

July 2008/23

**Policy development
Consultation**

Reponses should be sent to HEFCE
by Friday 17 October 2008.

This is a consultation on possible changes to HEFCE's
policy of reimbursing inherited staff liabilities.

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Reimbursement of inherited staff liabilities

**Consultation on possible changes to
HEFCE policy**

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Reimbursement of inherited staff liabilities

Consultation on possible changes to HEFCE policy

To	Heads of HEFCE-funded higher education institutions in receipt of reimbursement Principal Finance Officers of local authorities and pension authorities in receipt of HEFCE funding
Of interest to those responsible for	Audit, Finance, Senior management, Governance
Reference	2008/23
Publication date	July 2008
Enquiries to	Donna Iafrati tel 0117 931 7357 e-mail d.iafrati@hefce.ac.uk

Executive summary

Purpose

1. This is a consultation on possible changes to HEFCE's policy of reimbursing inherited staff liabilities.

Key points

2. Later in 2008-09, the HEFCE Board will be considering its policy towards the reimbursement of inherited staff liabilities.

We wish to consult higher education institutions and those local authorities and pension authorities in receipt of this funding to inform the Board's discussion.

3. The views being sought relate both to the policy itself and to how any change might be implemented should the HEFCE Board conclude that it wishes to change its policy.

4. The proposed changes in policy are:

- a. Reimbursement of eligible pension costs would be assessed from 1 April 2009 on an actuarial basis, with the annual values of such reimbursement, along with the timescale over which they were payable, being agreed between HEFCE and bodies in receipt of funding by 31 March 2009.
- b. Salary safeguarding would no longer be eligible for reimbursement after 31 March 2009, although it should be noted that the actuarial calculation described above will include the cost associated with this safeguarded element once the individual retires and this element converts to a pension.

Action required

5. Responses to HEFCE are invited by e-mail with a signed copy by post, using the electronic version of the response form at Appendix A, by **Friday 17 October 2008**. The appendix is available with this document on the HEFCE web-site, www.hefce.ac.uk, under Publications.

Background

6. The Education Reform Act 1988 gave the then Polytechnics and Colleges Funding Council (PCFC) the power to reimburse certain institutions, local authorities and pension authorities for staff-related liabilities. These powers were transferred to HEFCE under the Further and Higher Education Act 1992 from April 1993. Initially, the PCFC paid 90 per cent of each claim made, but increased this voluntarily to 100 per cent prior to the transfer to HEFCE. HEFCE has continued to pay 100 per cent of each claim since 1993.

7. In 2007-08 the Council paid approximately £28.4 million in respect of staff liabilities. Of this sum £25.5 million was paid to local authorities and pension authorities and the balance to higher education institutions (HEIs). Details of those being funded and the categories that we reimburse are at Appendix B.

8. By the end of March 2008 the Council and its predecessor will have reimbursed inherited staff liabilities for 19 years.

9. Since 1989, the PCFC and subsequently HEFCE assurance over the claims being submitted by local authorities and pension authorities have been subject to audit by the Audit Commission. Over the years the actual scope of the audits has been eroded, until this year when the Audit Commission removed its services altogether.

Issues

Legal position

10. Historically, the Council (and the PCFC previously) has believed that it has a statutory obligation to reimburse HEIs, local authorities and pension authorities for qualifying staff-related costs, this being due to the initial interpretation of section 133 of the Education Reform Act 1988 and subsequently section 65 and 67 of the Further and Higher Education Act 1992.

11. As part of our keeping all funding programmes under review we have revisited our understanding of the basis for reimbursement of staff inherited liabilities. This has included seeking legal advice to confirm our understanding of our obligations set out in the Further and Higher Education Act 1992.

12. Below is a summary of the legal advice we have received:

- a. The power under the Further and Higher Education Act 1992 is discretionary rather than mandatory; we are able but not required to make these payments.
- b. By meeting claims for reimbursement for many years, we will have created a legitimate expectation that funding will continue on the present basis, but this does not mean that we are unable to change past practice, for example to reduce or eliminate these payments. Should we wish to implement changes to how this fund is administered we would need to inform those in receipt of funding that we plan to revisit our policy, give reasons, give them sufficient time to comment on the proposals and we would need to take account of the responses to this consultation exercise prior to reaching any decision on a change in policy.
- c. Provided we take the steps mentioned above and there is a reasonable, logical and consistent approach we can lawfully substitute a new policy on these payments for our present practice.

13. It is clear from this advice that we can change our policy for the reimbursement of inherited staff liabilities. However, any such change in policy can only happen after we have informed and consulted with those bodies in receipt of funding. This consultation document is intended to fulfil that obligation.

Accountability

14. The Audit Commission has informed HEFCE that it is no longer able to provide the annual assurance on the outturn statements provided by local authorities. HEFCE therefore needs to develop and implement procedures to provide a reasonable level of assurance in terms of the accuracy of the claims being submitted. This new requirement will increase the administrative burden on the Council and also the HEIs, local authorities and pension authorities. These, though, are considered necessary to ensure an adequate level of assurance for the use of public funds.

Review of policy

15. In light of the legal advice we have received, the HEFCE Board agreed on 3 July 2008 that it wishes to consult with those bodies in receipt of reimbursement of inherited staff liabilities about possible changes in its policy in this area.

16. The primary reasons to reconsider policy in this area are to ensure the Council has adequate accountability for the public funding provided and to quantify the demands this programme makes on HEFCE's funding over the life of the programme.

17. The responses to this consultation will be considered later in 2008-09 when the HEFCE Board considers any changes to its policy towards the reimbursement of inherited staff liabilities.

Proposed changes in policy

18. One element of reimbursement relates to compensation payments made to people who either lost their employment or suffered a diminution of emoluments, and were formerly employed at an institution (or department of a further education establishment) which, immediately before 1 August 1975, was conducted as a teacher training establishment.

19. No time limit was placed on such reimbursement, but the expectation was that it would reduce over time¹. Given the number of years that have elapsed since these payments started we believe it is now difficult to accept that such entitlements still exist. HEFCE is therefore giving notice that the year ended 31 March 2009 will be the last year where the salary safeguarding element of claims will be reimbursed. The actuarial calculation will take into account the pension costs of this element once the individual retires.

20. It therefore follows that, from the year commencing 1 April 2009, HEFCE will only reimburse costs that relate to [early retirement and] pensions.

Possible implementation of a change in policy

21. Were the HEFCE Board to decide later in 2008-09 that it wished to change its policy towards the reimbursement of staff inherited liabilities, we would implement that relating to the compensation payments made to people who either lost their employment, or suffered a diminution of emoluments from the year commencing 1 April 2009.

22. We would also be looking to complete discussions with HEIs, local authorities and pension funds between October 2008 and March 2009 about the actuarial evaluation of [early retirement and] pension costs.

23. This work would then inform the Council of the sums to be paid, and over what time period, for each of the local authorities, pension schemes and HEIs that currently receive this funding. Once this was established the payments would be profiled and no further action by those in receipt of the funding would be required.

24. Should any organisation experience difficulty in providing the Council with a reasonable level of assurance as to the validity of their claim, we would propose to enter into further discussions.

Consultation questions

25. We would welcome responses to the following questions:

- a. How important is reimbursement of staff inherited liabilities to your organisation? Please explain your answer.
- b. If the HEFCE Board decided to cease reimbursing payments made to people who either lost their employment, or suffered a diminution of emoluments, and were formerly employed at an institution (or department of a further education establishment) which, immediately before 1 August 1975, was conducted as a teacher training establishment, what would be the impact on your organisation?

¹ Recipients were required to inform those providing the reimbursement of changes in their financial circumstances so the amount of reimbursement could be adjusted.

- c. If the HEFCE Board decided to carry out an actuarial review to fix the payment profiles, both in terms of annual values and the term over which the payments are made, what factors should the Board take into account and how should this change in policy be implemented? Are there other reasonable options that the Board could be invited to consider?
- d. If a decision were taken to fix the payment profiles both in terms of annual values and the term over which the payments are made, are there any special cases which should be made an exception to the general policy?
- e. If you are in receipt of this funding, please describe the impact on your organisation if a decision were taken to fix the payment profiles, both in terms of annual values and the term over which the payments are made.
- f. Do you have any comments to make to inform the HEFCE Board's post-consultation discussion about the future of this policy?
- g. Are there any other relevant issues you wish the HEFCE Board to consider?

26. Responses are invited by e-mail with a signed copy by post, using the electronic version of the response form at Appendix A, by **Friday 17 October 2008**. The appendix is available with this document on the HEFCE web-site, www.hefce.ac.uk, under Publications.

Appendix A

Consultation response form

Please complete the electronic version of this response form, which is available for download with this document on the HEFCE web-site, www.hefce.ac.uk, under Publications, and return it by e-mail to d.lafrati@hefce.ac.uk with a signed copy by post to Donna lafrati, Finance, HEFCE, Coldharbour Lane, Bristol, BS16 1QD by **Friday 17 October 2008**.

Organisation Name.....

Question 1

How important is reimbursement of staff inherited liabilities to your organisation? Please explain your answer.

Question 2

If the HEFCE Board decided to change its policy to cease reimbursing payments made to people who either lost their employment, or suffered a diminution of emoluments, and were formerly employed at an institution (or department of a further education establishment) which, immediately before 1 August 1975, was conducted as a teacher training establishment, what would be the impact on your organisation?

Question 3

If the HEFCE Board decided to carry out an actuarial review to fix the payment profiles, both in terms of annual values and the term over which the payments are made, what factors should the Board take into account and how should this change in policy be implemented? Are there other reasonable options that the Board could be invited to consider?

Question 4

If a decision were taken to fix the payment profiles both in terms of annual values and the term over which the payments are made, are there any special cases which should be made an exception to the general policy?

Question 5

If you are in receipt of this funding, please describe the impact on your organisation if a decision were taken to fix the payment profiles, both in terms of annual values and the term over which the payments are made.

Question 6

Do you have any comments to make to inform the HEFCE Board's post-consultation discussion about the future of this policy?

Question 7

Are there any other relevant issues you wish the HEFCE Board to consider?

All returns should be properly authorised by the Principal Finance Officer for local authorities and pension funds; and by the head of the Institution for HEIs.

Date Signed

Name.....

Position

Higher Education Funding Council for England
Northavon House
Coldharbour Lane
BRISTOL
BS16 1QD

tel 0117 931 7317
fax 0117 931 7203
www.hefce.ac.uk