

SCHOOLS FORUM - 9 November 2017

Title of paper:	De-delegation of funding for Trade Union time off for senior representatives
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Summary The purpose of this report is to outline the proposed funding arrangements for trade union (TU) facility time for senior trade union representatives from schools to attend negotiation and consultation meetings and to represent their members in schools in 2018/19.	
Recommendation(s):	
1	For maintained mainstream primary schools to approve the de-delegation of funding for senior trade union representatives at a rate of £1.55 per pupil and a lump sum of £1,622 per school. Total funding requested to be de-delegated by maintained mainstream primary schools is £0.066m. This is made up of £0.017m generated by pupil's numbers and £0.049m lump sum funding.
2	For maintained mainstream secondary schools to approve the de-delegation of funding for senior trade union representatives at a rate of £1.55 per pupil and a lump sum of £1,622 per school. Total funding requested to be de-delegated by maintained mainstream secondary schools is £0.004m. This is made up of £0.002m generated by pupil's numbers and £0.002m lump sum funding.

1 REASONS FOR RECOMMENDATIONS

- 1.1 Under the school funding arrangements staff supply cover costs must form part of the school formula. However, funding can be retained centrally on behalf of maintained mainstream primary and secondary schools if de-delegation is approved.
- 1.2 The decision made by Schools Forum to de-delegate in 2017/18 related to that year only, so a new approval is required for this service to be de-delegated in 2018/19. Schools Forum members of maintained mainstream primary and secondary schools for each phase must decide separately whether this service should be provided for centrally and the decision will apply to all maintained schools in that phase. Funding for this service will then be removed from the formula before the school budgets are issued.

- 1.3 Schools Forum agreed in October 2013 that Academies could be approached to ascertain whether they would like to be part of the Local Authority's (LA) arrangements in relation to the funding of senior trade union representatives. Currently, fifteen primary and five secondary academies have agreed to participate in this arrangement.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 Time off for workplace representatives is currently funded by the schools in which they work, but there is central funding for senior TU representatives from the main unions that represent teachers and support staff in schools namely:

NEU
NASUWT
NAHT
UNISON
GMB

These senior representatives meet with officers of the LA to participate in the schools collective bargaining machinery; negotiating and engaging in consultation on terms and conditions of service and HR policies and procedures. If this funding were not available, senior TU representatives would be asking for time off to attend meetings with the Council and this would have to be funded by the school in which they work as there is an entitlement under the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) for reasonable time off for trade union officials to represent their members.

- 2.2 Academies are in a similar position; some of their employees are senior TU reps and are asking for release to represent employees in maintained schools and other academies. The current funding method means that academies will be reimbursed for time spent away from school on TU duties.
- 2.3 There are benefits and economies of scale for maintained schools and academies from contributing to the LA's arrangements for trade union consultation. They do not have to duplicate effort when negotiating policies and procedures such as the recent Teachers Pay Policy. Schools can then use such policies, if they buy back HR services in the knowledge that the senior trade union representatives have been consulted and any issues resolved. Senior TU representatives are also more experienced in policies and procedures, when representing their members, which can be helpful.
- 2.4 Schools that do not contribute to the TU costs will have to have their own arrangements for negotiating and consulting trade unions on terms and conditions of service and will have to release TU representatives from their own school to undertake collective bargaining and represent their employees.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 If this is not supported the budget will be delegated and schools will have to make their own arrangements for negotiating and consulting with the trade unions on changes to HR policies and procedures which will lead to duplication of effort and inconsistencies across schools.

- 3.2 TU reps have a legal right to time off to participate in the collective bargaining arrangements of their employer and to represent their members. If the de-delegations were not agreed individual schools would have to bear the cost of the time off for the senior TU reps nominated by their union to participate in these discussions. TUs may also decide that they each wish to appoint reps in individual schools and, therefore, schools may also have to pay additional costs for the training and CPD of each TU rep.

4 OUTCOMES/DELIVERABLES

- 4.1 The money requested is based on actual salary of those employees who have time off therefore those schools including academies who have senior TU representatives with time off will receive the actual cost of the absence of that employee. The amount of time off per union is based on the per capita membership per union based on the actual cost of the TU reps salary.

5 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 5.1 As per “The national funding formula for schools and high needs Policy document – September 2017” for the next two financial years (2018/19 and 2019/20) local authorities will continue to set their local funding formula to distribute their schools block funding, in consultation with schools and their School Forum. However, local authorities will be funded based on the new national funding formula. Included within this “soft approach” is the ability for local authorities to be able to still request approval from maintained primary and secondary school representatives on Schools Forum for de-delegated services.
- 5.2 Any decisions made to de-delegate in 2017 to 2018 related to that year only; new decisions will be required for any service to be de-delegated in 2018 to 2019 and 2019 to 2020 before the start of each financial year.
- 5.3 As stated in 4.1 the cost of trade union facility time is reimbursed to their place of employment. Based on the 2018/19 salary projections and forecast income from maintained schools and academies who buy into the service (based on the current rate of £1.55 per pupil and a lump sum of £1,622), this would generate sufficient funding to cover the costs of the salaries in the financial year 2018/19.
- 5.4 Table 1 shows the forecast projection for 2018/19.

Table 1: Forecast projection for the financial year 2018/19		
Forecast income from maintained schools	-£0.070m	
Forecast income from academies	-£0.060m	
Total forecast income		-£0.130m
Forecast expenditure		£0.130m
Net Surplus/(Deficit)		£0.000m

- 5.5 HR are currently discussing the allocation of facility time hours with the trade unions with a view to making some reductions, consistent with the lower overall number of

schools/academies participating. This will have the effect of lowering the salary costs to be covered. The forecast reduced facility time hours have been included in the forecast expenditure projection in **Table 1**.

- 5.6 During the last two financial years (2016/17 and 2017/18) the rates applied have been £1.52 per pupil and a lump sum of £1,590 per school. In order to be able to cover the forecast facility hours in the financial year 2018/19 the rates have been increased by 2% (equivalent to the pay award of 1% per year for the last 2 years) to £1,622 lump sum per school and £1.55 per pupil. Further work is also underway to try to attract more academies to participate. It is estimated that this combined approach should enable the facility time to be funded for 2018/19 to a breakeven position.

6 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

6.1 Legal Implications

The schools forum's powers here derive from the School and Early Years Finance (England) Regulations 2017 ("SEYFR"), made by the Secretary of State in exercise of powers under the School Standards and Framework Act 1998 and the Education Act 2002. The SEYFR came into force on 16 February 2017.

Chapter 2 of Part 2 of the SEYFR is entitled "Further Deductions and Variations to Limits Authorised by School Forums or the Secretary of State" and it contains regulation 12 of the SEYFR. Under regulation 12 of the SEYFR, on the application of a local authority the schools forum may authorise *the redetermination of schools' budget shares by removal of any of the expenditure referred to in Part 6 (Items That May Be Removed From Maintained Schools' Budget Shares-Primary and Secondary Schools) of Schedule 2 [of the SEYFR] from schools' budget shares where it is instead to be treated by the authority as if it were part of central expenditure, under regulation 11(5) (SEYFR, regulation 12(1)(d))*. Part 6 of Schedule 2 to the SEYFR contains paragraph 42, which states, amongst other things:-

Expenditure on making payments to, or in providing a temporary replacement for, any person who is –

- (a) carrying out trade union duties or undergoing training under sections 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992;*
- (b) taking part in trade union activities under section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;*

Therefore, provided the proposals fall within the above legislation, Nottingham City Schools Forum has the power to approve the recommendations in this report. This power should be exercised lawfully. Provided the amounts sought through use of this power have been correctly and lawfully calculated, the exercise of this power will be lawful.

Moreover, it should be noted that any decision taken by the Schools Forum here does not obviate an employer's requirement to consult with staff via their trade union representatives. As employers of their own staff, Academies (and the

governing bodies of voluntary aided schools) will still have substantive legal obligations to consult, even if their proposals align with those of Nottingham City Council in relation to the authority's own staff in maintained schools.

Jon Ludford-Thomas
Senior Solicitor
Legal Services

7 HR COLLEAGUE COMMENTS

- 7.1 The relevant HR issues are included in the above report. The trade unions are supportive of this approach and have commented as follows:

Good employment relations are key to minimising costs. To achieve this, both schools and the trade unions need effective and positive support for members and employers that can remain locally based. If schools/academies choose not to de-delegate funding then the costs will almost certainly exceed the amounts as recommended in this report. We believe the proposed formula to be affordable based on the current funding provided centrally. The investment is worth making to secure peace of mind regarding providing the time and resources outlined in statute so that the unions are able to represent members both individually and collectively in negotiations and consultation meetings with schools/academies.

For those of you who require further information regarding Facility Time, the TUC produced a report "The Facts about Facility Time for Union Reps" (2011) which is very informative and helpful (see link) <http://www.tuc.org.uk/tucfiles/108/TheFactsAboutFacilityTime.pdf>

- 7.2 There is broad agreement across the teaching unions NAHT/NEU/ASCL/NASUWT) that de-delegation should be supported and that they have jointly contacted schools and academies to express this view.
- 7.3 The existing 'pot' set up by the LA for academies to pay into has been supported by a number of academies who recognise the value of the expertise provided by TU officials via effective JCNC mechanisms.
- 7.4 The stated ambition for City schools to be less atomised is supported by having organisations that 'join them up' and the TU's represent just such a body.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 Has the equality impact of the proposals in this report been assessed?

No

Yes ✓

Attached as Appendix 1. There is no indication that this scheme will adversely impact on any of the protected groups. In fact it may impact positively on protected groups as the trade union representatives concerned are all experienced at representing their members.

**9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR
THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

9.1 None

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

10.1 Schools Forum report 3 November 2016: De-delegation of funding for Trade Union time off for senior representatives.

Appendix 1

Equality Impact Assessment

Funding of time off for senior trade union representatives in schools

This is a desk-based Equality Impact Assessment (EIA) screening of the funding arrangements for Senior Trade Union representatives in maintained schools and Academies.

Information used to analyse the effects on equality

The decision to extend the arrangements will impact on all trade union members in a consistent manner. Data regarding trade union membership in schools and academies is not available so could not be used for this EIA. Indications are that 75% of schools based employees are in a trade union.

	Could particularly benefit (X)	May adversely impact (X)	How different groups could be affected: Summary of impacts	Details of actions to reduce negative or increase positive impact (or why action not possible)
People from different ethnic groups	<input type="checkbox"/>	<input type="checkbox"/>	There is no indication that this scheme will adversely impact on any of the protected groups. In fact it may impact positively on protected groups as the trade union representatives concerned are all experienced at representing their members.	Not applicable
Men, women (including maternity/pregnancy impact), transgender people	<input type="checkbox"/>	<input type="checkbox"/>		
Disabled people or carers	<input type="checkbox"/>	<input type="checkbox"/>		
People from different faith groups	<input type="checkbox"/>	<input type="checkbox"/>		
Lesbian, gay or bisexual people	<input type="checkbox"/>	<input type="checkbox"/>		
Older or younger people	<input type="checkbox"/>	<input type="checkbox"/>		

Other (e.g. marriage/civil partnership, looked after children, cohesion/good relations, vulnerable children/adults)	Not applicable		
Outcome(s) of equality impact assessment: No major change needed <input checked="" type="checkbox"/> Adjust the policy/proposal <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove the policy/proposal <input type="checkbox"/>			
Arrangements for future monitoring of equality impact of this proposal / policy / service: A further EIA will be completed should any further decision to amend the arrangements for the funding arrangements in schools be proposed.			
Approved by: Della Sewell, Employee Relations Manager 10 October 2017		Date sent to equality team for publishing:	

