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Potential in Everyone Academy Trust  
CEO – David Whitehead



# Special Payments and Indemnities Policy

<b>Committee</b>	Board of Directors
<b>Version</b>	1.0
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<b>Signature</b>	
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<b>Associated Documentation</b>	
Pay Policy	

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# Part A – Policy

## 1. Policy Statement

Potential in Everyone Academy Trust is committed to assuring that an appropriate and reasonable procedure is followed in terms of the Trust's financial arrangements.

Certain transactions by public bodies may fall outside their usual planned range of activity and may exceed statutory and contractual obligation and HM Treasury refers to these as special payments. These are subject to greater control than other payments. They include:

- Staff severance payments
- Compensation payments
- Ex-gratia payments
- Indemnities

The Board of Directors have delegated responsibility to the Audit, Finance and Staffing Committee to make recommendations to the Board for special severance payments and to assure them that all conditions in relation to special payments adhere to the conditions outlined by DfE in the current Academies Financial Handbook.

## 2. Scope of the Policy

The purpose of this policy is to ensure that the Trust maintains and develops systems of financial control which conform to the requirements both of propriety and of good financial management. It is essential that these systems operate properly to meet the requirements of the Trust's funding agreement with the DfE, Managing Public Money, and the Academies Financial Handbook. Before any Special Payment is considered, paragraph 3.3 of the Academies Financial Handbook must be consulted and if appropriate professional advice taken as to whether the payment should be made.

The Trust is dedicated to following the correct financial procedures, in accordance with relevant legislation and statutory guidance, to ensure the best possible outcome for the Trust and in the interest of providing quality education.

This policy is for the Accounting Officer and Trust 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 £50000 or over, or for any value where a Financial Notice to Improve (FNtI) is in place. Special payments of less than £50,000 will be presented to the Audit, Finance and Staffing Committee for approval prior to any agreement being made with an employee.

## 3. Adoption Arrangements and Date

This policy was adopted by the Board of Directors of Potential in Everyone Academy Trust on 12 July 2019 and supersedes any previous policy.

## 4. Review of the Policy

This policy will be reviewed by the Board of Directors every two years to ensure the policy is up to date with the latest DfE guidance or earlier if there is a need.

## 5. References to Other Sources of Information

This Special Payments Policy has due regard to the following DfE guidance:

- The current Academies Financial Handbook.

## 6. Definitions

Transactions that are not part of the Trust's planned budgeting are classed as special payments. These payments are non-contractual (non-statutory) and include:

- Staff severance payments – paid to employees when leaving employment in the public service, whether they resign, are dismissed or reach an agreed termination of contract.
- Compensation payments – made to provide redress for loss or injury.

- Ex-gratia payments – transactions which go beyond statutory/contractual cover or administrative rules, e.g. payments to meet hardship caused by official failure or delay.

## 7. References

Current Academies Financial Handbook <https://www.gov.uk/government/publications/academies-financial-handbook>

# Part B – Procedure

## 8. Severance Payments

Severance payments will only be made in accordance with section 5 of the Academies Financial Handbook 2019.

Special 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. These are different to ex-gratia payments.

Staff severance payments are paid to employees outside statutory or contractual requirements when leaving public employment. The Trust must consider the following issues before making a binding commitment:

- That the proposed payment is in the Trust's interests
- Whether the payment is justified, based on legal assessment of the Trust's chances of successfully defending the case at employment tribunal. If there is a significant prospect of losing the case, a settlement may be justified, especially if the costs of a defence are likely to be high. Where a legal assessment suggests the Trust is likely to be successful, a settlement should not be offered
- If the settlement is justified, the Trust would 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

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 succeed in an employment tribunal 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.

Potential in Everyone Academy Trust will be able to demonstrate and provide evidence of why the chosen route was taken to resolve the issue. The Trust will balance the legal and management costs against the level of pay out.

A severance payment is made from public money and, therefore, value for money will be demonstrated. Any non-contractual financial considerations will be supported 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.

The use of confidentiality clauses associated with staff severance payments will not prevent an individual's right to make disclosures in the public interest, in accordance with the Public Interest Disclosure Act 1998.

Consideration and approval of severance payments will be made by the Full Board of Directors.

The Trust has delegated authority to approve individual staff severance payments provided any non-statutory/non-contractual element is under £50,000 gross (i.e. before income tax or other deductions). Where the trust is considering a non-statutory/non-contractual payment of £50,000 or more, (gross, before deductions), ESFA's prior approval must be obtained before making any binding offer to staff. ESFA will refer such transactions to HM Treasury, so Trusts should allow sufficient time for proposals to be considered. Examples of approval requirements are as follows:

Statutory/contractual payment		Non-statutory/non-contractual payment	ESFA/HM Treasury approval required?
£30,000	+	£30,000	No
£60,000	+	£30,000	No
£30,000	+	£50,000	Yes – for £50,000

Approval will be sought from the ESFA prior to all non-contractual payments of £50,000 or more using the [academies severance payments form](#). Non-contractual payments under £50,000 do not require approval; however, the Trust must prove value for money by applying the same scrutiny to a payment under £50,000 as those over £50,000 and have a justified business case.

A business case to the Audit, Staffing and Finance Committee will be made for all non-contractual severance payments, which will be available for the ESFA if requested. If the ESFA considers the payment is not justified, they reserve the right to request a repayment from the Trust.

The Trust must ensure 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.

If the Trust is subject to a Financial Notice to Improve, any non-contractual payments, irrespective of value, should be sent through to ESFA for prior approval, as the notice withdraws the academy's delegated authority limit.

All staff severance payments, of any value, will be disclosed in total in the Trust's audited accounts.

## 9. Compensation Payments

Compensation payments provide redress for loss or injury, for example personal injuries, traffic accidents or damage to property. If a trust is considering a compensation payment, it must base its decision on a careful appraisal, including legal advice where relevant, and ensure value for money.

Academy trusts have delegated authority to approve individual compensation 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. ESFA will refer such transactions to HM Treasury.

Trusts should consider whether cases reveal concerns about the effectiveness of internal control systems and take steps to correct failings.

When considering making a compensation payment, the Trust will base its decision on a careful appraisal of the facts and legal advice to ensure that value for money is achieved.

The CEO has the authority to approve individual compensation payments, provided that all non-contractual elements are under £50,000. Approval must be given by the Full Board of Directors. The ESFA's prior approval will be obtained when the Trust is considering making a non-contractual payment of £50,000 or more.

The Audit, Finance and Staffing committee will routinely consider whether any cases reveal concerns about the internal control systems, taking any necessary actions to improve effectiveness and put failings right.

Irrespective of whether the Secretary of State's approval is required, the Trust will disclose aggregate figures of compensation transactions, and separate disclosure for individual transactions above £5,000, in their audited accounts.

## 10. Ex-gratia Payments

Ex gratia payments are another type of transaction going beyond statutory or contractual cover, or administrative rules. Annex 4.13 of Managing Public Money provides examples, including payments to meet hardship caused by official failure or delay, and to avoid legal action due to official inadequacy.

Ex gratia transactions must always be referred to ESFA for prior approval. HM Treasury approval may also be needed. If trusts are in doubt about a proposed transaction, they should seek ESFA advice.

These payments are separate to severance and compensation payments. For example

- Payments made to meet hardship caused by official failure or delay.
- Payments to avoid legal action on the grounds of official inadequacy.

Any contractual payments received by Trust employees, in accordance with the Trust's Pay Policy, are not classed as ex-gratia payments. All proposed ex-gratia transactions will be referred to the ESFA for prior authorisation and HM Treasury's approval will also be sought, dependant on the nature of the payment.

The Trust will always seek prior advice from the ESFA if there is any doubt surrounding a proposed ex-gratia transaction.

All ex-gratia payments, of any value, will be disclosed in total in the Trust' audited accounts

## 11. Indemnities

The academy trust must obtain ESFA's prior approval for the following transactions beyond the delegated limits described below:

- writing-off debts and losses
- entering into guarantees, letters of comfort or indemnities

The delegated limits, subject to a maximum of £250,000, are:

- 1% of total annual income or £45,000 (whichever is smaller) per single transaction
- cumulatively, 2.5% of total annual income in any financial year per category of transaction for trusts that have not submitted timely, unqualified accounts for the previous two financial years. This category includes new trusts that have not had the opportunity to produce two years of audited accounts
- cumulatively, 5% of total annual income in any financial year per category of transaction for trusts that have submitted timely, unqualified accounts for the previous two financial years

In relation to these limits:

- the trust should always pursue recovery of amounts owed to it, including overpayments, or erroneous payments. In practice, however, there will be practical and legal limits to how cases should be handled
- the trust should only consider writing-off losses after careful appraisal, including whether all reasonable recovery action has been taken with the debtor, the trust's insurers, or the risk protection arrangement, and should be satisfied there is no feasible alternative
- the amounts for write-offs are before successful claims from an insurer or the risk protection arrangement
- total annual income is defined as grant income as disclosed in the trust's last audited accounts. ESFA should be contacted if the trust has not yet published their first audited accounts

Before accepting liabilities by issuing guarantees, a letter of comfort or indemnity, the trust should secure value for money by appraising the proposal through assessment of the costs and benefits of relevant options.

Before accepting any of these liabilities, the Trust will appraise the proposal through an assessment of the costs and benefits of all relevant options, to ensure value for money.

The Trust will only write-off losses after considering whether all reasonable action has been taken and that there is no feasible alternative. All write-offs will be made before any successful claims from the academy's insurer/risk protection arrangements.

Irrespective of whether the Secretary of State's approval is required, the Trust will disclose aggregate figures of indemnity transactions, and separate disclosure for individual transactions above £5,000, in their audited accounts.

## 12. Reporting requirements

The Academies Financial Handbook provides that irrespective of whether ESFA approval is required, the Trust must disclose aggregate figures for transactions of any amount, and separate disclosure for individual transactions above £5,000, in its audited accounts for the following transactions:

- special payments –compensation
- special payments –ex gratia
- writing off debts and losses
- guarantees, letters of comfort and indemnities
- acquisition or disposal of a freehold of land and buildings
- disposal of heritage assets
- taking up or granting a leasehold on land and buildings
- gifts by the trust

Special payments – staff severance must be disclosed in total, irrespective of value, and individually. Other than what is required under financial reporting standards, the Charities SORP and the Accounts Direction, disclosure can be anonymised.