

**REPORT FOR: EDUCATION
CONSULTATIVE FORUM**

Date of Meeting:	1st March 2011
Subject:	Position on the Potential Conversion of High Schools to Academies
Key Decision:	No
Responsible Officer:	Catherine Doran, Corporate Director Children's Services
Portfolio Holder:	Councillor Brian Gate, Portfolio Holder for Schools and Colleges
Exempt:	No
Decision subject to Call-in:	No
Enclosures:	None

Section 1 – Summary and Recommendations

This report sets out

- A proposed Council position on potential conversion of 7 high schools to academies
- The Academies Act 2010 and what it means for Harrow schools
- The current declared position of Harrow's High schools, and the statutory process they will need to follow.
- Implications for LB Harrow as a Local Authority.
- Actions, key decisions and a top level timetable.

Recommendations:

EdCF members to note the implications for the Local Authority of the potential conversion of 7 of Harrow's high schools to academies. EdCF members to note the proposed position on conversion to academy and make a referral to Cabinet.

Reason: (For recommendation)

To prepare for the significant changes that academy conversion will entail and to ensure that all of Harrow's schools continue to provide high quality education to local young people.

Section 2 – Report

INTRODUCTION

Harrow has a history of good partnership working between Council, schools, governors, parents and young people. Elected Councillors are rightly proud of the borough's secondary schools, which have served young people and the community well over many years. The Council actively supports schools to have the freedom to operate as they know best and has delegated a higher proportion of the schools budget to schools than any other local authority in England.

PROPOSED COUNCIL POSITION ON CONVERSION TO ACADEMY.

The Council learned in [January](#) that 7 high schools were investigating academy status with potential conversion at August 2011. The proposed position of the Council is as follows:

- The Council would prefer the 7 high schools to remain within the family of schools in the borough
- However, the Council will support the schools and work in partnership with them regardless of the outcome regarding academy status
- The Council will encourage all schools to work closely together in the best interests of Harrow people, including high school work with primaries and through the Collegiate
- The Borough's admissions arrangements for community schools and fair access protocol are important to Harrow parents, we will not wish to see these changed and remain committed to high quality Harrow school places for all Harrow children
- We will remain committed to great learning opportunities for all Harrow pupils whatever their abilities or disabilities

- As democratically elected representatives we will seek to be actively involved in supporting any new academies and continue to hold all schools publicly to account for outcomes for the borough's young people
- The Council will work with the respective Governing Bodies to ensure that due diligence is exercised in considering academy status
- We will encourage fair and wide consultation as part of the process

The Council is working with the schools groups to ensure a wide consultation with all stakeholders, including parents.

FURTHER INFORMATION ON THE PROPOSED CONVERSION OF SCHOOLS TO ACADEMIES:

1. The Academies Act 2010

The Academies Act 2010 streamlined the process to convert maintained schools into academies. In the first instance any maintained schools rated as "outstanding" in their latest Ofsted inspection could apply, this was more recently extended to "good" schools with one or more "outstanding" feature. As LBH has no High Schools performing poorly it has no history of dealing with "old style" Academies, primarily focused on failing secondary schools.

An academy is a publicly funded independent school free from local authority control. It is state maintained and funded directly by the Department for Education as opposed to through the local authority. No charge can be levied to parents or children attending the school, save where the law allows maintained schools to charge. Any school wishing to convert will be required to commit formally to supporting another school to raise its performance

Academies have considerable autonomy in comparison with LEA maintained schools, including the power to set terms of employment for staff, flexibility in terms of following the national curriculum and the ability to change the length of terms and school days. The DfE will provide further freedoms to academy schools through a revised Funding agreement in such areas as target setting and 14-19 education.

Selective and religious schools can carry over their status, but other schools cannot become selective after conversion.

The Act is intended to increase dramatically the number of academies across the UK. As at 1 February 2011, 527 applications to convert had been received, 326 academy orders have been made and 171 new academies have been created.

2. The current declared position of Harrow's High schools and the required conversion process.

In early February, a collective statement was issued by the Chairs of Governors and Head teachers of Bentley Wood, Canons, Harrow High, Hatch End, Nower Hill, Park and Rooks Heath announcing their individual investigation of academy status. Amongst the mainstream community

schools only Whitmore is not currently investigating academy status. In context the 7 schools represent 28% of the Borough's pupils and 74% of secondary pupils.

There are 4 key steps for schools to follow to achieve academy status:

- **Step 1.** Interest in conversion registered with DfE following a GB resolution to investigate academy status. Funding from the DfE is released to the schools to assist with the costs associated with conversion. Statutory consultation may begin at this stage.
- **Step 2.** Application to convert is made to DfE, GB passes resolution in favour of academy conversion, GB and LEA start TUPE process for staff transfers, Secretary of State considers applications
- **Step 3.** New Governance documents for the school (based on DfE model) finalised, Academy registered at Companies House, leasing arrangements for land finalised, TUPE process completed, GB complete required consultation process, funding agreement completed and submitted to secretary of state for approval.
- **Step 4.** CRB checks completed, new financial systems and contracts in place, academy registrations with exam bodies undertaken. Opening.

The Act requires Schools to consult such persons as the GB thinks appropriate. The consultation must be on the question of whether the school should be converted into an academy. It is for the GB to determine who should be consulted but the non statutory guidance from DfE states that schools should consider involving local groups or bodies with strong links to the school.

In the joint press release the 7 schools set out a collective set of principles that they would work to namely:

- a comprehensive education for all utilising the new academy freedoms.
- remaining as schools for the local community, retaining their existing admissions criteria for over subscriptions, and the pan-London process.
- recruiting and maintaining high quality staff, retaining national terms and conditions for current and future new staff.
- Retaining the existing school day and setting the school year within the local context.
- Commitment to continued collaboration amongst the schools and with other partners.

The schools have also proposed some policies¹ that would be adopted post conversion, subject to Governing Body approval:

- **Admissions:** Retain current Published Admission Year Number for Year 7; retain current admission policy / over subscription criteria
- **Governance:** LA to appoint one Governor; staff governors to continue to have teaching and support staff representation
- **HR:** Retain current Terms and Conditions for new staff (i.e. STPCD / Burgundy Book for teachers, Local T&C for support); no restructure as part of conversion (although GB will monitor workload for support staff regarding academy operation); no desire to alter pay date (although this depends on payroll conversion)

¹ Proposed at Meeting with Trades Unions 10 Feb 2011

- **School day / year:** Retain the current school day; continue to set the school year in the local context
- **School name:** Retain current school name
- **Collaboration:** Continue to collaborate with cluster primary schools, with other high schools / FE colleges (including through the Collegiate) and with the LA

At present the 7 schools are stating they are seeking academy status by August 2011. Current estimates suggest that by the first week in March each schools GB will have decided to investigate (i.e. Step 1 above). Each GB have indicated a wish to pass a resolution by late May (step 2) to make the formal application to DfE in order to complete the statutory TUPE consultation in time for a proposed conversion by September 2011.

3. Key implications for Harrow as a Local Authority

Given that one of the key policy drivers behind the 2010 act was to “free academies from Local authority control” it is not surprising that neither the Act nor the accompanying guidance sees a significant role for the LEA in academy transfer approaches. There is no veto and relatively little real influence afforded the Local Authority. However, whatever the decision of the respective Governing Bodies, the local authority is committed to working in partnership with all of Harrow’s High Schools to deliver high quality education for local young people.

The Education Bill 2011 proposes further changes to the relationship between schools and local authorities and as the Bill passes through Parliament it will become clearer what impact these proposals will have. It is clear that school improvement will be delivered differently in the future and the Council has already made a decision to set up the Harrow School Improvement Partnership, which will be led by participating schools.

A: SOME KEY EDUCATION SERVICE POLICY IMPLICATIONS

3.1 Admissions:

Whilst academies are not subject to the statutory admissions requirement, the current model funding agreement states that the Academy Trust will act in accordance with the statutory School Admissions Code and the School Admissions Appeals Code and ensure that an Independent Appeal Panel is trained to act in accordance with these and to comply with the law on admissions as it applies to maintained schools. The Academy Trust is also required, under the current model funding agreement, to take part in any mandatory admissions forum and have regard to its advice and to participate in co-ordinated admission arrangements operated by the local authority and the local fair access protocol.

Any pupils already on the roll at the point of conversion will transfer automatically and places offered to children at the predecessor school will be binding. Harrow Council must include academy admission arrangements in its report to the Schools Adjudicator.

Whilst the local authority cannot direct an academy to admit a particular pupil, it can apply to the Secretary of State to direct that an Academy Trust admits a named pupil.

3.2 Exclusions:

Academies are not subject to statutory requirements in relation to exclusions, however the current model funding agreement does provide that the Academy Trust shall comply with the law on exclusions as if it was a maintained school.

If invited to do so by the Council, the Academy Trust shall enter into an agreement which has the effect of allowing payment to flow between the Academy Trust and the Council following a permanent exclusion or admission of a permanently excluded pupil. This applies in the same way as it would apply to a maintained school.

3.3 Special Educational Needs:

The current model funding arrangements require that academies must comply with all duties imposed on maintained schools in Part 4 of the Education Act 1996 - duty to have regard to code of practice, duties in relation to pupils with SEN, duty to advise parents that special educational provision is being made and duty to admit a child where the school is named in the statement.

The Academy Trust must ensure that their prospectus includes details of arrangements for the admission of disabled pupils and the steps taken to prevent disabled pupils from being treated less favourably and the facilities provided to assist access to the Academy by disabled pupils. The Academy Trust must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

Where Harrow Council proposes to name an academy in a statement of SEN, it must give the Academy Trust written notice. The Academy Trust must consent to being named, except where admitting a child would be incompatible with the provision of efficient education for other children and where no reasonable steps may be made to secure compatibility.

B: OTHER MAJOR IMPLICATIONS

3.4 Finance

The following summary gives only an overview of what is a complex and fast-changing position around the funding of academies and impact on LAs.

Academies are funded directly from central government. On conversion an academy will continue to receive its current budget plus additional funding to take account of the new responsibilities which they take on from the council. The amount of additional funding that the high schools will receive is yet to be finalised but is expected to be between £300k to £550k, depending on the size of the school.

This funding is to provide for the additional duties and responsibilities which academies have to undertake including:

- Admissions (DSG funded)
- Asset management
- Employer responsibilities including trade union duties & CRB checks.

- Premature retirement & redundancies
- Governor statutory duties
- Financial duties including external auditors and actuarial reports
- Eligibility for Free School Meals (DSG funded)
- Education Welfare Service
- School Improvement
- Performance Management & Data Quality
- Music Service
- Pupil support including clothing grants (DSG funded)
- Other statutory services for example Health & Safety

To finance the new funding to academies the DfE is taking funding from local authorities. As part of the Spending Review announced in December 2010 the Dept for Communities & Local Government top sliced formula grant from every council based on an estimate of the number of schools they believed would convert to academy status nationally. For Harrow in 2011/12 this totalled £614k and the subsequent reduction in grant was factored into the 2011/12 budget. A further clawback of £484k is expected in 2012/13 which has been built into the Medium Term Financial Strategy.

In addition the DfE will clawback a proportion of centrally retained Dedicated Schools Grant (DSG). This is currently estimated at £21 per pupil, which is the lowest rate nationally and compares to the outer London average of £143 per pupil. The low rate reflects the high level of existing delegation to schools. The estimated clawback, based on the schools considering conversion would be £160k. It is hoped to minimise the impact of this loss of funding by offering an SLA for the admissions service to the newly converted academies.

The DfE did propose a further clawback of DSG in respect of some special educational needs services however in recognition of the adverse impact that this clawback was having on those services the DfE announced on 9th February that there would be no clawback in respect of SEN funding in 2011/12. No assurances have been provided though for 2012/13 onwards.

The additional funding that academies receive is forecast to reduce between the 2010/11 and 2011/12 academic years. The full extent of the reduction is yet to be confirmed. Schools that convert during the 2010-11 academic year will receive protection which limits the reduction in their top up funding to 10%. Schools that convert on or after 1st September do not receive protection and will just receive funding at the lower 2011/12 rate. This could incentivise schools to seek to transfer before 1st September 2011.

The funding of academies is currently under national review and is expected to change significantly for 2012/13 onwards.

No details for **capital funding** of academies have been confirmed by the DfE but a review is underway.

3.5 Land and Property

The freehold land for current community schools is usually owned by the Council. The conversion process requires that the school land is transferred to the Academy Trust and guidance suggests that in the case of a community school this will usually be by way of the grant of a 125 year lease to the

Academy Trust, with the council retaining its freehold interest in the land. No consideration, whether by way of a premium or rent, is payable by the Academy Trust for the grant of the lease.

The government clearly envisages ongoing community use of Academy premises and this is expressly acknowledged in the model funding agreement to be entered into between DfE and the Academy Trust, which requires the Academy 'to be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community'.

Generally, the government encourages the Academy Trust and the local authority to agree the arrangements for the land transfer between themselves, so there may be scope for negotiation on certain issues. The Council will need to make a decision on what land should be transferred, based on the definition of school premises in the Act and what terms to take account of individual site issues. Where agreement cannot be reached the Secretary of State may ultimately make a scheme compelling the local authority to transfer the land.

Work on investigating title is underway; this is likely to raise issues around joint use, community use, building conditions, shared/hub kitchen use etc. These will need to be considered, negotiated and resolved on a site by site basis. It is hoped that the considerable expense of full condition surveys on all buildings can, by mutual consent, be avoided and pragmatic risk sharing decisions be taken on each school site.

3.6 Staffing

The Transfer Agreement makes clear that the TUPE regulations apply to all conversions. As such staff employed transfer to the new trust employer on their existing terms and conditions. Both the Council and the Academy Trust have obligations in relation to consultation under the TUPE regulations.

Teachers' levels of pay and conditions of service are a matter for the Academy Trust, save that it must act in accordance with Secretary of State's guidance in relation to maximum salaries. Teaching staff must still be either qualified teachers or otherwise eligible to do specified work in accordance with the Education (Specified Work and Registration) (England) Regulations 2003.

Until all schools have determined to investigate academy status the work on verifying employee data for the purposes of TUPE will not commence. It is expected that this request will come in before the middle of March.

During February, a meeting was held between representatives of Trades Unions, schools and the local authority to open a dialogue about issues of interest and concern.

Surgeries for staff are being offered in each of the seven schools, held jointly by the schools' HR consultant and an LA HR adviser.

Depending on decision made about service level agreements, there may be staffing implications in relation to staff employed in Council directorates who provide services to the schools. Consideration will be given to whether TUPE applies to these staff as the project moves forward.

3.7 Traded services/ Service Level Agreements (SLAs)

In 2010/11 schools were offered 26 SLAs for provision of council services in return for payment out of the schools' budget. These include building maintenance, governor services, financial and legal services, payroll and HR advice. For some of these 'traded services' the loss of contracts with the academies would question their ongoing viability, for others there would be a much lesser impact. In context in 2010/11 schools SLAs generated £4.6m of income for the Council, the schools considering conversion equate to nearly £2m of this sum.

The council is undertaking a full review of services provided and charges made. The council may wish to consider offering the schools the opportunity to take up SLAs under the terms originally offered for 2011-12. This will allow breathing space from a possible August 2011 transfer date to April 2012 to determine actual need and negotiate further. Services offered to schools must be on a cost recovery basis. Current SLAs are offered on a cost recovery basis, however in some cases not all costs are recovered eg. Fixed asset costs such as accommodation. A decision needs to be made on how these fixed asset costs should be split and depending on this decision, it is likely that some services will have to increase their charges to ensure they are recovering full costs. In addition there may be additional costs associated with providing the service to an academy eg. additional insurance premiums and licence costs. Some services may not be able to continue once the schools convert, either because it is not legally permissible, financially viable or because the expertise required will fundamentally change.

There are a number of "new" traded service areas, created by resources currently spent by the LA transferring to Academies with the responsibility to deliver them. These services can be provided by the LA under a SLA (if not then given the DSG clawback corresponding in year savings would need to be made) these services include:

- Assessment of free school meals
- Licences and subscriptions
- Asset management (including landlord maintenance)
- Education welfare service and pupil support
- Clothing grants
- CRB checks
- Financial statutory duties (internal audit, pension administration, accounting etc)

It is worth recognising that there are certain statutory duties that the council retains and that do not transfer to a new academy. The Council is required to continue to provide them free of charge. The financial and service impact of academy transfer will need to be worked through. These services include:

- Home to school transport(including SEN)
- Ed psych, SEN statementing and assessment
- Monitoring of SEN provision
- Non attendance prosecutions
- Pupil referrals units/ education otherwise
- Individual SEN resources for pupils with rare conditions needing expensive tailored packages.

3.8 Third party contracts

Many schools purchase services through council wide corporate contracts to achieve economies of scale from amalgamated procurement. As part of the conversion process all of these contracts need to be identified, reviewed, novated or amended as necessary.

The Council is required to assign all contracts which are capable of assignment without the consent of other parties. In cases where consent is required, the Council must use its reasonable endeavours to obtain consent. Where contracts cannot be assigned the council will need to consider terminating those arrangements.

Historic liabilities remain the responsibility of the Council and future liabilities are the responsibility of the Academy Trust.

These contracts are currently being identified, mapped and a view will need to be taken (preferably jointly with the schools) on how best their benefits should be assigned.

3.9 Other Corporate implications

The Academy Trust will be responsible for making arrangements for the insurance of the academy. The DfE guidance states that insurance cover is likely to be higher for academies than maintained schools and for a large secondary school is likely to be about £90,000.

For buildings and business interruption, the LA may have an insurable interest. However, the Council is unlikely to have an insurable interest in employer's liability, contents and motor insurance. The extent to which an LA could arrange insurance on behalf of academies, if any, is being investigated.

There are a range of other issues connected to such issues as data management and data/system transfer that are not expanded upon here. They are however included in the programme plan for the potential transfers.

There will also be a number of questions arising about impact of transfer out on a range of policies. These will be flagged and dealt with as part of a FAQ type approach where they are of relatively low level of importance or impact and escalated to the appropriate level for decision making where their impact is more significant.

4. Actions, key decisions and a top level timescale

A programme team has been formed to oversee and lead work across the Council. This team will report into members and chief officers on a regular basis and can provide updates, briefings or answers to particular questions as required.

The Team will oversee and coordinate a number of strands of themed activity (communication and consultation, finance, land issues, staffing, SLAs, third party contracts, data and information transfer and corporate implications). It will act as liaison point with the schools seeking to transfer and their

representatives. The team is currently working up a detailed project plan but the anticipated headline timetable is as set out below.

Whether Governing bodies decide to proceed will depend on them weighing up a number of factors. In particular as set out above:

- Any liabilities being taken on by the new charitable company
- Clarity on their responsibilities as an employer
- How the finances work for them under the funding agreement
- Issues around land, buildings, contracts and capital projects.

Any significant “surprises” in these areas or a considerable expression of unease with the proposals during consultation will raise question marks about the desirability of proceeding. Clarity on a number of those issues will only emerge for schools and the Council as the work progresses. There are at this stage therefore no certainties.

For Governing Bodies (assuming they in the next few weeks all decide to go through stage 1) the key timetabling issues will be around consultation, staff and property transfers, a formal decision to seek academy status, then the constitutional, due diligence and start up phase.

For the Council the required work to meet the schools timetable, a Cabinet decision on the principles of land transfer in April, and working through the implications of any schools transferring as set out in this paper will be the key issues.

An **assumed timetable** therefore would be:

February

- More schools reach **step 1**... GB decision to investigate
- Council starts work on land title, staffing, financing, SLAs , Contracts,
- Council and Schools representative work on range of issues including consultation

March

- Project work ongoing.
- All 7 schools get to **step 1**
- Likely consultation period harmonised for all interested schools 7th march to 4th April
- SLA packages finalised for 2010/11
- Report to Education Consultative Forum 1st March
- Meeting with Headteachers 2nd March
- Meeting with all governors

April

- Project work ongoing (including TUPE due diligence and handover of title reports on land)
- Cabinet decision on how to handle land transfers and any other in principle decision required to made at that level
- Report to Licensing and General Purposes Committee regarding pensions provision

May

- All governing Bodies need to consider consultation feedback and pass resolutions on whether to enter a funding agreement with DfE. **Step 2**
- Project work ongoing

June

- Project work ongoing
- TUPE transfer consultation and active dialogue
- All Third party contracts mapped, SLA positions determined

July

- Schools enter funding agreements with DfE **Step 3**
- All project work geared towards a mid July completion. **Step 4**

August

- New academies and relationships commence

Financial Implications

The financial implications are covered in section 3.4 above.

Performance Issues

Responsibility for school improvement and attainment transfers to the academy on conversion. However, the LA will retain some responsibility for overall performance in the local area and will need to work in partnership with all local schools to achieve this. This is an important element of the negotiations which have begun with the 7 schools.

Environmental Impact

Although there is no direct environmental impact from this report, it should be noted that Schools account for 62% of the Council's CRC emissions with an estimated cost to the council of £300k for 2011/12. Responsibility for carbon reduction targets following academy conversion is being investigated.

Risk Management Implications

This is an emerging issue and the risk register is being updated. The risks for the Council of conversion to academy status are multiple and will require careful management. The report above identifies some of the key risks for the LA and these will continue to be reviewed and updated.

Equalities implications

Equalities implications are being considered as part of the programme of work. The potential conversion to academies will be subject to an Equalities Impact Assessment.

Corporate Priorities

Supporting vulnerable people.

Section 3 - Statutory Officer Clearance

Name: Emma Stabler

on behalf of the
Chief Financial Officer

Date: 25 February 2011

Name: Sarah Wilson

on behalf of the
Monitoring Officer

Date: 25 February 2011

Section 4 – Performance Officer Clearance

Name: Alex Dewsnap

Divisional Director
Partnership,
Development and
Performance

Date: 25 February 2011

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker

on behalf of the
Divisional Director
(Environmental
Services)

Date: 25 February 2011

Section 6 - Contact Details and Background Papers

Contact:

Alex Bailey / David Harrington – Project Team 020 8420 5248

Background Papers: None

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

*[Decisions for noting are not
subject to Call-In]*