

Time off and Facilities Agreement for Trade Unions	Policy Register No: 08019 Status: Public
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1. Purpose

- 1.1 This agreement gives guidance to management and staff organisations on the interpretation of The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment Order) 2013 (TULRA) and reflects the advice given in the Code issued by the Advisory, Conciliation and Arbitration Service ('ACAS').
- 1.2 TULRA gives certain trade union officials a right to reasonable paid time off work to discharge certain functions or to undergo training (s168); and an employee who is a member of the union may claim unpaid time off work in order to participate in certain of its activities (s170). The right is available only to a member of an independent trade union which is recognised by the employer, and does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furthermore of a trade dispute.

2. Background

- 2.1 TULRA provides a right to request time off work which must not be refused if it is 'reasonable'. If an employer refuses a reasonable request, an employee is entitled to complain to an employment tribunal.
- 2.2 The Employment Rights (Dispute Resolution) Act 1998 made minor amendments to previous legislation and the statutory provisions are supplemented by an ACAS Code of Practice ('the Code'). The Code gives practical guidance to employers and unions on making arrangements for time off. Breach of the Code does not necessarily give a right to legal action; it is more a statement of good practice which an employment tribunal would take into account.
- 2.3 There is also a statutory right to time off work for non-union employee representatives in respect of consultation on transfers of undertakings and collective redundancies (TULRA s188(1) and TUPE Reg 10(2)). Such responsibilities are only to be elected where there is no recognised trade union and this agreement does not therefore deal with their position.
- 2.4 This agreement introduced by the Essex Area Health Authority after the 1978 employment legislation, was adopted by the Mid Essex Health Authority in 1982 and subsequently by the Trust in 1992. It has been revised in 2002, 2008 and again now in 2016 to update and reflect any changes in the law.
- 2.5 Under section 170 of TULRA an employer shall permit an employee who is a member of an independent trade union recognised by the employer, to take time off during their working hours for the purpose of taking part in any activities of the union or any activities which the employee acts as a representative of the union. This right does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furthermore of a trade dispute. Time off will be unpaid under this section unless there is a contractual right to pay.
- 2.6 The Code provides practical guidance on the time off to be permitted by an employer under sections 168-170 of TULRA and on the facilities which management should make available to officials to enable them to perform their trade union duties efficiently and to communicate effectively with members, fellow lay officials and full time officers of the union. The Code indicates that such facilities may include accommodation for meetings, access to a telephone, notice boards and where the volume of the official's work justifies it, the use of office facilities.

Aims

- 3.1 This agreement is between the Trust and the Trade Unions and Staff Associations recognised by the Trust under its recognition agreement.
- 3.2 The Trust acknowledges the role of trade union representation of its employees in facilitating good employee relations within the Trust, which in turn plays an important role in the effective delivery of health services.
- 3.3 The Trust also recognises the importance of providing trade union representatives with the necessary support to be able to carry out their duties efficiently and to communicate with their members effectively. Hence, time off during working hours and appropriate facilities will be given to all accredited trade union representatives (including health and safety representatives) in accordance with this agreement.
- 3.4 The spirit of this agreement is one of co-operation between all parties – the Trust, its managers, the trade unions, local staff representatives and employees.
- 3.5 The general purpose of the statutory provisions and Code 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 seek to specify how reasonable time off for union duties and activities and for training can work to their mutual advantage. In the interests of consistency, please consult a Human Resources Manager regarding interpretation of ‘reasonableness’ where required. Managers should keep local records to record time off granted to each representative with the details of each activity.

4. Definitions

- 4.1 In the context of this agreement:

‘trade union’	Means a staff organisation and/or a professional association recognised by the Trust and referred to in the Appendix to this agreement and any such organisation which may in future be so recognised;
‘trade union official’	Means an employee who has been elected or appointed in accordance with the rules of the trade union to be a representative of all or some of the union’s members in a particular workplace or area of work administered by the Trust (including an employee who has been elected or appointed Chairman or Secretary of a trade union branch) and who, in accordance with the provisions of Section 7 of this agreement, is recognised by the Trust as an accredited representative of the trade union;
‘with pay’	Means the remuneration the employee would have received if they ordinarily had worked during the period when the time off was taken or, if the employee’s remuneration varies with the amount of work done, an amount

calculated by reference to their average hourly earnings.

‘reasonable’

Should be read and interpreted with regard to the level of activity and position of the respective trade union representative.

‘union learning representative’

A person nominated by their trade union and/or professional association to take responsibility for co-ordinating and promoting training, development and learning activities and opportunities within the workplace.

5. Scope

- 5.1 This policy applies to Trade Union Representatives and Managers at Mid Essex Hospital Services NHS Trust.

6. Equality and Diversity

- 6.1 Mid Essex Hospital Services NHS Trust is committed to a Policy embracing the Equality Act 2010 in all its employment practices and strives to eliminate all unfair discrimination, harassment, bullying and victimisation. Equality of opportunity is a high priority within Mid Essex Hospital Services NHS Trust and the Trust will not unlawfully, unfairly or unreasonably discriminate or treat individuals less favourably on the grounds of gender, marital status, sexual orientation, religion or belief, disability, age, race, nationality or ethnic origin.

7. Accreditation of Staff Representatives

- 7.1 A recognised trade union shall establish with the Trust the number of its representatives in each work place or area of work administered by the Trust having regard to the national rules of the organisation, the size of its membership and the number and location of work groups for which each representative will be responsible.
- 7.2 It is in the mutual interest of trade unions and management that employees of the Trust who are elected or appointed as staff representatives are in a position to perform the functions of the office satisfactorily and in this regard it is expected that trade unions will elect or appoint such employees whose daily working hours do not differ substantially from the majority of the staff they are required to represent.
- 7.3 Trade unions shall notify management promptly in writing when staff representatives are appointed, or resign, or when other changes in representation are made. Such notification shall be made to the Director of Human Resources.
- 7.4 Upon receipt by management from a recognised trade union of written notification of a staff representative who has been elected or appointed within the terms of the agreement referred to in Section 7.1 above, such representative shall, subject to the provision of Section 7.5 below, be recognised by the Trust as an accredited representative of those members of the trade union they have been elected or appointed to represent. This provision shall include the election or appointment of a deputy in circumstances where an accredited representative is prevented from fulfilling the functions of that role.

7.5 Trade unions shall provide their representatives with written credentials, stating inter alia the period of office of the representative and which work group(s) they represent.

8. Trade Union Official – Time off for Trade Union duties

8.1 Subject to the operational requirements of the service and compliance with the conditions contained in Section 10 of this agreement, the Trust will permit the taking of reasonable time off work with pay to accredited staff representatives to enable them to perform those trade union duties concerned with industrial relations between the Trust and its employees, provided that the business for which time off is required is manifestly necessary and relevant to those employees of the Trust who the trade union official represents.

8.2 Conditional upon what is said above, reasonable time off work with pay will be granted to accredited staff representatives for the following purposes:

- to attend meetings which have been officially convened, or other such meetings as may be jointly agreed by management and trade unions, in connection with the management/staff consultative/negotiating machinery;
- to attend meetings called for the express purpose of informing members of the outcome of negotiations or consultations with management;
- to meet with other staff representatives or with full time trade union officers on matters which are concerned with industrial relations between the Trust and its employees;
- to investigate any complaint or difficulty raised by those members they represents and if necessary to make representations on such matters to management either directly or through the recognised joint consultative machinery as appropriate.
- to prepare for meetings with and on behalf of members in relation to specific disciplinary or grievance matters.
- to attend interviews with and on behalf of members on grievance and disciplinary matters concerning a member of members and the Trust, where the presence of the representative is requested by the member or members;
- to appear on behalf of a member or members before a Trust Committee or Committee of Inquiry, where the attendance of the representative is requested by the member or members;
- to appear on behalf of a member or members before an outside official body, such as an Employment Tribunal or Medical Appeals Tribunal, which is dealing with an industrial relations matter directly concerning the Trust and where the attendance of the representative is required in connection with the presentation of the case;
- to attend meetings called by management where the presence of the representative is requested by the management representative convening the meeting;
- to meet new employees for the purpose of explaining the role of the staff organisation within the workplace, industrial relations structure and inviting them to membership.

9. Union Learning Representatives

9.1 Section 168A of TULRA allows a union learning representative paid time off work to carry out particular activities. An employer shall permit an employee who is a member of an independent trade union recognised by the employer and a learning representative of the trade union, to take paid time off during their working hours for

any of the following purposes/activities in relation to qualifying members of the trade union:

- analysing, learning or training needs
- providing information and advice about learning or training matters, or
- arranging learning or training or
- promoting the value of learning or training
- consulting the employer about carrying on any activities in relation to members of the trade union
- preparing for any activities mentioned above

- 9.2 If an employer is required to permit an employee to take time off to be a learning representative, they shall also permit the employee to take time off during their working hours to undergo training which is relevant to their function as a learning representative.
- 9.3 Where the trade union in the last six months given the employer notice in relation that an employee is a learning representative, the employer must allow the employee to undergo the training mentioned above.
- 9.4 The trade union must give the employer notice in writing that the employee is a learning representative of the trade union. TULRA also states that the 'training condition' must be met in relation to the learning representative.
- 9.5 The training condition is met if the employee has undergone sufficient training to enable them to carry out the activities mentioned above and as the trade union giving the employer written notice of that fact. In addition, the trade union must also have, in the last six months, given the employer notice in writing that the employee will be undergoing such training. Only one notice may be given in respect of any one employee.
- 9.6 The reason, frequency, amount of time, and any conditions attached to the employee taken time off work under this new section, must be reasonable in all the circumstances having regard to any relevant provisions of the Code. Any employee granted time off in this capacity would be expected to work closely with the Learning and Development team and complement the corporate objectives of the Trust.
- 9.7 An employee may present a complaint to an Employment Tribunal that the employer has failed to permit them to take time off as required by this new section.
- 9.8 An employee who is a member of a trade union recognised by the employer will be permitted to take time off to obtain the services of the learning representative. This only applies if the learning representative would be entitled to take that time off and it is for the purpose of one of the permitted activities listed above.

10. Conditions Relating to the Granting to Trade Union Officials of Time Off Work for Trade Union Duties

- 10.1 Managers are authorised to grant reasonable time off work with pay to accredited staff representatives within the provisions of Section 4 and 7 of this document and in the event of any interpretative difficulty in this regard should seek the advice of a Human Resources Manager.
- 10.2 An accredited representative requiring time off work shall seek permission, through their immediate Manager, as far in advance as is practicable and shall indicate the

general nature of the trade union duty for which time off work is required, the expected period of absence and where they can be contacted in an emergency.

- 10.3 If, unavoidably and exceptionally, circumstances necessitate that an accredited representative shall seek permission for time off work directly from their Manager, the representative shall ensure that their immediate Manager is given a brief outline of the request as soon as possible.
- 10.4 Managers in considering requests from accredited representatives for time off work shall, whilst ensuring that the granting of time off work is not unreasonably withheld, take account of the overriding operational requirements of the service. It is therefore necessary for a Manager who refuses such a request to be able to demonstrate sound reasons for the refusal if called upon to do so by a Senior Manager. Such Senior Manager will, if requested, provide in writing to the accredited representative concerned, the reasons or reasons for any refusal.
- 10.5 An accredited representative who has been granted time off work for trade union duties shall not leave their place of work without the permission of the immediate Manager and shall not, for the purpose of the undertaking of those duties, enter a department outside that in which they are normally employed without first informing the Manager of their arrival and the capacity in which they are attending. On returning to duty the representative shall report to their immediate Manager.
- 10.6 Before a meeting is held on the Trust's premises under the provisions of Section 8.1 of this agreement, the accredited representative(s) must obtain approval for time off work for all staff involved and must obtain permission to use the proposed venue of the meeting from the Manager concerned. Where such a meeting will involve the attendance of representatives and/or members from more than one department the approval of the appropriate Senior Manager must also be obtained.
- 10.7 Managers shall keep records of all paid time off work granted to accredited representatives.
- 10.8 Managers who are also accredited representatives shall not give approval to the granting of time off work to other accredited representatives of their own staff organisation, or themselves take time off work for trade union duties, without obtaining the consent of a more Senior Manager who is not so involved.

11. Time Off Work for the Training of Trade Union Officials

- 11.1 Recognising that it is the responsibility of trade unions to ensure that their accredited staff representatives are appropriately briefed on, and trained in, the appropriate National agreements and the procedures and practice of industrial relations generally, the Trust will, subject to the operational requirements of the service, assist recognised staff organisations to discharge this responsibility by granting reasonable time off work with pay, but not the payment of fees and expenses, to accredited representatives for the purpose of enabling them to attend relevant training courses approved by the Trade Union Congress or by a recognised staff organisation and arranged by or on behalf of such an organisation.
- 11.2 A request for an accredited representative to be granted time off work for the purpose of attending a training course specified in Section 10.1 above shall be made by a Full Time Officer or Branch Secretary of the staff organisation, in writing, normally at least one month before the course is due to commence. Such a request, together with a broad outline of the content of the course, shall be sent to the appropriate Manager. Where the request is refused by the Manager, a formal response should be made by

them within seven days. Otherwise, the representative will assume that approval has been granted.

11.3 The attendance of accredited representatives as employees of the Trust at other training courses of an industrial relations nature, which may be organised by or on behalf of the National Health Service or by an outside body, shall be at the discretion of the Trust. In those cases where attendance is approved the Trust will grant leave of absence with pay and will accept responsibility for the payment of fees and expenses in accordance with the employee's terms and conditions of service.

12. Time Spent by Accredited Representatives on Duties Concerned with Industrial Relations Matters Outside their Normal Working Hours

12.1 Although trade union officials have no entitlement under section 169 of TULRA to payment by the employer for time spent outside working hours on trade union duties concerned with industrial relations matters between their employer and the employees they represent, the Trust recognises that accredited representatives may face particular problems of representation arising from the differing hours or shifts worked by them and their members and from the fact that their own working hours may not coincide with the working hours of management. Attention is drawn to this problem in Section 7.2 of this agreement and it is therefore to be hoped that the number of accredited representatives encountering such difficulties will be small.

12.2 To assist accredited representatives in overcoming this problem, the Trust may grant, at the discretion of the appropriate Senior Manager who will take account of the operational requirements of the Service, an ex-gratia payment calculated by reference to the basic hourly rate of the employee and the time spent on the duty, or time off in lieu, whichever is acceptable to the Senior Manager, for the following purposes:

- To attend meetings of an industrial relations nature initiated by management, where the attendance of the representative is requested by the management representative convening the meeting.
- To attend interviews with and on behalf of a member or members on grievance and disciplinary matters concerning a member or members and the Trust, where the presence of the representative is requested by the member or members.
- To appear on behalf of a member or members before a Trust Appeals Committee or Committee of Inquiry, where the attendance of the representative is requested by the member.
- To appear on behalf of a member or members before an outside official body, such as an Employment Tribunal or Medical Appeals Tribunal, which is dealing with an industrial relations matter directly concerning the Trust and where the attendance of the representative is required in connection with the presentation of the case.
- To attend meetings called specifically to inform members of the outcome of negotiations or consultations with management.

12.3 A request for an ex-gratia payment or time off in lieu under the provisions of this Section shall be made by an accredited representative to their Manager, as far in advance as is practicable, specifying the nature and anticipated duration of the duty. As soon as possible following the completion of the duty the accredited representative shall inform their Manager of the time actually spent on the duty, which shall be exclusive of travelling time.

- 12.4 Where an ex-gratia payment is granted, the Manager shall ensure that the employee's time sheet or the departmental overtime return, as appropriate, is completed accordingly.
- 12.5 The Trust will not accept responsibility for the payment of travelling or other expenses which might be incurred by accredited representatives in performing the trade union duties specified in this Section.
- 13. Paid Time Off Work for Members (Including Accredited Representatives) of Recognised Staff Organisations to Participate in Trade Union Activities**
- 13.1 Whilst there is no requirement under TULRA for trade union members to be paid for time off taken to engage in the activities for a trade union in working hours (as distinct from the provisions relating to paid time off work for officials performing trade union duties, which are dealt with in Section 8 of this agreement), the Trust recognises that to operate effectively staff organisations will require the active participation of members and accredited representatives in certain activities of the staff organisation.
- 13.2 The Trust will therefore permit, subject to the operational requirements of the Service and to compliance with the conditions contained in Section 13.3, 13.4 and 13.5 below, the granting to members and accredited representatives of reasonable time off work with pay for the following purposes:
- i) To attend meetings of Agenda for Change as a member of the Staff Side of such a council
 - ii) To enable one member of a branch of a recognised staff organisation to attend the Annual Conference of the organisation, subject to a maximum of two members of any one staff organisation from the Trust and to the time off work required by a member for the purpose not exceeding one working week (see paragraph 13.2)
 - iii) To attend, at the workplace, the annual general meeting of the local branch of the staff organisation, or such other annual meetings as may be arranged, for the purpose of electing branch officers and committee members
 - iv) To attend at meetings convened, with the approval of management by an accredited representative or branch official for the specific purpose of informing members of the outcome of negotiations or consultations with management
- 13.3 Requests for the time off work with pay under the provisions of this Section shall be made by the employee, or if a large proportion of employees are involved by the employees' accredited representative(s), to the appropriate Manager as far in advance as possible, indicating the purpose for which time off is required and the expected period of absence.
- 13.4 Managers are authorised to grant time off work with pay (having regard to the operational requirements of the Service – which requirements may necessitate seeking arrangements with the staff organisation(s) for other employees to cover the work of employees taking time off) with the exception that requests to attend Annual Conferences within the provisions of Section 13.2 (ii) shall be submitted by those Managers to the appropriate Director/Manager.
- 13.5 Where, within the provisions of Section 13.2 (iii and iv), a staff organisation or accredited representative considers it necessary to hold meetings of members during

working hours, the staff organisation or accredited representative shall seek to agree the arrangements with management as far in advance as is practicable. Where meetings necessarily involve a large proportion of employees at the workplace at any one time, management and the staff organisation or accredited representative shall agree (a) on a convenient time which minimises the effect on the Service (for example, towards the end of a shift or working day or just before or after a meal break) and (b) to leave at work such members as are essential for safety or operational purposes.

14. Unpaid Time Off Work for Members (Including Accredited Representatives) of Recognised Staff Organisations to Participate in Trade Union Activities

- 14.1 Subject to the operational requirements of the Service, the Trust will permit the granting by Managers of time off work without pay to members and accredited representatives of staff organisations to enable them to take part, each as a representative of a branch or branches, or a section of members, in meetings of official bodies of the organisation such as the National Executive Committee, a Provincial Council, a District Committee, or a Special Delegate Conference.
- 14.2 Subject to the organisational requirements of the Service, the Trust will permit the granting of time off work without pay, to enable members and accredited representatives of staff organisations, other than those benefiting under **paragraph 13.2 (ii)**, to attend the annual conference of the staff organisation, with the proviso that the number of members or representatives attending under the terms of this paragraph and paragraph 13.2 (ii) shall be limited, for each staff organisation, to one person per branch. Requests for time off work under the provisions of this paragraph shall be made and deal with in accordance with the procedure outlined in paragraph 12.3.
- 14.3 Request for employees to be granted time off work without pay under the provisions of this Section shall be made by a full time officer or branch secretary of the staff organisation, in writing to the appropriate Manager, as far in advance as is practicable, specifying the purpose for which time off work is required and the period of the proposed absence.

15. Full Time Officers of Staff Organisations

- 15.1 Where the prior permission of management has been sought and granted, Full Time Officers of staff organisations may, in the performance of their duties and where such duties are concerned with industrial relations matters affecting the Trust and any of the organisations' members, be permitted to visit premises administered by the Trust and hold or attend meetings with their members.

16. Facilities for accredited representatives of staff organisations

- 16.1 Accredited trade unions will be afforded all reasonable facilities to enable them to carry out their duties effectively. These could include, subject to availability and agreement:
- Use of notice boards on Trust premises
 - Designated office accommodation with telephone
 - Access to rooms or offices within the Trust for meetings
 - Access to photocopying facilities
 - Use of fax machines
 - Use of stationery as necessary

- Use of the Trust's internal and external postal system
- Use of the Trust's intranet and internet system

16.2 The Trust will operate a 'Deduction of Contributions at Source' (DOCAS) system at the written request of individual employees and pay such deductions to the respective trade unions. The amounts deducted will be in accordance with the rates determined by the trade unions and notified to the Trust in writing. Any changes to the subscription rates will be implemented in accordance with the Trade Union Reform and Employment Rights Act 1993.

17. Conditions Relating to Industrial Action

17.1 The provisions contained in this agreement relating to time off work for trade union duties and activities and facilities for staff organisations are subject to a recognition that there is no obligation on the Trust to consider requests from accredited representatives and members for time off work for trade union activities which themselves consist for industrial action. Furthermore, the Trust reserves the right to withdraw from a staff organisation, or from any of its members who are taking industrial action against the Trust, some or all of the provisions contained in this agreement, with the exception that:

- where an accredited representative is not taking part in industrial action but represents members who are so involved, the provisions shall not be withdrawn from them; and
- where a group of members not taking part in industrial action is directly affected by the industrial action of other employees, such group of members and their accredited representative(s) may, subject to the approval of management, be permitted reasonable time off work to attend an emergency meeting, provided this is not called for the purpose of considering an extension of the industrial action.

18. Breaches of Policy

18.1 Where there is a significant breach of this policy, the HR Operations Team must consider whether that breach should be reported under the Trust's Datix reporting procedure.

19.0 COUNTER FRAUD

19.1 Employees alleged to be involved in fraudulent activity may render themselves liable to disciplinary action, including termination of employment.

19.2 Employees must be aware that failure to provide a true declaration when asked by the Trust, or the making of a false declaration, could result in an investigation by the Local Counter Fraud Specialist which could lead to disciplinary and/or criminal/civil action.

20. Audit and Monitoring

20.1 Any non-compliance to be raised with Branch Secretary initially and if not resolved through to JCNC on an adhoc basis.

20.2 A yearly audit of all breaches of this Policy will be carried out and submitted to JCNC. This will be completed by the Human Resources Operations Team.

21. Communication and Implementation

- 21.1 Staff will be made aware of this policy through reference at Corporate Induction and dissemination via Staff Focus. The document will be stored for access to all on the MEHT Intranet under HR Policies and will be available also on the Trust website.

22. Pensions Auto Enrolment

- 22.1 Since 1st July 2013 the Trust has an obligation to assess all workers and their individual position within the organisation. This being the case, staff need to be aware that any changes to pay under this policy may affect their Pensions Auto Enrolment Status.

23. Review

- 23.1 This policy and procedure will be reviewed within 24 months of its agreement and bi-annually thereafter. Any additional amendments will be made in accordance with any changes in legislation.