

Wiltshire Council

Cabinet

15 February 2012

Subject: Formation of a School Company

Cabinet member: Cllr Lionel Grundy - Children's Services

Key Decision: No

Executive Summary

This report outlines a proposal from the Trowbridge Cluster of Schools to establish a company limited by guarantee with charitable status to deliver a number of services across the Trowbridge area and proposes that the local authority become the supervising authority for maintained schools who join the company.

Under section 11 of the Education Act 2002 governing bodies of maintained schools are able to form companies on their own. Schools are able to set up companies to undertake activities for the purchasing of goods and services, providing services or facilities, or for exercising functions which an LA is able to contract out.

The DfE has published detailed guidance as to the procedures to be followed in establishing, operating and supervising school companies. In particular, maintained schools need permission from their LA to form a company. This is in order to ensure that schools have the managerial and financial capability required to take part in a school company.

All school companies must have supervising authorities and this will normally be the LA within which the member schools are based. The supervising authority has no role in relation to Academies which may be members of the company.

Proposal(s)

It is proposed that:

- a) The local authority (LA) approve the formation of a schools company Collaborative Schools Ltd.
- b) The LA become the supervising authority for the company
- c) The LA instruct the Clarendon College that it must not become a formal member of the company whilst it is in Special Measures.

Reason for Proposal

The Trowbridge schools have proposed the establishment of a school company as the most effective method for ensuring the continued delivery of extended services and collaboration between schools.

The company must have a supervising authority which would normally be the local authority in whose area the schools are located.

Carolyn Godfrey
Corporate Director

Wiltshire Council

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Purpose of Report

1. To formally approve that the maintained schools within the Trowbridge cluster be able to join a school company, Collaborative Schools Ltd, where the criteria for membership are met.
2. To formally establish the local authority (LA) as the supervising authority for those maintained schools in the company.

Background

3. Under section 11 of the Education Act 2002 governing bodies of maintained schools are able to form companies on their own. Schools are able to set up companies to undertake activities for the purchasing of goods and services, providing services or facilities, or for exercising functions which an LA is able to contract out.
4. The DfE has published detailed guidance as to the procedures to be followed in establishing, operating and supervising school companies. In particular, maintained schools need permission from their LA to form a company. This is in order to ensure that schools have the managerial and financial capability required to take part in a school company. The circumstances in which a LA can refuse to give permission are limited and prescribed in part 3 of the regulations. They are where a school:
 - a. Is subject to special measures or has serious weaknesses;
 - b. Is thought likely to become subject to special measures or be assessed as having serious weaknesses within the next year;
 - c. Has a deficit budget;
 - d. has been at fault for a previous insolvency of a school company;
 - e. has belonged to a school company which failed to act in accordance with the regulations within the last 3 years.

5. Section 12 of the act also prevents a school from forming a school company if its school's delegated budget has been suspended. A school that has been refused permission to form a company and thinks this decision is unfair can complain to the Secretary of State using the rights of complaint that schools already have against LA acting unreasonably.
6. All school companies must have supervising authorities and this will normally be the LA within which the member schools are based. The supervising authority has defined powers over companies, some of which can only be exercised in certain circumstances:
 - a. it may direct the company to provide such information about the company's finances, management and contracts to which the company is a party, as the supervising authority think necessary;
 - b. it may direct the company to take certain specified steps in order to comply with Regulations;
 - c. it may direct a governing body of a maintained school, which is a member of the company, to reduce its involvement in the management of the company; and
 - d. it may direct the governing body of a maintained school, which is a member of the company, to resign as a member of the company.

Main Considerations for the Council

7. The Trowbridge Cluster comprises 21 schools, listed in Appendix 1 to this report. The group of schools is a mixture of maintained schools and academies and the supervising authority is established in respect of the maintained schools only.
8. It is proposed to establish a company limited by guarantee with charitable status comprising these schools. The aims of the Company are to promote and advance the education of children, young people and their families especially within the wider Trowbridge community by:
 1. Supporting the development and maintenance of a sustainable, self-improving and progressive school system
 2. Supporting positive personal achievements and outcomes
 3. Reducing barriers to learning, enhancing health and well-being and raising aspirations
 4. Promoting such other charitable purposes that may on occasion be determined
9. The services to be provided are listed in appendix 2 to this report.
10. It is possible that additional maintained schools will wish to join the company as provision expands and further reports will be brought to Cabinet to seek permission for these schools to join the company. Any schools from outside Wiltshire who wish to join the company would need permission from their own LA.

11. In setting up the company the schools have consulted with all governing bodies within the 21 schools.
12. The company is limited by guarantee and has yet to finalise its internal structures in respect of numbers of Directors on the Board, etc. This is a matter on which the company will be required to obtain its own independent advice. Subject to Cabinet approval, the Council's legal team will advise the LA in its role as supervising authority.
13. In considering whether to give permission for the schools to join the company the LA needs to consider the criteria outlined in paragraph 4 above and can only refuse permission if any of these criteria are met. Currently:
 - a. One of the schools, the Clarendon College, is in special measures.
 - b. The schools have not been at fault for any previous insolvency of a school company nor been involved with a company that has failed to act in accordance with the regulations.
 - c. A number of the schools are currently members of an existing company, West Wilts Learning Futures Ltd, and Wiltshire Council is the supervising authority for those maintained schools who are members of that company.
 - d. One of the schools within the proposed company is in financial deficit and has an agreed recovery plan.
14. The LA should instruct the Clarendon College that it cannot become a member of the school company at this stage.
15. Should any of these circumstances occur in other maintained schools who are members of the company in the future the Regulations state that the LA as the supervising authority must direct the school either to reduce its involvement in the company or to resign as a member of the company. There is a process through which any school in such a position will be issued a notice by the LA. In such circumstances the LA would review with the school and the company the level of involvement in the company that is appropriate.

Environmental and climate change considerations

16. None identified

Equalities Impact of the Proposal

17. The aims and objectives of the company are outlined in paragraph 8 above. In fulfilling these objectives the Company will be acting to ensure that access to education and training is available to all groups of young people across the Trowbridge area.

Risk Assessment

18. Members of a school company need to make important decisions regarding the structure of the company, its aims, how it is to be funded, terms and conditions for the employment of staff and how any profits are to be applied. As the supervising authority the LA will not intervene in the day to day running of the company and should only exercise its powers of direction if there is evidence that a company is approaching or is in financial trouble.
19. As stated in a previous paragraph one of the schools involved in the Company is currently in financial deficit. The school has worked with the LA to resolve its financial position and has an agreed recovery plan in place. The Company requires a low level of investment from individual schools and a risk assessment of the implications of the deficit position of the school indicate that it should not negatively affect that school's involvement in the company. This situation would need to be kept under review and the processes in paragraph 12 would apply if the LA had concerns over the ability of this or any other maintained school to manage its finances.
20. Should the company get into financial difficulties the DfE guidance states that it will either have to borrow money to pay its creditors or trade its way out of difficulties. A company that cannot pay its debts will be wound up.

Financial Implications

21. The company is to be accounted for outside of the school accounts and the finances of the company are not part of the LA's funds.
22. The sources of income to the company are the subscriptions paid by the member schools, balances of Extended Schools funding held by the Trowbridge cluster and income from other services purchased by schools outside of the subscription.

Legal Implications

23. This proposal is within the statutory framework provided by sections 11-13 of the Education Act 2002 and regulations made under those provisions enabling governing bodies of maintained schools to form companies for certain purposes, including the provision of services or facilities for any schools.
24. The role and responsibilities of the LA as supervising authority are outlined earlier in this report. The LA will have no formal participation in the company except in its role as supervising authority.
25. Collaborative Schools Ltd is a company limited by guarantee, which means that it does not have a share capital, but has members who are guarantors instead of shareholders. Under the company's memorandum of association the liability of its members is limited to a nominal amount (£ 1) which they undertake to contribute towards any shortfall in the event of the company being wound up.

26. Regulation 26 of the School Companies Regulations provides that a supervising authority has a duty to monitor the management and finances of the school company; and notify members of the company and relevant local education authorities if it considers that the company is poorly managed or there is a risk of the company becoming insolvent.
27. The income and property of the company must be applied solely towards the promotion of its objects.
28. There are significant responsibilities imposed upon company directors under company law. Directors of the company will need to ensure that they are aware of the nature and extent of these responsibilities.

Options Considered

29. The Trowbridge cluster of schools have consulted governing bodies in all of the schools and have concluded that a limited company is the most effective vehicle for the delivery of services and continued collaboration of schools in the current framework of schools in Wiltshire. An alternative method of delivery could be for the schools to act as a less formal collaboration for the delivery of these services but this has been rejected by the schools.

Conclusions

30. That a School Company be formed to facilitate the development and delivery of extended schools and other development services for schools and young people in Trowbridge.
31. That as supervising authority the LA must direct Clarendon College not to become a member of the company at this stage.

Carolyn Godfrey
Corporate Director

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12 January 2012

Background Papers

DCSF Guidance on School Companies, issued 20/1/03
The School Companies Regulations 2002

Appendices

Appendix 1 – List of schools within the Trowbridge cluster

Appendix 2 – Services to be delivered by Collaborative Schools Ltd

Appendix 1 – Schools within the Trowbridge Cluster

Secondary Schools

The John of Gaunt School

The Clarendon College

St Augustine's Catholic College

Special School

Larkrise Special School

Primary Schools

Grove Primary School

Walwayne Court School

Staverton C of E.V.C Primary School

Hilperton C of E.V.C Primary School

Bellefield Primary School

Holbrook Primary School

Studley Green Primary School

Newtown Community Primary School

Holt V.C Primary School

The Mead Community Primary School

Paxcroft Primary School

St John's Catholic School

Southwick C of E Primary School

West Ashton C of E Primary School

North Bradley C of E Primary School

Keevil C of E Primary School

Trowbridge Longmeadow Primary School

Appendix 2 – Services to be delivered by Collaborative Schools Ltd

These services are provided as part of the core offer to member schools at no additional cost other than the annual member contribution:

Activity	Detail
*Continuing Professional Development (CPD) for staff of member schools	Local in-house development of a CPD programme to meet needs
Transfer & Transition programme	Ongoing development of a 'local offer'
*Student and family counselling service	Access to in house counselling service
*Leadership and Development Advisor	Provision to support school leadership and development
*Parenting Support	Local in-house delivery of a varied programme of support for parents to meet local need
Multi- Agency Health & Well Being Drop-Ins for young people	An on-site confidential health & well being advice service for young people at all three secondary schools
The Youth Parliament	Student forum which discusses and actions local issues of importance to children and young people
Multi-Agency Forum (MAF)	A multi-agency collaborative partnership ensuring all schools access to children's services, identifying and seeking ways to fill local gaps in provision
Free Time Disadvantage subsidy scheme	Enabling student access to school and community based clubs and activities by removing the financial barriers to engagement
*The Hub	A purpose built facility with meeting rooms and office accommodation playing host to a variety of member school and community functions.
*Adult learning programmes	Local in-house development of adult learning programmes to compliment other local provision to meet needs
*Service procurement	A procurement and contract management service which will allow member schools to purchase additional services
School Sports Co-ordinator	Provision of sports advice, consultancy and activities for member schools

*Activities that will be traded as income generation