



Diocese of Westminster

EDUCATION SERVICE

Director of Education: Paul Barber

Guidance on Finance and Insurance for Catholic Voluntary Aided Schools

September 2011

The Nature of a Voluntary School

The funding regime in Catholic maintained schools differs in some marked respects from many other schools. These differences derive from the legal nature of the school itself. Catholic maintained schools, as well as being in the **voluntary aided** category, are, properly speaking, all **voluntary schools**. They are voluntary schools because they were founded by a voluntary body, namely, the Church. Because of this, the powers of the governing body derive both from the **trust deed** under which it was established, as well as from its status as a **statutory corporation** under the Education Acts. This makes voluntary schools a unique example of what are known in law as “**hybrid bodies**”: bodies having both public and private functions.

Charitable Status

As a result of its foundation, and unlike community schools, every Catholic school is a **charity**, whose objects derive from the trust deed under which it was founded. For schools in diocesan trusteeship, those objects are: **advancing the Catholic religion by such means as the Archbishop may think fit and proper**. Since 1999, the governing body of every voluntary aided school has been an **exempt charity**.¹ An exempt charity is not required to register with the Charity Commission (indeed, it is prohibited from doing so).

As a result of being an exempt charity, governing bodies are subject to the general legal rules applicable to charities, but they are not subject to the jurisdiction of the Charity Commission or the detailed accounting rules under the Charities Acts. Under no circumstances may an exempt charity describe itself as a registered charity or use a registered charity number (even that of the diocese or order which are its trustees).² It is good practice to use one of the following phrases on stationery, especially that of a financial nature or related to fund-raising: “*an exempt charity*” or “*an exempt charity under section 23 of the School Standards and Framework Act*”.

Exempt charities are entitled to rely on exactly the same financial benefits as other charities. It is sometimes necessary to produce evidence to prove that the school is a charity. The statement that the school is an exempt charity under s.23 of the School Standards and Framework Act together with a copy of the school’s Instrument of Government is usually accepted as sufficient proof. In cases of difficulty, the Charity Commission are usually willing to assist.

¹ School Standards and Framework Act 1998 (SSFA) s.23(1).

² This can constitute a criminal offence if connected with the raising of funds: Charities Act 1992 s.63.

Sources of Funds

Generally speaking, the governing body of a voluntary school will be dealing with at least three sets of funds – statutory funds, both delegated and otherwise; and voluntary funds. It is important to distinguish between them.

Statutory Funds

Most of the income of a maintained school will be derived from public sources. The majority of this will come from the local authority by way of delegation. Other statutory funds include those which come from the local authority or from the DfES by some form of grant,³ and any other income which the school acquires in the course of carrying out its statutory functions.

Delegated Funds

Delegated funds never belong to the governing body. They remain the property of the local authority, but are spent by the governing body acting on behalf of the local authority in accordance with the statutory scheme of delegation (see below).⁴

Other Public Funds

Any other statutory or public funds received by the school may be in the form of grant funding, or income gained through conducting the school (e.g. fees for chargeable items, income from hiring out school equipment). These funds are owned by the governing body, but remain public funds. The governing body remains accountable to the local authority for their expenditure. They can only be spent in conducting the school.

Voluntary Funds

Catholic schools will almost certainly have voluntary funds (i.e. not derived from statutory sources) such as a “governors’ fund”. These are sometimes termed “private funds”, though there is a subtle but important distinction. “Private funds” refer to the non-statutory funds held by any governing body (as it is now possible for community schools to hold funds separately from their local authority). However, voluntary funds can only exist in voluntary schools because they refer to funds which are held for the purposes of the trust under which the school is established.

Voluntary funds may have been raised through voluntary contributions of parents and others, and may be raised by any non-statutory activities of the governing body. Voluntary funds may also cover the funds of other bodies such as PTAs (but see below). They may be expended for any purposes falling within the school’s trust deed (unless they were explicitly raised for a narrower purpose, in which case they are held by the governing body for that purpose). The management of voluntary funds is entirely the responsibility of the governing body. The local authority is entitled to ask the school for a certificate that these funds have been audited, but not to have access to the accounts of such funds.⁵

Voluntary funds **do not** come within the scope of the new Consistent Financial Reporting framework (CFR). Neither OFSTED nor CFR require details of the income or balances of voluntary funds. Expenditure from voluntary funds will be picked up by CFR **only** if it is spent in conducting the school. In this case, the sum expended **must** be entered **both** as an expenditure

³ E.g. the Standards Fund.

⁴ SSFA s.49(5).

⁵ DfES statutory guidance on schemes for financing schools under SSFA sch.14, para.1(2) (Issue 2(rev): May 2003).

under the appropriate category **and** as an income from voluntary funds (113) of the same amount. Any other expenditure from voluntary funds is outside CFR.

Parent Teacher Associations etc.

There are two types of PTA, Friend's Associations and similar fund-raising organisations. The first is one which is completely autonomous of the governing body. Such organisation has a separate constitution and is likely to have to register as a charity in its own right. The second, and preferred, type is one which is ultimately accountable to the governing body. In this case, that organisation is also an exempt charity and its funds form part of the voluntary funds of the school.

The local authority's duty to maintain the school

The local education authority is under a duty to maintain Catholic voluntary aided schools.⁶ The local authority's duty to maintain includes the duty of defraying all the expenses of maintaining it (except for premises related capital expenditure which is the responsibility of the governing body). Therefore **all** revenue expenditure in relation to the conduct of the school falls within the local authority's duty to maintain – this also includes any premises related expenditure under £2000. Full definitions of the premises related expenditure for which the governing body are now responsible are given in DfES Circular 0276/2002 (April 2002) *Funding for Premises Related Work at Voluntary Aided Schools in England*. (an updated version is also available on the DfES website: www.teachernet.gov.uk).

An local authority may discharge their obligation in one of two ways: directly or via a delegated budget. Unless the school has had its delegated budget withdrawn, the primary way in which the local authority discharges its duty is by making available annually to the governing body a sum known as the school's budget share which forms the school's delegated budget.⁷ The delegated budget remains the property of the local authority, but is spent by the governing body acting on behalf of the local authority.⁸

The governing body may spend the delegated budget for any purposes of the school and this *includes* the governing body's financial responsibility for premises related capital expenditure.⁹ (If it wishes, the local authority has the power to assist the governing body in its responsibility for capital expenditure).¹⁰ In spending delegated funds, the governing body must comply with the provisions of the local authority's current scheme of delegation. It is therefore important to have a copy of the current local authority scheme, as its requirements differ between local authorities and may change from year to year. To the extent that the scheme allows, the governing body may delegate their spending powers to the head teacher.¹¹ Provided they act in good faith, governors will not incur any personal liability.¹²

If expenses are properly incurred by the governing body which are not covered by the sums delegated to the governing body, then the local authority has the duty to defray those expenses directly. Unless their current scheme allows them to, the local authority cannot deduct such expenses from the school's delegated budget. In particular, in respect of staffing:

⁶ SSFA s.22(1).

⁷ SSFA ss.45, 49

⁸ SSFA s.49(5).

⁹ SSFA s.50(3).

¹⁰ SSFA sch.3, para.8.

¹¹ SSFA s.50(6).

¹² SSFA s.50(7).

- early retirement costs **may** be deducted from the school's delegated budget unless the local authority agrees in writing to fund them;¹³ but
- costs incurred in respect of the dismissal, or for the purposes of securing the resignation of a member of staff **cannot** be deducted from the delegated budget without good reason.¹⁴

Most "good reasons" for deducting expenses from the school's delegated budget are given in the Statutory Guidance for local authorities (see extracts in Appendix).

Insurance

Premises Insurance

The governing body must have a policy of insurance covering its liability for 10% of the replacement cost of the whole of the school premises, or of any individual loss, excluding the values of:

- any buildings on playing fields and related to their use;
- any revenue premises losses below the national *de minimis* level for VA capital purposes (currently £2000).

The diocesan insurance policy arranged through the Catholic Church Insurance Association provides such cover, with an excess in most cases of £300 (net of grant aid).

In addition, the local authority should either meet 100% of the premium cost for its own liabilities or self-insure for that value. For non premises related capital items (e.g. contents) and *revenue* premises losses (i.e. below £2000) the school should have access to exactly the same arrangements as other maintained schools in the local authority.

Public and Employers' Liability Insurance

As employers, governing bodies of voluntary aided schools are responsible for arranging compulsory insurance to cover their employers' liabilities. Such insurance must ensure that an appropriate employer's liability certificate is issued in the name of the governing body. Similarly, as occupiers of the school premises, the governing body must arrange appropriate public liability insurance. For both of these insurances, as a voluntary school the governing body must ensure that its cover extends to any aspects of its employment or occupation of premises which fall outside its purely statutory functions.

Both employers' liability and public liability insurances relating to the statutory responsibilities of the governors in the conduct of the school will normally be arranged through the local authority. Some arrangements will differ depending on whether the local authority arranges the related insurance cover under its scheme or 'self insures' it.

The diocesan insurance, arranged through the CCIA, is designed to ensure that governing bodies are not exposed to uninsured risks, especially when the governing body is acting in its "voluntary" capacity. The diocesan insurance is therefore designed to act as a "safety net" to pick up liability claims which are not covered by the insurance arranged via the local authority or elsewhere. Since the major part of both liability insurances are provided via the local authority scheme, it is no longer the practice of CCIA to issue a certificate of employers' liability insurance, as this should be obtained through the local authority.

For full details of the cover included through the CCIA, see the Insurance Guide on our website

¹³ SSFA s.57(4).

¹⁴ SSFA s. 57(5). The fact that the LEA has a "no redundancy" policy is deemed *not* to be a good reason: s.57(6).

www.rcdow.org.uk/education, or contact CCIA direct on 01296 422030, e-mail: enquiries@ccia.org.uk

Funding of Premiums

Although responsibility for ensuring appropriate insurance cover is in place rests with the governing body, the responsibility for funding insurance premiums for VA schools rests exclusively with local authorities, because it falls within the local authority's duty to maintain. They should therefore either meet such costs centrally (where insurance is not delegated) or ensure appropriate amounts are delegated to reflect the likely premium costs incurred by the governors on all educational purposes. It is therefore no longer necessary to continue the custom, in some schools, of paying insurance premiums from voluntary or parish funds.

Where the local authority delegates funds, it should offer the same facility to VA schools as to other schools to buy back into its local scheme or make other arrangements.

Appendix: Extracts from Legislation and Statutory Guidance

School Standards and Framework Act 1998

22. (5) In the case of a voluntary aided school, the local education authority's duty to maintain the school includes-

(a) the duty of defraying all the expenses of maintaining it, except any expenses that by virtue of paragraph 3 of Schedule 3 are payable by the governing body, ...

49. (5) Any amount made available by a local education authority to the governing body of a maintained school (whether under section 50 or otherwise)-

(a) shall remain the property of the authority until spent by the governing body or the head teacher; and

(b) when spent by the governing body or the head teacher, shall be taken to be spent by them or him as the authority's agent.

50. (3) Subject to any provision made by or under the scheme, the governing body may spend any such amounts as they think fit-

(a) for any purposes of the school; or

(b) (subject also to any prescribed conditions) for such purposes as may be prescribed.

...

(6) The governing body may delegate to the head teacher, to such extent as may be permitted by or under the scheme, their powers under subsection (3) in relation to any amount such as is mentioned in that subsection.

(7) The governors of a school shall not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under subsection (3) or (6).

57. (1) It shall be for the governing body of a maintained school to determine-

(a) whether any payment should be made by the local education authority 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.

...

(4) Costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school shall be met from the school's budget share for one or more financial years 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.

(5) Costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school 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.

(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); ...

Schemes for Financing Schools: Section 48 of the School Standards and Framework Act 1998, and Schedule 14 to the Act

Statutory guidance for local education authorities

Issued by the Secretary of State for Education and Employment for the purposes of paragraph 1(2) of Schedule 14 to the School Standards and Framework Act 1998 ('the Act')

...

2.8 Audit of voluntary and private funds

A scheme must contain a provision requiring schools to provide audit certificates in respect of voluntary and private funds held by schools and of the accounts of any trading organisations controlled by the school.

The purpose of such a provision is to allow the LEA to satisfy itself that public funds are not being misused. LEAs may not seek to impose through the scheme a right to audit such funds themselves or otherwise access the accounts of private funds. The Department does not believe that such access is required, or that the scheme can bestow it. A school refusing to provide audit certificates to the LEA as required by the scheme is in breach of the scheme and the LEA can take action on that basis. Access to the accounts of such funds by other agencies is a matter for them. Any other requirement as to audit of such funds is a matter for those making the funds available, and any Charity Commission requirements.

...

SECTION 6: THE CHARGING OF SCHOOL BUDGET SHARES

6.1 General provision

The scheme must contain a provision which allows the budget share of a school to be charged by the LEA without the consent of the governing body only in circumstances expressly permitted by the scheme, and requires LEAs to consult schools as to the intention to so charge, and notify schools when it has been done.

Schemes may provide for a disputes procedure for such charges.

Although the right of LEAs to protect their financial position from liabilities caused by the action or inaction of governing bodies by charging budget shares is well established, the government is anxious to ensure that schools are clearly aware of the circumstances in which this may happen. Schemes must therefore list the circumstances in which such charging is permitted. The main ones are given below: LEAs may propose others but will need to demonstrate that there is a need for additional items. LEAs may omit some if they consider them unnecessary. It may be useful to remind schools that the LEA cannot act unreasonably in the exercise of any power given by the scheme, or it may be the subject of a direction under s.496 of the Education Act 1996.

For each of these circumstances (except 6.2.11) the LEA would have to be able to demonstrate that the Authority had necessarily incurred the expenditure now charged to the budget share. This means that where the Authority cannot incur a liability because the statutory responsibility rests elsewhere, no charging is possible. Therefore the position on charging will vary between categories of school.

In some cases the ability to charge budget shares depends on the LEA having given prior advice to the governing body. LEAs need to ensure that they have taken steps that enable them to give advice whenever possible, and will wish to remind schools of this..

6.1.2: The scheme must have a provision which requires the Authority to charge salaries of school-based staff to school budget shares at actual cost.

6.2 Circumstances in which charges may be made

6.2.1 Where premature retirement costs have been incurred without the prior written agreement of the LEA to bear such costs (the amount chargeable being only the excess over any amount agreed by the LEA);

6.2.2 Other expenditure incurred to secure resignations where the school had not followed LEA advice;

6.2.3 Awards by courts and industrial tribunals against the LEA, **or out of court settlements**, arising from action or inaction by the governing body contrary to the LEA's advice

Awards may sometimes be against the governing body directly and would fall to be met from the budget share. Where the LEA is joined with the governing body in the action and has expenditure as a result of the governing body not taking LEA advice, the charging of the budget share with the LEA expenditure protects the LEA's position.

Authorities should ensure in framing any such advice that they have taken proper account of the role of aided school governing bodies under s.60(5) of the SSAF Act 1998.

6.2.4 expenditure by the LEA in carrying out health and safety work or capital expenditure for which the LEA is liable where funds have been delegated to the governing body for such work, but the governing body has failed to carry out the required work;

6.2.5 expenditure by the LEA incurred in making good defects in building work funded by capital spending from budget shares, where the premises are owned by the LEA **or the school has voluntary controlled status**;

6.2.6 Expenditure incurred by the LEA in insuring its own interests in a school where funding has been delegated but the school has failed to demonstrate that it has arranged cover at least as good as that which would be arranged by the LEA;

See also 10.1. The LEA itself needs to consider whether it has an insurable interest in any particular case.

6.2.7 recovery of monies due from a school for services provided to the school, where a dispute over the monies due has been referred to a disputes procedure set out in a service level agreement, and the result is that monies are owed by the school to the LEA;

6.2.8 Recovery of penalties imposed on the LEA by the Board of Inland Revenue, the Contributions Agency, HM Customs and Excise, **Teachers Pensions** or regulatory authorities as a result of school negligence.

6.2.9 Correction of LEA errors in calculating charges to a budget share (eg pension deductions)

Before applying any such provision the LEA should consider whether it is reasonable to do so. If the error dates back several years it may be questionable whether such charging is reasonable.

6.2.10 additional transport costs incurred by the LEA arising from decisions by the governing body on the length of the school day, and failure to notify the LEA of non-pupil days resulting in unnecessary transport costs.

6.2.11 Legal costs which are incurred by the LEA because the governing body did not accept the advice of the LEA (see also section 11).

[6.2.12 deleted]

6.2.13 Costs of necessary health and safety training for staff employed by the LEA, where funding for training had been delegated but the necessary training not carried out.

6.2.14 Compensation paid to a lender where a school enters into a contract for borrowing beyond its legal powers, and the contract is of no effect.

6.2.15 Cost of work done in respect of teacher pension remittance and records for schools using non-LEA payroll contractors, the charge to be the minimum needed to meet the cost of the Authority's compliance with its statutory obligations;

6.2.16 Costs incurred by the LEA in securing provision specified in a statement of SEN where the governing body of a school fails to secure such provision despite the delegation of funds in respect of that statement;

6.2.17 Costs incurred by the LEA due to submission by the school of incorrect data;

6.2.18 Recovery of amounts spent from specific grants on ineligible purposes;

6.2.19 Costs incurred by the LEA as a result of the governing body being in breach of the terms of a contract.