

Schools Forum			
REPORT TITLE	Proposed Amendments to the Scheme of Delegation		
KEY DECISION	Yes	Item No.	5
WARD	N/A		
CLASS	Part 1	Date	4 October 2018

1 Purpose of the Report

- 1.1 The purpose of this report is to consider a revision to the Scheme of Delegation to schools.

2 Recommendation

- 2.1 The Schools Forum is recommended to:

- 2.1.1 Agree to incorporate the proposed amendments to the scheme of delegation to schools as set out in Appendix 1 to this report.

3 Background

- 3.1 Prior to the start of each financial year the Schools Forum undertakes an annual review of the scheme of delegation and its finance manual. This is to incorporate any legislative changes required and any changes which the Schools Forum consider desirable to make. In response to a potential legal challenge to the current provision of Section 6 of the scheme of delegation (pertaining to the costs of dismissals, resignations and premature retirement set out in Annex E of the Scheme) and an enquiry from the DfE following a complaint to the Secretary of State, it became necessary to review the provision set out in this section of the Scheme. There has been considerable delay in reaching a proposal which could be brought to Schools Forum. Officers apologise for the lengthy delays.

4 Redundancy

- 4.1 Lewisham's Scheme of Financial Delegation, in line with national requirements which have been in place for many years, gives schools the freedom to exercise choice over their spending plans. Like other local authorities, Lewisham Council can only impose regulations which are consistent with the need for accountability and control over the expenditure of public funds. The Scheme expects all schools to set a balanced budget and to manage within the resources made available to them. This is specifically a duty on the governing body of the school.
- 4.2 Proposed changes to the Scheme of Delegation to schools were considered by the Schools Forum in October 2017. There was subsequent consideration and agreement to changes to the Scheme in December 2017. In the light of further concerns raised by the DfE and in accordance with further external advice, it is

proposed that further amendments are necessary and these changes are reflected in the documents appended to this report.

- 4.3 The Council had the approach of automatically charging redundancy costs to school budgets unless it identified good reason to do otherwise. After discussions with the Department for Education and having sought external legal advice, the local authority has revisited its procedures and proposes the amendments set out in Appendix 1.
- 4.4 Members of the Schools Forum should note that the Appendix to this report sets out a proposed revision to Section 6 of the Scheme 'for the costs of dismissals, resignations and premature retirement' with the revised Annex E to the Scheme incorporating these proposed changes.
- 4.5 Essentially, the proposed revisions to the Scheme clarify the position in relation to the circumstances in which costs incurred in respect of dismissals, resignations and premature retirement may or must be met from a school's budget in accordance with the requirements of section 37 of the Education Act 2002. The proposed amendments of Annex E, which is attached at Appendix 1 sets out the Council's policy in relation to the consideration of such matters.
- 4.6 As set out in the proposed amendments at Annex E, Section 37 of the Education Act 2002 sets out two basic rules for members of staff of a maintained school. Firstly, that costs incurred by the local authority in respect of premature retirement must be met from the school's budget share unless (and to the extent that) the authority and governing body agree otherwise in writing. Secondly, that costs incurred by the local authority in respect of dismissal or securing the resignation of a staff member may be met from the school's budget share, but only if (and to the extent that) the local authority has "good reason" to deduct those costs from the school's budget share.
- 4.7 Members of the Schools Forum will note that the proposed revision to the Scheme sets out the local authority's policy and revised process for the consideration of such matters on an individual case basis. Members will also note that whilst it is not considered possible to satisfactorily provide an advance definition of what may constitute "good reason" for charging school's budget share, the examples provided in DfE guidance whilst helpful, are not to be treated as exhaustive.
- 4.8 Members will also note that even in cases where "good reason" for charging a school's budget share exists in principle, the local authority may exercise its discretion so as not to do so, in whole or in part.

5 Further Information

- 5.1 Should you require any additional information regarding the items contained in this report please contact:

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Proposed amendments to Scheme of Delegation to Schools

Section 6

Para 6.2.25 to be reworded as follows:

“For the costs of dismissals, resignations and premature retirement, see Annex E.”

New Annex E (to appear as set out below)

Costs of dismissals, resignations and premature retirement

Statutory framework

The circumstances in which costs incurred in respect of dismissals etc. may or must be met from a school's budget share, whether in whole or in part, are addressed by section 37 of the Education Act 2002.

Separate rules apply where the member of staff concerned is employed (wholly or partly) for “community purposes” (see below).

Otherwise, the two basic rules laid down by the legislation for members of the staff of a maintained school are that:

- (A) Costs incurred by the local authority in respect of premature retirement MUST be met from the school's budget share UNLESS (and to the extent that) the authority and the governing body agree otherwise in writing [section 37(4)]; and
- (B) Costs incurred by the local authority in respect of dismissal or securing the resignation of the staff member MAY be met from the school's budget share BUT ONLY IF (and to the extent that) the authority has “good reason” to deduct those costs from the budget share [section 37(5)].

What follows sets out Lewisham's policy in relation to these matters. Further guidance and assistance may, if required, be sought from the Lewisham's Schools HR service in particular cases.

Premature retirement costs

Any governing body contemplating incurring costs in respect of premature retirement, and inviting Lewisham to agree that the costs will be met otherwise than from the school's budget share, should raise the issue with Lewisham at the earliest opportunity, and certainly in any normal case before any commitment to such costs has been made. Lewisham will normally require a full reasoned justification as to why it would be appropriate to give its agreement, and (given what is said below about the management of staffing and budgets) it is expected that such agreement will only exceptionally be forthcoming, although applications will be considered on their merits.

Other dismissal/resignation costs

The legislation does not define what is a “good reason” to charge such costs to the school’s budget share (save that a “no redundancy” policy cannot itself be a good reason).

The DfE’s guidance *Schemes for Financing Schools* (December 2015) suggests that schemes should contain a provision setting out the circumstances “in which exceptions will be made”. When read with Annex B to the guidance, it appears that the DfE’s advice is that an authority’s scheme should set out its policy on what it will treat as a good reason for charging dismissal/resignation costs to a school’s budget. Annex B suggests that: “Although each case should be considered on its merits, this should be within an agreed framework.” Annex B also sets out a number of examples of situations in which a good reason for charging costs to a school’s budget might exist:

- Where a school has decided to offer more generous terms than the authority’s policy.
- Where a school is otherwise acting outside the authority’s policy.
- Where staffing reductions are being made which the authority does not believe to be necessary to set a balanced budget or meet the conditions of a licensed deficit.
- Where staffing reductions arise from a deficit caused by factors within a school’s control.
- Where a school has excess surplus balances, and no agreed plan to use them.
- Where a school has refused to engage with the authority’s redeployment policy.

Lewisham has considered the DfE guidance as set out above. It agrees that it is appropriate to consider whether a good reason applies in each case on its own merits. To that end, when relevant costs have been or are expected to be incurred, the school will be expected to complete a proforma giving details of the member of staff whose employment is terminating or has terminated, the reasons for and terms of the termination, and other relevant circumstances. Lewisham may seek other information if necessary. Lewisham’s Schools HR service will then record on the proforma what the costs associated with the dismissal are, and will give an initial view as to whether (and if so, why) good reason exists to charge all or part of those costs to the school’s budget. The school will have the opportunity to comment upon any such proposal to charge costs to its budget. If there is disagreement between Schools HR and the school as to what should happen, a decision will normally be taken by an officer at a senior level within the Directorate of Children and Young People, consulting if necessary with Schools HR and/or other officers. Exceptionally, the Executive Director Children and Young People may decide to refer such an issue for decision at an appropriate level outside the Directorate. Schools will be expected to co-operate fully and promptly with this process, and a failure to do so may itself be treated as a good reason to charge the relevant costs to the school’s budget share.

Lewisham does not consider that it is possible satisfactorily to provide a complete advance definition of what may constitute a good reason for charging the school’s budget share. The examples of “good reason” given in the DfE guidance are helpful and applicable but will not be treated as exhaustive. In particular, Lewisham expects

schools to manage their staffing and budgets responsibly, both in the short term and over longer periods. This includes developing plans to adjust expenditure in line with actual and anticipated funding and income levels. There is an expectation that in many cases it should be possible to avoid the need for redundancies, or payments in lieu of notice, by appropriate planning and vacancy management. Schools which have incurred redundancy costs will be expected to explain why such costs could not reasonably have been avoided, and the absence of a satisfactory explanation is likely to be regarded as a good reason for charging the school's budget share. Likewise, schools are expected to engage at an early stage with the Schools HR service, and to follow Lewisham's policies, and other good employment practice, with a view to avoiding or minimising the cost of redundancies through redeployment. If a school has significant unspent and uncommitted balances (even if those balances are not "excess" ones as contemplated by the DfE guidance), and no pressing need to retain those balances, then that may constitute a good reason why costs should fall to the school's budget share, rather than having to be met from other hard-pressed budgets.

Where an individual's employment is terminated for reasons other than redundancy (e.g. misconduct or lack of capability), it should normally be possible to effect this without additional cost by following proper procedures, and giving any notice to which the individual may be entitled. It is acknowledged that there may be cases where that is not so, but the incurring of unnecessary costs will normally be regarded as a good reason for charging the school's budget share. Where liability for costs arises from an adverse decision of a court or tribunal concerning the lawfulness of a dismissal, or where it has been necessary to pay sums by way of settlement in the face of a claim or potential claim of such unlawfulness, then that will normally be regarded as a good reason for the school's budget share to be charged – although the LA will always be prepared to consider the individual circumstances of the case.

It is only in unusual cases that it is appropriate for payments to be made to secure the resignation of an individual employed to work at a school. Schools which anticipate offering such payments should consult with Schools HR in advance. A failure to do so, or a departure from the advice given, will generally amount to a good reason for charging any resulting additional costs to the school's budget share.

Even where there is a "good reason" for charging costs to a school's budget share, Lewisham may exercise its discretion so as not to do so, in whole or in part. A favourable exercise of discretion may be considered, for example, if meeting the costs in full would have a disproportionate impact upon the school's budget and functioning. However, schools must be aware that there is no centrally retained budget or contingency fund for meeting such costs, and that Lewisham is therefore likely to take a rigorous approach in such cases.

Staff employed for community purposes

"Community purposes" refers, in relation to the staff of a maintained school, to members of staff employed for the purposes of the provision of services and facilities under section 27 of the Education Act 2002.

In such cases, the legislation requires both costs in respect of premature retirement, and costs in respect of dismissal, or incurred for the purpose of securing resignation, to be recovered from the governing body except in so far as it is agreed in writing between the authority and the governing that they shall not be so recoverable.

Where schools wish to seek such agreement, the same guidance and policy applies as set out under "Premature retirement costs" above.

The governing body may meet such costs out of the school's budget share, but only if it is satisfied that to do so will not to a significant extent interfere with the performance of its duties.

Where a person is employed partly for community purposes and partly for other purposes then section 37(9) provides that the costs are to be apportioned between the two purposes.