

GUIDE TO TAKING STRIKE ACTION

Contents

1	Introduction	Page 2
2	Plan your Day	Page 2
3	Get the Public on Board	Page 2
4	Recruitment	Page 3
5	Prime the Press	Page 3
6	Who can Strike	Page 3
7	Call to Participate	Page 4
8	Timing of Strike	Page 4
9	New members	Page 4
10	Exemptions	Page 5
11	Sick Leave & Pay	Page 6
12	Annual Leave	Page 6
13	Employer Intimidation	Page 6
14	Use of Agency Workers	Page 6
15	Discipline of UNISON Members	Page 6
16	Losing Pay	Page 7
17	Hardship Payments	Page 7
18	Guidelines on Picketing	Page 10
19	Effect of Strike Action on Pensions	Page 12

GUIDE TO TAKING STRIKE ACTION

Scottish Joint Council Pay Dispute 2008

UNISON members have delivered a majority 'Yes' vote for industrial action to get a fair deal on their pay.

This action is not being taken lightly. It is vitally important that we have a massive turnout on the day (*20 August*) in order to demonstrate to the Scottish Local Government Employers the strength of feeling of our members in this dispute and to ensure an improved offer on your pay. We will only have an impact if we can show that our members are prepared to take the action. All members who are eligible to strike should be encouraged to take strike action.

It is important to begin preparations for strike action now. These guidelines set out the actions branches need to start thinking about in order to ensure the most effective action possible.

Branches must do everything possible to ensure the industrial action is effective. Good communication is essential. If we fail to deliver effective action on pay, the employers will ride rough-shod over us on other issues in future.

Plan your day

Branches need to think through organisation on the day of the strike. A starting point is to make a list of all the workplaces and all employers covered by the dispute in your branch. Stewards in each workplace/employer should be brought together with branch officers to discuss the arrangements for the day. In particular, rotas for the picket line need to be organised and each workplace provided with supplies of publicity and materials such as armbands and placards. Your Regional Officer will be involved.

Members of Unite (T&G) and GMB are also taking action on the same days as UNISON. It is therefore important to work with them at local level to ensure the maximum impact of the strike. Branches are encouraged to set up joint trade union strike committees, to co-ordinate picketing arrangements and other activities so that each union can play to their maximum strengths.

The purpose of the strike is to demonstrate to the Scottish Local Government Employers our strength of feeling over their below inflation pay offer for the next three years. Our members are the poor relations of the public sector. For the last 10 years we have received below inflation settlements and enough is enough!

Get the public on board

It is also very important to get our message across to the public. We all know that a critical success factor in many strikes is the degree of public sympathy. Branches will therefore need to think through a publicity strategy aimed at getting the message across to service users and the public at large. A leaflet aimed at the public explaining why we are on strike will be despatched to branches on week commencing 11 August.

Branches can order the following materials for the planned day of action:

- Official Picket Placard – stock number 0703
- UNISON Blank Placard – Stock Number 0713
- UNISON Armbands – stock number 0702

There are also other materials on the website – www.unison-scotland.org.uk

As part of their planning for the day, branches should be in contact with their Regional Officer to find out what arrangements are being made for local meetings, demonstrations, rallies or publicity stunts. Each branch will want to make their own arrangements to fit in with other activities being organised at regional level.

Recruit!

This is a golden opportunity to recruit new members and increase active participation in the union and branches must 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 also be able to sign up new union representatives.

Prime the press

Use the media to get the case across: Local papers, radio, regional media and the professional press. UNISON Focus and UNISON Scotland's Communications Officer should be copied into all news releases.

Consideration needs to be given to a press strategy for the strike day. It is likely that the local press will be very interested in this story and it represents an ideal opportunity to get our point of view across to the wider public. Chris Bartter, the Regional Communications Officer will be able to help you make plans to deal with the press and should have a regional press strategy which your branch can 'key' into. We will want reports of successful picketing to be sent early in the morning on 20 August to the Communications Officer.

Who can strike?

All of Scotland's 32 local authorities, 10 Joint Valuation Boards, 7 Fire and Rescue Boards and Tayside Contracts have been notified of the intention to ballot. In those employers **ALL members** have been balloted and will be participating in the strike action.

In addition some Leisure Trusts and other arms length organisations have also been notified of the intention to ballot. If an employer has been notified of the intention to ballot, then **only members who are conditioned to the SJC** in that employer will be participating in the strike action. If branches are not clear which employers within their branch are included, they should liaise with their Regional Officer to establish this. **If they have not been balloted, they must not be called upon to take action.**

We are asking colleagues from non-striking unions to refrain from undertaking duties which would normally be done by members of UNISON.

The 'call' to participate

UNISON will instruct those members covered to take industrial action. Call to Action notices will be sent directly to branches for distribution to all members and potential members.

When will the strike take effect?

The day of action will be on 20 August 2008 and branches will be notified of any further planned action. Members are to take strike action on the 20 August. Anyone whose shifts cross midnight should work as normal on the 19 and 21 August 2008

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 the picket line but anyone who decides to do so must be allowed to. *Union officials* may picket otherwise 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 1 for detailed guidelines on picketing).**

Participation by new UNISON members in the strike

New members of UNISON who have been balloted are covered by the strike call and can take part in the action. **This is a golden opportunity to recruit and branches are encouraged to use it.** Get them onto the RMS system as soon as you can.

We are entitled to call out members who joined UNISON after the ballot, even though they were not given a vote in the ballot. This is because, in accordance with the law, we balloted only those who were members at the time. The industrial action therefore has the support of a ballot.

This is settled law following the decisions in *London Underground v RMT* (1995 – Court of Appeal) and *P v NASUWT* (2003 – House of Lords). It is confirmed by the DTI's 2005 Code of Practice, paragraph 22, which states:

“The validity of the ballot will not however be affected if the union subsequently induces members to take part in or continue with industrial action who at the time of the ballot:-

- *were not members or*
- *were members but who it was not reasonable to expect would be induced to take action (for example because they changed jobs after the ballot).”*

Since they will be taking part in industrial action that is supported by a statutory ballot, these members have just the same protection from dismissal as members who were given a vote.

Exemptions from strike action

If industrial action over SJC pay is to be effective, it needs to be hard-hitting and solid. The General Secretary has stated that exemptions are to be kept to an absolute minimum. Branches should not be making offers of exemptions to employers. **It is for the employer to request exemptions and we should not normally exempt members we have balloted.** However, it is not the union's intention to put vulnerable members of the public at risk. If branches are contacted by employers on exemptions, **NO** agreement must be given without referral and approval by your Region. **The Scottish Secretary - or his nominated officer - will be the only person with power to approve exemptions.**

Life-and-limb cover

Branches can consider requests for exemptions where there would otherwise be a direct danger to life and limb of any person, such as in the emergency services, but these should be referred to the **Scottish Secretary for approval.**

Separate guidance will be issued to branches very shortly.

Special cases

However it is common practice to ensure that staff in the following categories, who may suffer longer term financial loss from strike action, should be allowed to work normally on the day, subject to Regional approval. They are:

- Employees currently in their last year of service with their employer who are members of the Local Government Pension Scheme. Members in councils where local government reorganisation is taking place will only be given exemption where a member has been notified that they are at risk and will be in their last year of service.
- Pregnant women who have notified their employer of the expected date of birth (unless there is a clear commitment from the employer that the member will not suffer detriment as a result of her taking strike action).
- People whose state benefits may be affected if they take part in strike action. Those working under 16 hours a week may be entitled to income support. For members who are in receipt of tax credits, an employer can only stop paying tax credits when the period of absence due to strike action exceeds 10 consecutive days on which the employee should have been working. However the claimant must keep their benefits office aware of their circumstances.

Branches must advise members to get advice from the benefits office/CAB as it will depend on the individual's circumstances as to whether they should be exempted from the action.

Any members receiving exemptions should be asked to donate a day's pay to a strike hardship fund.

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 sick on the day the action starts, the employer can be expected to make their own judgment as to whether they 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 will reflect the lower earnings during the period leading up to the illness.

Annual leave

UNISON does not regard anyone who takes annual leave on strike days to be participating in the strike action.

Employer Intimidation

Management may circulate letters, documents and create rumours in an attempt to throw doubt on the legitimacy of the action. Circulate letters of refutation, restate official guidelines, tell members to ignore rumours and to take note only of official UNISON documents.

Management may attempt to isolate, or indeed intimidate certain individuals or small groups with the view to encouraging strike breaking. There may be threats concerning their careers or of disciplinary action. Warn all branch members of this type of pressure and advise them they should in the first instance report this to the Branch officers. A full report should then be made to the Regional Office. The more members on strike, the less likely this is to happen.

Use of Agency Workers

Para 7 of the Conduct of Employment Agencies Regulations 2003 says a "work seeker" (agency worker) cannot be used to do the job of a worker who is taking part in a strike or other industrial action".

Agencies have a defence of "ignorance" i.e. they didn't know or had no reasonable grounds for knowing the worker is on strike.

BERR (DTI) polices and enforces the regulations and can fine up to £5,000 or a 10 year ban on operating if the agency is found guilty.

Branches should notify all local agencies who provide agency workers direct so they can't plead ignorance. If agencies then do supply workers, they should be reported to the BERR (DTI).

Discipline of UNISON members not taking part in strike action

The union cannot discipline members who refuse to participate in the industrial action. However, the union will expect that members will abide by the decision of the majority given that UNISON has carried out a legal and democratic ballot of its members. The majority of members voting in the ballot have voted for industrial action.

Losing pay

General

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.

It is essential in these discussions that branches ensure that deductions are pro rata'd for people who work part time. In instances where branches already have existing local agreements on deductions for strike action then we would expect those agreements to be kept to by the employer.

It is anticipated that the Scottish Local Government Employers will advise their constituent authorities that the correct deduction for a worker who works a 5-day week is 1/260th of annual salary for salaried staff or 1/5 of a week's wage for weekly paid staff and that authorities should apply the same formula when calculating the appropriate deduction for staff who work different normal working hours. For instance, an employee who works a three-day week should be deducted 1/156th of annual salary.

Pensions

With most pension schemes, absence on a day's 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. **(See Appendix 2 for more details)**

Hardship Payments

Setting up an Industrial Action Fund

The ballot for action over SJC pay made clear that there would be no strike pay. However, 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. Details are available at www.unison.org.uk/

Broadly, a branch can establish a dedicated industrial action fund if approved by a 2/3rds 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 the 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 case of national or regional 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 Scottish Secretary (Regional Committee) in respect of regional appeals, or the Industrial Action Committee in respect of national appeals, and *not* direct.

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 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.

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 (e.g. branch mailings, printing, room hire) from the Branch 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 available at www.unison.org.uk/

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.

Benefits

It is good practice to accept that applicants who are in receipt of a means tested benefit such as income support, working family tax credit, housing benefit or disabled working tax credit are on low income and therefore eligible for consideration for assistance.

The following financial assessment could be applied to all applicants:

Income

Weekly income from all sources should be taken into account:

- Earnings
- Partner's earnings
- Supplementary income benefits
- Savings
- Income from non-dependants
- Maintenance payments
- Disability benefits such as DLA should be disregarded

Expenditure

Income should be compared to normal expenditure. Where a member is seeking assistance in excess of 'actual' loss, this may indicate that their difficulties are not directly related to any dispute. In these circumstances, an application to UNISON Welfare may also be appropriate.

Priority expenditure which can be deducted from income:

- Housing costs, e.g. rent, mortgage, council tax, insurance policies
- Secured loans, e.g. second mortgage
- Ground rent/service charge
- Childcare costs
- Food
- Utility costs
- Child maintenance
- Fines (subject to a court order)

Other expenditure which could be taken into consideration

- Prescription costs
- School fares/meals
- Abnormal costs, e.g. fuel where arrears have accrued and additional payments are being met
- Other

NB It is not advisable to use hardship funds to meet credit commitments, e.g. store/credit cards, loan payments etc. UNISON Welfare operates a free debt advice service and can give guidance on how to deal with late/delayed payments etc. Members may access the free phone service direct by contacting 0800 389 3302 (lines open Monday to Friday 8am to 9pm and 9am to 1pm on Saturday).

APPENDIX 1

GUIDELINES ON PICKETING

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 terms the number of pickets does not exceed six at any entrance to 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

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 should be 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.

It is an offence to use threatening, abusive or insulting words or behaviour or display any insulting leaflets, placards, posters or other material.

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, stationery supplies.

APPENDIX 2

LOCAL GOVERNMENT PENSIONS FACTSHEET (June 2008)

WHAT ABOUT YOUR PENSION IF THERE WAS STRIKE ACTION?

Introduction

One question the Branch officers are often asked when there's any suggestion of a strike or other industrial action, is "what would happen to my pension?" It is also an issue that management raise in an attempt to stop people planning such action. So this factsheet is intended to spell out the position.

What is the position?

For every whole day a member is out on strike s/he will lose one day's pensionable service. The lost days would not count in any way towards pension benefits.

A member will effectively lose $1/365^{\text{th}}$ of a 60^{th} for each and every full strike day's action.

Example

If a member retired after 25 years service with pensionable pay of £15,000, the pension would be $25/60^{\text{th}} \times £15,000 = £6,250$.

If the member lost 6 days through strike action, the loss would be $£15,000 \times 1/60^{\text{th}} \times 6/365 = £4.11$ per annum.

As can be seen from the example, a strike of a few days would not normally have any significant effect on benefits because benefits are calculated on a daily basis. Due to recent changes in the Regulations, even if the strike was in the last year of service, the effect on final pensionable pay is likely to be minimal.

In most cases an employee's final salary is their earnings in the year before retirement and hence any period of employment which does not attract a salary because of unauthorised absence will reduce the final year to below 365 days. If the final year is regarded as a part year because of the strike, the final pay is effectively grossed up to what it would have been over the 365 days. Rounding may lead to a small change either up or down.

Any loss of service could also have a very marginal effect on entitlement to qualifying periods, for example, unreduced benefits under the Rule of 85. In some cases it may mean the member working another couple of days to satisfy the rule.

Buying Back Service lost through strike action

It is possible to **buy back** the service lost, at your own cost, at a rate of 16% of the lost pay for that period.

It follows that the amount you pay is based on the method your employer adopts to deduct your pay.

It is likely that many employers will deduct pay based on $1/260^{\text{th}}$ of annual salary for each whole day a member is on strike. For weekly paid staff this will be $1/5^{\text{th}}$ of the week's wage. For other workers who work less than full time hours, a different formula would apply. For example, a member who works three days a week could have $1/156^{\text{th}}$ of annual salary deducted for each day on strike.

However, it should be pointed out that for some employers this method may not be the basis used, due to locally negotiated agreements. It is therefore important that any member checks with their respective employer concerning the exact terms of payback that apply.

How is the back payment made?

The extra contributions will be deducted from pay. Normally this is as a single payment, but the employer has the discretion to spread it over a longer period.

Either the Pension Office or Payroll Section of your employer can provide a form for people to fill in and send back, if this is what they want to do. **Think carefully - once you have made the decision it cannot be changed.**

The administrator for the LGPS usually advises anyone in this position to telephone their payroll section first, to get an estimate of what the cost to them would be, before they sign the form. You have 30 days from the date you return to work (longer if the employer allows) to make up your mind.

In most cases, the effect of a short strike on your pension is going to be too small for buying back to be worthwhile, though you might want to consider it if you were involved in lengthy action.

Example

A full time member on £15,000 salary who was on strike for 6 whole days. The amount to pay back would be based on the pay lost, which in this case would be $6/260^{\text{th}} \times £15,000 = £346.15$.

You will then be required to pay 16% of this figure = £55.38 (this is the gross figure which would attract tax relief)

Additional Voluntary Contributions

If you elected to pay for Added Years before 1 April or are making Additional Regular Contributions since 1 April, the contributions you pay will not be affected by the strike. You still have to pay the extra contributions you have agreed to pay.

If it is just straightforward additional contributions payable to the scheme's nominated Additional Voluntary Contribution provider, then you can choose whether or not to make up any contributions not paid as a result of the strike.

If you have any questions please call the Pensions Unit on 020 7551 1406.

National Pensions Unit
Updated June 2008