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Special Severance Payments Policy

Adopted by the Trust Board of
Aspire Learning Trust
on December 2016

Policy reference:	A25
This policy is to be reviewed:	3 yearly
The next review date is:	January 2024
Review is the responsibility of:	FIHR Committee

Review History

Review ratified:	18 th January 2021
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Authorised by: Full Trust Board

Introduction

This Policy is for the Aspire Learning Trust accounting officer and finance staff to consider when making special severance payments. It explains what the Trust should consider before making any such payments, and how to seek approval from the Education and Skills Funding Agency (ESFA) for payments of or over £50,000, or for any value where a Financial Notice to Improve (FNtI) is in place.

Special severance payments are paid to employees, contractors and others outside of normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract. You can read more in the HM Treasury publication [Managing Public Money](#).

Severance payments, specifically non-contractual elements, are always under close scrutiny.

What to consider before making any special severance payment:

Special staff severance payments are paid to employees outside of normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.

If an academy trust is considering making a staff severance payment above the statutory or contractual entitlements, it must consider the following issues before making a binding commitment:

- a. that directors reasonably consider the proposed payment to be in the interests of the trust
- b. whether such a payment is justified, based on a legal assessment of the chances of the trust successfully defending the case at employment tribunal. If there is a significant prospect of losing the case then a settlement may be justified, especially if the costs incurred in maintaining a defence are likely to be high. Where a legal assessment suggests that the trust is likely to be successful, then a settlement should not be offered
- c. if the settlement is justified, the trust would then need to consider the level of settlement. This must be less than the legal assessment of what the relevant body (e.g. an employment tribunal) is likely to award in the circumstances

Staff severance payments should not be made where they could be seen as a reward for failure, such as gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the claimant is likely to be successful in an employment tribunal claim because of employment law procedural errors. In the case of poor performance, an acceptable comparison would be the time and cost of taking someone through performance management and capability procedures.

Academy trusts have delegated authority to approve individual staff severance payments provided any non-statutory/non-contractual element is under £50,000.

Where the trust is considering a non-statutory/non-contractual payment of £50,000 or more ESFA's prior approval must be obtained before the trust makes any binding settlement offer to staff.

Academy trusts should demonstrate value for money by applying the same level of scrutiny to a payment under £50,000 as if it were over the £50,000 delegation and have a business case justifying the level of settlement reached. Settlements must not be accepted unless they satisfy the conditions in this handbook and in ESFA's guidance and submission template.

The Trust should then take the following steps:

Consider whether a special severance payment is appropriate in this case

A severance payment may not always be the right approach: for example, severance payments must not be made to staff with poor performance, and EFA and HM Treasury will not approve such payments.

Take and document legal/HR advice

Appraise any course of action with the associated costs and the likelihood of winning. If there is a good chance of the academy trust winning the case the Trust will also need to demonstrate why this route was not taken and instead, a payment was made to the employee. The Trust should balance the legal and management costs against the level of pay-out.

Clearly document the management process

This must take account of the academy's own internal processes and employment law.

Consider the appropriate level of payment

Following any legal advice, can a change from the settlement value actually be justified? A severance payment is made from the public purse and therefore value for money has to be demonstrated.

Ensure you can support any non-financial considerations with evidence

For example, that pupil performance has been affected by a lack of continuity of teaching due to absence or teaching by temporary staff.

Confidentiality clauses

Academy trusts must ensure that the use of confidentiality clauses associated with staff severance payments do not prevent an individual's right to make disclosures in the public interest (whistleblowing) under the Public Interest Disclosure Act 1998.

Seeking approval for the severance payment

Payments of or over £50,000

For non-contractual payments of or over £50,000 you must seek prior approval using the [Academies Severance Payment Form](#)

Please send the completed form to ESFA using the enquiry form. ESFA will then review the details and either:

- a. contact the Trust for more information/clarification
- b. send the Trust form directly to HM Treasury for approval

Payments under £50,000

Non-contractual payments under £50,000 are not required by HM Treasury for prior approval. However, The Trust have to be able to show the Trust applied the same level of scrutiny to a payment as if it were over the £50,000 delegation.

ESFA expects academy trusts to have a business case for any non-contractual severance payment and to provide this to ESFA in a timely manner if requested.

Failure to justify the payment

If the academy is unable to show they have treated the payment correctly, the ESFA reserve the right to claw back the payment back.

In some circumstances the re-payment may not be requested. However, ESFA may conduct a visit and impose sanctions in relation to any further severance cases. In extreme circumstances ESFA may issue a Financial Notice to Improve, which withdraws the academy freedoms. Further information about Financial Notices to Improve can be found in the [Academies Financial Handbook](#).

Financial Notice to Improve

Where an academy trust is subject to a Financial Notice to Improve, this withdraws the delegated authority limit. As such any non-contractual payments, irrespective of value, should be sent through to ESFA for prior approval.

HM Treasury sample process

HM Treasury review a sample of all non-contractual severance payments made from 1 September 2012 onwards, to ensure the delegated authorities are working effectively.

For the financial period up to 31 August 2013 the outcomes were as follows:

- a. overall, the sample of cases showed that most academies made special severance payments that were regular, proper and good value for money
- b. two cases where the payment could not be approved and this suggests that some academy trusts do not fully understand the requirements

Disclosing severance payments in your audited financial statements

The [Academies Accounts Direction](#) explains how academies should disclose severance payments within the financial statements. These should be aggregated in staff restructuring costs, within the staff costs note. Further written disclosure is then required for non-statutory/non-contractual payments on an individual basis.

Academy auditors will verify the value of compensation payments included within the staff costs note as part of the statutory audit and regularity engagement. Auditors will also look at whether prior approval was obtained.