

Report to:	EXECUTIVE CABINET
Date:	24 July 2019
Executive Member / Reporting Officer:	Councillor Leanne Feeley – Executive Member (Life Long Learning, Equalities, Culture and Heritage) Tim Bowman Assistant Director Education Tom Wilkinson Assistant Director, Finance
Subject:	SCHOOLS STRATEGY UPDATE
Report Summary:	<p>This report provides an update on the implementation of the schools strategy agreed by Executive Cabinet in August last year. This strategy assertively redefined and restated the Council's role in education and in relation to schools.</p> <p>The strategy emphasised the need for the council to become an honest and intelligent broker of school support as well as the glue in the system for schools linking wider children's services to the education system.</p> <p>The report also sets out the issues in relation to academisation of PFI schools.</p>
Recommendations:	<p>Executive Cabinet are asked to:</p> <ol style="list-style-type: none"> 1. Discuss the implementation of the schools strategy, noting the positive feedback from the recent Peer Review (Appendix A) and the improved and positive relationships between senior education and finance officers and key stakeholders most notably Headteachers, the office and Regional Schools Commissioner. 2. Consider the approach to the academisation of PFI schools as outlined, noting that the Director for Children's recommends that TMBC officers should work with DfE officials to prepare the academisations of the Arundale and Pinfold Primary Schools to the Victorious Trust understanding fully that the risks of academisation have not been mitigated by an indemnity as the DfE are not prepared to go that far.
Corporate Plan:	This report supports the starting well priority of the Corporate Plan, specifically the hope and aspiration objective. It is consistent with the Schools Strategy agreed by Executive Cabinet in August 2018.
Policy Implications:	These are set out in the report.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	As set out in section 5.
Legal Implications: (Authorised by the Borough Solicitor)	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.

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.

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. 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.

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.*

It was agreed that 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.

This report now confirms that there are significant issues to be considered. Whilst no decision is risk free the question that members are required to ask themselves is whether the benefits achieved by academisation outweigh those in the event that the Council is required to pick up the financial risks in circumstances where it will not have control.

Members need to consider whether this is an appropriate risk balance and/or share bearing in mind that on an enforced academy by the DfE because school inadequate DfE bear the risk but where the Local Authority looking to support and intervene before inadequate is an outcome, the Council carry the risk for the remainder of the PFI contract some 15 or more years.


Risk Management:

These are set out in the report.

Background Information:

APPENDIX A	Tameside: School improvement peer review - Post-review summary of key findings
APPENDIX B	Independent Legal advice obtained on level of indemnity provided
APPENDIX C	formal response from Vicky Beer (Regional Schools Commissioner)

The background papers relating to this report can be inspected by contacting Tim Bowman, Assistant Director Education

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1. INTRODUCTION

- 1.1 In August 2018, a refreshed “Schools Strategy” was discussed and agreed by Executive Cabinet. This strategy assertively redefined and restated the Councils role in education and in relation to schools. The strategy emphasised the need for the council to become an honest and intelligent broker of school support as well as the glue in the system for schools linking wider children's services to the education system.
- 1.2 The report also sets out the issues in relation to academisation of PFI schools.
- 1.3 In agreeing the strategy Elected Members agreed to 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.
- 1.4 This report provides an update in two parts, firstly, on the implementation of this strategy and secondly, in relation to the academisation of PFI schools.

2. IMPLEMENTATION OF THE SCHOOLS STRATEGY

- 2.1 Whilst reasserting and restating the role of the Local Authority (LA) our schools strategy clearly noted that the role of the LA has changed stating that:

“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”

- 2.2 To this end we have taken steps to build and maintain relationships through regular meetings, keep in touch discussions and other opportunities for engagement. We have implemented a clearer strategic approach to school support and for the wider education service, this has been underpinned by more aspirational objectives for all our children and more rigorous approach to discharging our statutory responsibilities.
- 2.3 Critical to this has been the agreement to a clear set of education priorities endorsed by the Education Attainment and Improvement Board, SLT and Board. This has been communicated to schools.
- 2.4 These priorities and the analysis that underpins them are reflected in our corporate plan in its starting well priority. Reading is firmly established as a corporate priority expressed through our Tameside Loves Reading campaign and the commitment to it has been clearly demonstrated by senior leaders across the single commission.
- 2.5 To review the impact of this work. We recently took part in a Peer Review of our school improvement functions. A copy of the Peer Review report is included at **Appendix A** to this report. The report concluded positively that there is, *growing confidence in the systems and processes around the school-led school improvement systems which are developing in Tameside.*

3. ACADEMY SCHOOLS

- 3.1 The Schools Strategy agreed last August noted that:

“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.”

- 3.2 The strategy did not seek to change this policy position. Rather it noted:

“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.”

- 3.3 However, it did assert that the council could not be passive in these discussions and that as a system leader and advocate for all children in the Borough it *must* have a clear voice in determining the future of all Tameside’s schools and *must* be concerned with the long term sustainability and viability of its schools.
- 3.4 Partnerships between schools are vital to their success. They increase the sustainability of schools financially and provide a vehicle to share the highest quality practice and maximise the impact of outstanding leaders. In Tameside there are too many small or standalone academies and too many maintained schools not seeking formal partnerships with others.
- 3.5 Our schools strategy is bold in this respect, clearly stating that our explicit 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.”

4. THE ACADEMISATION OF PFI SCHOOLS - BACKGROUND

- 4.1 A number of PFI schools have converted to Academy status across the country. To support this 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. Additional funds are also provided to PFI schools seeking academisation, to mitigate increased legal costs.
- 4.2 Tameside has 10 PFI schools. A number of these schools sought and investigated academisation between 2012-14. Tameside unlike many other Local Authorities has not progressed the academisation of any of its PFI schools.
- 4.3 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 .
- 4.4 A number of PFI built schools are still seeking to academise, most notably Pinfold and Arundale primary schools who are seeking to join the Victorious Academy Trust. These schools first registered their interest in 2012.
- 4.5 In August of 2018, Executive Cabinet considered a new schools strategy. Contained in this paper was a proposal to reconsider the Council’s position on PFI academisation.

- 4.6 The key issue causing the council concern in relation to the academisation of PFI schools is an issue of financial risk not one of policy. The council is concerned that the model documents issued by the DfE relating to the conversion of PFI schools to academies (Model Documents) may leave TMBC exposed to certain risks that TMBC did not previously bear.
- 4.7 In discussion with Department for Education officials the council received assurances that these risks were mitigated by an indemnity contained in the model documents at conversion. The council have not been convinced that this assurance is sufficient mitigation for our risk.
- 4.8 In order to clarify these issues Elected Members agreed to 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.
- 4.9 The advice has been sought and is attached at **Appendix B** to this report. The advice is focused on the following specific questions:
- What are the key risks associated with conversion of the schools to academy status?
 - Do the Model Documents fully protect TMBC from the risks associated with the Academy occupying the schools?
 - If not, what risks remain with TMBC
- 4.10 In summary, the advice details the nature of the residual risks to the council noting them reduced but not removed. This advice has been discussed by senior officers and shared with DfE officials. A formal response from Vicky Beer (Regional Schools Commissioner) is contained at **Appendix C** to this report.

5. FINANCIAL BACKGROUND

- 5.1 Tameside have entered into contracts for and with project companies to design, build, finance and operate PFI schools with suppliers, a Special Purpose Vehicle (SPV).
- 5.2 The SPV borrows from the banks to finance the building of the new school and Tameside have a contract to repay the SPV over the life of the contract (25 – 30 years). These payments are Unitary Charge to SPV to cover the costs of
- Repayment of borrowing
 - Interest on borrowing
 - On-going running costs (Hard FM Costs - repairs, maintenance and Soft FM Caretaking, Cleaning Catering etc.)
 - Lifecycle costs (Capital and revenue) replacement cost furniture
- 5.3 The contracts in place at Tameside are with two suppliers:
- Albany – Covering Pinfold, Arundale and Alder Schools
 - Inspired Spaces – Mossley Hollins, Hyde CC, Denton CC, Thomas Ashton, St Damians, Tameside Pupil Referral Service (Whitebridge and Elmbridge)
- 5.4 The cost of these contracts are paid directly by the Council to Albany and Inspiredspaces and the funding of these are as follows:
- PFI Credits – grant from Government to cover costs of build, paid over 25 - 30 years.
 - Contribution from Schools – to cover the cost of maintaining the schools
 - DSG Top Slice to cover the lifecycle costs of building;

- Council contributions, this is only the case for the Inspired Spaces Contract due to income received from Council shareholding in the SPV funded from DSG;
- Devolved Formula Capital
- Interest on cash balances from PFI related reserves;
- Third party income from lettings.

5.5 The contractual obligations between the SPV's and Tameside Council will not change as a result of a school converting to Academy.

6. ADVICE AND NEXT STEPS

6.1 Further advice on the academisation of PFI schools has been sought and further assurances from DfE officials provided. Although the advice and correspondence is inconclusive, in that it does not confirm that all risk to the council has been removed, it does clarify their limits and likelihood.

6.2 In order to reconsider the position of the Council advice from education, finance and legal must be considered and balanced. Financial and legal comments are provided at the front of this report. Advice from the Assistant Director Education is set out below.

Advice from the Assistant Director Education

6.3 Central to the delivery of our schools strategy and achieving our objective to *be a key influencer* is resolving the issue of the academisation of PFI schools. There are three reasons for this.

- Firstly, we do not wish to be in conflict with RSC's team, we are seeking to be an effective and robust partner. Tameside is unique amongst local Authorities in not progressing the Academisation of PFI schools. Conflict on this issue will limit our ability to *influence* future decisions. There are a number of key decisions about Academy sponsorships which are due to be made.
- Secondly, we wish to support local multi academy trusts to achieve a sustainable size. If we do not progress the academisation of Pinfold and Arundale schools, we risk unintentionally creating *another* too small MAT in the borough.
- Thirdly, if we are to achieve a well-planned and effective local network of schools we must grow sustainable local multi academy trusts. To do this we must ensure that our best school leaders are able to join, establish and grow MATs.

In summary, the potential financial risks of progressing PFI academisations must be balanced against the risk to the implementation of the Council's schools strategy. Progressing the academisation of PFI schools, should it be sought by individual governing bodies, *will* increase the Council's ability to deliver its schools strategy, increase our ability to be a credible, effective and trusted partner to schools and the DfE and most importantly support the sustainable improvement of schools in the borough to the benefit of children, young people and their families.

7. CONCLUSION

7.1 This report has outlined the potential *financial* risks inherent in progressing the academisation of PFI schools.

- 7.2 As noted in section six of this report the potential financial risks of progressing PFI academisation must be balanced against the risk to the implementation of the Council's schools strategy.
- 7.3 The School Strategy agreed by Elected Members in August 2018 outlined a clear and ambitious vision for the council to follow. The implementation of this strategy has enabled the Council to make significant positive steps forward with its relationships with key stakeholders and embed a more structured and effective model for school improvement.
- 7.4 The schools strategy also boldly outlined what the council *must* do to lead and influence the school system and its composition. In relation to academies this role is understood to include the need to have *a more assertive approach in which we expect to be a key influencer* of the system, and to oversee a more sustainable model with fewer small and standalone academies and more larger local Multi Academy Trusts.
- 7.5 Therefore, it is recommended that:
- The academisation of PFI should be progressed.
 - TMBC officers should work with DfE officials to prepare the academisations of the Arundale and Pinfold Primary Schools to the Victorious Trust,

8. RECOMMENDATIONS

- 8.1 As set out at the front of the report.