

## Schools Forum - 6 December 2022

<b>Title of paper:</b>	De-delegation of funding for Trade Union time off for Senior Representatives for 2023/2024
<b>Director/ Corporate Director:</b>	Richard Henderson, Director of HR and EDI Clive Heaphy, Corporate Director of Finance and Resources
<b>Report author(s) and contact details:</b>	Sheena Yadav-Staples, HR Consultant (Employee Relations), Human Resources <a href="mailto:sheena.yadav-staples@nottinghamcity.gov.uk">sheena.yadav-staples@nottinghamcity.gov.uk</a>  Julia Holmes, Senior Commercial Business Partner, Finance <a href="mailto:Julia.holmes@nottinghamcity.gov.uk">Julia.holmes@nottinghamcity.gov.uk</a>
<b>Other colleagues who have provided input:</b>	Elaine Harrison, HR Consultant (Employee Relations), <a href="mailto:Elaine.harrison@nottinghamcity.gov.uk">Elaine.harrison@nottinghamcity.gov.uk</a>  Alexa McFadyen, Senior Solicitor, Legal Services <a href="mailto:Alexa.mcfadyen@nottinghamcity.gov.uk">Alexa.mcfadyen@nottinghamcity.gov.uk</a>
<b>Summary</b>	
<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 negotiations and consultation meetings and to represent their members in schools from 1 April 2023 to 31 March 2024.</p> <p>Under the Schools and Early Years Finance Regulations 2022, 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 member of their staff carrying out Trade Union duties.</p>	
<b>Recommendations:</b>	
<b>1</b>	For maintained mainstream primary schools to approve the de-delegation of funding for senior trade union representatives at a rate of £1.56 per pupil and a lump sum of £1,577 per school. These charges will generate a £0.158m projected income and is based upon 70 maintained schools and academies buying into the scheme.
<b>2</b>	Maintained mainstream primary schools to note that the total funding requested to be de-delegated by maintained mainstream primary schools is £0.063m. This is made up of £0.018m generated by pupil 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 7 December 2021 to de-delegate from 1 April 2022 to 31 March 2023 related to that year only, so a new approval is required for de-delegation to continue from 1 April 2023 to March 2024. Schools Forum members of maintained mainstream primary schools must decide whether this service should be provided 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 individual school budgets of maintained mainstream primary schools 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 2023 and this will be based on the costing decision taken at Schools forum on 6 December 2022.

- 1.3 **Table 1** shows the number of schools participating in the trade union arrangement from 2016/17 to 2022/23.

<b>Table 1: Number of maintained schools and academies in the trade union cover arrangement and trade union allowance for each financial year</b>							
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Maintained primary schools	39	36	30	29	29	29	29
Academies, maintained special schools and pupil referral units	34	20	34	36	37	40	41
<b>Total</b>	<b>73</b>	<b>56</b>	<b>64</b>	<b>65</b>	<b>66</b>	<b>69</b>	<b>70</b>

From the financial year 2023/24 it is forecast that there will be an additional 1 school participating in the arrangement. Therefore, we anticipate that there will be 70 schools and academies taking part in the arrangement.

- 1.4 The allowance allocated for 2023/24 to schools Trade Unions would remain the same as the last two years at 3.7 which equates to 18.5 days per week.

**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	2022/23
Per Pupil rate	£1.52	£1.52	£1.55	£1.45	£1.52	£1.64	£1.63
Lump sum per school	£1,587	£1,590	£1,622	£1,368	£1,538	£1,693	£1,653

## 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 None

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

- 6.1 As per "The national funding formulae for schools and high needs 2023-24 Policy document – July 2022" The basic structure of the schools national funding formula (NFF) is not changing in 2023/24".
- 6.2 In 2023/24 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.
- 6.3 The decision made to de-delegate in 2022 to 2023 related to that year only; new decisions are required for any service to be de-delegated in 2023 to 2024 before the start of each financial year.
- 6.4 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 estimated 2023/24 salary projections and forecast income from maintained schools, academies and maintained special schools, Nottingham Nursery and PRU's who buy into the service plus the underspend on the budget in 2021/22 (£0.019m) (based on the current rate of £1.56 per pupil and a lump sum of £1,576.55), this would generate sufficient funding to cover the costs of the salaries in the financial year 2023/24.

The calculation of the salaries assumes a pay award of 5% in September 2022 and a 3% pay award in September 2023 for teaching staff and a 2.5% pay award for non-teaching staff in the financial year 2023/24. If the underspend from 2021/22 had not been taken into account, the rates would have been £1.75 per pupil and a lump sum of £1,765.75.

The underspend of £0.019m on trade union cover budget in 2021/22 was mainly due to one union not taking up all its allotted allowance.

- 6.5 It is estimated that this combined approach should enable the facility time to be funded for 2023/24 to a breakeven position.

**Table 3** shows the forecast projection for 2023/24.

<b>Table 3: Forecast projection for the financial year 2023/24</b>		
Forecast income from maintained primary schools	£0.063m	
Forecast income from academies and maintained special schools, Hospital and Home Education PRU and Nottingham Nursery	£0.095m	
Brought forward balance from 2021/22	£0.019m	
Total Forecast income		£0.177m
Less Forecast expenditure		-£0.177m
<b>Net Surplus/(Deficit)</b>		<b>£0.000m</b>

- 6.6 In 2022/23 the recharge was based upon a rate of £1.55 per pupil and a lump sum of £1,571.23. The rates were lower than those quoted in **Table 2** due to the inclusion of the under-spend of £0.008m from 2020/21 being brought forward and taken into account when calculating the rate for 2022/23. This underspend was notified to Schools Forum on the Outturn Report 2020/21 on 29 June 2021. If the brought forward balance had not been taken into account, then the rate per pupil would have been £1.63 and the lump sum £1,653 per school.

Between the financial years 2022/23 and 2023/24 the rates have increased by 7% (£1.63 to £1.75 per pupil and £1,653 to £1,766 lump sum per school). The main reason for this movement is due to the fact that when the salaries were estimated for 2022/23 they were based on a 2% pay award for teachers pay in September 2022 but the actual teachers' pay award for the trade union representatives who are teachers was 5%, in addition the teachers' pay award for September 2023 has been proposed at 3%. The non-teaching pay award was also higher than anticipated. A pay award of 1.75% was used to calculate the salaries for non-teaching trade union representatives for the financial year 2022/23 however, the actual pay award received by non-teaching trade union representatives ranged from 6.04% to 9.23%.

On average each maintained primary school will see an increase in their charge of 0.43% year on year if the pupil numbers at the school in October 2022 remain the same as those in October 2021. This is due to inclusion of the under-spend of £0.019m from 2020/21 being brought forward and taken into account when calculating the rate for 2022/23.

- 6.7 As per "The national funding formulae for schools and high needs 2023-24 Policy document – July 2022"

### **Paragraph 12**

The 2023-24 NFF funding floor is set at 0.5%. This means that every school will attract an increase in their pupil-led funding of at **least 0.5%** per pupil, compared to their baseline.

- 6.7 Any under/overspend at the end of the financial year 2023/24 will be netted off against the trade union facility time charges for the financial year 2025/26 if de-delegation is an option in the financial year 2025/26.

Julia Holmes  
Senior Commercial Business Partner  
7 November 2022

## 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.

Alexa McFadyen  
Senior Solicitor (Employment)  
21 November

## 8. **HR Comments**

- 8.1 The relevant HR issues are included in the above report. The Trade Unions have not offered any objections to the continuing de-delegation of Trade Union facility time funding.
- 8.2 The existing 'pot' set up by the LA for academies to pay into, continues to be supported by a number of academies having previously recognised the value of the expertise provided by TU officials via effective JCNC mechanisms.
- 8.3 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 The Carbon impact assessment is not required because it is 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 and Early Years Finance Regulations 2022
- 15.2 The national funding formulae for schools and high needs 2023-24 Policy document – July 2022
- 15.3 Schools Forum report 7 December 2021: De-delegation of funding for Trade Union time off for senior representatives