

Protocol for the Issue of a Notice of Concern

Background

The local authority has a role to protect the financial position of each individual school, Staffordshire schools as a community and the local authority. This role is recognised and supported by the Schools Forum as any irrecoverable financial liabilities incurred by an individual school would be charged to the Dedicated Schools Grant (DSG) and therefore reduces the monies available to all schools. The Schools Forum has repeatedly indicated that they expect each school to manage their own budget appropriately. The aim of issuing Notices of Concern, in line with this stewardship role, is to protect the funds available to every single pupil in Staffordshire in order that they may experience the highest quality teaching and learning.

On 1 January 2007 the DCSF issued a directed revision to the Scheme for Financing Schools (SSFS) for all local authorities which introduced a right to issue a Notice of Concern. An extract from the SSFS including this provision is included as Appendix 1.

Local authority officers aim to offer support and advice to schools on a number of financial issues and would consider the issue of a notice of concern only when the normal methods of supporting, training and encouraging schools in their financial management have failed. Officers feel it helpful to have available a protocol that gives schools clear examples of certain occasions which may give rise to a Notice of Concern and appropriate measures that may be implemented to help the school overcome any difficulties. It is hoped that such notices will not be issued widely but that increased clarity over their purpose and use would be helpful to schools and the local authority.

The purpose of this protocol is to set out guidelines as to when a Notice of Concern may be issued. It is not meant to be comprehensive as situations may occur that are not covered by the protocol where a Notice of Concern would be appropriate, and alternatively, a protocol may suggest a Notice of Concern but mitigating circumstances could indicate that it is not appropriate. Therefore each case will be decided on its merits within the overall framework.

As detailed in the SSFS each Notice of Concern will set out the reasons and evidence for it being made and will place on the governing body restrictions, limitations or prohibitions in relation to the management of funds delegated to it. The issue of a Notice of Concern does not remove the right of the local authority to de-delegate the school.

Foreseeable Situations where a Notice of Concern may be issued

1. Revenue deficits where there is no recovery plan
2. An internal audit report which assesses the school financial procedures as giving only limited assurance
3. When a school is scheduled for closure, amalgamation or to become a sponsored academy
4. Breach of Procurement Regulations for Schools.

1. Revenue Deficits where there is no Recovery Plan

Each year a number of schools close the financial year with a revenue deficit. Governors then have two options; to pay the deficit back fully in the following year or to enter into a licensed deficit scheme with the local authority to pay the deficit back over a number of years (up to 5). Early identification of the deficit and planning is essential so that staffing structures for September can be drawn up in good time.

- Schools Accountants from the Schools Financial Services team will visit all schools with an expected or actual revenue deficit as at 31 March by no later than 31 May each year. Typically these visits will take place between January and May and the focus will be to identify what action needs to be taken; to ascertain the viability of any recovery plan and to set the licensed deficit up where required. Although the Schools Financial Services team have mechanisms to identify when a school may be going into deficit, the responsibility is for head teachers or governors to notify the Schools Financial Services team of their concerns as early as possible.
- If a viable recovery plan has not been agreed by governors and the Schools Financial Services team by 31 May, a Notice of Concern will be issued on the grounds that a school should not set a deficit budget (section 4.5 and 4.9 of SSFS) and the school's inability to set a balanced budget is a clear financial risk for the individual school, the wider schools community and local authority. The action required will be to agree a recovery plan by the end of the summer term.
- If a recovery plan has still not been agreed by the end of the summer term or repayments under a previously agreed recovery plan have not been met then a Notice of Concern will be issued with additional actions required. An example is given as Appendix 2b.

2. An internal audit report which assesses the school financial procedures as giving only limited assurance

Under the instruction of the Director of Finance and Resources, the authority's internal audit department carry out planned visits to schools to ensure that controls are operating correctly. Following the visit, the school receives a report which gives an audit opinion of either substantial assurance, adequate assurance or limited assurance. In giving an opinion of limited assurance, internal audit consider that there is a significant breakdown of controls and at least one matter is high risk and requires immediate attention and priority action.

Following the issue of the audit opinion, the report must be presented to governors and an approved action plan sent to internal audit to show that the issues have been addressed.

A notice of concern is not issued in every case where the audit opinion is of limited assurance. Some examples of other factors which would be taken into account follow:

1. A lack of response to the audit report or an unwillingness to take action
2. Where the audit report highlights concerns of a medium or high risk where similar concerns have been highlighted in previous audit reports. This demonstrates that any previous action plan has not been successfully implemented
3. Where the audit report highlights significant discrepancies from the annual financial self-assessment carried out by governors under the Schools Financial Value Standard (SFVS). This indicates that the self-assessment may be flawed and that governors may not fully understand the control environment in the school.

The Notice of Concern must specify the actions required to recover the control environment in the school. These actions are likely to be different in each case, but will specify what needs to be done for the Notice of Concern to be lifted.

3. School scheduled for closure, amalgamation or to become a sponsored Academy

When a school closes or amalgamates it legally closes, even if a successor school opens on the same site. When a school closes any balance reverts to the local authority (s. 4.8 of the SSFS). There is a danger that schools may close with a significant deficit which would then fall on the local authority and be funded from the DSG. This would reduce the amount that can be allocated to all schools through the funding formula.

When a school becomes a sponsored academy under formal brokered sponsorship arrangements, any budget surplus is paid to the successor academy but any deficit falls on the local authority and is funded from the DSG. This would reduce the amount that can be allocated to all schools through the funding formula.

In Staffordshire we have been relatively fortunate in that recent school closures and amalgamations have not led to large deficits being written off in this way. This is due to the integrity of the governors and head teachers of closing schools, the work of the Schools Financial Services team in advising closing schools and the practice within Staffordshire that on amalgamation any surplus balances are reallocated as an opening balance for any successor school.

Unfortunately, colleagues in other authorities have made us aware that they have regularly experienced school closures which have resulted in large amounts being written off to DSG and also large sums of public money being spent inappropriately or in a way that does not achieve the best educational outcomes for all pupils in the local authority.

Some authorities have already implemented automatic Notices of Concern or de-delegation for closing schools which, combined with the appointment of an external member of staff to oversee the financial aspects of the closure, has significantly reduced the expected amounts being written off to DSG.

The Notice of Concern would be issued on confirmation that Cabinet has agreed a school closure, amalgamation or the DFE has approved conversion to a sponsored academy irrespective of their current financial position. An example together with suggested actions is included as Appendix 3.

4. Breach of Procurement Regulations for Schools

Schools are required to comply with Procurement Regulations for Schools when entering into contracts over £15,000 (section 2.15 of the SSFS). As guardians of public money, this is an important obligation of the governors of each school. There are two potential breaches of Procurement Regulations for Schools which risk a large liability falling on the school. If it is not possible for the school to fund this, then the liability would eventually fall on the wider school community or on the local authority. The two areas where it has been identified that such a liability could occur are:

- Obligation to go out to European Tender

For large contracts (currently over £173,934 for supplies or services contracts) there is an obligation to go out to European tender. If this is not complied with it is possible for the local authority to be sued by any potential supplier of the goods or services within Europe and they have the right to be compensated for the loss they have incurred through not winning the contract. The amounts involved could be very significant

- Transfer of staff under TUPE

Where staff are transferred from one employer to another they retain employment rights including the right of access to benefits, including pension, that are at least as good as the benefits they already have. Typically schools experience this when changing the supplier of cleaning or catering services. The risk is that a member of staff will not be aware that TUPE legislation has been breached until they come to retire and so the potential liability could be very large.

Where a significant breach of Procurement Regulations for Schools occurs, a Notice of Concern will be issued and an example is given as Appendix 4.

Publishing of Notices of Concern

The notice of Concern will be signed by the Director for People and Deputy Chief Executive and sent to the Chair of Governors at the address registered with Governor Services. Copies will be sent to:

- The Head Teacher at the school address
- The County Improvement Manager for the District in which the school is located
- The School Self-Evaluation Partner for the school
- Internal Audit

Information on notices issued will be provided to the Schools Forum on a termly basis. When a notice is withdrawn a copy of the withdrawal will be sent to the same people.

Appendix 1

Notice of Concern

The authority may issue a notice of concern to the governing body of any school it maintains where, in the opinion of the Director of Finance and the Corporate Director Children & Lifelong Learning, the school has failed to comply with any provisions of the scheme, or where actions need to be taken to safeguard the financial position of the local authority or the school.

Such a notice will set out the reasons and evidence for it being made and may place on the governing body restrictions, limitations or prohibitions in relation to the management of funds delegated to it. These may include :-

- insisting that relevant staff and governors undertake appropriate training to address any identified weaknesses in the financial management of the school;
- insisting that an appropriately trained/qualified person chairs the finance committee of the governing body;
- placing more stringent restrictions or conditions on the financial management of a school than the scheme requires for all schools – such as the provision of monthly accounts to the local authority;
- insisting on regular financial monitoring meetings at the school attended by local authority officers;
- requiring a governing body to buy into a local authority's financial management and/or HR systems;
- imposing restrictions or limitations on the manner in which a school manages extended school activity funded from within its delegated budget share – for example by requiring a school to submit income projections and/or financial monitoring reports on such activities; and
- insisting that the governing body considers, signs and publishes a Controls Assurance Statement, as defined in the Financial Management Standard in Schools.

The notice will clearly state what these requirements are and the way in which and the time by when such requirements must be complied with in order for the notice to be withdrawn. It will also state the actions that the authority may take where the governing body fails to comply with the notice.

The Schools Forum (or committee thereof) will act as arbitrator in relation to any dispute relating to an issued notice.

Appendix 2a

NOTICE OF CONCERN (Revenue Deficit no recovery plan) ABC SCHOOL

This Notice of Concern is being issued to ABC School in order to safeguard the financial position of the school, all schools maintained by the Authority and the Local Authority.

The Notice has arisen as a result of the school's deficit balance of £x as at 31 March 20XX. As at 31 July 20XX a recovery plan has not been agreed between the school and the Local Authority and so a Licensed Deficit is not in place and the school is in breach of the Staffordshire Scheme for Financing Schools. The Notice will remain in force until the a recovery plan is agreed and a licensed deficit plan put in place

The following conditions and limitations are being placed on the management of funds delegated to the school.

1. The Governing Body will work with the Schools Accountant, Schools Financial Services team, to agree a recovery plan that enables the school to set a budget for 20XX/YY and to recover the existing deficit within 5 years.

Budget Monitoring

2. The Head teacher and Business Manager will hold meetings on a half-termly basis to review the budget position. Minutes of these meetings together with a predicted outturn for the financial year and a revised 3-year model will be made available to the members of the Finance Committee, Chair of Governors and the Schools Accountant within 7 days of the meeting taking place and at least 7 days before the next meeting of the Finance Committee.
3. The Schools Accountant will visit the school on a termly basis. These visits will be paid for from the school's budget at the standard rate as detailed in the Schools Financial Services Service Level Agreement in accordance with s 6.2.19 of the SSFS. The purpose of the visit will be to advise on the robustness of the budget review, to offer professional advice to the business manager and head teacher and to provide up to date information to the Director for People and Deputy Chief Executive when required.

Staffing

4. Any change to the staffing profile that gives rise to additional costs compared to the staffing structure as at 31 July 20XX must be agreed by the Authority.
5. The supply budget will be closely monitored. Current and expected expenditure will be reported to Governors as part of the half-termly monitoring report.

Non-Staffing

6. A list of departmental budgets will be drawn up. Each budget will have a named budget holder, an agreed spending plan and an allocation of funds. Virements are allowed between budget holders but the Authority must be advised of any item that cannot be contained within the overall budget.

7. Details of any contracts that the school proposes to enter into with a value of over £15,000 must be notified to the Local Authority and written approval received before the contract is entered into.
8. The Governing Body will authorise all expenditure greater than £5,000.
9. The Headteacher can authorise expenditure up to £5,000, provided it has been allowed for in the budget.
10. A budget holder can authorise expenditure up to £1,000 provided it has been allowed for in the plan and that the school's finance team confirms that funding is available.

Other

11. The Governing Body may not enter into lease agreements unless they have permission from the Local Authority in writing.
12. The Authority will contact the Chair of Governors if it has any concerns about the financial management of the school.
13. The Authority reserves the right to apply to the Secretary of State to withdraw delegation if the agreed budget, recovery plan, and these conditions are not adhered to.

Director for People and Deputy Chief Executive

Appendix 2b

NOTICE OF CONCERN (Deficit Recovery Plan not met) ABC SCHOOL

This Notice of Concern is being issued to ABC School in order to safeguard the financial position of the school, all schools maintained by the Authority and the Local Authority.

The Notice has arisen as a result of the school failing to keep to the agreed recovery plan under the licensed deficit scheme. The school is therefore in breach of the Staffordshire Scheme for Financing Schools. The Notice will remain in force until a revised recovery plan is agreed and one repayment has been successfully made against this plan.

The following conditions and limitations are being placed on the management of funds delegated to the school.

- 1 The Governing Body will work with the Schools Accountant, Schools Financial Services team, to agree a revised recovery plan that enables the school to set a budget for 20XX/YY and to recover the existing deficit within X years.

Budget Monitoring

- 2 The Head teacher and Business Manager will hold meetings on a half-termly basis to review the budget position. Minutes of these meetings together with a predicted outturn for the financial year and a revised 3-year model will be made available to members of the Finance Committee, Chair of Governors and the Schools Accountant within 7 days of the meeting taking place and at least 7 days before the next meeting of the Finance Committee.
- 3 The Schools Accountant will visit the school on a termly basis. These visits will be paid for from the school's budget at the standard rate as detailed in the Schools Financial Services Service Level Agreement in accordance with s 6.2.19 of the SSFS. The purpose of the visit will be to advise on the robustness of the budget review, to offer professional advice to the business manager and head teacher and to provide up to date information to the Director for People and Deputy Chief Executive when required.

Staffing

- 4 Any change to the staffing profile that gives rise to additional costs compared to the revised recovery plan must be agreed by the Authority.
- 5 The supply budget will be closely monitored. Current and expected expenditure will be reported to Governors as part of the half-termly monitoring report.

Non-Staffing

- 6 A list of departmental budgets will be drawn up. Each budget will have a named budget holder, an agreed spending plan and an allocation of funds. Virements are allowed between budget holders but the Authority must be advised of any item that cannot be contained within the overall budget.

- 7 Details of any contracts that the school proposes to enter into with a value of over £15,000 must be notified to the Local Authority and written approval received before the contract is entered into.
- 8 The Governing Body will authorise all expenditure greater than £5,000.
- 9 The Headteacher can authorise expenditure up to £5,000, provided it has been allowed for in the budget.
- 10 A budget holder can authorise expenditure up to £1,000 provided it has been allowed for in the plan and that the school's finance team confirms that funding is available.

Other

- 11 The Governing Body may not enter into lease agreements unless they have permission from the Local Authority in writing.
- 12 The Authority will contact the Chair of Governors if it has any concerns about the financial management of the school.
- 13 The Authority reserves the right to apply to the Secretary of State to withdraw delegation if the agreed budget, recovery plan, and these conditions are not adhered to.

Director for People and Deputy Chief Executive

Appendix 3

NOTICE OF CONCERN (closure) ABC SCHOOL

This Notice of Concern is being issued to ABC School in order to safeguard the financial position of the school, all schools maintained by the Authority and the Local Authority.

The Notice has arisen as a result of the Authority's decision for the school to close/ amalgamate/ become a sponsored Academy with effect from 31/08/200X. The Notice will remain in force until the school closes/ amalgamates/ becomes a sponsored Academy. This Notice is not as a result of any action or breach made by the school, but is enacted as a matter of course for all schools in this situation to protect the financial position of all schools maintained by the Authority.

The following conditions and limitations are being placed on the management of funds delegated to the school.

- 1 The Governing Body will agree the budget for 200X/XX prepared by the Schools Accountant in conjunction with the school's senior leadership team.
- 2 The Authority acknowledges that variations may arise in respect of the key risk items identified during the budget setting process, and that further review may give rise to additional costs not allowed for in the budget. Any variations which increase the planned budget for 200X/XX must be agreed by the Authority.
- 3 A copy of the Authority's protocol for closing schools will be made available to all governors and members of the senior leadership team and should be adhered to at all times.

Staffing

- 4 Any change to the staffing profile that has not been identified in the budget, must be agreed by the Governing Body.
- 5 Any change to the staffing profile that gives rise to additional costs not allowed for in the budget must be agreed by the Authority
- 6 The staffing budget will be closely monitored. Any virements must be actioned where appropriate.
- 7 The supply budget will be closely monitored. Current and expected expenditure will be reported to Governors as part of the half-termly monitoring report.

Non-Staffing

- 8 A list of budgets will be drawn up. Each budget will have a named budget holder, an agreed spending plan and an allocation of funds. Virements are allowed between budget holders but the Authority must be advised of any item that cannot be contained within the overall budget.
- 9 The Governing Body will authorise all expenditure greater than £5,000.

- 10 The Headteacher can authorise expenditure up to £5,000, provided it has been allowed for in the budget.
- 11 A budget holder can authorise expenditure up to £1,000 provided it has been allowed for in the plan and that the school's finance team confirms that funding is available.

Budget Monitoring

- 12 The Head teacher and Business Manager will hold meetings on a half-termly basis to review the budget position. Minutes of these meetings together with a predicted outturn for the financial year and a revised 3-year model will be made available to members of the Finance Committee, Chair of Governors and the Schools Accountant within 7 days of the meeting taking place and at least 7 days before the next meeting of the Finance Committee.
- 13 The Schools Accountant will visit the school on a termly basis. These visits will be paid for from the school's budget at the standard rate as detailed in the Schools Financial Services Service Level Agreement. The purpose of the visit will be to advise on the robustness of the budget review, to offer professional advice to the business manager and head teacher and to provide up to date information to the Director for People and Deputy Chief Executive when required.

Other

- 14 The Governing Body may not enter into lease agreements running beyond August 20XX.
- 15 The Authority will contact the Chair of Governors if it has any concerns about the financial management of the school.
- 16 The Authority reserves the right to apply to the Secretary of State to withdraw delegation if the agreed budget and these conditions are not adhered to.

Director for People and Deputy Chief Executive

Appendix 4

NOTICE OF CONCERN (Procurement Regulations for Schools) ABC SCHOOL

This Notice of Concern is being issued to ABC School in order to safeguard the financial position of the school, all schools maintained by the Authority and the Local Authority.

The Notice has arisen as a result of the school failing to comply with Procurement Regulations for Schools. The school is therefore in breach of the Staffordshire Scheme for Financing Schools. The Notice will remain in force until the breach has been remedied and procedures have been put into place to ensure that Procurement Regulations for Schools are followed in future.

- 1 Specific actions to remedy the breach if this is possible (eg: to go to European tender or to fulfil all TUPE requirements regarding transfer of staff)
- 2 The Governing Body will authorise all expenditure greater than £5,000.
- 3 Details of any contracts that the school proposes to enter into with a value of over £15,000 must be notified to the Local Authority and written approval received before the contract is entered into.
- 4 The head teacher and/ or business manager will attend the next training session provided by the Local Authority on Procurement and Best Value

Director for People and Deputy Chief Executive