

## **POLICY – PAYMENT FOR CAPITAL WORKS TO VA SCHOOLS**

### **Background**

The Diocese in its role as a Responsible Body is required by the Education Skills Funding Agency (ESFA) to support schools with advice to maintain their building and ensure that they meet Health and Safety requirements, and that they continue to be fully operational and open. For example if a boiler fails, this will need to be repaired or replaced. This may be funded either via Devolved Formula Capital (DFC) or the Local Education Authority Co-ordinated Voluntary Aided Programme (LCVAP).

To access LCVAP or DFC funding for capital works, Governing Bodies of Voluntary Aided Schools must contribute 10% of the cost of the works and associated costs.

The Diocese of Chichester has operated an agreed loan scheme over the last 14 years with a general interest rate of 3% over base rate. All current loans have been repaid in full with interest.

However, the National Society has taken advice that the practice is ultra vires, and is viewed as a 'gentleman's agreement', with repayment not guaranteed. Legal advice from Lee Bolton Monier Williams (LBMW) solicitors (2008 updated 2015) states that although custom and practice has been for several Dioceses to offer loans to Governors in respect of their contributions over previous years this is not strictly legal. The Department for Education's lawyers have given their opinion that governing body borrowing of this kind can only be entered into with the explicit consent of the Secretary of State, which in practice is never given as to do so would bring these sums within the scope of the Public Sector Borrowing Requirement (although the ESFA does allow some loans e.g. SALIX).

### **Policy**

The Diocese has ceased operating a loan scheme to Governing Bodies.

The Diocese wishes to provide support for the ongoing maintenance of VA schools via LCVAP funding, and recognises that to access this funding governing bodies of VA Schools are required to pay a 10% contribution to the overall project costs. This is ordinarily payable at the end of the project; the LCVAP funding is paid in advance and funds the majority of the payments to contractors during the project. Most VA schools will be prepared and will have generated sufficient governors' funds in a separate account. This will be from a variety of avenues such as lettings, trust funds, grants, revenue surpluses and sponsorship.

In a few cases and particularly where the projects require significant capital investment, the schools will not be in a position to immediately pay their 10% contribution on conclusion of a project. In cases where there are no immediate funds, the Diocese may facilitate support to the school governors by accepting deferred payment. The school will be and remain liable to pay their contribution, and failure to do so would be enforceable in law as breach of contract. The Diocese

will indicate by a side letter that no steps to enforce payment will be taken within a set period, unless the school passes a resolution to become an academy. Interest will be payable on late payments at a standard rate of 3% over base.

The Diocese will invoice for project costs relating to DFC contribution and the governors' 10% contribution in full on completion of a capital project. The invoice will be raised by the Accounts Department on notification by the Capital Assets Programme Manager (CAPM). Payments terms will be 60 days, after which interest for late payment will be charged at the standard rate.

Where it is known that the school will be unable to pay on completion and discussions have been held between the school governing body and the CAPM, a side letter will be sent with the invoice. The side letter will outline that as long as the school governing body pays in line with terms set out in the side letter, payment will not be enforced for the total amounts outstanding unless the school passes a resolution to become an academy, although interest will be incurred.

### **Procedure**

- A VA school wishing to undertake a project where they will not have funds to pay their governors 10% on completion of the project should enter into discussion at the earliest point with the CAPM, expressing their need for Diocesan support in writing.
- All other options for immediate payment should have been explored and Trust Funds supporting the schools identified where possible. Advice will be given by the CAPM.
- A request for a side letter with a proposed repayment plan should include the following:
  - Expected amount to be paid and frequency (which may be revised on completion of project and indication of the sum to be invoiced)
  - Period of plan (commencement and completion date)
  - Agreement signed by Chair of Governors on behalf of the Corporate Governing Body
- A side letter will be sent stating that:
  - Invoices will not be subject to late payment interest until 60 days from the date of the invoice
  - No enforcement action will be taken while the agreement is in place and adhered to
- The CAPM will ensure that:
  - An invoice is raised by Accounts and the repayment plan logged against project account
  - A Payment Plan is agreed and a signed copy is sent to Accounts
  - Payments are monitored
  - The plan and payments against it are reported to Business Development Committee of the DBE.

### **Policy agreed by**

**Signed.....Date.....**