

New novel, contentious and repercussive transactions guidance

13 May 2025  Philip Wood and Heather Mitchell

The Department for Education (DfE) recently released new 'best practice' guidance on novel, contentious and repercussive (NCR) transactions for academy trusts and colleges.

Most financial decision-making is delegated to operational leadership in academy trusts and colleges but there are certain transactions which require prior approval from the DfE, including NCR transaction.

Interpretation of NCR guidance

Whilst it doesn't appear to have been intended to be a major change in approach, since the DfE introduced the NCR provisions in the Academy Trust Handbook a number of years ago, there has been some uncertainty as to how they would be interpreted. Given the vagueness, it also meant that the interpretation itself can change over time.

Trust financial transactions requiring DfE consent

The guidance reiterates and provides more details on the three categories that require consent, being:

- **Novel Transactions:** These are transactions that the institution has not previously undertaken or that fall outside its typical operations.
- **Contentious Transactions:** These transactions might attract criticism from stakeholders, including Parliament, the public, or the media.
- **Repercussive Transactions:** Actions that could have broader financial implications for the education sector or set a precedent for other institutions.

Whilst the government generally does not appear to have an overarching philosophy, the Secretary of State has mooted more collaboration and a rising regulatory expectation on schools, especially academies, when compared to previous recent governments. That is notably different to health, where there is talk about 'earned autonomy' and league tables.

This new guidance is really designed to highlight where the regulatory line is on each element rather than really provide best practice advice, but that does mean that whilst this new guidance hasn't introduced a new requirement, the case studies and more detailed interpretation of the requirements are something that schools will need be conscious of.

Key take aways from our perspective include

1. Importance of seeking DfE consent for novel transactions

Clarity that if you are in any doubt, the DfE want you to seek their view as to whether something will fall into one of the above categories. Importantly, especially on novel transactions, the fact that a trust down the road has done something similar does not mean you will be able to do it without consent. There is very much a focus on your school/trust's experience and impact of the proposal.

2. Expanded examples of transactions requiring DfE consent

The examples indicate that things which we suspect trusts would not have previously thought as requiring consent, do need consent. One of the examples includes a £10k payment to overcome strike action before the start of a new academic year, when the Trust has £3m reserves. The examples generally show that there is a considerable amount of grey area here with a strong theme that if you're in doubt, you should seek a view from DfE. Whilst not a direct cost, seeking consent is going to take staff time and DfE is unlikely to want to confirm that something does not need consent without detailed information on what you are planning, why and the pros/cons.

3. Enhanced role of auditors in ensuring compliance compliance

The guidance highlights the role of auditors in the process in more detail than before. Whilst DfE may not be aware that you have failed to obtain consent, it may well come out in the year-end audit and the expectation is that trusts will obtain retrospective consent. As part of that, DfE will want to know why consent was not sought in the first place.

Summary

Overall, the DfE has a number of hard and soft regulatory levers to pull, and this guidance shows how easily the position and interpretation on existing regulatory powers and intervention can change. If you're in any doubt about whether to seek consent, it is worth taking advice about what you are planning to do in your own context.

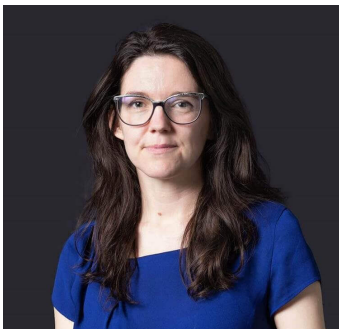
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