



## TRADE UNION DUTIES AND ACTIVITIES

Trade union duties and activities including time off and other Facilities

This policy applies to all school recognised trade unions and all maintained school employees who are accredited officials of those trade unions.

February 2014

## Trade Union Duties and Activities Policy

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### INTRODUCTION

Governors and Head Teachers are responsible for developing and implementing policies and procedural arrangements in certain areas of employee relations including disciplinary, capability and grievance procedures.

A recognised trade union is an independent trade union recognised by the School and the local authority (as applicable) for collective bargaining purposes. In building and maintaining relationships with recognised trade unions and their accredited officials, Governors and Head Teachers must operate the agreements and procedural arrangements put in place by the Council on behalf of maintained schools.

Governors/Head Teachers must continue to apply provisions made by the Council where the latter remains responsible, for example, for ensuring that reasonable 'time off' is granted for trade union officials and members in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992.

This policy ensures that the school has proper and effective arrangements for the recognition of trade unions and the accreditation of trade union officials.

### DEFINITIONS

- a “recognised trade union” is an independent trade union recognised by the Council and maintained schools for collective bargaining purposes

- an “accredited official” is an employee of the School/local authority elected or appointed by his/her trade union to represent other trade union members who are employees of the School
- “other facilities” includes payroll deduction of subscriptions, printing and the use of telephones, meeting rooms, notice-boards and internal post/courier services
- A TULR is an accredited Trade Union Learning Representative appropriately trained
- A H&SR is an accredited Health and Safety Representative appropriately trained
- A lay member is an elected/appointed member to represent members in a given workplace

## **OBJECTIVES**

To:

- ensure effective industrial relations between the Council, maintained schools and their recognised trade unions
- ensure effective and efficient arrangements for the accreditation of trade union officials
- ensure the responsible application for time off etc for trade union duties and activities
- outline the recording system to be able to monitor the effectiveness of the arrangements made.

## **PRINCIPLES**

All parties agree that there are common benefits in a consistent approach to the application for and granting of paid or unpaid time-off for trade union facilities within schools.

### **The School recognises:**

- their statutory responsibility to permit an accredited official reasonable time-off with pay to carry out certain trade union duties
- the value of providing other reasonable time-off and other trade union facilities to promote meaningful consultation and good industrial relations generally

### **The Trade Unions recognise:**

- their responsibility for requesting use of facilities in the most effective and efficient way possible
- their obligation not to unduly or unnecessarily prolong the time that they are absent from work on union duties or activities

## **ACCREDITATION**

Elections for the post of trade union representatives often happen annually within the Unions. Employees may inform the Head Teacher of their intention to stand as a candidate for the post of a trade union representative. Early notification of the intention to stand can help the school to plan for accommodating this arrangement and should

therefore, in most cases, avoid objection to accreditation once the person has been elected.

## **LEVEL OF FACILITIES**

The level of facilities must be “reasonable in all of the circumstances” and must take into account the operational needs of the school and any other time taken by the employee, for example for public duties. This “test of reasonableness” is detailed below.

At least annually, Head Teachers need to reach agreement with each accredited official within their responsibility on the amount of time-off that can reasonably be expected taking into account:

- the official’s duties
- the operational needs of the organisation
- the amount of time-off taken in the previous year
- the minimum amount of notice for specific types of absence

A similar approach will be taken by Head Teachers regarding the provision of other facilities.

Paid time off will normally be given to trade union officials for duties relating to both those within and outside of the School and these are detailed below.

## **APPROVAL MECHANISMS FOR TIME OFF**

Accredited officials are required to request permission for time-off during working time and the use of other facilities from their manager. Normally and where possible 7 days' notice should be given and the form in Appendix 1 should be used.

In cases where a series of absences relate to the same duty, a standing arrangement can be agreed providing that proper notice can be given.

Lay members of a recognised trade union may request time-off without pay in accordance with the same principles as above i.e. with 7 days' notice using the form in Appendix 1.

In the case of time-off for training purposes the respective trade union should write to the Head Teacher in the first instance with the day/dates of the training. Where the time-off request is significant it should be done with at least 28 days' notice.

In considering requests for trade union training and education, Head Teachers should take into account:

- 1) the benefit to the school as well as the union of having properly trained representatives;
- 2) time off for training should be considered separately from and additional to time off for other duties and activities
- 3) part time employees who attend a full day of training will be paid on their normal grade for the full time working day.

Where a request is not approved then the reason for the refusal must be given in writing to the official or member within 3 days of the decision and confirmed in writing if so requested. If the official or member does not agree with this decision the matter can be dealt with through the School's Grievance Procedure.

## **TIME-OFF WITH OR WITHOUT PAY**

Where trade union officials and lay members face difficulties in achieving effective representation or communication it is not unreasonable for trade unions to request that meetings be held (in part) within normal working hours.

The School recognises that there will be occasions when time-off will be requested at times when matters cannot be dealt with effectively outside of normal working hours and that there is a direct benefit to both parties in dealing with specific issues in this way.

Time-off is given for either a trade union duty or activity. See 'Statutory provision' section below for definitions regarding trade union duties and activities.

Accredited officials will receive normal or average earnings for approved absences to undertake a **duty** relating to their role.

Approved time-off for a trade union **activity** will be without pay. This will also apply to lay members who have time-off to enable them to participate during normal working hours in an activity properly authorised by that trade union.

## **STATUTORY PROVISIONS FOR TIME OFF FOR DUTIES**

The Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Relations Act 2002, provides for employees who are officials of an independent trade union have the right to be permitted a reasonable amount of paid time off work to enable them to carry out their duties. Paid time off will normally be given to trade union officials for **duties** relating to both those within and outside of the School and these are detailed below:

### **For Duties outside the School**

- attendance at conferences which are considered to have value in relation to the School's services
- initial basic and then further training relevant to carrying out the duties providing that the training has been approved by either the Trade Union Congress or the official's own union

### **For Duties inside the School**

- participation in collective bargaining as appropriate
- to inform members of negotiations/consultations with the School in relation to statutory provisions
- reasonable preparation for and attendance with members at grievance and disciplinary hearings and interviews

- attendance with members at other meetings held under appropriate council procedures (eg capability and attendance), and preparation for those meetings.
- discussions with new employees as regards the union's role in respect of the industrial relations framework (check protocol)
- carrying out the functions of a Trade Union Learning Representative
- carrying out the functions of a Health & Safety Representative

## **ACTIVITIES FOR UNPAID TIME OFF**

The School will not pay for an official's activities in relation to an internal/domestic union nature although time off without pay should not be withheld unreasonably.

Unpaid time off for lay members should be considered taking into account the "test of reasonableness" outlined below.

## **TEST OF REASONABLENESS**

Following accreditation the amount of time off taken by a trade union official or time off permitted to a lay member must be reasonable in all the circumstances. The principles of the "test of reasonableness" should therefore be applied. The criteria to be taken into account are set out below.

### **Criteria:**

- Has the employee and/or trade union supplied sufficient information on which to make a decision?
- Has a reasonable amount of notice been given?
- Does the trade union formally support the request made?
- What is the impact on the service? What is the purpose of the time off? If the purpose is a "duty" then the official will normally have the time off with pay. If the purpose is an "activity" then both officials and lay members may have time off approved without pay. See section Time off with or without pay...

Time off will not be allowed to participate in industrial action although recognised officials will be expected to attend meetings to resolve disputes.

### **General Guidance**

Where there is some doubt as to the approval of the application further information can be requested from the trade union.

Consideration of time off may need to take into account factors, which would be applied by an Employment Tribunal in the event of the employer's unreasonably withholding time off, or payments for such time off. Where there are any doubts schools should seek advice from their HR provider. Discussions with full time officials from the trade union may also take place.

In requesting information from a representative, Head Teachers will have due regards to issues of confidentiality.

It will be recognised that in some emergency circumstances representatives will be required to ask for time off at short notice.

Some representative may hold more than one office within their trade union, in which case the test of reasonableness will be applied separately to each role.

## **CONSULTATION PROCEDURES/REQUIREMENTS**

Consultation is a statutory requirement in a number of circumstances including redundancy, introducing disciplinary procedures and **any** changes that may have Health and Safety implications for employees.

Consultation is also a corporate requirement by which governors/Head Teachers are bound in other circumstances, including the introduction of Grievance Procedures and the variance of national or local terms and conditions of employment (as adopted by the County Council). Please contact your HR provider if you require further information.

Consultation with staff and their representatives/recognised trade union is recommended on any matter of common interest. Governors/Head Teachers will not be obliged to **agree** all matters but should respond to or take into account the comments received from the staff and their trade union representatives.

## **DISPUTES PROCEDURES**

Governors/Head Teachers are responsible for resolving disputes that arise through the exercise of their powers. Therefore, school level discussions or negotiations which break down and which are concerned with matters for which governors are responsible should be resolved (if possible) through the School's Grievance Procedure.

The School's Grievance Procedure aims to resolve the problem as quickly as possible. Where Governors are constrained in their decision taking by responsibilities to conform to Council practice, the matter should then be referred to the People Management Service.

Where the matter is one for which governors are not responsible in law the dispute may exist between the trade unions and the Council and will therefore be dealt with in accordance with Council procedures.

Governors/Head Teachers, who are in doubt as to the position with regard to a dispute in their school, should seek professional advice by contacting their HR provider.

## **DEALING WITH INDUSTRIAL ACTION**

The Council operates a Code of Practice on Industrial Action, which all establishments must follow. This includes provision for deduction of pay from salary and sending certain employees home – see Appendix 2. This code should be distributed to employees who are intending to participate in industrial action along with one of the model letters in appendix.

If the cause of Industrial Action is a matter for which governors are responsible as the employer, then the action must be limited by the trade unions to that establishment only. Similarly, any ballots of membership required of a trade union must be confined to membership within that one establishment.

Head Teachers and Governors are advised to seek advice by contacting their HR provider in the event of industrial action being threatened or taken.

If the Industrial Action is concerned with a matter for which the Council remains responsible, then the Council will provide specific advice or instruction to schools on:

- The extent of the action proposed by the trade unions;
- The ballot arrangements;
- The responses to Industrial Action recommended;
- Any other advice and information relevant at the time.

## **RECORDING TIME OFF**

Full records of time off and other facilities granted must be recorded by the Head Teacher concerned and reported to the Governing Body on a regular basis.

The form in Appendix 1 should be used to request and record all authorised absences. Governing Bodies are responsible for monitoring the effectiveness of their arrangements and reporting difficulties encountered in their operation to the Head of People Management.

## **FUNDING**

The costs of granting time off with pay and the use of other facilities will be met from the school's budget.

## **DISCLOSURE OF INFORMATION**

The Council and School's will disclose to representatives of the trade unions such information, as they may reasonably need in order to conduct negotiations in an informed and responsible manner.

The type of information relating to an employer's undertaking which could be relevant in certain collective bargaining situations are as follows:

Pay and Benefits  
Conditions of Service  
Number and types of employees  
Performance  
Financial

Trade unions requesting information should do so in writing.

All information disclosed will be dealt with in accordance with Data Protection legislation and must be used only for the purposes for which it was provided.

## **REVIEW**

The provisions of this Policy will be subject to annual review, or earlier if requested by either side. Reviews will ensure that the principles and objectives of the agreement are being effectively sustained.



## **RELEVANT LEGISLATION**

Trade Union and Labour Relations (Consolidation) Act 1992

Employment Relations Act 1999

Safety Representatives and Safety Committees Regulations 1977

## **FURTHER INFORMATION**

Please contact the school's HR provider

## APPENDIX 1 – APPLICATION FORM FOR TIME OFF

(If you would like to complete this form in soft copy, please select, copy and paste this section into a new Word document)

### Facilities for Accredited Representative/Members of Recognised Trade Unions

#### Applications for Time Off in accordance with Agreement on Trade Union Facilities

**Part A:** To be completed by representative/official normally, and where possibly, not less than 7 days before the first absence or 28 days in the case of time off for significant amounts of training. This section indicates anticipated need for time off for agreement in principle.

- 1 Full Name and  
Payroll Number: .....
- 2 Name of Accredited Trade  
Union (**Select as** Unison/Unite/GMB/NUT/NASUWT/ATL/ASCL/NAHT  
**Appropriate**)
- 3 Union Position of status .....
- 4 Identified **Duty/Activity**(**Select as appropriate**) for which absence is requested. ....
- 5 Inclusive dates of anticipated absence from work .....  
Inclusive times of anticipated absence from work .....
- 6 Time taken off on the above date(s) is requested **With/Without** pay.  
(**Select as appropriate**)
- 7 The above date/time is being requested outside core working hours and is noted to **Include/Not Include** flexi time agreements to my working time.  
(**Select as appropriate**)

**Part B:** To be completed by Head Teacher and a copy returned to the applicant.

- 1 The application for time off **is/is not** approved in principle. (**Select as appropriate**)

2 If approved, the time off is to be taken **with/without** pay. **(Select as appropriate)**

3 If approved, the flexi time requested **will/will not** be included.

Signed: ..... Date: \_\_\_\_\_

**Part C:** To be completed by representative/official to confirm actual time off taken normally not more than 7 days after the absence.

1 Inclusive dates of actual absence  
from work .....

Inclusive times of actual absence  
from work .....

**Part D:** To be completed by Head Teacher and a copy placed on file

1 The Application for time off **is/is not** approved in principle. **(Select as appropriate)**

2 If approved, the time off is to be taken **with/without** pay. **(Select as appropriate)**

3 If approved, the flexi time requested **will/will not** be included **(Select as appropriate)**

Signed: ..... Date: \_\_\_\_\_

## APPENDIX 2 – INDUSTRIAL ACTION CODE OF PRACTICE

### AIM OF CODE

The aim of this code is to ensure that:

- employees are given a clear indication of the Council's likely response to industrial action and their responsibilities under the law
- there is a consistent and fair handling of industrial action
- reasonable support and protection is given to those employees not taking part in industrial action
- employees taking lawful industrial action on the instruction of their Trade Union are not subsequently discriminated against

### LEGAL REQUIREMENTS

- employees are reminded that in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992:
  - peaceful picketing is allowable, "at or near his/her own place of work for the purpose only of peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working"
  - picket lines are restricted to no more than six pickets
  - secondary picketing in support of employees outside of the County Council is unlawful

### CONTRACTUAL REQUIREMENTS

#### Pay

Employees will not receive their normal pay for days absent through industrial action.

Where employees participate in industrial action short of strike action the Council reserves the right to withdraw a percentage of pay or send the employee home on no pay where this significantly impacts on service delivery.

Employees who do not attend work as a result of a refusal to cross a picket line will be treated as employees taking strike action.

#### Annual Leave

Where employees have booked annual leave during a period of industrial action, this will continue to be honoured and normal payment will be made. However no retrospective booking of annual leave can be made during or following industrial action.

#### Sickness Absence

Where employees have committed themselves to industrial action and subsequently are "unfit for work", including certified sickness, normal sickness payments should not be paid. Payment should only be reinstated from the date of receipt of written notice of an employee's withdrawal of industrial action. No retrospective claims should be permitted.

## Conduct

Any employee who breaks the law and/or the Code of Conduct whilst participating in industrial action will be in breach of their contract and as such may be subject to the Disciplinary Procedure. At the end of industrial action, employees will not harass, intimidate, abuse or show less favourable treatment to other employees on the grounds that they did or did not participate in strike action. Any examples of such will be treated seriously and dealt with accordingly.

## EMPLOYEES REMAINING AT WORK

Employees who choose not to take part in industrial action will be expected to undertake their normal duties.

Where essential Council services are not being delivered or an employee cannot gain access to their workplace because of an obstruction, employees may be requested to undertake duties outside of their normal job description and/or be moved to another work base. In such cases, employees will not be put at risk to their health and safety. Appropriate honoraria and/or disturbance payments will apply.

## APPENDIX 3 - MODEL LETTERS

### 1. Employees who withdraw the whole of their normal working activities

TO:

PLACE OF WORK:

DATE:

[INSERT NAME] Trade Union(s) have called for a [INSERT TIMESCALES] strike which will take place on/between [INSERT DATES].

The Council intends to maintain School services by minimising disruption on this day and expects most staff to attend work.

Employees taking strike action should be aware of the following information:-

#### Notification of Intention to strike

Employees intending to participate in the strike action are requested to inform their Head Teacher of their intention to do so. Head Teachers will communicate with employees to assess if it is their wish to strike. It is acknowledged that employees might not know for certain at the time of asking if they will be striking or not. However, we would ask that staff give their Head Teacher a definite answer by [INSERT DATE] to allow contingency plans to be put in place as necessary.

#### Pay

Deductions in pay are made in lieu of damages for a breach in contract.

Employees participating in strike action will not receive pay for the days that they are on strike. The principle for pay deduction will be one fifth of weekly pay for weekly paid staff or 1/365<sup>th</sup> of annual salary for teaching staff for each day of strike action.

Deduction of pay for part time staff will be on the basis of the number of hours they would otherwise have worked on that day.

It is likely that deductions from pay for those employees who take part in the strike will be actioned in the [INSERT DATE] payroll.

#### Pension

Absence on strike will not count as pensionable service and lost pay can reduce the average pay used in the benefit calculation. Absence due to industrial action cannot be classed as reckonable service and must be shown as days excluded. Please be aware there is no provision in the Teachers' Pension Scheme (TPS) for members to buy back strike days.

## Continuous Service

Continuous service will not be broken during industrial action.

## Sickness

An employee who is absent due to sickness on any day strike action is called must provide a medical certificate. The School will reimburse employees who are charged by their G.P. for providing this, upon production of a receipt.

## Homeworking

Employees who normally work from home should inform their manager if they intend to take strike action. Employees who do not normally work from home will not be expected to work from home on [INSERT DATE(S)]. Any issues should be discussed with your line manager.

## Annual Leave

Annual leave for [INSERT DATE(S)] which is not already authorised will not be approved unless there are exceptional circumstances.

## Principles of Strike Action

- Picket lines are restricted to no more than 6 people.
- Secondary picketing in support of employees outside Council buildings is unlawful.
- Employees who do not work for the Council (ie Health colleagues) are not affected by the strike. They will attend work as normal.
- Picketing outside your workplace is allowed but it must remain peaceful and sensible.
- The Council will treat an employee not directly involved in the dispute who has refused to cross the picket line as taking part in strike action.
- Employees taking strike action will be deducted [INSERT TOTAL NUMBER OF DAYS] day's pay (as above) but no subsequent action will be taken against staff.

## Treatment of striking / non striking employees

It should be noted that intimidation, bullying, harassment or otherwise unacceptable behaviour will not be tolerated, whether from striking against non-striking employees, from non-striking against striking employees, from managers against striking employees or between any other groups of employees or third parties and partner organisations either during or after the action.

If such behaviour is proven to have taken place, action will be taken in accordance with the Council's relevant employment policies.

For further information please read the School's policy on Industrial Action which includes the industrial action code of practice for employees. It can be found on LCC Connect in

the School's Employment Manual. Finally, should you have any further questions or concerns please do not hesitate to contact your Head Teacher or Chair of Governors.

**2. Employees who withdraw part of their normal working activities and it is agreed that they can remain at the workplace**

TO:

PLACE OF WORK:

DATE:

I am writing to advise you that by withdrawing part of your normal work activities you are in breach of your contract of employment and as such for each day of industrial action you will receive a deduction of [INSERT APPROPRIATE CALCULATION FOR STPCD OR GREEN BOOK] from your salary.

At this moment the County Council accepts your presence at work only for the expediency of the service but reserves the right in due course not to accept your presence at work and send you home on no pay.

I attach a copy of the Code of Practice, which states your obligations and requirements under the law and the School's policy. Any breach of the Code of Practice may lead to disciplinary action.

In the event that you wish to make yourself available for the whole of your normal working activities, please do not hesitate to contact me.

**3. Employees who withdraw part of their normal work activities and it is agreed that they cannot remain in the workplace**

TO:

PLACE OF WORK:

DATE:

I am writing to advise you that by withdrawing part of your normal work activities you are in breach of your contract of employment and as such the School cannot accept your presence at work. You will therefore not receive any payment of your salary for each day of industrial action.

I attach a copy of the Code of Practice, which states your obligations and requirements under the law and the School's policy. Any breach of the Code of Practice may lead to disciplinary action.



In the event that you wish to make yourself available for the whole of your normal working activities, please do not hesitate to contact me.

Employees taking strike action should be aware of the following information:-

### Notification of Intention to strike

Employees intending to participate in the strike action are requested to inform their Head Teacher of their intention to do so. Head Teachers will communicate with employees to assess if it is their wish to strike. It is acknowledged that employees might not know for certain at the time of asking if they will be striking or not. However, we would ask that staff give their Head Teacher a definite answer by [INSERT DATE] to allow contingency plans to be put in place as necessary.

### Pay

Deductions in pay are made in lieu of damages for a breach in contract.

Employees participating in strike action will not receive pay for the days that they are on strike. The principle for pay deduction will be one fifth of weekly pay for weekly paid staff or 1/365<sup>th</sup> of annual salary for teaching staff for each day of strike action.

Deduction of pay for part time staff will be on the basis of the number of hours they would otherwise have worked on that day.

It is likely that deductions from pay for those employees who take part in the strike will be actioned in the [INSERT DATE] payroll.

### Pension

Absence on strike will not count as pensionable service and lost pay can reduce the average pay used in the benefit calculation. Absence due to industrial action cannot be classed as reckonable service and must be shown as days excluded. Please be aware there is no provision in the Teachers' Pension Scheme (TPS) for members to buy back strike days.

### Continuous Service

Continuous service will not be broken during industrial action.

### Sickness

An employee who is absent due to sickness on any day strike action is called must provide a medical certificate. The School will reimburse employees who are charged by their G.P. for providing this, upon production of a receipt.

### Homeworking

Employees who normally work from home should inform their manager if they intend to

take strike action. Employees who do not normally work from home will not be expected to work from home on [INSERT DATE(S)]. Any issues should be discussed with your line manager.

### Annual Leave

Annual leave for [INSERT DATE(S)] which is not already authorised will not be approved unless there are exceptional circumstances.

### Principles of Strike Action

- Picket lines are restricted to no more than 6 people.
- Secondary picketing in support of employees outside Council buildings is unlawful.
- Employees who do not work for the Council (ie Health colleagues) are not affected by the strike. They will attend work as normal.
- Picketing outside your workplace is allowed but it must remain peaceful and sensible.
- The Council will treat an employee not directly involved in the dispute who has refused to cross the picket line as taking part in strike action.
- Employees taking strike action will be deducted [INSERT TOTAL NUMBER OF DAYS] day's pay (as above) but no subsequent action will be taken against staff.

### Treatment of striking / non striking employees

It should be noted that intimidation, bullying, harassment or otherwise unacceptable behaviour will not be tolerated, whether from striking against non-striking employees, from non-striking against striking employees, from managers against striking employees or between any other groups of employees or third parties and partner organisations either during or after the action.

If such behaviour is proven to have taken place, action will be taken in accordance with the Council's relevant employment policies.