



## Financing of Costs of Redundancy for Maintained Schools

### 1. INTRODUCTION

- 1.1 This Policy sets out the 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 employees appointed by and working in maintained schools.
- 1.2 With regards to staff employed directly by Academies within the City, the liability for these costs remains the responsibility of the governing body of the Academy (as the employer of their staff). All liability for such costs passes to the governing body of the Academy at the point the TUPE transfer takes place.

### 2. BACKGROUND

- 2.1 Section 37 of the Education Act 2002 states that:

- (4) costs incurred by the Local Education 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 financial years except in so far as the Local Authority agree with the governing body in writing (whether before or after the retirement occurs) that they shall not be so met.
- (5) costs incurred by the Local Education Authority in respect of the dismissal or for the purpose of securing the resignation, of any member of staff of a maintained school shall not be met from the school's budget share for any financial year except in so far as the authority have good reason for deducting those costs, or any part of those costs from that share.
- (6) the fact that the Local Authority has a policy precluding dismissal of their employees by reasons of redundancy is not regarded as a good reason for the purposes of the subsection (5); and in this subsection the reference to dismissal by reason of redundancy shall be read in accordance with section 139 of the Employment Rights Act 1996 (c.18).

- 2.2 Therefore 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.

2.3 Ultimately it would be for the courts to decide what a good reason was, but the examples provided within DFE guidance on Schemes for Financing Schools indicates the situations in which exceptions to the default position may be taken.

### **3. PAYMENT OF REDUNDANCY COSTS**

3.1 The Local Authority will view it as 'good reason' to pass the costs (in full or part) to the school's delegated budget if any of the reasons below occur:

1. 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;
2. If the school is otherwise acting outside of the Local Authority's policy;
3. 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;
4. Where staffing reductions arise from a deficit caused by factors within the school's control;
5. Where the school has excess surplus balances and no agreed action plan to use these;
6. Where a school has refused to engage with the Local Authority's redeployment policy.

3.2 All schools would be expected to comply and fully engage with all the provisions of the current Restructuring Principles and Redundancy Guidelines for Schools taken from the People Management Handbook for Schools.

3.3 Schools would also be expected to adhere to the advice provided by the Local Authority representative in respect of the procedure, best practice and any relevant employment legislation.

3.4 Schools are also fully expected to maintain close liaison with the Schools Finance Team. Not to do so may justify as 'good reason' to pass all costs associated with any redundancy to the school's delegated budget.

3.5 In addition, the Local Authority deems it both fair and reasonable to only accept to meet such costs that would otherwise result in the school having a deficit budget. Therefore reductions made on grounds other than a deficit budget would need to be met by the school's delegated budget.

## Supporting Documentation

- 3.6 With any redundancy situation in any maintained school, there are a series of documents that are required by the Local Authority to demonstrate that the correct process has been followed and that the situation in the school is a genuine redundancy situation.
- 3.7 The documentation that is required from maintained schools in order for consideration to be given as to whether the Local Authority will meet any redundancy costs are as follows:
1. *Minutes from Governing Body Meetings* – this will need to include the initial discussions where the staffing reductions are proposed and then when the proposals have been accepted after consultation. Evidence should be submitted in addition to demonstrate that the school has considered alternative proposals to making the reductions even if this has been discussed formally with the HR representative from the Local Authority.
  2. *The budget sheet* – confirming that the school is in a deficit budget or would be in a deficit budget if the staffing reductions were not made.
  3. *Recovery plan for budget* – obtained through Finance by the school to demonstrate the impact of any reductions over the three year budget plans.
  4. *Section 188 notification* – which confirms the reductions that need to be made and to demonstrate that formal consultation has been undertaken with the recognised Trade Unions.
  5. *Structure charts* – both the existing and the proposed structure charts highlighting where posts have been removed from the structure.
  6. *Formal correspondence* – any documentation regarding the consultation process and the Staff Dismissals Hearings which help to demonstrate that due process has been followed by the school. This will need to include the minutes from the Staff Dismissal Hearing and the school decision letter following the hearing. Evidence of consultation having taken place should also be submitted to demonstrate due process has been undertaken.
- 3.8 Upon receipt of the above documentation, the Local Authority will make a decision as to whether the redundancy costs will be met by the Local Authority's budget or whether the costs should be passed on in full or part to the school's delegated budget.

## 4. PAYMENT OF EARLY/PREATURE RETIREMENT COSTS

### 4.1 Support Staff

If a member of support staff is made redundant at age 55 years or over, and they pay into the Local Government Pension Scheme, then the employee's

pension will automatically be released early. In such cases, all costs associated with the early release of the pension will fall to the school's delegated budget.

#### 4.2 Teaching Staff

The procedure within the Local Authority at this time is that if a member of the teaching staff is made redundant at age 55 years or over, and they pay into the Teachers' Pensions Scheme, then subject to the conditions of Teachers' Pensions, the employee's pension may automatically be released early. In such cases, the annual pension costs associated with the early release of the pension under the Teachers' Pension Scheme Regulations 2014 will fall to the school's delegated budget.

### **5. PAYMENT OF EARLY/PREATURE RETIREMENT ANNUAL PENSION COSTS FROM A NON-SCHOOLS' BUDGET**

5.1 The default position is that premature retirement costs must be charged to the school's delegated budget. In exceptional circumstances, and in accordance with DFE guidance on Schemes for Financing Schools, the Local Authority may agree to fund in full or in part early retirement annual pension costs for staff from a central non-school's budget.

5.2 In such exceptional circumstances, an assessment would be made on a case-by-case basis and would be subject to final approval of a business case by the Corporate Director responsible for schools and academies. Consideration will be given where the following circumstances apply:

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.

5.3 The school would need to compile a business case outlining their rationale as to why the costs should be picked up by the Local Authority rather than being charged to the school's delegated budget. Evidence would be needed to confirm that alternative approaches to the reductions have been considered. It will then be a decision for the Local Authority, namely the Corporate Director for Childrens and Adults Services, as to whether the Local Authority assists partly or fully with the costs associated with the early/premature retirement.