

SCHOOLS FORUM - 8 December 2016

Title of paper:	Financing the Costs of Redundancy for Maintained Schools
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Summary

The purpose of this report is to outline the proposed arrangements and future policy for circumstances when the costs of redundancy and the costs of annual pension in early retirement (including where redundancy activates access to pension) may/will be paid in full or part by the Local Authority for school based staff in maintained schools.

Recommendation(s):

1	To note the requirements of section 37 of the Education Act 2002, for costs incurred by Local Authorities in respect of any premature retirement and any dismissal for the purpose of securing resignation, of any member of staff of a maintained school.,
2	To note the review of Policy and proposed future arrangements, outlined in the document 'Financing of Costs of Redundancy for Maintained Schools', which sets out the default position and parameters, for the individual responsibilities of the Local Authority and maintained schools for costs incurred for (i) dismissal by reason of redundancy and (ii) premature retirement.
3	To note that it is proposed that the revised policy be implemented with effect from 1 January 2017, and that further policy work will be undertaken to consider the impact of pension costs and payments on budgets.

1 REASONS FOR RECOMMENDATIONS

1.1 Section 37 of the Education Act 2002 states that

- Any costs incurred by the Local Authority in respect of any premature retirement of a member of staff of a maintained school, shall be met from the school's budget share.
- That costs incurred by the Local Authority in respect of dismissal or for the purpose of securing a resignation shall not be met from the school's budget share, except in so far as the Local Authority have good reason for deducting those costs or any part of those costs.

Due to increasing financial pressures placed upon the Local Authority, and changes to the context and demographics of the City, it is appropriate that the application of these requirements should be reviewed.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The default position is that premature retirement costs must be charged to the school's delegated budget, while redundancy costs must be charged to the local authority's budget. In the former case, the local authority has to agree otherwise for costs to be centrally funded, while in the latter case, there has to be a good reason for it not to be centrally funded, and that cannot include having a no redundancy policy.
- 2.2 Historically, the City Council's default practice has been to exercise their discretion and to agree to fund early retirement costs, particularly as the majority of schools who have needed to take decisions involving dismissal or the early retirement of staff have usually experienced ongoing long term reduction in pupil numbers, and/or did not have sufficient balances in the central schools budget to cover existing establishment costs, or the costs of exit payments and were therefore unable to absorb the budget deficit. On this basis, not to do so would ultimately have had a negative impact on the school's ability to maintain standards of achievement.
- 2.3 The growth in pupil numbers has been particularly marked in the city since 2009. The most significant growth has come through initial entry to school in foundation stage, where we have seen, on average, 4% growth in numbers entering the system each year between 2009 and 2012. Whilst the numbers entering the school system at first entry appear to have plateaued in 2015, they are still entering the system in far greater number than pre 2009. These larger cohorts of pupils are, of course moving through the school system and we are beginning to see the impact in terms of secondary school application numbers. School place capacity has been added in over 40 city primary schools. Consideration of adding capacity in secondary schools is currently being reviewed.
- 2.4 The current financial climate has led to the Council needing to review its practice and criteria in determining to fund the costs for redundancy and premature retirement. These are outlined in 2.5 and 2.6 of this report.
- 2.5 **Payment of Redundancy Costs** - The Local Authority, in line with section 37 of the Education Act 2002, will meet their obligations to meet the costs of the redundancy payment, unless there is 'good reason' to pass the costs (in full or part) to the school's delegated budget. The circumstances whereby 'good reason' to pass on costs may apply are outlined in the Policy – Financing of Costs of Redundancy for Maintained Schools (PMH4S), and are listed below:
- If a school has decided to offer more generous terms than the Local Authority's policy, then it would be deemed reasonable to charge the excess to the school's budget;
 - If the school is otherwise acting outside of the Local Authority's policy;
 - Where the school is making staffing reductions which the Local Authority does not believe are necessary to either set a balanced budget or meet the conditions of a licensed deficit;
 - Where staffing reductions arise from a deficit caused by factors within the school's control;

- Where the school has excess surplus balances and no agreed action plan to use these;
- Where a school has refused to engage with the Local Authority's redeployment policy.

2.6 **Payment of Early Retirement/Premature Retirement Costs** - The Local Authority, in line with the Education Act 2002, will not, apart from exceptional circumstances, fund in full or in part early/premature retirement costs for staff in maintained schools. Any application by the school for exceptional circumstances would be considered on a case-by-case basis and would need to be supported by a business case. The circumstances that might be considered as exceptional include:

1. In conjunction with other circumstances, where the school has an ongoing long term reduction in pupil numbers and charging such costs to their budget would impact upon maintaining standards of achievement.
2. Where a school is closing and does not have sufficient balances to cover the costs and where the central schools budget does not have the capacity to absorb the deficit. This does not include schools converting to academy status. Any balance remaining will need to have been mitigated as far as possible by the school with the appropriate supporting evidence, this will also need to include why any remaining balance cannot be contained within budget.
3. Where a school is in special measures, does not have excess balances and employment of the relevant staff is being/has been terminated as a result of the Local Authority or government interventions to improve standards.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 If this is not supported the authority will need to consider the implications of a continued approach that is likely to have a significant impact on non-schools budgets, in a context of significant financial challenge and pressure on Council services to citizens.
- 3.2 It is also expected that the authority would review its practice aligned to the intentions/requirement outlined under Section 37 of the Education Act 2002.

4 OUTCOMES/DELIVERABLES

- 4.1 It is intended that the Local Authority and schools would act in a way that is both fair and reasonable.

5 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 5.1 Nottingham City Council's Fair Funding scheme (dated April 2016) incorporates the requirements of the Education Act 2002 Section 37 as referred to in Section 1 of this report.

- 5.2 Schools & Early Years Financial Regulations states that costs of new early retirements or redundancies may only be charged to the central part of the Schools Budget where the expenditure is to be incurred as a result of decisions made before 1st April 2013.

This position is reflected within the budget.

- 5.3 **Appendix 1 - Financing of Costs of Redundancy for Maintained Schools** will be incorporated within all decisions from 1 January 2017 and included into the Fair Funding Scheme guidance.

6 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

6.1 Legal Implications

- 6.1.1 The subject matter of this report engages section 37 of the Education Act 2002 (“EA2002”) and the Teachers’ Pension Scheme Regulations 2014 (as amended) (“TPS Regs”).
- 6.1.2 As this report correctly states, under section 37(4) of the EA2002, costs incurred by the local authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more funding periods except in so far as the authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met. This would ultimately include costs often described as ‘employer pension strain’.
- 6.1.3 Where a teacher aged 55+ but under normal pension age is made redundant, s/he potentially becomes eligible for premature retirement for the purposes of the TPS Regs.
- 6.1.4 Entitlement to a premature retirement pension is governed by regulation 101 of the TPS Regs, which states the following:-
- (1) *A person (P) is entitled to payment of a premature retirement pension from the entitlement day if—*
- (a) *P has reached normal minimum pension age but has not reached normal pension age;*
- (b) *P is qualified or re-qualified for retirement benefits;*
- (c) *P's pensionable service in relation to an employment is terminated by reason of P's redundancy or in the interests of the efficient discharge of the functions of P's employer;*
- (d) *P's employer gives written notice to the scheme manager stating that—*
- (i) *P's pensionable service was terminated by reason of P's redundancy or in the interests of the efficient discharge of the employer's functions; and*

- (ii) *the employer agrees that a premature retirement pension should become payable to P;*
- (e) *P receives no compensation under Part 3 of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015 as a result of P's pensionable service being terminated;*
- (f) *P has left all eligible employment;*
- (g) *P has applied under regulation 162 for payment of a premature retirement pension; and*
- (h) *P has not applied under that regulation for payment of any other retirement pension.*
- (2) *P is not entitled to payment of a premature retirement pension in respect of any pensionable service after P reaches normal pension age.*
- (3) *If the employer is not the local authority, the local authority must give the notice under sub-paragraph (1)(d) if—*
 - (a) *P's pensionable service was in relation to an employment that falls within category A (as defined by regulation 34(1) of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 2015; and*
 - (b) *the governing body of the school or institution mentioned in that provision asks the local authority to do so.*
- (4) *A premature retirement pension is payable for life.*

6.1.5 “Normal minimum pension age” is effectively now defined by the TPS Regs, regulation 3 and the Finance Act 2004, section 10(1) as age 55.

6.1.6 “Employer” here is not simply confined to the local authority where the contract of employment is between the local authority and the employee (as it is with an employee in a community school, a community special school, a voluntary controlled school, a maintained nursery school or a Pupil Referral Unit (“PRU”)). For the purposes of the TPS Regs, regulation 3 of the TPS Regs states:-

“employer”, for a person employed by the governing body of a school maintained by a local authority, means—

- (a) *the local authority; or*
- (b) *for the purpose of an additional pension election, the local authority and the governing body;*

Therefore, for the purposes of most of the TPS Regs (including premature retirement), “employer” means the local authority even where the contract of employment is between the governing body and the employee (as it is with a foundation or voluntary aided school).

- 6.1.7 Clearly, under the TPS Regs the employer has a discretion whether or not to agree that a premature retirement pension is paid to an employee who is otherwise eligible under regulation 101 of the TPS Regs. Therefore, the operation of this discretion is up to the local authority, provided that discretion is operated in accordance with public law. That is, its operation is neither irrational nor subject to a blanket policy that could fetter the local authority's discretion. This is where a clear and sensible policy is required.
- 6.1.8 Given all the above, it is advisable that a policy along the lines referred to in this report is put in place for Nottingham City Council ("NCC") maintained schools and PRUs to determine when the discretion under the TPS Regs to grant premature retirement could be exercised.

7 HR ISSUES

- 7.1 HR supports this proposal which is in line with section 37 of the Education Act 2002, and commits the local authority to meeting the costs of any redundancy payments in Maintained Schools, unless there is 'good reason' to pass on the costs (in full or part) to the school's delegated budget, but will not, apart from in exceptional circumstances, fund (in full or in part), early/premature retirement costs for staff in Maintained Schools.
- 7.2 This proposal has no direct impact on individuals either employed or made redundant from a Maintained School, who will continue to receive their calculated entitlements appropriate to their individual circumstances. The proposed change is a financial administrative change which should go unnoticed to individual employees / ex-employees.
- 7.3 Communication with regard to this change should be sent to all Maintained Schools so they understand the local authority's position and any implications as a result of the proposed change.
- 7.4 Any further review and policy change to pension and redundancy costs for staff in Maintained Schools should be consulted upon in the usual manner and follow due process.

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8 EQUALITY IMPACT ASSESSMENT

- 8.1 Has the equality impact of the proposals in this report been assessed?

No x

An EIA is not required because:

This is an enactment of existing regulations under the Education Act 2002. The Policy will not directly impact on employees or service users.

Yes

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

9.1 (i) Financing of Cost of Redundancy for Maintained Schools - November 2016

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

10.1 None.