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[Department
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Guidance

FE transaction approval requests: required information

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Applies to England

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To decide whether to grant approval for a non-delegated transaction, the Department for Education (DfE) needs a college to include specific information in its further education (FE) transaction approval request form. Including this information will ensure the request is processed as quickly and efficiently as possible.

Follow this process to [submit an FE transaction approval request form](#).

Novel, contentious and repercussive transactions

In general, a:

- novel transaction is one of which a college has no experience or that is outside its normal course of business
- contentious transaction is one that might cause debate or criticism by Parliament, the public or the media
- repercussive transaction is one likely to set a precedent or cause pressure for other colleges or the wider public sector to take a similar approach and hence has broader financial implications

This is not an exhaustive list. It is intended to help you to think about the concepts of novel, contentious and repercussive (NCR) transactions. If your college team is unsure whether a transaction could be NCR, contact your place-based team lead.

[Guidance on NCR transactions](#) is available.

To request approval for a NCR transaction, a college must submit an [FE transaction approval request form](#).

Letters of comfort

A letter of comfort (LoC) provides a level of assurance that an obligation will ultimately be met, but does not create a legally enforceable contract.

If a college wishes to provide an LoC to its subsidiary, it must:

- submit an FE transaction approval request form
- email the letter it proposes to send to the subsidiary to its place-based-team case manager for Department for Education (DfE) approval

If a college wishes to issue a LoC to its wholly owned subsidiary for a transaction above the 1% or £45,000 limit, and that transaction is not NCR, it must meet the following HM Treasury (HMT) conditions:

- the letter is time-limited, in that the comfort offered cannot be for a period of more than 12 months
- the comfort proposed may concern only the willingness of the parent college not to enforce any sums owing to it by the subsidiary
- the value of the comfort offered may not exceed the value of the current liabilities of the subsidiary
- the LoC is not legally enforceable

Special payments

Special payments include those that relate to or are:

- severance
- compensation
- ex-gratia
- extra-contractual
- extra-statutory
- extra-regulatory

When a staff member leaves their employment, any non-statutory payments related to the termination of their employment are special severance payments (SSPs). SSPs are a category of special payment for which specific financial delegations are in place.

There are different limits for other types of special payments – for example, compensation – as set out in part 5 of the [college financial handbook](#). This category includes out-of-court settlements related to employment tribunals that lead to the termination of employment, or the settlement of employment tribunals after employment has been terminated.

To request approval for a special transaction, a college must submit an FE transaction approval request form.

The business case should clearly set out the legal advice provided and the legal assessment of the likelihood that:

- a claim will be raised
- the college could successfully defend the claim

If the legal advice is that the college is likely to win the employment tribunal, the transaction approval request is unlikely to be approved. However, an exceptional value-for-money case may be considered – for example, where the costs incurred are exceptionally high and settlement would be in the public interest.

The business case should clearly set out and compare the costs to the college of:

- the proposed settlement
- successfully defending the claim
- unsuccessfully defending the claim

The college should consider all the costs involved, including in those 3 scenarios, related to:

- legal advice
- damages
- staff time

In the case of retention payments, any request to make such a payment must demonstrate the size of the payment being offered in comparison to the employee's salary.

Severance payments should be appropriate to the circumstances and not made, for example, to avoid:

- management action
- disciplinary processes
- unwelcome publicity
- reputational damage

The special payments section of the [college financial handbook](#) lists the factors that colleges must consider before making a binding commitment to give a staff member a severance payment above the statutory or contractual entitlement. A college must provide detailed information against each of these points to aid the evaluation of its business case.

Write-offs and losses

A college should only consider writing off a debt once all other options have been explored and there is no feasible or value-for-money alternative.

To request approval for a write-off or loss, a college must submit an FE transaction approval request form.

In developing its business case, the college should consider what additional debt collection activity it could undertake. The business case should be supported with evidence and clearly set out why it is better value for money to write off the debt than to continue to pursue its recovery. Setting out the college's internal process of delegations and approvals for write-offs does not constitute a value-for-money assessment.

The college should provide a comparison between the:

- quantified assessment of the expected costs and benefits of further recovery action
- costs of writing off the debt both already incurred and likely to be incurred in the future

It may be appropriate for the college to seek legal advice to provide an assessment of the likelihood of recovery.

If there are several items within the total debt – for example, learner debt and provider debt – it should be broken down into individual lines or groups of debt, with a business case to support each line or group.

These examples illustrate how the information in such statements could be set out.

Example 1

A fourth round of activity by the college's debt team is expected to cost £xx per 500 debt lines and recover zz% of totals debts with a value of £10,000. The success rate of zz% is based on evidence. £xx multiplied by 500 gives a total expected cost of further recovery action of £aa. The expected benefits of the further recovery activity are £10,000 multiplied by zz%, giving £bb. The expected benefits, £bb, of the further round of recovery activity are less than the costs, £aa, and therefore, there is a value-for-money case for the taxpayer if the college

were to write off the debt.

Example 2

X company went into liquidation. The college's assessment [note: this should be based on advice received from the administrator or liquidator] is that the company has no assets against which it could claim for the debt owed, so even though the likelihood of being successful in a claim against the company is high, there are no assets with which to pay the claim and therefore the expected return from further activity to pursue the claim is zero. The costs of making a claim against the company are £yy. There is therefore a value-for-money case for writing off the debt because further recovery activity would have a cost to the college but no benefits.

Tax advice

DfE is unable to give tax advice. Colleges retain responsibility for operating within tax rules, regulations and requirements (usually referred to as 'compliance'). They are strongly advised to obtain professional advice in relation to any issue with potential taxation implications.

As colleges are classified as central government bodies, this advice should explicitly consider the application of:

- the core principles of HMT guidance on [managing public money](#)
- section 5.6 of the guidance, which refers to tax
- any other requirements relevant to the proposal

It may also be necessary or advisable to consult HM Revenue and Customs.

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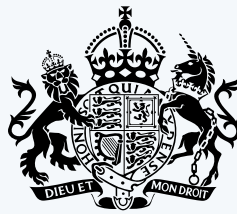
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