

3.9 Notice of Concern

Appendix C

Lewisham may issue a notice of concern to the governing body of any school it maintains where, in the opinion of the Chief Finance Officer and the Director of Children and Young People, the school has failed to comply with any provisions of the scheme, or where actions need to be taken to safeguard the financial position of the local authority or the school.

Such a notice will set out the reasons and evidence for it being made and may place on the governing body restrictions, limitations or prohibitions in relation to the management of funds delegated to it. These may include:

- insisting that relevant staff undertake appropriate training to address any identified weaknesses in the financial management of the school;
- insisting that an appropriately trained/qualified person chairs the finance committee of the governing body;
- placing more stringent restrictions or conditions on the day to day financial management of a school than the scheme requires for all schools;
- insisting on regular financial monitoring meetings at the school attended by local authority officers;
- Requiring a governing body to buy into the authorities finance SLA or any other recommended by the authority.
- requiring a governing body to buy into a local authority's recommended financial management systems; and
- imposing restrictions or limitations on the manner in which a school manages extended school activity funded from within its delegated budget share – for example by requiring a school to submit income projections and/or financial monitoring reports on such activities.

The notice will clearly state what these requirements are and the way in which and the time by which such requirements must be complied with in order for the notice to be withdrawn. It will also state the actions that the authority may take where the governing body does not comply with the notice.

It should be noted that if a Notice of Concern is issued in relation to financial controls this may affect the judgement as to whether a school should be placed in the LA category 4a (notice to improve)

Appendix D

3.10 Reporting on and control of the use of balances (Balance control mechanism)

The Authority believes that schools should have autonomy in the management of their affairs including the deployment of the formula share with regards to its use for the interest of their pupils and realises that in order to achieve both short and long-term strategies funds will need to be retained in the form of balances.

The Authority does have a role in supporting schools autonomy and needs to be satisfied that all balances are being used to the benefit of all pupils in the Authority. In determining the deductions in c. below the authority will expect to draw upon information in the School Improvement Plan, the asset management plan and any other planning documents that the School Forum might agree over time. The process will be undertaken jointly between Finance and School Improvement Officers.

The balance control mechanism will be used to enable schools to agree plans for surplus balances with the Authority or re-distribute funds to achieve this aim. The first determinations under this provision will be with effect from April 2008 / October 2007 in respect of balances held as at 31 March 2007. Any deductions made will form part of the headroom provision in 2008-09

Surplus balances held by schools as permitted under this scheme are subject to the following restrictions with effect from 1 April 2007:

- a. the authority shall calculate by 31 May each year the surplus balance, if any, held by each school as at the preceding 31 March. For this purpose the balance will be the revenue balance (Standards Fund and ISB) as reported to each school in writing by the authority.
- b. the authority shall deduct from the calculated balance any amounts for which the school has an accrual which could not be included in the schools accounts.
- c. the authority shall then deduct from the resulting sum any amounts which the governing body of the school has declared to be assigned for specific purposes **agreed with the authority**. Amounts must not be retained beyond the agreed period without the consent of the authority. The authority must agree any changes to the assigned purpose. In doing so the authority will look at previous assignments and consider the needs of the school.

- d. if the result of steps a to c is a sum greater than 5% of the current year's budget share for secondary schools, 8% for primary and special schools, then the authority shall deduct from the current year's budget share an amount equal to the excess. This deduction will take place in a budget update in October of each year.

The total of any amounts deducted from schools' budget shares by the authority under this provision are to be applied to the Schools Budget of the authority.

The authority will consider the school improvement needs of all schools and how best they can be met, when determining how to apply the funds.

3.12 Health and Safety

Appendix E

Background

The Health & Safety at Work Act 1974 places overall responsibility for health & safety with the employer. Who the employer is, varies with the type of school i.e.:

-for community schools, voluntary controlled schools, and pupil referral units, the employer is usually the LA.

-for foundation schools, independent schools and voluntary aided schools, the employer is usually the governing body.

The Health & Safety Executive(HSE) enforces health & safety law relating to the activities of LA's & schools. The HSE will usually take action against the employer, for non compliance but they can also take action against employees who have failed to undertake their health & safety responsibilities.

Schools may take advice on health & safety from other bodies but must heed the policy of the LA.

Health & Safety Responsibilities

The LA has delegated the responsibility for health & safety to schools: this includes the requirement for all schools to have a health & safety policy in place & arrangements to implement it. As the LA/employer retains the ultimate responsibility for health & safety, the LA will need to:

- undertake regular school audits to confirm that these responsibilities are being undertaken.
- provide health & safety guidance
- ensure that staff are trained in their health & safety responsibilities as employees & those who are delegated with health & safety tasks (e.g. risk assessments), are competent to carry them out in accordance with the Management of Health & Safety at Work Regulations 1999. If an LA risk assessment shows that training is needed, the LA must ensure that this takes place.
- direct schools to release staff for health & safety training as necessary & can charge for any training provided.
- request Governing Bodies to supply financial & other information to ensure that the school is managing it's budget satisfactorily.

- require Governing Bodies to assess in advance the health & safety competence of contractors taking into account the LA's procurement policies.

Monitoring of Health & Safety responsibilities by the LA & financial implications for schools

The LA has a statutory duty to monitor robustly how schools are complying with their responsibilities & to take action on non compliance. This will include recharging schools the costs for health & safety work which have been delegated to them but which have not been undertaken e.g. statutory maintenance costs; staff training. The LA will also withhold funds to cover the strategic management of health & safety i.e. establishing policies; setting standards; providing competence at a strategic level; undertaking monitoring; reviewing policies & standards & advising schools.

Where the LA believes that the health & safety of anyone on-site or of anybody engaged on school activities off-site, is at risk, it will make a direction to the Governing Body & Head Teacher to remedy this as a matter of urgency.

Substantial or persistent non-compliance is a ground for suspending delegation, subject to the Governing Body's right of appeal.

LA intervention in Community, Foundation or Voluntary Aided Schools

The LA can & will give a warning notice to any school in its area where the safety (not health) of staff or pupils is threatened.

Reserve Power of Entry

LA's may need to obtain information in order to exercise their health & safety responsibilities & if necessary have a right of entry to any school maintained by them.

3.20 Teachers Pensions

Appendix F

In order to ensure that the performance of the duty on the Authority to supply Teachers Pensions with information under the Teachers' Pensions Regulations 1997, the following conditions are imposed on the Authority and governing bodies of all maintained schools covered by this Scheme in relation to their budget shares.

The conditions only apply to governing bodies of maintained schools that have not entered into an arrangement with the Authority to provide payroll services.

A governing body of any maintained school, whether or not the employer of the teachers at such a school, which has entered into any arrangement or agreement with a person other than the Authority to provide payroll services, shall ensure that any such arrangement or agreement is varied to require that person to supply salary, service and pensions data to the Authority which the Authority requires to submit its annual return of salary and service to Teachers' Pensions and to produce its audited contributions certificate. The Authority will advise schools each year of the timing, format and specification of the information required. A governing body shall also ensure that any such arrangement or agreement is varied to require that Additional Voluntary Contributions (A.V.C.'s) are passed to the Authority within the time limit specified in the AVC scheme. The governing body shall meet any consequential costs from the school's budget share.

A governing body of any maintained school which directly administers its payroll shall supply salary, service and pensions data to the Authority which the Authority requires to submit its annual return of salary and service to Teachers' Pensions and to produce its audited contributions certificate. The Authority will advise schools each year of the timing, format and specification of the information required from each school. A governing body shall also ensure that Additional Voluntary Contributions (AVCs) are passed to the Authority within the time limit specified in the AVC scheme. The governing body shall meet any consequential costs from the school's budget share.

3.23 Community Facilities

Appendix G

Introduction

3.23.1 Schools which choose to exercise the power conferred by s.27 (1) of the Education Act 2002 to provide community facilities will be subject to a range of controls. First, regulations made under s.28 (2), if made, can specify activities which may not be undertaken at all under the main enabling power. Secondly, the school is obliged to consult its authority and have regard to advice from the authority. Thirdly, the Secretary of State issues guidance to governing bodies about a range of issues connected with exercise of the power, and a school must have regard to that.

However, under s.28(1), the main limitations and restrictions on the power will be those contained in the maintaining authority's scheme for financing schools made under section 48 of the School Standards and Framework Act 1998. Paragraph 2 of Schedule 3 to the Education Act 2002 extends the coverage of schemes to the powers of governing bodies to provide community facilities.

Schools are therefore subject to prohibitions, restrictions and limitations in the scheme for financing schools.

This section of the scheme does not extend to joint-use agreements; transfer of control agreements, or agreements between the Authority and schools to secure the provision of adult and community learning.

3.23.2 The budget share of a school may not be used to fund community facilities – either start-up costs or ongoing expenditure - or to meet deficits arising from such activities.

3.23.3 Mismanagement of community facilities funds can be grounds for suspension of the right to a delegated budget.

Consultation with the LA – Financial aspects

3.23.4 Section 28(4) of the Education Act 2002 requires that before exercising the community facilities power, governing bodies must consult the authority, and have regard to advice given to them by their authority.

Schools should therefore adopt the following procedure before providing community facilities.

- a. Details of the proposal should be supplied to the LA. Which will include:
 - i. Nature of the facilities
 - ii. How they fit in with the extended schools agenda
 - iii. How they will benefit the pupils of the school or the community
 - iv. An income and expenditure statement indicating how the facilities will be funded.

- b. The school should allow 2 weeks for the authority to respond with any suggestions or comments before the facilities are adopted. In their response the LA will consider the benefits to the pupils/community and the financial viability of the facility.
- c. Schools should confirm the arrangements they have decided on following the advice given by the authority.

The LA may not charge the school for any advice given.

Funding Agreements - Local Authority Powers

3.23.5 Schools must provide the authority with details of any third party funding agreements before they are signed. The authority must be given at least 2 weeks to comment on the agreement.

3.23.6 The authority does not have a right of veto over any such agreements. However if an agreement is signed against the wishes of the LA, which the LA considers is contrary to Financial standing orders or seriously prejudicial to the interests of the school or the LA, that may constitute grounds for suspension of the rights to a delegated budget.

Other Prohibitions, restrictions, and limitations

3.23.7. The authority may require that in the interests of the authority the governing body should carry out the facilities through a schools company or must obtain indemnity insurance. The authority will only impose this request if it considers that the project carries significant financial risk.

Supply of Financial Information

3.23.8 Where the authority has notified a school that they believe there is cause for concern with the schools management of the community facility, they may request detailed income and expenditure statements every three months. If necessary the Authority may also request the submission of a recovery plan for the activity.

3.23.9 All income and expenditure on Community facility should be reported under the CFR Framework.

Audit

3.23.10 Schools must grant access to the school's records connected with exercise of the community facilities power, in order to facilitate internal and external audit of relevant income and expenditure.

3.23.11 Schools, in concluding funding agreements with other persons pursuant to the exercise of the community facilities power, must ensure that

such agreements contain adequate provision for access by the authority to the records and other property of those persons held on the school premises, or held elsewhere insofar as they relate to the activity in question, in order for the authority to satisfy itself as to the propriety of expenditure on the facilities in question.

Treatment of income and surpluses

3.23.12 Schools may retain all net income derived from community facilities except where otherwise agreed with a funding provider, whether that be the authority or some other person.

3.23.13 The school may carry such retained net income over from one financial year to the next as a separate community facilities surplus, or, subject to the agreement of the authority at the end of each financial year, transfer all or part of it to the budget share balance.

3.23.14 If the school is a community or community special school, and the authority ceases to maintain the school, any accumulated retained income obtained from exercise of the community facilities power reverts to the authority unless otherwise agreed with a funding provider.

Health & Safety

3.23.15 The Health and Safety provision (11.5) is also applicable to Community Facilities.

3.23.16 Governing bodies will have responsibility for the costs of securing Criminal Records Bureau clearance for all adults involved in community activities taking place during the school day. Governing bodies will be free to pass on such costs to a funding partner as part of an agreement with that partner.

Insurance

3.23.17 It is the responsibility of the governing body to ensure adequate arrangements are made for insurance against risks arising from the exercise of the community facilities power, taking professional advice as necessary. Such insurance can not be funded from the school budget share. The school should seek the authority's advice before finalising any insurance arrangement for community facilities.

3.23.18 The authority may undertake its own assessment of the insurance arrangements made by a school in respect of community facilities, and if it judges those arrangements to be inadequate, make arrangements itself and charge the resultant cost to the school. Such costs can not be charged to the school's budget share.

Taxation

3.23.19 Schools should seek the advice of the authority and the local VAT office on any issues relating to the possible imposition of Value Added Tax on expenditure in connection with community facilities, including the use of the local authority VAT reclaim facility.

3.23.20 Schools are reminded that if any member of staff employed by the school or authority in connection with community facilities at the school is paid from funds held in a school's own bank account (whether a separate account is used for community facilities or not), the school is likely to be held liable for payment of income tax and National Insurance, in line with Inland Revenue rules.

Banking

3.23.21 Schools may maintain a separate bank account or use the schools main account for Community Facilities.

Where a separate bank account is used, transaction must be recorded under the CFR Framework and audited copies of the year end accounts must be submitted to the Authority.

Where the schools main bank account is used separate identification of the Community Facilities funds from the Schools Budget share will be facilitated through the use of the CFR framework.

3.23.22 Restrictions on banking arrangements for Community Facilities are the same as those for the schools main bank account (see section 3.5.1)

3.23.23 Schools are reminded that they may not borrow money without the written consent of the Secretary of State. This requirement does not extend to monies lent to schools by their maintaining authority.