

Appendix 1 – Proposed revisions to the Scheme of delegation to schools

Proposed amendments to Scheme of Delegation to Schools

Section 6

Para 6.2.25 to be reworded as follows:

“For the costs of dismissals, resignations and premature retirement, see Annex E.”

New Annex E (to appear as set out below)

Costs of dismissals, resignations and premature retirement

Statutory framework

The circumstances in which costs incurred in respect of dismissals etc. may or must be met from a school’s budget share are addressed by section 37 of the Education Act 2002.

Separate rules apply where the member of staff concerned is employed for “community purposes” (see below).

Otherwise, the two basic rules laid down by the legislation for members of the staff of a maintained school are that:

- (A) Costs incurred by the local authority in respect of premature retirement **MUST** be met from the school’s budget share **UNLESS** (and to the extent that) the authority and the governing body agree otherwise in writing [section 37(4)]; and
- (B) Costs incurred by the local authority in respect of dismissal or securing the resignation of the staff member **MAY** be met from the school’s budget share **BUT ONLY IF** (and to the extent that) the authority has “good reason” to deduct those costs from the budget share [section 37(5)].

What follows sets out the LA’s policy in relation to these matters. Further guidance and assistance may, if required, be sought from the LA’s Schools HR service in particular cases.

Premature retirement costs

Any governing body contemplating incurring costs in respect of premature retirement, and inviting the LA to agree that the costs will be met otherwise than from the school's budget share, should raise the issue with the LA at the earliest opportunity, and certainly in any normal case before any commitment to such costs has been made. The LA will normally require a full reasoned justification as to why it would be appropriate to give its agreement, and (given what is said below about the management of staffing and budgets) it is expected that such agreement will only exceptionally be forthcoming, although applications will be considered on their merits.

Other dismissal/resignation costs

The legislation does not define what is a "good reason" to charge such costs to the school's budget share (save that a "no redundancy" policy cannot itself be a good reason).

DfE guidance

The DfE's guidance *Schemes for Financing Schools* (December 2015) suggests that schemes should contain a provision setting out the circumstances "in which exceptions will be made". When read with Annex B to the guidance, it appears that the DfE's advice is that an authority's scheme should set out its policy on what it will treat as a good reason for charging dismissal/resignation costs to a school's budget. Annex B suggests that: "Although each case should be considered on its merits, this should be within an agreed framework." Annex B also sets out a number of examples of situations in which a good reason for charging costs to a school's budget might exist:

- Where a school has decided to offer more generous terms than the authority's policy.
- Where a school is otherwise acting outside the authority's policy.
- Where staffing reductions are being made which the authority does not believe to be necessary to set a balanced budget or meet the conditions of a licensed deficit.
- Where staffing reductions arise from a deficit caused by factors within a school's control.
- Where a school has excess surplus balances, and no agreed plan to use them.
- Where a school has refused to engage with the authority's redeployment policy.

Lewisham's policy

The LA has considered the DfE guidance as set out above. It agrees that it is appropriate for each case to be considered on its own merits. To that end, when relevant costs have been or are expected to be incurred, the school will normally be expected to complete a proforma giving details of the member of staff whose employment is terminating or has terminated, the reasons for and terms of the termination, and other relevant circumstances. The LA may seek other information if necessary. The LA's Schools HR service will then record on the proforma what the costs associated with the dismissal are, and will give an initial view as to whether (and if so, why) good reason exists to charge all or part of those costs to the school's budget. The school will have the opportunity to comment upon any such proposal to charge costs to its budget. If there is disagreement between Schools HR and the school as to what should happen, a decision will normally be taken by an officer at a senior level within the Directorate of Children and Young People, consulting if necessary with Schools HR and/or other officers. Exceptionally, the Executive Director Children and Young People may decide to refer such an issue for decision at an appropriate level outside the Directorate. Schools will be expected to co-operate fully and promptly with this process, and a failure to do so may itself be treated as a good reason to charge the relevant costs to the school's budget share.

The LA does not consider that it is possible satisfactorily to provide a complete advance definition of what may constitute a good reason for charging the school's budget share. The examples of "good reason" given in the DfE guidance, whilst helpful, will not be treated as exhaustive. In particular, the LA expects schools to manage their staffing and budgets responsibly, both in the short term and over longer periods. This includes developing plans to adjust expenditure in line with actual and anticipated funding and income levels. There is an expectation that in many cases it should be possible to avoid the need for redundancies, or payments in lieu of notice, by appropriate planning and vacancy management. Schools which have incurred redundancy costs will normally be expected to explain why such costs could not reasonably have been avoided, and the absence of a satisfactory explanation is likely to be regarded as a good reason for charging the school's budget share. Likewise, schools are expected to engage at an early stage with the Schools HR service, and to follow the LA's policies, and other good employment practice, with a view to avoiding or minimising the cost of redundancies through redeployment.

Where an individual's employment is terminated for reasons other than redundancy (e.g. misconduct or lack of capability), it should normally be possible to effect this without additional cost by following proper procedures, and giving any notice to which the individual may be entitled. It is acknowledged that there may be cases where that is not so, but the incurring of unnecessary costs will normally be regarded as a good reason for charging the school's budget share. Where liability for costs arises from an adverse decision of a court or tribunal concerning the lawfulness of a dismissal, or where it has been necessary to pay sums by way of settlement in the face of a claim or potential claim of such unlawfulness, then that will normally be regarded as a good reason for the school's budget share to be charged – although the LA will always be prepared to consider the individual circumstances of the case.

It is only in unusual cases that it is appropriate for payments to be made to secure the resignation of an individual employed to work at a school. Schools which anticipate offering such payments should consult with Schools HR in advance. A failure to do so, or a departure from the advice given, will generally amount to a good reason for charging any resulting additional costs to the school's budget share.

Even where "good reason" for charging costs to a school's budget share in principle exists, the LA may exercise its discretion so as not to do so, in whole or in part. A favourable exercise of discretion may sometimes be appropriate, for example, if meeting the costs in full would have a disproportionate impact upon the school's budget and functioning. However, schools must be aware that there is no centrally retained budget or contingency fund for meeting such costs, and that the LA is therefore likely to take a rigorous approach in such cases. By the same token, if a school has significant unspent and uncommitted balances (even if those balances are not "excess" ones as contemplated by the DfE guidance), and no pressing need to retain those balances, then that may constitute a good reason why costs should fall to the school's budget share, rather than having to be met from other hard-pressed budgets.

Staff employed for community purposes

"Community purposes" refers, in relation to the staff of a maintained school, to members of staff employed for the purposes of the provision of services and facilities under section 27 of the Education Act 2002.

In such cases, the legislation requires both costs in respect of premature retirement, and costs in respect of dismissal, or incurred for the purpose of securing resignation, to be recovered from the governing body except in so far as it is agreed in writing between the authority and the governing that they shall not be so recoverable.

Where schools wish to seek such agreement, the same guidance and policy applies as set out under “Premature retirement costs” above.

The governing body may meet such costs out of the school’s budget share, but only if it is satisfied that to do so will not to a significant extent interfere with the performance of its duties.