
REPORT OF THE CHIEF EXECUTIVE OF EDUCATION LEEDS

EXECUTIVE BOARD: 14 January 2009

SUBJECT: Developing and Responding to New Governance Arrangements for Schools in Leeds

EXECUTIVE SUMMARY

1 PURPOSE OF THIS REPORT

- 1.1 The purpose of this report is to enable the local authority to respond with confidence to the emerging diversity of school governance arrangements, in particular trust schools and academies.

2 BACKGROUND INFORMATION

- 2.1 The role of the local authority continues to change, now being seen as a commissioner of schools and services rather than a provider, and this role is expected to embrace the opportunities afforded by the range of new school governance arrangements. Trust schools and academies can play their part in this as they are about strengthening leadership and governance to accelerate progress in improving outcomes for children and young people.
- 2.2 As the opportunities to form trust schools became available, Leeds City Council, through an inquiry early in 2007 by the Children's Services Scrutiny Board, concluded that there was the potential, with the right partners working together, for a Trust working in a deprived area to contribute positively to narrowing the gap between the most disadvantaged children and communities and the rest of the City. It also concluded that the local authority should be at the forefront of the trust schools agenda, making sure that the potential is maximised for Leeds. The Scrutiny Board also recommended that Education Leeds developed guidance to governors considering trust status, which we have done and used in development work with them.
- 2.3 The Leeds School Improvement Policy, developed to support the New Relationship with Schools, is at the centre of our partnership working to meet the needs and aspirations of our children and young people, their families and communities. As part of this policy the local authority has a responsibility to intervene in schools that are causing concern. In relation to such schools, and to National Challenge schools, the local authority has a duty to consider closure or the establishment of an academy or trust as part of the duty to ensure that the education and life chances of pupils are safeguarded.

3 **Current Issues**

3.1 Trust Schools; There is already evidence of collaboration at governance level evolving already in Leeds. The learning to be taken from this is that in support of the local authority's commissioning role trust status may be supported and encouraged where proposals demonstrate collaboration between schools and partners which strengthens and sustains relationships, and describes improved outcomes for children and young people in relation to standards achieved and the five outcomes.

3.2 Academies; The focus of the academies programme is to provide a strategic response to radically and sustainably raise standards. The memorandum of understanding, which would be agreed between the local authority, academy sponsors and the DCSF would firmly establish the partnership arrangements.

4 **Implications for Council Policy and Governance**

4.1 As part of the local authority's strategic approach there is the opportunity for the local authority to become a key partner in school trusts, appoint trustees to the Boards of trusts, and retain seats on the governing bodies of the constituent schools. There is also the opportunity to maintain the interests of the local authority through the governance arrangements of academies as outlined in the Memorandum of Understanding.

5 **Legal and Resource Implications**

5.1 The development of trust schools and academies has implications for the capital assets of the City Council and the City Council's Asset Management Group is aware of these implications. Action is being taken to develop and apply appropriate mechanisms that minimise the risks involved. The specific implications are detailed in 5.2 of the report

6 **RECOMMENDATIONS**

6.1 The Executive Board is asked to:

- i. Note the opportunities and implications for governance of the academies and trust schools programmes.
- ii. Approve the draft Memorandum of Understanding which seeks to maximise the opportunities available to the City Council to contribute to and influence the governance of academies.

Approve a policy position that supports and encourages moves by schools to adopt Trust Status where a proposal demonstrates;

- a willingness to engage the City Council as a key partner in any Trust, including having a representative appointed as a trustee;
- collaboration between schools and partners to improve outcomes for young people;

a willingness to engage constructively with the City Council to reach agreement on the transfer of assets and the use of capital receipt from any future land/building sale, to ensure that the Council's strategic priorities can be addressed.

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Electoral Wards Affected: ALL

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 The purpose of this report is to enable the local authority to respond with confidence to the emerging diversity of school governance arrangements, in particular trust schools and academies.

2.0 BACKGROUND INFORMATION

2.1 The Department for Children, Schools and Families (DCSF) uses the term School Diversity to describe the way in which the education system is structured to enable schools to distinguish themselves according to their individual ethos, special character and areas of specialist expertise. The extension of the academies programme and the introduction of Trust schools, together with the new focus on school and community as part of delivering the five ECM outcomes (e.g. the extended schools/services programme), and the proposals for 14-19 education open the way for integrated provision and joined up governance never seen before.

2.2 The role of the local authority continues to change, now being seen as a commissioner of schools and services rather than a provider, and this role is expected to embrace the opportunities afforded by the range of new school governance arrangements. Trust schools and academies can play their part in this

as they are about strengthening leadership and governance to accelerate progress in improving outcomes for children and young people.

- 2.3 As the opportunities to form trust schools became available, Leeds City Council, through an inquiry early in 2007 by the Children's Services Scrutiny Board, concluded that there was the potential, with the right partners working together, for a Trust working in a deprived area to contribute positively to narrowing the gap between the most disadvantaged children and communities and the rest of the City. It also concluded that the local authority should be at the forefront of the trust schools agenda, making sure that the potential is maximised for Leeds. The Scrutiny Board also recommended that Education Leeds developed guidance to governors considering trust status, which we have done and used in development work with them.
- 2.4 As indicated, trust schools can be one model in this agenda which could help the local authority fulfil this new commissioning role, and to directly support this the academy memorandum of understanding described below could also have the potential to be developed into a commissioning framework for the development of trusts. Trusts could also be an option in filling specific gaps in provision.
- 2.5 The Leeds School Improvement Policy, developed to support the New Relationship with Schools, is at the centre of our partnership working to meet the needs and aspirations of our children and young people, their families and communities. As part of this policy the local authority has a responsibility to intervene in schools that are causing concern. In relation to such schools, and to National Challenge schools, the local authority has a duty to consider closure or the establishment of an academy or trust as part of the duty to ensure that the education and life chances of pupils are safeguarded.
- 2.6 Academies are an option for the local authority in strategic planning of provision and the focus of the academies programme is to provide a strategic response which radically and sustainably raises standards. These academies would work within area clusters and establish strong, dynamic partnerships with other local schools. In support of this the Executive Board has asked Education Leeds to develop a memorandum of understanding that would ensure that any new academies in Leeds would be an integral part of the family of schools.

3.0 **CURRENT DEVELOPMENTS IN SCHOOL GOVERNANCE**

- 3.1 Schools locally are actively building arrangements which secure a stronger sense of collective responsibility for quality of provision and outcomes. This has seen the development of collaborative committees, federations and trust schools.

3.2 Trust Schools

- 3.2.1 To a greater extent recently, effective clusters and partnerships are now seeing trust status as a means by which governance can be strengthened and sustained, and relationships formalised. The majority of schools involved in the trusts pathfinder programme were expected to look at how Trusts could support collaboration – not just collaboration between schools but also with key partners e.g. HE and FE institutions and the PCTs, whilst retaining a key partnership with the local authority as maintained schools. This is reflected in the current guidance to governors that encourages collaboration, and describes ways of securing and working with key partners to deliver improved outcomes for children and young

people.

3.2.2 The extent to which collaboration at governance level has evolved is already evidenced in Leeds. We have:

- One pathfinder trust formally established in the City at Garforth in September 2007 involving five schools.
- Thirteen schools have achieved early adopter status – Otley (six), Boston Spa School, Bruntcliffe School, Crawshaw School, Royds School, Temple Moor High School and Wetherby (two).
- Other schools in the City are actively considering applying for early adopter status.

3.2.3 In support of the local authority's commissioning role trust status may be supported and encouraged where proposals demonstrate collaboration between schools and partners which strengthens and sustains relationships, and describes improved outcomes for children and young people in relation to standards achieved and the five outcomes.

3.3. Academies

3.3.1 As indicated earlier in this report, the focus of the academies programme is to provide a strategic response to radically and sustainably raise standards. The memorandum of understanding, which would be agreed between the local authority, academy sponsors and the DCSF would firmly establish the partnership arrangements.

3.3.2 Academies would work within area clusters and establish strong, dynamic partnerships with other local schools, sharing facilities with other schools and the wider community. A broad curriculum would be delivered with an emphasis on a particular subject area, and an academy is required to provide by law education for pupils of differing abilities, wholly or mainly drawn from the local area.

3.3.3 Any new academy must ensure that it effectively engages with its local community and it is essential that it should build on existing local partnerships across schools, with colleges and other providers. An academy must also be an all inclusive school and arrangements for admission must comply with admissions law and the national code of practice.

3.3.4 Academies are expected to have the backing of their local authority and close collaboration is required between the local authority and sponsor. In relation to governance, the constitution of an academy is determined through the funding agreement and there must be a minimum of one seat and a maximum of two for the local authority. Where such close collaboration exists, and to support the local authority's strategic planning and commissioning role, agreement can be reached to secure two places on an academy governing body. Although the Council would not commission direct education services from an academy, it may be involved in commissioning wider arrangements for contributing to the five outcomes.

4.0 **IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE**

4.1 The issues raised in this report impact upon established Council governance arrangements.

4.2 The local authority currently has seats on the governing bodies of all its maintained schools and is therefore able to continue to maintain its interest in the governance of those schools as they come together to form collaborations, federations or trusts as described above. This is strengthened by the fact that local authority representation on governing bodies remains strong across the City, with vacancy levels below the national, regional and metropolitan averages.

4.3 As part of the local authority's strategic approach there is the opportunity for the local authority to become a key partner in school trusts, appoint trustees to the Boards of trusts, and retain seats on the governing bodies of the constituent schools. There is also the opportunity to maintain the interests of the local authority through the governance arrangements of academies as outlined in the Memorandum of Understanding.

4.4 Attached as Annex One is a table which illustrates the range of responsibilities across the governance of trust schools and academies and indicates in particular the opportunities for the local authority to maintain a clear interest in the governance of trust schools and their trusts. It should also be noted that academies are named as relevant partners to be included in children's trust governance arrangements in the latest statutory guidance (November 2008).

5.0 **LEGAL AND RESOURCE IMPLICATIONS**

5.1 The development of trust schools and academies has implications for the capital assets of the City Council and the City Council's Asset Management Group is aware of these implications. Action is being taken to develop and apply appropriate mechanisms that minimise the risks involved. The specific implications are detailed in 5.2 of the report

5.2 In relation to trust schools (which are local authority funded and maintained schools):

- all land and buildings held or used by schools are transferred to the foundation schools for nil consideration and these assets are then passed through and held in trust by the newly formed trust for the duration of its existence. Holding land on trust means the Trust will have legal title to the land but the Trust holds it on trust for the purposes or benefits of the school (or whatever is defined as the area of benefit in the Trust's Memorandum and Articles) and subject to the provisions of the Trust's governing documents. If its role ends then publicly funded land will normally revert to the governing body;
- there is a requirement that all land held or used by a school immediately before it publishes proposals will transfer to the trust;
- in the event of disagreement between the Council and the Trust as to
 - (i) the extent of school land to be transferred: or
 - (ii) the terms of such transfer as are necessary or expedient to identify and define the rights and liabilities transferring to the Trust or retained by the Councilthe matter shall be referred to the Schools Adjudicator for determination;
- the assets will no longer be part of the Council's Asset portfolio;
- the local 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;
- although the trust holds such resources on trust, the day to day use and operation of these assets is under the control of the governing body;
- schools will continue to receive devolved formula capital administered by the

Authority and would be eligible for investment through Capital Modernisation funding or future waves of BSF or Primary Capital;

- the Trust can dispose of the land and buildings;
- the trust must inform the local authority of their plans to dispose of any non-playing field land;
- the local authority can object to proposals if they feel that they are not in the interests of the school in the long term or would disadvantage the wider community. The local authority will also be able to object to re-investment proposals and to claim a share of the proceeds attributable to public investment in the land
- trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector including schools outside the local authority area according to the Trust's Memorandum and Articles and the Trust itself will not be able to profit from any such disposal.
- if a Trust's Memorandum and Articles are focused on wider educational objectives (eg to support education in an area rather than a specific school, including an area outside the local authority) then the Trust would be able to use the proceeds of disposal to support education at another school. However the trustees would need to consult the governors at the original school. The local authority would also be able to object if they felt the disposal would damage standards at the school.
- a local authority will also be able to propose the placing of a new or re-sited school on surplus foundation or Trust land and also for other educational purposes and the provision of children's services where it cannot otherwise reasonably meet a local need and which are suitable to be next to a Trust school
- where local agreement cannot be reached on any of the above issues they are referred to the Schools Adjudicator for determination in accordance with the Regulations
- a local authority will not be able to force a Trust to sell any surplus land to raise money.

5.3 Where a PFI situation exists the governing body of a school which changes status to become a foundation school with a Trust does not become a new legal entity. It is the same body corporate as the governing body of the existing school. It therefore continues to have all the contractual benefits and obligations that it has signed to. These will include, where the school is part of a PFI contract, the individual agreements that the governing body will have signed with the authority, which will include its obligation to contribute to the unitary charge for the PFI contract and the services that it will receive under the contract. Acquiring a Trust is not an opportunity for a school to withdraw from any contract unless a variation to the school's status is specifically written into the terms of the contract as an eligible reason for withdrawal.

5.4 In relation to academies (which are central government funded, independently managed schools):

- the DCSF meets the capital and running costs of the academy in full and they are funded at a level comparable to other schools;
- an agreement between the local authority and the sponsors is required to be signed assigning the land and buildings to the academy trust.
- the assets will no longer be part of the Council's Asset portfolio;
- Devolved Formula Capital goes directly to the academy

Where a PFI situation exists any proposal will be developed and progressed in accordance with national guidance on the conversion of schools participating in closed PFI projects into academies. The principles of the guidance on conversion are that the local authority should be in a no better or worse position as a result of a maintained school being replaced by an academy in respect of obligations and liabilities as a consequence of the PFI contract.

6.0 **CONCLUSION**

6.1 The way in which the education system is structured increasingly enables schools to distinguish themselves according to their individual ethos, special character and areas of specialist expertise. It also provides opportunities for them to work together in collaborative partnerships. It is likely that secondary schools will be engaging in confederations that include FE providers in order to secure 14-19 pathways. The 'provider governance' arrangements for this type of association will also need to be considered in due course. In addition, this diversity gives opportunities for the local authority to develop its role in strategic planning to raise standards and to commission a diverse range of schools and services.

6.2 The school trusts and academies programmes, which are a developing part of this diversity, must operate to raise standards and improve outcomes for children and young people. They must also work to maximise opportunities for children and young people in Leeds by contributing to the challenges of accelerated locality working, the restructuring of the 14+ learning landscape, and the National Challenge.

6.3 This report describes the opportunities available within developing school structures and governance models, and the key implications for the local authority of such models. If the local authority is to continue to fulfil its strategic role effectively it must work with all schools to develop collaborative approaches and ensure that models of governance and accountability in academies and trust schools connect with stakeholders, partners and the community.

6.4 The draft Memorandum of Understanding, attached as Annex Two which would need to be agreed with academy sponsors and the DCSF is intended to support the strategic planning role of the local authority and secure commitment to effective social partnership working in key areas that fall under the governance responsibilities of institutions. Such a document could also be adapted to provide the basis for the commissioning of schools to develop locality based trusts in order to improve educational outcomes and meet the five Every Child Matters outcomes.

7.0 **RECOMMENDATIONS**

The Executive Board is asked to:

- iii. Note the opportunities and implications for governance of the academies and trust schools programmes.
- iv. Approve the draft Memorandum of Understanding which seeks to maximise the opportunities available to the City Council to contribute to and influence the governance of academies.
- v. Approve a policy position that supports and encourages moves by schools to adopt Trust Status where a proposal demonstrates;

- a willingness to engage the City Council as a key partner in any Trust, including having a representative appointed as a trustee;
- collaboration between schools and partners to improve outcomes for young people;
- a willingness to engage constructively with the City Council to reach agreement on the transfer of assets and the use of capital receipt from any future land/building sale, to ensure that the Council's strategic priorities can be addressed.

8.0 **Background Papers**

- (i) Leeds Policy for School Improvement, March 2006.
- (ii) DCSF Statutory Guidance on Schools Causing Concern, May 2007.
- (iii) Education Leeds: Trust Schools – A Guide for Schools, October 2007.
- (iv) Children's Services Scrutiny Board Report – Implications of Trust Schools for the Local Authority, May 2007.

Summary of Responsibilities and Opportunities Across Academies and Trust Schools Governance Models

FOUNDATION (TRUST) SCHOOLS	ACADEMIES
GOVERNANCE, ORGANISATION AND ADMISSIONS	
Local Authority maintained schools	Publicly funded independent schools
<p>GB is corporate legal body with charitable status. This can help in the effective use of gifts and other support from the business community, parents and others.</p> <p>Clear distinction between the trust and the GB as separate legal entities.</p>	<p>GB is established as a charitable company. It cannot delegate its decision making power to a body upon which it does not have a majority.</p> <p>Academy Trust has control over the conduct of the school through the GB (directors)</p>
<p>GB constitution – stakeholders are parents, LEA, staff, and foundation. GB can decide that the majority of governors are appointed by the Trust. If so, a parents’ council must be formed.</p>	<p>Constitution - [Directors]: principal sponsor, sponsor governors, Principal [ex-officio member], one parent, at least one LA and co-opted governors plus other categories as stipulated in the Articles of Association.</p>
<p>The Trust (not GBs) could become the principal sponsor of an academy, forming a partnership between strong and weak school(s) and appoint the majority of directors.</p>	
<p>GB can federate with other LA maintained schools but not with academies, independent schools or FE institutions</p>	<p>Cannot federate at governance level with maintained schools, but may be part of a school company.</p>
<p>GB can collaborate with other LA maintained schools and FE institutions but not with academies or independent schools</p>	<p>Cannot collaborate at governance level with maintained schools, but may be part of a school company.</p>
<p>GB is the admissions authority and sets its admissions arrangements. Like all other schools, they have to act in accordance with the Admissions Code.</p>	<p>GB is the admissions authority and sets its admissions arrangements. Like all other schools, they have to act in accordance with the Admissions Code.</p>
BUILDINGS AND SAFETY	
<p>LEA is responsible for capital funding. Trust holds land and buildings on trust and GB is responsible for buildings, land and assets on day to day basis. GB as employer is responsible for health and safety.</p>	<p>GB is responsible for buildings, land and assets.</p> <p>GB as employer is responsible for health and safety.</p>

FOUNDATION (TRUST) SCHOOLS	ACADEMIES
FINANCE & STAFFING	
Funded through the LA Fair Funding Scheme	After initial sponsor input the majority of the funding for Academies comes from the DfES through the funding agreement. Some funding is from the Local Authority
GB is the employer and carries out all employer functions.	GB is the employer and carries out all employer functions.
OFSTED INSPECTIONS	
Subject to a Section 5 inspection by OfSTED every three years.	Inspected by Ofsted in the same way as maintained and independent schools and are inspected against both frameworks and the Independent School Standards, as they apply to Academies

MEMORANDUM OF UNDERSTANDING

An Agreement for the Provision of an Academy in Leeds

Introduction

This Memorandum of Understanding (MoU) is not intended to constitute a legally enforceable contract or to create any rights or obligations which are legally enforceable. All parties acknowledge that It is entered into in good faith and intended to be binding in honour only.

This is a general commitment of co-operation covering the establishment of an academy in Leeds, and as such acts as a formal statement of interest and intention to co-operate.

This agreement is between:

1. _____ as the Sponsor of an Academy in Leeds.
2. The Department for Children, Schools and Families (DCSF).
3. Leeds City Council, being the local authority for the area.

Purpose and Introduction

The purpose of this MoU is to set out the matters agreed between the prospective Sponsor(s) of an Academy, the DCSF and Leeds City Council which merit specific mention and to inform the formation of a framework for the development of an Academy in Leeds. The provisions and requirements of this MoU will be incorporated into any Expression of Interest by the Sponsor and the Funding Agreement with the Secretary of State establishing an Academy, so far as such provision is not already made in that Agreement.

This MoU has regard to the proposed aims and objectives of an Academy which are provided by statute and set out in section 482(2) of the Education Act 1996, as substituted by the Education Act 2002.

General Principles

An Academy will be at the heart of its community, working within area clusters to establish strong, dynamic partnerships with other local schools, sharing facilities with other schools and the wider community.

It will have a broad curriculum with an emphasis on a particular specialism(s) and provide education for pupils of different abilities who are wholly or mainly drawn from the area in which the Academy is situated.

A new Academy in Leeds must ensure that it effectively engages with its local community and parents and that it effectively provides for all young people it serves. It is essential that it should build on existing local partnerships across schools and with colleges and other providers.

Scope and Provisions of the Agreement

1. Governance and Representation on the Governing Body

1.1 Local Authority Representation.

The Local Authority has a key strategic role in planning and commissioning services and educational provision across its area and must work with all schools to develop collaborative approaches to social responsibility and partnership, delivery of the Leeds Learner entitlement, admissions and exclusions, curriculum planning and provision and accountability arrangements. Sponsors of an Academy need to develop models of governance and accountability that connect any new Academy with its stakeholders, partners and its community as well as being part of the educational provision in the City of Leeds.

To demonstrate this commitment to working in partnership as part of the wider community of Leeds the sponsor of a new Academy in Leeds must agree that Leeds City Council can nominate two governors to the governing body of the Academy, one representing the Council Ward from which the majority of students will be drawn, and one representing the Council Administration.

1.2 Elected Parent Representation.

In accordance with the Education and Inspections Act 2006 academies, through their funding agreements, are obliged to have regard to the Children and Young People's Plan designed to support more integrated and effective services whatever the circumstances or background of the child.

To secure the Every Child Matters outcomes parents and carers must be engaged as partners in the learning process, and to support this the sponsors of an Academy must ensure that provision is made for at least two elected parent representatives on the constitution of the academy governing body.

2. Managing Pupil Behaviour, Attendance, and Excluded Pupils

An Academy will work actively with other local education providers in Leeds to avoid any exclusions from schools and to make suitable and appropriate provision for all children responding to their individual needs. From its opening the Academy will take its allocated share of pupils excluded from other Leeds schools as well as accepting in year transfers in accordance with the Local Authority's In Year Fair Access Policy to ensure that all schools in an area admit their fair share of children with challenging behaviour.

A new Academy will access pupil attendance support from the Local Authority and participate in information and data sharing protocols to enable early intervention and support for Persistent Absence pupils and vulnerable pupils.

3. Staff and Union Recognition

An Academy will recognise any trade union that the previous employer (the Local Authority or Governing Body) recognised in respect of any transferring employees. In addition, an Academy governing body will recognise, for collective bargaining purposes, those Trades Unions recognised by Leeds City Council

Signature: _____
For and on behalf of the Sponsor (_____)

Name in full _____

Position _____

Date _____

Signature: _____
For and on behalf of the DCSF

Name in full _____

Position _____

Date _____

Signature _____
For and on behalf of Leeds City Council

Name in full _____

Position _____

Date _____