

TRADE UNION FACILITIES AGREEMENT

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1.0 INTRODUCTION

The aim of this Agreement is to support and develop employer / employee relations at Schools Partnership Trust Academies (SPTA). SPTA is committed to solving employee relations' issues through discussion and agreement. This agreement is based upon the 'Memorandum of Understanding' that was reached at the meeting between National Trade Unions and the Employer SPTA on 21 January 2014 (See Appendix D).

- 1.1 This Agreement provides a clear framework for the provision of facilities and facility time for Trade Union officials, representatives and members, to ensure fairness and consistency is applied. It encompasses a joint responsibility from the SPTA and Trade Unions that arrangement for time off from work is to the mutual advantage of all parties.
- 1.2 Successful operation of these arrangements depends on Managers and Trade Unions acting reasonably. The amount, purpose, occasion and any conditions subject to which time off applies, must take account of service needs at all times and will be those that are reasonable in all circumstances.
- 1.3 SPTA and the recognised Trade Unions will seek to resolve any problems arising from the operation of this Agreement in a constructive manner.

2.0 STATUTORY PROVISIONS

- 2.1 The provisions of this Agreement are in accordance with the Trade Union and Labour Relations (Consolidated) Act (TULR(C)A) 1992 and the relevant amendments made by the Employment Act 2002. This procedure is also based upon the recommendations within the ACAS Code of Practice 3: 'Time off for Trade Union Duties and Activities (Including guidance on time off for Union Learning Representatives)', published in 2003.
- 2.2 Whilst this Agreement is not legally enforceable, SPTA and the Trade Unions are committed to maintaining and building a successful partnership, that is committed to the terms stated herein.

3.0 SCOPE

- 3.1 This Agreement is between SPTA and the recognised Trade Unions, listed below:

| | |
|---------------|---|
| UNISON | |
| GMB | |
| UNITE | |
| NUT | National Union of Teachers |
| ATL | Association of Teachers and Lecturers |
| NAHT | National Association of Head Teachers |
| NASUWT | The Teachers Union |
| ASCL | Association of School and College Leaders |

3.2 This Agreement applies to:

- (i) all employees, whether full or part-time, who are members of a recognised Trade Union
- (ii) all accredited Trade Union officials
- (iii) all accredited Trade Union representatives
- (iv) all accredited Trade Union Health and Safety representatives (Refer to Appendix B)
- (v) all accredited Union Learning Representatives (Refer to Appendix B)
- (vi) all recognised Trade Unions
- (vii) all Managers
- (viii) the School Partnership Trust Academies Board

4.0 DEFINITIONS

- 4 For the purposes of this document, the term 'Trade Union' shall be taken to include all staff side organisations, which are recognised for employee relations' purposes
- 4.1 The term 'official' is used to refer to full and part-time employees working on behalf of a Trade Union at branch level. He/she will have been elected in accordance with the rules of the Trade Union.
- 4.2 The term 'representative' is used to refer to an employee who operates on behalf of a Trade Union at a local level. He/she will have been appointed in accordance with the rules of the Trade Union.
- 4.3 The guidance in this document primarily applies to duties and activities, which relate to employee relations between SPTA and its employees.

5.0 GENERAL PRINCIPLES

- 5.1 The general purpose of this Agreement is to aid and improve the effectiveness of relationships between SPTA and the recognised Trade Unions. This Agreement is based on a belief that both the Trade Unions and SPTA accept joint responsibility for ensuring a well ordered system of Trade Union organisation and employee relations.
- 5.2 The parties to the Agreement recognise the contribution that can be made by the Trade Unions, and their officials/representatives, to the efficient and effective services provided by SPTA.
- 5.3 Individuals will not be discriminated against during the course of their employment for membership of a trade union or activities undertaken in the capacity of trade union representative/official.

6.0 TRADE UNION / MANAGEMENT OBLIGATIONS

6.1 This Facilities Agreement underpins a partnership approach adopted between SPTA and its recognised Trade Unions. Therefore, there are specific responsibilities on Management and the Trade Unions in this context.

6.2 The Trade Unions will:

- (a) Provide membership numbers to SPTA on 31st December every year to ensure that members are adequately represented;
- (b) Confirm in writing to SPTA which union members are elected or resign as officials or representatives at the earliest opportunity. This correspondence will state the position and constituency to which they are appointed as well the effective date of office.
- (c) For teacher trade unions notice of any change of office must be confirmed in writing by the end of the spring term so that Principals have a full term to make timetable and staffing adjustments as required. The period of office will follow the academic year, i.e. commencing on 1st September and terminating 31st July.
- (d) Provide appropriate training for officials and representatives;
- (e) Give reasonable notice of time off requirements.

6.3 School Partnership Trust Academies will:

- (a) Implement a central budget and accounting systems for Trade Union facilities finances;
- (b) Ensure that management at all levels are familiar with arrangements relating to the Facilities Agreement;
- (c) Ensure that Trade Union officials, representatives and members are not treated less favourably or disadvantaged during their employment for undertaking Trade Union duties or activities;
- (d) Provide facilities and time off to recognised Trade Union officials, representatives and members, as detailed below.

7.0 METHOD OF CALCULATION OF TIME OFF FOR TRADE UNION REPRESENTATIVES

7.1 The allocation of facilities time for Trade Union representatives is based upon the membership figures provided to SPTA by the individual recognised trade unions.

7.2 Where membership figures have not been provided by the trade union, SPTA will still ensure that statutory duties are complied with.

7.3 SPTA will provide facilities time as outlined in the table below, in accordance with the agreement reached on 20 January 2014. This time represents the total time provided for each trade union's facilities time across the SPTA group.

| TRADE UNION | FTE |
|--------------------|------------|
| NASUWT | 0.6 |
| NUT | 0.4 |
| GMB | 0.4 |
| ATL | 0.2 |

N.B. The trade unions within this table are those which have provided membership figures to the SPTA in accordance with point 7.1.

- (i) The respective trade unions will identify elected trade union representatives to receive the facilities time and inform SPTA on an annual basis prior to the commencement of each academic year. This would normally be at Easter each year to ensure schools and Principals have adequate time to plan the timetable for each year and ensure there is minimal or no disruption to service delivery.
- (ii) The remaining recognised trade unions will be allocated facilities in line with the employer's statutory duties.
- (iii) Trade union officers will be paid their current rate of contractual pay and allowances whilst on trade union facilities time release.
- (iv) In exceptional circumstances due to workload demands, it may be necessary to extend the time off for Trade Union Officials, for a specific period.
- (v) In the event that a trade union representative/official is appointed to the national executive of a recognised Trade Union, additional facilities time may be granted. This will be subject to separate consultation with SPTA. Account will be taken of individual circumstances and the substantive allocation granted to that particular trade union.

8.0 CONDUCT OF TRADE UNION REPRESENTATIVES

8.1 It is the responsibility of the respective Trade Unions to ensure that their representatives fully understand the extent of their authority and responsibility in their role. Any necessary training required will be provided and/or organised by the Trade Unions.

- 8.2 In the event that SPTA have any concerns regarding the conduct of a union representative, there will be the right to raise this with the relevant union.
- 8.3 In the event of any trade union officer be subject to any alleged breach of any formally adopted SPTA procedure agreed with the Trade Unions, in accordance with the ACAS COP, the appropriate full time official will be informed prior to any action being taken by the employer

9.0 ENTITLEMENT TO TIME OFF FOR TRADE UNION DUTIES

- 9.1 It is recognised that Trade Union representatives have a key role to play in the industrial relation process and in representing members both individually and collectively. The conditions set out below underpin this and detail the circumstances to which time off for Trade Union duties apply.
- 9.2 Trade Union representatives are permitted to take 'reasonable' time-off to carry out Trade Union related duties, subject to service requirements. It is SPTA's prime objective to ensure a high quality service is maintained at all times. The Trade Unions should be aware of the range of operational requirements, which must be taken into account when considering requests for time off. Such factors include:
- Statutory requirements
 - Service delivery
 - The meeting of work deadlines
 - The need for safety and security
- 9.3 Entitlement to time off applies where duties relate to:-
- Negotiations with SPTA, as per section 178(2) of the TULR(C)A 1992; or
 - Any other functions on behalf of SPTA employees which are related to matters falling within section 178(2) of TULR(C)A 1992 and which SPTA has agreed the union may perform
 - Any other legislation which defines the rights and entitlements of trade union officers under health and safety and union learning representatives respectfully
- 9.4 There is no statutory right to pay for time when a Trade Union duty is carried out at a time when the representative would not otherwise have been at work. However, where such hours are at the specific request of management, time off in lieu (TOIL), or in exceptional cases, overtime may be approved, in line with local arrangements.

10.0 DEFINITION OF TRADE UNION DUTIES

- 10.1 Trade Union duties include matters relating to the following:

- Terms and conditions of employment, or working conditions of staff
- Engagement or non-engagement, or termination or suspension of employment of one or more members of staff
- Allocation of work or the duties of employment as between workers or groups of workers
- Matters of discipline and grievance
- Trade Union membership
- Facilities for officials of Trade Unions
- Machinery for negotiation or consultation and other procedures
- Any other matters associated with the legitimate interests of the Trade Union concerned and its members

10.2 A detailed breakdown is contained in Appendix A, as per the ACAS Code of Practice 3: Time off for Trade Union Duties and Activities (including guidance on time off for Union Learning Representatives) (2003).

11.0 ENTITLEMENT TO TIME OFF FOR TRADE UNION ACTIVITIES

11.1 SPTA recognises that Trade Unions require the active participation of its members to operate effectively. As such, employees who are members of a recognised Trade Union are permitted to reasonable time off, during working hours to undertake union related activities.

Time off for the following activities will be paid:

- Attendance at workplace meetings to discuss and vote on the outcome of negotiations with SPTA
- Accessing the services of a Union Learning Representative

11.2. Time off for these 'activities' will be 'reasonable' in all circumstances. All parties should seek to agree time off at a period, which minimises the disruption of SPTA services.

12.0 TRAINING

12.1 SPTA recognises that it is in the interests of good employee relations that Trade Union officials and representatives receive training to enable them to undertake their roles effectively. Therefore, Trade Union officials and representatives will be afforded the opportunity to attend training courses, which are specifically relevant to their role within the Trade Union, during working hours, subject to the needs of the service.

12.2 It is the responsibility of the Trade Union(s):

- (i) To ensure representatives and officials have received sufficient training to enable them to operate competently in their roles. In the case of ULR's, they must be trained:

- At the time when the Trade Union provides SPTA with written notification of the appointed/elected ULR's

OR

- Within 6 months of that date and this again must be confirmed to SPTA in writing. In exceptional circumstances, this 6-month period may be extended, subject to prior discussion and approval between the Trade Union and SPTA to pay for training fees and expenses, other than for courses organised by SPTA

- (ii) To ensure that training is approved by the relevant Trade Union Congress of the recognised Trade Union, or by the Trade Union itself

12.3 Management will consider releasing officials and representatives for initial training in representative skills as soon as possible after their appointment/election.

12.4 Both officials and representatives will provide management with 10 working days' notice in advance of any training courses they wish to attend, where possible OR a reasonable amount of time, which will allow continuation of service delivery.

13.0 PROCEDURE FOR REQUESTING TIME OFF

13.1 School based representatives requesting time off to pursue employee relations' duties or activities must notify the nominated manager at the earliest opportunity.

13.2 Consultation will take place between relevant parties.

N.B: The Trade Union representative concerned will be consulted, along with the Union Branch Officer or Regional Official

14.0 FACILITIES

14.1 The following facilities will be provided for Trade Union officials and representatives to carry out Trade Union duties and activities:

- Use of accommodation for meetings (subject to agreement with the Academy Principal or, in the case of the SPTA central office, the appropriate SPTA Manager).
- Access to telephone, e-mail and fax.
- Appropriate use of SPTA email system and internal mail system. Any such usage should be in accordance with SPTA's e-Safety Policy and the Code of Practice for Computer and Telephone Users.

- The deduction of Trade Union membership fees at source where requested.
- Secure accessible notice board facilities on Academy sites. The management of such notice boards will be the responsibility of the Trade Unions. No notices may be elsewhere on SPTA premises without prior consent of management.
- Full access to SPTA policies, procedures and documents relating to terms and conditions of service of staff they represent, via the intranet or hard copy, on request.
- Secure storage in which to keep Trade Union related documentation (subject to negotiation with the Academy Principal or appropriate SPTA Manager)
- Access to PC and photocopying facilities will be granted, subject to discussion with the relevant manager. Where it is believed that the request may not fall within the terms of this Agreement
- Where the nominated manager believes that granting the request would seriously disrupt the service of SPTA or create a potential threat to the health and safety of employees, the public or SPTA property.

15.0 ARRANGEMENTS FOR STAFF WITH NON-STANDARD WORKING PATTERNS

15.1 To ensure effective union representation, consideration will be given to:

- Employees who work shifts
- Part-time employees
- Employees employed in dispersed locations
- Employees with particular domestic commitments, which management have been made aware of

15.2 Wherever possible, meetings shall be convened at a mutually convenient time, date and venue with the aim of causing minimal disruption to service delivery.

15.3 In the event that it is necessary for management to arrange a joint meeting which fall outside the 'normal' working hours for the categories of union members listed above, time off in lieu, or in exceptional cases, overtime may be approved, in line with local arrangements.

15.4 Staff employed at dispersed sites, who are required to attend meetings with management, will be granted reasonable travelling time.

16.0 EXPENSES

- 16.1 SPTA will only reimburse expenses incurred by officials and representatives where these specifically relate to duties undertaken at SPTA's request. There will be prior agreement made with the relevant line manager before expenses are incurred.
- 16.2 Travelling expenses and subsistence allowances which have been incurred for SPTA related duties will be in accordance with SPTA travel and subsistence provisions.

17.0 MONITORING AND REVIEW OF AGREEMENT

- 17.1 This Agreement will be reviewed on an annual basis. Where appropriate, in response to a particular issue or concern a review may be requested by either party.
- 17.2 Should SPTA or the Trade Union(s) wish to amend or terminate this Agreement **3 months written notice** must be given. Negotiations will commence once notification is received.
- 17.3 This agreement is approved and signed on behalf of School Partnership Trust Academies and recognised Trade Unions by:

| |
|--|
| Signature: <u></u> Date: <u>6</u> / <u>13</u> / <u>2014</u> |
| Position: <u>CHIEF EXECUTIVE</u> |

For and on behalf of Schools Partnership Trust Academies

| |
|---|
| Signature: _____ Date: ____ / ____ / ____ |
| Position: _____ |

For and on behalf of UNISON

Signature: P.A.C Chambers Date: 26 / 03 / 14
Position: National OFFICER

For and on behalf of GMB

Signature: Glenn James Date: 10 / 3 / 2014
Position: National Officer

For and on behalf of UNITE

Signature: [Signature] Date: 1 / 4 / 2014
Position: National Treasurer

For and on behalf of NUT (National Union of Teachers)

Signature: [Signature] Date: 1 / 4 / 2014
Position: Senior Regional Official

For and on behalf of ATL (Association of Teachers and Lecturers)

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of NAHT (National Association of Head Teachers)

Signature: b. keates Date: 14 / 3 / 2014
Position: General Secretary

For and on behalf of NASUWT (The Teachers Union)

Signature: _____ Date: ____ / ____ / ____
Position: _____

For and on behalf of ASCL (Association of School and College Leaders)

Appendix A

TRADE UNION DUTIES

Trade Union officials will be granted reasonable paid time off during working hours to undertake trade union duties as set out in the ACAS Code of Practice 3 - Time off for Trade Union Duties and Activities (including guidance on time off for Union Learning Representatives (2010)). The current ACAS Code of Practice follows, which defines trade union duties

11. 'Subject to the recognition or other agreement, trade union officials should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with:

(a) **Terms and conditions of employment or the physical conditions in which employees are required to work.** Examples could include:

- pay
- hours of work
- holidays and holiday pay
- sick pay arrangements
- pensions
- learning and training needs
- equal opportunities
- notice periods
- the working environment
- operation of digital equipment and machinery;

(b) **Engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers.** Examples could include:

- recruitment and selection policies
- human resources planning
- redundancy and dismissal arrangements;

(c) **Allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- family friendly policies;

(d) **Matters of discipline.** Examples could include:

- disciplinary procedures

- arrangements for representing trade union members at internal interviews
- arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

(e) **Trade union membership or non-membership.** Examples could include:

- representation arrangements
- any union activity in the induction of new workers;

(f) **Facilities for officials of trade unions.** Examples could include an arrangement for the provision of:

- accommodation
- equipment
- names of new workers to the union;

(g) **Machinery for negotiation or consultation and other procedures.** Examples could include arrangements for:

- collective bargaining
- grievance procedures
- joint consultation
- communicating with members
- communicating with other union officials also concerned with collective bargaining with the employer.

12. The duties of an official of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example to:

- prepare for negotiations
- inform members of progress
- explain outcomes to members
- prepare for meetings with the employer about matters for which the trade union has only representational rights.

Appendix B

ACAS Code of Practice

This code revises the ACAS Code of Practice on Time Off for Trade Union Duties and Activities which came into effect on 27 April 2003. This revised code is issued under Section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and comes into force by order of the Secretary of State on 1 January 2010.

Introduction

1. Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (ACAS) has a duty to provide practical guidance on the time off to be permitted by an employer:

(a) to a trade union official in accordance with section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

(b) to a trade union member in accordance with section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 199 of the Act, as amended by the Employment Act 2002, also provides for ACAS to issue practical guidance on time off and training for Union Learning Representatives. This Code, which replaces the Code of Practice issued by ACAS in 2003, is intended to provide guidance and advice on the role and responsibilities of employee representatives and is provided in two ACAS Guides: *Trade union representation in the workplace: a guide to managing time off, training and facilities* and *Non-union representation in the workplace: a guide to managing time off, training and facilities*.

Terminology

2. In this Code the term 'Trade union official', is replaced by 'union representative'. In practice there is often confusion between an 'official' and an 'officer' of a union and the term 'representative' is commonly used in practice. Section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 defines an official as

(a) an officer of the union or of a branch or section of the union, or

(b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.

Section 181 (1) of the same Act defines a 'representative', for the purposes of sections 181 – 185 of the Act, as 'an official or other person authorised by the union to carry on such collective bargaining'.

The Background

3. Since the Employment Protection Act 1975, trade union officials have had a statutory right to reasonable paid time off from employment to carry out trade

union duties and to undertake trade union training. Union officials and members were also given a statutory right to reasonable unpaid time off when taking part in trade union activities. In 1989 restrictions were introduced on the range of issues for which paid time off for trade union duties could be claimed to those covered by recognition agreements between employers and trade unions. Additionally union duties must relate to the official's own employer and not, for example, to any associated employer. All the time off provisions were brought together in sections 168 - 170 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 43 of the Employment Act 2002 added a new right for Union Learning Representatives to take paid time off during working hours to undertake their duties and to undertake relevant training. The rights to time off for the purpose of carrying out trade union duties, and to take time off for training, were extended to union representatives engaged in duties related to redundancies under Section 188 of the amended 1992 Act and to duties relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

General purpose of the Code

4. The general purpose of the statutory provisions and this Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work.

Structure of the Code

5. Section 1 of this Code provides guidance on time off for trade union duties. Section 2 deals with time off for training of trade union representatives and offers guidance on sufficient training for Union Learning Representatives. Section 3 considers time off for trade union activities. In each case the amount and frequency of time off, and the purposes for which and any conditions subject to which time off may be taken, are to be those that are reasonable in all the circumstances. Section 4 describes the responsibilities which employers and trade unions share in considering reasonable time off. Section 5 notes the advantages of reaching formal agreements on time off. Section 6 deals with industrial action and Section 7 with methods of appeal.
6. The annex to this Code reproduces the relevant statutory provisions on time off. To help differentiate between these and practical guidance, the summary of statutory provisions relating to time off which appears in the main text of the Code is in bold type. Practical guidance is in ordinary type. While every effort has been made to ensure that the summary of the statutory provisions included in this Code is accurate, only the courts can interpret the law authoritatively.

Status of the Code

7. **The provisions of this Code are admissible in evidence in proceedings before an Employment Tribunal relating to time off for trade union duties and activities. Any provisions of the Code which appear to the Tribunal to be relevant shall be taken into account. However, failure to observe any**

provision of the Code does not of itself render a person liable to any proceedings.

Section 1

Time off for Trade Union Duties

Union representatives undertake a variety of roles in collective bargaining and in working with management, communicating with union members, liaising with their trade union and in handling individual disciplinary and grievance matters on behalf of employees. There are positive benefits for employers, employees and for union members in encouraging the efficient performance of union representatives' work, for example in aiding the resolution of problems and conflicts at work. The role can be both demanding and complex. In order to perform effectively union representatives need to have reasonable paid time off from their normal job in appropriate circumstances.

Entitlement

- 8. Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to carry out certain trade union duties.**
- 9. Union representatives are entitled to time off where the duties are concerned with:**
 - negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C) A) and for which the union is recognised for the purposes of collective bargaining by the employer;**
 - any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform;**
 - the receipt of information from the employer and consultation by the employer under section 188 TULR(C)A, related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer;**
 - negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer; or**
 - the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.**

Matters falling within section 178(2) TULR(C) A are listed in the sub headings of paragraph 3 below.

- 10. 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.**

Further advice on time off provisions for health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance 'Consulting workers on health and safety'. This is not covered in this ACAS Code.

- 11. An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have no statutory right to time off to undertake any duties except that of accompanying a worker at a disciplinary or grievance hearing (see para 20).**

Examples of trade union duties

- 12. Subject to the recognition or other agreement, trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with the subjects of collective bargaining.**

- 13. The subjects connected with collective bargaining may include one or more of the following:**

- (a) terms and conditions of employment, or the physical conditions in which workers are required to work. Examples could include:**

- pay
- hours of work
- holidays and holiday pay
- sick pay arrangements
- pensions
- learning and training
- equality and diversity
- notice periods
- the working environment
- operation of digital equipment and other machinery;

(b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers. Examples could include:

- recruitment and selection policies
- human resource planning
- redundancy and dismissal arrangements;

(c) allocation of work or the duties of employment as between workers or groups of workers. Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- work-life balance;

(d) matters of discipline. Examples could include:

- disciplinary procedures
- arrangements for representing or accompanying employees at internal interviews
- arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

(e) trade union membership or non membership. Examples could include:

- representational arrangements
- any union involvement in the induction of new workers;

(f) facilities for trade union representatives. Examples could include any agreed arrangements for the provision of:

- accommodation
- equipment
- names of new workers to the union;

(g) machinery for negotiation or consultation and other procedures. Examples could include arrangements for:

- collective bargaining at the employer and/or multi-employer level
- grievance procedures
- joint consultation
- communicating with members

- communicating with other union representatives and union full-time officers concerned with collective bargaining with the employer.
14. The duties of a representative of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:
- prepare for negotiations, including attending relevant meetings
 - Inform members of progress and outcomes
 - prepare for meetings with the employer about matters for which the trade union has only representational rights.
15. **Trade union duties will also be related to the receipt of information and consultation related to the handling of collective redundancies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days, and where the Transfer of Undertakings (Protection of Employees) Regulations apply but also including the negotiations with a view to entering an agreement under regulation 9 of the Regulations (variation of contract in insolvency).**

Union Learning Representatives

16. **Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a Union Learning Representative, provided that the union has given the employer notice in writing that the employee is a learning representative of the trade union and the training condition is met (see paras 28 – 33 for further information on the training condition) The functions for which time off as a Union Learning Representative is allowed are:**
- analysing learning or training needs
 - providing information and advice about learning or training matters
 - arranging learning or training
 - promoting the value of learning or training
 - consulting the employer about carrying on any such activities
 - preparation to carry out any of the above activities
 - undergoing relevant training.

In practice, the roles and responsibilities of Union Learning Representatives will often vary by union and by workplace but must include one or more of these functions. In some cases it may be helpful if Union Learning Representatives attend meetings concerned with agreeing and promoting learning agreements. Employers may also see it in their interests to grant paid time off for these representatives to attend meetings with external partners concerned with the development and provision of workforce training.

Recognition needs to be given to the varying roles of Union Learning Representatives where the post holder also undertakes additional duties as a union representative.

17. Many employers have in place well established training and development programmes for their employees. Union Learning Representatives should liaise with their employers to ensure that their respective training activities complement one another and that the scope for duplication is minimised.

Payment for time off for trade union duties

- 18. An employer who permits union representatives time off for trade union duties must pay them for the time off taken. The employer must pay either the amount that the union representative would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do.**

The calculation of pay for the time taken for trade union duties should be undertaken with due regard to the type of payment system applying to the union representative including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

- 19. There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works flexible hours, such as night shift, but needs to perform representative duties during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable.**

Time off to accompany Workers at disciplinary or Grievance Hearings

- 20. Trade union representatives are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at a disciplinary or grievance hearing so long as they have been certified by their union as being capable of acting as a worker's companion. The right to time off in these situations applies regardless of whether the certified person belongs to a recognised union or not although the worker being accompanied must be employed by the same employer. Time off for a union representative or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.**

Section 2

Training of union representatives in aspects of employment relations and employee development

Training is important for union representatives to enable them to carry out their duties effectively. Training should be available both to newly appointed and to more established union representatives. It is desirable, from time to time where resources permit it, for joint training and development activities between union representatives and managers to occur.

Entitlement

21. Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training in aspects of industrial relations relevant to the carrying out of their trade union duties. These duties must be concerned with:

- negotiations with the employer about matters which fall within section 178(2) TULR(C)A and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or
- any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform;
- matters associated with information and consultation concerning collective redundancy and the Transfer of Undertakings, and the negotiation of an agreement under Regulation 9 of the Transfer of Undertakings (Protection of Employees) Regulations.

Matters falling within section 178(2) TULR(C)A are set out in paragraph 13 above

22. The Safety Representatives and Safety 1977 regulation 4(2)(b) requires that employers allow union health and safety representatives to undergo training in aspects of their functions that is 'reasonable in all the circumstances'.

Further advice on the training of health and safety representatives is provided by the Health and Safety Executive in their approved Code and Guidance 'Consulting workers on health and safety'. NB: This is not covered in this Acas Code.

23. Employees who are Trade Union Learning Representatives are also permitted reasonable time off during working hours to undergo training relevant to their functions as a Union Learning Representative.

What is relevant employment relations training?

- 24. Training should be in aspects of employment relations relevant to the duties of a union representative. There is no one recommended syllabus for training as a union representative's duties will vary according to:**
- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement
 - the structure of the union
 - the role of the union representative
 - the handling of proposed collective redundancies or the transfer of undertakings.
- 25. The training must also be approved by the Trades Union Congress or by the independent trade union of which the employee is a union representative.**
26. Union representatives are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular, employers should be prepared to consider releasing union representatives for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:
- for training courses to develop the union representative's skills in representation, accompaniment, negotiation and consultation
 - for further training particularly where the union representative has special responsibilities, for example in collective redundancy and transfer of undertakings circumstances
 - for training courses to familiarise or update union representatives on issues reflecting the developing needs of the workforce they represent
 - for training where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised; or where significant changes in the organisation of work are being contemplated
 - for training where legal change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements
 - for training where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings.
27. E-learning tools, related to the role of union representatives, should be used where available and appropriate. However, their best use is as an additional learning aid rather than as a replacement to attendance at approved trade union and Trades Union Congress training courses.

Time needs to be given during normal working hours for union representatives to take advantage of e-learning where it is available.

Training for Union Learning Representatives

- 28. Employees who are members of an independent trade union recognised by the employer are entitled to reasonable paid time off to undertake the functions of a Union Learning Representative. To qualify for paid time off the member must be sufficiently trained to carry out duties as a learning representative:**
- either at the time when their trade union gives notice to their employer in writing that they are a learning representative of the trade union
 - or within six months of that date.
- 29. In the latter case, the trade union is required to give the employer notice in writing that the employee will be undergoing such training and when the employee has done so to give the employer notice of that fact. During the six month period in which he or she is undergoing this training, the Union Learning Representative must be allowed time off to perform their duties.** It should be confirmed by the union in a letter that the training undertaken is sufficient to allow the Learning Representative to undertake their role and it is good practice for the union to give details of the training which has been completed and any previous training that has been taken into account. In the interests of good practice, the six month qualifying period may be extended, with agreement, to take into account any significant unforeseen circumstances such as prolonged absence from work due to ill health, pregnancy, bereavement or unavoidable delays in arranging an appropriate training course.
30. To satisfy this training requirement an employee will need to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the following areas of activity relevant to their duties as a Union Learning Representative:

analysing learning or training needs;

- this could for example include understanding the different methods for identifying learning interests or needs, being able to effectively identify and record individual learning needs or being able to draw up a plan to meet identified learning requirements

providing information and advice about learning or training matters;

- including, for example, the development of communication and interviewing skills
- knowledge of available opportunities, in order to be able to provide accurate information to members about learning opportunities within and outside the workplace
- the ability to signpost members to other sources of advice and guidance where additional support is needed, for example, basic skills tutors or fuller in depth professional career guidance.

arranging and supporting learning and training;

- for example, obtaining and providing information on learning opportunities including e-learning where available, supporting and encouraging members to access learning opportunities and helping to develop and improve local learning opportunities;

promoting the value of learning and training;

- some examples of this activity could be, understanding current initiatives for the development of learning and skills in the workplace, promoting the value of learning to members and within trade union networks and structures, working with employers to meet the learning and skill needs of both individuals and the organisation, and appreciating the value of learning agreements and how they may be developed.

31. An employee could demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of these areas of activity by:

- completing a training course approved by the Trades Union Congress or by the independent trade union of which the employee is a Union Learning Representative, or by
- showing that they have previously gained the relevant expertise and experience to operate effectively as a learning representative. In the latter case, previous experience and expertise gained in areas such as teaching, training, counselling, providing careers advice and guidance or human resource development, may well be relevant, as may periods of extensive on-the-job training and experience gained in shadowing an experienced Union Learning Representative.

32. Reasonable time off should also be considered for further training to help Union Learning Representatives develop their skills and competencies.

33. Although not required by law it is recognised that there would be clear advantages both to the individual and the organisation if training undertaken leads to a recognised qualification standard.

Payment for time off for training

34. An employer who permits union representatives or Union Learning Representatives time off to attend relevant training, must pay them for the time off taken. The employer must pay either the amount that the union representative or the Union Learning Representative would have earned had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. The calculation of pay for the time taken for training should be undertaken with due regard to the type of payment system applying to the union representative and Union Learning Representative including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

- 35. There is no statutory requirement to pay for time off where training is undertaken at a time when the union representative or Union Learning Representative would not otherwise have been at work unless the union representative or Union Learning Representative works flexible hours, such as night shift, but needs to undertake training during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable.**

Section 3

Time off for trade union activities

To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured and help is given to promote effective communication between union representatives and members in the workplace.

Entitlement

- 36. An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative (provided those services are services for which the Union Learning Representative is entitled to time off).**

What are examples of trade union activities?

37. The activities of a trade union member can be, for example:
- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer. Where relevant, and with the employer's agreement, this can include attending such workplace meetings at the employer's neighbouring locations.
 - meeting full time officers to discuss issues relevant to the workplace
 - voting in union elections
 - having access to services provided by a Union Learning representative.
38. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:
- branch, area or regional meetings of the union where the business of the union is under discussion
 - meetings of official policy making bodies such as the executive committee or annual conference
 - meetings with full time officers to discuss issues relevant to the workplace.
- 39. There is no right to time off for trade union activities which themselves consist of industrial action.**

Payment for time off for trade union activities

- 40. Paragraphs 18 and 19 set out the statutory entitlement to payment for time off to undertake trade union duties.**

41. **There is no statutory requirement that union members or representatives be paid for time off taken on trade union activities.** Nevertheless employers may want to consider payment in certain circumstances, for example to ensure that workplace meetings are fully representative or to ensure that employees have access to services provided by Union Learning Representatives.

Section 4

The responsibilities of employers and trade unions

Employers, trade unions, union representatives and line managers should work together to ensure that time off provisions, including training, operate effectively and for mutual benefit. Union representatives need to be able to communicate with management, each other, their trade union and employees. To do so they need to be able to use appropriate communication media and other facilities.

General considerations

42. The amount and frequency of time off should be reasonable in all the circumstances. Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:

- the size of the organisation and the number of workers
- the production process
- the need to maintain a service to the public
- the need for safety and security at all times.

43. Employers in turn should have in mind the difficulties for trade union representatives and members in ensuring effective representation and communications with, for example:

- shift workers
- part-time workers
- home workers
- teleworkers or workers not working in a fixed location
- those employed at dispersed locations
- workers with particular domestic commitments including those on leave for reasons of maternity, paternity or care responsibilities
- workers with special needs such as disabilities or language requirements.

44. For time off arrangements to work satisfactorily trade unions should:

- ensure that union representatives are aware of their role, responsibilities and functions
- inform management, in writing, as soon as possible of appointments or resignations of union representatives
- ensure that union representatives receive any appropriate written credentials promptly

- ensure that employers receive details of the functions of union representatives where they carry out special duties or functions.
45. Employers should ensure that, where necessary, work cover and/or work load reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.
46. While there is no statutory right for facilities for union representatives, except for representatives engaged in duties related to collective redundancies and the Transfer of Undertakings, employers should, where practical, make available to union representatives the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague union representatives and full-time officers. Where resources permit the facilities should include:
- accommodation for meetings which could include provision for Union Learning Representatives and a union member(s) to meet to discuss relevant training matters
 - access to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet
 - the use of noticeboards
 - where the volume of the union representative's work justifies it, the use of dedicated office space
 - confidential space where an employee involved in a grievance or disciplinary matter can meet their representative or to discuss other confidential matters
 - access to members who work at a different location
 - access to e-learning tools where computer facilities are available.
47. When using facilities provided by the employer for the purposes of communication with their members or their trade union, union representatives must comply with agreed procedures both in respect of the use of such facilities and also in respect of access to and use of company information. The agreed procedures will be either those agreed between the union and the employer as part of an agreement on time off (see section 6) or comply with general rules applied to all employees in the organisation. In particular, union representatives must respect and maintain the confidentiality of information they are given access to where, the disclosure would seriously harm the functioning of, or would be prejudicial to, the employer's business interests. The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic. Union representatives should understand that unauthorised publication risks damaging the employer's business, straining relations with the representative body concerned, possible breaches of individual contracts of employment and, in extreme cases such as unauthorised publication of price sensitive information, the commission of criminal offences.
48. Union representatives will have legitimate expectations that they and their members are entitled to communicate without intrusion in the form of monitoring

by their employer. Rules concerning the confidentiality of communications involving union representatives should be agreed between the employer and the union. Guidance on this is set out in paragraphs 49 and 57 below.

49. Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. They should not normally carry out regular or random monitoring of union emails. Only in exceptional circumstances may employers require access to communications but such access should be subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998 whether a person is a member of a trade union or not is defined as sensitive personal data. This also applies to data concerning individuals, for example communications concerned with possible or actual grievance and disciplinary issues. There are therefore very strict provisions on how such data can be used and monitored in compliance with the law.

Requesting time off

50. Trade union representatives and members requesting time off to pursue their duties or activities or to access the services of a Union Learning Representative should provide management, especially their line manager, with as much notice as practically possible concerning:
- the purpose of such time off, while preserving personal confidential information relating to individuals in grievance or disciplinary matters
 - the intended location
 - the timing and duration of time off required.
51. Union representatives should minimise business disruption by being prepared to be as flexible as possible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult for colleagues or managers to provide cover for them in their absence. Equally employers should recognise the mutual obligation to allow union representatives to undertake their duties.
52. In addition, union representatives who request paid time off to undergo relevant training should:
- give at least a few weeks' notice to management of nominations for training courses
 - provide details of the contents of the training course.
53. When deciding whether requests for paid time off should be granted, consideration would need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or the provision of service. Consideration should also be given to allowing Union Learning Representatives access to a room in which they can discuss training in a confidential manner with an employee. Similarly, managers and unions should seek to agree a mutually convenient time which minimises the effect on

production or services. Where workplace meetings are requested, consideration should be given to holding them, for example:

- towards the end of a shift or the working week
- before or after a meal break.

54. For their part line managers should be familiar with the rights and duties of union representatives regarding time off. They should be encouraged to take reasonable steps as necessary in the planning and management of representatives' time off and the provision of cover or work load reduction, taking into account the legitimate needs of such union representatives to discharge their functions and receive training efficiently and effectively.
55. Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect.

Section 5

Agreements on time off

To take account of the wide variety of circumstances and problems which can arise, there can be positive advantages for employers and trade unions in establishing agreements on time off in ways that reflect their own situations. It should be borne in mind, however, that the absence of a formal agreement on time off does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede statutory entitlement to time off.

56. A formal agreement can help to:

- provide clear guidelines against which applications for time off can be determined
- establish realistic expectations on the part of union representatives and managers
- avoid misunderstanding
- facilitate better planning
- ensure fair and reasonable treatment.

57. Agreements should specify:

- the amount of time off permitted recognising that this will vary according to the fluctuations in demand on the union representatives' role
- the occasions on which time off can be taken including meetings with management, meetings with other union representatives, time needed to prepare for meetings, communicating with members and their trade union, time to undertake e-learning if appropriate and to attend approved training events
- in what circumstances time off will be paid
- arrangements for taking time off at short notice
- how pay is to be calculated
- to whom time off will be paid
- the facilities and equipment to be provided and limits to their use, if any
- arrangements for ensuring confidentiality of communications involving union representatives. These should include agreed rules on the use of data and the exceptional cases where monitoring may be necessary, for example in cases of suspected illegal use, specifying the circumstances where such monitoring may be undertaken and the means by which it is to be done, for example by company IT or security personnel
- the role of line managers in granting permission to legitimate requests for time off and, where appropriate and practical, ensuring that adequate cover or work load reductions are provided
- the procedure for requesting time off

- the procedure for resolving grievances about time off.
58. In addition, it would be sensible for agreements to make clear:
- arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities
 - how and in what circumstances payment might be made to shift and part time employees undertaking trade union duties outside their normal working hours.
59. Agreements for time off and other facilities for union representation should be consistent with wider agreements which deal with such matters as constituencies, number of representatives and the election of officials.
60. The operation of time off agreements or arrangements should be jointly reviewed by the parties from time to time.
61. In smaller organisations, it might be thought more appropriate for employers and unions to reach understandings about how requests for time off are to be made; and more broadly to agree flexible arrangements which can accommodate their particular circumstances.

Section 6

Industrial action

62. Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be permitted for this purpose particularly where there is a dispute. **There is no right to time off for trade union activities which themselves consist of industrial action.** However, where a union representative is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the union representatives should apply.

Section 7

Resolving disputes

There is advantage in agreeing ways in which disputes concerning time off arrangements, including training and access to facilities, can be settled and any appropriate procedures to resolve disputes should be followed.

63. Every effort should be made to resolve any dispute or grievance in relation to time off work for union duties or activities. **Where the grievance remains unresolved, union representatives, Union Learning Representatives or members have a right to complain to an employment tribunal that their employer has failed to allow reasonable time off or, in the case of a Union Learning Representative or union representative, has failed to pay for all or part of the time off taken. Such complaints may be resolved by conciliation by Acas or through a compromise agreement and, if this is successful, no tribunal hearing will be necessary.** Acas assistance may also be sought without the need for a formal complaint to a tribunal.

Annex – The law on time off for trade union duties and activities Section 168 of the Trade Union and Labour Relations (Consolidation) act 1992, states:

- (1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with –
 - (a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or
 - (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union, or
 - (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 2006, or
 - (d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
 - (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.
- (2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations –
 - (a) relevant to the carrying out of such duties as are mentioned in subsection (1), and
 - (b) approved by the Trades Union Congress or by the independent trade union of which he is an official.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.
- (4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

Section 168a of the Trade Union and Labour Relations (Consolidation) act 1992 states

- (1) An employer shall permit an employee of his who is –

- (a) a member of an independent trade union recognised by the employer, and
- (b) a learning representative of the trade union,

to take time off during his working hours for any of the following purposes.

(2) The purposes are –

- (a) carrying on any of the following activities in relation to qualifying members of the trade union(
 - i) analysing learning or training needs,
 - (ii) providing information and advice about learning or training matters,
 - (iii) arranging learning or training, and
 - (iv) promoting the value of learning or training,
- (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,
- (c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Subsection (1) only applies if –

- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
- (b) the training condition is met in relation to him.

(4) The training condition is met if –

- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,
- (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
- (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(5) Only one notice under subsection (4)(b) may be given in respect of any one employee.

(6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.

- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes –
- (a) undergoing training which is relevant to his functions as a learning representative, and
 - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union –
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
 - (b) in relation to whom it is the function of the union learning representative to act as such.
- (11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.

Section 169 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

- (1) An employer who permits an employee to take time off under section 168 or 168A shall pay him for the time taken off pursuant to the permission.
- (2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.
- (3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.
The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

- (4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but –
 - (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and
 - (b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (5) An employee may present a complaint to an employment tribunal that his employer has failed to pay him in accordance with this section.

Section 170 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

- (1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in –
 - (a) any activities of the union, and
 - (b) any activities in relation to which the employee is acting as a representative of the union.
- (2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
- (2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.
- (2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.
- (3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.ES

- (4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (5) For the purposes of this section –
 - (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
 - (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.

Section 178(1) – (3) of the Trade Union and Labour Relations (Consolidation) act 1992, states:

- (1) In this Act “collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters specified below; and “collective bargaining” means negotiations relating to or connected with one or more of those matters.
- (2) The matters referred to above are –
 - (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
 - (b) engagement or non engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
 - (c) allocation of work or the duties of employment as between workers or groups of workers;
 - (d) matters of discipline;
 - (e) a worker’s membership or non membership of a trade union;
 - (f) facilities for officials of trade unions; and
 - (g) 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.
- (3) In this Act “recognition”, in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and “recognised” and other related expressions shall be construed accordingly.

Section 173(1) of the Trade Union and Labour Relations (Consolidation) act 1992, states

For the purposes of sections 168, 168A and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.

Section 119 of the Trade Union and Labour Relations (Consolidation) act 1992 states:

“official” means –

- (a) an officer of the union or of a branch or section of the union, or
- (b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them, and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.

Appendix C

SAFETY REPS TIME OFF AND FACILITIES REPS FUNCTIONS AND EMPLOYER DUTIES

FACILITIES & TIME-OFF FOR SAFETY REPS (SR)

Section 2(6) of the Health & Safety at Work Act requires employers to consult with safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures. Under section 2(4) safety representatives are required to represent the employees in those consultations. The SRSC Regulations (1977) identify the functions of SRs & stipulates the employers duties towards SRs so that the Act is implemented.

FUNCTIONS

SRSCR Regulations 4 and 4A details these statutory functions, which can be grouped under a number of main headings:

Investigative: to investigate potential hazards; dangerous occurrences; the causes of accidents; and complaints by employees.

Inspections: to inspect the workplace by regular quarterly inspections and to re-inspect when any remedial work has been completed; where there has been a reportable injury, dangerous occurrence or case of disease; inspect and take copies of documents relating to the health and safety of employees.

Representative: to make representations to the employer on both specific issues or on general matters relating to health & safety in the workplace; to attend meetings of the safety committee; to represent issues to inspectors of the Health & Safety Executive or other enforcing authority when they visit the workplace, and to receive information from such inspectors.

Consultation: To be consulted in good time on the introduction of measures in the workplace that may substantially affect employees health & safety; the nominations of competent persons to do risk assessments, take charge in emergencies etc; the provision of information about health & safety to staff; how training is planned and organised; and the consequences of the introduction of any new technology.

TIME-OFF

Employer duties

The provision in SRSC Reg 4(2) is as follows: An employer **shall** permit a safety representative to take **such time off** with pay during the employee's working hours **as shall be necessary** for the purposes of:

- a) Performing his functions under the Health & Safety at Work Act 1974 S2(4), and SRSCR Regulation 4(1)

- b) Undergoing such training in aspects of those functions as may be reasonable in all the circumstances

This duty is without restriction or qualification; it is not “reasonable” time-off, it is “such time-off.....as shall be necessary.” It is better to talk about time-off in relation to the employer’s duty in this respect, rather than emphasising ‘safety reps rights’. Rights can easily be ignored; duties are more clearly understood by employers and can be enforced.

One of the main problems that arise is that the qualification “reasonable in all the circumstances” applied to time-off for trade union representatives in Section 168(3) of the Trade Union & Labour Relations (Consolidation) Act 1992. This is commonly assumed by employers to include safety representatives, so some employers assert that this “reasonableness” test also qualifies their duty to permit safety reps to take time-off. **This is NOT the case.** The duty imposed on the employer is absolute

Training

In the case of permitting release for training, the word “reasonable” refers to the nature, content and appropriateness of training, **NOT** to the employer’s duty to release the safety representative from work. The employer may temporarily postpone permission if there would be operational difficulties caused by the absence from work – for example if there was no-one available to cover the representatives normal job whilst they were attending the course. But, they cannot use this excuse continuously – to do so would deprive the representative of their legal right to be trained. If permission is refused for this kind of reason for one occasion, then that would be considered sufficient notice to the employer to enable them to make suitable arrangements to cover the reps release for a course running, say, three months later.

Enforcement of duty to provide time-off and training

Safety representatives can make a complaint to an Employment Tribunal if the employer either refuses time-off, or fails to pay the rep for the time off or deducts a proportion of salary (SRSCR Regulation 11). This needs to be done within your union’s own procedures so check what these are. The promise that an ET application will be made is often enough to encourage management to observe their statutory duty. There are time limits for submitting claims to Employment Tribunals (3 months) so remember to take advice from your union on this too. From 29th July claimants who wish to take a claim to a tribunal or appeal tribunal will have to pay a fee. An initial fee will be paid to issue a claim and a further fee will be payable if the claim proceeds to hearing. There are two levels of fee which will depend on the type of claim.

FACILITIES & ACCESS TO INFORMATION

Regulations 4A(2) of the SRSC Regs places an absolute duty on every employer to “...provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions...”

Regulations 5(3) and 6(2) also impose the same duty on the employer specifically in relation to workplace inspections and the investigation of incidents, injuries and occupational diseases.

“Reasonably require” qualifies the representatives’ needs, **NOT** what the employer has to provide. So the assistance and facilities required must relate to health, safety and welfare matters that affect your members. For example, a request for information about the ventilation regulations in coal mines would not be a reasonable request for a university safety rep; but HSE guidance on laboratories would. Access to HSE Guidance, Approved Codes of Practice and other publications would be covered, as would copies of relevant HSE research reports.

Facilities

The minimum facilities a SR is likely to require include:

- Secure storage for documents & records
- Somewhere to talk to members in private
- Access to telephones, fax, photocopiers, email etc
- Computers & printers
- Trade union notice board
- A library to store information that can be easily accessed

Depending on the hazards and risks your members are exposed to, additional specific facilities relevant to health & safety and welfare will be needed:

- Access to monitoring and testing equipment. For example, noise & light meters, dust sampling equipment
- Camera
- Specialist information e.g. books, journals, on-line subscriptions. What the employer uses should be available to you as a minimum.
- Information from suppliers and manufacturers of substances & equipment
- Copies of laws & guidance and other HSE and general health & safety publications
- Use of outside advisors
- Ready access to employer information, policies etc.

Information

SRSCR Regulation 7 imposes 2 separate duties on employers in respect of the provision of information. Reg. 7(1) says that safety reps shall be entitled to inspect, and take copies of, any document the employer is required to keep by law, provided they give the employer reasonable notice. To keep can also mean to create. So, for example, the employer is legally required to record the main points of a risk assessment where there are more than 5 people employed. That record is a document – therefore safety reps can ask the employer to give them a copy of it. Similarly, a RIDDOR reportable incident is to be reported by sending the HSE a form – safety reps are therefore entitled to a copy of this form.

In addition, employers shall make available the information within their knowledge related to health & safety that is necessary to enable the reps to fulfill their statutory functions. Such documents might include plans and any proposed changes, technical information, statistical records relating to health, incidents and injuries, the results of surveys (stress or bullying, for example) or monitoring exercises and any other information the reps may define as appropriate.

Enforcement of duty to provide facilities & access to information

This duty is enforced by the HSE although recent guidance issued by the HSE has stated that failure by the employer to do so is NOT considered to be a 'material breach'. See below.

CONSULTATION

SRSC Reg 4A requires employers to consult with safety representatives, in good time, on the introduction of measures in the workplace that may substantially affect employees health & safety; the nominations of competent persons to do risk assessments, take charge in emergencies etc; the provision of information about health & safety to staff; how training is planned and organised; and the consequences of the introduction of any new technology.

The HSE has now re-issued its guidance on the enforcement of the employer's duty to consult with employees. This can be found at

<http://www.hse.gov.uk/foi/internalops/fod/inspect/enforcement-consultation-regs.pdf>

In the document the HSE re-iterates that *'consultation with workers is an essential element of successful health and safety management and the development of a positive health and safety culture. Inspectors should take all available opportunities to remind employers of their legal duties to consult.'*

HSE also instruct Inspectors to read this document in conjunction with their document 'Managing for Health & Safety Guidance for regulatory staff on the practice of assessing health & safety management', specifically the sections on collecting evidence to support enforcement activity. This document can be found at <http://www.hse.gov.uk/managing/regulators/regulators.pdf>

CHANGES TO HSE ENFORCEMENT

The HSE now operates a Fee for Intervention (FFI) cost recovery scheme, which came into effect on 1 October 2012. Where an HSE Inspector identifies a 'material breach' in how employers deal with health and safety, it will charge a fee for the work the Inspector has to undertake to achieve employer compliance. Such work will include the visit that discovered the breach, and any associated work that follows, such as serving a notice, writing letters or giving advice and guidance; evidence gathering for a prosecution; any communications involved with the case; research work, getting specialist assistance etc. HSE will charge £124 per hour for an Inspectors time, and hopes to recover some of that to offset the recent 35% funding cuts imposed by government. We'll see if that happens.

HSE has published guidance at <http://www.hse.gov.uk/pubns/hse47.htm> which outlines what, in the HSE's opinion, would constitute a 'material breach'. The

examples of 'material breaches' given in the document do **not** include material breaches such as:

- failing to undertake a suitable and sufficient risk assessment or to give employees information about its findings unless that failure is in respect of a vulnerable person, or of a significant risk;
- failure to give a safety representative such assistance as they reasonably require to undertake their functions;
- failure to give a safety representative a copy of a document the law requires the employer to keep when requested;
- failure to make available to the safety rep any information about health and safety relevant to the workplace, within the employers knowledge, WITHOUT having to be asked and
- failure to consult, in good time, over a wide range of health & safety matters;

So is there anything useful that health and safety representatives can get out of this development? Well, for a start, we can remind our employers that bad behaviour might cost them in the future, even though it doesn't at present. And even if failure to comply with many of the duties under the SRSC Regulations has not been deemed to be a material breach we can still make a complaint to the HSE where there is evidence of employers not complying.

REPORTING A COMPLAINT TO THE HSE

Some of us have kicked-up about the HSE hiding its contact details. This is what it now says on the HSE website. They have, apparently, re-discovered a telephone number – 0300 003 1647 available during normal office hours. If you call this number you will be asked to provide:

- your name, address and contact details;
- the name and address of the workplace or activity you are concerned about;
- a description of your concern, including who is at risk and why, if the risk is happening now, how long it is likely to go on for, how often it happens and when and where any incident occurred; and
- details about what you have done to try and resolve the issue.

This is then what the HSE say will happen:

First, we will check that the complaint relates to a work activity where HSE is responsible for enforcing the health and safety legislation. Then we will seek to identify from the information you provided:

- *Who is responsible for health and safety at the location of the complaint?*
- *Who is at risk of injury or ill health or has no adequate welfare facilities?*
- *What injury or ill health could result and how likely is this?*
- *A complaints officer will then assess your complaint and place it into one of the following categories:*
- *Red = Serious Risk and a complaints officer will follow it up as a high priority within 24 hours of receipt (or it will be passed to an inspector for an on-site investigation)*

- *Amber = Significant Risk and a complaints officer will follow it up within 5 days of receipt*
- *Green = Low Risk and it will not be followed-up by HSE*

What we will do:

We may ask the employer to investigate your complaint or we may look into it ourselves. However, we cannot successfully follow up your 'red' or 'amber' complaint if, from the information you provided, we are not able to identify or establish who is responsible for the work that you have complained about from the information you provided. In such situations, this will be recorded as a "matter of concern" and no action will automatically be taken. However, if the "matter of concern" has been assessed as "red" it will be reviewed by an inspector.

The other situations where HSE will not investigate your complaint are:

- *when you make a complaint anonymously to HSE or withhold contact details. This is because we are not able to substantiate or discuss the information with you or ensure that it is not a malicious complaint*
- *when you have not raised the issue with the person responsible for health and safety or your trade union - unless, of course, you have good reason to believe you would be placed in a vulnerable position if you did raise your concerns with this person*
- *when there are no reasonably practicable precautions to deal with the matters that you raised*
- *when it is impracticable to pursue your complaint*
- *If you want feedback, we will contact you and let you know what we have done. Or, if we have assessed your complaint as low risk 'green' we will explain our decision.*

Appendix D

MEMORANDUM OF UNDERSTANDING (TURA / TUFA) AS AGREED AT THE MEETING WITH SPTA, DONCASTER OFFICE 21 January 2014

Present: Lawson Armstrong (ATL), Bill Chard (GMB), John Rimmer (NASUWT), Christine Hardacre (NUT), Ian Stevenson (NUT), Carl Bingham (SPTA HR), Helen Ruddle (SPTA HR), Lesley Blackett (SPTA HR) & Sir Paul Edwards (SPTA CEO)

This is a 'memorandum of understanding' to record what was agreed at the above meeting regarding an SPTA Trade Union Facilities Agreement (TUFA) to complete the existing Trade Union Recognition Agreement.

The meeting agreed:

- The trade union side agreed to complete and submit drafts of the SPTA TURA and TUFA to SPTA HR by Friday 24 January 2014 once the trade union side had reached agreement.
- To implement a trade union facilities agreement by Easter 2014 for full implementation at the start of the academic year September 2014 to September 2015.
- The SPTA TUFA will be monitored for a period of six months regarding the agreed budget arrangements to support trade union facilities.
- The agreement was based upon ATL 0.2 FTE; GMB 0.4FTE, NASUWT 0.6FTE and NUT 0.4 FTE with remaining trade unions receiving time off in line with the employers statutory obligations due to membership figures not being provided to SPTA
- The trade union side agreed to notify SPTA HR team by 31 March 2014 and consequentially the respective Principals/Head of Academy's in SPTA who the elected trade union representatives in receipt of the agreed formal facilities time will be for the coming academic year.
- The elected trade union representatives in SPTA will only undertake trade union duties in SPTA as defined in the SPTA TUFA during the agreed formal facilities time.
- In the interim period from Easter to September 2014 SPTA will work with the nominated representatives with regard good working practice to ensure a smooth transition.
- Negotiations regarding matters of pay and conditions will normally be dealt with in line with current SPTA regions South, East and West.
- The agreement will be signed off at the meeting scheduled for 26 February 2014 at SPTA Head Office.
- It was agreed on the basis of the above by Sir Paul Edwards that SPTA HR representatives were in a position to sign off the SPTA TUFA as defined above in time for implementation commencing at Easter 2014

John Rimmer (TU side secretary)