

## INDUSTRIAL ACTION - GUIDANCE FOR MANAGERS

### Background

- this guidance addresses industrial action that is the result of an 'external' dispute – either a national dispute between the trade unions and local government employers, or trade unions and the government.
- in these circumstances, it is the responsibility of the County Council and its managers to ensure that services to the public are maintained as far as possible and that the employers' position is fully explained and supported.
- it is also important to ensure that local employee relations are not unnecessarily damaged by a dispute that is not directly of our making.
- accordingly, a dialogue is maintained with the trade unions throughout and, as far as possible, actions on both sides are avoided which might damage long-term employee relations.

### Leading up to industrial action

- **ballots** - unions are legally required to conduct a paper ballot before industrial action takes place. They are required to give the Council an advance copy of the ballot paper to be used, so we will get advance notice of any potential industrial action.
- unions are also required to ensure that they ballot all those who may be called upon to take industrial action, and that they do not ballot those who will not be involved.
- a failure to follow these requirements will result in industrial action being unlawful and, therefore, vulnerable to a claim for damages or an injunction to stop the industrial action going ahead.
- the courts are reluctant to declare industrial action unlawful because of minor breaches of procedure, eg. very small numbers of staff wrongly included or excluded from the ballot. However, if managers become aware of substantial breaches of ballot procedures – for example whole groups of staff being wrongly included or excluded – they should inform their HR Business Partner.
- **The Trade Union Act 2016 requires at least 50% of all of the members of a trade union in a public service to vote and for 40% of these members voting to vote in favour of the action for legal industrial action to take place.**

### Preparation for industrial action

- **notice of action** - once the ballot result is declared, under the Trade Union Act 2016 the unions must now give at least **fourteen** days notice.

- **exemptions** - it is open to the trade unions to agree exemptions from participation in the industrial action. In those areas which the union agrees are exempt, staff will be instructed by the trade union not to take part in the industrial action.
- Assistant Directors are responsible for identifying areas where requests for exemptions will be sought by the Council, and for forwarding these requests to their HR Business Partners. A form for making such requests is available within this document by clicking here:



Exemption\_From\_Industrial\_Action\_Form-1

- it should not be assumed that exemptions will be agreed and preparations must therefore be made for contingency arrangements if necessary. The extent to which unions are prepared to agree to exemptions will vary, dependent on the nature of the dispute and the union involved. However, in general, unions are prepared to agree to exemptions only where industrial action would pose an immediate risk to the safety of people and where there are no practical alternatives to mitigating this risk.
- the process of agreeing exemptions takes time, and it is therefore important that any such requests are made as soon as possible.
- **assessing the likely impact** - managers need to assess the likely impact of industrial action in order to make contingency plans and protect services.
- managers can ask staff about their intentions, but they should do so courteously and in a way that will not inflame the situation or undermine our longer-term employee relations. It is important that employees should not, in any way be victimised for taking the decision to take part in the industrial action. Managers also need to be aware that staff are not obliged to say in advance whether they plan to participate in industrial action – so assumptions may need to be made that staff will be participating.
- where managers themselves plan to participate in industrial action it is helpful if they can inform their own managers in advance.
- **non-participants** - staff who have not been covered by the call for industrial action, including non-union staff, are expected to work as normal during industrial action and every support should be given to enable them to do so.
- **redeployment** - where workplaces are closed as a result of industrial action then all efforts should be made to all those who wish to work to find alternative work locations. This may also be necessary where the health and safety of employees is compromised as a result of industrial action.
- **re-allocation of work** - work may also be re-allocated to those staff who wish to work. Such requests should be reasonable and within the capabilities and experience of the employee concerned. In re-allocating work, it would obviously be sensible to ask for volunteers first and ensure that adequate training and health and safety issues have been considered. Care will be needed to avoid endangering the goodwill of non-striking staff by asking them to perform additional duties. If in doubt please contact your HR Business Partner.
- **relocation** - where staff are redeployed or re-allocated to different work locations, excess travelling expenses should be paid in accordance with the Council's

Reimbursement of Expenses policy which is available on the intranet:

[Home > HR > A-Z > Expenses](#)

- **recruitment of temporary staff** Where the operation of the service cannot be maintained using existing staffing levels, it may be necessary to consider the recruitment of temporary staff. It should be noted, that **agencies are no longer restricted by legislation from providing staff to replace striking employees.**
- **dealing with requests for time off** - pre-booked requests for annual leave or flex-leave during the period of industrial action should be honoured. Later requests should be considered on their individual merits, taking into account the need to maintain services.
- **working at home** – this should only be agreed where it is compatible with maintaining services. In particular, the effects on front-line staff, who have no opportunity to work at home, should be considered when decisions are taken to allow others, particularly managers and supervisors, to do so
- **effects of industrial action elsewhere** (eg. leading to the closure of schools) – staff should be allowed to book leave or work at home only to the extent that this is compatible with the maintenance of services.  
In particular, managers should bear in mind that,
  - work cannot sensibly be undertaken at home at the same time as caring for small children
  - service levels must not be reduced as a result of a larger number of staff than is normal taking leave or working from home
- **access / accommodation issues** - managers may need to consider,  
key holders – make sure that assumptions about access to premises, vehicles, etc. are correct and, if necessary alternative arrangements made.

access to ICT and Information Systems – make sure that critical ICT, information and customer access systems are available

- **health and safety** – risk assessments need to be made to ensure that issues such as first-aid, fire evacuation procedures, lone working, etc. are properly managed if there are likely to be less staff present than normal.
- **customer contact / reception** – you will need to ensure that appropriate arrangements are in place to receive or re-direct calls and visitors.
- **communications** - whether or not it is anticipated that services can be maintained during the period of industrial action, it is important that the public, service users and 'internal' customers should be kept informed. Existing mechanisms should be used, linking to any corporate communications strategy that has been adopted in respect of this particular industrial action.

### **During industrial action**

- **picketing** of workplaces is protected by law and, at the County Council, has always been undertaken peacefully and courteously. A dialogue is maintained between HR and the trade unions during industrial action with a commitment to dealing promptly with inappropriate behaviour by either pickets or employees

attending work. Any such instances should be reported to your HR Business Partner immediately.

- in general terms pickets should:
  - be peacefully obtaining or communicating information
  - be peacefully persuading any person not to work
  - be picketing at or near their place of work
  - not obstruct employees who wish to attend work
  - be restricted to 6 at any particular location.

The Trade Union Act 2016 outlines specific requirement on picketing as follows. For any picket that takes place the relevant trade union must appoint a union official or other member of the union who is “familiar” with the statutory Code of Practice on picketing to supervise the picket (“the picket supervisor”). The union or picket supervisor must then take “reasonable steps” to tell the police:

- the picket supervisor’s name;
- where the picketing will be taking place; and
- how to contact the picket supervisor.

The union must also provide the picket supervisor with a letter stating that the picketing is approved by the union and the supervisor must, if asked by the employer (or an individual acting on behalf of the employer), show the letter to the employer (or individual), as soon as is reasonably practicable. While picketing takes place, the supervisor must be present or be readily contactable by the union and the police and be able to attend at short notice. The supervisor will also have to wear something that readily identifies them as being the picket supervisor.

- **staff who encounter pickets** at other locations (eg. hospitals, other authorities’ premises, etc.) while undertaking their job are required to enter those premises as normal.
- **sickness absence** - staff who report that they are absent because of sickness will be paid as normal, providing that any necessary certification is produced.
- **staff prevented from working** (eg. because their place of work is closed) but who are not participating in industrial action will be paid as normal providing that they can demonstrate that they are able and willing to work. However, staff refusing to cross a picket line do not fall into this category and will not be paid.
- **record keeping** - managers must ensure that a careful record is kept of staff taking part in industrial action, for two reasons,
  - the Council will be expected to provide prompt information on the numbers of staff participating and the services affected to the national employers, press and media, etc. The deadline for submitting information can be as early as 9.00am on the day concerned, so your HR Business Partner will be seeking to collect this information as soon as possible.
  - employees who take part in industrial action will not be paid during the period of their participation. Pay will be deducted on the basis of 1/5th\* of a week’s pay for each day lost for full-time employees or on a proportionate basis for part-time staff. Accordingly, the HR Service Centre will need prompt notification of employees participating in industrial action – the appropriate form can be found

on the intranet: [Home > HR > A-Z > Industrial Action > Industrial Action Absence Form](#)

### **After industrial action**

- The only significant issue that ordinarily arises after industrial action is over relates to **pension contributions**. Employees\* who are members of the Local Government Pension Scheme who are absent from duty due to strike action for one or more complete days have the opportunity to “make-up” pension contributions in relation to the pay “lost” during the strike period. Further details on this, together with the implications of not opting to pay the contributions, can be accessed from the Pensions Service on 412682 or 412234.

\*separate rules apply to staff employed on teachers’ conditions of service which is based on 1/365th

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