

CAMDEN SCHOOLS LED PARTNERSHIP: CONSULTATION ON ESTABLISHING THE CSLP AS A LEGAL ENTITY

Questions & Answers – in response to key questions raised by consultees over the course of the consultation including at the ‘CSLP next steps’ conference on 15th January 2016.

Question: What are the pros and cons of a company limited by shares vs limited by guarantee?

Answer:

Whilst there is little legal difference between a company limited by shares and a company limited by guarantee (both are companies with limited liability and have owners (shareholders or members) and directors), the main difference between the two is the regulation around the protection of minority shareholders.

A company limited by shares presumes that there is a distribution of at least some of the profits of the company by way of dividend. The shares provide a mechanism for the distribution of those profits.

Where profits are not to be distributed (with the value therefore being reinvested back into the company), a company limited by guarantee provides a more typical framework for persons to work together and the constitution of the company (the Articles of Association) can be used both to capture the mission of the company (its fundamental object or purpose) and to regulate how the company is to be operated.

This flexibility is helpful where a large number of persons (in this case governing bodies of schools) are coming together in a joint venture with a shared set of principles and objectives which promote a greater good and wider community benefit (as is the case with the proposed CSLP company). The consultation therefore proposes that the CSLP company is limited by guarantee (as opposed to limited by shares) as this better meets the purpose of the CSLP. The capturing of this social purpose and public benefit is also why companies limited by guarantee are typical vehicles for charitable organisations.

Question: What are the specifics of how academy sponsorship might work (including as related to charitable status)?

Answer:

It is noted that the policy landscape is changing, with the possibility that schools would be further encouraged, or required, to become academies in the future. While this needs careful consideration, the specific government requirements and proposals related to this are still uncertain. A key reason for establishing the CSLP as a legal entity (company limited by guarantee), includes to ensure the long-term stability and effectiveness of the partnership into the future in relation to school improvement. For this reason the consultation proposes to create a CSLP company to achieve this in the first instance. After the company is formed it would, however, be open for the company to consider its role in relation to academy sponsorship, as the policy landscape becomes clearer.

While noting the above, further background is provided on the specifics of academy sponsorship (as currently known). Academies are established and operated by academy trusts, typically multi academy trusts (MATs). An academy trust is a company limited by guarantee which has entered into “academy arrangements” with the Secretary of State for Education. Like all companies, the academy trust has both owners (referred to as “members”) and directors (generally referred to as “trustees”).

In a situation where a change in law requires all schools are to become academies, it is likely that the Anglican and Catholic Aided schools in Camden would be sponsored by their Diocesan or Order’s MAT. Community schools in Camden could be sponsored by a MAT linked with the CSLP or could choose different sponsorship arrangements. Under current law a good or outstanding school can convert with its own trust and not become involved with a sponsor.

A sponsor of an academy is expected to provide experience and resources to improve the educational performance of the academy. Sponsors must not profit from this arrangement but are allowed to recover their costs. As sponsors are accountable for educational performance, it is typical for sponsors to be involved in the governance of the academy, which means the governance of the academy trust. Sponsors typically appoint all or a majority of the members and trustees of the academy trust, and with appointment comes the right to remove.

Increasingly, the Department for Education (DfE) favours charitable bodies as potential sponsors of academy trusts in order to avoid any suggestion that academy sponsorship is being used to allow schools to be run for the profit of commercial organisations. The DfE is finding it increasingly difficult to find new academy sponsors. By the time there is any change in the law requiring all schools to become academies it is likely that there will be other models of ‘sponsorship’ or ‘improvement partnership’ available for use. Any decision around academy sponsorship or partnership would therefore need to be made by the company, the schools concerned and the Council nearer the time.

Question: What are the intricacies of how charitable status would work?

Answer:

Charities are regulated by the Charity Commission who seek to ensure that any venture purported to be charitable does in fact provide a public benefit, i.e. a benefit to those in necessitous circumstances. The provision of education has been long recognised as a charitable purpose, although the way in which such education is provided would require consideration by the Charity Commission. For example, state funded schools provide an education for which no charge is made, and fee paying schools can be charitable provided they can demonstrate some wider public benefit.

For the proposed CSLP company to be registered as a charity, it would need to demonstrate to the Charity Commission what the purpose of the CSLP is and how the CSLP company generates funding. Typically charities rely on charitable donations, but it is also recognised that charities which fulfil a social purpose and are funded by government grants can be charitable. Charitable status has some tax

advantages but it also prohibits trading, which may put charitable assets at risk. Charities would also be unable to claim back VAT, while a company could claim back VAT.

The extent to which the proposed CSLP company may be trading rather than simply providing a public benefit is a complicated question. While the CSLP would undertake trading (of school improvement services), the provision of education is seen as a charitable, providing a public benefit. Further technical advice would therefore be needed before this option is explored further. For this reason the consultation proposes that the CSLP company would not initially register as a charity but would consider this after the company is formed, and the day to day operations of the company become clear. It would still be open for the proposed CSLP company to register as a charity after it is established.

Question: What would be the specific roles and responsibilities of board members?

Answer:

The members of the CSLP board (i.e. the directors of the company) would be responsible for the day to day management of the company. Typically directors further delegate responsibility to officers of the company who carry out or are responsible for the day to day activities.

It is anticipated that the proposed CSLP company would have a mixed board of both volunteer directors (i.e. non paid) and executive officers. Voluntary directors would be expected to attend board meetings, of which it is expected there would be three a year, more if needed. The board would be expected to hold the executive to account and ensure that any public money is spent wisely.