

---

Decision Maker: **Audit Sub-Committee**

Date: **16 March 2011**

Decision Type: Non-Urgent Non-Executive Non-Key

**TITLE: THE GOVERNMENT'S ACADEMY PROGRAMME :  
DEVELOPMENTS WITHIN BROMLEY**

Contact Officer: Gillian Pearson, Director of Children and Young People Services  
Tel: 020 8313 4060 E-mail: gillian.pearson@bromley.gov.uk

Chief Officer: Gillian Pearson, Director of Children and Young People Services

Ward: Boroughwide

---

1. Reason for report

- 1.1 The Director of Children and Young People Services (CYP) has provided a series of report updates on the Government's reform agenda for education, schools and wider children's services at meetings on: 20 July 2010 (DCYP10113), 7 September 2010 (DCYP10124), 30 November 2010 (DCYP10158), 24 January 2011 (DCYP11019) and 22 February 2011 (DCYP11039). These reports have provided an overview of the policy direction and key areas for reform, including the Academies agenda.
- 1.2 This report provides an update on the Academy Programme, developments within Bromley and the potential strategic implications for Bromley Council.
- 1.3 At the request of the Chairman of the Audit Sub-Committee (ASC), this report will be presented to the ASD at their meeting on 16 March 2011.
- 

2. **RECOMMENDATION(S)**

2.1 **The Audit Sub-Committee is asked to note:**

- (i) **the Government's Academy Programme, developments within Bromley and local strategic implications for policy and planning;**
- (ii) **the specific financial implications as outlined in Section 8 of the report.**

### Corporate Policy

1. Policy Status: Existing policy: Children and Young People's Plan 2009-2011
  2. BBB Priority: Children and Young People
- 

### Financial

1. Cost of proposal: Estimated cost To be determined
  2. Ongoing costs: N/A To be determined
  3. Budget head/performance centre: Schools delegated budgets, central schools budget and Local Authority's budget
  4. Total current budget for this head: £183.0m 2009/10  
£189.4m 2010/11
  5. Source of funding: Dedicated Schools Grant, Specific Grants, ABG, Council Tax, Revenue Support Grant
- 

### Staff

1. Number of staff (current and additional) -
  2. If from existing staff resources, number of staff hours -
- 

### Legal

1. Legal Requirement: Statutory requirement:
  2. Call in: Call-in is applicable
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected) -
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 This report provides an update on the Academy Programme and the position for Bromley regarding schools seeking conversion to Academy status, either individually or collectively, as part of an academy federation or cluster arrangement.
- 3.2 The Government's Academy Programme is underpinned by the Academy Act (2010) with the initial focus being on those schools judged by Ofsted as "outstanding". In addition, the Act makes provision for the Secretary of State for Education to direct any school which is underperforming and "in intervention" to become an academy, without the need for consultation with the Local Authority.
- 3.3 The Academy Programme was extended and accelerated by the Secretary of State in November 2010 to include:
- "good schools with outstanding features"
  - all schools who link to an "outstanding school"
  - special schools (from September 2011)
  - pupil referral services (underpinned by a change of legislation through the Schools' Bill/Act).

### 4. ACADEMY DEVELOPMENTS IN BROMLEY: CURRENT POSITION

- 4.1 At the start of the 2010/11 Academic Year, there were 95 maintained schools in Bromley which included: 17 secondary, 74 primary phase and 4 special schools. This broad spectrum of schools included Foundation, Trust, Community, Voluntary Aided and Voluntary Controlled. In addition, Bromley maintains a Pupil Referral Service. Educational standards in Bromley and the outcomes achieved by children and young people across our schools, places the borough in the top quartile of overall performance nationally.
- 4.2 During the Autumn 2010 and early part of the Spring Term 2011, a number of governing bodies have taken the decision to make a formal application to the Department for Education (DfE) to pursue Academy conversion, either as an individual entity or as part of an existing Academy Trust Federation.
- 4.3 **Appendix 1** summarises the position for Bromley as at 3 March 2011; this information is based upon formal notification that the Director of Children and Young People Services has received from the Chairman of Governors, or from the Head Teachers on behalf of the Governors, or direct from the Department for Education (DfE).
- 4.4 In summary, the position is as follows:

#### **Academy conversions undertaken or scheduled for 2011**

- 5 secondary schools have now "opened" as Academies
  - 11 secondary schools are targeted to convert by 1 April or 1 September 2011
  - 7 primary schools have registered their intention to convert, subject to parental consultation.
- 
- 23 Total

- 4.5 There are three potential academy clusters which are currently at the stage of initial exploratory discussions, each involving one or more of the Bromley secondary schools which will have secured academy status by September 2011, together with a potential total of 22 primary schools, subject to formal decisions by individual governing bodies, consultation and approval by the Secretary of State for Education.

## **5. FUTURE DEVELOPMENTS**

- 5.1 It is anticipated that a number of individual schools and groups of schools will be engaged in exploratory discussions, as they consider the possibilities and implications of conversion to academy status. A number of Head Teachers have been meeting with the Director of Children and Young People Services to discuss outline plans to initiate multi-academy clusters, formed across primary phase schools or involving secondary schools. These are at an early stage of development and the Director and senior officers will support these exploratory discussions wherever possible.
- 5.2 For schools at the early stage of considering academy conversion, on registering their decision to pursue academy status with the DfE, they will be provided with a named DfE contact officer who will offer detailed advice on the academy conversion processes.
- 5.3 There are a number of operational and practical issues that need to be considered, both by the school and the Local Authority. As part of the DfE procedures, the Director of Children and Young People Services will be asked to provide a position statement on each school. This statement needs to include information on: standards and performance; attendance, persistent absence and exclusions; financial management and any exceptional circumstances specific to the school.
- 5.4 Should an application for academy conversion be successful, following a resolution by the Governing Body in favour of academy conversion, the Secretary of State will issue an Academy Conversion Order. The Local Authority and School Governors will be required to work together, with their legal advisers, to complete the Commercial Transfer Agreement (CTA). This Agreement will need to cover some complex issues including: pension liabilities; other liabilities including outstanding loans; any budget deficit; any shared facilities including dual-use facilities and SEN Unit provision, and any outstanding capital works. In due course, the CTA has to be the subject of approval by the Council's Executive Committee. The Council's Legal Section is currently working on the CTA's for the ten schools seeking conversion in March or April; the very short timescale dictated by the DfE is proving challenging particularly given the contractual arrangements and liabilities relating to those schools with dual-use and SEN unit facilities
- 5.5 It should be noted that the Commercial Transfer Arrangements have yet to be completed in respect of all five secondary schools that have been formally approved by the Secretary of State to take on their new Academy status.

## **6. EDUCATION IN BROMLEY: A CHANGING LANDSCAPE**

- 6.1 The landscape of education in Bromley will undoubtedly change radically over the next 12 months. The decision regarding whether to pursue academy conversion lies with the individual governing body of each school, together with the Secretary of State for Education; in the case of Church of England and Roman Catholic schools, conversion is also subject to consideration by the Diocese of Rochester and Archdiocese of Southwark (respectively).

- 6.2 The LA will continue to have a strategic and statutory role for certain key aspects of education, including improving outcomes for children and young people, pupil place planning, co-ordinated admissions, special education for statemented pupils and the education of children out of school, together with advocacy for Bromley residents.
- 6.3 Given the pace of academy conversions in Bromley and the associated reduction in funding levels from both the Schools' Budget (funded from the Dedicated Schools' Grant) and the Non-Schools' Budget (funded from the Revenue Support Grant) for central support services, there will undoubtedly be challenges to sustaining a sufficient 'critical mass' of service support for those schools remaining with the LA.
- 6.4 The implementation of the Academy Programme in Bromley will ultimately be the product of individual decisions by the schools' governing bodies, and the Secretary of State for Education. Clearly, the Local Authority has needed to both react to these developments, and where possible, advise and support on the transition processes.
- 6.5 If the momentum of conversions during 2011 continues at the pace experienced in recent months, the Local Authority will need to adopt an even more proactive role. The Director CYP and senior officers will need to support the exploratory discussions between schools, so that in any formation of Academy Cluster arrangements the LA can reduce the risk of smaller schools becoming isolated, and ensure that the rationale for clusters reflect the needs of children and local communities.

## **7. POLICY IMPLICATIONS**

- 7.1 The Government's reform agenda for education, schools and wider children's services will be underpinned by major statutory changes. This will impact significantly on local policy, strategy and priorities for Bromley's Children and Young People Services agenda; the detail of which will be brought in progress update reports to Members.

## **8. FINANCIAL IMPLICATIONS**

- 8.1 Academies will receive their revenue funding on the following basis:
- their school budget share, based on the LA Funding Formula;
  - a funding element from the LA Non-Schools' Budget – Revenue Support Grant (RSG)
  - a funding element from the Local Authority's Schools' Budget (DSG), i.e. a percentage of the funds used to deliver central services including Behaviour Support, Pupil Referral Service, Respite provision, school admissions and supply cover for maternity and jury service.
- 8.2 For the 2011/12 financial year the Government has applied a general top-slice from the RSG settlement for every Local Authority, based on an assumption of an average number of academy conversions during the year. Bromley Council's RSG has been 'top-sliced' by £800k in 2011/12 to reflect academy conversions, with an indicative figure of £640k for 2012/13. However, given the anticipated number of Bromley schools converting to academy status, it is not clear if the Government will review the funding arrangement within 2011/12, or, for the start of the 2012/13 financial year.
- 8.3 The methodology for recoupment from the Dedicated Schools Grant (DSG) will be through an in-year adjustment. This will have a direct and immediate impact on central CYP Services funded through DSG including: Behaviour Support, Pupil Referral Services, Respite, School Admissions. Clearly, with the escalation in the numbers of Bromley schools seeking conversion, and in-year funding adjustments, it will be necessary to 'downsize' a range of central services to reflect this funding loss.

- 8.4 The DfE have issued guidance on how to treat schools balances when they become academies. Where applications for conversion are approved under the new arrangements, the Academies Act requires the local authority (LA) to pay over the school's surplus to the academy. Where a school converting under the new legislation has a deficit, then the DfE will reimburse the LA for the deficit, and the YPLA will then recover it from the academy over a period of time by reduced payments of General Annual Grant. The guidelines also state that where an academy is set up under the previous procedures, i.e. with a trust/sponsor, then surpluses and deficits would continue to revert to the LA.
- 8.5 For 14 of the secondary schools that have converted or are in the process of converting, it is clear that they are converting under the new arrangements and as such any surplus would transfer to the school and any deficit would be repaid to the LA. However, 2 schools Cator Park School and Kelsey Park School have both indicated that they will convert as part of the Harris Trust. At present one of these schools has a large deficit and one has a surplus balance. The LA has sought advice from the DfE regarding this, and has received an email which states that Cator Park is being treated as a voluntary converter and will therefore take its deficit or transfer to Academy status. If Kelsey Park is also treated as a voluntary converter, then its surplus will transfer to the new Academy.
- 8.6 As this advice does not seem to be in line with the guidelines, the Director and Portfolio Holder for Children and Young People Services have asked the DfE that this be put in writing, along with confirmation that the deficit will be repaid to the LA in full at the point of conversion. This information has not been received to date.
- 8.7 The remaining secondary school, The Priory, has a deficit and is considering the options for academy status.
- 8.8 Of the 7 primary schools securing conversion as individual academies, 6 had a surplus as of 31 March 2010 and one had a deficit. These schools will take their balances with them. Of the 10 primary schools converting as part of a trust (2 in the Charles Darwin multi-academy Trust and 8 in the Diocese of Rochester's outline proposal), 9 had a surplus as of 31 March 2010 and 1 had a deficit. Subject to confirmation from the Government (see above), if these schools are treated as voluntary converters, they will take their balances with them.
- 8.9 In November 2010 the Secretary of State announced the Government's decision to scrap the Financial Management Standards in Schools (FMSiS) with immediate effect. The DfE will work with interested parties, including local authorities and schools, to develop a new way of ensuring schools have the right arrangement in place to manage their budgets effectively.

## **9. LEGAL IMPLICATIONS**

### **9.1 Transfer of Land**

- 9.2.1 The land upon which schools stand is held by any one of three separate bodies; for community schools the landowner is the Local Authority, for faith schools it is the relevant diocese and for foundation schools it is the governing body. Under the new legislation in the case of foundation schools there is a discretion available to the governing body to transfer the land either under a long lease (125 years) or as long as there is no legal impediment to it, the freehold may be transferred to the new academic trust if the governor's so wish. In the case of any community school that wishes to become an academy, the process is for the grant of a long lease by the local authority at a peppercorn rent to the academic trust, But the Secretary of State will have the power to make a scheme to transfer the land to the academy trust freehold or leasehold if necessary.

- 9.2.2 In the case of land held by the diocese, such is normally privately owned land and it will be for the freeholder to decide how the land will be held by the academic trust. The diocese may choose to lease the land to the local authority who in turn lease it to the academic trust.
- 9.2.3 For community schools who elect to become academic trusts, the land will be transferred on a long lease to the academic trust by the local authority, it should be noted that the Secretary of State will have the power to make a scheme to transfer the land to the academy trust freehold or leasehold if necessary.
- 9.2.4 In view of timescale it may well be impossible for potential academic trusts to complete negotiations on a lease before the proposed opening date for the Academy. Problems precluding transfer could include issues associated with how the existing school was procured or if the land and buildings are in multiple ownership. This may well be an issue that is of concern to the authority and the question of dual-use facilities and associated use on sites is a matter on which no firm guidance has been published by the DfE. Current guidance suggests that, if all parties agree, a Licence to Occupy (also known as Tenancy at Will) can be used to enable the Academy to open on the preferred date. This is intended as a short term solution until the full lease can be agreed.
- 9.2.5 The Secretary of State does have a power to make a scheme whereby land may be mandatorily transferred to the new academy (Schedule 1 of the Act) and such schemes may be made in respect of land owned by a local authority, where the land has at any time within the last eight years been used wholly or mainly for the purpose of a maintained school but is either no longer being used for this purposes or is about to cease to being used for those purposes there is no requirement to consult the local authority in relation to a transfer of land in these circumstances e.g. a maintained school becomes an academy. Where land is transferred from a local authority to the new academy under a transfer scheme, the scheme has to specify whether the transfer is to be a transfer of the leasehold or freehold interest in the land, or whether the local authority is simply to grant a lease to the academy.
- 9.2.6 Where the land in question is owned by the governing body, foundation body or trustees of a foundation or voluntary school the Secretary of State has the option either to transfer the land to the new academy or transfer it to the local authority (para 4(3) schedule 1); if such happens the local) authority may be required to pay an “appropriate” sum for the land. The converse is true in that the Secretary of State has the power under a scheme Para 5(3) to require a governing body or trustees to pay either the Secretary of State or local authority the whole or part of the value of the land transferred, and the Secretary of State on an academy ceasing to exist or use land that was subject to a transfer the Secretary of State may make a scheme to transfer such land back to the authority.

## **10. PERSONNEL IMPLICATIONS**

- 10.1 The full HR implications of the Government’s Education Reform agenda will not be known until the detail behind the broad policies is published. Any changes will be managed within the framework of organisational change procedures that are in place across the Council.

### **Conversion to Academy Status**

- 10.2 Conversion to Academy status gives rise to personnel implications and would constitute a TUPE transfer for staff currently employed at the establishments. The current Governing Bodies would need to engage in meaningful consultation with all staff and recognised Trade Union representatives regarding the transfer and any proposed changes.

- 10.3 Of the current conversions, Darrick Wood Secondary School, Kemnal Technology College, St Olave's Grammar School, Ravens Wood School, Coopers Technology College, The Ravensbourne School, Hayes School and Bishop Justus CE School are already employers of their staff. Therefore any TUPE liabilities rest with the existing Governing Body and the new Governing Body established as part of the conversion to Academy status.
- 10.4 If a community school or voluntary controlled school were to convert then the conversion would involve the transfer of staff from the employment of the Local Authority to the Governing Body. The Local Authority and the newly established Trust/Governing Body would be jointly liable for consultation, and for ensuring compliance with the provisions of TUPE in the conversion process.
- 10.5 The conversion to Academy status allows the Governing Body to negotiate new terms and conditions of service for staff but only within the normal legal framework which governs how changes to contracts of employment might be achieved.
- 10.6 At present the Local Authority has various statutory employment responsibilities in respect of staff in all LA maintained schools which are undertaken by HR on behalf of the Director of Children and Young People Services without charge to the school. A small number of these responsibilities will cease to be relevant and the remainder will in future pass to the Governing Body. Significantly, this will include employer responsibilities under the Teachers' Pension Scheme and the Local Government Pension Scheme which currently rest with the Council even in the case of Foundation, Foundation Trust and Voluntary Aided Schools.
- 10.7 The implications of Academy status as regards continued access to the Local Government Pension Fund for support staff are currently the subject of debate nationally. Academies under the new legislation are 'scheduled bodies' who must offer LGPS membership to non-teaching staff. Any pension fund deficit in respect of their staff will also be transferred, and their employer rate assessed on their staff profile.

<b>Non-Applicable Sections:</b>	N/A
Background Documents: (Access via Contact Officer)	<p>Previous Director CYP Reports: The Government's Reform Agenda: Education and Children's Services:</p> <p>20 July 2010 : DCYP10113</p> <p>7 September 2010 : DCYP10124</p> <p>30 November 2010 : DCYP10158</p> <p>24 July 2011 : DCYP11019</p> <p>22 February 2011 : DCYP11039</p> <p>Department for Education: Academy Website</p> <p>The Academies Act 2010</p>



Bromley's position as at 1 March 2011 regarding schools securing or in the process of seeking conversion to Academy Status is as follows:

**Table A**

<b>Secondary Schools Seeking Conversion as Individual Academies</b>		
<b>SECONDARY SCHOOLS</b>	<b>POSITION</b>	<b>TIMESCALE</b>
<b>Kemnal Technology College</b>	Conversion	September 2010
<b>Darrick Wood Secondary School</b>	Conversion	December 2010
<b>Beaverwood School for Girls</b>	Conversion	1 March 2011
<b>Bishop Justus CE Secondary School</b>	Conversion	1 March 2011
<b>Coopers Technology College</b>	Conversion	1 March 2011
<b>Bullers Wood School</b>	Notification to Local Authority (10 February 2011)	Target: April 2011
<b>Charles Darwin School</b>	Submission to Secretary of State Notification to Local Authority (January 2011)	Target: April 2011
<b>Hayes School (Secondary)</b>	Notification to Local Authority (December 2010)	Target: April 2011
<b>Langley Park School for Boys</b>	Academy Order Issued by Secretary of State (January 2011)	Target: April 2011
<b>Langley Park School for Girls</b>	Notification to DfE to register an interest – potential September 2011 conversion – subject to consultation.	TBC
<b>Newstead Wood School for Girls</b>	Notification to Local Authority (December 2010)	Target: April 2011
<b>Ravens Wood School</b>	Academy Order Issued by Secretary of State (December 2010)	Target: Sept 2011
<b>St Olave's Grammar School</b>	Notification to Local Authority (October 2010)	Target: April 2011
<b>The Ravensbourne School</b>	Academy Order Issued by Secretary of State (January 2011)	Target: April 2011
<b>The Priory School</b>	Considering Options	TBC

**Table B**

<b>Secondary Schools Seeking Conversion as part of an Established Academy Trust Federation</b>		
<b>SECONDARY SCHOOLS</b>	<b>POSITION</b>	<b>TIMESCALE</b>
<b>Kelsey Park Sports College</b>	Governors' decision to convert to Academy Status as part of the Harris Academy Trust Foundation	15 February 2011
<b>Cator Park School</b>	Governors' decision to convert to Academy Status as part of the Harris Academy Trust Foundation	15 February 2011

Table C

Primary Schools Seeking Conversion as Individual Academies		
PRIMARY SCHOOLS	POSITION	TIMESCALE
<b>Balgowan Primary School</b>	Notification to LA – 10 February 2011	TBC
<b>Green Street Green Primary School</b>	Notification to LA – 17 February 2011	TBC
<b>Hayes Primary School</b>	Notification to LA – 24 February 2011	TBC
<b>Pickhurst Infant School</b>	Notification to LA – 15 February 2011	TBC
<b>Pickhurst Junior School</b>	Notification to LA – 15 February 2011	TBC
<b>Stewart Fleming Primary</b>	Notification to LA – 2 March 2011	TBC
<b>Warren Road Primary School</b>	Notification to LA – 11 February 2011	TBC

Table D

PROPOSED ACADEMY CLUSTERS	POSITION	TIMESCALE
<b>Charles Darwin Multi-Academy Trust</b>	Proposed multi-academy Trust - Charles Darwin Secondary School + Biggin Hill Primary + Oaklands Primary	Target: Sept 2011
<b>Diocese of Rochester's outline proposal</b> <ul style="list-style-type: none"> <li>• Secondary CE School: Bishop Justus</li> <li>• Primary Phase CE Schools (8) * <ul style="list-style-type: none"> <li>- Chislehurst (St Nicholas) CE VA</li> <li>- Cudham CE VC</li> <li>- Keston CE VC</li> <li>- Parish CE VC</li> <li>- St George's, Bickley, CE VC</li> <li>- St John's CE VA</li> <li>- St Mark's CE VA</li> <li>- St Paul's Cray CE VC</li> </ul> </li> </ul>	Proposed Faith Based Academy Trust Education Notification – to LA – 9 December 2010 Currently under discussion with individual governing bodies	TBC
<b>'Family Langley'</b> - Langley Park School for Boys, Langley Park School for Girls + invitation to 12 main feeder primary schools to join this Academy Federation	Notification to Local Authority – 9 February 2011. Primary schools not as yet named	TBC

Footnote

- \* VA – Voluntary Aided  
VC – Voluntary Controlled