


<p style="text-align: center;">Cabinet</p> <p style="text-align: center;">10 May 2016</p>	
<p>Report of: Debbie Jones, Corporate Director Children's Services</p>	<p>Classification: Unrestricted</p>
<p>Maintaining Educational Excellence in Tower Hamlets</p>	

Lead Member	Councillor Saunders, Deputy Mayor and Cabinet Member for Education and Children's Services
Originating Officer(s)	Layla Richards, Service Manager Policy, Programmes and Community Insight Sajeed Patni, Finance Business Manager
Wards affected	All wards
Key Decision?	No
Community Plan Theme	A Prosperous Community

Executive Summary

This report summarises the key implications for the Council arising from the DfE schools White Paper, *Educational Excellence Everywhere*, and the DfE consultation on the National Funding Formula. As well as the duty to maintain schools, the White Paper sets the scene for responsibility for school improvement moving from local authorities to the school-led system and local authorities' role in allocating funding to local schools will be overtaken by the move to a National Funding Formula.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the contents of this report and to agree to receive further reports as developments in relation to the White Paper, *Educational Excellence Everywhere*, and the National Funding Formula occur.

1. REASONS FOR THE DECISIONS

1.1 N/a

2. ALTERNATIVE OPTIONS

2.1 N/a

3. SCHOOLS WHITE PAPER

- 3.1 The government's White Paper, *Educational Excellence Everywhere*, was published on 17 March 2016. It covers teaching and leadership in schools, preventing and tackling underperformance in academies, curriculum reform, governance and standards and fair funding for schools. The White Paper sets out a radical new proposal which will transform the Council's role in education and its relationship with schools in the borough. The main issues which will directly affect the Council are outlined below.
- 3.2 Proposals in the White Paper have been met with some opposition and the academisation of all schools, in particular, has been at the centre of a lot of national debate. In light of that opposition, there has been some suggestion that some of the proposals may change and the Council will want to review the implications once plans are finalised. The remainder of section 3 of this report outlines the implications for the Council should proposals go ahead as they are currently set out in the White Paper.

Forced academisation

- 3.3 The White Paper confirms the government's plans for all schools to either become academies, or be in the process of converting to academy status, by the end of 2020. By the end of 2022, local authorities will no longer maintain schools. The government's policy of academisation is not new, but the direction set out in this White Paper is unprecedented in that it sets out a clear timeline for the forced academisation of all schools, backed by new government powers. This will be achieved by:
- Using the powers for Regional Schools Commissioners (RSCs) in the Education and Adoption Act 2016 to forcibly convert maintained schools judged by Ofsted to be inadequate
 - In Council areas that are underperforming or the Council no longer has capacity to maintain its schools, new powers will be given to the Secretary of State to ensure all schools become academies 'to a faster timescale'
 - A new duty on councils to facilitate the process of all maintained schools becoming academies
 - If schools have not started the process of becoming academies by 2020 they will be directed to do so by the Secretary of State
 - Most schools will be expected to form or join a Multi Academy Trust (MAT)

Conversion and land costs

- 3.4 Schools will continue to get financial support to become academies. There are no proposals in the White Paper to reimburse councils for the costs that they will face in the conversion of maintained schools. Furthermore, to speed up the process of academy conversion, when a community school converts to academy status and the council owns the land, the land will transfer to the Secretary of State who will then grant a lease to the academy trust. If the land is owned by the school, a Diocese or a charitable trust, it will not transfer in the same way.

A new role for local authorities

- 3.5 The White Paper sets out the government's intention to transfer responsibility for school improvement from local authorities to schools and system leaders. The government therefore intends to legislate to change local authorities' powers and duties. In the short-term, local authorities will continue to have responsibilities which include employment of staff in community schools, ownership and asset management of school buildings and responsibilities relating to governance, organisation and curriculum of maintained schools. Those responsibilities will shrink as each school in the area becomes an academy until they all do so when they will fall away entirely.

- 3.6 In future the council role in education will be focused in three areas:

- **Ensuring every child has a school place:** LAs will retain responsibility within the fully academised system for ensuring that there are sufficient schools places and that free school applications are supported through the central free school programme. LAs will also be required to work with schools and parents in developing local school transport policies and to take a lead in crisis management and emergency planning.
- **Ensuring the needs of vulnerable pupils are met:** The LA will be responsible for identifying, assessing and making provision for children with special educational needs and disability and looked after children; promoting school attendance and tackling persistent absence. The LA will retain responsibility for safeguarding (including radicalisation and extremism) children and will have a duty to ensure that schools understand and discharge their safeguarding duties.
- **Acting as champions for all parents and families:** Supporting parents to navigate the new schools system within its continued role in admissions. The LA will also be required to support residents to navigate local SEND arrangements and encouraging high performing schools to provide more school places

- 3.7 Moreover, the government will review the responsibilities of local authorities in relation to children, including the implications for the roles of the Director of Children's Services and the Lead Member for Children and will consult on any changes to the statutory guidance.

School accountability

- 3.8 The White Paper says that in an academised system, where schools will be more locally accountable to academy trusts with whom parents have a direct relationship, it is even more important that parents and governing boards should be able to challenge schools and hold them to account.
- 3.9 A new online Parent Portal will be established in 2017 to set out clearly the key things a parent needs to know about schools.
- 3.10 A new duty will be placed on academies to ensure that they listen to views and needs of all parents.
- 3.11 The DfE will consult on changes to the admissions system to make it easier for parents to navigate, including simplification of the admissions code. They will consult on the council role in coordinating admissions, including requiring councils to handle the administration of the independent admissions appeals function.
- 3.12 Academy trusts will no longer be required to reserve places for elected parents on governing boards, although boards will be required to undertake a skills audit and parents could apply through this route.

4. NATIONAL FUNDING FORMULA

- 4.1 The government issued its first stage consultation on 7 March to introduce a fairer schools' national funding formula (NFF) that will be implemented fully in 2019/20. There will be two transitional years in 2017/18 and 2018/19.
- 4.2 There are currently 3 blocks of funding in the Dedicated Schools Grant (DSG): Schools, High Needs and Early Years. Modelling from various sources has estimated that Tower Hamlets, having the highest per pupil funding in the country, would be set to lose the most DSG, between 12 to 18% for its Schools block. From 2019/20, the DfE will determine individual schools funding without any local authority involvement or any avenue to make local decisions for local circumstances.
- 4.3 London Council's modelling has suggested a loss of 14.2% which equates to £1,000 per pupil or £36.5m for the borough. Simultaneously a consultation has also been issued for a national funding formula for the High Needs element of the DSG. A consultation for the Early Years element will be issued later in the year.
- 4.4 This consultation is stage one of a two stage process and doesn't confirm any monetary values. It sets the general principles of a NFF and gives an indication of where the Education policy is heading but stage two will provide the necessary financial detail. However, there are enough details in the consultation to conclude that for Tower Hamlets, there will be a significant financial impact. The NFF implementation will be a redistribution of funding nationally, Tower Hamlets will lose significantly but there will be gainers throughout the country.

- 4.5 There are four building blocks to the Schools element of funding. This proposes a basic amount of per pupil funding which would apply nationally for Primary, Key Stage 1 and Key Stage 2 pupils. Additional needs factors such as deprivation, low prior attainment and English as an additional language would then be applied. In addition, there would be School specific considerations such as a sparsity factor, business rates and premises costs, including PFI. There will also be an amount for pupil number growth. Lastly, there will be an area cost adjustment which considers more expensive costs in cities, such as London, however there is no information on the multiplier or weighting which will be applied. The area cost adjustment will prove crucial for all London Councils.
- 4.6 The consultation also proposes a Minimum Funding Guarantee (MFG) at a school level. In the past few years this has been set at 1.5% and means no school would lose more than 1.5% of its funding from year to year. There is no information on what the MFG will be in this consultation (although it is expected it will be much higher than 1.5%) and it is unclear over what period the overall redistribution of funding nationally will be staged. This detail will be crucial for Schools as it will determine the rate (MFG) and pace of the funding decrease.
- 4.7 There are also proposals in the consultation to have an 'Invest to save fund' available to Schools for restructuring costs. The budget statement in March 2016 promised an additional £500m nationally for the NFF, at present it is unclear how this will be used and whether the Invest to Save fund will be new or existing money from within the DSG national allocation. For the High Needs block the consultation states that £200m of capital funding for special educational needs (SEN) will be made available nationally.
- 4.8 The reductions that are likely at this stage do not take into account increasing costs such as medium term inflation, salary increases and national insurance employer contribution increases for schools as a result of a change to how teachers pensions are valued. This was announced in the March 2016 budget and is set to impact from 2019. These additional costs will result in additional financial challenges for Tower Hamlets schools.
- 4.9 The Education Services Grant (ESG) is paid to local authorities on a per pupil basis as an un-ringfenced grant. This is worth £92 per pupil to the Council in 2016/17 and is made up of 2 elements: a general funding rate and a retained per pupil rate.
- 4.10 The general funding rate is worth circa £3.1m to Tower Hamlets in 2016/17. With the proposal to transfer these responsibilities to schools, the associated funding of £3.1m for these responsibilities would cease. The retained pupil rate will remain with LAs. This is worth £641k in 2016/17 to Tower Hamlets.

5. COMMENTS OF THE CHIEF FINANCE OFFICER

- 5.1 The Education Service Grant (ESG) is worth £92 per pupil in 2016/17. This is made up of 2 elements, a general funding rate and a retained per pupil rate. The general funding rate is worth circa £3.1m to Tower Hamlets in 2016/17. It is proposed this will cease from September 2017, this will need to be factored into the Council's medium term planning assumptions and options presented for consideration to minimise the unfunded financial burden for the Council. The retained pupil rate will remain with local authorities; this is worth £641k in 2016/17 to Tower Hamlets.
- 5.2 The duties associated with the ESG, such as School Improvement and Behaviour Support will be removed from local authorities. However, local authorities will still have responsibility for the areas stated in 3.5 of this report.
- 5.3 The remaining ESG and money set aside in the DSG which currently funds central services (such as school admissions and schools redundancy provision) will be amalgamated into a new fourth block in the DSG called the 'Central Services' block. It is likely that this block will not be sufficient to fund the duties to remain and so the DfE has proposed an avenue to apply to the Schools Forum to 'top-slice' some of the money, which is for schools, in order to provide extra income for 'Central Services'. This, however, would represent additional decreases in funding for schools along with any of the significant cuts covered in 3.4 of this report. In the medium term, schools would also need to absorb increases in expenditure linked to medium term inflation, salaries and increasing employer pension costs programmed to take effect from 2019.
- 5.4 There are likely to be significant costs to the Council in meeting the duty to facilitate the process of converting schools to academies, at present there is no information that additional funding will be granted for this. It is envisaged that a dedicated project team may be required for this role; estimates for this team are circa £200k per annum. Options for recovering the costs of the academy conversion will need to be developed and considered.
- 5.5 Schools converting to academies would be recognised as scheduled bodies under the LGPS and would have access to the Tower Hamlets pension arrangements. Current and future non-teaching staff would have access to the LGPS. At the point of transfer, the liabilities would be 100% funded. However, any future assessed liabilities in respect to the pension fund and employer costs would need to be funded by the individual schools
- 5.6 Any school which becomes part of a Multi Academy Trust (MAT) would be assessed as one employer in respect of all the schools which come under the umbrella of the MAT and would have one pensions' liability in respect of all of the schools. Tower Hamlets has had a small number of schools which have converted to academies; the same principles which applied to them (as described above) would apply to any future conversions (unless there was statutory guidance from central government specifically which required a change).
- 5.7 Costs associated with actuarial fees for actuarial assessment for individual schools would need to be factored in (circa £3,500 per school). For the 92

schools that are currently local authority maintained, this would represent a cost in the region of £322k over the period the schools convert to academies. It is likely that specific legal advice on top of a dedicated legal resource would be required, for example, in relation to the local authority's PFI schools. This would represent additional costs for the Council.

- 5.8 The financial implications of schools' pensions will need to be considered by the Pension Fund Committee and its advisors and options to address the cost burden to the Council will need to be identified.

6. LEGAL COMMENTS

- 6.1 It is to be noted that the White Paper does not represent the final form of the proposed changes. It will be necessary to consider the full impact of the changes once the draft legislation is produced in a more complete form and then ultimately consider the implications once the final draft is produced.
- 6.2 Broadly speaking the principal effect of the proposed changes is that all schools would become academies. However, it is not entirely clear what the Council's statutory obligations will look like following such changes although it is considered to be likely that the Council's main functions will centre around ensuring continuing improvement in schools.
- 6.3 The presumption at this stage is that the current legislation relating to the conversion of schools into academies remains broadly the same. This is detailed in the Academies Act 2010.
- 6.4 The significant features for the Council from a legal perspective are that:
- 6.4.1 Under the Academies Act 2010 the Council is prohibited from providing any maintenance of the School and
- 6.4.2 When a school converts into an Academy it closes as a maintained school and then reopens as an Academy.
- 6.5 However, an exception to the prohibition on maintenance was then subsequently included to the Academies Act allowing a Council to continue the payment of PFI / BSF payments which without the exception would constitute maintenance.
- 6.6 The closure of the school means that, in the absence to any contrary agreement all of the schools agreements extant at the point of closure terminate with liability potentially falling on the Council.
- 6.7 Therefore, it is possible that the Council could be left in the position of compensating many contractors for the early termination of existing agreements and to have continuing responsibility for the payment of BSF / PFI payments.
- 6.8 One other measure of particular legal significance included in the White Paper is the requirement to transfer to the Academy the land upon which the School

is sited. This does not fit well with the Council's obligation under S.123 of the Local Government Act 1972 to obtain Best Consideration in respect of any disposal. It is also worth noting that following the directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions) any disposal of land would require the Commissioner's consent.

- 6.9 It is also worthy of note that the Council may have to consult with affected persons in accordance with the Local Government Act 1999, the Academies Act 2010 and the Equalities Act 2010.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 The White Paper articulates a new role for local authorities focused in three areas. Ensuring every child has a school place, ensuring the needs of vulnerable pupils are met and acting as champions for all parents and families all have an equalities and therefore One Tower Hamlets dimension to them.

8. BEST VALUE (BV) IMPLICATIONS

- 8.1 There are no direct best value implications as a result of the recommendations in this report.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 9.1 None identified.

10. RISK MANAGEMENT IMPLICATIONS

- 10.1 Concerns have been raised by the LGA on behalf of councils about whether they will have adequate powers to properly discharge their remaining education duties as set out above. For example, councils' abilities to ensure sufficient school places without any power to compel academies to expand and limited control over free schools.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 11.1 None identified.

12. SAFEGUARDING IMPLICATIONS

- 12.1 The Council will retain responsibility for safeguarding children and will have a duty to ensure that schools understand and discharge their safeguarding duties. Discharging this duty in a more fragmented system presents additional risks.
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Linked Reports, Appendices and Background Documents

Linked Report

- The Tower Hamlets Education Partnership (May Cabinet)

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- Government White Paper, Educational Excellence Everywhere (March 2016)
- Government National Funding Formula consultation (March 2016)

Officer contact details for documents:

Layla Richards