

SCHOOL/MULTI-ACADEMY TRUSTS WITHDRAWING FROM LA POOLED ARRANGEMENTS

The NASUWT has a clear position that all schools should be part of a central fund for facility time, which is administered by the relevant local authority (LA).

Although the NASUWT advocates the provision of a central fund administered by LAs under either a de-delegated agreement or a Service Level Agreement to provide trade union facilities which encompass more than one school, it is recognised that some schools/multi-academy trusts (MATs) do not wish to participate in these arrangements for a variety of reasons. They are, however, required to enact their own arrangements in order to fulfil their obligations under statute.

It should be noted that since trade union recognition rights are transferred to academies and free schools in accordance with Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 legislation, the issue is not **whether**, but **how** academies and free schools will provide paid time off for union representatives, union learning and safety representatives.

It may be helpful to obtain a list of all the schools in the association/district, and RAG rate these by whether they are contributing. This will help to identify the numbers of schools not contributing or considering withdrawal. Although it may seem that there are large numbers of schools not contributing, in most areas this will be a relatively low number.

Historically, facility time has not just been granted, it has been fought for and won over many years. The current situation is no different, facility time still needs to be campaigned and fought for. Certain arrangements are detailed in the Burgundy Book (where applicable) and ACAS guidance.

It should always be remembered that any facility time arrangements must be consistent with the NASUWT's facility time principles.

This checklist provides advice in the circumstance where a school/MAT decides to withdraw from a LA pooled arrangement.

Process

Where a school/MAT gives notice that it intends to withdraw from LA pooled arrangements, local representatives should:

- Obtain the school/MATs financial information, either from the LA, Companies House reports (<https://www.gov.uk/get-information-about-a-company>), or the Department for Education (DfE) school financial benchmarking website (<https://schools-financial-benchmarking.service.gov.uk/>) to ascertain the level of any financial reserves.
- Meet with the school/MAT to ascertain the rationale behind the decision, and challenge any misconceptions.
- Use the arguments in the following section to put forward the case to remain in the pooled arrangements.
- Request that the school/MAT reconsiders its position.

If the school/MAT refuses to reconsider its position:

- Alert the National Executive Member, who can meet with members to ascertain whether an industrial response is possible. If so, then the usual industrial action processes should be followed. Although it is often difficult to achieve action over facility time alone, there are often other issues, such as workload or pupil indiscipline that members will be prepared to take action over. The facility time issue can then be included in the trade dispute and its resolution.
- If there is no likelihood of industrial action, present the school/MAT with the NASUWT's *Model Trade Union Facilities Agreement for multi-academy trusts (MATs), single-academy trusts and maintained schools which do not participate in de-delegated facility time arrangements*, available on the NASUWT website.
- The aim of negotiations should be to maximise the facility time available to the NASUWT.
- Contact the NASUWT for further advice, especially if the school/MAT wishes to deviate substantially from the model agreement, or refuses to negotiate an agreement.

Arguments

There are many arguments that can be put forward for the continued participation of the school/MAT in local pooled facility time arrangements. These are some of the arguments that can be used:

- Ensure that the school/MAT is fully aware that withdrawing from a pooled arrangement does not remove their legal obligations under the Trade Union and Labour Relations (Consolidation) Act 1992 to provide paid time off for trade union duties.
- Trade union duties include:
 - negotiations around pay and conditions;
 - engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers, such as restructurings and redundancies;
 - allocation of work or the duties of employment as between workers or groups of workers, such as discussing work/life balance;
 - matters of discipline, such as representation at hearings;
 - trade union membership or non-membership, such as meeting with new employees;
 - facilities for trade union representatives; and
 - machinery for negotiation or consultation and other procedures, such as consultation over policies.
- Ensure that the school/MAT is aware that successive governments have legislated to provide a statutory basis for union facility time as follows:
 - paid time off within the working day for union representatives to accompany a worker to a disciplinary or grievance hearing;
 - paid time off within the working day for union representatives to carry out trade union duties;
 - paid time off within the working day for union representatives to attend union training; and
 - paid time off within the working day for union learning representatives to carry out relevant learning activities.
- Whereas the school/MAT can currently call on local representatives to accompany members, this requirement will transfer to in-house representatives which the school/MAT will be under a legal obligation to fund both in terms of paid time off and training.

- Remind the school/MAT that although there is no specific budget heading, it has received funding for facility time through its core grant, and therefore this should be spent on facility time release as intended.
- If the school has substantial reserves, use this to demonstrate that the costs of the pooled arrangements are affordable.
- Remind the school/MAT that pooled arrangements are the most cost-effective way of meeting their legal obligations, as the school/MAT will need to fund the cover the additional requirements for representatives to be trained, and the supply costs of cover that will be required for the school/MAT-based representatives to undertake duties. The cover costs of training alone will be a minimum of £2000 per year (one representative for NASUWT, NEU, GMB, and UNISON each receiving 2-3 days training). The actual cost is likely to be significantly higher however, as the Employment Tribunal ruled in *Bennett v London Borough of Camden* that 36 days paid leave for training was reasonable.
- In addition to the cover costs of releasing school representatives, this is likely to disrupt the continuity of learning for pupils in their class(es).
- Remind the school/MAT that the legal requirements for time off for union representatives accompanying a member include preparation time, as well as the meeting time. Therefore, using internal school-based representatives is likely to be far more expensive than using local representatives. Inform the school/MAT that much of the casework undertaken by unions is in the background, as issues are resolved before they develop by local representatives giving advice and guidance to members without school managements being aware. Withdrawing from the facility time arrangements will therefore likely lead to an increase in the development of major issues.
- Estimate the cost to the school of the pooled arrangement. This is likely to be a few thousand pounds per year. Use this to demonstrate that the pooled arrangements will be substantially cheaper and by far the most cost-effective way of meeting its obligations under statute.
- Remind the school/MAT that if it does withdraw from the local pooled arrangements; local union officers will be unable to attend meetings typically between the hours of 8:30am and 4:30pm, potentially leading to severe delays in the progress of procedures.
- Where applicable, remind the school/MAT that HR resources have been expanded to deal with an increased number of issues, and a similar increase is required to ensure adequate representation in line with regulations.