



Department
for Education

Advice on trade union facility time

For school leaders, governing bodies,
employers and employees in schools

January 2014

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Summary

About this departmental advice

This is non-statutory advice from the Department for Education.

By law, trade union representatives are entitled to reasonable paid time off from their regular job to enable them to perform their union duties and to undertake relevant training.¹ Trade union members, including representatives, may also ask for unpaid time off to undertake activities. Together, these arrangements constitute facility time.

This advice explains what facility time is, clarifies the flexibilities available to schools and sets out the department's expectations about how facility time should be managed. It also sets out new measures to ensure better accountability and transparency for spending on facility time, which are supported by the findings of the Department for Education's call for evidence. The advice reflects the legislation and the Acas Code of Practice on trade union duties and activities.

Expiry or review date

This advice will next be reviewed in May 2016.

Who is this advice for?

This advice is for school leaders, governing bodies, employers and employees in all maintained schools and academies in England.

Key points

- Union representatives² in schools are entitled to reasonable **paid** time off during working hours to take part in trade union duties. Union representatives and members are also entitled to reasonable **unpaid** time off for trade union activities.
- There is substantial flexibility for maintained schools and, in particular, academies, to determine their own approaches to facility time to ensure positive workplace relations.

¹ Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) sections 168 to 173.

² Trade union representatives, union learning representatives and health and safety representatives all have statutory rights attached to their respective roles under TULR(C)A / Safety Representatives and Safety Committees Regulations 1977, see also Code of Practice and HSC Code of Practice: Time Off for Training Safety Representatives (1978). Local facility agreements may also be in place.

- All union representatives who receive facility time to represent members employed in schools should spend the majority of their working hours carrying out their main duties as school employees.
- Employers should ensure that spending on facility time is as efficient as possible.
- There should be full accountability and transparency on facility time given to trade unions.

WITHDRAWN

Introduction

Trade union facility time is reasonable time off for trade union duties and activities. This entitlement is set out in the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#)³ and the [Acas Code of Practice on time off for trade union duties and activities](#).

The Department for Education has undertaken a review of trade union facility time in schools. A public call for evidence was launched on 19 September 2013 to gather views from employers, schools, representative organisations, governors and members of the public. This call for evidence asked for views about how facility time should operate. It asked how taxpayer subsidy of trade union activity through paid facility time could be made more transparent and efficient, and sought views on what constitutes 'reasonable' time off for trade union duties.

The [results of the call for evidence](#) have been published on the Department for Education's website. The results demonstrate that there are examples of good practice, where facility time benefits schools and is managed efficiently and transparently. There are also, however, examples where spending is very high compared with other areas of the country. The majority of respondents agreed that there is a lack of accountability and transparency about how facility time is managed, and that all trade union representatives should be grounded in current classroom practice.

This advice is designed to provide information for school leaders, governing bodies, employers and employees on managing trade union facility time in schools. A glossary of some of the main terms used in the advice, as well as links to further sources of information, are provided at the end of the document.

³ Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) sections 168 to 173. Local facility agreements may also be in place.

1. Facility time in maintained schools and academies

The legislation on time off for trade union duties and activities applies to all employers, including those responsible for maintained schools, academies and free schools. Within this legislation there is significant flexibility for all schools to determine their own approaches to facility time. This section explains the legislation and the flexibilities available to maintained schools and academies.

While this flexibility will continue, the call for evidence did produce some clear expectations about how facility time should be managed in schools. These are explained in **Section 2** of this advice. In making decisions about facility time, we would encourage school leaders, employers and managers to consider these expectations and the new transparency arrangements set out in section 2.4. School leaders, employers and managers will also want to consider the benefits of facility time, such as improved workplace relations and early intervention in relation to complaints and grievances.

1.1 Entitlement to time off for trade union duties and activities

Employees who are [union representatives](#) of a trade union recognised by their employer are entitled to **reasonable time off, during working hours and without loss of pay, to carry out union duties and undergo relevant training**.

Trade union duties include:

- negotiations with the employer, or other functions connected with the subjects of collective bargaining, such as terms and conditions, redundancy and dismissal arrangements.
- preparations for negotiations, including attending relevant meetings.
- informing members of progress and outcomes of negotiations.
- matters of discipline (e.g. accompanying employees to internal hearings⁴).
- attending training in aspects of industrial relations relevant to carrying out their trade union duties. This training must be approved by the Trades Union Congress or by the trade union of which he/she is an official.

Employees who are [union learning representatives](#) and trade union health and safety representatives are also entitled to paid time off to carry out their duties and training. For union learning representatives to take time off, the employer must have notice in writing that the employee is a learning representative of that union. The Health and Safety Executive issues its own advice and codes for health and safety representatives⁵.

⁴ In the case of local representatives these employees may be outside their own school if a local facility agreement allows for this.

⁵ [Health and Safety Executive advice and Codes of Practice](#)

Union members and union representatives may also request **reasonable unpaid time off during working hours to take part in union activities**. The Department for Education expects time off for trade union activities to be unpaid. Activities include:

- meetings with full time officials, or branch, area, regional or national meetings of the union where the business of the union is under discussion.
- meetings of official policy making bodies such as the national executive or annual conference.
- workplace meetings to discuss and vote on the outcome of negotiations with the employer.
- voting in union elections.

The [Acas Code of Practice on time off for trade union duties and activities](#) sets out in detail the difference between trade union duties and activities and provides examples.⁶

Employers should ensure that facility time is not used for any activities related to lobbying for, planning or carrying out industrial action. **There are no circumstances under which an employee can claim time off to take industrial action.**

The entitlements in relation to paid time off do not extend to people who are not employees⁷. All teachers, school leaders and support staff who receive facility time to carry out trade union duties and activities should be employed to work in a school, and have a responsibility to participate in their school's arrangements for appraisal. Their objectives should reflect their school-based jobs rather than their trade union work.⁸

1.2 Managing facility time in maintained schools and academies

The arrangements for how maintained schools and academies manage their facility time budgets and arrangements are set out below. In both cases, it is not a legal requirement to have a formal facility time agreement and so it may be more appropriate to agree simpler, more flexible arrangements. Any agreement reached should be in writing and reviewed on a regular basis.

⁶ [Code of Practice Section 1 \(duties\) and Section 3 \(activities\)](#).

⁷ Whilst we would expect all union representatives to be currently employed in schools, we are aware that in some cases recently retired teachers, school leaders or support staff receive facility time under a local agreement to represent members. These arrangements should be reviewed on a regular basis to ensure they are providing benefits. In other cases there may be a local facility agreement in place which provides for representation beyond the school where the representative is employed. If a representative works in a school where the local authority is not the employer and the employer chooses to continue the local facility agreement, this teacher will be entitled to reasonable paid time off to carry out trade union duties related to wider local representation.

⁸ All teachers and school leaders in maintained schools must also be appraised against the relevant standards as well as their objectives.

How maintained schools manage facility time

Simplification of local funding arrangements for 2013-14 means that maintained schools now have more flexibility to manage facility time budgets.

Funding for trade union facility time is delegated to maintained schools in the first instance. For maintained primary and secondary schools⁹ the local authority may propose that this funding should be pooled centrally. The relevant members of the [schools forum](#) are responsible for deciding whether funding will be returned from the schools to the local authority. This is known as [de-delegation](#). To enable schools forum representatives to decide what is best for their schools, the local authority should provide clear information in advance about how funds will be spent and how the service will benefit schools. Schools forum members should seek the views of the schools they represent before the decision is taken.

In local authorities where the schools forum has decided **not** to de-delegate funding, individual schools manage their own facility time budget. This allows flexibility: schools may choose to organise their own facility time arrangements, buy into local authority services or pool funding with other schools.

There may be facility time agreements which have been agreed in the past at a local level. Local agreements can always be re-negotiated even if they have been long standing arrangements¹⁰, provided they have not been incorporated into individual employment contracts (this practice is rare). Re-negotiations may be needed to ensure efficient spending on facility time and fair, transparent and up-to-date arrangements.

How academies and free schools manage facility time

As with maintained schools, funding for trade union facility time is delegated to academies and free schools in the first instance. This gives them the flexibility to manage their own facility time budgets.

Where the employer (i.e. the academy trust) recognises trade unions, union representatives working in the academy or free school are entitled to reasonable time off. This could be agreed formally, or on an ad hoc basis as needed. A number of academies manage their own facility time arrangements at school level. Others have made the decision to buy into local facility time services by agreement, to be reviewed regularly. Some larger academy trusts have set up their own agreements directly with recognised trade unions. In some areas groups of academies share the cost of facility time, and review their pooled allocation on a regular basis.

⁹ De-delegation does not apply to maintained special schools, nursery schools or Pupil Referral Units.

¹⁰ Facility time agreements will normally have notice provisions. If not, reasonable notice (e.g. up to 6 months but not less than 3 months) should be given before ending or re-negotiating an agreement.

Following a TUPE transfer, an academy should comply with any existing facility time agreement until they give notice that they want to end or re-negotiate this agreement.

The following examples demonstrate how different employers have reviewed and revised their facility time arrangements:

Example 1: review of facility time arrangements

Earlier this year Trafford Council ran a consultation on trade union facility time, with a view to revising their facility time allocation model and improving efficiency. The revised model still de-delegates facility time funding from maintained schools back into a central fund. Academies that have opted in also pay a set amount per pupil: the charges for academies and maintained schools are the same. The annual facility time budget for the borough is then allocated between participating trade unions. Each union is allocated a fixed amount which translates into days their representative can spend away from teaching, carrying out trade union duties and representing members across the borough. There are no full time trade union representatives.

The transparency of the model brings benefits. There is a clear, fixed allocation for the unions across the year which is managed centrally and published. Representatives also have to produce a termly log of their activities to report to the local authority.

Example 2: multi-academy trust

The White Horse Federation is a multi-academy trust encompassing seven primary schools (including two teaching schools). The trust has made the decision not to buy back in to the local authority's facility time fund in 2014-15. There is no clear information from the local authority of how the annual expenditure of £5,100 is used to benefit schools. As an academy trust they are directly accountable to directors, members and trustees as well as to the Education Funding Agency, and need to be able to show tangible results for all areas of spending.

The trust recognises the benefits of union representation for good workforce relations. They encourage each academy in their chain to make sure they have school-based union representatives, and to be flexible in allowing them the time they need to carry out union work, funded from the trust's facility time budget. On the rare occasions when they need to buy in the services of a local authority union representative, they are prepared to pay for this service. They employ human resources experts who provide bespoke advice and support for all of their schools; this also contributes to positive workforce relations.

Example 3: traded service for facility time

In North Somerset Council the schools forum made the decision not to de-delegate any funds back to the local authority. Instead, the local authority set up a traded service for facility time. All schools (including academies) can choose whether to buy into the service. The traded service encourages better accountability: the council and the trade unions must provide clear information to schools about the benefits. Maintained schools, special schools and academies are charged the same amount (just over £1.70 per pupil), and those schools who do not wish to buy into the pooled fund are able to buy the services of representatives on an ad-hoc basis. Focusing on work that is of genuine mutual benefit is the key to making the service cost-effective. The council runs a 'one day a week' model which helps to keep costs down and reduce disruption in schools. The funding arrangements for local authority level union representatives of the recognised trade unions allow those representatives time off to undertake union duties on a particular day of the week, each week during term time. All regular liaison meetings and most consultation and case work meetings are held on that day, and representatives carry out their school jobs for the rest of the week. The council operates an invoice approval system, allowing for accountability without creating a new reporting system.

1.3 Facilities for union representatives

When employers and school leaders are considering facility time arrangements, they may also want to consider the use of the following facilities:

Office facilities

There is no statutory right to office facilities for union representatives, except for those engaged in duties related to collective redundancies and the transfer of undertakings, unless a local agreement contains provisions for these. Many employers make facilities available to representatives, such as a meeting room, access to a telephone and other communication media, and use of a notice board. Office facilities should not be used for union activities which are only union facing and/or which encourage or promote industrial action. The Acas Code of Practice sets out further advice on use of office facilities.

'Check-off'

Some employers offer a 'check-off' facility which allows employees who are trade union members to pay their union subscriptions by deduction from their pay at source.

Employers are not required to offer a 'check-off' facility unless there is a contractual entitlement or local agreement providing for this to be made available. It is possible to withdraw from local agreements on notice. If employers choose to offer check-off they may charge the union an administration fee: for example, some employers charge 5% of the value of the fees collected.

2. Managing facility time spending: ‘reasonable’ time off, efficiency, accountability and transparency

When making decisions about facility time spending, we would encourage employers and school leaders to take into account the expectations set out below, which are based on the clear messages emerging from the call for evidence.

2.1 What is ‘reasonable’ time off?

The call for evidence asked for views on the percentage of working hours which could be considered ‘reasonable’ time off to carry out trade union duties and activities. A majority of respondents expressed the view that trade union representatives should be grounded in classroom practice, and should spend more than 50% of their time in the classroom. Most school union representatives, who represent members in a single school, do not request any time off for trade union duties during their teaching time. However, many local representatives, whose duties are related to wider local representation outside their own school, currently spend *up to 100%* of their working hours on trade union work.

We agree with the majority of respondents to the call for evidence that **no teacher funded by the taxpayer should work full time on union work**. The provision in legislation is for employees to be permitted reasonable time off during working hours: the clear implication is that working hours should be spent principally on carrying out their main duties as an employee.

Whilst fully recognising that trade union representatives are entitled to reasonable time off in appropriate circumstances, the Department for Education expects all trade union representatives to spend **the majority of their working hours carrying out their school-based jobs**. We believe that it should be possible for local union representatives to fulfil their main union duties in one day a week or less, as demonstrated by the example of North Somerset Council above.

We would encourage all employers in schools and school leaders, especially those who currently fund full-time union representatives from facility time budgets, to review their facility time arrangements to ensure that **all union representatives are grounded in current classroom practice**.

2.2 Efficient spending on facility time

Moving beyond individual trade union representatives, at school/employer level, the call for evidence demonstrated the **importance of ensuring spending on facility time is as efficient as possible**.

Published data on current facility time spending shows significant variation in spending; from £1.00 per pupil per annum in one local authority, to £5.70 per pupil per annum in a local authority of a similar size. Even taking into account the need for flexibility according to local circumstances, the Department for Education believes that this is an unacceptable level of variation. The views of many respondents demonstrate that reductions in overall facility time spending can be made, whilst still allowing for flexibility according to local circumstances.

The department's review found that many local authorities and other employers have already reduced spending to approximately 0.1% of the pay bill, and others have made further reductions to 0.05% or less. This should include funding for all trade union representatives based in schools; representing support staff, classroom teachers and school leaders.

Whilst recognising the need for flexibility, we believe that **employers can reduce spending in line with these amounts and still support effective facility time arrangements in their school(s)**. As many respondents to the call for evidence suggested, we would encourage employers to review spending on facility time and consider how it could be made more efficient.

Efficiency of 'pooled' facility time funds

A number of academy trusts responding to the department's call for evidence raised the issue of inconsistency in local authority facility time arrangements. Most local authorities allow academies to buy into central facility time funds, but academy trusts report that charges range from less than £1 per pupil per annum to more than £7 per pupil per annum, and the benefits of buying into the service are often unclear. Some local authorities charge academies significantly more than the amount paid in by maintained schools, and some do not allow academies to buy into funding arrangements at all.

All employers or providers managing a pooled facility time fund should provide clear information to participating schools about **how much each school will be charged, how the money will be used and how this benefits schools**. As a rule charges should be the same for similar schools: if there are different rates for different types of schools the reasons for this should be made clear.

2.3 Better accountability

A strong consensus emerged from the call for evidence that there should be better accountability to employers and managers for how facility time is used. The majority of respondents agreed that **trade union representatives should be accountable to their managers and/or employers for the duties and activities carried out during facility time**.

Requests for time off

This need for better accountability applies in particular to requests for time off. Union representatives and/or members should give managers as much advance notice as practically possible when requesting time off, and advise them of the purpose, time and place. Wherever possible they should ensure that time off will not interfere with the normal functioning of the school. The Acas Code of Practice provides that union representatives should minimise disruption by being prepared to be as flexible as possible in seeking time off, particularly in circumstances where it is difficult for colleagues and managers to provide cover for them in their absence. Equally employers should recognise their obligation to allow union representatives to undertake their duties.

When dealing with requests for time off, employers, school leaders and managers should consider what constitutes 'reasonable' time off, and whether the request should be accommodated. They can take into account the amount of agreed time already taken and/or prospective time off. The following questions should be considered:

- Can the school accommodate the amount of time requested, and ensure adequate cover for safety and the provision of educational services?
- Does the request contain the right information (e.g. purpose, time and place - including agendas of meetings where appropriate), and has enough advance notice been given to provide alternative cover arrangements where necessary?
- Does it attract paid or unpaid time (i.e. will the time be used to undertake specific trade union **duties**, or for **activities** which should not attract paid time off)?
- If the request cannot be accommodated is there a reasonable alternative?

It is the responsibility of the manager (in consultation with the employer) to decide whether a request for time off is appropriate, and to decline a request if it is not considered reasonable. The Acas Code of Practice provides information on disputes over time off arrangements.

Reporting arrangements

All employers and managers should ensure that reporting arrangements are in place for trade union representatives to account for the duties and activities they have carried out during trade union facility time. It should not be necessary to provide more than a brief description of the work carried out, to avoid unnecessary bureaucracy or any breach of confidentiality.

Examples of good practice from the call for evidence include:

- a monitoring system with a time plan and details of trade union duties and activities undertaken, including minutes of meetings where appropriate.
- a simple termly report to the schools forum including evaluation of the service.

- an account of total hours spent under agreed headings.
- A code of conduct for trade union representatives (agreed between the employer and recognised trade unions).

2.4 Transparency

The majority of respondents agreed that details of facility time spending should be gathered and published, to enable taxpayers to see how their money is being spent.

Gathering information at national level

From 2014 the Department for Education will ask all local authorities and academies to provide separate information about trade union facility time spending as part of the regular financial returns to government.¹¹ **All employers in schools will need to ensure that reporting arrangements are in place so that spending on facility time is captured accurately in these returns.**

Publishing information at local level

For maintained schools, it is the role of the schools forum to decide whether trade union facility time funds should be pooled at local authority level or managed by schools.

Schools forum regulations and associated guidance¹² state that the local authority must promptly publish all papers considered by the forum and the minutes of their meetings on their website. Recommendations to, and decisions of, the schools forum must be clearly set out. **Local Authorities should publish decisions made by schools forums on facility time spending, including details of the amounts allocated.**

Academies and free schools also have a responsibility to ensure their spending is transparent and efficient. **Academies and free schools should include details of facility time spending as part of their published financial reports.**

A number of local authorities and other employers in schools already have systems in place to ensure better accountability and transparency for facility time spending, and review these annually to ensure that the service they provide is cost-effective.

¹¹ Local Authorities will be required to submit additional information on staff costs for facility time as part of the Section 251 return for budget forecasting, and academies will be required to disclose facility time spending in their annual budget forecast return.

¹² [Department for Education guidance on the role of the schools forum](#)

Glossary

Trade Union and Labour Relations (Consolidation) Act 1992 – TULR(C)A [BACK](#)

This Act relates to trade unions, employers' associations, industrial relations and industrial action. The provisions in sections 168-173 relate to time off for trade union duties and activities (collectively known as facility time). These provisions are also set out in the annex to the Acas Code of Practice on time off for trade union duties and activities.

Acas Code of Practice on time off for trade union duties and activities [BACK](#)

Under section 199 of TULR(C)A the Advisory, Conciliation and Arbitration Service (Acas) has a duty to provide practical guidance on the time off to be permitted by an employer to a trade union official or member. The code of practice sets out authoritative guidance describing the responsibilities which employers and trade unions share in considering reasonable time off. The provisions in the code of practice are admissible in evidence in proceedings before an Employment Tribunal.

Trade union representative [BACK](#)

This advice reflects the Acas code of practice, which uses the term 'union representative' to mean an employee who has been elected or appointed in accordance with the rules of the independent union, to be a representative of all or some of the union's members in the school(s) where the union is recognised for collective bargaining purposes. This is intended to equate with the legal term 'trade union official'.

Union learning representative [BACK](#)

A union learning representative is an employee who is a member of an independent trade union recognised by the employer who has been elected or appointed in accordance with the rules of the union to be a learning representative of the union at the workplace.

Schools forum [BACK](#)

Schools forum is made up of representatives from schools and academies, but with some representation from other non-school organisations. The forum acts as a consultative body on some issues and a decision making body on others. The forum is responsible for decisions on proposals to de-delegate funding from maintained primary and secondary schools (e.g. for staff supply cover including facility time).

De-delegation [BACK](#)

Funding arrangements allow maintained primary and secondary¹³ schools forum representatives to vote on behalf of their phase to transfer funding from delegated budgets to a central budget (held by the local authority). This is known as de-delegation.

¹³ De-delegation does not apply to maintained special schools, nursery schools or Pupil Referral Units.

Further sources of information

[Results of the Department for Education call for evidence on trade union facility time in schools](#)

[Department for Education call for evidence document:](#)

[Advisory, Conciliation and Arbitration Service \(Acas\) Code of Practice on trade union duties and activities](#)

[Acas advice on trade union representatives in the workplace:](#)

[The rights of trade union representatives](#)

[Taxpayer funding of trade unions: delivering savings in local government \(Department for Communities and Local Government, March 2013\)](#)

[Government response to Civil Service facility time consultation](#)

[Department for Education guidance on the role of the schools forum](#)



WITHDRAWN

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