

CYP Sinfin Review meeting – 11 December 2008.

Those attending:

Councillors: Bolton, Latham, Higginbottom, Rawson, F Khan

Co-opted members: Kirit Mistry, Ian Jennison

Witnesses: Dave Wilkinson, Howard Jones, Steve Monks, Andrew Flack, David Croll, John White

Apologies: Councillor Williams, Nasreen Iqbal, John Honey

The meeting started at 6.00 pm. The Commission went into private session at 7:05 pm and the meeting finished at 7:25 pm.

1. Nasreen Iqbal had asked it to be made clear that as she thought she had a personal interest in the subject she had wanted to attend the meeting but was not intending to take part in the review. Having been told that her interest might be prejudicial, Nasreen had decided she must respect the advice given in the Constitution and would not be attending the meeting.
2. The Chair outlined the objectives and format of the review and asked the witnesses to give their evidence to the Commission.

Dave Wilkinson (DW) – NASUWT

3. DW thanked the Commission for holding the review and for giving him a chance to speak. He said he understood that the review would confine itself to considering the effect of the Academy proposal on the terms and conditions of school staff.
4. DW said that school teachers' terms and conditions in maintained schools were nationally determined. He said that the terms and conditions fell within three main types. These were contracts set out in the 'Blue Book', collective agreements with employers' organisations such as the Education Employers representing local authorities and Catholic and Church of England schools, contained in the 'Burgundy Book' which related to sick pay, maternity leave, etc, and local collective agreements. DW said that in respect of local collective agreements Derby teachers were in a privileged position because Derbyshire County Council had formerly entered into lots of these with the teaching trades unions and these had been retained when the City became a unitary authority.
5. DW said that Academies were independent schools funded by the state and as such could set their own conditions of service. DW said that the concerns about the change to Academy status could be addressed by the Academy agreeing to stick to existing agreements, but to date there had been no confirmation that it was prepared to do this. DW confirmed that he had met with David Croll about the recognition of the teaching unions but there had been no agreement on service terms and conditions, and he said staff would need this agreement.

6. DW also told the Commission that staff employed by independent schools could have different terms and conditions to staff working for local authority schools.

Steve Monks (SM) – Head Teacher Sinfin Community School

7. SM told the Commission that he felt on balance he knew what was good for the school and said that he felt what was on the table was not good for the school.

8. SM said he felt it was important to take the staff forward with the proposal. He said that some staff were mainly concerned about the effect of the proposal on their pay and conditions but the concerns of the majority were broader. He said that staff wanted to work in a local authority Community school and suggested that if the proposal went ahead the more principled might decide to leave and this would be to the detriment of the school.

9. SM was concerned that agreements made at this stage might not be honoured in the future. He felt that the new structure might be destabilising and said it was necessary to understand the strengths and weaknesses.

10. Referring to the situation of the Senior Leadership Team (SLT) SM said that he felt TUPE should apply across the board.

11. SM said that he had taken advice from his professional body ASCL about the advertising of his post and had been told that what had been proposed was probably unlawful. SM said that this view was supported by advice ASCL had received from Queen's Council.

12. SM told the Commission that the situation was putting pressure on staff, pupils and parents and was causing unease.

Howard Jones (HJ) – Deputy Head Teacher

13. HJ told the Commission that he had just returned from a meeting with school inspectors who had confirmed that Sinfin school was making satisfactory progress.

14. HJ said that he and the other SLT members were initially given the impression by Derby College that the proposal was for a 'new style' Academy. He said that promises made verbally to himself and his colleagues were that working at the Academy would be an excellent experience for them that would benefit them in their future careers. HJ said that the inference was that he and his colleagues would be needed under the new structure.

15. HJ told members told the Commission that he and his SLT colleagues had worked with the College on the proposal but around three months ago the situation had changed, the relationship had cooled and they had learned that the head teacher's post would be advertised. HJ said that it was at this point he realised that it was to be the 'old style' approach for failing schools.

16. HJ said that Appleyards, the HR consultants, were careful with their choice of words using phrases such as 'looking at structures' and 'slotting in'.

17. HJ said it was normal for a head teacher's post to be advertised if the school was failing but Sinfin was making progress but if it was to be a new style Academy the post did not have to be advertised.

18. HJ said that he was sure Appleyards would be careful to follow the letter of TUPE but he did not know whether the spirit of TUPE would be upheld.

David Croll (DC) – Principal and Chief Executive, Derby College

19. Referring to a point made by Dave Wilkinson on national conditions DC confirmed that he had agreed to propose to the Trustees that full trades union recognition would be maintained.

20. DC said that the Academy would not be private as it would be a public sector organisation funded via the local authority. He said it was necessary to look at how Derby College had performed and pointed out that it had the best pay and conditions of any College in the country. DC said that Dave Wilkinson seemed to be trying to compare the terms and conditions of FE establishments with those of schools and this was not a valid comparison.

21. DC said that the Trustees and not the College would be responsible for the day-to-day running of the Academy. He told the Commission that to attract and retain the best teaching staff the Academy would need the best terms and conditions and he confirmed that the Academy would adhere to the terms and conditions set out in the Blue and Burgundy books for existing staff.

22. DC told the Commission that the level of remuneration for the new head teacher's post would be more than for the current one because of the wider and different responsibilities it would carry. DC confirmed that the advice from DCSF was that the head teacher's post would need to go through a public appointment process.

23. DC said that Chris Perkins, Chair of the College Governors, had guaranteed that the Head would get an interview. He said it was not necessary to offer this to other staff as they would be protected by TUPE rights.

24. DC said that the proposal was aimed at lifting the school out of National Challenge status.

John White (JW) – Appleyards Consultants

25. In response to a question from a member of the Commission JW confirmed that Appleyards had been engaged to provide organisational consultancy to the College on the process of setting up the Academy. JW said that his background was just in HR.

26. JW said he felt that David Croll had said much of what needed to be said. JW said he could not speak on behalf of the governors, only from the position of employment law. He said that TUPE gave tremendous rights to transferring staff which included recognition of existing trades union representation. JW said he expected the trades unions to be recognised by the Academy and that experience had shown this usually happened.

27. JW confirmed that when existing staff transferred under TUPE their existing terms and conditions were protected and that this protection was not time limited.

28. JW told the Commission that as the Academy would be a different organisation it will require some re-organisation and this would mainly affect the Senior Managers at the school. JW said that as a copy of the present organisational structure for the school had not been provided, a new structure was having to be designed without any knowledge of the old. He said that once the new structure was completed it would be possible to see where existing staff might fit in.

29. JW said that existing staff would get an interview for new posts and that the application process would be open. He said that the intention was to apply the spirit of TUPE rather than the letter of the law.

30. JW said that the sponsors wanted to work positively with the trades unions and told the Commission that his previous experiences of this type had gone well.

Andrew Flack (AF) – Corporate Director for Children and Young People

31. AF reminded the Commission that part of the former Cabinet decision was to 'address positively the concerns expressed by staff'. He said that the nature of the partnership with the College made Cabinet feel that the change to an Academy would be a smooth transition. AF also said that the College had a good record in the employment field and reminded members that the College did not have to act as sponsor – it did so out of a shared vision for the success of young people in the City.

32. AF told members that there would be huge pressures on the College to succeed as sponsor. This was a flagship policy and it made no sense if the staff were not engaged, or were underpaid or had unfavourable conditions.

33. AF said that commitments had been given so far as was possible. He said that the union action meant there was no willingness to discuss pay and conditions. He also said that FE pay and conditions should not be compared with those of teaching staff.

34. Referring to High View, AF said that the situation there had been similar in some ways and had involved the transfer of all the staff with staff being

slotted in as appointed and pay and conditions protected. AF said that TUPE was a complex process and the intention was to apply the spirit as well as the law and recognise the situation of staff on different jobs. He said however that the situation became more difficult where senior staff were concerned in the sense of posts being the same as current ones. He emphasised the need for discussion to resolve issues.

35. The Chair then asked members if they had any questions for the witnesses.

36. Cllr Higginbottom asked why the organisational plan for the school had not been passed to the College. In response SM said that he had been instructed not to do so by the Governors who considered it would not be in the best interests of the school.

37. Cllr Latham asked when the request had been made by Appleyards and was told the request was made about three weeks ago. SM said that he had been asked for a lot of information. He said he had an organisational chart for the SLT but not for the rest of the school.

38. The Chair asked whether relationships between the school and the College were strained. SM said there was no strain on an interpersonal level but there were procedural issues, the Governors had concerns and were reluctant to give consent.

39. Cllr Rawson asked about the sticking points for the Governors. SM said that there were a range of issues, not just pay and conditions and the Governors felt that the risks of the proposal outweighed the benefits.

40. Cllr Latham asked what happened if the proposal fell apart. AF said that the government had a strong say in what happened through funding streams and the National Challenge which required robust plans to make some performance gains above the threshold by 2011. The government could take action if this was not achieved but would rely on the local authority getting the standards to rise. There would be pressure if not direct involvement by the government.

41. Cllr Latham asked if this would mean less certainty for the staff and AF it would. He said that the Council felt it could work with the sponsor,

42. Cllr Latham said she was concerned about the trades unions and the terms and conditions of staff. She said she was pleased to hear of the intention to stick at least to the existing terms and conditions and the spirit of TUPE. DW confirmed that he found the comments encouraging and said he thought it would be helpful if a statement could be made to the effect that the terms and conditions of staff at the school would be 'no less favourable than their existing conditions'. He said that this did not preclude the existing terms and conditions being improved upon and he asked that discussions between the College and the trade unions be started as soon as possible. DW considered that this was the job of the negotiators and he said that with a

proposal of this sort in place it should be possible to move forward to an agreement.

43. Ian Jennison welcomed the assurance that TUPE would be recognised but asked whether new staff would be engaged under the same conditions. He said he felt that there might be grounds for a legal challenge if new employees were offered less favourable pay and conditions.

44. DC said that they were currently considering existing staff. He said that if they wanted performance they needed committed and contented staff and therefore the College would not want to worsen conditions of employment. However he said in the future roles might change and it would be necessary to maintain standards.

45. Councillor Khan asked how soon a management structure might be in place. In response JW said he had been hampered by not having sight of the management structure for the school as he would have preferred to have seen what was already in place. JW said that he would expect a proposed structure to have been completed by mid January 2009 and that consultation would take place over four weeks between then and the February half term, which was a tight timetable. JW confirmed that it might not be possible to appoint a head designate by Easter 2009.

46. Councillor Latham asked whether the decision about the future of the school was to be made in mid January. AF confirmed that this was planned for the Council Cabinet meeting on 13 January and that the consultation would finish on 15 January. He said that the consultation on the form of the Academy by the sponsor did not finish until mid February.

47. AF said it was known that a designate head teacher would be needed early in the process which is why the project management company had proposed to place the advertisement before the consultation closed. He said that the process was working to a demanding schedule, a number of things had to happen within the time frame and the proposal to advertise the head teacher's post had come from the Appleyard time line. AF said that the proposal to advertise the head teacher's post may have given the impression that it was a 'done deal', but this was not the case – any appointment would be conditional on outcomes.

48. Councillor Latham pointed out that if the advertisement had been placed when it was originally proposed, SM would have had to apply for the job before the consultation period was finished, and she felt this had caused problems. She asked when the advertisement would now be placed and was told by AF that this was still under discussion. JW said he would want to see the attitude of Council at the meeting on 13 January. He said that a serving head teacher who applied successfully for the new post would have to hand in their notice by 30 April which was why it would be necessary to advertise the now post as soon as possible in January. AF confirmed that the successful applicant would have to resign in sufficient time to allow completion of their notice period and this had a bearing on the date of the advertisement.

49. Councillor Latham asked whether the breakdown in relations with the Governors might be a result of the proposal to place the advertisement before completion of the consultation period and AF confirmed that it had been a major contributor to the situation.

50. Councillor Higginbottom asked whether the College had consulted anyone else on their proposals. HJ said that no promises had been made but they had been implied. Councillor Higginbottom then asked whether having the existing management structure would have helped the College and DC confirmed that it would. Councillor Higginbottom then asked if it would impact badly on the staff if the proposal failed and there was no sponsor and AF said it was likely it would.

51. Councillor Rawson asked whether employees of the Academy would retain the pension rights that they had as Council employees. JW and DC confirmed that these rights would be retained.

52. In response to a question from Councillor Khan DC said that the Trustees of the Academy would be governors of Derby College or a wider body.

53. Councillor Latham asked DW whether the industrial action that had led to the disruption of teaching was likely to continue. DW said that he did not have any information on this. He said that it depended on the decision taken by Cabinet and on a whole range of other factors including the position adopted by the NASUWT National Leadership. DW felt that reaching an agreement on terms and conditions would be helpful.

54. AF reminded the Commission that non teaching staff as well as teachers were affected by the proposal. He said that the new governing body would have a different make up to that of the school and would be broader based.

55. There being no further questions the Chair thanked the witness for their contribution and at 7.05 pm the Commission went into private session to consider their recommendations.

DRR 15 January 2008.