

SCHOOLS' FUNDING FORUM

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| SUBJECT: | PFI and Academy Conversions |
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| DATE: | 22 May 2015 |
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SUMMARY OF REPORT:

This paper sets out the current position and seeks the views of the Forum to inform a paper due to be submitted to KCC Cabinet this summer.

1. Background

1.1 In October 2011 a report was submitted to the Leader and Cabinet setting out the risks to KCC of PFI schools converting to academy status. These risks had come to light in the work on the planned conversions of Swan Valley School and The North School and in work on similar conversions in other local authorities.

1.2 The issues were:

- PFI contractors and banks were questioning the legality of PFI schools converting because of the wording in Section 6 (2) of the Academies Act 2010 which raised the question of the PFI payments made by local authorities being Ultra Vires once a school had converted because the authority was no longer maintaining the school.
- The way in which HMRC were looking to treat the PFI payments subsequent to conversion would have resulted in a loss of the KCC partial exemption on VAT with an additional annual cost of around £9.5m as a result of VAT that we would no longer be able to recover.
- The costs of the annual increase in funding the PFI affordability gap would fall on a reduced number of maintained schools/KCC and the DfE offer to meet this cost (during the early work on the conversion of The North School) was swiftly withdrawn and we were informed that it had been an error to make such an offer.

1.3 The decision of the Cabinet was that KCC would not support the conversion of any PFI school until the issues were resolved and at the time work was halted on the conversions of both Swan Valley School and The North School. There was a process whereby individual conversions could proceed if there was specific approval.

2. Current Position

2.1 Since that decision in 2011 there has been regular lobbying of the DfE and HMRC at the highest levels. The Ultra Vires issues was resolved through an amendment in legislation in the Education Act 2011 and the VAT issue resolved by HMRC with written confirmation that the VAT position of KCC would not be affected by PFI schools converting. Despite much lobbying the DfE have refused to provide any help over the PFI affordability gap which is frustrating given the fact that the PFI

programme in Kent was accelerated at the specific request of the DfE. The DfE have acknowledged that there is an issue and that they are signatories to the PFI Principal Agreement with KCC but are clear that they are not prepared to provide any financial support.

- 2.2 The Cabinet decision not to support PFI conversions remains in place although Swan Valley School was allowed to convert because of the exceptional circumstances around that school and KCC has agreed to allow the eventual conversion of Ellington & Hereson because of the situation in Thanet with regard to The Marlowe Academy. In this case, subject to the outcome of consultations and formal decisions by KCC, Ellington & Hereson and The Marlowe Trust, the Marlowe Academy will close and in effect revert to maintained school status as part of an enlarged Ellington & Hereson School. The intention is that this enlarged school will then convert to an academy in due course.

3. Next Steps

- 3.1 The only outstanding issue from 2011 is the Affordability Gap and after some three and half years of lobbying it is crystal clear that the DfE will not change their stance. We are working with the PFI schools to address the issue of the balance of the split of that funding gap between schools and the overall KCC DSG allocation and some changes are in hand. However the reality remains that the majority of the costs of the gap will continue to fall on the overall DSG. To transfer more of the cost to the 11 PFI schools would drive all of them into major and long term deficits which would be unsustainable.
- 3.2 Given this position (and the desire of at least three more PFI school to seek academy status) it is time to review the current decision with Cabinet this summer. This has been discussed with both Cabinet Member and Leader who are keen to know the views of the Forum on this topic in order that they can be included within the paper to be presented to Cabinet.

4. Recommendation

- 4.1 Members of the Forum are asked to give the LA their views on this topic