

## ***FULL COUNCIL REPORT***

Date Written	9 <sup>th</sup> April 2015
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Service Area	Schools Department
Exempt/Non Exempt	Non Exempt
Committee Date	22 <sup>nd</sup> April 2015

*To: Mayor, Ladies and Gentlemen*

# **Nursery Education Proposal to Fund all Nursery Places Part-Time from September 2015**

### **PURPOSE OF THE REPORT:**

To inform members with respect to the public interest regarding the Nursery Education Proposal 2015/16 and the legal challenge that has been received against the proposal.

Moreover;

To request that Council revoke the decisions taken on 28<sup>th</sup> January 28<sup>th</sup> 2015 and 11<sup>th</sup> March 2015 with respect to the Nursery Education proposal.

To request that Council approve the reissuing of schools' formula allocations 2015/16 calculated based on the scheme of delegation prior to the changes approved by Council on 28<sup>th</sup> January and 11<sup>th</sup> March i.e. to include funding for full-time nursery places up to the 1979/80 FTE limit.

## **1.0 INTRODUCTION AND BACKGROUND**

- 1.1 On 28<sup>th</sup> January 2015 Council approved a recommendation to fund all nursery places on a part-time basis only from September 2015, subject to approval from the Minister for Skills & Technology to change the scheme of delegation for financing schools.
- 1.2 The Minister's approval was required because the local authority's Schools Forum had rejected the proposal to change the scheme of delegation on 10<sup>th</sup> December 2014.

- 1.3 On 11<sup>th</sup> March 2015 Council approved phased arrangements to the scheme of delegation as requested in the Deputy Minister's conditional approval letter dated 13<sup>th</sup> February 2015. This ensured that those currently in receipt of full-time nursery education would not revert to part-time provision in September 2015.
- 1.4 On 9<sup>th</sup> March a 'letter before claim' was received by the local authority from Bindmans LLP solicitors on behalf of a client who was seeking to challenge the lawfulness of the Council's decision taken on 28<sup>th</sup> January 2015.
- 1.5 In a subsequent letter dated 18<sup>th</sup> March 2015, Bindmans LLP notified the local authority of a further claimant who wished to bring the same challenge to Council's decision on 28<sup>th</sup> January 2015. This challenge was later extended (in a letter dated 31<sup>st</sup> March 2015) to the decision taken by Council on 11<sup>th</sup> March 2015.
- 1.6 In the same letter a specific request was made by Bindmans LLP to suspend redundancy proceedings in schools until the matters raised in the challenge had been resolved.
- 1.7 Following consideration of the local authority's position in the matter and with due regard to the wider public interest, it was agreed by both Corporate Directors that schools would be advised to put all redundancy proceedings relating to the nursery education proposal on hold, pending the outcome of Council's deliberations in the meeting on 22nd April 2015.
- 1.8 At the beginning of March 2015 an online petition was commenced titled 'Keep Merthyr Tydfil Nursery Education'. The petition made is as follows;

*'This petition is calling on Merthyr Tydfil County Borough Council to review the decision on part-time nursery funding. Please reconsider the funding cuts of our full time nursery provision in Merthyr Tydfil.'*

- 1.9 When a public petition reaches 1,000 signatories there is a requirement to notify Cabinet of the petition and its content in order that it can be formally considered by the local authority. A subsequent report regarding this petition will be presented to Cabinet since the total number of signatories reached 1,000 on 31st March 2015 and as at 9th April 2015 1,156 people have signed the petition.

## **2.0 STATUTORY DUTY OF LOCAL AUTHORITY IN RELATION TO PROVISION OF NURSERY EDUCATION**

- 2.1 Insofar as is relevant, a local authority's duties in relation to the provision of nursery education are set out in section 118 of the School Standards and Framework Act 1998 ("the SSFA"). That section provides as follows:

*"(1) A local authority in Wales shall secure that the provision (whether or not by them) of nursery education for children who -*  
*(a) have not attained compulsory school age, but*  
*(b) have attained such age as may be prescribed, is sufficient for their area.*  
*(2) In determining for the purposes of subsection (1) whether the provision of such education is sufficient for their area a local authority -*

- (a) *may have regard to any facilities which they expect to be available outside their area for providing such education; and*
- (b) *shall have regard to any guidance given from time to time by the National Assembly for Wales.”*

- 2.2 In broad terms, the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003 prescribe the relevant age for the purposes of section 118 as the age of the child at the beginning of the term following his or her third birthday.
- 2.3 The practical effect of section 118 is that a local authority must secure that sufficient nursery education is provided for its area. Accordingly, where a local authority considers a proposal to change the provision of nursery education in its area, it must consider whether what is proposed would result in sufficient nursery education being provided for its area.
- 2.4 In determining whether nursery education is sufficient for its area, the local authority must have regard to guidance given by the Welsh Government. The relevant Welsh Government guidance (as noted in the report of 28<sup>th</sup> January 2015 pgh 3.1.4) recommends a minimum of 10 hours per week nursery education for every child.
- 2.5 The local authority's long standing policy with respect to nursery education as detailed in the local authority's admissions policy document 'A Guide to Policy and Schools Admission Arrangements 2015/16' is to provide free part-time nursery education to every child the term following their third birthday.
- 2.6 Part-time nursery education is accepted in practice to be between 10–15 hrs per week and so the local authority's policy has due regard for Welsh Government guidance.

### **3.0 LEGAL CHALLENGE**

- 3.1 In the letters referred to above, Bindmans LLP raised a number of grounds of challenge to the Council decisions of 28<sup>th</sup> January and 11<sup>th</sup> March. Advice on those grounds of challenge was sought from independent counsel. In light of that advice, it is considered that the most important ground of challenge is that relating to section 118 of the SSFA.
- 3.2 The gist of that challenge is that, when Council took its decisions of 28<sup>th</sup> January and 11<sup>th</sup> March, it did not consider whether what was being proposed would result in sufficient nursery education being provided for its area; instead Council proceeded on the erroneous premise that the Council's statutory duty was to provide part-time nursery education to every three year old from the term following their third birthday.
- 3.3 In the light of advice received from counsel, officers' view is that this ground of challenge is likely to succeed and that a court would be likely to quash the decisions of 28<sup>th</sup> January and 11<sup>th</sup> March. In particular, the statutory duty on the local authority remains that of securing the provision of "sufficient" nursery education and cannot be equated to securing the provision of part-time nursery education unless and until

Council take a decision that the provision of such part-time nursery education is sufficient for its area. To date, the Council has not taken a decision to that effect.

- 3.4 If a challenge were to be brought to the decisions of 28<sup>th</sup> January and 11<sup>th</sup> March, and that challenge were successful, it is likely that the local authority would be required to pay the legal costs of the claimants.
- 3.5 Options for mediating with the proposed claimants regarding the provision of nursery education in their particular local area were considered. However, although the claimants are apparently concerned with provision in a single locality, it is considered that in light of the concerns outlined above it would be more appropriate to reconsider the provision of nursery education throughout the local authority's area as a whole, thereby ensuring that no one community is treated differently. This position is also supported by the wider local interest in the proposal as indicated by the public petition.

#### **4.0 CONCLUSION**

- 4.1 On the basis of the points noted in 4.1 - 4.5 above and taking into account the fact that there is a wider public interest in ensuring that decisions taken by this local authority are robust, lawful and transparent, officers' view is that the decisions of 28<sup>th</sup> January and 11<sup>th</sup> March should be revoked.

#### **5.0 NEXT STEPS**

- 5.1 If Council decides to revoke the decisions of January 28<sup>th</sup> and March 11<sup>th</sup>, the next steps would be as follows:
  - 5.1.1 Formula allocations (budget shares) to schools for 2015/16 will be reissued based on the scheme of delegation as it stood prior to the decision of 11<sup>th</sup> March.
  - 5.1.2 A letter will be sent to all head teachers and chairs of governing bodies to inform them of Council's decision.
  - 5.1.3 Schools will also be invited to reconsider whether it is necessary to make redundancies for financial year 2015/16 in light of their revised formula allocations. In this way schools will be able to either conclude or cancel any relevant redundancy proceedings that they have been progressing as part of their budget setting processes.
  - 5.1.4 A letter will be sent to all parents/carers of pupils in schools to inform them of Council's decision.
  - 5.1.5 A letter will be provided to all relevant early years providers, who can then inform parents as appropriate.
  - 5.1.6 A letter will be sent to Bindmans LLP informing them of Council's decision.

5.1.7 A future report will ask Council to approve sufficient nursery provision for the LA both in terms of the number of places and time.

5.1.8 A future report will also detail what steps need to be taken to ensure that provision meets this requirement.

## **6.0 FINANCIAL IMPLICATION(S)**

6.1 If Council revoke the decisions of 28<sup>th</sup> January 2015 and 11<sup>th</sup> March 2015 and reissue formula allocations to schools for 2015/16, based on the scheme of delegation prior to these decisions, this will result in additional funding of £350k being provided to schools over and above the current Individual Schools Budget (ISB) set for 2015/16.

6.2 Consequently alternative budget reduction proposals to replace the reinstated £350k will need to be identified across the Council's budget for 2015/16.

## **7.0 SINGLE INTEGRATED PLAN AND SUSTAINABILITY IMPACT SUMMARY**

7.1 The Single Integrated Plan and Sustainability Impact Assessment has been completed and there are some negative impacts in relation to the following priorities and supporting principles; Learning for Life, Financial sustainability of public services, Equal Opportunities of access to education services and Social Inclusion.

## **8.0 EQUALITY IMPACT ASSESSMENT**

8.1 An Equality Impact Assessment (EqIA) form has been prepared for the purpose of this report. It has been found that a full report is not required at this time. The screening form can be accessed on the Council's website/intranet via the 'Equality Impact Assessment' link.

## **9.0 RECOMMENDATION(S) that**

9.1 The decisions of 28<sup>th</sup> January 2015 and 11<sup>th</sup> March 2015 with respect to Nursery Education be revoked.

9.2 The reissuing of schools' formula allocations 2015/16 calculated based on the scheme of delegation prior to these decisions of 28<sup>th</sup> January and 11<sup>th</sup> March i.e. funding for full-time nursery places will be provided up to the 1979/80 FTE limit be approved.

9.3 A future report is brought to Council detailing the next steps with respect to the provision of nursery education in the County Borough.

**LORRAINE BUCK**  
**CORPORATE DIRECTOR, PEOPLE & PERFORMANCE**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
Council Reports titled 'Proposal to fund part-time nursery places in nursery and primary schools'	January 28 <sup>th</sup> 2015 & March 11 <sup>th</sup> 2015	MTCBC Intranet
Cabinet Information Report titled 'Sufficiency of Nursery Education Places'	December 17 <sup>th</sup> 2015	MTCBC Intranet

***Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.***