

Facility time

What is facility time?

In 1975, Harold Wilson's government introduced the Employment Protection Act, which included a statutory right to paid time off for trade union representatives to undertake training and certain 'duties'. The motivation for this was the theory that a certain level of friction between employers and employees is inevitable, and that trade unions play a vital role in reducing that friction. Building on this theory, it was recognised that if employers and employees are to feel confident in the ability of trade unions to deliver this role, employers need to feel assured that representatives have been appropriately trained and employees need to be able to elect representatives who won't suffer any loss of wages or other detriment in taking on the role.

What is ASCL's view?

The law doesn't dictate very much about the mechanics of it, but ASCL's view is clear: "ASCL recognises that facility time is a statutory responsibility and advises strongly that members' employers buy into local authority pooled arrangements where it is available." (**Position statement**, December 2021)

How local authority pooled arrangements generally work

In most cases, pooled arrangements operate using de-delegated funding. In other words, the relevant Schools Forum will decide whether to operate a pooled fund across its maintained schools, whether to allow academy trusts to contribute, and at what level the buy-in cost should be set. The local authority then retains the agreed amount centrally from each maintained school's budget, and invoices contributing academy trusts. Following this, the schools employing individuals elected to serve as trade union representatives are reimbursed the cost of a replacement member of staff from the pool.

ASCL's reasons for advising members' employers to buy into these pooled arrangements are numerous but can be boiled down to our view that members are likely to find that these pooled arrangements are the simplest, most effective, and most efficient way to manage industrial relations. This view is shared by all the education unions.

Are there any alternatives?

Some employers may find that paying into local authority pooled arrangements is not an option, perhaps if a local authority doesn't allow academy trusts to buy in. Irrespective, it's important to remember that all trade union representatives retain a statutory entitlement to paid time off for their trade union duties (so not being able to buy into pooled arrangements is not a valid reason not to provide paid time off).

Some employers have reached agreements to operate a pooled arrangement between academy trusts, with one academy trust shouldering the responsibility of operating the fund, and other academy trusts benefiting from access to the cost savings that come from sharing resources. Other employers have gone down the route of reaching in-house facility time agreements which guarantee a baseline amount of time off and additional ad-hoc time off as required. All trade unions will typically push back against arrangements which seek to agree entirely ad hoc facility time without any level of guaranteed time off, because experience has shown us that members are understandably extremely reluctant to take on the additional responsibility of becoming a trade union representative if they have no certainty around how much time their employer will allow them.

Geographic inconsistencies?

Sometimes, employers express concerns about varying costs between different pooled facility time arrangements. To get our heads around this it's worth remembering that British industrial relations are based on voluntarism – meaning there isn't an awful lot of statutory guidance dictating how arrangements such as these should operate. Instead, idiosyncratic arrangements have developed in each area, depending on the local context. Pressures such as varying rates of academisation, or the political leanings of individuals involved in continuously renegotiating arrangements have also played a significant part in leading us to the hugely varied landscape we see today.

Why don't members' subscription fees pay for this?

As we discussed at the start of this article, the law continues to recognise the vital role trade unions can play as a lubricant in the inevitable friction between employees and employers. In recognition of this, the law allows trade union members to elect representatives from the workforce to undertake certain core trade union duties without loss of wages. Over time, most trade unions have begun offering members a vast array of additional services that exist outside of that core list of trade union duties. Within ASCL, those services include:

- a **Hotline** service operated entirely by experienced senior leaders
- a team of **Regional and Field Officers** providing advice and support to individual members
- an **in-house legal team** supporting members if they find themselves facing threats to their employment or conditions
- a team of officials providing support and training to **Local Representatives**
- a team of **policy specialists** advocating for the best interests of members at all levels of government
- **professional development**, including in-person and online events, and bespoke programmes and services

All these additional services provided to ASCL members exist outside of the list of trade union duties, and so are funded entirely separately to any contributions employers make to pooled facility time arrangements.

Additional information

It is easy to become so distracted by the need to understand the nuts and bolts of how pooled arrangements work that we divorce ourselves from focusing on the statutory obligation of employers and the core principles at the heart of it all. To combat this, it is perhaps easier to think of facility time from the perspective of the trade union representative rather than the employer. The trade union representative is entitled to paid time off from their normal work to complete trade union duties. All they require is to be permitted the time, and not to see any deductions from their pay as a result. The employer must ensure that this can happen. When paying into pooled arrangements, all employers are doing is sharing the cost of the wages of trade union representatives during the time they spend undertaking their duties instead of each employer independently funding the required time off for at least one representative from each of the education unions.

Facility time FAQs are also available on the ASCL website [here](#).

If you have any further queries on facility time, please contact employers@ascl.org.uk

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