

UNISON INDUSTRIAL ACTION HANDBOOK

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Introduction

The Trade Union Act 2016 introduced new restrictions on workers taking industrial action which has been incorporated into this revised guidance. Despite these changes UNISON has not seen the anticipated reduction in industrial action.

UNISON members are reluctant to take industrial action. It is always the last resort, bringing with it - to some degree, loss of earnings and job instability. Yet, the number of disputes affecting UNISON members has been rising over the last few years; about 60 ballots on industrial action are now taking place every year with half of them leading to action of some kind. The overwhelming majority of ballots are at branch level, with some involving only a handful of members. The most frequent cause is an attempt by employers to worsen terms and conditions of employment.

UNISON is committed to collective bargaining and negotiates disputes in part to protect the union and our members from employers taking pre-emptive action and imposing changes. Industrial action becomes a legitimate strategy when negotiations have broken down and where any agreed disputes procedure has been exhausted – although there are circumstances when industrial action may be authorised earlier. Remember, our main objective is to get the best possible deal for our members and that the branch, the region and the national union work together.

Industrial action in the United Kingdom is more circumscribed by legislation than in any other country in the Western world. A raft of restrictions have been enacted which make it easy to fall foul of the law and employers are often only too willing to take UNISON to court where areas of the law are open to interpretation. It has therefore been necessary to develop fairly rigorous industrial action procedures which are designed both to make action effective and to protect the union and its members from legal action proceedings.

The National Executive Council has established an Industrial Action Committee to oversee the conduct of disputes and the union has at its disposal an Industrial Action Fund. UNISON's Rule 0 sets out the constitutional position and provides for a set of Industrial Action Procedures which regulate in some detail the authorisation and

conduct of disputes (See Appendix A and B). All industrial action ballots are run centrally on behalf of the branch and union. It is therefore vital that branches alert the regional organiser as soon as possible wherever there is the possibility of a ballot being needed.

This handbook is aimed mostly at branch officers and stewards involved in local action but will also be of help to staff and activists engaged in disputes at all levels. Primarily it focuses on the legal and procedural requirements when taking industrial action. Branches have important responsibilities, referred to throughout this guide, and which must be carried out to both ensure that industrial action is used successfully and that neither the union, branch nor individual officers placed at risk of legal challenge.

It is also important not to forget that industrial action can be an important opportunity for the union to recruit new members and to encourage existing ones to become more active.

UNISON's experience during ballots is that UNISON membership, and the number of stewards, goes up. In an ideal world there would be no need take industrial action, but until that day comes we should make the most of the campaigning and leadership opportunities that industrial action can sometimes offer.

Please note that in March 2017 new legislation covering ballots in England Scotland and Wales came into force. Therefore some deadlines in this handbook will be different depending on whether the balloting is taking place in Northern Ireland; or in England Scotland and Wales.

1. The law on industrial action – an overview

This is a brief summary of the law on industrial action. It deals with basic concepts and what is required for industrial action to be lawful. It is not a full statement of the law and cannot be relied upon as a statement of UNISON policy. Any issue relating to the conduct of industrial action should be raised with the regional office in the first instance. The law is constantly changing and you are advised to consult the UNISON website www.unison.org.uk for the latest adjustments to the rules on industrial action.

The ‘right to strike’

There is no legal right to strike in the UK, but there is limited protection for individuals from unfair dismissal and the right to associate in the European Convention on Human Rights. Our so-called ‘right to strike’ really only exists provided that certain conditions are met.

Strikes and other forms of industrial action invariably involve a breach of contract. Therefore it may be lawful for an employer to dismiss employees for it and also to refuse pay for a service not provided.

What protection do we have?

Protection is provided under the Trade Union and Labour Relations (Consolidation) Act 1992 (which is here referred to as ‘the Act’). The Act gives immunity to trade unions from being sued if the union takes industrial action ‘in contemplation or furtherance of a trade dispute’. The wording in quotations is sometimes called ‘the golden formula’.

A trade union is taken to have authorised or endorsed almost any action – and this includes ‘unofficial action’ (like a walk-out or a wildcat strike) - unless it formally repudiates it in notices to employers, officials and each member.

What happens if the branch or union is taken to court?

When employers take a union to court, they are most often looking for an injunction to stop the industrial action. However, they are also entitled to claim damages, which can be considerable. It is possible for an employer to sue UNISON up to the value of £250,000 for the damage industrial action has caused them.

If a branch or union does not comply with an injunction it is in contempt of court and can be fined or have its assets temporarily seized, or its officers imprisoned.

(In theory, the employer could try to sue individuals for breach of contract even if their union has statutory immunity, although it is difficult to see the advantage for the employer.)

How does the union secure immunity?

To be immune from liability, there has to be a 'trade dispute' – for example, about terms and conditions, dismissals, the allocation of work or duties, disciplinary matters, facilities and machinery for negotiations. The dispute should be real and substantial.

It cannot be a political dispute (eg. when a union is not really at issue with the employer but is protesting about government policy). It also does not include 'secondary action' (such as sympathy strikes).

The need for a ballot

If a lawful ballot is not held, immunity is lost. This is a very difficult part of the law for any union to comply with because the rules relating to balloting are mandatory and are technical and complex. Breaches of these rules are the most common reason for the courts to grant industrial action injunctions.

Sometimes difficult decisions have to be made over the conduct of industrial action when it is realised that the union has failed to comply with some technical aspect of the balloting rules. UNISON continues to urge the government to reform these rules.

For a member to be balloted, there must be a dispute between one or more workers and their common employer. It is not necessary for every member of the balloting constituency to be directly affected by the issue in dispute – the balloting constituency is those members who may be called upon to take part in the industrial action following the ballot.

A summary of the main rules on balloting:

- the union must ballot all those members it intends to call upon to take action
- there must be separate ballots for each employer unless certain conditions are satisfied. In limited circumstances, a ballot across several employers may be aggregated into one
- the employer must be given at least seven days notice before the ballot. Notice periods for taking industrial action are seven in Northern Ireland and 14 in England, Scotland and Wales. The notice must describe those members being balloted and those taking action
- the union usually has to appoint an independent scrutineer
- each member being balloted must have voting papers sent to their home address and all have the right to vote secretly
- the voting papers must contain either a question asking whether a member is prepared to take part in a strike, or a question asking whether a member is prepared to take part in action short of a strike, or both. The two questions cannot be run together as one
- there are rules on informing employers and members of the result.

There are many other technical rules, as well as a Code of Practice, to comply with.

Once a ballot request has been formally approved in accordance with the procedures set out in this handbook, UNISON processes manage the ballot and the issuing of statutory notices to the employer(s).

Commencing the industrial action

Within Northern Ireland the action must commence within 28 days of the last voting day in the ballot and it may be extended for an extra 28 days with the employer's agreement. Such an agreement should be confirmed in writing.

Within England, Scotland and Wales the action must start within six months of the last voting day in the ballot. It may be extended for an extra three months with the employer's agreement. Such an agreement should be confirmed in writing.

The union has a policy on a number of other important and technical legal issues, including what to do regarding suspension of action, the management of discontinuous and continuous action and other issues. It is crucial to obtain advice on these through your regional organiser.

Picketing

It is lawful to picket, but the law imposes limits. Picketing by members may only lawfully take place at or near their own place of work. Pickets are allowed to peacefully persuade workers and others (e.g. suppliers) not to cross a picket line but anyone who decides to do so must be allowed to.

Union officials may picket other than at their own place of work where they are accompanying other lawful pickets. Obviously the criminal law on public order has to be complied with and directions from the police should be followed. Mass picketing is unlawful. A government code of practice says a picket should be six or less: a court is not bound by this but is likely to heed it.

The trade union loses its immunity (and thus can be sued) if there has been unlawful picketing.

See Appendix C Guidelines on Picketing.

2. Impact of industrial action on statutory and contractual employment rights

Loss of pay

An employer is entitled to withhold payment for each day of strike action from those deemed to be on strike. UNISON argues that this should be 1/360th of annual salary. Where this is not agreed, the maximum deduction allowable should be 1/260th of the annual salary. In the case of *Cooper v Isle of Wight College* (November 2007), the High Court determined that the employer had to include days of annual leave and bank holidays when assessing the working year, rejecting the employer's argument that the deduction should be 1/228ths.

Continuous service

Although a strike is technically a breach of the contract of employment, it does not break continuous service if the worker returns to work after the strike ends. However, days of strike action will not count towards any relevant qualifying periods.

Maternity leave and pay

A woman who is due to commence maternity leave on the day of a strike is advised to seek further advice. A woman who is on maternity leave while the strike takes place retains her right to maternity pay. She can also delay her return to work if it coincides with a day of strike action. (See also "4 Organising industrial action – Exemptions – Special cases")

Sick leave and pay

Workers who are absent on sick leave when a stoppage of work starts retain their right to statutory sick pay during the period of industrial action. If an employee reports as sick on the day the action starts, the

employer can be expected to make their own judgement as to whether the employee should be regarded as on sick leave or on strike.

For the purposes of statutory sick pay payable in the eight weeks after a period of strike action, average earnings figures will reflect the lower earnings during the period leading up to the illness.

Annual leave

Where strike action begins during a member's annual leave, the employer can be expected to treat them as on leave and not on strike. Some employers however adopt a policy of refusing requests for leave by workers, covered by a ballot, during a period of industrial action. Disputes in relation to this should be referred to the region.

Pensions

With most pension schemes, absence for a one day strike will not count towards pensionable service. The pay lost will reduce the average pay used in any calculation of benefits. It may be possible to buy back service lost, but in many instances the amount lost will be so small it is not worthwhile. It is usually in the last year of service that pensions are most affected, and for this reason we normally exempt such members from taking strike action.

Dismissals

The right of an employer to dismiss those taking part in lawful action is restricted. There is protection when:

- the dismissal is within 12 weeks of the action starting;
- it is after 12 weeks but the employee ceased the action within the 12-week period;
- the employer failed to take reasonable procedural steps to resolve the dispute.

It is important to note that an employer can legally dismiss all those who take part in unlawful action. In the case of unofficial action, the employer can dismiss and later pick and choose who it re-employs – with no protection from victimisation for those it chooses not to re-employ.

Discipline of UNISON members not taking part in industrial action

Trade unions cannot discipline members who refuse to participate in industrial action. However, the union does expect members to abide by the decision of the majority expressed in a legal and democratic ballot of its members.

3. UNISON processes for initiating industrial action

Any proposed action is identified as either “sector action”, “regional action” or “branch action”. Although the legal requirements are the same, the internal processes differ.

Sector industrial action

This is industrial action in a dispute which affects all members belonging to a particular national bargaining sector, for example a local government pay claim, or a dispute with one “national” employer that has workplaces and staff in more than one UNISON region.

Where more than one employer is involved, the result of the ballot may be aggregated but each individual employer must still be served notice in the prescribed way. Permission to embark on the industrial action ballot rests with the general secretary, or delegated officer, following a request from the national secretary of the appropriate service group.

Regional industrial action

This is industrial action over a bargaining dispute that affects more than one branch in a region, but only members in that region. It will most likely arise from bargaining at a regional level, for example in Scotland, Wales or Northern Ireland.

Permission to hold a ballot rests with the regional secretary in conjunction with the assistant general secretary for regions, following a request from the officer acting as secretary to the relevant bargaining group.

Branch industrial action

The majority of industrial action ballots relate to a local dispute with a specific employer. In these cases, permission to ballot lies with the relevant regional secretary. There may be occasions where the regional secretary does not agree to authorise a ballot. In these circumstances, the branch has a right to appeal to the Industrial Action Committee.

All industrial action ballots are administered nationally by the Membership Liaison Unit (MLU) at UNISON head office. The appropriate regional member of staff who is dealing with the dispute will liaise with MLU to make the necessary arrangements for the ballot to take place, and will also notify the relevant national secretary of the dispute. Guidance is available for regional staff covering all aspects of the processes needed to conduct the ballot within complex legal frameworks. A summary of the main requirements for the branch are as follows.

Consulting members

For effective negotiations, members need to be a part of the process from start to finish. Bargaining claims should follow a consultation with members, and members must be consulted on offers and where there is potential for a dispute. Branches will know best how to maximise their consultation with members – newsletters, emails, social media, branch website and/or meetings. Meetings have the benefit of enabling discussion and for sector, regional or branch leaders to explain the position and speak to any recommendation.

Throughout any dispute, it is important that members are kept actively engaged. It is their dispute and they will be more prepared to back their negotiators with industrial action if they have been involved throughout.

Branch ballots

BEFORE THE BALLOT

Involve your regional organiser

In most cases, experienced branch negotiators, who have listened to their members, advised them, researched their case, kept their members informed, anticipated the employer's response, and have presented their evidence and arguments well, will be able to achieve a satisfactory outcome to their negotiations.

But in some cases, an employer following a dogmatic policy may not be willing to listen to even the best reasoned argument, and negotiations break down. It happens! And when it does, the regional

organiser must be informed and involved if not already. Once industrial action is a possibility, if not before, the regional organiser must be involved to advise and support the branch on the way ahead. They will help to develop a campaign strategy and communications plan to engage members, key decision makers, the media and the public service users. The regional organiser will subsequently be responsible for liaison with UNISON's ballots section over the arrangements for an authorised ballot, including determination of the ballot timetable.

Accurate membership records

Ensuring the accuracy of membership records is of paramount importance. The speed and effectiveness of the balloting process will depend very much on the accuracy of branch membership figures. Experience tells us that employers will challenge the legality of any ballot which they believe is based on inaccurate membership data.

As soon as the possibility of industrial action becomes apparent, branches must check their records through the RMS. The legal requirement to provide employers with full details of those being balloted or called upon to take action is normally fulfilled by reference to those members on DOCAS, plus a list of others paying subscriptions through different means. The non-DOCAS list must include the number, occupation and workplace location of each member. Names should not be included. The regional organiser will ensure that UNISON's ballots section is placed on alert so that, if a ballot is requested and authorised, the resources are available to ensure that it proceeds smoothly.

Independent scrutineer

If the ballot is for more than 50 members, the law requires UNISON to appoint an independent scrutineer who will administer the ballot, send out the ballot papers, count them, and issue an official report of the results.

Letter of intention to ballot

The letter of intent to ballot will be dispatched by MLU to the employer(s). The contents are based on the requirements of the law and must include the date that the ballot will start.

A copy of the ballot paper will be sent to the employer(s) at least three days before the start of the ballot.

Ballot paper

The branch will need to agree with the regional secretary, at the time of requesting the ballot, whether members will be asked to agree to strike action; to action short of strike; or to both. Normally it is better to ask members both questions on the ballot paper and to explain the strategy and implications of each in literature sent to the members with the ballot. The ballot paper will be produced by MLU, and will also include a description of the trade dispute, the period within which any industrial action is expected to take place, and the form any industrial action short of strike will take.

Literature with voting paper

In many instances, the region and/or branch will want to include some literature with the ballot voting paper, giving details of the dispute and the intended action to be taken. Care must be taken that the content relating to the trade dispute does not concern itself with any matter outside the terms of the trade dispute.

PROBLEMS DURING THE BALLOT

Members missed out

The region will arrange for the branch involved to contact MLU with details of any members who have not received ballot papers so that they can be sent out.

Challenges by employers

If the employer challenges or queries the balloting process, the region will contact the MLU immediately so that advice can be given and if necessary referred to our legal advisors. In the case of any challenge or query sent direct to a branch, the region must be notified immediately.

BALLOT RESULT

Result

When the result is available it will be sent immediately to the appropriate region. Permission may then be sought for authorisation from the Industrial Action Committee to pursue the matter.

Important – once the result is known, the law requires both the members and the employers to be notified without delay. Therefore the following two sections need to be addressed straight away.

Authorisation to commence industrial action after the ballot

Once a ballot is held, the branch and the region will need to assess the result and decide what course of action to follow. If it is agreed to propose industrial action in any form, a report needs to be submitted by the regional secretary to the Industrial Action Committee and the general secretary for authorisation. In practice, this process is delegated and requests for local industrial action which have the support of the region are sent by the regional secretary to the director of the executive office, or designated officer, at UNISON head office. She or he will then seek a decision from the chair of the committee.

If the action proposed by the branch is not supported by the region, the branch may appeal to the Industrial Action Committee.

Once authorisation has been given; the region, in consultation with the branch, will need to fulfil the remaining legal requirements and in particular give the employer 14 days notice (seven in Northern Ireland) of the start of industrial action.

NOTICE TO THE MEMBERS AND TO THE EMPLOYER

The region will communicate the result to the employer once it is known and without delay. MLU provides pro-forma documentation for this purpose.

The branch will normally agree with the region how it will notify members of the result.

If permission has been granted for the industrial action to proceed, a letter of intent to take action is then issued to the employer(s), giving 14 days notice (seven days in Northern Ireland). Action must start within six months of the last voting day of the ballot. In Northern Ireland Action must start within 28 days of the last voting day of the ballot. All subsequent action to be taken also needs a further 14 days notice of intent. (Seven days in Northern Ireland). Any delay in determining whether action is to proceed, for example where the branch and region have been unable to agree, must not cause the issuing of the ballot result to the members or to the employer(s) to be delayed.

Type of action

In order to take action, in England, Scotland and Wales at least 50% of members balloted must have voted. The ballot must normally show a majority of members are in favour of strike action or action short of strike action, or both as the case may be. However additional thresholds apply for some ballots covering health members in England and Scotland. Please seek guidance from your region on this. A branch must therefore aim to ensure that the majority of members vote in the ballot. Depending on the ballot result and any other relevant factor, the union will decide what form or forms the industrial action is to take. It must also decide whether the action is to be continuous or discontinuous. Broadly, industrial action with no closing date is 'continuous'; while separate days of action or periods of action for a defined period is 'discontinuous'. The union must convey all this information in its notice to the employer.

Action short of a strike

Action can consist of strike action and/or action short of a strike. Each must be covered by a separate question on the ballot paper. Action

short of a strike will usually involve a refusal to perform full normal duties and includes a ban on both contractual and non-contractual overtime. The branch will need to guide members on what activities are being boycotted. Action short of a strike will almost always involve a breach of contract, even if no express term of contract is being broken although there may be occasional exceptions.

Other unions

It is important that the branch and region liaise with other unions that have members involved in the dispute. It may be necessary for the timetable for balloting and subsequent action to be co-ordinated. Where UNISON has small groups of members, or even one, in a workplace where another recognised union is pursuing a dispute, our members must be balloted separately, and the need to alert the regional organiser as soon as possible is no less important.

4. ORGANISING INDUSTRIAL ACTION

GENERAL PRINCIPLES

These principles underpin any dispute – whether sector, regional or branch.

This is a golden opportunity to recruit new members and increase active participation in the union, and branches are encouraged to use it. A recruitment drive should be run in tandem with the dispute. Employees will see the union standing up for them and trying to improve their working lives, and will be more easily persuaded to join. It is also a time when existing members are likely to feel moved to become more active. You may be able to sign up new union representatives.

These activities will help recruit new members:

- Publicise the campaign widely, not only to those members affected by the dispute but to all employees. You will need to develop a communications plan including regular communications through a variety of mediums such as members meetings, social media, notice boards, leaflets, emails (although be careful not to use employers systems.) People want to know what is going on and members will want to know what you are doing with their mandate. Keep reminding non-members how they can join.
- Before the ballot, ask stewards to approach all employees affected by the dispute to confirm their membership or to invite them to join, to check their home mailing address, to explain why we are balloting, and to hear what members and non-members have to say. Make sure your stewards have a supply of application forms.
- Hold some meetings open to non-members as well as members, and make application forms available. But make clear that only members will have a vote and a say in the conduct of the action.
- Non-members may also join online at joinunison.org

Once the many legal hurdles are passed, a branch must do everything possible to ensure the industrial action is effective. Good communication is essential.

CONSULTATIVE BALLOT DURING LOCAL NEGOTIATIONS

As we have seen, a lawful industrial action ballot is tightly controlled by the requirements of the law. A ballot uses resources and it takes time – when all your preparations have been completed to ensure we have an accurate ballot register, it will normally take a minimum of 6 weeks from the date upon which we give notice of the ballot to the employer to the first possible day of action.

Before coming to the stage of seeking an official industrial action ballot, and whilst negotiations still continue, a branch will often carry out a short, informal ballot of members to seek their views and possible support for a range of strategies, including forms of industrial action, should negotiations fail.

Remember, an informal ballot requires no commitment by the member, and so you should expect members to show a high level of support for action if the outcome of the ballot is going to convince the employer that they need to improve their position in order to avoid the real thing.

Remember also that no actual industrial action can be authorised or take place on the basis of a consultative ballot.

PREPARING FOR A FORMAL INDUSTRIAL ACTION BALLOT

The *worst* outcome for negotiators is to call an industrial action ballot only to find that the members do not back the call for action; those members supporting the call will feel let down whilst others will feel the branch doesn't understand or listen to its members. And the employers will forever dismiss what the negotiators say as being “out of touch” and not representative.

There are therefore two things we need to think about – what we do before deciding to seek an industrial action ballot, and what we do to win the ballot once it has been called.

Industrial action needs to be organised and led effectively, with members kept informed and a part of their campaign.

The following steps should be taken:

- Provide information about the issue to all affected members

before the ballot (particularly if the group concerned is too big or dispersed to be relied upon to come to meetings).

- Organise publicity around the ballot. Make sure members know when the ballot is on, the timetable, whether there is a helpline available and any other important details. The branch has a responsibility to maximise turnout in the ballot. In England, Scotland and Wales at least 50% of members in the ballot need to vote.
- Set up an action committee to run the dispute (see below).
- Make allies – service users, relevant voluntary organisations, members of the branch not directly affected and the general public. Ask the region to help widen support within UNISON and communicate with other branches (Note: UNISON's Democracy in UNISON guidelines require any branch seeking moral or financial support for its dispute from other branches to do so only via the regional secretary).
- Develop a political strategy engaging local politicians on the issues and seeking their support for the campaign.
- Use the media to get the case across – local newspapers, radio, regional media and the professional journals (if the dispute is in a specific professional area). The UNISON press and publicity office should be copied into all news releases. Don't forget the letters page in the local newspaper – a series of letters from different members (activists) helps put the message across in a less formal manner.
- Notify all members of the intended action; give details of exactly what they should be doing, make contact arrangements etc.
- Order leaflets, placards and armbands from the regional office.
- Maintain contact with members to ensure that the action has momentum; produce a campaign newsletter, hold demonstrations and regular meetings (at least once a week) for those involved in the action.

In the case of sector disputes, only the general secretary, the national secretary or national officer of the relevant sector bargaining group has the authority to write to branches in furtherance of a ballot or dispute.

NEC, SGE or sector committee members, seeking to give their personal encouragement may do so only via the general secretary or, in the case of communications to branches in a region, via the regional secretary.

Setting up an Industrial Action Committee

It is important that the dispute is “managed” and led. The branch committee is responsible for the conduct of the dispute – to determine the strategy; confirm the bargaining objectives; provide resources; give leadership; monitor the effectiveness of negotiations and the action taken; to update tactics; and to confirm the settlement. It is also its responsibility to decide to bring the dispute to an end when a settlement is reached or if it proves impossible to maintain industrial action at a level to force a satisfactory conclusion.

The day-to-day carrying out of these responsibilities can be delegated to an action committee. It should be made up of stewards from each area or section covered by the dispute and senior branch officers. The branch committee should define what authority to act is delegated to any action committee and where decision making should be “escalated” to the branch committee.

The ‘call’ to participate

UNISON will usually instruct those members covered to take industrial action. Technically this will take the form of a ‘call’ issued from the general secretary, via the regional office and conveyed through leaflets, newsletters, notice boards or whatever is most effective. The call may be sent separately from the letter notifying members of the ballot result if to do otherwise might delay issuing the result.

To help ensure the maximum support for the action; that members understand what is expected of them, and hardship support, etc, the branch should make whatever arrangements it can to meet with members – by holding meetings, by stewards visiting them, etc.

New members

Members who have joined since the ballot are covered by the strike call and can take part in the action.

Annual leave

Taking annual leave on strike days is not regarded as participating in the action and members should be discouraged from this.

Exemptions

The general position on exemptions is that for a strike to be effective there can be no general exemptions from industrial action. However, it is not the union's intention to put vulnerable members of the public at risk. Branches will need to give thought to those individuals or groups of staff who should remain at work. Nevertheless, it is for the employer to request exemptions and we should not normally exempt members we have balloted.

In the case of national disputes, or disputes involving more than one branch in a region, the final decision on exemptions will be taken by the regional secretary and convenor.

Life-and-limb cover

Branches should be prepared to grant exemptions where there would otherwise be a direct danger to life and limb of any person, such as in the emergency services.

Exemptions should not be based on the administrative convenience to the employers and exemptions will not be necessary where management make their own arrangements, such as deploying workers prepared to break the industrial action. Specific decisions will be dependent on local circumstances.

There are a range of services where branches may wish to consider allowing life-and-limb cover, like residential homes for children and the elderly, emergency duty social work and emergency meals-on-wheels. The situation can be particularly problematic in the health services where patients are obviously vulnerable. Risk assessments with health service managers are advisable.

Branches should bear in mind any adverse publicity that might occur, or be encouraged by the employers, if the emergency services are disrupted or vulnerable people shown to be suffering hardship which they will say is as a result of our actions.

Any members receiving exemptions should be invited to donate their pay to a hardship fund.

Special cases

It is UNISON practice to ensure that members who would suffer long-term financial loss can work normally during industrial action. They are:

- employees in their last year of service who are in a pension scheme.
- pregnant women who have notified their employer of the expected date of the birth (unless there is a clear commitment from the employer that the member will not suffer detriment).
- people whose state benefits may be affected if they take part in strike action.

Members who are not actual employees of an employer involved in the dispute may not take part in industrial action.

STRIKE PAY PROCEDURES

The basic rules

Strike pay will be paid direct from the UNISON Centre to those members entitled to receive it in respect of authorised action once the action has taken place. Branches may not make separate arrangements for the payment of strike pay. In certain circumstances, branches may make hardship payments in accordance with the arrangements set out in the NEC Scheme for Branch Industrial Action Funds (see Hardship Payments below).

Rate of strike pay

The standard level of strike pay is currently £25 per day and it will apply in most disputes. The Industrial Action Committee has the right to pay a higher amount – up to full take home pay – depending on the circumstances of the dispute. Full take home pay can only be granted in exceptional cases.

The Committee also has the right to pay a lesser amount than standard strike pay or no strike pay at all where a large action could exhaust the Industrial Action Fund.

Qualification for strike pay

Where a strike is of less than four days duration, no payment of standard strike pay will be made. Once a fourth day of action has been undertaken strike pay becomes payable from the first day.

To qualify for payment, a member must have participated in all four days of action. The only exception to this relates to part-time workers who, due to their pattern of work, have participated in less than four days' action. In their case, payment will become due once the dispute has entered its fourth day.

The days of action need not be consecutive.

The Inland Revenue does not regard strike payments as taxable earnings.

Strike pay is administered and paid by UNISON's finance department directly to the member's bank account. Provided the following actions are taken promptly, the payment should be received by the member at the same time as deductions from salary are made by the employer.

Branches are required to identify on RMS those members expected to qualify for strike pay once authority for the action has been given by the Industrial Action Committee.

The members concerned will be sent a "pack" by the finance department advising how they claim.

In action where full compensation for "loss of earnings" has been approved by the Industrial Action Committee, the process will allow the finance department to calculate the likely deduction to be made by the employer, and make arrangements for the member to claim any further adjustment needed at a later date on production of evidence of the actual loss.

Branches will be asked to verify that members participated in the action immediately it has taken place.

The branch will need to maintain an up-to-date list of members on strike. This is particularly important where discontinuous action takes place and differing groups of members are out at different times.

No money should be paid to members in lieu of strike pay. Any difficulties or delay in receipt of payment should be reported at the time to the finance department.

Pensions

When “maintenance of full take-home pay” is granted, members taking action will also receive reimbursement for their lost superannuation contributions. Once the dispute is over, the loss will be calculated by the employer’s pension fund and members will be informed of the amount of missing contributions. Some employers will deduct the outstanding contribution from salary, others expect a cheque payment.

Loss of annual leave

On very rare occasions, employers reduce annual leave entitlements pro rata to the length of the dispute. The member may make an application to head office for payment for the lost annual leave, but only in disputes where full take-home pay has been agreed.

Strike expenses

Where a branch experiences financial difficulty as a result of a dispute, the Industrial Action Committee will consider reimbursing costs and expenses. This only applies in exceptional circumstances and where costs have been properly incurred and are reasonable given the size and duration of the dispute. Note: normal branch funds may only be used for campaigning and related activity. Only where a branch has a dedicated Industrial Action Fund, can it pay supplementary strike benefit or hardship payments to members. See also the separate section on hardship payments below.

HARDSHIP PAYMENTS

Setting up an Industrial Action Fund

In certain circumstances a branch can make hardship payments to members provided that it has an industrial action fund established in accordance with the NEC Scheme for Branch Industrial Action Funds.

Broadly, a branch can establish a dedicated industrial action fund if approved by a two thirds majority of the members voting at a quorate general meeting and where such notice has been set out on the agenda and circulated to all branch members.

Raising money for the dispute

Branches can transfer up to 5% of their estimated annual income into an industrial action fund, subject to the approval of each transfer by a quorate general meeting, and can transfer further sums during an authorised dispute provided any money remaining unspent at the end of the dispute is returned to the general fund.

The branch can also supplement the fund by donations from members of the branch and, in respect of branch disputes only, from local collections (in the cases of national or regions industrial action, all “outside” donations and collections must be passed to the regional industrial action fund).

A branch can also make an appeal to other branches but this must be via the regional secretary (regional committee) in respect of regional appeals, or the Industrial Action Committee in respect of national appeals, and not direct.

Any branch seeking a national appeal should work with their regional organiser to complete a proforma. The request will be considered by the Chair of the IAC who will take into account the amount in the branch’s industrial action fund, the length of the action and the number of members involved.

Where a branch has no financial resources, it can appeal to the Industrial Action Committee for sufficient funds to maintain the dispute.

Making payments

Only hardship that is a direct consequence of the dispute can be addressed through the branch industrial action fund – other hardship claims can be referred to the UNISON charity There For You (UNISON Welfare).

Hardship payments should be assessed against criteria approved by the branch and available to all members. Detailed guidance on how to assess and make payments is contained within the NEC Scheme. A sample claim form can be found at Appendix E.

The branch committee can decide to meet expenditure which is not part of a branch's normal operating costs but is directly related to the dispute (eg branch mailings, printing, room hire) from the branch's industrial action fund.

Further detailed guidance on branch industrial action funds – how they can be established, used and wound up, and what should happen to money at the end of a dispute, is given in the full NEC Scheme for Branch Industrial Action Funds.

Taking care

A dispute can expose the branch to unusually high levels of financial activity – collecting cash, receiving cheque donations, making payments, etc. It is vital, in the interests of the dispute and of the branch, that proper care is taken at all times and that procedures are put in place to ensure that all financial activity is properly recorded. Detailed guidance is given in the NEC Scheme.

ENDING THE DISPUTE

It is the role of the branch industrial action committee, and the branch committee, to monitor the progress of negotiations; the impact action is having; the effectiveness of our strategies; and the views of members throughout the dispute. It is a tough job to bring a dispute to an end if we have not achieved all our objectives, but leadership is vital.

Hopefully the industrial action will be concluded because UNISON members have achieved their objectives. It will often be the case that our public demands to the employer might conceal a “fall back position”, and if we have won an acceptable compromise it is important that we don't make a “defeat” out of a victory by underselling it.

Whatever the outcome, however, the atmosphere may be tense and a job of aftercare may be required from regional and branch officers.

Return-to-work agreement

This is negotiated with the employer to ensure normal circumstances can be resumed without any recriminations on either side. The key aspect of the agreement will be to secure a guarantee of non-victimisation of strikers and strike leaders in particular. You should also try to agree notional continuous service by deeming the strike period to be unpaid leave.

Reviewing and reporting

The outcome of all disputes should be reported to the Industrial Action Committee so that an assessment of the effectiveness of UNISON's industrial action strategy can be made.

APPENDIX A

RULE O, UNISON RULE BOOK

Industrial action

- 1 Only the National Executive Council or the General Secretary on behalf of the National Executive Council shall have the power to authorise strike or other industrial action and payment of strike benefit.
- 2 The National Executive Council may appoint a sub-committee, officer or member to act on its behalf in issuing any particular instructions to take industrial action.
- 3 No such instruction shall be issued unless the members who are the subject of that instruction have first had the opportunity to vote upon the proposal to take industrial action in a ballot.
- 4 The National Executive Council shall draw up a Code of Conduct applicable either generally to all industrial disputes or in relation to any particular dispute. All members shall observe the Code during the disputes.
- 5 Dispute benefit and other costs and expenses arising from and connected with the dispute will be paid under regulations drawn up by the National Executive Council from a fund specifically maintained for these purposes.

APPENDIX B

INDUSTRIAL ACTION PROCEDURES

1 Ballot requests from branches

- 1.1 A branch wishing to take industrial action must, at the earliest opportunity, approach their regional organiser who will ensure that all necessary steps have been taken to resolve the dispute and that assistance is given from the regional office. A branch may make a request for an industrial action ballot, in writing, to the regional secretary following a resolution of a quorate branch committee meeting.
- 1.2 The regional secretary has delegated responsibility to undertake a ballot if a branch seeks authorisation for industrial action. The regional secretary should respond within five working days to a request for a ballot. When a ballot is authorised, the relevant national secretary(ies) should be informed.
- 1.3 If the regional secretary decides not to authorise a ballot, the reasons shall be communicated within five working days in writing to the branch which may then refer the request to the general secretary.
- 1.4 The regional secretary will write a report for the general secretary and director of the executive office giving the background to the dispute and the reason why the ballot was not authorised. A copy of this report will be given to the branch which will also be able to submit a written statement to the general secretary.
 - 1.4.1 The general secretary and director of the executive office will seek to deal with the issues involved but if no understanding can be reached the branch may request that the case be put before an early meeting of the Industrial Action Committee.
 - 1.4.2 When a request is being considered, branches will be invited to send up to four representatives to be paid from national

funds and the regional secretary and appropriate officers will be asked to attend. All may participate in the proceedings, putting their case and answering questions.

- 1.4.3 The Committee will then meet to make a decision and the branch and officials will be invited back into the meeting to hear the decision, an explanation of the reasons for it and a possible discussion on its implementation.

2 Ballot requests from bargaining sectors

- 2.1 Where a sector committee of a “national” bargaining group wishes to undertake a ballot of part or all of its membership, the national secretary will submit a report to the assistant general secretary for bargaining requesting authorisation. The assistant general secretary for bargaining may authorise the ballot.
- 2.2 If the assistant general secretary for bargaining does not authorise the ballot, the sector committee of the bargaining group, may refer the request to the Industrial Action Committee under the same procedures as outlined in paragraph 1.4.
- 2.3 The Industrial Action Committee or its chair should be involved prior to the conduct of the ballot, if there could be serious implications for the Industrial Action Fund or issues relating to the level of strike pay.

3 Ballot requests from regional bargaining groups

- 3.1 Where a regional bargaining group wishes to undertake a ballot of its members, the relevant regional officer or manager will submit a report to the regional secretary requesting authorisation. The regional secretary may authorise the ballot.
- 3.2 If the regional secretary does not authorise the ballot, the regional bargaining group may refer the request to the Industrial Action Committee under the same procedures as outlined in paragraph 1.4.

- 3.3 The regional secretary will inform the general secretary of any authorised regional ballot.
- 3.4 The Industrial Action Committee or its chair should be involved prior to the conduct of the ballot, if there could be serious implications for the Industrial Action Fund or issues relating to the level of strike pay.

4 Following a branch ballot

- 4.1 The ballot result will be sent by MLU to the regional organiser, who will communicate it to the branch officers. The region will ensure that all employers are immediately notified of the ballot outcome. The branch will ensure that all members are immediately notified of the outcome of the ballot

5 Approval of branch industrial action

- 5.1 The regional secretary will be responsible for submitting a report to the general secretary (or designated officer) following a ballot with a recommendation on industrial action.
- 5.2 A copy of the report will be made available to the branch by the regional secretary when it is submitted to the general secretary and the branch will be given the opportunity to submit a written statement.
- 5.3 Before any decision is taken the views of the appropriate national service group may be sought and taken into account.
- 5.4 Following a ballot in favour of industrial action, the general secretary (or designated officer) on behalf of the National Executive Council, will have the power to authorise action, where appropriate, in consultation with the chair of the Industrial Action Committee.
- 5.5 In the event of the action not being approved, either the general secretary (or designated officer) or the branch may refer the request to the Industrial Action Committee for determination. Branch representatives and the regional secretary will be invited to attend the Committee when the request is being

considered in line with Paragraphs 1.4. This process will not delay notification of the ballot result to the employer(s) and to members.

6 Approval of sector industrial action

- 6.1 Following a successful ballot and decision by the sector committee (and where appropriate discussion with any other UNISON sector or other trade union involved in the dispute), the national secretary will submit a report to the general secretary (or designated officer).
- 6.2 The general secretary, or designated officer, will have the power to authorise the proposed action, where appropriate, in consultation with the chair of the Industrial Action Committee.
- 6.3 In the event of the action not being approved, either the general secretary or the sector committee may refer the request to the Industrial Action Committee for determination. Representatives of the sector committee and the national officer will be invited to attend the committee meeting when the request is being considered in line with paragraphs 1.4.

7 Approval of regional industrial action

- 7.1 Following a successful ballot, the regional secretary will submit a report to the general secretary (or designated officer) within two working days. This should include the history of the dispute and the views of either the regional committee or the regional convenor acting on its behalf.
- 7.2 The general secretary, or designated officer, will have the power to authorise the proposed action, where appropriate, in consultation with the chair of the Industrial Action Committee.
- 7.3 In the event of the action not being approved, either the general secretary or the regional committee may refer the request to the Industrial Action Committee for determination. Representatives of the regional committee, and the regional secretary, will be invited to attend the committee meeting when the request is being considered in line with paragraphs 1.4.

8 Role and functioning of the Industrial Action Committee

- 8.1 The Industrial Action Committee has delegated authority both to authorise industrial action and to terminate it.
- 8.2 It should monitor individual disputes and assess industrial action strategies in the light of experience.
- 8.3 The views of the appropriate sector national officer may be sought on any request and the chair of the appropriate Sector Committee will be invited to attend the Committee for that item.

9 Termination of branch industrial action

- 9.1 When the Industrial Action Committee is considering the possibility of terminating action the regional secretary and the branch will be asked to submit a report and be invited to attend the meeting of the Committee when the dispute is being discussed.
- 9.2 Branches will be invited to send up to four representatives to be paid from national funds and the regional secretary and appropriate officers will be asked to attend. All may participate in the proceedings, putting their case and answering questions.
- 9.3 The Committee will then meet to make a decision and the branch and officials will be invited back into the meeting to hear the decision, an explanation of the reasons for it and a possible discussion on its implementation.

10 Strike pay

- 10.1 Strike pay should be set at £25.00 per day for action lasting more than three working days, to be paid from the first day. In circumstances where insufficient resources are available in the Industrial Action Fund, the Committee shall have the power not to pay strike pay, or to pay a lower rate.

- 10.2 There should be no pro rata reduction for part-time members. They should also receive £25.00 unless that is more than their normal take home pay.
- 10.3 In addition, the Industrial Action Committee will examine the possible use of branch and regional strike funds and levies to help fund industrial action and, if appropriate, it will make further recommendations to the NEC on these issues.
- 10.4 The Industrial Action Committee may vary its procedures to provide for strike pay above the level of national strike pay up to and including normal take-home pay where the union calls on clearly identified groups of selected members to take industrial action in the following circumstances:
- 1) As part of a pre-determined programme of sector industrial action (approved by the Committee and subject to regular review), at the request of the National Executive Council or a sector committee.
 - 2) As part of a pre-determined programme of regional industrial action (approved by the Committee and subject to regular review), affecting all members of an identifiable bargaining group at the request of a regional committee.

APPENDIX C

GUIDELINES ON PICKETING

Picketing is carried out in furtherance of official industrial action. There is no actual legal 'right to picket' but peaceful picketing has long been recognised as a lawful activity.

Number of pickets

The government's Code of Practice on picketing says "pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to, or exit from, a workplace; frequently a smaller number will be appropriate". This figure is only advisory but has been reinforced in later legal action.

Police

It is advisable to notify the police in order to establish good relations in the event of problems arising on the picket lines. It may be best that you tell them where you intend to picket and ask what further information they need.

Pickets should co-operate with the police in any requests they make to keep the streets free from obstruction, etc. Attempts should be made to persuade the police to permit cars and other vehicles to be stopped for a brief time, to enable information to be communicated.

Any agreed arrangements with police, for example relating to the position of the pickets, showing of placards, use of loud speakers etc should be scrupulously adhered to.

Arrests

If a member is arrested, this should be reported to the regional office as soon as possible so that any necessary representations or complaints can be made to the police. Witnesses to an arrest should make a note of the following details:

- date and time
- the number of police officers involved
- the name of the member arrested
- any expressed reasons for the arrest
- any words exchanged between the police officer and the person arrested.

Place of picketing

Picketing is only lawful if it is carried out by a person attending at or near the place of work they report to, although union officials representing members in disputes may participate.

Members who are mobile or do not report to a fixed workplace should regard the administrative centre as their place of work.

Organisation of picketing

It is important that picketing is organised and that premises are not left unattended. A rota should be drawn up to co-ordinate the action. The picket rota must include only members on strike. It is advisable that the picket line is balanced between experienced and inexperienced members.

A picket register – a record of attendance on picket duty – should be kept. Picket duty should begin not less than an hour before normal working hours and should aim to cover at least the first half of the working day. Take account of work places where there is shift work.

Pickets should wear an armband indicating they are on duty. Placards and posters should be displayed stating “official strike”. Each picket line should appoint an organiser to ensure these are in place and to liaise with branch officers/ coordinators and with the police if required.

The content of placards, posters and leaflets must avoid personal attacks.

The picket supervisor must be present on the picket line or be readily contactable and able to attend at short notice. The dispute manager or regional office should provide the picket supervisor with a letter

stating that the picketing is approved by the union. This does not need to include the picket supervisor's personal details. Only the employer involved in the dispute or an individual acting on behalf of the employer is entitled to see this letter.

Approaching people

Any member, work colleague, or member of the public who approaches the picket line should be spoken to, given a leaflet and the reason for the strike explained to them in a polite and courteous manner.

The picket does not have the power under the law to require people to stop or to compel them to listen or to make them do what the pickets ask them to do. A person who decides to cross a picket line must be allowed to do so.

Those workers who wish to cross the picket line should be asked not to undertake any other duties or responsibilities other than their own. Particular care should be taken to ensure that the movement of essential goods and supplies or carrying out of duties essential to the life of the community are not impeded or prevented.

It is an offence to use threatening, abusive or insulting words or behaviour or display any insulting leaflets, placards, posters or other material. Pickets, and anyone organising a picket should take very great care to ensure that their activities do not cause distress, hardship or inconvenience to members of the public who are not involved in the dispute.

Permitted secondary picketing

The only forms of permitted 'secondary' action is where workers are picketing at or near their place of work and persuade other workers, not employed there, to not deliver goods or enter the work premises, for example, the post, milk, stationary supplies.

APPENDIX D

AT A GLANCE GUIDE FOR BRANCHES

Negotiations getting difficult

- the issue discussed by branch committee
- regional organiser notified of potential for ballot request, and involved
- members consulted on issue
- communications plan agreed
- political strategy agreed
- consultative ballot?
- strategy agreed with other trade unions
- membership records reviewed and updated

Before the ballot

- ballot request to regional secretary
- ballot request approved by regional secretary
- if not then the branch may appeal to the Industrial Action Committee
- members alerted to ballot, the issues and bargaining objectives
- decision on what industrial action is to be called for
- Industrial Action Committee appointed on terms of reference agreed by the branch committee
- setting up of industrial action fund (if required) and transfer of appropriate sums approved by quorate branch general meeting

- timetable for ballot agreed with regional organiser
- ballot questions agreed with regional organiser
- contact point for members not receiving ballot papers agreed
- statement for distribution with ballot papers

During the ballot

- campaign materials for use on lobbies, demonstrations, picket lines ordered
- stewards contacting members to ensure they have voted
- communications with employer remain open

After the ballot

- result received
- employer(s) notified of result by the region
- members notified of the result by the branch
- decision on action agreed with regional secretary
- authorisation given by IAC
- notice of intent issued to employer(s) by the region
- call to action issued to members by the branch
- communications with employer remain open
- regular communications with members
- situation monitored by branch committee

During the dispute

- members kept informed
- channels of communication with employer remain open

- effectiveness of action monitored
- members aware of hardship arrangements

Strike Pay

- approval received where strike pay needed
- members entitled to receive strike pay identified on RMS
- members have received strike pay packs from finance department
- members have received strike pay
- where Industrial Action Fund established by branch, criteria for awards determined and published to members

After the industrial action

- was the action effective?
- negotiations continuing
- proposed settlement put to members with recommendation
- return to work agreement (if required)
- outcome reported to region
- lessons learned logged

APPENDIX E

SAMPLE HARDSHIP CLAIM FORM AND GUIDANCE

Hardship claim form										
Please complete this form and return to your branch official. This should be completed in block capitals unless stated. For guidelines on how to complete this form please see notes overleaf.										
Your current address details	Changes – please use the space below to let us know if your address details are incorrect.									
Membership, branch, employer & income details	1 Membership number									
	2 Branch									
	3 Employer									
	4 Income									
How would you prefer to be paid?	1 Cheque Y N									
	2 Directly into your bank account Y N									
<i>If you answer Yes to 2 above please complete the section below</i>										
Your bank details										
Your bankers name (e.g. Lloyds, Nat West, Barclays)										
Account number	<table border="1" style="width: 100%;"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>									
Sort code	<table border="1" style="width: 100%;"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>									
Member's Signature										
FOR BRANCH USE Authorised by:	Print name									
	Signature									
	Position									
Amount to be paid	Date									
Payment reference										

UNISON HARDSHIP CLAIM FORM

Guidelines for completion

- Please note no payments can be made until this form has been received and authorised by your branch official. It is therefore imperative that it is completed and returned without delay.
- Please complete all sections of the form. This should be in block capitals. Failure to do so may prevent reimbursement of hardship pay being made.
- Name and address – this box will be completed for you. If this is incorrect please make changes in the box provided.
- Membership, branch, and employer details – this information will be completed for you please check that to the best of your knowledge the information is correct.
- Income details – this should be your annual income from employment.
- How would you prefer to be paid? – please highlight which method you would like to receive the payment. Please note cheque payments will take a minimum of 10 days to process and pay.
- Bank details – only complete this section if you require your hardship pay to be paid directly into your bank account. This should be the bank account you normally have your salary paid into. Please note not all branches will have the facility to make payments by BACS.
- Once you have completed the form it should be forwarded to your branch official for approval.

If you have any queries please contact your branch official.

