

**Response by Governing Body of Ysgol Gyfun Cwm Rhymni regarding the potential termination of the Caerphilly CBC School PFI Contract.**

**Consultation**

As the local authority has chosen to consult, the consultation must be adequate and fair. It is generally accepted that a consultation must:

- (a) **take place when proposals are still at a formative stage** - to be meaningful, consultation must be undertaken at a point where the decision-maker is still open to change its position and can be influenced by responses to the consultation. It does not appear that this is the case.
- (b) **give reasons for any proposal to permit intelligent consideration and response** – although the key driver for the proposal is the financial savings to the local authority, the wider rationale and key factors are not known. This means that it is difficult for us to provide an effective response – it would seem the only response that we could give to put our position in the most persuasive light would be focused on savings the local authority will make – that is only one element of the decision. Partial answers to some of our questions were only received on the evening prior to the deadline for responding to the Council's briefing paper, giving very little time for governors to give that intelligent consideration to the issues.
- (c) **give adequate time for consideration and response** – although the question of what is adequate time for consideration can be complex and is fact specific, we do not think the local authority can genuinely and reasonably defend the timescales it is proposing, particularly in light of the fact that a report from Local Partnerships was provided in October 2018. The urgency now being referenced is due to the Council's own actions and delays – the local authority could have chosen to engage with the school at a much earlier stage, which would have provided the school with adequate time for consideration.
- (d) **give conscientious consideration** – we trust that the local authority will feed our response into the decision-making process, including making it available to councillors involved in the decision-making process.

We are particularly disappointed with the timing of this consultation – the report pertaining to the proposal to voluntarily terminate the PFI agreement was not received until 5:02pm on Friday 10th February and was not read by the school until the morning of Monday 13th February. As we told you in our earlier correspondence, the Governing Body is required to give 5 days' notice to the EAS to convene a meeting, and naturally needs time after the meeting to formally respond to such a consultation. It has not been possible for us to convene a meeting and respond to the consultation as we would wish before the stated deadline of Friday 17th February.

Further, we are disappointed to receive partial responses to our queries on the evening prior to the deadline for responding to the Council's briefing paper.

**CCBC Officers Response:**

*The Council acknowledges the comments made in relation to consultation, however, it is important to be clear on what level of engagement is appropriate in this particular circumstance, as per the guidance in the Council's Consultation and Engagement Framework.*

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

*The school has been engaged with to advise them of the publication of the Report and provide information to assist them in understanding the opportunities and/or solutions which are anticipated to result from the withdrawal from the PFI arrangement with the contractor.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

*To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

**Strategic Case**

It is appreciated that the local authority is faced with significant financial pressures and it appears that the local authority intends to realise savings to its education budget to provide additional resource for all the other strategic objectives. It is not clear whether these savings will be ringfenced within the education budget, or whether it could be reassigned to other budgets.

Although we acknowledge and accept the need for the local authority to raise standards and ensure learners are healthy, confident, proud and ambitious, we are concerned that the decision to voluntarily terminate the contract could have negative consequences for our school. We have raised separately our concerns about the need for equity of funding for our school – the only two campus school in the county borough. We appreciate the authorities ongoing work in this area in supporting the school although we are concerned that this decision could create further tensions and pressures on our school, possibly leading to even more concerning financial projections in the future.

We are disappointed with the Council's view that "The school funding mechanism / formula distributes funding in a consistent way to all schools. The split site issue has been addressed with a "lump sum" element of funding for each of the 2 sites". We do not believe equality of funding is the right concept - it is equity that we are seeking. There are unique challenges of running a school divided between two geographically distant sites in the county borough.

We remain concerned that the Council is unwilling to acknowledge that, and to assist with the challenges we are facing to ensure that pupils, teachers and staff in Welsh medium secondary schools (of which we are the only one in the county borough) are not adversely affected when compared to their English medium counterparts.

**CCBC Officers Response:**

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present and is significantly higher when compared to all other schools.*

*There is also inequality across the two Ysgol Gyfun Cwm Rhymini sites as only the Gelli-Haf site is PFI funded.*

*With reference to the paragraphs relating to 'a two campus school' and 'Funding Formula', this is a separate matter which is outside the remit of this PFI proposal. Officers from within the Education Finance Team have met with the school to discuss the issue raised and future meetings are scheduled.*

**Impact on the school**

We very much appreciate the recognition that “the Authority is conscious that it doesn’t want the termination of the Contract to impact the schools in any adverse way”. However, we believe that the impact is not limited solely to the timing of the decision and is likely to have a greater impact during both the medium and the long term.

**CCBC Officers Response :**

*The current contractual arrangement has circa 9 years left to run at which point it would end and new arrangements would need to be implemented.*

*A full options appraisal has been undertaken, utilising both quantitative and qualitative assessment criteria which included consideration of the impact on day to day service provision, pupil attainment, maintenance of assets, strategic fit and financial fit.*

*In addition, an Integrated Impact Assessment has been undertaken to help support the Council in making informed and effective decisions.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

**Transfer to new provider**

We note that the local authority has in-house capability to provide the services, which we assume is all services, that are currently delivered under the Contract. We have not

received any details about the costs of these, and therefore cannot ascertain the effect on our budget. We appreciate having the right to choose our provider.

We have asked for confirmation that we will have support to manage any TUPE transfer that might occur, including the necessary legal and HR support. It is noted that the local authority refers to “discussion both with the Contractor and Mitie. The Authority’s Education and Human Resources teams have expertise and experience with TUPE transfer arrangements of staff between organisations and anticipate no significant issues.” We assume that the Council will be solely responsible for all costs if the TUPE transfer was from the incumbent provider to the Council.

If we do not choose the local authority as the provider of services, we will need to undertake a procurement process to appoint a provider. We would welcome the chance to consider this option with the Council and ensure an appropriate project plan is put in place. We note that “Time has been allocated in the programme to allow the [school] to make that decision and for the [school] and new provider(s) to be engaged and feed into the termination and handover process with the existing Contractor”. This would appear to need urgent attention, and the school will need to be involved in the development of the timeframe to ensure it can resource as necessary, alongside the already busy duties of the school’s senior leadership team.

#### **CCBC Officers Response:**

*The School has the right to choose whichever provider(s) and level of service they want.*

*The Authority has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use this service.*

*It is noted that the school is already utilising Council Catering services at their Y Gwyndy (Non-PFI) site.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage.*

#### **Capital spend**

We acknowledge that the schools are in good condition, that there is limited backlog maintenance and that our school benefits from higher levels of asset related expenditure than the majority of the non PFI schools estate in the county borough. We are concerned that the state of the school will deteriorate quickly, particularly when it would need to be considered against other priorities identified by the local authority. There is also a risk that the local authority is making a short term revenue gain at the expense, and to the detriment of, future capital requirements. We note the Council has identified that “There are also other Welsh Government Grants that maybe [our emphasis] available for investment into the school” but are disappointed that there is no certainty.

**CCBC Officers Response:**

*The Authority is fully committed to investing in the educational estate as evidenced by its ongoing Capital Maintenance programme and Sustainable Communities for Learning Programme.*

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present and is significantly higher when compared to all other schools.*

*There is also inequality across the two Ysgol Gyfun Cwm Rhymni sites as only the Gelli-Haf site is PFI funded.*

**Catering spend**

We note that Local Partnerships, in their last benchmarking review in 2017, have not identified cost savings to date. We are concerned that this means we are receiving an excellent, value for money service at present, and that we will be exposed to significant turbulence in costs of alternative provision in the future.

**CCBC Officers Response:**

*The School has the right to choose whichever provider(s) and level of service they want.*

*The Authority has in-house capability to provide the services that are currently delivered under the Contract, and most schools in the county borough use this service.*

*It is noted that the school is already utilising Council Catering services at their Y Gwyndy (Non-PFI) site.*

**Pupil attainment**

We agree that pupil attainment should be ranked the most important factor in the local authority's option's appraisal. We would appreciate receiving confirmations that pupil attainment will not be negatively affected by the decision as a result of additional pressures on our already-stretched budget.

**CCBC Officers Response:**

*Although there are significant differences between the service provision and asset management arrangements for each of the options, consideration was given as to whether the lower level of asset maintenance under Options 2 and 5, compared to Option 1 in particular, could have a negative effect. However, based on comparative attainment levels at PFI and non PFI schools in the Borough, this does not appear to be the case.*

## **Day to day service provision and financial**

We note that this criterion assesses the quality of the service provided, and that voluntary termination has been assessed as allowing “a more cost effective service provision to be put in place, hence the scores of 4”. We are not sure of the basis on which this has been assessed, but it would appear to relate to the impact on the Council’s budget rather than the school’s budget. We have asked for information on how we might financially benefit from the proposal, but have not received that detail. We are concerned that we could be exposed to increasing financial budgetary pressures when compared with the fixed cost of the existing provision.

### **CCBC Officers Response:**

*Finance Officers within Education have met with the school to clarify the budget position. The schools formula funding allocation is not impacted by this proposal, the only change relates to the fact that the school will retain the identified elements of funding rather than be included within the PFI contract and claw back from the school. Discussions are continuing as further meetings have been scheduled.*

## **Scoring**

Taking account of our points above on pupil attainment, day to day service provision and financial could result in the scoring being reconsidered and to the voluntary termination option being scored second. We raise this point as it demonstrates how the assessment might be effected by different views. We appreciate that some of our concerns might not arise, but the speed at which this consultation is taking place has not allowed us to properly and fully analyse the impact on the school. We have not seen evidence that the local authority has considered the impact on the school.

### **CCBC Officers Response:**

*A full options appraisal has been undertaken, utilising both quantitative and qualitative assessment criteria which included consideration of the impact on day to day service provision, pupil attainment, maintenance of assets, strategic fit and financial fit. In addition, an Integrated Impact Assessment was carried out to identify any impact on the educational and community elements as a direct result of any decision to proceed being taken. The Integrated Impact Assessment demonstrates that the proposal would have no impact on the current Educational provision offered at the two PFI sites.*

*This proposal seeks to secure equality of investment across all the schools in Caerphilly County Borough dependant on need based on a number of factors e.g. condition surveys and Health and Safety. Currently the level of investment into the two PFI schools is disproportionate at present being significantly higher when compared to all other schools.*

### **School condition at handover**

We note that the local authority recommends undertaking an updated condition survey prior to issuing the Termination Notice to obtain an up to date position. We note the comments on the items that would be due for major overhaul or replacement, including the boilers. We have not received any indication of how any relevant costs would be funded, including whether the savings realised by the voluntary termination could be used to offset those costs. We would appreciate a commitment from the local authority to use some of the possible up to £2m per annum savings to ensure there is no adverse impact to the school. We are disappointed that the Council has not considered this and intends to “redirect a proportion of the savings from the potential termination to support Capital Expenditure across the wider school estate”.

### **CCBC Officers Response:**

*Identifying the latest assets conditions will support discussions on handover and financial settlement with the outgoing contractor, and the implications for lifecycle spend by the Authority in upcoming years.*

### **Welsh Language and equality impact assessment**

We understand that an integrated impact assessment has been completed, but have not seen this (or any other equality impact assessment) for the project and so are unable to provide any views on issues for the school which may need to be taken into account.

It is very disappointing to note that whilst the briefing note includes an assessment of impact in the following areas; strategy; maintenance of assets; service provision; pupil attainment; and finance; no assessment has been made regarding the impact on the proposal on the Welsh language and on Welsh medium education within the county borough. Ysgol Gyfun Cwm Rhymni is the only Welsh medium secondary school in Caerphilly and it's the Governing Body's view that due consideration must be given to this when making a decision on this proposal.

We note that the Council states that “This proposal does not impact on this [the WESP] as it is merely a contractual matter between the Authority and the PFI Contractor. We are surprised that this is the Council's response. It seems to raise questions about the Council's approach to the WESP and it is disappointing that the officer responsible for the WESP does not appear to have been engaged in this matter (or at least is not part of the project team identified in the briefing note).

In view of the above, the Governing Body is disappointed that the report gives no consideration to the impact on the WESP. In particular the impact on outcomes 3, 4 and 7 over the next 10 years, along with the impact on the Welsh Government's long-term objective of ensuring 1 million Welsh speakers by 2050. Once again, it's the Governing Body's view that due consideration must be given to this when making a decision on this proposal.

## **CCBC Officers Response:**

*An Integrated Impact Assessment has been undertaken to help support the Council in making informed and effective decisions whilst ensuring compliance with a range of relevant legislation, including:*

- *Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011*
- *Socio-economic Duty – Sections 1 to 3 of the Equality Act 2010*
- *Welsh Language (Wales) Measure 2011*
- *Well-being of Future Generations (Wales) Act 2015*
- *Statutory Consultation v Doctrine of Legitimate Expectation and Gunning Principles*

*The proposal is a contractual change, which will bring the PFI site at Gelli-Haf in line with the arrangements already in place at the Y Gwyndy (Non-PFI) site for the school.*

## **Wider budget setting**

We asked why the proposal was not included as part of the Council's wider public consultation on the draft budget proposals for 2023/4. The Council's response was that "This did not form part of the 23/24 Draft Budget Proposals as no decision has been made at this point". We do not understand the point being made with this response - as noted in the opening of this response, consultation should take place before a decision has been made (otherwise it is not consultation). Given the length of time that this matter has been under consideration by the Council, it remains unclear why this proposal was not included as part of the Council's wider ongoing public consultation, not least as it would have ensured greater time to consider the Council's proposal, an opportunity to raise issues and discuss them at the Council's consultation sessions and an opportunity for pupils, staff and parents to feed into the consultation.

## **CCBC Officers Response:**

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

## **Contract with the school**

We note that the Council has refused to release the contract which was entered into by the school, and which was signed by representatives of the school - without reason, the Council has responded to our request that "We are unable to release this information". To be clear, we are requesting a copy of the contract that was signed by our chair on behalf of the school. As a party to that contract, we are entitled to a copy, and we are disappointed that the Council is unable to release it to us.



**CCBC Officers Response:**

*This proposal relates to a voluntary termination of a contractual agreement between the Authority and the PFI Contractor only through which the provision of building maintenance, catering facilities, cleaning facilities and caretaking facilities are provided. As such, there is a clear contractual mechanism to follow in this instance.*

**Outstanding issues**

We previously wrote to officers to ask for additional information to help our Governing Body properly consider the proposal. Although the Briefing Note addresses some of our issues and questions, there remain a significant number of unknowns which have not enabled us to conclusively offer our support, or objection, to the proposals. Although we received a late response to our queries, governors have not had time to properly consider and digest those response, some of which are very brief and do not address our underlying concerns.

**CCBC Officers Response:**

*The Council acknowledges the comments made. To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

**Conclusion**

We would like to emphasise once again that we are not absolutely opposed to the proposed voluntary termination. We can see some of the advantages, but have concerns which have not been addressed. The Council's late, partial response to our queries (received very close to the closing date for comments) has not been helpful. We are therefore unable to come to a proper conclusion and are unable to confirm our support at this time, in the very short timeframe set by the local authority.

As noted in this response, if the local authority does go ahead with this proposal, there is still much work to do. We hope that the local authority will provide full support to ensure that the transition to the new arrangements is without any adverse impact to our pupils, teachers and staff, as well as the much valued staff of the current provider.

**CCBC Officers Response:**

*The Council acknowledges the comments made. To ensure openness and transparency, this document will be included as an annex to the main report going forward to Members to enable conscientious consideration.*

*Officers will continue to keep the school informed of the process and provide support to the school in determining the ongoing provision of services, subject to approval of the proposal as no formal decision has been taken to proceed at this stage*