

SCHOOLS FORUM - 24 September 2015

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 2016/17.	
Recommendation(s):	
1	For maintained mainstream primary schools to approve the de-delegation of funding for senior trade union representatives a rate of £1.52 per pupil and a lump sum of £1,586.86 per school. Total estimated funding requested to be de-delegated for maintained mainstream primary schools is £0.079m.
2	For maintained mainstream secondary schools to approve the de-delegation of funding for senior trade union representatives a rate of £1.52 per pupil and a lump sum of £1,586.86 per school. Total estimated funding requested to be de-delegated for maintained mainstream secondary schools is £0.004m.
3	To note this proposal is based on the assumption of academy buybacks continuing as set out in 5.2.

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 2015/16 related to that year only, so a new approval is required for this service to be de-delegated in 2016/17. 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, thirteen primary and nine secondary academies have agreed to contribute to this arrangement.
- 1.4 In 2016/17 the cost of providing this service will increase, this is due to the following factors:
 - Schools that have academised since the last years approval was given to de-delegate that have decided to make their own arrangements;
 - Prior to the financial year 2016/17 the National Association of Schoolmasters Union of Women Teachers (NASUWT) did not take up their full entitlement. However, in 2016/17 they will be taking up their full entitlement;
 - Due to the amalgamation of Fernwood Infants and Junior to become a primary school there is one less maintained school.
- 1.5 As a result of this increase in cost it is necessary to increase the funding allocated per pupil and the lump sum per school to enable the full reimbursement of schools with senior trade union representatives. This will ensure that they are not penalised by having trade union representatives employed by their schools.

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:

NUT
NASUWT
ATL
NAHT
UNISON
GMB
UNITE

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.

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 COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 5.1 Based on the latest Department for Education indicator data and known academy conversions the proposal would result in maintained mainstream primary schools de-delegating £0.079m and maintained mainstream secondary schools de-delegating £0.004m. Therefore, a total of £0.083m would be de-delegated.
- 5.2 . This proposal assumes that the academies that bought back into the service in 2015/16 continue to do so in 2016/17, plus the new academies that have agreed to buy back into the service, this would generate additional income of £0.054m.
- 5.3 For information the proposal would result in the delegation of an estimated £0.115m to academy schools. Therefore, the total amount to be delegated is £0.198m.

- 5.4 The funding delegated to academies will be passed through the local funding formula through the basic entitlement factor and the lump sum and then the total of the academies Individual Schools Budget Shares is recouped by the Education Funding Agency.
- 5.5 These calculations are based upon a rate of £1.52 per pupil and £1,586.86 per school for both maintained schools and academies.
- 5.6 This proposal is based on the proportion between the rate per pupil and lump sum remaining the same, with 70% of the costs being delegated/de-delegated on per school basis and 30% on pupil numbers. This split has been used for the last three financial years.
- 5.7 This methodology supports the aim of achieving greater value for money as the costs are spread over a greater number of schools and if more academies buy back into the service each year the cost would reduce even further that is assuming the staffing costs do not increase.

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

Legal Implications

The schools forum's powers here derive from the School and Early Years Finance (England) Regulations 2014 ("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 12 January 2015.

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 5 of Schedule 2 (Items That May Be Removed From Maintained Schools' Budget Shares) [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(4) (SEYFR, regulation 12(1)(d)). Part 5 of Schedule 2 of the SEYFR contains paragraph 30, which states, amongst other things:-

Expenditure on making payment to, or in providing a temporary replacement for, any person –

- (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 ISSUES

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 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 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>

There is broad agreement across the teaching unions (NUT/NAHT/ASCL/NASUWT) that de-delegation should be supported and that they have jointly contacted schools and academies to express this view.

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.

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

An Equality Impact Assessment is completed and is attached
Due regard should be given to the equality implications identified in the EIA.

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

None

10. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 10.1 Schools Forum report 16 October 2014: De-delegation of funding for Trade Union time off for senior representatives

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"/>	In undertaking this EIA there is no indication that this scheme will adversely impact on any of the protected groups. In fact it may impact on protected groups positively as the trade union representatives concerned are all experienced.	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 20 July 2015		Date sent to equality team for publishing:	