

Schools Forum - 7 December 2021

Title of paper:	De-delegation of funding for Trade Union time off for Senior Representatives for 2022/2023
Director/ Corporate Director:	Richard Henderson, Director of HR and Customer Clive Heaphy, Corporate Director of Finance and Resources
Report author(s) and contact details:	Elaine Harrison, Employee Relations Consultant, Human Resources. Email: elaine.harrison@nottinghamcity.gov.uk Julia Holmes, Senior Commercial Business Partner, Finance Email: julia.holmes@nottinghamcity.gov.uk
Other colleagues who have provided input:	Ana Farenden, Employee Relations Specialist, Human Resources. Aman Patel, Solicitor, Legal Services Email: aman.patel@nottinghamcity.gov.uk
Summary	
<p>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 2022 to 31 March 2023.</p> <p>Under the Schools and Early Years Finance Regulations 2021 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.</p>	
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 £1,571 per school. These charges will generate a £0.155m projected income and is based upon 69 maintained schools and academies buying into the scheme.
2	Maintained mainstream primary schools to note that the total funding requested to be de-delegated by maintained mainstream primary schools is £0.0.63m. This is made up of £0.017m generated by pupil's numbers and £0.046m lump sum funding.

1. Reasons for recommendations

- 1.1 Under the school funding arrangements, costs which relate to teachers and non-teaching support staff who are employed by schools and are engaged as Senior Trade Union Representatives can be centrally retained on the behalf of maintained primary schools if de-delegation is approved. Funding for facility time 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 primary maintained schools at Schools Forum on 13 October 2020 to de-delegate from 1 April 2021 to 31 March 2022 related to that year only, so a new approval is required for de-delegation to continue from 1 April 2022 to March 2023. 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 maintained mainstream primary schools Individual School Budgets before their 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 2022 and this will be based on the costing decision taken at Schools forum on 7 December 2021.

- 1.3 **Table 1** shows the number of schools participating in the trade union arrangement from 2016/17 to 2021/22.

Table 1: Number of maintained schools and academies in the trade union cover arrangement and trade union allowance for each financial year						
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Maintained primary schools	39	36	30	29	29	29
Academies and maintained special schools	34	20	34	36	37	38
Total	73	56	64	65	66	67

From the financial year 2022/23 it is forecast that there will be an additional 2 schools participating in the arrangement. Therefore, we anticipate that there will be 69 schools and academies taking part in the arrangement.

- 1.4 The report that came to Schools Forum last year on 13 October 2020 requested that maintained primary schools approve an increase in the cost of trade union facility time to allow the trade union allowances to be increased from 3.4 which equates to 17 days per week (0.1 represents half a day) to 3.7 which equates to 18.5 days per week from the financial year 2021/22.

This approach was approved to acknowledge the hard work undertaken by the trade unions to increase the number of participating academies in the facilities time arrangement from 56 schools in 2017/18 to 66 in 2020/21.

- 1.5 On 5 October 2021 an agreement was reached with Nicholas Lee, Director of Education and the trade unions that for the financial year 2022/23 the allowances allocated to each trade union would remain the same as those in 2021/22 at 3.7. The trade unions highlighted their increased workload due to Covid-19 but recognised the financial pressures that schools and academies are currently facing and therefore agreed to keep the allowance at 3.7. This proposal requires £0.163m

to be generated in income to cover the costs of the trade union representatives' salaries. This will require a rate of £1.63 per pupil and a lump sum of £1,653 per school or academy. NB - These rates have been adjusted to take into account the £0.008m underspend on the trade union cover budget in the financial year 2020/21. Once applied this will reduce the rates to £1.55 per pupil and a lump sum of £1,571 per school and academy in 2022/23.

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

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Per Pupil rate	£1.52	£1.52	£1.55	£1.45	£1.52	£1.64
Lump sum per school	£1,587	£1,590	£1,622	£1,368	£1,538	£1,693

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. Consideration of Risk

5.1

6. Finance colleague comments (including implications and value for money/VAT)

- 6.1 As per "The national funding formula for schools and high needs 2022-23 Policy document – July 2021" The basic structure of the schools national funding formula (NFF) is not changing in 2022/23".

In 2022/23 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.

Local Authorities are awaiting further clarification from the Department of Education on whether or not de-delegation will be an option beyond the financial year 2022/23. The Fair funding for all: completing our reforms to the National Funding Formula – Government consultation which closed on the 30 September 2021 stated: "Moving towards a hard NFF, whereby the department determines schools' allocations centrally creates a strong case for change in how funding for central school services should work. The role that LA's currently have in the school funding landscape will change as we move towards a hard NFF, leaving them with less flexibility to determine how the remaining DSG allocated to them is used. The transition to the hard NFF also presents an opportunity to review the variation in how central school

services are currently provided and funded. Our proposals aim to bring more consistency across the country, reflecting these changing roles to support a more school-based system that allows schools maximum control over their funding.

- 6.2 The decision made to de-delegate in 2021 to 2022 related to that year only; new decisions are required for any service to be de-delegated in 2022 to 2023 before the start of each financial year.
- 6.3 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 2022/23 salary projections and forecast income from maintained schools and academies who buy into the service plus the underspend on the budget in 2020/21 (£0.008m) (based on the current rate of £1.55 per pupil and a lump sum of £1,571.23), this would generate sufficient funding to cover the costs of the salaries in the financial year 2022/23. The calculation of the salaries assumes a pay award of 0% in 2021/22 and a 2% pay award in 2022/23 for teaching staff and a 1.75% pay award for non-teaching staff in the financial years 2021/22 and 2022/23. If the underspend from 2020/21 had not been taken into account, the rates would have been £1.63 per pupil and a lump sum of £1,652.87.
- 6.4 It is estimated that this combined approach should enable the facility time to be funded for 2022/23 to a breakeven position.

Table 3 shows the forecast projection for 2022/23.

Table 3: Forecast projection for the financial year 2022/23		
Forecast income from maintained primary schools	-£0.063m	
Forecast income from academies and maintained special schools	-£0.092m	
Brought forward balance from 2020/21	-£0.008m	
Total forecast income		-£0.163m
Forecast expenditure		£0.163m
Net Surplus/(Deficit)		£0.000m

- 6.5 In 2021/22 the recharge was based upon a rate of £1.49 per pupil and a lump sum of £1,537.44. The rates were lower than those quoted in Table 2 due to the inclusion of the underspend of £0.015m from 2019/20 being brought forward and taken into account when calculating the rate for 2021/22. This underspend was notified to Schools Forum on the Outturn Report 2019/20 on 13 October 2020. If the brought forward balance had not been taken into account, then the rate per pupil would have been £1.64 and the lump sum £1,693 per school.

There has been no significant movement in the rates between the financial years 2021/22 and 2022/23 (£1.64 to £1.63 per pupil and £1,693 to £1,653 lump sum per school). This movement is due to the fact that 2 additional schools will be joining the arrangement and the additional pupils on the October 2020 school census have offset the increased cost in the trade union representatives' salaries.

On average each maintained primary school will see an increase in their charge of 2.69% year on year if the pupil numbers at the school in October 2021 remain the same as those in October 2020.

Based on the “The national funding formula for schools and high needs 2022 to 2023 Policy document – July 2021”

Paragraph 4

“The NFF is levelling up school funding: increasing core factors of the formula by 3%, while ensuring that every school is allocated at least 2% more funding per pupil”

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.

- 6.6 Any under/overspend at the end of the financial year 2022/23 will be netted off against the trade union facility time charges for the financial year 2022/23 if de-delegation is an option in the financial year 2023/24.

Julia Holmes
Senior Commercial Business Partner
2 November 2021

7 Legal colleague comments

- 7.1 The schools’ forum’s powers here derive from the School and Early Years Finance (England) Regulations 2021 (“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 11 February 2021.
- 7.2 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)(d)). Part 6 of Schedule 2 to the SEYFR contains paragraph 44, 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;

- 7.3 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.
- 7.4 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.

Aman Patel
Solicitor (Commercial, Employment & Education Team)
3 November 2021

8. HR comments

- 8.1 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>

- 8.2 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.
- 8.3 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.
- 8.4 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.

9. Crime and Disorder Implications (If Applicable)

- 9.1 Not applicable

10. Social value considerations (If Applicable)

10.1 Not applicable

11. Equality Impact Assessment (EIA)

11.1 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.

12. Data Protection Impact Assessment (DPIA)

12.1 A DPIA is not required because there are no data protection risks associated with this proposal.

13. Carbon Impact Assessment (CIA)

13.1 Has the Carbon impact of the proposals in this report been assessed?

No



A DPIA is not required because:

Not applicable

14. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

14.1 None

15. Published documents referred to in this report

15.1 Schools Forum report 9 October 2018: De-delegation of funding for Trade Union time off for senior representatives

15.2 The national funding formulae for schools and high needs 2019 to 2020 – July 2018

15.3 Schools revenue funding 2019 to 2020 Operational guide – July 2018