

Selected Correspondence Between Swale Academies Trust and Officers of Kent County Council relating to the Proposed Academisation of Holmesdale School and The North School

4th January 2019 to 4th February 2021

Note: these emails were acquired through two Freedom of Information Requests. The full correspondence provided for me is available if required.

1) 4th January 2019: From Rachel Gough, representing Swale Academies, Trust to Keith Abbott, (then Director of Planning and Access, KCC)

Thank you for your call this morning. I have explained to Jon that Matt Dunkley and Jonathan Duff had a conversation yesterday and that it is likely there will be further discussions next week. I cannot over-emphasise just how vulnerable the school is at the moment. Teaching capacity is very low, and only looks to get worse with the XXXXXX in February, YYYYYY and further staff departures in key areas such ZZZZZZ as by Easter. Behaviour is contained, at the moment, but without a DHT there is no single point of contact for pupils and parents on behaviour issues. THS is fragile, and Nicki will be very limited in what she can achieve without approval to appoint key staff. SAT is still seeking an open and honest conversation about what might be available, especially along the lines of the flexible and open relationship that is enjoyed between Kent, SAT and The North School, with minimal involvement from the LA. The IEB needs to be strengthened, with more suitably skilled members, and both the IEB and the Trust need delegated authority to make necessary appointments to staff the school on SAT contracts. I hope your discussions with Matt go well on Monday, and I have said to Jon that there may be the opportunity to discuss things further with Matt and Jonathan Duff during the course of next week.

PETER: There have been great improvements in all areas since this time.

2) 13 March 2019, Jon Whitcombe (CEO of Swale Academies Trust), to Roger Gough, (then Cabinet Member for Education, KCC), and Matt Dunkley (Corporate Director for Education, KCC)

As you are aware Swale Academies Trust has made significant progress with the improvement of educational provision at the North School, and with the Trust's support the school now offers a good standard of education.

We consider that further progress can only be made if the school is formally part of the Trust and that this will lead to significant additional support which we can bring to the school.

The Trust has in the past committed significant resources in both time and also in incurring a large amount of legal expenses in trying to get the school converted. For the past eighteen months there has been a lull in activity with an impasse reached between KCC DFE and the Lenders in respect of PFI finance related issues which are not the concern of the Trust.

We have found ourselves stuck in the middle, and unable to make progress. This has been immensely frustrating and counter-productive. We are prepared to commit considerable efforts and resources to make the conversion happen, but we need an unequivocal commitment from KCC to support the Trust in helping to get the school converted within an agreed timeframe.

In particular, we would ask for written confirmation that KCC will commit to the following :

To use all reasonable endeavours to get the school converted within an agreed timescale- we would propose 1st September 2019.

To instruct their legal team to engage with the Trust's lawyers and to provide sufficient legal resources to progress the documentation to meet the September timescale.

To adopt the DFE model documents for the School Agreement and Principal Agreement to enable the documents to be settled within a reasonable timeframe.

To have an agreed written position between KCC, Lenders and the DFE over any funding related issues which have been preventing the school from converting.

The Trust is prepared to make a reasonable contribution to the KCC's legal expenses provided this commitment is given and the agreed timescale is achieved.

The Trust would also like the same commitments to be made in respect of Holmesdale with a view a conversion of that school by 1st September 2020.

I would be grateful if you could respond to this email as soon as practically possible.

- 3) [1 Apr 2019: Matt Dunkley to Rachel Gough \(representing Swale Academies Trust\). Copies to Keith Abbott and Jon Whitcombe Subject: Re: funding.](#)

Rachel - please don't bother copying me in to any more of this farcical correspondence.

- 4) [2 Apr 2019: J Whitcombe to Roger Gough](#)

My colleague Rachel Gough received the email below (above) from Matt Dunkley last night. I consider it to be deeply inappropriate. Rachel's correspondence is not "farcical." She is attempting to resolve serious outstanding matters in a professional and diligent manner. As you will recall we agreed that Rachel would be the interface with Kent. I would be grateful if an apology could be made to Rachel who was, understandably, upset by Matt's email.

- 5) [3rd April 2019: Keith Abbott to Rachel Gough](#)

[Items in red appear to form a response.](#)

As promised set out below is a response to your questions. I suggest that if you have any subsequent queries we pick those up at a rearranged meeting after Easter. Please let me have some possible dates so we can arrange that.

1 - Redacted

2 - Redacted

3 - Redacted

4 - With regard to PFI I am working with colleagues in Invicta Law to produce a formal response to the proposals from SAT that were sent to Matt and Roger. In the meantime I thought it would be helpful to give you some idea of the points we are likely to be making: **To be clear is this the proposal that Paul Goodson made to Paul Carter in his recent letter?** We are all frustrated by the lack of progress on PFI but we are not clear as to the point of the proposals as they ignore known facts and previous discussions. It leaves me somewhat concerned as to what may have been communicated to the SAT Board about the position. I'm more than happy to meet with them and explain this if that would be helpful. **We would like to take you up on the offer of attending the next Board meeting to explain the KCC position to Directors. The next meeting is 14th May 10.00am at Eastbourne Academy. Grahame Ward has provided a thorough and detailed update as to the position with regards these PFI schools over the past three years and I think it would be surprising to suggest that he has in any way misled Directors.**

SAT are well aware that KCC is not in a position to agree any dates before the PFI funding issue is resolved. Unlike SAT or DfE we are the only body facing major financial liabilities if this is not properly resolved. I have talked to Jon about this on several occasions. I know he and SAT are very unhappy with this but that is the position. I am sure you can appreciate that I cannot risk moving forward with a plan that leaves a possible c.£250m liability hanging over KCC, that would be utterly irresponsible on my part. **All we are seeking is clarity. However, if there is evidently no progress by the end of the academic year we will consider terminating our interest in both Holmesdale and The North School on the basis that neither project is going anywhere.**

Our lawyers were instructed years ago and we have the resource we require but until we have seen the legal advice from the ESFA and their proposal for a way forward we cannot progress matters. Again, as Jon knows, Lord Agnew committed the ESFA to agreeing a plan with us by last September. We are still waiting for a proposal from them but I know from conversations I had last week that the ESFA do now have their external legal advice but are now involved in internal discussions as to whether they can release this to KCC! This, like much else with regard to PFI, is not within our control. I am hopeful we will see something from them after Easter. **Phoebe Clapham and a PFI colleague from the DfE are**

also attending the next Directors meeting in Eastbourne on May 14th. Hopefully you can both resolve any dispute at that point. From where I sit both the DfE and Kent appear to be squabbling amid a certain amount of point scoring and we are caught in the middle.

As Jon and the GB at The North know from their meeting that I attended last autumn - when I updated them on the position - Lord Agnew has been very clear that once the PFI issues are resolved he requires KCC to prioritise the conversion of schools with DAOs over others therefore, whatever the timescales we end up with, The North will not convert before Royal Harbour or Holmesdale. This position should not be a surprise to SAT. **The Governors at The North School requested a response from you in October 2019 to a number of matters. To my knowledge there has been no response.**

The suggestion that we adopt model documents from the DfE makes no sense to us. We already have agreed and signed PFI contract documents in place and to seek to get all parties to agree to change this would be difficult, time consuming and expensive but, more crucially, would potentially leave KCC exposed to greater financial liabilities so that is not something we are able to consider. **If KCC are not prepared to accept the DfE model agreements in place throughout the rest of country it would appear that there is absolutely no chance of either Holmesdale and The North School converting. Just to be clear we have no interest in engaging in school improvement with dead duck projects!**

I hope this provides the clarity you seek on these various issues. I look forward to meeting with you after Easter.

6) 22 May 2020: Jon Whitcombe to David Adams (Interim Director of Education, KCC)

Holmesdale have had correspondence from the DfE saying that the school is converting to an Academy on September 1st (see below). The school have checked this with the DfE and apparently they are clear this is happening on this date. This is unexpected and wonderful news.

David, firstly thank you for sorting this out, you're eight weeks into a new job and you've already done more in that time than your predecessor did in eight years. Clearly, staff have been hard at work in Sessions House and the DfE sorting out the "affordability gap," and whatever other barriers were preventing conversion. I am also grateful that you have evidently spared SAT from having to get drawn into the detail here, with KCC just rolling its sleeves up and getting it done. Obviously the new brooms of you and Roger Gough have quietly and efficiently done wonders to move matters on in the interests of children in this historically troubled KCC maintained school.

Clearly we need to crack on and get the CTA and other documentation sorted and obviously I need to get a move on to seek Board approval to progress matters. However, given that we now have this unexpected good news and some school staff have obviously got wind of it, it is only sensible that we write to parents and issue a press release hopefully today.

Once again - thank you David for this - any news on The North School

7) 11 September 2020: David Adams to Jon Whitcombe

Conversion of The North and Holmesdale Schools

Thank you for your email and conversation in which you have asked for written assurance that KCC is committed to progressing the conversions of the above two schools.

Hitherto KCC has raised concerns with the DfE that the financial institutions behind the PFI contract have insisted that KCC indemnify them for any and all losses arising from the Deed of Variation, that they will need to sign, being found to be ultra vires. The underpinning concern is that legislation (The Academies Act 2010) prevented a local authority from maintaining an academy, and therefore the lenders were concerned that the LA making the PFI utility charge payment in respect of an academy could be seen as the LA acting ultra vires. This has led to some changes in legislation which allows for LAs to make payment of some, but not all, of the costs of maintaining an academy. Our lenders have continued in their stance that they wish KCC to certify both the original deal and the Deed of Variation,

meaning that KCC would be liable to pay damages in the event that one or other was breached or found to be ultra vires. These damages could amount to the total value of the PFI contract. KCC has always been prepared to accept responsibility for any breach arising from its actions but has maintained that if the breach occurred as a result of the actions or inactions of others, it should not be liable. An indemnity from the DfE has been sought and refused.

Our former Leader was not prepared to move forward with the conversion all the time the totality of risk sat with KCC, particularly when it could not control the action or inaction of other parties. Ultimately, this is a question of risk and the probability that the risk will materialise. Ministers have provided further assurance to the Council that in their view the risks have been covered off by legislation. It is disappointing that holding these views Ministers have not been prepared to indemnify the Council. Had they been prepared to do so the schools would have been able to convert a long time ago.

The Council has reconsidered its position, the assurances given by Ministers and the legal advice available to it, and the new Leader has agreed with his officers that we can proceed with the conversions of these two schools. I trust this letter provides the assurance you seek.

In terms of potentially contentious issues, I hope there will be none. I have been clear with you on our position regarding the current deficit at the North School and that position remains. You have indicated, on behalf of the Trust, that this debt will be taken into the Trust on conversion.

We are both working to the same objective, the swift, smooth transition of the schools into the Trust. As both our teams are aware of the previous agreements made on all other matters while transferring schools to the Trust they should be able to avoid going over previous debates. I see no reason why these conversions should not proceed with little contention between ourselves.

8) 3rd November 2020: Jon Whitcombe to David Adams

I first spoke to you about chasing up engaging your solicitors on September 14th following concern raised by our solicitors. I followed this up with an email to you on September 28th. It is now November 2nd.

It is difficult to accept that it takes six weeks to commission solicitors to undertake PFI conversion work. Given that it is likely to be more complex than a standard conversion I would have thought KCC would have realised the imperative to engage in a more timely fashion. By contrast we commissioned our legal work and scoped out costs in an afternoon in August.

As you will appreciate these delays on KCC's part mean that it is now unlikely that conversion for both schools will happen by September 2021.

I would be grateful if you could confirm when KCC is in a position to carry through with its commitment to proceed with the conversions which as a precursor requires solicitors to be engaged.

9) 3rd November 2020: Jon Whitcome to Matt Dunkley

On September 11th 2020 David Adams wrote to me confirming that KCC now supports the timely conversion of both The North School and The Holmesdale School into Swale Academies Trust. Specifically, he said the following: "We are both working to the same objective, the swift, smooth transition of the schools into the Trust. As both our teams are aware of the previous agreements made on all other matters while transferring schools to the Trust they should be able to avoid going over previous debates. I see no reason why these conversions should not proceed with little contention between ourselves." I took this statement to mean that KCC would move matters forward swiftly to ensure that the conversions happened for September 2021 at the latest. David Adams has confirmed on several occasions that this is his objective and that this reflects the council's policy. Having been through the PFI conversion of XXXXXX I am aware that there is a significant amount of legal work that needs to be undertaken, with a lead in time of at least ten months between the point of instructing solicitors and conversion. Swale Academies Trust has commissioned YYYYYY to act on its behalf, an instruction which we issued

in August. ZZZZZZ have begun work and we have already incurred costs as a result. It is disappointing that having repeatedly asked KCC to instruct solicitors to begin engagement with our team this has still not happened. I have written to David Adams on September 14th and September 28th to press the need to get this done. I am told as of today that this has not been done and that KCC are in "discussions" with solicitors about the possibility of instructing them. I do not understand why it needs to take two months to only achieve a position where KCC are in "discussions" about instructing solicitors to act, particularly given how pressing it is to get matters moving. It is worth being clear that the conversions of both schools fall within the express wishes of both the Governing Body of The North School and the IEB of The Holmesdale School, as well as the RSC. Due to KCC's delays to date, it now appears that the conversion of both schools for September 2021 is unlikely. I am unable to force KCC to instruct its solicitors to move forward, but I would stress that the ongoing uncertainty that these delays generate are unsettling to both school communities at a time when the need for stability and certainty is paramount. I am not expecting or indeed seeking a professional response to this email. It does, however, record SAT's genuine and legitimate frustrations with KCC's lack of engagement over this matter.

A further nine emails between the parties were exchanged between now and 2nd February, mostly between Swale Academies Trust asking why there is no progress, and KCC either explaining or promising action, five of the most recent being as follows.

10) 13th November: Jon Whitcombe to David Adams

As I understand it there is still no progress with KCC instructing solicitors to act with respect to the conversions of both The North School and Holmesdale. Given the optimism of your email below I was hoping to have received notification that this task had been completed by now. Evidently, due to this delay the timeline for a September 2021 conversion as put forward by the DfE and agreed with KCC is now in all likelihood unachievable. This will be disappointing news to both school communities.

I would welcome some clarification as to the current state of play specifically when you now plan to be able to facilitate conversion as per your stated commitment. As we are both aware zero progress can be made unless both legal teams are instructed.

11) 16 Nov 2020: David Adams to Jon Whitcombe

Colleagues have confirmed to me that following the discussions with XXXXXX, which I informed you a couple of weeks ago, files have now been exchanged, and solicitors named. YYYYYY are being informed. I trust now we can move forward as anticipated.

12) 11 January 2021: Internal Email Swale Academies Trust to Jon Whitcombe

I have been speaking to our solicitors, they are still not in receipt of the School Agreements for both The North and Holmesdale. When I last met with the DfE and KCC the intention was for them to be sent before the Christmas break. XXXXXX were advised before Christmas that they would receive drafts in the New Year, this was chased last week but they are still awaiting a response. Can you please advise me on the next steps as we don't seem to be getting anywhere in moving the conversion forwards.

13) 13 January: Jon Whitcombe to David Adams

Further to my recent email regarding the delay to KCC producing the draft School Agreement for Holmesdale and The North School, I am enquiring as to whether you are in a position to respond. Clearly both conversions are complex issues and I need to update my Board as to the progress being made with respect to the agreed timescale. I do realise that things are incredibly busy for all parties at the moment. however we have jointly made a commitment to both school

communities to ensure a prompt conversion process, which given the significant delays over recent years, any further holdups would be unfortunate to say the least. I would welcome an update this week if possible.

14) [Later 13 January from David Adams to Jon Whitcombe:](#)

Thank you for your message of Monday, and the message below. As you rightly mention, it has been a little busy!

XXXXXX emailed YYYYYY yesterday apologising for the delay. Like many of us, she too has been diverted to deal with Covid related priorities. She has received information from ZZZZZZ for review and has committed to looking at this and getting back to AAAAAA very shortly.