

19 December 2013

Syrie Cox
South Essex Community School Ltd

By email: syriecox@southendymca.org.uk

Dear Syrie

Legal Charge in respect of land at and adjoining 110 East Street, Southend-on-Sea, SS2 6LH to be granted by South Essex Community School Ltd in favour of the Secretary of State for Education

I am instructed that the Secretary of State for Education ("the Lender") has lent (or is lending) money to South Essex Community School Ltd ("the Academy Trust") pursuant to a Funding Agreement dated 11 June 2013, (the "Funding Agreement"). A copy of the draft agreement I have seen is attached to this letter (I would be grateful if you could send me a copy of the final signed and dated Funding Agreement so that I can ensure that it and the draft that I have reviewed are consistent. If not I will let you have any other comments I may have). Pursuant to the Funding Agreement the Lender is seeking security over the Academy Trust's property by way of a legal charge and I have been asked to comment on the draft which was provided to you by Bond Dickinson on 3 December 2013 ("the Legal Charge").

I comment as follows:

1. The Charged Property

The Lender is seeking a legal charge over the Academy Trust's freehold land at and adjoining 110 East Street, Southend-on-Sea, SS2 6LH, held under title numbers EX883043 and EX883045 (the "Charged Property").

The Legal Charge will be registered at the Land Registry in favour of the Lender. A copy of the form of draft Legal Charge is attached to this letter.

2. The secured liabilities

The Legal Charge states that the "Obligations" (as defined in the Legal Charge as being the monies obligations and liabilities owed by the Academy Trust to the Lender under the Funding Agreement) are repayable on demand, when they fall due.

2.1 Under the Funding Agreement, the "Obligations" fall due either:

2.1.1 upon termination of the Funding Agreement (see paragraphs 2.2 to 2.4 below);

2.1.2 upon sale of the whole or part of the Charged Property; or

- 2.1.3 upon the Academy Trust receiving a notice from the Lender requiring repayment of the debt following the Academy Trust becoming unable to use the Charged Property as the permanent site of the Academy Trust.
- 2.2 Clause 83 of the Funding Agreement provides that the Lender is entitled to issue a written notice of his intention to terminate the Funding Agreement where he considers that:
 - 2.2.1 the Academy Trust is no longer meeting the requirements referred to in clause 10 of the Funding Agreement;
 - 2.2.2 the conditions and requirements set out in clauses 12 to 33A of the Funding Agreement are no longer being met;
 - 2.2.3 the standards of performance of pupils at the Academy Trust are unacceptably low;
 - 2.2.4 there has been a serious breakdown in the way the Academy Trust is managed or governed;
 - 2.2.5 the safety of the pupils is threatened; or
 - 2.2.6 the Academy Trust is otherwise in material breach of the provisions of the Funding Agreement.

Clause 85 provides that the Lender may by notice in writing terminate the Funding Agreement in the event that:

 - 2.2.7 the Academy Trust has not, by the date specified in the termination warning notice, responded to the termination warning notice either confirming that it accepts and agrees to undertake the specified remedial measures or providing its representations with regard to the specified remedial measures; or
 - 2.2.8 the Academy Trust has not carried out the specified remedial measures and/or further remedial measures within the specified timeframes;

provided that, having considered the representations made by the Academy Trust, the Lender remains satisfied that it is appropriate to terminate the Funding Agreement.
- 2.3 Clause 86 of the Funding Agreement provides that the Lender may issue a written notice of his intention to terminate the Funding Agreement where the Chief Inspector gives notice to the Academy Trust that special measures are required to be taken in relation to the Academy Trust or the Academy Trust requires significant improvement.
- 2.4 Clauses 89 to 95 of the Funding Agreement provide that the Funding Agreement may be terminated with immediate effect:
 - 2.4.1 if a decision is made that the Academy Trust is to be struck off the register of Independent Schools;

- 2.4.2 where, in the Lender's opinion, there is a serious risk of occurrence of any of the following events:
- a. the Academy Trust calls a meeting of its creditors or enters into any composition or arrangement with its creditors;
 - b. the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986;
 - c. the Academy Trust is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - d. the Academy Trust has a receiver and manager, administrator or administrative receiver appointed over all or any part of its undertakings, assets or income;
 - e. any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen business days;
 - f. the Academy Trust has passed a resolution for its winding up; or
 - g. an order is made for the winding up or administration of the Academy Trust.
- 2.4.3 if the Academy trust fails to procure the resignation or removal of an unsuitable governor or member of the Academy Trust having received a notice from the Lender requiring it to procure the said resignation;
- 2.4.4 if the Academy Trust has not obtained full planning permission in respect of the site on which it is proposed that the Academy Trust will be situated by 30 June 2014;
- 2.4.5 if at any time after the signing of the Funding Agreement but prior to the Academy Trust opening date the Lender is of the view that;
- a. the alternative Academy Trust would on opening, provide an unacceptably low standard of education;
 - b. the safety of pupils or staff at the Academy Trust would on opening, be threatened;
 - c. the staff employed at the Academy Trust are unsuitable;
 - d. there is a serious breakdown in the way that the Academy Trust is being managed or governed; or
 - e. the buildings and other structures on the land are unsuitable or the Academy Trust has not obtained Building Regulations approval;
- 2.4.6 if there is a change in the control of the Academy Trust or a change in the control of a legal entity that controls the Academy Trust.

If the Academy Trust wants to exercise its option to terminate under clause 82 of the Funding Agreement, the Academy Trust will have to consider how it will deal with repayment of the debt and discharge of the Legal Charge. The Academy Trust will need the Lenders consent to deal with the Charged Property in such circumstances.

If the “Obligations” as defined in the Legal Charge including those set out at 2.1 to 2.4 above have fallen due or if the Academy Trust defaults under the Legal Charge or the Funding Agreement the Lender can enforce the Legal Charge and demand immediate repayment of the grant.

Having said that, it may be that rather than demand repayment of the grant under the Legal Charge, on termination of the Funding Agreement, the Lender may wish to exercise its option (as set out in clause 108E of the Funding Agreement) to acquire the Charged Property from the Academy Trust for nil consideration.

3. Obligations of the Academy Trust in the Legal Charge and the Funding Agreements

- 3.1 Under the Legal Charge and the Funding Agreement, the Academy Trust is required to complete the Legal Charge and within 28 days of completion apply to the Land Registry to enter a restriction on the register of the title of the Charged Property. The Academy Trust is also required to take any further steps required to ensure that the Legal Charge is entered on the charges register and provide the Lender with confirmation of the registration of the Legal Charge after it receives notification from the Land Registry. In practice Bond Dickinson will almost certainly wish to deal with this registration, however we are able to do this on your behalf if required.

Please note that once registered, the restriction means that the Academy Trust cannot transfer, under let, or further charge the Charged Property without the consent of the Lender.

- 3.2 One of the clauses in the Legal Charge requires the Academy Trust, at its own cost (and at the Lender’s request) to execute any deed or document and take any action reasonably required to perfect or protect the Legal Charge or further secure on the Charged Property the obligations under the Funding Agreements or for facilitating the realisation of the Charged Property or the exercise of any rights or powers of the Lender or any Receiver.

This is a standard further assurance clause and is unlikely to be needed once the Legal Charge is registered at the Land Registry unless the Lender has to take any enforcement action for breach of the Legal Charge or the Funding Agreements.

- 3.3 The Funding Agreement sets out the following further obligations which the Academy Trust must comply with:

- a. to keep the Charged Property clean and tidy and make good any damage it causes or deterioration of the Charged Property that arises after the date of the transfer. In general the Academy Trust is not to permit or cause to permit anything to be done that lessens the marketability of the Charged Property save with consent of the Lender;

- b. to obtain the Lender's prior written consent, not to be unreasonably withheld to the granting of any licence in respect of the Charged Property, to the permitting of any encumbrance to affect the Charged Property, to the parting with possession or occupation of the Charged Property or any part of it, or to entering into any onerous or restrictive covenants affecting the Charged Property;
- c. to obtain the Lender's prior written consent to the taking of any steps under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Charged Property;
- d. to obtain and keep the Charged Property insured with a reputable insurer in the reinstatement value of the Charged Property, to pay the premiums, to use the proceeds of the insurance following damage to rebuild and reinstate the Charged Property in the event of damage or destruction and not knowingly to do anything to cause the policy of insurance to become void or voidable; and
- e. to produce a copy of the insurance policy to the Lender when reasonably requested with details of the cover. The insurance is to cover property owner's liability and third party risk including occupier's liability.

4. The Lender's right to enforce the Legal Charge

4.1 The Lender is entitled to enforce the Legal Charge and exercise its "powers" under it in the following scenarios:

- a. any of the Obligations are not paid and/or discharged in accordance with the Funding Agreement;
- b. the Funding Agreement is terminated; or
- c. the Academy Trust disposes of the Charged Property without the Lender's prior written consent.

4.2 Powers of the Lender

If the Legal Charge has to be enforced by the Lender due to default by the Academy Trust, the Lender is, in the usual way and as set out in clause 6 of the Legal Charge, entitled to:

- a. grant a lease of the Charged Property or any part of it, or surrender any existing lease or vary or reduce any sum payable under any existing lease;
- b. sell the Charged Property;
- c. appoint and deal with a receiver(s) of all or any of the Charged Property to deal with the Charged Property in accordance with clause 7 of the Legal Charge; and
- d. take such action (instead of appointing a receiver) as is necessary to make good any default of the Academy Trust.

4.3 Powers of the Receiver

In the case of default by the Academy Trust of its Obligations the Lender is unlikely to wish to deal with the Charged Property itself as it would then be a mortgagee in possession which places certain obligations on the Lender. Lenders therefore usually appoint a receiver to deal with the property for them. In the Legal Charge clause 7 allows any receiver appointed to:

- a. take possession and generally manage the Charged Property;
- b. enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract or arrangement to which the Academy Trust is or is to be a party;
- c. carry out any works on the Charged Property and apply for any permissions in respect of those works;
- d. purchase or acquire any land or property, purchase, acquire, grant or release any interest in or right over land or other property and enter into, take or release the benefit of covenants binding on or benefiting the Charged Property or any part of it;
- e. sell, lease, licence surrender or accept surrenders of leases and deal with or dispose of the Charged Property;
- f. complete any transaction by executing deeds or documents in the name of or on behalf of the Academy Trust;
- g. insure the Charged Property;
- h. call up any uncalled capital of the Academy Trust;
- i. engage, rely on the advice of and dismiss advisers, consultants, officers, managers, agents, workmen and others;
- j. bring, continue or defend any claim, dispute, action or legal proceedings; and
- k. redeem any security and borrow or raise any money and secure the payment of any money.

The Academy Trust will be responsible for all of the receiver's actions, defaults and remuneration.

5. Indemnity

Under the Legal Charge the Academy Trust is obliged to indemnify the Lender on demand against any loss or expense sustained or incurred as a result of a failure by the Academy Trust to perform any or all of its obligations under the Legal Charge. Again this is a standard provision for a legal charge.



6. Payments

All monies paid by the Academy Trust to the Lender are to be paid in sterling, in immediately available funds and to any account designated by the Lender.

All payments shall be made in full, without set-off of any sum owing by the Lender to the Academy Trust, or any deduction for tax.

If the Academy Trust is required by law to make any deduction from any payment to the Lender, the Academy Trust must simultaneously pay to the Lender whatever additional amount is necessary to ensure that the Lender receives a net sum equal to the payment it would have received had no deduction or withholding been made.

7. Prior Charges

If there is any security that ranks in priority to this Legal Charge and that security is enforced, the Lender or any receiver may repay the monies owed under that security.

8. Assignment and Transfer

The successors in title of the parties to the Legal Charge have the benefit of and are subject to the terms of the Legal Charge.

The rights and obligations of the Lender under the Legal Charge are however not to be assigned, novated or otherwise transferred other than to a person, body or executive agency having the legal capacity, power and authority to become a party to and perform the obligations of the Lender under the Legal Charge.

The Lender may give information relating to the Academy Trust as it thinks fit to any of its associated companies or to any third party proposing to take an assignment and/or transfer from the Lender.

9. Delegation

Under the Legal Charge, the Academy Trustees of the Academy Trust are required to complete a resolution which delegates authority to two of the Academy Trustees to execute the Legal Charge on behalf of the Academy Trust. The form of resolution is attached to the reverse of the Legal Charge.

If you have any queries on this letter please let me know.

Yours sincerely

Rebecca Rider

cc. Jane Lougher, Mark Traynor

