



Industrial action

Your guide from ATL – the education union

Legal advice series



ATL is the union for education professionals across the UK. Active in the maintained, independent and post-16 sectors, we use our members' experiences to influence education policy, and we work with Government and employers to secure fair pay and working conditions. From early years to HE, teachers to support staff, lecturers to leaders, we support and represent our members throughout their careers.

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01 Introduction

Industrial action, either via a strike or other partial refusal of duties, can be a powerful weapon in industrial relations. It has enabled us to resolve disputes on a wide range of issues, from the reinstatement of disruptive pupils, to the imposition of redundancies or the introduction of unacceptable conditions of service. However, industrial action must never be taken lightly. ATL will support its members by organising and authorising lawful industrial action in appropriate cases, essentially as a last resort. This publication aims to set out in an accessible and practical format:

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

The appendices provide:

- a checklist and timetable for taking industrial action
- a model ballot form
- an explanation of the penalties that members may face if they take part.

Although this guidance is mainly aimed at members in maintained schools and colleges in England, Wales and Scotland, 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 the London office.

The explanation of the complex requirements of industrial action given in this publication is not a complete statement of the law. If you are considering taking industrial action, you should involve your local ATL representative and obtain advice from ATL's London office.

Our approach to disputes 02

When an ATL member has a problem with their employer it could be an individual or a collective issue. If, for example, a member is dissatisfied with the way a pupil behaviour matter has been dealt with, or with a salaries issue, an ATL representative might support the individual on a 'single-member' basis in resolving the problem.

However, what may seem at first an individual matter may turn out to be a collective issue if it affects other ATL members within that workplace. Colleagues may feel affected by a behaviour issue (for instance, by the imposed return of a disruptive student), or may be suffering similar treatment on a salaries matter. In these cases, members may agree that this is a collective issue, and ask an ATL representative to speak for them all.

If the concern is shared by ATL members, it is likely to be shared by members of other unions too. The ATL representative should try to work cooperatively with other representatives, but will always reserve the right to act independently.

Resolution, not confrontation

No one enjoys an argument with their manager or employer. The professional approach to differences is to attempt, assertively but not aggressively, to find a solution acceptable to both parties. In any workplace, a manager or employer has greater power than an individual member of staff, and this often gets in the way of a professional dialogue to resolve a problem. By making a disagreement a collective issue, members can rebalance the relationship between the manager and the staff. Members avoid a feeling of isolation and gain strength and comfort from the support of colleagues.

Discussions between managers or employers and ATL representatives are an everyday occurrence. ATL representatives seek to find mutually acceptable solutions to both individual and collective problems. We have a local network of branch and Executive Committee representatives and also of caseworkers (regional officials and senior regional officials) with considerable industrial relations expertise. Either directly or through the caseworker involved, there must be contact with the local branch secretary or member of the Executive Committee. This is important because if industrial action is proposed, it is the Executive Committee (normally via its officers) which has the power to authorise it. If there are any difficulties in contacting these officials, the ATL representative in the school or college should approach ATL's London office directly so that local support is provided as soon as possible. You should get help from this network at an early stage before problems get worse.

Collective disputes

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 (LA) funding policy)
- at national level (for instance, when a dispute arises with the Government over a national pay and conditions issue).

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

- meetings and discussions with management and employers, which may include the headteacher or principal, the governors or the LA
- meetings of the ATL members involved in the dispute
- 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
- involvement of external agencies, such as the Advisory, Conciliation and Arbitration Service, to seek a satisfactory solution.

During a dispute, the two sides will normally hold meetings and, where appropriate, call in expert advice or more senior representatives. ATL always tries to settle disputes through resolution rather than confrontation. 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. During these discussions, the ATL representative will benefit from maintaining awareness of the strength of feeling amongst the members.

If discussions appear to be unproductive members will need to consider the possibility of industrial action. The mood of the members may be tested informally or by means of an 'indicative ballot'. This is like a straw poll; a secret ballot carried out by ATL for its own information outside the legal provisions for formal industrial action ballots. It is usually preferable to test the mood by way of an

anonymous survey via email rather than a show of hands. The ATL representative will be in a stronger position to negotiate an agreement if they can inform the employer that the members are so discontented that they are prepared to take industrial action. Of course, that must never be an empty threat; it must be genuine. But it is a powerful incentive to an employer to come to an agreement.

If disagreement remains, a formal ballot on industrial action may be held. Even if members vote in favour, industrial action is not inevitable. The vote will further strengthen the ability of the ATL representative to reach agreement. If this cannot be achieved and industrial action is to take place, it is important to concentrate on sorting out the dispute and assessing how likely the action is to achieve the desired outcome. ATL regards industrial action as a last resort.

Our experience is that the threat (and/or the reality) of industrial action can be an effective means of demonstrating the seriousness of a dispute. Skilfully targeted, it can persuade a reluctant or intransigent management to negotiate a reasonable settlement or negotiation.

Nevertheless, while industrial action is taking place, it is important to concentrate on resolving the dispute and reviewing how effective the action (with its risks) is in achieving the desired outcome.

In short, industrial action can be useful for achieving an aim, but must not be seen as an aim in itself.

Turning a dispute into a campaign

If members are prepared to ballot for industrial action, it is a sign of a breakdown of relationships between staff and employer. At this stage, members will need to campaign to gain support for their position. Led by the ATL representative, members should, as appropriate:

- seek the support of other staff unions. Where possible, ATL should coordinate with other unions from the outset of a dispute
- seek the support of others. This might include parents, governors, the headteacher or principal, the local community, local politicians, local and regional media
- publicise the dispute by means of newsletters, leaflets and/or press releases
- consider organising events to attract publicity and reinforce collective support.

Support and the sustentation fund

If ATL members take part in industrial action approved by ATL and authorised in line with the procedure set out in this guidance (ie it is official and lawful industrial action), ATL will give its full professional support.

However, when members consider taking industrial action, they need to be aware that they may face penalties from the employer (see page 19), which could include deductions from their salary. ATL has a 'strike fund' (known as the sustentation fund), which provides some financial support. Where members have suffered deductions from their pay for part in an (official) strike of one full

day or more, the fund is able to reimburse their net financial losses for a maximum of 10 days. Application forms to apply for this reimbursement are available from ATL's London office.

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 either without the support of the union or without following the necessary balloting procedure (see page 8). ATL is not able to support members who take unofficial or unlawful action.

03 The legal background

What is industrial action?

There is no precise definition of industrial action in employment legislation. Put simply, it is either a strike ie, 'any concerted stoppage of work' (Trade Union and Labour Relations (Consolidation) Act 1992, section 246) or alternatively, industrial action other than a strike, ie, action 'short of a strike'. This includes 'working to rule', refusing to do certain duties and not cooperating with the employer. Perhaps the simplest definition of industrial action is: 'a refusal by employees to do something; that refusal being 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
- a continuing ('all-out') strike.

In educational institutions, 'other industrial action' can include:

- 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
- 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 compensation for the economic consequences of the action. This would easily bankrupt them, and the threat of legal proceedings would prevent unions from ever taking industrial action, thus removing their power. Since 1906, legislation has given

trade unions limited immunity from the legal consequences of organising industrial action. They are protected from claims from the employers for compensation as long as they meet strict legal requirements. The current requirements are set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) as amended by legislation including the Trade Union Act 2016.

Trade unions must make sure that industrial action is both:

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

If members take action which is either unofficial or unlawful, they may be dismissed (see page 20). 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 five 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
- machinery for negotiation, consultation or union recognition.

(section 244, TULRCA 1992)

Note: If industrial action is not related to a trade dispute matter (if, for example, it is over a political or policy issue) it may well be considered to be unlawful.

2. Secondary action

It must not involve 'secondary action'; this 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. To be lawful, 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 Government has produced a code of practice on 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 their members. Each union that has members attending a picket line must appoint a picket supervisor.

4. Secret ballot

The action must be supported by a majority of those voting in a secret ballot. There are complicated rules about the process of balloting for industrial action. Unions must now meet many requirements (see below). These rules mean that it takes at least four weeks for a union to organise lawful industrial action, and in practice, it will normally take longer. Our procedures follow the Government's code of practice: 'Industrial Action Ballots and Notice to Employers'.

5. Voting thresholds

All ballots for industrial action must have a turnout of at least 50% of union members who are eligible to vote. The Government has further concluded that education is an 'important public service' and therefore a ballot for industrial action involving those employed in the education of pupils under the age of 17 must have the support of at least 40% of eligible union members in order to be valid.

Rules governing the balloting process

1. The employer 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.
5. The method of voting must be by marking a ballot paper.
6. All members who are reasonably expected to take part in the action must be given an opportunity to vote (as far as is reasonably practicable).
7. The ballot paper must contain a legal statement alerting voters that they will be breaking their contract if they take part in 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. If the action proposed is action short of strike, the ballot paper must identify the types of industrial action.
12. Individuals must be able to vote without interference from the union.
13. The voting (as far as is reasonably practicable) must be secret.
14. Individuals must be able to vote (as far as is reasonably practicable) without cost to themselves.
15. A named independent monitor (known as a 'scrutineer') must be appointed to oversee the ballot if over 50 employees are entitled to vote.
16. The union must tell members the result as soon as is reasonably practicable after the ballot.
17. At least 14 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.
18. The industrial action must start within six months of the date on which the ballot closes (nine months in certain circumstances).

04 Taking industrial action

The procedure in practice

ATL will make sure that any industrial action its members take is both official and lawful.

This entails:

- consulting the members involved
- approving the balloting procedure
- arranging the ballot, via ATL's London office
- communicating the result
- deciding on authorising (and giving notice of) industrial action.

The meeting of members

Any decision to seek a ballot on industrial action should be made at a meeting of the members involved at which the local branch secretary, member of the Executive Committee, or the ATL caseworker is present. It is obviously important that, before invoking the formal balloting process, the local representatives and caseworkers are confident that a majority of the members involved will indeed vote in favour of the industrial action being proposed.

It is advisable to carry out an email survey of members, which is anonymous. On previous occasions a show of hands has falsely indicated that members would be willing to take part in action due to peer pressure resulting in members feeling unable to refuse. Given that at least 50% of voting members must take part in the ballot (ie by voting yes or no) and the requirement that at least 40% of the voting workforce support the action, it is imperative that indicative ballots are accurate.

The balloting procedure

If industrial action is being considered, the balloting procedure must then be carefully followed. In most cases, our national officers, on behalf of the Executive Committee, are responsible for approving any decision to authorise industrial action. In practice, the balloting process itself (that is, the timing, content and administration of the ballot) is normally overseen and administered by our employed staff. The decision to authorise action is then made by the Executive Committee or the national officers, in consultation with the local officials, representatives and staff, as appropriate.

If the members involved in the dispute work in different places, it may be legally necessary to hold a separate ballot for each workplace.

Preparations for the ballot will include the following stages.

1. Setting a timetable for the ballot

Because of the requirements to give the employer seven days' notice of the start of the ballot, the time taken to conduct a full postal ballot and to then give 14 days' notice before the action can begin, the process takes at least four weeks.

2. 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
- details of who can authorise the action
- certain other details required by law.

3. Formal notice to employer

This must give the employer at least seven days' notice of the opening of the ballot and information about who will be asked to vote. It is our usual practice to include with this notice to the employer a copy of the proposed ballot paper and also to send a copy to the headteacher or principal, as appropriate.

4. Confirmation of the list of members in the 'voting constituency'

This will be the institution or branch, as appropriate. By law, we need to rely upon a formal record as to who is eligible to vote and to take part in any subsequent action. For this purpose, we rely on our central computer record of members. Accordingly, only those members included in this central membership list can be sent a ballot paper. It is therefore highly important that the membership information held by the London office is accurate before the start of the ballot. This will normally involve the school or college representative contacting ATL's membership department to verify and/or update the list.

Every member on ATL's central database 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. Trainee 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 anticipated action. 'Late joining' individuals who become members during or after the ballot are also entitled to take part in any subsequently authorised action.

Even if there are a very small number of members within an institution where industrial action is being considered, 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 either without an ATL ballot or before the result has been declared and proper authorisation given, this could 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 20).

The ballot itself

The legal requirements for balloting are as follows, with ATL's practice in italics:

- 1 The ballot must be fully postal.

ATL will normally send the ballot paper, explanatory letter and other information to the members' home addresses unless a specific request to do otherwise is made.

- 2 The method of voting must be by marking a ballot paper with a 'Yes' or 'No' answer.

- 3 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 individuals are breaking their contract, and a statement about the rules as to the fairness of any dismissal for taking part. See the model ballot paper on page 18.

- 4 The type of industrial action proposed must be shown on the ballot paper and in particular whether a strike, or any action short of a strike, is being considered. If the action is action short of strike the type of action must be specified.

When a range of actions are being considered, ATL is required to invite its members to vote on each one separately.

- 5 The employer must be sent a copy of the ballot paper at least three days before the opening of the ballot.

ATL's normal practice is to send this to the employer with the formal 'seven-day notice' of the ballot.

- 6 The members must be allowed to vote without interference, without cost and in secret. They must be allowed a reasonable opportunity to vote.

ATL allows members several days to return their ballot forms and always sends them a pre-paid envelope. As recommended by the Government's code of practice, ATL numbers the ballot papers individually to make sure that there can be no improper 'duplicate' voting. To ensure that voting is secret, we do not keep a record of which member receives which numbered ballot paper.

- 7 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'.

ATL will normally approach one of the organisations specifically set up to deal with voting processes to act as scrutineer where necessary.

- 8 The members involved and the employers must be told of the outcome.

ATL normally writes to the school or college representative and to the employer to announce the result as soon as practicable after the ballot closes, with a copy to the headteacher or principal. If we have members' email addresses we will usually email the result to members.

- 9 Employers must be given at least 14 days' notice of the start of the action.

Where possible, ATL informs the employer of the date that any industrial action will start when we notify them of the ballot result.

This process takes at least four weeks and will normally take longer.

School and college ballots

In the case of a ballot at a single institution where fewer than 50 members are involved, the process is undertaken by ATL staff. If more than one union is balloting their members in one workplace over the same dispute, it is often sensible to coordinate arrangements for balloting on (and subsequently calling) industrial action, where this is practicable. When the date and time for closure of the ballot arrives, staff will count the returned ballot papers and consult the officers via the president for a decision with regards to authorising industrial action. The ballot papers are then stored securely for at least six months so that they are available for checking should the need arise.

Larger and branch/national ballots

If the proposed industrial action involves more than 50 members, for example, where there is a large constituency at one workplace, or a whole branch, or ATL members are being balloted nationally, an independent scrutineer needs to be appointed. The scrutineer's main task is to oversee the ballot and to give a formal report to the union on the conduct of the ballot and its result. The independent scrutineer 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 ATL the result
- retains the returned ballot papers.

The scrutineer's report after the ballot must state whether it is satisfied that the ballot was carried out in line with the legal requirements. It must be produced within four weeks of the

ballot. Copies of the report must be made available to the members involved and to the employer for six months after the closing of the ballot.

Announcing the result

As soon as is reasonably practicable ATL will announce the result of the ballot by formal letter to those who were entitled to vote and to the employer 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
- the number of spoiled ballot papers.

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

If email addresses are available, members will be emailed with the results.

If the dispute has regional or national significance, members may learn the outcome via the media before they receive official notice of the result. In these cases, ATL may meet its responsibility to tell members the result via their workplace, branch or national notices or newsletters, as appropriate.

If the result is 'no' to any industrial action, we will decide on a case-by-case basis as to whether the employer is informed.

Authorising industrial action

Where ‘national-level’ industrial action is being contemplated, ATL’s full Executive Committee will normally decide whether to authorise official industrial action. However, where (as is often the case) the ballot is at branch or individual workplace level, authority to decide on industrial action has been delegated to the Executive Committee’s officers. However, by law:

- at least 50% of those entitled to vote must take part in the ballot, and, in education (and other important public services), at least 40% of those entitled to vote must support the action (by voting ‘yes’).

Notifying the employer

Once industrial action has been supported by the ballot and ATL has authorised it, the next step is to notify the employer when industrial action will begin. At least 14 days’ written notice must be given of the start of the industrial action.

The notice must state whether the action will be continuous, for example an indefinite strike, or a continuing refusal to teach a pupil; or discontinuous action, such as a series of one-day strikes. The union must give at least 14 days’ notice of each occasion on which the industrial action will be taken. The notice must also provide the employer with information regarding which employees will be taking part; but members will never be identified by name.

If ATL authorises 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 begin. ATL will normally send the headteacher or principal involved a copy of the letter supplying this information.

Taking industrial action

Save in exceptional circumstances, such as the employer agreeing to an extension, the industrial action must begin within six months of the date on which the ballot closed.

If the action is suspended by the union, for example, to facilitate further negotiations, the employer must be given 14 days’ notice of the action starting again.

If the issues remain unresolved after six months ATL will be required to re-ballot members.

Advice not instruction

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

ATL has always respected the right of individual members to act in the way that they believe is right. Individual members may be unwilling to take industrial action, either because of personal beliefs or because they do not support the particular cause in question. Other members should be ready to respect this. Any decision not to take part in industrial action will have no impact on the member’s membership of ATL whatsoever.

Industrial action by other unions 05

ATL's policy

Our members can be placed in a difficult position if another union is taking action and ATL is not. 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 process for balloting by their union has not taken place. ATL advises its members very strongly against taking part in action taken by other unions if ATL has not held its own 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
- they 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 be required to confirm this by arriving at the premises as normal to register their presence, unless other arrangements are agreed. Employers are generally entitled to deduct salary for the time spent in taking strike action. If your school or college is closed but ATL members are not taking strike action you must still be paid. If you are not, you should contact ATL.

Picket lines

If the other union or unions are picketing outside the premises when ATL has not authorised strike action, 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 appropriate. It may be necessary to tell the employer, formally, 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, the 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 cooperation with their colleagues, without the formal balloting process being undertaken, there is a real danger that the employer may regard this as unlawful industrial action. It is unlikely that ATL's support would be available here, as we would have to consider the action as unofficial.

Working normally

Where ATL has not held a ballot, but other union colleagues are taking industrial action, our members must work as normally as they are able. As they are not involved directly in the dispute, they must not act as if they are taking action. At the same time, however, ATL supports the principle that its members should not undermine their colleagues' action.

With this in mind, ATL's representatives and members in maintained schools should be aware of the provision with 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, ATL would 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. ATL appreciates that members will not want to put the health and safety of their pupils or students at risk and will cooperate 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
- agree to combine groups of pupils or students, or divide one group between others, as a result of colleagues taking industrial action.

However, you should check your contract carefully as the Government's guidance states that cover supervisors, or teachers who are employed wholly or mainly to provide cover and are not taking industrial action themselves, can be directed to provide cover during industrial action by teachers or non-teaching staff. If you have any concerns, speak to ATL.

In some circumstances, it may be reasonable for members to cooperate with the management 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 to continue. 'Totting up' normally 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 sent home on a rota basis. These arrangements should be agreed with all the education unions that are represented in the school or college.

ATL respects the right of each member to do whatever he or she thinks is right in these sensitive situations and we expect their workplace 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 their school and college representatives, to seek guidance from their branch secretary, Executive Committee member, or 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. At the same time, our members need to make it clear that they are not themselves taking industrial action.

ATL appreciates the sensitive position of ATL (AMiE) members who are members of the senior leadership team at a time of industrial action, whether it is action taken by other unions or by ourselves. There can be anxious or difficult conflicts of loyalty for headteachers and principals, and those who may be asked to deputise for them, 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. Members who are in the senior leadership team 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 obtain advice from their local branch secretary or Executive Committee member, regional official or caseworker if they find themselves facing difficulties.

At times of industrial action, it is particularly important for ATL members in management roles to maintain contact with their teaching or lecturing colleagues and other members of management, and to keep up to date with the local situation. They should be free to act as their conscience dictates; 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 a member of senior management 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 individuals concerned, the issues should be readily understood and easier to sort out.

ATL's support, advice and other services are always available to those members who are in senior management roles.

Industrial action by the headteacher or principal

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

Even though their contract or job description may provide for the individual to deputise, the above principle of not normally being prepared to undermine the industrial action of colleagues still applies there. They may need to tell both the headteacher or principal and the employer (the chair of governors or LA, 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 obtain advice from our advisers.

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 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 and/or the LA and, where practicable, 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, ATL 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 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 to do.

Staff should not be asked to undermine the industrial action of colleagues from other unions.

Chronological checklist for industrial action

1. Consultation and negotiation

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

2. Meeting of ATL members

- ATL members will meet either at their workplace or at a branch level, as appropriate (with local officers present), to decide whether there is sufficient support to proceed to a ballot. This indicative ballot should be held in secret, eg by email survey.

3. Involvement of ATL's London office

- Contact is made with the legal and member services department at ATL's London office, who will administer the process.
- ATL will set a timetable for the ballot.

4. Notice of the ballot to the employer

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

5. Draft ballot paper

- ATL will prepare a draft of the ballot paper in consultation with local officials, setting out what industrial action is being proposed and ensuring all other information is contained on the ballot paper in accordance with the legislation.

6. Prepare a list of voters

- ATL will make any amendments to the computerised membership database, based on information from the school or college representative.

7. Independent monitor

- If more than 50 members are involved, ATL will appoint an independent scrutineer.

8. Ballot paper to the employer or employers

- If not already sent (see point 4 above), ATL 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 (normally at a local level) to try to resolve the dispute.

10. Further information

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

11. Distribution of ballot papers

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

12. Voting

- Voting usually takes place over several days.

13. Working as normal

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

14. Ballot result

- The votes are counted after the closing date, either by the designated member of staff at ATL's London office or by the independent scrutineer.

15. Authorisation of action

- If there is a vote in favour, and in line with the legal requirement (see above), ATL's Executive Committee or its officers decide whether to authorise industrial action.

16. Notice of the result

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

17. Notice of action

- If not already notified (see point 16), ATL will send a letter to the employer.
- ATL must give at least 14 days' notice of the start of the industrial action.

18. Industrial action begins

- The action must start within six months of the date on which the ballot closed. If the dispute is not settled within six months of that date, a fresh ballot must be conducted.

08 Appendix B

Model ballot paper for industrial action

Ballot paper number:

Association of Teachers and Lecturers

.....School or College

(Summary of matter or matters in issue in the trade dispute to which the industrial action relates)
(Indicate period or periods within which the industrial action, or each type of action, is expected to take place.)

BALLOT PAPER

Are you prepared to take part in industrial action short of a strike, ie

Please place a cross (X) 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 strike or other industrial action, which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place less than 12 weeks after your commencement in the action, and, depending on the circumstances, may be unfair if it takes place later.

In the event of a vote in favour of industrial action, ATL's Executive Committee and its officers (ie the president, immediate past president, vice president, policy officer, and treasurer and member governance officer) are empowered to authorise and/or call upon members to take part (or continue to take part) in industrial action.

Your vote will be secret. The cost of the ballot will be borne by ATL.

The law does not require the appointment of an independent scrutineer 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:

....., ATL, 7 Northumberland Street, London WC2N 5RD,
no later than noon on/..../....

Penalties for taking industrial action

Employers facing industrial action by staff can respond with a number of penalties, ranging from deductions of salary through, in the most serious cases, to dismissal. Fortunately, the law gives employees some protection from dismissal as long as the industrial action is both official and lawful. However, employees who are considering taking part should 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 (and normally will) withhold one day's salary. For teachers working in maintained schools, the National Conditions of Service (the 'Burgundy Book') have traditionally, and helpfully, stated that any deductions of one day's salary must be worked out at 1/365th of the annual figure. For other staff, the proper figure is not clearly set out.

If the industrial action involves an employee refusing to carry out 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 'rough and ready' assessment of the 'value' of lost services.

Salary deductions can have a significant effect on pension benefits, particularly for those approaching retirement. 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 carry out 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 sending staff involved home. The employer is then in a position to withhold pay completely; fortunately, this is not a tactic that employers often use.

Dismissal for official action

Employees can claim automatic unfair dismissal if they are taking part in official and lawful industrial action and are dismissed:

- during the first 12 weeks of the action
- after the first 12 weeks, but where they had stopped taking part in the action during that period
- after the first 12 weeks, but where the employer had not taken reasonable steps to resolve 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 when determining whether the dismissal was unfair.

This protection from dismissal only relates to action which is both official, ie organised by the union, and lawful, ie in line with the balloting and other legal requirements (see page 8).

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 notice. This is, and was intended by Parliament to be, a major disincentive from 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
- it 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 ATL’s Executive Committee and its officers (see page 12) have the power to authorise official industrial action. If any other person or group organises or calls action without this authorisation, ATL cannot protect the member or members from dismissal for taking unofficial action.

Found this helpful? ATL has lots of other resources – all free to members – that you might be interested in:

Bullying at Work

Product code: PE29

Part-time Working

Product code: PE31

Violence, Threatening Behaviour and Abuse

Product code: PE28

Redundancy

Product code: PE10

Finished with your copy? Why not pass it on to other colleagues who might find it useful.



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