Make Work Pay: Draft code of practice on trade unions' right of access into workplaces

Submission to the Department for Business & Trade

Chartered Institute of Personnel and Development (CIPD)
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Response

Section B: Establishing an access agreement

Q1. Do paragraphs 23 to 28 provide sufficient detail and clear advice on how trade unions should submit an access request?

Yes, but see comments under Q1.1 below.

Q1.1 Please provide further information to support your answer.

The wording in paragraphs 23 to 28 is clear and concise, but it could be helpful to also include reference to digital access. The preceding paragraphs up to paragraph 23 don't make reference to it either, and the first substantive reference is in paragraph 90. In paragraph 26, which mentions that request for access may include reference to various premises operated by a single employer, it could be informative to include reference to the option of digital access here. This will help to ensure that all parties understand on reading the early sections of the Code that digital as well as physical access is possible under their request (as asked for in the template *a. Trade Union Access Request timetable*).

Q2. Do paragraphs 29 to 33 provide sufficient detail and clear advice on how an employer should respond to an access request?

Broadly yes, but see comments under Q2.1 below.

Q2.1. Please provide further information to support your answer.

We welcome the longer response time of 15 days for an employer to respond to an access request than was originally proposed in the 2025 consultation. We also welcome the flexibility built into the process afforded by the ability of the parties to agree to an extension of the response period.

However, it would be helpful to explain the definition of a 'working day' as in today's modern workplace this no longer necessarily has the traditional meaning it did many years ago, for example when the Working Time Regulations were introduced. Paragraph 33 acknowledges there may be certain scenarios where an employer has been unable to respond to an access request in the allotted fifteen working days and gives one example of school holidays. But there could be many and diverse circumstances where an employer is unable to respond within what is still a tight timetable of 15 working days.

Therefore, it would be helpful for the guidance to be clearer on how strict the 15-day response period is and whether or not both parties have to agree to an extension of it in all or just some circumstances. As it stands the Code just encourages unions to 'avoid submitting access requests to employers at times where they are aware that staff will be unavailable to respond' – but how will a union know of the employer's operational circumstances and the availability of key managers, particularly when many union access requests are likely to be made by unions that have no presence in the organisation and very little knowledge of its day to day internal operations?

Q3. Is the following guidance clear: paragraphs 34 to 41 on how trade unions and employers should negotiate the terms of an access agreement, including expectations of good-faith engagement and the process where negotiations continue beyond the initial period?

Broadly yes, but see comments under Q3.1 below.

Q3.1. Please provide further information to support your answer.

We welcome the flexibility provided in the Code to extend the period beyond 25 working days for the parties to negotiate an agreement, without needing to inform the CAC. This approach should help to foster productive and consensual industrial relations between the employer and union. In paragraph 41, outlining the process whereby one party may apply to the CAC if it doesn't want to extend the negotiation period, it would be helpful to outline how long this is likely to take and what the parties should do while waiting for the CAC to reach a determination– ie should they continue to negotiate or is the negotiation process effectively paused, or is it up the parties to decide?

Q4. Does paragraph 42 provide sufficient clarity and detail on how and when an application may be referred to the CAC if negotiations on access terms are unsuccessful?

Unsure.

Q4.1 Please provide further information to support your answer.

It would be helpful to provide some additional detail in paragraph 41. For example, an explanation of 'as per the 55-day CAC referral period' as this is the first time this term is used in the Code. Further, paragraph 41 states a party has 15 working days to notify the CAC if negotiations are unsuccessful following the conclusion of the negotiation period, but does the 25-day negotiation period need to expire before either party can notify the CAC? What if the negotiations fail before that?

Q5. Do paragraphs 43 to 47 provide clear guidance on how the CAC will make decisions on whether access should take place, including the principles it must

apply and the factors it will consider?

Broadly yes but see comments below.

Q5.1. Please provide further information to support your answer.

It would be helpful to be a bit more specific on what is meant by access not being granted 'if the CAC decides that it would prejudice the investigation or detection of offences.'

In paragraph 48, does a workplace relate to a site or organisation-wide?

It doesn't feel logical for paragraph 50 dealing with the length of an access agreement to sit within this section on circumstances where access must not be granted. In this point, is it advisable for the parties to negotiate and mutually agree an expiry date for an access agreement if possible? If so, this could be included in the earlier paragraphs on negotiating an access agreement.

Q6. Are the circumstances set out in paragraphs 48 to 51, in which access must not be granted or may reasonably be refused, clear and appropriately detailed?

Broadly yes, but see comments below.

Q6.1. Please provide further information to support your answer.

We welcome the provision in the Code whereby it will be reasonable for the CAC to not grant access if the employer in question already recognises an independent trade union that represents the one or more of the workers that are subject to an access request. There could be considerable disruption to an organisation's collective bargaining arrangements whereby union recognition and employment relationships are already well established and have been carefully nurtured by the employer and union sides. This could be exacerbated where 'single issue' or so-called 'pop up' unions want to gain access. Conversely, there could equally be a situation where existing recognition arrangements are not working effectively for either the workforce and trade union members, or the employer. In such circumstances – and/or where workers want access for a different union – it would be conducive for better employment relations to allow access for another independent trade union.

Q7. Do paragraphs 52 to 55, provide clear and sufficient guidance on the circumstances in which it is reasonable for the Central Arbitration Committee (CAC) to refuse access, including where an employer already recognises an independent trade union, an access agreement is already in place, or where facilitating access would require significant structural changes?

No.

Q7.1. Please provide further information to support your answer.

Given the diversity of access and/or recognition arrangements in individual organisations, and the complexity associated with assessing how well, or not, they are supporting effective collective bargaining and industrial relations, it would be helpful to have more detailed guidance in paragraph 52. This could cover the factors that the CAC will take into account when deciding whether it may or may not refuse access on the basis that the employer already recognises an independent trade union.

It would be helpful to provide some more detail, perhaps a practical example, in paragraph 55 on the circumstances where the CAC may refuse access if it determines that access may jeopardise the health and safety of any person covered by that access agreement. And does that mean the entire access agreement would fail, and/or would there be provision to amend the access agreement to include terms that reduce or eliminate the health and safety risks? What criteria would the CAC use to make such a determination?

Q8. Are the 'model' terms of access agreements set out in paragraphs 56 to 65, including the frequency and duration of access for different scenarios, sufficiently clear and detailed?

Not sure.

Q8.1 Please provide further information to support your answer.

These paragraphs describe the model terms, but we assume these will be set out in regulations which it would have been helpful to consider alongside the draft code.

We welcome the recognition in the code that an employer will not be expected to make significant structural changes, or make available a disproportionate level of resources, to facilitate union access, and that there should not be unreasonable disruption to the employer's business. It would be helpful to have more clarity and detail on what this should mean in practice as well as guidance on how the parties can avoid disruption, with the access agreement setting out expectations on both sides.

We appreciate that this consultation is seeking views on the content of the code rather than on the policy decisions that underpin it. However, we are still of the view that providing for weekly access could involve significant challenges for some employers, but paragraph 57 makes clear that the CAC will consider this timeframe as a model term.

Providing for weekly physical access could impose a disproportionately onerous burden on some employers, particularly smaller businesses operating in a tight operational environment without the resources to disrupt production or service delivery routines and provide additional cover to free up workers to meet with union officials. To make the access arrangements meaningful for the union(s), workforce and the organisation, access should be given as and when needed if union relationships are truly meant to support a partnership approach and underpin mutuality. The model term of a union having to give just two working days' notice before an access visit could also be disruptive for some employers in terms of service delivery and production etc.

We welcome the flexibility of what constitutes a weekly visit in that they could be spaced closer together or further apart, and suggest that these arrangements should be specified in the access agreement at the outset to avoid potential conflict further down the line. However, what is the expected duration of a weekly visit?

Paragraph 62 refers to employers taking reasonable steps to facilitate access such as 'moving tables and chairs around' but surely this level of detail set out as a model term should not be their responsibility?

Q9. Do paragraphs 68 to 69 of Section B provide sufficient clarity and detail on how joint applications for access by two or more trade unions should operate in

practice?

Yes.

Section C: Operation of an access agreement

Q11. Do paragraphs 70 to 74, provide clear and sufficient guidance on where access can take place, including expectations around using workplace facilities, accounting for health and safety or security requirements, and reflecting local workplace circumstances?
Yes.

Q12. Are the arrangements set out in paragraph 75 clear and sufficiently detailed on how access should operate where suitable meeting space is not available, including the use of off-site or digital alternatives?

Broadly, yes.

Q12.1 Please provide further information to support your answer.

We welcome the recognition in the code that in some circumstances it may not be possible for an employer to provide for physical access to be provided on workplace premises. To help avoid unnecessary disputes it would be helpful to have more detailed guidance, with practical examples, of where access may need to be restricted due to 'exceptional circumstances'.

It is reasonable for the union to consider holding meetings off-site away from the workplace premises at its own expense (where access on workplace premises is not possible). However, what are the reasonable parameters around these arrangements as off-site meetings could require more time away from work and more disruption to the employer's business?

Q13. Is the guidance in paragraphs 76 to 79 clear and sufficiently detailed on when access should take place?

Broadly yes.

Q13.1 Please provide further information to support your answer.

We would like to re-emphasise the need for more detailed guidance on the reasonable length of time that meetings should be expected to last.

Q14. Do paragraphs 80 to 83 provide clear and appropriate guidance on the privacy of access meetings, including the attendance of managers or supervisors and the use of workplace surveillance or recording equipment?

Yes.

Q15. Is the following guidance clear and workable: paragraphs 84 to 86 on how access agreements should operate where the employer does not control the premises, including the role of third parties and referral to the CAC where access cannot be facilitated?

No.

Q15.1 Please provide further information to support your answer.

Many employers employ people who work in locations that are controlled by third parties, including sites that are controlled by facilities companies. The code doesn't take full account of the additional potentially significant challenges that such arrangements can involve for an employer in arranging physical access for the union, particularly where weekly access is expected. It could also require a substantial amount of time and resources to deal with any difficulties that arise. The code should afford some level of flexibility and extra time to allow the parties to discuss access arrangements and for the employer to communicate with the third party. Therefore, the code would benefit from more detailed guidance on this area.

Paragraph 85 reflects an approach that escalates too quickly to enforcement and referral to the CAC to impose access to the premises which is not helpful for fostering a collaborative working relationship with the union. Further, hasty enforcement action could damage the relationship between the employer and third party, and more guidance is needed on how this can be averted.

Q16. Are the arrangements set out in paragraphs 87 to 89 sufficient and flexible on facilitating access for workers with non-typical working patterns, including shift workers, part-time workers and those who rarely attend the employer's premises?

Yes.

Q17. Does the code provide clear and workable guidance on 'digital' access in paragraphs 90 to 95 provide clear and appropriate guidance on digital access, including the use of indirect digital communication, consent requirements, and the role of the CAC where personal data is involved?

No.

Q17.1. Please provide further information to support your answer, including any views on the role of consent and the use of indirect digital access.

The arrangements set out in paragraphs 92 and 93 place a significant responsibility (including for data protection compliance) and administrative burden on employers, for example in sending out email invites to meetings. The code should establish more clearly defined and reasonable parameters for what is expected of the employer, as employers cannot be expected to send out large volumes of emails on behalf of the union.

Q18. Do paragraphs 96 to 98 provide clear guidance on how access agreements may be amended or revoked, including the requirement for agreement between the parties and notification to the CAC?

Yes.

Q19. Is the guidance in paragraph 99 helpful and appropriate on how access agreements may interact with the statutory trade union recognition process?

Not sure.

Q19.1 Please provide further information to support your answer.

It would be helpful for the code to provide some further detail on how general union access arrangements can work alongside the recognition process, and how access and unfair practices operate specifically during the statutory recognition process (ie as set out in the revised Code of Practice on Access and Unfair Practices).

Q20. Do you have any comments you have any additional comments on Section C?

No.

Section D: Resolving disputes and enforcement

Q21. Are the arrangements set out in paragraphs 101 to 102 clear and appropriate in encouraging trade unions and employers to resolve access-related disagreements through dialogue before pursuing formal action?

Not sure

Q21.1 Please provide further information to support your answer.

We welcome the emphasis on encouraging the parties to resolve issues with access collaboratively and at a workplace level. However, many employers dealing with access requests will be dealing with unions for the first time and are likely to have little experience or confidence in handling disagreements when they occur. Therefore, it would be helpful to expand in paragraphs 101 to 102 on the practical steps that the parties can take to resolve issues before they escalate. For example, paragraph 102 advises 'the full use of any mechanism to resolve such disputes' – it would be helpful to provide more detail on what these could be, such as open dialogue, involvement of key people in the process, incorporation of channels such as conciliation in the access agreement, advice from Acas etc. It could also be helpful to link to additional support and advice available that can help to develop the skills and capabilities needed for effective negotiation, such as the joint training offered by Acas and CIPD to help employers work effectively with trade unions.

Q22. Is the guidance in paragraphs 103 to 104 clear and workable in explaining how and when a complaint may be made to the Central Arbitration Committee (CAC), including time limits and information requirements?

Q22.1 Please provide further information to support your answer.

It would be helpful to clarify if access agreements are enforced by the CAC whether they are negotiated by the parties or imposed by the CAC.

It would be more conducive to building effective relationships and industrial relations at a workplace level if there was more emphasis on working through and resolving any disagreements by the parties themselves before raising a complaint with the CAC. Perhaps some guidance can be provided on what might be considered a more serious breach of an access agreement, bearing in mind that some access agreements could be long and complex. Therefore, there could be scope for disputes to arise unnecessarily over lower-level issues. Whilst enforcement is necessary any complaint to the CAC is likely to be viewed as an escalation and within what timescales will the CAC deal with complaints as

any delay is unlikely to be conducive to fostering positive relationships and industrial relations.

Q23. Do paragraphs 105 to 107, provide sufficient clarity on the powers available to the CAC when a complaint is upheld, including the ability to alter access agreements, issue compliance orders, and impose penalties for repeated non-compliance?

Yes.

Q23.1 Please provide further information to support your answer.

Paragraphs 105 to 107 do provide sufficient clarity on the powers available to the CAC when a complaint is upheld etc but it would also be helpful if this section could emphasise any practical steps the employer can take and/or support (with signposting) available so that organisations can resolve disputes at a local level.

Q24. How clear is the guidance in paragraphs 108 to 110 on how the CAC determines the value of a financial penalty, including the factors it must consider and the treatment of repeated or cumulative breaches?

We understand the need for deterrence as part of effective enforcement, but this needs to be proportionate, and part of a more balanced approach. Given that agreeing an access agreement could be very new employment relations territory for many employers, an enforcement approach based too strongly on deterrence and facing considerable potential financial penalties should be balanced with a firm emphasis on encouraging compliance and good practice. However, we note that the financial penalties have been strengthened compared with those proposed in the previous consultation, and we consider a £500,000 maximum fine (which can be issued repeatedly without requiring parties to go through the full enforcement process again) to be disproportionately high. For small employers in particular, operating on very tight margins, the size of the fines could be catastrophic for the future of the business. Rather than imposing a blanket amount of fine on all employers, should there not be some consideration of business size/resources?

There should be more emphasis and investment on upskilling employers, particularly those that are not currently unionised, to ensure they have the knowledge, capability and confidence to work with unions and set up effective access arrangements as a foundation to develop a voluntary recognition agreement. More work is needed to promote the benefits of working collaboratively with unions. Imposing an unnecessarily punitive penalty scheme could be counterproductive and not encourage a positive attitude to the unions as part of an effective industrial relations framework.

Q25. Does the guidance in paragraphs 111 to 113 provide sufficient and accessible information on how parties may appeal a CAC determination, declaration or penalty order to the Employment Appeal Tribunal?

Yes.

Section E: Annexes – Standardised Templates

Q29 Are there any parts of Section E where the guidance or templates are unclear, difficult to follow, or could benefit from further explanation?

Yes, broadly.

Standardised template – access request

Q31. In your view, is the standardised template for access requests clear and easy to use for the purpose of submitting an access request?

Yes, broadly. Under point 3, t could be helpful to include some further detail to help unions in how they are expected to describe the workers to which access is being sought.

Standardised template – response to an access request

Q32. How clear and workable is the standardised template for employer responses to an access request, including the information employers are expected to provide?

Yes.

Standardised template – notification to the CAC of an access agreement

Q33. Does the proposed standardised template for notifying the Central Arbitration Committee (CAC) that an access agreement has been agreed provide sufficient clarity on the information required?

Yes.

Standardised Template - notification to the CAC of a revocation or variation of an access agreement

Q34. Does the proposed standardised template for notifying the Central Arbitration Committee (CAC) of a variation to, or revocation of, an access agreement previously notified to the CAC provide sufficient clarity on the information required?

Yes.