



Industrial Action Policy Draft 2017

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1 Introduction

This is a guide to the legal framework governing industrial action and the issues that should be addressed where industrial action is proposed. It applies to all council employees except school teachers and fire fighters (including those dealing with calls for help and organising their response) for whom there are separate policies.

Firefighting and education of those under 17 are considered "important public services" under the Trade Union Act 2016.

2 What is industrial action?

Industrial action, including strike action, is a collectively co-ordinated withdrawal of labour and/or cooperation. There is no legal right to strike but legislation provides a way of ensuring that industrial action can be official and lawful in order to protect employees. Unofficial action is not lawful.

Official industrial action needs to be 'in furtherance of a trade dispute', e.g. disputes about employment terms and conditions; physical conditions at work; recruitment, suspension or dismissal of employees; allocation of work; disciplinary matters; membership or non-membership of trade unions or facilities for trade union officials.

A trade union must organise a secret ballot and secure majority support before notifying an employer of intended action. At least 50% of those eligible to vote must cast their ballot on industrial action for the result to be considered legitimate.

3 Types of industrial action

Industrial action normally involves non-attendance at work for a period of hours or days, and constitutes a breach of contract. This means that employers can claim compensation by withholding pay.

Other forms of industrial action include:

- partial performance of duties
- refusal to carry out reasonable instructions
- work-to-rule or go-slow
- ban on contractual overtime
- withdrawal of goodwill.

<https://www.gov.uk/industrial-action-strikes/overview>

4 National and local disputes

Surrey County Council has local collective bargaining arrangements with recognised trade unions, collectively described as Surrey County Council Trade Unions (SCCTU).



However some categories of staff are still linked to national pay and terms of conditions of employment. These groups include:

- Fire fighters, whose pay and conditions are set are determined by National Joint Committee for Local Authorities Fire and Rescue Service;
- Teachers, whose terms and conditions are determined by the Department for Education;
- Educational psychologists, whose terms and conditions are determined by the Soulbury Committee;
- Adult education workers, whose terms and conditions are determined by and the Adult Education, National Joint Council (NJC);
- Youth and community workers, whose terms and conditions are determined by the Joint Negotiating Committee (JNC).

In the event of any national industrial action by the trade unions to whom our staff belong, these employees are likely to be balloted. In such cases, disputes are resolved by the National Employers' Organisations as outlined above.

5 Notification requirements

The union must ensure that employers are informed of a ballot at least two weeks in advance and provide details of the members that may be subject to ballot including "such information in the union's possession as would help the employer make plans and bring information to the attention of those of his employees".

The union must provide employers with a sample ballot paper not later than the third day before the ballot begins. The ballot paper needs to include:

- o a summary of the matter or matters in issue in the trade dispute to which the proposed industrial action relates;
- o where the paper concerns action short of a strike, the type or types of such industrial action proposed; and
- o the period or periods within which the industrial action or, where relevant, each type of industrial action, is expected to take place

This information will be cascaded to heads of service so that they can start planning.

The union must provide information to the employer about

- The number of:
 - o individuals who were entitled to vote;
 - o votes cast in the ballot;

Commented [PM1]: Changes as detailed in para. 3 of Committee paper.



- individuals answering “Yes” to the question, or each question;
 - individuals answering “No” to the question, or each question; and
 - spoiled voting papers.
- whether the number of votes cast is at least 50% of those entitled to vote; and
 - where the “important public services” requirements apply, whether the number of those answering ‘Yes’ to the question(s) is at least 40% of those entitled to vote

Important public services include fire, health services and education of those under 17. The Council follows the Local Government Association (LGA) definition of essential public services, which includes employees directly engaged in fire fighting activity (including those dealing with calls for help and organising their response), education of 5-16 (this includes teachers but not support staff in schools), and health services (but not health and care services delivered by local authorities). Managers should contact MyHelpdeskHR if they require further clarification on whether a particular role or function falls under the definition of ‘important public services’.

Commented [PM2]: Amended and new ballot requirements as referred to in para. 3 of Committee paper.

Members’ agreement to a union’s proposed industrial action will automatically expire six months after the date of the ballot, unless the council agrees to an extension request from the trade union(s) involved, in which case the mandate can be extended by up to three months (i.e. a total of 9 months from the date of the ballot).

Commented [PM3]: Facility for extension to validity of mandate as mentioned in para. 4 of Committee paper.

Employers must be provided with at least two weeks’ notice before the action begins.

Once the council has been notified that industrial action is to take place, the management cascade will be used to inform managers and employees the actions they are required to take and the likely consequences for pay and other terms and conditions. HR will also be offering advice on the process.

The council may introduce additional measures around the time of industrial action, for example a ban on the use of council IT systems to promote the dispute, and any breach of this ban would be treated as a disciplinary offence.

6 Behaviour

The conduct of those involved in any industrial action is subject to normal behaviour framework and concerns or complaints raised will be subject to the normal disciplinary procedures.

7 Picketing

Picketing of workplaces is protected by law and, at the County Council, has always been undertaken peacefully and courteously. A dialogue is maintained between senior managers, 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 dealt with through the usual disciplinary procedure.

Any picket must comply with the relevant code of practice which now must be under the control of an identifiable picket supervisor.

<https://www.gov.uk/government/publications/code-of-practice-picketing>

8 What is secondary action?

Secondary action is where a picket tries to persuade employees of another organisation to break their contract, for instance by persuading a delivery driver or contract worker not to cross a picket line. It is lawful providing the pickets are outside their own place of work.

9 Guidelines for managers: responding to industrial action

In any dispute, HR&OD will be responsible for promoting an effective working relationship between managers, employees and trade union representatives and will advise services on the required response to industrial action.

Trade unions must give at least two weeks' notice of any official industrial action, to give time to implement contingency plans.

Heads of service should seek to:

- minimise the disruption resulting from industrial action
- maintain essential services, especially for the vulnerable
- ensure that the council's statutory duties are performed
- secure the council's property
- ensure that health and safety standards are met.

They should designate a senior manager (possibly the same person responsible for emergency planning) to co-ordinate a planned response to any action by:

- undertaking contingency planning
- developing a communication strategy.

9.1 Contingency Planning

Step 1: Risk Assessment

The impact of industrial action should be assessed using the same process as any emergency planning, 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

Commented [PM4]: Elaboration on business continuity arrangements, referred to in para. 5 of Committee paper.



is important that employees know that they will not be adversely affected by a 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.

Step 2: Agreed exemptions

Identify the essential services where an exemption should be sought. The union(s) may be willing to help to keep essential services running by giving their members in certain areas exemption from participating in the action.

Step 3: Resourcing

Ensure that adequate resources are allocated for essential work during industrial action:

- Do not grant annual leave on strike days unless it has been pre-booked and authorised some time previously, or is required for exceptional circumstances.
- Reallocate essential work to non-striking members of the work group sensitively, and taking care not to damage their goodwill by asking them to perform additional duties.
- Reallocating work to other groups of employees or using volunteers (e.g. managers) may require additional training, particularly in relation to health and safety. This should happen as soon as possible. You may make reasonable requests for staff to carry out tasks. Reasonableness depends on how important the task is and whether the employee can do it.
- You may need to use temporary staff, contract workers or contractors but be aware agencies are restricted by legislation and may not supply a temporary worker to replace an individual taking part in lawful industrial action.

Step 4: Ensuring health and safety

Employers continue to have statutory duties in relation to health and safety during a dispute. Sometimes the impact of industrial action may affect health and safety provisions. Where possible, introduce alternative arrangements and discuss these with employees in advance.

Step 5: Securing council property

During any dispute, make sure that the following are safeguarded:



- keys and alarm access codes for buildings
- access to depots
- access to fuel
- power, heat and light
- vehicles and their keys
- access to information systems
- access to ICT equipment and systems.

Step 6: Develop a communication strategy

The communication strategy must ensure that council members, the public, the local media, partner agencies, trade unions and employees are kept informed. In the event of a general ballot, there should be a countywide statement of the managerial position. All employees need to be notified of the consequences of participation in industrial action. HR&OD will work with Internal Communications to draft appropriate information.

The communication strategy should aim to

- keep day-to-day links with trade union representatives to resolve difficulties without jeopardising essential services.
- inform employees about the management position on the dispute, and the potential consequences that may result from industrial action (e.g. deductions from pay)

Step 7: 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, members, press and media, etc.
- the Council will need to make the appropriate deductions from the contractual pay of employees who withdraw their labour as part of industrial action, such as a strike or a contractual overtime ban.

Managers need to ensure the availability of a recording and reporting system to monitor the extent of the action- ideally through SAP or other secure electronic means.

Step 8: Review the plan

Any contingency plan needs to be kept under review and include apparatus to provide quick and effective decisions and responses to changing situations.



10 Information about pay and benefits

10.1 Deducting pay for strike action

Industrial action is a breach of contract and employers are entitled to damages. In the absence of a contractual agreement to the contrary, the level of damages is calculated by assessing the loss arising from contractual duties that were not performed. That loss is normally worked out by dividing the annual salary by the number of working days (i.e. 260) and deducting pay appropriately.

If the industrial action is for less than a day, such as a two-hour work stoppage, then the hourly rate of pay will be used for the calculation of any deductions. Employees who are paid by the hour, work to term-time only contracts, or have an irregular working pattern, will simply not receive pay for any hours not worked as a result of their participation in industrial action.

Employees must be reminded prior to the commencement of strike action that they will not receive pay for the period they are on strike, and managers should attempt to discern which staff will be absent during the strike and inform the Shared Service Centre. It is important that employees involved in any action are not paid by default. A spreadsheet to provide to Employee Services information about those participating in industrial action is on snet

Employees who fail to attend work on the day of any planned industrial strike action will be assumed to be involved in strike action, for which pay will be deducted.

10.2 Deducting pay for action short of a strike

If an employee attends work but refuses to carry out part of their normal duties – ‘partial performance’ – they could be considered to be in breach of their contract of employment and it may be appropriate to deduct a proportionate amount of pay. Pay deducted should be based on an estimate of the damage caused. Any deduction will be a fair proportion of the pay, not a penalty.

Where the industrial action is short of a strike and involves the employee refusing to work in accordance with their contract, including the essential requirements of the job, it may be lawful to deduct pay for the total period of the action. Although this will be rare, it may apply even though the employee has attended work and has agreed to perform some duties. The council will determine its approach to partial performance of the contract according to the nature, frequency and severity of each instance of proposed industrial action.

A consistent approach will normally be applied by the council to all those employees participating in the industrial action. Where a manager requires clarification with regards to any proposed deductions of pay for industrial action short of a strike, they should contact HR for advice.



10.3 Non attendance

The council can treat an employee who is not directly involved in the dispute but who refuses to cross a picket line as taking part in the strike. Services should ensure that employees who want to work are not prevented from crossing picket lines.

If the council considers that an employee has done everything reasonable in the circumstance to come into work but has been prevented by events outside of their control, it may decide not to treat the absence as industrial action.

10.4 Pension

Pension contributions are not payable for days missed due to industrial action, and that service is lost for pensionable purposes. Employees who are members of the Local Government Pension Scheme who are absent from duty due to industrial action have the opportunity to buy back "lost pension" in relation to the pay lost during the period of action. More information on pension arrangements, including those that apply to members of other schemes, is available through MyHelpdeskHR.

10.5 Sickness absence

Employees who are absent due to sickness during periods of industrial action should be paid for the period of absence as normal and not treated as being on strike, unless they explicitly express such a wish.

Where practicable, managers should request employees to submit a medical certificate to cover any sickness absence that overlaps with a period of industrial action, even if the duration of the absence would have allowed for self-certification under normal circumstances. The council will reimburse employees for any fees charged by their GP, or other medical professional, for issuing such a certificate.

Commented [PM5]: Amended to align with sickness absence policy, as detailed in para. 6 of Committee paper.

10.6 Annual and other leave arrangements

Normal pay arrangements will apply to authorised leave during industrial action.

Where annual leave has been authorised in advance of the industrial action, it should be granted having regard to the needs of the service and normal pay will apply. However, any unauthorised absences should be regarded as "absence on strike".

Managers may wish to consider carefully any requests for special leave, annual leave or TOIL at short notice before a period of industrial action. Managers should encourage employees who do not participate in the action to work as usual. There may also be a need for temporary changes to be made to flexible working arrangements such as working 'compressed hours' and/or from home, however managers need to consider the potential impact on any affected employees who are not participating in industrial action..



Bank or public holidays occurring within a period of strike will be treated identically to other paid holidays. The council will deduct the appropriate amount of pay for employees who work on a shift rota system, are scheduled to work on a public holiday, and withdraw their labour as part of industrial action.

If the day of a strike coincides with an employee's non-working day, the day should be treated as a non-working day.

10.7 Continuous service

Continuous service is not normally broken by strike action.

11 Returning to work from industrial action

Once a period of industrial action has ceased, a full return to normal work should be achieved as early as possible. It is imperative to maintain good relations within teams.

Employees who have taken official industrial action should know that a decision to participate will not adversely affect them. Restorative meetings may be a useful way of ensuring that the team spirit is not affected in particular for teams including union members who did not take part in the action.

Commented [PM6]: Amended to align with policy on Bank Holidays, as detailed in para. 6 of Committee paper.

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