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Executive Summary

This report sets out the purpose of the Schools' Financial Support Fund which is funded as a de-delegated budget from the Schools Block of the Dedicated Schools Grant, currently managed by the Schools' Financial Support Panel set up by Southwark Council. The report also sets out recommendations on the revised terms of reference, the criteria for contributions to the fund and the criteria for payments from the fund.

Schools Forum Actions

The Schools Forum is asked to:

- Note the way in which the schools financial support fund operated
- Recommend which schools should contribute to and make claims from the fund in future
- Recommend the types of claims that may be made from the fund, and
- Agree the revised terms of reference for the fund, including the criteria for claims.

1. Background

1.1 In October 2015 a new Schools Human Resources (HR) Manager (now the Head of Schools Human Resources) was appointed. This post was a member of what was known at the time as the "schools in financial difficulty" panel and a member of the schools HR team was also assigned to service the panel. The Panel chair was the Director of Education.

1.2 Between October 2015 and December 2015, investigations were made by the Head of Schools HR to clarify the role of the panel and revised terms of reference were subsequently agreed by the panel in January 2016. The panel was renamed

the “school staffing panel” (hereafter referred to as “the Panel”) to reflect that awards made related primarily to staffing issues.

- 1.3 Further Investigations were also conducted to establish the ownership of the panel’s budget. In October 2016 it was established that the budget was held by the Education Finance Manager. It was subsequently agreed that this would transfer to the Head of Schools HR where it remains.
- 1.4 Over the course of the following year, a number of questions arose as claims were considered and determined by the panel. The terms of reference have been reviewed and updated from time to time since to reflect changes in membership and clarify criteria for awards.
- 1.5 In September 2017 it became apparent that there were differences between the considerations of the Panel as set out in the terms of reference and the “Scheme for Financing Schools” April 2012 (hereafter the “Scheme”) and as such a further review of the terms of reference for the schools financial support panel has been undertaken. The current Scheme can be found on Southwark’s website - http://www.2.southwark.gov.uk/download/downloads/id/9387/scheme_for_financing_schools_april_2012
- 1.6 The Scheme sets out when the authority will cover costs incurred by schools and when it will seek to recover these for a number of different situations. Some of these relate to criteria for awards from the school staffing panel, others relate to areas for which the Panel has no locus.
- 1.7 It has become apparent from investigations that the panel’s budget has been used for a diverse range of financial support to schools over many years and that there had been a number of claims made and agreed by the panel to schools that did not in fact contribute to the overall budget.
- 1.8 The Panel have therefore produced revised terms of reference to ensure consistency between these and the scheme, for Schools Forum approval which are attached as Appendix A.

2. Contributions to the Fund

- 2.1 At present only Southwark’s locally maintained primary and secondary schools contribute to the Panel’s budget. Contributions are based on pupil numbers, excluding nursery and 6th form provision and this is done through the de-delegation mechanism the Schools Forum is used to. For the 2017-18 financial year this amounted to £786,501 at a rate of £39.48 per pupil, but included the £39k cost of Audit.

- 2.2 Historically, the Panel has, however, allowed claims and agreed funding from other Southwark maintained schools such as: nurseries, special schools and the council's pupil referral unit. Since April 2016, £69,000 or 9.7% of the overall funding agreed to schools from the panel has been awarded to these schools.
- 2.3 The Scheme for Financing Schools, paragraph 1.2.1 states that "this scheme applies to all community, nursery, voluntary, foundation, community special and foundation special schools maintained by the London Borough of Southwark". As such, any claims falling within the scope of the scheme, which includes the categories set out in the schools' financial support panel terms of reference, must be paid by the authority.
- 2.4 The Schools Forum are therefore asked to consider either:
- a) a requirement for community nursery and special schools to contribute to the Panel budget, if they wish to continue to fall within the scope of the scheme, or
 - b) to agree a separate budget from which such schools may make claims, or
 - c) to exclude such schools from the scope of the schools' financial support fund.

Option a) is recommended to the panel for agreement.

3. Membership of the Panel

- 3.1 The revised terms of reference propose that the role of chair of the panel is held by a head teacher representative, rather than the Director of Education. The current head teacher representative has agreed to take this role.
- 3.2 A second head teacher representative would be retained in the membership and appointed from the pool of schools contributing to this fund. This role would be filled by requesting a volunteer via head teacher groups and determined by the Panel chair.
- 3.3 The financial representative on the panel is amended to the Departmental Finance Manager, to ensure effective communication between the terms of the panel and the Scheme for Financing Schools going forward.
- 3.4 Other roles in the membership remain unchanged.
- 3.5 The Schools Forum is therefore asked to agree to the revised membership of the panel as set out in the terms of reference at Appendix A.

4. The scope of the fund

- 4.1 The Panel will consider requests relating to the following areas covered by the Scheme for Financing Schools (relevant page referenced in brackets):
- a) Severance payments for compulsory or voluntary redundancy (page 47)
 - b) Premature retirement and ill health retirement (pages 23 and 47)
 - c) Settlement agreements to secure resignations (page 23)
 - d) Prevention of licenced deficits (page 19)
 - e) Other financial support which may be reasonably determined to fall within the scope of the scheme.
- 4.2 Historically, the Panel has also been used to award funds in respect of legal actions and/or costs against schools, for example the costs incurred in defending employment tribunal claims, where they have taken and acted upon the advice of the authority. There is a need to ensure this is reflected in the terms of reference. The Scheme for Financing Schools makes it clear that such costs may be recharged to schools if they have failed to seek or act upon the advice of the authority, and in such circumstances claims would not be agreed by the panel.
- 4.3 The Schools Forum are therefore asked to agree:
- a) that the category of legal costs and awards be added to the terms of reference for the Panel as set out in Appendix A,
 - and
 - b) to ensure that consideration is given to the amount of legal costs and awards likely to be incurred when setting the panel's budget in future years.

5. Schools Forum Actions

- 5.1 The Schools Forum is asked to:
- a) Agree to the proposed revised terms of reference for the Schools' Support Panel as set out at Appendix A.
 - b) Agree to the proposed revised membership and confirm the new chair of the panel as set out at paragraph 2.3 above.
 - c) Agree the recommendation to facilitate the inclusion of maintained nursery and special schools as contributors to and claimants from the fund as set out at paragraph 2.4 above and subject to the rules of the 2018-19 National Funding Formula for centrally retained budgets, de-delegation and cross subsidisation of the Funding Blocks.

- d) Agree to the recommendation to the inclusion of legal costs and awards as a category under which claims may be submitted to the panel for consideration as set out at paragraph 4.3 above.

APPENDIX A

Schools’ Financial Support Panel (SFSP): Terms of Reference

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Background

The Scheme for Financing Schools (April 2012) applies to all Southwark local maintained schools and makes it clear that it is the duty of each governing body (or other relevant body) to ensure that the school plans and conducts its affairs in order to remain solvent, to apply good financial management practice and follow best value principles in their expenditure.

It is recognised however that on occasion unforeseen or additional costs may arise which can place additional pressures on a school budget. In accordance with Southwark's Scheme for Financing Schools, the Southwark Schools Forum advises the authority on an annual basis in relation to a dedicated budget to be held by the authority to cover a specified range of staffing costs and other financial support for maintained primary and secondary schools only, excluding maintained nurseries and special schools. The budget does not provide for financial support to any other type of schools unless they choose to contribute to the fund. The budget holder is the Head of Schools' Human Resources. The management and allocation of this budget has been delegated to the schools' financial support panel (SFSP; hereafter referred to as the Panel).

Purpose

As the purpose of the Panel is primarily to ensure appropriate use of public funds and to support schools in financial difficulties, where there are no financial difficulties and balances are sound, no contribution will be agreed.

The panel will determine whether to offer financial support to schools, and the amount of any such support, in relation to:

- severance payments to school employees on the grounds of compulsory and voluntary redundancy (including the ending of a fixed term contract by reason of redundancy),
- premature retirement, including ill health retirement,
- settlement agreements made to secure resignations,
- help addressing a deficit balance which has been licensed by the authority.

Support for other purposes relating to unforeseen employment costs not otherwise funded by the school may also be considered at the panel's discretion.

The panel will not agree financial support in relation to any illegal or unlawful decisions proposed or taken by schools to end employment. The panel will refuse requests for financial support if it determines that the school has acted unfairly or inconsistently, failed to follow agreed employment procedures and/or failed to accept and/or act upon advice given by the authority.

In considering all requests, the Panel will ensure that any financial support agreed offers value for money and constitutes a reasonable use of public funds.

The panel will also provide information to and inform the Schools Forum in their annual determination of the overall budget and contributions of individual schools.

The Panel will review these terms of reference at least annually.

Membership

The Panel will comprise:

Head Teacher, Grange Primary (Chair)	mwebb@grange.southwark.sch.uk
Head Teacher representative	to be confirmed
Head of 0-19 Standards	terry.segarty@southwark.gov.uk
Head of Schools Human Resources	julie.chow@southwark.gov.uk
Department Finance Manager	russell.dyer@southwark.gov.uk

The Panel will be serviced by a member of the schools HR team.

Process

Any school wishing to obtain financial support from the panel must provide full information to the panel to inform their decisions. A form is available for this purpose.

Where the school has an agreement for HR services through the schools human resources team, the HR business partner will support the school with preparation of documents. In all other cases it will be for the school to take advice from their chosen HR provider.

It is expected that schools will take advice from their human resources business partners prior to submitting information, to ensure that the information provided is complete and accurate and clearly sets out their case for consideration.

All papers will be provided to the head of schools human resources for consideration in the first instance. The head of schools HR will refer any issues arising back to the relevant HR business partner/school for clarification. If satisfied that the papers are complete the head of schools HR will email these to the education finance manager for comment. On receipt of any comments, the head of schools HR has the authority to authorise requests for financial assistance up to the value of £5,000 on behalf of the panel. Requests for support of potentially more than £5,000 will be emailed to the panel for comment and approval from the panel chair, with relevant comments from the head of schools HR and the education finance manager.

The Panel will aim to decide on all requests by email within 2 weeks of receipt of full documentation. This may be extended to allow for school closure periods. Schools are expected to take this into account when submitting their request.

Where a decision may not be made via email, the panel reserves the right to convene a meeting with the head teacher requesting support to discuss the details of their request as needed. The Panel reserve the right to adjourn a decision pending further information where necessary. The Panel will schedule one meeting per term for this purpose but may cancel or schedule further meetings as required.

Once a decision has been made, the HR administrator will arrange for an email to be sent to the head teacher confirming the panel's decision on behalf of the chair. The HR administrator will maintain a record of decisions and claims made each year for monitoring purposes.

Considerations

Severance payments for compulsory or voluntary redundancies

Governing bodies are recommended to review their staffing structure annually to ensure that it remains fit for purpose. Where changes are required these must be managed in accordance with the school's agreed reorganisation procedure. If there is potential for either compulsory and/or voluntary redundancies arising from the proposal, the school should submit their request for funding for severance costs to the panel prior to starting consultation with staff and/or unions. A failure to do so may leave the school liable for any severance / capital costs arising.

The Panel will consider financial support to cover the costs of redundancy payments incurred during reorganisations of staffing driven by:

- School improvement, and/or
- The need to balance the school budget, and/or

The Panel will require as a minimum the rationale for the changes, details of the proposals, the impact on individual staff including any redeployment opportunities available, an estimate of redundancy costs for each staff member potentially affected and the effective date of implementation. This may be in the form of the proposed consultation pack for unions and staff. The rationale should set out clearly the economical, technical and organisational reasons for the changes and include the financial impact (savings and costs), the impact on outcomes for pupils, the impact on teaching and learning, and any wider school impact anticipated.

The Panel will consider financial support if the following criteria are met:

- the aims of the proposals are sound and the business case is robust and compelling and will achieve the aims of the proposals;
- the impact of any previous reorganisations has been considered and the current proposals are not in conflict with achievements already made;
- that proposed changes are sustainable, or where short term changes are proposed that any future financial risks have been identified and provided for;
- that alternative models, ways of working and efficiency savings have been considered;
- the school has committed to undertake the reorganisation and any terminations of employment in compliance with the reorganisation procedure they have adopted, and has accepted and acted upon any advice provided by the authority, eg schools' human resources;

- that proposed consultation with unions and staff (and other relevant parties) will be full and meaningful;
- that the selection criteria for redundancy are objective, fair, reasonable and non-discriminatory;
- that employees will be afforded their right to representation and appeal;
- that the business case demonstrates good use of public funds;
- that the governing body agree in principle with the proposals and will support the decision to dismiss if needed;
- that the schools' human resources team will be afforded the right to attend any meetings with staff in community schools which may potentially result in dismissal on the grounds of redundancy in order to provide advice and to represent the Director of Education.
- That the school does not have significant revenue balances (i.e. above 8% carry forward for nursery, primary and special schools or 5% for secondary schools).

Fixed term contracts are used for a number of reasons to cover short term needs in schools. If an individual employee is eligible for a redundancy payment on the ending of their fixed term contract, by virtue of long service, then the Panel will consider funding the cost of the redundancy payment.

The school must submit a copy of the employee's statement of terms and particulars of employment (which should include the reason for the fixed term appointment), an explanation of action taken by the school to terminate the contract and explore redeployment, and a list of current and foreseeable school vacancies.

The Panel will consider financial support if the following criteria are met:

- The reason for entering into a fixed term contract was sound
- There is a fair reason in law to consider ending the fixed term contract
- The procedure followed to end the fixed term contract has been reasonable
- There is no scope to extend the fixed term contract
- There are no redeployment opportunities available within the school

The Panel may only agree financial support for redundancy payments howsoever arising within the limits of the authority's current severance scheme. Any discretionary and/or enhanced severance payments offered beyond this must be met by the school. **The school will be responsible for any payments made in lieu of contractual notice entitlement.**

Premature retirement costs, sometimes referred to as capital costs, arising from redundancies will normally be met in full by the school. The Panel has discretion to extend financial support to include a contribution towards premature retirement costs arising from redundancies in exceptional circumstances.

Premature retirement and ill health retirement

Premature retirement costs will normally be met in full by the school unless there has been prior agreement from the Panel to offer financial assistance.

The Panel will consider requests to fund the additional capital costs to the pension fund by virtue of premature retirement on efficiency grounds or as an alternative to redundancies.

The school must submit a statement of the financial business case and benefit(s) to pupils arising from the early retirement (as opposed to taking alternative action).

The Panel will consider financial support if the following criteria are met:

- the individual employees are eligible for early retirement;
- the proposal will deliver benefits to the school financially and/or to pupil outcomes at the school
- that the school has taken advice from the authority and verified the costs of such agreement

The decision on whether an employee may be eligible for ill health retirement lies with the relevant pension body. **Normally all such costs generated will be met by the school.** The panel will however consider whether to fund some of the additional costs of ill health retirement incurred by the school for support staff only, in relation to the 'tier' of ill health retirement agreed by the pension body, if the school may otherwise struggle to cover the costs. All schools will be required to make some contribution towards ill health retirement costs.

The maximum amount of funding that may be agreed by the Panel will be determined with reference to the school's overall budget. The school must submit confirmation of the latest medical opinion on fitness for work, confirmation from the pension scheme of their determination that the individual is eligible for ill health retirement and a financial analysis setting out the potential costs of agreeing the request.

The Panel will consider financial support if the following criteria are met:

- the individual employee has been accepted for ill health retirement by the LGPS, and either
- the school does not have sufficient finances to cover the cost, or
- for the school to cover the cost would be detrimental to the outcomes for pupils in the school.

Settlement agreements to secure resignations

The request to enter into a settlement agreement to secure a resignation / termination of employment may be generated by the school or the employee or their union representative. They form a contractual agreement between the employer and the

employee to end their employment by mutual consent. Whilst in community schools the authority is the employer, there is a legal risk to the council of liability for all maintained schools and as such the council must be a party to all agreements made relating to employees in maintained schools. Any such agreement must be facilitated via the legal services team in accordance with the authority's agreed procedures. A settlement agreement will not be entered into in respect of any child protection claims or allegations against an individual employee.

The cost of any settlement payment made as part of the terms of such agreement and any legal costs incurred are normally met by the school.

If the school wishes to seek financial support from the Panel, the school must submit a completed settlement agreement proposal form, which for maintained schools only has been duly authorised by the Director of Education.

The Panel will consider financial support if the following criterion is met:

- The school has a clear business case for reaching a settlement as opposed to following agreed employment procedures
- The school has taken advice from the authority on the terms of the agreement including the settlement sum
- The agreement will secure savings on costs incurred over time in securing a resignation or dismissal through other means and/or is necessary to effect a speedy improvement in the learning and/or progress of pupils
- The school and/or the authority may be at risk of legal claims and/or financial penalties if such agreement is not made.
- The Director of Education has agreed for the authority to be party to the agreement (maintained schools only)
- The authority's legal services team will be engaged to facilitate the agreement on behalf of the authority and the school

Legal costs and awards

Actions taken by schools in relation to employment matters may sometimes be challenged via employment tribunal or other external legal systems. In such cases, there are costs incurred in responding to and/or defending such claims, irrespective of the potential merits of the claim, and also the potential for awards to be made against the school and/or the authority should a defence fail. The panel will consider financial support towards the costs of action and any awards made if the following criteria are met:

- The school informed and took advice from the authority in respect of the matters leading to the claim,
- The school has accepted and acted upon advice provided by the authority in respect of the matters leading to the claim,
- The school has provided the authority with all requested information required to respond to and/or defend the legal action,

- The school has accepted and acted upon advice provided by the authority in respect of responding to the legal action.

The Panel will not agree any financial support in respect of any action or inaction by the governing body contrary to the authority's advice and/or where advice was not accepted.

Licensed deficits

If a school moves into or predicts a budget deficit, they may request financial support from the panel. Requests will only be considered if the school has engaged with the authority to put in place robust plans to address the deficit over a reasonable time frame. Except in exceptional circumstances, deficits are normally repaid within the following financial year. In some circumstances, schools may apply for and be granted a licensed deficit. Advice may be sought on how to do so through the council's finance team.

The authority will not write off the deficit balance of any school. Schools may however apply for financial assistance to address the deficit balance by applying to the panel. To support their request, the school must submit a copy of their actual and projected budget, along with details of their deficit recovery plan.

The panel will consider financial support if the following criteria are met:

- A head teacher has been appointed within the last academic year and has identified a deficit of more than 2% of the total funds available to the school, or
- The deficit is more than 2.5% of the total funds available to the school, and
- There is a robust deficit recovery plan in place.

Other financial support

From time to time unexpected additional costs may arise in order to resolve complex employee relations issues. **Such costs will normally be met by the school.** The Panel has discretion however to consider financial support for any such issues as it deems relevant and reasonable, where there is sufficient funding available to do so. In such cases, the panel will notify the school of the information required.