

Report Title	Provision of funding to pay for Professional Association and Trade Union Facilities Time
Report to	Governing Bodies of Maintained Secondary Schools and Academy Schools
Report from	Director of Children's Services and Head of Human Resources and Organisation Development
Date	17 April 2014

Executive Summary

Background and Context

Schools are required to provide reasonable time off for elected representatives to undertake trade union duties specified in the ACAS Code of Practice on time off for trade union duties and activities (Jan 2010 Code of Practice 3).

Currently all primary and special schools de-delegate/buy back funding assigned to pay for TU facilities times.

Money to pay for this provision has also been delegated to maintained secondary and academy schools.

Wirral has one of the lowest cost of facilities time as a percentage of Total School Pay Bill i.e. Less than 0.1% of Total Pay Bill.

The recommendation below formalises arrangements, where most secondary schools and academies previously bought back TU Facilities time.

Recommendation

To deliver cost effective TU facilities time through a local collective agreement, it is recommended that Governing Bodies contribute towards the facilities time for those recognised Trade Unions representing Teachers, School Leaders and Support Staff at a cost of **£3** per pupil per annum effective from 1 April 2014.

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REPORT ON THE PROVISION OF FUNDING TO PAY FOR PROFESSIONAL ASSOCIATION AND TRADE UNION FACILITIES TIME

1. Background

1.1 Schools Forum

At a meeting of the School Forum in January 2014, a decision was taken not to de-delegate monies for TU facilities time to maintained Secondary Schools in Wirral. However, there was a request for those representing secondary schools that a report be prepared to fully outline issues and options for schools. This report has been prepared to address those issues. All schools and academies have specific money in their budget to pay for the cost of TU facilities time.

1.2 Legislation

By law, under section 168-170 of the Trade Union and Labour Relations (Consolidation) Act 1992, and as specified in the ACAS Code of Practice on Time off for Trade Union Duties and Activities, trade union representatives are entitled to reasonable paid time off from their regular job to enable them to perform their union duties and to undertake relevant training.

Trade union members, including representatives, also have a statutory right to reasonable unpaid time off to undertake trade union activities. Together, these arrangements constitute facility time.

2. Impact on Schools

2.1 Trade Union Duties

Union representatives in schools are entitled to reasonable **paid** time off during working hours to take part in trade union duties, as defined in the ACAS Code of Practice on time off for trade union duties and activities are attached in Appendix 1.

It should be noted that trade union health and safety representatives and union learning representatives also have the legal right to reasonable paid time off to perform their respective duties and undertake relevant training.

2.2 Trade union activities

To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured and help is given to promote effective communication between union representatives and members in the work place. Union representatives and members are entitled to reasonable un-paid time off for trade union activities, as defined in the ACAS Code of Practice.

There is no right to time off for trade union activities which in themselves consist of industrial action. There is no statutory right for union members or representatives to be paid for time taken on TU Activities.

The Local Authority works with the Trade Unions to ensure that spending on facility time is as efficient as possible. There should be full accountability and transparency on facility time given by trade unions.

3. Costing of TU Facilities time

3.1 % of Total School Pay bill

*DfE Guidance found that many local authorities and other employers have already reduced spending to approximately 0.1% of the pay bill,

Wirral is currently less than 0.1 % of total pay bill

3.2 Funding of all TU facilities time

The legislation on time off for trade union activities applies to all employers, including for those responsible for maintained schools, academies and free schools.

The *DfE guidance in January 2014 recognises the central pooling of funding as an option and schools and academies can choose to buy into local authority pooled services, through a traded service.

4. How will contributions to TU facilities time be used?

4.1 Provide advice and representation to local members, including head teachers in respect of individual casework such as disciplinary, grievance, sickness absence and capability.

4.2 Provide representation to members on collective consultation issues such as restructuring, redundancy, collective grievance.

4.3 Contribute to the development of locally developed and collectively agreed model school employment policies and procedures.

4.4 Meet with the local authority and elected members as part of the Local Joint Negotiation and Consultative requirements, on behalf of Wirral schools and academies.

4.5 Meet with the local authority on behalf of schools to ensure that Health and Safety requirements are met in Wirral schools and academies.

4.6 Essential communication regarding local, regional and national education policies.

5. Benefits to the School of contributing to TU facilities time

5.1 Many individual schools would find it impossible to immediately find one of their own employees with the level of knowledge, training and experience necessary to undertake all the statutory duties listed in section 1 of the ACAS Code.

5.2 Even where such an employee existed, the delegated amount per school is unlikely to cover the cost of the release time necessary for that employee to retain that level of expertise – and s/he would be very under-utilised within their own school.

5.3 Alternatively, where provision is made on an Authority-wide basis, a small number of specialised individuals can service the collective and individual needs of Wirral schools very efficiently.

- 5.4 Individual members' casework needs which make up the majority of TU work are unpredictable.
 - 5.5 The cost of releasing Local Association officers from their work commitments fall unpredictably on a small number of schools.
 - 5.6 It would be unfair to expect the schools or academies with elected officers to meet the cost of their release.
 - 5.7 Provide schools with Trade union representatives who have in depth local knowledge of schools' issues.
 - 5.8 Ensures experienced Trade Union representatives dealing with all employment issues.
 - 5.9 Have established working relationships with LA Officers to support a speedier resolution of issues.
 - 5.10 Have established working relationships with Head teachers at local level.
 - 5.11 Ability to look borough wide at issues affecting schools, enabling consistency of approach across schools.
 - 5.12 Pro-active and early intervention and prevention approach to dealing with issues affecting school staff.
 - 5.13 By far the most efficient and fair system for funding of trade union facility time is one in which each individual school makes a contribution towards the cost of releasing a relatively small number of individuals who can then provide union services across all schools who buy in to the Authority pooled funding.
- 6. Drawbacks of Schools not contributing to TU facilities time**
- 6.1 Governing Bodies will still be required to ensure that they have a policy in place which meets the requirements of the Trade Union and Labour Relations (Consolidation) Act 1992 for facilities time for Trade Union Representatives. Failure to put this in place may result in the Trade Unions pursuing an Employment Tribunal claim for failure to meet the requirements outlined in this Act
 - 6.2 Pro active, early intervention and prevention of issues escalating will be reliant on local school representatives. This will result in Trade Unions requesting additional training for up to 7 x TU school representatives, in order to undertake the role, within the provision of the Trade Union and Labour Relations (Consolidation) Act 1992. This could mean up to 10 days training per representative in each of the recognised Unions per year.
 - 6.3 In addition schools would be required to release school representatives to undertake duties associated with Health and Safety and Union Learning representation.

- 6.4 All cases that cannot be resolved by school representatives will inevitably be referred to the Regional Professional Association/Trade Union Officials, who work across a wide area normally the North West of England. As a result it is likely there will be delays in trade union representation being available for employees, resulting in potential delays in the process. This could be detrimental for school employees and potentially the employer.
- 6.5 Engage in consultation with the Local Authority on the development of collectively agreed model policies and procedures minimising need for schools to develop and consult with school representatives on individual school employment policies and procedures.
- 6.6 School representatives will be entitled to time off to carry out additional duties such as individual and collective casework.
- 7. Options for delivery of a Traded Service for TU Facilities Time**
The service model proposed is based on the concept of schools working closely together and having closer collaboration.
- 7.1 Option 1**
Contribute towards a local facilities time agreement for schools to provide facilities time for those representing Teachers, School Leaders and Support Staff at a cost of **£3** per pupil.
- 7.2 Option 2**
Contribute towards a local facilities time agreement for schools to provide facilities for Teachers and School Leaders for at a cost of **£2.25** per pupil.
- 7.3 Option 3**
Contribute towards a local facilities time agreement for schools to provide facilities time for those representing Support staff at a cost of **£0.75** per pupil.
- 8. Recommendations**
It is recommended that Governing Bodies agree option 1 i.e. contribute towards a local facilities time agreement for schools to provide facilities time for those representing Teachers, School Leaders and Support Staff at a cost of **£3** per pupil.

Appendix 1

ACAS code of Practice on Time Off for Trade Union Duties and Activities (Jan 2010 Code of practice 3)

Definition of TU Duties

- negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations(Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the employer;
- any other functions on behalf of employees of the employer which are related to matters falling within section 178(2)TULR(C)A and which the employer has agreed the union may perform.
- the receipt of information from the employer and consultation by the employer under section 188 TULR(C)A, related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer;
- negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer;
- the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under regulation 9 of the Transfer of Undertakings(Protection or Employment) Regulations 2006.

Examples of trade union duties include :

a) terms and conditions of employment, or the physical conditions in which workers are required to work. Examples could include:

- pay
- hours of work
- holidays and holiday pay
- sick pay arrangements
- pensions
- learning and training
- equality and diversity
- notice periods
- the working environment
- operation of digital equipment and other machinery;

(b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers.

Examples could include:

- recruitment and selection policies

- human resource planning
- redundancy and dismissal arrangements;

(c) **allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- work-life balance;

(d) **matters of discipline.** Examples could include:

- disciplinary procedures
- arrangements for representing or accompanying employees at internal interviews
- arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

(e) **trade union membership or non membership.** Examples could include:

- representational arrangements
- any union involvement in the induction of new workers;

(f) **facilities for trade union representatives.** Examples could include any agreed arrangements for the provision of:

- accommodation
- equipment
- names of new workers to the union;

(g) **Machinery for negotiation or consultation and other procedures.**

Examples could include:

- Collective bargaining at the employer and/or multi-employer level
- Grievance procedures
- Joint consultation
- Communicating with member

Communicating with other union representatives and union full-time officers concerned with collective bargaining with the employer

Appendix 2

ACAS code of Practice on time off for trade union duties and activities (Jan 2010 Code of practice 3)

Definition of TU Activities

An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative (provided those services are services for which the Union Learning Representative is entitled to time off).

Example include

- Attending work place meetings to discuss and vote on the outcome of negotiation with the employer. Where relevant, with the employers agreement, this can include attending such workplace meetings
- Meeting full time officers to discuss issues relevant to the workplace
- Voting in Union elections
- Having access to services provided by the union learning representative

Where the ember is acting as a representative of a recognised union, activities can be, for example, taking part in:

- Branch, area or regional meetings of the union where the business of the union is under discussion
- Meetings with official policy making bodies such as the executive committee or annual conference
- Meetings with full time officers to discuss issues relevant to the workplace