



North Tyneside Council

Financial Services
Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY
Tel: (0191) 643 5800

Briefing note

To:	Schools Forum	Author:	Janice Gillespie, Head of Finance Christina Ponting, ENGIE
Date:	13 th July 2016		

Title of Briefing: Scheme for Financing Schools – responsibilities for redundancy and early retirement costs: update

Background:

A report was presented to Schools Forum in May 2016 which advised of the current arrangements in place and that a consultation process would be undertaken to provide additional clarity to be applied from September 2016.

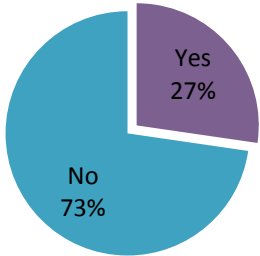
Findings:

Following the last schools Forum report, electronic and paper surveys were made available to all schools (for both Head Teachers and Chair of Governors) and Schools Forum Members over a 5 week period. In addition the matter was discussed directly with a number of Head Teacher colleagues to seek further views.

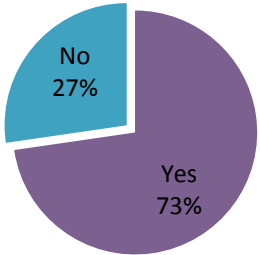
A limited number of electronic/paper responses were received - the general view being expressed as part of the verbal feedback was that Schools Forum members were nominated to represent localities/phases and it was felt that those members were best placed to participate in the survey representing the collective view.

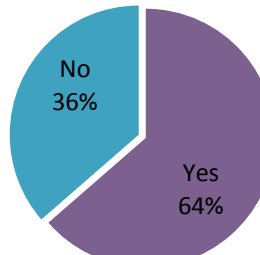
However, based on electronic, paper (13) and verbal responses (22) the following responses are noted and are reported to Schools Forum for completeness:

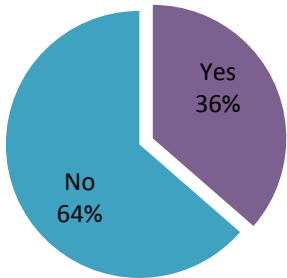
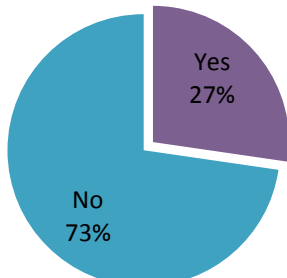
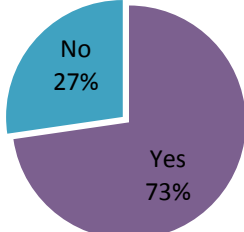
<p>Do you support the proposal for future funding relating to redundancies being capped at an amount to be determined by the Local Authority, inclusive of applications within the 16/17 Financial year?</p>	<table border="1"> <caption>Survey Results</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>31%</td> </tr> <tr> <td>Yes</td> <td>69%</td> </tr> </tbody> </table>	Response	Percentage	No	31%	Yes	69%
Response	Percentage						
No	31%						
Yes	69%						

<p>Do you support the principle that funding is applied on a first come first served basis up to the agreed cap and once this has been reached schools will need to fund all redundancy costs from their own budget and associated salary savings - please note this would be inclusive of applications received to date for 2016/17?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>73%</td> </tr> <tr> <td>Yes</td> <td>27%</td> </tr> </tbody> </table>	Response	Percentage	No	73%	Yes	27%
Response	Percentage						
No	73%						
Yes	27%						

<p>If you do not support the concept of first come first served way of distributing support to schools can you provide any alternative methods of distribution that can be considered?</p>	<ol style="list-style-type: none"> 1. All cases should be considered equally and not just those who are able to put in their requests quickest 2.shared on a needs basis not first come first served. 3. No, but schools paying redundancy from school budgets is not the way forward. 4. Prefer the approach outlined under No.9 5. We need some way of allowing schools to signal their plans across the year so a prioritization can be made to provide the support proportional to need to avoid one school using up the entire entitlement and them being the least needy. 6. Could there be a publicised cut off in the financial year so decisions are made to dove tail with this & then support will be allocated according to financial need rather than first one there with the paperwork?
--	---

<p>Do you support the proposal that the Local Authority continue to provide capped funding support but in addition also apply a maximum funding contribution based on statutory weekly wage (currently £479 per week or £14,711 overall) where this is lower than existing weekly wage?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>73%</td> </tr> <tr> <td>No</td> <td>27%</td> </tr> </tbody> </table>	Response	Percentage	Yes	73%	No	27%
Response	Percentage						
Yes	73%						
No	27%						

<p>Would you support a proposal that Schools Forum members agree, via a de-delegation arrangement, to provide further funding for schools facing redundancies on a collective basis to support any requirements over a proposed cap?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>64%</td> </tr> <tr> <td>No</td> <td>36%</td> </tr> </tbody> </table>	Response	Percentage	Yes	64%	No	36%
Response	Percentage						
Yes	64%						
No	36%						

<p>Do you support the proposal that funding support for redundancies is limited to only those schools in financial deficit?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>64%</td> </tr> <tr> <td>Yes</td> <td>36%</td> </tr> </tbody> </table>	Response	Percentage	No	64%	Yes	36%
Response	Percentage						
No	64%						
Yes	36%						
<p>Do you support the proposal that the Local Authority should not be providing any support in redundancy situations on the basis that the school retain the salary budget and the redundancy costs can be funded from this (as applies in the Local Authority and Academies)?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>73%</td> </tr> <tr> <td>Yes</td> <td>27%</td> </tr> </tbody> </table>	Response	Percentage	No	73%	Yes	27%
Response	Percentage						
No	73%						
Yes	27%						
<p>Do you support the proposal for schools to be able to access any Local Authority support and allow for the management of any capped budget, schools would need to apply for a contribution to funding at a set point (or points) per year (to be determined) – as occurs now for Headroom funding, etc – and that the Local Authority would determine which schools would be allocated supported funding based upon the business case presented?</p>	 <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>No</td> <td>27%</td> </tr> <tr> <td>Yes</td> <td>73%</td> </tr> </tbody> </table>	Response	Percentage	No	27%	Yes	73%
Response	Percentage						
No	27%						
Yes	73%						
<p>Do you have any other alternative criterion which you feel would be relevant in determining the distribution of funding available to schools facing redundancies?</p>	<ol style="list-style-type: none"> 1. Has to be around a business case. 2. No 						

Conclusion:

Having taken the feedback from schools into account, the Council has decided to revise its guidance accordingly. The following principles will be applied effect from September 1st 2016 for any new applications for funding support - (or applications that have not been concluded/agreed) to the Local Authority will be subject to the following arrangements.

1. funding support will be capped at statutory weekly wage (current rate for 2016/17 being £479 per week) will be applied
2. the funding support cap will be applied alongside a maximum weeks qualifying period based on the statutory guidance on age and length of service (this confirms the current position).
3. funding support linked to allowances/additional payments will not be provided.

4. criterion will be applied to each application for supportive funding, which may include but will not be limited to:
 - funding support provided to the school in the past 3 years;
 - where funding support has been received in previous years it is not automatic that funding support would be received in subsequent/future years;
 - consideration of school decisions to date regarding staff/finance/curriculum;
 - a conditional review of overall spend on staffing, utilisation and timely application of any subsequent recommendations;
 - funding will be limited to core school purpose/education.
5. applications for supportive funding will be open to all and not just those in deficit.
6. each application for supportive funding will be subject to a business case – to include projections of impact of the removal of the post and other associated cost factors (e.g. overall cost of the removal of the post – including but not being limited to retraining, reallocation of some duties, other benefit realisation).
7. schools being able to demonstrate that they have operated within a framework of 3 year financial forecasting and projections and have acted in a timely and appropriate way to address those predictions.
8. the Local Authority will consider each year the application of an overall maximum funding cap and in addition may also choose to apply an additional funding cap being applied against an individual school. This will be determined by the Local Authority and will be linked to affordability; contribution made to the school to-date; overall applications for funding support/in year requests, etc. This could mean that a lesser amount of funding (below the statutory weekly wage) is applied against some school applications or some applications for funding support being declined.
9. there will be no funding contribution towards pension costs (this confirms the current position).
10. there will be a requirement for schools to apply for funding within a set time frame each year. This set period of time will apply in the majority of cases, e.g. January-mid February (by the February half term) of each academic year – to ensure that any downsize is effective within the current academic year. Where a schools circumstances change in year and/or this has not been foreseeable, then consideration will be made for applications being received outside of this time frame on a case by case basis.

This update does not affect *Annex B of the North Tyneside Council – Scheme for Financing Schools October 2013* (attached at Appendix A), however, it does provide clarity as to how the Scheme will be applied.

This clarification guidance will be subject to periodic review should circumstances necessitate a need for change, but will also be reviewed at least annually in June of each year – the next review will take place in June 2017 in conjunction with Schools Forum.

Recommendation

The report is for information for Forum to note and clarifies the funding support framework which will be applied from 1st September 2016 equally to all schools within North Tyneside that are eligible to apply for funding support (e.g. it will exclude all non community or foundation schools).

Link to the NTC Scheme for Financing Schools October 2015 - http://november.northynteside.gov.uk:7777/pls/portal30/docs/PAGE/PUBLIC/SCHOOLS_FINANCE/FGFS/SCHEME%20FOR%20FINANCING%20SCHOOLS%202015.PDF

Guidance regarding the application of Annex B of the North Tyneside Council – Scheme for Financing Schools October 2015

RESPONSIBILITY FOR REDUNDANCY AND EARLY RETIREMENT COSTS

(as at 1st April 2013)

The Education Act 2002 (the Act) Section 35 and 36 provides reference for the employment of a school based employee in the following school categories and give clarity on whom is the employer.

<u>Section 35</u>	<u>Section 36</u>
Community	Foundation
Voluntary controlled	Voluntary Aided
Community Special	Foundation Special Schools
Maintained Nursery	
<u>Employer:</u> any member of staff employed in those schools are appointed on the basis that the local education authority* is the employer;	<u>Employer:</u> any member of staff employed in those schools is appointed on the basis that the governing body is the employer.

(* Whilst some of the terms are out of date, e.g. local education authority – local authority, the legislation continues to apply).

Section 37 of the Act notes who is responsible for payments in the event that employment is brought to an end by way of specific circumstances.

This guidance note summarises the position which operates within North Tyneside for both Community and Foundation schools. All other schools including Academies are excluded from this provision.

Section 37 as noted within the Education Act 2002	NTC Comment for clarity
<i>Please note – key points are <u>highlighted</u> for ease of reference only.</i>	
(1) It shall be for the governing body of a maintained school to determine — (a) <u>whether any payment should be made by the local education authority</u> in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school, and (b) the amount of any such payment.	This requires a Governing Body in both Community & Foundation schools (GB) to identify when a termination payment may be appropriate and to determine if the payment is eligible for financial support being made available to the school under the Authorities scheme for financing schools.
(2) Subsection (1) <u>does not, however, apply</u> in relation to a payment which the local	The Local Authority <u>is not required</u> to fund a payment when employment is brought to an

<p><u>education authority are required to make —</u></p> <p>(a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned, or</p> <p>(b) under any statutory provision.</p>	<p>end in circumstances where a:</p> <p>(a) a fixed term contract/contract of employment with an expected end date was (should have been) in place.</p> <p>(b) Where other statutory provision notes that the Local Authority are not eligible to fund a payment.</p>
<p>(3)The local education authority —</p> <p>(a) shall take such steps as may be required for giving effect to any determination of the governing body under subsection (1), and</p> <p>(b) shall not make, or agree to make, a payment in relation to which that subsection applies except in accordance with such a determination.</p>	<p>Once it has been determined there is a need to provide financial support the Local Authority are required to facilitate this but not necessarily fund it.</p>
<p>(4) Subject to subsection (7), costs incurred by the local education authority in respect of any <u>premature retirement</u> of a member of the staff of a maintained school <u>shall be met from the school’s budget share for one or more financial years</u> 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.</p>	<p>School are to fund pension costs when employment is ended and pension is released prematurely. Local Authorities are not to fund retirement costs unless an agreement is in place to the contrary, or the condition of point 7 – “community purposes” apply – see point 7 below.</p> <p>North Tyneside has presented information to Schools Forum in April 2013 to clarify this – see comment below.</p>
<p>(5) Subject to subsection (7), costs incurred by the local education authority in respect of the <u>dismissal</u>, or for the purpose of securing the resignation, of any member of the staff of a maintained school <u>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.</u></p>	<p>Local Authorities can have in place separate arrangements to clarify where they will not provide funding/part funding support, this is known as ‘good reason’. North Tyneside has such arrangements in place which is reviewed periodically and applied at the point of applications from schools to access funding.</p> <p>The exclusion noted within this section (7) is as noted above - “community purposes” – also see point 7 below.</p>
<p>(6) The fact that the authority have a policy precluding dismissal of their employees by reason of redundancy is not to be regarded as a good reason for the purposes of</p>	<p>North Tyneside do not operate a no-redundancy policy, this section states that should an Authority have in place a no-redundancy policy such a policy would be</p>

<p>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).</p>	<p>overwritten by the Employment Rights Act 1996.</p>
<p>(7) Where a local education authority incur costs —</p> <p>(a) in respect of any premature retirement of any member of the staff of a maintained school who is employed for <u>community purposes</u>, or</p> <p>(b) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a <u>maintained school who is employed for those purposes</u>,</p> <p><u>they shall recover those costs from the governing body</u> except in so far as the authority agrees with the governing body in writing (whether before or after the retirement, dismissal or resignation occurs) that they shall not be so recoverable.</p>	<p>“community purposes” are defined within Section 27 of the Education Act 2002 – ‘facilities or services whose provision furthers any charitable purpose for the benefit of: a. pupils at the school or their families, or b. people who live or work in the locality in which the school is situated’. – the most common examples being Children’s Centres, Community Wings.</p> <p>This provides for the Authority to not be responsible for any costs associated with dismissal/resignation where the individual(s) were employed for ‘community purposes’. The GB of the school which provides that facility, irrespective of whether or not they are a Community or a Foundation school remains responsible for all costs.</p>
<p>(8) Any amount payable by virtue of subsection (7) by the governing body of a maintained school to the local education authority <u>shall not</u> be met by the governing body out of the school’s budget share for any financial year.</p>	<p>This clarifies there where a school operates a facility for ‘community purposes’ it cannot use the schools delegated budget to support any termination costs.</p>
<p>(9) Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the preceding provisions of this section shall apply separately to each part of the payment or costs.</p>	<p>In the event that a school had in place individuals whose posts were linked to ‘community purposes’ and those individuals also undertook another role, the costs associated with any termination costs would have to be appropriately distributed/apportioned.</p>
<p>(10) Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of subsection (7).</p>	<p>This state that were a facility for ‘community purposes’ operate the Authority would be able to directly recover monies from the school delegated budget to support any termination costs.</p>

<p>(11) Subsections (1) to (6) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under section 17 of, or Schedule 15 to, the School Standards and Framework Act 1998 (c. 31).</p>	<p>In a situation where either a Community or a Foundation school had had its delegated budget removed the school cannot be charged for any costs covered under these sections.</p>
<p>(12) In this section “community purposes” means the purposes of the provision of facilities or services under section 27.</p>	<p>“community purposes” are defined within Section 27 of the Education Act 2002 – ‘facilities or services whose provision furthers any charitable purpose for the benefit of: a. pupils at the school or their families, or b. people who live or work in the locality in which the school is situated’.</p>