

Schools Forum - 13 October 2020

Title of paper:	De-delegation of funding for Trade Union time off for Senior Representatives for 2021/2022
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Summary

The purpose of this report is to outline the proposed funding arrangements for trade union facility time for senior trade union representatives from schools to attend negotiation and consultation meetings and to represent their members in schools from 1 April 2021 to 31 March 2022.

Under the Schools and Early Years Finance Regulations 2020 maintained schools can agree to de-delegate funding for trade union facility time. This has been done by maintained schools since the financial year 2013/14. To reduce the cost on maintained schools the arrangement is also offered to academies. The income generated pays for the salaries of the trade union representatives whilst carrying out trade union facility time duties. Maintained schools and academies are reimbursed the salaries of the representatives who are employed by them. This is done so that no school loses out as a consequence of members of their staff carrying out trade union duties.

Recommendation(s):

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| 1 | For maintained schools to note the revised methodology for calculating the funding available for trade union facility time from the financial year 2021/22. Whereby, the per pupil rate and lump sum amount have been increased by 1.5% each financial year since 2016/17 to generate a revised rate per pupil and lump sum for 2021/22. This will ensure there is sufficient funding to cover the salaries of the trade union representatives in both maintained schools and academies and achieve a breakeven position in the financial year 2021/22. This will also enable the total time allocated to trade union representatives to be increased back to the level they were in the financial year 2016/17. See 1.4 for an explanation as to why the allowances have been increased. |
| 2 | For maintained mainstream primary schools to approve the de-delegation of funding for senior trade union representatives at a rate of £1.49 per pupil and a lump sum of £1537.44 per school. These charges will generate a £0.145m projected income and is based upon the current 66 maintained schools and academies buying into the scheme. |
| 3 | Maintained mainstream primary schools to note that the total funding requested to be de-delegated by maintained mainstream primary schools is £0.061m. This is made up of £0.016m generated by pupil's numbers and £0.045m lump sum funding. |

1 Reasons for recommendations

1.1 Under the school funding arrangements, teachers and teaching support staff who are school employees and also engaged as Senior Trade Union Representatives are covered under these arrangements to cover their costs for facility time funding and this forms a part of the school formula. However, funding can also be retained centrally by Nottingham City Council on behalf of maintained mainstream primary schools if de-delegation is approved.

1.2 The decision made by Schools Forum in October 2019 to de-delegate from 1 April 2020 to 31 March 2021 related to that year only, so new approval is required for the de-delegated service to continue from 1 April 2021 to March 2022. Schools Forum members of maintained mainstream primary schools must decide whether this service should be provided for centrally and the decision will apply to all maintained mainstream primary schools in that phase. Funding for this service will then be removed from the formula before the school budgets are issued.

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. We are yet to write to Academies asking them to buy into the service from April 2021 and this will be based on the costing decision taken at Schools forum on 13 October 2020.

1.3 **Table 1** shows the number of schools participating in the trade union arrangement from 2016/17 to 2020/21.

	2016/17	2017/18	2018/19	2019/20	2020/21
Maintained Schools	39	36	30	29	29
Academies	34	20	34	36	37
Total	73	56	64	65	66

In the financial year 2017/18 the number of schools in the arrangement fell to 56 from 73 in 2016/17 and has increased up to 66 in 2020/21. As the number of schools participating in the arrangement fell in 2017/18 the allowances allocated to the unions were reduced from 3.7 to 3.2 in the financial year 2018/19 to keep down the cost of trade union cover to schools. They were increased to 3.4 in 2020/21 but have not reached the level they were in 2016/17 of 3.7.

1.4 **Table 2** shows the rates applied over the last five financial years to schools and academies.

	2016/17	2017/18	2018/19	2019/20	2020/21
Per Pupil rate	£1.52	£1.52	£1.55	£1.45	£1.52
Lump sum per school	£1,587	£1,590	£1,622	£1,368	£1,538

1.5 Since 2017/18 the unions have worked hard at increasing the number of academies taking part in the arrangement. The number of maintained schools and academies have not risen to the same level as there were in 2016/17 (77) but they have risen

from the lowest point of 56 contributors to 66 in 2020/21. As a result of the increase in numbers contributing, the unions have asked for the allowances to be increased to 3.7 to reflect the increase in academies taking part and their increase in workload they have to undertake on the behalf of schools and academies. This is expected to increase further because of Covid-19.

- 1.6 For 2021/22 rather than costing the trade union salaries based on the a total allowance of 3.4 which equates to 17 days (0.1 represents half a day), the main trade unions for schools; NASUWT, NAHT, NEU, GMB, Unite and Unison requested a revised proposal for the Local Authority to model an uplift to the per pupil rate and the lump sum rate by 1%, 1.5% or 1.7% to see what income this would generate. **Appendix A** shows the income that would be generated by each percentage increase and this is then compared to the cost of either a 3.4 (17 days) or 3.7 (18.5 days) allowance a week. The costed options assume that maintained schools continue to de-delegate and that all academies that are part of the arrangement in 2020/21 continue to do so in 2021/22.
- 1.7 An agreement was reached with Nick Lee the Director of Education and the trade unions that a proposal of a 1.5% increase on the rate from the financial year 2016/17 would be proposed in this report. **This option would generate income of £0.160m** and is based on a rate of £1.64 per pupil and a lump sum of £1,693.24 per school or academy. NB: These rates have been adjusted further to take into account of the underspend on the trade union cover budget in the financial year 2019/20, which was underspent by £0.015m. Once applied this will reduce the rates to £1.49 per pupil rate and a lump sum of £1,537.44 per school and academy in 2021/22, this has been excluded from the calculation so that the rates were not skewed.
- 1.8 If the trade union facility time allowance is kept as it is, currently at 3.4. This is projected to cost £0.148m in 2021/22. Based on the pupils in the October 2019 Autumn Term census this would require a per pupil rate of £1.53 and a lump sum of £1,573.88 per school. This would mean that schools would not have seen an increase in the rates for trade union cover since the financial year 2016/17.
- 1.9 If the trade union facility time allowance is increased back to 3.7, this is the allowance the trade unions had in 2016/17 before the number of schools participating in the arrangement fell, it acknowledges the hard work that the the unions have undertaken to get academised schools to buy back into the arrangement. **The allowance of 3.7 is projected to cost £0.160m.** Therefore, a breakeven position is projected on this budget in 2021/22. This projection is based upon the pupils on the October 2019 Autumn Term census.

2 Background (including outcomes of consultation)

- 2.1 Time off for local 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:
 - National Association of School Masters and Union of Women Teachers (**NASUWT**)
 - National Association of Head Teachers (**NAHT**)
 - **UNISON**
 - **UNITE**

- **GMB**
- National Education Union (**NEU**) from 1 September 2017 (Previously National Union of Teachers and Association of Teachers and Lecturers)

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. 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 and academies 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 de-delegation is not supported, the budget will be delegated and schools and academies 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 Senior 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 and academies would have to bear the cost of the time off for the senior TU reps nominated by their union to participate in these discussions. TU's 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 the senior TU representatives 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 senior 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 2021 to 2022 Policy document – July 2020" 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 9

"In light of the need to focus efforts on meeting the challenges of COVID-19, we are not changing local authorities' flexibility over the distribution of school funding in 2021-22. The government will shortly put forward proposals to move to a 'hard' NFF in future, which will determine schools' budgets directly, rather than through local formulae set independently by each local authority. This will level up the school funding system so that all schools across the country are funded on a comparable basis. We will consult wider with local authorities, schools and others to make this transition carefully."

In 2021/22 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 2020 to 2021 related to that year only; new decisions will be required for any service to be de-delegated in 2021 to 2022 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. The reimbursements will be actioned by the Local Authority at the end of each financial year (March) once the actual costs have been confirmed they have been incurred. Based on the 2021/22 salary projections and forecast income from maintained schools and academies who buy into the service plus the underspend on the budget in 2019/20 (£0.015m) (based on the current rate of £1.49 per pupil and a lump sum of £1,537.44), this would generate sufficient funding to cover the costs of the salaries in the financial year 2021/22. The calculation of the salaries assumes a pay award of 2.75% in 2020/21 and 2% in 2021/22. If the underspend from 2019/20 had not been taken into account the rates would have been £1.64 per pupil and a lump sum of £1,709.50 as shown in **Appendix A**.
- 5.3 It is estimated that this combined approach should enable the facility time to be funded for 2021/22 to a breakeven position.

5.4 **Table 3** shows the forecast projection for 2021/22.

Table 3: Forecast projection for the financial year 2021/22		
Forecast income from maintained schools	-£0.061m	
Forecast income from academies	-£0.084m	
	-£0.015m	
Brought forward balance from 2019/20		-£0.160m
Total forecast income		
Forecast expenditure		£0.160m
Net Surplus/(Deficit)		£0.000m

5.5 In 2020/21 the recharge was based upon a rate of £1.04 per pupil and a lump sum of £1,054. The rates were lower than those quoted in **Table 2** due to the inclusion of the underspend of £0.044m from 2018/19 being brought forward and taken into account when calculating the rate for 2020/21. This underspend was notified to Schools Forum on the Outturn Report 2018/19 on 25 June 2019. If the brought forward balance had not been taken into account then the rate per pupil would have been £1.45 and the lump sum £1,368 per school.

The main reasons for the increase in cost in 2021/22 is due to an increase in the allowances given to the trade unions as well as a lower brought forward figure being included in the calculation of the rates (£0.015 instead of £0.044m). In 2018/19 the number of academies agreeing to be part of the agreement to buy back the service fell. In order not to pass this cost onto the remaining maintained schools and academies the allowances were reduced to the trade unions. The trade unions were informed by the LA that if the number of schools partaking in the service increased then the LA would increase their allowance back to what it had been 2017/18. This is why recommendations 1 and 2 are now being made to increase allowances given to the trade unions to acknowledge the number of academies they have been able to get to buy back into the service and give funding for their increased workload.

See **Table 4** of the impact on each phase of school by increasing the allowance to 3.7 in 2021/22 from 3.4 in 2020/21.

Table 4: Impact of increasing the rate per pupil and lump sum by 1.5% from the financial year 2016/17 compared to the charges made in 2020/21			
Phase	Number of schools	From and to	Average increase
Primary	54	£154.20 to £240.79	£174.26
Secondary	8	£207.70 to £275.70	£232.46
All-through	1	£362.06	£362.06
Specials	2	£143.89 to £145.07	£144.48
AP	1	£155.60	£155.60
Total	66		

Based on the "The national funding formula for schools and high needs 2021 to 2022 Policy document – July 2020"

Paragraph 5

“Every school will be allocated at least 2% more pupil-led funding per pupil compared to its 2020-21 NFF baseline.”

As in previous financial years it is the intention of the local authority to pass onto schools as much of the minimum funding guarantee as possible through the local funding formula.

- 5.6 Any under/overspend at the end of the financial year 2021/22 will be netted off against the trade union facility time charges for the financial year 2022/23 if delegation is an option in the financial year 2022/23.

Julia Holmes
Senior Commercial Business Partner
14 September 2020

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 2020 (“SEYFR”), made by the Secretary of State for Education in exercise of powers under the School Standards and Framework Act 1998 and the Education Act 2002. The SEYFR came into force on 21 February 2020.

- 6.2 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)(c)).* 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;*

- 6.3 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.

- 6.4 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.

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 October 2018: 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