

Meeting:	Herefordshire schools forum
Meeting date:	Friday 20 October 2017
Title of report:	Trade Union Facilities
Report by:	HR Services Manager

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To review the new arrangements for trade union facilities within schools and to propose a revised amount per pupil for de-delegation to apply from April 2018, subject to consultation with schools and a final decision by the Schools Forum in January 2018.

The new arrangements, effective from 1 September 2017, are to provide vouchers for trade union facilities at a standardised rate common to all teaching trade union representatives, irrespective of whether they are current serving teachers or paid as a worker (for the purposes of IR35 regulations, i.e. invoices subject to tax and national insurance).

There has been a regular underspend on the trade union facilities budget over recent years (£14,117 for 2015/16 and £13,894 for 2016/17) and this has been taken into account in proposing a reduction in the de-delegation price per pupil.

Recommendation(s)

That:

- (a) schools forum provide its views on a de-delegated amount of £2.90 per pupil, effective from 1 April 2018, being formed on the basis of consultation with schools;**

and

- (b) **the Budget Working Group be asked to provide a further report by June 2018 on the potential for a further reduction in 2019/20 on the cost per pupil.**

Alternative options

1. To continue with current cost of £3.50 per pupil. Secondary, special and academy schools do not de-delegate but have the option to buy back into the trade union facility service level agreement. Numbers have steadily been decreasing over the last few years as headteachers do not believe that it is cost effective or offers best value. To maintain the current cost could potentially result in a further reduction of schools that buy back. This would reduce the overall funding and potentially create a situation whereby there is insufficient income to cover the cost. Pressures on school budgets remain with unfunded pay awards/incremental increases, increase in pension/national insurance costs etc and with the possibility of interest rate increases in the future, schools need to ensure they are managing their budgets appropriately and reduce costs where possible. The trade union facility budget has been underspent in recent years and the underspend is redistributed back to schools, including those that did not participate in the arrangements.
2. The Budget Working Group (BWG) has suggested that as the England average was £2 per pupil, further work was needed to further reduce the Herefordshire figure. It was felt that the number of vouchers distributed to trade union representatives could be reduced to £2.50 per pupil or lower. However, there is insufficient time to carry out this review in order for Schools Forum to make a decision in January 2018 and therefore the BWG will undertake further work over the next few months to consider alternative options, e.g. providing a minimal service for schools whereby additional school specific trade union consultations are charged as extras - dependent upon the service and whether a subscriber or non-subscriber to the trade union service level agreement. Any new arrangements will be effective from 1 April 2019.

Key considerations

3. School trade union facility arrangements ensure employees in schools always have access to confidential advice and support on employment issues from highly trained local union representatives who understand local issues in Herefordshire schools, whether or not a particular school has a representative on their own staff body. This helps ensure that sensitive issues don't spiral out of control into situations involving formal procedures, which can be extremely costly in both senior leadership time and money.
4. What school leaders and governors detect in terms of union activity in schools is only a glimpse of what actually takes place in casework terms. A great deal of time is spent by local representatives dealing with employees' concerns and grievances 'behind the scenes' in a way which prevents issues escalating into confrontation and formal procedures. Problems in schools are not necessarily real, but perceived, and local union representatives help members work through conflict and change to the benefit of the members themselves and of school leaders.
5. The Department for Education published non-statutory advice relating to trade union facility time in January 2014. The report stressed the importance of ensuring spending on facility time was as efficient as possible. It also recommended that trade union representatives should be accountable for the duties and activities carried out during

facility time. A simple termly report, which included details of trade union duties undertaken, was considered to be good practice.

6. A review of trade union facilities was subsequently undertaken and it was agreed that the facility time payment would be standardised to £170 per day effective from 1 September 2017 for all teaching trade union representatives. A framework would be put in place to account for activity, the contracts of employment for three teaching trade union representatives would cease with effect from 31 August 2017 and alternative employment options, which was determined as self-employed (for tax purposes defined as a worker) would be supported.
7. There is significant variation in the level of trade union spend across councils. Statistical neighbours' de-delegation rates vary from £1.00 to £3.00 per pupil. Worcestershire, although not a statistical neighbour, has a rate of £2.00 per pupil which is also the average spend per pupil in England. Herefordshire's rate at £3.50 per pupil is above the England average and also higher than many of its statistical neighbours.
8. By reducing the charge per pupil, this would make the scheme more attractive financially and if more or all schools subscribed to the facility agreement, the rate could be further reduced.
9. Other councils have a different approach to the trade union facilities agreement whereby de-delegated funds provides a minimal service for all schools and additional trade union consultations are charged as extras, dependent upon the service and whether a subscriber or non-subscriber to the trade union service level agreement. For example, TUPE for academy conversions are subject to an additional charge.
10. The trade union annual budget varies dependent upon the level of buy-back into the service level agreement, but has been reducing by approximately 5% on a year-on-year basis for the last three years with approximately 20% of the budget not being claimed. There is no evidence to suggest that this trend would not continue.
11. There is currently an 'unfair' subsidy for schools with sixth forms, as sixth form pupils are excluded in the calculation of the amount of annual subscription due. By removing this subsidy, this would have the effect of reducing the charge per pupil for all other schools.

Community impact

12. All schools are required by law to allow trade union representatives reasonable time off to perform union duties and undertake relevant training (without which they are unable to act as representatives). Without this pooled service, there would be an increase in the number of issues requiring formal intervention and/or an increase in training days for individual schools as more representatives are trained in order to support union members.
13. Employers are legally obliged to consult with employee representatives on changes to the workplace, such as redundancy and TUPE, and to permit employees to be accompanied by trade union representatives in employment issues.
14. All schools should have arrangements in place to meet these requirements and the trade union facilities arrangements assist in enabling schools to release staff on union duties and to provide arrangements for representatives who are not current serving teachers to undertake union duties.

15. If schools decide not to de-delegate funding or buy back into trade union facilities, individual schools would be responsible for meeting the costs of providing reasonable release time for training and trade union duties of any staff member working on behalf of a union, even if that work takes place in an establishment other than their own.
16. Research from the University of Hertfordshire shows that involving trade union representatives can help maintain staff morale and reduce the number of issues that escalate. It is estimated that for every £1 spent on trade union facilities, between £3 and £9 of benefits are accrued to the employer.

Equality duty

17. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
18. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

19. Schools are legally required to ensure their arrangements comply with trade union requirements and therefore there are no additional budget implications.

Legal implications

20. Funding for trade union facility time is delegated to maintained schools in the first instance. For maintained primary and secondary schools the local authority may propose that this funding should be pooled centrally. The relevant members of the schools forum are responsible for deciding whether funding will be returned from the schools to the local authority. This is known as de-delegation. To enable schools forum representatives to decide what is best for their schools, the local authority should provide clear information in advance about how funds will be spent and how the service will benefit schools. Schools forum members should seek the views of the schools they represent before the decision is taken.

Risk management

21. The current system does not provide best value and if the recommendations are not agreed, then the number of schools that buy back into the trade union facilities service level agreement will probably continue to decrease.
22. Without a pooled system available to all schools, it is likely that more issues will be resolved formally and not 'behind the scenes'.
23. Primary schools de-delegate funding for trade union facilities and if the rate per pupil is maintained at current levels, this will cause additional pressure on school budgets. This will be mitigated by reducing the cost per pupil.

Consultees

24. The recommendations include consulting with the Schools Forum, although it is understood that a number of academy/secondary schools do not buy back into the trade union facilities arrangements due to cost and the perception that it does not provide best value to schools or union members.
25. A briefing paper was presented to the Budget Working Group at its meeting of 16 June 2017 and its views were reported to the Schools Forum at its meeting of 7 July 2017. A further verbal update was provided to the BWG at its meeting of 22 September. The working group expressed concern that the proposed per pupil figure, although reduced, was still higher than the national average. The working group recommended that work take place to seek to reduce the per pupil figure further.

Appendices

26. None

Background papers

27. None