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Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Kenneth Baker MP
Secretary of State for Education and Science
Department of Education and Science
Elizabeth House
York Road
London
SE1 7PH

22nd January 1988

Dear Ken,

GRANT MAINTAINED SCHOOLS: COMPENSATION FOR DISMISSALS

Your letter of 15 January ^{at 11.30} set out the proposed details of the scheme of special assistance to GM schools to cover the costs of certain dismissals, agreed in principle by E(EP) last July.

Your proposals go much further than the sort of scheme considered by E(EP), which was expressly intended to ensure that GM schools were not saddled with "unsatisfactory teachers or troublemakers" (your minute of 16 July 1987 to the Prime Minister). The scheme which you have now put forward extends to voluntary severances in the interests of those schools' efficiency as much more widely defined, and would as a result be significantly more expensive than the very limited scheme so far agreed. Nonetheless, I recognise the importance of getting the staffing structure right in order to get GM schools off to the best possible start. I also accept that GM schools should not be treated substantially less favourable in this respect during the transition than maintained schools, under the agreed arrangements for financial delegation. Equally they must not be treated any more favourably. In that context, I welcome the proposed procedures for claiming grant and in particular the discretion you will retain to refuse it.

I am therefore content to agree to your proposals, subject to two points. First, we do not normally provide special assistance with the costs of redundancies. Such assistance was not provided, for example, for redundancies as a result of GLC abolition. I am prepared to agree to it here in the context of establishing a wholly new sector of educational

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provision. But it must not be seen as establishing a precedent. I must therefore ask you to stress this context in presenting the scheme both in Committee on the Bill and publicly.

Second, whilst I recognise the benefits of extending special assistance to voluntary severances, it is important that GM schools' governors should not regard voluntary severance as an easier option managerially than compulsory dismissal (without compensation) in appropriate cases. It should therefore be a condition of grant that schools consider compulsory dismissal in the first instance, and proceed by that route in all cases where their legal advice is that the dismissal is likely to be ruled fair by an industrial tribunal.

I cannot agree now to add the estimated costs of the scheme to your programme. There will of course be no expenditure under the scheme in 1988-89. The appropriate place to pursue future years' additions is in the Survey.

I am copying this letter to the Prime Minister, other members of E(EP), the Lord Chancellor, the Attorney General and Sir Robin Butler.

*Yours Ever,
John*

JOHN MAJOR



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ELIZABETH HOUSE
YORK ROAD
LONDON SE1 7PH
01-934 9000

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Parliament Street
London
SW1P 3AG

15 January 1988

John Major

GRANT MAINTAINED SCHOOLS: COMPENSATION FOR DISMISSALS

The Government's consultation paper on grant maintained schools said that the governors would be able to seek special grants support "to cover costs arising in certain limited cases from premature retirements or dismissals of teaching staff initiated during the first 12 months of life of a grant maintained school". E(EP) at its meeting on 28 October 1987 asked that my Department should arrange early circulation to members of the Sub-Committee of the proposed details of the arrangements to give effect to this undertaking.

2. I now attach a paper which sets out my proposals. This takes account of discussions my officials have had with their counterparts in the Treasury, the Department of Employment and the Lord Chancellor's Department. It essentially proposes that the Government should be ready to meet the costs of any premature retirements or voluntary severances in GM schools reasonably initiated in the interests of the efficient discharge of a school's functions before the end of its first 12 months of operation. There would, however, be limits on the enhancement of pension or compensation for severance which the Government would finance under the scheme. In selecting teachers for severance GM schools would be required to demonstrate that they had in every case scrupulously followed the predetermined procedures designed to ensure that teachers are treated fairly where there is any question of misconduct, incompetence or redundancy. Where dismissals were contested the Government would undertake to meet the costs only where a school could show both that the proper procedures had been followed and that legal advice confirmed that the dismissals were unlikely to be found by an industrial tribunal to be unfair. The Government would retain discretion to refuse to meet the costs of severances in particular cases - for example, where a school was seeking to make extravagant use of the scheme, or where the educational effects of the proposed severances seemed likely to be undesirable. This parallels the situation in schools with financial delegation, where the expectation is that LEAs will normally

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meet the costs of dismissals outside schools' delegated budgets, but where LEAs retain the right to refuse to meet the costs for "good reason" (which the Bill does not define); the difference between GM schools and FD schools is that the Government's scheme of assistance runs only for a school's first year of operation, while FD schools' ability to secure assistance from the LEA will continue without limit of time.

3. In the course of consultations among officials, Treasury officials expressed reservations on 3 points:

- i. They suggested that the coverage of the scheme should be restricted so that it applied only to teachers dismissed by reason of incompetence or misconduct, so ruling out Government assistance towards voluntary severances in GM schools;
- ii. they wanted to be assured that the Government would not be writing a blank cheque, and find itself obliged to finance redundancies and other dismissals from GM schools on a sweeping scale;
- iii. they questioned whether the Government should be prepared to finance redundancy compensation above the statutory minimum.

4. I consider that it would be neither practicable nor desirable to try to restrict the scheme to cases of misconduct or incompetence. Where teachers' record or performance is so bad as to justify their dismissal, schools will generally be able to get rid of them with little or no compensation provided they follow scrupulously the established procedures; the only question then is whether it is more cost-effective to give such teachers some modest inducement to leave before the procedures have been exhausted. I do not see such teachers as our main target in the GM schools case: rather we are concerned to ease the departure of teachers who are out of sympathy with the GM approach, whose performance does not measure up to the highest standards, or who are too old to adapt to the new situation. At the same time I think we should be ready to assist with a few redundancies where schools' staffs have the wrong balance of specialisations. In all these cases voluntary severance will be the only practicable solution - the performance and conduct of the teachers concerned will not have been such as to lead industrial tribunals to regard their compulsory dismissal as fair.

5. I agree that there should be no question of the Government writing a blank cheque. GM schools will be required to inform the Department before they begin any procedures intended to lead to the departure of a teacher under the scheme, and I shall retain discretion to refuse to meet the costs. I shall make clear that the Government's offer is only to finance dismissals and premature retirements in limited cases where these would contribute to the efficient functioning of the school. In practice I see little risk of GM schools seeking to get rid of substantial numbers of teachers; and my Department would certainly take a great deal of convincing that Government assistance should be provided if a school sought to get rid of more than, say, 5 per cent of its teachers.

6. On the question of enhanced benefits for severance we have to bear in mind that we shall be concerned with voluntary severance. Some LEAs have already undertaken to pay redundancy compensation above the statutory minimum, and there are a number of examples where the Government has

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deliberately paid, or encouraged the payment, of compensation above the statutory minimum in order to achieve desired restructurings in the public services. Insistence on our part that severance terms in GM schools should be inferior to those normally granted in schools remaining with local education authorities would, I believe, be damaging to our objective of establishing successfully a new class of maintained schools outside the control of LEAs: at the least it would greatly strengthen teacher opposition to the adoption of GM status. I therefore consider that we should allow for compensation under the scheme above the statutory minimum for redundancy payments, but still within clearly defined limits.

7. On the assumption that 50 schools opt out in 1989-90, 75 in 1990-91 and 100 in 1991-92 and each subsequent year, and on the basis of 2 teacher severances per school, I estimate that the cost to the Government would increase from about £0.5m in the first year to a steady annual amount of about £3m in the fourth and subsequent years. At our PES bilateral in September, you said that decisions on provision for the scheme should await agreement on the details of the scheme. I hope that you can now agree that the sums needed should be added to my programme.

8. The scheme would be put in place by means of Regulations made under Clause 60 of the Education Reform Bill, so that there should be no need for any detailed discussion as the Bill goes through Parliament. But I am bound to be asked in the context of debates in Committee about the staffing provisions affecting GM schools how the scheme would work. So that I may be in a position to do this, I should be glad to know that you and other E(EP) colleagues are content with the arrangements described above, and set out in more detail in the attached paper, by 21 January.

9. I am copying this letter to the Prime Minister, the other members of E(EP), the Lord Chancellor, the Attorney General, and Sir Robin Butler.

Thomson
Armitage

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GRANT MAINTAINED SCHOOLS: SCHEME OF COMPENSATION FOR DISMISSALS

1. Coverage

GM governing bodies may apply to the Department of Education and Science for funds to meet the costs of all dismissals initiated before the end of their school's first year under their new status in the interests of the efficient operation of their schools. The dismissals thus covered will include those where the process was initiated by the LEA (or the governing body in the case of an aided school) before the change of status. Because of the time required to follow the prescribed procedures where there are questions of incompetence or redundancy, and because of the length of periods of notice, it may in some cases be a year or more before severance actually takes place.

2. Costs to be met by the Government

These will include

- i. pension enhancement in cases of premature retirement (restricted to teachers over 50 years of age): the costs of added years up to age 60 (and up to age 65 if reckonable years' service, including added years do not exceed 30) (these terms are less than the permitted maximum, which allows 10 years added service up to age 65);
- ii. compensation for voluntary severance up to the following limits: 2 weeks pay per year of service, plus an extra 2 weeks pay to each year of service over the age of 41 but below 50, with a maximum of 25 years service (these were the terms used in 1983 in advanced further education: the statutory minimum for redundancy is 1 week's pay for each year of service between ages 22 and 41 and 1.5 weeks over 41, subject to a maximum of 20 years service);
- iii. legal costs and costs of compensation awarded by industrial tribunals in contested cases, subject to the school providing evidence of compliance with established procedures and advice from its legal adviser to the effect that the dismissal was likely to be found to be fair.

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The Secretary of State would have discretion to reject an application, which would not be restricted in the Regulations establishing the scheme. Circumstances in which he might do so would include where he was not satisfied that the dismissals would contribute to the delivery of education at the schools, or that the legal advice in contested cases was well-founded.

3. Procedure

Where governing bodies wished to apply for special grant aid, they would be required to give notice to the DES of the dismissals they were contemplating and the reasons for them before initiating any procedures to bring them about. Where severances were agreed voluntarily, governors would then further notify the Department of the effective date and the payments on which they were requesting grant (which would have to be within the limits specified in paragraph 2 above). In contested cases governors would be required to submit further supporting material as in 2 (iii) above. Where payments fell to be met by the school (ie in voluntary severance cases and those contested before industrial tribunals) the Department would reimburse the schools at the time the payments fell due. Where the teachers took premature retirement the Department would itself be responsible for making payments to the teachers and for this purpose would credit itself as compensating authority with the capitalised value of the enhancement element of pension (ie lump sum plus continuing pension) at the time of retirement.

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cc BG



HOUSE OF LORDS,
LONDON SW1A 0PW

To The Right Honourable
Kenneth Baker MP
Secretary of State for Education
and Science
Elizabeth House
York Road
LONDON SE1 7PH

21st January 1988

Dear Kenneth,

GRANT MAINTAINED SCHOOLS: COMPENSATION FOR DISMISSALS

file with PG.

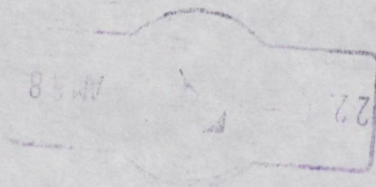
Thank you for sending me a copy of your letter of 15th January 1988 to John Major.

I am content generally with your proposed arrangements for enabling Governors to seek special grants support in the early life of a grant maintained school. I am also satisfied that your proposed tests in contested cases, that proper procedures have been followed and that the Governors legal advisors have confirmed that the dismissals are unlikely to be found by an industrial tribunal to be unfair, are sufficient. They can also be demonstrated by Governors who proceed with ordinary prudence in approaching such dismissals.

I am copying this letter to the Prime Minister, the members of E (EP) and the Attorney General and to Sir Robin Butler.

*Yours etc,
James.*

EDUCATION: Policy PT17.



Y SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switsfwrdd)
01-270 0538 (Llinell Union)

Oddi wrth Ysgrifennydd Gwladol Cymru



ceby.
WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-270 3000 (Switchboard)
01-270 0538 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

26 January 1988

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A. Tennant

Thank you for copying to me your letter of 15 January to John Major on the question of compensation for dismissals of teaching staff in the first 12 months of GM schools.

Any applications for grant in respect of GM schools in Wales will, of course, come to the Welsh Office. However, I see no reason for objecting to what you propose.

/ I am copying this letter to the Prime Minister, E(EP) colleagues, the Lord Chancellor, The Attorney General and Sir Robin Butler.

[Large handwritten signature]

The Rt Hon Kenneth Baker MP
Secretary of State for Education and Science.

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