**WESTMINSTER CITY COUNCIL**

**SCHOOLS FORUM 10th OCTOBER 2016**

 **REPORT BY THE DIRECTOR OF FINANCE**

**RESPONSIBILTY FOR REDUNDANCY AND EARLY RETIREMENT COSTS**

This paper reinstates the Council’s position with regard to redundancy and early retirement costs.

1. **Introduction**
	1. The purpose of this report is to clarify the arrangements for the payment of redundancy and related early retirement pension benefits for schools, so that schools are correctly advised. The need for this clarity has arisen because of several recent reorganisations, where it has been assumed that the Local Authority will bear these costs necessitating a need to be able to provide clear advice to schools on this matter
2. **Background**
	1. The 2002 Education Act sets out how premature retirement and redundancy costs should normally be funded.
	2. The DfE regularly updates Schemes for Financing Schools which provides statutory guidance for local authorities, setting out the financial relationship between them and the schools they maintain. The latest version, issue 8 was published in December 2015.In 2013 **Statutory guidance for local authorities: Issue 6** placed restrictions of termination of employment costs funded from central school’s budget to the value of previous year and existing commitments.
	3. 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. In Westminster it has always been the position that it has been assumed that schools should absorb redundancy costs although up until 2013 there has been an assumption that if the school did not absorb redundancy costs then they could be charged to the central DSG. Redundancy costs have never been charged to the General Fund, the council’s main account.
	4. For staff that are employed for community purposes, as defined by the Act then the presumption is that redundancy costs lies with the governing body of the school but, under certain circumstance could be charged to the school’s budget. Specific advice will need to be provided for any redundancy affecting staff for community purposes.
	5. Given the recent changes in guidance and the fact that it is not the default position it is worthwhile considering what the local authority considers to be good reason as to why redundancy costs should remain with schools.

1. **Good Reasons**
	1. There is a basic tenet that responsibility for taking decisions to incur expenditure should sit with those who are responsible for funding the implications of that decision.
	2. The Education Act 2002 altered that perspective in establishing the default position whereby, whilst schools are still considered responsible for early retirement costs, redundancy costs, by default are the responsibility of the LA. This would generally be to the central amount of the DSG. However, without changing legislation the DfE have sought to shunt these costs directly to the General Fund.
	3. Nevertheless, whilst statutory guidance issued by the DfE sets the default position it also states that there may be occasions where there is a good reason why the default position is not adhered to with a warning that ultimately, it would be for the courts to decide what was a good reason.
	4. The statutory guidance sets out the following examples in which exceptions to the default position might be appropriate:

Charge of dismissal/resignation costs to delegated school budget:

* If a school has decided to offer more generous terms than the authority’s policy, then it would be reasonable to charge the excess to the school
	+ If a school is otherwise acting outside 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 a school has refused to engage with the local authority’s redeployment policy
	+ Where the school has excess surplus balances and no agreed plan to use these
	1. Most of the above scenarios are relatively straightforward however it is the last one in relation to the adequacy of surplus balances. It is the view of the Local Authority that responsibility for making redundancies lie with the school and as such it is one of the most important areas that schools should consider making provision for. As such it is unlikely that the LA would consider that any school with balances over £200,000 did not have sufficient excess surplus balance to absorb redundancy costs itself and therefore it would not be considered appropriate for the redundancy costs to be charged to the Council. For schools with balances under £200,000 the individual circumstances would need to be considered prior to the reorganisation taken place with agreement reached as to who would fund the redundancies.
	2. The statutory guidance does allow for a de-delegated contingency be provided, if Schools Forum agree, to support individual schools where “a governing body has incurred expenditure which it would be unreasonable to expect them to meet from the school’s budget share”. Forum are asked their opinion on this matter
1. **Approval of School reorganisations**
	1. Currently community schools within Westminster have historically been required, in line with other services, to submit a paper for the Adjudication Panel, to approve the reorganisation and any subsequent redundancy for schools the panel notes rather than approves, partly because it has been assumed that schools will be picking up the costs of the redundancies.
2. **Recommendation**
	1. Schools are to seek specific advice for any redundancy proposals affecting staff for community purposes.
	2. Forum to decide if they would like officers to pursue the establishing of a de-delegated contingency.
	3. In order for the funding of the redundancy position to be clarified, all schools who believe that the LA should fund their redundancy costs must supply their proposals to the Council for its consideration. HR team will consider the appropriateness of the proposals and the finance team will consider the financial implications of the proposals. The Council will then determine if it will fund the redundancies.

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