



North Tyneside Council

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Briefing note

To:	Schools Forum	Author:	Janice Gillespie, Head of Finance Christina Ponting, ENGIE
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Background:

Each Local Authority is required to have a place a Scheme for Financing Schools, North Tyneside Council's policy was last reviewed in October 2015. Within the document, Annex - A relates to funding in relation to redundancy and retirement costs, detailing whether schools or the Authority are responsible for these.

Annex B was last revised in April 2013 and the document attached at Appendix A provides some further guidance/clarity on how Annex B operates in practice.

Prior to April 2013 early retirement pensions cost were allocated to a centrally retained budget. A report was presented to Schools Forum in April 2013 and agreement was reached that, with effect from 1st April 2013, a centrally retained budget would no longer provide funding support to schools for any new applications for pensions release linked to early/premature release of pension. The centrally retained budget would continue to support prior/historic applications and would provide monitoring updates to Schools Forum in terms of spend/retained funding. This report was presented on the basis that costs would not exceed the amount budgeted in the previous financial year(s).

In April 2013 it was noted that the local authority in accordance with the Education Act 2002 has continued to provide funding support and to exercise just/good cause in the application of this policy in relation to redundancy funding support. However, many other Local Authorities have moved away from providing any funding support at all and/or have plans to withdraw funding support entirely in the next financial year.

Current Arrangements:

The arrangements which currently operate in North Tyneside are as follows:

- (a) premature retirement are funded from the schools delegated budget for both teachers and support staff pensions;
- (b) all termination costs linked to the ending of a fixed term contract/contract of employment with funded from the schools delegated budget;
- (c) all termination costs relating to a settlement/termination agreement, irrespective of the circumstances are funded from the schools delegated budget;
- (d) non-enhanced redundancy costs are funded by the Local Authority – this is based on actual weekly wage rather than being capped at the statutory weekly wage. The Local Authority will exercise its discretion to apply not to fund/contribute financially to any such termination costs where it believes that it has 'good reason'.

In relation item d) the funding support provided to schools is provided from within the general fund, there are no specific grants to support this funding nor is capitalisation an option. Even if capitalisation was permitted, the costs would ultimately fall on the general fund. Currently the Authority continues to consider support for all schools who make an application for

funding and present an appropriate business case - the latter being linked to the information provided to Schools Forum in 'December 2015 – HR Resource Review Analysis', where Forum asked for assurance that funding applications and agreements were being applied consistently to all schools and all schools were accountable against the same criteria.

Schools themselves also make a contribution to redundancy funding where they have chosen to offer an 'enhanced' redundancy from the savings in the salary in the current and future financial years.

Since 2013/14 Financial Year the number of applications for funding support has steadily increased for both teaching and support staff as follows:

Year	Number of Applications	Cost
2013/14	20	£164,600
2014/15	27	£395,990
2015/16	40	£429,005
2016/17 – to date	9	£137,391

In this same period the average redundancy payment for both teaching and support staff has increased from £7,316 to £11,793 for support staff and £19,503 to £23,918 for teaching staff.

Proposed Approach:

It is appropriate that with the number of schools potentially facing deficit, the upward trend in both cost and the number of applications, changes in the Education sector since the 2002 regulations were introduced (*) that the Authority periodically considers the level of funding support that it is able to sustain to support schools in reviewing their staffing structures and associated costs.

(*all Academies are excluded from accessing funding).

It is therefore proposed that a period of consultation be entered into to gain opinion on the following options:

1. Future funding support available in each financial year will be capped at an amount to be determined by the Local Authority within each financial year – including for the 16/17 Financial Year those applications that have already been approved.
2. Funding support is applied on a first come first service basis up to the agreed cap and once the funding has been removed schools will need to fund any redundancy costs from their own budget and the associated salary savings - please note that would include the applications that have been received to-date for 2016/17.
3. The Local Authority continue to provide funding support to an agreed capped budget but also apply a maximum funding contribution based on statutory weekly wage (currently £479 per week or £14,711 overall - whichever is the lower).
4. Maintained Schools Forum members agree via a de-delegation arrangement to provide further funding for schools on a collective basis to support any requirements over the cap.
5. Funding support is limited to only those schools in deficit.
6. The Local Authority provide no funding support in Redundancy situations on the basis that the school retain the salary budget and the redundancy costs can be funded from this (as applied in the Local Authority and Academies).

7. To be able to access any Local Authority support and to allow the Local Authority to more proactively manage its 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. Based on each business case presented the Local Authority would determine which schools would be allocated supported funding.
8. Any other/alternative criterion which it is deemed relevant to apply.

The decision regarding the level of budget available from the Local Authority's General Budget rests with the Local Authority, but it is important that all schools are consulted on to inform the decision that is reached. It is proposed that the new arrangements would be effective from 1st September 2016.

Recommendation:

It is recommended that:

- 1) Schools Forum note the background set out in this report
- 2) Schools Forum agrees that a period of consultation with schools is entered into from the 23th May to the 17th June 2016 (4 weeks). An electronic survey will be distributed and comments sought on the options outlined above. The outcome of this consultation will inform a further report presented to Schools Forum on the 13th July 2016 confirming the funding support/framework from 1st September 2016.

**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	
Employer: any member of staff employed in those schools are appointed on the basis that the local education authority* is the employer;	Employer: 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 in relation to a payment which the local education authority are required to make</u> — (a) by virtue of any contract other than one made in contemplation of the	The Local Authority <u>is not required</u> to fund a payment when employment is brought to an end in circumstances where a: (a) a fixed term contract/contract of employment with an expected end

<p>impending dismissal or resignation of the member of staff concerned, or</p> <p>(b) under any statutory provision.</p>	<p>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 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</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 overwritten by the Employment Rights Act 1996.</p>

1996 (c. 18).	
<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,</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</p>

<p>or Schedule 15 to, the School Standards and Framework Act 1998 (c. 31).</p>	<p>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>