



**EMPLOYMENT COMMITTEE - 11 JULY 2013**

**REVIEW OF TRADE UNION RECOGNITION AND FACILITIES TIME**

**REPORT OF THE DIRECTOR OF CORPORATE RESOURCES**

**Purpose**

1. To report the current trade union recognition and facilities time agreement in light of recent government guidance and school funding forum decisions.

**The Legal Framework**

2. Trade union facility time provides the platform upon which union representatives in workplaces in both the public and private sector receive paid time off work for a relatively tightly-defined set of trade union duties.
3. The legal basis for the right to paid time off (or “facility time”) for representatives of recognised trade unions is contained in the Trade Union & Labour Relations (C) Act, 1992. This is supported by reference in the legislation to the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice; an updated version of which came into operation on 1<sup>st</sup> January 2010. The right applies to all elected representatives including Stewards, Health & Safety Representatives and Union Learning Representatives
4. There are nine areas of statute and equivalent types of workplace representatives where union representatives have statutory rights to paid time off to perform their duties and in some cases to be released for training and be provided with facilities. The relevant roles and duties within the County Council are as follows:
  - Collective bargaining role – including terms and conditions of employment, termination or suspension of employment, allocation of work or the duties of employment, discipline and grievance, facilities for union representatives, machinery for negotiation or consultation;

- Learning representatives;
  - Equality representatives;
  - Health and safety representatives;
  - Accompanying workers in grievance and disciplinary cases;
  - Specific consultation and negotiations – TUPE, collective redundancy and pensions.
5. ACAS suggest that organisations should have a written agreement in place which confirms what time off and access to facilities is reasonable and appropriate. The County Council currently has two separate formal recognition and facilities time agreements with its recognised trade unions.

### **Debates around the provision of dedicated facilities time**

6. There has been increasing political and media interest in the provision of facilities time in the public sector. In November 2011, the Prime Minister announced that a review of the funding for trade union facility time would take place. There have been similar announcements by both Francis Maude, Minister for the Cabinet Office and Eric Pickles MP, Secretary of State for Communities and Local Government. The Taxpayers' Alliance (TPA) have also published reports, subsequently reported by the media, that suggest that in 2011, £113m of taxpayers money was being used to 'support the activity of trade unions'.
7. As a result of the announcements, in September 2012 the Civil Service conducted a review of the level and cost of facility time and in March 2013 the Department for Communities and Local Government issued official advice to councils on union facilities time. The guidance suggested that Councils should:
- Save money by scaling back the cost of trade union facility time and limit it to a percentage of the organisation's pay bill;
  - Ensure full transparency on the level of facility time given to trade unions;
  - Ensure employees are not spending all or the majority of their working hours on trade union duties;
  - Adopt private sector levels of facility time;
  - Place restrictions on the use of office facilities for trade union representatives;
  - Charge for collecting union subscriptions.

8. The Trades Union Congress (TUC) which has 54 trade union members, representing 6 million workers responded to the government announcements and TPA report by commissioning a report from the Work and Research unit at the University of Hertfordshire. The TUC said that they sought to 'redress the imbalance' in the TPA report as it 'Made no attempt to undertake a cost-benefit analysis of the role of union reps in the public sector'.

### **Current Arrangements in the County Council**

9. There are two separate formal trade union recognition and facilities time agreements in place which cover both centrally employed staff and those working in maintained schools. As part of those agreements, Leicestershire County Council formally recognises the following trade unions: UNISON, GMB, Unite the Union, NUT (National Union of Teachers), NASUWT (National Association of Schoolmasters Union of Women Teachers), ATL (Association of Teachers and Lecturers), Voice the Union for Education Professionals, ASCL (Association of School and College Leaders) and NAHT (National Association of Head Teachers). There is a separate clause in some Adult Learning contracts which formally recognises UCU (University and College Union), but they are not currently covered by the main agreements.
10. The agreements clearly define the arrangements for the positive management of relations between the County Council and the recognised trade unions. They include a list of the matters that are subject to negotiation and consultation and the arrangements for this at a corporate and departmental level. The agreements also include:
- Use of County Council premises, equipment and facilities;
  - Time off for Trade Union Duties;
  - Employee Time off for Trade Union Activities;
  - Access to Training;
  - The role and recognition of Union Learning Representatives.

### **Centrally employed staff (excluding teachers)**

11. The agreement representing centrally employed staff has been in place since March 2009 and it covers UNISON, GMB and Unite.
12. Historically, the Council has chosen to meet its statutory obligations for paid time off for trade union activities by agreeing to adhoc release for GMB and Unite representatives, and the full and part time release of

UNISON representatives. It has proved an effective mechanism to manage the paid release of representatives from the largest union.

13. UNISON currently represents approximately 5,000 Leicestershire County Council employees (including school based staff) and has 117 elected representatives. There are currently 4 representatives who are granted full-time secondment to undertake their UNISON roles supporting centrally based employees. The cost of the full-time release is £143,008, which is 0.057% of the overall pay bill of £250 million.
  
14. The 4 UNISON representatives undertake the bulk of the work associated with the branch and its members and are involved in all aspects of representation ranging from:
  - consultation on Action Plans;
  - individual representation at disciplinary and grievance hearings and appeals;
  - negotiations on terms and conditions;
  - redundancy consultation and representation;
  - TUPE transfer consultations;
  - revision of employment policies and procedures;
  - providing advice and support to stewards and;
  - providing general advice and support to staff.
  
15. The Council considers that the advantages of providing facility time by way of full-time release for the largest trade union are as follows:
  - Matters are dealt with in a timely manner and without unnecessary delay eg. changes to policies, and procedures;
  - It substantially reduces the amount of paid time off needed for the other 113 representatives so that this is negligible;
  - The Council has seen significant change in recent years and is faced with that continuing in the medium term. Trade union involvement in working with managers and in representing staff through these changes has helped to minimise disaffection and ensure that staff understand what is being proposed. The Council benefits from having well trained and experienced representatives involved in the consultations, something that cannot be achieved to the same extent by involving a wide range of representatives on an ad hoc basis;

- The involvement of representatives in the development of action plans has shown that we are able to identify problems at an early stage, before they are launched, which in turn save the Council time and money;
- Disciplinary and Grievances are better managed with the involvement of well trained and experienced representatives. As an example, in 2011 a number of complex cases, involving 2 representatives required 22 days of hearing time. The preparation time and pre-meetings leading to the hearings were in excess of this figure. With this work being carried out by full-time representatives there was no disruption to the department in meeting its legal obligation to give paid time off to representatives to prepare and represent at a disciplinary hearing;
- The provision of timely advice to staff can avoid the Council becoming engaged in costly and lengthy internal procedures e.g. Grievances, Dignity at Work investigations and Health & Safety matters;
- Due to their time being predominately related to employment matters the experience the representatives gain enable them to identify solutions to difficult problems as they are likely to have relevant experience of similar situations;
- Ensures that collective bargaining is conducted by representatives that have an understanding of employment legislation, developments in Government policy and the challenges facing Leicestershire County Council.

### **School based staff and centrally employed teachers.**

16. The agreement on facilities time for school based staff has been in place since April 2007 and historically the funding, which was delegated from schools to the Council, paid for the release of the following representatives at a total cost of £198,000:

NUT	Full-time rep + additional 29 days per year
NASUWT	Full-time rep + additional 29 days per year
ATL	2 days per week + additional 17 days per year
VOICE	2 days per week + additional 6 days per week
ASCL	2 days per week + additional 6 days per year
NAHT	2 days per week + additional 6 days per year

UNISON Full-time rep

17. Following statutory changes to the way in which schools should be funded, the School Funding Forum chose in December 2012 to delegate the trade union facilities funding back to schools from April 2014. As a result of this decision, the County Secretaries will be made redundant at the end of August 2013.
18. The recognised teacher trade unions have written to the Acting Director of the Children and Young People's Service formally asking the local authority to establish a mechanism where Leicestershire schools and academies are able to 'buy into' a central fund for trade union facilities time. Whilst the Council agrees that the local authority retains the statutory duty to allow paid release for trade union representatives, it does not agree with establishing a 'traded service'. The proposed changes to teacher's pay and conditions from September 2013 clearly demonstrate that the government wants individual schools, whether maintained or academies to develop 'local' policies and procedures for teaching staff where relevant. There is no longer the requirement for the local authority to drive consistency and agreement across the county. It would still be necessary to invite representatives from maintained schools to any relevant collective bargaining for teachers in maintained schools.
19. In terms of representing support staff in maintained schools, UNISON will be losing the paid release of a full-time representative from September 2013, but they have suggested that if the Council could continue the current level of paid release at a corporate level, they would make every effort to continue to support maintained schools. In maintained schools, the terms and conditions of support staff are still linked to those of centrally employed staff and therefore, the trade unions will still need to be heavily involved in any collective bargaining.

### **Proposals**

20. It is appropriate, given the guidance from the Department for Communities and Local Government, media interest in facilities time, changes to the way in which facilities time is funded for maintained schools, to review the recognition and facilities time agreement across the Council. It is proposed to consult on the following:
  - (a) Amend the current recognition agreement for centrally employed staff to include the recognition of the trade unions for centrally

employed teachers, teachers in maintained schools, Adult Learning and Public Health staff;

- (b) Incorporate within the recognition agreement for centrally employed staff different collective bargaining agreements which cover separate staff groups, e.g. centrally employed teachers, staff in maintained schools;
- (c) That matters relating to staff employed in maintained schools will be dealt with at a reconstituted CYPS Departmental Negotiating and Consultative Committee (DNCC) with any matters which require corporate consideration referred to the Corporate Negotiation and Consultative Committee (CNCC);
- (d) To disestablish the 'Agreement on Facilities for Accredited Representatives of Recognised Teachers' Organisations' due to the School Funding Forum decision in December 2012;
- (e) To respond to the teacher trade unions to confirm that the Council does not wish to establish a 'traded' fund for facilities time in Leicestershire schools and academies;
- (f) Agree a standard constitution for the DNCC's;
- (g) To review the recognition and facilities time agreement on a yearly basis to ensure it meets legislative requirements, agree levels of funding and meets the needs of the organisation;
- (h) To establish a central fund, through departmental contributions based on headcount, in order to continue the practice of paid release for UNISON representatives;
- (i) Given, the scale of potential change within the Council, to continue to second full-time union representatives at the current level until March 2014 and then review on an annual basis;
- (j) To continue to charge the trade unions for the collection of subscriptions;

### **Recommendation**

That the proposals set out in paragraph 20 (a) to (j) be approved as a basis for negotiations with the recognised trade unions.

**Background Papers**

None.

**Circulation Under the Local Issues Alert Procedure**

None.

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**Equal Opportunities Implications**

None.