

Schools Forum**18th June 2018****Report of the Strategic Director for Children's Services****Review of the Derbyshire Scheme for Financing Schools****1. Purpose of the Report**

To inform Schools Forum of a review of the Derbyshire Scheme for Financing Schools and to seek approval to a range of changes.

2. Information and Analysis

Local authorities are required to publish Schemes for Financing Schools, setting out the financial relationship between them and the schools they maintain. The DfE publishes statutory guidance which lists the provisions which a local authority's scheme must, should or may include.

On 22 March 2018 the Department for Education (DfE) revised its statutory guidance to all authorities regarding revisions required to their Schemes for Financing Schools. Full details of the updated statutory guidance can be found at:

<https://www.gov.uk/government/publications/schemes-for-financing-schools>

The Scheme, which sets the relationship between the Authority and its schools on financial issues, was last revised in 2015 and needed to be updated to reflect changes within the Authority and the national funding framework. Historically the Scheme has been supplemented by several Financial Reference Documents (FRDs) covering specific areas in more detail. However, this refresh now absorbs the content of these FRDs into the main Scheme.

The Scheme has been updated to reflect the latest operational structures and language e.g. references to Statements of SEN and the Children and Younger Adults department have been replaced with Education Health and Care Plans and Children's Services etc. Particular changes, other than ones of the type referred to above, are referenced in Appendix 1 to this report.

In making changes to its Scheme, other than for changes directed by the DfE, the Authority is required to consult all of its schools (heads and governing bodies) and receive approval from Schools Forum. Also, the Scheme, including any amendments to it, must be published on a website accessible to the general public, together with the date on which any amendments take effect.

On 11 April 2018 the Authority wrote to the headteachers and governing bodies of LA maintained schools on the revised Scheme, inviting any responses to be submitted by 18 May 2018. Only one response was received.

Subject to any late minor changes e.g. updates to the list of LA maintained schools in Annex A, it is proposed that the consultation version of the Scheme published in April be approved.

3. Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime & disorder, equality of opportunity, human resources, legal & human rights, environmental, financial, social value, health, property and transport considerations.

4. Background Papers

Papers held in Children's Services Finance.

5. Officer's Recommendation

That the draft Scheme published for consultation in April 2018 be approved by the Schools Forum as set out in this report.

JANE PARFREMENT
Strategic Director for Children's Services

Scheme para	Change/heading	Revised text/comment
1.5	Clarification of the roles & responsibilities of key stakeholders	<p>The Chief Financial Officer is the Director of Finance and ICT and all references in this Scheme to the Director of Finance and ICT can include an authorised representative. The Director of Finance and ICT is responsible for the proper administration of the Council’s financial affairs. This includes the responsibility for ensuring an adequate and effective internal audit of maintained schools in Derbyshire.</p> <p>The Director of Finance and ICT is responsible for preparing and publishing the County Council’s financial accounts. The detailed format and content of all financial returns and procedures will be subject to approval by the Director of Finance and ICT.</p> <p>In order to fulfil his responsibilities, the Director of Finance and ICT has the right of access to any relevant information or data relating to a school’s delegated budget, including information held within the school and the right to attend any relevant meeting of a governing body and to speak on financial issues.</p>
1.6		<p>All references in this Scheme to the Strategic Director for Children’s Services can include an authorised representative. The Strategic Director for Children’s Services is responsible for ensuring that adequate advice, information and support is available to Governing Bodies to enable them to fulfil their responsibilities.</p> <p>Following approval, the Strategic Director for Children’s Services will provide details of the delegated budget share that will be allocated to each school in the following year by applying the relevant distribution formula to the Individual Schools Budget. The Authority must submit final school budget proformas to the Education and Skills Funding Agency and notify the Secretary of State of the proposed Schools Budget by the deadline set each year.</p> <p>The Strategic Director for Children’s Services will publish the information required by the 1998 Act in accordance with the regulations and timetables laid down by the Secretary of State for Education. In order to fulfil their responsibilities the Strategic Director for Children’s Services has the right of access to any relevant information or data relating to a school’s delegated budget, including information held within the school.</p>
1.7		<p>In any financial year, once a school’s delegated budget share has been confirmed in writing by the Strategic Director for Children’s Services, the Governing Body may incur expenditure up to the total of the delegated budget share, after allowing for any accumulated surplus or deficit carried forward, for the purposes specified in paragraph 2.13.</p> <p>The Governing Body has a responsibility to ensure that adequate financial procedures and controls exist within the school to minimise the risk of loss, wastage or misappropriation and also to fulfil the County</p>

		<p>Council's statutory responsibilities relating to VAT, income tax, National Insurance, Construction Industry Scheme and any other aspect of the school's finances.</p> <p>All the powers and responsibilities set out in this Scheme are vested in the full Governing Body. However, subject to the Education Acts and Regulations made under those Acts, the governing body may delegate any power granted to them by this Scheme to a committee of the governing body or to the Headteacher (see paragraph 1.8 below).</p> <p>Where this Scheme attributes authority or responsibility to the Headteacher, this indicates recommended practice so as to achieve efficient and effective day to day management and control. The Governing Body does have the power to limit the delegated powers of the Headteacher if this is considered to be necessary. Prior consultation with the Strategic Director for Children's Services is strongly recommended if such action is under consideration.</p> <p>The Governing Body has the responsibility to ensure that the school's accounts are accurately reflected in the County Council's statement of accounts. In order to achieve this, the governing body must make arrangements for compliance with guidance produced by the Authority.</p>
1.8	New paragraph which sets out the circumstances in which the Council could withdraw delegated powers from a school's governing body	<p>Where it appears to the Council that a school subject to this Scheme:</p> <p>(i) has been guilty of a substantial or persistent failure to comply with requirements applicable under the relevant scheme, or</p> <p>(ii) is not managing its delegated budget in a satisfactory manner,</p> <p>the Council may suspend the Governing Body's right to a delegated budget in accordance with the provisions of Section 51 and Schedule 15 of the 1998 Act. A school's right to a delegated budget may also be suspended for other reasons under Section 17 of the 1998 Act. Any action by the Council under this section will be reported to the Council's Cabinet and to the Secretary of State.</p> <p>Governing Bodies have the right to appeal to the Secretary of State against suspensions under Section 51, but not under Section 17.</p>
2.1.4	Payment of invoices	Update of text previously in a FRD which sets out the process by which schools' invoices are paid
2.1.5	Control of assets/ security	Update of text previously in a FRD which sets out the rules governing inventories and governors/school staff's responsibilities regarding the security of assets generally
2.2	Basis of accounting	Key area is the responsibility of non-SAP schools to provide financial information to the Authority

2.3.1	Multi-year budgets	The regulations no longer allow LAs to issue budgets for a multi-year period. However, the Scheme still gives the Authority the power to require schools to submit a financial forecast covering more than one year.
2.8	Audit of voluntary & private funds	Update of text previously in a FRD which sets out the Council's expectations regarding the administration of private school funds, including audit arrangements
2.9	Register of business interests	Update of text previously in a FRD which sets out the responsibilities of staff and governors where they are in a position to influence a decision of the school and have a business interest, either directly or indirectly. The text requires schools to maintain a register of business interests.
2.10	Purchasing, tendering & contracting requirements	Updated links to DCC and DfE advice websites
2.11	Contracts	Removal of a historical reference to contracts let prior to April 1999
2.14	Capital spending	Update of text previously in a FRD on capital spending, includes information on the process to be followed if the proposed capital spend exceeds £15,000 and
2.15	Leases	A new paragraph requiring schools to take advice from the Authority <u>before</u> entering into a lease agreement
2.16	School Financial Value Standard (SFVS)	Clarification that the SFVS needs to be returned to the LA by 31 March.
2.18	Notice of Concern to a governing body	<p>The Authority may issue a Notice of Concern to the Governing Body of any school it maintains where, in the opinion of the Director of Finance and ICT and the Strategic Director for Children's Services, the school has failed to comply with any provisions of the scheme, or where actions need to be taken to safeguard the financial position of the Authority or the school. Such a Notice will set out the reasons and evidence for it being made and may place on the Governing Body restrictions, limitations or prohibitions in relation to the management of funds delegated to it. These may include:</p> <ul style="list-style-type: none"> • insisting that relevant staff undertake appropriate training to address any identified weaknesses in the financial management of the school; • insisting that an appropriately trained/qualified person chairs the finance committee of the Governing Body; • placing more stringent restrictions or conditions on the day to day financial management of a school than the scheme requires for all schools – such as the provision of monthly accounts to the Authority; • insisting on regular financial monitoring meetings at the school attended by Authority officers; • potential withdrawal of local banking facilities • requiring a Governing Body to buy into an Authority's financial management systems; and • imposing restrictions or limitations on the manner in which a school manages extended school activity funded from within its delegated budget share – for example by requiring a school to submit income

		<p>projections and/or financial monitoring reports on such activities.</p> <p>The Notice will clearly state what these requirements are and the way in which, and the time by which, such requirements must be complied with in order for the notice to be withdrawn. It will also state the actions that the Authority may take where the Governing Body does not comply with the notice.</p>
4.8	Balances of closing/replacement schools	Where in the funding period, a school has been established or is subject to a prescribed alteration as a result of the closure of a school, a local authority may add an amount to the budget share of the new or enlarged school to reflect all or part of the unspent budget share (including any surplus carried over from previous funding periods) of the closing school for the funding period in which it closes.
4.9	Licensed Deficits	Removal of limits on an individual school's licensed deficit
4.10	Loans to schools when a school converts to academy status.	This section is a directed change by the DfE. Loans must only be used to assist schools in spreading the cost over more than one year of large one-off individual items of a capital nature that have a benefit to the school lasting more than one financial or academic year. Loans must not be used as a means of funding a deficit that has arisen because a school's recurrent costs exceed its current income. If loans are made to fund a deficit, the Secretary of State will consider using the power under paragraph 13(4)(d) of Schedule 1 to the Academies Act 2010 to make a direction to the effect that such a loan does not transfer, either in full or part, to the new Academy school in individual cases. At this time the Authority does not propose offering a formal loan scheme to schools: schools should instead seek to utilise the flexibilities available under 4.9.2.
5.1	Income – general	General update of text, including requiring schools to comply with all guidance issued by the Director of Finance and ICT, advising that schools will retain income except where specified otherwise and requiring governing bodies to review their charging arrangements annually.
7.1	VAT	General update to text regarding VAT
11.11	Redundancy/early retirement	Revised DfE text to reflect national changes regarding top-slicing. Annex B of the Scheme has further information and this has been included as Appendix 2 to this report.
11.12	Retention of records.	A new paragraph giving a link to LA advice regarding retention of records.
Annex A	School list	Updated list of LA schools to which the Scheme applies – as at 1 June 2018
Annex B	Redundancy/early retirement	See 11.11 above and Appendix 2 of this report, DfE text reflects national change re top-slicing.
Annex C	Payment of salaries and wages	Update of text previously in a FRD which sets out the process by which schools' salaries and wages are paid
Annex D	Payment of invoices	Update of text previously in a FRD which sets out the process by which schools' invoices are paid

Schools looking to reduce their staffing should seek advice at an early stage from the Schools HR Service by e-mailing CS.HRDeptSchools@derbyshire.gov.uk

This section summarises the position relating to the charging of voluntary early retirement and redundancy costs, sets out what is specified in legislation and provides some examples of when it might be appropriate to charge an individual school's budget, the central Schools Budget or the local authority's non-schools budget.

Section 37 of the 2002 Education Act says:

(4) costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more financial years except in so far as the authority agree with the Governing body in writing (whether before or after the retirement occurs) that they shall not be so met

(5) costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs, from that share.

(6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c. 18).

The default position, therefore, is that premature retirement costs must be charged to the school's delegated budget, while redundancy costs must be charged to the local authority's budget. In the former case, the local authority has to agree otherwise for costs to be centrally funded, while in the latter case, there has to be a good reason for it not to be centrally funded, and that cannot include having a no redundancy policy.

Ultimately, it would be for the courts to decide what was a good reason but the examples set out below indicate the situations in which exceptions to the default position might be taken.

Charge of dismissal/resignation costs to delegated school budget:

- If a school has decided to offer more generous terms than the Authority's policy, then the excess would be charged to the school

- If a school is otherwise acting outside the Local Authority's policy
- Where the school is making staffing reductions which the Local Authority does not believe are necessary to either set a balanced budget or meet the conditions of a licensed deficit
- Where staffing reductions arise from a deficit caused by factors within the school's control
- Where the school has excess surplus balances and no agreed plan to use these
- Where a school has refused to engage with the Local Authority's redeployment policy

Charge of premature retirement costs to local authority non-schools budget:

- Where a school has a long-term reduction in pupil numbers and charging such costs to their budget would impact on standards
- Where a school is closing, does not have sufficient balances to cover the costs and where centrally held funds do not have capacity to absorb the deficit
- Where charging such costs to the school's budget would prevent the school from complying with a requirement to recover a licensed deficit within the agreed timescale
- Where a school is in special measures, does not have excess balances and employment of the relevant staff is being/has been terminated as a result of local authority or government intervention to improve standards

Costs of early retirements or redundancies may only be charged to the central schools services block of the schools budget, as a historic commitment, where the expenditure is to be incurred as a result of decisions made before 1st April 2013. Costs may not exceed the amount budgeted in the previous financial year.

The Authority can, with the approval of the relevant members of the Schools Forum, retain a central budget within the schools budget to fund the costs of new early retirements or redundancies by a deduction from maintained school budgets (excluding nursery schools). Where such a budget has been agreed, it will be used to fund the cost of redundancies in LA maintained schools subject to the Authority being satisfied regarding individual schools' proposals.

The local authority will discuss the application of its policy with its Schools Forum as required. Individual cases will, however, be considered on their own merits within an agreed framework. Where appropriate it may be reasonable to share costs in some cases.

Where a de-delegated contingency has been agreed by the Schools Forum, this could be used to support individual schools where “a Governing Body has incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share”.

For staff employed under the community facilities power, the default position is that any costs must be met by the Governing Body, and can be funded from the school’s delegated budget if the Governing Body is satisfied that this will not interfere to a significant extent with the performance of any duties imposed on them by the Education Acts, including the requirement to conduct the school with a view to promoting high standards of educational achievement. Section 37 now states:

(7) Where a local education authority incur costs—

(a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes, or

(b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes, they shall recover those costs from the Governing Body except in so far as the authority agrees with the Governing Body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.

(7A) Any amount payable by virtue of subsection (7) by the Governing Body of a maintained school in England to the local authority may be met by the Governing Body out of the school’s budget share for any funding period if and to the extent that the condition in subsection 7(B) is met.

(7B) The condition is that the Governing Body are satisfied that meeting the amount out of the school’s budget share will not to a significant extent interfere with the performance of any duty imposed on them by section 21(2) or by any other provision of the education Acts.

(8) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.