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## Facility time

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Guidance for UNISON branches

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## **This guidance covers:**

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Facility time is one of the most important issues faced by UNISON reps. Securing, maintaining and improving facility time means we can continue to effectively recruit, represent and organise UNISON members across the UK.

## What is facility time?

Facility time is time off from an individual's job, granted by the employer, to enable a rep to carry out their trade union role. In some cases, this can mean that the rep is fully seconded from their regular job, enabling them to work full time on trade union tasks. It can also mean an employer allows a rep to carry out trade union duties and activities, instead of their substantive job, for a certain amount of time per week or month.

## The right to time off

In workplaces where the trade union is recognised, trade union workplace representatives have a right to paid time off for the purpose of carrying out their trade union duties or to take part in union training.

This right applies to:

- workplace reps
- health and safety reps
- union learning reps
- information and consultation reps.

Workplace reps are entitled to paid time off to cover the following duties:

- trade union duties related to collective bargaining, on issues like: terms and conditions of employment; redundancies; job evaluation; family friendly policies; discipline; trade union facilities; and negotiating machinery
- Individual representation
- meetings with management preparation for these meetings
- keeping members informed about negotiations.

Unions are required to train workplace reps to ensure that they are certified under the Employment Relations Act, including attending refresher training

Learning reps are entitled to paid time off to cover the following duties:

- analysing training needs
- arranging, promoting and advising on learning or training

- consulting with the employer and undergoing relevant training.

Learning reps are required to attend training within 6 months of the employer being notified of their appointment.

Safety reps and information and consultation reps are entitled to paid time off to fulfil their activities in these roles. The activities covered are:

- to represent workers in talks with the employer or the Health and Safety Executive (HSE) or other safety or environmental enforcement agencies
- to investigate complaints, possible hazards and dangerous incidents
- to carry out regular inspections of the workplace
- to take part in workplace risk assessments and to be consulted upon the arrangements for health and safety

Safety reps are required to attend training, for which the employer has to give paid time off.

UNISON, the TUC and other trade unions are campaigning for environment reps to also be recognised by the law. For more information see here: <http://www.tuc.org.uk/workplace/index.cfm?mins=87&minors=4&majorsubjectID=2>

Also, although not a statutory role, many equality reps make an important contribution to promoting fairness and equality at work, and ensuring that employers comply with equality legislation. It is important to get employers to agree to recognise equality representatives and afford them the adequate facility time to carry out their roles.

## National Public Sector Agreements on Facility Time

UNISON and our partner trade unions have negotiated national agreements covering facility time in particular parts of the public sector.

### NHS

In the NHS, facility issues are covered by section 25 of the NHS Terms and Conditions of Service Handbook. Under the agreement employers and unions must agree arrangements and procedures at a local level, but these must be consistent with principles set out in the handbook.

You can see the relevant section here:

[http://www.nhsemployers.org/SiteCollectionDocuments/AfC%20Handbook\\_Section%2025\\_280909.pdf](http://www.nhsemployers.org/SiteCollectionDocuments/AfC%20Handbook_Section%2025_280909.pdf)

### Local government

The Local Government “Green Book”, which is a national agreement applying to most local authorities in England, Wales and Northern Ireland, contains a short section on “Trade Union Facilities”. Section 18.1 states “Authorities shall provide the recognised trade unions with facilities necessary to carry out their functions, including paid leave of absence to attend meetings concerned with the work of the NJC and Provincial Councils and the operation of a check off system whereby, with the consent of the individual, trade union dues are deducted from pay.” The details of facility time arrangements are negotiated at local level.

In Scotland, the single status agreement has a similar wording: “Authorities shall provide the recognised trade unions with facilities necessary to carry out their functions in accordance with the ACAS Code of Practice. This will include paid leave of absence to attend relevant meetings concerned with the work of the Scottish Joint Council including its relationship with the UK National Joint Council...”

<http://www.unison-scotland.org.uk/localgovt/single3.html#facility>

### Police staff

From the National Agreement for Police Staff Council (England and Wales):

“The Council endorses that facilities to allow trade unions to organise effectively for individual and collective representation should be provided by police authorities at local level. Local machinery should be established with recognised trade union representatives of staff to discuss the application of the provisions of this Handbook, consider other conditions of service issues and, where possible, resolve any differences through local collective machinery.”

## Recognition

Clearly, the rights mentioned above are reliant on a recognition agreement existing between the union and the employer. Recognition can be achieved either through negotiation with employers or by using the statutory recognition procedure. The statutory procedure can lead to an employer being forced to recognise a trade union where a majority of workers vote for it. Some employers will agree to voluntary recognition once the statutory procedure has commenced.

The UNISON guide to negotiating recognition can be found here:

<http://www.unison.org.uk/file/Negotiating%20Recognition%20Agreements.pdf>

The UNISON guide to statutory recognition can be found here:

<http://www.unison.org.uk/acrobat/15130.pdf>

but on the arguments they can make about the benefits of facility time. To make this case, the collective strength of the union in the workplace is crucial. The more members the union has in a particular workplace, the stronger the case will be for time to be given to represent them.

Safety reps do have some statutory rights with employers where there is not recognition agreement. These reps are sometimes called “representatives of employee safety” in non-recognised workplaces. The law requires employers to permit them such time off to:

- 1 performing their functions (which are much more limited when compared to a recognised safety rep) and undergoing training for these functions.
- 2 reasonable time off with pay for standing for election, and carrying out functions as a candidate for the role.

## Facility time without trade union recognition

All of the rights listed above are guaranteed to accredited reps who are covered by a recognition agreement. However, some UNISON members work for employers who do not recognise a trade union for collective bargaining purposes.

Facility time is therefore strongly related to the issue of trade union recognition. If the employer doesn't recognise a union, then there is no automatic right to facility time. Recognition is extremely important – not just so that the union can negotiate on pay and conditions, but also because it's a way of making sure reps get time to carry out their trade union role.

However, if your employer doesn't recognise a union, it doesn't mean facility time won't be possible.

Reps in recognised employers will want to focus on maximising what's in the facility time agreement – going beyond the legal minimum, getting as many union tasks as possible covered by the agreement.

Reps in employers where there is no recognition will need to argue for a facility time agreement 'from scratch' – relying not on any legal rights,

## Transfers

Some UNISON members will, at one time or another, have had their jobs transferred to a new employer, often as a result of the contracting out of public services or the transfer of a service contract to a new organisation. When this happens, existing employees have their terms and conditions of employment transferred to the new employer under TUPE regulations (Transfer of Undertakings, Protection of Employment Regulations).

Under these regulations recognition of the union by the employer also transfers. However, it is important to get a formal agreement from the new employer that recognition will continue, including adequate facility time.

UNISON's guide to transfers can be found here: [http://www.unison.org.uk/activists/procurement/docs\\_list.asp](http://www.unison.org.uk/activists/procurement/docs_list.asp)

## Facility time – a key part of workplace organising

Facility time agreements are the written documents, agreed between the union and the employer, which specify the arrangements for taking facility time.

The main point of a facility time agreement is to secure for reps the time and resources to enable them to represent members in the workplaces that make up the employer.

Some members may work in a contracted-out service and not directly for a large public sector organisation. However, their UNISON branch may primarily deal with a local authority or NHS trust. The contractors providing the services will often not allow reps from outside their organisation to come into the employer to represent members. And even when they do, this will tend to be limited to individual representation in disciplinaries and grievances.

If we want to organise and recruit actively in a particular workplace, facility time for the reps who actually work for that employer is essential. The branch's task is to help the reps in each employer to obtain facility time. This is a massive task. But UNISON's organising strategy is very much based on having local UNISON representation in as many workplaces as possible. The more reps we have, the more widely spread they are, and the more facility time they have, the greater and wider will be our influence, and the stronger we will be.

## Negotiating with employers – making the case

Some employers can be reluctant to grant facility time, and others may seek to reduce existing arrangements. Even those which are relatively supportive of trade unions may be wary. In the current economic climate, some employers are using the situation as an excuse to make cuts that they had long been looking for the chance to implement. Reps need to be aware of this when making the case for facility time, and address the employers' likely concerns. We must make clear the link between facility time (giving reps the chance to become fully trained and then carry out their roles) and workplace performance and greater efficiency.

Reps provide industrial relations expertise that can be vital to the employer. Paid time off allows reps to access union training in equal opportunities, job evaluation, health and safety and many other areas, acquiring skills and knowledge which the employer may lack themselves. This knowledge may prevent the employer from making costly mistakes in industrial relations practice and ensure the smoother running of the workplace. Smaller employers often struggle to maintain adequately staffed human resources departments; this makes the expertise that trained reps can contribute even more valuable. Reps also provide valuable input to the development or updating of workforce policies.

### An employer's view – Leicestershire County Council

"Leicestershire County Council is fully committed to working in partnership with UNISON to support the learning and development of all employees. Through this partnership the Learning Agreement has been developed, giving member's access to a learning coordinator and union learning representatives, as well as access to the council's full range of learning and development opportunities.

This partnership also presents exciting opportunities for the future, to support all learners as we move forward in challenging times."

Jennifer Penfold, Corporate Learning & Development Manager, Leicestershire County Council

Local reps help to sort out problems before they become serious. Reps with sufficient time will be able to tackle grievances or disputes at a local level before they mushroom. This will often save time and money by preventing the need for cases to go to a higher level of management or Employment Tribunal. Although not a statutory role, many Equality reps make an important contribution to promoting fairness and equality at work, an ensuring that employers comply with equality legislation.

Union reps make a big contribution to the management of change. Large scale reorganisation, major new agreements or changes to legislation put big burdens on HR departments. Working with a team of skilled union reps can ease the workload and improve the results. Union reps can facilitate change by explaining the procedure, supporting members and ensuring that the process is carried out correctly. Facility time assists the employer in fulfilling their legal responsibilities towards employees; providing support and representation to individuals and as a mechanism for formal consultation on a collective basis.

Reps are aware of best practice in other workplaces. Allowing reps time off to attend regional and national meetings helps them acquire knowledge about developments in other sectors and workplaces which can be of advantage to the employer. UNISON reps have access to a huge pool of resources that may be beyond the capacity of any one employer (particularly in small workplaces). The union at both regional and UK level provides information on industrial relations practices, national legislation, public service standards, equal opportunities, health and safety, learning opportunities, policy trends, pensions and occupationally specific issues.

The TUC have found that reps with facility time contribute the following benefits to the UK economy:

- Workplace representatives mean 13,000 to 25,000 fewer dismissals each year across the UK, creating a benefit of £107m to £213m for employers.
- 17,000 to 34,000 fewer voluntary 'exits', worth a saving of £72m to £143m to employers
- 3,600 to 7,300 fewer Employment Tribunal cases, worth £22m to £43m to business and exchequer.

- 8,000 to 13,000 fewer injuries, equivalent to 161,000 to 241,000 fewer working days lost. Benefits range from £136m to £371m to society.
- 3,000 to 8,000 fewer cases of work related illness equivalent to 125,000 to 375,000 fewer working days lost. Benefits range from £45m to £207m to society.

The TUC research is here:

<http://www.unison.org.uk/acrobat/B11455.pdf>

In addition, according to research published by the government in 2007, union reps in the public sector:

- save the taxpayer between £167m and £397m every year by helping resolve disputes
- increase the take up of training and reduce staff turnover.
- contribute up to 100,000 unpaid hours of their own time each week to carry out their union duties which directly benefits public services and the people who work in them.
- contribute as much as £1.2bn to £3.6bn in productivity gains.

These facts and figures demonstrate clearly how employers benefit from facility time. The costs of poor employee relations; lack of effective employee engagement, and the length, and cost of the processes needed to resolve problems should all be of major concern to Employers. Reps with facility time can make a massive difference to these problems, and so they can contribute to significant savings in the organisation.

It is also important that reps can demonstrate the successes of facility time. Practical examples often work best, and you should get hold of examples of how facility time has helped similar employers. If you're talking to a local authority, make sure your example of good practice comes from another local council. Your regional service group reps and your UNISON Regional Organiser should be able to assist you in identifying and using the best examples.

Finally, it may be worth reminding the employer of the various statutory responsibilities that they have to consult and inform employees. Recognised trade unions with adequate facility time can assist the employer in meeting these responsibilities. For example, the Information and

Consultation of Employees (ICE) Regulations were introduced in 2005 and apply to organisations with 50 or more employees. These employers must have in place an information and consultation agreement which sets out how they intend to keep the workforce informed about issues which affect them. If an agreement cannot be reached your employer is obliged, at the very least, to inform and consult employees:

- about the business’s economic situation
- about employment prospects
- about decisions likely to lead to substantial changes in work organisation or contractual relations.

If the employer fails to abide by the terms of a negotiated information and consultation agreement or the fall-back provisions, employees can raise a complaint with the Central Arbitration Committee.

## What should be in your facility time agreement?

### What can facility time be used for? Trade union duties vs. trade union activities

The right to paid time off is there so reps can carry out trade union duties. ‘Trade union duties’ refers to all matters relating to collective bargaining and individual representation, such as pay negotiations, consultation meetings, disciplinary hearings and staff inductions. It should be kept in mind that these are rights, enforceable by law, not optional extras which the employer can pick and choose.

There is also a broader category of trade union tasks – known as ‘trade union activities’. If your employer recognises a union, you are also entitled to unpaid time off to take part in any other trade union activity – for example attending branch committee meetings, or a UNISON conference.

So, if you are covered by a recognition agreement, a key task for you in negotiating a facility time agreement will be to get as many activities as possible covered by your paid facility time allowance. In other words, although you’re entitled to unpaid time off to attend conference, branch meetings, etc., why not try to get those activities covered by your paid time off?

If you’re not covered by a recognition agreement, your task is obviously much harder. But the same principle applies: when trying to get a facility time agreement, try to get trade union activities, as well as trade union duties, included. And, of course, ideally you should push for it all to be paid facility time. But if that isn’t possible, then some unpaid facility time for union activities is a good start. If your branch is looking for further guidance on this issue, you may want to contact your area organiser.

### How much facility time?

Even where the union is recognised, and so facility time is a right, there is no legal minimum – employers just have to grant “reasonable” facility time. This flexibility could work either way. On the plus side, it avoids reps facing a strict ceiling on how much time they can take, but on the other hand, employers may have a strict interpretation

### An employer’s view – Vertex

Numerous employers work with UNISON for the benefit of their organisation and the services they deliver. For example, Vertex, a business process outsourcing company have a strong record of partnership working with the union. A spokesperson for Vertex has said:

“We’ve learned to respect trade unionists.”

“Where unions have significant support, business change is better achieved in Partnership rather than in conflict”

“Transitions in Ealing, Glasgow, Birmingham, Bedford, Bury, Rayleigh, Westminster and Toronto and others were all made easier by the trade union relationship”



of what is “reasonable”, and you may find yourself in repeated discussions about whether a particular request for facility time is reasonable.

Reps should use their judgement to assess whether it would be better to leave it open, settling for “reasonable” time, or whether it would be better to pin them down to a specific number of hours per week or month.

### **To whom will time off be paid?**

Full-time secondments deliver some very definite benefits for trade union reps, providing they are not granted at the expense of a larger number of reps having some facility time. In some of UNISON’s larger service groups, branches often have one or more reps who are seconded full-time – in effect, their facility time is full time. In other service groups, such as Community, very few employers have such arrangements, and would prefer to spread paid facility time around, so that no individual (or their workplace) takes on too much. If full-time (or half-time) secondments are available, then they can be of immense value, but this should hopefully be in addition to facility time that is shared between a number of reps.

### **Procedure for requesting time off**

It is very important that there is a clear process in place. Many UNISON members are extremely busy at work, and as a result rotas need to be carefully drawn up, and cover provided. So there needs to be a procedure which ensures that reps can take the time off they are entitled to, without managers blocking it. A common problem arises when the union and human resources department reach agreement on facility time, but local managers fail to grant individual requests from reps to take the time entitled to them.

### **Procedure for resolving disagreements about time off**

Disagreements will inevitably occur, and reps need to think about the best way to resolve them – and who to involve? Many employers prefer to resolve issues informally, without recourse to formal procedures, but proper processes are vital for trade union reps, so that disagreements can be resolved fairly.

### **Time off for training**

Trade union reps who are covered by a recognition agreement also have the right to paid time off during working hours to receive training which is “relevant to their duties”. The ACAS code of practice stresses the importance of employers giving paid time off for reps to be trained as soon as possible after they have been elected, for further updating training in specialist areas and where legislative change may affect industrial relations. Training must be approved by UNISON or the TUC to ensure that it meets accredited standards.

Many employers claim to be very supportive of training opportunities, so reps should push employers to make sure that there is good provision for time off for training in any facility time agreement.

### **Workload reductions for trade union reps**

In 2009, ACAS issued a revised code of practice and guidance on time off for trade union duties. The purpose of the code is to give advice to employers and trade unions on the implementation of the Trade Union and Labour Relations (Consolidation) Act 1992 and its subsequent amendments. You can see the code here: <http://www.acas.org.uk/index.aspx?articleid=2391>

The new code contains provision for work and/or workload reductions for reps when time off for trade union duties/activities is required. The code states: “Employers should ensure that, where necessary, work cover and/or workload reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.” Many UNISON members work in education, health and social care settings, where work cannot just be left until another day. If reps take facility time, their care shifts will need covering.

It is very important that employees given facility time to carry out trade union duties are not simply expected to carry out their other role in a compressed period of time. This can lead to unmanageable workloads and increased stress for the individuals concerned. It is vital that a

proper process is put in place to ensure this does not happen.

### **Use of email, office and IT facilities**

The new code also states that, where resources permit, the employer should grant access “to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet”. Some of UNISON’s potential members work in small, geographically dispersed workplaces, which are often difficult to access. So it is vital that reps make the most of whatever electronic facilities they can get – for example using facility time and electronic resources to e-mail colleagues, setting up discussion groups or blogs, and using the employer’s intranet site to promote the work of the union.

For safety reps the law states that employers shall provide such facilities and assistance as safety reps may reasonably require for carrying out their functions. This includes facilities for private discussion with employees.

You should also prioritise negotiating for the use of a dedicated office which can be locked. This is

important because the union will have to deal with confidential information provided by both the employer and members. A dedicated office will provide a secure place where this information can be appropriately discussed and stored.

For more information on this see the UNISON guide to negotiating recognition here: <http://www.unison.org.uk/file/Negotiating%20Recognition%20Agreements.pdf>

### **The confidentiality of electronic communications**

The new code clearly states that communications between union reps and members must remain confidential. It states: “Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. They should not normally carry out regular or monitoring of union emails. Only in exceptional circumstances employers require access to communications but such access is subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner’s Office.”

## **Model agreements and examples**

The following model agreements should help as a starting point for negotiations on facility time.

UNISON’s model recognition and procedural agreement:  
<http://www.unison.org.uk/acrobat/B1511.pdf>

The TUC’s model recognition agreement for Academy Schools:  
<http://www.unison.org.uk/acrobat/Educ8804.pdf>

Environmental reps TUC model agreement at:  
[www.unison.org.uk/green/](http://www.unison.org.uk/green/)

The Safety Representative and Safety Committees Regulations:  
<http://www.unison.org.uk/acrobat/17872.pdf>

If you would like to see examples of facility or recognition agreements from your sector, email the address below and UNISON Bargaining Support will send them to you  
[bsg@unison.co.uk](mailto:bsg@unison.co.uk)

## Defending facility time – what to do when you come under attack

In recent years trade union facility time and the principles of partnership working have come under attack. Right-wing lobby groups and their allies in the media and parliament have made it their business to criticise facility time agreements and seek to undermine their legitimacy. As a result, some employers are seeking to renegotiate or terminate previously agreed facility time, often on the basis that it is no longer “affordable” or is unsustainable following a re-organisation.

Often these moves take place as part of a move to derecognise the union entirely. As noted above in the “making the case” section, such arguments are spurious and are usually a cover for a desire to weaken staff influence over workplace decisions.

The checklist below may help if your branch is contacted by the employer about a reduction in facility time.

- 1 Contact your Regional Officer or organising staff to talk over what has happened and keep them informed. This is particularly important if there are moves to derecognise the union. If you require assistance in negotiations, ask for it.
- 2 Find out what has prompted the employer to take this action. Challenging assumptions about “wasting money” is crucial.
- 3 Check your current recognition agreement for cooling off clauses and/or process if either side wish to terminate
- 4 Request a meeting with the employer to make the case for maintaining existing arrangements (see page 6).
- 5 Make sure the employer knows that UNISON reps have statutory rights to take paid time off (see page 9).
- 6 If your employer is subject to a national agreement (such as the Green Book or Agenda for Change) ensure that the employer is aware of the terms of those agreements (see page 4).
- 7 Organise, organise, organise! It is no coincidence that branches with higher levels of organisation and density are less likely to have their facility time attacked. Where the employer knows the union is strong, they are less likely to consider taking a confrontational attitude towards facility time.
- 8 Throughout this process you should ensure that members are kept informed about developments and take on board their views.

Remember, key points to be made to the employer is the huge positive contribution that trade unions make to the running of an organisation.

It's also worth noting that if an employer does derecognise the union they would then be legally required to consult either directly with all their employees on health and safety (an onerous task), or through elected representatives of employee safety (a position which the former safety reps could stand for).

The TUC have found that reps with facility time contribute the following benefits to the UK economy. It is worth reminding employers that limiting time for workers to take part in trade union duties will impose much greater costs and risks for the organisation further down the line. In particular they will be risking:

- More employment tribunal cases as reps may no longer have the facility time to play a constructive role in resolving workplace disputes.
- Higher turnover of staff. Workers who are represented at work and enabled to provide feedback to management are more likely to maintain their employment with that organisation.
- More injuries and illness at work. Trade Union Health and Safety reps make a huge contribution to a healthier and safer workplace.
- More working days lost due to illness
- Less access to training for staff. In addition to training which equips reps to carry out their roles efficiently, UNISON supports and delivers a range of member education. Union learning reps also play an important role in ensuring that all staff can access appropriate learning opportunities

These arguments should be put to any employer considering de-recognition or the reduction of facility time.

## Dealing with an FOI request about facility time arrangements

As noted above, it has become increasingly common for right-wing “think tanks” and lobbying organisations to put in Freedom of Information (FOI) requests to public sector employers. These organisations often use the information to present a misleading picture of facility time to the press and public.

An example of such an FOI request would be for: “...the total amount of paid staff time spent working on behalf of a trade union – sometimes called ‘Trade Union facility time’ – for the past 3 years.” Following these trawls for information the think tank will usually put out a press release attacking the practice of granting facility time and excluding any reference to the benefits or unpaid work which UNISON can bring to an organisation.

Codes of practice on dealing with requests state that it is good practice for a public sector organisation to consult with third parties who will be affected by the disclosure of information. It

also states that it is courteous to advise that third party that a request has been received and them to consult that third party on any response. Clearly, UNISON would consider itself to be a third party in any FOI request about facility time.

The code goes on to state that the consultation may enable the third party to give the public sector organisation more context or explanatory material. However, the legal requirement to respond to the request is firmly on the employer and responding to it cannot be delegated to a third party.

It would be sensible to speak to the employer and ask to be notified, as the code suggests, should any FOI request of this nature be received. It is important that UNISON Branches are properly consulted on what is to be disclosed and, where necessary, ensure not only that the information is correct, but that the context is properly set out.

Where the employer is not co-operative please make sure that your regional organiser is made aware of the situation and they will provide further advice.

The code of practice referred to above can be found here: <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/foi/reference/statCodesOfPractice.htm>

### Additional resources

The 2009 ACAS code on time off for trade union duties:

<http://www.acas.org.uk/CHttpHandler.ashx?id=1128>

ACAS 2009 guidance on Trade Union representation in the workplace:

<http://www.acas.org.uk/CHttpHandler.ashx?id=2307&p=0>

TUC facts and figures to help make your case:

<http://www.unison.org.uk/acrobat/B11455.pdf>

The Safety Representative and Safety Committees Regulations:

<http://www.unison.org.uk/acrobat/17872.pdf>

UNISON's Health and Safety Representatives Guide <http://www.unison.org.uk/acrobat/10529.pdf>

UNISON Education. Joint report (with Higher Education employers and the Institute for Employment Studies) on Partnership Working

[http://www.ucea.ac.uk/en/Publications/Partnership\\_Joint\\_Working.cfm](http://www.ucea.ac.uk/en/Publications/Partnership_Joint_Working.cfm)







