

Subject:	Voluntary Aided Schools (Industrial Relations)
Date of Meeting:	22 April 2010
Report of:	Director of Strategy & Governance
Contact Officer:	Name: Abraham Ghebre-Ghiorghis Tel: 29-1500
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Key Decision:	Yes Forward Plan No: CAB16249
Wards Affected:	All

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that relevant advice and information was not available in time and a decision on this matter cannot be delayed without significant adverse consequences. The item was not included in the forward plan for the same reason. However, the Chairman of the Overview & Scrutiny Committee has been consulted and agreed that a decision on the matter cannot be reasonably delayed.

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Cabinet will be aware of the completion of the work regarding proactive settlement of potential back-pay liabilities to equal pay claims for staff in a variety of Council services including “community schools”. Concerns have been raised by staff, trades unions and voluntary aided schools about an apparent difference in relation to the approach taken to the funding of those schools. This report recognises the argument that inadvertently voluntary aided schools may have been disadvantaged by the previous funding mechanism and seeks to find an equitable way forward. As the report sets out matters have recently come to a head with an increasingly sensitive industrial relations climate within the schools and balloting for industrial action. Given that such action potentially disrupts the smooth and efficient education of all schools in the City during an important term for pupils this report looks at options available to the Council to ensure the continuity of education for all pupils by making financial resources available to voluntary aided schools to enable them to resolve their industrial relations issues.
- 1.2 The importance of ongoing education provision is such that following receipt of Leading Counsel’s advice yesterday this report has been prepared for Cabinet to determine today and provide certainty on the position.

2. RECOMMENDATIONS:

- 2.1 That Cabinet agrees in principle to use the wellbeing powers as set out in this report to make available up to £1.5million to enable voluntary aided schools to address the threat of industrial relations disruption.

2.2 That Cabinet authorises the Chief Executive (in consultation with the Director of Children, Families & Schools, Finance & Resources and Strategy & Governance) to take all steps necessary or incidental to making the funding available to the voluntary aided schools and to determine any conditions upon which those sums should be made available.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The City of Brighton & Hove has some 16 voluntary aided-schools (all of which are either Catholic or Anglican faith schools). Together, the voluntary aided schools employ approximately 844 non-teaching staff (including casual staff). The pay and conditions of teaching, as opposed to non-teaching staff are set at a national level and are not relevant for present purposes.

3.2 In 2005, a job evaluation of non-teaching staff in both community and voluntary aided-schools was undertaken (for the purpose of this report, community schools are local authority schools and voluntary aided schools are the faith schools). Since 2006, when the result of the review was implemented, staff in both voluntary aided schools and community schools in Brighton & Hove have been paid exactly the same amounts and worked under identical terms and conditions. If there were any variation in pay, it would have been implemented for both groups simultaneously. As with many local authorities, these arrangements where the pay and conditions in voluntary aided schools mirror those of community schools, are adopted voluntarily by each voluntary aided school and are not the subject of any legally-binding agreement with the Council. Notwithstanding these arrangements, the legal position remains that staff in voluntary aided schools are employed by the governing body of the school and those in community schools are employed by the Council. The Council provides HR, payroll and legal support to the voluntary aided schools under service level agreements that recognise those schools are the employers of their staff.

3.3 In 2009, the Council undertook an equal pay review of all its staff throughout the Council, including non-teaching staff in community schools. Non-teaching staff employed in community schools (and therefore employed by the Council) were able to use other employees of the Council in male dominated groups (such as refuse collectors) as comparators for equal pay purposes. Following detailed negotiations with the trades unions concerned potential claims of affected employees were settled on an individual basis by the acceptance of proactive offers by the Council equating to around 60% of back pay liability.

3.4 The total cost of meeting equal pay liability as it related to schools for whom the Council was the employer was estimated at around £17m. The Council agreed to meet approximately half of this from its own resources and proposed that the other half would be funded by contributions from the schools. A government capitalisation (borrowing) facility was used to enable the cost to be spread every 10 years which resulted in a cost to schools of £10m (including interest costs) or £1m per annum. As this involved a variance from the "central expenditure limit", (the limit on the Council's ability to increase the centrally held schools budget, as opposed to the individual schools budget) the approval of the Schools Forum was required. The Schools Forum met on the 29 January 2009 and agreed the methodology proposed.

- 3.5 The Employment Appeal Tribunal, in the case of *Dolphin v Hartlepool Borough Council (2007)* and other cases, ruled that staff in voluntary aided schools were not employed by the local authority and could not therefore use any Council employee as a comparator as they do not work in the same “establishment”. In the practical application of this principle in Brighton & Hove, it meant staff in voluntary aided schools had no valid equal pay claims unless they were able to show a comparator within the same school. The equal pay initiative was intended to address legal liability (as opposed to fairness in general) and given resources available, the Council, did not feel it was appropriate to make payments (in relation to voluntary aided schools) when there was no liability. It was also unclear whether the Council would have legal powers to pay what would arguably be “gratuitous” payments to another employer.
- 3.6 The Council has been approached by the voluntary aided schools, the unions and Members with concerns about the unsatisfactory state of affairs. The voluntary aided schools have also made representations to the government. Although not a dispute with the Council, the unions are balloting their members in a number of the voluntary aided schools with a view to taking industrial action. The current position means that the relations between the Council and the voluntary aided schools is coming under increasing pressure; there is the prospect of disruption to the education of a large number of pupils in the City and this has the potential to continue into an important term in the school year.
- 3.7 Whilst the position taken by the Council to date has been appropriate in terms of its contractual relationship with its own staff and the differentiation from the obligations of the voluntary aided schools (as independent employers) it does potentially lay the Council open to allegations of “differential treatment” of the funding of voluntary aided schools. Whilst legally defensible, given the impasse and increasingly acrimonious industrial relations environment there is now a real threat to the provision of good ongoing education to pupils in the City. Given the situation Officers have sought advice from Leading Counsel. Leading Counsel’s written advice (received yesterday) is that the Council has the legal powers (the wellbeing powers under the Local Government Act 2000) to make funds available to the voluntary aided schools if it considers that would be in the economic, social or environmental wellbeing of the area. He further advised that it would be reasonable to take a view that the resolution of the dispute would fall within such categories.
- 3.8 Officers have considered the financial position, which is set out in more detail in the Financial Implications paragraph below. In broad terms however, although not without difficulty, it appears that the Council would be able to make available to voluntary aided schools up to £1.5m without requiring any additional contribution from the schools or any additional pressures on the general fund over and above what is already provided.
- 3.9 Given the governing bodies constitute 16 different employers the precise sum needed to resolve the industrial relations issues is unknown but the authorising of up to £1.5m of capital will enable those schools to enter constructive dialogue with staff. It remains the responsibility of the governing bodies however to seek to resolve those issues on the best terms possible and such sums will only be available to those schools for the resolution of the existing dispute. The figure of £1.5m represents the sum to assist those governing bodies deal with their

industrial relations problems rather than assessment of what, if any, legal liability might arise following employment tribunal or negotiated process. Rather the proposed sum is about dealing with the perceived inequality of funding treatment of voluntary aided schools compared to community schools.

- 3.10 Given the above, it is proposed that Cabinet agrees in principle to assist the voluntary aided schools in resolving this matter by making financial contribution that takes account of the need to act fairly, but also takes account of other demands on its resources to address outstanding equal pay and other pay and grading issues. In doing so Cabinet would be using the Council's wellbeing powers and taking regard of the contents of the City's Community Strategy and guidance issued by the Secretary of State in its use.
- 3.11 Further detailed work and discussions need to take place with representatives of the voluntary aided schools if the recommendations in this report are agreed. This will include requiring those schools to take reliable independent HR and Legal advice on how best to deal with their position. Ultimately however it remains the responsibility of the governing bodies of those schools to discharge their responsibilities as employers. Cabinet is therefore recommended to delegate to the Chief Executive, after consulting with relevant statutory officers, to liaise with the voluntary aided schools and take all steps necessary or incidental to the achievement of a fair outcome.

4. CONSULTATION

- 4.1 There have been discussions with the Audit Commission, representatives of the voluntary aided schools and the unions and their comments and positions have been taken into account in this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1.1 The Council can fund the £1.5m proposed in this report through releasing one-off resources set aside in reserves specifically to deal with matters related to equal pay. The term "Single Status" has been used in the designation of this earmarked reserve. Funding from this reserve would be utilised as set out in the report to address issues that have arisen in voluntary aided schools in connection with the Council's own equal pay review. These issues do not relate to Council employees and are not a legal consequence of the equal pay review or action previously taken by the Council. However the payment is considered to be affordable in the context of the resources available and estimates of any known remaining equal pay risks. Spending the resource in this way does reduce the Council's flexibility for the future in dealing with other pay related matters for its own employees, for example making changes to allowances or the wider pay and reward system.
- 5.1.2 The funding of equal pay back pay in schools included a contribution from schools. The methodology for this was agreed by the Schools Forum. At the same time other unrelated changes to the formula for funding schools were agreed by the Forum. The financial impact of those decisions vary school by school and, as for all such decisions, creates a complex set of possible "winners" and "losers" which is overlaid by the government's Minimum Funding Guarantee

to schools. It has always been the Council's position that, if any equal pay back pay liability were to be identified in voluntary aided schools, then funding would be provided to assist with this on the same basis as for maintained schools so as not to place voluntary aided schools at a financial disadvantage.

5.1.3 The Council has not formed a view as to whether there is any equal pay back pay liability in voluntary aided schools as the staff are not its employees. However, if there is any potential liability, it is likely to be small.

5.1.4 The £1.5m is therefore being made available to help the voluntary aided schools reach a negotiated settlement with their staff on pay related matters. Voluntary aided schools will need to use part of that funding to seek robust legal and human resources advice to ensure that they do not create unforeseen and potentially costly liabilities with other members of their workforce. £50,000 will be released immediately to facilitate obtaining that advice and this will be increased as needed up to a maximum of £100,000. The remaining funding will be released to make payments to staff on the basis of the proposals put forward following that advice.

Finance Officer Consulted: Catherine Vaughan Date: 22/04/10

Legal Implications:

5.2 These are incorporated into the body of this report.

Lawyer Consulted: Abraham Ghebre-Ghiorghis Date: 21/04/10

Equalities Implications:

5.3 The proposals in the report will help achieve consistency of treatment of staff and therefore contribute towards equality.

Sustainability Implications:

5.4 There are none arising from this report.

Crime & Disorder Implications:

5.5 There are none arising from this report.

Risk & Opportunity Management Implications:

5.6 If the current dispute is left unresolved, there is a risk of industrial action, strained relations with the faith schools and potential disruption to the education of children.

Corporate / Citywide Implications:

5.7 A resolution of this issue will assist in achieving better harmony and co-operation between the Council and the various educational providers in the area and ensure the consistent provision of education to children across the City.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The Council has the option of not making any offer and allow the matter to take its course. However, this has the potential to be disruptive to the provision of good education and affect the relationship between the Council and the voluntary aided schools in the City adversely it is therefore not recommended.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 These are set out in the body of the report.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None