

APPENDIX 2 Trade Union Facilities Time.

1. Background

- 1.1. The requirement for employers to grant time off for trade union duties is specified in the Trade Union and Labour Relations (Consolidation) Act 1992. This states that an employer will grant an employee, who is a recognised trade union official, time off during working hours to carry out official duties including negotiations on collective bargaining, consultation on TUPE and redundancies, etc. It also extends to representation of individual employees. Time off shall also be granted for the purposes of undergoing training on aspects of industrial relations which are relevant and approved by the Trade Union Congress or relevant trade union.
- 1.2. The amount of time off must be 'reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS. There is no requirement to pay for time off outside the union official's normal working hours or when the official would otherwise not have been at work.
- 1.3. There is a statutory right to payment for time off to undertake trade union duties but no statutory requirement that union members or representatives be paid for time off taken on trade union activities. Activities might include meetings with other trade union representatives, administrative tasks related to the union, representing the union externally, voting, etc.
- 1.4. The 1992 Act specifies that an employer who permits an employee to take time off must pay them for the time off taken. The Act does not specify the amount of time that a representative is entitled to take off but specifies that it must be 'reasonable in all of the circumstances' and have regard to the relevant provisions of the ACAS Code of Practice. Employees may bring a complaint to an Employment Tribunal where an employer has failed to permit time off in accordance with this legislation.
- 1.5. There are five areas where recognised trade unions have a statutory right to be consulted on:
 - Redundancy situations (under the Trade Union and Labour Relations (Consolidation) Act 1992).
 - Transfers (under the Transfer of Undertakings (Protection of Employment) Regulations 2006)
 - Health and Safety (under various provisions including Health and Safety at Work Act 1974; Safety Representative and Safety Committees Regulations 1977 and Management of Health and Safety at Work Regulations 1999).
 - Pensions (The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006; Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations

2006 and the Information and Consultation of Employees Regulations 2004 as amended).

- Workplace training and learning (under the Employment Act 2002 where a union has appointed a Union Learning Representative).

Employees also have a statutory right to be accompanied at particular employment meetings (including disciplinary and grievance meetings).

2. Practice in Haringey

2.1. The Council recognises eight trade unions for the purposes of collective consultation and negotiation on terms and conditions of employment, redundancies, TUPE, and HR policies in schools. Trade union representatives also support employees in employee relations matters such as disciplinary and grievance matters.

2.2. The trades unions are as follows:

Teaching	Support Staff
NUT	Unison
NASUWT	GMB
NAHT	Unite
ASCL	
ATL	

2.3. Union recognition is beneficial in progressing individual issues but also to address Council wide matters of policy and procedure.

2.4. As a matter of custom and practice, the Local Authority has consulted with recognised trade unions on employment policies and procedures in place for all staff. These policies and procedures define the processes and discretions the employer will exercise. This is not necessarily a statutory obligation but has been undertaken where practicable to assist in maintaining a constructive employee relations climate. This framework has facilitated the production of a range of policies and procedures for the benefit of the collective maintained school sector. These can be adopted by Governing Bodies without necessity for further consultation at school level other than that required to localise the policies.

2.5. Also, as a matter of custom and practice, the Local Authority has consulted with the recognised trade unions on school improvement priorities and the strategic direction of the education provision within the authority including it's provision and support for schools.

2.6. Redundancy and transfers are dealt with on an individual school basis with the school engaged in the consultation process.

2.7. In practice, consultation on pensions related matters takes place at a national level and not a local level given the Teachers' Pension Scheme and Local Government Pension Scheme are national schemes.

- 2.8. Haringey's facilities arrangements provide for certain trade union officials (normally Branch Secretaries) to be given a fixed allocation of time off, based on membership. Under this provision, the employee is seconded from their normal duties to undertake trade union duties for a fixed, block period of time per week. This allows the employing department or school to back fill these hours at no detriment
- 2.9. Providing a fixed allocation of seconded time off has the advantage of ensuring that when the Council needs to engage in formal consultation and negotiation, the union representatives are available to attend meetings without disruption to their normal duties. In schools this is of particular benefit as there needs to be no disruption to timetables.
- 2.10. Some representatives are engaged in trade union duties for the whole of their working time. The unions strongly advocate full time representation, primarily to avoid the pressures of balancing both workplace and trade union roles but also to allow for better planning and availability. Nationally the DFE has produced guidance with a view to limiting time off to half time (see section 3 below). This guidance is not statutory, however.
- 2.11. Prior to the 2013-14 financial year a centrally retained budget supported representation by teaching/support unions. From April 2013 the Council was no longer able to retain funds for this purpose for mainstream schools and the funds were delegated to individual schools/academies budgets.
- 2.12. Academy schools are separate from the authority and responsibility for union relationship with unions transfers to each Academy Trust. Upon conversion, academy schools take back their contribution to the budget.

3. DFE Guidance

- 3.1. On 16th January 2014 the DFE produced guidance on this matter – "Advice on Trade Union Facilities Time in Schools". This guidance is not statutory and therefore could not be relied upon in itself to make non consensual changes to employee contracts of employment or to effect a dismissal.
- 3.2. The main provisions in this advice are:
- Trades Union representatives should not be engaged on trade union duties for more than 50% of their time
 - Employers should ensure that facility time is not used for any activities related to lobbying for, planning or carrying out industrial action.
 - In local authorities where the schools forum has decided not to de-delegate funding, individual schools may choose to organise their own facility time arrangements, buy into local authority services or pool funding with other schools.
 - Where the employer is the academy, union representatives working in the academy are entitled to reasonable time off or the academy can buy into local authority facility time services by agreement. Some larger academy trusts have set up their own agreements

directly with recognised trade unions. In some areas groups of academies share the cost of facility time, and review their pooled allocation on a regular basis.

4. Financial Year 2014-15.

- 4.1. In January 2014, Forum representatives of both the primary and secondary sectors voted not to de-delegate funding.
- 4.2. Issues have arisen from this and from concerns raised by both schools' managers and trade unions that subsequently led to a dispute.
- 4.3. Productive talks took place at ACAS Headquarters on Monday 17th November between Schools Forum and trade union representatives leading to significant agreement on key points of trade union representation and to the following agreed protocol.
- 4.4. As a consequence, the NUT agreed to recommend to members in schools affected by strikes and ballots that these be suspended. This was agreed.
- 4.5. The representatives of the Schools Forum also agreed to recommend to that body a funding arrangement which will, if adopted, bring an end to the dispute with recognised trade unions.
- 4.6. In reaching an agreement a commitment was given to seek the Forum's agreement to fund the trade union facility time for the current SLA, until April 2015 – therefore eliminating the need for schools to sign up to an SLA for the current financial year. The Forum's agreement would also be sought to de-delegate this budget.

AGREED PROTOCOL.

Employment Relations Protocol for Teaching Associations/ Unions and Support staff unions

Introduction

Good employment relations are the cornerstone of managing change and people successfully in any organisation. This protocol sets out the principles for communications and engagement between stakeholders involved in running our schools. The aim is to secure a good education for our children and young people and to provide good working conditions for staff. This protocol is not designed to replace the industrial relations frameworks and time off agreements that are already in place but they do supplement them.

Principles for engagement

Relevant stakeholders to this protocol recognise that effective employment relations takes place in an atmosphere of mutual respect for the professional expertise and a recognition and understanding of the various responsibilities, of those involved.

It is important for managers to have positive working relationships with employees, based on good communications. It is at this basic level that many issues are raised and resolved informally, without the need to invoke formal procedures. Employee representatives provide an additional channel for employees to communicate with managers, and vice versa.

Employee representatives should improve understanding, lead to better decision making and improve employment relations. Representatives should help to develop trust and cooperation, improve the quality of decisions and encourage employees to feel more responsible for the performance of a school, helping to understand and manage change.

To this end all stakeholders agree that any level of communication and engagement must be conducted in a way that is relevant and necessary, accurate and factual, fair and balanced, and not offensive in any way. Communication and engagement should be conducted using appropriate communication lines and recognise the relevant hierarchies involved before considering escalation of an issue to a different stakeholder.

Stakeholder roles

In adhering to the principles it is important for each stakeholder to this protocol to understand the respective roles and accountabilities that each party plays. More information is provided in the appendix to this protocol but the key roles of head teachers and unions are summarised below.

Trade unions are independent bodies certified by a statutory independent committee. Unions have a number of legal rights under statute/ employment law as follows:

- disclosure of information by the employer for collective bargaining purposes, including hours, pay and benefits information; policies on

recruitment, redeployment, training, equalities, appraisal, health & safety; numbers employed by grade, department, location, age; financial cost structures.

- reasonable time off, with pay, for union officials to carry out union duties concerned with negotiations on terms and conditions of employment; engagement, non engagement, termination, suspension of workers; allocation of work or duties; matters of discipline or grievance.
- reasonable time off, with pay, for union reps to undergo training in aspects of industrial relations relevant to carrying out their trade union duties.
- consultation prior to redundancy
- consultation prior to business transfers (TUPE)

Note – the law provides workers with the right to be accompanied at disciplinary related hearings or grievance hearings. The worker may choose a companion or a trade union official to accompany him/her. The worker chooses the companion and the union chooses its officials. The employer has no right to choose who the particular companion or union rep is.

Head teachers have responsibility for managing the school including developing policy, goals and objectives for the adoption by the school governors. Head teachers are also responsible for providing detailed plans, procedures, schedules and specifications for daily operations in the school and actions to be taken by school staff.

Action for Complaints

CONCERNS RAISED BY A HEADTEACHER

Level one – Informal Process

Where the headteacher has a concern over the conduct of a borough level union representative when acting in his or her capacity as a trade union representative, as a first step, the headteacher will meet with that trade union representative to discuss those concerns with a view to reaching a resolution. By agreement, the parties may contact a paid trade union official or an official of the local authority or any other relevant party to assist in reaching a resolution.

Where the headteacher has a concern over the conduct of a school based union representative when acting in his or her capacity as a trade union representative, as a first step, the headteacher will meet with that trade union representative to discuss those concerns with a view to reaching a resolution. That school based representative may choose to be accompanied to the meeting by a trade union colleague.

All meetings will take place as soon as possible.

Level two – Formal Process

Where it has not been possible to reach a resolution under Level One, then as a second step in any process, the headteacher will refer the concern to the Chair of the Schools Forum, Head of HR, Assistant Director Schools and Learning who will consider the merits of the complaint and, if appropriate, refer it to a paid official of the trade union. The official will meet with a designated Governor to reach a formal resolution. That meeting may be attended by the headteacher and elected trade union official. The resolution could include by agreement (but is not limited to):

- (i) mediation, including involvement of an external mediator;
- (ii) a recommendation as to the future conduct of the trade union representative;
- (iii) a recommendation as to the future management of issues arising between the headteacher and the trade union representative;
- (iv) no further action taken.

CONCERNS RAISED BY A TRADE UNION REPRESENTATIVE

Level one – Informal Process

Where a borough level or school based union representative has a concern over the conduct of a headteacher or a governor, which has arisen out of relations with that trade union, then as a first step this will be raised with the headteacher or governor to discuss. By agreement, the parties may contact a

paid trade union official or an official of the local authority or any other relevant party to assist in reaching a resolution.

All meetings will take place as soon as possible.

Level two – Formal Process

Where it has not been possible to reach a resolution under Level One, then as a second step in any process, the trade union representative will refer the concern to the full time official at a regional level, who, if appropriate will liaise with the Chair of the Schools Forum, Head of HR, Assistant Director Schools and Learning who will consider the merits of the complaint and, if appropriate, refer it to a designated governor. The governor will meet with a paid trade union official to reach a formal resolution. That meeting may be attended by the headteacher and the trade union representative. The resolution could include by agreement (but is not limited to):

- (i) mediation, including involvement of an external mediator;
- (ii) a recommendation as to the future conduct of the headteacher;
- (iii) a recommendation as to the future management of issues arising between the trade union representative and the headteacher (or his or her representative);
- (iv) no further action taken.

This protocol will be reviewed in 12 months from 17/11/14.