



Haringey Council

The Children and Young People's Service

Report to Haringey Schools Forum – 26th February 2014

**Agenda Item
9**

Report Status

For information/note
For consultation & views
For decision

**Report Title: TRADE UNION FACILITIES AND TIME OFF
ARRANGEMENTS**

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Purpose

Following the decision by the Schools Forum not to de delegate the budget for trades union facilities time for 2014/15 this report proposes a way forward to enable schools and academies to enter into a service level agreement to “buy back” trade union representation.

Recommendations:

1. That Schools Forum note this report and support the proposed course of action set out in this report.
2. That schools forum considers whether or not to separate the SLA into teaching and support staff unions.

REPORT TO SCHOOLS FORUM

26TH FEBRUARY 2014

TRADE UNION FACILITIES AND TIME OFF ARRANGEMENTS

1. Background

- 1.1. The requirement for employers to grant time off for trade union duties is specified in the Trade Union and Labour Relations (Consolidation) Act 1992. This states that an employer will grant an employee, who is a recognised trade union official, time off during working hours to carry out official duties including negotiations on collective bargaining, consultation on TUPE and redundancies, etc. It also extends to representation of individual employees. Time off shall also be granted for the purposes of undergoing training on aspects of industrial relations which are relevant and approved by the Trade Union Congress or relevant trade union.
- 1.2. The amount of time off must be 'reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS. There is no requirement to pay for time off outside the union official's normal working hours or when the official would otherwise not have been at work.
- 1.3. There is a statutory right to payment for time off to undertake trade union duties but no statutory requirement that union members or representatives be paid for time off taken on trade union activities. Activities might include meetings with other trade union representatives, administrative tasks related to the union, representing the union externally, voting, etc.
- 1.4. The 1992 Act specifies that an employer who permits an employee to take time off must pay them for the time off taken. The Act does not specify the amount of time that a representative is entitled to take off but specifies that it must be 'reasonable in all of the circumstances' and have regard to the relevant provisions of the ACAS Code of Practice. Employees may bring a complaint to an Employment Tribunal where an employer has failed to permit time off in accordance with this legislation.
- 1.5. There are five areas where recognised trade unions have a statutory right to be consulted on:
 - Redundancy situations (under the Trade Union and Labour Relations (Consolidation) Act 1992).
 - Transfers (under the Transfer of Undertakings (Protection of Employment) Regulations 2006)
 - Health and Safety (under various provisions including Health and Safety at Work Act 1974; Safety Representative and Safety Committees Regulations 1977 and Management of Health and Safety at Work Regulations 1999).

- Pensions (The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006; Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006 and the Information and Consultation of Employees Regulations 2004 as amended).
- Workplace training and learning (under the Employment Act 2002 where a union has appointed a Union Learning Representative).

Employees also have a statutory right to be accompanied at particular employment meetings (including disciplinary and grievance meetings).

2. Practice in Haringey

2.1. The Council recognises eight trade unions for the purposes of collective consultation and negotiation on terms and conditions of employment, redundancies, TUPE, and HR policies in schools. Trade union representatives also support employees in employee relations matters such as disciplinary and grievance matters.

2.2. The trades unions are as follows:

Teaching	Support Staff
NUT	Unison
NASUWT	GMB
NAHT	Unite
ASCL	
ATL	

2.3. Union recognition is beneficial in progressing individual issues but also to address Council wide matters of policy and procedure.

2.4. As a matter of custom and practice, the Local Authority has consulted with recognised trade unions on employment policies and procedures in place for all staff. These policies and procedures define the processes and discretions the employer will exercise. This is not necessarily a statutory obligation but has been undertaken where practicable to assist in maintaining a constructive employee relations climate. This framework has facilitated the production of a range of policies and procedures for the benefit of the collective maintained school sector. These can be adopted by Governing Bodies without necessity for further consultation at school level other than that required to localise the policies.

2.5. Also, as a matter of custom and practice, the Local Authority has consulted with the recognised trade unions on school improvement priorities and the strategic direction of the education provision within the authority including it's provision and support for schools.

2.6. Redundancy and transfers are dealt with on an individual school basis with the school engaged in the consultation process.

- 2.7. In practice, consultation on pensions related matters takes place at a national level and not a local level given the Teachers' Pension Scheme and Local Government Pension Scheme are national schemes.
- 2.8. Haringey's facilities arrangements provide for certain trade union officials (normally Branch Secretaries) to be given a fixed allocation of time off, based on membership. Under this provision, the employee is seconded from their normal duties to undertake trade union duties for a fixed, block period of time per week. This allows the employing department or school to back fill these hours at no detriment
- 2.9. Providing a fixed allocation of seconded time off has the advantage of ensuring that when the Council needs to engage in formal consultation and negotiation, the union representatives are available to attend meetings without disruption to their normal duties. In schools this is of particular benefit as there needs to be no disruption to timetables.
- 2.10. Some representatives are engaged in trade union duties for the whole of their working time. The unions strongly advocate full time representation, primarily to avoid the pressures of balancing both workplace and trade union roles but also to allow for better planning and availability. Nationally the DFE has produced guidance with a view to limiting time off to half time (see paragraph 4 below). This guidance is not statutory, however.
- 2.11. At present a budget across all schools and academies supports representation by Teaching/support unions. These arrangements were funded by schools and academies through the Council retaining a sum from the Dedicated Schools Grant. Special schools and Nurseries are unable to de-delegate.
- 2.12. In April 2013 the Council was no longer able to retain funds for this purpose and the funds were delegated to individual schools/academies budgets. In 2013/14 Primary schools voted to de delegate this budget back to the Local Authority. Secondary schools voted not to de delegate. In January 2014, all sectors voted not to de delegate funding.
- 2.13. Academy schools are separate from the authority and responsibility for union relationship with unions transfers to each Academy Trust. Upon conversion, academy schools take back their contribution to the budget.

3. DFE Guidance

- 3.1. On 16th January 2014 the DFE produced guidance on this matter – "Advice on Trade Union Facilities Time in Schools". This guidance is not statutory and therefore could not be relied upon in itself to make non consensual changes to employee contracts of employment or to effect a dismissal.
- 3.2. The main provisions in this advice are:
- Trades Union representatives should not be engaged on trade union duties for more than 50% of their time

- Employers should ensure that facility time is not used for any activities related to lobbying for, planning or carrying out industrial action.
- In local authorities where the schools forum has decided not to de-delegate funding, individual schools may choose to organise their own facility time arrangements, buy into local authority services or pool funding with other schools.
- Where the employer is the academy, union representatives working in the academy are entitled to reasonable time off or the academy can buy into local authority facility time services by agreement. Some larger academy trusts have set up their own agreements directly with recognised trade unions. In some areas groups of academies share the cost of facility time, and review their pooled allocation on a regular basis.

4. Reasons for Change and Proposed Principles for Revised Arrangements

4.1. The current facilities arrangements are no longer sustainable for the following reasons:

- The Council's current arrangements for time off and other provisions for trade union representatives do not properly reflect the changes to school status that have resulted in a significant number of staff ceasing to be Council employees. For example, in February 2013, 800 of the 2000 National Union of Teachers members in Haringey were employed in schools where the Local Authority is not the employer
- The existing arrangements cannot be maintained if the current funding is not recovered from schools/academies going forward. Whilst there are definite advantages to all concerned in providing seconded time off, the amount of seconded time off available in the future will be determined by the amount of funding recovered from schools and academies. Reasonable ad hoc time off will also still need to be provided in accordance with legislation regardless of whether or not a school enters into a service level agreement.

4.2. Recognising that school issues affect the whole community of schools, we need to put in place a mechanism whereby schools may contribute to support an arrangement that will support teaching and support staff within schools.

4.3. Facilities and time off for representatives who are not Council employees (i.e. those in non community schools and academies) will therefore continue to be borne by the actual employer and not the Council.

5. Proposals

5.1. In essence the aim is to create a 'budget pool' to pay for representation across all schools and academies. Both community schools and other schools can decide whether to contribute and, as far as is reasonably practical, a representative's time off will be funded from this 'budget pool'.

5.2. In accordance with legislation, ACAS guidance and current practice, it is proposed that the following principles form the basis of the revised agreement (appended A)

- All accredited representatives will be entitled to request reasonable time off for trade union duties as specified in the relevant legislation and ACAS Codes of Practice
- Full time arrangements will continue for existing representatives. However newly elected representatives will not normally be released on a whole time basis for trade union duties. This will ensure that there is a balance between work and trade union duties and that representatives understand the workplace they are representing;
- No separate allocation of seconded time off will be given to undertake specific duties such as Employee Side Secretary, Union Learning Representatives, etc.;
- Facility time shall not be used for any activities related to lobbying for, planning or carrying out industrial action. Representatives should focus the use of their time, where possible, on statutory consultation and representation requirements that benefit both the employer and unions;
- In the event that a trade union official granted seconded time off regularly fails to attend meetings or engage with managers or HR staff as required, the seconded time off will be reviewed and may be withdrawn at the discretion of the Council, following discussion with the relevant regional officer;
- Accredited trade union representatives will have access to facilities in Council offices/schools in the same way as they do now.
- Schools will be invited to participate in the seconded time off arrangements and to contribute to the 'budget pool' from their delegated budgets.
- For those that wish to participate, initial financial contributions will be based on a unit cost calculated on the 2014/15 trade union budget, proportioned according to established posts for each participating school/academy
- Time off arrangements will be reviewed on an annual basis, or more frequently if necessary depending upon available funding, operational experience, etc.
- In order to facilitate this, Trade unions will supply to the Local Authority by the end of the second week in January each year:
 - .1. Membership numbers
 - .2. Evidence of number of cases/policies reviewed and to evidence their impact on fostering good employment relations by the end of

the second week of January each year, in order to report to Schools' Forum;

- Where such detail as outlined in 2) above is not provided by the end of the second week in January each year, the union will forfeit their entitlement to any funds, with funds remaining in the budget being returned to schools

6.3 For academies, there are various options regarding how they continue to conduct such relationships and one of these is to opt to buy into The Local Authority's arrangements for consultation and/or casework elements, regardless of whether they use the Local Authority model policies or develop their own local policies. This can be undertaken on an ad hoc basis, based on the hourly rate of the representatives for a particular consultation or on an SLA basis (equivalent contribution to The Local Authority maintained schools) for unlimited access to the employed trade union representatives. Academy Schools buying a SLA would be the preferred option.

6.4 If Academies or Schools don't buy the SLA, then such schools need to establish their own negotiation and consultation arrangements. Where they do not purchase the SLA arrangements, the representatives employed in the Local Authority are unable to use their facilities release time to act as a trade union representative in these schools since their time is not funded. This may mean that their consultation would be with another union official or representative (e.g. paid Regional Officer, or retired representative) that supports them. If the Local Authority representative is used the Local Authority would charge a "by case" rate based upon an estimate of the typical time that a trade union representative would spend on a case. This cost would be in the region of £500 per case.

6.5 It is proposed that the Head of Schools HR finalise this with trades unions

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Draft Service Level Agreement Between xxxx school, Haringey Council and Trades Unions

Description of the Service

The service is provided to enable schools and academies to pay for the provision of trades union representation for employees in their school. By entering into the service level agreement staff employed by Haringey who are accredited trade union representatives will provide trade union representation for staff on an individual and collective basis for a single charge to the school. Although the school may continue to recognise locally elected representatives, by buying into the Haringey service level agreement the school will have access to experienced and skilled representatives who will work with the school to promote good employee relations.

The terms governing the SLA are as follows:

- The school will recognise Haringey trade union representatives for trade union duties as specified in the relevant legislation and ACAS Codes of Practice
- The trades unions concerned are as follows:

Teaching	Support Staff
NUT	Unison
NASUWT	GMB
NAHT	Unite
ASCL	
ATL	

- Full time arrangements will continue for existing representatives. However newly elected representatives will not normally be released on a whole time basis for trade union duties. This will ensure that there is a balance between work and trade union duties and that representatives understand the workplace they are representing;
- No separate allocation of seconded time off will be given to undertake specific duties such as Employee Side Secretary, Union Learning Representatives, etc.;
- Trade union representatives will be permitted to visit the school to meet with their members in order to undertake the duties itemised in 1 above.
- Facility time shall not used be for any activities related to lobbying for, planning or carrying out industrial action Representatives should focus the use of their time, where possible, on statutory consultation and representation requirements that benefit both the employer and unions;
- In the event that a trade union official granted seconded time off regularly fails to attend meetings or engage with managers or HR staff as required, the seconded time off will be reviewed and may be

withdrawn at the discretion of the Council, following discussion with the relevant regional officer;

- Whilst it is acknowledged that from time to time the school/Local Authority and trades unions may take differing stances on particular issues, the disagreements will be dealt with professionally, focusing on the issue under discussion. Unprofessional behaviour by either party will be treated seriously and may result in an immediate termination of the service level agreement or a disciplinary matter.
- Accredited trade union representatives will have access to facilities in Council offices/schools as appropriate.
- Time off arrangements will be reviewed on an annual basis, or more frequently if necessary depending upon available funding, operational experience, etc.
- In order to facilitate this, Trade unions will supply to the Local Authority by the end of the second week in January each year:
 - .1. Membership numbers
 - .2. Evidence of number of cases/policies reviewed and to evidence their impact on fostering good employment relations by the end of the second week of January each year, in order to report to Schools' Forum;
- Where such detail as outlined in b above is not provided by the end of the second week in January each year, the union will forfeit their entitlement to any funds, with funds remaining in the budget being returned to schools
- For those schools that wish to participate, initial financial contributions will be based on a unit cost calculated on the 2014/15 trade union budget, proportioned according to established posts for each participating school/academy