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Transfer of John Smeaton Academy from United Learning Trust to The Gorse Academies Learning Trust

Date: 26 July 2021

Report of: The Sufficiency and Participation Team Lead

Report to: The Director of Children and Families

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- The Project Team (including Children & Families, Legal Services and PACS) have negotiated the transfer documentation and agreed a commercial position in preparation for the academy transfer of John Smeaton Academy from United Learning Trust to The Gorse Academies Trust on 1 September 2021. All issues have been resolved to the Project Team's satisfaction and the formalisation of the transfer is recommended in preparation for the transfer.
- 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 contributing towards the achievement of the Child Friendly City aim of 'improving educational attainment and closing achievement gaps for children and young people vulnerable to poor learning outcomes'; 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.

Recommendations

- a) Note the negotiations held with Solicitors acting on behalf of United Learning Trust ("ULT"), DfE, The Gorse Academies Trust ("TGAT") and Investors in the Communities (Leeds Schools) Limited ("ICL");
- b) Give authority for the following agreements to be executed and completed to enable the Academy to transfer on the 1st September 2021 (or such later date advised by DfE);
 - o Deed of Novation and Variation of the Commercial Transfer Agreement between LCC, UTL and TGAT;
 - o Deed of Novation and Variation of the Principal Agreement between LCC, DfE, UTL and TGAT;
 - o Deed of Novation and Variation of the School Agreement between LCC, UTL and TGAT;

together with any other documentation required to complete the transfer;

- c) Note that ICL will note TGAT on project insurances from the transfer date; and
- d) Give authority for any other necessary action to be taken to affect the transfer.

Why is the proposal being put forward?

- 1 On the 13 December 2016 Ofsted carried out a full inspection and rated the John Smeaton Academy as “requires improvement”. A subsequent monitoring visit carried out on 7 December 2017 identified some effective action had taken place to tackle the areas requiring improvement, however, a further full inspection was carried out by Ofsted on the 17 January 2019 resulted in the academy being rated as “inadequate”. A subsequent monitoring visit on the 17 October 2019 found that leaders and managers were not taking effective action towards the removal of the serious weaknesses designation.
- 2 As a result of the poor Ofsted results the Regional Schools Commissioner has negotiated the brokerage of John Smeaton Academy from United Learning Trust to The Gorse Academies Trust to take effect on the 1st September 2021

What impact will this proposal have?

Wards Affected: Crossgates and Whinmoor
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Have ward members been consulted?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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- 3 To enable John Smeaton Academy to transfer to The Gorse Academies Trust on the 1 September 2021, the Secretary of State must enter into a legally binding supplementary funding agreement in respect of John Smeaton Academy with The Gorse Academies Trust.

- 3.1 As the Regional Schools Commissioner now wishes the John Smeaton Academy to become part of The Gorse Academies Trust, the academy documents in respect of the school must be transferred from United Learning Trust to The Gorse Academy Trust. Therefore, deeds of novation and variation (“DoNV”) have been negotiated and agreed between the Secretary of State, LCC, United Learning and The Gorse Academies Trust to allow the academy relating John Smeaton Academy to be novated and varied i.e.

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

The DoNVs have been subject to negotiation between the various parties and it is intended that these agreements will be sealed or signed by LCC, United Learning Trust, The Gorse Academies Trust and the Secretary of State as appropriate.

- 3.2 The John Smeaton Academy is serviced by ICL pursuant to the Combined Secondary Schools PFI Project. Therefore, The Gorse Academy Trust will be noted on the project insurances held by ICL in respect of the John Smeaton Academy from the Transfer Date.

- 3.3 The Long-Term Lease in respect of the site of John Smeaton Academy will also be assigned by United Learning Trust to The Gorse Academies Trust;
- 3.4 Below is an outline of the main issues that have been concluded on each of the above Agreements.

3.5 Deed of Variation and Novation of the Academy Documents

3.5.1 The effect of the DoNVs is that The Gorse Academies Trust steps into the place of United Learning Trust under the academy documents. The DoNVs therefore:

- transfer the future obligations, liabilities, and rights of United Learning Trust under the academy documents to The Gorse Academies Trust; and
- vary the academy documents to recognise such transfer as appropriate.
- with LCC left in a “no better, no worse” position because of the transfer.

The academy documents that LCC are party to and which are novated and varied are set out below.

3.5.2 *Schools Agreement*

- The John Smeaton Academy is subject to the Combined Secondary Schools PFI Project. Under this Project (through the Project Agreement between LCC and ICL), ICL provide services to the school including catering, cleaning, security, reactive maintenance, and lifecycle works. Notwithstanding the school’s status as an academy LCC remains counterparty to the Project Agreement and therefore manages the PFI arrangements on behalf of United Learning Trust in respect of the John Smeaton Academy. If liabilities arise under the Project Agreement due to the acts or omissions of United Learning Trust, these will fall to LCC under the Project Agreement.
- The School Agreement has therefore been developed to balance local 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 the relationship between United Learning Trust and LCC in respect of the PFI Project Agreement (and replaced the governing body agreement that was in place in respect of the school). It provides for United Learning Trust’s financial contribution towards the PFI Unitary Charge (the academy contribution), practical interface processes between the United Learning Trust and LCC and the allocated liabilities between the parties in respect of the PFI arrangements.
- The existing School Agreement previously negotiated in 2013 will continue to be in place for this transfer and will be novated from United Learning Trust to The Gorse Academy Trust through a DoNV.

3.5.3 Principal Agreement

- The Principal Agreement governs the relationship between the DfE, United Learning Trust and LCC, and in particular the risk of failure of United Learning Trust 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 LCC where such payments are not made by United Learning Trust.
- The existing Principal Agreement previously negotiated in 2013 will continue to be in place for this transfer and will be novated from United Learning Trust to The Gorse Academies Trust through a DoNV.

3.5.4 Commercial Transfer Agreement (CTA)

- The purpose of the Commercial Transfer Agreement is to transfer assets and contracts to the incoming academy trust and to allocate associated risks and includes information obligations for the parties relating to staff, assets and contracts. It provides for apportionments of payment of salaries, pension contributions, etc. and indemnities in relation to employment matters.
- The existing Commercial Transfer Agreement previously negotiated in 2013 will continue to be in place for this transfer and will be novated from United Learning Trust to The Gorse Academies Trust through a DoNV.

3.6 Deed of Variation to the PFI Contract

3.6.1 There is an existing deed of variation of the PFI Project Agreement between LCC and ICL which provides that any academy trust or foundation trust operating a school which is subject to the Project Agreement are:

- included as an insured party under the Required Insurances under the PFI contract; and
- deemed to be a City Council Related Party whose actions are the responsibility of LCC.

3.6.2 ICL have confirmed that these arrangements will apply to the transfer on 1st September such that The Gorse Academy Trust will be included as an insured party and be deemed to be a City Council Related Party.

3.7 Long Term Lease

John Smeaton Academy's existing 125-year lease from LCC previously negotiated in 2013 and assigned to United Learning Trust will be assigned to The Gorse Academies Trust on the transfer date.

What consultation and engagement has taken place?

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

What are the resource implications?

- 5 Children & Families has again incurred costs in relation to the work stream associated with the assignment and novation of the existing documentation.
 - 5.1 LCC has incurred further costs relating to legal, finance and project management in respect of the re-brokerage from United Learning Trust to The Gorse Academies Trust. Note however that DfE and TGAT confirmed that they would pay LCC's reasonable costs in facilitating the conversion which was estimated to be £7,500 to £10,000.
 - 5.2 It should be noted that this transfer does not change LCC's obligation to manage the PFI contract on the same terms that were negotiated in 2013 on the original conversion of the school.

What are the legal implications?

- 6 Legal implications are outlined above in 3.0 'What impact will this proposal have?'
 - 6.1 This is a Significant Operational Decision on the basis that this report relates only to the novation or assignment of existing documentation.
 - 6.2 This report does not contain exempt information under Access to Information.

What are the key risks and how are they being managed?

- 7 Negotiations around the transfer documents have been handled by legal and contract specialists in Legal Services and Procurement and Commercial Services 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.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

- 8 This section of the report is not applicable due to the fact this is the transfer of an existing academy from one trust sponsor to another on instruction of the Regional Schools Commissioner.

Options, timescales and measuring success

a) What other options were considered?

- 9 The Regional Schools Commissioner has instructed that the academy must become part of The Gorse Academies Trust, therefore, the DoNV has also been negotiated and agreed between the Secretary of State, LCC, United Learning and The Gorse Academies Trust to allow the previously negotiated documents relating John Smeaton Academy to be novated and varied as required.

b) How will success be measured?

- 10 To improve educational attainment and close achievement gaps for children and young people vulnerable to poor learning outcomes by:

- Raising progress 8 to national or above;
- Diminishing the progress 8 disadvantaged gap to the national average;
- Significantly reducing fixed term exclusions;
- Significantly increasing attendance

To achieve a good outcome at the next Ofsted inspection.

c) What is the timetable for implementation?

- 11 The agreements will be executed and completed to enable the Academy to transfer on the 1st September 2021 (or such later date advised by DfE)

Appendices

- 12 None

Background papers

- 13 None