



## Schools Forum

### **Report title:**

**Understanding the Different Options for Protecting your School, Pupils and Wider Community - Briefing for Schools Forum on the RPA (Risk Protection Arrangement)**

**Date:** 19<sup>th</sup> January 2021

**Key decision:** No.

**Item number:** 10

### **Outline and recommendations**

*This report notes the introduction of Risk Protection Arrangement (RPA) and considers the current the insurance arrangements. Schools Forum is asked to note this report.*

## Timeline of engagement and decision-making

Following the meeting of Schools Forum on 19<sup>th</sup> January, there will be a series of roadshows by the insurance team to update schools on the RPA and the Lewisham insurance offer.

Schools will be required to make a decision on whether to stay within the council's contract or move towards the RPA before 1<sup>st</sup> June 2021.

### 1. Background and Purpose

- 1.1. Following consultation regarding extending the academies risk protection arrangement (RPA) to local authority maintained schools (LAMS), 'Ministerial approval was given and changes to the School and Early Years Finance regulations have been put in train to allow for the RPA to operate for LAMS from 1 April 2020.'
- 1.2. There was a stark difference in responses between respondents from the school community itself, local authority representatives and the insurance sector. The full response to the public consultation on RPA arrangements can be found at <https://www.gov.uk/government/consultations/extending-the-academies-risk-protection-arrangement-to-la-schools>
- 1.3. Broadly, and perhaps understandably as the scheme has been promoted as saving money, schools who responded were more supportive.
- 1.4. This paper aims to set out the main differences between the RPA offering to LEA maintained schools (LAMS) and the current insurance arrangements in place via the LEA. It seeks to suggest the main considerations schools should take account of when evaluating their options and taking decisions on their future arrangements for protecting their schools, pupils and wider communities against risk.
- 1.5. The RPA does have different rules and rates for Academy trusts, Church Academies, Voluntary Aided, Foundation and Foundation Special Schools and Voluntary Controlled Schools but it is not possible to cover all of the differences within this briefing.
- 1.6. **Schools Forum to note that the current Long Term Agreements with insurers under the LEA arrangements will expire on 1 December 2021. Any schools wishing to leave the LEA's arrangements are required to give notice of their intention by 1 June 2021.**

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## **2. Executive Summary**

- 2.1. The Government extended the RPA to LAMS from 1 April 2020.
- 2.2. There are significant differences between the RPA and the LEA insurance arrangements that are set out in this paper.
- 2.3. There initially appears to be a cost saving when the RPA pricing is compared to the cost of the LEA insurance arrangement but the cost (financial and administrative) of procuring the omitted covers and services needs to be added to the RPA cost.
- 2.4. The RPA is not an insurance policy. It is a scheme whereby risk is transferred and an indemnity is given. Under the RPA there is no guarantee of reinstatement of a school at its original location or size. Scheme rules would operate and there would be consultation between the LEA, school and the Government on what should be provided in place of a school that was severely damaged and considered uneconomic to repair.
- 2.5. Statutory inspections and insurance for lifts, lifting equipment and pressure plant is not included in the RPA and would have to be procured separately, at an additional cost.
- 2.6. Contract Works insurance is restricted to £250k and does not meet contractual requirements for a policy to be maintained in joint names. So, for major projects additional cover, which is not readily available and is expensive, would be required.
- 2.7. There are differences in the basis of cover under the RPA liability policies which could leave gaps in cover, particularly around the time of change-over.
- 2.8. The services offered under the LEA insurance arrangements are wider than under the RPA and the cost and benefit of those services should be factored into consideration of which scheme to choose.
- 2.9. The LEA would have to charge a 'premium for risk/levy to schools who leave the LEA arrangements and join the RPA to cover the risks that potentially remained with the LEA which would be in addition to the RPA costs.
- 2.10. Any schools wishing to leave the LEA arrangements are required to give notice by 1 June 2021 and will remain in the LEA arrangements until 30 November 2021 when the existing Long Term Agreements expire.
- 2.11. There is no guarantee that the RPA rates will be sustainable in the long term as their claims experience develops.

## **3. Assessing Value for Money**

- 3.1. The National Audit Office (NAO) uses three criteria to assess value for money in the public sector:
  - Economy: minimising the cost of resources used or required (inputs) – spending less;
  - Efficiency: the relationship between the output from goods or services and the

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resources to produce them – spending well;

- Effectiveness: the relationship between the intended and actual results of public spending (outcomes) – spending wisely.
- 3.2. In the insurance context, value for money goes beyond a simple comparison of each ‘per pupil’ rate (economy). You ultimately need to provide the right protection (effectiveness) for your school and pupils with a provider who understands your needs and has the resources to get you back up and running when it counts (efficiency).
- 3.3. With the current austerity measures and financial constraints, schools are under increasing pressure to make their money work harder. Obviously, this includes getting maximum value from your insurance. The Department for Education’s announcement to extend the Risk Protection Arrangement (RPA) to local authority maintained schools may initially appear to promise you cost savings, but you will need to understand how your service and cover differ and whether there will be ‘hidden’ additional costs to satisfy yourself that you are achieving value for money, whichever scheme you choose.

#### **4. Main Price/Cover Differences between the RPA and LEA Insurance & Risk Programme (Economy)**

- 4.1. The first consideration is that the RPA is an indemnity scheme. It is not a traditional insurance policy. It is a mechanism through which the cost of risks that materialise from the date of membership may be covered by government funds. There would be no obligation on the part of the Government to reinstate a particular building, at a particular location, in the event of a loss, as there would be with a conventional insurance policy rather the scheme rules would operate. Under the RPA, the Scheme Administrator (the Government) could exercise its rights to enforce a merger or relocation of a school, rather than an ‘as was’ reinstatement although there would be an obligation to consult with the LEA and school. In recent history, there have been three fires in schools in Lewisham that have necessitated a total or partial rebuild – Perrymount, Stillness and Hatcham.
- 4.2. The cover being provided by the RPA appears to be mostly comprehensive and whilst there are differences, many would not pose significant problems. The exceptions here would appear to be the omitted covers of statutory engineering inspection and insurance services, which could be procured outside of the RPA but at a cost. The restriction of contract works insurance to £250k which would be particularly difficult and expensive to procure separate to the main property insurance policy in joint names to comply with contractual obligations is particularly problematical. The fire at Hatcham involved contract works and even with the correct insurances in place, years of litigation followed to recover costs.
- 4.3. The current price per pupil for membership of the RPA is £19 (a small increase on the 2019/20 price). The all-inclusive per pupil price for the more comprehensive LEA insurance and risk arrangements is approximately £26 per pupil.

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- 4.4. Schools would have to factor in the premium and administrative cost of any additional covers and support services that they would need to procure to ‘top-up’ the RPA cover if they chose to leave the LEA scheme. As explained throughout this document, price is only one of the considerations when assessing value for money.
- 4.5. The table below depicts the main risks covered by the RPA and compares them to the current cover under the LEA Scheme. The most significant differences in cover are discussed in more detail below.

Cover Type	RPA Limit of cover	LEA Insurance	Comment/Risk
<p><b>Material damage</b></p> <p>Loss or damage to buildings, contents, computers and stock owned by or the responsibility of the school</p>	<p>Reinstatement value of the property</p>	<p>Reinstatement value of the property</p>	<p>Subsidence is covered under the RPA (but not if it pre-dated membership) but not covered under LEA insurance</p>
<p><b>Business interruption (BI)</b></p> <p>Compensation for increase in cost of working, resulting from interruption or interference with the business following a material damage loss</p>	<p>£10,000,000 any one loss (36 month indemnity period)</p>	<p>£10,000,000 any one loss (36 month indemnity period)</p>	<p>No major differences</p>
<p><b>BI – Loss of data</b></p> <p>Loss of data covers the expense associated with reinstating data from back-up servers</p>	<p>Not included</p>	<p>Included</p>	<p>Risk would be uninsured under RPA or procured at additional cost</p>
<p><b>Works in progress/Contract Works</b></p> <p>Works in progress covers properties which are undergoing repair, renovation or major rebuilding work</p>	<p>£250,000 (fixed)</p>	<p>£2,000,000 limit for any one contract</p>	<p>Significant risk. Insufficient limit and no facility to have cover to meet contractual requirements – e.g. joint names etc. Difficult to procure separately but, if available, would be significant additional cost</p>

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<p><b>Money</b></p> <p>Loss of money whilst in transit or elsewhere</p>	<p>Various, including cash on premises or in transit – max limit £5,000</p>	<p>Various, including cash on premises or in transit – max limit £20,000</p>	<p>Medium risk if insignificant money handled rises to red if money above £5k handled.</p>
<p><b>Public liability</b></p> <p>For all sums the school may become legally liable to pay</p> <p>(including claimant costs and expenses) as damages in respect of accidental third party injury</p>	<p>Unlimited</p>	<p>£50m</p>	<p>Both contain 'inner limits' for certain risks that are not considered to present any significant risk.</p> <p>The RPA is written on a 'claims made' basis which is contradicted in the document – this could result in claims being uninsured.</p>
<p><b>Employers' liability</b></p> <p>All sums the school may become legally liable to pay</p> <p>(including claimant costs and expenses) following death, injury or disease sustained by Employees and arising out of and in the course of their employment by the school</p>	<p>Unlimited</p>	<p>£50m</p>	<p>Both contain 'inner limits' for certain risks that are not considered to present any significant risk.</p> <p>The RPA is written on a 'claims made' basis which is contradicted in the guidance document – this could result in claims being uninsured</p>
<p><b>Professional indemnity</b></p> <p>Actual or alleged breach of professional duty. For example, required for members of staff who perform OFSTED inspections</p>	<p>Unlimited</p>	<p>£5m</p>	<p>LEA cover is for declared activities only and considered sufficient for known activities</p>
<p><b>Governors' liability (including trustees)</b></p> <p>Governor liability expense</p>	<p>£10,000,000</p>	<p>Included in Public Liability above</p>	<p>The RPA is written on a 'claims made' basis which is contradicted in the guidance document – this could result in claims being uninsured</p>
<p><b>Personal accident</b></p> <p>Compensation for</p>	<p>£100,000</p>	<p>£2,500,000</p>	<p>The LEA policy contains different limits for different categories of staff The figures shown are the</p>

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accidental bodily injury to employees,  governors, trustees, volunteers and pupils of the school  whilst on the business of the school in the UK			maximums.
<b>School journey (winter sports included)</b>  Compensation for travel related costs in the UK and overseas.  cover includes: medical expenses, loss of baggage,  cancellation, curtailment, rearrangement, change of itinerary  and accidental bodily injury to employees, governors,  volunteers and pupils whilst on business of the school	<b>Various – £10,000,000 medical expenses cover</b>	<b>Various Medical expenses unlimited</b>	The LEA policy is optional for schools
<b>Legal expenses</b>  Reimbursement of legal expenses relating to employment  disputes, contractual disputes, tax investigations, civil actions  in relation to school expulsions	<b>£100,000</b>	<b>Not covered</b>	Not currently provided by LEA separately though some cover exists under Public and Employers' Liability
<b>Engineering inspection</b>  Inspection of equipment requiring a statutory inspection  (for example: lifts, boilers)	<b>Not covered</b>	<b>Covered by LEA Scheme</b>	Not currently covered by RPA. Would incur additional cost as inspection is a statutory requirement
<b>Engineering insurance</b>  Insurance of (for example:	<b>Not covered</b>	<b>Covered by LEA Scheme</b>	Not currently covered by RPA. Would incur additional

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lifts, boilers etc.) for sudden and unforeseen damage/explosion			cost.
<b>Motor</b>  Motor insurance cover for employees and volunteers to use insured vehicles	<b>Not covered</b>	<b>Not covered</b>	Schools currently make their own arrangements or buy into the Council's fleet arrangements
<b>Cyber insurance</b>  Cyber insurance provides protection against external threats  and internal mistakes that impact a firm's information  Technology and computer systems.  Covers may include: cyber-terrorism, cyber extortion, civil  fines and penalties (GDPR), privacy breach and reputational  rebuild costs, security and privacy liability, digital asset  replacement expenses	<b>Not covered</b>	<b>Not covered specifically but some elements are already included within other policies (e.g. GDPR)</b>	The LEA are currently considering options for purchasing this cover.

- 4.6. The above is a summary of the main differences, predominantly comparing limits of indemnity/availability of cover and any onerous differences in cover. The documentation, rules, terms and conditions, policy wordings etc. for both the LEA scheme and the RPA run into many hundreds of pages and it is not possible to identify each and every difference in this document.
- 4.7. In the opinion of the Group Manager, Insurance & Risk, the low limit of indemnity (£250k) for the Works in Progress/Contract Works cover presents the greatest difficulty. Basically, when a contract is let for works at a school, the standard JCT contracts require insurance to be maintained in the joint names of the school and the contractor and the primary insurer does not assume responsibility for the 'works'. The RPA will not allow joint names cover and it is extremely difficult to arrange this cover separately from the main property insurance and the £250k limit is clearly insufficient for major works.
- 4.8. She considers the basis on which the liability policies are written may present a risk, particularly at the beginning and end of any membership year as claims must be notified within the membership year and the RPA will only deal with claims for certain categories (e.g. alleged abuse, asbestos exposure etc.) within certain time periods. These are technical matters that would need exploring

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further as the documentation issued is contradictory around whether the cover is 'claims made' or 'claims occurring'. The LEA's cover is 'claims occurring'.

- 4.9. The cost of procuring and administering the omitted cover for statutory inspection service would need to be added to the per-pupil price quoted. Failure to maintain these services would be a breach of legislation and could result in criminal prosecution as well as civil claims in negligence should an accident occur.

## **5. Other Considerations (Efficiency and Effectiveness)**

- 5.1. There will be services and breadth of offering that the LEA's insurance team can provide (aided by the appointed broker and insurers – forming a multi-layer support structure) which will not be available from a single source under the RPA scheme arrangements.
- 5.2. Under the RPA arrangements, schools would need to notify claims themselves, identifying which were covered, and under which policies. The RPA claims handlers are located in Glasgow. Schools would have to communicate directly with third parties and their solicitors to advise on progress with any claims made against them. Schools would receive Court Proceedings etc. and need an awareness of the protocols and timescales for handling them. This is done on behalf of schools by the LEA team under the LEA arrangements.
- 5.3. The service offered by the LEA is far wider than an insurance product and is tailored for each school and aims to provide a range of value added services to compliment the insurance offering. Examples could include:-
- Interpretation of Policy coverage and advice on how to present claims.
  - Management of disputes (with either insurers or claimants).
  - Specialist risk management advice.
  - Unlimited access to specialist insurance and risk advisors.
  - A professional claims handling service from cradle to grave including appointment of local authority expert legal advisors and support as and when necessary.
  - Guidance and support following serious incidents or potentially significant events where an urgent response is required or clearance of communications (including media enquiries) is required.
  - Local knowledge and accessibility.
  - Insurance services that are procured include a range of risk management surveys and support services to improve risk.
  - Extensive support and advice from market experts is available following major losses, including accessing salvage and restoration experts.

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- Named individuals with whom positive and long-standing relationships have been built – not a generic ‘in-box’.
  - The LEA's insurance arrangements are regularly tendered to ensure Value for Money is delivered. At the next tender, insurers will be invited to tender on a ‘per pupil’ basis for schools to aid transparency.
- 5.4. The RPA has only been offered to LAMS since April 2020 and there is no published data showing claims experience to date. There are projections, based on assumptions of the number of schools joining, but there can be no certainty at this time on the sustainability of the current pricing.
- 5.5. The impact of Covid-19 on the RPA is simply not known. 2019/20 was certainly not a good year in terms of weather, water and travel claims but the RPA have not had a sufficient enough proportion of schools or long enough claims experience to take an informed view on the sustainability of their rates.

## **6. Financial considerations and wider sector implications**

- 6.1. The LEA would still retain the duty to educate, and insurers have confirmed that there would be no reduction in liability premiums if schools exit from the LEA programme. There would be a reduction in property insurance costs, due to the reduction in sums insured (but insurers have confirmed this would not be a straightforward pro-rata). There would be a narrower base to spread these across and a greater gap between the self-insurance provisions maintained and the external insurance procured and economies of scale would be lost.
- 6.2. The current insurance arrangements are subject to Long Term Agreements that expire on 1 December 2021, but have options to extend for a further two years. Insurers have confirmed their expectation that these would be honoured and no rebates would be issued in the event of schools leaving the programme outside of the natural renewal dates.
- 6.3. There would likely be a necessity to re-base the insurance recharges across the LEA if a number or all of the schools left the LEA programme. Consideration would have to be given to charging a ‘premium for risk’ or ‘levy’ on schools to cover any residual risks that the LEA continue to carry or for any historic claims/matters that arise. This cannot currently be accurately assessed but would be an additional cost to the RPA cost.
- 6.4. In reality, there would be a negligible reduction in work-load but a significant loss of income. This would most likely result in additional costs to other LEA services and in the event of staff reduction becoming unavoidable, there would be redundancy costs and a loss of expertise that is shared across other areas of the LEA.
- 6.5. The LEA insurance markets are very small and contraction of business could result in the withdrawal of some or all of the key players resulting in lack of

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competition and/or availability for the public sector in the event that the RPA ceased to operate or charges increase making it unattractive

- 6.6. Currently Insurance Premium Tax (IPT) is charged at 12% on all external premium spend. So, the Government would be losing this revenue in the event of schools joining the RPA. Current speculation is that IPT is delivering less than expected revenue for the Treasury so a further loss of revenue would likely result in an increase in the tax to generate the lost income.
- 6.7. The Association of Local Authority Risk Managers (ALARM) is not supporting the extension of the RPA and have stated 'We are not aware of any evidence that LAM schools would be better placed in joining the RPA, rather than continuing with their current arrangements. In doing so, schools will lose vital support from their council, insurers, and the wider insurance and LA community. A provision of local services at a local level will be lost, along with the level of specialist expertise currently on offer through the mix of council's self-insurance and commercial insurance arrangements.'

## 7. Timetable

Action	Start Date	Completion by	Effective from
Briefings to Executive Director CYP, Schools, Schools Forum	February 2020	March 2021	Immediate
Notice required from any schools wishing to leave LEA arrangements	immediate	1 June 2021 cut-off date	1 December 2021
LEA insurance arrangements renewal process commences	1 June 2021	1 November 2021	1 December 2021
Any schools who opt to join the RPA must give 3 months' notice if intending to leave. So, if they joined on 1 December 2021 and intended to leave in April 2022	31 December 2022 or annually thereafter	31 March 2022 cut-off date or annually thereafter	1 April 2022 or annually thereafter

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## 8. Financial implications

- 8.1. The RPA is a DfE initiative commonly offered to Academies. There remains insufficient information around the RPA in particular the success of claims and customer support for schools where claims need to be actioned.
- 8.2. The Local Authority is required to undertake its own sourcing for the insurance contract renewal commencing June 2021. Depending on the number of schools remaining within the contract or opting out, there could potentially be wider financial implications

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