

The provision of trade union facility time in Shropshire – Discussion paper

Background

In line with school funding regulations, Shropshire Council is required to consult on an annual basis with its maintained schools on the de-delegation for trade union facility time from individual mainstream school budgets. Academies are invited to voluntarily buy into the service, in accordance with Department for Education (DfE) and Education and Skills Funding Agency (ESFA) advice. This states:

‘Where de-delegation has been agreed for maintained primary and secondary schools, our presumption is that the local authority will offer the service on a buy-back basis to those schools and academies in their area which are not covered by the de-delegation.’¹

The per pupil funding which the Shropshire Schools Forum, following consultation, has de-delegated for trade union costs in the 2019-20 financial year is £1.93 per pupil for primary mainstream schools and £3.07 per pupil for secondary mainstream schools. These unit costs also apply to Academies who choose to buy back into this service.

This figure has increased over the years from £1.78 (primary) and £2.91 (secondary) in 2014 to the current amounts. Within that time though, due to Academy conversions of the majority of secondary schools in Shropshire, the budget has decreased significantly in that same period. In 2014 it was £60,160. This compares to the 2020 amount of £23,001. The current buy-back from Academies in 2020 is £35,792, meaning that the total budget is £58,793.

For context, the current Unions being paid via the budget are:

NASUWT – 0.4fte (2 days) - £21,304

NEU – 0.4 fte (2 days) - £21,393

NAHT - 0.1fte (half day) - £8,798

Total - £51,495

All of the above are currently working in Shropshire schools. The fte’s decreased in 2019 for NASUWT and NEU (from 0.5fte) due to the decreased budget and limited buy back from Academies. Those Academies not buying back do not benefit from access to locally reps or locally agreed policies and procedures.

¹ ESFA Schools Revenue Funding 2020-21, Operational Guide, paragraph 337

The cost of the facility time for the three reps above is £51,494.66 (including on costs). Therefore, the majority of facility time for the reps is met by the buy back from Academies. There are currently only 4 Shropshire MATs buying back into the facility budget. Should one of these decide not to in future, further reductions to facility time would need to be considered.

Local reps are reporting that workload has not decreased as a result of less maintained schools and in fact has increased in the past 2 years meaning they are regularly working double the amount of time they are paid for under the facility time budget. This is not sustainable long term and is also impacting upon policy and procedure consultation as member support and casework takes priority.

Research by the local reps has found that the Shropshire amounts are lower when compared with the average de-delegated per pupil trade union costs figure across England of £3.00.² The secondary per pupil trade union costs figure is therefore at the average level for local authorities in England, but the primary trade union costs figure is lower.

In Shropshire, it has long been shown that schools were in need of higher funding. Under the National Funding Formula, per pupil funding is increasing in 2021/22 to £4,597 in the primary phase and £5,537 in the secondary phase. The current cost of trade union facility time is therefore 0.042% of per pupil funding for primary schools in Shropshire and 0.055% of per pupil funding for secondary schools in Shropshire.

Shropshire has received above inflation increases in school funding through the National Funding Formula (NFF) in 2020/21 and will do also in 2021/22. The increases in schools budget per pupil funding over the 2019/20 and 2020/21 baseline figures are:

- 2020/21 – 3.67% per pupil increase;
- 2021/22 - 4.5% per pupil increase;

In particular, the increase in the schools budget from 2020/21 to 2021/22 is £15,178,733, with an increase of £345 in primary per pupil funding and £432 in secondary per pupil funding from 2020/21 to 2021/22.

High needs funding in Shropshire is increasing by a larger percentage than schools budget funding from 2020/21 to 2021/22. The increases in high needs per pupil funding over the 2019/20 and 2020/21 baseline figures are:

- 2020/21 – 8.85% per pupil increase;
- 2021/22 - 10.45% per pupil increase;

² DfE, Expenditure by Local Authorities and Schools on Education, Children and Young People's Services in England, 2018-19, Table 1a

The total increase in the high needs budget from 2020/21 to 2021/22 is £3,632,671.

It is accepted that this increased funding comes after years of underfunding and that some Shropshire schools will potentially be worse off under the NFF. Nevertheless, trade union facility time funding in Shropshire is not comparable with the national average across both phases of schools in Shropshire.

Therefore, Trade Union representatives are requesting consideration of an increase in per pupil funding is, partly due to the increase in per pupil funding under the NFF but also due to the decrease over the past 6 years of the size of the budget and the facility time. This decrease has not led to a decrease in workload or casework, and in fact in the last 9 months workload has obviously increased dramatically due to COVID-19.

The Local Union reps would request consideration of the primary per pupil facility time figure was to increase to £3.00, the national average, and the secondary per pupil facility time figure was to increase to £4.00. Based on current pupil numbers this would provide a budget of £36,601. This could be considered for consultation with schools in autumn 2021 with a view to being implemented in April 2022. If agreed, this increase would also be applied to Academy buy back from September 2022.

It should also be noted that, under the de-delegation arrangement, schools benefit from a local service from local trade union representatives. NASUWT members' national subscriptions meet the cost of Full time NASUWT staff salaries and legal costs. If the only means of engagement between the NASUWT and union members is via full-time officials, there is likely to be a greater recourse to litigation in order to resolve industrial relations difficulties. This would not be in the interests of Shropshire schools or necessarily create the most positive environment for industrial relations.

Below is further evidence highlighting the benefits of local trade union representatives.

The Benefits of Pooled Trade Union Facility Time.

Good relations

- Retaining de-delegated funding for facilities time is logical and cost-effective. During the last 12 months, de-delegated funding for has enabled a significant contribution to good employer/employee relations at county level and for individual schools, especially in light of COVID-19.
- 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 Teacher Pay and Appraisal.
- The model policies can be adopted by schools, thereby avoiding the management of each school spending time and resources on developing and negotiating its own policies.

Representation

In the last 12 months 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. Appraisal and Capability.
- at disciplinary and appeal hearings.
- individual members have been supported informally; e.g. with advice on Return to Work meetings.

Centrally-funded facility time also means schools benefit from:

1. Informal discussion between a member of staff and their local union representative quite often prevents potential issues ever coming to the attention of schools; e.g. an alleged 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 local union representative 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 local union representative, 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 local union 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 local union representative at meetings; e.g. disciplinary, grievance, ill health, and capability (formal or informal), consultation meetings on changes in working arrangements.

Benefits of effective local 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 local union representative helps to promote good industrial relations.
- Representation - accompanying members to meetings, both informal and formal. By having local union representative, meetings can usually be arranged speedily, and issues resolved more quickly. De-delegated Facility Time funding enables local union representative to attend such meetings during the working day.
- Negotiation - local union representative work with HR in the creation and revision of policies. Thus centralising a workload that would otherwise be far greater if spread over individual schools.
- Changes - effective local union representative 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.
- Resolving issues - good local union representative 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 local union representative, 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.

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, i.e. 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.

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.

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.

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