COMMUNICATION WORKERS UNION

BRANCH GUIDELINES

Industrial Action and Picketing

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1. INTRODUCTION

The most recent piece of Trade Union Legislation (The Trade Union Act 2016) becomes law on the 1st March 2017.

As presently framed, like the vast majority of Employment law especially those relating to Industrial Action and Picketing, this new legislation appears to have been deliberately designed to place even more restrictions and regulation on Trade Unions especially where our members decide they have no other option than to take legitimate action to defend our members jobs and terms and conditions.

Whilst we opposed and campaigned against the introduction of this restrictive and unnecessary legislation, and will continue to do so, with a view to seeing the act repealed, it is the policy of the Union, enshrined in its rules, to comply with the law.

This is done so as we do not expose the Union, its members and representatives to the consequences of illegality (see Annex 1 – Trade Union Liability).

However, of equal importance is that the Union exists to represent its members and to assist representatives at the front line when faced with the day to day industrial relations problems. We can and do carry out this difficult role by devising policies which enable our representatives to operate effectively on behalf of our members.

These guidelines on industrial action balloting, taking industrial action and picketing have been produced to offer Branches and Representatives some practical guidance to ensure that we all have a better understanding of the prevailing legislation and of the CWU policies which must now be used by everyone within the Union when dealing with industrial action situations.

It is a matter of fact that the legal framework covering industrial action is very complex and the purpose of this document is to simply provide some basic understanding of the main issues involved and to offer assistance to Branches and Representatives. This document should not be seen as a giving any legal advice or any definite interpretation of the Law. However, where possible we have tried to supplement our own policies with relevant extracts from either the Trade Union and Labour Relations (Consolidation) Act 1992 or the Codes of Practice issued by the Department of Business, Energy and Industrial Strategy (BEIS) relating to Industrial Action and Picketing.

If Branches or Representatives require further information regarding any aspect of these policies or the relevant legislation then they should contact CWU HQ.

Please note that whilst the Code of Practice referred to above is not part of any legal obligations the 1992 Act provides that any provisions of the Code are to be admissible in evidence and are to be taken into account in proceedings before any court where it considers them relevant.

2. THE CWU RULES

The CWU Union's rules regarding Industrial Action (issued in May 2016) state the following:

Rule 13 Industrial Action

1. The NEC shall be responsible for ensuring that the Union is fully compliant with all relevant legislation governing Industrial Action.

2. The NEC, a conference or a properly convened Branch meeting may in furtherance of the Union's objectives decide to authorise, endorse, call or take industrial action, including strike action. All such action must be within the law and in accordance with, and in compliance of, all statutory obligations, inclusive of ballots etc. Where a Branch decides to take action to protect immediate local interests, the General Secretary and NEC must be informed.

3. For the avoidance of doubt it is confirmed that nothing contained in these Rules empowers a Branch or any other person, committee, group or body of persons to authorise, endorse, call or take industrial action without there being a statutory ballot and compliance in all other respects with the requirements of Part V of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended or replaced from time to time.

In essence these rules dictate that:

- **Any** ballot must conform strictly with the statutory procedures of the legislation and the NEC policy/guidelines.
- **Any** industrial action ballot or subsequent call for industrial action can only be authorised by Conference or the NEC/Industrial Executive(s).
- **All** industrial action must be preceded by a ballot conducted in accordance with the prevailing legal requirements.
- **All** forms of industrial action must be officially authorised by the Union via the NEC/or where appropriate by the relevant Industrial Executive Committee.

It can therefore be seen that there is a constitutional requirement, as well as a legal imperative, for Branches and representatives to act within the law.

3. INDUSTRIAL RELATIONS AND REACHING AGREEMENT

One of the fundamental principles of effective and successful Industrial Relations (IR) is that there is a responsibility on all representatives and managers to seek to resolve differences by discussion and negotiation rather than conflict.

An example of this is contained in the Royal Mail IR Framework Agreement governing negotiations which states:

"The purpose of this agreement is to set down a framework for the discussion of issues proposed by Royal Mail or the CWU, which involve the interests of groups of employees.

It is the aim of both parties to encourage the interest of employees in business affairs through the exchange information and consultation. Consultation allows for discussions between the two parties on the exploration of proposals and any differences that may exist.

It provides the opportunity for each party to modify the views of the other. Both parties are committed to engaging in open discussion where the aim will be to establish common ground. Where negotiation is appropriate the parties are committed to operating the procedures described in paras 5 to 13 of this section."

Although these particular words may not be exactly comparable to other IR agreements in some of the other businesses in which we organise, in practice we should subscribe to a similar approach.

Therefore where conflict emerges, either because the procedures are exhausted without agreement or because of a "flashpoint" arising (i.e. executive action being taken by managers outside of the procedures) then industrial action may have to be contemplated by the Union.

The one simple overriding rule is that such action must not place within the Union, its representatives or its members outside of the law.

In fact the Code of Practice issued by the Department for BEIS contains the following text:

Observing Procedural Agreements

An industrial action ballot should not take place until any agreed procedures, whether formal or otherwise, which might lead to the resolution of a dispute without the need for industrial action have been completed and consideration has been given to resolving the dispute by other means, including seeking assistance from ACAS. A Union should hold a ballot on industrial action only if it is contemplating the organisation of industrial action.

4. INDUSTRIAL ACTION BALLOTING PROCEDURE

4.1 Preparing for an Industrial Action Ballot

As previously stated in this document the precise requirements of the law are legally complex and it would not be practical to simple reproduce them in this document. However the guidance below contains some of the main requirements of the current legislation.

- All industrial action must have the support of a ballot if it is to be legal.
- All industrial action ballots must be on a fully postal basis and those voting are able to do so in secret.
- An independent scrutineer must be appointed to conduct the ballot.

4.2 Branch Procedure for Requesting an Industrial Action Ballot

As can be seen above even before we begin the process of obtaining the views of our members there is a great deal of work that needs to be done to ensure that the ballot for Industrial Action complies with the Law and this process begins with the Branch.

It is essential that all Branches strictly adhere to the following procedures when considering industrial action:

- A properly constituted meeting must be convened and a formal motion along the following terms should be considered and voted on:

  "This meeting agrees that an industrial action ballot be requested from CWU Headquarters due to (describe the nature of the trade dispute). The action to be taken in the event of a YES vote will consist of a strike/short of a strike or both (describe what action is contemplated)."

  Please note that in respect of National Industrial Action Ballots that the NEC via the relevant Industrial Executive Committee will have the responsibility for authorising the ballot.

- It is important that the decision to seek a ballot is clear regarding any concerted action, whether a strike action ballot or action short of strike action or indeed both is contemplated.

- Once the decision to seek a ballot has been taken Branches should submit the request to the SDGS Department at CWU HQ with a copy sent to the relevant Industrial Department. The request should be accompanied by the terms of the motion agreed, together with all documentation relating to the issue in dispute.

- When submitting the request for an industrial action ballot it is absolutely critical that the members to be included in the ballot must be clearly detailed from the outset of the ballot request. This should be by name, category and workplace. It is also essential that the employer of the members involved is supplied to CWU Headquarters at the time of seeking the authority to ballot.

- In order to be compliant with the relevant legislation it is crucial that the membership information that is used to identify the members involved in the ballot is obtained from the CWU National Database at CWU HQ.

- In view of this at the very first opportunity a Branch (this could be prior to the member meeting referred to above) should obtain an up to date and accurate membership listing from CWU HQ for checking and verification purposes. Performing this prior to the ballot request being submitted will ensure that the ballot can proceed as speedily as possible.

- **No industrial action of any kind must be taken prior to a ballot. Authorisation by the NEC/Industrial Executive Committee is necessary before action can commence.**

- As a matter of practice those balloted must be given at least seven days to vote and return papers if first class post is used, or fourteen days for second class post.

On receipt of a request for a ballot, the SDGS Department will seek the authorisation of the Industrial Executive Committee, via the appropriate National Officer, for the ballot to proceed. In most cases where all negotiating procedures have been exhausted this authority will be given without delay.

The SDGS Department will then proceed with the necessary arrangements for the ballot. This will be based on working to an agreed realistic timetable. Consultation will take place between the SDGS Department, the relevant Industrial Department Officer and the Branch prior to setting the timetable. Setting the timetable is not the responsibility of the Industrial Executive.

Please remember that it is important that before Branches request industrial action ballots that they have exhausted the agreed negotiating procedures.

At the conclusion of the ballot and once the result is declared in accordance with the Law then it is a matter for the NEC/Industrial Executive to authorise any action to be taken, this will be done in consultation with the relevant Branch(s). Authorisation of the action to be taken is not the responsibility of the SDGS Department.

4.3 Providing the Ballot Notice to the Employers

In order for the ballot to be legal under section 226A of the 1992 Act the Union must take steps to ensure that the employer of any members who will be given the entitlement to vote receives written notice of our intention to ballot. It is the responsibility of the SDGS Department to issue such notice.

The notice must be received by the employer not later than the seventh day before the intended opening day of the ballot (i.e. the first day on which a voting paper is sent to any person entitled to vote).

By Law the notice must also:

- State that the Union intends to hold the ballot;
- Specify the date which the Union reasonably believes will be the opening day of the ballot; and
- Contain either:

  (a) A list of the categories of employee to which the employees concerned belong, a list of the workplaces at which they work and figures (together with an explanation of how they were arrived at) showing the total number of employees concerned, the number of them in each of the categories listed and the number of them that work at each of the workplaces listed; or

  (b) Where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the Union, a practice commonly known as "checkoff" or "DOCAS11", other alternatives apply.

- In such circumstances, the notice must contain either:

  - Those same lists, figures and explanations as set out in (a); or
  - Such information as will enable the employer to readily deduce the total number of employees concerned, the categories of employee to which they belong, the number of employees concerned in each of those categories, the workplaces at which the employees concerned work and the number of them at each of these workplaces.

The lists and figures or information supplied should be as accurate as is reasonably practicable in the light of the information in the Union's possession at the time when it complied with subsection 226A of the 1992 Act.

Information is "in the Union's possession" provided it is held for Union purposes in a document (either in electronic or other form) and provided it is in the possession or under the control of an officer or employee of the Union. Dependent on the precise status of the individuals concerned, information held by shop stewards or other lay representatives would probably not qualify for these purposes as being "in the Union's possession".

4.4 Providing a Sample Voting Paper to the Employers

The Union must take steps to ensure that any employer of any member who will be given entitlement to vote receives a sample voting paper not later than the third day before the opening of the ballot. The SDGS department is responsible for ensuring that this legal requirement is carried out within the timescale.

4.5 Entitlement to Vote (the "Balloting Constituency")

Entitlement to vote in the ballot must be given to all the Union's members who it is reasonable at the time of the ballot for the Union to believe will be induced by the Union (whether that inducement will be successful or not) to take part in or continue with the industrial action, and to no other members.

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).

4.6 Ballot Thresholds for Industrial Action

The current ballot threshold required for industrial action is that a turnout of 50% is required and that a simple majority (i.e. more than half) of the votes cast must be in favour of industrial action.

Note – that currently the additional requirement of a 40% level of support in favour in specific important public services does not currently apply to the CWU.

4.7 Balloting Members in More than One Workplace

Where the members to be balloted have different workplaces or where we intend to ballot multiple workplaces on the same issue then separate ballots will be necessary for each workplace unless one of the conditions set out below is met.

The conditions for holding a single ballot for more one workplace are:

- At each of the workplaces covered by the single ballot there is at least one member of the Union affected by the dispute; or
- Entitlement to vote in the single ballot is given, and limited, to all of a Union's members who, according to the Union's reasonable belief, are employed in a particular occupation or occupations by one employer or any of a number of employers with whom the Union is in dispute; or
- Entitlement to vote in the single ballot is given, and limited, to all of a Union's members who are employed by a particular employer or any of a number of employers with whom the Union is in dispute.

Where a single ballot across a number of workplaces is held in accordance with the legal requirements relating to thresholds under section 226 of the 1992 Act, it is lawful for the Union to organise industrial action at any such workplace.

4.8 The Balloting Method

All votes cast in an industrial action ballot must be by an individual member “secret” ballot and all voting papers must be sent out and returned by post to the appointed independent scrutineer.

The period between sending out voting papers (i.e. the opening day of the ballot) and the date by which completed voting papers should be returned should be long enough for the voting papers to be distributed and returned and for the members concerned to consider their vote.

Generally, seven days should be the minimum period where voting papers are sent out and returned by first class post and fourteen days were second class post is used.

4.9 The Voting Paper

The voting paper must contain the following information:

- State the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned.
- Be marked with a number, which is one of series of consecutive numbers used to give a different number to each voting paper.
- Include a summary of the matter or matters in issue in the trade dispute to which the proposed industrial action relates.
- Make clear whether voters are being asked if they are prepared to take part in, or to continue to take part in, industrial action which consists of a strike, or in industrial action short of a strike, which for this purpose includes overtime bans and call-out bans.
- Where it contains a question about taking part in industrial action short of a strike, specify the types of industrial action (either in the question itself or elsewhere on the voting paper).
- Indicate the period or periods within which the industrial action or each type of industrial action is expected to take place; and
- Specify the person or persons (and/or class or classes of person/s) who the Union intends to have authority to make the first call for industrial action to which the ballot relates, in the event of a vote in favour of industrial action.
- While the question (or questions) maybe framed in different ways, the voter must be asked to say by answering “Yes” or “No” whether he is willing to take part in or continue with the industrial action.
- If the Union has not decided whether the industrial action would consist of a strike or action short of a strike (including overtime bans or call-out bans), separate questions in respect of each type of action must appear on the voting paper.

Additionally the following words must appear on the voting paper:

"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 strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than twelve weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later."

This statement must not be qualified or commented upon by anything else on the voting paper.

4.10 Communication with Members

The Law requires the Union to give relevant information to its members entitled to vote in the ballot, including (so far as practicable):

- The background to the ballot and the issues to which the dispute relates.
- Any considerations in respect of turnout or size of the majority vote in the ballot that will be taken into account in deciding whether to call for industrial action.
- The possible consequences for workers if they take industrial action; and
- Likely timing of industrial action.
- In doing so, the Union should ensure that any information it gives to members in connection with the ballot is accurate and not misleading.

4.11 Holding an Industrial Action Ballot

In an industrial action ballot the Union must ensure that:

- Every person entitled to vote must be allowed to do so without interference from, or constraint imposed by, the Union or any of its members, officials or employees.

As far as reasonably practicable, every person entitled to vote must be:

- Sent a voting paper by post to his home address, or another address which he has asked the Union (in writing) to treat as his postal address.
- Given a convenient opportunity to vote by post; and
- Allowed to do so without incurring any direct cost to himself.
- As far as reasonably practicable, the ballot must be conducted in such a way as to ensure that those voting do so in secret.

4.12 Following an Industrial Action Ballot

At the close of the balloting period the Union will receive a formal certificate from the Independent Scrutineer advising of the result of the ballot. On receipt of the certificate the Union is obliged to provide notification of the details of the result on industrial action ballot to "all those entitled to vote in the ballot and their employers".

In respect of the notification to the employers this is performed by the SDGS department as soon as is reasonably practicable after receiving the result from the Independent Scrutineer. At the same time of doing this we also provide a copy of the result to the Branch so that they in turn can arrange for the result to be published to the members entitled to vote in the ballot.

It is worth reminding Branches that whilst this aspect of the industrial action process may appear to be a straightforward it is also an area where we must pay particular attention to. In fact the 1992 Act now requires that a Union must:

"As soon as reasonably practicable after holding an industrial action ballot, take steps to inform all those entitled to vote, and their employer(s), of:

- *The number of individuals entitled to vote in the ballot.*
- *The number of votes cast in the ballot.*
- *The number of individuals answering "Yes" to the required question (or each question).*
- *The number of individuals answering "No" to the required question (or each question).*
- *The number of spoiled or otherwise invalid voting papers returned.*
- *Whether or not the number of votes cast in the ballot is at least 50%.*
- *Of the number of individuals who were entitled to vote in the ballot."*

Where separate workplace ballots are required these details must be notified separately for each such workplace to those entitled to vote there.

Branches must therefore use all means at their disposal to ensure that the members are **immediately** made aware of the result including using its own journals, local communications and news sheets, notice boards and where appropriate social media and Branch email distribution lists plus any other viable methods.

Branches must keep a record of the method(s) that have been used to advise of the details of the result for future reference.

Following a successful YES vote for industrial action and on the basis that the Union has carried out its legal obligations in term of notification of the result to the members entitled to vote and the relevant employers then in order for the action to be protected by the law action must be taken within six months beginning with of the date of the ballot. This period can be extended to a period not exceeding 9 months if agreed by the Union and the member's employer.

4.13 If the Union Decides to Authorise or Endorse Industrial Action

As we have already stated, in accordance with the rules of the CWU and to ensure that we remain compliant with the legislation, the decision to authorise industrial action lays with the NEC and Industrial Executives.

If the Union decides to authorise or endorse industrial action following a ballot, it must then take such steps to ensure that any employer, who it is reasonable for the Union to believe employs workers who will be called upon to take part in the action, receives no less than 14 days (or seven days if so agreed by the Union and the employer) a written notice stating the details of the action to be taken.

The notice must state:

- It must be given by any officer, official or committee of the Union for whose act of inducing industrial action the Union is responsible in law.

- It must specify whether the Union intends the action to be "continuous" or "discontinuous" and the date on which any of the affected employees are intended to begin to take part in the action (where it is continuous action), or all the dates on which any of them are intended to take part (where it is discontinuous action).

It must state that it is a notice given for the purposes of section 234A of the 1992 Act and contains either:

(a) A list of the categories of employee to which the affected employees belong, a list of the workplaces at which they work and figures (together with an explanation of how they were arrived at) showing the total number of affected employees, the number of them in each of the categories listed and the number of them that work at each of the workplaces listed; or

(b) Where some or all of the employees are employees from whose wages the employer makes deductions representing payments to the Union, a practice commonly known as "checkoff" or "DOCAS", other alternatives apply.

In such circumstances the notice must contain either: those same lists, figures and explanations as set out in (a); or such information as will enable the employer to readily deduce the total number of "affected employees", the categories of employee to which they belong, the number of employees concerned in each of those categories, the workplaces at which the affected employees work and the number of them at each of these workplaces.

The "affected employees" are those whom the Union reasonably believes will be induced by the Union or have been so induced to take part in or continue to take part in the industrial action.

The lists and figures or information supplied should be as accurate as is reasonably practicable in the light of the information in the Union's possession at the time when it complied with subsection 234A(1) of the 1992 Act i.e. at the time when we sent the notice to the employer of industrial action.

Information is “in the Union’s possession” if it is held for Union purposes in a document (either in electronic or other form) and it is in the possession or under the control of an officer or employee of the Union.

Changes in the Union’s intentions, for example as to the dates on which action is to be taken require further notices to be given accordingly.

4.14 Dealing with "Flashpoints"

The procedure for authorising industrial action ballots during “flashpoint” dispute situations (such as where management have introduced proposals by executive action or breached agreements etc.) is only different to the normal application as follows:

a) There is no requirement for the Branch to hold a meeting prior to submitting the request to the SDGS department.

b) The request must still give all necessary information. It must describe the nature of the dispute and the industrial action that is contemplated and identify by name, category, workplace and employer those members who are to be balloted.

c) If authorised by the NEC/Industrial Executive the notice will be given by CWU Headquarters to the employer, as soon reasonably practical which could be on the day of receipt of the request providing that the membership information has been checked and verified as described above.

d) Any industrial action in these circumstances will normally be authorised immediately if a YES vote is achieved.

It is imperative that Branches contact the relevant National Industrial Officer immediately they are aware of a flashpoint situation for advice and guidance.

Branches should then send the ballot request, with all necessary information, by email to the SDGS Department at CWU Headquarters as early in the working day as possible.

Action without a ballot cannot be contemplated by Union officials in any circumstances even in “flashpoint” situations.

Such action is illegal and unconstitutional. It allows the employer to ignore the issue at the heart of the dispute by using the law against the Union, its members and its finances and will almost certainly be successful in obtaining an immediate injunction. Thereafter it may not be possible to proceed with a ballot on the same issue until such time as the injunction is lifted or successful defeated.

The only way in which the Union as a whole can remain legally protected if unlawful action of this nature occurs is by repudiation in accordance with the legislation.

4.15 Picketing During Industrial Action

The purpose of this section to is to provide practical guidance on picketing in trade disputes.

There is no legal "right to picket" as such, but attendance for the purpose of peaceful picketing has long been recognised to be a lawful activity. However, the law imposes certain limits on how, where, and for what purpose such picketing can be undertaken and also requires trade Unions to appoint a picket supervisor during picketing and comply with certain requirements (see below).

The law sets out the basic rules which must be observed if picketing is to be carried out, or organised, lawfully. To keep to these rules, attendance for the purpose of picketing may only:

- Be undertaken in contemplation or furtherance of a trade dispute.
- Be carried out by a person attending at or near his own place of work.
- A Trade Union Official, in addition to attending at or near his own place work, may also attend at or near the place of work of a member of his Trade Union whom he is accompanying on the picket line and whom he represents.
- Take place where a Picket Supervisor has been appointed in accordance with section 220A of the 1992 Act and the requirements at sections 220A.
- Furthermore, the only purpose involved must be peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

As stated above picketing is lawful only if it is carried out in contemplation or furtherance of a "trade dispute". A "trade dispute" is defined in law so as to cover the matters which normally occasion disputes between employers and workers - such as terms and conditions of employment, the allocation of work, matters of discipline, trade union recognition.

4.16 Appointment of Picket Supervisor Under Section 220A of the 1992 Act

The following text is a direct lift from the Department of Business, Energy & Industrial Strategy Code of Practice on Picketing. The reason why this has been produced in this way is to fully explain the importance of this particular aspect of the law as it is now presented and set out the main elements of the recent changes that have now become law.

As you will see these additional requirements (introduced as a result of the Trade Union Act 2016) now place a number of specific actions on Trade Unions when organising pickets and as we have stated previously whilst we may object to their introduction and we should continue to seek to repeal this unnecessary legislation we must ensure that we are compliant with the law.

In view of this Branches should obtain a copy of the Code of Practice from the BEIS website and ensure that the appointed picket supervisor and all CWU Representatives are familiar with the provisions of the Code.

Where a Trade Union either organises the picketing or encourages its members to take part in picketing, the Union must appoint a Picket Supervisor who is either a Trade Union Official or other member of that Union. Where more than one Union is involved in the picketing, each Union must appoint its own Picket Supervisor. The Picket Supervisor must be familiar with the provisions of this Code that deal with picketing in order to be able to advise others on what constitutes 'peaceful' picketing. Peaceful picketing means that people involved in, or affected by, picketing activity can go about their business without fear of intimidation. Intimidatory behaviour by any individual may constitute a criminal offence and such a person will be treated in the same way as any member of the public who breaks the law. The Picket Supervisor has responsibility in relation to the pickets where the Union has approved the picketing. Further information on the function of the picket supervisor is set out at Section F.

The Picket Supervisor must be present on the picket line or be readily contactable and able to attend at short notice. The term 'short notice' is not defined, however the intention is that where the Picket Supervisor is not in attendance, they must be contactable in order to be able to return quickly so as to provide advice on peaceful picketing. Depending on the nature of the industrial dispute, it may be possible for a Union to appoint a Picket Supervisor to supervise more than one picket line provided that they continue to be able to attend each picket line at short notice.

Either the Union or the Picket Supervisor must take reasonable steps to inform the Police of his name, contact details and the location of the picketing. This will mean contacting the Police so that they have the necessary information. As the Picket Supervisor does not have to be on the picket line all of the time, this will enable the Police to contact the Picket Supervisor should an issue arise which does not require Police intervention but which could benefit from the Picket Supervisor's advice.

The Union must provide the Picket Supervisor with a letter stating that the picketing is approved by the Union. There is no legal requirement for the approval letter to contain the Picket Supervisor's personal details and the Union should ensure that the letter does not breach Data Protection requirements.

Only the employer involved in the trade dispute, or an individual acting on behalf of the employer, at whose workplace the picketing takes place, is entitled to see this letter. This provides confirmation that the Union has approved the picketing activity. **Where a request to see the letter has been made, the Picket Supervisor must show the letter as soon as reasonably practicable.** This takes account of the possibility that the Picket Supervisor may be absent from the picket line. It may be good practice for the Union or the Picket Supervisor to provide a copy of the letter with the employer in advance of the picket in any event.

When present, the supervisor must wear something that readily identifies him to both others and the picketers as being the supervisor to help others on the picket line or those seeking advice or further information. This could be achieved in a number of different ways, for example, by way of wearing a tabard, armband or a badge.

“Secondary Action”

The "statutory immunities" do not apply to protect a threat of, or a call for or other inducement of "secondary" industrial action. The law defines "secondary" action - which is sometimes referred to as "sympathy" or "solidarity" action - as that by workers whose employer is not a party to the trade dispute to which the action relates.

However, a worker employed by a party to a trade dispute, picketing at his own place of work may try to persuade another worker, not employed by that employer to break, or interfere with the performance of, the second worker's contract of employment, and/or to interfere with the performance of a commercial contract. This could happen, for example, if a picket persuaded a lorry driver employed by another employer not to cross the picket line and deliver goods to be supplied, under a commercial contract, to the employer in dispute. Such an act by a picket would be an unlawful inducement to take secondary action unless provision was made to the contrary.

Accordingly, the law contains provisions which make it lawful for a peaceful picket, at the picket's own place of work, to seek to persuade workers other than those employed by the picket's own employer not to work, or not to work normally. To have such protection, the peaceful picketing must be done:

- By a worker employed by the employer who is party to the dispute ; or
- By a Trade Union Official whose attendance is lawful.

Where an entrance or exit is used jointly by the workers of more than one employer, the workers who are not involved in the dispute to which a picket relates should not be interfered with by picketing activities. Particular care should be taken to ensure that picketing does not involve calls for a breach, or interference with the performance, of contracts by employees of the other employer(s) who are not involved in the dispute. Observing the principle will help avoid consequences which might otherwise be damaging and disruptive to good industrial relations.

5. CONCLUSION

The objective of the Union at all levels is to assist in resolving disagreements and conflict to the satisfaction of our members and in the interests of the Union as a whole.

By following these guidelines Branches and representatives can help avoid the many pitfalls contained in the current legislation and greatly reduce the risk of the employer taking the Union to court and successfully securing an injunction to prevent us taking industrial action in defence of our members.

There is no other option available to Branches and Representatives who clearly have a responsibility to avoid endangering the Union, its representatives and its members by becoming involved in unconstitutional, illegal industrial action.

If you require any further information regarding Industrial Action ballots then please do not hesitate to contact the SDGS Department at CWU HQ.

ANNEX 1 – TRADE UNION LIABILITY

1. Section 20 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") lays down when a Union is to be held responsible for the act of inducing, or threatening, a breach or interference with a contract in circumstances where there is no immunity. The Union will be held liable for any such act which is done, authorised or endorsed by:

    - Its Executive Committee, General Secretary, President.

    - Any person given power under the Union's rules to do, authorise or endorse acts of the kind in question; or

    - Any committee or official of the Union (whether employed by it or not). A Union will be held responsible for such an act by such a body or person regardless of any term or condition to the contrary in its own rules, or in any other contractual provision or rule of law.

2. For these purposes:

    - A "Committee of the Union" is any group of persons constituted in accordance with the rules of the Union.

    - An "Official of the Union" is any person who is an officer of the Union or of a Branch or section of the Union or any person who is elected or appointed in accordance with the Union's own rules to be a representative of its members, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, he is elected to represent (e.g. a shop steward); and

    - An act will be treated to have be end one (or authorised or endorsed) by an official if it was so done (or authorised or endorsed) by a group of persons, or any member of a group, to which an official belonged at the relevant time if the group's purposes included organising or co-ordinating industrial action.

3. A Union will not be held liable for such an act of any of its committees or officials, however, if its Executive Committee, President or General Secretary repudiates the act as soon as reasonably practicable after it has come to the attention of any of them, and the Union takes the steps which the law requires to make that repudiation effective. But the Union will not be considered to have "effectively repudiated" an act if the Executive Committee, President or General Secretary subsequently behave in a manner which is inconsistent with the repudiation.

4. The fact that a Union is responsible for organising industrial action to which immunity does not apply does not prevent legal action also being taken against the individual organisers of that action.

"Immunity"

5. A Trade Union which organises (i.e. authorises or endorses) industrial action without satisfying the requirements of section 226 (for balloting on industrial action), or 234A (for notice to employers of official industrial action), of the 1992 Act will have no "immunity". Without immunity the Trade Union will be at risk of legal action by (i) an employer (and/or a customer or supplier of such an employer) who suffers (or may suffer) damage as a consequence of the trade Union's unlawful inducement to his workers to break or interfere with the performance of contracts; and/or (ii) any individual who is(or is likely to be) deprived of goods or services because of the industrial action. Such legal proceedings might result in a court order requiring the Trade Union not to proceed with, and/or desist from, the unlawful inducement of its members to take part or continue with the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

6. Under section 62 of the 1992 Act, a member of a Trade Union who claims that members of the Union, including himself, are likely to be or have been induced by the Union to take industrial action which does not have the support of a ballot may apply to the court for an order, which may require the Trade Union to take steps to ensure that there is no, or no further, unlawful inducement to members to take part or continue to take part in the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

Contempt and other proceedings

If a court order issued following legal proceedings as described in paragraphs 5 and 6 above is not obeyed, anyone who sought it can go back to court and ask that those concerned be declared in contempt of court. A Union found in contempt of court may face heavy fines, or other penalties which the court may consider appropriate.

In addition, any member of the Union may have grounds for legal action against the Union's trustees if they have caused or permitted the unlawful application of Union funds or property.

ANNEX 2

Section 220 a of the 1992 Act

"220AUnion supervision of picketing

(1) Section 220 does not make lawful any picketing that a Trade Union organises, or encourages its members to take part in, unless the requirements in subsections (2) to (8) are complied with.

(2) The Union must appoint a person to supervise the picketing.

(3) That person ("the Picket Supervisor") must be an official or other member of the Union who is familiar with any provisions of a Code of Practice issued under section 203 that deal with picketing.

(4) The Union or Picket Supervisor must take reasonable steps to tell the Police:
(a) The Picket Supervisor's name.
(b) Where the picketing will be taking place.
(c) How to contact the Picket Supervisor.

(5) The Union must provide the Picket Supervisor with a letter stating that the picketing is approved by the Union.

(6) If an individual who is, or is acting on behalf of, the employer asks the Picket Supervisor for sight of the approval letter, the Picket Supervisor must show it to that individual as soon as reasonably practicable.

(7) While the picketing is taking place, the picket supervisor must:
(a) Be present where it is taking place, or
(b) Be readily contactable by the Union and the Police, and able to attend at short notice.

(8) While present where the picketing is taking place, the Picket Supervisor must wear something that readily identifies the picket supervisor as such.

(9) In this section
- "Approval letter" means the letter referred to in subsection (5).
- "Employer" means the employer to which the trade dispute relates.
- "Picketing" means attendance at or near a place of work, in contemplation or furtherance of a trade dispute, for the purpose of:
  (a) Obtaining or communicating information, or
  (b) Persuading any person to work or abstain from working.

(10) In relation to picketing that two or more Unions organise or encourage members to take part in:
(a) In subsection (2) "the Union" means any one of those Unions, and
(b) Other references in this section to "the Union" are to that Union."