

Protect Our Pensions campaign

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GUIDE TO TAKING INDUSTRIAL ACTION

“We only take strike action as a last resort. We will do everything in our power to ensure no harm occurs to clients, patients and users of services.

“But we need to send a message that we will stand up to protect our pensions.”

Dave Prentis, UNISON General Secretary, 14 September 2011

Industrial action is never taken lightly. 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 take industrial action should be encouraged to do so.

It is important to begin preparations for industrial action now. These guidelines set out the actions branches need to start thinking about in order to ensure the most effective action possible and clarify some of the technical issues and concerns members may have about protection whilst taking industrial action.

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1. Recruit!

This is a significant opportunity to recruit new members and increase active participation in the union. 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. Branches should also seek to recruit new representatives and pensions contacts and champions.

It's important that where we do sign up new representatives or pensions champions and contacts that we give them something concrete to do as soon as possible. Maintaining their enthusiasm and getting them used to doing something for the union makes it easier to go back and ask them to do more!

Our position on pensions is popular with members and non-members because we are visibly standing up for something that they feel is important. Visibility in the workplace is key so make sure that lots of UNISON material is on the noticeboards and that it is kept up to date. Also make sure that UNISON representatives are visible in the workplace.

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

2. Plan your day

Branches, in conjunction with their regional organiser, need to think through organisation on the day of the industrial action. 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 picket and steward armbands as well as placards. Branches should ensure that there is a lead contact for every employer covered by the dispute and that the branch centrally and the regional office have contact details for all these lead contacts.

A key part of your branch strategy should be about communicating with members, offering guidance and reassurance about industrial action plans and their rights and Roles in taking industrial action.

In considering rotas and plans for picketing branches should ensure members are aware which workers will be required to provide emergency cover by their employer. The action will last for 24 hours from midnight and cover all shifts. Further advice on emergency cover is provided in paragraph 7 of this guidance.

Other unions are also balloting their members to take action on the same day as UNISON. However, there are other trade unions/organisations who may be supportive of our dispute but not planning industrial action themselves. It is therefore important to work with the other trade unions at local level to ensure the maximum impact of the strike and any protests. 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 and protests is to demonstrate to the employers and Government our strength of feeling over the current proposals on public sector pensions.

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 much industrial action 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. Contact should also be made with relevant community groups.

A campaign leaflet for the public is available (stock No. 3053) and can be found here: <http://www.unison.org.uk/acrobat/20307.pdf>

There are also other materials on the website – www.unison.org.uk/pensions

As part of their planning for the day, branches should be in contact with their regional office 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.

Prime the press

Use the media to get the case across: local papers; radio; regional media and the professional press. UNISON Focus, 0207 121 5543 infocus@unison.co.uk and the UNISON press and broadcasting office, pressoffice2@unison.co.uk 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. Your region 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.

3. Who can take industrial action?

If an employer has been notified of the intention to ballot, then ALL members of that employer will be participating in the ballot, not just those who are members of the pension schemes. If branches are not clear which employers within their branch are included, they should liaise with their Regional Office to establish this. **If an employer has not been balloted, members in that employer must not be called upon to take action.**

Participation by new UNISON members in industrial action:

New members of UNISON who have been balloted are covered by the industrial action call and can take part in the action. This is a significant opportunity to recruit and branches are encouraged to use it.

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 of 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.

Clarification by the Nursing and Midwifery Council

Following a robust response from UNISON to a statement issued by the Nursing and Midwifery Council (NMC) on 5 October 2011, the NMC has now acknowledged that taking lawful industrial action is not a breach of the nurses' code of conduct. UNISON believes this is true for ALL regulated healthcare professions.

The Nursing and Midwifery Council (NMC) issued a press release on 5 October 2011 which UNISON believed was factually inaccurate as it implied that nurses and midwives could be in breach of their professional code of conduct if they took part in industrial action. UNISON responded to the NMC immediately, making it quite clear that it was prepared to take legal action if they did not revoke the statement.

The NMC had to back down and now recognises that nurses and midwives can take lawful industrial action without breaching their code of conduct. The NMC's statement can be read in full at <http://www.nmc-uk.org/Press-and-media/Latest-news/Nurse-regulator-clarifies-its-position-in-respect-of-possible-industrial-action-by-nurses-and-midwives/>

UNISON is of the view that the same position applies to all regulated healthcare professions (including the Health Professions Council and General Pharmaceutical Council) and nothing in the professional codes prevents a registrant from voting for or taking lawful industrial action. UNISON will not hesitate to take legal action against a regulator or employer if they try to use the Codes of Conduct to mislead or intimidate staff.

4. After the ballot closes:

The result of the ballot was announced on 3 November. Branches were advised by email of the decision on strike action for each of the 7 pensions ballots UNISON conducted: England and Wales: LGPS, NHS and principle civil service pension schemes, Northern Ireland: LGPS and NHS schemes, Scotland: LGPS and NHS pension schemes. Information has also been placed on the UNISON website and is available from UNISON Direct 0845 355 0845.

5. When will the industrial action take effect?

The first day of action will be 30 November 2011 and branches will be notified of any further planned action. The action will commence at 12 midnight and continue for a 24 hour period. Staff who could have part or all of more than 1 shift/rota falling during strike day would only be expected to take strike action on the one that starts during the strike. Such arrangements should be agreed with your regional organiser and the local employer.

6. Picketing

Attached to this document are Guidelines on picketing. (Appendix A). This guidance should be strictly adhered to.

7. Emergency cover

It is the employer's responsibility to provide appropriate emergency cover; this will need to be negotiated locally. Branches should engage in discussions with their employers. Regions are asked to ensure a consistent approach to emergency cover and branches should consult their regional organiser before reaching agreement with employers.

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. 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.

UNISON service groups may issue more detailed guidance to branches on emergency cover in their sectors.

8. Exemptions from industrial action

If industrial action is to be effective, it needs to be hard-hitting and solid. Branches should not be making offers of exemptions to employers, it is normal practice for the employer to request exemptions and we should not normally exempt members we have balloted. A consistent approach should be taken in regards to exemptions.

However branches should consider exempting staff in the following categories: these staff may suffer longer term financial loss from strike action and so should be allowed to work normally on the day:

- Employees currently in their last year of service with their employer who are members of the Scheme. However, those under threat of redundancy, but without a last day of service will not automatically be exempted.
- 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.

If branches are contacted by employers on exemptions, no agreement must be given without referral and approval by the region.

Any members receiving exemptions should be invited to donate a day's pay to the branch industrial action fund.

9. Legal protection for those taking industrial action

All employees are protected from dismissal during the first 12 weeks of any lawful, balloted, official industrial action. During these 12 weeks the protection is absolute. Any dismissal regardless of how long the employee has worked, or their age, is automatically unfair unless a tribunal decides the dismissal was not to do with the industrial action.

10. 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.

11. Annual leave

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

12. 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 correction, 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.

We hope that colleagues from non-striking unions will refrain from undertaking duties which would normally be done by members of UNISON. Branches should ensure they liaise closely with other trade unions and organisations on local activity.

13. 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.

The 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 they should be reported to the DTI.

14. Use of Employers resources during industrial action

Branches should exercise caution when using employers' resources e.g. phones, work cars etc during industrial action. Checks should be made in terms of what the contract of employment or union agreement allows. Any queries should be raised with the regional office in the first instance.

15. Members and/or representatives who may refuse to take industrial action

Obviously we hope for full support of members in any action which is taken. The law is clear and no member may suffer a disciplinary penalty for not participating in industrial action. If a representative refuses to support the action or campaigns against the industrial action, the regional office should be notified. No action should be taken by branches in regards to such representatives.

16. Loss of pay

Branches should seek to negotiate with employers that deductions are taken from the January rather than the December pay packets.

If employers decide to deduct pay from those taking strike action branches are advised to seek agreement at local level for deductions of no more than 1/7th of weekly income (i.e. 365th of annual income) for a single day of strike action. 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. Any queries should be referred to your regional organiser.

17. Hardship Payments

The NEC has indicated that it will not be possible to pay "strike pay" in this dispute.

Branches are able to make hardship payments to members in line with guidelines issued by the National Executive Council.

The NEC has agreed that for the duration of the current pensions dispute a branch can establish a dedicated industrial action fund if approved by a quorate branch committee meeting. For further information on establishing such a fund, raising money for the dispute and making payments

branches should consult the UNISON Scheme for Branch Industrial Action Funds:
<http://www.unison.org.uk/acrobat/B4126.pdf>

Note: due to the scale of this dispute the NEC confirmed that hardship payments should only be made in circumstances of extreme hardship. In considering issues of extreme hardship, branches should adopt criteria to be used for the assessment of financial hardship. These should ensure they are properly defined, and that all members are treated 'fairly'.

Only hardship that is a direct consequence of the dispute can be addressed through the branch industrial action fund – other hardship payments can be referred to UNISON Welfare. Hardship payments should be assessed against criteria approved by the branch and available to all members. A sample claim form for branch use can be found at Appendix E of the Industrial Action Handbook. <http://www.unison.org.uk/acrobat/18193.pdf>

Members should be referred to UNISON Welfare for financial support and advice where it is evident that industrial action has brought pre-existing financial difficulties to the surface rather than being the primary cause of hardship. UNISON Welfare may be able to help with:

- Emergency crisis payments and other financial assistance
- Debt advice
- Support and information
- Wellbeing breaks

For advice or information or to find out how UNISON Welfare might be able to help call 020 7121 5620 – 9am-5pm Monday-Friday or email welfare@unison.co.uk. Members struggling with debt can access immediate advice by calling freephone 0800 389 3302 – 8am-9pm Monday-Friday and 9am-3pm Saturdays or visit Debtclinic, the online version of our debt advice service debtclinic.co.uk/unison. Application forms can be downloaded at unison.org.uk/thereforyou.

Branches may also want to raise the issue of financial support for the industrial action with other local trade unions/organisations who may be supportive but who themselves are not taking industrial action. For the purposes of this dispute only donations made to branches may be retained for hardship use if the branch has an industrial action fund rather than be passed to the region as required by the UNISON Scheme.

Appendix A

GUIDELINES ON PICKETING

Picketing is carried out in furtherance of official industrial action. It is defined as talking to people seeking to enter a workplace in order to encourage others workers not to go in. There is no legal “right to picket” as such but peaceful picketing has long been recognised as a lawful activity. Branches should ensure effective pickets, in line with these guidelines, at each main workplace – at least until mid-day on any strike day.

Every branch should ensure that there is a lead contact for every employer covered by the dispute and that the branch centrally and the regional office have contact details for all these lead contacts.

1 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 it is likely that the courts will give effect to it. Branches should discuss picketing plans with other unions who will be taking industrial action on the day.

Other local unions and organisations may be supportive but not taking industrial action. Whilst not picketing they may be organising other local protests and rallies and early joint liaison should be arranged.

2 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 speak to your local Borough Police Division telling them where you intend to picket and asking 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 lorries and cars 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 where the pickets should stand or parade, and to behaviour, showing of placards, use of loud speakers (particularly if there are private houses nearby) should be scrupulously adhered to.

Any planned protests on employer property should be discussed with the employer in advance.

Should any member be arrested this should be reported to the Regional Office as soon as possible in order that any necessary representations or complaints can be made to the police. Witnesses to an arrest should make a note of the following details:

- 1 Date and time
- 2 The number of police officers involved
- 3 The name of the member arrested

- 4 Any expressed reasons for the arrest
- 5 Any words exchanged between the police officer and the person arrested.

3 PLACE OF PICKETING

Picketing is only lawful if it is carried out by a person attending at or near her/his own place of work. That is the workplace you report to on a daily basis. In the case of members who are mobile or do not report to a fixed workplace then the administrative centre is deemed to be your place of work.

4 ORGANISATION OF PICKET

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 who are taking industrial action and it is advisable that the picket line is balanced between experienced and inexperienced members.

A picket register should be kept which is a record of attendance on picket duty.

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. Account should be taken of work places where there is shift work.

Each picket line should appoint an organiser, whose function is to:

- Ensure that pickets are wearing armbands
- Ensure that there is an official placard of display
- Liaise with branch officers/co-ordinators
- Liaise with the police if required.

You may wish to organise in advance food and drink supplies by possibly setting up an order with a local café or bringing your own refreshments.

5 IDENTIFICATION

Pickets should wear a UNISON picket armband indicating they are on duty. Placards and posters should be displayed stating OFFICIAL STRIKE.

6 PICKETING

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.

Those workers who wish to cross the picket line should be asked not to undertake any other duties or responsibilities other than their own.

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.

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

Always take the opportunity to talk to members of the general public and explain the reasons for the industrial action. You can give them the UNISON leaflet designed for that purpose.

UNISON members who have not been balloted for strike action are not taking part in the strike. Pickets should not try to persuade them to abstain from work.

7 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, not to deliver goods or to enter the work premises, i.e. post, milk, stationery supplies, etc.