

Report for Schools' Forum

26.11.13

The trades unions requests that de-delegation of Facility Time funding be continued, because it is in the best interests of all concerned: pupils, school leaders, and school staff.

Good relations

- Retaining de-delegated funding for facilities time is logical and cost-effective. During 2013- 2014, de-delegated funding for has enabled a significant contribution to good employer/employee relations at county level and for individual schools.
- In turn, this supports the quality of pupils' education by avoiding both disruption and low staff morale.

Policy development

- During this year, there has been a great deal of work done at county level on policies; for example on Pay, on Appraisal, and on Capability, with still further work to be completed on Disciplinary, Grievance, Fixed Term contracts, Harassment & Bullying, and Paternity.
- The model policies can be adopted by schools, thereby avoiding the management of each school spending scarce resources on developing and negotiating its own policies.

Representation

In 2013-14, county-based TU representatives have supported:

- groups of members in particular schools; e.g. when their school is in Special Measures.
- individual members have been supported formally; e.g. on Appraisal, on Capability, and at disciplinary hearings.
- individual members have been supported informally; e.g. with advice on Return to Work meetings.

Conversely, no centrally-funded facility time means losing 7 of the best

1. Informal discussion between a member of staff and their experienced county-based TU representative quite often prevents potential issues ever coming to the attention of schools; e.g. a putative grievance which is never in fact submitted.
2. Early resolution of issues, thereby saving and avoiding unnecessary escalation of costs to schools, and unnecessary workload for school leaders, on matters such as disciplinary, grievance, and capability.
3. Less disruption because a county-based union officer can help school leaders and trade union members understand the impact of organisational change; e.g. school reorganisations, academy transfer consultations.
4. The expertise of county-based TU representatives, meaning that every school TU rep would need a lot of time off with pay (a statutory requirement) to attend the requisite intensive training courses.
5. A quicker response because a county-based TU representative will usually be available sooner than union Regional Officers, who cover much larger areas.

6. Discussions and negotiations through regular meetings with HR during working hours; e.g. consultation on proposed policies and procedures. This saves each school individually having to go through the process with school TU representatives.
7. Attendance during the regular working day of county-based TU representatives at meetings; e.g. disciplinary, grievance, ill health, and capability (formal or informal), consultation meetings on changes in working arrangements. Instead, such meetings would have to take place evenings or weekends.

Attached are 4 appendices, giving more background.

Appendix 1

Time spent on union duties by county-based representatives

In the first 6 months of 2013-14, supported by de-delegated Facility Time budget, county-based representatives of teachers' unions have undertaken numerous duties (time sheets available on request) which can be grouped under the following headings:

- ∇ **Support for primary school members** - this may be individual or groups
 - ∇ **Support for secondary school members supported** - this may be individual or groups
 - ∇ **Support for all county primary schools** - when SCC model policies are being discussed, all county primary schools are supported
 - ∇ **Support for all county secondary schools** - when such as when policies are being discussed, all county secondary schools are supported
 - ∇ **Electronic communications** - telephone and e-mail; and telephone advice calls, particularly with a distressed member, can often take an hour.
 - ∇ **Meetings attended** - in individual schools with several members, or with an individual member, or with HR, or other relevant meetings such as Health and Safety.
 - ∇ **Admin Hours** – the hours spent completing administration tasks and research- includes recording outcomes of meetings, researching and inputting into policies, researching educational initiatives and changes
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Appendix 2

Benefits of effective trade union representation

Trade union representatives carry out a range of complex and demanding duties, including:

- ∇ **Advice** - this may be through telephone, e-mail, documents, or meetings. This may involve long telephone calls to give reassurance and greater understanding of issues which may

have arisen in school. Local knowledge from county-based TU representatives helps to promote good industrial relations.

- ∇ **Representation** - accompanying members to meetings, both informal and formal. By having county-based TU representatives, meetings can usually be arranged speedily, and issues resolved more quickly. De-delegated Facility Time funding enables county-based TU representatives to attend such meetings during the working day. Without this funding mechanism, meetings such as disciplinary, grievance, ill health, and capability (formal or informal) and consultation meetings on changes to working arrangements, would be much more difficult to arrange. Instead, such meetings would have to take place evenings or at weekends.
- ∇ **Negotiation** - county-based TU representatives work with HR in the creation and revision of policies such as Pay, Appraisal, and Capability. Thus centralising a workload that would otherwise be far greater if spread over individual schools. Delegating Facility Time funding would perforce create additional costs and workload for schools and school leaders.
- ∇ **Changes** - effective county-based TU representatives can help school leaders and union members alike understand the impact of organisational changes; help to resolve reorganisation issues; and pass on ideas from staff. By doing so, they can help to minimise the impact of changes on schools.
- ∇ **Legal** - trades unions help to ensure that schools and the LA meet their legal obligations. It would be a setback for all parties (including pupils) if the expertise of experienced county-based TU representatives were to be lost to school leaders and LA officers.
- ∇ **Resolving issues** - good county-based TU representatives help to resolve issues at an early stage. Without de-delegated, central Facility Time funding, fewer issues would be resolved informally, resulting in a marked increase in costs to schools and in workload for school leaders and LA officers. Disciplinary, grievance and capability issues would be more likely to escalate unnecessarily, with cases more likely to reach Employment Tribunals.

Cost-benefit analysis

- ∇ **Expertise** - the current arrangements enable unions to develop expertise amongst county-based representatives, who serve as local union officers supporting members across a large number of schools.
- ∇ **Central Funding** - an end to (i.e. delegation of) central funding would dilute expertise, meaning that each school would need to provide much more paid time off (a statutory obligation – see Appendix 3, below) to enable school-based TU representatives to train for, and to carry out their TU duties.
- ∇ **Impact of losing Central funding** - delegation would have substantial financial consequences for schools because, over time, the costs for each school would be likely to exceed considerably the funding delegated; for example through the slower resolution of cases, and/or their unnecessary escalation.
- ∇ **The opportunity cost of central funding** – on a school-by-school basis, the amount of funding for facilities time is relatively small.

- ∇ **Evidence from research** - research commissioned for the TUC from the University of Hertfordshire shows that involving trade union representatives effectively usually leads to better staff morale and productivity, to reduced dismissal and exit rates – meaning lower recruitment costs – and to improved health, to less sickness absence, and to fewer injuries.
 - ∇ **VfM** - the return on the investment made in trade union facility time is many times the sum spent. The researchers cited above estimated that, for every £1 spent on facility time, between £3 and £9 of benefits accrue to the employer.
 - ∇ **Providing balance** - at a time of significant change and pressures on funding, the cost to Local Authorities and to schools of failing to fund facility time appropriately could lead to significant problems in the delivery of education.
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Appendix 3

Statutory rights to time off for trade union duties

1. Rights to Paid Time Off

The statutory provisions on time off for trade union representatives are contained in sections 168-170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and section 10 Employment Relations Act 1999.

In summary, the statutory rights provide for paid time off for:

- union representatives to **accompany** a worker to a disciplinary or grievance hearing
- union representatives to carry out trade union **duties**
- union representatives to attend union **training**
- union learning reps (“ULRs”) to carry out relevant **learning activities**

2. Time off to accompany

A union representative who has been certified by the Union as having experience of, or as having received training in, acting as a worker’s companion at disciplinary or grievance hearings, has a right to take reasonable time off to accompany a worker to a disciplinary or grievance hearing.

The right applies to those entitled to time off for trade union duties under TULR(C)A below, ie an official or accredited representative who has been elected, or appointed, in accordance with the rules of the union, to be a representative of all, or some, of the union’s members who work for that employer.

This right is additional to the rights of trade union officials employed by the trade union to accompany members to such hearings.

3. Time off for other Trade Union duties

TULR(C)A provides for time off for other trade union duties. The legislation does not specify precisely how much time off should be provided – only that it should be ‘reasonable’. The interpretation of ‘reasonable’ time off has traditionally reflected the number of Union members employed by a particular employer

Union duties by law must relate to the *representative’s own employer* and not, for example, to any associated employer such as an Academy. However it is possible to reach agreements whereby duties can be undertaken in respect of other employers.

In the case of maintained LA schools, this would apply to all members employed by the local authority. Although voluntary aided and foundation school governing bodies are technically the employer of teachers in their schools, they have traditionally maintained their participation in LA arrangements.

Provision for paid time off is also the subject of a collective agreement contained in the Burgundy Book. Local authorities should stand by the agreement that they have made with the NUT and other teacher organizations, although this cannot be enforced in law. The statutory provisions can however be enforced by application to the employment tribunal.

4. Who is entitled to Time off?

Under TULR(C)A, an accredited trade union representative is an employee who has been elected, or appointed, in accordance with the rules of the union, to be a representative of all, or some, of the union’s members who work for that employer.

Section 169 of TULR(C)A 1992 states that an employer who permits representatives time off for trade union duties must pay them for the time off taken. This will be the amount that would ordinarily be paid for that time. Part time staff are entitled to receive paid time off in the same way as full time staff. There is, however, no statutory right 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 Burgundy Book Agreement, which provides the framework for local collective bargaining agreements, further defines accredited representatives as being teachers who are:

- a member of the recognised Union’s national executive or other national committee
- an officer of the local Association or Division
- a school representative

5. Trade Union Duties

In addition to the right to time off to accompany to hearings, section 168 allows time off for duties such as:

- negotiations with the employer on collective issues relating matters listed in s.178 TULR(C)A:
 - terms and conditions of employment, or the physical conditions in which any workers are required to work;
 - engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

- allocation of work or the duties of employment between workers or groups of workers;
- matters of discipline;
- a worker's membership or non-membership of a trade union;
- facilities for officials of trade unions; and
- machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.
- performance of other functions on behalf of employees of the employer which relate to the matters above, and which have been agreed with the employer.
- receipt of information and consultation relating to TUPE and Section 188 redundancy notices
- negotiations under TUPE.

It should be noted that there is no statutory right to paid time off for duties or activities which do not fall within these provisions, such as activities relating to the internal functioning of the trade union.

6. Time off for Training

Section 168(2) of TULR(C)A provides that union representatives are to be permitted reasonable time off during working hours to undergo training. The training must be relevant to the carrying out of their trade union duties as described above and approved by the relevant union or by the TUC.

7. Union Learning Representatives (“ULRs”)

s.168(A) TULR(C)A provides that an employer must allow reasonable (paid) time off for a ULRs to carry out activities relating to:

- analysing learning or training needs,
- providing information and advice about learning or training matters,
- arranging learning or training, and
- promoting the value of learning or training,

However, these rights do not apply unless the employer has been notified by the Union that the person is a learning representative, and that person has either received sufficient training to carry out the role, or will receive that training within six months of the initial notification to the employer. ULRs are entitled to paid time off to undergo the training above. Once the training has been completed, the union must notify the employer accordingly.

8. Health & Safety Representatives

In addition to the provisions in TULR(C)A, the Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a) requires that employers allow union health & safety representatives paid time, as is necessary, during working hours, to perform their functions, including

- Investigation of potential hazards and dangerous occurrences/ accidents at work
- Investigate member's complaints regarding health, safety or welfare at work
- Making representations to the employer on the above

- Carrying out health and safety inspections
 - Representing members in workplace consultations with enforcing authorities including HSE inspectors
 - Receiving information from HSE inspectors
 - Attending safety committee meetings in their capacity as safety representative
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Appendix 4

Resources

ACAS code of practice on time off for trade union duties and activities
<http://www.acas.org.uk/index.aspx?articleid=1878>

HSE code of practice on consulting workers on health and safety
<http://www.hse.gov.uk/pubns/priced/l146.pdf>

DTI (subsequently BERR) - [Consultation Document, Workplace Representatives: a review of their facilities and facilities time](#) - January 2007

BERR (previously DTI) - [Workplace Representatives: a review of their facilities and facilities time. Government Response to Public Consultation](#) - November 2007

BERR-CBI-TUC - [How workplaces can gain from modern union representation](#) – May 2009

TUC - [The Facts about Facility Time for Union Reps](#) – October 2011

TUC - [The value of unions to the UK economy PR](#) – January 2012

TUC - [Facility time for union reps - separating fact from fiction](#) – January 2012

Unison/NatGen - [The Value of Trade Union Facility Time](#) – June 2012

TUC - [how unions make a difference to health and safety: the union effect](#) – May 2011

TUC – [An employer's introduction to trade unions](#) – 2007

TUC Touchstone Pamphlet 8 - [The Road to Recovery: How effective unions can help rebuild the economy](#) – 2010