

UCU local industrial action procedures

A guide for UCU branches and local associations

Bargaining and negotiating

February 2017

NB. This updated guidance is NOT applicable to Northern Ireland.

Please note:

Industrial action, whether strike action or action short of a strike is a serious step for any branch/LA to take not least because it will usually involve a breach of contract even where the action is just working to contract. This entitles employers to dismiss staff (in certain circumstances) and / or deduct pay at a punitive rate. Unions are required to inform members of this on the voting paper and to comply with various other legal requirements if the ballot process and subsequent action are to remain lawful.

Compliance with the law on balloting protects UCU as a trade union. It is lawful for employers to dismiss selectively anyone organising or taking unofficial industrial action. However, it is unlawful for employers to dismiss collectively those taking part in lawful industrial action within the first 12 weeks of the first day of protected industrial action, or longer where an employer has failed to take reasonable procedural steps to resolve the dispute. Compliance with these procedures will provide the maximum protection for our members that the current law allows.

In almost all local ballots it will be necessary to appoint an independent scrutineer – UCU appoints Electoral Reform Services (ERS).

Trade Union Act 2016

The Trade Union Act 2016 (TUA 2016) places additional restrictions and legal obligations on trade unions when they actively contemplate, prepare and then undertake a statutory ballot for industrial action. These new requirements have been incorporated into this guidance and it is vitally important that branches and officials work together at all times to minimise the risks to UCU.

The key changes brought in by the act are:

- a 50% threshold requirement
- a 40% support threshold (applicable only to FE colleges)

- a more detailed ballot paper
- an increased period of 14 days notification of action to employers
- informing members whether the threshold and support requirements were met
- an increased period of 14 days notification of action to employers
- the ballot ceases to be effective after 6 months

It is vital that statutory ballots for industrial action are only undertaken when there is a high certainty that there will be a positive result and with the level of participation required by law, i.e. in every case at least 50% of members eligible to vote in the ballot must vote, and, where the support threshold applies, that 40% of those entitled to vote, vote positively for action.

An unsatisfactory result in a statutory ballot, which we are legally required to notify employers, is likely to seriously damage the bargaining power of the union.

Keep other unions at your workplace aware of your dispute and any action that you may be contemplating.

Identifying and declaring a dispute

1. The regional official (RO), as the senior official, shall be involved in the final stages of any negotiation where industrial action may be contemplated.
2. The branch/local association (LA) should normally exhaust agreed procedures (formal or otherwise) before an industrial action ballot is sought.
3. The branch/LA shall ascertain the level of support from branch members for industrial action and for different types of action, it is recommended that this is done either via a quorate branch meeting or e-ballot.
4. The branch/LA shall seek the advice of the regional official on the appropriateness of the use of industrial action to resolve the dispute as well as how the dispute may be resolved. If industrial action is derived from branch motions, the branch /LA should liaise with the regional official to ensure that the subject matter of the motion can form a legitimate trade dispute as defined in the legislation.
5. The TUA 2016 requires that the voting paper must include a summary of the matter or matters in issue to which the proposed industrial action relates. For this reason, and because multi-matter disputes are riskier in general because employers may offer concessions on some, but not all, of the matters thus endangering the ballot mandate, it is strongly recommended to focus on single issue disputes. The key is to identify the dispute and not to add into the description matters which might, if they were agreed to, end the dispute. For example:

'This dispute is about the college's proposal to make compulsory redundancies in the

School of Art'

as opposed to:

'This dispute is about:

- 1. the college's proposal to make redundancies in the School of Art, and*
- 2. its unwillingness to give a guarantee of no compulsory redundancies, and*
- 3. its unwillingness to agree a voluntary severance scheme with UCU.'*

Furthermore, it is important to be consistent in identifying the matter(s) in issue. So, if the dispute is about redundancies, the material sent to members about this dispute must address that issue only. Recent experience shows that employers and their lawyers will trawl social networking sites to see if members are being encouraged to vote for a reason not related to the dispute, e.g. to address the under-funding of education in FE, or the introduction of casualised contract staff to replace the redundant lecturers.

6. If the dispute cannot be resolved, the RO will then write to the employer declaring the dispute. This letter will make it clear to the employer:
 1. what the dispute is
 2. what the employer needs to do to resolve the dispute
 3. the timeframe for resolving the dispute.

Preparation

7. The regional office is responsible for the administration of local industrial action ballots. The branch/LA should agree with the RO the following:

- i. Type of action*

- Whether the ballot will be for strike action and/or action short of a strike (and if so the type or types of action short of a strike must be specified).¹
- Whether the action will be continuous or discontinuous.²
- The demonstrated level of support for each type of action.
- The period of periods within which the industrial action, or each type of industrial action, is expected to take place³.

¹ An overtime ban and a call-out ban are action short of strike.

² Discontinuous action is where the action takes place only on some days on which there is an opportunity to take the action; continuous action takes place on every day.

³ It is also a requirement of the TUA 2016 to show this information on the voting paper.

ii. Who to ballot

All members who it is reasonably believed will be called upon to take action should be balloted. This would normally be the whole UCU branch, even when the issue in dispute only affects some members. However, balloting a sub-set of members or excluding certain members from the ballot may be appropriate

in certain (extenuating) circumstances. NB: Any sub-groups of membership to be balloted or any groups to be excluded must be clearly identified, well defined and capable of being identified on UCU's membership database.

IMPORTANT – the support threshold of 40%

The 40% support threshold is only relevant to industrial action if a majority of those eligible to vote (i.e. over 50%) are delivering 'an important public service'.

Regulations limit this to members in a further education college where the majority are, at the time of the ballot, engaged in teaching those under 17 years of age, unless the union reasonably believes this not to be the case. If members are engaged in multiple duties and spend only some of their time on teaching those aged under 17 years of age, the law will treat those members as delivering an important public service if they are normally engaged in such teaching. This is a matter of fact and the matters which a court will take into account in deciding whether a union could have formed a reasonable belief as to the facts include:

- asking members whether they teach under 17yr olds
- taking account of information provided by the employer.

iii. Timetable for ballot and action

It is essential that adequate time be allowed for the following:

- conduct the pre-ballot checks (see below)
- assessing the balloting constituency to check whether the 40% support threshold applies
- processing by the Electoral Reform Services (who administer the ballot)
- authorisation of the ballot (see para 7)
- statutory notice to employers of intention to ballot
- balloting (3 weeks is recommended)
- authorisation of action (see para 20)
- statutory notice to employers of result and action.

We recommend that you work with your RO to determine the timetable by working backwards from the intended start of the action.

Seek authorisation to ballot

8. Authorisation for balloting must be sought under UCU rule 32. Unless there are exceptional circumstances, the branch/local association must allow at least 5 days for this process (13 days before the proposed opening date of the ballot). The responsibility for completing this application lies with the appropriate regional official or Scotland/Wales/NI official, who will send it to a senior national official to seek authorisation from any three of: the president, the chair of FEC/HEC, two vice-chairs of FEC/HEC.

The outcome of this process will be reported back to the branch/LA as soon as it is agreed.

The following information is required in **every** application.

- Membership density
- Whether the support threshold might be triggered
- Details of the nature of the dispute
- Dates the formal dispute letter and failure to agree notification were sent to the employer
- Steps taken to date to resolve/prosecute the dispute
- The branch/LA shall ascertain the level of support from branch members for industrial action and for different types of action. Wherever possible, membership feeling should be tested pre-ballot through an electronic survey. This serves a number of purposes including: illustrating the strength of feeling about an issue; enabling the branch/LA to campaign among members in a lower stakes environment than a full ballot; providing the opportunity to test the branch/LAs get the vote out (GTVO) plan; and potentially an opportunity to engage with management with a view to settling the issue. Branches/LAs should be aware that except in exceptional circumstances, if no indicative poll has been held they are likely to be asked to hold one pre the formal ballot by authorising officers.
- Details of steps to be taken by branch to ensure maximum participation in the ballot. i.e. a clear get the vote out (GTVO) plan.
- Details of steps taken to ensure accuracy of membership data for constituency to be balloted
- Regional/ Scotland/NI/ Wales official's assessment of member support and likelihood of success/ progress in resolving dispute.
- Full details of proposed industrial action with timeline (as explained in paragraph 6(i) above)
- Bargaining aims and objectives including an indication of what will resolve the Future dispute and possible exit strategies if required.
- Dates of future scheduled meetings with management and members (or when they are being sought)

Pre-ballot checks & the statutory ballot notice

9. The law requires that there must be a ballot of those members who the union intends to call out and no others. Hence, it is vital to check the membership to ensure that all relevant members appear on the voting list. For local ballots, the process of checking membership records should start as soon as a ballot is contemplated.
10. The law requires that the union serve a notice on the employer, not later than seven days before the opening date of the ballot⁴, which must include 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. We refer to these lists, which we combine into a single document, as the **ballot matrix**.

UCU uses 'employment function' as indicated on UCU's online membership form to define the categories of employee.

A 'workplace' is defined as a single set of premises which is either where a person works from or is the place with which the person's employment has the closest connection.

Errors in the ballot matrix, especially in describing workplaces, are a common reason why employers challenge ballots and can render the ballot ineffective.

Branches should also be aware of the importance of ensuring that the union's central database reflects any information held at branch level. This is because although the ballot information is provided by the national union, information may be deemed to be in the union's 'possession' if it is held by branch representatives, or could easily be obtained by them. So, in other words, do not hold on to any information about workplaces or members, but rather make sure that the information known to you is identical to that maintained by head office. You can do this by using UCU's membership portal 'My UCU'.

Checking the ballot matrix is essentially a two stage process. The first stage, checking that our membership records correctly identify all the workplaces where members eligible to vote work from, is a key stage performed by the branch with assistance from the regional office.

The second stage is checking the identity of the members eligible to vote and their employment category. The emphasis is now on members to be encouraged to log in to

⁴ The opening date is the first date on which voting papers are sent to the voting constituency.

'My UCU' and verify their personal information. The role of the branch in this second stage is to get the message out to members to perform this check in good time before the ballot matrix is generated.

11. A 'dummy' matrix for checking workplace details will be sent to the branch by the regional office. The branch must check and ensure that the workplaces are correct and up to date. The branch will also be able to access a membership list via the membership portal, or can request a .csv file from the regional office.

Membership data is sensitive, and should be password protected if sent by email.

Please do NOT print off the list of members unless you absolutely have to. If you print off the list, you MUST ensure that the printed list is always kept in a secure, i.e. locked place, to which only you (or another authorised UCU representative) has access. The information on the list should be treated as strictly confidential and not shown to any unauthorised person. Once the printed list has served its specific use, it MUST be securely shredded, and any email attachment deleted from your computer.

Branches should make sure that only those members employed by the institution are included in the ballot. Staff employed by an agency, student members, unemployed members, honorary members, self-employed and retired members are automatically excluded from ballots by the system. Members working for a subsidiary company or an institution not covered by the dispute may need to be excluded at workplace level by the membership team. Individual exclusions can be applied or removed using the membership portal.

The matrix checking process is described in further detail below:

Stage 1

Checking the 'dummy' matrix

As explained above, before balloting members for industrial action, the union is obliged to provide employers with a **matrix** of those members who are to be balloted, in anonymised form, but indicating the **workplace** and **category** of members.

For local ballots, which may occur at any time of the year, a dummy matrix will be sent to the branch by the regional office for checking as soon as possible, once a ballot is in prospect.

Branch membership contacts should note:

- The purpose of checking at this stage is merely to confirm that workplaces listed are correct and up to date and do not include known closed locations and that the employment functions are recognised.

- **Branches should reply directly to the regional office with confirmation that workplaces and categories listed are correct** or update workplace details via the Membership Portal.
- For workplaces, the matrix displays up to three lines of text for department, building, school, campus, faculty as appropriate, plus institution name and full postal address.
- A degree of detail is aimed at that ensures compliance with the law (accuracy of location) but not such detail that might identify individual members (eg, room numbers). The regional office can advise if there are queries as to how any individual branch should approach this.

Stage 2

Checking the membership list

In order to ensure that all eligible members are included in the ballot, and that we have correct information on them, the branch are required to check individual members. The membership list can be accessed via the membership portal, or the branch can request the .csv file from the regional office.

The dummy matrix shows numbers of members in the respective categories, but it is essential that the union can demonstrate that it has taken reasonable steps to make this data accurate.

The emphasis is now on members taking ownership of their own personal information and logging into their 'My UCU' account to check that their employment record is correct and we have the correct address to which their ballot paper must be sent.

Branch membership contacts will be provided with instructions on creating a ballot checking spreadsheet locally. Alternatively the regional office will generate a .csv file and send to the branch with password protection. This will be a slimmed-down version of the complete membership data for the branch, but will include key ballot information.

The object of checking at this stage is to identify that:

- all **full** members listed are still employed at the institution
- their **employment function** is correctly indicated
- all **Full** Members are assigned to the correct workplace
- any temporary or workplace **ballot exclusions** are correctly flagged

If errors are noted, branches should encourage the members to log into their 'My UCU' account and make the changes.

Please note – 'My UCU' the upgraded member portal is not yet on line, it is due in

March 2017, until the upgraded portal is live, 'eServices' can be used for the same functionality by members and branches.

Who should be checked?

Only **full** members are included in industrial action ballots and need to be checked. If any are known to have left, the regional office will need to be informed.

What employment details need to be checked?

The employment function reflects the type of work undertaken by the member. Any that are clearly mis-assigned (eg, FE only category in HE institution) should be amended via the membership portal.

What workplace information needs to be checked?

Workplaces should be correctly named if Stage 1 has been completed.

Who should be excluded?

The law requires that we ballot only those members we believe we will call upon to take action. Therefore, there are some members attached to branches who we're not likely to call upon to take action and who must therefore be excluded from voting.

Student, retired, honorary and attached members are automatically excluded from the matrix and balloting process, as are those indicating self-employed or agency status in their contract details.

The following forms of exclusion can be set:

Workplace exclusions: need to be set by the membership team where generally a department or other organisational unit is technically under a different employer to the institution being balloted.

Individual exclusions: can be set or removed at branch level via the Membership Portal. The current options for individual exclusion are as follows:

Different employer: that is to say someone who is working in the establishment where the action is to take place but whose legal employer is not the establishment employer, e.g. a secondee whose contract remains the employer from which they are seconded.

Head of institution

Long term leave: those on long term parental, sick or other unpaid leave, where

the member is not expected to be available to take part in action.

The **ballot spreadsheet** will indicate with a Y those members who have been marked for exclusion either at an individual or workplace level. These should be checked as part of the ballot preparation process, being added or removed as necessary via the membership portal.

Keep a record of the checks you have made so that, if challenged in the courts, the union can produce evidence of the steps taken to verify the membership records.

Actual ballot papers are sent to members via an independent scrutineer, generally Electoral Reform Services (ERS). For local ballots, liaison with ERS will be by the Regional Office. A file of Members to be balloted will be generated at the same time as the final matrix for the employer, and procedures for dealing with enquiries regarding missing ballot papers put in place for each ballot.

Voting paper and ballot enclosure

12. The law set out certain requirements regarding the content of the voting paper, and the TUA 2016 has added to these. Specifically, a voting paper must now also show:

- a summary of the matter or matters in dispute to which the proposed action relates
- makes it clear whether voters are being asked to take part in strike action and/or action short of strike
- if the action includes action short of strike the voting paper must specify the types of action which is expected to take place
- indicate the period within which the action or each form of action is expected to take place.

The regional official will prepare a leaflet, in consultation with the branch/LA, to accompany the ballot papers that will be sent directly to every member eligible to vote in the ballot. The final draft of the ballot enclosure will have to be signed off by the RO.

The ballot enclosure:

- should summarise the issue under dispute and the background to it. Also, be careful not to widen the dispute beyond that which is summarized on the voting paper, e.g. if the dispute is about redundancies, not to suggest that the dispute is about the under-funding of further education by the current government.
- whilst it will of course contain persuasive, campaigning language, should remain factually accurate and not be misleading
- can include a link to further background information on a website
- should not usually be longer than two sides of A4

- can include direct encouragement to vote 'YES', e.g. 'VOTE YES TO STRIKE ACTION!', 'YOUR COMMITTEE URGES YOU TO VOTE YES!'
- should include, usually in the header or footer, contact details of the relevant regional office, and should include the UCU logo.

Prepare publicity and campaign material

13. The branch/LA's primary role throughout the balloting period is to campaign on the issues, both inside and outside the institution and to ensure a yes vote with over 50% turnout. It is recommended that members are made aware of this threshold in your campaign materials.

Branches should discuss with their Regional/Wales/Scotland official and refer to the UCU branch toolkit at:

https://www.ucu.org.uk/media/4411/GTVOtoolkit/pdf/GTVO_booklet.pdf

Conducting the ballot

14. Once you have received authorisation checked the membership details, and agreed the ballot material, your RO will:
- i. send the notice of intention to ballot to the employer (the section 226(A)) in writing at least 7 days before the first day of distribution of the ballot material that the union intends to hold the ballot, the date the union intends the ballot papers to be distributed, and enclosing the lists and numbers. A copy of the notice will be sent to the branch.
 - ii. contact the independent scrutineer (ERS) who will be printing and distributing the ballot material. All industrial action ballots must be fully postal and be sent to an individual's 'proper' address. This could be a home or work address depending on the preference indicated by the member on their application to the union. Institutional internal postal systems and other means of distribution must not be used. Members will receive a ballot paper, the accompanying literature, and pre-paid reply envelopes to be returned direct to the ERS.
15. The branch/LA should put up posters/use e-mail etc. to inform members of the ballot, the opening and closing dates, the need to secure 50% plus turnout and who to contact if they have not received a ballot paper, or have any queries relating to the conduct of the ballot. The branch/LA must inform the RO of any members entitled to vote who have not received a ballot paper or of any member/person who is not entitled to vote who receives a ballot paper.
16. The branch/LA will receive from head office a copy of the labels used by the ERS to distribute the ballot material. You must notify the membership department of any changes to your membership records during the ballot period.

Members must be given, as far as reasonably practicable, a voting paper and being able to vote so without cost to themselves and in secret.

New members: A member is entitled to vote in a ballot as soon as they are registered on the union's database as a member. Individuals can only join online. Paper applications are no longer accepted.

Resignations: Under the union's rules a member continues in membership for one full month after the month in which they notified their resignation to the union.⁵

Notification of results

17. The RO will send the notice to the employer of the result of the ballot, giving the number of votes cast, the numbers voting YES, the numbers voting NO and the numbers of spoilt papers. This must be sent as soon as possible after the ballot result is known. A copy will be sent to the branch/LA.
18. The union is required by law to take such steps as are reasonably necessary to ensure that those entitled to vote in the ballot are informed of the result including the number of votes cast in the ballot, the number of people answering YES and NO, and the number of spoilt voting papers. Head office will ensure that an e mail is sent to all members for which we have an email address. The branch/LA should also use its normal methods of communication to communicate this information to members; notice boards, email newsletters, websites, etc.

Members may contact the regional office for a copy of the scrutineer's report up to six months after the close of the ballot.

Notification of the action

19. From the closing date of the ballot (i.e. the last day on which votes may be cast), you have six months within which to commence industrial action, either strike action, action short of a strike or both, otherwise the ballot ceases to be effective. Before you can take action, you will need authorisation from the union to proceed.
20. Once the results are known, and in consultation with your RO, if your branch/LA decides to proceed with the action, your RO will complete the application for authorisation enclosing their recommendation and send to the relevant national official to seek authorisation from any three of: the president, the chair of FEC/HEC, the two vice-chairs of FEC/HEC. Unless there are exceptional circumstances, the branch/LA

⁵ 10.1 A member may resign membership of the union by submitting notice of intention to resign to the union's Head Office. The resignation shall take effect at the end of the calendar month after the month in which the notice was received by the union.

must allow at least 7 days for this process to take place BEFORE the 14 days' notice of the proposed action is sent.

21. On receiving authorisation, your RO will send the notice of industrial action (the section 234 notice) to the employer in writing stating the form of action to be taken, together with the updated description of members being called upon to take action. Please note that if the action is discontinuous, the employer will need to be notified of all the dates you intend to take industrial action that are known at the time of the notice. A copy of the notice will be sent to the branch/LA.

Taking action

22. Any industrial action will only be legal if it is on the dates given to the employers. If these dates are changed then a new 14 day notice of action will need to be submitted to the employer.
23. Groups of members who have been excluded from the ballot cannot be called upon to take action but if a member joins after the close of the ballot, they can still participate in the action as long as the number of new members is not significant. Inform your RO of any changes in your membership profile.
24. Industrial action cannot be taken under the ballot after 6 months starting from the date on which the ballot closed, ie. the last day on which votes may be cast.
25. Any picketing must be comply with certain conditions. UCU provides separate guidance for branches/LAs on picketing.