

## **Trade Union response to the proposal to remove funding for trade union secondments**

This Joint Trade Unions make this submission to the wider report arising from Cabinet's resolution that; *"officers be requested to bring a further report on the procedures necessary to remove all paid Trade Union officers"*.

The Joint Trade Unions understand that the rationale given is that the Lancashire County Council (LCC) should not fund full time trade union secondments at a time when LCC faces considerable financial pressures. The Joint Trade Unions understand that the Leader has stated that he is quite prepared to agree secondments but that the Trade Unions should fund them.

This submission puts to one side the obvious political and ideological discussion around Trade Unions and facility time and focuses on how industrial relations work in practice within LCC and the issues and risks that LCC will face if the secondments are removed. The Joint Trade Unions also wish to highlight the real benefits of facility time and secondments.

### **Statutory rights to paid facility time**

There are three main trade union roles with statutory rights to time off and these are the traditional trade union workplace steward/rep, union learning reps and union health and safety reps. There are also some other legal time off rights where someone is representing a trade union.

An employer must give trade union representatives paid time off to carry out their trade union duties as per the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). Examples of duties are;

- Negotiations with the employer;
- Functions which the employer has agreed may be performed by the trade union;
- Receiving information and being consulted on redundancies, business transfers or pensions changes;
- Training in industrial relations matters.

Time spent in negotiations/collective bargaining is set out in TULRCA as involving;

- Terms and conditions of employment or physical conditions of work;
- Recruitment, suspension, dismissal;
- Allocation of work;
- Discipline;
- Trade union membership or non membership;
- Facilities for trade union reps and officers;
- Procedural matters – eg consultation.

Trade union side meetings are also an example of a trade union duty as union reps need to meet separately from management to discuss and share information. In addition to statutory

provision there is substantial case law which clarifies the right to paid time off and there is guidance set out in the ACAS Code of Practice.

Union health and safety reps have paid time off rights under the Health and Safety at Work Act 1974. Health and safety reps must be permitted time off under the Safety Representatives and Safety Committee Regulations 1977 (SRSCR). They have similar rights to time off as other representatives however the SRSCR defines safety reps as having “functions” rather than duties and an employer must permit them time off with pay “as shall be necessary”.

This time off covers;

- attending meetings;
- undergoing training;
- investigating hazards and dangerous occurrences;
- investigating complaints and welfare at work;
- making representations to the employer.

There other matters set out within the SRSCR also. The Health and Safety Executive (HSE) also provide guidance that adds to the time that union health and safety reps need to take off.

Union learning reps (ULR) help open up learning opportunities for union members and supports them during the learning along with encouraging and developing a learning culture in companies and workplaces. ULR has a right to paid time off under TULRCA to carry out their duties. ULR duties involve analysing learning/training needs, arranging and promoting learning/training and consulting with the employer about these matters.

All reps have rights to time off when acting as a companion. The statutory right to be accompanied at a grievance or disciplinary hearing allows workers to request and have a union rep/officer as a companion. Paid time off used in this way by a rep is equivalent to a trade union duty and is part of facility time and the employer must permit a rep to take the paid time off. This extends beyond the hearing to meeting with the employee in advance for example.

There are also extensive statutory obligations on employers to consult when making collective redundancies under TULRCA. This consultation is with the trade unions and must be sufficient and meaningful with a view to reaching agreement. The employer must provide specified information to the trade unions and the employer must consider representations from union reps and reply to them. Reps need reasonable paid time off in order for this to be achieved and the rights for this are set out in TULRCA.

There are similar statutory obligations on an employer under the Transfer of Undertakings (Protection of Employment) Regulations. Here employers are required to inform and consult with representatives. Again paid time off is required to achieve this.

In addition following the recent decision of the Court of Appeal in UNISON, Vining & Ors v LB Wandsworth & the Secretary of State, trade unions have a right to be consulted under

article 11 of the European Convention on Human Rights on any workplace issue which affects their members.

Where reasonable paid time off is not granted claims can be brought in the employment tribunal and there is case law which expands upon the legislation as written. In addition where an employer fails to properly collectively consult over redundancies or TUPE transfers there exists a punitive measure called a protective award can be brought for each employee affected which can result in massive financial penalty to the employer of 90 days gross pay in collective redundancy situations or 13 weeks pay for transfers.

### **The Cost Argument**

The Joint Trade Unions understand that the Leader has stated that he is quite prepared to agree secondments but that the Trade Unions should fund them particularly given the financial pressures facing LCC.

Trade union facility time is often described as a cost to the employer and in simple terms a cost can be associated with a member of staff being seconded as a “full time rep”. There are two issues with that simplistic measure;

1. it does not factor in the benefits of trade union facility time and the use of secondments brings to LCC, a matter which is elaborated upon elsewhere in this report; and
2. the seconded “full time reps” carry out duties which LCC would be obligated to grant paid time off for anyway.

Therefore removing the paid for trade union secondments would not generate the expected savings for LCC and would in reality create additional costs, a matter elaborated upon elsewhere in the report.

The Joint Trade Unions are not prepared to pay for trade union secondments when the employer has a statutory duty to grant paid time off anyway.

### **Benefits of facility time and trade union secondments to LCC**

Notwithstanding that reps have a statutory right to paid time off as set out above there are benefits arising from paid facility time. None of the impact assessments into facility time conducted by Government have considered the benefits of facility time. The Trades Union Congress (TUC) has commissioned reports and analysis of the Government’s own data from their Workplace Employment Relations Study (WERS).

One such TUC report by Bradford University from 2016 is included at appendix A. Key points to note from this report are;

- Research commissioned by the trade union UNISON found that facility time;
  - Improved workplace relations and helped build the reputation of the employer as a good place to work.
  - Union representation enabled earlier intervention in relation to complaints, grievances and disciplinaries, which stopped them escalating which was less

costly to the employer and the taxpayer as a result of reduced staff and legal costs.

- Union reps enabled better communication with staff during restructuring and redundancy processes, which led to greater understanding of management's rationale for the changes, and reduced industrial action.
- In 2007 the then Department for Business Enterprise and Regulatory Reform (BERR – now BIS Department for Business Innovation and Skills) found the following benefits from trade union facility time based on WERS data from 2004;
  - Dismissal rates were lower in unionised workplaces with union reps – this resulted in savings related to recruitment costs of £107–213m pa.
  - Voluntary exit rates were lower in unionised workplaces with union reps, which again resulted in savings related to recruitment costs of £72–143m pa.
  - Employment tribunal cases were lower in unionised workplaces with union reps resulting in savings to government of £22–43m pa.
  - Workplace-related injuries were lower in unionised workplace with union reps resulting in savings to employers of £126–371m pa.
  - Workplace-related illnesses were lower in unionised workplace with union reps resulting in savings to employers of £45–207m pa.
- This gave £327-977m in savings across all sectors with around 60% being public sector equating to £223-586m pa.
- Updating this to 2014 figures to reflect the reduction in the size of the public sector and taking into account changes in real values gives a benefit of £250-674m to the public sector.
- Using the Taxpayers Alliance estimated total cost of public sector facility time (£108m in 2012-13) means **that for every pound spent on facility time, the accrued benefits have a value of between £2.31 and £6.24.**

There are clear benefits based on the Government's own data of paid trade union facility time in improving the working environment, promoting good and safe working practices free from discrimination and working with the employer to save jobs, protect services, retain skills and avoid compulsory redundancies.

### **Benefits of full time trade union secondments and the issues and risks if removed**

There are clear benefits as evidenced above to trade union facility time in general. The cost of the secondments is a cost that LCC would ultimately incur anyway as trade union reps are entitled to paid time off to undertake duties as set out above. However the use of secondments brings further benefits and it is popular amongst many employers in both the public and private sector particularly in larger employers.

Full time trade union secondments are a highly efficient way of an employer dealing with and managing their statutory obligation to grant paid time off for trade union duties, particularly in an employer the size of LCC. It ensures that there are highly trained and knowledgeable union representatives available for LCC to work with to fulfil LCC's legal obligations. Secondments ensure there are reps available for meetings or hearings when LCC want or need them to happen. It allows for good and close working relationships to be built between the full time reps and officers which assists in resolving workplace issues at the earliest possible stage. This then saves the employer both the difficulty and cost of workplace issues escalating.

The Joint Trade Unions believe that there are currently good working relationships with LCC officers and the Joint Trade Unions have worked effectively and professionally with officers in dealing with LCC's recent transformation programme, which can be evidenced by the low number of compulsory redundancies and savings achieved to date.

Given the financial pressures and challenges that LCC face the Joint Trade Unions believe that LCC will need experienced and knowledgeable seconded trade union representatives to work with during inevitable restructures and re-organisations. Not having such representatives will present LCC with serious difficulty in meeting their legal obligations. Having to release representatives on an "as and when" basis would be an inefficient method to seek to consult with trade unions which would result in a lack of consistency and greater issues amongst the LCC workforce in the implementation of any reorganisations. It could also result in consultation not being meaningful and place LCC in legal jeopardy.

General day to day workforce and employment issues would also be more difficult for LCC to manage in the absence of seconded full time trade union reps. Currently a manager or HR can contact a full time seconded trade union representative whom they have a working relationship and in many instances can resolve potential employment problems before they become an issue. That would be lost if the secondments were removed.

There is a process currently to grant "as and when" facility time but it would need developing and improving as seconded trade union representatives currently do the majority of the trade union duties such as representation and consultations. Even if a useful system were developed there would be delays to consultation/negotiation meetings and disciplinary and grievance hearings in the absence of seconded trade union representatives as these would depend on the availability of reps and the release of reps from their service areas. This in turn could create issues and problems in service areas where reps may need to be regular granted facility time. It will likely also result in disputes about facility time itself and legal claims against LCC.

A further issue will be the employer will find it more difficult to comply with the facility time reporting and publication requirements detailed in the Trade Union Act. Retaining the secondments makes this obligation far simpler.

The Joint Trade Unions also expect that if the full time secondments are removed then this will result in a need for the Joint Trade Unions to retrain our existing representatives across LCC and recruit and train new representatives. This will be necessary to ensure there are representatives available when members need them but also when LCC need them too. Paid time off would have to be granted for a substantial number of representatives to be trained.

The Joint Trade Unions also wish to highlight that staff voluntarily join and a Trade Union to represent them in the workplace and with their employer. This helps create effective two way communications leading to a more engaged workforce. This is increasingly important given the ever greater pressures being placed on staff and services, particularly given the hard work of staff in keeping LCC services going.

In light of the above the following risks of removing the full time trade union secondments are highlighted;

- The desired savings will not be realised and it may actually increase costs;
- A worsening of industrial and employee relations;
- Disruption of day to day employee relations matters such as disciplinary hearings;
- Lack of staff engagement and consultation resulting in a less engaged and demotivated workforce;
- More workplace issues, disputes and accidents resulting in greater cost through more demand on officer time and increased litigation against LCC;
- Increased disputes and issues relating to requesting facility time itself, including increased claims brought against LCC at the employment tribunal;
- LCC struggling to meet their legal obligations to consult, including increased claims brought against LCC at the employment tribunal;

### **Conclusion**

Given that removal of the full time trade union secondments is a false economy and will in all probability increase costs for LCC as well as creating a range of additional difficulties and risks, then at a time LCC is facing financial pressures it would be perverse and against basic logic to remove the full time trade union secondments.