



**NOTTINGHAM CITY COUNCIL**  
**SCHOOLS FORUM**

**Date:** Thursday, 21 April 2016

**Time:** 1.45 pm

**Place:** Ground Floor Committee Room - Loxley House, Station Street, Nottingham,  
NG2 3NG

**Members are requested to attend the above meeting to transact the following business**

**Governance Officer/Clerk to the Forum:** Phil Wye

**Direct Dial:** 0115 8764637

**AGENDA**

**Pages**

**1 APOLOGIES FOR ABSENCE**

**2 CHANGE TO MEMBERSHIP**

To note that the following new members have been appointed:

- Maria Artingstoll as maintained primary governor representative;
- David Blackley as pupil referral unit (PRU) representative;
- Dawn Whitmore as further education (FE) provider representative;
- Dave Hooker as secondary academy representative (voting member from September 2016).

**3 DECLARATIONS OF INTEREST**

**4 MINUTES OF THE PREVIOUS MEETING**

Minutes of the last meeting held on 25 February 2016 (for confirmation)

3 - 8

**5 WORK PROGRAMME**

9 - 10

**6 ALTERNATIVE PROVISION MODEL 2016/2017**

11 - 24

**7 PROPOSALS FOR A SCHOOLS NATIONAL FUNDING FORMULA  
AND HIGH NEEDS FUNDING REFORMS**

Presentation by Julia Holmes and Kathryn Stevenson, Finance Analysts,  
Children and Adults

IF YOU NEED ANY ADVICE ON DECLARING AN INTEREST IN ANY ITEM ON THE  
AGENDA, PLEASE CONTACT THE GOVERNANCE OFFICER/CLERK TO THE FORUM

SHOWN ABOVE, IF POSSIBLE BEFORE THE DAY OF THE MEETING

CITIZENS ATTENDING MEETINGS ARE ASKED TO ARRIVE AT LEAST 15 MINUTES BEFORE THE START OF THE MEETING TO BE ISSUED WITH VISITOR BADGES

CITIZENS ARE ADVISED THAT THIS MEETING MAY BE RECORDED BY MEMBERS OF THE PUBLIC. ANY RECORDING OR REPORTING ON THIS MEETING SHOULD TAKE PLACE IN ACCORDANCE WITH THE COUNCIL'S POLICY ON RECORDING AND REPORTING ON PUBLIC MEETINGS, WHICH IS AVAILABLE AT [WWW.NOTTINGHAMCITY.GOV.UK](http://WWW.NOTTINGHAMCITY.GOV.UK). INDIVIDUALS INTENDING TO RECORD THE MEETING ARE ASKED TO NOTIFY THE GOVERNANCE OFFICER/CLERK TO THE FORUM SHOWN ABOVE IN ADVANCE.

**NOTTINGHAM CITY COUNCIL**

**SCHOOLS FORUM**

**MINUTES of the meeting held at Loxley House, Nottingham on 25 February 2016 from 13.50 - 15.07**

**Membership**

Present

Mark Precious (Chair)  
Sian Hampton (Vice Chair)  
Bev Angell  
Susi Artis  
Sally Coulton  
Andy Jenkins  
Judith Kemplay  
Janet Molyneux  
Tracy Rees  
Terry Smith  
James Strawbridge  
Marcus Wells  
Tracey Ydlibi

Absent

Caroline Caille  
Paul Halcro  
Gary Holmes  
Chris Manze  
Richard Matthews

**Colleagues, partners and others in attendance:**

Mandy Bryce	- Finance Analyst, Children and Adults
Alistair Conquer	- Head of Education Partnerships
Pat Fielding	- Director of Education
Julia Holmes	- Finance Analyst, Children and Adults
Lucy Juby	- Project Manager, School Organisation
Kathryn Stevenson	- Finance Analyst, Children and Adults
Ceri Walters	- Finance Business Partner, Children and Adults
Phil Wye	- Governance Officer

**30 APOLOGIES FOR ABSENCE**

Paul Halcro  
Gary Holmes  
Richard Matthews  
Councillor Sam Webster

**31 DECLARATIONS OF INTEREST**

None.

### **32 MINUTES OF THE PREVIOUS MEETING**

The minutes of the meeting on 21 January 2016 were agreed as a correct record and signed by the Chair.

### **33 WORK PROGRAMME**

The work programme for the next meeting of the Forum was noted, with the addition of a report on the Funding Formula for the meeting in April.

Alistair Conquer announced that there are currently 4 vacancies for membership of the Forum in the categories of Maintained Pupil Referral Units, Secondary Academies, Maintained Primary Governors and 16+ Further Education Provision.

### **34 CONSULTATION ON THE REVISED FAIR FUNDING SCHEME**

Ceri Walters, Finance Business Partner, Children and Adults, introduced the report updating the Forum on the findings of the consultation on the revised Fair Funding Scheme and seeking approval for the recommended changes to the scheme. Ceri highlighted the following:

- (a) the consultation document was circulated to all head teachers of maintained primary and secondary schools and their chair of governors on 8<sup>th</sup> January 2016 and the consultation period was open for a two week period;
- (b) key changes proposed to the scheme are:
  - to clarify the notification period for any schools that intend to use an alternative payroll provider to Schools Finance Support from one month to three months in line with payroll requirements;
  - to specify the write-off of debts limits and the approval process in line with the Local Authority's Financial Regulation;
  - to re-introduce the submission of a 3-year budget plan from all maintained schools by 15<sup>th</sup> July each year;
  - to change the order threshold from £10,000 to £5,000 in accordance with Financial Regulations;
  - to change the April cash advance payment from 5% of 5/12<sup>th</sup> of the indicative non-pay budget to 10% to help with schools' cash flow;
  - to change to no interest charges on cash advances to schools using external payroll to make it consistent with schools using EMSS payroll;
  - to change the deadline from 3 months to 4 months to finalise closed school accounts in line with the DfE guidance;

- to specify the treatment of a deficit school balance and the arrangements in place to minimise the deficit level to prevent the LA from picking up debt from an academy conversion;
- (c) the change of order threshold from £10,000 to £5,000 is in line with Department for Education guidance and in accordance with financial regulations;
- (d) information on the new fair funding formula has still not been published. No core cities or comparators to Nottingham are involved with the drafting of this so it may not be favourable to Nottingham.

**RESOLVED to approve the changes made to the Fair Funding Scheme**

**35 DEFICIT FUNDING FOR HADDEN PARK HIGH SCHOOL**

Lucy Juby, Project Manager, School Organisation, introduced the report seeking approval to fund the closing deficit balance for Hadden Park High School from the Statutory Schools Reserve. Lucy highlighted the following:

- (a) when Hadden Park High School closed, it had a deficit balance of £0.013m due to falling pupil numbers at the school;
- (b) following the school's closure, a late water bill was received that had not been included in the school's projections;
- (c) when a school with a deficit is converted to an academy, the deficit remains with the local authority, to be funded from its core budget. However there is no available funding from the core budget, so it is proposed to fund this from the Statutory School Reserve (SSR);

The following answers were given in response to questions from members of the Forum:

- (d) it is enshrined in law that the sponsor academy trust should not pay any deficits from the original school;
- (e) when a school is due to convert to an academy, the finance team write to them 3 months beforehand for monthly financial outturns. If a deficit is observed, then a plan is put in place to minimise this. A licensed deficit cap must be approved by the Corporate Director for Children and Adults before a conversion. If the school is not managing the budget in a satisfactory manner, the conversion to academy status can be delayed;
- (f) had Hadden Park High School not become an academy, its deficit due to low pupil numbers had been predicted to increase further. Since the school has become an academy it is now full in year 7;
- (g) the criteria and process for academisation is very robust and stringent to avoid these situations arising in future.

**RESOLVED to approve the allocation of £0.031m from the Statutory School Reserve (SSR) to fund the closing deficit balance of -£0.031m for Hadden Park High School, which converted to an academy, sponsored by Bluecoat Academy, on 1<sup>st</sup> April 2014 (11 in favour, 2 against)**

### **36 SCHOOLS BUDGET 2016/17**

Ceri Walters, Finance Business Partner, Children and Adults, introduced the report presenting the proposed Schools Budget for 2016/17. Ceri highlighted the following:

- (a) funding streams for educational funding are the Dedicated Schools Grant (DSG), Education Services Grant, Pupil Premium, Universal Free School Meals and the Devolved Formula Capital Grant. The majority of this funding goes direct to schools;
- (b) other main areas for funding identified in the report are de-delegated funding, central expenditure, early years and high needs. Approvals for these have all been gained from Schools Forum at earlier meetings;
- (c) the amount of DSG has increased for 2016/17, mainly due to increased pupil numbers and adjustments to high needs;
- (d) the schools' funding formula is used to allocate schools' budgets with specific rates. This has been changed in the following ways:
  - the Income Deprivation Affecting Children Index (IDACI) scores have been updated as they had not been amended since 2010;
  - Free School Meals data was updated according to the 2015 census and showed a reduction in numbers;
  - there was an uplift of all pupil-led factor rates of 2.5%;
  - 96.04% of the schools block is allocated to schools, which is an increase from 95.9% in 2015/16;
- (e) the majority of schools will see an increase in funding for 2016/17, with those that will have a decrease being due to reductions in pupil numbers;
- (f) funding for early years is based initially on actual pupil numbers from the 2015 census, and there has been no increase in the per pupil rates from the DfE. A new national formula will be implemented for 2017/18 which will increase the national average rate by 30p per hour and implement a new distribution method;
- (g) funding for high needs has increased by £0.410m. Some of this will be needed to support a planned increase in Special Educational Needs places from September 2017.

**RESOLVED to**

**(1) note the value of the 2016/17 DSG schools budget is £243.280m;**

**(2) note how the funding has been allocated;**

- (3) note that any unallocated DSG will be transferred to the Statutory Schools Reserve (SSR);**
- (4) note the allocation of Pupil Premium, and Year 7 Catch Up Premium will be confirmed in Summer 2016 and will be allocated to schools in accordance with the grant conditions.**

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## SCHOOLS FORUM WORK PROGRAMME

Title of report	Report or presentation	Author – name, title, telephone number, email address
<b><u>16 June 2016</u></b>		
1. 2015/16 outturn report	Report	Ceri Walters, Finance Business Partner, Children and Adults Tel: 0115 8764128 Email: <a href="mailto:ceri.walters@nottinghamcity.gov.uk">ceri.walters@nottinghamcity.gov.uk</a>

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### Deadlines for submission of reports

Date of meeting	Draft reports (10.00 am)	Final reports (10.00 am)
16 June 2016	25 May	6 June

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**SCHOOLS FORUM – 21<sup>st</sup> April 2016**

<b>Title of paper:</b>	<b>Alternative Provision Model 2016/2017</b>
<b>Director(s)/ Corporate Director(s):</b>	<b>Pat and Sarah Fielding, Directors of Education</b>
<b>Report author(s) and contact details:</b>	Michael Wilsher, Inclusion Officer
<b>Other colleagues who have provided input:</b>	Kathryn Stevenson, Finance Analyst (Schools) – Resources Jon Ludford-Thomas, Senior Solicitor, Legal Services Lynn Robinson, HR Business Partner, Organisational Transformation Services
<b>Summary</b>	
<p>This report is to consult Schools Forum on the detailed proposals to move to a new model for Alternative Provision for the 2016/17 financial year. This involves the devolution of high needs funding to maintained schools and academies (referred to as schools in this document) under a service level agreement (SLA) in order to support early intervention and make provision for pupils with challenging behaviour in schools.</p>	
<b>Recommendation(s):</b>	
<b>1</b>	<b>To give a view on the proposal to devolve funds to individual secondary schools for the 2016/17 financial year in accordance with the formula specified in paragraph 5.8, under a Service Level Agreement (SLA).</b>
<b>2</b>	<b>To give a view on the proposal that under the SLA the charge for pupils that are permanently excluded be set at £15,000 per annum (pro-rata) for 2016/17.</b>
<b>3</b>	<b>To give a view on the proposal to pilot the devolution of funds to 1 or 2 clusters of primary schools as of September 2016.</b>
<b>4</b>	<b>To note that the implementation of this model will require an estimated £5.565m from the Statutory School Reserve over the next 5 years. Of this £0.825m is already ring fenced for this area of activity within the reserve.</b>  <b>£0.500m of this requirement is ear-marked to cover any potential risks.</b>

**1 REASONS FOR RECOMMENDATIONS**

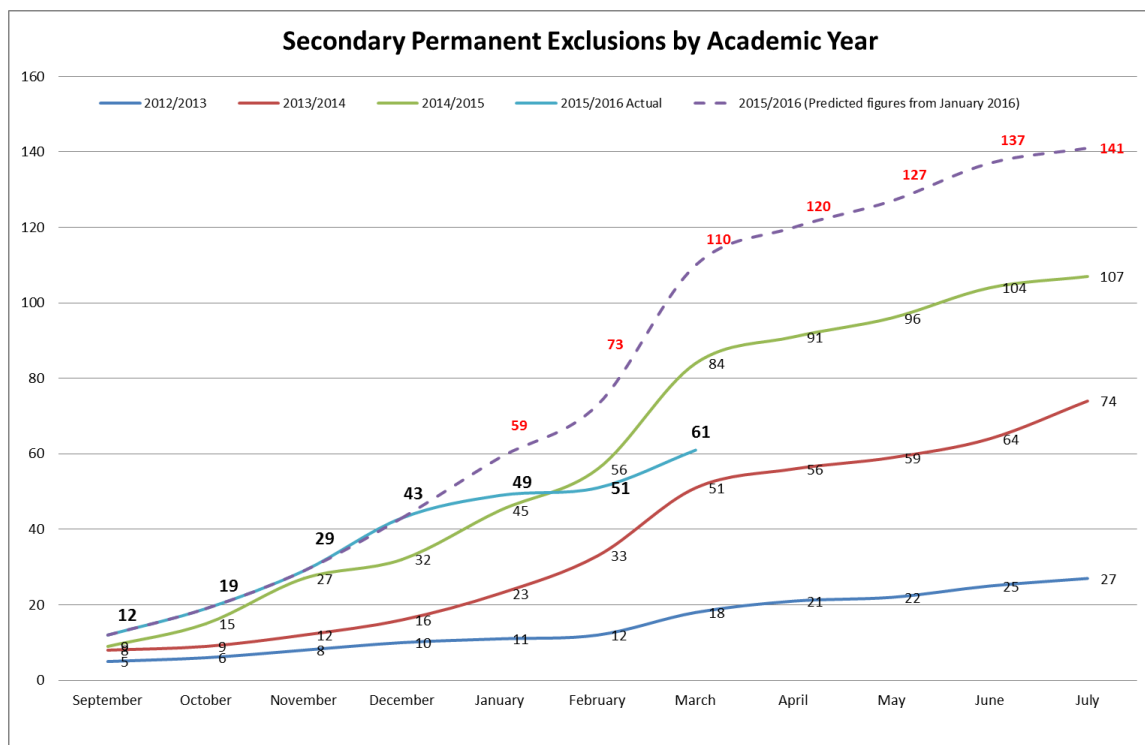
- 1.1 The current system is inequitable and is not financially sustainable.
- 1.2 The intention behind these recommendations is to put schools in charge of commissioning alternative provision to support pupils at risk of permanent exclusion in their schools. This is consistent with the national direction of travel as outlined in the White Paper and National Funding Formula and High Needs consultations.
- 1.3 It is envisaged that there will be improved educational outcomes as a result of this approach as outlined in paragraph 2.4.

- 1.4 The LA is required to consult Schools Forum over the arrangements for high needs pupils and alternative provision.
- 1.5 Consultation has been undertaken with all schools over these proposals. The Nottingham City Secondary Education Partnership (NCSEP) has indicated the agreement of secondary head teachers to the devolution proposals. Interest has been expressed by a couple of groups of primary schools in piloting the new approach in their areas.

It is the intention to implement the proposal across the whole of the secondary phase simultaneously, but to stagger the primary implementation to review the pilot cluster models. The purpose of the primary model will be to support schools in developing effective models and for all primary schools to be part of the model before April 2017. As such, full cost for permanent exclusions will be applicable to all schools through an approved service level agreement.

## 2 **BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 Within the 2015/16 high needs budget; £2.815m is set aside to fund Denewood and Unity Learning Centres. However, the update presented at Schools Forum on 24 September 2015 outlined the requirement to supplement this budget by up to £1.655m from the DSG reserve.
- 2.2 The annual overspend will continue to grow if the number of permanent exclusions remains in line with the average for the last 3 academic years. Modelling suggested that the cumulative overspend over the next 5 years could reach £14m, which is clearly not affordable.
- 2.3 This academic year (2015/2016) has already seen secondary permanent exclusions above the average for the last 3 years as shown in the graph below. It is important to note that primary permanent exclusions have also risen significantly over the last 3 years (on average 20 exclusions per year) including at Key Stage 1.



- 2.4 The proposal is to move to a model of devolution of alternative provision funding to schools.

Under this model, schools have all the funding and make the choice of provision for their pupils. Educational benefits of the new approach are expected to be:

- Additional funding available to schools to support early intervention and provide for the needs of pupils.
- Schools can work together to develop good practice and shared resources.
- Funding and resources to support links between primary and secondary to develop transition support.
- Better outcomes for pupils accessing quality education and provision through schools.
- More flexibility to avoid exclusion and speed of support.

- 2.5 Funding will be devolved to schools based on calculations outlined in paragraphs 5.7 to 5.11.

- 2.6 This funding will be attached to conditions outlined in a Service Level Agreement (SLA). This will include the requirement for schools to meet the ongoing costs of provision for all pupils including those that they permanently exclude. Devolved funding will be adjusted to reflect a charge for any pupils permanently excluded after 1<sup>st</sup> April 2016. The proposal is for this charge to be £15,000 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost which currently is outlined in paragraph 5.12.

- 2.7 Secondary heads are in the process of reviewing and providing feedback on the detailed contents of the SLA. It will not be possible to release funding until there is an agreed SLA and all schools have signed up. Equally, from a Local Authority (LA) perspective the proposals will require formal approval at the May Executive Board.

- 2.8 Whilst there will be a slight delay due to the above, the LA is proposing that the devolved funding allocations once released will represent the full April – March financial year 2016/17 funding and the terms of the SLA will state that the allocation is adjusted for a charge on any exclusions from April 1<sup>st</sup> 2016. Delays to the implementation date risk the affordability of the model which has been consulted on.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 The proposals have been revised considerably as a result of feedback from schools during the period of consultation.

### **4 OUTCOMES/DELIVERABLES**

- 4.1 A model which can be taken forward for formal approval and implementation.

### **5 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

- 5.1 Under the proposed new approach, £2.815m funding that has previously been budgeted for Denewood and Unity PRUs will in future be **devolved to schools via a formula** from the high needs budget.

This allocation will be based on the premise that they will agree the SLA which will include the requirement to meet the costs of provision for permanently excluded pupils.

High level needs top-up funding for secondary pupils with Social, Emotional and Mental Health (SEMH) issues will be added to the quantum to be devolved by the same formula.

- 5.2 The devolved funding is separate from (and in addition to) schools' delegated budget shares. It remains classed as a central budget and its terms of use, is dictated by an agreement between the LA and the school.
- 5.3 Under regulation 23 of the Schools and Early Years Finance (England) Regulations a deduction is already made from schools' budget shares relating to pupils that are permanently excluded. This is a deduction relating to the formula funding received for the pupil pro-rata for the remainder of the funding period. The regulations do not permit local authorities to make a differential charge on schools' and academies' budget shares over and above this. However, a further charge can be made from devolved funding outside of the budget share, as proposed in this report.
- 5.4 The proposed charge of £15,000 (pro-rata) will therefore be deducted from the excluding school in two parts. The deduction as outlined in regulation 23 will be made to the school's budget share. A deduction will then be made to the school's devolved funding, making up the balance of the £15,000 (pro-rata).
- 5.5 These proposals are consistent with the latest Education Funding Agency guidelines (EFA High needs funding: alternative provision (AP) additional guidance 2016 to 2017 published September 2015). Paragraph 24 states:

*"It is also possible for the local authority to charge for any funding that it has devolved to schools and academies for AP, outside their budget share. Devolved funding remains as a central budget under the local authority's central control and the terms of its use by schools and academies should be covered by a service level agreement with those schools/academies. We are aware that a number of authorities have closed their PRUs and now channel most AP funding through behaviour partnerships or cluster. As with other elements of high needs funding held centrally, under the conditions of grant associated with the DSG, the local authority must treat maintained schools and academies on an equivalent basis and make sure that any distribution of such funds is fair and reasonable. As an example it would not be permissible for local authorities to levy a charge on schools commissioning AP free school places if they did not levy a similar charge for places commissioned with a PRU. Local authorities are therefore encouraged to seek the agreement of the schools forum and to consult all relevant schools and academies before deciding such matters."*

- 5.6 In the transition to the new approach, the High Needs (HN) budget will need to continue to support costs of provision at the PRUs for pupils previously permanently excluded as well as devolved funding for schools. New devolved allocations will therefore be reduced initially to reflect the costs attributed to these pupils.

- 5.7 This paper recommends the devolution of funding to individual secondary schools from April 2016. The secondary model is based on 75% of the behaviour PRU quantum, (£2.111m) plus £0.127m which represents the 2016/17 SEMH top-up allocations that would otherwise have been delegated to schools.
- 5.8 **Table 1** below shows the formula that will be used to calculate individual secondary school shares of devolved funding for 2016/17:  
The formula devolves 75% of the funding based on Ever 6 Free School Meals (FSM) pupils and 25% based on pupil numbers.

This approach is consistent with the proposal to use both deprivation and population factors in distributing funding to LAs for AP in the proposed new HN's funding arrangements currently under consultation.

TABLE 1: SECONDARY SCHOOL SHARE FORMULA										
A		B		C		D		E	F	G
School A % share of total Ever 6 FSM secondary pupils * £1.679m	+	School A % share of total secondary pupils * £0.660m	=	School A full devolved share	-	Total PRU pupils excluded from School A * projected cost/pupil at each PRU for 2016/17	=	School A 2016/17 devolved share before floor protection	Floor is 43% of full share (C)	School A devolved funding equals higher of E or F

- 5.9 This paper recommends that up to £0.390m be made available for clusters of primary schools interested in conducting a pilot project to test and evaluate a collaborative approach to behaviour during 2016/17.

This has been calculated as 25% of the behaviour PRU quantum (£0.703m) less the estimated attributed cost for 2016/17 of the primary pupils currently on roll at Denewood PRU (£0.313m).

- 5.10 The maximum amount available to each primary cluster will be the sum of the individual shares of participating schools based on the 75%:25% Ever 6 and pupil number formula applied to the £0.390m.
- 5.11 Secondary schools and participating primary clusters will be responsible under the SLA for meeting costs associated with any pupils they permanently exclude. For 2016/17 it is proposed that the charge will be £15,000 (pro-rata).

This is below full cost and a temporary measure whilst PRU costs are being reduced. In future years the charge will be equivalent of the full PRU cost/pupil.

- 5.12 The projected full cost of pupils in Denewood Learning Centre for 2016/17 is £21,568 and in Unity Learning Centre £18,177. This is reliant on the Learning Centres making significant in-year cost savings. The Schools Forum sub-group had the opportunity to scrutinise the assumptions underpinning these unit costs at the meeting held on 10<sup>th</sup> March. Members of the sub-group wished to record their concerns about uncertainty around the strategy to ensure adequate availability of appropriate provision in the City for these pupils.

- 5.13 Devolved funding from 2017/18 will also be reduced to reflect a charge for placing pupils in provision where the HN's budget incurs a £10k per place cost. This includes AP Free school academies after the first 2 years of opening. The DfE HN's funding consultation technical note states (paragraph 7b) that the new HN's formula allocation would cover "all place funding for PRUs and AP academies and free schools except for the place funding in the first two years after a free school is established". Subject to the final DfE proposals, it is suggested that the pro-rata place cost of pupils accessing the provision during the period April 2016 – March 2017 will be deducted from the 2017/18 devolved funding.
- 5.15 Based on the numbers of permanently excluded pupils as at the end of January indicative 2016/17 budgets of £1.541m and £1.920m respectively have been issued to Denewood and Unity Learning Centres.
- 5.16 However, there have been 15 secondary pupils permanently excluded between 27<sup>th</sup> January (which was the cut-off for the data used for the latest modelling shared with secondary schools) and 31<sup>st</sup> March.

The model has been updated to reflect this increase resulting in an estimated £0.474m extra additional cost to the HN's budget over the 5 year period and a £0.264m reduction in devolved allocations to schools over the same time-frame.

Due to the floor level allocation of 43% of each school's full devolved share, the sum of 2016/17 devolved allocations is only reduced by £0.040m.

- 5.17 When setting the 2016/17 Schools Budget, the LA budgeted for a £0.170m DSG deduction relating to AP Free School places. The final 2016/17 HN's block allocation has not yet been confirmed but separate notification of the AP Free school places deduction suggests this will only amount to £0.077m. The £0.093m saving in 2016/17 together with the annual saving from the proposal to charge for AP free school places against devolved funding from 2017/18, will be used to cover the extra costs to the high needs budgets of provision for the 15 recently excluded pupils.
- 5.18 Top-up funding paid to the PRUs for any pupils permanently excluded after 1<sup>st</sup> April will be paid for mostly from the combined pro-rata £15,000 deduction to budget share/devolved funding from the excluding school. A contingency of £0.133m to support any shortfall has been created from re-allocation of high level needs funding arising from the closure of Beckhampton PRU.
- 5.19 Modelling shows that the proposals will require an estimated **additional £5.165m from the Statutory School Reserve (SSR)** over the next 5 years, of which £2.2m will be required in 2016/17.

This is based on funding being devolved to all schools including primaries from 2017/18. This reserve requirement is on top of the annual £2.815m budget for the behaviour PRUs. There is £0.825m previously ring-fenced in the reserve for the relocation of the PRU which it is proposed to re-allocate to support these proposals.

- 5.20 This will leave a total of £4.552m un-earmarked in the Statutory School Reserve (SSR).



5.21 Whilst the new model will bring the costs to the high needs budget onto a more predictable basis some risks remain including:

- Achievement and sustainability of reduced PRU costs/pupil, particularly if PRU pupil numbers fall significantly in future years
- Costs of provision for permanently excluded pupils from primary schools not initially participating in the pilot
- Costs of permanent exclusions of City pupils from County schools if a reciprocal arrangement is not achieved

It is therefore recommended that **a further £0.500m is ear-marked in the SSR** to cover potential risks, thereby reducing the un-earmarked balance to £4.052m.

5.22 The additional costs incurred over the next 5 years is due to the need to simultaneously provide new devolved funding to schools to operate the new arrangements, as well as funding the provision of pupils permanently excluded under the current system. However, these proposals will bring the costs back under control.

Recent trends in permanent exclusions suggest that the continuation of the status quo would cost significantly more. It is considered that the commissioning of AP directly by schools will lead to higher quality, value for money provision. These proposals would also align in preparation with recent government proposals of schools having a greater involvement with pupils permanently excluded and their outcomes and responsibility for alternative provision (Educational Excellence Everywhere, March 2016).

## **6 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

### **Legal Implications**

6.1 This report sets out proposals to devolve funds from the high needs budget for alternative provision to maintained schools and Academies. The high needs budget for alternative provision is a sum of money provided by the Education Funding Agency (“EFA”) to a local authority over and above other education funding. In a sense it is additional funding for the specific purpose of alternative provision. As such, it is for the local authority to determine how to use it in accordance with EFA guidance. The current EFA guidance is entitled: *High needs funding: alternative provision Additional guidance 2016 to 2017* (September 2015). This budget can be devolved to maintained schools and Academies, provided maintained schools and Academies are treated on an equivalent basis, following consultation with the local authority’s schools forum (*High needs funding*, paragraph 24). In addition, *High needs funding* makes it clear that a local authority cannot charge a maintained school or Academy for the costs of a permanently excluded pupil, over and above the charge derived from the education funding regulations, unless this is pursuant to an agreement between the local authority and the maintained school or Academy (*High needs funding*, paragraph 42).

6.2 The proposals set out in this report would, if implemented, essentially entail Nottingham City Council (“NCC”) devolving its high needs budget for alternative provision to maintained schools and Academies by reference to a funding formula

that applies equally to maintained schools and Academies and only distinguishes between primary and secondary schooling. This is in accordance with *High needs funding* and is lawful. Furthermore, this would include the requirement for maintained schools and Academies to meet the on-going costs of provision for all pupils including those that they permanently exclude, with devolved funding adjusted to reflect a charge for any pupils permanently excluded after 1 April 2016. The proposal is for this charge to be £15,000.00 (pro-rata) in 2016/17 whilst PRU unit costs are being managed downwards. In future years the charge will be aligned to the full cost which currently is outlined in paragraph 5.12 of this report. Again, since this charge would be levied against the amount a maintained school or Academy has had devolved to it from the high needs budget for alternative provision – a form of additional funding – such a charge would be lawful. Indeed, whilst it is desirable for the sake of certainty that the charge is the subject of a commercial agreement between NCC and each governing body of a maintained school/proprietor of an Academy, since this is money devolved from a central budget that would be recouped by NCC in the event of a permanent exclusion it could be said there is no need for a formal commercial agreement, particularly as the proposals set out in this report envisage arrangements with clusters of primary schools which could result in unwieldy commercial agreements. The alternative option would be to adjust the amount down that would be devolved to the permanently excluding maintained school/Academy from the high needs budget for alternative provision in the following financial year.

- 6.3 In accordance with *High needs funding*, NCC has produced this report in order to consult with the Nottingham City Schools Forum. If these proposals are to be implemented, it is advisable that NCC seeks further legal advice as to the commercial law, education law and employment law implications of these proposals.

Jon Ludford-Thomas  
Senior Solicitor  
Legal Services  
Nottingham City Council

## **7 HR ISSUES**

- 7.1 The business case proposed in this paper to move to a New Model of Alternative Provision for 2016/17, under a SLA, which has been consulted upon with relevant stakeholder, is recognised in addressing the financial challenges facing this agenda.
- 7.2 The authority and other stakeholders should be mindful of any direct or indirect impact on respective employees who are currently contracted to provide Alternative Provision services. There should be a distinction between employees of different organisations in terms of the application of each organisation's agreed employment procedures and processes.
- 7.3 If these proposals are agreed, any Nottingham City Council employees who are potentially affected either directly or indirectly, will be entitled to be formally consulted with, in line with either the policies contained within the People Management Handbook for Schools and/or the City Council's People Management Handbook. In particular, regard should be given to the policies and procedures relating to restructuring principles.

- 7.4 In addition, management will need to consider any financial cost implications to restructuring of resources and in particular to any potential cost as a result of redundancy compensation payments, release of pension benefits and pension costs relating to the Transfer of Undertaking and Protection of Employment (TUPE) regulations.

*[These HR observations/comments should be cross-referenced with those provided by Legal Services]*

## **8 EQUALITY IMPACT ASSESSMENT**

- 8.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:  
(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 1, and due regard will be given to any implications identified in it.

## **9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

9.1

## **10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

- 10.1 Provision and Services for Pupils with Behavioural, Emotional and Social Difficulties in Nottingham City - An Independent Review, Peter Gray 2015

Educational Excellence Everywhere, March 2016

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## Equality Impact Assessment Form (Page 1 of 2)

**Title of EIA/ DDM: Alternative Provision Model 2016/2017**

**Name of Author: Michael Wilsher**

**Department: Education**

**Service Area: Inclusion and Disabilities**

**Author (assigned to Covalent): Michael Wilsher**

**Director: Pat and Sarah Fielding**

**Strategic Budget EIA Y/N (please underline)**

### **Brief description of proposal / policy / service being assessed:**

This report is to consult Schools Forum on the detailed proposals to move to a new model for Alternative Provision for the 2016/17 financial year. This involves the devolution of high needs funding to mainstream schools and academies (referred to as schools in this document) under a service level agreement (SLA) in order to support early intervention and make provision for pupils with challenging behaviour in schools. This would support schools in improving early intervention and support for pupils whilst driving outcomes for pupils and improvement of alternative provision within the city.

### **Information used to analyse the effects on equality:**

To assess the equalities impact, data has been collated regarding exclusions across the city and consultations with all mainstream schools support services. This has been assessed and has revealed the following:

#### **Exclusions**

Fixed period (when a pupil is excluded from school for a fixed number of days) and permanent exclusions (excluded and not able to return to that school) from schools in Nottingham City have increased significantly over the last 4 years. The largest increase has been in secondary schools, but the primary schools have also increased in permanent exclusions. The following data shows the increase of exclusions over this period:

	2012/13	2013/14	2014/15	2015/16	Grand Total
Primary Fixed Period	349	324	304	195	1172
Primary Permanent	12	21	19	11	63
Secondary Fixed Period	1804	1840	2578	1383	7605
Secondary Permanent	27	73	107	62	269
<b>Total Fixed Period</b>	<b>2153</b>	<b>2164</b>	<b>2882</b>	<b>1578</b>	<b>8777</b>
<b>Total Permanent</b>	<b>39</b>	<b>94</b>	<b>126</b>	<b>73</b>	<b>332</b>

Data regarding the number of education days lost to exclusion within the City shows that on average 11% of the school population will lose over a weeks' worth of education from fixed period exclusion. This does not take account of pupils permanently excluded and the impact that this has on pupils, their families or their future educational opportunities.

Nationally, there is a disproportion of the number of students excluded who have special educational needs; also pupils from minority ethnic backgrounds. Nottingham City sees the same picture of distortion locally, with pupils from minority ethnic backgrounds disproportionately being excluded.

The government has released guidance for exclusions as well as exclusion trial which sought to give more flexibility to schools, by giving them the resources and responsibilities for pupils' provision whilst excluded. This has been reinforced with the recent white paper Educational Excellence

Everywhere, which seeks to implement the outcomes of the exclusion trial.

In order to move towards the direction of the exclusion trial, the white paper and follow the example of many other local authorities; Nottingham City local authority have been consulting with primary and secondary schools in the City. This has been with the intention to reduce the need for exclusion and therefore reduce the high number of exclusions seen across the City in recent years. Also because this would become financially unsustainable and would not be the best use of schools or the local authorities funding. The consultations meetings have been an opportunity to discuss a shared way forward. The outcomes of these consultations are:

- Primary and secondary schools agree that there needs to be a change to the current system and that it is unsustainable.
- Funding for the support of pupils should be used earlier to avoid exclusion. This funding could be devolved from the local authorities high needs budget, which is used for the educational costs of pupils excluded.
- There needs to be a robust service level agreement which supports the process and has clear monitoring and responsibilities.

Based on the support of schools and the local authority and considering the exclusion data and national context; It is intended that the proposal to devolve high needs funding to schools is implemented. This will need to be constantly reviewed to ensure effective implementation and monitoring of benefits and in light of the changing national context and potential future changes in law or responsibilities.

	<b>Could particularly benefit X</b>	<b>May adversely impact X</b>	<b>How different groups could be affected (Summary of impacts)</b>	<b>Details of actions to reduce negative or increase positive impact (or why action isn't possible)</b>
<u>People from different ethnic groups.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>By schools providing earlier intervention this could reduce the number of exclusions, which affect all ethnic groups, but could particularly benefit ethnic minority groups as nationally and locally there are disproportionately excluded more than other groups</p> <p>Less exclusion would be beneficial as it would reduce the number of educational days lost to exclusion, increasing the opportunities for pupils in school. This would also support safeguarding vulnerable pupils and local cohesion, as pupils will be able to access support and provision through schools.</p>	<p>Monitor the impact of exclusions on ethnic groups annually to review positive or negative impacts.</p> <p>Monitor the use of exclusions by individual school and share information with schools about increases and decreases to support better inclusion practice and consistent support across all schools.</p>
<u>Men</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Women</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Trans</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Disabled people or carers.</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Pregnancy/ Maternity</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>People of different faiths/ beliefs and those with none.</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Lesbian, gay or bisexual people.</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Older</u>	<input type="checkbox"/>	<input type="checkbox"/>		
<u>Younger</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
<u>Other (e.g. marriage/ civil partnership, looked after children, cohesion/ good relations, vulnerable children/ adults).</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
<b><i>Please underline the group(s) /issue more adversely affected</i></b>				

or which benefits.

**Outcome(s) of equality impact assessment:**

- No major change needed  •Adjust the policy/proposal  •Adverse impact but continue
- Stop and remove the policy/proposal

**Arrangements for future monitoring of equality impact of this proposal / policy / service:**

This assessment will be reviewed annually to take account if the impact of the policy. Exclusion data will be collected regarding ethnicity, number of students involved in exclusion, the type and length of exclusion, the gender and age groups of pupils as well as reviewing the policy with schools and partners. This will be compared to national data when available.

**Approved by (manager signature):**

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11<sup>th</sup> April 2016

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