Report to:	**EAST STRATEGIC NEIGHBOURHOOD FORUM**
Date:	17 October 2018
Executive Member / Reporting Officer:	Councillor Leanne Feeley – Executive Member (Lifelong Learning) Councillor Bill Fairfoull – Deputy Executive Leader James Thomas – Director of Children's Services (DCS) Tom Wilkinson – Assistant Director - Finance
Subject:	**TAMESIDE STRATEGY FOR SCHOOLS**
Report Summary:	The report sets out the strategic leadership proposed for Tameside MBC in relation to schools and school improvement, noting the complexity of the current education landscape. The strategic approach sets out the role of local authority leadership in a system of school-led improvement and the strategic aims in relation to academisation. The report also sets out the issues in relation to academisation of PFI schools.
Recommendations:	Members are asked to note the following recommendations as agreed by Executive Cabinet: 1. Note the content of the report and approve the strategic approach outlined, and the specific objective of working towards having a smaller number of larger more sustainable locally led Multi-Academy Trusts which will drive improvement and work collaboratively with the Council. 2. Seek the necessary legal advice on the strength of the DfE's covenants / commitments set out in their standard documentation and the risks that would be retained by the Council, to enable the Cabinet to review its current stance on academisation of PFI schools in light of the external auditors concerns currently on record (**Appendix B** refers) with the cost of such legal advice being met by the Victorious Academies Trust, who are able to access such funding from the DfE under their Academies conversion process.
Links to the Corporate Plan:	The Corporate Plan outlines the priorities for improving the borough of Tameside including the quality of life for children and families.
Financial Implications: (Authorised by Section 151 Officer)	Contained in the body of the report.
Legal Implications: (Authorised by Borough Solicitor)	Contained in the body of the report.
Risk Management:	Contained in the body of the report.
Access to Information:	The background papers relating to this report can be inspected by contacting the report writers James Thomas and Tom Wilkson Telephone: 0161 342 3354 / 2062 e-mail: james.thomas@tameside.gov.uk / tom.wilkinson@tameside.gov.uk

1. CORE PURPOSE

1.1 The delivery of good and outstanding education to every one of our resident children is a key priority for Tameside MBC. This is because the future life chances of those who are currently children will in large part be determined by their educational outcomes, and because improved educational attainment is therefore a key means to reducing inequality. So our focus is not just upon our formal statutory responsibilities, important though those are, but upon providing effective strategic leadership to ensure that all those partners with a role to play are delivering effectively for our children.

1.2 This was well articulated by the Leader in her inaugural speech:

"Years ago we were below the average for Greater Manchester (on GCSE results), let alone the rest of the country. Now the M.E.N. is highlighting our schools performances as one of the reasons why families are choosing to move into the borough. There was no magic wand or quick fix. It took bringing everybody involved in education in Tameside together, investing in the areas that allowed them to use their skills in the most effective way, and bucket loads of good old-fashioned hard work. It's a model that works, and it's a model that can be applied elsewhere too. But there can be no room for complacency."

2. EDUCATION LANDSCAPE IN 2018

2.1 For a period the role of the Local Authority in education was seriously under question. The longstanding government policy of academisation set out an objective in which there would be no schools for which Councils were directly responsible. The wider impact of these policies diminished the role of Local Authorities, amidst a search for alternative middle leadership within a school led system, whether from Teaching Schools, Multi-Academy Trusts or Regional Schools Commissioners.

2.2 However the tide has turned. The Local Authority role as the systems leader for schools, on behalf of every one of their residents, including every child, is once again being recognised. In part this is due to the fact that the academisation programme has had to change, with the policy amended in 2016, the pace of change slowed and a developing body of evidence that in itself academisation is no panacea for lack of effective school leadership.

2.3 This reassertion of the Local Authority's role is also due to the fact that it now widely recognised that there is no alternative systems leader to replace that of the Local Authority, with its deep and overarching understanding of residents' needs and its democratic mandate

2.4 But of course this shift in the tide is happening in a changed context and a different schools landscape, and so the nature of the Local Authority's leadership is not a return to a previous era, but rather needs to be adapted to the current context. We need to have really effective relationships with all schools, with the DfE and RSC team - we need to plan together to ensure schools are part of a sustainable partnership with each other. And we need to be an honest and intelligent broker of school support and be the glue in the system for schools linking wider children's services to the education system.

3. TAMESIDE MBC'S SYSTEMS LEADERSHIP

3.1 In order to exercise effective leadership and ensure we deliver our legal obligations and oversee improvements in outcomes for there are four key functions:

- School Improvement – with a statutory responsibility for maintained schools, and a systems leadership role in respect of all schools – this function requires data capacity to ensure we know our schools well and school improvement capacity to engage credibly with schools to ensure that they know what needs to improve and to hold them to account for doing so.

- School System Leadership – with a particular focus upon the strategic leadership of each school, this function requires a detailed knowledge of the capacity that lies within each school's Governing Body and MAT Board where relevant, Headteacher and Senior Leadership Team; and the relationships and influence to be able to broker and shape decisions that lie with individual governing bodies or the RSC.

- Pupil Place Planning – a core duty to ensure sufficient school places which has been under pressure in recent years with a growing child population, and where we need the co-operation of schools in order to accommodate population bulges without ending up with too much capacity.

- Inclusion and SEND – core statutory responsibilities for SEND and vulnerable pupils[1] which can only be effectively delivered within a wider whole systems approach to inclusion, within which children's needs are identified early, high quality support is available and schools all see it as their responsibility to meet the needs of children with additional needs. There are significant financial pressures already upon the High Needs Block of the Direct Schools Grant, and an effective inclusion strategy will be key to keeping these under control.

3.2 The key to a revised and updated Tameside Schools Strategy is to exert more assertive and systematic leadership in order to deliver these key functions. To do this well we must be a credible, effective and responsive partner for schools and central government and we must have an effective and engaged relationship with all our schools. Our success is dependent on mutual co-operation.

3.3 To this end steps have already been taken to bring heightened rigour, structure and systematic analysis to our school improvement function – supported by the current Interim Head of Service – which will then be maintained and developed by the new Assistant Director and permanent Head of School Improvement. There should also be a greater willingness to use our statutory powers when a school fails to take appropriate action to deliver necessary improvements. Whilst Tameside has significantly reduced its school improvement capacity, this is no obstacle to the effective delivery of the function, as long as we maintain a clear and rigorous boundary between our role in knowing our schools and being able to hold schools to account, and schools and their governing bodies' responsibility to deliver the improvement activity that is required.

3.4 Tameside's current policy position on academisation is a neutral one that respects the role of School Governing Bodies as being best placed to determine the strategic plans which will best drive improvement for their school. This is a sound approach, which enables us to work effectively with the RSC and DfE, at the same time as supporting those which wish to remain as maintained schools. However in recent times, that neutrality has led to too much passivity as the Local Authority is simply the recipient of news about individual schools' decisions to academise and join a MAT of their choosing with no input from the Local Authority.

[1] Looked after Children, excluded pupils and young people with medical needs

Tameside's current profile of Academies and Academisation

3.5 **Secondary Schools**

- Majority of secondary schools are now academies – 9 out of 15
- 2 are part of the Great Academies Education Trust (4 schools in all, 3 in Tameside)
    - Great Academy
    - Copley Academy
- 2 make up the Aspire Plus MAT
    - Longdendale
    - Rayner Stevens
- 3 are standalone converter academies
    - West Hill
    - Fairfield
    - Audenshaw
- 2 are standalone sponsored academies
    - Droylsden
    - All Saints
- No current proposals for further academisation at this time

3.6 **Primary Schools**

- Minority of primary schools are academies – 19 out of 76
- 9 are part of the Enquire Learning Trust (23 schools in all; based in Wakefield):
    - Flowery Field
    - Endeavour
    - Manchester Road
    - Bradley Green
    - Dowson
    - Godley
    - Moorside
    - Oakfield
    - Linden Rad
- 3 make up the Victorious Academies Trust
    - Inspire
    - Discovery
    - Poplar Street
- 2 are standalone converter academies
    - Ashton West End
    - Denton West End
- 4 are the sole Tameside school in MATs based elsewhere:
    - Oasis Broadoak (Oasis MAT - 41 schools in total across the country)
    - Manor Green (Focus MAT – 14 other schools across the NW)
    - Waterloo (Prestolee MAT – 3 other schools all in Manchester)
    - St Pauls C of E (Chester Diocese MAT – 3 other schools all in Cheshire)
- Silver Springs is part of the secondary led Great Academies Education Trust
- Trend is one of steady further academisation in the primary sector with 14 Primary Schools known to be actively planning to academise:
    - 5 considering the Victorious Academies Trust (including 2 PFI schools)
    - 4 joining the Forward As One C of E MAT (with 3 schools in Bolton)
    - 4 considering non-Tameside based MATs
    - 1 unclear which MAT

3.7 The current position and current trends therefore are characterised by a preponderance of either small MATs or single converter academies which have none of the benefits of scale that strong Multi Academy Trusts provide, or membership of non-Tameside MATs where there is always likely to be a limit upon our influence. See attached graphic at **Appendix A.**

3.8 Our strategic objective should be for a relatively small number of outstanding locally led MATs who can work with the Local Authority to drive improvement, and for that we need a more assertive approach in which we expect to be a key influencer, we expect to be included in school's early thinking about academy conversion and their options, and we expect to work with the RSC's team to shape the MAT landscape in Tameside.

3.9 In pursuing this objective, there is a specific issue in relation to the complexities when PFI schools wish to convert and the need to secure sufficient assurance for the Council that no undue financial risk is transferred to the Council through academy conversion. The following section of the report deals with this issue from a Finance perspective.

4. PFI SCHOOL ACADEMISATION

4.1 A number of PFI schools have converted to Academy status across the country. The Department for Education (DfE) have produced some standard documentation to aid the novation of contracts and the governing body agreements, to ensure that the PFI contracts and associated payment profiles remain intact.

4.2 Tameside MBC has 10 schools that were built using the private finance initiative (PFI) in three schemes:

Pyramid Schools /Interserve

- Arundale Primary, Hattersley
- Pinfold Primary, Hattersley
- Alder High School, Gee Cross

PFI Project Co 1 – Amber Infrastructure

- St Damian's RC Science College Ashton
- Mossley Hollins High School

PFI Project Co 2 – Amber Infrastructure

- Denton Community College
- Hyde Community College
- Thomas Ashton Special School Hyde
- White Bridge College (PRU) Dukinfield
- Elmbridge School (PRU) Denton

The nature of PFI contracts, and in particular, the responsibility for the payment of the unitary charge to the PFI providers, is the Local Authority, who receive the government support for the building element of these schemes in the form of a grant known as PFI credits.

4.3 The academisation programme has not changed the PFI credit arrangements, with the Local Authority continuing to be the recipient of the PFI credits, even though the legal responsibility for the Academy and its operations transfers from the Council to a standalone Academy or MAT. The Council therefore remains responsible for ensuring the PFI providers are paid for the delivery of services and for ensuring that there are no authority breaches of the contract or in the event that the Authority is in default under the contract and the contract is terminated that any compensation due under the contract is paid. The contract sets out a number of matters including non-payment of PFI charges in which the contract can be terminated, including preventing access to the school site.

4.4 Typically, PFI funded schools have a number of cashflows that contribute to the payment of the unitary charge, including contributions from the schools' delegated budget, a top sliced element from the dedicated schools grant (DSG), any income collected for lettings or room

hire at the schools, investment returns on the Council's PFI investments and interest from sinking funds associated with the contract.

4.5 The legal documentation issued by the DfE seeks to ensure that the Academy is liable for making the payments due to the Council for it to pass on to the PFI provider. In a circumstance when all PFI schools are academies, the Council would act as an intermediary between the academy and the PFI company and ultimately guarantor.

4.6 To date the Council's position has been that in order to consent to any PFI conversion the Council are held harmless/indemnified for (a) the legal costs to the conversion process and the Council insist that these be met by the converting schools and (b) all liabilities under the contract caused by the default of the school by the DfE on the basis that Academies and MATs generally have limited Funds to the extent of grant monies provided by the DfE whereas the liability under the PFI agreements extend to tens of millions of pounds.

4.7 A number of residual risks remain with the Council in its liability to pay the PFI provider, its reliance on the continued income in the form of PFI credits, the DSG regulations allowing the top slice and collection of the academy's contribution. This has not been a problem with those PFI schools that have converted elsewhere, but some residual risk remains. The likelihood of these materialising are low. However, in light of the Council's position and the residual liability, the Council's external auditor previously raised this as a risk in its annual report dated 28 August 2013 and received by the September 2013 Audit Panel and set out at **Appendix B.** Consequently, the Council agreed that it would only agree to circumstances where it was provided with a DFE indemnity. The DfE do not agree to provide an indemnity but advise that in the 5 years since the Council's external Auditors made their recommendation, they have given greater comfort to Local Authorities in their standard documentation.

4.8 On the 24 May 2018, representatives from the Council's legal, finance and education services met with the DfE, Academies Regional Delivery Group, and the Chief Executive, Victorious Academies Trust, and Headteacher of Arundale Primary School to discuss the potential conversion of Pinfold and Arundale PFI Schools to academy status and to join our Trust. It was confirmed at the meeting that:

- Tameside Council has no objections in principle to schools becoming academies but cannot subsidise any costs for any works associated with any conversions, particularly PFI's where the costs can be substantial.

- Where schools wishing to convert are PFI's the Council needs to ensure that once the schools have converted that the authority has no additional liabilities, cost or risks if the school or the Trust fails to make the payments or is in breach of the contract in any way.

- The DfE confirmed that they have worked with Councils, Trusts and schools to convert over 150 PFI schools to academies, some of which are local, in Salford and Oldham. There are more PFI conversions in the pipeline and they stated this is a well embedded process with a suite of standard documents, all available at Model PFI documents.

- Tameside confirmed their support for having a range of choice for families in Tameside and those academies within the Trust form part of this. The Authority is supportive of the Trust, particularly as the Trust works closely with the Council.

- The Trust confirmed that they, along with the schools are happy to fund the costs associated with the legal processes required by the Council for a PFI conversion but that they are a small Trust with limited funds and therefore it is imperative that they have an understanding of what these costs will be at the start of the process. *The Trust would also look to the Council to ensure that the costs provide value for money and will be cognisant that any costs required to be funded by the Trust will come from*

public money and we have a duty to ensure that it is spent with regularity, propriety and compliance.

4.9 It was agreed that:

- The DfE will provide details about costs and timescales where other schools have converted to academy status where the funder is the same as that of the current schools together with some benchmark information for variation costs.

- Tameside would agree to undertake the appropriate governance process to enable the appropriate consideration by elected members with a view to reviewing the current position with a Cabinet meeting in August being targeted. The Cabinet Report will set out the risks linked with PFI schools becoming academies and recommend approval or otherwise to taking the process forward.

- In order to enable the Cabinet to review its current stance in light of the external auditors concerns on record, external legal advice will be obtained on the strength of the DfE's covenants/commitments set out in their standard documentation and the risks that would be retained by the Council, with the cost of such legal advice being met by the Victorious Academies Trust, who are able to access such funding from the DfE under their Academies conversion process. Should the Executive Cabinet be minded to proceed, then further information about the costs of the process will be obtained from the Funders and their lawyers to enable the Academy and Schools affected to consider their options with support from the DfE.

5. RECOMMENDATIONS

5.1 As set out on the front of the report.