

## Schools Forum - 17 January 2023

<b>Title of paper:</b>	De-delegation of 2023/24 Health and Safety Building Inspection Funding
<b>Corporate Director/ Director:</b>	Catherine Underwood – Corporate Director for People Nicholas Lee - Director of Education Services
<b>Report author and contact details:</b>	Trevor Bone, Head of Building Services and Facilities Management Tel: 07940 306506 e-mail: <a href="mailto:trevor.bone@nottinghamcity.gov.uk">trevor.bone@nottinghamcity.gov.uk</a>
<b>Other colleagues who have provided input:</b>	Julia Holmes, Senior Commercial Business Partner, Finance David Thompson, Schools H&S Manager

### Summary

The purpose of this report is to update Schools Forum on the statutory and legislative health and safety responsibilities of the Local Authority (LA) in relation to maintenance and testing of maintained school properties and how the funding, requested be de-delegated, is used to support this.

In summary:

- Schools Forum (SF) agreed at its meeting on 8 October 2019 the de-delegation of £6.61 for the financial year 2020/21 and that this funding, along with the outstanding balance on the health and safety tests and inspections reserve (£0.228m), was to be used to fund the costs of tests and inspections in the financial years 2020/21 to 2022/23.
- When the last report was brought to SF, maintained schools expressed a preference to be able to organise their health and safety tests and inspections themselves once the five-year tests and inspection cycle had come to an end. During discussion between Pat and Sarah Fielding (Nottingham Schools Trust) with Nicholas Lee (Director of Education Services) and David Thompson (Schools Health and Safety Manager) it was agreed that a report requesting the de-delegation of funding for the financial year 2023/24 would be brought to SF. Therefore, this report to SF asks maintained primary schools if they would like to approve the de-delegation of funding for health and safety tests and inspections for the financial year 2023/24.
- The LA are required to seek approval on an annual basis in accordance with the 'Schools and Early Years Finance Regulations 2022'.

### Recommendations:

<b>1</b>	To note the statutory and legislative health and safety responsibilities of the LA in relation to building maintenance of maintained primary and secondary schools and the type of costs that the requested funding will be used to fund, as detailed in paragraph 1.2.
<b>2</b>	For maintained mainstream primary schools to approve the: <ul style="list-style-type: none"> <li>(a) de-delegation of health and safety building inspection funding for 2023/24 based on a rate of £7.40 per pupil, with a total estimated funding for mainstream maintained primary schools to be de-delegated in 2023/24 of £0.082m;</li> </ul>

- |  |  |
|--|--|
|  | (b) use of the forecast balance of £0.014m at the end of the financial year 2022/23 from the health and safety tests and inspections reserve to offset the costs of tests and inspections in the financial year 2023/24. |
|--|--|

## 1. Reasons for recommendations

- 1.1 The overall responsibility for health and safety lies with the employer. The Health and Safety Executive state that in England the Local Authority is the employer in community schools. The Health and Safety at Work Etc. Act 1974 (section 4) imposes duties on an individual or body who has control of the premises. This includes those with obligations for maintenance or repairs and control of access. There can be multiple duty holders within a school context. In schools, the management of health and safety on the estate is delegated by the employer to Head Teachers and school Governing Bodies.

The Health and Safety at Work Etc. Act 1974 and subsequent legislation places a general duty on employers to ensure so far as is reasonably practicable the health, safety, and welfare at work of all their employees and non-employees.

To meet schools' statutory building health and safety responsibilities, Property Maintenance, situated within Building Services at the LA ensure that the statutory and legislative maintenance and testing regimes are undertaken within Nottingham City Council's portfolio of properties, to ensure that all property facilities with health and safety implications listed on the schedule for example, fire extinguishers are inspected and tested, but Portable Appliance Testing would not form part of the schedule.

- 1.2 The funding requested to be de-delegated in this report in 2023/24 is to be used by:

Property Maintenance to fund the tests and inspections in maintained primary schools. These tests and inspections include, but are not restricted to:

- Air Conditioning Units
- Asbestos surveys
- Automatic doors and gates
- Boilers
- Electrical circuit testing
- Emergency lighting
- Fire alarms
- Heat pumps
- Legionella risk assessments
- Lifts
- Lightning protection
- Pressure sets
- Stage lighting

- 1.3 Approval of the de-delegation of Health and Safety inspections is required for maintained mainstream primary school sites to enable the LA to deliver its statutory obligation regarding the health and safety of these sites.

Maintained special schools, pupil referral units and nursery schools are not allowed to de-delegate funding, these establishments are required to buy-back services. Therefore, these schools will be invoiced for the cost of their tests and inspections based on the same rates applied to maintained mainstream primary schools.

- 1.4 Approvals for de-delegations are annual regardless of the statutory nature.
- 1.5 Schools Forum on 8 October 2019 agreed to de-delegate funding for the financial year 2020/21 at a rate of £6.61 per pupil as well as use the school's health and safety buildings maintenance reserve to fund the cost of tests and inspections for the period up to 2022/23. When the report was taken to Schools forum on 8 October 2019 the balance on the Schools health and safety tests and inspections reserve was £0.228m. See Table 1 in 2.4 for a breakdown of the reserve between the financial years 2013/14 to 2021/22.
- 1.6 **Table 1** shows the closing balance on the schools health and safety buildings maintenance reserve at the end of the financial year 2021/22 was £0.112m.

## 2. Background

- 2.1 In order to achieve a competent level of functionality the LA will consider the relevant legislation and documentation, which may include:

- Statutory legislation and regulation
- Industry regulation
- Approved Codes of Practice
- Guidance documentation
- Equipment manufacturer's instructions and recommendations
- Best practice

A policy has been produced by the Property Maintenance Team "Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties – Policy statement & Testing Procedures (January 2022 v 1.2db)". This document confirms Nottingham City Council's responsibilities in relation to tests and inspections carried out in Nottingham City properties, in line with corporate policies. The aim of the document is to give support and advice and ensure clarifications of property related health and safety responsibilities are understood. This document can be found in the Schools Safety Manual.

Property Maintenance Team using SFG 20 industry guidance have put in place a timetable for tests and inspections, which reflect a combination of statutory guidance and appropriate practice. The LA uses internal and external contractors to carry out the tests and inspections. The timetable for tests and inspections, undertaken in-house or by contractors, range from daily to up to every five years dependent on the test or inspection.

- 2.2 Note that the funding does not include the Property Maintenance advisory service on such remedial matters; this service is available via an Education Services Nottingham contract.
- 2.3 Where tests and inspections are required as part of a health and safety management system, such as asbestos, legionella or fire safety, separate policies relating to these items are included in the appendices B, C and D of the "Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties –

- 2.4 Approval to de-delegate the school's health and safety building inspection budget has been given by maintained mainstream primary school representatives at Schools Forum between the financial years 2013/14 to 2020/21. Any unspent balance at the end of the financial years 2013/14 to 2017/18 has been transferred to a Health and Safety buildings maintenance reserve. In reverse, any in-year overspend has been drawn down from the Health and Safety Building Maintenance Reserve, this occurred in financial years 2018/19 to 2021/22. As at 31 March 2022, the balance on the Health and Safety Building Maintenance Reserve was £0.112m.

Table 1 shows the budget and expenditure on the school's health and safety building maintenance in the last nine years since the funding was first de-delegated.

<b>Table 1: Breakdown of Schools Health and Safety Building Maintenance</b>						
<b>Year</b>	<b>Budget £m</b>	<b>Outturn £m</b>	<b>Variance £m</b>	<b>Year- end balance on the reserve</b>	<b>Explanation</b>	
2013/14	0.273	0.231	0.042	0.042		
2014/15	0.253	0.174	0.079	0.121		
2015/16	0.208	0.174	0.034	0.155		
2016/17	0.199	0.177	0.022	0.177	The year-end under/overspend transferred to the Health and Safety tests and inspections reserve	
2017/18	0.197	0.145	0.052	0.229		
2018/19	0.120	0.121	-0.001	0.228		
2019/20	0.073	0.088	-0.015	0.213		
2020/21	0.074	0.083	-0.010	0.203		
2021/22		0.090	-0.090	0.113		
<b>TOTAL</b>			<b>0.113</b>			

### **3. Other options considered in making recommendations**

- 3.1 If the health and safety inspections were undertaken by the school (i.e. the LA does not organise them on the schools' behalf) then according to health and safety legislation the LA would still retain the overall responsibility that they are undertaken. Therefore, the LA would need to monitor the schools to ensure that they are taking place. In the event that they do not take place in a timely fashion to the relevant standard, the LA has the legal responsibility to instruct the school to act and/or

undertake the inspection and tests automatically and recharge the school. The LA may choose to add officer time to this recharge.

#### **4. Outcomes/deliverables**

- 4.1. To de-delegate this funding will enable the LA to fulfil its statutory duties in relation to Health and Safety on maintained mainstream primary school sites.
- 4.2. Schools Health and Safety Team will be provided in good time the details of any services where the contractor has changed, so this information can be shared with schools.
- 4.3. Schools will be given access to the Concerto database where the schedule of tests and the most recent report will be held.

#### **5. Consideration of Risk**

- 5.1 Predominately this report focuses on adhering to the management of the LA Health & Safety risk, but also ensures that all aspects of risk management are managed within the LA constitutional requirements.

#### **6. Finance colleague comments**

- 6.1 In 2023/24 local authorities will continue to be funded based on the new national funding formula. Included within this “soft approach” is the ability for local authorities to be able to still request approval from maintained primary and secondary school representatives on Schools Forum for de-delegated services.
- 6.2 Approval to de-delegate funding must be sought on an annual basis.
- 6.3 As stated in 2.4 approval to de-delegate funding for health and safety tests and inspections was given in the financial years 2013/14 to 2020/21 and any under/overspends each financial year were netted off against the Schools health and safety buildings maintenance reserve.
- 6.4 On 8 October 2019 SF approved that the balance on the Schools health and safety buildings maintenance reserve of £0.228m and the de-delegation of £6.61 per pupil would be used to fund the health and safety tests and inspection costs for the financial years 2020/21 to 2022/23. This is why no report to de-delegate funding for the financial years 2021/22 and 2022/23 have been bought to maintained primary schools to approve.
- 6.5 This report is seeking maintained primary schools approval to de-delegate funding for the cost of health and safety tests and inspections in the financial year 2023/24. This service is also going to be provided to Rosehill Special School, Hospital and Home Education and Nottingham Nursery on a buy-back basis.
- 6.6 It is estimated that this combined approach should enable the health and safety tests and inspections budget for 2023/24 to achieve a breakeven position.

Table 2 shows the forecast projection for 2023/24.

<b>Table 2: Forecast projection for the financial year 2023/24</b>
--

Forecast income from maintained primary schools 2023/24	(£0.082m)	
Forecast income from maintained establishments who buy back the service 2023/24	(£0.001m)	
Balance on the health and safety tests and inspections reserve at the end of the FY 2021/22	(£0.113m)	
<b>Total Forecast income</b>		(£0.196m)
Less Forecast expenditure 2022/23	£0.099m	
Less Forecast expenditure 2023/24	£0.087m	
Contingency 2023/24	£0.010m	
<b>Total Forecast Expenditure</b>		£0.196m
<b>Net Surplus/(Deficit)</b>		<b>£0.000m</b>

Based on the estimated cost of health and safety tests and inspections for the financial year 2022/23 (£0.099m) less the current balance on the Schools health and safety tests and inspections reserve of £0.113m as outlined in **Table 1**, this is forecast to leave a balance of £0.014m on the reserve at the end of the financial year 2022/23.

The estimated cost of health and safety tests and inspections for the financial year 2023/24 is £0.087m. In order to be prudent the projected costs for 2023/24 have been inflated by 11% to allow for inflation and any swing in electrical installation costs. The 5 yearly electrical costs have changed from a M2 rate to cost per number of circuits. Therefore, the number of circuits (and therefore cost) will only be known once the visit has taken place.

The contingency set aside on this basis totals £0.010m. After taking into account the forecast costs for the financial years 2022/23 and 2023/24, deducting the balance on the Schools health and safety tests and inspections reserve and deducting the forecast income from maintained establishments that buy-back the service this would mean that £0.082m would need to be recouped from all maintained primary schools. Based on the number of pupils included on the October 2022 school census this would require of rate of £7.40 per pupil to ensure a breakeven position is achieved.

If the forecast balance on the Schools health and safety tests and inspections reserve of £0.014m (£0.113m - £0.099m) had not been taken into account, the rate would have been £8.57 per pupil for the financial year 2023/24.

6.7 Table 3 shows the forecast funding that would be deducted if maintained primary schools were to agree to de-delegation in 2023/24.

<b>Table 3: Forecast range of costs to be de-delegated</b>	
<b>Pupil number ranges</b>	<b>Costs range from and to</b>
100 to 199 pupils	£1080.13 to £1,472.23

200 to 299 pupils	£1,479.63 to £1,538.81
300 to 399 pupils	£2,323.02 to £2,929.66
400 to 499 pupils	£3,040.64 to £3,085.02
500 to 599 pupils	£3,750.86 to £4,431.74
600 to 699 pupils	£4,601.64 to £4,601.64
700 to 1100 pupils	£7,679.27 to £7,679.27

- 6.8 Any underspend at the end of the financial year 2023/24 will be added to the health and safety tests and inspections reserve and then netted off against the health and safety tests and inspections charges for the financial year 2025/26 if de-delegation is an option in the financial year 2025/26. However, if there were to be an overspend at the end of the financial year this would be added to the forecast charges for the financial year 2025/26 if de-delegation is an option in the financial year 2025/26. It is hoped that by including the contingency in the calculation of the rate per pupil this will reduce the risk of this occurring.

Julia Holmes, Senior Commercial Business Partner – 9 December 2022

## 7. Legal colleague comments

- 7.1 Primary responsibility for health and safety in relation to community schools and community special schools rests with the local authority that maintains those community schools and community special schools since it owns the land and buildings of the community schools and community special schools, and employs the staff of those schools. However, it should be noted that the governing bodies of community schools and community special schools have health and safety responsibilities arising from their control and use of the school premises and their management of the school staff.
- 7.2 The Schools Forum's powers here derive from the School and Early Years Finance (England) Regulations 2017 ("SEYFR"), made by the Secretary of State in exercise of powers under the School Standards and Framework Act 1998 and the Education Act 2002. The SEYFR came into force on 16 February 2017.
- 7.3 Chapter 2 of Part 2 of the SEYFR is entitled "Further Deductions and Variations to Limits Authorised by School Forums or the Secretary of State" and it contains regulation 12 of the SEYFR. Under regulation 12 of the SEYFR, on the application of a local authority the Schools Forum may authorise *the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares – Primary Schools and Secondary Schools) of Schedule 2 [to the SEYFR] from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(5) (SEYFR, regulation 12(1)(d)).* Part 6 of Schedule 2 to the SEYFR contains paragraph 45, which states:

*Expenditure on insurance in respect of liability arising in connection with schools and schools premises.*

- 7.4 Part 6 of Schedule 2 to the SEYFR contains paragraph 49, which states:-

*Expenditure on the schools' specific contingency.*

- 7.5 Therefore, provided the proposals fall within the above legislation, Nottingham

City Schools Forum has the power to approve the recommendations in this report. In addition, by virtue of regulation 8 of the Schools Forums (England) Regulations 2012 only the representatives of the maintained primary schools and the maintained secondary schools have a vote on this in respect of maintained primary schools and maintained secondary schools respectively. Moreover, this power should be exercised lawfully. Provided the amounts sought through use of this power have been correctly and lawfully calculated, the exercise of this power will be lawful.

## **8 Other relevant comments**

None.

## **9 Crime and Disorder Implications (If Applicable)**

N/A

## **10 Social value considerations (If Applicable)**

N/A

## **11 Equality Impact Assessment (EIA)**

An EIA is attached as an appendix and due regard will be given to any implications identified in it.

## **12 Data Protection Impact Assessment (DPIA)**

A DPIA is attached as an appendix and due regard will be given to any implications identified in it.

## **13 Carbon Impact Assessment (CIA)**

A CIA is not required because Building Services has an overarching CIA for all our procurement, which covers these report requirements.

## **14 List of background papers relied upon in writing this report**

None.

## **15 Published documents referred to in this report**

15.1 Nottingham City Council Policy: 'Statutory Testing & Inspection of Fixed Installations in Nottingham City Council Properties – Policy statement & Testing Procedures (October 2013 v 1.2b)'.

15.2 Legislation:

- The School and Early Years Finance (England) Regulations 2017;
- The Health and Safety at Work etc. Act 1974 and associated legislation;
- DfE: Good estate management for schools.