Making the case for facilities agreements and facility time
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Introduction

Trade union facility time is subject to increasing public and political scrutiny. This attention focuses almost exclusively on the costs of facility time, without balancing these costs against the many and often intangible benefits of trade union recognition.

This guidance sets out rebuttals to these challenges, looks at the benefits of union representatives and facilities agreements and restates what the law and good practice say about the issue.

It aims to provide you with information to make the case for facilities time and agreements. At the back of this publication, there are also template letters to share with employers to help you make the case.

Facilities agreements cover all aspects of employment relations between trade unions and employers including recognition and negotiation as well as time off for union representatives. They also include other aspects of the union’s rights to represent its members, such as information and access to physical resources including rooms and means of communication.

Union representatives – stewards, learning and safety representatives – have statutory rights to paid time off to carry out trade union duties. However, the RCN and many employers alike view these rights as only a minimum and no substitute for a good local agreement, which is well understood and supported by union representatives and employers. An agreement cannot provide less than the law intends but it is the RCN’s experience that most provide for more than the legal minimum.

1 The Tax Payers Alliance report Taxpayer funding of trade unions 2011 contended that trade unions received £113 million of funding from taxpayers in 2010-11

The Trade Union Reform Campaign is a group led by Conservative politicians and activists whose aim is stop what they claim are taxpayer-funded union officials in the public sector. In a letter to TURC Chairman Aidan Burley MP, the Prime Minister wished the campaign ‘all the best’ and said he strongly believes that the “current level of public subsidy to the trade unions cannot be sustained, either morally or economically.”
The benefits of workplace representatives and facility time

This section sets out various benefits that workplace representatives bring to an organisation, as well as the benefits of formal facilities agreements.

If you are trying to get a formal agreement, or stop your existing agreement being eroded, you could use these points to make your case. Gather evidence on the positive benefits that facility time brings your organisation or point out the disadvantages of not having an agreement. You could point out examples where RCN work, aided by facility time, has resolved a difficult issue for management or lack of facilities time meant that the issue dragged on and became more difficult for management. As an RCN representative you are uniquely equipped to highlight how improving the workplace can impact on the quality and safety of patient care.

The benefits of RCN representatives

- RCN representatives provide employment relations expertise which benefits both members and employers. Facility time allows representatives to access union training in key areas such as equal opportunities, job evaluation, and health and safety. Training for RCN representatives also uniquely reinforces the relationship between a good working environment and safe care for patients.
- RCN representatives can play a big part in facilitating the management of change. They can help by explaining the situation to members, and supporting them through the process, negotiating changes and ensuring that they are carried out correctly.
- RCN representatives, who combine their responsibilities with their health care role in the organisation, bring a unique perspective and expertise. They understand how changes impact on both staff and patients and enable effective communication with members.
- As many NHS and other health care organisations face the need to make cost savings, they are looking at ways to restructure and redesign services. Staff are often the ones who know best how the service works and can help come up with ideas about how they can be improved.
- Involving staff in change management often results in raised motivation and productivity, leading in turn to reduced staff turnover, lower recruitment costs and loss of skills. In turn, a healthy work environment leads to increased job satisfaction and improved patient outcomes.
- Union learning representatives (ULRs) have successfully introduced many thousands of employees to training, helping employees to improve their skills and work capabilities with direct benefits for patients.
- The Health and Safety Executive has reported that health and safety representatives are highly effective in improving safe working practice by forming safety committees, undertaking safety audits, and recruiting other employees as safety representatives as well as organising training events.
The benefits of facility time

• Representing union members can be complex and time consuming – and the best way of allocating time for these duties is through union facility time. This ensures that members have access to representation at a specific time and gives employers the confidence that union representatives are available for individual or collective representation.

• Investing in facility time is an investment in organisational development as employee relations and staff productivity are improved.

• It can sometimes be difficult to come to an agreement on how facility time is arranged, releasing people from their jobs to undertake union duties. It can also be difficult to come to an agreement on what constitutes reasonable time off. Flexibility is key to negotiating facilities arrangements – between HR, line managers and union representatives. Full-time RCN officers are available to help negotiate an arrangement to suit everyone.

• Many HR departments decide to centrally-fund facility time; this can share the load rather than falling on the individual departments where those representatives work. Suggesting this option may help you make the case for facility time.

• Some employers pay for the full-time release of staff to take on a representative role and for the backfill for their job ensuring they can undertake their responsibilities without worrying about leaving their colleagues in the lurch. You could recommend this approach as a model of partnership working at its best.

In 2007, the then Department of Trade and Industry – now the Department for Business Innovation and Skills (BIS) – conducted a review of the facilities and facility time available to workplace representatives (Department of Trade and Industry, 2007). It found that:

a) dismissal rates are lower in unionised workplaces with union representatives and this resulted in savings related to recruitment costs of £107m-£213m per year

b) voluntary exit rates are lower in unionised workplaces with union representatives, resulting in savings related to recruitment costs of £72m-143m per year

c) employment tribunal cases are lower in unionised workplaces with union representatives resulting in savings to government of £22m-43m per year

d) workplace-related injuries are lower in unionised workplaces with union representatives resulting in savings to employers of £126m-371m per year

e) workplace-related illnesses are lower in unionised workplaces with union representatives resulting in savings to employers of £45m-207m per year

f) 3,000 to 8,000 fewer cases of work related illness equivalent to 125,000 to 375,000 fewer working days lost. Benefits to society range from £45m to £207m.
What legal rights do union representatives have?

Union representatives take on many different responsibilities, ranging from individual member cases to regular meetings with management as well as keeping in touch with colleagues from the RCN and other unions. Union representatives and employers should work together to arrange appropriate time off and make arrangements for cover while representatives are undertaking union duties or activities.

Trade union representatives have a statutory right to paid time off from employment to carry out union duties and to undertake training as provided by the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).

This right applies to:
- workplace representatives – stewards
- health and safety representatives
- learning representatives/advisers.

Union representatives are entitled to paid time off to cover the following duties:

<table>
<thead>
<tr>
<th>Stewards</th>
<th>Health and safety representatives</th>
<th>Learning representatives/advisers</th>
</tr>
</thead>
</table>
| Trade union duties related to collective bargaining, on issues such as:  
  • terms and conditions of employment  
  • redundancies  
  • job evaluation  
  • flexible working  
  • discipline  
  • trade union facilities  
  • negotiating machinery.  
Individual representation.  
Meetings with management and preparation for these meetings.  
Keeping members informed about negotiations.  
Training in aspects of industrial relations relevant to the carrying out of trade union duties. | Performing their functions under health and safety legislation.  
Undergoing training to carry out their duties and responsibilities.  
Attending health and safety meetings at local, regional, national and international levels where appropriate. | Analysing learning or training needs.  
Arranging, promoting and advising on learning or training.  
Consulting with employers and undergoing relevant training. |
What can be covered in a facilities agreement?

Facilities agreements usually refer to trade union duties and trade union activities.

Trade union duties refer to all matters relating to collective bargaining and individual representation, such as pay negotiations, consultation meetings, disciplinary hearings and staff inductions.

Trade union activities may include attending branch meetings, RCN conferences or committee meetings.²

Facilities agreements

A facilities agreement will usually cover the following aspects. This list is not exhaustive, however, and both parties may decide to negotiate the content and structure of their agreement.

- Terms and conditions of employment including physical working conditions.
- Engagement, termination or suspension of employment and the duties of employment.
- Allocation of work or the duties of employment as between employees or groups of employees.
- Discipline and grievance.
- Activities associated with trade union membership.
- Facilities for union officers, such as office space, storage facilities for files, etc.
- Negotiation or consultation machinery and other procedures.
- Procedures for collective bargaining, disputes, joint consultation, communicating with members and other trade union officers.

A sample agreement can be found using this link.

NHS staff are covered by a national agreement – Agenda for Change – which encourages and promotes partnership working. As part of this approach, employers should ensure that union representatives are released appropriately to participate in partnership working. This can be found in the NHS Terms and Conditions Handbook.

² There is no statutory requirement that union representatives should be paid for time off taken for trade union activities. However, employers may consider payment in certain circumstances.
Local practice

Sometimes local arrangements may not be written into formal agreements and local practice is developed which could either be written or unwritten. Local practices agreed in writing might be found in letters, minutes of meetings or emails. They usually have the same weight as an agreement but can often be changed more easily than a written agreement.

Some local arrangements are not written down anywhere and might be the result of a verbal agreement or just accepted as ‘the way we’ve always done it’. Representatives and managers may prefer to rely on unwritten arrangements – but these can sometimes be misunderstood.

The RCN recommends that local practices – both written and unwritten – are written into formal agreements to provide you with safeguards. Representatives should get in touch with their regional office when planning to formalise any agreements.

Useful guidance and advice

Acas Code of Practice

The 2009 Acas code of practice and guidance on time off for trade union duties contains provision for work and/or workload reductions for representatives when time off for trade union duties or activities is required. It states that:

“Employers should ensure that, where necessary, work cover and/or workload 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.”

The code provides for reasonable paid time off for trade union duties even when a representative would not ordinarily be at work if they work flexible hours:

“There is not a statutory requirement to pay 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.”

The code provides guidance in determining what constitutes reasonable time off, and this list is not exhaustive, taking into account any operational difficulties, the need to maintain a service and the difficulties for trade union representatives in respect to shift patterns.

There is also an expectation for employers to ensure work cover and/or workload reductions are provided when time off is required. In practice, this can often be difficult to enforce, but the provision in the code should be highlighted if problems are encountered.

Health and safety representatives have a separate entitlement to the provision of facilities to help them perform their duties under the Safety Representatives and Safety Committees Regulations 1977 and the Health and
Safety (Consultation with Employees) Regulations 1996. Further information is available on the Health and Safety Executive website at www.hse.gov.uk

Facilities time in the NHS

The Agenda for Change terms and conditions of service handbook states:

“NHS employers should allow reasonable paid facility time for recognised staff officials to carry out negotiations with the employer about matters for which the union is recognised and to undergo training relevant to these duties.” (section 25)

The full text of the Agenda for Change terms and conditions of service handbook (PDF 604KB)

In Scotland, NHS trade union facilities arrangements are agreed through the national Partnership information network (PIN) guidelines (Scottish Government, 2011).

A note on time off for trade union activities and duties

Although we often refer to paid time off for trade union activities and duties, many representatives point out that it’s not really time off since they are using this time to carry out important duties. In any case, employers need to provide staff cover for representatives undertaking union duties and activities. Until the law changes, we can’t move away from the term time off, but it’s perhaps worth reminding ourselves of the extent and value of the work that representatives accomplish.
Checklist for officers and representatives

- Do you have a formal agreement? If not, if your existing agreement is out of date, or if you rely on custom and practice for your arrangements – think about how best to put an agreement in place.
- Do your agreements allow for adequate cover arrangements? Do they allow representatives to provide adequate support to members?
- Are representatives due to retire or leave their job? It is important to make sure facilities agreements and facility time for those representatives are not lost.
- Know your rights as a union representative.
- Start to think about the benefits of facilities agreements and union representatives in your workplace. It might be useful to put together evidence on the difference you make to both members and the employer.
- We might be stuck with the term time off for trade union duties, but ensure you are clear that this is time spent supporting members, negotiating with managers and representing the RCN.
- Check that your agreement offers time off in lieu of payment.

### Does your facilities agreement cover the following:

- starting date
- review date
- reference to TULRCA (1992)
- reference to paid time off for:
  1. union duties
  2. union activities
  3. union training.
- reference to time off in lieu (if appropriate)
- reference to facilities including:
  1. use of email
  2. internal and external internet
  3. private telephone
  4. notice boards
  5. meeting rooms
  6. office space
  7. storage space
  8. reprographics
  9. internal post.
- reference to confidentiality
- reference to disputes regarding the agreement
- reference to how the agreement may be amended/terminated
- reference to backfilling of posts.
Appendices

The following template letters are to help you in contacting employers about facilities agreements. They provide guidance, so feel free to adapt them to fit your needs.

Dear [name]

We all know that [the NHS/health care] faces tough times ahead – there is less money with which to do more. And the only way we can get through this challenge is a commitment to build trust – between staff, employers and trade unions.

I am writing to you to ask for a meeting to discuss a facilities agreement with the RCN.

Use this section to explain what the current situation is and what you want, i.e., a renewed or formalised agreement, a completely new agreement or stop the employer taking away existing facility time.

The RCN firmly believes that facilities agreements are the best way of promoting constructive dialogue between employers, staff and their union representatives.

Local agreements often prevent problems emerging and find solutions to problems if they do emerge. In fact, problems often occur when the RCN is not consulted.

A major feature of the RCN is our commitment to making our members better health care professionals – supporting their ongoing training and development and ensuring they are engaged in and motivated by their work.

We are also health and safety champions. We want to make sure our members work in a healthy and safe environment and our health and safety representatives have access to the latest advice and best practice. Our work on needlestick injuries and wellbeing at work demonstrate we are leaders in the health and safety field.

The RCN is also an expert in helping NHS organisations manage change and minimise uncertainty among staff. The best way to secure organisational change is to involve staff – they are the ones who best know the service and how it can be improved. Involving RCN representatives helps ensure that change does not undermine health care delivery.

Poor employment relations is damaging [for the NHS], for the organisation and is costly. Working closely with RCN representatives minimises time and costs. Treating the RCN as a key stakeholder leads to improved employee relations which in turn leads to better staff morale, lower turnover and improved wellbeing. This all adds up to better staff productivity.

But this all takes time, and making sure that RCN representatives have adequate time to fulfil all these roles and duties is really important. A formal agreement, which sets out paid time off for union duties and activities, is the best way of establishing a mutually understood and consistent approach.

I hope you’ll agree that this is a constructive agenda and I look forward to meeting with you to discuss it.
Dear [name]

This letter is to formally let you know that your staff member [name] has been elected as a representative for the Royal College of Nursing. Their role will be as a [role] which will allow them to represent the interests of RCN members through partnerships within the workplace.

This role requires [name of rep] to be trained and competent to deliver both individual and collective support representation for members.

In the first instance, this will involve participation in the RCN Representative Learning and Development Pathway. [How many days will this involve?]

The pathway is based on national occupational standards for trade union representatives in the workplace (ENTO standards) and ensures that RCN representatives are effective, competent and confident in their roles.

Once [name] has undertaken their training, they will require time off to perform their trade union duties and activities. Your organisation may already have facilities arrangements for the RCN or other trade unions and it will be fairly straightforward to extend these arrangements to [name]. Developing a robust facilities agreement with time off for representatives to undertake trade union duties is an effective way of making sure they have adequate time and resources to get on with their roles.

RCN representatives take on many and varied roles, including offering advice and support to members on employment issues, representing members and working closely with employers on service improvements and restructuring.

Representatives are entitled to time off in order to perform their trade union duties and attend appropriate training (Ref Section 168 TULRCA 1992 and Employment Act 2002). In addition Section 25 of Agenda for Change promotes agreement of paid time off and facilities for representatives to perform their duties in order to improve staff engagement.

A key feature of the RCN representative programme is individual support they receive from RCN full-time officers. We provide mentorship to all our representatives and I will be working closely with [name]. I would be happy to discuss with you any aspect of the development pathway or how we can work with you in developing partnership arrangements.

Evidence shows that trade union representatives who are properly trained, and with access to a good facilities agreement provide many benefits to an organisation and an assurance that partnership arrangements are working effectively.

I enclose a copy of our role descriptor for [name] and if you would like to discuss this further, then please do contact me.

I look forward to working with you in the future.
References


