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1. Introduction

Section 1 of the Trade Union Labour Relations (Consolidation) Act 1992 (TULR(C)A) defines a ‘trade union’ as a temporary or permanent organisation that consists ‘wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of industrial relations between workers of that description (or those descriptions) and employers or employers’ associations’.

This guide has been written to support Colleges in understanding the key legal framework around trade union recognition and representation in the workplace.
2. Trade union recognition

Recognition is the process by which an employer accepts a trade union as entitled to act on behalf of a particular group of workers for some purpose. It can take many forms but is more commonly associated with recognition for consultative and representational purposes as well as for collective bargaining.

Collective bargaining is a method, or process, of conducting negotiations about wages or working conditions and other terms of employment between an employer and representatives of workers with a view to arriving at collective agreements. It is defined under S. 178 (1) & S.178 (2) of TULR(C)A, as ‘negotiations relating to or connected with’ one or more of the following matters;

a. terms and conditions of employment or the physical conditions in which any workers are required to work;
b. engagement or non-engagement, or termination or suspension of employment or the duties of employment of one or more workers;
c. allocation of work or the duties of employment as between workers or groups of workers;
d. matters of discipline;
e. a worker’s membership or non-membership of a trade union;
f. facilities for officials of trade unions; and

2.1 Voluntary recognition

The majority of recognition agreements are reached on a voluntary basis, are not legally binding and made as a result of discussions between employers and unions.

It is not uncommon for employers to recognise trade unions where it becomes clear, prior to any formal request by the union that membership levels are such that any application for statutory recognition is likely to be successful (see section 2.2). Many Colleges recognise trade unions on a voluntary basis. The College will not need to follow a process of derecognition to bring voluntary recognition to an end.

2.2 Statutory recognition

Schedule A1 of the TULR(C)A provides that, any employer with 21 or more workers may be compelled to recognise, and bargain collectively with a trade union. Trade unions can apply to the Central Arbitration Committee (CAC) for a declaration requiring an employer to recognise the union as entitled to conduct ‘collective bargaining’ on behalf of the workers in a particular ‘bargaining unit’. Part 1 of the schedule sets out the procedure that an independent trade union must follow, and the conditions that it must fulfil, to qualify for statutory recognition.
Prior to the CAC considering an application for statutory recognition the trade union should be able to demonstrate that they meet a number of requirements:

- The trade union must have made a formal application to the organisation concerned.
- The CAC is unable to accept an application if, following the request, the employer suggests ACAS should become involved and the trade union refuses or does not respond.
- The union must have at least 10% of the proposed bargaining unit in active membership and be likely to attract majority support in a ballot.
- The CAC will not accept applications from competing trade unions.
- If a single joint application is made by the unions concerned they will need to show that:
  - They will cooperate with each other.
  - If the employer wishes, they will enter into collective bargaining arrangements by which the unions act together on behalf of the workers in the relevant bargaining unit.

Once the declaration has been produced the next step will be for the union and employer to agree a method of collective bargaining. If a procedure cannot be agreed, the CAC will impose one.

Statutory recognition will normally last for a minimum of three years and cannot be ended unilaterally by the employer, even after the end of the period, except through a process of derecognition.

### 2.3 Recognition agreements

A formal recognition agreement is not a legal requirement but nevertheless is an important document as it provides a framework for industrial relations within a College. It sets out the rules and procedures to be used by the union and the employer in carrying out consultation, collective bargaining and representation.

It is important to have a clear and comprehensive recognition agreement in the interest of both employer and trade unions. The content of recognition agreements will vary depending on the size and type of College and local union relations but should include the following:

- The purpose of the agreement.
- Basic principals such as the spirit and intention of the agreement.
- Date of commencement.
- The trade unions recognised and the bargaining units they represent.
- The scope of the agreement and on what matters the College and union(s) will negotiate and/or consult on.
- Structure of representation which might include reporting lines and responsibilities for different areas of representation.
- The maximum amount of representatives for each trade union.
• Facilities and equipment to be provided, this might include:
  • Accommodation.
  • Provision of telephone and email access.
  • Access to mailing systems and courier services.
  • Storage.
  • Stationary and photocopying.

• The use of notice boards for promotional material.
• Procedure for resolving disputes.
• Procedures for negotiation and consultation.
• Attendance and frequency at meetings. This might include the number of trade union representatives in attendance at particular meetings and on certain committees.
• Rights of the parties to vary or terminate the agreement.

Case law has demonstrated that as recognition gives a union and its members such important legal rights in relation to their treatment by the employer, it will be established only where there is either an express written agreement or where there is very clear indication of recognition from the conduct of the parties.

The AoC joint agreement on local recognition and procedural agreements in FE Colleges provides a framework for establishing local arrangements for consultation and negotiation between Colleges and recognised trade unions.
3. Representation

Representation is an important part of employee relations and employees have a number of statutory rights to be represented in the workplace. Representatives themselves also have a number of statutory rights regarding time off and are protected from dismissal or detriment in carrying out their duties or standing in an election.

There are different types of workplace union representatives, including:

- Representatives in collective bargaining.
- Learning representatives.
- Environmental representatives.
- Equality representatives.
- Health and safety representatives.
- Representatives dealing with individual grievance and disciplinary matters.
- Representatives engaging in consultation.
- Representatives dealing with time limited consultation and negotiation – TUPE, collective redundancy and pensions.
- Multiple role union representatives.

The roles and responsibilities of these representatives are set out in detail in the ACAS guide – trade union representation in the workplace. This has been summarised in Appendix 1: rights of trade union representatives.
4. Time off for trade union duties and activities

S.168 and S.169 of TULR(C)A provide trade union officials of recognised independent unions a statutory right to request a reasonable amount of paid time off from work to carry out union duties and to undertake training. Furthermore S.170 provides union members of recognised trade unions with the right to request reasonable unpaid time off to take part in union activities.

Colleges should be aware that this right is to request (and not to demand) time off. Requests are subject to the ACAS code of practice on time off for trade union duties and activities.

4.1 Trade union duties

The ACAS code of practice on time off for trade union duties and activities provides guidance for employers. Some key points to consider regarding time off include:

- Union representatives should gain approval to take time off from their work to carry out their duties.
- Such time off requests cannot be unreasonably refused.
- TULR(C)A provides that if, having been recognised, a trade union is entitled to negotiate on certain terms and conditions, then it is sensible to allow the union’s representatives time off work to be properly trained and to discharge their functions properly.
- An official can claim time off only to perform ‘duties of his (or hers)’ which means those that he or she is required to perform by his or her union. An official cannot therefore take time off to perform duties outside his or her scope of authority (Ashley v Ministry of Defence [1984] IRLR 57 EAT).

As discussed previously, S.168 of TULR(C)A only allows for payment for officials undertaking trade union duties. It is crucial for Colleges to understand the distinction between activities and duties as the former does not attract payment. Duties include negotiations with the employer on matters listed in S.178(2) of TULR(C)A for which the union is recognised for collective bargaining purposes. These are:

- terms and conditions of employment;
- engagement, non-engagement, suspension or termination of employment;
- allocation of work or duties;
- disciplinary matters;
- trade union membership or non-membership;
- facilities for trade union officials; and
- procedures and the framework for negotiations or consultation on the matters above.
Representatives are also entitled to time off for functions (other than negotiations) related to these matters.

Further to the above:

- **S.168** of TULR(C)A also provides that a union representative is entitled to paid time off for duties relating to:
  - information and consultation about collective redundancies or a TUPE transfer; and
  - negotiation and other functions relating to the variation of employees’ contracts during a TUPE transfer where the transferor is subject to insolvency proceedings.

- Representatives are entitled to paid time off under **S.10 (6)** of the Employment Relations Act 1999 to accompany employees (who are employed by the same employer as the representative) to disciplinary and grievance meetings.

- Union health and safety representatives and union learning representatives are also entitled to paid time off to perform their duties.

### 4.2 Trade union activities

The right to reasonable (unpaid) time off work to participate in trade union activities is available for members of trade unions which the College recognise for that group of staff. Examples of trade union activities might include:

- Attendance at workplace meetings to discuss and vote on the outcome of negotiations with the employer.
- Meetings with full-time officials to discuss issues relevant to the workplace.
- Voting in properly conducted ballots on industrial action.
- Voting in union elections.

Where the union member is acting as a representative of a recognised trade union, the ACAS code of practice on time off for trade union duties and activities suggests that appropriate activities for which unpaid time off should include:

- Branch, area or regional meetings of the union where the business of the union is under discussion.
- Meetings of official policy-making bodies such as the executive committee or annual conference.
- Meetings full-time officials to discuss issues relevant to the workplace.
- There is no right to time off for trade union activities which themselves consist of industrial action.
4.3 Reasonable time off

The repeated use of ‘reasonable’ is a constant cause of debate for Colleges. The clause ‘reasonable’ in all the circumstances’ means that the employer (and a tribunal) may consider all broadly related matters when considering a request for time off. This may include the amount of time off already given for other purposes or any future time off already scheduled.

Colleges should consider the following when seeking agreement with trade unions for reasonable time off:

- The size of the organisation and the number of workers.
- Service delivery.
- The need for safety and security at all times.
- Work patterns.
- Different work places.

Applications for reasonable time off should be considered on a case by case basis.

4.4 Time off agreements

Colleges may find a formal agreement for time off to be valuable. The essential purpose of any such agreement will be to minimise the detrimental impact time away from service delivery. Clear guidelines will also, establish realistic expectations on the part of union representatives and managers, avoid misunderstanding, facilitate better planning, and ensure fair and reasonable treatment. Such agreements may include:

- The amount of time off permitted.
- The occasions on which time off can be taken.
- In what circumstances time off will be paid.
- Arrangements for taking time off at short notice.
- How pay is to be calculated.
- To whom time off will be paid.
- The facilities and equipment to be provided.
- Arrangements for ensuring confidentiality of communication involving union representatives.
- The role of line managers in granting permission to legitimate requests for time off.
- The procedure for requesting time off.
- The procedure for resolving grievances about time off.
In forming any such agreement Colleges should make it clear to union representatives that they are still under an obligation to perform the duties of their job and that their trade union duties are not their primary function. Flexibility will be required from the College, the trade union and employee in meeting service demands.

### 4.5 Entitlement to payment

S.168 of TULR(C)A allows paid time off during working hours to undertake trade union duties. S.173 defines this time as being those hours the official is required to work under his or her contract. It follows the decision in *Hairsine v Kingston Upon Hull City Council [1992] IRLR 211 EAT* that an official cannot claim pay for performing duties outside working hours. It should be noted however that this position may discriminate against part time workers and Colleges should consider each request on an individual basis. As mentioned previously no entitlement exists for payment of staff taking part in trade union activities.

**Case law decisions of interest:**

In *Sood v GEC Elliott Process Automation Ltd [1980] ICR 1 EAT*, union representatives from the GEC Group met at a Product Advisory Committee to exchange information and experience. Sood, a union shop steward brought a claim when he was not paid for the time off which he took to attend. The EAT found that this meeting was outside of the agreed bargaining structure between the trade union and employer and therefore it did not attract payment being a trade union duty; attendance was a ‘union activity’ and only provided the right to unpaid time off. The purpose of the meeting was not to enable the official to carry out his duties in relation to a matter arising between employees and management; it was merely a forum for the exchange of information and not sufficiently concerned with industrial relations.

**Advice to Colleges:**

- Colleges should carefully consider in their recognition and time off agreements what constitutes time off for trade union duties and activities and only make payment for time off for duties.
In *Luce v London Borough of Bexley* [1990] *IRLR* 422, an NUT branch secretary wrote to London Borough of Bexley asking for unpaid leave for six teachers to enable them to attend a lobby of Parliament over proposed legislation affecting the teaching profession. The request was refused and one of the teachers complained to a tribunal that they had been refused time off to take part in trade union activities. The question of whether the lobby constituted a ‘trade union activity’ depended on whether it was in some way linked to the employment relationship between the employer, the employee and the union involved. The EAT made the decision that time off to attend a parliamentary lobby intended only to cover political or ideological obligations to proposed legislation and could not be regarded as an activity because there was no direct link to the employment relationship.

Advice to Colleges:

- This case is interesting as provided the evidence had been presented in a different way the tribunal could have been persuaded that the Education Reform Bill had a potentially significant impact on teachers’ conditions of employment an hence on the employment relationship.
- Colleges should be careful not to automatically reject requests to take time off for trade union activities which do not have an obvious impact on the immediate employment relationship.
5. Trade unions and discrimination

All employees, regardless of their length of service, enjoy protection against being victimised for their involvement with trade union duties and activities. This is enshrined in S.146 of TULR(C)A which provides that an employee has the right not to be subject to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the purpose of, among other things, preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so.

The employer must also not take action short of dismissal against an employee:

a. to prevent or deter him from belonging to a trade union; or
b. to prevent him or deter him from taking part in the activities of such a union; or
c. to compel him to join any particular trade union.

If the employer is in breach of these provisions, then the employee is entitled to make a complaint to the Employment Tribunal under S.192 of TULR(C)A and to seek compensation. The provisions mentioned apply only in respect of discrimination against an existing employee. Further, it is automatically unfair for an employer to dismiss an employee for one of the reasons detailed above. S.152 of the act clarifies that an unfair dismissal claim can be made regardless of the length of service of the employee if the dismissal is on grounds related to trade union membership and activities.

S.137 of TULR(C)A prohibits an employer from discriminating against an applicant for employment because they are or are not a member of a trade union or are unwilling to agree to join or leave a trade union. Although the legislation does not on the face of it prohibit discrimination against a job applicant (as opposed to existing employee) on account of TU activities (as opposed to mere membership), it is suggested that such a practice may be incompatible with the Human Rights Act 1988 and should be avoided.

On 2 March 2010 the Employment Relations Act 1999 (Blacklists) Regulations 2010 came into force, preventing the use of blacklists to deny employment or dismiss employees as a result of their trade union membership or activities.

Under the Regulations the compilation, use, sale or supply of a ‘prohibited list’ containing the details of persons who are or were trade union members, or are or were involved in trade union activities, is prohibited. One of the list’s purposes must be discrimination (i.e. less favourable treatment) by employers or employment agencies on the ground of trade union activities either on recruitment or during employment. To qualify, prohibited lists may be in any language, contain a mix of unionists and non-unionists, and need not specifically refer to trade union membership or activities, provided the list’s purpose is to discriminate against trade unionists. A person may complain to an employment tribunal or court and be awarded compensation where he or she has, for a reason related to a blacklist, been refused employment or employment agency services, or has been subjected to a detriment.
6. Disclosure of information to trade unions

S.181 of TULR(C)A provides that an employer is under a duty to disclose, on request, information relating to his business to an independent recognised trade union where that information is both:

- Information without which the union representatives would be to a material extent impeded in carrying out collective bargaining – S.181(2)(a), and
- Information which it would be in accordance with good industrial relations practice to disclose for the purposes of collective bargaining - S.181(2)(b).

The overall intention behind these requirements is to enable unions to gain sufficient information in order for them to conduct collective bargaining with employers effectively. Trade unions are only entitled to information concerning those matters in respect of which it is recognised. This means that if a union is only recognised for collective bargaining on terms and conditions but not over disciplinary matters, the union will only qualify for disclosure of information that relates to terms and conditions.

It should be noted however that in seeking to work with trade unions, to maintain harmonious industrial relations sharing of some information may be useful in certain circumstances. Colleges may wish to negotiate locally on the regular disclosure of information.

FAQ’s

Do I need to recognise the trade union to provide information under Section 181?
Yes, information should only be shared with trade unions recognised by the College. Colleges should consider that unions may request formal recognition in instances where no formal recognition is in place.

Should I provide information if I am not currently negotiating any collective agreements?
Colleges cannot refuse to disclose information simply because no negotiations are actually taking place, providing the information is for collective bargaining purposes.

Will I be in breach of Data Protection law if I share information under Section 181?
No, the Data Protection Act will not stand in the way of disclosure where there is another legal obligation to disclose information.
7. Duty to consult with trade unions

Recognised trade unions have a statutory right to be informed, and in some cases also consulted with when the employer proposes either to transfer the business or make redundancies. The detailed obligations are set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) in respect of business transfer, and S.188 TULR(C)A in respect of collective redundancies.

The obligation to inform and consult with the unions arises only if the union is recognised by the employer. In the event that there is no recognised union, the employer must inform and consult with elected representatives of the employees.

Colleges should note that they cannot bypass a trade union in favour of informing/consulting with other representatives if a trade union is formally recognised by the employer.
8. The individual right to be accompanied

The right to be accompanied by a trade union official (or fellow employee) was introduced by Employment Relations Act 1999, S.10 provides that any worker who is required or invited to attend a disciplinary or grievance hearing by his or her employer is entitled to be accompanied either by a trade union official or by a fellow worker of his or her choice.

A disciplinary hearing is a hearing which could result in:

a. the administration of a formal warning;
b. the taking of some other action by the employer in respect of the worker, or;
c. the confirmation of a warning already issued.

This definition is quite wide, and could well cover a meeting to discuss matters such as the possible redundancy of a worker; even though that would not be regarded as ‘disciplinary’ in the sense in which that word is normally used, the dismissal of an employee certainly falls within the scope of ‘some other action in respect of a worker’.

The companion is entitled to address the hearing and confer with the worker during the hearing, but not to answer questions on the workers behalf. If the worker’s chosen companion is not available at the time of the hearing, and the worker proposes a reasonable alternative time within 5 working days of the original date, the employer must try to rearrange the hearing to the time proposed. The employee enjoys the right to be accompanied, regardless of whether the union is recognised by the employer. However, the legislation does not impose any legal obligation on a trade union to afford representation to a member at such a hearing.

In the wider context, it should be noted that an employee will not normally have any legal right to be accompanied by someone who is not a fellow worker or union official, such as a friend, relative or lawyer. Employers do sometimes permit such people to accompany workers, but there is no general legal obligation to do so.
9. Further guidance

This guidance document has been written to support Colleges in understanding the key legal framework around trade union recognition and representation in the workplace.

Colleges may also find our industrial action guidance helpful.

This document is also available in other formats, available by emailing employment@aoc.co.uk. Further guidance can be found via www.aoc.co.uk/employment

AoC Employment Helpline

Colleges can contact the AoC Employment Team for further information and advice on this or any other employment related matter by telephone on 020 7034 9900 or by email employment@aoc.co.uk
## Appendix 1: Rights of trade union representatives

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<th>Type of trade union representative</th>
<th>Rights</th>
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| **Union representatives:** appointed by an independent union in workplaces where the union is recognised for collective bargaining purposes under the provisions of the TULR(C)A 1992 | • Paid time off to carry out their duties  
• Paid time off for training  
• Protection against dismissal and detriment.  
The ACAS Code of practice on time off for trade union duties and activities applies. |
| **Union learning representatives:** appointed by independent unions in workplaces to promote and enable training and learning where the union is recognised for collective bargaining purposes. These rights are in TULR(C)A as amended in 2002. | • Paid time off to carry out their duties  
• Paid time off for training  
• Protection against dismissal and detriment.  
The ACAS Code of practice on time off for trade union duties and activities applies. |
| **Health and safety representatives:** appointed by trade unions in workplaces where the union is recognised. The representatives are covered by the Safety Representatives and Safety Committees Regulations 1977. | • Paid time off to carry out their duties  
• Paid time off for training  
• The provision of facilities to help them perform their duties  
• Protection against dismissal and detriment.  
The Health and Safety Executive issues its own advice and Codes on health and safety representatives. |
| **Information and consultation representatives:** union representatives may be elected or seconded to negotiate the set up and/or be members of a subsequent information and consultation body under the Information and Consultation of Employees Regulations 2004 (known as ICE). They may sometimes work alongside non union representatives. ICE bodies are typically called ‘employee forums’ or ‘works councils.’ | • Paid time off to carry their duties  
• Protection against dismissal and detriment.  
The statutory rights only apply to those representatives who negotiate to create an ICE body and/or serve on it under a ‘negotiated agreement’ or a ‘standard agreement’ under the Regulations. Union representatives on ICE bodies established under a ‘pre-existing agreement,’ where there are no provisions for time off for non-union representatives, would have rights to time off etc if the union was recognised. |
| **European consultative bodies:** employee members, whether union or non-union, of a special negotiating body (a body established for the purposes of negotiating with central management an agreement for a European Works Council (EWC)) under the Transnational Information and Consultation of Employees Regulations 1999 have statutory rights to enable them to set up with management appropriate consultative bodies like an EWC. Once established the rights apply to the employee representatives on these bodies irrespective of union membership. | • Paid time off to carry out their duties  
• Protection against dismissal and detriment |
<table>
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<tr>
<th>Type of trade union representative</th>
<th>Rights</th>
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| **Pension representatives**: are those workplace representatives, whether union or non-union, elected for the purpose of consultation over changes to pension arrangements, known as ‘listed’ changes, under the [Occupational and Personal Pension Scheme (Consultation by Employers and Miscellaneous Amendment) Regulations 2006](https://www.legislation.gov.uk/uksi/2006/1657). | • Paid time off to carry out their duties  
• Protection against dismissal or detriment. |
| **‘TUPE’ representatives**: where an independent trade union is recognised for collective bargaining purposes, the union, usually including the workplace representatives, must be informed and consulted over the transfer of undertakings. | • Paid time off to carry out their duties  
• Paid time off for training  
• The provision of facilities to help them perform their duties  
• Protection against dismissal and detriment.  

The ACAS Code of practice on time off for trade union duties and activities applies. |
| **Collective redundancy**: where a trade union is recognised, consultation in circumstances where the redundancy of 20 or more employees is proposed within a 90 day period ([Employment Rights Act 1996](https://www.legislation.gov.uk/ukpga/1996/71), known as ‘collective redundancy’), must be with the union representatives. Time off rights were added to TULR(C)A in 2006. | • Paid time off to carry out their duties  
• Paid time off for training  
• The provision of facilities to help them perform their duties  
• Protection against dismissal and detriment.  

The ACAS Code of practice on time off for trade union duties and activities applies. |
| **Workforce agreement representatives**: workplace agreements may be found in circumstances where it is necessary for employers to agree the particular application of a statute to the workplace concerning working time, maternity and paternity and fixed term employment. Representatives may be union or non-union. | Employee representatives in these circumstances do not have rights to time off but have a right to:  
• Protection against dismissal and detriment.  

Representatives from unions with recognised collective bargaining rights in these circumstances would maintain their statutory facilities described above. |
1. Background and context

Social media has evolved rapidly over the last ten years, has become easier to use and is increasingly popular with individuals and organisations. With its wide-reaching scope and its unsolicited nature it presents serious risks that need to be managed.

The purpose of this guidance document is to highlight how the use of social media both in and outside of the workplace can cause employment relations issues and how these should be managed.

In this guidance ‘social media’ is the term used to describe the online tools, websites and interactive media that enable users to interact with each other in various ways, through sharing information, opinions, knowledge and interests. Social media involves building online communities or networks, which encourage participation, dialogue and involvement.

Colleges use social media to raise their public profile, to enhance the learning experience and engage with students, and as a useful marketing and information resource. Employees use social media in their personal lives and often professionally, either as part of their job or for professional development and networking.

Colleges should make clear to employees what is and what is not acceptable when using social media. If an employee’s online activity poses a risk to damage or destroy the relationship of trust and confidence between employer and employee, discipline and dismissal will be a legitimate course of action.

A glossary of terms used throughout this guide is available in Appendix 1.