



GREENWOOD ACADEMIES TRUST

Special Payments Policy

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1. Policy Overview

This document describes the Trust policy with regard to making Special Payments, which are transactions that fall outside the normal range of activities. They are non-statutory or non-contractual and are defined within the following three categories:

- i) Staff Severance Payments
- ii) Compensation Payments
- iii) Ex gratia Payments

2. Special Staff Severance Payments

Special staff severance payments are paid to employees outside of normal statutory or contractual requirements when leaving employment whether they resign, are dismissed or reach an agreed termination of contract. [Note these are different to ex gratia payments].

Chapter 2 of the HM Treasury document 'Guidance on Public Sector Exit Payments: Use of Special Severance Payments' contains some definitions of what is and is not considered to be a special payment. This guidance needs to be considered each time a potential special payment is proposed to be made. The relevant information from the guidance has been included in Appendix C of this policy.

Special staff severance payments will only be made when in the best interests of the Trust, and in determining this consideration will be given to the following:

- a legal assessment of the likely success of defending the case at an Employment Tribunal,
- whether the estimated legal costs involved in pursuing the case through Employment Tribunal are likely to be disproportionate to the potential settlement value,
- the estimated time and cost of taking a staff member through internal procedures,
- potential reputational damage
- recognition that the payment should not be seen as a reward for failure

The above is not an exhaustive list and will need to be reassessed on a case by case basis.

The *legal assessment*, referred to in the bullet point above may not need to be a formal legal opinion from an external firm of solicitors. The internal expertise and experience within the Trust is likely to be adequate in most cases to determine with sufficient confidence the legal position of the case. Since the decision to pursue formal proceedings with an employee will need to be balanced with the likely legal success and the associated cost, it is probable that for lower value settlements an internal assessment will be sufficient. Therefore, as a guideline, for settlements up to £25,000 the Trust can make an internal assessment whereas for proposed settlements above this an external legal opinion must be sought.

With regard to the bullet point above relating to the *estimated time and cost of taking a staff member through internal procedures*, consideration may be given to the following:

- Time for the initial investigation,
- Time for the gathering of witness statements,
- Management time of Senior Leadership team and/or Academy Advisory Council to consider proposals and make recommendations,
- Hearings and Appeals, together with the required preparation time,
- Advisory time required from the People Directorate through all stages of the process,

- Impact of potential staff sickness costs and related supply cover
- Impact on pupils and continuity of education

The above is not an exhaustive list and will need to be reassessed on a case by case basis.

Any agreement between the Trust and the employee that contains confidentiality clauses must not prevent an individual's right to make disclosures in the public interest under the Public Interest Disclosure Act 1998.

3. Compensation Payments

Compensation payments are made to provide redress for loss or injury, for example; personal injuries, traffic accidents, or damage to property.

In making any compensation payment, the Trust must:

- ensure the payment is in the best interests of the Trust, as defined in the staff severance payments in section 2 above
- consider whether it is appropriate to take legal advice
- seek, where appropriate, the appropriate advice from the Trust's insurers

Any amounts that are paid from the Trust insurance policy to the plaintiff are outside of this policy since they do not amount to a payment from the Trust.

The Trust must also evaluate the effectiveness of the internal control system and consider whether the incident identifies the need for specific improvements.

4. Ex-Gratia Payments

Ex gratia payments go beyond statutory cover, legal liability or administrative rules, including:

- payments to meet hardship caused by failure or delay by an officer or Director of the Trust or a party working on behalf of the Trust,
- out of court settlements to avoid legal action on grounds of inadequacy of an officer or Director of the Trust or a party working on behalf of the Trust,
- payments to contractors outside a binding contract, eg on grounds of hardship. This does not apply to unforeseen circumstances that increases the cost on a construction or maintenance contract (for example requiring payment for additional works)

Payments relating to severance are not ex gratia payments, but instead are dealt with in section 2 above.

5. Documentation

The Trust must ensure that appropriate documentation is maintained to support the decision for every Special Payment that is made, irrespective of the size of payment. This should be in the format of a business case and should include:

- a clear description of the background to the case
- a list of the potential options with an analysis of the pros & cons and costs for each
- information about other factors utilised in making the decision of recommended course of action
- the likely costs and benefits of each scenario and the chance of failure/success of each, to enable a financial comparison between the competing options

- the conclusion as to which course to take, with supporting justification. The information provided should also articulate how value for money has been achieved.

The ESFA requires that this information is sufficient to justify the payment, and they reserve the right to review this documentation.

The form in Appendix A must be utilised for Special Staff Severance Payments

The form in Appendix B must be utilised for Compensation Payments and Ex-Gratia Payments.

6. Approvals

Internal Approval

The business case described in section 5 will typically be prepared by:

Special Staff Severance Payments. The Chief People and Organisational Development Officer or the People Service Director and reviewed by the Chief Financial Officer.

Compensation and Ex Gratia Payments. The most relevant staff member within the Trust and reviewed by the Chief Financial Officer.

Internal approval of the business case, and therefore approval to make the payment, must then be made and evidenced in line with the Scheme of Delegation. If this is not clear from the Scheme of Delegation, approval must be from the CEO or DCEO.

ESFA Approval

Per the Academy Trust Handbook, ESFA prior approval must be obtained for:

- Any special severance payment or compensation payment that has a non-statutory/non-contractual element that is over £50k
- All ex gratia payments (ie of any amount)
- A special staff severance payment of any amount, where it is included in an exit package of £100,000 or more
- A special staff severance payment where the employee earns over £150,000

Secretary of State Notification

The Trust Master Funding Agreement requires the Trust to give thirty (30) days' notice to the Secretary of State of its intention to make any special payments (irrespective of value, and irrespective of whether ESFA or Secretary of State approval is required).

The Trust must therefore ensure that these timelines are built into the internal processes for such transactions.

Appendix A - Academies Severance Payments

Name of Academy	
Name of Staff Member	
Date	
Total value of payment	
Value of contractual element	
Value of non-contractual element	
Terms of employment	
Age	
Length of service	
Current salary	
Contractual notice period	
Type of contract (eg fixed term, part-time)	
Detail how the situation came about: Please note the Academies Financial Handbook stipulates that this should not be a reward for gross misconduct and poor performance. If the payment is in relation to ill health please clarify whether ill health retirement was explored:	
<Insert your response here. You can expand all boxes on this form as much as you need to>	
Explain the management procedures the academy followed	
<Insert your response here>	
Proposed way forward	
Explain why you think a special payment to be made, over and above the contractual element?	
<Insert your response here>	
Detail potential consequences including tribunal (the scope for winning at a tribunal) and any other options explored.	
<Insert your response here>	
Has a legal assessment been undertaken? If so by whom and what was the response?	
<Insert your response here>	
What was the legal assessment of the chance (in % terms) of winning or losing the case at a tribunal or equivalent? What was the legal assessment of any potential monetary award at a tribunal or equivalent?	
<Insert your response here>	
Can you confirm that an express clause has been included to the effect that no provision in the settlement agreement or undertaking purports to prevent the individual from making a protected disclosure in accordance with Part IVA of the Employment Rights Act 1996.	
<Insert your response here>	
Value for money	
Provide a breakdown of costs including legal and tribunal costs where applicable	
<Insert your response here>	
Provide the rationale for settlement. What alternative options such as redundancy, a performance improvement process or other appropriate comparators were considered? How much would these have cost in comparative terms?	
<Insert your response here>	
What alternative options were considered? How much would these have cost in comparative terms?	
<Insert your response here>	
Please add any further comments on value for money where there may be non-financial considerations (e.g. staff morale, business objectives)	

Name of Academy	
<Insert your response here>	

Please confirm that the accounting officer is aware and satisfied with the settlement (and the date of this confirmation)
Wider impact
Will the severance payment have an impact on any existing or future cases for either the academy or other public sector bodies?
<Insert your response here>
Please include below any other relevant information
<Insert your response here>

Prepared by:

Approving person (in line with Scheme of Delegation):

Date:

Signature:

Approving person (in line with Scheme of Delegation):

Date:

Signature:

Appendix B - Academies Compensation and Ex-Gratia Payments

Name of Academy	
Name of Individual	
Date	
Total value of payment	
Value of contractual element	
Value of non-contractual element	
Detail how the situation came about:	
<Insert your response here. You can expand all boxes on this form as much as you need to>	
Explain the management procedures the academy followed	
<Insert your response here>	
Proposed way forward	
Explain why you think a special payment should be made, over and above the contractual element?	
<Insert your response here>	
Detail any other options explored.	
<Insert your response here>	
Has a legal assessment been undertaken? If so by whom and what was the response?	
<Insert your response here>	
Value for money	
Provide a breakdown of costs	
<Insert your response here>	
Provide the rationale for settlement. What alternative options were considered? How much would these have cost in comparative terms?	
<Insert your response here>	
Please add any further comments on value for money where there may be non-financial considerations (e.g. staff morale, business objectives)	
<Insert your response here>	
Please confirm that the accounting officer is aware and satisfied with the settlement	
Please include below any other relevant information	
<Insert your response here>	

Prepared by:

Approving person (in line with Scheme of Delegation):

Date:

Signature:

Approving person (in line with Scheme of Delegation):

Date:

Signature:

Appendix C – Extract from Chapter 2 of HM Treasury document ‘Guidance on Public Sector Exit Payments: Use of Special Severance Payments’

2.4 The following types of payments are likely to constitute Special Severance Payments:

- a) Any payments reached under a settlement agreement;
- b) The value of any employee benefits or allowances which continue beyond the employee’s agreed exit date;
- c) Write-offs of any outstanding loans;
- d) Any special leave, such as gardening leave;
- e) Any honorarium payments or gifts;
- f) Any hardship payments;
- g) Any payments to employees for retraining related to their termination of employment;
- h) Compensation in lieu of notice (CILON);
- i) Payments agreed as part of a judicial or non-judicial mediation.

2.5 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual’s contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) Pay in lieu of notice (PILON);
- b) Pension strain payments.

2.6 The following do not constitute Special Severance Payments:

- a) Statutory redundancy payments;
- b) Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise;
- c) Payment for untaken annual leave;
- d) Payments ordered by a court or tribunal.