

TRADE UNION REPORT
TO
LEICESTERSHIRE FUNDING FORUM

DEC 2012

TRADE UNION FACILITIES TIME

1. THE CURRENT POSITION

Historically, the funding of trade union facilities time in Leicestershire has not been as transparent as it should undoubtedly have been. Individual schools have not known how much this funding has cost them, and the costs have just 'existed' - the outcome of a system which simply 'top sliced' an amount of money from the overall schools budget in order to fund this facilities time.

It was never subject to a formula which was then known to each individual school. As it related to a combination of actual costs and a 'release' system based on historic membership figures for each trade union/professional association, schools were unaware of how much they would have financially 'benefited' if this system was not in place.

This is why the current situation is as complex and uncertain as it actually is. The LA cannot quantify the costs involved for each individual school, as this has never actually been part of the way in which the historical costs were funded. The sum was not related to a 'per pupil' cost, or a cost related to the number of staff in each school.

This means that rather than starting from a place where de-delegation could be considered in terms of a formula for the costs of the facilities time element within 'supply costs', Leicestershire is starting from a somewhat different place.

This Report advances the arguments for de-delegating the costs of supply funding, with a particular emphasis on the reasons why trade union/facilities time funding should be de-delegated.

Colleagues should also clearly understand that this would be a continuation of the current arrangements. Leicestershire trade unions/professional associations are not requesting anything new. We are making the case for a continuation of the existing system, which permits the LA to reimburse schools which release 'lay' officers, and for a system where the costs of this are funded by LA schools.

To put this discussion into a Regional context, we do know that the following LA's have decided to de-delegate both Primary and Secondary funding:

Peterborough; Derbyshire; Leicester; Solihull; Warwickshire; Staffordshire; Herefordshire; Nottingham.

We also know that a number of these LA's have also decided to establish a mechanism for academy/delegated schools to buy back into a centrally held facilities 'pot'.

2. FUNDING ARRANGEMENTS FROM APRIL 2013

Colleagues will know that the school funding reforms coming into effect from April 2013 require significantly greater delegation of funding to schools. Local authorities will only be able to retain funding for supply cover costs – including for trade union facilities time – where schools have agreed through the Schools Forum to “de-delegate” the funding. Discussing this issue is the subject of this Report.

The retention of funding for trade union facilities time under the heading of supply costs allows the LA to reimburse individual schools for the employment of a long term replacement for local 'lay' officers who are on partial or full time release, as well as for short term supply costs for occasional absences for other trade union representatives' attendance at meetings or training courses.

The 2013 changes pose a serious potential challenge to the existing Leicestershire LA facilities time arrangements, arrangements which have served schools, the LA, employees and trade unions/professional associations well for a considerable number of years.

The DfE's guidance on the operation of the new provisions can be found in its document *2013-14 Revenue Funding Arrangements - Operational Guidance for Local Authorities*, which can be found at www.tinyurl.com/operationalguidance

In summary, the changes mean that LAs can no longer decide unilaterally to retain funding for supply costs such as maternity leave, long term sick leave, trade union facilities time and time off for public duties. Under the new arrangements, the LA can decide that it wishes to retain funding for any or all of these purposes and determine the proposed level of funding under each heading. The Schools Forum's agreement is then, however, required before the LA can exclude this funding from delegation.

The Schools Forum is only legally empowered to agree to or reject the de-delegation of funding for supply costs. It cannot decide to vary the amount of funding to be retained or change the purposes for which the funding is to be retained (eg that it should cover maternity leave but not facilities time).

Should funding be delegated for either primary or secondary phase, or the level of retained funding be reduced, the LA will nevertheless remain statutorily liable to provide time off for local trade union officers employed in its schools.

The DfE guidance further states that decisions must be taken separately for the primary and secondary sectors by Schools Forum members from those sectors. Other Forum members may not take part in voting on the decision. Although the guidance does not say so explicitly, our view is that this suggests that academies members are excluded from taking part in the decision in the same way as non-schools members of Funding Forum.

Where a decision to de-delegate is taken, this will be binding upon all LA schools in that sector and the funding involved will be excluded from their delegated budgets.

Where there is a decision to delegate funding, the DfE guidance advises that LAs may nevertheless offer “buy-back” arrangements to schools. Where any decision is taken to delegate funding in one sector only, schools in that sector should be offered access to “buy-back” arrangements allowing them access to the pooled facilities time arrangements applying in the other sector.

Academies are not affected by these provisions. Their funding allocations will include an element in respect of this funding whether or not it is de-delegated. The LA is able to offer buy-back arrangements to academies in the same way as to other LA schools which have received delegated funding, and we would urge that this is the recommendation of Leicestershire LA. The final part of this Report gives our interpretation of the legal powers of LAs to offer such arrangements and accept funding.

Whatever the decision made by funding forum, legislation ensures statutory rights to time off for trade union duties, and these are summarized below. These rights exist irrespective of whether an employer is an Academy Trust or a Local Authority. Clearly, exercising these rights has a not insignificant cost to the LA and to individual academies.

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.

These statutory rights provide for:

- Paid time off for union representatives to **accompany** a worker to a disciplinary or grievance hearing
- Paid time off for union representatives to carry out trade union **duties**
- Paid time off for union representatives to attend union **training**
- Paid time off for union ‘learning reps’ to carry out relevant **learning activities**

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, ie 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.

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. It has also been subject to Case Law established in appropriate tribunals and courts.

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. A current example of this would be voluntary aided and foundation schools, whose governing bodies are technically the employer of teachers in their schools, but who have traditionally maintained their participation in Leicestershire LA arrangements.

Provision for paid time off is also the subject of a collective agreement contained in the Burgundy Book. These statutory provisions can be enforced by application to an employment tribunal.

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.

The Burgundy Book Agreement, which provides the framework for local collective bargaining agreements, further defines accredited representatives as being teachers who are:

- a member of the recognised Union’s national executive or other national committee
- an officer of the local Association or Division
- a school representative

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 s178 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.

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. Again, the definition of 'reasonable' in this context has been established by case law, and is also contained in various documents and Codes of Practice from ACAS (.ACAS code of practice on time off for trade union duties and activities <http://www.acas.org.uk/index.aspx?articleid=1878>)

Union Learning Representatives

S168(A) TULR(C)A provides that an employer must allow reasonable (paid) time off for a union learning representative 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,

Health and 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 and 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

(see HSE code of practice on consulting workers on health and safety <http://www.hse.gov.uk/pubns/priced/l146.pdf>)

LOCAL AUTHORITY and SCHOOL POWERS

Local Authority Powers

Some local authorities have suggested that they do not have the power to make arrangements for facilities time over and above the requirements of TULR(C)A. Similarly some have suggested that they do not have the power to accept funds from academies who wish to pay into the collective pot of funding for facilities arrangements. Our view is that this is not correct.

Local authorities have powers under s2 Local Government Act 2000 to do anything which promotes “the economic, social or environmental wellbeing” of the people of their area. Facilities arrangements come within this definition. Whilst local authorities may choose not to exercise their powers in this way, it is not correct to suggest that they do not have the power to do so.

School Powers to Hold Funds

The School Standards and Framework Act 1998 s50(3) also provides that subject to any provision made by the school under a scheme of arrangement with its local authority, the governing body may spend any such amounts as they think fit :

- a) For any purposes of the school;
- b) Subject also to any prescribed conditions for such purposes as may be prescribed.

This power would allow schools to use their funds to pay towards trade union facilities despite not being the formal employer of teachers at the school, and, therefore, schools may decide to pool funding for in relation to facilities arrangements.

3. THE CASE FOR DE DELEGATION

This section of the JCC Report explains the case for de-delegating supply costs, including facilities time.

At a general level, the work of Local union Reps has been widely recognised and praised by employers.

In 2009 the Director General of the CBI, Richard Lambert, said in the foreword to 'Reps in Action: how workplaces gain from modern union representation' a report published by BERR;

'In today's difficult economic climate, it is more important than ever that all resources available to the workplace are well deployed. Union reps constitute a major resource: there are approximately 200,000 workers who act as lay union representatives. We believe that modern representatives have a lot to give their fellow employees and to the organisations that employ them.'

Union Learning Reps (ULRs) also get paid time off in unionised workplaces to support their colleagues in updating existing and obtaining new skills and qualifications. In June 2011, John Hayes MP, Minister for Lifelong Learning, Further Education & Skill paid tribute to the work of ULRs saying;

"I want to pay tribute to union learning reps, who have made so much difference to so many lives, and to such effect. Trade unions can play an invaluable and immeasurable role in improving skills in the workplace."

Benefits of effective trade union representatives

Trade union and professional association representatives carry out a range of complex and demanding activities covering advice, representation and negotiation. This is demonstrated day after day in Leicestershire schools, where staff routinely contact trade unions/professional associations for advice and support, and where local officers participate in arrangements for meaningful consultation, negotiation and representation.

Effective local union officers 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.

Unions and Professional Associations also help to ensure that schools and LAs meet their legal obligations. The expertise of experienced trade union officers should not be lost to school leaders and LA officers. Neither should the associated costs of proceeding without this pooled knowledge of employment-related and legal matters.

Funding for time off allows trade union representatives to attend consultation and representation meetings during the working day. Without it, meetings such as disciplinary, grievance, ill health and capability meetings - formal or informal - and consultation meetings on changes to working arrangements would be much more difficult to arrange. These would still have to take place, but these meetings would more likely have to take place in the evening or at weekends, affecting everyone involved.

Local union officers also help to resolve issues at an early stage. Without de-delegation, fewer issues would be resolved informally, resulting in a significant increase in costs to schools and workload for school leaders and LA officers. Disciplinary, grievance and capability issues would be more likely to escalate, with cases more likely to reach employment tribunals.

De-delegation would also mean the continuation of a system which means that the same reps were more likely to interact with the same managers on a reasonably long-term basis. There was the potential, therefore, to build relationships of mutual respect and trust, essential qualities for positive industrial relations.

In a recent survey for the TUC and **Personnel Today**, over half of responding HR professionals agreed that unions were an “essential part of modern employer/employee relations”, and that union officials approached meetings with managers in an “open, constructive manner”.

Other benefits

Unions provide services such as professional training to members which benefit the employer. These are effectively sold to members by school representatives and by local officers. Without time for them to liaise with members, the benefits of this union training would be lost. All local unions and professional associations provide training courses covering not just trade union duties, but also professional development opportunities for their members, and many of these courses are brought to member’s attention by local officers.

Cost benefit analysis

The current arrangements enable unions and professional associations to develop expertise among a relatively small group of representatives who serve as local casework officers supporting members across a large number of schools, and an end to central funding would bring that to an end. Schools would then be required to provide paid time off to trade union representatives at every school for duties relating to union members as well as paid time off for training to do so.

This would have substantial financial consequences for schools, since the costs would considerably exceed the funding delegated. It would also have other consequences such as the reduced likelihood of cases being resolved quickly. The current arrangements efficiently pool the cost risk to individual schools, as well as allowing trade unions to provide more effective support through trained and experienced representatives (see Case Studies in Appendix Two).

The amount of funding per pupil for facilities time would be relatively small. The removal of centrally held funding, however, would result in a significant cost for schools as the valuable contribution made by union representatives is lost.

The current arrangements also allow LAs and schools to determine the pattern of absence for individual trade union officers at the start of the academic year and to make appropriate arrangements to avoid disruption to teaching and learning.

Research commissioned for the TUC from the University of Hertfordshire shows that involving trade union representatives effectively can help reduce dismissal and exit rates, meaning lower recruitment costs and better staff morale and productivity, and reduce workplace-related injuries and illnesses through better health and safety standards.

The return on the investment made in trade union facility time is many times the sum spent. The above research estimated that, for every £1 spent on facility time, between £3 and £9 of benefits accrued to the employer.

At a time of significant change and pressures on funding, the cost to local authorities and schools of not adequately funding facility time could actually cause significant problems in the delivery of education.

THE CASE FOR DE-DELEGATION AND RETENTION OF FUNDING

Risks of additional costs arising from delegation

The cost of supply cover for facilities time will fall unpredictably and/or unevenly across schools. Delegation of funding, however, would be by means of a pupil-based funding formula, allocating a proportion of this funding to all schools. There would be a degree of 'protection' for small schools, in terms of a more even and reasonable spread of the costs.

As noted above, the funding delegated to individual schools will not match the funding needs of those schools liable to pay the costs of facilities time for local officers. In addition, the funding required in total for greater facilities time for each school's different school representatives will far exceed the amount currently provided for the current LA facilities budget.

In establishing the power to de-delegate, the DfE has de facto accepted the argument that central retention of this funding should be permitted on the grounds of economies of scale and of pooled risk. The possibility of de-delegation means that the DfE has recognised that delegation of funding, on the other hand, will increase the likelihood of individual schools bearing a disproportionate cost for functions which actually benefit all schools.

Research has also shown that planned education spending between now and 2014-15 will fall significantly:

Table 4. DfE DEL resource budget, 2010–11 to 2011–12 and to 2014–15

	2010–11 (£ billion)	2011–12 (£ billion)	% change (real terms)	2014–15 (£ billion)	% total change (real terms)
Resource DEL	51.4	51.5	-2.7%	54.0	-5.6%
<i>Of which:</i>					
Early Intervention Grant	2.5	2.2	-13.0%	2.2	-21.7%
Schools spending	37.4	38.0	-1.2%	41.1	-1.2%
Dedicated Schools Grant and Academies	37.4	37.4	–	38.6	-7.3%
Pupil Premium	–	0.625	–	2.5	–
Cancelled education programmes	0.6	0.0	-100%	0.0	–
16–19 education	8.1	8.0	-4.1%	?	–
Further education	4.0	4.0	-2.5%	?	–
Sixth-form funding	2.4	2.4	-2.1%	2.2	-17.6%
Apprenticeships	0.8	0.8	-0.5%	?	–
EMA and 16–19 Bursary	0.6	0.4	-29.4%	?	–
Other spending	0.4	0.4	-3.8%	?	–
Administration	0.5	0.5	-10.9%	0.4	-31.5%
PFI/Other (PESA)	0.5	0.7	28.0%	0.9	55.4%

(“Trends in Education and Schools Spending”, Chowdry and Sibieta, Institute for Fiscal Studies, October 2011, p12)

It is clear that any opportunity for planned savings at individual school level will be of the utmost importance going forward, and deciding not to de-delegate would be a high risk strategy given the potential training costs involved for each individual school. A pooling of those costs, via de-delegation, has shown itself over the years to be the most appropriate way forward on this issue.

In local terms, there are countless examples of trade union and professional association involvement which has contributed to the effective functioning of Leicestershire schools:

- School introductions of action plan plans for redundancy/restructuring which have been resolved without the need for compulsory redundancies. We know of schools where consultations have resulted in suggestions where action plans have been amended and significant savings have been achieved.
- Consultations over an action plan involving LSAs have taken place where staff have agreed to reduce hours while maintaining flexibility and morale within the staff team.
- Compromise agreements have been negotiated that achieved potentially significant savings, with the compromise agreement preventing potential tribunal claims for unfair dismissal.

And on a daily basis we routinely advise and represent our members on their queries and issues arising from their employment in Leicestershire schools and academies. This advice and representation is delivered in such a way as to attempt to resolve difficulties at the earliest opportunity and at the lowest level possible. By doing so, this

involvement is often effective at minimising the costs and time that can arise as a result of grievance and disciplinary procedures that could have been resolved informally. We are often able to prevent an escalation of problems simply by giving our members effective advice that enables them to deal with their issues informally without recourse to costly procedures.

CONCLUSION

Our view is that it is essential for Leicestershire LA schools to decide to de-delegate funding for trade union facilities time for all the reasons discussed above.

In addition, not doing so would be to send out all the wrong messages in terms of what schools and the LA consider to be good practice, and call into question a system which has served the LA and school-based staff remarkably well for a considerable number of years.

In times where conflict can easily become a byword, the relationship between Leicestershire LA, individual schools, HR and trade unions/professional associations has stood the test of time and has been characterised by co-operation and professional dialogue.

This has enabled the resolution of many issues, individual and collective, without recourse to formal procedures and, when matters have had to be pursued formally, this has been done in a swift and timely manner.

School staff and school leaders have valued the tried and tested mechanisms which have served everybody well. Abandoning these mechanisms would be a regressive and unhelpful step for all of those involved in Leicestershire education.

We think that it is an urgent priority for the Funding Forum to make this decision and then for the LA and trade unions/professional associations to enter into negotiations for an acceptable and realistic formula – other LAs have arrived at a figure of between £3 - 5 per pupil per school per year.

This would represent an affordable figure for most schools and we believe that it is an investment worth making to secure peace of mind regarding the issues discussed in this report. We very much hope you will be persuaded by this information as well as your stated support for trade unions, which we appreciate. We are now asking you to commit your school to funding this agreement on an annual basis so we can begin to set the new arrangements up and make them effective in all schools across Leicestershire for the future.

Appendix One

FUNDING FOR TRADE UNION FACILITIES TIME

Dear colleague,

You will be aware of Schools Forum discussions on the future treatment of funding for supply costs. This letter sets out the reasons why central retention of funding by the local authority for the costs of supply cover relating to trade union facilities time is in the interests of school leaders as well as teachers generally.

As representatives of all recognised educational trade unions and professional associations in Leicestershire, we would support the views expressed in a recent email by the Local Authority on this matter, and the views expressed at regular intervals by school leaders and county councillors. All have commented positively on the valuable work carried out as a result of the current arrangements for facilities time. National research has confirmed these benefits, both in financial terms and in terms of positive industrial relations.

There is absolutely no doubt that disrupting the current arrangements for facilities time, under which the local authority retains a centralised budget to reimburse schools, would create significant additional costs and workload for schools and academies. The arrangement has worked well in ensuring that local authorities and schools meet their statutory responsibilities to provide paid time off for trade union duties and allowing trade union representatives to attend meetings and hearings during normal working time. If the funding for these arrangements was to be delegated to schools, school and academy leadership teams would encounter greater difficulty in ensuring that employees have access to the trade union representation to which they are entitled and would inevitably find themselves obliged to convene and attend more meetings outside school hours and into the evening.

Currently, this funding falls under the same budget head as other supply cover costs. The pooling of funding between all schools within the local authority area allows for more flexibility for schools in providing for the costs of maternity leave, long term sick leave, secondments and trade union and public duties. It allows trade union representatives who understand the local context to deal with issues arising within schools, without necessarily being a member of staff of the particular school. It also allows experienced trade union reps to seek to resolve problems at an early stage, often informally. Trade union reps help to support morale, reduce staff turnover and lower recruitment costs.

The above examples illustrate the extent to which changed or reduced support for the work of trade union representatives would greatly disrupt the working of Leicestershire schools and academies.

It is also vital that the LA produces a series of costings for different models so that Forum Members have a clear understanding of how this decision might actually impact on their budgets, rather than leaving this as a matter of speculation. It is equally important that Forum members have an understanding of how these costings have been arrived at.

We hope you will agree that it is in the interests of everyone at your school, and the generality of Leicestershire schools, that the current arrangements are maintained, and that you will support a position of de-delegation at the Schools Forum when this issue is discussed.

Yours sincerely

Richard Holdsworth, ASCL
Alison Deacon, ATL
Jed Purkis, GMB
Jo Lovell, NAHT
Phil Leech, NASUWT
Andy Reeve, NUT
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Appendix Two

EXEMPLAR COSTINGS FOR WHEN INDUSTRIAL RELATIONS GO WRONG IN SCHOOLS

Case Study 1

Costs for a discrimination case

Discrimination claims can include not only race discrimination but also discrimination on the grounds of faith or belief which can be quite wide ranging. The legislation also allows claims for alleged discrimination on grounds of sex, disability, sexuality and age, all of which may also be pursued as separately identified cases against a school. Employees can also pursue claims for victimisation where they have made a complaint of discrimination (whether internally or externally) and feel they received treatment that victimised them in response to that complaint.

Other key pieces of legislation that teachers have been known to pursue claims under include the Fixed Term Employee Regulations, the Part Time Worker Regulations, the Agency Worker Regulations, Unfair Dismissal and Unfair Selection for Redundancy. These are the commonest claims the trade unions generally handle for teachers, although there are other heads of law that could be relied upon.

This case study demonstrates the costs associated with a case where a teacher believed that he was being discriminated against on grounds of race and disability. This teacher raised the issue of race discrimination with the school but was not satisfied with the way in which his complaint was handled or resolved. This led to extreme stress and anxiety which after a period of time manifested itself in physical illness diagnosed as severe and chronic irritable bowel syndrome and severe migraines. This teacher was then off sick for a considerable length of time resulting in the school commencing procedures to dismiss the teacher on grounds of ill health. This teacher was convinced that his illness was caused by the racial discrimination he experienced in his workplace and intended to take a claim for unfair dismissal and discrimination on the grounds of race and disability to employment tribunal. There was medical evidence to support this view for legal purposes.

The case was eventually settled by way of a compromise agreement after more than 18 months of meetings and negotiation.

The NUT rep spent in the region of 168 hours or approximately 24 days over 18 months on this case. The associated cost of release from normal duties is £3,216. Had the member not had NUT representation, he would undoubtedly have taken the case to tribunal. The NUT would have covered the member's legal costs but the school would have had to prepare and defend themselves in an employment tribunal which would have been listed as a 5 day hearing. The legal costs for the school would have been solicitor's fees of approximately £20,000 plus VAT. Since the case involved two strands of discrimination, the school would have considered using a barrister.

Barristers' fees are at least £1,500 per day (and may be much more) so including preparation time this could easily have been in the region of a further £10,000 plus VAT.

The potential costs of this case had it not been resolved by the intervention and support of the trade union concerned have been assessed as follows:

NUT rep	24 days @ £134 per day supply rate	£ 3,216
Solicitor's fees		£ 24,000
Barrister's fees		£ 12,000
TOTAL		£ 39,216

Further associated costs for the school would have been the time for staff in the school in preparing for the case and being witnesses at the hearing. If we take conservative figures of:

Headteacher	12 days @ annual salary of £90,000	£ 2,959
Admin support	12 days	£ 657
Witnesses x 8	2 days per person @ supply rate	£ 2,144
TOTAL COST		£ 44,976

By settling via a compromise agreement rather than having to represent themselves at employment tribunal, **the school saved at least £41,759** before consideration is given to any award that would have been made if the member won his claim. The teacher would not have signed a compromise agreement without NUT support and would certainly have continued to pursue his intended course through the employment tribunal if not given timely and competent advice regarding case prospects and settlement terms by his trade union. The employment tribunal service is well-known for being inundated with claims from unrepresented claimants with little understanding of legal processes and ultimately poor case prospects, whereas none of the teacher trade unions would ever support a member in pursuing a claim without reasonable prospects of success being clearly assessed and identified. The trade union rep's input into this at an early stage is a key element that needs to be supported properly by schools.

Paying into the facilities budget saved this academy school at least £42,935 after taking into consideration their contribution to the facilities budget.

(NB: The figures above do not take into account any compensatory payment made to the employee as part of the compromise agreement).

Case Study 2

The Cost Of An Employment Tribunal Case

The likely costs of any hearing will depend on the complexity of the case and the length of the hearing. However, ATL recently had costs awarded against them for a failure to consult case that was only listed for half a day. These costs, set by the employment tribunal, were £4371.

The School's solicitor's hourly rates were:-

Partner:	£ 260.00
Solicitor:	£ 155.00
Trainee:	£ 98.00

A standard unfair dismissal case could easily take 40 hours to prepare so at £155 per hour that would be **£6,200** (or, for the services of a partner, the cost would be **£10,400**.) Some claims involve a solicitor and a partner working together so those costs would turn out to be quite considerable for a school.

A two day hearing on top (which is fairly standard for unfair dismissal) is £2,480 (a barrister would probably charge around £5,000 for a two day case).

Therefore a straight forward unfair dismissal case could cost £8,000 to £10,000 in fees alone, using a standard level solicitor to prepare and present the case for the school. There would be additional costs if the school were to lose the case and/or have separate costs awarded against them. The average award for unfair dismissal in 2010/11 was £8,924.

Discrimination cases are usually more complex, which means greater solicitor costs, the likely involvement of a barrister to prepare or present a case and a longer Employment Tribunal hearing. In addition, awards in discrimination cases are typically far higher, for example the average award for age discrimination claims in 2010/11 was **£30,289**.

Case Study 3

The True Costs Of A Failure To Agree – Dispute Resolution Case

Whether they are an employer or a trade union representative, everyone is generally committed to transparent, effective and positive employment relations. This is stipulated under recognition agreements but in any case is a good practice model. Dispute issues do occasionally arise within a school, usually around working conditions or practices or the introduction of new measures, and the maintenance of positive employment relations in that context becomes especially critical.

It is in the interests of all employees and employers to resolve potential dispute issues as near to their point of origin as possible and with the minimum amount of conflict and disruption occurring. Schools want to see matters resolved in a timely and effective manner so that their focus can return to the proper business of teaching and learning and the management of their establishment. It is also the wish of every trade union to work in such a manner.

For these reasons, all parties always work hard to achieve agreement and constructively negotiated outcomes that are mutually beneficial and agreeable. If it is to be achieved successfully, this takes time (and therefore money.) Without that commitment to resources being given, any dispute that came to the attention of the unions, no matter how trivial it may be in its origins, would translate immediately into collective balloting activity and/or collective employment tribunal applications, which we do not see as being in the interests of schools or members. This is particularly relevant in the initial stages as all evidence demonstrates that disputes are most capable of constructive resolution at their early phase.

Below is an outline of a dispute issue that arose in a school which we have analysed for time spent and costs to illustrate how and why we believe the intervention of trade union representatives saves schools considerable time and money.

Context and Progress of Dispute:

The school wished to change its Directed Time formula to lengthen the school day. In addition, there was a wish to introduce one late finish per week (5pm) for teachers in exchange for leaving earlier (2pm) on a Friday afternoon once a month. Although the members understood the school's rationale and were not totally unhappy about all of the proposals, the effect of the school's proposal overall was to add 35 minutes to each teacher's contact time each week. This they were extremely unhappy about and the view of all three unions involved (ATL, NASUWT, NUT) was that this would breach the relevant teacher conditions if implemented.

There was a mix of locally-based representation, with two out of the three main teacher unions having a School Representative. Joint and separate members' meetings had been held to consult and discuss the issues and, in the case of the represented unions, indicative ballots had been conducted because there was a strong request made for industrial action in response to the proposal from members almost immediately. These meetings had demonstrated virtually unanimous support for action to oppose the proposals being requested and both the local reps were asked to take this up with the Headteacher immediately. There had been one local meeting to discuss the situation but this had not gone well: the reps had essentially refused to discuss the proposals because it was outside of their union defined remit to do so, but had informed the Headteacher that everyone was upset, ballots were being requested and he had no prospect of implementing his proposal. The Headteacher had become extremely defensive and had stated that he intended to complain about the behaviour of both reps to their respective unions.

At this point, the matter was referred to the Local Secretaries, all of whom worked at other schools. There was also consultation with the Regional Officers of the unions, both paid and elected. A joint Secretaries' letter was produced detailing the concerns expressed by members and sent to the Headteacher and Chair or Governors. A

meeting was requested as a matter of urgency to discuss the situation and see if it might be resolved. In the case of one union, there was also 'behind the scenes' involvement from their National Officers because of the potential for a formal dispute. In tandem with this, the Headteacher wrote a letter to each of the unions formally complaining about the attitude of the local reps. This greatly complicated the situation and led to an almost irretrievable break down in relations locally because of the entrenchment of positions. However, it was believed he may have done this in the heat of the moment, so the Headteacher was contacted by telephone by one of the Local Secretaries and was persuaded to withdraw these complaints in favour of assistance towards a dispute resolution process, since no progress could ever have been made otherwise.

An initial dispute meeting was held with the Headteacher, three Governors, a Personnel Officer from the school and a HR Adviser from the relevant Local Authority. At the first meeting, the key issues from each side were explored in a controlled and appropriate manner, agreement was reached regarding how the negotiating process would be facilitated and barriers to progress each side felt existed were identified. This meeting took 4 hours and included specifications from each side for a joint document to agree how the resolution process would go forwards. This was drafted and shared afterwards, outside of the meeting process and it was used to inform all of the meetings that followed. The document took around 6 hours to produce, consult and come to agreement upon.

There followed a series of six further meetings, all of around 3 hours duration, in which negotiations continued and progress was achieved. The trade union side also held a joint pre-meeting for an hour before each of these to ensure continuity and assist progress of the dispute. Eventually, it was possible to come up with a re-negotiated proposal that met the needs of both the school and its teacher employees and the school was able to implement this positively for the following September after an effective consultation exercise to complete the process.

Commentary and Costing

The involvement of the locally based Association/Branch contacts in this dispute was absolutely crucial to its successful resolution. Without it, there could not have been the same level of commitment to a joint process and partnership to succeed in getting to a satisfactory resolution. The local representatives at the school were under significant pressure from their members and the Headteacher found it very difficult to negotiate on his original proposal because of the way in which it had been introduced and responded to right at the beginning. All of the reps' time was funded via existing facilities arrangements.

There was also considerable activity involved outside of the meeting schedule, to ensure good liaison and communication at all levels and a continuing commitment to the process. This time also included the drafting and sharing of documents, for both the school and the members the school was under an obligation to consult with. In this case, the three Secretaries met together and undertook those activities jointly, to maximise the best use of their available facilities time.

Had the local representatives been unable to assist the situation because of the lack of appropriate facilities support, then the situation would have relied on the employed

officials of the three unions becoming involved in the alternative. This would have inevitably made the dispute appear much more serious and high-level than it needed to be, particularly at the outset. In the case of at least one union involved, it would also have necessitated the direct involvement of the General Secretary because a dispute was declared and then the procedure outlined in the Burgundy Book would have been invoked, meaning nothing could be changed or negotiated upon until there had been a National/Local Deputation meeting. That involves a large number of people and can take months to see through to fruition. It is also likely there would be a simultaneous ballot for industrial action if this route were to be taken.

Had it been adopted, that approach would have severely limited capacity for resolution on both sides, it ran the risk of missing locally-based knowledge and intelligence and the whole situation would have taken much longer, become intractable and would have remained extremely difficult to resolve.

In addition, owing to their wider level of functioning and resulting commitments, it is highly probable that all of the employed officials would struggle to find many days and times on which they could all be available which would also suit the school. The school would then have had to meet with each union separately (in the case of at least one union after the National/Local Deputation process had taken place.) In that circumstance, assuming the pattern of meetings above, the Governors, the Headteacher, the Personnel Officer and the HR representative would have to attend three times as many dispute meetings – even if there were only the seven above that were actually needed to resolve this case, this would amount to twenty-one meetings to resolve the issue overall. That has a significant cost implication for the school, even without anything else being accounted for.

As it was, since facilities funding was available to the key local activists of each union, the costs to the school were as follows:

3 x secretaries attending 7 meetings, inc pre-meets Facilities funded – 84 hours total	NIL COST
2 x local reps attending 7 meetings, inc pre-meets Facilities funded – 58 hours total, inc 1 hour for liaison/prep	NIL COST
Secretaries (3) and reps (2) consulting with employees Facilities funded 4 mtgs – 80 hours total	NIL COST
Secretaries drafting reports, agreements, updates etc Facilities funded – 30 hours total	NIL COST
Time spent travelling to/from school (assuming 1 hour each way) for Secretaries x 3 Facilities funded – 66 hours total	NIL COST

Without the TU facility time, assuming supply cover costs of £134 per day (approx £21 per hour), these costs would have been:

3 x secretaries attending 7 meetings 84 hours total	£ 1,764
2 x local reps attending 7 meetings 58 hours total	£ 1,218

Secretaries (3) and reps (2) consulting with employees 80 hours total	£ 1,680
Secretaries drafting reports, agreements, updates etc 30 hours total	£ 630
Time spent travelling to/from school 66 hours total (assuming 1 hour each way)	£ 1,386
GRAND TOTAL COST TO SCHOOL	£ 6,678

(NOTE: Both tables assume that the consultation with employees is a cost that falls to the employer because of the legal obligation to consult where new contractual proposals are being negotiated in recognised workplaces.)

Had the school been an academy paying into the facilities fund to support the resolution activity by the local trade union reps, their costs for this would have been the schools delegated sums – this would range from £1,155 for 300 pupils up to £3,465 for 900 pupils in a school.

On the figures above, this would represent a saving of between £3,213 and £5,523 in a single year after taking into account the school's contribution to the fund. Costs Not Included Above

These figures only represent costs for trade union and/or member consultation time, they do not include any time that was required for school or Local Authority representatives to engage in and seek to resolve the dispute amicably, so the true business costs would have been considerably higher, probably at least twice the amount indicated above. For the purposes of this case study, we have only assessed the trade union time and costs as these are the figures we would present to any school that decided not to purchase the facilities of the Local Association Representatives as invited.

Further to the costs indicated above, without Local Association Secretarial intervention, it is extremely likely that this dispute would have proceeded into a legal arena at a very early stage, with the possibility of failure to consult claims being lodged by all three unions on behalf of each and every member (almost every teacher working there in this case.) Instead of this, the facilities fund enabled constructive attempts to be made by our Secretaries to resolve it as locally as possible. Had that not been available, the spectre of accumulating legal costs is raised immediately for any school, even before any tribunal process takes place, as in the case study example given above. Had such claims been lodged and won by the three unions involved, the award for failure to consult may have been quite considerable in a dispute case as it is calculated on the basis of amount awarded for each member who is part of the relevant bargaining group. This case study was costed only on the basis of the real trade union time taken to resolve it. We believe it demonstrates clearly that the benefits to schools of purchasing facilities time far outweigh the costs of any significant dispute resolution activity, even where no recourse is taken to legal proceedings by either party. In that context, it represents very good value for money to a school.

The purpose of including these case studies is to attempt to explain what the three trade unions who have worked on them have identified as the key projected costings for any school if we cannot maintain good employment relations.

To achieve this, both schools and trade unions need effective and positive support for members and employers that can remain locally based. If schools choose not to purchase facilities in the way we are suggesting, this is very much placed in jeopardy and the school runs a strong risk of higher costs arising than would be necessary under this proposal.

Appendix 3

a) Appendix III of the Burgundy Book

AGREEMENT ON FACILITIES FOR REPRESENTATIVES OF RECOGNISED TEACHERS' ORGANISATIONS

Introduction

1. This agreement between the Council of Local Education Authorities (CLEA), acting on behalf of the Local Government Association, and the teachers' organisations contains the principles and practices which are recommended to local education authorities and governing bodies in respect of the facilities to be made available to those teachers, not being paid officials of any of the recognised teacher organisations, who are representatives of these organisations. Each local education authority is advised to agree jointly with each of its recognised teacher organisations the detailed arrangements for the granting of facilities in accordance with the provisions of this agreement. Disagreements on points of principle and any requests for clarification may be referred to CLEA for discussions with the national teachers' organisations.

General Principles

2. This agreement is based on a belief that both the teachers' organisations and the employing authorities accept their joint responsibility for ensuring a well ordered system of trade union organisation and industrial relations, and on a recognition of the contribution that can be made by the teachers' organisations and their local representatives to the smooth running of the education service at local and national levels. It is agreed that in jointly determining the nature and extent of the facilities required locally, and in their use, the parties to the local agreement will have regard not only to the value of the agreed facilities for effective employee representation as a means of promoting good industrial relations, but also to the need to avoid unnecessary cost, to maintain the effective running of the schools where the teacher representatives are employed, and to recognise that the provisions of the agreement will have to be introduced within the resources available to the employing authorities.
3. An accredited representative of a recognised teachers' organisation will be a teacher who is:
 - (a) a member of the national executive or other national committee of his organisation, or a representative of his organisation appointed by the national executive to serve on a national body;
 - (b) a local officer of such an organisation whose necessary official organisation duties are effectively at local authority level. The relations and negotiations with a local education authority shall be the sole responsibility of the main unit of local organisation. The activities in which these local teacher representatives will be jointly involved with the LEA and governing bodies will include both individual and collective issues. In order to act effectively, the teacher representatives will need to put views to the authority concerned as appropriate, to consider proposals, to conduct correspondence and to consult members of their associations individually or collectively;

(c) a local officer whose duties are at the lower level of an association within the area of the main unit of local organisations;

(d) a school representative whose duties will be limited to activities which are a necessary part of his/her duties for his/her organisation and its members within the school in which he/she is employed.

In certain circumstances a representative may have responsibility for more than one of these functional levels. For their part the recognised teachers' organisations undertake to ensure that their accredited representatives locally understand the extent of their authority and responsibility as teachers' representatives.

4. It will be the responsibility of the recognised teachers' organisations to notify the local education authority and individual head teachers of the names of its accredited representatives and it will be to the accredited representatives only that the recommended opportunities and facilities are extended. It is appreciated that in very large or split site schools organisations may wish to appoint more than one representative, while in those areas where there are very small schools organisations may wish to have one representative to service more than one school.
5. The principal matters with which the appropriate accredited representative will deal, in accordance with the responsibilities defined in paragraph 3, are as follows:

(a) matters arising out of the use of grievance and disputes procedures which have been agreed between the teachers' associations at authority level and the local education authority and governing bodies;

(b) responsibilities of the teacher representatives to their unions (e.g. attendances as delegates to their national conferences);

(c) responsibilities of the teacher representatives in connection with the interests of their members in the schools;

(d) functions connected with the training of teacher representatives, including attendance at training courses arranged by the recognised teacher organisations at national, regional or authority level for this purpose. In these respects consultation with the authority will be part of those functions.

6. It is expected that (b) above will include the involvement of members of the local committee of recognised teacher organisations in attendance at the meetings of those committees, which will not be expected to meet earlier than 4:00 p.m. on any school day, other than in exceptional circumstances⁶. Item (c) is likely to include, without interfering with the normal functioning of the school, the convening of meetings of newly appointed teachers for the purpose of meeting them and explaining the advantages of membership of a recognised organisation.

Facilities for Accredited Representatives

7. It is recommended that local agreements on the provision of facilities for the local officer of the recognised teachers' organisations should include:

- (a) arrangements for carrying out his or her association's responsibilities within the schools and for obtaining permission to leave the school in which he or she is employed so that he or she can perform his or her functions as an accredited representative;
- (b) provision of lists of newly appointed teachers in the authority's area and arrangements for communication direct with the new teachers;
- (c) provision annually of a list of the teachers employed in the schools of the LEA by the means most convenient to the authority⁸;
- (d) arrangements for use of accommodation in schools or other premises of the authority for association meetings;
- (e) arrangements of the use of the local authority's distribution system to schools for the purposes of official union communication with their members, subject, if necessary, to approval by the national union or association concerned;
- (f) arrangements for the deduction of membership subscriptions at source where this is requested by any local association of a nationally recognised teachers' organisation. It will be for the individual member to decide whether to opt for deduction at source.

6 Where meetings called for 4:00pm would adversely affect the school day, as might be the case when committee members in rural areas may have to travel significant distances to attend such meetings, a later starting time should be arranged.

7 It is expected that such agreements will be no less favourable than those already applicable in the area concerned or any similar agreements which authorities have made with recognised unions in respect of other groups of their employees, particularly with regard to the terms of sub-paragraphs (d), (e) and (f) of this paragraph.

8 The lists referred to may, if any authority so wishes, be provided in the form of copies of School returns.

8. Absence from teaching duties for the performance of their responsibilities as local officers of the recognised teachers' organisations is to be allowed without reduction in pay. A scale providing for the maximum amount of leave with pay permitted to the local officers should be negotiated locally, and have regard, inter alia, to the number of members of the organisation concerned who are employed by the local authority and serviced by the officers in question.
9. The likely extent of the time required by accredited representative for the performance of their level of responsibilities as representatives of the recognised teacher organisations should be assessed in accordance with an estimate of their local involvement. They should not unreasonably be refused the time necessary for the performance of their responsibilities. The time which these responsibilities is likely to occupy should be taken into account in respect of its effect on their teaching duties.
10. The accredited school representatives of the recognised teachers' organisations should be permitted reasonable opportunities and be given the necessary facilities to discharge their functions as provided for in the ACAS Code, namely:
 - (a) union matters such as recruitment, maintaining membership, collecting contributions and communicating with members;
 - (b) within the responsibilities conferred on them by their respective organisations, industrial relations matters within the individual school such as the handling of members' grievances.

11. The facilities envisaged are as follows:

- (a) notice board facilities to be provided by the LEA or governing body without charge and the titles of the organisations to be inscribed on the board or boards. Multi-association boards should be used wherever possible;
- (b) use of telephone with reasonable privacy (if available), with payment for outgoing calls;
- (c) provision of a room for a meeting with the organisation's members as required, providing reasonable notice is given;
- (d) use of school typing, duplicating and photocopying equipment, where available, for essential union work within the school providing this does not interfere with the work of the school and on a basis of repayment by the organisation concerned for the materials used.

12. Local officers should be provided with the documents which set out the pay, conditions of service and the regulations of the local authority which apply to the teachers employed in the authority's area. Accredited school representatives should be provided with access to such documents and also with information as to the structure and allocation of promoted posts applicable to their own schools and with the articles of government. These documents should be supplied without charge.

General

13. Guidance on aspects of this agreement is contained in the accompanying Commentary. Any changes will be notified to those concerned.

COMMENTARY ON ASPECTS OF THE AGREEMENT ON FACILITIES FOR REPRESENTATIVES OF RECOGNISED TEACHERS' ORGANISATIONS

1. Local Authorities have been advised that they should pursue policies designed to fulfil the recommendations of the ACAS Code of Practice with regard to facilities for Union representatives. Employment protection legislation requires employers to allow officials of independent trade unions, including employees who are accredited as representatives of recognised unions (or associations) to act on behalf of union members in the establishments where they themselves are employed, reasonable time off from work with pay for trade union activities which are a necessary part of the official's duties in connection with the employer's own organisation. The legislation provides for such an employee to complain to an Industrial Tribunal that permission has been unreasonably refused to allow him/her time off from work for these purposes.
2. The Agreement arrived at between CLEA and the recognised teachers' organisations seeks to set out in detail the manner in which the recommendations of the ACAS Code on facilities for trade union representatives should be applied within the education service. The purpose of this Commentary is to offer guidance to authorities and teachers' organisations on aspects of that agreement, and the issues which stem from it.
3. It is recognised by CLEA that if the provisions of the agreement are to be given effect without imposing additional burdens on teaching staffs it may be necessary for LEAs to provide additional staffing resources in individual schools and authorities are accordingly recommended to make such provision as far as possible within the resources available to them and subject to the constraints of LMS formulae.
4. It will be noted that the agreement does not specify any limit on the amount of paid leave of absence which shall be granted to national representatives. It is accepted that individual representatives will be willing to inform the employing authority of the reasons for absence if the authority thinks it is necessary to ask.
5. The agreement provides for leave of absence with pay to be permitted for local officers in accordance with a scale to be negotiated locally and related, inter alia, to the number of members of an organisation employed in a LEA area and serviced by the officers in question.
6. With the developments taking place in the field of industrial relations, health and safety at work, and similar matters, the teachers' associations are giving increased attention to training programmes for their accredited representatives and to the needs of the schools. Authorities should therefore give encouragement and support to accredited union representatives wishing to attend courses for this purposes and teachers' organisations should regard to the needs of the school in arranging their training programmes. When arranging them they should consult with the LEA concerned before making any arrangements to hold a training course during term time.

7. The recommendations in the agreement are not intended to alter the relations which at present exist between the recognised teachers' organisations and individual local education authorities, particularly so far as negotiations are concerned.

Appendix 3**b) Part 2, Section 18 of the Green Book****18.Trade Union Facilities**

18.1 Authorities shall provide the recognised trade unions with facilities necessary to carry out their functions, including paid leave of absence to attend meetings concerned with the work of the NJC and Provincial Councils and the operation of a check off system whereby, with the consent of the individual, trade union dues are deducted from pay.