



Report for:	Cabinet Member Signing – 10 March 2014	Item Number:	
Title:	Octagon Pupil Referral Unit Academy Conversion		
Report Authorised by:	Lisa Redfern, Interim Director, Children’s Services		
Lead Officer:	Jon Abbey, Assistant Director, Schools and Learning		
Ward(s) affected:	Report for Key Decision		

1. Describe the issue under consideration

- 1.1 The Octagon, Pupil Referral Unit (PRU) Management Committee in October 2013 expressed an interest in converting to Academy Status, as a sponsored academy under the Academies Act 2010 (AA 2010).
- 1.2 The Secretary of State for Education (SoS) pursuant to his powers under the AA 2010 has issued an Academy Order in respect of The Octagon, PRU to convert as a Sponsored Academy with Tri-Borough Alternative Provision Trust as the sponsor.
- 1.3 The AA 2010 provides that on the conversion date the former educational establishment will close and reopen as an Academy under Academy Arrangements in accordance with Section 1 of the AA 2010. Under the provisions of the AA 2010, where the Council are freeholders of the land they are required to negotiate and enter into a 125 year lease with the new Academy Trust. In addition the Local Authority is expected to enter into a separate Commercial Transfer Agreement relating to the commercial arrangements for the PRU.

2. The Leader of the Council’s introduction

- 2.1 To note the decision of the Octagon (PRU) Management Committee to convert to academy status. As the establishment converts to academy status, the local authority would still wish to work with TBAP (provider) as part of the Haringey family



Haringey Council

of schools and local continuum of provision. The recommendations proposed enable the local authority to comply with the section 19 statutory duties for local authority areas to provide provision for children and young people needing to be educated otherwise than at school.

3. Recommendations

- 3.1 The Cabinet Member is asked to note the decision of the Octagon, Pupil Referral Unit Management Committee to convert to Academy Status.
- 3.2 In order to facilitate the statutory process and conversion of the PRU to Academy status, the Cabinet Member is asked to approve that the Local Authority enter into:
 - (i) A Commercial Transfer Agreement
 - (ii) A Lease for 125 years where the Local Authority is the freeholder
 - (iii) Novation and/or assignment of any building contracts as appropriate.
- 3.3 That authority is delegated to the Director of Children's Services / Assistant Director for Schools and Learning, in consultation with the Cabinet Member for Children's Services, to agree the final terms of the documents in paragraph 3.2 and enter into these agreements.

4. Alternative options considered

- 4.1 None – this is a statutory process following the exercise of the educational establishments' discretion to choose to convert to academy status under the Academies Act 2010.

5. Background information

- 5.1 The Executive Committee of the Octagon Pupil Referral Unit (PRU), under the Education Pupil Referral Units Application of Enactments England Amendment Regulations 2012, applied to the Secretary of State of Education to convert to Academy status under the Academies Act 2010 (as amended).
- 5.2 The Secretary of State having considered the application of the Octagon PRU Management Committee made an Academy Order on 19 December 2013 for the Octagon PRU to convert to a sponsored academy;
- 5.4 The Academy Order obliges the Council to cease maintenance of the PRU on the conversion date. The anticipated conversion dates for the PRU to convert to Sponsored Academy Status is 1 June 2014 however the PRU, the sponsor and the Local Authority have indicated as a preferred conversion date 1 April 2014.
- 5.5 Under the provisions of the Academy Order and of the Academies Act, where the Council is the freeholder of the land where the school is sited, it is required to negotiate and enter into a 125 year lease, a failure to agree terms will mean that the



Haringey Council

SoS has power to make a property transfer scheme. The 125 year lease will enable the Academy to use the land and assets in accordance with the lease.

- 5.6 The grant of a 125 year lease will be of the school site at a peppercorn rent to the Academy with the Academy taking responsibility of maintaining the assets. The freehold interest will remain with the Council.
- 5.7 A commercial transfer agreement will transfer the maintenance responsibility of the Octagon site to the Academy Trust to facilitate the conversion process. This process includes the recent management decision where only responsibility for the Octagon building is being transferred to the Academy Trust. Therefore, transfer will not include the Coppetts Wood site, as the primary PRU moved to the Octagon site. The Muswell Hill Coppetts building will therefore remain with the Council.
- 5.8 A commercial transfer agreement is required to transfer responsibility of all the administration, including employment of personnel and pension obligations, maintenance of the school and insurance to the Academy. Following the integration of the primary and secondary PRU staffing teams, which will be based on the single PRU Octagon site, the commercial transfer agreement will further include the transfer of a cross phase PRU workforce administration.
- 5.9 Non-teaching staff at schools fall within the Local Government Pension Scheme (LGPS). As the employer, the Academy would be responsible for meeting the employer contribution. Academies are obliged to offer LGPS membership to staff and staff transferring would simply continue their scheme membership. The Council will remain the pension authority under the Local Government Pension Scheme (LGPS).
- 5.10 Local authorities under the Education Act 1996 will retain their section 19 duties (the duty to arrange suitable full-time education, unless a child's health makes this inappropriate, for any child of school age who, for reasons of exclusion, illness or otherwise, would not receive suitable education without such provision). The relationship with the converted PRU will change in that the local authority role will move from being the direct provider of services to commissioning them.
- 5.11 An assignment or novation of building contracts will transfer the responsibility of liaising and reporting of defects of the school under the building contracts to the Academy Trust, this will apply to The Octagon PRU and will facilitate the conversion process and comply with the obligation under the AA 2010 requiring the Council to cease to maintain the school.



6. Comments of the Chief Finance Officer and financial implications

- 6.1 The conversion to Academy status has a number of financial implications for the Council. However, as set out in the Legal comments the authority must cease to maintain the PRU on the appropriate date.
- 6.2 The transfer of staff who are members of the LGPS as described above creates an obligation on the PRU to meet an appropriate proportion of the pension fund scheme deficit. Agreement was previously made by the Council's Corporate Committee on an appropriate basis for determining the relevant resource and this will form part of the CTA.
- 6.3 The CTA can also provide for certain liabilities to fall on the Council, e.g. certain staff termination costs where a reorganisation is necessary to balance the budget and action has not been previously taken by the PRU. The extent of such liabilities would need to be identified in the CTA.
- 6.4 The creation of a PRU Academy means that delegated resources are paid to the PRU directly by the Education Funding Agency (EFA) once the local Authority ceases to maintain the PRU. There is a consequent recoupment in an Authority's Dedicated Schools Grant (DSG). In the case of a PRU this will be £8,000 for each of the 58 planned places notified to the EFA. The Authority will retain 'top-up' funding to provide for costs in excess of £8,000 and will act as the commissioner in placing pupils in appropriate provision.
- 6.5 A reduction to an Authority's Education Services Grant is also made in respect of planned numbers in PRU academies. The numbers are lagged so the reduction will be based on 2013-14 numbers and will be £18k in 2014-15. This deduction has been reflected in the Council's Medium Term Financial Plan (MTFP).
- 6.6 The Local Authority requires the PRU and the Management Committee to discharge their financial responsibilities in respect of public money appropriately.
- 6.7 The PRU is being funded for its actual costs and there will be no surplus or deficit to transfer or write-off at year-end.

7. Head of Legal Services and legal implications

- 7.1 The Head of Legal Services has been consulted with the preparation of this report, and makes the following comments.
- 7.2 Under section 6 subsection (2) of the Academies Act 2010, the Council as the local authority must cease to maintain the school on the conversion date, this date will be stipulated in the funding agreement entered into by the Secretary of State and the Academy.



- 7.3 In order to facilitate this, approval is required to enter into a lease where the local authority is the freeholder, and commercial transfer agreements as appropriate.
- 7.4 Under the provisions of the Academy Order and of the Academies Act, the Council is required to negotiate and enter into a 125 year lease. If the Council fails to negotiate terms of the lease, the SoS has power to make a property transfer scheme and impose terms on the Council. The Council will finalise the terms of lease before the transfer.
- 7.5 The Council is required to formalise the transfer for the responsibility of all administration functions, including employment of personnel and pension obligations to the Academy Trust by way of the commercial transfer agreement.

8. Equalities and Community Cohesion Comments

- 8.1 The SoS has confirmed that the Octagon PRU will convert to Academy status on the conversion date. Haringey Council will urge the new Academy, as a public body, to be mindful of its Public Sector Equality Duty in particular in relation to its policy on recruitment and management of staff.
- 8.2 The PRU Management Committee should decide whether they need to undertake an equalities impact assessment, in relation to the conversion. If they decide there is a potential impact then they need to consider whether or not to carry out an equalities impact assessment to adequately discharge their equality duty. The Local Authority will work with and remind the PRU's Management Committee of its duty to ensure this is undertaken to address the impact prior to conversion.

9. Head of Procurement Comments

NA

10. Policy Implication

- 10.1 Local authorities under the Education Act 1996 retain their section 19 duties (the duty to arrange suitable full-time education, unless a child's health makes this inappropriate, for any child of school age who, for reasons of exclusion, illness or otherwise, would not receive suitable education without such provision). The relationship with the converted PRU will change in that the local authority role will move from being the direct provider of services to commissioning them.

11. Reasons for Decision

- 11.1 This is a statutory process following the exercise of the educational establishments to choose to convert to academy status under the Academies Act 2010.

12. Use of Appendices



Haringey Council

12.1 Academy Order for the PRU dated 19 December 2013 (See attached – Appendix 1)

13. Local Government (Access to Information) Act 1985

N/A

COUNCILLOR CLAIRE KOBER

.....

DATE

.....



Rt Hon Michael Gove MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/help/contactus

Haringey Pupil Referral Unit
Commerce Road
Wood Green
London
N22 8DZ

19 December 2013

To: The Chair of Governors of Haringey Pupil Referral Unit

I am writing to confirm that I am content to agree in principle to the proposal for Haringey Pupil Referral Unit to open as an Academy sponsored by Tri-Borough Alternative Provision Trust.

I enclose an Academy Order to enable your school to open as an Academy on the provisional opening date of 1 June 2014.

The project will follow a fast track process to Academy status, with a school improvement grant of up to £92,500 available to Tri-Borough Alternative Provision Trust to assist with the support and improvement that Haringey Pupil Referral Unit requires.

The Academy proposal will be developed by the sponsor, who will be your principal contact. A DfE official will be assigned to the project who will work primarily with Tri-Borough Alternative Provision Trust. The next steps to enable your school to become an Academy are set out in the Annexes A and B.

Further information is available on our website at
<http://www.education.gov.uk/schools/leadership/typesofschools/academies>

A handwritten signature in black ink that reads "Michael Gove". The signature is fluid and cursive, with the first name "Michael" and the last name "Gove" clearly distinguishable.

MICHAEL GOVE



Rt Hon Michael Gove MP
Secretary of State

I am copying this letter to the head teacher and the sponsor, and I will also be writing to London Borough of Haringey.

MICHAEL GOVE



Rt Hon Michael Gove MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/hep/contactus

Haringey Pupil Referral Unit
Commerce Road
Wood Green
London
N22 2QZ

19 December 2013

To: The Chair of Governors of Haringey Pupil Referral Unit

I am writing to confirm that I am content to agree in principle to the proposal for Haringey Pupil Referral Unit to open as an Academy sponsored by Tri-Borough Alternative Provision Trust.

I enclose an Academy Order to enable your school to open as an Academy on the provisional opening date of 1 June 2014.

The project will follow a fast track process to Academy status, with a school improvement grant of up to £92,500 available to Tri-Borough Alternative Provision Trust to assist with the support and improvement that Haringey Pupil Referral Unit requires.

The Academy proposal will be developed by the sponsor, who will be your principal contact. A DfE official will be assigned to the project who will work primarily with Tri-Borough Alternative Provision Trust. The next steps to enable your school to become an Academy are set out in the Annexes A and B.

Further information is available on our website at
<http://www.education.gov.uk/schools/Leadership/typesofschools/academies>

I am copying this letter to the head teacher and the sponsor, and I will also be writing to London Borough of Haringey.

MICHAEL GOVE



Rt Hon Michael Gove MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 0002288 mlministrs@education.gov.uk

To: The Chair of Governors of Haringey Pupil Referral Unit

London Borough of Haringey

ACADEMY ORDER

1. This is an Academy Order made further to section 4 of the Academies Act 2010.
2. I hereby order that on the conversion date Haringey Pupil Referral Unit shall be converted into an Academy.
3. The conversion date shall be the date that the school opens as an Academy further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date London Borough of Haringey shall cease to maintain Haringey Pupil Referral Unit.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:.....**D**..

..... Date: 19 December 2013

Dominic Herrington,
Director, Academies Group



Rt Hon Michael Gove MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/help/contactus

Tri-Borough Alternative Provision Trust
The Bridge AP Academy
Finlay Street
Fulham
London
SW66HB

19 December 2013

To: **Tri-Borough Alternative Provision Trust**

I am writing to confirm that I am content to agree in principle for Haringey Pupil Referral Unit to become an Academy sponsored by Tri-Borough Alternative Provision Trust.

I enclose a copy of the Academy Order to enable Haringey Pupil Referral Unit to open as an Academy on the provisional opening date of 1 June 2014.

The project will follow a fast track process to Academy status, with a school improvement grant of up to £92,500 available to you to assist with the support and improvement that Haringey Pupil Referral Unit requires. To enable the Academy to open I will need to agree a Funding Agreement and the Articles of Association of the Academy Trust.

Your DfE project lead will work directly with you on the next steps to enable the project to progress quickly, which are set out in Annexes A and B.

Further information is available on our website at
<http://www.education.gov.uk/schools/leadership/typesofschools/academies>

I am also copying this letter to the head teacher and the Chair of Governors of the school.

MICHAEL GOVE

Annex A: Next Steps

Having received agreement in principle, you can now work towards your Funding Agreement between the Academy Trust and the Secretary of State. The Funding Agreement will stipulate the date when the Academy will open.

The actions listed below will need to be completed before reaching Funding Agreement:

- set up the Academy Trust, completing the Memorandum and Articles of Association (available on our website);
- use these to register the Academy Trust with Companies House. This normally takes between 8 – 10 working days and costs £20. It can, however, be done on the basis of same day incorporation for a fee of £50;
- review your Management Information System (MIS). When you convert to an academy you can change supplier- there are many firms offering competitive licence and maintenance charges.
- set up a bank account for the newly-formed Trust and appoint an Accounting Officer, who must be the Principal of the academy and be in place from the day of opening as an Academy. Please note that bank accounts can take several weeks to set up. We advise you to identify your preferred bank and obtain the necessary paperwork in order to be able to set up a bank account as soon as possible after registering the Academy Trust at Companies House.
- agree land and building arrangements with the local authority or other landowner where appropriate. Lawyers acting for your governing body and the Academy Trust (when established) must prepare a Report on Title, providing land ownership and other important details, and send a copy to the DfE project lead as soon as possible. It will enable DfE to work with your school and the lawyers to determine what arrangements should be made and what DfE documentation should be completed. A model lease and other model documents, including a Report on Title, are available on our website and schools are advised to read the advice on land also published on the website;
- agree asset and property transfer arrangements with the local authority or other landowner (if applicable). A model Commercial Transfer Agreement is available on our website;
- the employer of the current staff should continue and complete the TUPE process;
- confirm the membership of the governing body for the academy in line with the arrangements outlined in your Memorandum and Articles of Association;
- ensure that CAB checks are completed as necessary;
- your governing body must, prior to signing the Funding Agreement, consult with the appropriate persons on the proposal to convert to an academy.

Your project lead will support you to complete these steps, and further information and supporting documents are available on our website at www.education.gov.uk/academies. There are a number of other actions your school will need to take before opening, including data protection registration and pension registration (see section 4 of the guidance on pre-opening checks).

Minimizing the cost of conversion

There are steps you can take to keep your costs of conversion as low as possible. The following can be used as a checklist but does not replace existing guidance on becoming an Academy:

- Shopping around for solicitors to get the best value for money-. It may help to ask other Academies in your area which firms they used and whether in their opinion they offered good value for money. We would also recommend that you obtain an estimate for the cost of the legal work or if possible, a fixed price for the legal work required.
- Ensuring your solicitors know the requirements for conversion by supplying them with the land transfer advice and 'Guide to Becoming an Academy' document available on our website: <http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/b0061257/how-to-become-an-academy>
- Our guidance states that converting schools are not expected to make changes to the model documentation. If you consider that changes are required then we suggest you discuss these with your project lead before approaching your solicitors as this can save time and considerable expense.
- Shopping around for insurance; guidance on Academy insurance is available here: <http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/b0061866/supporting-documents-for-schools-converting-to-academies/insurance-arrangements-for-academies-converting-from-maintained-schools>

Support Grant

The Secretary of State has agreed to allocate a grant under Section 14 of the Education Act 2002 of no more than £25,000, to contribute towards expenses incurred by your school in converting to an Academy.

The grant is subject to the following conditions:

1. Grant may only be used for the following purposes
 - a) obtaining legal advice in respect of the conversion process;
 - b) the costs of software licence transfers;
 - c) HRITUPE advice;
 - d) re-branding costs; and
 - e) expenses incurred in setting up the Academy Trust.

2. You should retain records to show that the grant has been used for the purposes outlined in 1 above for 6 years after the end of the financial year in which the expenditure has taken place. The books and records relating to claiming and using the grant will be open to inspection by the National Audit Office and representatives of the Secretary of State as and when they may require.

3.
 - a. In the event of a successful conversion, any unused element of Grant should be transferred to the Academy Trust for the purposes described in its charitable objects, typically the advancement of education. The Chair of the governing body will be expected to sign a declaration confirming how much of the grant has been spent at the point of conversion to academy status and, if relevant, how much has been transferred to the academy budget. The Chair will send a certificate (see Annex) to the Secretary of State declaring this and including the exact amounts of grant spent and transferred. This will still apply if the total amount of the grant has been spent.

 - b. In the event that the conversion does not occur then any unused grant should be repaid to the Secretary of State within 10 working days of notifying us that you are withdrawing your application to convert.

4. When procuring goods and services for the school or academy, you are reminded of the requirement to comply with EU and UK procurement law and regulations when appropriate.

Annex B - Setting Up Financial and Governance Arrangements

We have put together a list of the main financial and governance arrangements that academies need to have in place, including highlighting the new requirements for academies. It may be that you have already set up many of these systems and processes, but this is an ideal opportunity to review all your school based policies and to check their continuing suitability. The list below is intended to support your smooth start up and offers a helpful checklist but is not a substitute for published documents such as the Academies Financial Handbook, the Governors' Handbook and the Academies Accounts Direction which are available on the [DfE website](#).

General

- You will need to appoint an accounting officer. In trusts comprising a single school this should be the principal or, in a multi-academy trust, the chief executive or executive principal of the trust. The roles and responsibilities of Academies Accounting Officers are set out in some detail in the [Academies Financial Handbook](#).New or academies
- It is important that you read your funding agreement (FA) thoroughly and review it regularly to ensure your academy remains compliant with all the terms in it. Non-compliance can happen simply because you fail or forget to do something which you are required to do, for example getting approval to enter into a lease; take out a loan; or sell or acquire land.New for academies
- You should tell the Information Commissioner's Office (ICO) in writing that the academy is opening and will now be responsible for processing personal and pupil data (failure to do so is a criminal offence).
- Note that academies are charitable trusts but the principal regulator for academies is the Secretary of State for Education and not the Charity Commission. Trustees will however find the [Charity Commission's advice and guidance](#) very helpful in understanding and carrying out their roles.ew l"Of academies
- From September 2012 schools (including academies) are required to publish key information online. We have provided a link to details about the changes to [school information regulations](#).
- It is important to ensure you have a published complaints procedure which is compliant with Part 7 of *The Education (Independent School Standards) Regulations 2010*.
- Remember that as an academy you are responsible for your own admission arrangements. As this is the case, it is very important that you become fully acquainted with the requirements of the [School Admissions Code](#) and the [Admission Appeals Code](#). You are required to comply with these codes in setting and applying your admission arrangements and in organising admission appeals.
- If you don't already have a contingency and business continuity plan you will need to put one in place and have it approved by your Board of Governors.
- Make sure that you have adequate [insurance](#) cover in place before the academy opens.WJW or academies
- On opening please complete the [online contacts form](#) confirming to the Education Funding Agency the key people to contact in your academy.New for academies

Financial management and practice

If it has not already been established by the predecessor school, you will need to:

- Ensure that the Board of Governors appoint a principal finance officer. The governors may decide whether its needs are adequately served by employing staff or contractors with relevant skills to carry out the full range of financial management activities required in a company and in a charitable trust. Where staff are employed the EFA requires finance staff to be appropriately qualified and/or experienced.
- Establish a scheme of financial delegations and have it approved by the Board of Governors.
- Put in place financial procedures that have been approved by the Board of Governors.

- Ensure your financial procedures provide adequate control and checks (for example to cover segregation of duties; use of authorised signatories for ordering and payments; matching orders to invoices; and timely completion of VAT returns).
- Set a budget and have it approved by the Board of Governors. For the first academic year of operation (or part thereof) a detailed budget is required. For the subsequent two academic years outline budgets should be prepared.
- Do the work necessary to enable you to prepare and produce annual accounts and have them audited:
 - Appoint external auditors as soon as possible after opening to ensure you have access to the necessary financial advice on the production and audit of accounts.
 - Ensure the accounting period ends on 31 August, unless DfE has specified in writing that another date can be used.
 - When preparing the first set of accounts use the date of incorporation (i.e. the date on which your academy was registered as a company at Companies House), not the date on which the academy opened.
- Ensure that you can produce regular, reliable and accurate financial management information, based on accrual accounting principles, to inform your monitoring of the financial health of the academy and decisions.
- Reconcile all your bank accounts, if you have more than one, on a monthly basis as a minimum.
- Ensure that all the trust's property is under the control of the governors, and that measures are in place to prevent losses or misuse, including maintenance of adequate fixed asset registers.
- Put in place and apply a competitive tendering policy that will enable you to ensure that all goods and services are procured by means of free and open competition.
- Establish robust procedures for the recording, documenting, evidencing and monitoring of financial and business information and reasons for entering into major spending commitments.
- Set up a payroll system that includes adequate checks and controls to ensure the accuracy of data and that all statutory and contractual deductions are made.
- Ensure correct accounting for and monitoring of any restricted and unrestricted funds. For example, restricted funds should be used only for the purpose intended.
- Consider the need for a strategy for investing surplus cash that also ensures access to cash when required.

Governance arrangements

- Review your governance arrangements so that you are confident you have in place the skilled people, structures and delegated authorities you need to govern your academy effectively and ensure high standards of governance.
- Establish an audit committee or, if this is not practical, ensure that one of the academy's existing committees' (such as the finance committee) remit includes the functions of an audit committee.
- Ensure that your audit committee (or other committee, as above) puts in place a process for independent checking of financial controls, systems, transactions and risks (for example the appointment of internal auditor, external auditor and responsible officer).
- Ensure that the academy trust has in place an adequate risk management process to monitor and manage risks including financial risk.
- Establish, or if already in existence, review, a register of governors' business interests and any conflicts of interest that need to be managed. Governors should provide annual declarations of interest, as well as providing information on any changes which occur during the year.