



## **Unite response to Acas consultation on the updated draft Code of Practice on time off for trade union duties and activities**

### **Introduction and executive summary**

This response is made by Unite the Union. Unite is the UK's strongest trade union, representing over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, hospitality, health, local government and the not-for-profit sector.

In Unite's response to the Department for Business and Trade's recent consultation on the duty to inform workers of their right to join a trade union<sup>1</sup> we highlighted the benefits of union membership including representation at work, advice and support, and of collective bargaining<sup>2</sup>.

Union representatives are key to this. For example, Unite research carried out during the Covid pandemic found that Unite reps delivered a 'union premium', not least in respect of their role in negotiating and being consulted on work issues relating to Covid-19<sup>3</sup>.

Union representatives are volunteers and give much of their own time to undertake union duties and activities.

The lack of sufficient facility time places pressure on union representatives to carry out union duties outside of working hours. These pressures disadvantage and deter

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<sup>1</sup> Unite response to DBT consultation on duty to inform workers of their right to join a trade union: [https://www.politicshome.com/ugc-1/1/36/0/December%202025\\_Unite%20response%20to%20DBT.pdf](https://www.politicshome.com/ugc-1/1/36/0/December%202025_Unite%20response%20to%20DBT.pdf)

<sup>2</sup> Research by Alex Bryson and John Forth on the added value of trade unions, based on analyses of the Workplace Employment Relations Surveys 2004 and 2011, TUC 2017: <https://www.tuc.org.uk/added-value-trade-unions>

<sup>3</sup> *Working Through Covid*, (Unite Research Department, April 2021): [https://www.uniteunion.org/media/3835/unite\\_working-through-covid\\_reps-survey-report\\_word\\_april-2021.pdf](https://www.uniteunion.org/media/3835/unite_working-through-covid_reps-survey-report_word_april-2021.pdf)

employees with caring responsibilities, in particular women, from volunteering to become a union representative.

Unite welcomes the opportunity to comment on this consultation on the updated draft Code of Practice on time off for trade union duties and activities. We have responded to the questions in detail below but key comments to note are that the Code should:

- Include separate guidance on the entitlements of Union Equality Representatives (UERs) and Union Learning Representatives (ULRs), to reflect the distinctive roles of UERs and ULRs within the workplace.
- Make clear that the role of UERs is more akin to the role of workplace representatives and shop stewards, than ULRs and in many workplaces will undertake union duties representing members individually and collectively and negotiating with employers on equality related issues.
- Confirm and underline that in many workplaces, UERs will be eligible for paid time off under Section 168 of the 1992 Act, to engage in “negotiations with the employer related to or connected with equality. This may include negotiations on the development and implementation of equal pay and job evaluation schemes, anti-discrimination policies, family friendly policies and in discussions assessing the impact of redundancy or reorganisation on women, BAEM and disabled workers.
- Expand Paragraph 46 to include additional examples of the range of duties which UERs can be expected to undertake such as:
  - preparatory, analytical, strategic and preventative activities
  - engagement in organisational change, workforce planning and equality action planning.
- Expand and update the examples of the matters which may be the subject of collective bargaining (paragraph 16). For example, the list under:
  - Section (a) on terms and conditions should include the use of employment relationships or employment contracts, e.g. zero hours contracts
  - Section (c) on allocation of work or the duties of employment should include restructuring or re-organisation and the use of agency workers or outsourcing
  - Section (f) on facilities for union representatives should workplace access for union officials; access to and use of staff intranet and internal work emails.
- Encourage employers to ensure that cover arrangements are in place when union reps, including UERs, take time off to undertake union duties.
- Strongly advise employers not to cancel time off for training for trade union representatives and Union Equality Representatives. It is commonplace for employers, particularly in the public sector, to cancel time off for training at short notice, meaning representatives lose out on important union training and the opportunity to update their skills. Where employers decide to cancel time off for training, they should be expected to:
  - Give reasonable notice

- Confirm alternative dates within the next 4 months when reps should be released to complete union training
- Ensure all Union Equality Representatives and Union Learning Representatives continue representing members even though training has not been completed.
- Remind employers that since the adoption of Section 168(5) of TULR(C)A 1992 (introduced by the Employment Rights Act), employers will now be under an onus to demonstrate to an employment tribunal that the amount of time off which an employee proposes to take off for union duties is not reasonable.
- Make clear that all union representatives, including workplace reps, stewards, convenors, equality reps, health and safety reps and union learning reps are protected from detriment and dismissal for their trade union membership and activities, including for carrying out trade union duties.

Also, Unite questions the inclusion of a Foreword before the Code. The Foreword is problematic for the following reasons:

- It suggests the purpose of the Code is to ‘support the effective and *efficient* carrying out of the role of trade union representatives’. The word *efficient* infers that facility time should be limited with maximum effort being achieved through minimal cost. This is not the purpose of the Code and could underline rights to reasonable time off.
- The Foreword also seeks to define and prescribe the purposes of facility time referring to dispute resolution, improved communication and increased organisational productivity. There is, however, no reference to collective bargaining, the improvement of pay and conditions or improved compliance with or enforcement of worker rights. The text is therefore unbalanced.

Unite believes the Foreword should be removed as it adds an unhelpful narrative to the Code.

## **Responses to questions**

### **Section A: Guidance on equality representatives' right to time off**

#### **Detail and clarity of the Code**

#### **Question 1: Does the draft Code provide sufficient detail on the legal requirement for union equality representatives' right to reasonable time off?**

No.

By defining equality exclusively by reference to the Equality Act 2010, the provision limits the scope of a union equality representative's functions to matters tied to protected characteristics.

The section lists the protected characteristics exhaustively:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

As this is a “closed” statutory list, it could exclude intersectional disadvantage unless explicitly tied to recognised characteristics.

The Code should make clear that union equality reps will also play an important role in addressing instances of intersectional discrimination as experienced, for example, by black women. This is envisaged by section 14 of the Equality Act 2010.

Although paragraph 23 appears broad, it is still framed as a defined list of permitted functions. Employers may interpret this list restrictively.

For example:

- “Promoting the value of equality” could be read as awareness-raising only and not campaigning.
- “Arranging learning or training” may be confined to formal sessions, and not informal initiatives.
- “Consulting with the employer” may be limited to scheduled meetings rather than proactive policy engagement/negotiation.
- “Obtaining and analysing information” may be confined to reviewing data provided and not seeking new information/survey gathering.

Due to the list being prescriptive, employers may argue that any activity not clearly falling within one of these headings is outside the entitlement.

Unite believes the wording focuses on operational activities but does not expressly refer to:

- Participation in equality impact assessments.
- Involvement in organisational restructuring affecting protected groups.
- Monitoring recruitment, promotion and redundancy outcomes.
- Collective bargaining relating to equality-related terms and conditions.

Whilst the definition refers to eliminating discrimination, advancing equality of opportunity and fostering good relations, our concern is that whilst these mirror statutory language, they may be interpreted as reactive rather than preventative. For example, preventative work in challenging organisational culture before a complaint arises, addressing trends in representation gaps and investigating patterns not yet

amounting to unlawful discrimination. Employers may argue that unless there is a clear equality issue tied to the Act, the activity is outside scope.

Although not included in the guidance, time off is typically subject to a reasonableness test. When combined with a closed list of functions, and a statutory definition of equality, our concern is that this can give employers a double argument to say the activity does not fall within the defined functions and even if it does, the time requested is not reasonable.

This may particularly affect Union Equality Representatives (UER) wanting to carry out data-heavy or analytical work and preparation time. In addition, whilst the provision is tied to current statutory definitions, it does not anticipate future amendments to equality law, emerging forms of discrimination and developments in case law.

Unite believes that it is essential that Union Equality Representatives can participate meaningfully in collective bargaining processes.

Many workplace inequalities arise not only from individual acts of discrimination, but from the operation of pay structures, job evaluation schemes, recruitment practices, unfair progression and organisational policies.

During debates in the House of Lords, the Government Minister, Baroness Maggie Jones, made clear in addition to the functions and purposes listed in section 168B, “equality representatives may also be eligible for time off under Section 168 of the 1992 Act, which includes time off for “negotiations with the employer related to or connected with matters falling within section 178 in which the trade union is recognised by the employer”.

It is therefore vital for the Code to make clear that, subject to the collective agreement, Union Equality Representatives will be entitled to paid time off to engage in collective bargaining with the employer. This reflects clear Government policy. It is essential that the Code recognises that Union Equality Representatives should have a seat at the negotiating table.

Confirming Union Equality Representatives have the right to paid time to participate in collective bargaining will ensure their role is not limited to reactive case handling but includes addressing more structural issues concentrating on preventing inequality.

Union Equality Representatives are already experienced in negotiating. Unite currently has approximately 700 Union Equality Representatives. In a survey conducted in June 2025, representatives outlined the meaningful impact they have made within their workplaces. They provided examples of successfully negotiating and influencing policies in several key areas, including:

- Securing improvements to personal protective equipment (PPE) for women members — for example, replacing fully yellow garments with designs incorporating yellow below the knee and blue or black above, thereby promoting dignity and inclusion in the workplace.

- Supporting initiatives to prevent sexual harassment, including the establishment of safe and confidential reporting mechanisms.
- Advocating for the introduction of period dignity and menopause policies, which are currently under development.
- Introducing and strengthening workplace policies relating to bullying and harassment, flexible working arrangements, job sharing, gender-neutral facilities, and inclusive family leave provisions.

These examples demonstrate the significant contribution Union Equality Representatives continue to make in advancing equality, dignity and fair treatment at work.

In conclusion, to ensure that the role of Union Equality Representatives is not unduly constrained, the Code should be amended throughout to confirm that that Union Equality Representatives should be entitled to paid time to participate in collective bargaining. The Code should make clear that their seat at the table should not be limited to circumstances where equality or family friendly matters are being discussed. They should also contribute to discussions on pay, redundancies and restructuring, to ensure that the potential impact on workers with protected characteristics are considered and that commitments to promoting equality are adhered to.

Paragraph 46 should be amended to include additional examples of potential work by Union Equality Representatives under each of the functions and purposes of Union Equality Representatives. This list should make clear that Union Equality Representatives:

- have the right to receive and respond to information from employers
- should be provided with reasonable time to analyse complex equality related data
- are entitled to time off to engage in union related activities, including meeting with union members collectively and individually
- are entitled to time off to prepare for consultations and negotiations with employers.

This would mirror the approach taken to the definition of collective bargaining in paragraphs 15 to 17.

**Question 2: Is the guidance on union equality representatives' right to time off sufficiently clear?**

No.

The guidance on Union Equality Representatives' (UERs) right to time off is not sufficiently clear. The guidance lists examples of activities (e.g. promoting equality, consulting with employers, providing advice and monitoring under-representation). However, it uses language like "examples could include" which employers may interpret too narrowly, limiting time off to only the listed activities.

There is no explicit statement that time off covers all activities reasonably connected to the statutory functions of a UER, such as preparation work, data analysis, long term equality projects or engagement in strategic planning. The concern from Unite is that this may result in UERs being denied time off for essential but non-listed activities, such as preparing reports, conducting equality impact assessments or attending external equality forums. We are keen to see any equality work also recognising the time-intensive background tasks of analysing workforce data, preparing submissions or reviewing policies.

The current draft guidance does not reflect that UER roles include proactive activities such as initiating equality projects, proposing policy changes and monitoring the compliance of an employer. In addition, it does not make it clear that such activities should qualify for time off. The conclusion from employers may be to restrict to reactive duties (e.g. responding to individual complaints) and unable to exercise influence on structural or organisational change. While the draft covers activities and training, it does not explicitly connect time off to statutory rights, such as accessing relevant equality data, consulting with employers/members on equality policies or supporting members in cases of discrimination or harassment. Without explicit links, both UERs and employers may be uncertain about when time off is legally required. The language and lack of clear involvement of preparatory work and absence of explicit statutory wording could mean that employers have discretion to deny or limit time off as there is no formal mechanism in the guidance to enforce or clarify disputes over whether specific activities qualify for time off.

Most significantly, the draft Code does not confirm that Union Equality Representatives will, in many workplaces, be entitled to paid time to prepare for and engage in collective bargaining with the employer on matters which are directly and indirectly related to equality.

Whilst we accept the guidance is partially clear in describing some activities for which time off may be granted, Unite believes it is not sufficiently comprehensive or directive. For clarity, the guidance should:

1. Confirm that Union Equality Representatives in many workplaces will be entitled to paid time to prepare for and engage in collective bargaining with the employer on matters which are directly and indirectly related to equality.
2. Explicitly state that time off applies to all activities reasonably connected to the statutory functions of a UER.
3. Paragraphs 23 and 24 should confirm the explicit link between time off to statutory rights and union functions.
4. The paragraphs should also be restructured to include examples of potential work by Union Equality Representatives under each of the functions and purposes of UERs. This list should make clear that Union Equality Representatives includes:
  - Preparatory, analytical and reporting work as qualifying activities.

- Work on proactive and long-term equality initiatives, not just reactive tasks.

5. The Code must confirm that the list of examples is non-exhaustive to prevent restrictive interpretations.

Unite believes that strengthening the guidance in these ways would ensure UERs can carry out their roles effectively and are protected when exercising their right to time off.

### **Combining guidance on union equality representatives and union learning representatives**

**Question 3: Do you agree the guidance on union equality representatives should be provided in the same sections as the guidance on union learning representatives?**

No.

Unite believes it is essential that separate guidance is provided explaining the role of Union Equality Representatives (UERs) and Union Learning Representatives (ULRs).

While there are similarities between the right to reasonable time off for UERs and the existing provisions for ULRs, the two roles are fundamentally different in both purpose and statutory scope.

ULRs were never intended to operate as negotiating representatives. Their role was designed specifically to promote and develop learning and training opportunities in the workplace. They were not expected to sit at the negotiating table or engage in collective bargaining. Their functions have therefore been primarily developmental, focusing on identifying training needs, encouraging participation in learning and liaising with employers on workforce skills development.

By contrast, the new statutory rights for UERs are both broader and more closely connected to representing members collectively and individually in the workplace, participating in consultations on issues such as pensions and collective redundancies and engaging in collective bargaining on matters directly and indirectly related to equality, for example, family friendly policies, and pay and job evaluation. As the Government minister confirmed in the House of Lords, alongside being entitled to paid time for functions listed in section 168B, Union Equality Representatives may also be entitled to paid time to engage in negotiations.

The legislation provides for a right to reasonable paid time off not only to carry out defined equality-related functions but also to undergo relevant training. These functions may include:

- supporting members in relation to equality matters;

- engaging with the employer on policies and practices concerning equality, diversity and inclusion;
- participating in consultation/negotiation on workplace equality issues;
- gathering and analysing information relating to equality within the workplace;
- promoting compliance with statutory equality obligations.

Unlike ULR functions, these activities may directly intersect with collective bargaining processes and statutory employment rights, including discrimination law, equal pay, reasonable adjustments and harassment. UERs may therefore become involved in matters carrying legal and reputational risk for employers. Their role is not confined to promotion or awareness-raising but can involve substantive engagement with policy development, monitoring and dispute resolution in relation to legally protected characteristics.

In addition, the statutory framing of the UER role reflects a recognition that equality issues are embedded in broader workplace governance and employment relations. The right to time off for training acknowledges that UERs must acquire sufficient knowledge of equality legislation and workplace policy to perform their functions effectively. This elevates the role beyond the facilitative and skills-focused remit traditionally associated with ULRs.

Importantly, the rights afforded to UERs are, in practical terms, more expansive than those provided to ULRs. While both are framed as “reasonable time off”, the content and implications of the UER’s functions are more directly connected to enforceable statutory rights. Treating the two roles as functionally equivalent by integrating them within the same section of the Code risks minimising these substantive differences.

For these reasons, Unite believes that the view that guidance can be combined purely on the basis of structural similarity is incorrect. The enhanced scope, statutory context and potential legal implications of the UER role justify a clearer and more distinct treatment within the Code. A dedicated section would better reflect Parliament’s intention in creating a more robust and rights-based framework for UERs and would assist employers and unions alike in understanding the distinct nature of the role.

### **Duties covered by the right to time off**

**Question 4: Do you agree that the examples set out in paragraph 46 of the draft Code will help users of the Code to understand the duties for which union equality representatives have the right to time off?**

No.

Unite does not agree that the examples in Paragraph 46 are sufficient to explain and amplify the role of Union Equality Representatives.

We believe that the language is facilitative rather than rights-based. The activities are described as examples of what a representative “could” do rather than what they are entitled to do. This creates ambiguity and leaves the scope of the role open to employer discretion. To strengthen it, the wording should establish clear statutory rights, for example, a right to promote equality initiatives, a right to consult on policy development and a right to access relevant workplace data as by moving to defined entitlements, this would give UERs a stronger legal footing.

The provisions/example in paragraph 46 do not guarantee access to sufficient information as whilst the guidance refers to obtaining and analysing information, it does not create a clear right to receive anonymised workforce data, equality impact assessments, grievance statistics, recruitment and promotion outcomes or equal pay audits. The Code should emphasise that Union Equality Representatives should be given access to relevant equality data, subject to data protection/GPDR safeguards. Without access to robust information, monitoring under-representation cannot be effectively carried out.

We have concerns that the text does not guarantee adequate facility time or training. To increase their effectiveness, UERs must have a statutory right to reasonable paid time off for equality duties and training, protection against detriment for carrying out those duties and recognition of equality work as core part of official trade union activity.

Again, the scope remains reactive rather than proactive as much of the wording centres on providing advice or responding to issues raised. Stronger text would explicitly empower equality representatives to initiate equality impact assessments, request policy reviews, propose action plans to address long-term inequalities and participate in wider strategic workforce planning, not just individual casework.

**Question 5: Does paragraph 46 of the draft Code provide a sufficiently broad set of examples of the main types of activities to which the right to time off could apply?**

No.

The draft Code tends to describe activities at a relatively basic or administrative level, for example, promoting awareness, providing basic advice, reviewing policies or monitoring under-representation. While these are undoubtedly important, they reflect reactive or supportive functions rather than the full scope of any equality work.

We find equality representation increasingly involves longer term strategic engagement such as contributing to equality action plans, participating in workforce planning, consulting on recruitment frameworks or engaging in pay transparency initiatives. The absence of explicit reference to these broader, structural activities risks narrowing interpretation of what time off may legitimately cover.

The repeated use of phrases such as “examples could include” suggests that the list is non-exhaustive. However, in practice, employers may interpret such lists restrictively and where statutory guidance provides examples but does not clearly state that the list

is expansive, employers may often treat the examples as an indicative of their limited responsibility.

The Code needs to state clearly that time off applies to any activity reasonably connected to collective bargaining and the statutory equality functions, including preparing equality impact assessments, attending external equality forums or analysing complex workforce data.

Again, we believe that effective equality representation requires significant preparatory activities such as data analysis, research, preparation, drafting reports, consulting members through surveys and developing proposals. The draft examples mention monitoring and analysis but do not emphasise the time-intensive nature of evidence-based work.

It is important that the Code recognises that Union Equality Representatives will require paid time during working hours for preparation, research and follow-up actions. Time off should not be limited to face-to-face meetings or formal consultation.

The draft examples in the Code should not only focus on workplace-level and issue-specific interventions. The Code should also recognise that Union Equality Representatives should be entitled to paid time off to participate in wider collective equality initiatives such as:

- Reviewing multiple policies deployed in other workplaces or sectors.
- Addressing structural under-representation in leadership.
- Engaging with national or sectoral equality developments within their union.

The Code should encourage and enable representatives to take a wider perspective. Learning from the experience in wider contexts can offer significant benefits for their own workplace.

Given the evolving understanding of equality under the Equality Act 2010, particularly in relation to indirect discrimination, we believe the Code should reflect a broader conception of equality activity.

The Code should also specify that to fulfil their union duties, Union Equality Representatives will require time off to prepare for tribunal-related matters, to support members in complex discrimination cases and to engage with external regulators or oversight bodies. These are significant and time-consuming activities that fall within equality representation but are not clearly reflected in the examples provided.

To strengthen the provision, Paragraph 46 should include additional examples of the functions of Union Equality Representatives, including issues raised in this response:

- It should clearly state that the list of examples is non-exhaustive and should be broadly interpreted and differently in different workplaces and industries.
- Explicitly include preparatory, analytical, strategic and preventative activities.

- Recognise engagement in organisational change, workforce planning and equality action planning.
- Confirm that time off covers external engagement.

## **Training for union equality representatives**

**Question 6: What are your views on the guidance in the draft Code (paragraphs 44 to 48)?** For example, does it sufficiently explain how an employee can show they've had sufficient training to operate competently as a union equality representative?

Unite believes that this section has several positive features as it clearly defines the areas of activity for both Union Learning Representatives and Union Equality Representatives, provides illustrative examples which allows flexibility, and recognises both formal training and informal learning.

However, there are areas where ambiguity could create practical difficulty, particularly around the “sufficient training” threshold and employer discretion. The most significant weakness lies in paragraph 44, “...received sufficient training to enable them to operate competently...” Unions are fully committed to training all representatives. However, employers can prevent this by refusing time off for training. We are concerned that this could create space for employers to challenge the adequacy of training, delay recognition of the UER pending further training or argue that time off should not be granted until training is completed. Unite therefore believes it should be deleted.

Although paragraph 47 helps by allowing TUC or union-approved training, it still leaves room for dispute if the training is incomplete, training is informal or competence is based primarily on experience. The wording specifies that the employee must demonstrate sufficient training to their trade union, which is a positive feature, however it does not explicitly state that the employer must accept the union’s confirmation. In addition, it does not clarify whether time off for training must be granted before full competence is achieved. In practice, employers may attempt to argue that a UER is not yet trained, therefore they not entitled to paid time to carry out duties.

Unite believes that the Code should advise that employers must approve requests for paid time training from Union Equality Representatives. Before training is completed, employers should agree to the representatives taking paid time to complete their union duties.

In addition, this section does not specify how quickly training must be undertaken after being elected to the position of UER, whether a representative may act while undergoing training or whether partial training is sufficient.

A real concern for Unite is that the absence of timeframe could create delay tactics from employers. We believe that paragraph 48 is helpful but could be strengthened as currently it says that relevant experience “could” have been gained in certain areas. The guidance should state that such experience is sufficient, that extensive experience may

substitute entirely for formal training or that the union’s assessment of that experience is a determinative factor.

The examples listed under paragraphs 45 and 46 are sensible, however they are activity-based rather than outcome-based and they do not clarify whether competence must be demonstrated across all areas or only some.

Unite would suggest the below improvements:

1. Remove all reference to a sufficiency test. Failing this, the Code should clarify that the assessment of “sufficiency” rests with the independent trade union alone.
2. State that a UER may carry out duties while undergoing training within a reasonable period.
3. Confirm that relevant prior experience may satisfy the training requirement in full.
4. Specify that an employer must be required to justify and explain in writing why a refusal is reasonable.
5. Clarify that time off for training should not be refused on the basis that competence has not yet been fully achieved.

Unite currently has approximately 700 Union Equality Representatives. In a survey conducted in June 2025, over half of those representatives reported experiencing difficulties in securing time off to undertake training. These challenges were reported across a wide range of sectors.

The reasons provided included:

- Blanket refusals to grant time off for training.
- Requirements to complete training in personal time or to use annual leave, in some cases reflecting arrangements previously applied to Health and Safety Representatives.
- Employer statements indicating that facility time for union representatives would be granted only for narrowly defined or specific purposes.
- Direct refusal by line managers to approve time off.
- Inability to access training due to stated business or operational requirements.

These findings highlight ongoing barriers to accessing appropriate training and development, which are essential for UERs to effectively fulfil their roles.

## **Section B: Guidance on accommodation and other facilities**

**Question 7: Is the guidance on the provision of accommodation and other facilities in the draft Code (paragraphs 72 to 75) sufficiently clear?**

No.

Unite supports the adoption of Section 64 of the Employment Rights Act 2025 which creates a new permanent duty on employers to provide recognised unions with accommodation and facilities, to assist union representatives to fulfil their union duties. At present this right is limited to periods of consultation on collective redundancies and reorganisation and during TUPE transfers.

In general, Unite welcomes the draft guidance on the provision of accommodation and facilities for trade union duties. We however call for the following changes to the draft Code:

- Paragraph 73 should make clear that the accommodation provided should be located in an area which is easily accessible for all workers during normal working hours. If a union office were to be situated off site or at the edge of the work site, union members and other workers may be deterred from visiting.
- The Code should encourage the employer to provide union office space on a permanent basis. Temporary arrangements should be the exception.
- The Code should expressly state that any dedicated office space or meeting rooms used by unions to meet members must be confidential and free from surveillance and any form of monitoring.

The section on agreements on time off, accommodation and other facilities should specify that unions should not be charged for the use of office space or meeting rooms within the workplace.

**Question 8: Is the guidance on the provision of accommodation and other facilities in the draft Code (paragraphs 72 to 75) sufficiently clear?**

Yes.

The guidance on the provision of accommodation and other facilities is generally clear, subject to the changes suggested in response to Question 7.

**Section C: Guidance for smaller organisations**

**Question 9: Does paragraph 82 provide appropriate practical guidance for smaller employers?**

No.

Unite recognises that the Code should include guidance relating to smaller organisations. However, we do not agree that the words “and the relevant factors to consider when requests are made” should be included in the Code. They imply that different and additional tests may be applied when union requests for time off and facilities are made in smaller workplaces. This is not consistent with the legislation which applies equally to all workplaces. Also the existing “reasonableness” test is

adequate to ensure that the particular needs and challenges facing smaller organisations are accommodated.

## **Section D: Restructure of the existing Code**

**Question 10: Do the changes to the layout, structure, phrasing and formatting in the draft Code make clearer your understanding of the good practice principles when compared with the existing Code?**

No.

As set out throughout this response, there are several parts of the structure of the Code Unite does not agree with:

- Firstly, the proposed new Foreword is problematic and may be interpreted as seeking to redefine or refocus the purposes of the Code and of entitlements to facility time. The Foreword should be removed.
- Secondly, Unite strongly disagrees with the proposal to merge the guidance on Union Learning Representatives and Union Equality Representatives. The roles for ULRs and UERs are very separate and very different. UERs are more akin to union representatives, playing a key role in representing members individually and collectively and negotiating on their behalf. UERs also play a more distinct role within union structures, informing sectoral and national policy on equalities. This is currently not reflected in the draft Code.
- Thirdly, the draft Code does not currently recognise that many UERs will be entitled to paid time off to engage with employers under Section 68. It is important for the Code to confirm this to ensure that equality representatives get a seat at the negotiating table.
- Fourthly, the text of relevant legislation on time off for trade union duties should be included in the annex to the Code. This will assist union reps and officers and employers. The text must include Section 168(5) which was amended by the Employment Rights Act 2025 to place the onus on the employer to demonstrate why a union request for facility time was not reasonable.

**Question 11: Do the changes to the layout, structure, phrasing and formatting in the draft Code change your interpretation of any of the good practice principles contained in the existing Code?**

No.

As outlined above, Unite is seriously concerned that:

- The proposed new Foreword to the Code seeks to put a gloss on the purposes of the Code, prioritising issues such as productivity, efficiency and dispute resolution and omitting any reference to collective bargaining and improving pay, terms and conditions. Whilst the Foreword does not form part of the Code, it may be relied on by employers to seek to reduce or restrict facility time.
- Combining guidance on entitlements to paid time for union duties and training for Union Learning Representatives and Union Equality Representatives may have the effect of diminishing the representative and negotiating role of union equality representatives.
- The functions and duties of union equality reps are too narrowly defined by the draft Code. Greater emphasis needs to be placed in union equality reps role in representing members individually and collectively, on the role of equality reps within union structures and policy developments and their need to time to carry out analytical, cross sector and policy research. Employers may interpret the Code as providing them with the discretion to refuse facility time on these issues.
- The omission of reference to the entitlements to time off for equality reps to prepare for, participate in and consult with members on negotiations with employers under section 168 (as recognised by Ministers in the Lords, could result in employers refusing them a seat at the table.
- The Code currently does not emphasise the importance of employers providing cover to enable reps to take facility time. This has a significant impact in sectors such as health where reps feel unable to leave their patients in order to carry out union duties.
- The definition of reps' duties within union structures should be expanded to include not only regional but also national structures. Union reps also benefit from attending sectoral meetings where reps can discuss the pressures and solutions which are profoundly relevant for their workplaces.