

<b>Report to:</b>	<b>SCHOOLS' FORUM</b>
<b>Date:</b>	14 January 2021
<b>Reporting Officer:</b>	<p>Tim Bowman – Assistant Director, Education</p> <p>Tracy Brennand – Assistant Director, People and Workforce Development</p> <p>Tom Wilkinson – Assistant Director, Finance</p>
<b>Subject:</b>	<b>DE-DELEGATION AND RISK PROTECTION ARRANGEMENT (RPA) 2021-22</b>
<b>Report Summary:</b>	A report on the de-delegation services and risk protection arrangement (RPA) for 2021-22.
<b>Recommendations:</b>	<p>Members of the Schools' Forum are requested to note the contents of the report. Members of the Primary and Secondary sectors are required to vote separately on the de-delegation of funding for each of the following services:</p> <ul style="list-style-type: none"> <li>• Trade Union Support</li> <li>• Schools Contingency</li> </ul>
<b>Corporate Plan:</b>	Education finances significantly support the Starting Well agenda to provide the very best start in life where children are ready to learn and encouraged to thrive and develop, and supports Aspiration and Hope through learning and moving with confidence from childhood to adulthood.
<b>Policy Implications:</b>	In line with financial and policy framework.
<b>Financial Implications:</b> <b>(Authorised by the statutory Section 151 Officer &amp; Chief Finance Officer)</b>	The Dedicated Schools Grant is a ring fenced grant solely for the purposes of schools and pupil related expenditure from which de-delegation decisions are funded. Any cost pressure created as a result of schools deciding not to de-delegate funding for Trade Union Support will have to be managed by the Council as stated in Section 4.5 of this report.
<b>Legal Implications:</b> <b>(Authorised by the Borough Solicitor)</b>	The legal implications in relation to the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997 are set out in the main body of this report together with the benefits of the SLA enabling union representation at a local level.
<b>Risk Management:</b>	The correct accounting treatment of the Dedicated Schools Grant is a condition of the grant and procedures exist in budget monitoring and the closure of accounts to ensure that this is achieved. These will be subject to regular review.
<b>Access to Information:</b>	<p><b>NON-CONFIDENTIAL</b></p> <p><b>This report does not contain information which warrants its consideration in the absence of the Press or members of the public.</b></p>

**Background Information:**

The background papers relating to this report can be inspected by contacting Bernadette Wilde – Head of Human Resources (HR) Operations and Workforce Strategy, People and Workforce Development



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## **1. INTRODUCTION**

- 1.1 De-delegated funds are a deduction from a school's budget share and are held centrally to fund relevant services. De-delegation can only apply to maintained primary and secondary school budgets. Decisions on de-delegation have to be taken at the Schools Forum. The Primary and Secondary sector vote separately in relation to each of the services, following discussion with their wider stakeholder colleagues.
- 1.2 Academies do not have the option of de-delegating but can procure the service as a traded service. The charge would be on the same basis as de-delegation.
- 1.3 Decisions made to de-delegate are for one year only, so an annual vote is required. Schools Forum members for the primary maintained schools and secondary maintained schools must decide separately for each sector whether the specific service should be provided centrally and therefore funding de-delegated. The decision will apply to all maintained mainstream schools in that sector.

## **2. TRADE UNION SUPPORT**

- 2.1 Tameside schools have for many years had access to a Trade Union Support SLA that provides the services of the main trade unions and professional associations at a local level that support the various public sector employee groups across the whole school workforce within Tameside. This includes recognition of the main teacher and headteacher trade union/professional associations.
- 2.2 This SLA provides schools with a centrally coordinated Trade Union service to support a school and its leaders' statutory obligations as contained within the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997. In particular, it provides employees within schools, school leaders and Governing Bodies with support and expertise in employment related matters at a local level, helping to resolve workplace issues before they become too serious for the school. The support provides a significant and positive contribution to school leaders with their management of change; any large-scale reorganisation school leaders may wish to implement; and the implementation of employment related policies and procedures, enabling governing bodies to adopt and implement these policies and procedures for school based staff quickly and easily.
- 2.3 The provision of facilities for full time union officers has been determined to be the most efficient and effective way for large employers to manage the number of complex and challenging employment related matters and ensure they are able to fulfil their statutory obligations to consult with employees and their representatives.
- 2.4 Local trade union representatives undertake a variety of roles. They should work collaboratively with school leaders and managers; communicate with union members; liaise with relevant trade unions at a regional and national level; and assist in the handling of individual matters concerning school-based employees, such as matters relating to performance, capability, disciplinary, grievance and organisational change. Their performance is overseen by senior council officers; ensuring work is targeted and directed to where local needs for schools are best met.
- 2.5 There are positive benefits for employees, school leaders and union members in encouraging the efficient performance of a local union representatives' work, for example in aiding the resolution of problems and conflicts at work in a timely manner and having full knowledge and understanding of local issues to aid and improve working relationships.

- 2.6 The role can be complex and having local knowledge and understanding of the Tameside school campus's aims and aspirations for our students in the borough brings many benefits in ensuring positive and collaborative employee relations within a school's workforce.
- 2.7 In particular, the support and collaborative working between local trade union representatives, school leaders and school-based employees has never been more prevalent than during 2020 whilst schools have been '*living with COVID*'. Local trade union representatives has supported schools to react appropriately and quickly when dealing with constant change and when implementing safe, sensible and pragmatic decisions in terms of pupils, staff, parents and visitors wellbeing.
- 2.8 The Council's Facilities Agreements outline the statutory provisions and facilities for trade union duties and activities, along with the agreement for the provision and payment of full time workplace union officers. This arrangement is consistent with other Councils in the Greater Manchester region and across the country.
- 2.9 ACAS identify in summary the following areas of activity for trade union representatives to be involved with:
- Terms and conditions of employment, or the physical conditions in which workers are required to work;
  - Engagement/non-engagement, or termination or suspension of employment, or the duties of employment of one or more workers;
  - Allocation of work or the duties of employment as between workers, or groups of workers;
  - Matters of discipline;
  - Trade union membership/non membership/facilities for trade union representatives;
  - Machinery for negotiation or consultation and other procedures.
- 2.10 A summary of the benefits for schools for access to local representatives are as follows:
- Time and resources directed solely to Tameside schools' priorities, with less competing and conflicting demands;
  - Progression of employee relations issues within schools undertaken and concluded in a timely manner;
  - Full knowledge and understanding of local needs and pressures;
  - Progression of school employment procedure review and implementation undertaken more speedily;
  - The development of effective, collaborative working relationships to enable smoother progression of school based organisational matters, such as school staffing reorganisation and health and safety matters;
  - Locally based resulting in easier access and speedier responses to requests for service;
  - Direct access to senior officers within the Council's Children's Services Directorate, acting as mandate and lobbyist for school leaders/school based staff and school related matters.
- 2.11 The Council reviews year on year the number of local trade union officers and associated expenditure in relation to this SLA, with the majority of expenditure covering purely employment costs (salary plus NI and/or pension contributions where appropriate). For 2021-22, the support offered to schools will be just over 3 full time officer time covering all teaching and non-teaching staff across the whole Tameside campus. It remains the Council's position to seek full cost recovery.
- 2.12 Benchmarking exercises with neighbouring authorities are attempted regularly and this year was no exception. Whilst it is recognised that receiving responses to benchmarking exercises can be problematic due to the conflicting priorities of our neighbouring authorities and their capacity to complete, what is clear is that the majority of respondents offer a TU Support SLA under de-delegation, with the large proportion offering both teaching and non-

teaching recognised trade unions. This approach remains appropriate for ourselves, taking account of recent data received from our local Tameside UNISON branch, which advises they support around 1400 school-based UNISON members within our Tameside school campus.

- 2.13 Clarity has been sought with regard to the difference of service provision between local full time officials and school based shop stewards and how the SLA offer aligns to the following document:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410276/advice\\_on\\_trade\\_union\\_facility\\_time\\_in\\_schools\\_090315.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/410276/advice_on_trade_union_facility_time_in_schools_090315.pdf)

More specifically, page 4, bullet point no 3 under the section headed 'key points' where it states '*All union representatives who receive facility time to represent members employed in schools should spend the majority of their working hours carrying out their main duties as school employees*'.

- 2.14 In the main shop stewards based in schools act as a communication link between the local full time representative and relevant school based trade union members with regard to;
- generic trade union communications
  - updating of any trade union notice boards on site
  - publicising of trade union membership to new members of staff.
- 2.15 Full time representatives will be invited to attend meetings of a more strategic approach to represent at a holistic level the schools workforce, with examples including;
- Headteachers Scenario Planning meeting,
  - Schools Forum,
  - School and council led employee consultation meetings that may be discussing policy development or acadamisation (TUPE transfer) matters.

It would be rare for a local shop steward to represent a staff member in any individual formal employment matter. The purchase of this SLA ensures your workforce are effectively supported and represented during processes which staff often find very distressing and challenging, enabling your timeframes to be maintained and clear lines of communication to remain open.

- 2.16 Historically, having local representatives employed within a school and then having a proportion of their timetable set aside for trade union duties covering all Tameside schools became problematic for the employing school leader, trying to balance the employee's trade union activities and competing demands for time, including travelling time, against the employee's normal school business activity. Accordingly, it was decided some years ago to second staff on a full time basis, with the Council providing management oversight and thereby releasing individual schools from having to manage these conflicting demands. It is felt this model of delivery continues to be the best solution for schools.

### **3. TRADE UNION SUPPORT – FINANCIAL CONSIDERATIONS**

- 3.1 The methodology for calculating the cost of this SLA is a price per pupil rate, based on total costs divided by total pupil numbers of the **actual** schools that bought the SLA the previous financial year, including academy schools.
- 3.2 Taking the above methodology, the de-delegation rate for the present financial year 2020-21, which maintained schools voted on this time last year, was £6.47 per pupil.

- 3.3 This was calculated taking the combined pupil number on roll (26,934) of the 80% of schools that had bought in the year before (78 out of 98 schools) and dividing this number into the total costs for 2020-21 (£174,350).
- 3.4 However, the final outcome for 2020-21 was that secondary maintained schools chose to de-delegate, whereas maintained primary schools chose not to de-delegate, with the eventual outcome being only 57 out of 98 schools across the borough bought into this SLA for 2020-21 covering a combined pupil number on role of 23,500. This resulted in a short fall in cost recovery of £22k for the Council. This is a position the Council cannot continue to find itself in, at a time when the Council is facing significant budget pressures due to the pandemic and future outlook for funding with the latest medium term financial plan showing a cumulative budget gap of £34m. It remains important that the Council achieve full cost recovery to enable this service to continue to be offered as an SLA.
- 3.5 The total cost for providing the Trade Union Support SLA for schools for the forthcoming financial year 2021-22 is £180,890. Continuing with the same cost recovery methodology and based on the combined pupil number on role of the 57 schools that have presently bought the SLA (23,500), it is calculated that the price per pupil rate would increase to £7.70 per pupil.
- 3.6 What is clear is that the more schools that buy into this SLA the lower the cost is for all schools. Therefore, taking this principal, a number of projections have been calculated for 2021-22, based on different scenarios:

Scenario A	Pupil roll number of 57 schools that bought in 2020-21 (23,500 based on NOR from Oct 19 census)	£7.70 per pupil rate
Scenario B	Pupil roll number of all 98 schools across the borough (35,492 based on NOR from Oct 19 census)	£5.10 per pupil rate
Scenario C	Pupil roll number of <u>all</u> maintained schools (17,927 based on NOR from Oct 19 census)	£10.09 per pupil rate
Scenario D	Pupil roll number of <u>all</u> maintained schools plus Academies that actually bought back 2020-21 (29,506 based on NOR from Oct 19 census)	£6.13 per pupil rate

- 3.7 In summary, the Trade Union Support SLA requires full cost recovery for the forthcoming financial year, due to the Council's present deficit budget position. Non-achievement of full cost recovery will result in the need for a very urgent review of the facilities afforded through the Facilities Agreement, which would most probably result in a significant reduction of the offer made available to schools and the schools workforce for the forthcoming financial year.
- 3.8 Noting the scenarios outlined at paragraph 3.6 of this report, the more schools that buy into this SLA, the lower the cost it is for all schools. Schools' Forum voting members are asked to consider the significant amount of positive, collaborative working the purchase of this SLA brings to schools, in particular the support it demonstrates to your staff; enabling them access readily available local trade union representatives that are well knowledgeable of local school based issues. School based staff continue to experience one of their most challenging years and ensuring they have access to this provision demonstrates your commitment to them and can also ensure a smoother employee relations path for school leaders in matters of change and employment.
- 3.9 The decision for Schools' Forum is needed as to whether it supports de-delegation from schools budgets for Trade Union support. If Schools' Forum support de-delegation, it is recommended that scenario D at paragraph 3.6 is the preferred option. However, should

either of the sectors choose not to de-delegate, action will need to be taken to review the current SLA as discussed at paragraph 4.5.

#### **4. IMPLICATIONS OF NOT DE-DELEGATING TRADE UNION SUPPORT**

- 4.1 Employees will still have a statutory right to trade union representation and school leaders will still be required to undertake its statutory obligations as contained within the Employment Relations Act 1999, the Trade Union Labour Relations (Consolidation) Act 1992 and the Safety Representatives and Safety Committees Regulations 1997.
- 4.2 Where trade union support is required by management or employees, school leaders will need to seek that support at a regional level. Due to the competing demands of regional resources, which are required to support employers and workforces across a variety of public sector disciplines, not just schools, often covering the whole of the North West as a minimum, it is likely this will result in delays in accessing support. This will negatively impact on speedy resolutions to workplace issues and timely progression of employment policies and practices for schools and its leaders.
- 4.3 It is highly likely that any support available will not have full knowledge and understanding of a school's local needs.
- 4.4 It may mean school leaders will have full responsibility for the co-ordination and execution of necessary workforce consultation on some local school related matters. Furthermore, any meetings that require attendance from a variety of trade unions will become more problematic logistically to arrange at a regional level. This may result in school leaders having to hold a number of separate meetings with individual trade unions involved, resulting in an increased time pressure for school leaders. Local trade union representatives work well together in the use of diary management, attendance at meetings and the sharing of information. It is highly unlikely that coordination and joint working across different trade unions would be as prevalent at a regional level.
- 4.5 Any short fall in recovery of costs for the Council will result in the need of a very urgent and significant review of the facilities afforded through the Facilities Agreement, which would most probably result in a reduction of the offer made available to schools for the forthcoming financial year. This is because of the impact on the already concerning estimated budget gap of the Council for 2021-22.

#### **5. CONTINGENCY**

- 5.1 In 2020-21 mainstream secondary maintained schools voted to de-delegate budget for Contingency.
- 5.2 The contingency budget has been established to support those schools facing a deficit budget position or to support the DSG against any future pressures where schools are closing or are forced to convert to academy leaving a deficit balance, as this would need to be funded from DSG. It should be noted that a deficit balance transfers to the Academy Trust where the transfer to Academy is a convertor route, i.e. the School choses via an Academy order to covert to Academy. The balance remains a DSG issue where the schools are a forced conversion as part of a Sponsored Academy conversion route required by the Secretary of State.
- 5.3 Where a school is in deficit or facing deficit in the next financial year they will be subject to a review in line with the School Deficit process as outlined within the Tameside Scheme Financing, the LA will work very closely with the school and its Governors to manage the deficit and ensure action is taken to address it.

- 5.4 It is also anticipated that schools struggling to manage deficits where financial issues are beyond the control or influence of the Headteacher where significant action has been taken to bring the plan back into balance and where further cuts are likely to impact on the attainment of the pupils in the school.
- 5.5 It's acknowledged that whilst schools are facing financial pressures, it's prudent to establish a contingency budget to protect future pressures against the DSG which will affect all schools. The aim is to create a contingency fund of approximately £120k (approximately 10% of projected deficit balances).
- 5.6 As previously agreed by Schools' Forum the allocation follow the principles below:
- Allocations from the fund should not be made until the fund reaches the suggested level.
  - Allocations should be sector specific unless all sectors agree to contribute to the fund.
  - Decision on approvals from the fund will be agreed by Assistant Director Education and the Assistant Director Finance.
  - There should be a school sector representative as part of the approval process but the representation should not be from the requesting school.
  - When a school is facing financial difficulty a request should be submitted outlining their case for consideration.
  - Allocations will only be made where sufficient funds are available.
- 5.7 Support will be provided for schools in deficit and therefore in financial difficulty through the normal deficit recovery process, in line with Tameside's Scheme of Financing for schools managing licenced deficits.
- 5.8 Alongside this, support will be provided to schools closing with deficit balances to minimise the impact and potential pressure on the DSG.
- 5.9 The de-delegation rate for Contingency for 2021-22 is £5.81 per pupil. Agreement is sought from both the Primary and Secondary sectors to de-delegate in 2021-22. Should both sectors choose to contribute, based on the October 2020 census data, this would result in the following contribution to Contingency:
- Mainstream Primary Maintained Schools - £67k
  - Mainstream Secondary Maintained Schools - £33k
- 5.10 There have been no requests made to access the contingency funds of £65k to date. The fund will be carried forward into 2021-22.

## **6. RISK PROTECTION ARRANGEMENT (RPA)**

- 6.1 From April 2020 local authority maintained schools have been able to join the risk protection arrangement (RPA), which had previously only been available to academies.
- 6.2 Where schools have opted into this arrangement in 2020-21, the membership will continue on an ongoing basis. Should a school choose to opt out of the arrangement they would need to make their own risk protection arrangements.
- 6.3 The cost of RPA for 2021-22 is £19 per pupil. The DfE is operating a process whereby a deduction is made for the appropriate value, from the local authorities DSG. The LA plan to treat this in the same way as de-delegation items and allocate to the relevant schools on this basis. It should be noted that nursery numbers are included to calculate the charge for the primary sector (where relevant).
- 6.4 Further information about the scheme can be found through the following link:



## **7. RECOMMENDATIONS**

- 7.1 As set out at the front of the report.