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PFI expiry guidance for schools

11 December 2024

What was PFI?

The Private Finance Initiative (PFI) delivered infrastructure projects nationwide, principally in the period from the late 90s until the coalition government assumed office in 2010. Under PFI, private sector partners funded, built and operated these schemes in exchange for a single, 'unitary charge' paid by the public body.

PFI was little used following election of the coalition government in 2010, and officially ended by then Chancellor Phillip Hammond in 2018.

As many PFI arrangements were for 25 years or longer this leaves a long tail of PFIs – including those covering school estates – due to expire in coming years.

How does this affect academies?

School PFIs were delivered by local authorities and were aimed at building or redeveloping maintained schools.

The academies programme added an additional layer of complexity because the newly independent school has no direct relationship with the PFI Co.

To address this, a:

- 'School Agreement'; and
- 'Principal Agreement',

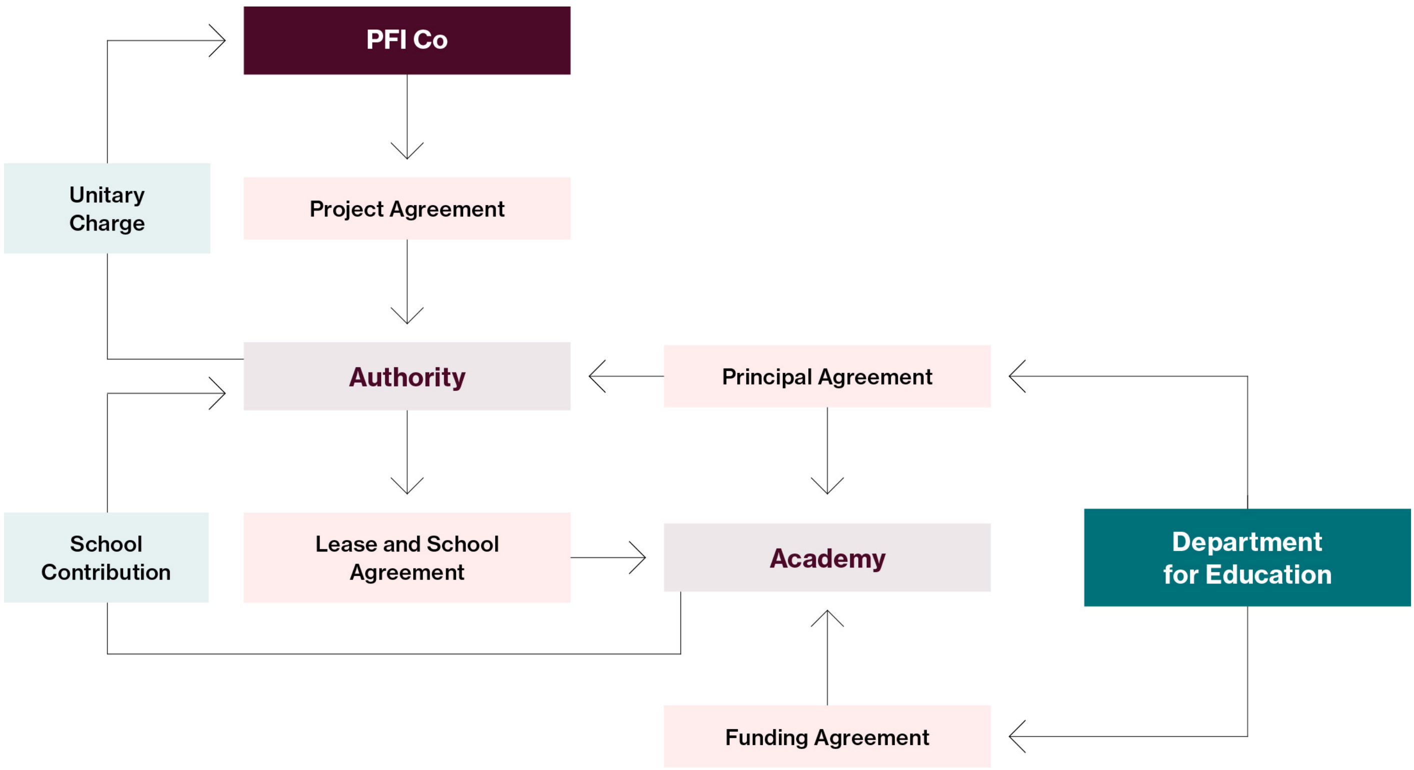
set out the relationship between the academy, local authority, and Department for Education in relation to the contractor’s obligations under the PFI.

What does government guidance say about PFI expiry?

The National Audit Office recommends that planning for PFI expiry should start seven years before the exit date. Given the number of deals that will be expiring over the next few years, many academies will be part of PFI transactions that end well within this period.

Remember: Local authorities still act as the Local Education Agency (LEA). They therefore have a continuing interest in ensuring an orderly exit from PFIs.

Simplified typical PFI arrangement



Quick definitions

Project Agreement

The project agreement between the PFI Co and the authority in relation to the maintenance and operation of the school buildings.

Lease Agreement

A lease granted by the authority to the academy, so that the academy can remain in occupation.

Principal Agreement

A tripartite between the DfE, the authority and the academy which sits alongside the School Agreement. It deals with the circumstances in which the academy fails in its obligations to pay the council under the Project Agreement. Should this happen, the authority will be paid by DfE, who will then seek recompence from the academy under the Funding Agreement.

Funding Agreement

An agreement between the DfE and the academy, setting out how the academy will be funded.

School Agreement

An agreement between the academy and the authority which governs their relationship in relation to the Project Agreement. The authority should, effectively, act on the academy's behalf in relation to the obligations of the PFI Co under this agreement. It will also set out payments ('school contribution') to be made to the authority to fund the unitary charge payable to the PFI Co under the Project Agreement.

What should academies do next?

1. Documentation

The first step is to make sure that the documents are accessible by both the academy and the authority. This may sound obvious, but with PFI schemes being entered into so long ago, and changes in personnel over this period, ready access to clear versions of the documents cannot be taken for granted. Academies should contact the authority to request a complete set of documents, as part of an initial discussion about the plans for expiry.

2. Expiry details

An academy will then wish to understand what the PFI Agreement actually says in relation to expiry. For example:

- Expiry date;
- Handover process (including handover of assets and equipment) and timelines;
- What are the PFI Co's obligations upon handover and exit? It is worth noting that earlier PFI Agreements, entered into before increased standardisation of terms, may be less helpful and contain less detail; and
- Estimated lifecycle spend for the remainder of the Project Agreement.

Legal review of the PFI contract and School Agreement.

3. Practical considerations

Consider the practicalities around expiry.

- Whatever the provisions in relation to expiry, they may no longer match the aspirations of the academy. As an example, the Project Agreement may state that the academy's boiler should be replaced as part of the lifecycle replacement programme two years before expiry. In reality, the academy may now prefer investment in net zero technology, rather than a like-for-like replacement.
- The PFI Co can be inflexible. Change can be 'forced through' a Change Procedure set out in the Project Agreement, if necessary, but this should be the last resort. A more collaborative approach is generally preferable.

Early engagement with estates colleagues.

- What is the actual condition of the site? Under a Project Agreement, responsibility for the maintenance of academy's buildings and facilities lies with the PFI Co, and it should be handed back in suitable condition on expiry. In reality, some sites have been maintained better than others.

Surveys should be undertaken and discussion with the authority entered into about resolution of any issues/sinking funds and (linked to the points above) consideration of whether the existing lifecycle maintenance programme remains appropriate.

- Future services. As with physical assets, the requirements for services may well have changed over 25+ years. Even if service requirements remain broadly similar, an academy will have to reprocure those activities (catering, facilities management etc.) currently provided under the umbrella of the PFI arrangements and will wish to establish a strategy for procuring them. This may be through some form of service level agreement with the authority, an independent procurement or use of an available Framework Agreement.

Engage with subject matter experts/advisers in relation to future services.

- Consider any disputes in relation to the services/ lifecycle maintenance. Disputes can always arise during any complex, commercial relationship. This may be exacerbated in school PFIs because: (i) the 'customer' (the authority) is now one step removed from the provider (PFI Co); and (ii) the incentives on the PFI Co to service and maintain the asset may be reduced in the final years – particularly as there is no ongoing market for PFI transactions.

Engage with the authority in relation to service provision, identifying any disputes which may have arisen.

4. 'Big picture' tips

- **Start early:** seven years might seem like a long period, but the earlier these issues are considered the better.
- **Communication is vital:** with the authority and, by extension, the PFI Co and its funders.
- **Get a team together:** given that there is no longer an active PFI programme, in-house resources at authorities may no longer be in place. Early engagement with authorities about the most effective project team, and whether external resource is needed, will get the foundations of a successful exit in place.

Resources

The PFI contract expiry guidance and toolkits →

General guide to PFIs in education →

Remember: It's important to maintain good relationships, particularly with the team at the authorities who deal with PFIs.

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