



Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

**Children & Young Peoples Scrutiny
Cabinet**

**2/11/10
8/11/10**

**Babington Community College, Fullhurst Community College
and New College Leicester**

**Implications of These Schools Becoming a Trust-
Pension and Employment Liabilities**

Report of the Strategic Director, Children's Services

1. PURPOSE OF REPORT

This report outlines the arrangements for managing the protection of pensions for school based support staff in schools that decide to change their status and become Trust schools.

Further, this report identifies the employment liabilities affecting the Governing Bodies of the above three schools, and the contribution of the Council in these matters. The apportionment of these liabilities has been the subject of discussions and in principle agreement between the separate IEB/Governing Bodies and the City Council.

2. SUMMARY

The report seeks Cabinet approval to admit support staff currently employed and those that will be employed at National Challenge Trust Schools to the Local Government Pension Scheme.

The report also seeks Cabinet approval to support the current practice of funding mandatory compensation for teachers in respect of pension contributions and for all staff in respect of redundancy costs, subject to national regulations and the Council being satisfied that the Governing Bodies have adhered to the policies and procedures in place at the time.

3. RECOMMENDATIONS (OR OPTIONS)

It is recommended that:-

All school based support staff employed by the Governing Bodies of Babington Community College, Fullhurst Community College and New College Leicester to be members of the Local Government Pension Scheme in accordance with regulation 8(1)(b) of the Local Government Pension Scheme(Administration) Regulations 2008 provided the Governing Bodies of the schools concerned consent.

The Strategic Director, Children's, be authorised, in consultation with the Director of Legal Services, under regulation 8 of the Local Government Pension Scheme (Administration) Regulations 2008 to determine eligibility for the Local Government Pension Scheme in relation to future admission to the Local Government Pension Scheme of school based staff in schools that decide to be come trust schools.

Cabinet agrees to support the current practice of funding mandatory compensation for teachers in respect of pension contributions and for all staff in respect of redundancy costs, subject to national regulations and the Council being satisfied that the Governing Bodies have adhered the policies and procedures at place at the time. Costs are chargeable to the DSG. The Council will only fund redundancy and termination costs where it is required to avoid a budget deficit or as apart of an agreed managed budget recovery plan which is In line with the provision for all schools maintained by the Council.

4. REPORT

A) Local Government Pension Scheme

The Governing Bodies of Babington Community College, Fullhurst Community College and New College Leicester, following consultation on the proposal to establish a Trust under the provisions of the 2006 Education and Inspections Act, resolved to complete the transfer to Trust school status, with formal acquisition of the Trust for each school completing on 1 June 2010. The schools believe that by establishing a trust they can bind some high profile key partners into helping the schools develop and improve.

On acquiring Trust status, the schools through their Governing Bodies become the legal employer of all the school's staff both teaching and support under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. Those staff are no longer the employees of the Council.

There are no changes required in respect of teaching staff membership of the national Teachers' Pension Scheme.

One of the consequences of a Governing Body decision to become a Trust school is in relation to support staff membership of the Local Government Pension scheme. In particular, a person may still be eligible after transfer of their employment to a new employer to be an active member of the scheme if s/he is an employee of the Governing Body of:

- A voluntary school
- A foundation school or foundation special school (which includes Trust schools)
- Any technical institute or other similar institution which is assisted by the Local Education Authority

- A federated school

These Governing Bodies are not scheme employers as defined by the Pension Regulations. Therefore to enable the support staff concerned (and any future new employees) to continue to be members of the scheme their membership needs to arise by virtue of regulation 8 of the Local Government Pension Scheme (Administration) Regulations 2008. Eligibility requires the Local Education Authority to designate the employee or the class of employees to which s/he belong as being eligible for membership of the scheme.

The mechanics of regulation 8 also require that the consent of the employer (i.e. the Governing Body) has been obtained.

When the support staff transfer from a Scheme Employer such as the Council to a Resolution Employer such as the Trust, there is no break in service and no crystallisation of any pension liability. There will therefore be no requirement from the Pension Administrator (in this case Leicestershire County Council) for any bond payment to guarantee the employees' future benefits. In addition all continuity of service is guaranteed for staff moving from a Scheme Employer to a Resolution Employer for the purpose of both pension calculations.

B) Employment Liabilities affecting the Governing Bodies of National Challenge Trust schools

i The Governing Bodies have agreed to adhere to national and local conditions of service including local agreements negotiated between the Council and Trade Unions/Professional Associations, currently in place for existing employees and new staff.

The Governing Bodies are seeking assurance from the Council that where they are required to appear before an employment tribunal in discrimination or unfair dismissal cases, the Council will fund any compensation/legal costs.

The Governing Bodies accept that if the Council can show good reason to charge the respective college budgets, e.g. if the Governing Bodies have been previously advised that an employment tribunal would likely decide in favour of the claimant, then the Council can be empowered to take the costs from the schools budgets.

ii The Governing Bodies as the employer can grant premature retirement to staff, in cases of redundancy or in the interest of efficient discharge of their employer function. The Council is requested, as the compensating authority to pay mandatory compensation towards a teacher's annual pension and retirement lump sum costs and/or redundancy payments for any employees of the colleges.

The Council will only fund redundancy and termination costs where it is required to avoid a budget deficit or as part of an agreed managed budget recovery plan as for all schools maintained by the Council.

The Council is empowered, where it has good reason, to take the costs of the premature retirement/redundancy payments from the colleges' delegated budgets if the Council has not agreed to the premature retirement or in the case of redundancy, where the payment is in excess of the Council's redundancy policy.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

As Resolution Employers, Trust schools will remain part of the City Council's pension fund (administered by the County Council) and will pay from their delegated budgets the same employer's contribution rate as applies to the City Council and its maintained schools generally from time to time. This rate comprises the expected cost of pensions for current staff and funding of the accumulated pension fund deficit.

As compensating authority the Council will continue to fund mandatory compensation payments and /or redundancy payments subject to the Council being satisfied that the Governing Body has applied the appropriate policy and acted reasonably at all times. The agreement to fund mandatory compensation for teachers in respect of pension contributions and all staff in respect of redundancy costs is subject to the Council's policies regarding maintained schools generally and to any future changes to school funding arrangements such that schools would generally be expected to meet such costs directly.

Failure by a Governing Body to comply with these requirements would result in any such costs being charged to the school's delegated budget.

Members will wish to note that in the event of any of the schools subsequently transferring to academy status, the existing DfE guidance advises that all staff will have the right to transfer on their existing terms and conditions and would be eligible to be in either the Teachers or Local Government Pension schemes. However in these circumstances the Council would not retain any pension funding responsibilities. In particular academies are separate employers for the Local Government Pension Scheme purposes, rather than Resolution Employers. An actuarial assessment of the Academy's pension liabilities would be undertaken, and an employer's contribution rate would be calculated based on the Academy's current staff profile and the historical fund deficit. The arrangements proposed in this report seek to ensure that in such an event, the Council and the trust schools would be in no different position to any other maintained school becoming an academy.

It is important that the schools continue to abide by the Council's policies and procedures for the approval of early retirements and redundancies that result in early retirement. Early retirements cause a strain on the Pension Fund, so the approval and funding of such retirements must be carefully managed

Colin Sharpe, Head of Finance, Investing in Children, Ext. 29 7750

5.2 Legal Implications

A Trust school is a Council maintained foundation school supported by a charitable Trust. To protect the pensions of the support staff employees who are currently members of the Local Government Pension Scheme and who are now employed by the Governing Bodies of the schools in question, the Council is required to make a decision under regulation 8 of the Local Government Pension Scheme administration regulations to designate those employees as eligible for membership of the Local Government Pension Scheme provided the Governing Bodies consent.

In the event of any future further transfer of those employees to a new employer consideration should be given to ensuring protection of pensions

The report also deals with employment liabilities affecting the Governing Bodies concerned. The mechanics of the transfer of both teaching and support staff from the employment of the Council as Local Education Authority to the respective Governing Bodies is governed by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. These regulations are similar to the more well known Transfer of Undertaking (Protection of employment) Regulation 2006. Under these regulations staff transfer over to their new employer on the same employment terms and conditions.

Governing Bodies of Trust schools are not restricted to taking legal advice from in-house Legal Services. It is advised that the Director should make clear to the Governing Bodies concerned that if in-house legal advice is not obtained with regard to employment disputes this may impact on any decision of whether or not to charge the schools budget if for example a claim is made to the employment tribunal which rules in favour of the employee.

There are also implications with regard to Single Status. The Council is currently trying to implement this through negotiation with the trade unions. The Director should seek to ensure that the Governing Bodies are aware of the negotiations and support any final agreement reached. Despite the transfer of support staff to the employment of the Governing Bodies the risk of equal pay claims for support staff continues and therefore they should be treated in line with the remaining staff of the council.

Anthony Cross, Head of Litigation, Ext 29 6362

5.3 Climate Change Implications

This report does not contain any significant climate change implications and therefore should not have a detrimental effect on the Council's climate change targets.

Helen Lansdown, Senior Environmental Consultant - Sustainable Procurement
Ext 29 6770

6. OTHER IMPLICATIONS

| OTHER IMPLICATIONS | YES/NO | Paragraph References Within the Report |
|---------------------|-----------|--|
| Equal Opportunities | No | |

| | | |
|-------------------------------|-----------|--|
| Policy | No | |
| Sustainable and Environmental | No | |
| Crime and Disorder | No | |
| Human Rights Act | No | |
| Elderly/People on Low Income | No | |

7. RISK ASSESSMENT MATRIX

Delete if not required and renumber paragraphs.

This only needs to be included if appropriate with regard to the Council's Risk Management Strategy

| Risk | Likelihood L/M/H | Severity Impact L/M/H | Control Actions (if necessary/appropriate) |
|--------------------------------------|---------------------|--------------------------|---|
| 1 failure to consult /employee claim | L | L | Consultation has taken place with unions/staff and Governing Bodies have given necessary consent. |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 etc | | | |

L – Low L – Low
M – Medium M – Medium
H - High H - High

8. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

The following background papers and research reports have been used in the compilation of this report and are available for inspection at the offices of the author.

Redundancy Policy for school based employees

Early retirement policy

Local Government Pension Scheme (Administration) Regulations 2008

9. CONSULTATIONS

10. REPORT AUTHOR

Margaret Libreri
Director, Learning Services

| | |
|--------------------------------------|---|
| Key Decision | Yes |
| Reason | Is significant in terms of its effect on communities living or working in an area comprising more than one ward |
| Appeared in Forward Plan | Yes |
| Executive or Council Decision | Executive (Cabinet) |