

SCHOOLS FORUM - 8 October 2019

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 from 1 April 2020/21.	
Recommendation(s):	
1	For maintained mainstream primary schools, to approve the de-delegation of funding for senior trade union representatives at a rate of £1.04 per pupil and a lump sum of £1,054 per school. Total funding requested to be de-delegated by maintained mainstream primary schools is £0.042m. This is made up of £0.011m generated by pupil's numbers and £0.031m 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 and secondary schools if de-delegation is approved.
- 1.2 The decision made by Schools Forum in October 2018 to de-delegate from 1 April 2019 to March 2020 related to that year only, so new approval is required for the de delegation service to continue from 1 April 2020 to March 2021. 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.
- 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. All

academies who are currently buying into the trade union facility time arrangements have been informed that participation will continue as normal unless they notify us otherwise, however those Academies who are not currently buying into the arrangements have been asked to sign up no later than 27th September 2019.

- 1.4 Currently, 25 primary academies, 5 secondary academies, 2 special schools, 2 All thorough schools and 1 PRU school have agreed to participate in this arrangement.

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:

- National Association of School Masters and Union of Women Teachers **(NASUWT)**
- National Association of Head Teachers **(NAHT)**
- **UNISON**
- **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 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.

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 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.

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.

Paragraphs 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 2019 to 2020 related to that year only; new decisions will be required for any service to be de-delegated in 2020 to 2021 before the start of each financial year.
- 5.3 As stated in para 4.1, the cost of trade union facility time is reimbursed to their place of employment. Based on the 2020/21 salary projections and forecast,

income from maintained schools and academies who buy into the service plus the underspend on the budget in 2018/19 (£0.044m) (based on the current rate of £1.04 per pupil and a lump sum of £1,054), this would generate sufficient funding to cover the costs of the salaries in the financial year 2020/21. The calculation of the salaries assumes a pay award of on average of 2%.

5.4 It is estimated that this combined approach should enable the facility time to be funded for 2020/21 to a breakeven position.

5.5 **Table 2** shows the forecast projection for 2020/21.

Table 2: Forecast projection for the financial year 2020/21		
Forecast income from maintained schools	-£0.041m	
Forecast income from academies	-£0.056m	
Brought forward balance from 2018/19	-0.044m	
Total forecast income		-£0.141m
Forecast expenditure		£0.141m
Net Surplus/(Deficit)		£0.000m

5.6 Last financial year the recharge was based upon a rate of £1.45 per pupil and a lump sum of £1,368. The rates have reduced in 2020/21 mainly due to the underspend of £0.044m in 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 £1.52 and the lump sum £1,538 per school. This increase in cost is due to an increase in the allowances given to the trade unions. 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. The trade unions have worked hard to get more academies/multi-academy trusts to buy-back into the service and this is why the costs have increased compared to 2019/20.

Julia Holmes
Senior Commercial Business Partner
27 September 2019

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.

- 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)(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;*

- 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