

Schools Forum – 10 December 2024

Title of paper:	De-delegation of 2025/26 Health and Safety Building Inspection Funding
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Other colleagues who have provided input:	Susan Woodland, Senior Commercial Business Partner, Finance David Thompson, Schools Health and Safety Manager

Summary

The purpose of this report is to update Schools Forum (SF) 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:

- Previously, maintained schools expressed a preference to be able to organise their health and safety tests and inspections themselves. 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 would be brought to SF annually. This report 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 2025/26.
- The LA are required to seek approval on an annual basis in accordance with the 'Schools and Early Years (England) Finance Regulations 2024'.

Recommendations:

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| 1 | 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. |
| 2 | For maintained mainstream primary schools to approve the de-delegation of health and safety building inspection funding for 2025/26 based on a rate of £8.58 per pupil, with a total estimated funding requirement for mainstream maintained primary schools of £0.094m, and to note an additional income of £0.003 will be sought from buy back from maintained special schools, maintained pupil referral Unit and maintained nursery, making a total budget of £0.097m. |

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 (LA) 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 assist meeting schools' statutory building health and safety responsibilities, Property Maintenance, situated within Corporate Landlord 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.

1.2 The funding requested to be de-delegated in this report in 2025/26 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 assist 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 The calculation of the rate for the financial year 2025/26 has been solely based upon the forecast income from maintained primary schools, maintained special schools, Hospital and Home Education and Nottingham Nursery. The October 2023 census data has been used to forecast the budget, but this will be updated once we have the latest census data for October 2024. An uplift of 3% has been added to manage inflationary increases within the service. A rate of £8.58 per pupil would be required to breakeven in the financial year 2025/26.

2. **Background (including outcomes of consultation)**

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

- Legislation and regulation;
- Industry Standards;
- Approved Codes of Practice;
- Manufactures Guidance and recommendations;
- Best practice.

A policy has been produced by the Corporate Landlords Property Maintenance Team "BS 019 - Stat Testing Statement rev 1.2F April 2024 CL". 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 found on the Corporate Safety Advice intranet site.

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.
- 3.2 It should be noted that the option is against Corporate Landlord Policy which mandates that only the Corporate Landlord undertakes statutory testing and inspection across all applicable Council properties.

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 and 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 (including implications and value for money/VAT)

6.1 Approval to de-delegate funding must be sought on an annual basis.

6.2 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 2025/26. This service is also going to be provided to Rosehill Special School, Hospital and Home Education and Nottingham Nursery on a buy-back basis.

6.3 It is estimated that this combined approach should enable the health and safety tests and inspections budget for 2025/26 to achieve a breakeven position. This calculation has been based on the number of pupils on the October 2023 census and would require a rate of £8.58 per pupil to ensure a breakeven position is achieved.

<u>Table 1:Forecast projection for the financial year 2025/26</u>		
	£m	£m
Forecast income from maintained primary schools 2025/26	93,730.00	
Forecast income from maintained establishments who buy back the service 2025/26	3,090.00	
Toral Forecast income		96,820.00
Less forecast expenditure	96,820.00	
Net surplus/(deficit)		0.00

The estimated cost of health and safety tests and inspections for the financial year 2024/25 was £94,000. In order to be prudent, the projected costs for 2025/26 have been inflated by 3%.

6.4 **Table 2** shows the forecast funding that would be deducted if maintained primary schools were to agree to de-delegation in 2025/26.

Table 2:Forecast range of costs to be de delegated	
Pupil number ranges	Costs range from and to
100 to 199	£858 to £1,707
200 to 299	£1,716 to £2,565
300 to 399	£2,574 to £3,423
400 to 499	£3,432 to 4,281
500 to 599	£4,290 to £5,139
600 to 699	£5,148 to 5,997
700 to 1100	£6,006 to £9,438

- 6.5 Any underspend at the end of the financial year 2025/26 will be reported back to school's forum.

Susan Woodland, Senior Commercial Business Partner - 14 November 2024

7. **Legal colleague comments**

- 7.1 The Council retains primary responsibility for health and safety for those schools where it is the employer however, governing bodies also have health and safety responsibilities arising from their control and use of the school premises and their management of the school staff.
- 7.2 Regulation 12(1)(e) of the School and Early Years Finance and Childcare (Provision of Information about Young Children) (Amendment) (Regulations) 2024 (The 2024 Regulations) allows the Schools Forum to authorise "the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 7 of Schedule 2 from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, in accordance with regulation 11(6)". Part 7 paragraph 69 relates to "Expenditure in relation to compliance with the authority's duties under the Health and Safety at Work etc. Act 1974 and the relevant statutory provisions as defined in section 53(1) of that Act, in so far as compliance cannot reasonably be achieved through tasks delegated to the governing bodies of schools; but including expenditure incurred by the authority in monitoring the performance of such tasks by governing bodies and, where necessary, giving them advice".
- 7.3 Schools Forum therefore appears to have the power to approve the recommendations in this report. By virtue of regulation 8 (9C) of the Schools Forums (England) Regulations 2012 (as amended) only the following representatives may vote on this matter:
- representatives of primary schools other than nursery schools;
 - representatives of secondary schools;
 - representatives of special schools, where there are any such schools in the authority's area;
 - representatives of pupil referral units, where there are any such schools in the authority's area.

Ann Barrett, Team Leader Legal Services - 19 November 2024

8. **Other relevant comments**

- 8.1 None.

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

- 9.1 N/A

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

- 10.1 N/A

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

11.1 An EIA is not required.

12. Data Protection Impact Assessment (DPIA)

12.1 A DPIA is not required.

13. Carbon Impact Assessment (CIA)

13.1 A CIA is not required.

14. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

14.1 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 2024;
- The Health and Safety at Work etc. Act 1974 and associated legislation;
- DfE: Good estate management for schools.