

Paper 7

EMPLOYING AUTHORITY AND EMPLOYER ROLES UNDER POST RPA ARRANGEMENTS

Context

1. The RPA announcement of November 2005 included a decision that the roles of 'employing authority' and 'employer' would be separate under the new arrangements. The new Education and Skills Authority (ESA) will be the single employing authority for all teaching and non-teaching staff in all schools. The role and functions of employer will rest with boards of governors.

2. In general terms, 'employing authority' is intended to comprise 'collective' functions such as:
 - determining terms and conditions of employment;
 - negotiating with trade unions etc; and
 - strategic workforce planning.

It is envisaged that the ESA would also hold the contracts of employment for all staff.

3. The term 'employer' is intended to include 'individual' or school specific functions such as:
 - decisions on the recruitment, promotion, disciplining or dismissal of staff; and
 - performance appraisal.

Rationale

4. There must be a clear, autonomous employer role for all Boards of Governors. They must be empowered to provide strong leadership

within schools, making all employer decisions. This will be complemented by the single employing authority role of the ESA to bring the advantages of:

- (i) Common and consistent employment practices, policies and approaches (eg to conditions of service, employer benefits and support) single messages, single interpretations and clarity for all staff.
 - (ii) Increased potential for mobility in terms of deployment and redeployment across schools, joint appointments etc which will offer staff increased scope for career development.
5. Thus, the challenge in developing policy proposals is striking the right balance between a single employing authority role that maximises effectiveness and efficiency, and an employer role that maximises local autonomy. There must also be a clear accountability framework and challenge mechanism so that the ESA can ensure consistency and propriety in the discharge of the employer role by schools.
 6. The employer role is of particular importance to many stakeholders, notably the voluntary grammar schools and Catholic schools (both maintained and voluntary grammar). For some stakeholders this issue is perceived as being inextricably linked to ethos. Catholic schools, in particular, regard an autonomous employer role as essential to the maintenance of ethos.
 7. The current arrangements are described in Annex A. For voluntary grammar and grant-maintained integrated schools, the decision to separate the employing authority and employer means, in effect, the transfer of the employing authority functions from Boards of Governors to the ESA. For other schools the employing authority and employer roles have already been separated. However, the separation needs to be clearer, more comprehensive and consistent across sectors.

Way Forward

8. The key policy issues to be addressed are:
- how the respective employing authority and employer functions will be dealt with in legislation. The options considered were assigning the roles separately to the ESA and Boards of Governors, or assigning both roles to the ESA with employer functions delegated to Boards of Governors;
 - the definitions of the respective functions of the employing authority and employer under new arrangements;
 - the respective responsibilities of the employing authority and employer under employment law; and
 - the roles of ESA in supporting, challenging, and holding Boards of Governors to account.

Assignment of roles in legislation

9. There are two possible approaches to the assignment of the employing authority and employer roles in legislation. The first would involve vesting the functions of both roles in the ESA initially, with the ESA empowered and required to delegate the employer functions to Boards of Governors. The second approach would involve assigning the respective sets of functions separately to the ESA and Boards of Governors.
10. The first option would have the advantage of being more readily made 'failsafe' in terms of avoiding overlapping roles, or functions falling outside either role – lack of clarity in this regard is a weakness of the current arrangements for some schools. The converse applies to the second option. Provisions would need to be drafted carefully, to ensure that the employing authority and employer roles were complete, discrete, and unambiguous. Assigning the roles separately in primary legislation – as some stakeholders would prefer – would be unusual

and somewhat inflexible. It is proposed that the delegated option should be the way forward. DE would take powers to make regulations to prescribe the delegation of employer functions, and requiring the ESA to do so. This would offer greater flexibility than primary legislation, whilst also providing reassurance that an autonomous employer role will be guaranteed by legislation. The regulations would make it clear that the delegation of employer functions could only be withdrawn by the ESA in extreme circumstances where a Board of Governors could not discharge the role, eg if all governors had resigned en masse, or had been removed. Withdrawal of delegation in such circumstances would be temporary, pending fresh appointments to the Board of Governors.

Functions

11. The suggested functions of the employing authority and employer are set out in Annex B. It is suggested that legislative provisions should empower DE to make regulations defining these roles. As noted above this would give a degree of flexibility, should the need arise to alter the definitions.

Balance of legal responsibilities

12. Both the ESA and schools will carry legal responsibility for employment law matters. For example, a member of staff who was allegedly discriminated against by someone within the management of a school would be likely to bring a case against both the Board of Governors and the ESA. In general, tribunals and courts would be reluctant to strike out proceedings against a Board of Governors if the Board of Governors appeared to have played any part in the matter that gave rise to the proceedings.
13. There is no compelling policy reason for seeking to depart from this position, which would make Boards of Governors and the ESA accountable for their actions. However, it is proposed to include (or retain in amended form) provisions giving the ESA the right to be joined

in proceedings taken against a Board of Governors; and ensuring as far as possible that the legal liability of governors is collective rather than individual. The former will ensure that the ESA would always be a party to proceedings for which the public purse would ultimately be liable for the financial consequences. The latter would ensure that potential school governors are not deterred by the prospect of personal liability. Similar provisions exist in current legislation.

Accountability and challenge role of the ESA

14. Boards of Governors must be accountable for the proper discharge of their employer role. However, accountability arrangements must be balanced and reasonable, and must not be at the expense of an autonomous employer role. It is proposed that the accountability arrangements centre on a requirement for the ESA to develop a management scheme, (or schemes) and a corresponding requirement on all schools to adopt and implement it. The scheme would set out the policies and procedures to be followed by Boards of Governors in the discharge of their employer functions. It might include, inter alia: the information that Boards of Governors would be required to provide to the ESA on the discharge of their employer functions. The scheme would make it clear that employer decisions are for Boards of Governors alone. The ESA would have no role in ratifying or approving such decisions. It is proposed that DE should take powers to make regulations covering the scope and content of management schemes, and giving the Department an approval function.

15. Paper 2 sets out the challenge function of the ESA in relation to the discharge by Boards of Governors of their functions, including employer functions. Paper 2 places the emphasis on self-governance by schools – the ESA will not interfere with the day to day discharge of the employer role. Where a matter of concern arises the ESA will be required to limit any intervention to the minimum necessary, and to provide support to Boards of Governors to bring about improvement. Where possible, intervention should be limited to requiring a school to

identify the actions that it will take to remedy the concern. Only if this proved ineffective would the ESA intervene further, as described in Paper 2.

16. Paper 2 and Paper 5 on governance and accountability include proposals on the circumstances in which some or all members of a Board of Governors could be removed. It is proposed that this should include circumstances in which there has been serious or repeated failure by a Board of Governors to implement the ESA management scheme. Once again, it must be emphasised that such interventions would be expected to occur only in the most extreme and rare circumstances.

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1. Schedule 4 to the Education Reform (Northern Ireland) Order 1989 (the '89 Order) assigns the employing authority as follows:
 - all staff in controlled schools – the Education and Library Board (ELB);
 - non-teaching staff in Catholic Maintained Schools and other maintained schools – the Education and Library Board; and
 - teaching staff in catholic maintained schools – the Council for Catholic Maintained Schools (CCMS).

2. The employer role of Boards of Governors is defined in a number of legislative provisions. Article 88 of the Education and Libraries (Northern Ireland) Order 1986 (the '86 Order) defines the role of Boards of Governors in the appointment of non-teaching staff in controlled and maintained schools. Articles 143 and 153 of the '89 Order make provisions for the CCMS and ELBs, respectively, to draw up management schemes which specify the roles of Boards of Governors in the appointment of teaching staff.

3. Schedule 4 to the '89 Order gives Boards of Governors of controlled and maintained schools a role in relation to the determination of staff complements, discipline, supervision and dismissal of staff in schools (with variations according to type of school).

4. The Education (Modification of Statutory Provisions Relating to Employment) Order (Northern Ireland) 1991 clarifies this, effectively deeming Boards of Governors to be the employer of staff in terms of the determination of staff complement, discipline, supervision and dismissal for the purposes of employment law. However, ELBs and the

CCMS, as employing authorities, retain the right to become a party to or take part in all proceedings of tribunals in which a Board of Governors is the respondent.

5. Article 40 of, and Schedule 4 to, the Education (Northern Ireland) Order 1996 conferred corporate status on the Board of Governors of grant-aided schools, other than the Boards of Governors of voluntary grammar schools which were already incorporated under other statutory instruments. This legislation provided greater protection to school governors against personal liability arising from the performance of their duties.
6. A more detailed explanation of the current arrangements for appointing teachers is given below.

Current Employment Arrangements

7. There are three different methods for employing teachers in grant-aided schools in Northern Ireland.
8. Teachers in Controlled Schools - in pursuance of Article 4(3) of the Education and Libraries (Northern Ireland) Order 1986 and Article 153 of the Education Reform (Northern Ireland) Order 1989 (as substituted), the Education and Library Boards are required to draw up a scheme for the appointment of teachers in controlled schools, including the functions to be performed by and the procedures to be followed by the Teaching Appointments Committee (TAC) under Article 4(5) of the 1986 Order. The Schemes provide for the Board of Governors to draw up a personnel specification for the vacant post and to interview those applicants who meet the agreed short-listing criteria.
9. For Principal/Vice-Principal posts, the Board of Governors carry their selection process and submit up to three names for consideration by the TAC. The TAC then invites the candidate(s) to undergo a selection

process and may appoint to the post any candidate whose name has been submitted by the Board of Governors. The TAC also has the right not to appoint any of the candidates to the post. Two of the ELBs allow Board of Governors to submit the names in preferential rank order while the other three do not.

10. For classroom teachers, the Board of Governors, after their selection process is complete, submit the name of one candidate to the TAC. The Education and Library Boards have indicated that this process is one of ratification, and that none of the TACs have failed to appoint the candidate named by the Board of Governors during the last five years.
11. Teachers in Catholic Maintained Schools – CCMS is responsible, subject to statutory requirements, for the appointment of all teachers in Catholic Maintained schools, in pursuance of Article 143 of the Education Reform (Northern Ireland) Order 1989 (as substituted), and has a Scheme for the Appointment of Teachers in Catholic Maintained Schools, within its Scheme of Management.
12. CCMS does not have Teaching Appointment Committees, but rather appointments are delegated to Board of Governors in line with their Scheme. The local Diocesan Office advertises posts and applications are returned to CCMS for checking of eligibility. The school Board of Governors shortlists and interviews, with support from the Diocesan Office, and then formally informs the Diocesan Office of its decision (one name). The Diocesan Office ensures that all procedures have been followed correctly, before forwarding the information to CCMS, where a Ratification Panel (a sub-committee of Council) (on advice from their HR personnel) ratifies the decision of the Board of Governors.
13. For principals and vice-principal posts in Catholic maintained schools, the process is the same, but a Management Officer from the local Diocesan Office attends at shortlisting and interview stages to ensure

that the proper processes are carried out; also the Chair of the appointment panel is a member of the Diocesan Education Committee and is therefore independent.

14. Teachers in voluntary and grant-maintained integrated schools – Boards of Governors in these schools appoint and employ their own staff.
15. In each of these procedures the school's Board of Governors plays a pivotal role in the appointment of teachers. In Catholic maintained, voluntary and grant-maintained integrated schools they are directly responsible for interviewing, selecting and appointing the teachers. In controlled schools their role is diluted as, after they have completed their selection process, they recommend candidates for appointment to the TAC, but it is the TAC that makes the appointment after it conducts its own selection process. For teachers this is a formality (ratification of the name submitted) but in the case of Principals or VPs the Board of Governors submits 3 names and the TAC interviews them all and may appoint any one or none of the names submitted.

FUNCTIONS OF THE EMPLOYING AUTHORITY

- (i) The following are examples of functions that could be performed by the ESA.

Appointment of staff

- Checking procedures have been correctly applied and ratifying appointments
- Successful candidate employed by and contracted to the Employing Authority
- Negotiating and providing advice/guidance to schools on salaries and conditions of service

Pay:

- Pay master for all school based staff
- Preparing the business case for annual pay awards
- Formulating Pay structure/progression arrangements

Terms and Conditions of Employment

- Working time
- Professional Duties
- Performance management (PRSD)

Conditions of service, Policies and Schemes procedures

- Bullying and Harassment
- Health and Welfare
- Leave and pay for Maternity, Paternity and Adoption
- Parental leave
- Career break
- Job-sharing

- Whistleblowing
- Managing attendance
- Grievance, Unsatisfactory Teachers' (including Principal and Vice-Principal), and Disciplinary procedures

Other employment functions

- Dismissal notifications
- Equal opportunity monitoring
- Operating agreed redundancy arrangements
- Redeployment of staff
- Providing advice/guidance on employment issues and responsibilities

FUNCTIONS OF THE BOARD OF GOVERNORS

Appointment of staff

- Identifying vacancies
- Preparation of job descriptions/personnel specifications highlighting qualification requirements and attributes of the post
- Establishing a selection panel
- Shortlisting and Interviewing candidates
- Selection of successful candidate
- Notification of appointment of successful candidate
- Decision of Board of Governors is final unless candidate does not meet criteria/personnel specification or procedures have not been followed

Management of staff

- Deciding upon a management structure and staffing compliment
- Developing and implementing salary policy
- Decisions on remuneration, eg pay progression (in line with PRSD) and promoted posts
- Financial management of staff costs
- Decisions on requests for paid and unpaid leave of teachers and Vice-Principal (and Principal, if not exceeding 3 days)
- Employment of substitute teachers
- Performance management in line with agreed PRSD arrangements
- Development and training of staff
- Operating unsatisfactory teacher arrangements, including development of staff as necessary
- Managing discipline and conduct of staff
- Managing attendance
- Referring cases to the GTC in instances where performance is still unsatisfactory after arrangements applied.
- Ensuring implementation of employment policies and procedures agreed in negotiation arrangements (eg maternity, paternity schemes, harassment policy etc - see list under Employing Authority functions)

- Requiring dismissal of a teacher by the employing authority
- Child Protection

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