

SCHOOLS FORUM - 9 October 2018

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 2019/20.	
Recommendation(s):	
1	For maintained mainstream primary schools to approve the de-delegation of funding for senior trade union representatives at a rate of £1.45 per pupil and a lump sum of £1,368 per school. Total funding requested to be de-delegated by maintained mainstream primary schools is £0.056m. This is made up of £0.016m generated by pupil's numbers and £0.040m 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 £1.45 per pupil and a lump sum of £1,368 per school. Total funding requested to be de-delegated by maintained mainstream secondary schools is £0.003m. This is made up of £0.002m generated by pupil's numbers and £0.001m 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 2018/19 related to that year only, so a new approval is required for this service to be de-delegated in 2019/20. 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, twenty-four primary and two secondary academies have agreed to participate in this arrangement, as well as one school for children with additional needs, and one Pupil Referral Unit.

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 as well as representing their members on a range of employment matters. 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 to 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 are 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.
- 3.3 This year, consideration has been given to alternative ways of calculating the funding for trade union time off to ascertain whether the current approach is still the most appropriate. This was prompted in light of recent changes to facility time allocations due to increasing number of schools becoming academies and due to the change in trade union representatives, which has seen a reduction in the cost of salaries. There are limited options for amending the calculation formula, but consideration has been given to the viability of calculating de-delegation amounts on the basis of an increased per-pupil charge, with no lump sum charge. **Table 1** below shows the impact of moving to recharging based on a flat rate per pupil.

Table 1: Comparison of continuing with the current recharging model or moving to a flat rate per pupil					
Phase	Number of schools			Increase or decrease in cost by adopting Option 2	
	Gainers	Losers	No change	Gainers range	Losers range
Primary	33	20	1	£3 to £711	£-13 to £-1,775
Secondary	0	2	0	-	£-842 to £-3,051
All-through	0	1	0	-	£-7,648 to £-7,648
Specials	2	0	0	£976 to £1,070	-
PRU's	1	0	0	£631 to £631	-
TOTAL	36	23	1		

- 3.4 On the basis of the financial modelling that has been undertaken, it was concluded that a change to this method would largely increase charges to many participating schools and academies, with some schools seeing significant increases in cost. On balance, it would seem that the current approach remains fit for purpose and, therefore, the calculation for 2019/20 has been made no differently to previous years.

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 and the actual cost of the TU reps' salaries.

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

- 5.1 As per "The national funding formula for schools and high needs 2019 to 2020 Policy document – July 2018" for the next two financial years (2019/20 and 2020/21) local authorities will continue to set their local funding formula to distribute their schools block funding, in consultation with schools and their School Forum.

Paragraph 5 & 6

"We are pleased to see the significant progress across the system in moving towards the national funding formula in its first year.

In light of this progress, and in order to continue to support a smooth transition, we are confirming that local authorities will continue to determine local formulae in 2020-21"

Local authorities will continue to 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 2018 to 2019 related to that year only; new decisions will be required for any service to be de-delegated in 2019 to 2020 and 2020 to 2021 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 2019/20 salary projections and forecast income from maintained schools and academies who buy into the service (based on the current rate of £1.45 per pupil and a lump sum of £1,368), this would generate sufficient funding to cover the costs of the salaries in the financial year 2019/20. The calculation of the salaries assumes a pay award of on average of 2%.
- 5.4 **Table 2** shows the forecast projection for 2019/20.

Table 2: Forecast projection for the financial year 2019/20		
Forecast income from maintained schools	-£0.058m	
Forecast income from academies	-£0.057m	
Total forecast income		-£0.115m
Forecast expenditure		£0.115m
Net Surplus/(Deficit)		£0.000m

- 5.5 Last financial year the recharge was based upon a rate of £1.55 per pupil and a lump sum of £1,622. The rates have reduced in 2019/20 due to a change in some trade union representatives whose salaries are lower than the previous post holders and an increase in the number of academies wishing to buy-back into the service. It is estimated that this combined approach should enable the facility time to be funded for 2019/20 to a breakeven position.

Julia Holmes
Senior Commercial Business Partner
17 September 2018

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

- 6.1 The schools forum's powers here derive from the School and Early Years Finance (England) Regulations 2018 ("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 5 February 2018.

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 43, 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.

Aman Patel
Solicitor
25 September 2018

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



An EIA is not required because:

These proposals have a very broad scope across many schools and academies and are focussed on financial matters. It is not possible to accurately assess how this directly impacts on individuals employed within schools.

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 9 November 2017: De-delegation of funding for Trade Union time off for senior representatives
- 10.2 The national funding formulae for schools and high needs 2019 to 2020 – July 2018
- 10.3 Schools revenue funding 2019 to 2020 Operational guide – July 2018