

Report of Director of Children’s Services

Report to Scrutiny Board (Children and Families)

Date: 13th December 2012

Subject: The Implications of Academies for the Local Authority and Education in General.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1.0 Summary of main Issues

1.1 Children and Young People’s Services have been asked to provide the Scrutiny Board with a report that addresses issues relating to the impact of academy developments upon the work of the Local Authority and education in general. Over recent years, due to governmental and notably coalition policy, there has been a significant increase in the number of schools converting to academy status both nationally and in Leeds. The current Leeds academy position in primary and secondary phases is summarised in this report together with some information on the national position. The report also presents information to the Scrutiny Board on how academies differ from local authority maintained schools, associated corporate implications and raises awareness to the Board for other options for structural change of schools.

1.2 At this time, insufficient data exists to attribute improved student outcomes purely to structural changes such as the transfer of a school to becoming an academy. Some indications suggest that increased accountability and more intensive support provided in some academy chains is proving to be effective, but this aligns with the provision to both maintained schools and academies receiving additional support and intervention through programmes such as the City Challenges and upon which the Leeds Education Challenge is based.

1.3 Mass transfer of schools to academy status threatens the financial capacity over time of the Local Authority.

2.0 Recommendations

The Scrutiny Board (Children and Families) is recommended to:

a) Note and consider the information contained within this report, and make recommendations as deemed appropriate.

b) Consider if further scrutiny is required and incorporate this into the work schedule of the Scrutiny Board

c) request further investigations to be carried out by Leeds Children's Services that take into account all options for schools considering or being expected to consider becoming an academy and the impact upon the school and the wider community that it serves in order to:

- appreciate the full implications of costs and resources on Leeds Children's Services
- inform the development of a comprehensive Leeds position statement on structural change that guides improvements in schools' standards and effectiveness and meets the needs of all young people educated in Leeds.

1.5 Purpose of this report

1.6 Children and Young People's Services have been asked to provide the Scrutiny Board with a report that addresses the following issues which have been captured from discussions with members and the Board itself:

- what an academy actually is, what makes them different from other types of local authority maintained schools
- what the budgetary implications are for the authority and schools as schools move to academy status
- why schools might opt to move to academy status (either by choice or by DfE requirement), what the short and long term benefits/detriments are
- the relationship between academies and the local authority
- the impact this may have on pupil exclusions and admissions
- in real terms how academies, both nationally and in Leeds, perform and their achievement rates since becoming an academy (i.e. is there any evidence that suggests that there is any accelerated improvement in outcomes for children once schools became academies) An analysis of school performance and their Ofsted outcomes for the past few years so that comparisons can be
- what happens if/when academies fail?
- other options for structural change of schools.

2.0 Background Information

2.1 *Primary provision total: 219 primary schools + 5 SILCs (2 – 19 years) + 1 PRU*

Primary LA maintained: 216

Primary academies total: 3 = 1%

Primary converter academies (2): Manston St James Church of England Primary School, Garforth Green Lane Primary School

Primary sponsored academies (1): Park View Academy (formerly Cross Flatts Park Primary School)

2.2 *Secondary provision total: 38 secondary + 5 SILCs (2 – 19 years) + 1 BESD SILC + 2 PRUs*

Secondary LA maintained schools: 24

Secondary academies total: 14 = 37% (not incl. SILCs and PRUs)

Secondary converter academies (8): Abbey Grange Church of England, Crawshaw School, Horsforth School, Garforth Academy, The Morley Academy, Otley Prince Henry's Grammar School Specialist Language College, Rodillian School, Woodkirk Academy.

Secondary sponsored academies (6): David Young Community Academy, The Farnley Academy, The Co-Operative Academy, Leeds East Academy, Leeds West Academy, Leeds South Academy

2.3 Leeds currently has 8 academy sponsors working in the city: Diocese of Ripon and Leeds, LEAF Academy Trust, The Co-operative, The Gorse Academies Trust, Schools Partnership Trust Academies, Academies Enterprise Trust, E-ACT and United Learning.

3.0 Main issues

3.1 What an academy actually is, what makes them different from a Local Authority run school?

3.1.1 There are two types of academy:

3.1.2 *Sponsored academies* are usually set up to replace “under-performing schools”.

3.1.3 *Converter academies* are higher attaining schools that have chosen to convert to academy status.

3.1.4 In all cases, the main differences between academies and Local Authority maintained schools are:

- Funding: Whilst academies receive the same level of per-pupil funding they also receive additional funding to cover the services that are no longer provided for them by the Local Authority and they are directly funded from the Education Funding Agency (EFA)
- Academies have the ability to set their own pay and conditions for staff and do not have to comply with national or local agreements;
- Academies have additional freedoms around the delivery of the curriculum, they do not have to deliver the National Curriculum; and
- Academies have the ability to change the lengths of terms and school days away from local agreements such that their school terms and school days can be out of synchronisation with surrounding schools.

- 3.1.5** Each school to academy conversion process brings about the Transfer of Undertakings (Protection of Employment) (TUPE) transfer of all staff except the headteacher (at the discretion of the sponsor). It also provides a lease (for 125 years) of all land and assets to the academy trust from the Local Authority. In these cases Leeds City Council takes on the function of the landlord.
- 3.1.6** Academies are required to follow the law and guidance on admissions, special educational needs and exclusions as if they were maintained schools.
- 3.1.7** Academies are required to establish an academy trust that is a charitable company limited by guarantee (the liability of the members is set at £10 in the model Articles of Association). The Trust has two layers of governance:
- the members, who operate at a strategic level with ultimate control over the direction of the Academy Trust, and
 - the governors (often referred to as the directors or trustees) with responsibility for day-to-day operation of the Academy Trust. The principles of governance are similar in academies as in maintained schools, but the governing body is accountable to the academy trust. Academies are required to have at least two parent governors. Representation of the local authority is not required on the governing body.

3.2 What the budgetary implications are for the authority and schools as schools move to academy status

Changes in school funding arrangements

- 3.2.1** The DfE removes the Local Authority Central Spend Equivalent Grant (LACSEG) from the Local Authority and this grant is then paid to academies. This is in recognition of the fact that as independent schools they no longer automatically receive a number of services from local authorities but must make appropriate provision for them.
- 3.2.2** The DfE is to transfer the block grant that funds the Local Authority's central education services to the DfE from 1.4.2013. This will then be split in real time pro-rata to pupil numbers attending academies and maintained schools. This will require immediate in-year reductions to many Local Authority central education functions as schools become academies. The rate per pupil for 2013/14 is not yet known but is estimated at £150. Therefore, a secondary school with 1000 pupils will require the local authority budgeting for £150,000. By the end of 2012/13 Local Authority funding for central education functions will be reduced by about £3 million per year.

Implications of funding changes for the Local Authority

- 3.2.3** Leeds Children's Services (For example, Personnel and HR, Finance, governor support services, healthy schools, Artforms, Sports Development, Legal services and Learning Improvement) currently trade some improvement and support programmes. The potential exists to lose trade if schools become academies and no longer wish to continue buying-in as a result of sponsors developing their own support and improvement capacity. Currently trade with schools and academies is developing across all aspects of LA services and is a feature of Budget Plus proposals over the next four years to ensure viability of services to all schools in Leeds. Marketing these services is developing.
- 3.2.4** We are encouraging all Leeds academies to choose to buy-in to Leeds' multi agency cluster arrangements and Area Inclusion Partnerships (AIPs), however they are not compelled to.
- 3.2.5** For a school becoming a sponsored academy, any deficit budget balance on closure reverts to the Local Authority any surplus is transferred to the academy. There has almost always been a deficit and so represents a non recoverable cost to the Council. In the case of schools that become converter academies they retain their balances whether deficit or surplus.
- 3.2.6** For new academies, the Local Authority continues to be funded through the Dedicated Schools Grant (DSG), but the DfE then remove funding equal to what the Local Authority would fund the academy and a share of Local Authority central expenditure. This assumes that most of our services funded through the schools budget shrink pro-rata to pupil numbers transferring to academies.
- 3.2.7** In addition to the ongoing revenue costs for academies there is a cost to the authority arising from each school to academy transfer, in that, legal agreements are required to facilitate the transfers, as well as additional costs to Leeds Children and Young People's Services arising from officers' time. These costs include;
- a. In the case of schools which are not subject to Public Funded Initiative (PFI) arrangements, these are more straight forward in that they consist of a lease of the school property, costs in relation to supporting the TUPE process for staff, and a Commercial Transfer Agreement (CTA) which deals with staff and asset transfers. The standard CTA form (supplied and required by the DfE) contains some fairly onerous TUPE indemnities which go beyond the actual requirements of the TUPE regulations. Leeds' position (in line with most other local authorities) in relation to the terms of the CTA on more recent conversions has been to only offer obligations which reflect the TUPE requirements. The average cost of legal work on non-PFI conversions is between £6-10k.

b. The Local Authority retains contractual responsibility and risk if a PFI school becomes an academy. In this case, for the PFI schools that convert, additional agreements are required to deal with the fact that the City Council remains counterparty to the PFI agreement and is responsible for continuing to administer it for the benefit of the academy (this is because the arrangements cover more than one school and cannot be partially terminated). The additional agreements include a deed of variation in respect of which the City Council is obliged to pay the PFI contractor's (and funders) legal costs. Otherwise they are based on standard forms which have been drawn up to ensure that the DFE can step in and back up any indemnity or loss caused to the City Council by the academy putting us in breach of the PFI agreement. There has been a national disagreement over the extent of the indemnities offered by the DFE on these transactions after they changed their standard approach in 2011. This disagreement is still on-going. However after further discussions it is hoped these issues can be resolved shortly for future conversions. The average legal costs for PFI school conversions currently exceed £40k, plus £15k funder legal costs. It is hoped once the indemnities point is agreed and due to other details already implemented the costs will reduce to less than £40k, plus funder costs. In order to reduce the impact of these substantial costs upon the Local Authority a series of negotiations with the DFE have led to the following proposals being developed as a way forward to mitigate costs on these transactions:

- The DfE have agreed to fund the cost of external legal fees incurred by the PFI funders and their lawyers to undertake due diligence.
- The LA has asked DFE to fund a sum of £25k for each PFI conversion in addition to this (this equates to the amount the academy itself receives for legal costs)
- The LA propose to seek a £10k contribution from each converter academy from their funding of £25k (non-PFI schools)

3.2.8 The Local Authority retains responsibility for providing SEN funding where 'attached' to individual pupils. However, SEN funding is changing in terms of what the Local Authority provides and what is topped-up for the individual children. Should an academy refuse to admit a child with high level special needs the responsibility for the child would revert to the Local Authority. This is an area that Scrutiny may wish to consider in light of funding changes.

3.2.9 There are potential additional admissions and transport costs if an academy adopts changed admission arrangements. However, if transport costs increase due to a change in the school day, academies must bear the cost or transport could be removed.

3.2.10 The removal of funding for academies from the Local Authority is detrimental to the Local Authority VAT partial exemption calculation due to the removal of academy budget funding from the Local Authority.

3.2.11 An academy is obliged to insure the buildings. Leeds City Council does not have the resources to check that the buildings have been adequately insured or continue to be insured (yet the Council continues to have a vested interest in these buildings as landlord).

3.3 Why schools might opt to move to academy status (either by choice or by DfE requirement), what the short and long term benefits/detriments are

3.3.1 A governing body of a school judged to be outstanding by Ofsted and which is above the floor standards may pass a resolution to convert to academy status.

3.3.2 The Secretary of State for education expects all schools deemed to be under-performing (below the floor standards or in an Ofsted category) to transfer to sponsored academy status.

3.3.3 There is, therefore, some pressure on school governing bodies to transfer to academy status, be they highly attaining schools or those schools that are either below the floor standards or in an OFSTED category.

3.4 The relationship between academies and the Local Authority

3.4.1 Leeds Children's Services is committed to establishing a learning partnership with all providers serving the interests of all children in Leeds. A Leeds academy sponsor network is being established to ensure robust links are maintained between the Local Authority and academies. In essence this is a family of Leeds schools working together regardless of status for the best outcomes for children and young people. The vast majority of schools and academies in Leeds are committed to this vision. In order to do this we are determined to avoid the fragmentation of education provision in Leeds. The quality of relationships between the Local Authority and individual academies varies from academy to academy. Recent international studies of successful education systems identify that collaboration is much more effective in raising standards than competition. These are the underpinning principles of the Leeds Education Challenge and the development of a school led school improvement system hence the secondments of headteachers to work within the Local Authority and establishment of the "4Heads". 4Heads is a brand for the work of the seconded headteachers as they work to challenge and support schools-led school improvement.

3.4.2 The Local Authority has no power of direction over an academy.

3.5 The impact this may have on pupil exclusions and admissions

3.5.1 Academies are required to follow the law and guidance on exclusions as if they were maintained schools. The new (September 2012) guidance to schools removes any requirement to inform the Local Authority of any fixed term exclusion. This means that our data on fixed term exclusions could become less reliable in future if more schools choose not to inform us of them.

3.5.2 Permanent exclusions last year in Leeds improved greatly and are now lower than ever before. In 2011-12 there were 23 permanent exclusions compared to 70 four years ago. In large part this is due to Area Inclusion Partnerships (AIPs) working hard to identify and implement alternatives to exclusion. Leeds academies currently benefit from these partnerships and support alongside our maintained schools.

3.5.3 All Leeds academies have adopted admissions policies that are in line with the Leeds policy that includes “nearest distance” as a prioritisation criteria. The Local Authority has no power of direction over an academy.

3.6 How academies perform nationally and the achievement rates of Leeds academies

3.6.1 The Evaluation of the City Challenge Programme report, (DfE, June 2012) analysed the impact of strategies for improving schools. It concluded that intervention strategies such as those deployed within the City Challenge programme were effective in improving all schools both academies and maintained schools. The report indicated that there was insufficient evidence that transfer to academy status of itself was an effective form of school improvement.

3.6.2 The performance of Leeds academies is subject to a full review and report as part of the annual standards report presented to Children’s Trust Board and Leeds City Council Executive Board in February 2013.

3.7 What happens if/when academies fail?

3.7.1 Sponsors and governors of converter academies are held directly accountable to the Department for Education for improving the performance of their schools. The Secretary of State has powers to end the funding agreement i.e. remove the sponsor, and put in place new sponsorship arrangements. The Local

Authority has no powers of intervention for underperforming academies and yet are still judged on their performance, which is one of the criticisms of the newly published Ofsted league tables. Academies are subject to Ofsted inspections under same framework as that of maintained schools.

3.8 Other options for structural change of schools

3.8.1 Other options to academy conversion are available for consideration by schools, governing bodies and the local authority. These are:

- A school federation is a formal and legal agreement by which any number of schools share a governing body which is formally reconstituted. Federations can involve a mix of primary, special and secondary schools of any type or size.
- Trust schools are state-funded foundation schools which receive extra support (usually non-monetary) from a charitable trust made up of partners working together for the benefit of the school.
- Co-operative Trust Schools are the same as trust schools with specific links to the Schools Co-operative Society and the Co-operative College which can provide organisational and educational support to both maintained and non-maintained schools.

4.0 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Further collaboration is required across Children and Young People's Services, Corporate Governance, Resources and City Planning to establish a greater understanding of the implications of structural change of Leeds schools.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 The issue of how to ensure that all children receive equal opportunities of the same highest standards of provision across all Leeds schools needs to be further addressed.

4.2.2 The issue of how all Leeds schools work together to ensure the benefits of community cohesion and social integration needs to be further addressed.

4.3 Council policies and City Priorities

4.3.1 A comprehensive (academies, trusts, federations) policy statement based on the values of Leeds City Council and the mission of the Leeds Education Challenge may be required

4.4 Resources and value for money

4.4.1 Service/Officer costs, recovery costs of past conversions, new trading implications, demonstration of school improvement data, land transfer (assets maintenance).

4.5 Legal Implications, Access to Information and Call In

4.5.1 Land transfer (assets maintenance).

4.6 Risk Management

4.6.1 Land transfer issues, PFI indemnities, checking maintenance of leased buildings, communications on safeguarding information, exclusions, admissions, SEN duties, equal opportunities.

5.0 Conclusions

5.1 At this time, insufficient data exists to attribute improved student outcomes purely to structural changes such as the transfer of a school to becoming an academy. Some indications suggest that increased accountability and more intensive support provided in some academy chains is proving to be effective, but this aligns with the provision to maintained schools receiving additional support and intervention through programmes such as the City Challenges and upon which the Leeds Education Challenge is based.

5.2 Mass transfer of schools to academy status threatens the financial capacity over time of the Local Authority.

6.0 Recommendations

6.1 The Scrutiny Board (Children and Families) is recommended to:

a) Note and consider the information contained within this report, and make recommendations as deemed appropriate.

b) Consider if further scrutiny is required and incorporate this into the work

schedule of the Scrutiny Board

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- appreciate the full implications of costs and resources on Leeds Children's Services
- inform the development of a comprehensive Leeds position statement on structural change that guides improvements in schools' standards and effectiveness and meets the needs of all young people educated in Leeds.

7.0 References

- 7.1** 3.6.1 *Evaluation of the City Challenge programme*, DfE Research Report DFE-RR215, June 2012¹

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.