

**Schools Forum**

**13 December 2021**

**Amendment to Fair Funding Scheme: Maintained schools involved in outsourcing**

**This report is for decision**

**1. Recommendations:**

That Schools Forum members:

- 1.1 Approve consultation with schools on an amendment to the text of the Fair Funding Scheme

**2. Purpose**

- 2.1 The purpose of this report is to highlight incidences of schools intending to outsource services not providing adequate notice to the Local Authority and the West Midlands Pension Fund. The report proposes to consult with schools on an amendment to the text of the Fair Funding scheme in order to address this matter.

**3. Report Details**

- 3.1 The Fair Funding Scheme provides guidance to all maintained schools on the process to follow when undertaking the outsourcing of services with consequent TUPE transfer of staff.
- 3.2 Paragraph 11.12 *Information for Maintained schools involved in outsourcing*; of the Fair Funding Scheme, acknowledges that maintained schools have delegated powers to make such decisions. However, under pension fund regulations and in relation to any potential future pension liabilities/guarantees the Council is still regarded as the Scheme Employer. This means that the Council is a party to the Pension Admission Agreement which has to be signed and executed under deed of seal by Council Officers acting on behalf of the Council.

- 3.3 It has come to the attention of the Council that a number of maintained schools have recently outsourced services and transferred staff without following the guidance identified in the Fair Funding Scheme. Consequently, it is proposed that the current text for Paragraph 11.12 *Information for Maintained schools involved in outsourcing*; is replaced with the text in Appendix 1. The revised text provides further clarity on the requirements of schools.
- 3.4 Subject to School's Forum approval schools will be consulted on the amended text with a view to a future report on the outcome of the consultation being brought back to the Forum.

#### **4. Recommendations**

- 4.1 That Schools Forum approve that schools should be consulted on amending the existing text of paragraph 11.12 *Information for Maintained schools involved in outsourcing*;, of the Fair Funding Scheme, and replacing it with the text in Appendix 1.

Steve Lilley, Finance Business Partner – Childrens Services

Date: 06/12/2021

Contact Officer: Steve Lilley

Tel No: schools\_financialservices@sandwell.gov.uk

### 11.12 Information for Maintained schools involved in outsourcing

The authority is aware that schools are examining different service delivery models, which could entail the outsourcing of services.

Where the outsourcing of services involves ~~the~~ TUPE transfer of any council employees who are members ~~of~~ or are entitled to be members of the Local Government Pension Scheme (LGPS), there will be pension ~~transfer~~ implications which ~~should~~~~must~~ be considered as part of the ~~initial~~ tender process.

There is a responsibility for schools to be fully aware of ~~the~~ pension ~~transfer~~ procedures and ~~protect~~~~ed~~ arrangements early on in ~~the~~ ~~any~~-tendering process.

Schools considering outsourcing a service must ~~should~~ contact the following bodies/teams at the ~~start of the tendering process~~ ~~earliest opportunity~~ to ensure ~~all~~ ~~any~~ pension implications are fully understood and considered.

- Schools Strategic Finance Unit (SSFU) [schools\\_financialservices@sandwell.gov.uk](mailto:schools_financialservices@sandwell.gov.uk)
- Local authority HR Team [hr\\_frontline@sandwell.gov.uk](mailto:hr_frontline@sandwell.gov.uk)
- Local authority Legal team [hr\\_frontline@sandwell.gov.uk](mailto:hr_frontline@sandwell.gov.uk)
- The West Midlands Pension Fund

~~Once all the relevant information has been received, the authority will contact the West Midlands Pension Scheme~~

This will ~~help to~~ ensure that the proper processes are followed, and the school can factor in any pension issues and costs in their tender documents and potential contractors can price these costs accurately into their bids. This will avoid potential and unnecessary delays and complications at the latter stages of the tender process or after the contract has been awarded.

It is recognised that Schools do have the delegated powers to make such decisions without the need to seek formal Council approval. However, under pension fund regulations and in relation to any potential future pension liabilities/guarantees the Council (Not the School) is still regarded as the Scheme Employer. This means that the Council (~~Not the School~~) is ~~must be~~ a party to the Pension Admission Agreement which has to be signed and executed under deed of seal by Council Officers acting on behalf of the Council. ~~The agreement also has to be signed and executed by the West Midlands Pension Fund (The Administering Authority), and the new employer (The Admission Body).~~

Once signed and sealed the Pension Admission Agreement will enable those transferred staff to continue to participate in the Local Government Pension Scheme as part of their employment with a new employer.

If proper process is not followed then this could result in those former Council employees no longer being eligible to participate in the West Midlands Pension Scheme. Those employees would suffer significant financial loss arising from the curtailment of their accrued future pension benefits.