



Schools Forum

Report title: Term Time Only Compensation

Date: 6th May 2021

Key decision: No

Item number: 3

Outline and recommendations

As part of the Council's Governance process a report will be presented to Mayor and Cabinet on the 19th of May 2021 to detail the implications of the Term Time Only claim

At a recent meeting (22nd April 2021) between the LA and Schools Forum representatives, it was agreed that an extraordinary meeting of Schools forum should be convened to enable an update to be taken to the Mayor and Cabinet meeting on the 19th of May 2021.

This report considers the potential financial implications and seeks the views of Schools forum to enable an update to be provided to Cabinet as mentioned above.

Schools Forum is asked to note

- The background resulting to Term Time Only claim, including recognising that the original basis for the calculation was **not** set by Lewisham Council, but was set by the now disbanded **Inner London Education Authority**, which LA adopted. A supporting presentation will be given to Schools Forum to provide further detail including any updates from discussions with Other LA, Trade Unions etc.*
- In principle 50% funded support from Central funds towards the potential schools' based liability, subject to Mayor and Cabinet meeting in May. The anticipated overall potential liability is estimated to be in the region of £4m to £5m.*
- If the matter is resolved with the unions Lewisham Council will also have additional liability of non-school based staff and the cost of supporting administration costs.*
- Information contained in this document is based on 2019/20 and includes estimates for data that was not available at the time, as such this information can only be used as point of discussion and to agree the overarching principles to be applied to the final data. The final figure could also increase depending on those staff who come forward who have left but could be entitled to compensation.*
- Note the request from Trade Unions is to support back pay from 2014, consideration is being taken as to whether to fund at March 2021 levels. There is an ongoing discussion with regards effect on the Pension Fund which could potentially add to the overall liability. This will depend on number of staff in the pension scheme*
- Various options have been considered to provide contribution to schools however the fairest and easiest option is a percentage contribution.*

Schools Forum is asked to agree

- The use of a percentage method of distribution to support schools as discussed in this report*
- Agree the principle of
 - full reimbursement for Nursery schools,*
 - Agree 10% or 20% for Special schools*
 - Agree the redirection of funding from uncommitted funds to support TTO**
- To receive a further report to update including final allocations, practicalities with regards implementation e.g. loans. cash advances etc.*

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Timeline of engagement and decision-making

Following this meeting, an update will be provided to the 19th May 2021 Cabinet meeting.

A further report will be presented to schools forum as soon as discussions with Trade Unions, ACAS, etc are concluded with a detailed implementation process including practicalities around schools on Lewisham Payroll, Separate Payroll, Cash Flow, Loan Agreements etc.

Summary

- 1 This report provides an illustration of the potential cost implication of finalising the Term Time Only back pay claim. The Local Authority is still in negotiation with Trade Unions. The data in this report is therefore used to seek approval from Schools forum on the basis of principles.
- 2 The overall liability is estimated to be in the region of £4m to £5m based on the 2019/20 payroll data.
- 3 A report is being considered by Mayor and Cabinet on the 19th May 2021. Recognising the value of the potential liability the Council is considering a financial support package. Initial discussions suggest this could be circa 50% for the schools cost and is therefore used as the basis of this report.
- 4 The overall objective is to seek agreement for the fairest approach and principle to assist schools to meet the remaining costs of funding the settlement
- 5 A further report will be presented to schools forum in due course with regards
 - a. Update from Mayor and Cabinet meeting
 - b. Update on final negotiations
 - c. Timelines for payment of backpay (including any practicalities with regards the offer and acceptance process , payments details including cashflow,)

Background

- 6 In 2018, Greenwich Council undertook discussions with Trade Unions and agreed a settlement to support compensation for staff who worked "Term Time Only", and due to the manner in which the leave entitlement was carried out had effectively be disadvantaged financially. Since this agreement, further discussions have taken place with various other Local Authorities in relation to Term Time Only claims, all of whom are at different stages of their negotiations.
- 7 It should however be noted that the basis of the calculation for Lewisham was inherited from the Inner London Education Authority.
- 8 **A presentation will be made at forum to provide more detailed information on the term time only claim.**
- 9 The main focus of this report is to consider an equitable and fair method of working effectively with out schools to dispense this potential liability.
- 10 As mentioned above a report is being considered by Mayor and Cabinet on the 19th of

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May 2021, to consider the Term Time Only implications with a view to agreeing support for schools.

Establishing the Value of Potential Financial Claim

- 11 To enable the Local Authority to have some estimate of the value of potential liability involved, initial work was undertaken in February 2020, using the data available. This data comes with caveats including :
- a. Incomplete information –data for school off payroll for example was not available so an assumption of similar size schools was made
 - b. Since 2020, pay awards have taken place which have seen increases at the “lower” pay grades –this will also potentially impact on any final settlement
 - c. Movement in staff contracts potentially
- 12 The overall value of the potential Schools based liability is potentially £4.4m with regards back pay. Further discussion is taking place with Trade Unions with regards to claimed loss of pensions contributions. This is still in discussion so needs to be noted as a potential further liability.
- 13 **Schools Forum should note that maintained schools and converter academies are in scope for this discussion and not stand alone academies. Converter academies are only in scope to the point of transfer date and in accordance with the terms of the relevant Transfer Agreement’.**

Equitable distribution of any central funding –options for discussion

- 14 Initial discussions with Schools’ representatives suggested that Officers should develop options for consideration on how best to distribute any central funding support to schools
- 15 Various options were considered including
- a. Funding per form of entry (not pupil numbers as some schools have had significant reductions in pupil numbers recently, as not to disadvantage those schools)
 - b. Funding per form of entry and EHCP –on the basis that a school with higher EHCP could potentially employ more staff that would be within scope for the settlement
 - c. Funding per form of entry, EHCP and a equal lump sum
- 16 When the options were considered with the potential liability (based on the initial costings see para 11), it was clear that there was limited correlation between potential liability and any formulaic method of financial support. This is understandable as under the principles of Local Management of Schools (LMS), all schools operate very differently some use term time only staff more than others, some schools employ their own cleaners etc
- 17 The fairest and most equitable option would be to provide a flat rate reimbursement.
- 18 **Schools Forum is asked to note the options considered and approve the use of a flat rate reimbursement method.**
- 19 Please also note that the discussions with Schools representatives noted that it would not be appropriate for the LA to consider surplus/deficit position of schools in any distribution, as it was deemed that schools with strong financial management (i.e strong surplus positions) would feel penalised.
- 20 The table 1 below shows the exemplification of potential overall liability per sector.

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Primary	£2,896,123
Secondary	£583,191
All-through	£180,743
Sub total	£3,660,057
PRU	£58,271
special	£607,896
Nursery	£77,522
Sub total	£743,690
	£4,403,747
Plus Central Staff	£243,856
Plus administration	£200,000
Total	£4,847,603

Table 1 –exemplification of liability over phases

21 Assuming a 50% contribution from Central funds, Schools forum is asked to consider the application of the estimated £2.2m (i.e at 50%) across the different phases recognising the disproportionate pressure on special schools. e.g 4 schools equate to £600k estimated liability..

22 Table 2 below shows the impact across the phases if Special Schools, PRU and Nursery Schools are supported in full

Table 2

Option 1 Assumes Special Schools and Nursery Schools are fully reimbursed						
			Central Funds		Schools	
Primary	£2,896,123		£1,153,829	40%	£1,742,294	60%
Secondary	£583,191		£232,346	40%	£350,845	60%
All-through	£180,743		£72,009	40%	£108,734	60%
Sub total	£3,660,057		£1,458,184		£2,201,874	
PRU	£58,271		£58,271	100%	£0	0%
special	£607,896		£607,896	100%	£0	0%
Nursery	£77,522		£77,522	100%	£0	0%
Sub total	£743,690		£743,690		£0	
	£4,403,747		£2,201,874	50%	£2,201,874	50%
Plus Central Staff	£243,856		£243,856			
Plus administration	£200,000		£200,000			
Total	£4,847,603		£2,645,729	55%	£2,201,874	45%

23 Table below shows the same again with nursery schools being supported in full but special schools making a contribution of 10%

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Assumes Special Schools take 20% liability and Nursery Schools are fully reimbursed					
		Central Funds		Schools	
Primary	£2,896,123	£1,259,254	43%	£1,636,869	57%
Secondary	£583,191	£253,575	43%	£329,616	57%
All-through	£180,743	£78,588	43%	£102,155	57%
Sub total	£3,660,057	£1,591,417		£2,068,640	
PRU	£58,271	£46,617	80%	£11,654	20%
special	£607,896	£486,317	80%	£121,579	20%
Nursery	£77,522	£77,522	100%	£0	0%
Sub total	£743,690	£610,456		£133,234	
	£4,403,747	£2,201,874	50%	£2,201,874	50%
Plus Central Staff	£243,856	£243,856			
Plus administration	£200,000	£200,000			
Total	£4,847,603	£2,645,729	55%	£2,201,874	45%

- 24 This notes that the 20% contribution from Special Schools would generate circa £130k to reduce the potential liability for primary, secondary and all through schools. Every 10% movement has an effect of £66k i.e 10% is £66k, £20% is £133k, 30% is circa £200k
- 25 **Schools Forum is asked to discuss and agree if Special Schools should be expected to take some cost impact and if yes at what percentage. LA proposal would support 20% which would broadly see a £30k pressure per special school and £12k pressure on the PRU.**
- 26 **Schools Forum is asked to support a 100% contribution for Nursery Schools, recognising the recent financial challenges faced by nursery schools including no support for Covid etc**

Re-prioritisation of uncommitted funds

- 27 Schools Forum will recall that at the January 2021, budget setting meeting, an uncommitted £1m was noted. It was agreed in principle that the funding could support Growth fund and Falling rolls fund. At present the only actual commitment on this funding is supporting bulge classes which would utilise around £36k.
- 28 With respect to falling rolls, funding can only be provided where a school is considered good or outstanding per the last Ofsted inspection. The additional criteria is that places would be required in the near future, with a final consideration of the schools surplus balance position. Analysis has been undertaken to consider the potential cost impact of this using a 5% threshold and a 10% threshold
- 5% threshold would utilise circa £360k and support 9 schools. Please note, the schools would also need to meet the surplus balance position criteria (i.e they don't have excessive surpluses).
 - 10% threshold would utilise circa £108k and support 3 schools
- 29 As some of the schools in scope are academies, we would not have information on their final balance positions as part of our remit.

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- 30 **Schools forum to consider if the falling rolls fund should be supported either at 5% or 10% or not supported in 2021/22.**
- 31 **Schools Forum to further consider if any uncommitted funding could be used to support the TTO claim position.**
- 32 Table 4 below shows the benefit of re-prioritisation of funds to TTO assuming for illustration a figure of £700k. The table below assumes special schools contribute at 20% and nursery schools receive full rebate, should the final forum decisions vary from these assumptions the table would require recasting, however for the purpose of illustration the table shows that if the £700k is used to support term time only, then this would reduce the overall direct liability for schools £1.5m from a previous £2.2m.

Assumes Special Schools take 20% liability and Nursery Schools are fully reimbursed							
		Central Funds		£700k re priorities of growth and falling rolls funds		Schools	
Primary	£2,896,123	£1,259,254	43%	£553,895	19%	£1,082,975	37%
Secondary	£583,191	£253,575	43%	£111,538	19%	£218,078	37%
All-through	£180,743	£78,588	43%	£34,568	19%	£67,587	37%
PRU	£58,271	£46,617	80%	0	0	£11,654	20%
special	£607,896	£486,317	80%	0	0	£121,579	20%
Nursery	£77,522	£77,522	100%	0	0	£0	0%
	£4,403,747	£2,201,874	50%	£700,000	16%	£1,501,874	34%
Plus Central Staff	£243,856	£243,856					
Plus administration	£200,000	£200,000					
	£4,847,603	£2,645,729	55%	£700,000	14%	£1,501,874	31%

Next steps

- 33 Following from this meeting, an update will be provided to Mayor and Cabinet to agree the value of financial support.
- 34 Discussions will continue to seek to consider if the agreement can be finalised with the trade unions and their members
- 35 Should an agreement be reached with the unions, individual ACAS agreements need to be undertaken with individual staff that may be affected and they and ACAS will need to consult with staff.
- 36 There will also be a period during which staff who have left could potentially lodge a claim if appropriate
- 37 Schools forum should note that this process is will be very time-intensive and in reality individuals are likely to receive payment more nearer to the late autumn period
- 38 **Schools with Lewisham as payroll provider** -With regards to the payments process for schools that are on the Lewisham payroll, the process will be largely managed centrally, with an discussion on financing the schools potential liability (e.g from reserves, this years funding, loan etc)
- 39 **Schools off Lewisham payroll** – detailed guidance will need to be provided to ensure that the payment date is in harmony with Lewisham payroll. As part of the discussion the schools would need to lead on the estimated position and advise the finance service of their expected cashflow needs as a cash advance. Any reimbursement would be on a final evidence based process, the school would be required to provide clear statement of costs incurred and value

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of reimbursement applied for. Further individual discussions would then need to take place to determine financing of the cash advance (e.g from reserves, this year's allocations and or loan –or a combination). **Schools forum to note that it is proposed that a meeting is held with all school who source their own payroll providers to ensure that there is clarity in terms of what is required and when.**

Financial implications

- 40 The report notes the financial implications for both the Local Authority and each school phase.
- 41 Outcome of this meeting will enable an update to be provided to Mayor and Cabinet to support the decision making process and enable funding to be agreed to support schools.
- 42 The report notes the redirection of funding to further reduce the pressure on schools
- 43 Impact at an individual school level will vary depending on there overall surplus/deficit position and where schools are potentially in a a structured deficit position.
- 44 The Local Authority in addition to the financial support (subject to Mayor and Cabinet meeting on the 19th May) will consider potential support in the form of loan agreements.
- 45 The report also notes that in addition to the school based liability, the LA also has cost pressures from staff centrally managed and also the adminsitration cost of finalising the back pay.
- 46 The report notes the potential additional cost arising from pension top up which is currently still in discussion.

Legal Comments

- 47 It should be noted that no settlement of the dispute has yet been agreed with the unions or authorised by Mayor and Cabinet and no admission of any liability by LBL to staff or unions has to date been made or is made by this report, or any discussions relating to it.

Equalities Impact

- 48 There are no direct equalities impact arising from this report as the report is agreeing an equitable support for schools with the support of schools forum.

Author – Mala Dadlani Group Finance Manager

Mala.dadlani@lewisham.gov.uk

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