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|  **7** |  | **EMPLOYEE RELATIONS GUIDANCE** |

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# INTRODUCTION

The Council encourages all staff to join a trade union. As an employer that chooses to recognise trade unions for collective bargaining purposes, there is a statutory obligation to consult with them on matters affecting the workforce. As a general rule, anything that affects an employee’s conditions of service should form the basis of a discussion with their unions. There are specific statutory requirements relating to redundancy and TUPE situations.

In this regard it is Council policy to build and maintain positive and constructive working relationships with the recognised teachers’ associations and trade unions. Governing bodies have many of the legal duties and responsibilities which fall to the employer. This chapter has a number of purposes. It explains to schools/academies the legal position surrounding relationships with trade unions and professional associations. It describes the policies schools should have in place to conform with the law. It also provides guidance to schools on how they should exercise the various areas of discretion available to them with respect to such issues.

It is important in employee relations issues to have a clear idea in advance of the rights and obligations of individuals as this does much to reduce possible conflicts and misunderstanding. Care should be taken to develop effective channels of consultation and communication with all employees. The main aim of this chapter is, therefore, to provide clear guidelines which will enable most issues and enquiries about professional associations or trade unions and their roles to be handled within the school.

The following guidance has been split into two parts, with Part One dealing with Teaching Staff and Part Two dealing with Support Staff.

Further advice on this guidance can be obtained from your HR provider.

# CONTEXT

This guidance was consulted upon with the relevant Trade Unions and Professional Associations.

Governing Bodies must consider this guidance and formally agree, at a full Governing Body meeting, their approach to facilities time, recording their decision in the minutes.

# THE LEGAL POSITION

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 any subscriber to our facilities time funding agreement. 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 general purpose of the statutory provisions and this guidance 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. This may be particularly important in the case of Union Learning Representatives where the lack of such an understanding may result in duplication of functions concerning employees’ training needs.

Human Resources and industrial relations issues have become increasingly complex over time. The list of employment legislation continues to grow annually, constantly supplemented by principles, precedents and good practice emanating from case law and ACAS advice. In addition, European legislation and the UK’s obligation to implement various directives have become increasingly significant.

Employment law recognises the role of schools in assuming many of the legal responsibilities of the employer. An example of this is the responsibility to undertake statutory consultation where redundancies are proposed and for disclosing information to the trade unions for collective bargaining purposes.

The School Teachers Pay and Conditions Document places a duty on headteachers to “Maintain relationships with organisations representing teachers and other members of the school’s workforce”.

However, as the relevant body for school-based staff, the Governing Body is responsible for permitting trade union officials reasonable paid time off from their normal employment to carry out certain trade union duties and to undertake trade union training. The Governing Body would, therefore, be the respondent in the event of a claim being made to the Employment Tribunal of a failure to allow reasonable time off for union duties and activities. Hence individual requests for release will need to be approved by schools, but should be consistent with the approach to facilities time agreed by the Governing Body.

In the event of a local dispute between staff working at a school and the Governing Body, the Governing Body assumes the legal responsibility of the employer. Subject to the dispute falling within the legal definition of a trade dispute, trade unions may organise industrial action against the Governing Body, provided the action itself is lawful i.e. does not constitute unlawful secondary action and has been preceded and authorised by a properly conducted secret ballot, with all due notification requirements being met. .

# UNION RECOGNITION

Maintained schools must recognise those trade unions and professional associations which are recognised by the Local Authority for collective bargaining purposes, but are not precluded from recognising others.

However, to allow the other unions a role in representation of staff can create confusion and additional difficulties and schools are strongly advised to follow the Authority’s policy.

If the governing body is minded not to follow this advice they are strongly recommended to make such a decision as a policy issue and not on an ad hoc basis. They should also seek advice from the HR Consultancy service (or their HR provider) on the range of issues which they will need to take into account. The professional associations and trade unions recognised by the Authority in the school environments are as follows:-

Teaching

Association of School and College Leaders (ASCL)

Association of Teachers and Lecturers (ATL)

National Association of Head Teachers (NAHT)

National Association of School Masters/Union of Women Teachers (NASUWT)

National Union of Teachers (NUT)

VOICE *(formerly Professional Association of Teachers)*

Please Note: *In addition we acknowledge that UCU (formerly National Association of Teachers in Further & Higher Education) and The Aspect Group of Prospect may represent staff in schools but they are not covered by this arrangement*

Non-Teaching

GMB

UNISON

UNITE

It is likely that many Academies will already have their own Trade Union / Professional Association recognition agreements, either as a result of TUPE arrangements or separate agreements.

# TIME OFF FOR TRADE UNION DUTIES

A trade union official is an employee who has been elected or appointed in accordance with the rules of the union to be a representative of all or some of the union’s members in that particular organisation or workplace. Under the terms of the Trade Union and Labour Relations (Consolidation) Act 1992, employees who are officials of recognised trade unions are permitted reasonable time off during working hours to carry out certain trade union duties.

This applies to duties concerned with: negotiations/local discussions with the employer about matters which fall within sections 168-170 of the Act e.g. terms and conditions of employment, machinery for consultation, negotiation, redundancy and dismissal arrangements, personnel policies and procedures.

The ACAS Code of Practice provides the following guidance:

a. Employees who are officials 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.

b. An official is an employee who has been elected or appointed in accordance with the rules of the union to be a representative of all or some of the union’s members in the particular company or workplace.

c. Officials 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; 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 falling within section 178(2) TULR(C)A are listed in the subheadings of paragraph a) of Appendix 7.1

d. 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.

e. **Time off to accompany workers at disciplinary or grievance hearings**

Trade union officials 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 an official or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.

Examples of trade union duties can be found in Appendix 7.1

# 7.1 PAYMENT FOR TIME OFF FOR TRADE UNION DUTIES

An employer who permits officials time off for trade union **duties** MUST pay them for the time off taken. The employer must pay either the amount that the officials 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.

There is **no** statutory requirement to pay for time off where the duty is carried out at a time when the official would not otherwise have been at work, but 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.

Funding for paid release in maintained Schools is acquired through the de-delegation of funding via the Schools’ Forum. This funding will only be in relation to those Trade Unions and Professional Associations recognised by the Local Authority.

Funding for paid release in Croydon’s Academies and Colleges can only be acquired if the Academy/College commits to allowing the release of the representative. This funding will only be in relation to those Trade Unions and Professional Associations recognised by the Local Authority.

The Local Authority will allocate the total funding received (via the de-delegation & funding agreements) to each Trade Union based on their proportion of total union membership.

Consequently, the proportion of funding will dictate the amount of release time that can be funded for each Trade Union/Professional Association.

The Professional Associations & Trade Unions must notify the Local Authority of their maintained school/Academy/College based membership numbers annually in January, based on the AR21 returns of their national unions to the Certification Officer.

Maximum release in recognition of the local officials of each recognised teachers’ association and trade union is recommended as follows:-

|  |  |
| --- | --- |
| Membership of Organisation(ASCL, ATL, NAHT, NASUWT, NUT and VOICE only)  | Release Time per week |
| Under 300 members300-399400-499500-599600-699700-799800-899900-999 1000-10991100-1199 1200-12991300-13991400-14991500-15991600-16991700-17991800-18991900-1999More than 2000 membersAnd so on  | 0.5 days 0.6 days0.8 days1.0 days 1.2 days 1.4 days1.6 days1.8 days2.0 days2.2 days2.4 days2.6 days2.8 days3.0 days3.2 days3.4 days3.6 days3.8 days4.0 daysAnd so on |

These figures will be used as a basis for calculating costs which will be submitted to Schools Forum for approval.

The formula for calculating the actual release time will be based upon the total income from the de-delegation and funding agreements, less any administrative costs incurred. The Schools’ Forum will annually determine the per pupil charge that will be used for de-delegation and the Academies/Colleges funding agreement will mirror this charge each year.

When counting membership numbers for the calculation of release time the Unions shall only count members in state funded maintained schools, Colleges and Academies within the London Borough of Croydon

Academies and Colleges that do not sign up to the funding agreement will be responsible for making their own facilities time arrangements, including consultations and employee relations casework. Union officials funded through such arrangements will not normally be allowed to attend meetings during the normal working day at schools/Academies/Colleges who are not part of the agreement.

Local Authority meetings will normally be held on Mondays and 0.1fte release time is provided to enable attendance at those meetings.

For all teachers other than head teachers, the school will be reimbursed for the actual salary of the official, including on-cost.

In the case of head teachers, 0.1fte release, for example, will be treated as 19 days per financial year at the daily supply teacher rate.

**Financial Arrangements**

Funding for the agreed release time for schools that have local officials will be identified at the start of each financial year. The school will then receive a share each month. If the official leaves the school or their term of office ends, any over funding will be removed from the school’s budget in the current financial year.

# 7.2 LOCAL OFFICIALS OF RECOGNISED PROFESSIONAL TEACHERS’ ASSOCIATIONS

Each locally recognised teachers’ association may nominate a local official (usually the branch secretary) to be the senior representative of the association within the Borough. It is the responsibility of the association to notify the Authority and the head teacher of the school in which the official is employed, of the name of the person appointed (and their nominated deputy to cover absence). A list of the names and addresses of local officials is given in Appendix 7.3

 **Operational Arrangements**

The local official’s school will need to ensure arrangements exist, including the facilities set out in section 7.1, to allow a local official to carry out their association’s responsibilities within the school and to be able to leave the school in which they are employed so that they can perform their functions as an accredited representative.

Of more immediate relevance to most schools is the fact that these officials will need to visit schools on occasions. They must make arrangements in advance with the head teacher (or their senior representative) of the school to be visited and the head teacher is entitled to know the purpose of the visit. Proposed visits should normally be arranged at times which do not interfere with the normal work of the school. Requests from local officials to visit a school (or the head teacher) should not be unreasonably refused.

Arrangements for the use of school/Academy/College accommodation or other premises for union/ association meetings concerned with employee relations should be arranged with the agreement of the head teacher, during times when buildings are normally open. Such requests should not be unreasonably refused. In such circumstances, the accommodation would be made available free of charge. Where the meetings are for purposes not directly concerned with employee relations for that establishment, then the union/association could reasonably be charged.

The Local Authority will provide local officials with documents which set out pay, conditions of service and regulations of the LA applicable to staff employed in the Authority. On request, schools/Academies/Colleges should provide local officials with similar information relating to local arrangements that have been determined by the governing body.

**Local Officials based in non-Croydon maintained schools, Foundation Schools, Colleges, Independent Schools and Academies**

Central funding for the release of union officers from LA maintained schools outside Croydon, or from independent fee-charging schools, is not possible.

The LA will administer the funding for the release of a local officer employed either by an educational establishment funded via Croydon, or by any other educational establishment based within the London Borough of Croydon, so long as that establishment is funded wholly or mainly from public funds. For the avoidance of doubt, this means that the LA will, if required, reimburse a Croydon based Academy for the release of a union officer employed by them in accordance with the funding arrangements detailed in section 7.1 of this guidance.

# 7.3 SCHOOL-BASED STAFF REPRESENTATIVES

Each recognised professional association and trade union with members in a school will normally elect or appoint one staff representative for that school. This arrangement is helpful to head teachers because it enables them to ensure that information from the professional associations/trade unions is properly disseminated. The professional association(s) or trade union(s) are responsible for informing the head teacher of the name of the representative(s) and for obtaining agreement that facilities (see below) will be granted to them. Schools should consult with their HR service provider in any case where the recognition of a particular individual as a staff representative may cause problems. Any such cases will probably need to be discussed with the professional association / trade union concerned.

School staff representatives should normally discharge their functions at times which do not interfere with the normal work of the school. Occasionally, it may be necessary for a staff representative to be released from duty during the working day but this must be agreed by the head teacher or their senior representative and cause the minimum disruption to the school’s programme.

All representatives need time to open post, to respond to requests for information received from their local and national organisations and to update themselves on employment, trade union and educational matters. In schools with large union memberships they also need time to inform and consult with their members, to explain to new staff the role of the unions in the workplace/industrial relations structure, to offer advice and support and to gather concerns/ views of staff, then to represent their views to the HT and to feed back.

Paid time off will be granted for Trade Union duties within the school. A suggested scale is as follows:-

1 – 9 members\* 15 minutes per fortnight

10+ 1 hour per week
20+ 2 hours per week

30+ 3 hours per week and so on

\*This information needs to be provided to the school by the Trade Unions / Professional Associations on an annual basis.

In addition, school representatives have a statutory right for additional time off for attendance at disciplinary/grievance/sickness interviews and for school-based negotiations/meetings and to prepare for such meetings.

Additional paid time off may **not** be granted for trade union activities such as balloting, general union meetings, recruitment and collecting contributions. These activities should take place outside the normal working day.

Supply cover will not be paid by the Local Authority for employee relations **activities** within the school and any costs for cover will have to be met from the school’s budget.

The above arrangements will apply to representatives elected to represent staff in their schools and facilities accorded them will not normally extend beyond the school. It is recognised, however, that some school-based staff may be required periodically to act as representatives to meet elected Council members or senior managers of the LA, or be elected to serve on service-wide consultative committees. This may also include pre-meetings associated with those committees. Where this applies, schools will be notified separately and their agreement obtained to release the member of staff. Any supply cover needed to allow the release time of the school representative in these circumstances will not be paid for by the LA, unless by prior agreement, on a case by case basis.

# 7.4 PERIPATETIC STAFF REPRESENTATIVES

It is likely that some professional associations or trade unions will wish to elect peripatetic representative to represent groups of schools or staff. This is particularly likely to apply to the teaching unions / professional associations that only have a few members in each school. The professional association/trade union will seek recognition for the peripatetic representative through the LA and school(s) where the staff are based will be consulted will be consulted before confirming that facilities will be provided and the schools for which they will be recognised.

The functions of the peripatetic staff representatives will be similar to school-based representatives (see 7.5).

Before visiting other schools peripatetic staff representatives must obtain the consent of their own head teacher to leave the school site. They should also make arrangements in advance with the head teacher of the school to be visited or their senior representative and the head teacher is entitled to know the purpose of the visit. Proposed visits should normally be arranged at times which do not interfere with the normal work of the school. Requests from these local officials to visit a school should not be refused unreasonably.

# 7.5 FACILITIES FOR SCHOOL-BASED OR PERIPATETIC STAFF REPRESENTATIVES

1. On request, representatives can be supplied with a list of staff and information about the staffing structure of the school(s).;
2. Reasonable notice board facilities should be provided in areas reserved for staff use;
3. Reasonable access to telephone (with privacy if available), email and Fax should be allowed;
4. Subject to reasonable notice from a school or peripatetic representative, a room should be made available for meetings with members of the professional association or trade union;
5. Representatives can have use of school word-processing, computing and photocopying equipment for essential union work within the school provided this does not interfere with the work of the school and on the basis of repayment by the organisation concerned for the materials used.

# 7.6 REGIONAL OR NATIONAL OFFICIALS

The election of any member of staff to a position in the regional or national organisation of a recognised professional association or trade union must be notified to the employer/Authority by the relevant organisation. Where the member of staff is employed in a school, the agreed arrangements for their release will be discussed with the school/Academy/College concerned, the Authority and the trade union or professional association.

The amount of release time made available will be determined in the light of the Official’s role and responsibilities.

For clarity, currently there is no additional funding for regional or national officials and therefore they will either have to be funded from the funds acquired by de-delegation and funding agreements or funded by the trade unions/professional associations themselves or not funded at all. However in the past between 1.5 days and 3 days per week has been provided for a member of a union’s national executive and between 3 days and 5 days for a national officer of a union.

# 7.7 TRAINING

Reasonable paid time off for training trade union/ professional association representatives will be given, for TUC approved training courses relevant to the representatives duties, and is a matter for the school, subject to being informed prior to the official undertaking the training and on receipt of an attendance certificate from the relevant organisation,

# 7.8 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. 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.

There is no right to time off for trade union activities which themselves consist of industrial action.

**Payment for Trade Union Activities**

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 can make use of the services of a Union Learning Representative.

# 7.9 MEMBERSHIP AND CONTRIBUTIONS

The Authority has an arrangement with the recognised professional associations and trade unions which allows for their members’ subscriptions to be deducted from pay at source. Written authorisation for the deduction must be given by the individual member via a pro-forma and this is forwarded to the relevant payroll provider for implementation. Any amendment or curtailment of deduction at source arrangement is a matter for the individual and the payroll provider.

**7.10 HEALTH AND SAFETY**

The Health and Safety (Consultation with Employees) Regulations 1996 require the employer to consult with its employees on matters of health and safety. In Croydon Council, many trade union appointed safety representatives have agreed to cover not only their own members but the whole workforce. As long as there are arrangements for consultation with trade union appointed safety representatives in place, this is sufficient to meet the requirements of the regulations. Where this is not the case, further advice may be sought from the Council’s Health and Safety Team.

For further information schools should refer to the Safety Representatives and Consultation Policy & for guidance on the statutory rights and facilities for safety representatives and the processing of health and safety issues.

# 7.11 CIRCUMSTANCES WHEN FACILITIES SHOULD NOT BE MADE AVAILABLE

There may be occasions when, because of a serious disagreement between the professional associations/trade unions and the Authority or school / Academy / College, the union seeks to take industrial action against the employer. This may be by seeking to persuade members to take industrial action of any kind or by putting views which are regarded as improper to their members or the public at large, against the Authority or school/Academy/College.

The Authority’s firm position is that while the trade unions or professional associations have a right to take such action provided that they comply with the law, they should have no expectations that the Authority will grant them any time or facilities to do so. In particular no time off, access to premises, meeting facilities, word processing, printing and internal mail facilities etc. should be made available to representatives to allow them to encourage staff to take industrial action.

# Appendix 7.1 EXTRACT FROM ACAS CODE OF PRACTICE ON TIME OFF

#  FOR TRADE UNION DUTIES AND ACTIVITIES

**Examples of trade union duties**

a) 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:

(i) 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 needs

• equal opportunities

• notice periods

• the working environment

• operation of digital equipment and other machinery;

(ii) 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;

(iii) 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;

(iv) 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;

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

• representational arrangements

• any union involvement in the induction of new workers;

(vi) facilities for officials of trade unions. Examples could include an arrangements for the provision of:

• accommodation

• equipment

• names of new workers to the union;

(vii) 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.

b) 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.

**Union Learning Representatives**

c) 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 paragraphs 22 - 27 of the full ACAS Code of Practice 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 will include one or more of these functions.

d) 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.

**Time off to accompany workers at disciplinary or grievance hearings**

e) Trade union officials 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 workers 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 an official or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.

**Examples of trade union activities**

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

• meeting full-time officials to discuss issues relevant to the workplace

• voting in union elections.

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 officials to discuss issues relevant to the workplace.