

**Meeting:** Central Bedfordshire Schools Forum

**Date:** 29 January 2018

**Subject:** De-delegated Trade Union Facilities Time Funding

**Report of:** Director of Children's Services

**Summary:** To seek approval for the continuation of funding for facilities release time for Trade Unions and Professional Associations. This would be through de-delegation (where appropriate) for maintained Lower, Primary, Middle and Secondary Schools. Nursery and maintained Special Schools would be invoiced directly, subject to their agreement to release funds for this purpose.

Contact Officer: David Waller, Policy & Implementation Manager Priory House, Bedford

Public/Exempt: Public

Wards Affected: All

Function of: Council

#### **RECOMMENDATION(S):**

**The members of the School's Forum who are entitled to vote are asked:**

- 1. To agree to de-delegate funding from the Lower/Primary School Phase for the use of Trade Union facilities time, £2.48 per pupil.**
- 2. To agree to de-delegate funding from the Secondary School Phase (Middle & Upper) for the use of Trade Union facilities time, £2.48 per pupil.**
- 3. To continue to allocate the per pupil funding cost of Trade Union facilities time equally across all phases.**
- 4. Forum decision required**

**Please note that the vote is for Maintained Lower and Primary and Secondary phase schools only. Academy Schools are not included in this report.**

**Maintained Nursery and Special Schools are included in this report however do not have a vote.**

## Background

1. Union representatives have a statutory right to reasonable paid time off from employment to carry out trade union duties and to undertake trade union training. (Trade Union and Labour Relations (Consolidation) Act 1992). There is also a need for schools to consult with the trade unions in accordance with School Teachers Pay and Conditions.
2. It is recognised that trade unions and professional associations make a significant contribution to the smooth running of schools, both locally and nationally. The funding system for schools should include full recognition of school workforce trade unions, and should enable the effective engagement of school workforce trade unions in local consultation and collective bargaining.
3. During the current period of facilities funding the Trade Unions have entered into collective consultation in relation to the following:
  - school policies and processes with officers of the Council;
  - the representation of staff in the consultation for the closure of three middle schools and subsequent consultations during the on-going structural reviews of the schools that are to close;
  - the TUPE transfer of schools to Academy status and service provision TUPE transfers both into schools and out of schools;
  - ongoing support and representation of members relating to school based matters.
4. From 2013/14 the Dedicated Schools Grant (DSG) was split into three notional funding blocks:
  - Schools Block
  - Early Years Block
  - High Needs Block
5. The Schools Block includes the delegated budgets of Lower, Middle and Upper Schools. Funding within the Schools Block that is currently retained by the Authority must be delegated to schools. However the following exceptions, applicable to Central Bedfordshire, are areas where decisions regarding the de-delegation of funding may be made.
  - a) Contingencies (including previous amounts for schools in financial difficulties)
  - b) Staff costs – supply cover (Facilities Time for Union Duties)
6. The decision relating to de-delegation within each phase is to be determined by those members of Schools Forum who represent maintained schools.
7. It is not possible to de-delegate funding from Nursery and Special Schools therefore Maintained Nursery and Special schools will be invoiced for the associated costs on an equivalent cost per pupil basis of £2.48 per pupil.

8. In 2014/15 it was agreed by the members of Schools Forum that the costs would be divided equally across all phases. It is recommended that this arrangement continues for 2017/18 so that the costs are proportioned across the phases.

### 2017/18 Facilities Time Budget Update

9. The following table sets out the expenditure to 31 December 2017 (to Quarter 3).

	<b>BUDGET</b> £	<b>SPEND</b> £	<b>BALANCE</b> £
Budget Allocation 2017/18	51,326		
VOICE		0	
ASCL		0	
NUT		0	
NASWUT		0	
ATL		6,337	
NAHT		1,389	
Unison		6,634	
GMB		9,202	
<b>Total</b>	<b>51,326</b>	<b>(23,562)</b>	<b>27,764</b>

10. The expected spend to the end of the year is £50,795.
11. The NASUWT and NUT have not made a claim in 17/18 to date as CBC are working with them in identifying a re-imbursment method suitable to all parties. This will be resolved by the year end and all relevant claims will be paid. This is reflected in the expected spend to the end of the year of £50,795.
12. ASCL and VOICE although whilst recognised and are provided Facilities Time, do not currently have a Local Trade Union representative and have therefore not made any claims for recompense. The allocation for ASCL and ATL for 2017/18 has be brought forward as an underspend and used to reduce the cost per pupil for 2018/19.

### Cost of Facilities Funding 2018/19

13. The estimated total cost for facilities funding for 2018/2019 for Maintained Primary and Secondary phases is £48,546 and the estimated cost per pupil is £3.26. The estimated total cost for Nursery and Maintained Special Schools is £1,888.45 and the estimated cost per pupil is £3.26.
14. The estimated total cost has been calculated by multiplying the actual cost per pupil rate for 2018/19 by the October 2017 pupil numbers census.

15. A remaining balance of £12,000 from the 2016/17 funding period was carried forward to the 17/18 funding period therefore reducing the costs per pupil. A further balance of £12,000 is estimated to be brought forward to be offset against the 18/19 expenditure therefore also reducing the costs per pupil for the 18/19 funding period.
16. The brought forward balance is drawn from funds not claimed by the Trade Unions in the 17/18 funding year.
17. The following table sets out the estimated costs as a result of the off set of remaining balance.

<b>Estimated total facilities funding 2018/19 Maintained Primary and Secondary,</b>	<b>Cost per pupil</b>	<b>Remaining balance 2017/18 for maintained Primary, Secondary nursery and special schools</b>	<b>Estimated adjusted total facilities funding for 2017/18 Maintained Primary and Secondary</b>	<b>Revised cost per pupil 2017/18 (All phases)</b>
£48,546	£3.26	£12,000	£36,546	£2.48

18. The estimated total cost for facilities funding for Maintained Primary and Secondary Phases including the off set of 2017/18 remaining balance is £36,546 which equates to £2.48 per pupil. The remaining balance of funds of £12,000 for 2017/18 has been offset against the 2018/19 facilities period only.
19. The number of pupils in schools maintained by Central Bedfordshire Council has been based on the October 2017 census.
20. It is important to note that the overall cost and cost per pupil is also affected by Trade union membership numbers. These are currently based on 2017/18 figures provided by the Trade Unions based on membership as at 31 July 2017.
21. The NUT and ATL Trades Unions have amalgamated to form the National Education Union (NEU). Transition arrangements are in place for 2018/19 and therefore the unions continue to be recognised separately for the purposes of facilities time funding. From 2019/20 the NEU will be recognised as one Union and membership figures and facilities time calculated accordingly.
22. Appendix A provides a frequently asked questions document for all schools regarding the statutory responsibilities that they need to comply with should the school elect not to de-delegate funding for Facilities time. These statutory responsibilities are contained within employment legislation and also the Teachers Conditions of Service (Burgundy book) and NJC Conditions of Service (Green book).

## **Trade Union Facilities Agreement – Schools**

23. The Facilities Agreement provides detail on the membership numbers and eligibility of trade unions and professional associations to claim payment in order that schools be able to adequately cover staff time lost. Eight Trade Unions and Professional Associations are formally recognised as part of this agreement.
24. Members of the Schools Forum are requested to continue to support the work with the Trade Unions and Professional Associations by continuing to agree funding for 2018/19 as recommended in this report.

### **Appendices:**

**A** Retained Facilities Funding Frequently Asked Questions Document

**Background Papers:** (open to public inspection) None

## Appendix A

### 1. Introduction

In light of the changes to the schools' funding formula, with effect from 1<sup>st</sup> April 2013 those schools that have voted to retain the allocation of monies for facilities time for Trade Union Representatives (not to de-delegate), or due to the schools block their phase is in is unable to vote to de-delegate the monies, 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.

#### Q1. What is the legal position in relation to trade union facilities time and representation?

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.

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>
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.  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.  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>

Type of union representative	Rights
Pension representatives elected for the purpose of consultation over changes to pension arrangements.  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.  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>

## Q2. What Other documents should I refer to?

A 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 Conditions of Service for Teachers (Burgundy book) sets out the collective agreement on facilities for representatives of recognised teachers’ organisations.

Part 2, Section 18 of the NJC 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.

Copies of the relevant sections can be requested from human resources whose contact details are provided at the end of this document.

## Q3. Which Trade Unions and Professional Associations are recognised by Central Bedfordshire Council?

A. The following are recognised by CBC for trade union activities and collective bargaining purposes (but not all receive an allocation):-

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

The NUT and ATL have amalgamated to form The National Education Union (NEU). This amalgamation will be reflected in 2019/20 following the end of the NUT and ATL transition arrangements.

**Q4. What paid time off is a union representative entitled to?**

A. The ACAS Code of Practice on Time Off for Trade Union Duties and Activities, 2010, which is relied upon in Employment Tribunal hearings, state 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.

**Q5. What is 'collective bargaining'?**

A. 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.

**Q6. What are the current arrangements within the Central Bedfordshire Council?**

A CBC has a Facilities Agreement (Schools) with the recognised Trade Unions which sets out the agreements reached in order for them to discharge their roles. A copy of the current Facilities Agreement (Schools) can be found on the CBC Schools Portal.

**Q7. Do the trade union representatives in CBC come from the workforce?**

A. Yes, 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.

**Q8. Does the employing school of a representative receive re-imburement?**

A. Yes, the school where the trade union representative is based receives reimbursement from the de-delegated facilities time budget to cover his/her time spent on trade union duties.

### **Q9. What duties are undertaken and funded in Central Bedfordshire?**

A.

- regular attendance at formal consultation and negotiating meetings with officers and/or elected members e.g. Education Employee Relations (EER) Working Party etc;
- attendance at policy development meetings with officers e.g. to develop the model HR policies used in schools (recent examples include the sickness absence policy; the paternity, maternity and shared parental leave policy);
- Attendance at case work meetings with head teachers, governors and others in schools e.g. disciplinary hearings, redundancy consultations, TUPE meetings, etc.

### **Q10. What are the options in relation to the de-delegation of facilities funding?**

A. Under the latest reforms to the school funding formula, from April 2013 onwards schools have 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.

### **Q11. If my school wishes to request de-delegation will we retain the current facilities arrangements with access to county representatives and collective bargaining?**

A Yes, representatives would continue to work with schools and support their members in schools with employee relation case work e.g. disciplinary hearings, redundancy consultations, TUPE meetings, etc. 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 this 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 advised to adopt the collectively negotiated policies and procedures to ensure consistent practice in schools across the council.

### **Q12. What if my school chooses not to de-delegate?**

Experienced local representatives/ branch secretaries would not attend case work Meetings.

Each recognised trade union of CBC 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.

It is likely that regional officers of the trade unions may wish to attend to particular casework, particularly where locally appointed officers are inexperienced. 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.

You are strongly advised to speak to your HR provider before deciding not to de-delegate.

**Q13. Will each school which chooses not to de-delegate be required to enter into a facilities agreement with the recognised trade unions?**

A. The current funding for facilities time and therefore the facilities agreement that is currently in place will remain until 31st March 2018. Schools whose funding is not dedelegated back to the Council should consider how they plan to manage the facilities time for trade union representatives within their school.

It is also advised that schools consider a facilities agreement with the recognised trade unions ahead of the 1st April 2018 when the current arrangements in place with county representatives would come to an end.

**Q14. Where can my school receive further advice on this matter?**

Should you wish to discuss the information contained within the questions and answers document please e-mail David Waller, Policy & Implementation Manager at [david.waller@centralbedfordshire.gov.uk](mailto:david.waller@centralbedfordshire.gov.uk) or telephone 0300 300 6053.