

MEETING:	SCHOOLS FORUM
DATE:	2 MARCH 2011
TITLE OF REPORT:	TRADE UNION FACILITIES
REPORT BY:	HR MANAGER

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

The purpose of this report is to provide additional information on the Trade Union facilities allocation as requested by Schools Forum on 31st January 2011. The report is provided for Schools Forum for information.

Key Decision

This is not a Key Decision.

Key Points Summary

- The review of Teacher Trade Union Facilities time has determined that the current arrangements are inadequate to 'reasonable' time off for trade union activity and are inadequate in terms of supporting meaningful consultation and negotiation with teaching unions.
- The previous arrangements do not cover statutory requirements as detailed in ACAS Code of Practice 'Time Off for Trade Union Duties and Activities.'
- The budget has not been set correctly. The budget which is currently set at £32k is not sufficient to cover previous arrangements. The previous arrangements as agreed with trade unions in 1998, of an allocation 300 trade union facilities time days equates to approximately £58k including on costs.
- The new arrangements represent an increase of 55 days of Teacher Trade Union Facilities Time.

Alternative Options

N/A

Further information on the subject of this report is available from
Mel Ganderton, HR Manager - CYPD on (01432) 260934

Reasons for Recommendations

N/A

Introduction

Schools Forum has requested further information in respect of Teacher Trade Unions Facilities time in respect of the following areas:

- Clarification on Trade Union Facilities Time Review and Allocation
- Statutory responsibilities of H&S representatives
- Agreed H&S inspection requirements for Herefordshire
- Clarification of H&S Facilities Time

Clarification on Trade Union Facilities Time and Allocation

As detailed in the Schools Forum report of 31st January 2011, the previous Director of Children's Services commissioned a review of Teacher Trade Union Facilities Time, following significant representation from Trade Unions that the arrangements were inadequate and did not meet statutory provisions as detailed under legislation i.e. under 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, (which is further expanded in the ACAS Code of Practice 'Time Off for Trade Union Duties and Activities'). The review examined the current level of trade union activity and evaluated the type of trade union activity against the ACAS Code of Practice to ensure that the activity was appropriate under statute. The type of trade union activity reviewed included the following, **all of which is consistent and appropriate in relation to the ACAS Code of Practice 'Time Off for Trade Union Duties and Activities'**:

- Consultation meetings; Directorate JCF, Corporate JCF, TTUC, meeting with Chief Exec
- Policy development consultation meetings
- Health & Safety; working group and inspections
- Casework; disciplinary, grievance, capability, redundancy
- Union Learning Representative activity
- Redundancy consultation and panel meetings
- Union regional conferences and training courses

The review has been undertaken involving the relevant teaching unions. All current trade union activity has been mapped for 10 / 11. Quantifiable activity for example time spent on planned meetings has been mapped accurately. For activities that are variable and non planned for example trade union casework, redundancy consultation, trade unions were asked to provide a projection of activity, and this was assessed against number of the cases in the previous year to ensure projections were appropriate. For redundancy programmes in schools HR provided estimation based on redundancy activity in previous years. The Teacher Trade Union Activity Review can be viewed in Appendix 1. For clarity this was the result of the review and through relevant discussions with the unions, the DCS confirmed that the amount of hours (3877) from the review was excessive and an increase to a proportion of 3.1 FTE could not be accommodated.

Therefore, a more conservative approach to hours was devised by previous DCS with support from HR and this was negotiated with trade unions. This approach can be observed in **Appendix 2 Teacher Trade Union Facilities Activity proposal**. This determined the actual value of Teacher Trade Union Facilities time was 2909 hours. Expressed as a proportion this equates to 2.3 FTE. In terms of monetary values this equates to £84,538. However, this does not take into account any of the on costs of the Teacher Trade Union Representatives. Using this level as a guide the DCS then determined that it was reasonable for the Teacher Trade Union Facilities Agreement to be £83,500. £10k of the £83,500 would be paid for from the Corporate Facilities Time budget in respect of the corporate consultation meetings and associated activity. However, the £83,500 figure would be the total figure and would need to include on costs. In order to accommodate relevant on costs, the total hours of trade union facilities time was reduced from 2909 (as detailed in Appendix 2) hours to 2307 hours. This equates to 355 days of trade union facilities time. This resulted in the following Teacher Trade Union Facilities Time agreement and allocation to relevant unions:

UNION	CURRENT MEMBERSHIP	TOTAL ALLOCATION	DAYS
NASUWT	850	134	
NUT	656	107	
ATL	326	61	
VOICE	49	23	
NAHT	88	17	
ACSL	50	12	
		355	

The relevant increase of time is therefore 55 days based on the original agreement of 300 days, as negotiated in 1998. As part of this proposal it was determined that facilities time would not be split down into the different activity elements. The total figure would be the total amount of the trade union facilities, and then this would be distributed across the Teacher Trade Unions. Therefore, the total allocation as detailed above is to cover all Trade Union Facilities activity.

It must be recognised that even to maintain the previous trade union facilities arrangements of the **agreed** 300 days (agreed in 1998) plus on costs, this would result in an approximate monetary figure of **£58k**.

Statutory responsibilities of H&S representatives

Health and Safety Representatives have the strongest rights of all trade union representatives. The statutory responsibilities and functions of Health & Safety Representatives are detailed under Section 2(4) of the Health & Safety at Work Act 1974 and Regulation 4(1) of the Safety Representatives and Safety Committees Regulations 1977. This provides the legal framework for employers and trade unions to reach agreement on arrangements for health and safety representatives and committees to operate in the workplace. In summary, Health and Safety Representatives have a statutory right to paid time off to carry out the following duties:

- health & safety training
- investigating health & safety complaints from employees
- negotiating with employers on aspects of health & safety
- carrying out workplace inspections
- reviewing employer's health & safety documents and manuals
- meeting with health & safety inspectors and environmental health officers
- attending safety committee meetings
- consulting with their members on aspects relating to health & safety

These rights apply to all trade unions appointed Health & Safety Representatives. Therefore, where employers recognise multiple unions, each union appointed a Health & Safety Representative has the right to paid time off for the purpose of carrying those functions as detailed above on behalf of their union and the members they represent.

In terms of health & safety inspections, **health & safety representatives have a right to inspect the workplace every three months** in order to investigate potential hazards, dangerous occurrences, any safety concerns raised by members and to obtain health & safety information from the employer. This is a legal right of any trade union appointed Health & Safety Representative, that operates in addition to the health & safety practices and procedures as developed by the employer, although the HSE recommend that it is in the interests of both the employer and the trade union to coordinate activities to ensure unnecessary duplication is reduced. The LA therefore is required by law to ensure that appropriate health & safety arrangements are in place with trade unions to ensure compliance to the regulations around workplace inspections.

For more information on statutory responsibilities of Health & Safety Representatives see appendix 3.

Agreed H&S Audit Inspection Arrangements for Herefordshire

The agreed Health & Safety Inspection arrangements have been developed by Andrew Rewell, Corporate Risk Manager in conjunction with the previous Director of Children Services, and the Health and Safety Committee which includes the Teacher Trade Unions. Three trade unions have appointed Health and Safety Representatives in order to carry out H&S inspections. The unions are NASUWT, ATL and NUT. It has been agreed that the activity be coordinated between the unions, and each representative will undertake the inspection on behalf of the other unions. This prevents a potential situation whereby a school with multi site union representation is inspected every 3 months by each of the unions separately, although each union has the right to do so as detailed in regulation 5 of the Safety Representatives and Safety Committees Regulations 1977. If any of the unions exerted this legal right the employer would be required to provide paid time off in order for the safety representative to undertake their duties including inspections. If we applied the responsibilities as detailed in the legislation, a school with multi site representation could easily have 12 inspections a year (one inspection every quarter by each of the separate unions), and a school with no representation (no members of staff who are in a union) would have no inspections. It must also be recognised that this could increase if other unions with representation across Herefordshire Schools such as Unison, GMB, NAHT, and Voice also appointed Health & Safety Representatives with the express functions of undertaking Health & Safety duties on behalf of their unions.

Following a pilot of one High School and two Primary schools, it has been estimated that a primary schools audit inspection and write up would take 4 hours, and a secondary school is estimated to

take 8 hours. On this basis, it has been estimated that the Audit Inspection programme will need 423 hours to cover all LA schools in a 12 month period. 27 schools are scheduled to be inspected in the Spring term, and this will be divided equally across NASUWT, ATL and NUT. Given what the law details about union representation and the rights of each union appointing their own Health & Safety Representative to undertake activities and consult with the employer on all matters regarding Health & Safety, a level of 423 hours across all Herefordshire LA schools is very moderate. In order to illustrate this point, if 50 schools have union representation by each of the 3 unions at their school, and each union exerted their right to inspect every 3 months, this would result in the total inspections are 600 (50 x 4 x 3). On this basis, the audit inspection arrangements that have been developed provide a more reasonable level of inspections and ensure that unions are representing all groups, and provide for only 1 inspection per school per year. This agreement has only been established by each of the unions agreeing to work collaboratively for the benefit of all Herefordshire Schools and their members

This approach was agreed by the previous DCS and the Health & Safety Committee. Both HASH and the Primary Heads group were consulted on the new audit inspection arrangements.

Clarification of H&S Facilities Time

Under regulation 4(2) of the Safety Representatives and Safety Committees Regulations 1977 safety representatives are entitled to paid time off to undertake duties in accordance with regulation 4(1) (as detailed in Statutory Responsibilities for H&S Representatives, above). Therefore, it is entirely appropriate to incorporate health & safety facilities time into the main Teacher Trade Union Facilities Agreement. Previously the only activity to be paid for from the main allocation of Teacher Trade Union Facilities time was Health & Safety Committee consultation meetings, as the audit inspection programme had not been developed. It is widely accepted that the previous H&S arrangements did not comply with the Safety Representatives and Safety Committees Regulations 1977, as there was no provision for the audit inspection programme, and associated Health & Safety activities. The Teacher Trade Unions have become increasingly vocal in this area, and now have exerted their statutory right in accordance with the Safety Representatives and Safety Committees Regulations 1977. It was important that this issue was addressed quickly in order to prevent a potential claim to an employment tribunal. This is why Andrew Rewell and the Health & Safety team were keen to develop the audit inspection programme in conjunction with Teacher Trade Unions.

The H&S facilities time is now included under the revised arrangements, and is based on 423 hours, as the H&S pilot has informed the view regarding H&S facilities time. (The Teacher Trade Union Activity proposal – Appendix 2 determined the hours as 411 hours, 137 per union). As the Teacher Trade Union Facilities Time Agreement has historically had insufficient allocation for H&S activity, in particular around inspections, it could be argued that the 55 days increase is attributable to H&S inspections and associated activity. It is therefore likely that the 55 days will be spent on H&S representation activity, although 55 days only equates to 360 hours. This is an area that will need to be reviewed.

For clarity the Teacher Trade Union Facilities Agreement will not detail each separate Trade Union Facilities activity. The facilities time voucher allocation will cover all Trade Union Facilities activity.

Key Considerations

4 Schools forum are asked to:

- Consider the new arrangements for Trade Union Facilities.
- Note the financial cost.
- Note the legal implications and compliance requirements as detailed from Trade Union and

Labour Relations (Consolidation) Act 1992 (TULR(C)A and Safety Representatives and Safety Committees Regulations 1977.

Community Impact

5 None

Financial Implications

The new arrangements provide an increased cost of £41,500.

Legal Implications

Statutory provisions of Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) require employers to have appropriate arrangements in place for trade union facilities.

Risk Management

Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) places a statutory condition on employers to ensure that trade union officials have reasonable paid time off for the purposes of trade union duties. The Safety Representatives and Safety Committees Regulations 1977. provide a legal right for union appointed Health & Safety representatives to have paid time off in order to carrying their functions in relation to health & safety. Failure to provide adequate trade union facilities time will potentially impact on meaningful consultation, and could damage positive working relationships with current teacher trade unions. Ultimately if trade union facilities are inadequate the LA could be in breach of the law, and this increases the potential for a formal dispute with teaching unions. The current arrangements are not sustainable and are not sufficient to meet the current level of activity. Moving into a difficult time in terms of the economic downturn, and falling rolls in schools, it is imperative that the Council engages positively with all unions in the spirit of partnership. To achieve this there must be an increase to the teacher trade union facilities time.

Consultees

9 None

Appendices

Appendix 1 – Teacher Trade Union Activity Review

Appendix 2 – Teacher Trade Union Activity Proposal

Appendix 3 – Regulation 3, 4, 5 Safety Representatives and Safety Committees Regulations 1977

Background Papers

None identified

TU Facilities Activity	Average Annual Hours						TOTAL	Comments
	NUT	NASUWT	ATL	VOICE	NAHT	ASCL		
Redundancy consultation meetings	84	84	84	42			294	Estimate average of 4 hours per school. Projection 14 schools
Restructuring Consultation Meetings	42	42	42	42			168	Estimate 14 schools
Redundancy case advice / appeals	72	72	60	24	10		238	This depends on individual cases
TTU meetings	18	36	18	18	18	18	126	6 meetings per year 3 hours with 1 hour pre meet
Directorate JCF	12	12	12	12	6		54	6 meetings per year 1 hour with 1 hour pre meet
Casework; disciplinary, grievance, capability	96	96	60	20	5		277	This depends on individual cases
Secretary duties		60					60	Current 10 days per year allocated only to NASUWT
Attend trade union courses	60	60	18	12			150	
Regional conferences (Education)	36	36	6	6	5		89	
Branch meetings					5		5	
School policy development meetings	20	20	20	20	20		100	4 meetings per year 3 hours with 2 hours pre meet
TOTAL	440	518	320	196	69	18	1561	
Average Hours Per Week	11.3	13.3	8.2	5.0	1.8	0.5	40.0	
Proportion Per Week	0.35	0.41	0.25	0.15	0.05	0.01	1.2	
Other TU Facilities								
H&S meetings	24	24	24	24			96	6 meetings per year 3 hours with 1 hour pre meet
H&S activity	400	400	400				1200	Subject to roving reps
ULR activity	252	252	252	n/a			756	
Corporate JCF	24	24	24	24			96	6 meetings per year 3 hours with 1 hour pre meet
Other corporate meetings	18	18	18	18			72	Average 6 per year estimate 2 hours with 1 hour pre meet
Corporate policy development meetings	24	24	24	24			96	Average 6 per year estimate 2 hours with 2 hour pre meet
TOTAL Other TU Facilities	742	742	742	90	0	0	2316	
Average Hours Per Week	19.0	19.0	19.0	2.3	0.0	0.0	59	
Proportion Per Week	0.59	0.59	0.59	0.07	0.00	0.00	2	
TOTAL	1182	1260	1062	286	69	18	3877	
Average Hours Per Week	30.3	32.3	27.2	7.3	1.8	0.5	99.4	
Proportion Per Week	0.93	0.99	0.84	0.23	0.05	0.01	3.1	

Further information on the subject of this report is available from
Mel Ganderton, HR Manager - CYPD on (01432) 260934

Appendix 2 – Teacher Trade Union Activity Proposal

TU Facilities Activity	Average Annual Hours						TOTAL	Comments
	NUT	NASUWT	ATL	VOICE	NAHT	ASCL		
Redundancy consultation meetings	84	84	84	42			294	Estimate average of 4 hours per school. Projection 14 schools
Restructuring consultation meetings	12	12	12	12			48	Estimate 4 schools
Redundancy case advice / appeals	72	72	60	16	10		230	This depends on individual cases
TTU meetings	18	18	18	18	18	18	108	6 meetings per year 3 hours with 1 hour pre meet
Directorate JCF	12	12	12	12	6		54	6 meetings per year 1 hours with 1 hour pre meet
Casework; disciplinary, grievance, capability	96	96	60	10	5	5	272	This depends on individual cases
Secretary duties		60					60	Current 10 days per year
Attend trade union courses	60	60	18	12			150	
Regional conferences (Education)	36	36	6	6	5		89	
Branch meetings					5		5	
School policy development meetings	20	20	20	20	20	20	120	4 meetings per year 3 hours plus 2 hour pre meet
TOTAL	410	470	290	148	69	43	1430	
Average Hours Per Week	10.5	12.1	7.4	3.8	1.8	1.1	36.7	
Proportion Per Week	0.32	0.37	0.23	0.12	0.05	0.03	1.1	
Other TU Facilities								
H&S meetings	24	24	24	24			96	6 meetings per year 3 hours with 1 hour pre meet
H&S activity	137	137	137				411	Included a provision of 4 inspections per school
ULR activity	252	252	252	n/a			756	
Corporate JCF	18	18	18	18			72	6 meetings per year 2 hours with 1 hour pre meet
Other corporate meetings	12	12	12	12			48	Average 6 per year estimate 1 hours with 1 hour pre meet
Corporate policy development meetings	24	24	24	24			96	Average 6 per year estimate 2 hours per meeting with 2 hours pre meet
TOTAL Other TU Facilities	467	467	467	78	0	0	1479	
Average Hours Per Week	12.0	12.0	12.0	2.0	0.0	0.0	38	
Proportion Per Week	0.37	0.37	0.37	0.06	0.00	0.00	1	
TOTAL ALL TU FACILITIES	877	937	757	226	69	43	2909	
Average Hours Per Week	22.5	24.0	19.4	5.8	1.8	1.1	74.6	
Proportion Per Week	0.69	0.74	0.60	0.18	0.05	0.03	2.30	