



North Northamptonshire Schools Forum: 14th December 2022

Agenda Item 6

2023-24 De-delegation : Trade Union Facilities Time for Maintained Schools

1 Background

- 1.1 North Northamptonshire Council (NNC) has a Recognition Agreement with trade unions and this recognition agreement automatically covers schools within the North Northamptonshire area where the local authority is the employer (*31¹ community, community special, voluntary controlled and local authority nursery schools*).
- 1.2 For trade unions recognised to represent employee groups based within local authority-maintained schools (*the 31 schools above, plus 9 voluntary aided and foundation schools*), time off for trade union duties and activities is determined on an annual basis. In November 2021, Schools Forum members representing maintained schools voted to de-delegate a sum of their Post MFG Budget into a pooled trade union facility time arrangement for financial year 2022/23. Academy schools were given the opportunity to buy in to the 2022/23 pool.
- 1.3 NNC schools pooled facility time arrangements for the current financial year (Apr'22 – Mar'23) are summarised in **Appendix 1**.

2 Facility time – legal context

- 2.1 Employees who are union representatives of an independent trade union recognised by their employer will be permitted reasonable time off during working hours to carry out certain trade union duties. Although there is no absolute right to take time off work, an employer should not refuse a reasonable request to do so.
- 2.2 Union representatives are entitled to request time off where the duties are concerned with:
 - negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the employer.
 - any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform.
 - the receipt of information from the employer and consultation by the employer under section 188 TULR(C)A, related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer.

¹ [Search results for " - GOV.UK \(get-information-schools.service.gov.uk\)](https://www.gov.uk/get-information-schools.service.gov.uk)

- negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer; or
- the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

3 Department for Education non-statutory guidance

3.1 The DfE [published guidance](#) on facility time for schools and stresses the importance of ensuring spending on facility time is as efficient as possible as well as transparent and accountable.

4 Benefits of de-delegation of budget into a pooled arrangement

4.1 It ensures maintained schools & the Council meet their legal obligations:

- NNC will undertake the management and operation of the statutory consultation framework on behalf of maintained schools via the Children’s Services Directorate Consultative Forum (DCF) and Health, Safety & Wellbeing Forum (HSWF).
- Consultation on school transfer to Academy status.

4.2 Representation on employee relation issues (e.g. disciplinary, grievance):

- TU members are employees and value local representation.
- Local knowledge and understanding of local context to support local members.
- Cost effective TU representation.
- Enables consistency of local practice.
- Supports fast, efficient and informal resolution.

4.3 Least disruptive to education and cost-effective means of organising facilities time; ensures no single maintained school faces a disproportionate cost.

4.4 The majority of maintained schools do not employ staff elected as TU representatives.

5 Impact on schools of no de-delegation for a pooled arrangement

5.1 Each individual school would be required to:

- Consult with all recognised trade unions on all employment and health and safety matters.
- Develop their own recognition agreement with trade unions and any collective approach to reaching agreements.
- Make their own arrangements for access to trade union representatives to represent employees and to manage facility time within the school
- Experience potentially longer timeframes for resolution of employment relation issues

5.2 Benefits to schools provided from a trade union perspective are contained in **Appendix 3**.

6 Recommendations for Schools Forum

6.1 Maintained School Forum members are recommended to vote to pool their facility time arrangements in 2023/24 between maintained schools falling within North Northamptonshire.

- 6.2 Maintained School Forum members are asked to vote on whether to de-delegate budgets to fund a pooled facility time arrangement between maintained schools within North Northamptonshire.
- 6.3 Maintained School Forum members are asked to vote on a per pupil rate – 4 options are provided in the table below.

As referred in **Appendix 1** the 2022/23 per-pupil rate of £2.10 has remained unchanged for a number of years and is at the lower end of the regional range.

The following elements inform the cost of a pooled facility time arrangement for maintained schools:

- TU rep salary costs – proxy salaries are used to propose a per-pupil rate; actual costs depend on the salaries of the elected TU representatives
- Number of maintained schools – may reduce due to conversions
- Number of pupils on roll – NoR from Jan 2022 Census are used, but actual NoR figures (Jan 2023 Census) will be used to charge schools under de-delegation
- What a ‘reasonable’ amount of facility time is that schools should provide trade unions across maintained schools. The Trade Union Recognition Agreement provides guidance on a ratio of TU members : number of days facility time, but membership numbers are generally not shared by trade unions (**Appendix 2**)

	Per-pupil rate	Jan’22 Census Primary NOR*	Primary Budget	Jan’22 Census Secondary NOR	Secondary Budget	Total Budget	Estimated facility time shared by 4 unions <i>Teacher: proxy £200/day</i> <i>Non-T: proxy £120/day</i>
1	£2.10	8,891	£18,671	1,121	£2,354	£21,025	2.5 days (1.5 teacher rep days + 1 non teacher rep day)
2	£2.95		£26,228		£3,306	£29,534	3.6 days (2.3 teacher rep days + 1.3 non teacher rep days)
3	£3.56		£31,651		£3,990	£35,641	4 days (2.5 teacher rep days + 1.5 non teacher rep days)
4	£9.76		£86,776		£10,940	£97,760	11 days (7 teacher rep days + 4 non-teacher rep days)

**from the 35 Primary & Secondary maintained schools who can de-delegate (community, voluntary controlled, voluntary aided, foundation)*

7 Next steps

- 7.1 If Schools Forum vote to de-delegate budget to fund shared arrangements for facility time, then time off will be allocated based on the funds made available from schools delegating budget for facility time. This will be managed by NNC in consultation with the relevant recognised trade unions.

8 Financial implications

- 8.1 The table in 6.3 outlines the anticipated budget generated by de-delegation based on the following budget using October 2021 (published January 2022) Census as an example. This de-delegated budget will be updated with the October 2022 (published January 2023) Census for 2023-24.

8.2 Without the Trade Union de-delegation, maintained schools will have to provide paid facility time within their school to release elected employee representatives from each of the recognised trade unions. It is likely to be more expensive and potentially disruptive to manage facility time directly than through a pooled arrangement funded through de-delegation.

9 Legal implications

9.1 The legal basis of facility time as set out in section 2 of the report applies to all employers, including those responsible for maintained schools, academies and free schools. The continuation of de-delegation enables maintained schools to meet these requirements and in particular for those maintained schools where the NNC Recognition Agreement applies because NNC is the employer.

9.1 The regulations on decision making by Schools Forum are contained within the [Schools Forum Powers and Responsibilities Guide](#).

10 Risks

10.1 If facility time is not organised centrally, each trade union can press for the release of a union representative at each individual school. The training requirement for these representatives could be significant, given the new role they would be expected to fulfil (e.g. employee, Health and Safety and Learning representative duties; attend training or learning activities; consultation and negotiation on employment related matters and the schools own HR policies).

10.2 There would be a risk of increased disruption in the school, for example, releasing a teacher from the classroom to accompany a member in a formal disciplinary/grievance/performance/individual consultation meeting.

Appendix 1

Summary of NNC pooled facility time arrangements for 1 April 2022 – 31 March 2023

- All maintained schools (Primary & Secondary phases excluding community special & maintained nursery schools), plus xx academies and xx Academy Trusts paid a £2.10 per pupil cost-to-school rate to fund 11 days/week of facility time which was requested by and shared between the following trade unions:

Union	Name	Employer	Days /week
GMB	no rep	no rep	2
Unison	Richard Poole*	Northamptonshire Children's Trust	2
NEU	Hayley Ansell	Oundle CE Primary	2
	Simon Rielly	Kettering Buccleuch Academy	2
NASUWT	Richard Kempa	NNC	1
	Mike Molloy	Havelock School	1
	Bruce Choto	Prince William School	1

*Arrangement agreed with NCT for 2022/23 for continuity during transition

- Due to conversions, a small carry forward deficit from 21/22 and fewer academy schools contributing to the pool than anticipated and actual salary costs, the £2.10 rate (which has remained static for a number of years) proved insufficient to fully fund the 11 days/week facility time provided to trade unions (despite only 9 days/week being taken, as GMB did not put forward an employee representative for their 2 day allocation).
- Benchmarking East Midlands local authorities (2019) found per-pupil de-delegation rates between £1.51 - £6.00 (mean £3.56) .
- NNC separately funds an additional 3 days/week of facility time under the Recognition Agreement specifically to ensure Schools TU representation at the NNC corporate forums (JCNF, Schools/Education DFC's, HSWF's, etc)

Appendix 2

Extract from NNC's Trade Union Recognition Agreement (Section 7)

Trade Union Representatives - Schools

- 1.1. For trade unions recognised to represent employee groups based within local authority maintained schools, time off for trade union duties and activities is determined on an annual basis at Schools Forum, in accordance with school budget arrangements.
- 1.2. If schools vote to de-delegate budget to fund shared arrangements for facility time, then time off (in addition to core time for senior trade union representatives set out in 7.8) will be allocated based on the funds made available from schools delegating budget for facility time and relative proportion of trade union membership in the NNC schools participating in the shared arrangements:

Trade union membership	Time-off allocation
1 – 99	0.25 days per week
100 – 499	0.5 days per week
500 – 999	1 day per week
1000 – 1499	2 days per week
1500 – 1999	2.5 days per week
2000 – 2499	3 days per week
2500 – 2999	3.5 days per week
3000 – 3499	4 days per week
3500+	4.5 days per week

Appendix 3

Joint statement from the recognised trade unions

The Table below illustrates the value of de-delegated facilities' time and the impact if this was not in place. The consequence of not agreeing on facility time is that issues may escalate quickly and be resolved more slowly costing time and money.

With maintained schools having to outsource HR providers and Wages clerk duties, the local authority cannot monitor HR issues and may only get notified of serious cases. The facility time helps us to work more closely with HR providers and Head Teachers to resolve issues quickly and fairly.

Impact assessment on Schools facility time

Reason for contacting the Union	Action of the Caseworker with facility time	Potential outcome	IMPACT Without facility time
General Enquiries	Able to advise members of where they stand and what fair, informal actions to take	Able to resolve the matter early before the become an issue for the schools. E.g. This may be as simple as requesting a flexible working policy	Staff anxieties are raised which may impact on performance. Working relationships and increased absence
Sickness / absence and Ill health retirement	Liaise between the school / HR Provider to get their perspective and enquire if there is any underlying caused i.e. a dispute.	Identify the reason for absence. Work with the school and HR provides to offer support and a plan for returning to work. E.g. Occupation Health reports Mediation if there are working relationship issues Support a clear action plan to return to work Retaining good staff and maintaining a low staff turn over	Prolonged cost of sickness absence and cover Staff being unsupported in being referred to Occupational Health Potential unresolved work relationship issues Staff leaving resulting in a higher turnover of staff, increase cost of agency staff and recruitment costs

Reason for contacting the Union	Action of the Caseworker with facility time	Potential outcome	IMPACT Without facility time
Disciplinary's	<p>Support the member through the process of any investigation</p> <p>Clarify the process with the school and HR Provider</p> <p>Advise members to be open and honest and enable them to give their version of events</p> <p>Ensure a fair investigation process</p> <p>Work within the safeguarding procedures.</p> <p>Liaise with HR Provider</p>	<p>Unions are able to support the process and advise the member accordingly.</p> <p>Many schools are grateful that the staff members are supported by an independent person who can remain objective</p> <p>Any potential outcome of the disciplinary is fair and reasonable.</p> <p>Be available, usually at very short notice to pick up these cases and respond accordingly</p>	<p>More staff will go off on sick</p> <p>More staff may leave the employment before any further action is decided on.</p> <p>In cases of false accusations, this may result in good staff leaving under a cloud.</p> <p>Without the union facility time, the disciplinary process will be very much delayed with inevitably increase costs to the school</p>
Capability	<p>Support the member through the process</p> <p>Liaise with the School and HR Provider to get their perspective</p> <p>Ensure they are following the Policy and identifying the skills and behaviours expected and how the school will provide guidance and training for these.</p>	<p>Identify what the issues are and look to resolve them without going into a formal process</p> <p>Support the member through the process with outcomes of the person attaining the standard required and that the employer provides any additional support needed</p>	
Reasonable Adjustments	<p>Work with the school to identify any potential risk factors and hazards</p> <p>Identify individual risk assessments – with or without the support of occupational health</p>	<p>The school retains a valuable member of staff</p>	<p>Increased long-term sick</p> <p>Increase agency cover needed</p> <p>Increase staff turnover</p>

Reason for contacting the Union	Action of the Caseworker with facility time	Potential outcome	IMPACT Without facility time
TUPE Consultation /redundancy	<p>Be able to work with the timelines on consultation which are often very tight</p> <p>Reassure members of a fair process</p> <p>Alleviating member's anxieties and miss trust</p> <p>Look at ways in preventing compulsory redundancies</p>	<p>Ensure staffs questions are answered in both an open forum and in confidential 1:1 Consultations</p> <p>Represent member's personal circumstances in the negotiation particularly in requesting Voluntary redundancy</p>	<p>The delayed process to enable the consultation to be meaningful</p> <p>Without the facility, time union staff will be less available to attend 1:1 meetings.</p> <p>Increased chance of tribunal cases for unfair dismissal</p>

There is a definite impact of financial cost and staffing cost / resource at a time when it is difficult to retain and recruit good staff. Particularly support staff such as TA's.