

REPORT OF THE CHIEF EXECUTIVE OF EDUCATION LEEDS

EXECUTIVE BOARD: 23 January 2008

SUBJECT: Garforth Schools' Trust

Electoral Wards Affected:

Garforth and Swillington

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality & Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call-in

Not Eligible for Call-in

(Details contained in the Report)

1.0 PURPOSE OF THIS REPORT

1.1 This report formally notifies Members of the changes being implemented, and requests authorisation for Leeds City Council to continue to provide buildings, contents and employers liability insurance cover on behalf of the schools (including covering any excess) and recharge the cost of premiums to the schools.

2.0 BACKGROUND INFORMATION

2.1 The Education and Inspections act (2006), and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations (2007) provide new flexibility for schools to work together under a shared Trust in partnership with external organisations (such as Universities, Business Foundations and Community Groups).

2.2 In line with these regulations, Garforth Community College has led the formal consultation and development of proposals to form a Trust called The Garforth Schools Trust ("the Trust") with effect from September 2007. The Trust will consist of:

- Garforth Community College
- East Garforth Primary

- Garforth Green Lane Primary
 - Ninelands Primary
 - Strawberry Fields Primary
- And:
- The Primary Care Trust
 - Trinity and All Saints College

- 2.3 These organisations will work together under the Trust to improve the standards of attainment and services for pupils, students and their families in the local community.
- 2.4 A Trust school remains a local authority maintained school that is funded on the same basis as other local authority maintained schools, and funding will be delegated to the governing body, not the Trust. There will be no additional funding from the local authority for a Trust school, and there is no expectation that the Trust will provide the school with additional funding. They could, however, bring in additional resources in terms of professional expertise, knowledge and vocational opportunities. The DCSF guidelines require authorities to ensure that trust status does not result in these schools being financially disadvantaged.
- 2.5 The Scrutiny Board for Children's Services has conducted an inquiry into the implications of trust status for the Council and published its report in May 2007. In this report it was recommended that the City Council, as the local children's services authority, be at the forefront of the trust schools agenda ensuring that the potential this affords is maximised for Leeds. The City Council, through the Director of Children's Services and Education Leeds is providing support and advice on the instigation of trust status, particularly in situations that would help deliver the universal and targeted elements of children's services provision and/or assist cluster groups of schools in disadvantaged communities.
- 2.6 This report formally notifies Members of the changes being implemented, and requests authorisation for Leeds City Council to continue to provide buildings, contents and employers liability insurance cover on behalf of the schools (including covering any excess) and recharge the cost of premiums to the schools.

3.00 **MAIN ISSUES**

3.1 **Governance**

- 3.1.1 Provisions contained within the Education and Inspections Act, 2006 and subsequent regulations have added to the opportunities for diversity in school structures and governance, particularly in relation to the establishment of foundation schools with a charitable foundation, commonly referred to as Trust Schools.
- 3.1.2 The governing body of Garforth Community College, along with the governing bodies of the four community primary schools in Garforth, was successful in its bid to the DCSF for pathfinder status and following a period of consultation those five schools changed category to foundation schools and acquired the Trust on 1 September 2007.
- 3.1.3 The Scrutiny Board (Children's Services) have considered the implications of Trust Schools for the local authority. They noted the considerable similarities between Trust Schools where the Trust has a minority role in school governance and existing Aided Schools. Garforth School Trust represents a minority stake in

school governance and therefore the asset management and employment responsibilities closely mirror those long established arrangements in Aided Schools across Leeds.

3.1.4 The Garforth School Trust has established common admission arrangements in full partnership with the local authority and in accordance with the Schools Admission Code. These arrangements focus on meeting the needs of all the children in the communities served by the schools which are not on the basis of selection by ability. The Garforth School Trust has adopted the Leeds In-Year Fair Access Protocols and indeed has been a very active partner working with other schools in East Leeds to take hard to place pupils.

3.1.5 The governing body will manage its own land and assets. The Trust will hold the land and assets of the school on trust for the duration of its relationship with the school. The implications of this are covered in more detail below.

3.1.6 The schools are supported by the Trust through the appointment of governors to the schools' governing bodies. The governing body of a Trust school, and not the Trust itself, will remain responsible for all aspects of the conduct of the school. The Trust and the governing body remain separate entities.

3.2 **Asset transfer and capital implications**

3.2.1 The freehold land and buildings which the schools occupied for the purposes of the schools were transferred from Leeds City Council ("the Council") to the Trust on the 1 September 2007 for nil consideration by virtue of the Education and Inspections Act 2006. and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. The land and buildings will be held in trust by the Trust for the duration of the existence of the Trust.

3.2.2 A detailed report specifying the detail of the terms of transfer, and specifically documenting the land in question was noted by Leeds City Council Asset Management Group on 7 September 2007 and is available on request.

3.2.3 The combined asset register value of the schools to be transferred (depreciated capital value of assets) as at 31 March 2007 is identified as £26,505,722. The Trust will have the ability to dispose of these assets (subject to any proposed amendment to the terms, see section 3.2.9) on the condition that the funds are retained and reinvested in educational assets by the Trust. The Trust would be expected to inform the Council of any proposals to dispose of assets. Furthermore where the Council objects to any disposal the matter would have to be referred by the Council to the schools adjudicator for resolution.

3.2.4 The ongoing financial arrangements and allocations between the Council and the Trust Schools will not change. The schools will continue to receive devolved formula capital administered by the Council, and would be eligible for investment, for example, through Capital Modernisation funding, Building Schools for the Future (BSF), Primary Capital Programmes or continuing Asset Management Support.

3.2.5 Land and buildings used by the five schools named above transfers in line with DCSF guidance for the Transfer and Disposal of School Land in England (available from: <http://www.teachernet.gov.uk/docbank/index.cfm?id=11650>)

The following extracts of this document have been reproduced below for information:

“11. When a school’s proposals to change category have been approved, all land held and used by the transferor immediately before the implementation date for the purposes of the school and agreed to be transferred will, on the implementation date¹, transfer to and vest in the transferee to be held for the purposes of the new school. Normally this will include the school’s buildings, hard and soft play areas, all-weather sports areas, games courts, playing fields, habitat areas, roads, paths and car parks. There is a presumption that all land held by the school immediately before it publishes proposals to change category will transfer: it is exceptions to this that will be agreed between transferor and transferee, or failing agreement, determined by the Adjudicator”

“32. The overarching assumption is that except where there is good cause, all the land being used by a school before it proposes to change category should transfer to its governing body or to the trustees of its foundation when its change of category is implemented.”

“41. An authority may wish to retain ownership of land surplus to the school’s needs where it has a strong strategic need for part of the site, for instance to locate another school or for the delivery of another educational or children’s service which can be suitably sited next to the school and for which it does not have an alternative site.

42. An authority cannot seek to retain a surplus part of a site purely on the grounds of potential value on disposal, unless there is evidence of a planned use of the disposal value for the strategic delivery of its educational or children’s services which it cannot otherwise reasonably meet.”

3.2.6 The following extracts of the same document provide guidance in the event the trust decides to dispose of non-playing field assets at some point in the future:

“8. The governing body, foundation body or trustees of a foundation, voluntary or foundation special school shall notify the local authority in writing of their intention to dispose of publicly funded non-playing field land which has been acquired or enhanced in value by public funding. This includes disposal by trustees of publicly funded land following discontinuance of a school.

11. In the event that the local authority objects to the disposal, the proposed use of the proceeds or wishes to claim a share of the proceeds in as much as they result from public funding, it should inform the school and both parties should discuss the matter with the aim of reaching agreement.... [where] it is not possible for the school and the authority to agree an amount of the proceeds of disposal that should be paid to the authority, either party may refer the matter to the Adjudicator”

¹ note, the DCSF and the documentation formalising the transfer be completed by the end of December 2007 and not later than March 2008.

- 3.2.7 The land and buildings outlined in Appendix 1 will be transferred to the Governing Body of the appropriate schools, who in turn will pass the assets, in trust, to the newly formed Garforth Schools Trust. Appendix 1 also identifies a number of neighbouring premises which currently have unauthorised access to school sites. The Legal Services section is working with the Trust to formally instruct these property owners to remove this access.
- 3.2.8 The transfer agreement will be drafted by the Legal Services Section which has to be based on the model transfer agreement outlined in Annex C of Transfer and Disposal of School Land in England. It is proposed that amendments will be made by the Council to the model agreement, to include additional provisions to protect the Council's interest - in particular that the use of any capital receipt of any future land/building sale be directed through existing Council approval processes in consultation with Asset Management Group to ensure as far as possible that backlog maintenance and other corporate priorities are addressed. The draft transfer agreement will then be forwarded to the Trust for approval. It should be noted that any proposed amendments made by the Council can only be included in the model transfer with the agreement of the Trust.

3.3 **Insurance**

- 3.3.1 Legal advice has indicated that even though the freehold of the land and buildings of the Trust schools has transferred to the School Trust the Council still retains responsibility for maintaining these schools under the School Standards and Framework Act 1998. Where there is an emergency such as a school burning down or a boiler breaking down there should be local authority support as for any other maintained school.

Information supplied by the DCSF states, as a general rule governing bodies are only responsible for those things which they have received funding delegated from the local authority, but the Trust must ensure that proper insurance has been taken out by the governing body and a local authority should delegate funding for this purpose to Trust schools equal to the amount it would spend if it insured the school.

As the Council therefore maintains an insurable interest in the Trust schools it can legally continue to provide buildings, contents, employers' liability and other insurance, should it decide to do so, on behalf of the governing bodies of the Trust schools (including covering any excess) and recharge the cost of premiums. A governing body may make its own arrangements for insurance but this would likely result in increased insurance premiums which may put the governing body in financial difficulty leaving it to the Council to resolve. If a governing body was unable to obtain adequate private insurance the likelihood is that the Trust would fall.

Leeds City Council's insurer, Zurich Municipal has agreed that they would insure the Garforth Trust Schools on the Council's main policy. In the event of an insured loss, Leeds City Council would continue to fund the policy excesses which are £250k for property (with a further 20% deduction of the gross value of the claim for "consortia/system build" schools which is relevant to parts of two of the schools), £500k for liability risks and £150k for liability claims arising from use of motor vehicles. This is consistent with arrangements for all schools.

3.4 Staff transfer

3.4.1 In accordance with the legal provisions in relation to foundation schools, the governing bodies of the schools concerned became the employers of the staff on 1st September, with staff being transferred on the same terms and conditions that were in place with the City Council at the time of transfer.

3.5 VAT and Rates

3.5.1 Detailed guidance has not yet been made available on the eligibility of school Trusts and their constituent foundation schools to reclaim VAT contributions. The Council's Taxation office is currently in discussion with the Department for Children Schools and Families and Her Majesty's Revenue and Customs to clarify this issue.

3.5.2 Trust status will enable the authority to save in the region of £145,000 pa from national non-domestic business rates paid for these premises. This is a ringfenced saving within the Dedicated Schools grant funding arrangements. As such this saving will be reallocated to schools through the formula funding arrangements.

4.0 IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE

4.1 Implications for Council Policy and Governance are outlined throughout this report, principally in sections 2 and 3. It should be noted that the Garforth Trust was among the first Trust arrangements to be formalised in the country, and it is highly likely that over the coming years other groups of schools in the City will seek to work together under shared Trusts.

4.2 Precedents set through the formation of the Garforth Trust will have implications for the progression of any future proposals. The Education Leeds Governor Support Service is presently working to develop a toolkit of resources to formalise Council policy and facilitate any future proposals.

5.0 LEGAL AND RESOURCE IMPLICATIONS

5.1.1 The DCSF have provided funding which has enabled the Trust to procure its own legal advice through an independent firm of solicitors. Throughout negotiations, the Council's Legal Services Unit have worked to ensure proposals are developed and implemented in accordance with legislation, and have represented the interests of the Council.

5.1.2 The proposals carry with them a number of risks which should be considered and managed:

1. There is a risk that assets previously owned by the council could be sold by the Trust Schools, as outlined in section 3.2.3. This could potentially deprive the Council of a capital receipt that might otherwise have been used (in whole or in part) to contribute to other priorities in the City. Further details on this risk are covered in section 3.2.
2. It is recommended that in-line with legal advice, the Council should continue to offer insurance cover to the Trust schools (as outlined in section 3.3). As a result there would be no significant change to the insurance risk.

3. There is a risk that the Trust schools may use centrally allocated school budgets, to fund the activities of the trust. This situation will be monitored by Education Leeds School finance officers, and is countered by the potential for the Trust to raise revenues through its own activities which should be invested either in the Trust or the Trust Schools
4. The Trust may borrow money secured on assets that they own. As a result the Trust may decide to purchase a building secured by a mortgage. In the event that the Trust is not able to make the required repayments, the Trustees would be liable (and not the schools or the Council). The Trust has been advised to independently source its own Trustees indemnity insurance. It should be noted that the Trust cannot secure a loan on assets they hold in Trust on behalf of the schools (i.e., the school buildings and grounds handed over).

5.2 The Trust schools have become the new employers of staff as outlined in 3.4. The schools must continue to employ teaching staff in line with the School Teachers Pay and Conditions agreement. During the autumn term 2007 Governing bodies of all schools in Leeds have been asked to formally adopt the new pay and grading model for staff on NJC conditions of service at Scale 1 to 6, as proposed by Leeds City Council (with a corresponding model due to be implemented in October 2008 for staff at SO1 to PO6). Trust schools may have some flexibility not to adopt this model, although failure to do so could leave schools and the City Council exposed in the event of an equal pay claim. The Education Leeds Personnel team is currently working closely with schools to seek to secure their agreement to the LCC model and manage this risk.

6.0 **CONCLUSIONS**

6.1 The Scrutiny Board for Children's Services has conducted an inquiry into the implications of trust status for the Council and published its report in May 2007. In this report it was recommended that the City Council, as the local children's services authority, be at the forefront of the trust schools agenda ensuring that the potential this affords is maximised for the City of Leeds. The City Council, through the Director of Children's Services and Education Leeds is providing support and advice on the instigation of trust status, particularly in situations that would help deliver the universal and targeted elements of children's services provision and/or assist cluster groups of schools in disadvantaged communities.

6.2 This report formally notifies Members of the changes being implemented, and requests authorisation for Leeds City Council to continue to provide buildings, contents and employers liability insurance cover on behalf of the schools (including covering any excess) and recharge the cost of premiums to the schools.

6.0 **RECOMMENDATIONS**

6.1 The Executive Board is asked to:

- note the implications of the formation of the Garforth Schools Trust;
- note the transfer of staff to the Garforth Schools Trust;

- note the proposals to formalise the Asset Transfer Agreement outlined at 3.2.8; and
- agree to the proposal that Leeds City Council continue to provide buildings, contents, employer's liability and other insurance on behalf of the schools (including covering any excess) and recharge the cost of premiums accordingly.