

# **The SMILE Learning Trust**

**Including:**

**Consulting Schools**

**Ottery St Mary Primary School  
Westhill Primary School**

***Statutory Representation Report***

**Full Governing Body Meetings**

**Monday 14<sup>th</sup> October 2013**

**At Westhill Primary School at 5.45pm**

## Overview

This document summarises the feedback from the The SMILE Learning Trust statutory proposals period. The consultation was supported by the Co-operative College, who have produced this report.

The following is based on the *Decision Makers' Guidance (Governing Bodies and Schools Adjudicator) for: Changing School Category to Foundation* and the *Decision Makers' Guidance (Governing Bodies and Schools Adjudicator) for: Trust School Proposals*. Both sets of statutory guidance need to be considered when making changes and these are covered in the executive summary below and in more detail in Appendix A.

## Executive Summary

The Governing Bodies of the two named consulting schools are each the decision maker for their own school on these proposals.

It now falls to each Governing Body to make a decision about whether or not to implement the proposals. The statutory guidance defines the criteria to be considered by the decision maker and these are summarised in the documents as follows.

The requirements of the Trust statutory guidance are:

- a) That the proposed Trust meets legal requirements.
- b) That consultation was adequate – the Governing Body met the requirements set out in regulations and had regard to consultation responses. [If the Governing Body has failed to meet the statutory requirements for consultation, the proposals may be deemed invalid and therefore should not be decided.]
- c) Evidence that the proposed Trust:
  - i) Is likely to contribute to raising standards at the school;
  - ii) Is likely to promote community cohesion.
- d) Proposed Trust partners and proposed trustees (where the trustees are specified in the proposals) are not involved in activities that may be considered inappropriate for children and young people – e.g. tobacco, gambling, adult entertainment, alcohol.
- e) The reputation of proposed Trust partners and proposed trustees (where the trustees are specified in the proposals) is in keeping with the charitable objects of a Trust.
- f) Proposed Trust partners and proposed trustees (where the trustees are specified in the proposals) are not involved in activities which could bring the school into disrepute, but would not otherwise be disqualified under regulations.

The Foundation statutory guidance also covers points (a) and (b) above and includes a further element:

- g) Decision Makers should consider how proposals will contribute to local diversity and national transformation strategies.

Each of these points is addressed below.

### **a) That the proposed Trust meets legal requirements**

The proposed Trust meets legal requirements and has exclusively charitable objectives. The proposals demonstrated how joining the Trust would assist the schools in delivering on the Trust's legal requirement to promote community cohesion. The co-operative membership dimension also greatly and actively assists this process. The structure of the proposed Trust meets the requirements expected of proposed partners and trustees and it is our understanding that none of

the proposed trustees are disqualified persons and that processes will be in place to ensure this remains the case in the future.

**b) That consultation was adequate**

Following the consultation, which included all the required elements, each Governing Body met to decide whether to proceed to issue a Statutory Notice and examined a report that discussed the consultation in detail. It duly decided that the requirements for consultation had been met and that there was no serious disjuncture between the weight of opinion (which was supportive of the proposals) and the proposed action and it published Statutory Proposals.

**c) Evidence that the proposed Trust is likely to raise standards and promote community cohesion**

There is clear evidence from OFSTED reports of existing co-operative trust schools that the co-operative dimension provides benefits in terms of curriculum and community cohesion. There are a range of curriculum materials available to the schools and the membership dimension of the Trust will encourage participation and promote the ethos and culture of the school and the Trust, to address national and local agendas through local, national and international engagement with the co-operative movement. The Local Authority will continue to challenge and support the school and take an active part in helping it and the Trust to address local and national education agendas. The school and the Trust are committed to working in partnership.

**d) Proposed Trust partners and proposed trustees are not involved in activities that may be considered inappropriate for children and young people;**

**e) Their reputation is in keeping with the charitable objects of a Trust; and**

**f) They are not involved in activities which could bring the schools into disrepute, but would not otherwise be disqualified under regulations.**

Proposed Trust partners are not involved in activities that are considered inappropriate and their reputation is in keeping with the charitable objects of the Trust. The membership and stakeholder elements of the Trust will add to its strength of purpose and local accountability and support. There will be processes and procedures in place to ensure proposed Trust partners and Trustees meet legal requirements and would not be disqualified under regulations and appropriate checks will be undertaken for those involved with the Trust.

**g) Decision Makers should consider how proposals will contribute to local diversity and national transformation strategies.**

As discussed in the Consultation Report, the proposals contribute to the diversity of provision and to the national transformation strategies.

## **Other issues**

The nature of a co-operative trust is such that it strengthens and supports a school both through the membership model and the partners, who will contribute towards its future development. There is support available to the proposed Trust to develop the membership and stakeholder model and this engagement with parents/carers, learners, staff and the local community will further support the Trust and the two schools and is widely seen as a real strength of co-operative school trusts.

Currently there are no immediate proposals envisaged for the Trust to become the legal foundation of any school other than the two named consulting schools, but its draft Memorandum and Articles of Association, if agreed by the Governing Bodies this evening, do allow for other schools to make the Trust their foundation.

## **Recommended Action**

The Governing Bodies have already considered the consultation, and determined that the consultation was adequate, and considered the views of those consulted. They also decided that there was no serious disjuncture between the weight of opinion (which was supportive of the proposals) and the proposed action and they published Statutory Proposals.

It is also noted that the Proposals have not been referred, by the Local Authority, to the Schools Adjudicator and that therefore the Governing Body is the decision maker for each school. It can be seen from the above that the necessary statutory considerations have been met.

It is recommended that:

- a) each Governing Body approves the Proposals as set out, with a proposed Implementation Day of 4<sup>th</sup> November 2013
- b) each Governing Body authorises the associated changes to its Instrument of Government (see Appendix C)
- c) each Governing Body formally agrees to ratify the employee protocol set out In Appendix D: this being the draft GB/TU protocol, as originally set out in the consultation report which went to them earlier this term. They are also asked to subscribe to the spirit behind the UNISON/SCS and NASUWT/SCS National Agreements, insofar as these apply to their situation
- d) each Governing Body formally agrees that the Trust should become a member of the Schools Co-operative Society (SCS).

## **APPENDIX A. Determination by the Decision Maker on the Proposals to convert to a Foundation school and the acquisition of a Trust.**

### **Criteria for Approval**

#### **Characteristics of the proposed Trust:**

- a. The proposed Trust is not seeking to acquire or alter the religious character of the schools
- b. The proposed Trust will be a company limited by guarantee with the intention also to become a Charitable Incorporated Organisation
- c. The purposes of the proposed Trust are wholly charitable with the objective to promote the advancement of education of the learners of each school
- d. The Proposals clearly set out the mechanisms by which the proposed Trust will promote community cohesion
- e. The Local Authority will be a Member (partner) of the proposed Trust but shall have no greater than 20% of voting rights
- f. Proposed Trustees - at the Implementation Date - are confirmed as not being disqualified from exercising their function either by virtue of:
  - I. Disqualification under company or charity law
  - II. Disqualification from working with children or young people
  - III. Not having obtained a criminal records certificate under section 113A of the Police Act 1997
  - IV. The Schools Organisation (Requirements as to Foundations) (England) Regulations (2007/1287) (as amended) which disqualify certain persons from acting as charity trustees
- g. The Proposals are for the Trust to appoint a minority of Trust governors to the Governing Bodies of the schools.

#### **Consultation:**

A full, open and wide-ranging consultation has taken place on the proposals, with sufficient information and the allowance of adequate time for comment. In total 863 sets of consultation documentation were distributed to parents/carers, staff, learners, governors, councillors and all other stakeholders required by statute and consultation meetings were held for staff, parents, unions and the public. Simultaneously with the public consultation, learners were consulted at both schools.

In all there were 11 response forms returned. The responses were unanimously supportive.

Around 2.2% of consultees made a response. It is worth noting that under the appropriate school organisation regulations and guidance applying to this school organisation process, a non-response is taken to mean 'that one is content with the proposals.'

#### **Representations:**

No representations have been received.

## **Standards and Diversity:**

Through acquiring a Trust the schools will be supported on securing the best possible outcomes for all children through a partnership with Devon County Council and the Co-operative Movement – initially represented by the Co-operative College.

a) The rationale for acquiring the foundation, the contribution it will make, and the direction it will provide to the schools can be summarised as: the Trust will collectively value excellence of achievement, a happy working atmosphere and a close relationship with our parents and our local communities. We shall continue to strive to provide support to children and their families to give them the best possible chance of success. This includes engaging with outside agencies and drawing on our collective expertise to make learning and development accessible to all. Through our work, we aim to develop a lifelong love of learning in all members of our schools. We believe in providing a stimulating learning environment through a creative, challenging curriculum. The creation of the Trust will provide a strong and well-tested legal entity through which to collaborate with our partners for the benefit of all our children.

b) The Co-operative Trust will enable the schools to further this intention and in particular to:

- make the quality of teaching and learning our highest priority
- develop a support structure which ensures children can achieve their potential, both by ensuring a safe and happy environment and by knowing each child as an individual
- seek to make every child feel a part of the community by increasing their ownership and participation
- celebrate achievement and creativity
- engage parents in an equal partnership to support their child
- invest in our staff to increase our skills and experience
- celebrate and support innovation and research in teaching and learning by our colleagues
- work closely with our community to raise aspiration and create opportunities and contribute fully to the life of the community
- collaborate with our partners for the benefit of our children and staff.

It is also proposed that the Trust will become a member of the Schools Co-operative Society (SCS), the national co-operative of co-operative schools; and through this be able to access the country's fastest growing network of schools.

The schools have chosen to become a Co-operative Trust because these are the values and principles which they already share. They will underpin the work of the Trust and it is believed this will strengthen the work of the schools even further.

c) The partners in the proposed Trust are:

- Devon County Council (1 Trustee)
- The Co-operative Movement, initially represented by the Co-operative College (1 Trustee)

d) The Governing Bodies of the schools set out below have jointly proposed that each school should become a Foundation School with the Trust acting as its foundation.

- Ottery St Mary Primary School
- Westhill Primary School

Each Governing Body will appoint two trustees to the Trust Board, namely the Head Teacher and Chair of Governors (or the Chair's nominee).

These aims will be fulfilled through a model of collaboration to share the use of resources, opportunities and expertise; collective brokering of services and opportunities for children and staff

development; strong local accountability, with priorities responsive to our local situation and diverse collection of schools.

Stakeholder involvement will be encouraged through adopting a co-operative model – the ethics of the co-operative model are particularly relevant to the schools and working in partnership with the Co-operative Movement will enable the ethics of co-operation to underpin the work of the Trust. The co-operative organisation also opens networking possibilities at local, national and international level.

The involvement of each of the partners in this project in no way prejudices their relationships with other education providers.

e) The Trust will appoint a minority (two) of Governors, onto each Governing Body as defined in Appendix C, which shows the proposed constitution of the Governing Body.

e) Each partner will appoint trustees as shown in (c) above. The Stakeholder Forum will appoint two Trustees.

f) The Trust's charitable objectives will be to advance the education of the children in The SMILE Learning Trust, to advance the education of other members of the community, and otherwise to benefit the community, it being acknowledged that in carrying out the objects the Trust must (where applicable) have regard to its obligation to promote community cohesion under the Education Acts.

g) Trust members offer educational experience, as follows:

**The Co-operative Movement** - has extensive experience in supporting educational establishments to develop and embed a co-operative 'values driven ethos' across the schools and across the curriculum. It will also help bring a global dimension to school and community perceptions, through national and international links with other co-operative educational institutions and organisations. Initially, it will be represented by The Co-operative College.

Being co-operative trust schools will also allow us to become a member of the Schools Co-operative Society (SCS). SCS is the fastest growing network of schools across England and is itself a co-operative of co-operative schools. Being part of a national co-operative schools organisation will be of great assistance as we try to navigate our schools through the rapidly changing educational landscape facing all mainstream schools. We will also be able to participate in a strong international network of co-operative schools and colleges. Equally important the South West is proving to be one of the fastest growing areas for co-operative schools.

**Devon County Council** will allow us to stay firmly within our local family of maintained schools and benefit from a wide range of school improvement and support services.

**The Governing Body of each consulting school** will also itself be represented on the Trust with two nominated trustees, the Headteacher and Chair of Governors (or nominee). Partner organisations shall appoint one trustee.

#### **Community cohesion:**

The Trust Partners are committed to improving community cohesion and ensuring that there is cultural respect and tolerance between different groups of people living together. The Trust will strategically develop opportunities for all children to succeed to the highest levels by removing barriers to access and participation in learning and by engaging with other partners, parents and wider communities, both nationally and globally.

**Reputation of Trust Partners/Organisations and Trustees:**

Governors are satisfied that the Partner Organisations and the individuals that represent them are of sound reputation and standing and do not pose any risk at this time to the integrity of either the schools' or Trust's charitable objectives. So far as can be determined, no Partner Organisation or Trustee is involved in activities that could be deemed inappropriate for children or young people.

**Additional matters of consideration:**

- The Trust does not already act as the foundation for a school.
- Trust partners already have an informal relationship with the schools. All partners have both formal and informal relationships with other schools.
- The partners all have links to the local community.
- The proposals identify support for each Governing Body by the appointment of two Trust nominated governors.
- The Trust has identified Trustees that can provide leadership experience to build capacity in the schools to ensure the raising of standards.

**Appendix B. Representations**

None received.



## Appendix C: Reconstituted Governing Body Structures

<b>Ottery St Mary Primary School</b>		
<b>Governor type</b>	<b>Current</b>	<b>Proposed</b>
<b>Local Authority</b>	3	1
<b>Parent</b>	5	5
<b>Staff</b>	2+HT	2
<b>Co-opted (formerly Community)</b>	3	4
<b>Trust/Foundation</b>	0	2
<b>Total</b>	14	14

<b>West Hill Primary School</b>		
<b>Governor type</b>	<b>Current</b>	<b>Proposed</b>
<b>Local Authority</b>	3	1
<b>Parent</b>	4	4
<b>Staff</b>	2+HT	2
<b>Co-opted (formerly Community)</b>	3	4
<b>Trust/Foundation</b>	0	2
<b>Total</b>	13	13

## **Appendix D: Employment Matters**

### **Protocol on Employees' Terms and Conditions and Trade Union Recognition for the Governing Bodies of Ottery St Mary Primary School and Westhill Community Primary School.**

1. The school will continue to adhere to the national and local conditions of service currently in place for its existing employees and will continue to employ new staff on these terms. All employees' continuity of service will continue, and contracts will only change in that the employer will become the Governing Body. Other contractual details will remain the same.
2. Recognition of the same trade unions and professional associations will continue, and the school will engage with the Unions in the same way in the future, in line with existing local agreements.
3. The School believes that trade unions help ensure good employee relations, will encourage employees to become union members and will inform new appointees accordingly. The School will, on request, provide the trade unions with names and work locations of new appointees.
4. The relevant unions are the teacher unions (ASCL, ATL, NAHT, NASUWT, NUT and VOICE) and the unions representing support and other professional school staff (GMB, UNISON and Unite).
5. Consultation on internal procedural matters and working and organisational arrangements will be dealt with in the first instance by discussions with union representatives within the school, who may ask for support from their local or regional officers if they think this is necessary.
6. If the school in the future considers varying existing terms and conditions, or not adopting variations agreed through the mechanism for negotiating between the Local Authority and its employees, it will notify the local authority representatives of the recognised unions, and will negotiate with them, through a forum consisting of representatives of the school and internal and/or external representatives of each of the recognised unions. In the unlikely event that there is a breakdown in negotiations on terms and conditions, the matter may be referred to the Advisory Conciliation and Arbitration Service (ACAS) in order to seek resolution of the issue. Either party may determine that a matter is referred to ACAS for conciliation. Both parties may subsequently agree, where necessary, that a matter is referred to ACAS for arbitration. Whilst these procedures are being followed the School will honour the status quo ante.
7. The school will write to all employees at the date of transfer to inform them that their new employer is now the Governing Body and that their conditions of employment will not change.

**Private & Confidential**

Rob Baldry  
Chair of Governors  
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11<sup>th</sup> October 2013

Dear Rob

**ASSURANCES FROM THE LOCAL AUTHORITY REGARDING PENSION ARRANGEMENTS, COST OF EARLY RETIREMENT AND REDUNDANCIES AND RELATED MATTERS**

Thank you for your letter dated 8<sup>th</sup> October 2013 regarding assurances about Pension Arrangements, Costs of Early Retirement and Redundancies upon Ottery St Mary Primary School changing its school category to Foundation Trust.

I can confirm that the existing processes that are currently in place for maintained schools in relation to pension arrangements, costs of early retirement, costs associated to employment matters and redundancies and will continue to be applicable for schools that have changed status to a Foundation Trust.

The Financial Intervention Panel for Schools (FIPS) will continue to consider all information relating to school finances upon request from the School. These cases will be looked at, as they currently are, and decisions reached on the payment as to whether the liability falls on the Governing Body or the Local Authority.

In relation to your specific questions I offer the following information:

**A. Liabilities affecting the Governing Body in respect of employment matters**

The School Organisation (prescribed Alterations to Maintained Schools) (England) Regulations 2007 highlights that where a community school changes category to a foundation school then the contracts of employment, along with the liabilities transfer to the Governing Body on the date of implementation.

If the school is faced with legal costs or compensation costs awarded by an Employment Tribunal then these liabilities will be with the Local Authority in such cases that the school has sought advice from the Local Authority, and followed that advice, during the course of the preceding internal process and subsequent Employment Tribunal.

**B. Responsibility for the cost of premature retirements and compensation for redundancy**

Section 37 of the Education Act 2002 deals with costs incurred by the Local Authority in respect of any premature retirement of a member of staff of a maintained school, which

includes schools that have changed category to a foundation school. It provides that such costs shall be met from the school's budget share.

However both premature retirements and compensation for redundancy are covered by the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 and as the compensating authority the Local Authority will continue to follow the existing process for maintained Schools in that submissions for funding are put forward to the Financial Intervention Panel for Schools (FIPS) by the School.

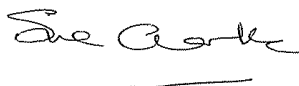
### **C. Pensions of support staff**

Under regulation 8 of the Local Government Pension Scheme (Administration) Regulations 2008, an employee of a governing body of a foundation school maintained by a Local Authority can be an active member of the LGPS where the local authority has, with the consent of the employer (i.e. the governing body) designated him, or a class of employees to which he belongs, as being eligible for membership of the scheme. This will apply for both current members of the LGPS as well as the right for new and existing support staff who are currently not in the scheme.

Following changes to the LGPS regulations from 1 October 2012 all staff who are designated as being eligible for the LGPS must now become an active member of the scheme on the day the designation takes effect. This means that existing and new support staff who are currently not in the scheme will, by default, be admitted on the date of designation or starting employment, however these staff will have the option to opt back out again if they wish.

If you require any further information, please don't hesitate to contact me.

Yours sincerely



**Sue Clarke**  
**Head for Education and Learning**

**Private & Confidential**

Kay Winson  
Chair of Governors  
West Hill Primary School  
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22<sup>nd</sup> October 2013

Dear Kay

**ASSURANCES FROM THE LOCAL AUTHORITY REGARDING PENSION ARRANGEMENTS, COST OF EARLY RETIREMENT AND REDUNDANCIES AND RELATED MATTERS**

Thank you for your letter dated 18<sup>th</sup> October 2013 regarding assurances about Pension Arrangements, Costs of Early Retirement and Redundancies upon West Hill Primary School changing its school category to Foundation Trust.

I can confirm that the existing processes that are currently in place for maintained schools in relation to pension arrangements, costs of early retirement, costs associated to employment matters and redundancies and will continue to be applicable for schools that have changed status to a Foundation Trust.

The Financial Intervention Panel for Schools (FIPS) will continue to consider all information relating to school finances upon request from the School. These cases will be looked at, as they currently are, and decisions reached on the payment as to whether the liability falls on the Governing Body or the Local Authority.

In relation to your specific questions I offer the following information:

**A. Liabilities affecting the Governing Body in respect of employment matters**

The School Organisation (prescribed Alterations to Maintained Schools) (England) Regulations 2007 highlights that where a community school changes category to a foundation school then the contracts of employment, along with the liabilities transfer to the Governing Body on the date of implementation.

If the school is faced with legal costs or compensation costs awarded by an Employment Tribunal then these liabilities will be with the Local Authority in such cases that the school has sought advice from the Local Authority, and followed that advice, during the course of the preceding internal process and subsequent Employment Tribunal.

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costs shall be met from the school's budget share.

However both premature retirements and compensation for redundancy are covered by the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 and as the compensating authority the Local Authority will continue to follow the existing process for maintained Schools in that submissions for funding are put forward to the Financial Intervention Panel for Schools (FIPS) by the School.

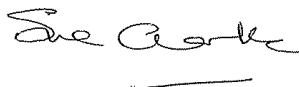
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Following changes to the LGPS regulations from 1 October 2012 all staff who are designated as being eligible for the LGPS must now become an active member of the scheme on the day the designation takes effect. This means that existing and new support staff who are currently not in the scheme will, by default, be admitted on the date of designation or starting employment, however these staff will have the option to opt back out again if they wish.

If you require any further information, please don't hesitate to contact me.

Yours sincerely



**Sue Clarke**  
**Head for Education and Learning**

c.c. Bob Beechen, County Solicitors  
Debbie Clapshaw, Devon Governor Service  
Chris Dyer, Learning Environments Team  
Christine McNeil, School Organisation