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10<sup>th</sup> November 2022

**Delegated Authority Letter – Education and Skills Funding Agency (ESFA)**

Dear David,

As Director General for Operations and Infrastructure Group for the Department for Education, I have been given formal delegated authority by the DfE's Principal Accounting Officer to exercise a range of authorities and to sub-delegate these as appropriate. I am writing to set out the ESFA's updated delegated spending authorities. This supersedes all previous communication on delegated authorities, and includes the arrangements for approving:

- new policy proposals and announcements;
- projects and programmes; and
- internal delegations

By accepting the Delegation of Financial Authority along with your responsibility as Accounting Officer, you assume full accountability and responsibility for ensuring that any financial resources under your control are managed in an economic, efficient and effective manner.

HM Treasury approval for expenditure is one aspect of the convention whereby the Treasury controls all other departments in matters of finance and public expenditure on behalf of Parliament. Formally, Treasury consent is required for all expenditure or resource commitments. In practice, the Treasury delegates to the Department for Education (DfE) and DfE delegates to its Arm Length Bodies (ALBs) the authority to enter into commitments and to spend within predefined limits without specific prior approval from the Treasury (with certain exceptions). Such delegated authorities strike a balance between the Treasury's need for control in order to fulfil its responsibilities to Parliament and the department's freedom to manage within its agreed budget limits and Parliamentary provision. Annex 2.2 of *Managing Public Money* sets this out in further detail.

The delegated authorities set out in this letter give the ESFA standing authorisation to commit resources or incur expenditure without specific prior approval from the DfE in specific areas and within specific limits. The delegated authorities do not make any distinction between DEL and AME spending. Where expenditure does not fall within these delegations, DfE and/or Treasury consent will be necessary. Details of these delegated authorities are set out in Annex A, alongside a list of the categories of spending which always require DfE/Treasury approval. These include proposals for expenditure which is novel and contentious, or could cause repercussions elsewhere in the public sector. Expenditure slotting into any of these categories requires Treasury consent. If no delegation is set out specifically in the letter, then the delegation is nil and DfE and/or Treasury consent will need to be sought. Programme specific delegations are also set out in Annex A.

This delegation letter commences from the date of this letter and will be reviewed on annual basis by the DfE. This means that your delegations must be reviewed by 9<sup>th</sup> November 2023. The letter should be read in conjunction with other guidance setting out the parameters of departmental spending authority, such as *Managing Public Money*. Any questions on the contents of this letter should be referred to your ALB's Sponsor Team who in turn will refer it to the Financial Governance Team in DfE to advise on.

### **New policy proposals and announcements**

New policy proposals and announcements with financial implications must be cleared with the DfE. Additional clearance from Treasury may also be required when:

- they are outside the department's delegated authorities;
- they are included within the list of categories of spending which always require HM Treasury approval;
- they are to be submitted to the Cabinet or a Ministerial committee for collective approval.

Cost estimates must be provided to the DfE/Treasury with an identification of how the costs will be met, including costs impacts for other departments. Except where specifically agreed with the DfE and Treasury, the ESFA is expected to submit a business case using the techniques set out in the Green Book, including cost-benefit analysis, to appraise and evaluate policy announcements and proposals, as well as projects and programmes.

Where proposals with financial implications are to be submitted to the Cabinet or a Ministerial committee for collective approval by DfE on the ESFA's behalf, Treasury approval must be secured well in advance. Where the department proposing the policy and Treasury cannot agree in advance, any proposal for collective ministerial consideration must record the Treasury's position in terms which are acceptable to the Treasury. Cabinet Committees will not sign-off policy proposals with public expenditure implications unless Treasury ministers are content. Issues will be referred to the Prime Minister, if necessary, for decision, or to Cabinet if the Prime Minister so decides.

### **When approval is required**

Projects and programmes must be cleared by the DfE. They may also require Treasury approval where they exceed, or are likely to exceed, the department's delegated authorities. The need for Treasury approval extends to the renewal of existing projects and programmes where significant changes are being proposed as well as new projects and programmes. For clarification, Treasury approval must be sought where multiple contracts tendered for a programme would, in aggregate, take expenditure over a given delegation limit; contracts must not be broken down in order to avoid the need for HMT approval. It will also be appropriate to seek HMT consent where additional contracts in relation to a programme of activity raise the expenditure above the delegation limit.

Where expenditure is or is likely to be beyond the department's delegated authorities, Treasury approval must be given at a minimum at each key stage of the project or programme under the Five Case Model, as set out in the Green Book supplementary business case guidance:

- initial approval at the Strategic Outline Case (SOC) phase;
- approval at the Outline Business Case (OBC) phase, before going out to the market or tender;
- approval at the Full Business Case (FBC) phase before any spending is committed. In the case of projects and programmes procured under the competitive dialogue process, approval is required before close of dialogue; further approval is then required at the FBC stage for any substantive changes since close of dialogue.

Additionally, for major projects as defined by the 'Treasury approvals process' guidance, the following apply:

- HM Treasury and the Infrastructure & Projects Authority (IPA) will agree with the ESFA via the DfE department a set of milestones as part of the project's Integrated Assurance and Approval Plan (IAAP). The Treasury reserves the right to add further approval milestones where necessary;
- the ESFA via the DfE must continue to provide the Treasury and the Infrastructure & Projects Authority (IPA) with details of projects and programmes after FBC approval until the project or programme is operational, including on project performance, cost and time envelope, on a quarterly basis. This information will be collected via the IPA's Government Major Project Portfolio (GMPP); and
- the ESFA via the DfE department is required to share its post-implementation review for each project with HM Treasury and the IPA.

Where this is not the case, or where the ESFA do not accept IPA recommendations, the Treasury will consider withholding funding until it is satisfied the recommendations have been properly implemented or considered.

### **Project reporting**

In addition to setting delegated limits, we are also maintaining lower disclosure thresholds for projects and programmes as set out in Annex A.

To facilitate effective Treasury oversight and knowledge of departmental spending, and Cabinet Office oversight of delivery risk and capability, the ESFA is required, on a quarterly basis, to provide the DfE/Treasury spending team, and relevant IPA contact, with information on projects whose whole life costs fall outside, or are likely to fall outside, delegated authorities or exceed disclosure thresholds. The quarterly GMPP process provides the primary means of collecting the information, which includes:

- project summary;
- the lifecycle stage, the next significant milestone, and when that is likely to take place;
- annual project costs and whole life costs, in government budgeting terms;
- where appropriate, the NPV of the project or programme;
- delivery confidence;
- the relative priority of the project in the department's project portfolio;
- the future timetable; and
- where applicable, the date and amount of any existing approval from HM Treasury.

The Treasury will normally only approve projects and programmes outside delegated authorities where departments comply with this and associated processes to prioritise and rank their portfolio(s).

This process includes all initiatives outside delegated authorities or above disclosure thresholds, including:

- those that are identified within your department as in development, as well as serious options where project or programme initiation is envisaged; and
- the projects and programmes of the DfE's executive agencies, non-departmental public bodies, or other sponsored bodies.

For any new initiative which is:

- likely to fall outside the relevant delegated authorities; or
- requires specific functional input or technical expertise (e.g. finance; digital; infrastructure; construction etc); or
- is novel, contentious, or is expected to lead to ministerial announcement,

The ESFA should assist the DfE in respect of these reporting requirements of eligible projects and programmes.

You are asked to work with your DfE sponsor team to engage the relevant Treasury spending team and IPA contact at the outset to determine the degree of challenge and whether the initiative and proposed delivery approach would benefit from Major Project status or IPA support. IPA and Treasury engagement in an initiative's transition from policy to delivery should be as early as possible and should not rely on the more formal quarterly cycle. As set out in the DfE's most recent Spending Review settlement letters, there will be a quarterly meeting between the DfE, the relevant Treasury spending team, and IPA contact where such matters should be formally discussed. In addition, the Treasury should be kept informed on a regular basis of details of planned savings measures, especially where they are novel or contentious.

### **Spending commitments beyond Spending Review settlement**

In line with *Managing Public Money*, any new spending proposal which would entail contractual commitments to significant levels of spending in future years for which plans have not been set must be approved by the Treasury. In addition, the Treasury requires departments to report on a quarterly basis on the total amount of capital spending which has been committed per financial year beyond the current Spending Review settlement. This applies to capital spending beyond 2024-25. If the Treasury has concerns about the level of commitments that have built up, it may require all spending proposals committing money beyond the current Spending Review settlement to have HM Treasury approval, regardless of the level of spending involved.

### **Process for obtaining approval**

Before any expenditure outside the delegated authorities is submitted by the department to HM Treasury for formal approval, it should already have passed the highest level of scrutiny within the department, which as a minimum will require sign-off by the Principal Accounting Officer, Finance Director, or other official with full delegated powers. Applications for

approval should be submitted to the DfE's Sponsor Team who will onward refer to the appropriate team within DfE for a decision or further referral to Treasury spending team. A decision will then be communicated in writing whether approval has been granted.

Expenditure submitted to the Treasury for approval should also have been signed-off by the relevant minister within the department (excepting cases related to special payments). Where the Principal Accounting Officer assesses that a ministerial direction will likely be needed in relation to the expenditure, the reasons for this should be discussed with the Treasury. No direction should be sought in advance of obtaining Treasury approval for the expenditure.

### **Policy proposals and projects**

Applications for approval should be submitted to the Treasury spending team, who will then communicate in writing whether approval has been granted. Projects outside delegated authority will be scrutinised through the Treasury Approval Point process, or the Major Projects Review Group for government's largest and riskiest projects and programmes. You will normally receive a response within 28 days of the business case formally being received.

### **Cabinet Office controls**

The Cabinet Office will continue to operate a subset of spending controls on behalf of the Treasury. They apply to the following types of expenditure:

1. Advertising, Marketing and Communications;
2. Commercial activity, including dispute disclosure;
3. Consultancy and Professional Services;
4. Digital and Technology, including identity assurance;
5. Grants;
6. Property,
7. Facilities Management;
8. Contingent Labour;
9. Learning and Development (Civil Service Learning); and
10. Redundancy and Compensation.

Detailed guidance on their operation and requirements is available at:

<https://www.gov.uk/government/publications/cabinet-office-controls>.

These controls apply to DfE and all its arms-length and central government bodies, unless exempted. Following a review, most spending control exemptions have been withdrawn or updated (details are set out at Annex B). Any new bodies being formed should do so with the assumption that new exemptions will not be granted.

## **Controls requirements**

The ESFA is required to develop and share spending 'pipelines' containing information on proposed commercial procurement, facilities management contracts, digital and technology, and property (leaseholds, property acquisitions and disposal) spending for at least the next 18 months (publishing commercial procurement pipelines). As well as meeting this requirement your staff should also continue to produce other business cases and seek other Treasury and Cabinet Office consent as required.

## **Grants control**

The Grants control provides an advisory control rather than a spending approval point with varying levels of support offered at tiers of spend. In accordance with the Grants Pipeline Control Framework, ESFA is required to provide complete, accurate and timely data on grant schemes and awards, from pipeline to completion. This includes confirmation that the business case has been through an internal functional standard compliant governance route to improve the investment. This will ensure effective oversight via the Complex Grants Advice Panel (CGAP) providing advice to the most complex and high-risk general grant schemes as well as targeting the Government Grant Management Functions (GGMF) provision of expert services.

## **AO responsibilities / approvals**

As it constitutes a delegation from Treasury consent, spending without the required Cabinet Office approval, or without meeting the conditions set for delegated or Cabinet Office approval, may be considered irregular. As AO you must immediately notify the Cabinet Office and HM Treasury as soon as you become aware of a breach of spending controls, and the National Audit Office (NAO).

## **Redundancy schemes (HMT and CO approvals)**

The ESFA also needs to seek Treasury approval for redundancy and compensation schemes where these fall outside delegated authorities, including where this involves a request to draw down funding ring-fenced for redundancy costs in the Spending Review. HM Treasury and Cabinet Office are jointly reviewing the operation of these controls and will notify you of further changes.

In addition, please also note the Cabinet Office Guidance on the use of Settlement Agreements, Special Severance Payments, and Confidentiality Clauses on Termination of Employment. As of 1 February 2015, Accounting Officers are required to seek the prior approval of the sponsoring Department's Minister for any use of a confidentiality clause and

then the approval of the Minister for the Cabinet Office in specified criteria, one of which is a proposed payment of £100,000 or more (at any grade).<sup>1</sup>

### **Special payments**

Certain categories of transaction require distinct treatment, including special payments, overpayments, losses & write-offs, gifts, and remedy payments. Annexes 4.10 to 4.14 of *Managing Public Money* contain guidance on these categories and the circumstances under which Treasury approval must be sought. You should note that all severance payments outside of normal statutory or contractual requirements require Treasury approval and, unless separately agreed with the Treasury Officer of Accounts (TOA), any consolatory payment of above £500 also requires Treasury approval (further detail set out in annex C). In addition, all payments, regardless of value, require Treasury approval if they are novel, contentious, or repercussive (paragraph 2.3.4 of *Managing Public Money*). Annex A of this letter contains further detail on the delegations relating to special payments, overpayments, losses & write-offs, gifts, and remedy payments.

### **Contingent Liabilities**

ALBs sponsored by departments do not generally have powers to take on liabilities, because these would in effect bind their sponsoring departments. Therefore, your delegation limit in relation to this is nil and you must always refer proposals for contingent liabilities to the DfE for initial consideration and approval. HM Treasury must be sought for all commitments that incur contingent liabilities that are novel, contentious, or repercussive, before they are agreed and must be cleared through your sponsoring department in the same way you would for other proposals needing Treasury approval. In addition, where such proposed contingent liabilities have maximum exposure of £3 million or more, a completed Contingent Liability approval framework checklist must be submitted to the Treasury alongside the request for approval. This process is also required for remote contingent liabilities.<sup>2</sup>

For contingent liabilities, including remote contingent liabilities, which are not novel, contentious or repercussive, the relevant delegated authority limit will apply. In such cases, the maximum exposure of the contingent liability should be tested against the relevant delegated authority limit. For example, if the maximum exposure of a contingent liability which extended beyond the spending review period was greater than the delegated authority limit for spending beyond the spending review period, it would require HM Treasury consent.

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<sup>1</sup> Detailed guidance is available at: <https://www.gov.uk/government/publications/civil-service-settlement-agreements-special-severance-payments-and-confidentiality-clauses>; further information on disclosure may be found within the Government Financial Reporting Manual (FRM) Clause 3.2.12d, available at: <https://www.gov.uk/government/publications/government-financial-reporting-manual>.

<sup>2</sup> <https://www.gov.uk/government/publications/contingent-liability-approval-framework>

Departments may enter into a limited range of normal course of business contingent liabilities outside of these delegations, as described in *Managing Public Money*, Chapter 5 and Annex 5.4 (e.g. standard indemnities to board members). DfE may choose to further delegate authority to ESFA in relation to contingent liabilities. Any such delegations will be summarised in Annex A.

### **New Services and Sole Authority**

HM Treasury agreement is also needed to introduce new services on the sole authority of the Supply and Appropriations Acts. New services can never be introduced on a permanent footing without legislation, but there is a temporary services derogation that may be used for services lasting no more than two years in total. Using this derogation requires agreement from the Treasury.

### **Fees and Charges**

Treasury agreement is needed to introduce or modify fees and charges schemes and for any proposal to retain fee and charge income to finance expenditure.

### **Banking and Cash Management**

ESFA must maximise the use of publicly procured banking services (accounts with commercial banks managed centrally by Government Banking). ESFA should only hold funds outside of the Exchequer where a good business case can be made for doing so. It should also be noted that specific Treasury agreement to each commercial account is required before it is established. Further details are set out in the Banking and managing cash annex of *Managing Public Money*. This also provides guidance on banking policy. As a matter of good financial management, ESFA should never go overdrawn.

As part of its delegated authority, ESFA should plan its own cash management efficiently. ESFA must support DfE's central cash management processes through forecasting of their cashflow via the cash management scheme as set out in guidance on OneFinance and *Managing Public Money*. This captures department's inflows and outflows at the point they leave the department's group of accounts within the exchequer.

For effective cash management it is important to distinguish cash flow from accrued budgets. Cash flow should be profiled for each day to inform Exchequer Funds and Accounts (EFA) of the Exchequer's demand for cash and expectations of income on a daily, weekly and monthly basis. The Debt Management Office (DMO) relies on the accuracy of this information to minimise the risks and cost of managing the government's overall cash position daily, and therefore the earliest possible communication with EFA on changes to cash flow is essential.

### **Sharing information with HM Treasury**

To support the effective monitoring of spend, and to inform decision making, DfE must provide HM Treasury with robust spending and forecasting information, including for ESFA,

and share data to demonstrate whether priority outcomes are being achieved and contribution to key government objectives.

### **Review of delegated authorities**

The ESFA's delegated authorities will be reviewed by the DfE on an annual basis, beginning from the date of this letter. That means that your delegations will be reviewed by 9<sup>th</sup> November 2023. Notwithstanding these regular reviews, the DfE reserves the right to withdraw, reduce, or amend these delegated authorities. Before doing this, the DfE will set out its reasons for making the changes and give the ESFA the opportunity to comment. ESFA's delegation may be affected by such amendments affecting the DfE.

### **Change of Circumstances**

For the avoidance of doubt, where there are material changes to the key metrics (e.g. cost base, forecast benefits, delivery schedule) of a programme, ESFA should consult the DfE who may in turn consult Treasury for its view on whether the considerations that led to approval should be revisited, and if fresh consent for the continuation of funding should be sought. Failure to do so may lead the NAO to regard spending following the identification of the material change of circumstances, benefits, or costs as irregular.

### **Change control procedure**

Where the ESFA's delegated authorities are amended a fresh delegation letter must be issued immediately to record this change. If a new delegation letter is not issued within 14 days of the change then it will lapse, and the ESFA's delegation limits will be as in the unamended letter.



***Iain King – Interim Chief Operating Officer, DfE***

***Date – 10<sup>th</sup> November 2022***



***David Withey – Chief Executive Officer of ESFA***

***Date – 18 November 2022***

## ANNEX A: DETAIL OF THE ESFA'S DELEGATED AUTHORITIES

The ESFA's delegated authorities are set out below. Notwithstanding these delegations, certain categories of spending proposal override any delegated authority and must be submitted to HM Treasury via DfE. These are proposals which:

- could create pressures leading to a breach in Departmental Expenditure Limits, administration costs limits, or Estimates provision;
- would entail contractual commitments to significant levels of spending in future years for which plans have not been set;
- could set a potentially expensive precedent;
- could cause significant repercussions for others;
- require primary legislation;
- are novel and contentious; or
- where Treasury consent is a statutory requirement.

In addition:

- The ESFA will always act within the rules of *Managing Public Money*;
- The department will abide by any specific agreements reached with Treasury Ministers or officials during Spending Review discussions or otherwise;
- If spending falls under more than one category of delegation, the lower delegated limit applies.
- Where ESFA refers a proposal to DfE that exceeds the Department's own delegated authorities, these must be submitted to HM Treasury via DfE.

The delegated authorities and Cabinet Office controls for the ESFA are set out in the following table and Annex B:

Notes:

1. Approval is required if spending falls outside one or more of the applicable delegated limits. Spending should be measured on a whole life cost basis except where this is not sensible, for example for ongoing annual commitments.
2. This includes all new projects and proposals/announcements, even when they are part of a larger programme or payment that was provided for as part of a Spending Review or other Treasury written approval and that are not covered by prior written approval from the Treasury.
3. This also includes renewal of existing projects and programmes where significant changes are being proposed.
4. Costs are on current net present value accruals basis.
5. Where relevant, when comparing costs against delegated limits, non-recoverable VAT will count towards the delegated limit (recoverable VAT will not).

6. The cost is the sum of all payments committed to a body, organisation or individual from a single programme over its lifetime (i.e. costs should not be “unbundled” to fall below the delegation).

Nature of delegation	Type	Delegated limit	Disclosure threshold
Novel, contentious, or repercussive spend. This includes where commitments are made that may give rise to such spend in future i.e. novel guarantees, indemnities and contingent liabilities, novel financing techniques, significant departures from standard departmental terms and conditions.		Nil	Nil
Projects and programs, and announcements and policy proposals with a defined timeline <sup>3</sup>	Resource	£30m in any year of the project	Nil
	Capital	£30m in any year of the project	Nil
Announcements and policy proposals creating ongoing expenditure <sup>3</sup>	Resource and capital	£10m	Nil
Spending commitments beyond the current Spending Review settlement <sup>3</sup>	Resource and capital	£10m	Nil
Administrative expenditure	N/A	£5m	Nil
Stock write-offs and impairments	Equipment, SOSP, IS/IT etc.	£5m	Nil
Special payments	Extra-contractual payments	£300k	Nil
	Ex-gratia compensation payments	£300k	Nil
	Extra-statutory payments	£300k	Nil

<sup>3</sup> Includes loans and contingent liabilities such as indemnities and guarantees. See “Contingent Liabilities” on page seven for full details.

	Extra-regulatory payments	£300k	Nil
	Reasonable legal costs agreed or estimated and confirmed as reasonable by appropriate legal advice	Unlimited	Nil
	Consolatory payments (ex-gratia payments to individuals in respect of incidents which do not involve financial loss and there is no legal redress available)	£500	Nil
	Special severance payments, including PILON and CILON, outside of normal statutory or contractual requirements	Nil	Nil
Losses	Cash losses	£300k	Nil
	Realised exchange rate and hedging losses	£300k	Nil
	Losses of pay, allowances and superannuation benefits paid to civil servants, members of the armed forces and ALB employees	£300k	Nil

	Losses arising from overpayments	£300k	Nil
	Losses arising from failure to make adequate charges	£300k	Nil
	Losses of accountable stores	£300k	Nil
	Losses through fraud, theft and deliberate act	£300k	Nil
	Fruitless payments and constructive losses	£300k	Nil
	Claims waived or abandoned	£1m	Nil
Other	Charitable grants	Nil	Nil
	Subsidies	Nil	Nil
	Guarantees, Indemnities and Loans	£250k	Nil
	Gifts	£300k	Nil

*Managing Public Money* sets out clearly the areas in which HM Treasury consent is required in more detail, so the below list should not be considered exhaustive. It is provided below as an aide memoire for areas where explicit HMT consent is needed even where the related spending may fall within delegations

<b>Managing Public Money reference</b>		
Reliance on Sole Authority of the Supply and Appropriations Act for modest and temporary expenditure on a New Service	2.5.4 & Annex 2.4	
Payment in advance of need	A.4.8.5	
Insurance	Annex 4.4	
Contingent Liabilities	Annex 5.4	
Lending to commercial entities	Annex 5.5	
Setting up of accounts outside the Government Banking Service.	Annex 5.6	
Creation of New Public Bodies	Annex 7.1	
Agreeing new Framework documents with ALBs	Annex 7.2	

## ANNEX B: CABINET OFFICE CONTROLS

The Cabinet Office’s policy is that there should be a presumption that spending controls apply in full to all central government organisations, and there should be no exemptions. As such, you should assume that all spend controls exemptions have been removed from all Departments and ALBs unless agreed otherwise in writing. There are few exceptions to this policy. Any exemptions must be agreed by Treasury and Cabinet Office ministers and will always be for a limited period, subject to review.

All controls are applied to central government classified bodies at default thresholds, as per the online publication.

In addition to Cabinet Office controls, DfE applies its own Spend Control thresholds which are in place to maintain compliance with Commercial policy and Cabinet Office Controls. The current DfE thresholds are set out in the table below. However, both the thresholds and spend approval processes are subject to change in year and so it is incumbent upon all ALBs and their Sponsor Teams to review these on a regular basis. Where planned activity will exceed DfE’s thresholds, ALBs must liaise with DfE Commercial Teams to ensure that Commercial policy is adhered to. Where Cabinet Office thresholds will be exceeded, DfE Commercial Teams will support ALBs in obtaining Cabinet Office approval.

Functional activity	DfE Threshold
Advertising, Marketing and Communications	<p>All communications spend (including that spent as part of contracts or grants) requires specific approval from CO and Number 10 before it can proceed. There is currently no lower limit for this approval, which covers all spend on communications delivered by departments, their ALBs and through grants and contracts.</p> <p>Contact for queries related to this category of spend: Communications Group (<a href="mailto:Request.exemption@education.gov.uk">mailto:Request.exemption@education.gov.uk</a>).</p>
Commercial	<p>Single Tenders / Direct Awards &gt;£5K</p> <p>Variations for Contracts/Grants where the value of the variation is &gt;£100k or Medium/High Risk or Low Risk contracts/grants where variation brings value of contract to &gt;£100k</p> <p>Extensions to Contracts/Grants where the original agreed value is &gt;£100k or Medium/High Risk or Low Risk contracts/grants where extension brings total value of contract to &gt;£100k</p>

	New Contract or Changes/Extensions to existing with a value $\geq$ £10m.
Consultancy	<p>Consultancy <math>\geq</math> £20k Ministerial approval</p> <p>All Consultancy spend <math>\geq</math> £120k in value or <math>\geq</math> 3 months in duration; and cases triggering the £600k / 9-month thresholds must be disclosed to the CO using the online portal accessible at: <a href="https://cpsp.mendixcloud.com/">https://cpsp.mendixcloud.com/</a>.</p>
Professional Services	<p>Professional Services <math>\geq</math> £120k or <math>\geq</math> 3 months in duration Ministerial approval.</p> <p>CO Disclosure <math>\geq</math> £120k (or <math>\geq</math> 3months)</p>
Contingent Labour	<p>DfE daily bill rate <math>\geq</math> £750, or <math>\geq</math> 12 months Ministerial approval.</p> <p>All Contingent Labour Spend, except for contracts with DfE daily bill rates between £750 and £999.99 where PSR is the route to market, must be disclosed to CO</p>
Digital and Technology, including identity assurance	<p>All programmes and projects with a Digital or Technology service element. Contact for queries related to this category of spend: <a href="mailto:Approvals.DDaTPMO@education.gov.uk">mailto:Approvals.DDaTPMO@education.gov.uk</a></p>
Grants, including advisory CGAP	<p>Manifesto-related general grants schemes (3 Tiers)</p> <p>(1) £100k</p> <p>(2) £100k - £10m</p> <p>(3) <math>&gt;</math> £10m</p>
Property and Facilities Management	<p>All new FM contracts and contract extensions must be approved by the CCS FM Category team.</p> <p>Property exemptions <math>\geq</math> £100k require completion of CO National Property Controls Team template.</p>
Learning and Development (Civil Service Learning)	$>$ £10k
Redundancy and Compensation	All schemes and exit arrangements require approval - Civil Service Compensation Scheme

Exceptions relating to ESFA are shown in the table below;

- Full Exemptions - spend controls do not apply at all
- Partial Exemptions - spend controls apply only to some functional spend
- Proportionate - spend controls do apply but not at default levels

You must ensure compliance, raised awareness, and meaningful oversight is maintained and that all bodies have an explicit understanding of their spending controls arrangements.

ALB	Controls arrangement	Relevant Control	Explanation

## ANNEX C: EXPLANATORY NOTE ON HM TREASURY APPROVAL IN RESPECT OF CONSOLATORY PAYMENTS

### Summary

HM Treasury approval is required for any consolatory payment which is over £500, or which is novel, contentious, or repercussive, or which is outside the delegated authority limit for ex-gratia payments agreed with Treasury. There are some exceptions, which are given below.

### Definition

Consolatory payments are ex gratia payments made to individuals by organisations in respect of incidents which do not involve financial loss, e.g. stress, inconvenience, embarrassment etc. They are a form of special payment, as defined by *Managing Public Money* (annex 4.13 – Special Payments).

### Guidelines

Due to the size of the amounts involved, Treasury approval is not required for any payment up to £500, which is not novel, contentious, or repercussive, and which is within the delegated authority limit for ex-gratia payments.

Given that there is no measure of financial loss in assessing consolatory payments, any such payment over £500 is liable to be novel and contentious by its nature and as such would require Treasury approval in most cases, even if the level of payment is within the delegated authority limit for ex gratia payments for the department or agency concerned.

### Exceptions

The following exceptions to these guidelines apply **if and only if** the proposed payment is not novel, contentious or repercussive, and is within the delegated authority limit for ex gratia payments for the department or agency concerned.

- Treasury approval is **not** required if a department is in a position to offer to settle a case which would otherwise be determined by the courts (e.g. a personal injury case), and the legal assessment is that the department is likely to lose the case and the proposed consolatory payment is less than the amount the court is likely to award.
- Treasury approval is **not** required for cases where an arbiter which has legal authority has made a recommendation for payment. The Parliamentary and Health Service Ombudsman (PHSO) is an example of such an arbiter.
- Treasury approval is **not** required if the proposed payment is above £500 but below a limit agreed bilaterally between the department and the Treasury in the context of an independent case examiner (ICE) within the department having made a formal determination of the appropriate level of compensatory payment.

An example of this is the Department for Work and Pensions, which has an ICE which carries out this role. The Treasury has agreed a threshold of £1,000 with the Department for consolatory payments assessed by the ICE.

### **Process**

Submissions for Treasury approval in respect of consolatory payments should be made through the usual departmental contacts in Treasury spending teams, who will, as appropriate, consult the Treasury Officer of Accounts team (TOA).

We would normally expect a fairly short business case, setting out the circumstances of the maladministration, the level of payment proposed, and justification for the level of payment.

### **Principles**

Given the absence of measurable financial loss in such cases, the Treasury seeks to strike a balance between ensuring appropriate levels of scrutiny and avoiding disproportionately heavy clearance procedures for very low value cases.

In accordance with Managing Public Money, Treasury approval is required for any payment which is novel, contentious or repercussive, or which is outside the delegated authority limit for ex gratia payments agreed with Treasury.

## **ANNEX D: DELEGATED AUTHORITIES FOR ACADEMY TRUSTS**

The following delegated authorities are only to be granted to Academy Trusts (ATs) at the discretion of DfE's accounting officer.

Novel and contentious payments must always be referred to HMT for explicit prior authorisation. This is with the exception of the specific case of staff severance or compensation payments below £50,000 made by ATs, covered below.

### **Liabilities and write-offs**

ATs may perform the following financial transactions up to the limits set out below: writing off debts and losses (including any uncollected fines); entering into guarantees, indemnities not in the normal course of business, or letters of comfort (excluding those relating to borrowing by the AT). The limits are:

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

Beyond these limits the AT must seek and obtain explicit and prior approval of the Secretary of State (through the ESFA) to the transaction. DfE may approve the following financial transactions by ATs up to £300k: writing off debts and losses (including any uncollected fines); entering into guarantees, indemnities not in the normal course of business, or letters of comfort (excluding those relating to borrowing).

### **Staff severance payments and compensation payments**

If an AT is considering making a staff severance payment above the contractual entitlement, it must consider the following issues:

- Whether such a payment is justified, based on a legal assessment of the chances of the AT successfully defending the case at tribunal. If the legal assessment suggests a better than even chance of winning, there is no rationale for settling the case. But where the case has a better than even chance of being lost, there is a justifiable rationale for the settlement.

- If the settlement is justified, the AT 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.

Special severance payments should not be made where they could be seen as a reward for failure, such as dismissal for gross misconduct or poor performance. The only acceptable rationale in the former case would be where the claimant will win an Employment Tribunal claim because of employment law procedural errors. In the latter, an acceptable comparison would be the time and cost of taking someone through performance management and improvement procedures.

If an AT is considering making a compensation payment it must consider whether the proposed payment is based on a careful appraisal of the facts, including legal advice and that value for money will be achieved. It is also good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems; and whether they have been respected as expected. It is also important to take any necessary steps to put failings right.

Where the AT is considering making a special staff severance payment or compensation payment of £50,000 or more above the contractual entitlement, prior approval will need to be sought from HM Treasury, contacting the ESFA in the first instance, before any such payment can be made.

### **Sampling approach**

ESFA must look in detail at 5% of staff severance and compensation payment cases in any one year. At least a third of the sample should be the highest value payments and the sample should also include any ATs that have made high numbers of special payments. The rest of the sample should be randomly selected from across the whole range. If this sample exceeds 75 cases, then the sampling procedures would be reviewed with HMT.

The ESFA will produce a report for HMT detailing the results of the sampling exercise. HMT will then review a random sample of cases ESFA have analysed, as selected by HMT. Where necessary, HMT will ask the ESFA for clarification or further information; the ESFA will manage any interaction with individual Academies. This system will be kept under review.

### **Energy Efficiency Projects in Academies/Free schools**

DfE has delegated authority to:

- Retain a loan fund for energy efficiency projects in academies and free schools within the education capital budget. The fund will be administered by Salix Finance Ltd.

- Recoup the loan repayments from academies' resource grants, following an agreed payment plan. This RDEL must then be converted to CDEL and used to make similar loans in future years. Any other RDEL to CDEL conversions require HMT approval.
- Provide these loans to academies and free schools on an interest free basis in line with agreed policy on these loans. As ensuring regularity and propriety remains crucial, this exemption to Managing Public Money Annex 5.5 does not apply to any other departmental lending.
- Any other proposals for departmental lending to academies continue to require separate HMT approval.