

# GATESHEAD SCHOOLS FORUM AGENDA

Thursday, 14 May 2020 at 2.00 pm in the Meeting held via e-mail

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From the Chief Executive, Sheena Ramsey

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Item Business

1 **Apologies**

2 **Minutes** (Pages 3 - 4)

The Forum is asked to approve as a correct record the minutes of the last meeting held on X

3 **Emotionally Based School Avoidance** (Pages 5 - 6)

Jeanne Pratt, Learning and Schools

4 **Term Time Only Non-Teaching Staff** (Pages 7 - 10)

Carole Smith, Resources and Digital

Contact: Melvyn Mallam-Churchill - email: [melvynmallam-churchill@gateshead.gov.uk](mailto:melvynmallam-churchill@gateshead.gov.uk),  
Tel: 0191 433 2088, Date: Thursday, 7 May 2020

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## GATESHEAD METROPOLITAN BOROUGH COUNCIL

### GATESHEAD SCHOOLS FORUM MEETING

Thursday, 12 March 2020

#### PRESENT

Ken Childs (Special Schools Governor) (Chair)

Denise Kilner	Nursery Sector Representative
Sarah Diggle	Primary Governors
Steve Haigh	Secondary Academy Headteachers
Elaine Pickering	Secondary Governors
Andrew Ramanandi	Primary Headteachers
Michelle Richards	Special School Headteachers
Domenic Volpe	Maintained Secondary Headteachers
Councillor Sheila Gallagher	Elected Member
Margaret Rich	Primary Governors

#### 10 APOLOGIES

Apologies for absence were received from Peter Largue, Alison Hall, Mustafaa Malik, Ethel Mills, Matt Waterfield, Chris Toon, Christina Jones, Clive Wisby and Cllr Gary Haley.

#### 11 MINUTES

The minutes of the meeting held on 6 February 2020 were agreed as a correct record.

#### 12 TERM TIME ONLY NON-TEACHING STAFF

The Forum received a report on the guidance on the employment of term time only employees.

Currently holiday entitlement is calculated on a pro rata basis but for term time only employees they do not receive the statutory minimum. Recent caselaw refers to this and the Court of Appeal agreed with the employee.

The impact of this on schools is not yet known, however further information would be brought back to the Forum once known.

Therefore, it is proposed that provision be made in the Council's accounts for the potential cost. The estimated cost to maintained schools is £600,000. The Schools Forum was asked to consider how this would be funded and a decision would be made at a later date. It was also pointed out that this will have a disproportionate effect on special schools because of the type of staff that are employed within those settings.

RESOLVED - That the Forum noted that contents of the report and that further reports will be brought to Schools Forum when it is known if the case goes to the Supreme Court.

**13 MAINSTREAM HIGH NEEDS TOP UPS**

A report was presented on the proposed Mainstream Schools top up rates from April 2020.

It is proposed that the mainstream top up rates be increased in line with mainstream MFG of 1.84%.

RESOLVED - That the Schools Forum approved the mainstream banding proposal for 2020/21.

**14 DEDICATED SCHOOLS GRANT Q3 OUTTURN**

The Forum received the quarter 3 projected outturn position of DSG for 2019/20. The projected outturn is £102.508m therefore an overspend of £747,000. The variances are due to the impact of MFG and capping in relation to special schools and a reduction in the forecast of early year spending, which may be the subject of clawback in 2020/21.

If the reserve fund is used to fund the overspend this will result in the reserve reducing to £211,000 at the end of the financial year.

RESOLVED - That the Schools Forum noted the content of the report.

**15 DEDICATED SCHOOLS GRANT 2020/21 BUDGET**

Forum received a report seeking approval of the budget for DSG for 2020/21.

The overall funding position is £106.137m which is an increase of £4.376m on the previous year. The budget allows for an increase in the maintained schools budget share, an increase in HNB and a reduction in the Central Services Schools Block.

RESOLVED - That the Schools Forum agreed the budget for 2020/21.

**16 DATE AND TIME OF NEXT MEETING**

The next meeting will be held on Thursday 14 May 2020 at 2pm.

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**TITLE OF REPORT: Emotionally Based School Avoidance (EBSA) Update**

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## **Purpose of the Report**

In December 2019 a paper was shared with School Forum on the increasing number of children and young people who were unable to access their educational provision due to their Emotionally Based School Avoidance (EBSA). The outcome of the report was an agreement by all Gateshead schools and academies to contribute to the cost of 1 EBSA-Learning Mentor (EBSA-LM) to work alongside the 2ND EBSA-LM funded from the HNB. This report provides an update on the current position of the EBSA-LM.

## **Background**

The paper presented to School Forum in December 2019, set out the definition of Emotionally Based School Avoidance (EBSA), along with the strategies that the LA is using to address the rise in numbers of children and young people who are not attending school due to EBSA, including

- Whole school support and training
- Interventions and strategies
- Transition
- Individual Pupil Level

In relation to work at an Individual Pupil Level the LA have 2 ongoing pilots.

- 1) the AV1 Avatars, the LA had secured funds (approximately 35,000) to pay for 10 AV1 Avatars to link pupils at home with their classroom
- 2) the EBSA-LM the LA HNB had agreed to pay for 1 person and the request was asked and agreed for schools to pay for the second person.

Work is ongoing to agree criteria for allocation of the EMSA-LM and allocation would be through the Education Inclusion Panel (EIP).

The agreement was that the EBSA-LM funded via the HNB would work with those pupils who were unable to attend school due to high levels of EBSA, while the EBSA-LM funded by the schools would work with those pupils identified as having EBSA but who were still attending their schools; although this might mean poor and sporadic patterns of attendance.

## **Proposal**

The funding that was agreed would normally run from April-March (financial year), however with the current situation (COVID 19) the recruitment process has been temporarily halted.

Therefore, School Forum is being provided with two alternative options for consideration once the current situation resolves itself.

### **Option 1**

We shift the funding from the financial year to the academic year

#### **Pros**

- This would allow time for the EMSA-LM to be employed and trained and still provide two terms of input.

#### **Cons**

- It means there is a cross over between financial year and academic year
- It means that School Forum /schools may be provided with evidence to consider future options after the budget for the next financial year need to be agreed for de-delegation

### **Option 2**

We ask schools for 2 terms of funding from the 2020/21 academic year and a further 1 year of funding from the 21/22 academic year, so that the positions would run from September 2020 until March 2022.

#### **Pros**

- This would give time for the employment and training of the EBSA-LM (Autumn Term 2020).
- This would provide time for the EBSA-LM work to be evaluated over several terms to ascertain the impact
- This would allow for three interim reports to be provided to School Forum (November 20, May 21 and Nov 21) as well as an annual report to schools Sept 21 (for the 20/21 academic year)

#### **Cons**

- This would cost the schools an additional 2 terms of funding

### **Recommendations**

School Forum are asked to consider the above options for moving forward with the appointment of the 2 EBSA-LM.

### **For the following reasons:**

To ensure that the children and young people in Gateshead receive an education that is suitable and appropriate to their needs and abilities

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**CONTACT: Jeanne Pratt Ext 8644**

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**TITLE OF REPORT: Term Time Only Non-Teaching Staff**

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## **Purpose of the Report**

The purpose of this report is to inform Schools Forums of the implications of implementing the February 2019 amendment to Part 4 of the Green Book introducing guidance on the employment of term time only employees.

## **Background**

This report builds on the initial report brought to Schools Forum in March. Currently, holiday entitlement is calculated on a pro rata basis based on the number of hours and weeks an employee is required to work per year. As term-time only employees work 39 weeks per year, they only accrue holiday for these weeks. Therefore, they do not receive the statutory minimum of 5.6 weeks holiday per year that a full year employee accrues.

Recent caselaw (*The Harpur Trust v. Brazel*) refers to a term-time only employee claiming that she must receive the statutory minimum holidays in accordance with the Working Time Regulations and the pro rata of holiday entitlement to 39 weeks is incorrect. The Court of Appeal agreed with the employee and stated that the Working Time Regulations do not provide for pro-rating of holiday for any employee who works part year.

This decision may be subject to a Supreme Court appeal, however to assess the potential implications of applying the case law to the Council's term-time only employees, the current position regarding term time only workers has been examined. Applying the case law would result in positively adjusting the pay for the majority of term-time only employees to account for the increase in holidays to the statutory minimum. Appendix 1 details estimated term-time only statistics on an individual school basis.

Whilst technically the case law is applicable only to statutory holidays, to avoid creating an equal pay risk, the case law should be applied to contractual holiday entitlement, not just the statutory minimum. The impact will be a greater positive adjustment than that detailed in 6 above and will apply to all term-time only employees.

Currently, term-time only employees are paid for 39 weeks work plus a pro rata of their holiday entitlement, which is then equated over 12 months. This means they receive a reduced pay each month in order to receive pay over the 13 weeks of school closures. At present this is not adjusted when term-time only employees leave, join or have contractual changes that affect their annual leave entitlement during the year.

The Green Book Part 4 Guidance, which was revised in February 2019 provides a suggested calculation to be applied when term-time only employees leave or join

during the year to ensure that they receive all monies (pay and holiday) owed to them. In addition, it recommends that councils consider the impact of contractual changes affecting their annual leave accrual rate during the year.

HR Advice and Payroll have considered the guidance and the suggested calculation for leavers and joiners during the year in detail and have determined that this provides term-time only employees with an accurate payment for the work done and holidays accrued. Therefore, it is expected that the majority of term-time only employees leaving during the year will receive a payment on the ending of their contract for any underpayment of salary. In addition, it will allow the Council to recover any monies overpaid to a term-time only employee.

HR Advice and Payroll have applied the suggested Part 4 calculation to contractual changes during the year and have determined that this will continue to pay term-time only employees incorrectly. Therefore, it is recommended that when a term-time only employee has a contractual change affecting their annual leave accrual rate two calculations are undertaken at the date of change to ensure their pay is correct and there is no unlawful deduction of salary. The case has not yet been heard in the Supreme Court.

## **Proposal**

It is currently unclear if the case will progress to the Supreme Court, but as the case law is an obligating event the Council must make a provision in their 2019/20 Final Accounts for the potential cost of implanting the suggested Part 4 of the Green Book and the cost of backdating the changes to August 2017. The estimated cost to maintained schools is approximately £0.970M. This included the estimated amount for 2019/20 and 19 months backdating for the increased entitlements to August 2017. HR Payroll attempted to calculate the cost for Gateshead Academies, but there was insufficient data for this to be carried out.

As a provision is required in the final accounts for 2019/20, the initial provision will be at an individual school level (as per appendix 1). It must be stressed however that these are estimated costs only. If the case does progress to the Supreme Court and the decision is upheld, then the exact calculations will be undertaken. If the Supreme Court overturns the decision, the provision will be reversed. When the situation is crystalized, we will work closely with all Gateshead schools and further reports will be brought to Schools Forum.

## **Recommendations**

It is recommended that Schools Forum notes the contents of the report and that further reports will be brought to Schools Forum when the situation crystalizes.

## **For the following reasons:**

To inform Schools Forum of the current situation re term time only non-teaching staff.

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**CONTACT: Carole Smith Ext 2747**

## Appendix 1

School Name	19 Months backdated	2019/20	Total
Barley Mow Primary School	£5,283	£3,122	£8,404
Bede Community Primary School	£10,136	£5,856	£15,992
Bensham Grove	£1,940	£1,146	£3,086
Bill Quay Primary School	£6,463	£3,819	£10,282
Birtley East Community Primary School	£10,903	£6,442	£17,345
Blaydon West Primary School	£6,230	£3,681	£9,911
Brandling Primary School	£5,406	£3,194	£8,600
Brighton Avenue Primary School	£19,417	£11,473	£30,890
Caedmon Community Primary School	£11,384	£6,727	£18,111
Carr Hill Community Primary School	£16,205	£9,576	£25,781
Chopwell Primary School	£9,305	£5,498	£14,803
Clover Hill Community Primary School	£4,533	£2,679	£7,212
Colegate Community Primary School	£6,212	£3,671	£9,882
Corpus Christi Catholic Primary School	£5,952	£3,517	£9,469
Crookhill Community Primary School	£6,524	£3,855	£10,379
Dryden Special School	£9,119	£5,388	£14,508
Dunston Hill Community Primary School	£11,840	£6,997	£18,837
Emmaville Primary School	£13,941	£8,238	£22,179
Eslington Special School	£14,974	£8,848	£23,823
Falla Park Community Primary School	£9,511	£5,620	£15,131
Fell Dyke Community Primary School	£7,546	£4,459	£12,006
Fellside Community Primary School	£5,176	£3,059	£8,235
Front Street Community Primary School	£10,416	£6,155	£16,571
Furrowfield Special School	£17,404	£10,284	£27,688
Gibside Special School	£34,621	£20,458	£55,079
Glynwood Community Primary School	£18,140	£10,719	£28,859
Greenside Primary School	£6,874	£4,062	£10,935
Harlow Green Community Primary School	£9,193	£5,432	£14,625
High Spen Primary School	£7,891	£4,663	£12,553
Highfield Community Primary School	£3,338	£1,972	£5,310
Hill Top Special School	£16,620	£9,821	£26,441
Kells Lane Primary School	£7,371	£4,356	£11,727
Kelvin Grove Community Primary School	£15,893	£9,391	£25,284
Kingsmeadow Community Comprehensive School	£11,722	£6,927	£18,649
Larkspur Community Primary School	£6,350	£3,753	£10,103
Lingey House Primary School	£8,554	£5,055	£13,609
Lobley Hill Primary School	£13,379	£7,906	£21,285
Oakfield Infant School	£5,860	£3,463	£9,322
Oakfield Junior School	£5,887	£3,479	£9,366
Parkhead Community Primary School	£10,095	£5,965	£16,060
Portobello Primary School	£3,942	£2,329	£6,271
Ravensworth Terrace Primary School	£9,233	£5,456	£14,689
Roman Road Primary School	£9,238	£5,459	£14,696
Rowlands Gill Community Primary School	£7,691	£4,545	£12,236
Ryton Community Infant School	£6,132	£3,624	£9,756
Ryton Junior School	£6,983	£4,127	£11,110
South Street Community Primary School	£8,209	£4,851	£13,059
St Agnes' Catholic Primary School	£5,614	£3,317	£8,931
St Aidan's Church of England Primary School	£6,854	£4,050	£10,904
St Alban's Catholic Primary School	£6,450	£3,811	£10,262
St Augustine's Catholic Primary School	£6,464	£3,820	£10,284
St Joseph's Catholic Infant School, Birtley	£3,257	£1,924	£5,181
St Joseph's Catholic Junior School, Birtley	£4,185	£2,473	£6,658
St Joseph's Catholic Primary School, Blaydon	£6,259	£3,698	£9,957
St Joseph's Roman Catholic Voluntary Aided Primary School, Gateshead	£8,328	£4,921	£13,249
St Joseph's Roman Catholic Voluntary Aided Primary School, Highfield	£3,314	£1,958	£5,272
St Mary and St Thomas Aquinas Catholic Primary School	£6,240	£3,688	£9,928
St Mary's Roman Catholic Primary School	£3,740	£2,210	£5,949
St Oswald's Roman Catholic Voluntary Aided Primary School	£11,113	£6,567	£17,680
St Peter's Roman Catholic Voluntary Aided Primary School	£4,460	£2,636	£7,096
St Philip Neri Roman Catholic Primary School	£7,291	£4,308	£11,600
St Wilfrid's Roman Catholic Voluntary Aided Primary School	£6,334	£3,743	£10,076
Swalwell Primary School	£7,042	£4,161	£11,202
The Drive Community Primary School	£6,418	£3,793	£10,211
Wardley Primary School	£9,911	£5,856	£15,767
Washingwell Community Primary School	£4,909	£2,901	£7,810
Whickham Parochial Church of England Primary School	£4,064	£2,401	£6,465
White Mere Community Primary School	£5,295	£3,129	£8,423
Windy Nook Primary School	£8,267	£4,885	£13,152
Winlaton West Lane Community Primary School	£14,767	£8,726	£23,493
	<b>£609,610</b>	<b>£360,090</b>	<b>£969,701</b>

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