on behalf of the Academy pursuant to clause 4.7 of the School Agreement
- o Request accelerated or deferred maintenance under the PA at the Academy's request pursuant to clause 11.2.2 of the School Agreement
- o Enforcing provisions in respect of Employees under the PA on behalf of the Academy (e.g. removing a contractor employee from site, which would require specialist legal advice) pursuant to clause 24.3 of the School Agreement
- o Dealing with the Academy's failure to supply information, consents etc in a timely manner and in accordance with the School Agreement (e.g. failure to provide requirements for the purposes of clause 20 (Use and Control of the School))
- o Responding to requests of the Academy made pursuant to paragraph 2.6 of Schedule 4 (Information Protocol) of the School Agreement.
- o Circumstances whereby the Contract Management Team have spent more time dealing with Academy issues than the other schools within the same contract (e.g. if there are five schools within a contract, resource time over and above 20% would be chargeable)

the costs charged would be the internal management costs of LCC in dealing with such matter together with the costs of any reasonable professional advice (internal or external including without limitation legal costs) properly incurred. Note that the fee would be subject to the reasonable agreement of the Academy where practicable.

Note that costs in respect of professional advice is now limited to the list of items within the "Additional Fee" list.

It should be noted that this list of exclusions will be subject to a final review by LCC, to ensure that it is comprehensive (although it is not currently envisaged that any items will need to be added to the list).

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