

## Appendix B

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| <b>Statutory responsibilities for all schools which are to retain facilities funding (non de-delegation of funding)</b> |  |
| <b>Frequently Asked Questions</b>   |  |
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### 1. Introduction

In light of the changes to the schools' funding formula, with effect from 1<sup>st</sup> April 2013 schools that have voted to retain the allocation of monies for facilities time for Trade Union Representatives (not to de-delegate), must consider how each school will comply with its statutory obligations for the provision of facilities time for trade union representatives within school.

The following questions and answers document sets out the current legal position and highlights areas for Headteachers and Governing Bodies to consider to ensure that each school within the phase meets its legal obligations.

The content of the report is based on both national legislation in respect of trade union duties and the statutory provisions contained in the School Teachers Conditions of Service (Burgundy Book) and NJC Conditions of Service (Green Book) and the regulations with respect to the school's formula funding.

### 2. What is the legal position in relation to trade union facilities time and representation?

- 2.1 Union representatives have had statutory rights to reasonable paid time off from employment in order to carry out trade union duties and to undertake trade union training since the Employment Protection Act was issued in 1975. Union duties must relate to matters covered by collective bargaining agreements between employers and trade unions and relate to the union representative's own employer.
- 2.2 All the statutory provisions for time off were brought together in s168 – 170 of the Trade Union and Labour Relations (Consolidation) Act, 1992. This was subsequently amended by s43 of the Employment Act, 2002, which added a new right for Union Learning Representatives to take time off with pay during working hours. The rights to paid time off were extended to union representatives engaged in duties related to redundancies under s188 of the 1992 Act and to duties in connection with the Transfer of Undertakings (Protection of Employment) Regulations, 2006.
- 2.3 In general terms this means that properly appointed trade union representatives are entitled to paid time off to undertake the following activities:

| Type of union representative  | Rights   |
|---|--|
| Union representatives appointed to engage in collective bargaining on behalf of their members. TULR(C)A, 1992 | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Paid time off for training</li> <li>• Protection against dismissal or detriment</li> </ul> |

| Type of union representative  | Rights   |
|---|--|
| Union learning representatives appointed to promote learning. TULR(C)A 1992   | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Paid time off for training</li> <li>• Protection against dismissal or detriment</li> </ul>   |
| Health and safety representatives appointed by trade unions in workplaces where unions are recognised.<br><br>Safety Representatives and Safety Committees Regulations 1977 | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Paid time off for training</li> <li>• Facilities to help them perform their duties</li> <li>• Protection against dismissal or detriment</li> </ul> |
| Information and consultation representatives.<br><br>Information and Consultation of Employees Regulations, 2004  | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Protection against dismissal or detriment</li> </ul>   |
| Pension representatives elected for the purpose of consultation over changes to pension arrangements.<br><br>Occupational and Pensions Pension Scheme Regulations, 2006     | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Protection against dismissal or detriment</li> </ul>   |
| TUPE representatives, where a trade union is recognised for collective bargaining purposes.<br><br>TUPE, 2006 as amended.   | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Paid time off for training</li> <li>• Facilities to help them perform their duties</li> <li>• Protection against dismissal or detriment</li> </ul> |
| Collective redundancy representatives where a trade union is recognised for collective bargaining purposes. TULR(C)A, 2006.   | <ul style="list-style-type: none"> <li>• Paid time off to carry out their duties</li> <li>• Paid time off for training</li> <li>• Facilities to help them perform their duties</li> <li>• Protection against dismissal or detriment</li> </ul> |

2.4 In addition to the legal requirements, according to the ACAS Code of Practice on Time Off for Trade Union Duties and Activities, 2010, which is relied upon in Employment Tribunal hearings, a reasonable employer will provide paid time off for union representatives for the following activities:

- Collective bargaining
- Working with the management side
- Communicating with union members
- Liaising with the trade union
- Handling individual disciplinary and grievance matters on behalf of employees.

2.5 ACAS advises that the term 'collective bargaining' includes the following activities:

- Negotiating terms and conditions of employment, including hours of work, pay, holidays, sick pay, pensions, learning, equality and diversity, notice and the working environment
- Matters relating to recruitment, HR planning and redundancy or dismissals for whatever reason, including redundancy
- Allocation of work or the duties of employment including job grading, job evaluation, job descriptions, flexible working practices and work/life balance

- Matters relating to discipline
- Representation of members at hearings
- Participation in the negotiation or consultation for an employer and/or multiple employers.

2.6 An employer who permits a union representative time off for any of the above union duties must pay them for the time taken off work. The employer must pay **either** the amount the union representative would have earned had they worked during their time off on union duties, **or**, where earnings vary with the work undertaken, an amount calculated by reference to the average hourly earnings for the work they are employed to do.

2.7 There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work. The law requires that the amount and frequency of time off should be reasonable in all the circumstances.

2.8 In addition to the statutory position on paid time for trade union representatives and the ACAS Code of Practice, the Conditions of Service for School Teachers (Burgundy Book) and NJC Conditions of Service (Green Book) also provide regulations on this issue. Appendix III – Agreement on Facilities for Representatives of Recognised Teachers' Organisations of the Burgundy Book (Teachers) sets out the collective agreement on facilities for representatives of recognised teachers' organisations. Part 2, Section 18 of the Green Book (Non Teachers) outlines the requirement to provide paid time off for trade union representatives to carry out their functions. These documents provide the framework on which all local authorities are required to base local arrangements for facilities time. Both the Burgundy and Green Book conditions are set out in Annex 1 of this document.

### **3. What are the current arrangements for collective bargaining within Central Bedfordshire Council?**

3.1 The Council currently recognises six teacher trade unions and professional associations and two support staff trade unions to represent the schools' workforce in relation to collective bargaining. Under the current consultation and facilities agreements, elected representatives receive a limited amount of funding to allow them to discharge their roles, which is paid under a formal facilities agreement.

3.2 Trade union representatives are appointed from Central Bedfordshire Council's schools' workforce, so a paid official may be based in any school within the county and can be called on to represent union members across the sector, for example a union representative working in a secondary school could represent a teacher in a maintained primary school and vice versa. The school where the trade union representative is based receives reimbursement to cover his/her time spent on trade union duties.

3.3 All teacher unions receive a fixed amount in order to fund the following specified activities:

- i) regular attendance at formal consultation and negotiating meetings with officers and/or elected members e.g. JCNC Working Party, JCNC Forum, EJCC etc;
- ii) attendance at policy development meetings with officers e.g. to develop the model HR policies used in schools (recent examples include the appraisal policy; the capability policy etc);
- ii) attendance at case work meetings with headteachers, governors and others in schools e.g. disciplinary hearings, redundancy consultations, TUPE meetings, etc.

- 3.4 The Council currently re-imburses the teaching trade unions at a rate of MPS pt 6 (irrespective of actual salary).

This rate applies, irrespective of the teacher representative's own salary point, so, for example, the NAHT receives the same rate as the NUT.

- 3.5 The support staff trade unions also receive funding towards the salary costs of their respective branch secretaries based on a fixed point of 36 of the NJC salary scales.

#### **4. What were the options in relation to the de-delegation of facilities funding?**

- 4.1 Under the latest reforms to the school funding formula, from April 2013 onwards schools had the following options in relation to trade union facilities budgets:

- a) retain facilities funding in individual school budgets;
- b) de-delegate the funding and assign it to the local authority to hold on behalf of schools.

- 4.2 Following the consultation process held by the Council in September 2012 in relation to the proposed school funding for 2013/14 the Schools Forum met on 22<sup>nd</sup> October 2012.

- 4.3 Following the outcome of a decision in relation to de-delegation of facilities funding for each school phase and taking into account the statutory requirement for paid time off to undertake union duties, Headteachers and Governing Body's of any phases which retain the delegated facilities funding will need to consider the mechanisms at school-level to undertake all of the activities currently undertaken on a countywide basis. As a separate entity, each school has a legal responsibility to meet the obligations set out in national legislation, as outlined in paragraphs 2.1 – 2.8, and the Burgundy (Teachers) and Green book (NJC) conditions of service.

- 4.4 Currently for all maintained schools consultation on HR policy and practice is undertaken at county level which avoids the need for each school to consult on every issue. Under the current approach, model policies and working practices are discussed and agreed with the recognised trade unions, which are then notified to schools and their personnel providers. Governing Bodies are strongly recommended to adopt the collectively negotiated policies and procedures to ensure consistent practice in schools across the council.

- 4.5 The Council does not have access to separate funding which would support trade unions representing the schools' workforce as the funding is received from schools to meet this cost. The Council has entered into a Facilities Agreement with the Trade Unions which details the calculation of facilities time within Central Bedfordshire Council.

It is advised that any schools within a phase which has determine not to de-delegate funding to the Council for Facilities Time enters into a Facilities Agreement for their school. It is advised that advice is taken from your HR provider in regarding entering into consultation in relation to a specific facilities agreement for your school.

In accordance with the legislation outlined in question 2 each trade union represented in a school could decide to appoint a local 'steward', who would be entitled to paid time off to carry out trade union duties. In practice, this could result in an overall increase in the monies paid to the trade unions due to the loss of economies of scale through the work of the county representatives and may lead to inconsistencies emerging in practice between schools.

4.6 Headteachers and Governors should therefore consider how employee relations issues will be managed by the school and will need to consider, in consultation with the Regional Officers of the trade unions whether 'locally' appointed representatives employed by the school will undertake case work e.g. disciplinary, grievance, capability hearings etc. It is likely that regional officers of the trade unions may wish to attend to particular casework, particularly where locally appointed officers are inexperienced, and therefore Headteachers and Governors will need to be aware that this may lead to delays in managing the timing of disciplinary, grievance and capability hearings, as regional officers from the trade unions will have limited availability to attend school hearings. This is also likely to affect discussions over TUPE transfers, school restructures and reductions in staffing, which often require an early response in order to meet teacher notice dates. It is advised therefore that the setting of meetings or planning of consultation processes in relation to the above will need to be arranged in advance of current timescales in order to ensure appropriate representation in accordance with the law is afforded to all employees and trade unions.

**5. Will each school be required to enter into a facilities agreement with the recognised trade unions?**

The current funding for facilities time and therefore the facilities agreement that is currently in place will remain until 31<sup>st</sup> March 2013. It is advised therefore that all schools whose funding is not de-delegated back to the Council consider how they plan to manage the facilities time for trade union representatives within their school, based on the information contained within this questions and answer document.

It is also advised that schools consider a facilities agreement with the recognised trade unions ahead of the 1<sup>st</sup> April 2013 when the current arrangements in place with county representatives come to an end.

**6. Which Trade Unions and Professional Associations are recognised by Central Bedfordshire Council?**

The following are recognised by CBC for trade union activities and collective bargaining purposes:-

NUT, ATL, VOICE, NAHT, NASUWT, ASCL, GMB, UNISON

**7. Can my school continue to de-delegate the facilities funding to the Council although the phase has voted to retain the funding is this possible?**

Yes, in accordance with DfE consultation on funding reform schools within a phase that opted to retain the facilities funding can request for the Council to administer this on their behalf. The Council however is able to charge an administration fee for this service.

**8. If my school wishes to request de-delegation will we retain the current facilities arrangements with access to county representatives and collective bargaining?**

Yes if facilities funding is de-delegated to the Council the existing arrangements will continue at a county level.

Should you wish to discuss this option further please contact David Waller, Employee Relations and Policy Manager at [david.waller@centralbedfordshire.gov.uk](mailto:david.waller@centralbedfordshire.gov.uk)

**9. Where can my school receive further advice on this matter?**

It is advised you contact your HR provider to obtain further advice and guidance in relation to consulting with the recognised trade unions on a bespoke facilities agreement for your school.

Should you wish to discuss the information contained within the questions and answers document please e-mail David Waller, Employee Relations & Policy Manager by e-mail to [david.waller@centralbedfordshire.gov.uk](mailto:david.waller@centralbedfordshire.gov.uk) or telephone 0300 300 6053 or Kerry Mullen, Senior Human Resources Manager, Schools Statutory Services to [kerry.mullen@centralbedfordshire.gov.uk](mailto:kerry.mullen@centralbedfordshire.gov.uk) or telephone 0300 300 6568.

## **Annex 1**

### **a) Appendix III of the Burgundy Book (Teachers Conditions of Service)**

#### **AGREEMENT ON FACILITIES FOR REPRESENTATIVES OF RECOGNISED TEACHERS' ORGANISATIONS**

##### **Introduction**

1. This agreement between the Council of Local Education Authorities (CLEA), acting on behalf of the Local Government Association, and the teachers' organisations contains the principles and practices which are recommended to local education authorities and governing bodies in respect of the facilities to be made available to those teachers, not being paid officials of any of the recognised teacher organisations, who are representatives of these organisations. Each local education authority is advised to agree jointly with each of its recognised teacher organisations the detailed arrangements for the granting of facilities in accordance with the provisions of this agreement. Disagreements on points of principle and any requests for clarification may be referred to CLEA for discussions with the national teachers' organisations.

##### **General Principles**

2. This agreement is based on a belief that both the teachers' organisations and the employing authorities accept their joint responsibility for ensuring a well ordered system of trade union organisation and industrial relations, and on a recognition of the contribution that can be made by the teachers' organisations and their local representatives to the smooth running of the education service at local and national levels. It is agreed that in jointly determining the nature and extent of the facilities required locally, and in their use, the parties to the local agreement will have regard not only to the value of the agreed facilities for effective employee representation as a means of promoting good industrial relations, but also to the need to avoid unnecessary cost, to maintain the effective running of the schools where the teacher representatives are employed, and to recognise that the provisions of the agreement will have to be introduced within the resources available to the employing authorities.
3. An accredited representative of a recognised teachers' organisation will be a teacher who is:
  - (a) a member of the national executive or other national committee of his organisation, or a representative of his organisation appointed by the national executive to serve on a national body;
  - (b) a local officer of such an organisation whose necessary official organisation duties are effectively at local authority level. The relations and negotiations with a local education authority shall be the sole responsibility of the main unit of local organisation. The activities in which these local teacher representatives will be jointly involved with the LEA and governing bodies will include both individual and collective issues. In order to act effectively, the teacher representatives will need to put views to the authority concerned as appropriate, to consider proposals, to

conduct correspondence and to consult members of their associations individually or collectively;

(c) a local officer whose duties are at the lower level of an association within the area of the main unit of local organisations;

(d) a school representative whose duties will be limited to activities which are a necessary part of his/her duties for his/her organisation and its members within the school in which he/she is employed.

In certain circumstances a representative may have responsibility for more than one of these functional levels. For their part the recognised teachers' organisations undertake to ensure that their accredited representatives locally understand the extent of their authority and responsibility as teachers' representatives.

4. It will be the responsibility of the recognised teachers' organisations to notify the local education authority and individual head teachers of the names of its accredited representatives and it will be to the accredited representatives only that the recommended opportunities and facilities are extended. It is appreciated that in very large or split site schools organisations may wish to appoint more than one representative, while in those areas where there are very small schools organisations may wish to have one representative to service more than one school.
5. The principal matters with which the appropriate accredited representative will deal, in accordance with the responsibilities defined in paragraph 3, are as follows:
  - (a) matters arising out of the use of grievance and disputes procedures which have been agreed between the teachers' associations at authority level and the local education authority and governing bodies;
  - (b) responsibilities of the teacher representatives to their unions (e.g. attendances as delegates to their national conferences);
  - (c) responsibilities of the teacher representatives in connection with the interests of their members in the schools;
  - (d) functions connected with the training of teacher representatives, including attendance at training courses arranged by the recognised teacher organisations at national, regional or authority level for this purpose. In these respects consultation with the authority will be part of those functions.
6. It is expected that (b) above will include the involvement of members of the local committee of recognised teacher organisations in attendance at the meetings of those committees, which will not be expected to meet earlier than 4:00 p.m. on any school day, other than in exceptional circumstances<sup>6</sup>. Item (c) is likely to include, without interfering with the normal functioning of the school, the convening of meetings of newly appointed teachers for the purpose of meeting them and explaining the advantages of membership of a recognised organisation.



## Facilities for Accredited Representatives

7. It is recommended that local agreements on the provision of facilities for the local officer of the recognised teachers' organisations should include:

- (a) arrangements for carrying out his or her association's responsibilities within the schools and for obtaining permission to leave the school in which he or she is employed so that he or she can perform his or her functions as an accredited representative;

- (b) provision of lists of newly appointed teachers in the authority's area and arrangements for communication direct with the new teachers;

- (c) provision annually of a list of the teachers employed in the schools of the LEA by the means most convenient to the authority;

- (d) arrangements for use of accommodation in schools or other premises of the authority for association meetings;

- (e) arrangements of the use of the local authority's distribution system to schools for the purposes of official union communication with their members, subject, if necessary, to approval by the national union or association concerned;

- (f) arrangements for the deduction of membership subscriptions at source where this is requested by any local association of a nationally recognised teachers' organisation. It will be for the individual member to decide whether to opt for deduction at source.

*6 Where meetings called for 4:00pm would adversely affect the school day, as might be the case when committee members in rural areas may have to travel significant distances to attend such meetings, a later starting time should be arranged.*

*7 It is expected that such agreements will be no less favourable than those already applicable in the area concerned or any similar agreements which authorities have made with recognised unions in respect of other groups of their employees, particularly with regard to the terms of sub-paragraphs (d), (e) and (f) of this paragraph.*

*8 The lists referred to may, if any authority so wishes, be provided in the form of copies of School returns.*

8. Absence from teaching duties for the performance of their responsibilities as local officers of the recognised teachers' organisations is to be allowed without reduction in pay. A scale providing for the maximum amount of leave with pay permitted to the local officers should be negotiated locally, and have regard, inter alia, to the number of members of the organisation concerned who are employed by the local authority and serviced by the officers in question.
9. The likely extent of the time required by accredited representative for the performance of their level of responsibilities as representatives of the recognised teacher organisations should be assessed in accordance with an estimate of their local involvement. They should not unreasonably be refused the time necessary for the performance of their responsibilities. The time which these responsibilities is likely to occupy should be taken into account in respect of its effect on their teaching duties.

10. The accredited school representatives of the recognised teachers' organisations should be permitted reasonable opportunities and be given the necessary facilities to discharge their functions as provided for in the ACAS Code, namely:

- (a) union matters such as recruitment, maintaining membership, collecting contributions and communicating with members;
- (b) within the responsibilities conferred on them by their respective organisations, industrial relations matters within the individual school such as the handling of members' grievances.

11. The facilities envisaged are as follows:

- (a) notice board facilities to be provided by the LEA or governing body without charge and the titles of the organisations to be inscribed on the board or boards. Multi-association boards should be used wherever possible;
- (b) use of telephone with reasonable privacy (if available), with payment for outgoing calls;
- (c) provision of a room for a meeting with the organisation's members as required, providing reasonable notice is given;
- (d) use of school typing, duplicating and photocopying equipment, where available, for essential union work within the school providing this does not interfere with the work of the school and on a basis of repayment by the organisation concerned for the materials used.

12. Local officers should be provided with the documents which set out the pay, conditions of service and the regulations of the local authority which apply to the teachers employed in the authority's area. Accredited school representatives should be provided with access to such documents and also with information as to the structure and allocation of promoted posts applicable to their own schools and with the articles of government. These documents should be supplied without charge.

### **General**

13. Guidance on aspects of this agreement is contained in the accompanying Commentary. Any changes will be notified to those concerned.

## **COMMENTARY ON ASPECTS OF THE AGREEMENT ON FACILITIES FOR REPRESENTATIVES OF**

### **RECOGNISED TEACHERS' ORGANISATIONS**

1. Local Authorities have been advised that they should pursue policies designed to fulfil the recommendations of the ACAS Code of Practice with regard to facilities for Union representatives. Employment protection legislation requires employers to allow officials of independent trade unions, including employees who are accredited as representatives of recognised unions (or associations) to act on behalf of union members in the establishments where they themselves are employed, reasonable time off from work with pay for trade union activities which are a necessary part of the official's duties in connection with the employer's own organisation. The legislation provides for such an employee to complain to an Industrial Tribunal that permission has been unreasonably refused to allow him/her time off from work for these purposes.
2. The Agreement arrived at between CLEA and the recognised teachers' organisations seeks to set out in detail the manner in which the recommendations of the ACAS Code on facilities for trade union representatives should be applied within the education service. The purpose of this Commentary is to offer guidance to authorities and teachers' organisations on aspects of that agreement, and the issues which stem from it.
3. It is recognised by CLEA that if the provisions of the agreement are to be given effect without imposing additional burdens on teaching staffs it may be necessary for LEAs to provide additional staffing resources in individual schools and authorities are accordingly recommended to make such provision as far as possible within the resources available to them and subject to the constraints of LMS formulae.
4. It will be noted that the agreement does not specify any limit on the amount of paid leave of absence which shall be granted to national representatives. It is accepted that individual representatives will be willing to inform the employing authority of the reasons for absence if the authority thinks it is necessary to ask.
5. The agreement provides for leave of absence with pay to be permitted for local officers in accordance with a scale to be negotiated locally and related, inter alia, to the number of members of an organisation employed in a LEA area and serviced by the officers in question.
6. With the developments taking place in the field of industrial relations, health and safety at work, and similar matters, the teachers' associations are giving increased attention to training programmes for their accredited representatives and to the needs of the schools. Authorities should therefore give encouragement and support to accredited union representatives wishing to attend courses for this purposes and teachers' organisations should regard to the needs of the school in arranging their training programmes. When arranging them they should consult with the LEA concerned before making any arrangements to hold a training course during term time.

7. The recommendations in the agreement are not intended to alter the relations which at present exist between the recognised teachers' organisations and individual local education authorities, particularly so far as negotiations are concerned.

## **b) Part 2, Section 18 of the Green Book**

### **18.Trade Union Facilities**

18.1 Authorities shall provide the recognised trade unions with facilities necessary to carry out their functions, including paid leave of absence to attend meetings concerned with the work of the NJC and Provincial Councils and the operation of a check off system whereby, with the consent of the individual, trade union dues are deducted from pay.

