

Industrial action

Information and advice for members



The Association of Teachers and Lecturers exists to promote the cause of education in the UK and elsewhere, to protect and improve the status of teachers, lecturers and non-teaching professionals directly involved in the delivery of education, and to further the legitimate professional interests of all members.

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Trade unions use industrial action in collective disputes. You should not take it lightly and we only use it as a last resort. The law sets out the detailed requirements of the procedure for industrial action ballots, and employers can respond to the action with a range of penalties, including, in certain cases, dismissal.

This booklet aims to set out in an accessible and practical format:

- our policy and approach to industrial action;
- the legal requirements of industrial action;
- the procedures used when action is being considered and taken; and
- our response when other unions are taking industrial action in which our members are not involved.

The appendices provide:

- a check list and timetable for taking industrial action;
- a model ballot form; and
- an explanation of the penalties that you may face if you take part.

Although this guidance is mainly aimed at members in maintained schools and colleges in England and Wales, it also applies to members in the independent sector. The law about industrial action in Northern Ireland is different from elsewhere in the UK. So if you live in Northern Ireland and are considering taking action, you should contact your branch secretary or Executive Committee member, who will contact us.

The explanation of the complicated requirements of industrial action given in this booklet is not a complete statement of the law.

If you are considering taking industrial action, you should involve your local Association of Teachers and Lecturers (ATL) representative and get advice from us.

Disputes can arise at any of the following three levels:

- within a single institution or service (typically over a suspended pupil returning to school or a decision on salaries)
- on a branch-wide basis (for example, over a local authority's funding policy)
- at national level (when a dispute arises with the Government over a national policy).

There is practical guidance about ballots at each of these levels in section four on page 10.

Resolution, not confrontation

We always try to settle disputes through resolution rather than confrontation. Our branch officers, national casework officials, regional officers and headquarters staff have considerable experience and expertise in settling disputes. You should get help from this network at an early stage before problems get worse. The longer a dispute continues, the more likely it is that people will become fixed in their positions, communications will become more difficult, and decisions will be made which are hard to reconsider or reverse.

Both sides in a dispute need to be aware that once industrial action is taken, this can distract you from sorting out the original problem. In all cases, our policy is to maintain communication between everyone involved and work towards a satisfactory solution.

We regard any form of industrial action to be a last resort.

A means, not an end

While industrial action is taking place, it is important to concentrate on sorting out the dispute and assessing how likely the action (with its risks) is to achieve the desired outcome.

Industrial action can be useful for achieving an aim, but you must not see it as an aim in itself.

Advice, not instruction

One of our basic principles is to advise, not instruct, our members. So we may authorise and encourage members to take part in industrial action, but we will not instruct them to do so.

We have always respected the right of individual members to act in the way that they believe is right.

You may be unwilling to take industrial action, either because of personal beliefs or because you are against the particular cause in question. Other members should be ready to respect this.

Support

If you take part in industrial action which we approve and authorise in line with the procedure set out in this guidance (official and lawful industrial action), we will give you our full professional support.

However, if you are considering taking industrial action, you need to be aware that you may face penalties from your employer (see page 26). These may include deductions from your salary. We do not have a 'strike fund' to refund members who suffer pay deductions for taking industrial action. People who vote to support or take part in strikes or other industrial action must not assume that we will repay them for any losses they may suffer, even if the action has been authorised. The Executive Committee's Defence Committee will consider each case individually and will only approve refunds in exceptional circumstances.

By law, employers have the right to dismiss staff who take part in unofficial or unlawful industrial action. It is very dangerous to take part in industrial action without the support of the union or without following the necessary balloting procedure (or both). We will not support you if you take unofficial or unlawful action.

The constitutional position – the '60% rule'

Our aims, as set out in ATL's *Constitution and Rules*, include:

- promoting education generally in the United Kingdom, Northern Ireland and elsewhere;
- protecting and improving the status of, and developing the legitimate professional interests of teachers, lecturers and others involved in delivering education; and
- helping, protecting and supporting any members who take industrial action after receiving approval from our Executive Committee.

Our Annual Conference (then called the 'Assembly') passed the following resolution in 1979.

'Assembly affirms that it is not opposed to industrial action but that where possible any such action shall be taken after consultation with the members.'

This was expanded by another Conference resolution that was passed in 1986.

'Assembly instructs the Executive Committee when appropriate to ballot all members directly affected by a dispute and advise them to take industrial action if 60% or more of those voting indicate support for such action.'

This means that we will normally declare industrial action to be official (that is, you will be

authorised to take part) if at least 60% of those voting in a lawfully organised ballot support it. The 60% figure applies to the number of votes cast, rather than to the number of members who are eligible to vote.

If a majority of less than 60% support industrial action, the Executive Committee (and those officers who have the power to authorise industrial action – see page 15) can decide whether to approve the action.

The Action Committee

Our Executive has appointed an Action Committee of national officers, committee chairs and other Executive members. It is responsible for the following tasks.

- Advising the Executive Committee on all aspects of industrial action, and in particular:
 - a** the advice given to members and how it should be given out;
 - b** whether any particular group of members need different or more detailed advice;
 - c** changes in legislation which could affect the industrial action by members; and
 - d** how members will be affected when other unions take industrial action, and the advice that we need to give to members when they are not taking industrial action.
- Advising the Executive Committee on the advantages and disadvantages of any form of industrial action in which our members may want to get involved in the future.

What is industrial action?

There is no precise definition of industrial action in employment legislation. Put simply, it is either a strike, 'any concerted stoppage of work' (Trade Union and Labour Relations (Consolidation) Act 1992, section 246) or industrial action other than a strike. This includes 'working to rule', refusing to do certain duties and not co-operating with the employer. Disturbingly for staff (and unions), cases suggest that although industrial action normally involves employees breaking the terms of their contracts, there can still be industrial action if this is not the case. Perhaps the simplest definition of industrial action is 'a refusal by employees to do something, which is used as a bargaining weapon against the employer'.

If a strike is being considered, it could be:

- a half-day strike;
- a full-day strike;
- a series of one-day strikes; or
- a continuing ('all-out') strike.

In educational institutions, 'other industrial action' includes:

- refusing to prepare classes and mark work;
- refusing to provide cover for absent colleagues;
- refusing to follow the directions of a headteacher or principal;
- refusing to go to out-of-hours meetings;
- refusing to do extra or unreasonable workload or duties; and
- refusing to teach or supervise a particular pupil or student. (This is, in practice, the most common issue leading to industrial action.)

Liability and immunity

When a trade union organises industrial action, it faces the prospect of legal action from the employer for committing an 'industrial tort' (for example, by causing someone to break the terms of their contract). If the law did not offer trade unions some protection, actions for compensation for the economic consequences of organising industrial action would easily bankrupt them, and the threat of legal proceedings would prevent unions from ever taking industrial action, removing their power.

It is for this reason that, ever since the 1906 Trade Disputes Act, legislation has given trade unions limited immunity from the legal consequences of organising industrial action. They are protected from court action as long as they meet the legal requirements. During the 1980s, the Conservative Government tightened the rules which unions must follow before they can get this immunity. The current requirements are set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) as amended.

To protect their members, trade unions must make sure that industrial action is:

- **official** (authorised by and, effectively, organised through the union); and
- **lawful** (in line with the statutory rules outlined below).

If you take action which is unofficial, you may be dismissed (see page 28). If a union authorises unlawful action, the employer may take legal action to get compensation or an injunction to halt the action.

Lawful industrial action

To be lawful, industrial action must meet four requirements.

1. Trade dispute

It must be a dispute between workers and their employer relating (wholly or mainly) to:

- terms and conditions of employment, or the physical conditions at work;
- hiring, firing or suspending staff, and sharing out work;
- discipline;
- union membership;
- facilities for union officials; or
- machinery for negotiation, consultation or union recognition.

(SECTION 244, TULRCA 1992)

Note: The dispute must be between the workers and their employer, and also over a trade dispute issue. If industrial action is not related to a trade dispute matter (if it is over a political issue, for example) it may be considered to be unlawful.

2. Secondary action

It must not involve 'secondary action', that is, action taken by the employees of an employer who is not involved in the dispute.

3. Unlawful picketing

It must not involve unlawful picketing. In simple terms, picketing is only lawful if it is at or near your place of work (or previous place of work) or, in the case of union officials, at or near the place of work of members. The picketing must be in relation to a trade dispute, and must only be done to peacefully collect or communicate information or to persuade a person to work or stop working. The Department for Education and Skills has produced a code of practice on picketing.

4. Secret ballot

There are complicated rules about the process of balloting for industrial action. You must now meet 17 requirements (see panel opposite). These rules mean that it takes at least three weeks for a union to recognise lawful industrial action. (In practice, it will normally take longer.) Section four on page 10 sets out how these requirements are met in practice.

Our procedures follow the September 2000 Department of Trade and Industry *Code of practice on industrial action ballots and notices to employers*. The procedure for balloting and calling industrial action is set out in a step-by-step sequence in section four.

Rules governing the balloting process

- 1 The employee must be given at least seven days' written notice of the intention to hold a ballot.
- 2 The notice must give information as to which employees will be balloted (although it does not need to name them individually).
- 3 At least three days before the voting begins, the employer must receive a sample ballot paper.
- 4 The ballot must be fully postal (balloting in the workplace is no longer allowed).
- 5 The method of voting must be by marking a ballot paper (not by a show of hands).
- 6 All members who are reasonably expected to take part in the action must be given an opportunity to vote (as far as reasonably practical).
- 7 The ballot paper must contain a legal statement alerting voters that they will be breaking their contract if they take part in the industrial action and may be dismissed for taking part.
- 8 The ballot paper must say who in the union is authorised to call or approve the action.
- 9 The question must require a simple 'Yes' or 'No' answer.
- 10 If a range of actions is proposed, members must be able to vote separately on each one.
- 11 Individuals must be able to vote without interference from the union.
- 12 The voting must (as far as is reasonably practical) be secret.
- 13 Individuals must be able to vote (as far as is reasonably practical) without cost to themselves.
- 14 A named independent monitor (known as a 'scrutineer') must be appointed to oversee the ballot if over 50 employees are entitled to vote.
- 15 The union must tell members the result as soon as is reasonably practical after the ballot.
- 16 At least seven days before the industrial action is to start, the union must give written notice to the employer of when the action will start and which members will be taking part.
- 17 The industrial action must start within four weeks of the ballot (unless the union and employer agree to extend this period).

Employment legislation, together with the Department of Trade and Industry *Code of practice on industrial action ballots and notices to employers*, requires trade unions to follow a detailed procedure when considering, balloting for and calling industrial action. These rules are explained in section three on page 6. We will meet these requirements to make sure that any industrial action our members take is official and lawful.

Before we will consider authorising official industrial action, we will do the following:

- consult
- communicate the result
- approve the balloting procedure
- decide on authorisation
- ballot.

If members fail to follow the procedures described in this guidance, we could be forced to declare the industrial action unofficial. The employer then has the option to dismiss employees who were involved.

Consultation and negotiation

The 1979 Annual Conference resolution discussed on page 4 made clear that industrial action should only be considered after consulting the members, wherever possible.

As industrial action is a last resort, it is highly important that all other avenues towards a solution are fully explored. The Department of Trade and Industry *Code of practice* expects all other options to have been exhausted.

In the case of a local dispute, the options usually include:

- meetings and discussions with management and employers (which may include the headteacher or principal, the governors or the local education authority);
- correspondence with management and the employer;
- meetings of the members of the Association of Teachers and Lecturers who are involved;
- meetings with members of other unions or their officials or representatives;
- a declaration of a formal collective dispute on the issue, if there is a procedure available; and
- involvement of external agencies (such as the Advisory, Conciliation and Arbitration Service) to find a satisfactory solution.

Before a dispute within a school or college gets worse, it is very important that you get independent help (normally through your union representative).

We have a local network of branch and Executive Committee representatives and also of caseworkers (regional officials and national casework officials) with considerable industrial relations expertise. Either directly or through the caseworker involved, you must be in contact with the local branch secretary or member of the Executive. This is important because if industrial action is proposed, it is the Executive Committee (and its officers) who have the power to authorise it. If you have any difficulties in contacting these officials, the ATL representative in the school or college should approach us directly so that you can get local support as soon as possible.

Any decision to hold a ballot on industrial action should be made at a meeting of the members involved at which the local branch secretary or member of the Executive is present.

The balloting procedure

If industrial action is being considered after negotiations have failed and the consultation process described above has been completed, the balloting procedure must then be carefully followed. Our Executive Committee is responsible for approving the ballot and the decision about authorising industrial action. For this reason, any school, college or branch considering a ballot must make sure that they approach one of the local Executive members.

In practice, the balloting process (that is, the timing, content and administration of the ballot) is normally overseen and administered by experienced staff in the Legal and Member Services Department of headquarters (usually by one of our in-house solicitors). The decision to authorise action is then made by the President, one of the national officers or the General Secretary in consultation with local officials and representatives, and staff at our headquarters.

If the members involved in a dispute work in different places, it may be legally necessary to hold a separate ballot for each workplace. Specialist staff in the Legal and Member Services Department of headquarters can advise you about this. Preparations for the ballot will include the following.

- **The drafting of the ballot paper.** This should include:
 - the industrial action or actions that members are to vote on;
 - the date the ballot will close;
 - the officers who can authorise the action; and
 - certain other details needed by law.

The ballot paper is normally drafted at our headquarters, in consultation with local officials and representatives. (For a 'model' ballot paper, see page 25.)

- **Formal notice to the employer**, giving them at least seven days' notice of the opening of the ballot and giving information about who will be asked to vote (members no longer have to be named individually). Again, our staff will normally do this. It is our usual practice to include with this notice to the employer a copy of the proposed ballot paper and send a copy to the headteacher or principal, as appropriate.

Careful consideration may need to be given to the identity of the employer. In the case of local authority community and voluntary-controlled schools (and also centrally employed staff), the employer will be the local education authority. For voluntary-aided and foundation schools, it will be the governing body. For further education colleges, the notice will normally be sent to the principal as the chief executive of the corporation.

- **Confirmation of the list of members in the 'voting constituency'** (the institution or branch, as appropriate). By law, we need to know who is eligible to vote (and later take part in any action) so we rely on our central computer record of members. It is very important that this record is updated before the start of the balloting process.

Every member who we believe will be invited to take part in any later industrial action is entitled to vote in the ballot. No other member may do so. Student members or those on teaching practice or on secondment to the school or college where balloting is taking place should be balloted if they will be authorised to take part in the action. 'Late joining' members are entitled to vote (see page 16).

Even if there is a very small number of members (or perhaps just one) in an institution where we are considering industrial action, a formal ballot will still normally be needed.

If members at an institution fail to follow the procedure above or decide to take part in industrial action before the result and proper authorisation, this would result in the action being unlawful. In these circumstances, we might have to declare that the action is unofficial (a process known as 'repudiation'), leaving the members unprotected and exposed to serious penalties from their employer (see page 28).

The ballot itself

The ballot is supervised by the Executive Committee and, in practice, is normally administered by specialist staff in the Legal and Member Services Department at our headquarters.

The legal requirements

The legal requirements are as follows, with our practice in italics.

- **The ballot must be fully postal.** *(We normally send the ballot paper to members' work places, unless people have specifically asked us to send to their home address.)*
- **The method of voting is by marking a ballot paper with a 'Yes' or 'No' answer** *(not, for example, by a show of hands at a meeting).*
- **The ballot paper must contain certain information**, such as the date by which it must be returned, who in the union is entitled to authorise the action, a warning that the action would mean that you are breaking your contract, and a statement about the rules as to the fairness of any dismissal for taking part. *(See the model ballot paper on page 25.)*
- **The type of industrial action proposed must be shown on the ballot paper** – and in particular whether a strike, or any action other than a strike, is being considered. *(When a range of actions are being considered, it is our practice to invite the members to vote on each one separately.)*
- **The employer must be sent a copy of the ballot paper** at least three days before the opening of the ballot. *(Our normal practice is to send this to the employer with the formal 'seven-day notice' of the ballot – see page 12.)*
- **The members must be allowed to vote without interference, without cost and in secret.** They must be allowed a reasonable opportunity to vote. *(We allow members several days to return their ballot forms and always send them a pre-paid envelope. As recommended by the Department of Trade and Industry 'Code of practice', we number the ballot papers individually to make sure that there can be no improper 'duplicate' voting. To make sure that voting is secret, we do not keep a record of which member receives which numbered ballot paper.)*
- **In the case of a ballot involving more than 50 employees**, the ballot must be overseen by a named independent monitor (known as a 'scrutineer'). *(We normally approach Electoral Reform Ballot Services to act as monitor where necessary.)*
- **The members involved and the employers must be told of the outcome.**
- **Employers must be given at least seven days' notice of the start of the action.**

Because we need to follow these procedures, the process for calling industrial action takes at least three weeks and normally longer than this in practice.

School and college ballots

In the case of a ballot at a single institution where fewer than 50 members are involved, the process is carried out by our staff.

Our normal practice is to send a letter to each member involved individually, setting out the circumstances of the dispute and the timing of the ballot, and enclosing an invitation to vote and the ballot paper. (If members do not already know the facts, we may include a separate information sheet on the background and issues involved.) We ask members to return the completed ballot papers to a named individual at our headquarters by a certain date in the pre-paid envelope provided. A model ballot paper is included on page 25.

If more than one union is balloting their members in one workplace over the same dispute, it is often sensible to co-ordinate arrangements for balloting on (and calling) industrial action, where this is practical.

When the date and time for the closure of the ballot arrives, the named member of our staff (normally one of our in-house solicitors) will count the returned ballot papers and store them securely for at least six months so that they are available for checking if the need arises.

Branch and national ballots

If the proposed industrial action involves a whole branch or a larger constituency, or if more than 50 members at one workplace are to be balloted, an independent monitor (known as a 'scrutineer') needs to be appointed. We normally use Electoral Reform Ballot Services. The monitor's main task is to oversee the ballot and give a formal report to the union on how it was carried out. However, as advised by the Department for Trade and Industry's *Code of practice on industrial action ballots*, our normal practice in these larger ballots is to ask the monitor to administer the ballot.

The independent monitor is involved (with our staff) in preparing the ballot papers, and then:

- distributes the ballot papers to the members;
- receives the completed ballot papers;
- counts the votes and gives the union the vote; and
- keeps returned ballot papers.

The monitor's report after the ballot must say whether he or she is satisfied that the ballot was carried out in line with the legal requirements. It must be produced within four weeks, and copies of the report made available to the members involved and to the employer for the following six months after the closing of the ballot.

Announcing the result

As soon as is reasonably practical, we will give the result of the ballot to those who were entitled to vote and to the employer. Our staff at headquarters will normally do this and will also prepare formal letters setting out:

- the number of votes cast in the ballot;
- the number of people who voted 'yes' to the question or questions;
- the number of individuals who voted 'no' to the question or questions; and
- the number of spoiled ballot papers, if any.

For school and college ballots, we will normally send this notice to the school or college representative to advise their ATL colleagues. We will send the letter for the management side to the formal employer of the staff, and will normally send a copy to the headteacher or principal.

If the dispute is branch-wide, or has regional or national significance, members may learn the outcome through the media before they receive official notice. (Indeed, publicity may well be an important part of an action campaign.) In these cases, we will meet our responsibility to tell members the result, normally through workplace, branch or national notices or newsletters as appropriate.

Authorising industrial action

If the timescale allows, our full Executive Committee will decide whether to authorise official industrial action. If this is not realistic (as is often the case), we will pass authority to authorise action to each of the senior national officers (the President, the Senior Vice-President and the Junior Vice-President) and the General Secretary, in that order.

By law, only a simple majority of those voting need to be in favour of industrial action for the union to authorise it. However, in line with the policy established at our Annual Conference in 1986 (see page 4), the decision is governed by the following rule:

- if 60% or more of the members voting are in favour of industrial action, we will authorise members to take the action
- if a majority, but less than 60%, of the members' voting is in favour, the Executive Committee (or the appropriate person as above) will decide whether to authorise the action.

Members should be aware that just because action has been authorised, it does not mean that it can start immediately, as the employer needs to be given at least seven days' formal notice (see page 13). Also, if we authorise the action it does not mean that we will pay back any amount that your employer takes from your salary (see page 4).

Although unions must be careful only to authorise those members who have the opportunity to take part in the ballot to be involved in the industrial action, the Department of Trade and Industry *Code of practice on industrial action ballots and notices to employers* makes it clear that unions can allow members who have joined after the ballot to take part.

Notifying the employer

Once industrial action has been supported in the ballot and we have authorised it, the next step is to notify the employer that industrial action is to begin. At least seven days' notice must be given of the start of the industrial action.

The notice must say whether the action will be continuous (for example, an indefinite strike or a continuing refusal to teach a pupil) or discontinuous (for example, a series of one-day strikes). In the case of discontinuous action, the union must give at least seven days' notice of each occasion on which the industrial action will be taken. The notice must also give the employer information about which employees will take part (members no longer have to be identified by their name).

If we authorise the action soon after the result of the ballot, the letter informing the employer of the result can also tell them when the action will start. We will normally send the headteacher or principal involved a copy of the letter saying when the action will start.

Taking industrial action

By law (unless there are other legal proceedings or the employer agrees an extension), the industrial action must start within four weeks of the date of the ballot (that is, when the ballot closes).

In disputes that arise towards the end of term, care must be taken when considering the timing of the ballot to make sure that the four-week rule can be followed, taking account of school holidays.

Once the industrial action has started within the four-week limit, it can continue indefinitely. There is no formal requirement to ballot the members again after a certain length of time. However, if the action is suspended by the union (for example, if more negotiations are needed) the employer must be given seven days' notice of the action starting again, unless they have formally agreed to the suspension.

As we said before (on page 3), it is very important to focus on sorting out the dispute while the industrial action is taking place.

Our policy

Our members can be in a difficult position if another union is taking action but they are not. Teachers and lecturers who are ATL members may have sympathy with the other union's cause, or may want to join their colleagues and take part in their action. However, the legal position in these circumstances is clear – industrial action by a union member is unlawful if the formal notice, balloting and authorisation processes have not taken place. We advise our members very strongly against taking part in action taken by other unions if we have not held a ballot.

Our advice to members in this situation is that they should tell the headteacher or principal (normally through their school or college representative) that they:

- are not taking industrial action as they are not in dispute with the employer; and
- are available to work normally, but they are not willing to accept arrangements which undermine the industrial action of colleagues.

Closing the school or college

If major industrial action is being taken by a significant number of staff, the headteacher or principal may decide to close the school or college.

In this situation, our members should tell the management, as above, that they are not taking part in the action and that they are available to work normally.

They may well need to confirm this by arriving at the premises as normal to register their presence, unless other arrangements are agreed.

Picket lines

If the other union or unions are picketing outside the premises, our members who are working as normal must be prepared to cross picket lines, even though this may cause some embarrassment or opposition from colleagues. If the situation is hostile and there is a real risk of physical confrontation or assault, members should get advice from their local ATL regional official or branch secretary so that the issue can be tackled with the other union or unions and the employer, as necessary. It may be necessary to formally tell the employer that you are not taking part in the action but are being physically prevented from coming to work.

You may, of course, decide not to cross a picket line and so fail to go to work. However, your employer may consider you to have broken your contract and may withhold your salary.

If a group of our members decide collectively not to go to work in sympathy or co-operation with their colleagues, the employer may regard this as unlawful industrial action. It is unlikely that our support would be available here, as we would have to consider the action as being unofficial.

Working normally

When colleagues are taking industrial action where we have not held a ballot, our members must work as normally as they are able to. As they are not involved directly in the dispute, they must not act as if they are taking action. At the same time, however, we support the principle that our members should not undermine their colleagues' action.

With this in mind, our representatives and members in maintained schools should be aware of the provision in the School Teachers' Pay and Conditions Document that headteachers must give 'reasonable' instructions. The question of reasonableness is often a delicate one and will vary according to the particular circumstances. However, if an instruction is clearly unreasonable, it can legitimately be refused.

Although it is not possible here to give definite or comprehensive guidance, we will normally consider it unreasonable for members to be asked to:

- take over the work of colleagues who are involved in industrial action, other than in exceptional circumstances (we appreciate that members will not want to put the health and safety of their pupils or students at risk and will co-operate in situations of genuine emergency);
- take on more work than usual, or accept more responsibilities or duties as a result of colleagues taking industrial action; or
- agree to combine groups of pupils or students, or divide one group between others, as a result of colleagues taking industrial action.

In some circumstances, it may be reasonable for members to co-operate with the headteacher in procedures such as 'totting up' so that the effect of industrial action is given full recognition but arrangements are made to allow other work at the school to continue. ('Totting up' means adding up the teaching time that pupils or students miss as a result of the industrial action and then dividing it between teaching groups so that classes are normally sent home on a rota basis.) These arrangements should be agreed with all the teachers' unions that are represented in the school or college.

We respect the right of each member to do whatever he or she thinks is right, and expect their colleagues to do likewise. At the same time, we recognise that the issues of working normally and of reasonableness can be complicated. It may be appropriate for members or school and college representatives to get guidance from their branch secretary or Executive member, or their local regional official, if they want to discuss their position.

Most headteachers and principals in situations of industrial action are fully aware of the problems which can arise over proposals to 're-allocate' work. However, if it is necessary to refuse a request or instruction, it should be made clear that this is on the joint grounds that the instruction is unreasonable and that it undermines the action of the other union or unions. Our members need to make it clear that they are not taking industrial action.

6 Deputy headteachers and vice-principals

We appreciate the sensitive position of deputy headteacher or vice-principal members at a time of industrial action (whether it is being taken by other unions or by us). There can be anxious or difficult conflicts of loyalty for those who are key members of the management team (and who may be asked to deputise for the headteacher or principal) but who are also committed members of the union.

There is no simple advice we can give to sort out these tensions, other than acting with care, openness and professionalism. Deputy and vice-principal members should decide on their response to, and involvement in, industrial action on the basis of their knowledge of the circumstances of their institution. It may be helpful to get advice from their local branch secretary or Executive member, regional official or caseworker if they find themselves facing difficulties.

At times of industrial action, it is particularly important for deputies or vice-principals who belong to the Association of Teachers and Lecturers to maintain contact with both their teaching or lecturing colleagues and other members of management, and to keep up to date with the local situation.

Deputies and vice-principals should be free to act as they want – they are entitled to take industrial action with their colleagues or to decide that, as a member of the institution's management, they do not want to do so. If the deputy or vice-principal decides to take part in the action, they should tell the headteacher or principal and give their reasons. In schools and colleges where there is a good relationship between the members of senior management, the issues should be readily understood and easier to sort out.

The Association of Teachers and Lecturers' support, advice and other services are always available to members who are deputies and vice-principals.

Industrial action by the headteacher or principal

There will be times where the headteacher or principal is a member of another union taking industrial action and they decide to take part in it. We will not normally consider it reasonable for a deputy or vice-principal to take over some or all of the tasks normally undertaken by the headteacher or principal in these circumstances.

Even though the contract or job description may provide for a deputy or vice-principal to deputise, the principle of not normally being prepared to undermine the industrial action of colleagues applies here. The deputy or vice-principal may need to tell both the headteacher or principal and the employer (the chair of governors or the LEA, or both) that he or she is not prepared to take over these additional responsibilities. Again, it may well be wise for the ATL member concerned to get advice from headquarters.

Acting headteachers and principals

If the headteacher or principal is absent (for example, on sick leave) at the time of the industrial action and an ATL member is 'acting up' in that role, he or she will need to decide as acting headteacher or principal how to respond. It may be that health and safety considerations lead to the school or college having to close. If this is necessary, the acting headteacher or principal should consult the senior management team, the chair of governors or the LEA and, where practical, the headteacher or principal.

If the institution stays open, acting headteachers or principals should respect the views of colleagues who are taking industrial action and, while fulfilling the responsibilities of management, take account of the importance of maintaining good long-term working relationships.

Allocating work

During a period of industrial action, our members who are also members of the management team may be responsible for allocating work to colleagues (for instance, arranging cover for absent colleagues in a situation of 'no cover' action). In carrying out this task, they should, as far as possible, follow the established practice and respect the principle above. Staff should not be asked to undermine the industrial action of colleagues by doing work which other people have refused.

Appendix A: Chronological check list for industrial action

1. Consultation and negotiation

- Involvement of national Executive Committee member, branch secretary or local caseworker.
- The discussion and negotiation procedures for the dispute have been exhausted.

2. Meeting of our members

- Our members will meet either at the workplace or at branch level as appropriate (with local officers present) to decide whether to proceed to a ballot.

3. Involvement of our headquarters

- Contact is made with our Legal and Member Services Department who will administer the process.
- We will set a timetable for the ballot.

4. Notice of the ballot to the employer

- We will send a letter giving at least seven days' notice of the opening of the ballot to the employer.

5. Draft ballot paper

- We will prepare a draft of the ballot paper in consultation with local officials.

6. Prepare a list of voters

- We will make any amendments to the membership database.

7. Independent monitor

- If more than 50 members are involved, we will appoint an independent monitor.

8. Ballot paper to the employer or employers

- If not already sent (see 4 above), we will send a copy of the ballot paper to the employer at least three days before the ballot opens.

9. Resolution efforts

- Communication with the employers or management continues to try to sort out the dispute.

10. Further information

- Where necessary, we will prepare further information about the dispute and the proposed industrial action for members.

11. Distribution of ballot papers

- We will post ballot papers to the members involved, with a covering letter and a pre-paid envelope for their return.

12. Voting

- Voting takes place, normally over several days.

13. Working as normal

- While the balloting process is underway, members work as normally as possible.

14. Ballot result

- The votes are counted after the closing date, either by the designated member of staff at our headquarters or by the independent monitor.

15. Authorisation of action

- If there is a vote in favour (and in line with the '60% rule' – see page 4), the authorised officer of the Executive Committee or the General Secretary decides whether to authorise industrial action.

16. Notice of the result

- We will send formal notice of the votes cast and the result to the school or college representative and, where possible, this will be accompanied by a decision on whether to authorise the action.
- We will send the employer formal notice as well.

17. Notice of action

- If not already notified in 16 above, we will send a letter to the employer.
- We must give at least seven days' notice of the start of the industrial action.

18. Industrial action begins

- The action must start within four weeks of the closing of the ballot.

Appendix B: Model ballot paper for industrial action

Ballot paper number _____

Association of Teachers and Lecturers

.....School or College

Ballot for industrial action BALLOT PAPER

Are you prepared to take part in industrial action other than a strike, ie.....?

Please put a cross in the box of your choice below.

Yes No

If you take part in a strike or other industrial action, you may be in breach of your contract of employment. However, if you are dismissed for taking part in a strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than eight weeks after you starting taking part in the action, and depending on the circumstances may be unfair if it takes place later.

If there is a vote in favour of industrial action, the Executive Committee and the following senior officers in order of priority can to authorise the action or ask members to take part (or continue to take part) in industrial action – the President, the Senior Vice-President, the Junior Vice-President, the General Secretary.

Your vote will be secret. The Association of Teachers and Lecturers will cover the cost.

By law, we do not have to appoint an independent monitor for this ballot. However, in order to make sure that your vote is accurately and fairly counted, the votes cast in the ballot will be counted by the person named below.

Please return your completed ballot paper in the pre-paid envelope provided to:

.....

Association of Teachers and Lecturers, 7 Northumberland Street, London WC2N 5RD.

It must reach us no later than noon on/...../.....

Appendix C: Penalties for taking industrial action

Employers facing industrial action by staff can respond with a number of penalties, ranging from deductions of salary through to dismissal in the most serious cases. Fortunately, the law changed in April 2000 to give employees some protection from dismissals as long as their industrial action is official and lawful.

However, employees who are thinking about taking part need to be aware that they may face penalties.

Deductions of salary

In order to be paid, an employee must either perform all of his or her contractual duties, or show that he or she is willing to do so.

The most commonly applied penalty for industrial action is partial or total deductions from pay. By law, wages and salaries are worked out by the day so for a one-day strike, the employer can withhold a day's salary. For teachers working in maintained schools, the National Conditions of Service (the 'Burgundy Book') has traditionally, and helpfully, said that any deductions of a day's salary must be worked out as $\frac{1}{365}$ of the annual figure. For other staff, the proper figure is not clearly set out.

If the industrial action involves an employee refusing to do certain duties rather than striking, the employer is entitled to make a partial deduction from his or her pay. No figure is set out for the calculation, and where cases have gone to court, judges have been prepared to approve the employers' own assessment of the 'value' of lost services.

Salary deductions have a significant effect on pension benefits. If an employee is absent for a day because he or she is taking strike action, he or she will normally lose that day's pensionable service. Where absences arise in fractions of days (for example, from half-day strikes), maintained employers normally combine these part days into whole days when working out the loss of pensionable service (rounding down to the nearest whole number). If employers make partial deductions, they are entitled to combine these and take off one day's pensionable service when they add up to a full day.

Refusal of partial performance

Case law has established that it is possible for an employer to respond to industrial action other than a strike (for example, a refusal to do certain duties) by making it absolutely clear to the employees that partial performance of contractual duties will not be accepted. This can be reinforced by, for example, sending home the staff involved. The employer is then in a position to withhold pay completely. Fortunately, this is not a tactic that employers often use.

Suing individuals

In principle, an employer could bring court proceedings against employees for compensation if they are breaking their contracts and the employer has suffered a financial loss as a result. In the case of a strike, the loss involved could, for example, be any extra costs of employing supply teachers. However, this penalty is rarely considered, probably because of the expense and effort involved in a claim, and the ease of using another penalty such as salary deductions.

Dismissal for official action

Historically, an employer could dismiss staff who were involved in industrial action without fear of facing claims of unfair dismissal, as long as they dismissed all the workers involved. This gave employees little protection if they took industrial action, as they faced the prospect of being dismissed without being able to appeal. Their only comfort was the fact that, in practice, employers rarely took the drastic step of dismissing the whole workforce involved in the action. Put simply, there was strength in unity.

The position changed significantly in April 2000 when the Government put into practice Section 16 and Schedule 5 of the Employment Relations Act 1999, which introduced the new idea of 'protected industrial action'. This allows employees to claim automatic unfair dismissal if they are taking part in official and lawful industrial action and are dismissed:

- during the first eight weeks of the action;
- after the first eight weeks, but where they had stopped taking part in the action during that period; or
- after the first eight weeks, but where the employer had not taken reasonable steps to sort out the dispute. It will be relevant if the employer has followed any established procedure, has offered (or accepted an offer of) negotiations, or has unreasonably refused a request for mediation.

The Employment Tribunal will not be expected to investigate the dispute itself.

This will, of course, substantially reduce the risk of dismissal for industrial action. (Fortunately, public-sector employers have not generally responded to industrial action in the past with threats of dismissal.) However, members should remember that this protection from dismissal only relates to action which is both official (organised by the union) and lawful (in line with the balloting and other legal requirements – see page 6).

Dismissal for unofficial action

Employment legislation does not protect staff who are involved in unofficial industrial action (sometimes referred to as 'wildcat' strikes or action) against dismissal.

This means that if an employer responds to unofficial action by dismissing one, some or all of those involved, the employees have no right to claim unfair dismissal, even though they may well have been dismissed without warnings, hearings or any notice. Legislators want people to be put off taking part in industrial action without a union's involvement.

By law, a strike or other industrial action is regarded as being official if it:

- has been formally authorised or approved by the union; or
- is considered to have been authorised by the union as a result of the actions of a union committee or official (whether they have the power to authorise industrial action or not). In this case, the union may become liable for the consequences of any unlawful industrial action unless it publicly declares that the action is unofficial (a process known as 'repudiation').

Only the Executive Committee, certain senior officers and the General Secretary (see page 15) have the power to authorise official industrial action. If any other person or group organises or calls action without this authorisation, we cannot protect the member or members from dismissal for taking unofficial action.

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The Association of Teachers and Lecturers (ATL) attempts to settle disputes through resolution, rather than confrontation. Upon occasion however, it may be necessary to resort to industrial action to achieve a particular outcome. This book, edited for clarity by the Plain English Campaign, sets out:

- ATL's policy and approach to industrial action
- the legal background to industrial action
- the procedures for taking industrial action
- what ATL members should do if other unions are taking industrial action in which they are not involved.

If you are considering industrial action, you should involve your local ATL representative and get advice from ATL staff.