



The benefits of paid time off for trade union representatives

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Section one

Introduction

A key aspect of the government's proposed trade union bill concerns so-called "facility time" – that is, paid time away from their usual duties for union reps to represent their colleagues – in the public sector. The bill, if passed, will require public bodies to report on facility time and gives ministers the power to cap it. The government's intention appears to be to reduce or end facility time in the public sector, yet none of their impact assessments have considered the benefits of facility time.

Facility time for trade union reps in the public sector has been the target of organised opposition for a number of years,¹ with the trade union bill being the latest manifestation. This paper sets out to examine the value of facility time, and whether the government's proposals are a proportionate response that supports the efficient working of the public sector.

The proposals in the trade union bill

The government's proposals will require public sector employers and publicly-funded bodies to publish information about how many employees carry out union duties in work time and the cost of this. Ministers may then consider it appropriate to exercise their reserve powers to make regulations to ensure "the percentage of the working time of any relevant union official of an employer that is taken as paid facility time does not exceed a percentage that is so specified" and that "the percentage of an employer's total pay bill spent on paying relevant union officials for facility time does not exceed a percentage that is so specified".²

It is clear that this will allow the government to reduce the provision of facility time. Nick Boles, the minister responsible for the trade union bill at BIS, gave an indication of what the government had in mind when he stated in Parliament that:

"The government [is] confident that our proposals will deliver efficiency savings. A reduction in spending on facility time across the wider public sector to levels similar to the civil service currently would deliver estimated savings of around £150m annually – £150m that could be spent on employing more nurses, on schools and on better serving the people who elect us to this place."³

1. See, for example, "If Facility Time Cuts Strikes, What is Happening in the Public Sector?" Taxpayers' Alliance, 25 November 2011, www.taxpayersalliance.com/if_facility_time_cuts_strikes_what_is_happening_in_the_public_sector

2. Trade Union Bill, p9 see www.publications.parliament.uk/pa/bills/lbill/2015-2016/0074/16074.pdf

3. Pyper, D. "Trade Union Bill – Committee Stage Report" House of Commons Library Briefing Paper, Number CBP 7369, 5 November 2015, p24.

Section two

Assessing the benefits of facility time

The 2011 Workplace Employment Relations Study

WERS is the major government-funded study of employment relations, and is widely considered the most authoritative study of its kind available. The sixth survey (a representative sample of 2,680 British workplaces) took place between March 2011 and June 2012, surveying managers, workers and union representatives.

Kim Hoque and Nicolas Bacon analysed the WERS6 data with regard to facility time in the public sector,⁴ and also specifically in the health sector. They found that only 2.8 per cent of public sector workplaces (1.5 per cent in health⁵) with recognised unions have a union representative that spends all or nearly all of their working time on their representative duties – statistically indistinguishable from the equivalent 2.2 per cent in the private sector.⁶

Hoque and Bacon found that public sector workplaces with full-time union representatives tend to be much larger workplaces (an average of 509 employees) than those with non-full-time union representatives (an average of 97 employees). In health, the average number of employees in workplaces with a full-time representative is 2,500, compared with 371 for workplaces with a non-full-time representative.⁷ A similar pattern is reported in the private sector: workplaces with full-time union representatives had an average of 583 employees compared with workplaces with non-full-time representatives, which had an average of 167 employees. This suggests where representatives work on a full-time basis (in both public and private sector workplaces), they do so because they represent large numbers of employees with implications for their workloads.⁸

4. Hoque, K. and Bacon, N. *Workplace Union Representation in the British Public Sector: evidence from the 2011 Workplace Employment Relations Survey*, Warwick Papers in Industrial Relations, No. 101, 2015, Industrial Relations Research Unit, University of Warwick.

http://www2.warwick.ac.uk/fac/soc/wbs/research/irru/wpir/wpir101-hoque_and_bacon.pdf

5. Hoque, K. and Bacon, N. (2015) *Workplace Union Representatives in the British Healthcare Sector: evidence from the 2011 Workplace Employment Relations Survey*, Universities of Warwick and City.

6. Hoque and Bacon (2015), p11.

7. Hoque, K. and Bacon, N. (2015) *Workplace Union Representatives in the British Healthcare Sector: evidence from the 2011 Workplace Employment Relations Survey*, Universities of Warwick and City.

8. Hoque and Bacon (2015), pp11–12.

They also found that fewer lead representatives in the public sector (84 per cent) report they are paid by the employer for the time spent on their representative duties than in the private sector (95 per cent).⁹

As a result of their analysis, Hoque and Bacon concluded that ‘... government concerns about the number of union representatives in the public sector (and in particular the number of representatives that are operating on a full-time basis) may be overstated’.¹⁰

This research also demonstrates that there is little if any basis for claims that facility time in the public sector runs at three times the rate of the private sector.¹¹ The private sector workforce (19 million) is nearly three times as large as that of the public sector (7 million), and there is no data – other than that provided by WERS6 – to assess the current extent of facility time in the private sector.

The second major issue examined by Hoque and Bacon was whether the outcomes of facility time were constructive and productive, leading to stable and effective industrial relations. They also compared this to the private sector. Concerns have been raised that public money is used by full-time union representatives to organise strikes and industrial action to oppose management and to engage in political campaigning.¹²

Hoque and Bacon first considered the extent of joint consultative councils (JCC) where union recognition existed. JCCs are the traditional mechanism for consultation and negotiation between unions and management – and union reps would usually use facility time to prepare for and attend these meetings. Hoque and Bacon found that the proportion of workplaces that have a JCC was little different in the public sector (16 per cent) from the private sector (17 per cent) while 8 per cent of public sector workplaces with union recognition and 9 per cent of private sector workplaces with union recognition have a JCC on which a union representative sits.¹³

WERS6 found that 84 per cent of management respondents in public sector workplaces with full-time representatives present either agreed or strongly agreed that full-time union representatives can be trusted to act with honesty and integrity.¹⁴ Indeed, management attitudes towards unions in the public sector compared to the private sector (with regard to whether unions can be trusted) showed public sector managers think more highly of public sector unions than do private sector managers of private sector unions.¹⁵ The researchers noted that “It is doubtful that public sector

9. Hoque and Bacon (2015), p12.

10. Hoque and Bacon (2015), p11.

11. “If Facility Time Cuts Strikes, What is Happening in the Public Sector?” Taxpayers’ Alliance, 25 November 2011, www.taxpayersalliance.com/if_facility_time_cuts_strikes_what_is_happening_in_the_public_sector and Jonathan Isaby, Chief Executive, Taxpayers’ Alliance, Committee Stage of Trade Union Bill, 13 October 2015, afternoon, p76 (www.publications.parliament.uk/pa/cm201516/cmpublic/tradeunion/151013/pm/151013s01.pdf)

12. See, for example, Taxpayers’ Alliance, 25 November 2011, *Ibid*.

13. Hoque and Bacon (2015), p14.

14. Hoque and Bacon (2015), p15.

15. Hoque and Bacon (2015), pp22–23.

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managers would hold such positive views if the full-time union representatives in their workplaces were not using facility time appropriately to help address organisational problems, or if, as alleged, they were using facility time and facilities to engage in inappropriate political activities”.

Hoque and Bacon also concluded from the WERS6 data that “there is no evidence that full-time [facility union] representatives are unwilling to engage in partnership working with management in the public sector”.¹⁶ Indeed, they found union attitudes toward management more positive in the public sector than in the private sector.¹⁷ In the healthcare sector, most workplace union representatives (90 per cent) also report working closely with management when changes are being introduced.¹⁸

The analysis of the health sector shows that staff turnover is almost three times higher in workplaces without union representatives than in workplaces with representatives – amounting to a saving of more than £66m pa for the NHS in recruitment costs alone.¹⁹ Hoque and Bacon also found that “managers in public sector healthcare workplaces that have a union representative are considerably more likely to report labour productivity, quality of service and financial performance as ‘better’ or ‘a lot better’ than are managers in public sector healthcare workplaces that do not have a union representative”.²⁰

Other research

NatCen was commissioned by Unison in 2012 to conduct research on facility time.²¹ They surveyed 129 local branches in health, local government and higher education and conducted three focus groups with branch reps and HR professionals in the public sector. The research found that the HR professionals valued partnership working with trade unions as it improved workplace relations and helped build the reputation of the employer as a good place to work. Union representation enabled earlier intervention in relation to complaints, grievances and disciplinaries, which stopped them escalating which was less costly to the employer and the taxpayer as a result of reduced staff and legal costs. And union reps enabled better communication with staff during restructuring and redundancy processes, which led to greater understanding of management’s rationale for the changes, and reduced industrial action.

16. Hoque and Bacon (2015), p18.

17. Hoque and Bacon (2015), pp16-17.

18. Hoque, K. and Bacon, N. (2015) ‘Workplace union representatives in the British healthcare sector: evidence from the 2011 Workplace Employment Relations Survey’ Universities of Warwick and City.

19. *Ibid.*

20. *Ibid.*

21. Mitchell, M., Coutinho, S. and Morrell, G. (2012) *The Value of Trade Union Facility Time: Insight, Challenges and Solutions*, NatCen Social Research. The report was commissioned by UNISON.

Evidence presented to Parliament

During the Commons and Lords passage of the trade union bill, expert evidence was submitted by a number of organisations, including local government employers such as COSLA, the North-East local government employers' association, the Welsh LGA and eleven local authorities, and NHS Wales.²² These submissions argued that paid time off for union representatives was an important factor in establishing stable and effective industrial relations.²³

The evidence of the Royal College of Nursing to the Commons committee scrutinising the trade union bill is particularly worth highlighting:

- Independent evidence funded by the RCN shows that facility time for union representatives is linked to increased productivity, crucial in the NHS for delivering high quality, cost effective care. There is therefore an economic case for retaining the current arrangements:
- Facility time is beneficial to the safety of practice environments, staff welfare and consequently, to patients. The RCN is warning that clauses 12 and 13 [of the Bill] may have unintended consequences for patient safety.
- The RCN and all other trade unions invest in their representatives to bring skills, knowledge and experience to the workplace and to facilitate effective partnership working. This is a cost effective way of developing practice and managing organisations. Alternative provision would increase costs for employers and, therefore, the tax payer.
- Employers report good working relationships with trade union representatives and there is a clear feeling among employers and trade unions alike that this bill will do little to improve industrial relations.

Writing in *the Guardian*, the crossbench peer and former head of the civil service, Bob Kerslake, criticised the attempt to centrally determine the extent of facility time in local government. He said:

‘This seems to me to be a quite extraordinarily centralising step to take for a government that is championing devolution. Local government at least ought to be trusted to come to its own arrangements’.²⁴

Updating government estimates of the benefits

In 2007, the (then) Department for Business, Enterprise and Regulatory Reform (BERR, now BIS – Department for Business Innovation and Skills) conducted a

22. See <http://services.parliament.uk/bills/2015-16/tradeunion/documents.html>

23. *Ibid.*

24. "I've Had Bruising Encounters With Trade Unions, But I Condemn Efforts to Silence Them", *the Guardian*, 11 January 2016, www.theguardian.com/public-leaders-network/2016/jan/11/trade-union-bill-silence-civil-service-bob-kerslake?CMP=share_btn_tw

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review of the facilities and facility time available to workplace representatives.²⁵ Using data from the 2004 Workplace Employment Relations Survey (WERS5), this review calculated the costs of union representatives and the benefits accrued from such representation.²⁶ A 2012 report for the TUC updated these figures to 2010 levels to give an idea of the scale of the benefits of facilitating union representatives to carry out their duties and roles in work time.²⁷

In 2004, the following benefits for union facility time were identified:

- Dismissal rates were lower in unionised workplaces with union reps – this resulted in savings related to recruitment costs of £107–213m pa.
- Voluntary exit rates were lower in unionised workplaces with union reps, which again resulted in savings related to recruitment costs of £72–143m pa.
- Employment tribunal cases were lower in unionised workplaces with union reps resulting in savings to government of £22–43m pa.
- Workplace-related injuries were lower in unionised workplace with union reps resulting in savings to employers of £126–371m pa.
- Workplace-related illnesses were lower in unionised workplace with union reps resulting in savings to employers of £45–207m pa.

Thus, the 2004 BERR research showed that £372–977m pa in savings were accrued across all sectors, in large measure as a result of the presence and work of union representatives. The public sector ‘worth’ here is some 60 per cent of the total – equating to £223–586m pa.

25. Department of Trade and Industry (2007), *Workplace Representatives: a review of their facilities and facility time*, see pp77–104 for the workings out of the estimates.

26. Unfortunately, neither the management nor financial questionnaires used for WERS6 asked questions about the value of facility time (as has been done for WERS5). Consequently, no figures from WERS6 data can be calculated about the worth of facility time in 2011.

27. Gall, G. (2012), *Facility Time for Union Reps – Separating Fact from Fiction*, TUC, 2012.

A number of assumptions had to be made in working out the benefits. These were that:

- Most workplace representatives are union representatives.
- Union representatives’ duties and roles are best and most appropriately carried out within the workplace and within working hours when union members and managers are available.
- The overall benefit from the funded provision of facility time in the public sector is a proportion of that set out in the BERR report, which included both public and private sectors. The working assumption used to divide the calculated accrued benefit was 60 per cent in 2012 and is now 58 per cent on 2014 figures – the proportion of union members to be found in the public sector.
- Accrued benefits for the taxpayer relate to the entire public sector workforce, not just union members, because of coverage of collective bargaining, and any benefits of union representation are likewise spread across the whole workforce, not just those in membership.

Merely updating these estimates for 2014, taking into account changes in real values,²⁸ shows an all-sectors benefit of £476–1,250m pa. The public sector proportion of this is 58 per cent – giving a crude public sector benefit of £276–725m pa.

However, the public sector environment in which facility time existed in 2004 is not the same as in 2014. We need to consider the impact of the fall in the size of the public sector workforce as well as other factors such as the introduction of the compulsory early conciliation scheme, the huge fall in employment tribunals as a result of increased fees and the extent of redundancy exercises.

It would therefore be appropriate to reduce the assumed benefit of facility time in the public sector by an equivalent percentage to public sector employment, which has fallen by 7 per cent since 2004.²⁹ This then equates to an assumed benefit of public sector facility time of £250–674m pa in 2014.

The cost of facility time

The government has not published figures relating to costs. However, the impact assessment for the facility time aspects of the trade union bill estimates that if facility time decreases along similar lines to those seen in the civil service after earlier reforms, the reduction in facility time costs would be over £100m per annum.³⁰ There is no additional evidence given to support this figure, nor any assessment of the value lost to the taxpayer as a result of this reduction.

Other estimates of the cost of facility time have been made by third parties. The Taxpayers' Alliance estimated a cost of £108m (£85m in staff time, £23m in direct costs) in 2012–13.³¹ However this research also did not attempt to cost benefits and savings to the taxpayer of facility time.

28. This is based upon the latest published Her Majesty's Treasury (HMT) GDP deflator index of 19 March 2015, www.gov.uk/government/uploads/system/uploads/attachment_data/file/414714/GDP_Deflators_Budget_2015_update.csv/preview

29. Total adjusted public sector employment stood at 5.244 million in September 2015, having been 5.63 million in September 2004 – a fall of around 7 per cent.

The adjusted figures exclude further education corporations and sixth form college corporations in England moving into the private sector in June 2012; Royal Mail being included in the private sector from December 2013; Lloyds Banking Group being included in the public sector from December 2008 to December 2013; Royal Bank of Scotland being included in the public sector from December 2008; Northern Rock being included in the public sector from December 2007 to December 2011; Bradford and Bingley being included in the public sector from September 2008; and Welsh further education colleges being included in the private sector from March 2015. See p10, Office of National Statistics 'Public Sector Employment' September 2015 www.ons.gov.uk/ons/dcp171778_427938.pdf

30. See www.gov.uk/government/uploads/system/uploads/attachment_data/file/493638/BIS-16-71-trade-union-bill-impact-assessment-reporting-of-facility-time-in-the-public-sector.pdf

31. Taxpayers Alliance, "Taxpayer Funding of Trade Unions 2012-13", Research Note 140, 10 September 2014 <https://d3n8a8pro7vhmx.cloudfront.net/taxpayersalliance/pages/5083/attachments/original/1422278685/txpayerfundingtradeunions2013.pdf?1422278685>

Section three

Conclusion

Proponents of limits to facility time have not adequately considered the evidence about the value of facility time – and the more extensive losses to the public sector that might accrue should facility time be reduced. In particular, the government's impact analysis for the trade union bill has failed to follow what would be regarded as good business practice in conducting any cost-benefit analysis, and it failed to take into account the views of public sector employers, many of whom value facility time.

In contrast, this analysis has shown that estimated expenditure of around £108m pa leads to benefits totalling (at the lower end of estimates given here) around £250m pa. So, for every pound spent on facility time, the accrued benefits have a value of between £2.31 and £6.24.

This paper also decisively undermines the case made by the government and others that facility time in the public sector is disproportionate. It has demonstrated that in comparison to the private sector, the amount of facility time for trade union representatives in the public sector is not excessive. It also shows that in light of the quantifiable benefits to employers (as well as employees) that the work of union representatives brings, the so-called cost of facility time would more accurately be described as an investment in modern and effective industrial relations.

Given the scale of expenditure cuts in the public sector, it could reasonably be assumed that the role of union reps and facility time would be more rather than less relevant currently, not least as union reps with significant release from their day-to-day duties might have developed considerable expertise and the pace of change might be faster than previously. Reducing facility time might well undermine co-operation between union representatives and employers, thereby threatening efforts to deliver improvements to public services in the future.



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