



Academy Commercial Transfer Agreement (CTA) – Derby Moor Community Sports College (Foundation)

SUMMARY

- 1.1 Commercial Transfer Agreements (CTAs) deal with which assets, contracts and liabilities will be transferred to an academy trust and which are to be retained by the Council as well as the terms on which those assets, contracts and liabilities will be transferred.
- 1.2 In May 2012 consideration was given in relation to the Council signing CTAs for academy conversions. It was agreed, at that time, that the Council would not enter into CTAs for any academy conversions.
- 1.3 The Education and Adoptions Act 2016 amended the Academies Act 2016 and inserted a duty on Local Authorities to take all reasonable steps to facilitate a conversion for a school to become an academy once an academy order has been issued (Section 5B). Further, the 2016 Act inserted a new Section 5C into the Academies Act 2010, which provides power for the Secretary of State to direct a local authority to take specified steps for the purpose of facilitating the conversion of a school into an academy where an academy order has been made.
- 1.4 Whilst there is no legal requirement for Councils to sign CTAs, it is understood that other Local Authorities do sign CTAs. It is possible that the Council's position of not signing CTAs could cause delays in the conversion of schools with Ofsted ratings of 'Requires Improvement' or 'Inadequate'. A delay in conversion of a school to an academy, where an academy order has been issued under Section 4(A1) or (1)(b) of the Academies Act 2010 (i.e. where intervention is required), may result in the Secretary of State issuing a Direction to the Council.
- 1.5 In view of this, it has been agreed that the Council will sign CTAs based on the Department for Education's (DfE) standard form template. It has also been agreed that the Cabinet Member for Education and Skills can approve the signing of individual school CTAs as and when required.
- 1.6 Derby Moor Community Sports College is due to convert to academy status. This report seeks Cabinet Member approval to sign the CTA for this school. The CTA follow the standard Department for Education template. There will be very limited amendments from the standard templates to reflect arrangements in respect of recent building works at the school; these amendments do not make any significant changes to the Council's risk profile and no additional indemnities will be given by the Council. The school is also a Foundation school, therefore the Council is not the employer or owner of the site.

RECOMMENDATION

- 2.1 To approve the Council signing a CTA for Derby Moor Community Sports College.

REASONS FOR RECOMMENDATION

- 3.1 Following careful consideration, it has been recommended that individual CTAs should be submitted to Cabinet Member for consideration and approval. This is due to the possibility that the Council's position of not signing CTAs could cause delays in the conversion of schools with Ofsted ratings of 'Requires Improvement' or 'Inadequate'. A delay in conversion of a school to an academy, where an academy order has been issued under Section 4(A1) or (1)(b) of the Academies Act 2010 (i.e. where intervention is required), may result in the Secretary of State issuing a Direction to the Council.

SUPPORTING INFORMATION

- 4.1 Council Cabinet, at its meeting on 13 June 2012, approved a policy position of not supporting the conversion of maintained schools to academy status. It was, however, agreed that, where a decision is taken for a school to convert to academy status, the Council will carry out all necessary processes to enable the conversion to take place including the transfer of staff and assets from the Council to the academy trust (where applicable) and putting a School Agreement in place in relation to PFI school conversions.
- 4.2 Commercial Transfer Agreement (CTAs) deal with which assets, contracts and liabilities will be transferred to an academy trust and which are to be retained by the Council as well as the terms on which those assets, contracts and liabilities will be transferred.
- 4.3 In May 2012 consideration was given in relation to the Council signing CTAs for academy conversions. It was agreed, at that time, that the Council would not enter into CTAs for any academy conversions.
- 4.4 The Education and Adoptions Act 2016 amended the Academies Act 2016 and inserted a duty on Local Authorities to take all reasonable steps to facilitate a conversion for a school to become an academy once an academy order has been issued (Section 5B). Further, the 2016 Act inserted a new Section 5C into the Academies Act 2010, which provides power for the Secretary of State to direct a local authority to take specified steps for the purpose of facilitating the conversion of a school into an academy where an academy order has been made.
- 4.5 Whilst there is no legal requirement for Councils to sign CTAs, it is understood that other Local Authorities sign CTAs. It is possible that the Council's position of not signing CTAs could cause delays in the conversion of schools with Ofsted ratings of 'Requires Improvement' or 'Inadequate'. Delay in conversion of a school to an academy, where an academy order has been issued under Section 4(A1) or (1)(b) of the Academies Act 2010 (i.e. where intervention is required), may result in the Secretary of State issuing a Direction to the Council.

- 4.6 It is possible that the issue of a Direction by the Secretary of State could result in the Secretary of State ordering an inspection of Local Authorities (see 'The framework for inspection Local Authority arrangements for supporting school improvement'. Page 10. Ofsted, September 2015).
- 4.7 In view of this, it has been agreed that the Council will sign CTAs based on the Department for Education's (DfE) standard form template. It has also been agreed that the Cabinet Member for Education and Skills can approve the signing of individual school CTAs as and when required.
- 4.8 The Secretary of State has issued an academy order for Derby Moor Community Sports College. The school is judged as a Good school by Ofsted, so it is not being directed to convert on performance grounds. However, the school have expressed a desire to join the Spencer Academies Trust (MAT), the Secretary of State has issued an Academy Order, and the DfE have confirmed the intention for the school to convert and join the MAT.
- 4.9 In terms of resources to negotiate and complete CTAs, the Council has recently introduced the following charges to schools to cover costs associated with academy conversions:

| Type of School to Convert | Standard Charge Per School |
|----------------------------------|--|
| Community School | £3,000 |
| Voluntary Aided School | £1,000 |
| Foundation School | £500 |
| PFI School (any school category) | £10,000 plus full reimbursement of actual external third party costs (PFI funder/consortium/legal fees). |

OTHER OPTIONS CONSIDERED

- 5.1 There is an option for the Council not to enter into CTAs. There is a risk, however, that by not signing CTAs, the Council could cause delays in the conversion of schools. A delay in conversion of a school to an academy, where an academy order has been issued under Section 4(A1) or (1)(b) of the Academies Act 2010 (i.e. where intervention is required), may result in the Secretary of State issuing a Direction to the Council.

This report has been approved by the following officers:

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|--|---|
| Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s) | Emily Feenan, Principal Lawyer Alison Parkin, Head of Finance – People Services Gurmail Nizzer, Acting Director for Commissioning |
| For more information contact: Background papers: List of appendices: | Gurmail Nizzer, Acting Director for Commissioning 01332 642720 gurmail.nizzer@derby.gov.uk None Appendix 1 – Implications |

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| IMPLICATIONS |
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Financial and Value for Money

- 1.1 It is not possible to fully quantify the financial risk around signing CTAs as different academy trusts are likely to apply the agreement in different ways. Once a school converts to academy status, the LA no longer receives funding for that school. Any successful claim brought against the Council would need to be met by the relevant department, dependent on what the claim related to.

Legal

- 2.1 CTAs deal with which assets, contracts and liabilities will be transferred to an academy trust and which are to be retained by the Council as well the terms on which those assets, contracts and liabilities will be transferred.
- 2.2 In relation to the transfer of staff, it should be noted that, without a CTA, the normal provisions of TUPE will apply i.e. the Academy Trust will be responsible for all liabilities relating to the employees post transfer date and this includes all historic liabilities, which the employees transfer with (e.g. equal pay claims). Through a CTA, the Council would indemnify the Academy Trust for any historic staffing liabilities and the Academy Trust would use reasonable endeavours to indemnify the Council against any losses that occur as a result of their actions.
- 2.3 With regard to the building and assets of the converting school, under the standard CTA template, the Council would agree to cover all losses and outgoings incurred or payable in relation to historic liabilities.
- 2.4 The CTAs will be amended to reflect where the Council has undertaken significant building works at the school and wording is required to detail how warranty claims in respect of the works are to be dealt with and collateral warranties or the Council's contracts are to be enforced. These amendments do not have a significant impact on the Council's risk profile. Specifically the Council will not give any additional indemnities (beyond those set out in the standard template) under the CTA.
- 2.5 It should be noted that Derby Moor Community Sports College is a Foundation School, and therefore the current Governing Body Trust are the owners of the buildings and the employer of all staff. The Council's role and liability is therefore more limited than for a Community School converting to Academy status.

Personnel

- 3.1 As set out in the legal implications section (above).

IT

- 4.1 None arising from this report.

Equalities Impact

5.1 None arising from this report.

Health and Safety

6.1 None arising from this report.

Environmental Sustainability

7.1 None arising from this report.

Property and Asset Management

8.1 With regard to the building and assets of the converting school, under the CTA, the Council would agree to cover all losses and outgoings incurred or payable in relation to historic liabilities. The Council would undertake to keep the Academy Trust indemnified against any historic liabilities.

Risk Management

9.1 As set out in the main body of the report.

Corporate objectives and priorities for change

10.1 This report supports the Council priority outcome of 'Enabling individuals and communities, and Raising achievement and skills'.