

Department for Education:
Review of Trade Union Facility
Time in Schools Consultation

Thompsons Response
(October 2013)



STANDING UP FOR YOU

Thompsons is the most experienced trade union, employment rights and personal injury law firm in the country with 28 offices across the UK. On employment and industrial relations issues, it acts only for trade unions and their members.

This is our response to the government's proposals to reform trade union facility time in schools. We believe that the terms in which the consultation has been written presume that facility time in schools does not contribute to an efficient and effective school system and implies that facility time needs to be reduced in order to save money for the taxpayer.

We fundamentally disagree with the negative representation of facility time and believe that in fact it has consistently been shown to benefit workplaces, employers and employees - including in schools - and, indeed, to bring significant financial benefits to the taxpayer. We therefore question the government's motives for undertaking this review.

We respond to the questions raised by the consultation as follows:

1. We would welcome views on the percentage of a school employer's pay bill that should be used to fund trade union facility time.

This consultation assumes that there is a problem with the current arrangements for trade union facility time in schools and that there is a need for reform. The consultation asserts that trade union facility time in schools as currently configured is expensive and can be made more efficient.

Figures from the Taxpayers' Alliance are quoted as evidence when in fact the Taxpayers' Alliance is not a neutral organisation. The Taxpayers' Alliance has political motives for its opposition to trade union facility time and its opposition to trade unions in general. For a government consultation to be based upon statistics from an avowedly political and anti union organisation is unacceptable and we believe it is flawed as it fails to detail the proven benefits of trade union facility time to schools, employers and the taxpayer.

As trade union lawyers, it is our experience that facility time can be and is a positive in the school environment. It allows for employment disputes in schools to be resolved in a way that avoids recourse to the Tribunal system. Settlement in the workplace saves money on lawyers fees and the breakdown in workplace relationships - often beyond the immediate parties - that inevitably follow. Steps to reduce facility time will reduce the chances of disputes being resolved in the workplace and lead to an increase in employment tribunal claims and industrial unrest.

A 2007 DTI consultation document on facility time, *Workplace Representatives: a review of their facilities and facility time* concluded that facility time improves employees' working environment and safety as well as being a spur to workplace productivity.

The estimate in the 2007 review was that "workplace representatives bring an identifiable range of benefits worth £476 million to £1,133 million annually, in addition to which there may be significant other gains from increased productivity. The cost to their employers of providing paid time off and facilities ranges between an estimated £407 million to £430.4 million annually."

The DTI review went on to estimate that the potential impact of workplace representatives on the economy through increased productivity was a more general potential gain of between £3.4bn and £10.2bn annually.

Another report in 2007 - from the Department for Business, Enterprise and Regulatory Reform (BERR) - showed that in workplaces with union representatives, dismissal rates, voluntary exit rates, tribunals, workplace injuries and workplace illnesses were all lower. That led to estimated savings of between £45 million to £207 million a year. The report estimated that, for every £1 spent on facility time, £3 to £9 is returned to the taxpayer in accrued benefits.

Framing the debate simply in terms of a pay bill is in our view both emotive and prescriptive. We believe the issue should be looked at in terms of the extent to which facility time can lead to measurable gains in efficiency and workforce satisfaction.

The fact is - though neither the government nor the Taxpayers' Alliance may like it - over 90% of the workforce in schools are unionised. If workforce managers faced with a serious collective issue or a challenging individual case that requires several meetings with trade union representatives are - due to reduced facility time - hampered in their ability to schedule meetings it will delay bringing the matter to a swift conclusion. At a time when grievance hearings are an established and compulsory part of the industrial relations scene who gains if the meetings for them are delayed due to difficulty in co-ordinating diaries?

Having a system where there are agreed times when trade union representatives are available to attend meetings with management and represent members at disciplinary and grievance hearings makes more sense than one where representatives have to be pulled out of classes on an ad hoc basis.

We do not believe that facility time should be crudely measured as a percentage of an employer's pay bill. School employers should have the ability to negotiate facility time on a school-by-school basis because they understand the particular needs and workforce dynamics of their employees.

For example, demands on a teacher in a school with particularly challenging pupils may mean there is a greater need for facility time to deal with issues such as assault, teacher exhaustion or false allegations of teacher misconduct.

Setting a percentage figure would be unhelpful as it would fail to recognise membership size and the core duties that need to be carried out by a representative regardless of their employer's overall staff pay bill.

2. More widely, have you any further suggestions about how facility time arrangements in schools could be made more efficient?

It is better for the amount of facility time to be negotiated in a way that suits both unions and employers. Cutting facility time is not a driver of efficiency, particularly if it leads to a more unsettled workforce and reduces managers' ability to manage.

3. How much time do you consider ‘reasonable’ time off for trade union duties for any union representative working in a school (as a percentage of contracted working hours)? Where possible we would welcome evidence and examples to support your views.

This question tacitly assumes that current levels of facility time are not ‘reasonable’. In our experience, the amount of facility time can be unreasonable because it is not long enough.

In a school setting there cannot be a one size fits all formula applicable to all circumstances. A simple ratio between facility time and contracted hours does not work. One representative may require more or less time than another depending on the amount of work they need to undertake. The premise that there is a definable ‘reasonable’ amount of time is therefore false.

If employers and unions do not have flexibility to negotiate the appropriate level of facility time, problems are likely to arise. For example, Thompsons represented a union branch secretary who worked in a university and had two days per week facility time. A failure by the employer to make effective arrangements for her post to be back-filled led to a serious backlog of work and the representative submitted a grievance. This was not properly addressed by her employer which led to the pressure on the representative becoming so great that she developed anxiety and was signed off for several weeks.

Whilst off work the representative’s backlog of work became substantially worse. Her non-availability to carry out union duties made it more difficult for the employer to progress the pipeline of grievances and disciplinary issues which had a knock-on effect throughout her department. In this case, therefore, limitations on the member’s facility time meant that a serious extra burden of work became unmanageable and the employer lost the efficiency savings that properly functioning, negotiated facility time provides.

The issue of how much time is ‘reasonable’ has been the subject of dispute in the past and has led to a statutory Code of Practice prepared by ACAS entitled *Code of Practice 3: Time Off for Trade Union Duties and Activities*.

Employers, unions and Tribunals alike rely on this Code of Practice which, being issued under s.199 of the *Trade Union Relations (Consolidation) Act 1992*, is a statutory code, and under s.207 is admissible in evidence.

The Code notes at paragraph 3 “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.”

It is our view that proposals to impose arbitrary limits without regard to local requirements runs directly contrary to this Code.

4. Do you agree that union representatives in schools should regularly account for the duties and activities carried out during facility time to their manager and/or their employer?

Yes. Accountability is important and the ACAS code of practice already includes a requirement for accountability. However accountability should not supersede the ability of trade union representatives to act independently as outlined in Trade Union and Labour Relations (Consolidation) Act 1992.

It needs to be recognised that in many instances it would be inappropriate for an employer to have details of what was discussed or what activity was carried out during facility time because it will invariably be confidential.

An unnecessarily wide or onerous duty of accountability might place a trade union representative in the invidious position of only being able to account for their activities by reference to confidential material. We would therefore lend support only where a fair balance is struck between duty to the employer and duty to the trade union member.

5. a) Do you agree that details of facility time spending should be gathered and published?

No. We believe that a prescriptive requirement to gather information would undermine the efficiency savings that the government's proposals purport to seek by placing further administrative burdens on schools. This is red tape from a government that professes to be against red tape.

We believe that the case has not been made for how gathering and publishing information can significantly add to efficiency. Facility time across the whole of the public sector costs less than 0.14% of the annual public sector pay bill and on that basis demanding school by school accounting seems a gross overlay of bureaucracy when there does not seem to be a problem. If the government is saying that the cost of facility time in schools specifically is a major drain on public sector finances, then why is that figure omitted from the consultation document?

The question of publication cannot be fully answered without more information.

To answer it properly we would have to know where the information would be published, in what form and in what context. We are very concerned that publishing only figures about the cost of facility time, without any assessment of the benefits to employers, would be highly misleading and we would be strongly opposed.

There would be a risk of the information being misused. For example, a group of school governors could utilise insufficiently detailed information to criticise or undermine a head teacher who was rightly using facility time effectively to manage a large workforce and ensure good industrial relations.

If information was published at school level, for example in a local newspaper, this could lead to other teachers being able to work out how much their colleague and union representative earned. This would be a breach of the teacher's right to confidentiality as well as a breach of the Data Protection Act.

5. b) If yes, how could a system be introduced without placing additional burdens on employers and school leaders (in both maintained schools and academies)?

See answer above.

6. Do you have any additional views on trade union facility time that you would like to share? We would be particularly grateful for any examples of good practice, or examples of how facility time is currently managed in your school, academy or local authority.

See the responses to questions 1 and 3 above.

For further information:

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