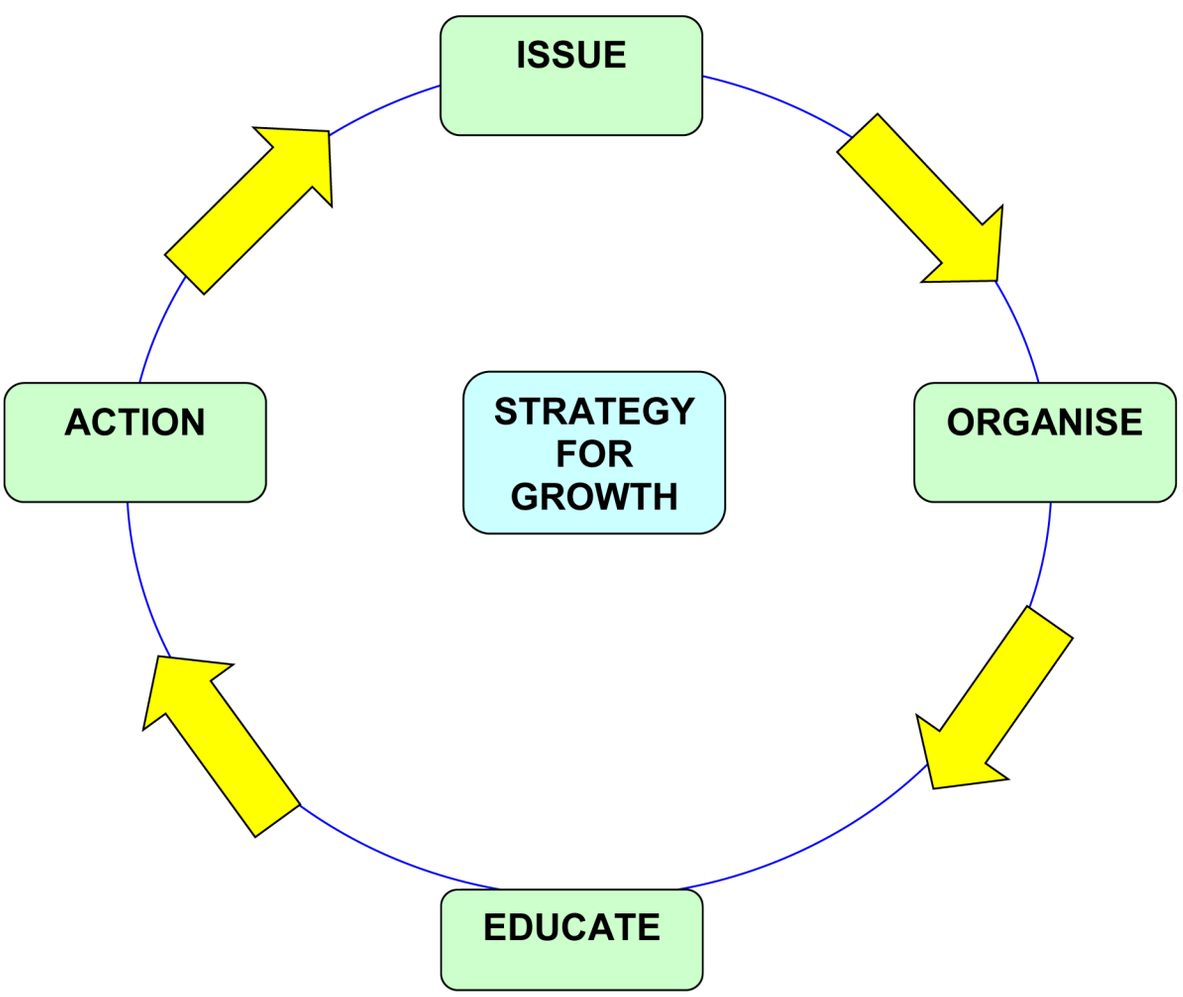
Workplace Reps Stage Two Resources 2021

unite
theUNION

THE 100% MEMBERSHIP CAMPAIGN

THE ORGANISING CYCLE



ORGANISING

"The starting point for any campaign is the workplace reps and the state of their organisation."

(Jim Kelly, Unite)

The Organising Cycle:

The Organising Cycle (shown in diagrammatical form at the start of this course pack) is integral to **issue-based campaigning** and the issue being tackled must be **deeply-felt**, **widely-felt** and **winnable**. The four stages of the cycle are as follows:

Stage 1 – Issues:

This is concerned with finding an issue, which must be **winnable**. How do we know if it is likely to be winnable? Well it has to be one that affects most people. Here we are talking about the largest majority of workers with whom we are concerned with. Next, it will be winnable because it will be **deeply felt** by this large majority.

Finally, it has to be one in which we can **involve everyone in winning**. Therefore, workers will be willing to sign up to the issue. Furthermore, it has to be one that can send a message to management about workers' concerns and intentions.

Stage 2 – Organisation:

Organisation means setting in place structures or networks to effectively communicate face-to-face with every single worker.

The development of this network or committee will often be the most difficult and time consuming stage of the organising cycle, but it is the most important. Such a network or committee can:

- Provide the resources to make one-to-one contact with every worker
  - Make such contacts in a more effective and acceptable way than an outside person such as a union organiser can hope to do
  - Provide the opportunity to develop more workers so that they can become more active and involved as union members
- Encourage workers to accept ownership of the organising campaign

In this way, organising the workplace becomes the work of active members, facilitated and supported by the organiser.

Stage 3 – Education:

Using the organising structures, we can educate each other through one-to-one communication about the issues that confront us, and what we can do about them together.

All of us learn by a range of methods. In the workplace, for example:

- By questioning and being questioned on issues and experiences
- By carrying out tasks and activities with other workers who have the same concerns
- By observing how employers respond to our claims and needs
- By talking, listening and discussing, and by sharing our experiences
- By seeing the differences between questioning “authority” as an individual and as a collective group
- When we “win” an issue, by understanding why and how we have won
- By understanding the process through which we take a d ecision to do something about an issue

Stage 4 – Action:

Action can be the fun and creative part of the organising cycle. Collective actions can be anything from wearing the same coloured T-shirts to organising a sit-down on the job, and to anything else that you might think will help. However, you must remember to follow due process and not break the law.

Collective action comes out of the one-to-one process, which has built commitment to one or more issues. It gives union members a chance to do something about the issue(s) that are important to them. It also gives the opportunity to demonstrate the effectiveness of workplace organisation. We need to remember the principles of the organising model (winnable, widely-felt and deeply felt). Staying within the law, following correct procedure, organising and campaigning together as a big collective in well-organised workplaces, but also remembering the other pillars of Unite – global and political consciousness as well as organising and union consciousness – these are all things we should be aware of.

Why do trade unions win?

- Thorough research / preparation?
- Knowing the legislation?
- Negotiating skills of Officers or Reps?
- Good Press/PR campaigns?
- Having a high level of membership?
- Producing good newsletters?

Elements of a winning campaign:

- Strong majority of workers will have to publicly support the union
- Workers will have to participate in the process (do the work of the campaign)
- A respected and representative group of workers must be willing to keep workers informed and to be leaders on the campaign

What drives a campaign?

- Deeply and widely felt issues
- Expectations for change (the workers must believe or have hope that their efforts will make a difference)
- Leaders committed early and committed to seeing the fight through
- ANGER/HOPE/ACTION

Moving a worker:

ANGER

- Workers need to want to change things in the workplace for the better
- Can't tell them to be angry, they must recognise it
  - Organisers agitate around issues to get workers to feel the need to do something

Vision: HOPE

- Anger is not enough
- Organisers must provide a vision
- Show how things could change so that all the workers come together

ACTION

- Get worker to do a task
- Don't overload – it must be achievable
- Small tasks can be built upon
- Always test action
- Build confidence
- Push towards collective action

Winning on the issues:

- Winning is about developing leaders – the workers are the union
- Winning is about building an effective committee
- Winning is about power – workers have the power to win
- Winning is about thinking and operating strategically

Committee (trade union team):

- Can make 1:2:1 contact with every worker
- More effective than a single Workplace Rep
- Provides opportunity to develop Leaders
- Takes ownership of the campaign

Role of the committee:

- Provides leadership
- Gives a sense of ownership
- Maintains 1:2:1 communications network
- Maintains mapping
- Eyes and ears of the Union
- Educates and agitates
- Organises collective action

Leaders:

"To lead people, walk beside them ... As for the best leaders, the people do not notice their existence. The next best, the people honour and praise. The next, the people fear; and the next, the people hate ... When the best leader's work is done the people say, 'We did it ourselves!"

(Lao-tsu)

Finding natural leaders:

- Acknowledged by others
- Speaks out about work issues
- Organises social events
- Involved and respected in their local community
- Respected by workers
- Understand trade unionism
- Recommended by fellow workers

Communications:

- 1;2;1s
- Small group meetings
- Mass meetings
- Telephone trees
- Texts
- E-mails
- Social networking
- Newsletters and Leaflets

Using surveys:

- Useful tool
- Gather information/identify Issues
- Initiate 1:2:1 discussions/education
- Demonstrates we care what workers think
- Tests issues
- Tests Leaders
- Short – 1 - 2 sides only
- Easy to complete (try www.surveymonkey.com it's free)
- Of interest to workers
- Include info on, why a survey & how information will be used
- Ask for contact details

Escalating collective actions:

Low Risk

- Same colour days
- Badges/stickers
- Petitions

Medium Risk

- Collective Grievances
- Boycotts

High Risk

- Collective illness
- Work to Rule
- One day Strikes
- All out Strikes

Collective actions:

1. Allow members to participate directly and collectively in activities and the campaign
2. Visibility – message of unity and commitment
3. Provide media coverage – explain position and increase community support
4. Can affect production or the community and result in a change in the Employers behaviour

Summary:

- Mapping must be completed
- Leaders identified
- Committee formed
- Collective actions organised
- Create a campaign timeline
- Use maps to allocate individuals to committee members

Organising and fighting back:

The environment for all trade unions is becoming increasingly hostile. In the United States, public sector workers in Wisconsin and Ohio have faced the full force of government hostility (March-April 2011). State governments legislated to remove ***collective bargaining*** rights from their employees, ***effectively de-recognising the unions***. The unions' response was to organise and campaign for their rights. This anti-union attack came from the Republican Party. President Obama opposed the Republican attack.

The British TUC joined in a day of solidarity with workers in Wisconsin and other US states on Monday 4 April 2011. Not just out of solidarity for another trade union movement, or concern for fundamental human rights, but because ***collective bargaining*** is crucial to overcoming the economic problems that the USA (and the UK for that matter) faces.

The workers who depend most on collective bargaining for decent living standards did not cause the crisis, and should not have to pay for it. But the declining wages and the increasing inequality which has resulted from the steady erosion of collective bargaining especially in the USA but across the developed world certainly did play a part in causing the global economic crisis.

Ohio vote repeals union limit law – latest news (December 2011):

Ohio voters have struck down a law limiting unions' collective bargaining powers, dealing a blow to Republicans in a crucial election swing state. The measure, which had not yet taken effect, was rejected by a nearly two-to-one margin in Tuesday's special referendum. The law would have curbed bargaining rights for 350,000 public employees. Labour unions said the result was a barometer of the national mood ahead of next year's presidential vote.

Richard Trumka, president of the AFL-CIO, one of the largest US unions, said, “Ohio has sent a message to every politician out there: go in and make war on your employees rather than make jobs with your employees, and you do so at your own peril.”

While the above case took place in the USA, we can see that even there, where trade unionism is relatively weak, workers can win – in this case, over collective bargaining rights. And let’s not forget that the IoD (see earlier in this course), have already suggested taking away collective bargaining rights for workers in the UK.

In the UK, we face unprecedented attacks on public services, jobs, pensions, pay, and the threat of wide-scale privatisation. We have to fight back against all these ideologically-driven attacks on working people’s living standards by the friends of “big capitalism”.

Will things change from 2021?

Below is Joe Biden’s statement on Trade unions and what his plans are as president! Where America leads will the UK follow?

Strong unions built the great American middle class. Everything that defines what it means to live a good life and know you can take care of your family – the 40 hour workweek, paid leave, health care protections, a voice in your workplace – is because of workers who organized unions and fought for worker protections. Because of organizing and collective bargaining, there used to be a basic bargain between workers and their employers in this country that when you work hard, you share in the prosperity your work created.
Today, however, there’s a war on organizing, collective bargaining, unions, and workers. It’s been raging for decades, and it’s getting worse with Donald Trump in the White House. Republican governors and state legislatures across the country have advanced anti-worker legislation to undercut the labour movement and collective bargaining. States have decimated the rights of public sector workers who, unlike private sector workers, do not have federal protections ensuring their freedom to organize and collectively bargain. In the private sector, corporations are using profits to buy back their own shares and increase CEOs’ compensation instead of investing in their workers and creating more good-quality jobs.

The results have been predictable: rising income inequality, stagnant real wages, the loss of pensions, exploitation of workers, and a weakening of workers' voices in our society.
Biden is proposing a plan to grow a stronger, more inclusive middle class – the backbone of the American economy – by strengthening public and private sector unions and helping all workers bargain successfully for what they deserve.

As president, Biden will:

- Check the abuse of corporate power over labour and hold corporate executives personally accountable for violations of labour laws;
- Encourage and incentivize unionization and collective bargaining; and
- Ensure that workers are treated with dignity and receive the pay, benefits, and workplace protections they deserve.

This plan is a critical addition to Biden's proposals to ensure all workers have access to quality, affordable health care; to guarantee all workers are able to send their children to quality public schools and have access to universal pre-kindergarten; to provide education and training beyond high school, including federally Registered Apprenticeships; to support a clean energy revolution that creates millions of unionized middle-class jobs; and to meet our commitment to invest first in American workers and ensure that labour is at the table to negotiate every trade deal.

Source: - https://joebiden.com/empowerworkers/

ACTIVITY 2: Understanding Employment Rights

A Chronology of Labour Law 1979 - Now

The IER compiled a chronology of employment and trade union legislation introduced between 1979 and 2000 with the aim of exposing the impact of Tory-inspired legislation for trade unionists.

That chronology has since been updated by Jonathan Jeffries, Andrew Morretta and Alex Just. It now extends to 2017, in addition new materials post 2017 have been added.

1980 Employment Act (Jim Prior)

- Definition of lawful picketing restricted to own place of work
- 80% ballot needed to legalise a closed shop
- Funds offered for union ballots
- Restricted right to take secondary action
- Code of practice (six pickets)
- Repeal of statutory recognition procedure
- Restricts unfair dismissal and maternity rights
- Unfair dismissal rights from 1 year to 6 months in companies under 20

1982 Employment Act (Norman Tebbitt)

- Further restrictions on industrial action – eg. definition of trade dispute
- Further restricted action to ‘own’ employer
- Employers could obtain injunctions against unions and sue unions for damages
- 80% rule extended to ALL closed shops every 5 years
- Compensation for dismissal because of closed shop
- Removed union only labour clauses in commercial contracts

1984 Trade Union Act

- EC elections every 5 years by secret ballot
- Political fund ballots every 10 years
- Secret ballots before industrial action

1986 Public Order Act

- Introduced new criminal offences in relation to picketing

1988 Employment Act (Norman Fowler)

- Unions to compensate members disciplined for non-compliance with majority decisions
- Members can seek injunction if no pre-strike ballot
- Union finances to be open to inspection
- Unions prevented from paying members' or officials' fines
- Action to preserve post entry closed shop made unlawful
- New restrictions on industrial action and election ballots
- Ballots for separate workplaces
- Ballots for non-voting EC members
- Election addresses controlled
- Independent scrutiny
- Establishment of CROTUM

1989 Employment Act

- Tribunal pre-hearing review and proposed deposit of £150
- Removal of restrictions on the work of women and young workers
- Exemption of small employer from providing details of disciplinary procedures
- Restricts time off with pay for union duties
- Written reasons for dismissal now require 2 years' service
- Redundancy rebates abolished
- Abolition of training commission

1990 Employment Act

- Attack on pre-entry closed shop – unlawful to refuse to employ non-union member
- All secondary action now unlawful
- Unions liable for action induced by ANY official unless written repudiation using statutory form of words sent to all members
- Selective dismissal of strikers taking unofficial action
- Extended power of CROTUM

1992 Trade Union & Labour Relations (Consolidation) Act

- Brings together all collective employment rights including trade union finances and elections; union members' rights including dismissal, time off; redundancy consultation; ACAS, CAC and CROTUM; industrial action legislation

- Does not cover individual rights like unfair dismissal, redundancy pay, maternity etc (these are covered by 1978 EPCA)

1993 Trade Union Reform and Employment Rights Act

- Individuals can seek injunction against unlawful action

Trade Unions:

- Creation of Commissioner for Protection Against Unlawful Industrial Action
- 7 days notice of ballots and of industrial action
- Members to be involved in ballot to be identified
- Attack on Bridlington procedures
- Written consent for check-off every three years
- Financial records, including salaries, to be available
- Checks on election ballots
- Independent scrutiny of strike ballots
- All industrial action ballots to be postal
- Postal ballots on union mergers
- New powers for Certification Officer to check union finances
- Higher penalties against unions failing to keep proper accounts
- 'Wilson/Palmer' Amendment (sweeteners to those moving to individual contracts)

Individuals (EC inspired):

- Maternity leave increased to 14 weeks with no length of service requirement
- Right to written statement within 8 weeks for those working over 8 hours a week
- Unlawful to dismiss H&S rep in course of duties AND those walking off unsafe site
- Right of individual to challenge collective agreement in contravention of equal treatment terms
- Changes to Transfer of Undertakings Regulations
- Changes to redundancy terms (consultation)

Miscellaneous

- Abolition of Wages Councils
- Changes to Tribunals and EAT procedures
- Career services out of Local Authority control

1996 Employment Rights Act

Employment Particulars

- Written statement of employment particulars required setting out terms and conditions of employment
- May include references to applicable collective agreements
- Must specify disciplinary rules and grievance procedures
- Protection of Wages and Guarantee Payments
- Unauthorised deductions not permitted subject to exceptions, including participation in industrial action, overpayment, cash shortages or stock deficiencies
- Pay for workless day guaranteed to maximum per day
- Sunday Working: Shop and betting workers may refuse Sunday work if employed prior to Sunday legislation commencement date, those employed after may opt out with three months notice
- Protected Disclosures: Amendments from Public Interest Disclosure Act 1998 provide protection for disclosure of specified matters including worker health and safety and damage to environment
- Detriment in Employment: Protection from employer retaliation including health and safety activities, refusal to carry out unsafe work, refusal to work Sundays if protected worker, refusal to work contrary to Working Time Regulations 1998, carrying out representative duties, taking family or domestic leave

Family, Domestic, Maternity, Parental and Other Leave

- Entitlement to time off for to make domestic arrangements or look for work if declared redundant
- Time off for medical appointments for pregnant employee, maternity leave no less than 18 weeks and parental leave up to 13 weeks, employment protection and right of return

Termination and Unfair Dismissal

- One month minimum notice period for termination or resignation, may agree to pay in lieu, employee entitled to written statement of reasons for dismissal
- Must be employed one year for unfair dismissal complaint, subject to exceptions such as for taking protected industrial action, exercising health and safety rights, acting as employee representative
- Complaint to be within three months of dismissal
- Compensatory award cap

Redundancy Payments

- Eligibility two years continuous service, normal retiring age excepted, claim must be made within six months, weekly cap
- Entitlement where employer ceasing to carrying on business for which employee employed or lay off/short time for four consecutive weeks, six in thirteen weeks

1996 Employment Tribunals Act

- Employment [then “industrial”] tribunals to cover all matters arising out of employment contracts along with specified duties set out in various Acts

- Tribunal to consist of a chair and representative of employee and employer interests, subject to agreement otherwise
- Person may appear in person or with representative
- Tribunal panel may conduct own review of decision in limited circumstances
- Employment Appeal Tribunal to hear appeals from tribunal decisions on questions of law only under Employment Rights Act 1996, also appeals under various other Acts
- Cases heard by judge and members appointed equally from employee and employer interests

1998 Employment Rights (Dispute Resolution) Act

- Renames industrial tribunals as employment tribunals
- Amends Trade Union Labour Relations (Consolidation) Act 1992 to provide for complaints to employment tribunal over employer deductions for political fund where objections or exception, also to provide for non-mandatory arbitration process for unfair dismissal complaints under TULRA through Advisory, Conciliation and Arbitration Service (ACAS)

1998 Public Interest Disclosure Act

- Protects persons making disclosures in public interest through amendments to Employment Rights Act 1998 and Trade Union Labour Relations (Consolidation) Act 1992

1998 National Minimum Wage Act

- National minimum wage for those over 18, subject to exceptions for training, volunteer work, residents in charities and religious communities
- Low Pay Commission to recommend minimum rate changes and coverage

1998 Working Time Regulations

- Implements EC Directive with respect to maximum working hours (subject to individual agreement); rest breaks, annual leave

*Does not apply to specified sectors, including air, rail, road and sea, armed forces and police

- Subject to modification under collective agreements

1998 Human Rights Act

- Give effect to European Convention on Human Rights with respect to specified provisions

*Protection from discrimination by public authority, including those whose functions are of a public nature

- UK legislation (primary and subordinate) to be read consistent with Act
- Provisions to fast-track changes to legislation found incompatible

- Court remedy declaration and compensatory; Parliament to make any legislative changes
- Minister must make statement of compatibility with Act on introducing new legislation

1999 Employment Relations Act

- Amendments to Trade Union Labour Relations (Consolidation) Act 1992
- Recognition and negotiation procedures for employers with at least 21 workers, establishment of bargaining unit
- Derecognition from loss of trade union independence or majority support of bargaining unit
- Complaint process for use of political funds and breach of union disciplinary, electoral or other internal rules
- Dismissal for participation in official industrial action deemed unfair within a protected period of 8 weeks
- Ballot and notice provisions for strike or industrial action

Disciplinary and Grievance Hearing

- Employee permitted to bring companion, who may be trade union official or representative to any hearing
- Employer not required to have process, Code in regulations provides guidelines
- Disciplinary hearing and grievance hearing defined

Other Provisions

- Part-time workers to be treated no less favourably; non-enforceable Code to eliminate discrimination
- Abolishes offices of Commissioner for Rights of Trade Union Members and Commissioner for Protection Against Unlawful Industrial Action
- Funds to be provided to assist in developing employment partnerships
- Regulation of employment agencies
- Regulation with respect to treatment of employees in transfer of undertakings (EC)
- Amends Employment Rights Act and TULRA to prevent complaint over unfair dismissal if action for purposes of national security

1999 Disability Rights Commission Act

- Establishes Commission to work towards elimination of discrimination against disabled persons and conduct ongoing review of Disability Discrimination Act 1995
- Action plan may be established to remedy discrimination;
- Commission may apply for injunction where discrimination persistent

2000 Regulatory Investigatory Powers Act

- Consolidates investigatory powers including surveillance and interception of communications (public and private)

- Designed to ensure compliance with human rights requirements

2002 Employment Relations Act (EA)

- an increase in the period of maternity leave to six months' paid maternity leave followed by up to six months' unpaid leave.
- the introduction of a new right to two weeks' paternity leave paid at the same standard rate as SMP. This is in addition to the existing right to 13 weeks' parental leave.
- similar entitlements for adoptive parents (who have no right to paid leave at present).
- award costs against a party's representative for conducting the proceedings unreasonably (though ministers have made it clear that this will not apply in the case of representatives of 'not-for-profit' organisations, eg trade union officers); and
- order one party to make payments to the other in respect of the time spent in preparing for a case.
- amended rules governing employers' handling of parental leave and pay issues.
- award costs against a party's representative for conducting the proceedings unreasonably (though ministers have made it clear that this will not apply in the case of representatives of 'not-for-profit' organisations, eg trade union officers); and
- order one party to make payments to the other in respect of the time spent in preparing for a case.
- The Act also provides the basis for amending employment tribunal rules to introduce a fixed period for conciliation by the Advisory, Conciliation and Arbitration Service (ACAS), and a tougher approach to so called " weak" cases.
- The Act introduces a new statutory right to paid time off work for trade union 'learning representatives',

2004 Employment Relations Act

- measures to tackle the intimidation of workers during recognition and derecognition ballots by introducing rules which define improper campaigning activity by employers and unions.
- measures to improve the operation of the statutory recognition procedure. For example, the appropriate bargaining unit; clarifies the "topics" for collective bargaining; allows unions to communicate with workers at an earlier stage in the process, and clarifies and builds upon the current legislation relating to the supply of information to the Central Arbitration Committee and the Advisory Conciliation and Arbitration Service (Acas);
- provisions to increase the protections against the dismissal of employees taking official, lawfully-organised industrial action by extending the "protected period" from 8 to 12 weeks; exempting "lock out" days from the 12 week protected period;
- procedural steps to resolve industrial disputes and measures to simplify the law on industrial action ballots and ballot notices;
- measures to widen the ability of unions to expel or exclude racist activists and others whose

political behaviour is incompatible with trade union membership.

- a power for the Secretary of State to make funds available to independent trade unions and federations of trade unions to modernise their operations (see Written Statement of 10 February 2004);
- measures to implement the European Court of Human Rights judgment in the case of Wilson & Palmer, which ensure that union members have clear rights to use their union's services, and cannot be induced by employers to relinquish essential union rights or dissuaded from seeking union recognition;
- measures to improve the operation of some individual employment rights such as a clarification of the role of the companion in grievance and disciplinary hearings; and technical changes to flexible working legislation concerning protections from unfair dismissal;
- new protections for employees who are dismissed or who suffer other detriment because they are summoned or have been away from work on jury service;
- a power to make regulations to introduce information and consultation in the workplace (in Great Britain and Northern Ireland), by implementing the EC Directive on Information and Consultation (Council Directive 2002/14/EC) The Government consultation on the draft regulations closed on 7 November 2003. The Government's response sets out the findings of the consultation;
- measures to improve the enforcement regime of the national minimum wage.
- measures to give the Certification Officer greater powers to strike out weak or vexatious claims;
- measures to improve trade union regulation, and a power to allow the Secretary of State to include non-postal methods of balloting in statutory union elections and ballots;

2004 Information and Consultation Regulations

- The Regulations do not impose a set method for employers to inform and consult their employees nor does it give a right for recognised trade unions to be consulted automatically under this legislation.
- The requirements to inform and consult employees are triggered either by a formal, written request for an information and consultation agreement from at least 10% of employees, with a minimum 15 and a maximum of 2,500, or where an employer chooses to start negotiations.
- In either case the employer will need to make arrangements to allow the employees to elect representatives to negotiate the agreement.
- The regulations impose £5,000 fine on employers who refuse to consult or inform under this legislation.

2004 Warwick Agreement (trade unions and labour)

Following discussions between unions and labour ministers, the "Warwick Agreement" set out agreed policy proposals including:

- An end to the two-tier workforce across the entire public sector
- 8 public holidays plus four weeks annual leave – but he will keep the opt-out
- Family Friendly policies- improved time off to attend to a sick relative
- Flexible working for workers caring for a disabled family member

- Gangmaster regulation and an end to exploitation of migrant workers
- Will support an EU Directive on Agency Workers next electoral term
- Will introduce legislation this term on Corporate manslaughter
- Steps to close the equality gap
- The introduction of sectoral bargaining in trial sectors

This fell short of trade union demands for repeal of anti-trade union (Tory) laws.

2008 Employment Act (EA)

- repeal the existing statutory dispute resolution procedures and related provisions about procedural unfairness in dismissal cases
- confer discretionary powers on employment tribunals to adjust awards by up to 25 per cent if parties have failed unreasonably to comply with a relevant Code of Practice
- make changes to the law relating to conciliation by Acas
- amend tribunals' powers by which they may reach a determination without a hearing
- allow tribunals to award compensation for financial loss in certain types of monetary claim
- introduce a new method of calculating arrears
- replace enforcement and penalty notices with a single notice of underpayment which will include a civil penalty against employers who have not complied with NMW requirements
- increase the civil enforcement powers available to officers enforcing the NMW
- make offences under NMW Act 1998 triable in the Crown court or the Magistrates' court
- increase the criminal investigative powers available to officers enforcing the NMW
- provides that, where an offence has been committed by partnerships in Scotland, any individual partners who are culpable may be prosecuted as well as the partnership itself
- Section 18 allows officers enforcing the NMW and officers enforcing employment agency standards to share information for the purpose of their respective enforcement functions.
- Section 19 amends trade union membership law in line with the ruling of the European Court of Human Rights on Aslef v UK.

2009 The Minimum Wage Regulations

- Amendments made to existing Minimum Wage regulations so employers could not include tips and gratuities when calculating wages.

2009 European Public Limited Liability Company (Employee Involvement) (Great Britain) Regulations

- These regulations were a heavily diluted form of German style worker participation. The UK approach under these regulations required little more than employees of large companies be given general information on progress and strategy.

2010 Equality Act

The Act was a consolidation, rationalisation, harmonisation and revision of various existing employment law acts and regulations including, The Equal Pay Act 1970, The Sex Discrimination Act 1975, The Race Relations Act 1976, The Disability Discrimination Act 1995 and various Employment Equality regulations which related to Religious beliefs, sexual orientation and age.

Broad Changes

- The Act consolidated the disparate groups protected under these Acts and statutory instruments as individuals with 'protected characteristics.'
- Direct discrimination is dealt with under section 13 of the Act, and applies to all individuals with protected characteristics and Indirect discrimination was given a clear definition in section 19.
- Employees mistakenly perceived of having a protected characteristic, and employees associated with someone with a protected characteristic who as a consequence are treated less favourably by their employer were given a measure of statutory protection.
- Tribunals were given the power to make recommendations for the benefit of members of the workforce, other than the applicant.
- The public sector equality duty was established. The duty applies to public bodies, and to other organisations, and requires authorities "when making decisions of a strategic nature about how to exercise its functions, to have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".
- Statutory questionnaires introduced under s138 sent to employers by prospective tribunal claimants who considered that they had been discriminated against were of considerable help to claimants, but were withdrawn in 2013 under the ERRA 2013.

Harassment

- Protection against harassment by third parties was extended to all protected characteristics, but employer liability for third party harassment was withdrawn by the ERRA 2013.

Race Discrimination

- Caste discrimination can be incorporated under the Act if a Minister makes an order to include 'caste' within the definition of race. In 2016, the Conservative government announced that it was to open a consultation on the matter.

Gender Equality

- Gender Pay Gap Information under s78 was implemented in 2016, and the first reports from firms with 250 or more employees are required to be published in April 2018.
- Permits claims for direct gender pay discrimination without a comparator.
- Pay secrecy clauses became unenforceable.

Sexual Orientation

- It is no longer a requirement for medical supervision in relation to gender reassignment to get protection for discrimination and harassment, and the 'association' aspect provides for a direct discrimination claim if you are the partner of a transsexual.

Disability

- The complicated concept of 'disability related' discrimination, was replaced by 'discrimination arising from disability.' The old requirement to show unjustified less favourable treatment became a requirement only to show that unfavourable treatment has been meted out 'because of something arising in consequence of [the claimant's] disability.'
- There is no longer any need for a comparator and Claims can only be brought by those who are themselves disabled.
- Employers are permitted to justify disability related discrimination by showing that it is a proportionate means towards a legitimate end.
- A failure in certain circumstances by an employer to make physical 'reasonable adjustments' to the workplace, and to provisions, criteria and practices which put an 'interested disabled person' at a 'substantial disadvantage', or to fail to provide certain auxiliary aids or services can now amount to unlawful discrimination.
- The Act restricted the scope for employers to ask about disability and health, and to require applicants to undergo health tests during the recruitment process.
- However, there is an exception where an employee is required to undertake duties for which a pre-employment health check is essential, and health checks after an offer of employment has been made, are not subject to restriction.

2010 Equality Act 2010 (Disability) Regulations

- These 'fine tune' the disability provisions of the Equality Act, revoking and revising the Disability Discrimination (Meaning of Disability) Regulations 1996.
- A disabled person must – although there are certain exceptions relating to those with severe disfigurement, HIV, cancer, and MS – 'have a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities. Any discrimination complained of under the Act must arise from that disability.
- Part 2 of the Regulations excludes certain categories from this definition, including Alcoholism, kleptomania and hayfever which are not deemed to be 'impairments.'
- It also clarifies the status of those with various severe ophthalmological conditions as 'disabled persons' within the meaning of the Act.

2010 Additional Paternity Leave Regulations

- These regulations introduced the concept of shared parental leave. They permitted fathers and same sex partners to take up to 26 weeks Additional Paternity Leave ('APL') if the mother or primary adopter has returned to work, in addition to the 2 weeks Statutory Paternity Leave (now

called Ordinary Paternity Leave) already available.

- The regulations applied to employees only, and the mother must have been entitled to maternity leave, Statutory Maternity Pay or maternity allowance.
- The right was exercisable, after 8 weeks notice, between 20 and 52 weeks after the birth.
- 'APL' has since 2014 given way to a more complex regime of interchangeable maternal and parental leave entitlements (see below).

2010 Employment Relations Act 1999 (Blacklists) Regulations

- These regulations were part of the 1999 ERA but did not come into force until the 2009 Consulting Association scandal had exposed the blacklisting of trade union activists, and those who had raised health and safety issues with a number of major construction firms.
- Regulation 3 prohibits any person from compiling, using, selling or supplying a 'prohibited list' which is defined as a a list which- (a) contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers."
- Under regulation 5, a person denied work for a reason relating to a contravention of regulation 3 can complain to an employment tribunal.
- There is a presumption (which the employer can rebut) that if a workers' name is found on a Blacklist which a company has in their possession or has used then that worker should be awarded compensation in line with compensation outlined in the Regulations.
- Regulation 6 extends liability under regulation 5 to employment agencies, and regulation 11(10) permits 'a worker' (a term which includes the self-employed) to bring a claim for a detriment.
- Successful tribunal claims attract a minimum award of £5,000 and a maximum of £65,300, and claims under regulation 5 can include compensation for injury to feelings.
- Claims under these Blacklisting Regulations can also be brought as a breach of statutory duty in the civil courts.
- However, the Blacklisting Regulations were not retrospective meaning workers who were Blacklisted before 2010 had to bring claims against employers under TULRA sections 137 and 152.

2011 The National Minimum Wage Regulations

- Amended to permit HMRC to 'name and shame' employers who breached the regulations.

2011 Agency Workers Regulations

- These Regulations oblige agencies to provide workers who have been working for 12 continuous weeks on one assignment for one of the agency's clients, with the same pay and conditions as their 'permanent' colleagues. Pay, working time, access to workplace facilities, and holiday provision are the key areas covered. However, sick pay provision is excluded.
- Article 2 of the underlying EU Temporary Agency Work Directive stated that the aim was to secure equal treatment "by recognising temporary agencies as employers." However, the UK Regulations fall short of this, ensuring that agency workers remain of indeterminate status, neither employed by the agency nor by the agency's customer, and consequently outside the ambit of the unfair dismissal regime.

- Article 5(2) of the Directive permits the so called 'Swedish derogation,' "where temporary agency workers who have a permanent contract of employment with a temporary-work agency [and] continue to be paid in the time between assignments" can be paid less than their colleagues who are not employed by the agency but directly employed by the agency's customer – the hirer. However, the minimum level of pay during 'idle' time under the 2011 UK Regulations is 50% of the standard rate, a sum which is not required to match National Minimum Wage standards. It is not, however, difficult to keep an agency employee paid the minimum wage constantly working, particularly when obliged in practice to accept whatever work is offered, however uncongenial.
- Anecdotal evidence, and common sense, suggests that agencies and hirers often try to get around these Regulations by transferring workers on to other contracts as the 12-week stage approaches to avoid the obligation to put the agency worker on an improved pay scale.

2011 Regulation (EU) 492/2011 (Freedom of Movement of Workers)

- Free movement of labour is one of the four fundamental economic freedoms on which the European Union is based. This revision of a regulation that was first issued in 1968 is, like all EU regulations, 'binding in its entirety and directly applicable in all Member States,' and is to be distinguished from regulations issued by the government as statutory instruments under the authority of Acts of Parliament ('secondary legislation') – the usual means by which the provisions of EU Directives are implemented.
- Like EU Directives, an EU Regulation is said to be 'directly effective' against public authorities, and when necessary its provisions can be relied upon by litigants in the UK courts.
- The Regulation essentially requires Member States to prohibit any discriminatory treatment of EU nationals in the sphere of employment and trade union membership except in relation to 'conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.'
- The Regulation extends to requiring that workers from other EU states "shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing," and that the children of EU migrants be admitted to state education.

2012 The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order

- Amended the Employment Rights Act 1996, increased the qualifying period for unfair dismissal from one year to two years for those employed after 5th April 2012.

2012 The Employment Tribunals Act 1996 (Tribunal Composition) Order.

- Employment judges were given the discretion to choose, in certain circumstances, whether to hear an unfair dismissal case, alone, or with a 'full panel.'

2012 The Employment Tribunals (Constitution and Rules of Procedure) Amendment Regulations.

- Witness statements are now to be taken 'as read', dispensing, at the discretion of the judge, with the need for witnesses to attend tribunal.

- Witnesses are no longer able to claim expenses for attending tribunal.
- The maximum costs awardable in a tribunal case, were doubled from £10,000 to £20,000.
- Deposit Orders, made, at the discretion of the Judge, in cases where it appears that one of the parties has little chance of success, were also doubled and can now be as much as £1,000 for each claim.

2013 Enterprise and Regulatory Reform Act.

This 'scatter gun' Act made a number of significant changes to UK employment law including:

- Claims for breaches of health and safety requirements at work were restricted by shifting the burden of proof back on the worker.
- The last of the Wage Councils, the Agricultural Wages Board was abolished.
- Employment Tribunals were given the power to require deposit orders in relation to specific allegations.
- The qualifying period for unfair dismissal claims on grounds of political opinion was abolished.
- The maximum award for unfair dismissal was capped at one year's gross pay for those earning less than £74,200 each year (in 2017 this cap is now £80,000).

Whistleblowing

- Whistle blowing protections were narrowed to encompass only matters of 'public interest. (In Parkins v Sodexho [2001] IRLR 109 the EAT held that a dismissal made following an employee's complaints about breaches of their employment contract fell within the ambit of the 1998 Act.)
- The Act deprived employees relying on the disclosure of information not considered to be matters of public interest in employment claims of 'whistle blower' status and gave tribunals the right to reduce awards by up to 25% where it was considered that there was an element of 'bad faith' behind the disclosure, and made it possible in certain circumstances for co-workers to be personally liable for whatever wrong had caused the complainant to make the disclosure in question.
- ERA 1996 whistle blowing was, however, extended beyond employees to embrace 'workers'.

No fault' dismissal

- Proposals for 'no fault' dismissals introduced the concept of 'settlement agreements,' effectively providing legislative recognition of the long standing practice of giving 'redundancy' payments to workers who have essentially been sacked, payments usually made with a view to reducing the likelihood of the dismissed worker bringing a claim for unfair dismissal.
- The concept of 'without prejudice' negotiations has been widened, building on the existing compromise agreement framework, permitting arrangements for a worker to waive the right to bring a claim in return for a payment.

Employee shareholder'

- The Act introduced the much trialed concept of the 'employee shareholder', allowing existing employees to sign away rights to redundancy payments, unfair dismissal, the right to request flexible working and certain maternity rights, in return for a share in the company.
- However, employees who become 'employee shareholders' would still have the right to bring claims if they believe they have been dismissed for an automatically unfair or discriminatory reason.

Harassment

- The Act removed the right to make 'third –party harassment' claims – employers have ceased to be vicariously liable in such circumstances for the actions of their customers and suppliers – and abandoned the discrimination questionnaires introduced in 2010.

Changes to Employment Tribunals

- The Act introduced Acas 'Early Conciliation,' which was to be implemented in 2014, and empowers tribunals to impose financial penalties upon employers who were unsuccessful at tribunal – a sum equivalent to up to half the compensation awarded the claimant, between £100 and £5,000. The money goes to the Exchequer the intention being to discourage employers from breaching those rights and reduce claims, rather than compensate.

- It also gave tribunals the discretion to require that respondents undertake 'equal pay audits' on losing an equal pay case – a measure implemented in 2014.

- The Act permits a single judge to hear certain EAT cases, and gave the government the power to permit Legal Officers to hear claims 'subject to the affirmative resolution of Parliament'.

2013 Employment Tribunals and the Employment Appeal Tribunal Fees Order

Arguable, the most significant attack on employee rights by the Coalition Government was the introduction of fees for those bringing claims to the Employment Tribunal. Fees were introduced by The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 under powers conferred by the Tribunals, Courts and Enforcement Act 2007.

- Tribunal fees have priced tens of thousands of people out of justice. To bring an unfair dismissal claim you now need to pay an issuing fee of £250 and a hearing fee of £950. Anti-discrimination, equal pay rights, and a range of other individual employment rights, have been effectively withdrawn from the millions of British people who cannot afford to pay £1,200 to bring a claim against their employer.

Recent research by academics at Oxford University has shown that across the board the impact of Employment Tribunal Fees has led to a two thirds reductions in most claims. Sex discrimination cases have reduced by a staggering 80% from their pre-fees level.
Withheld wage claims are now uneconomic for the lower paid. If you think your employer owes you £400, the gamble of paying a £130 issuing fee, and a £250 hearing fee for a claim which might fail, and, might well not even be paid if it is successful, is a risk many are not prepared to make.

2013 Employment Tribunals (Constitution and Rules of Procedure) Regulations.

- These Regulations relaxed and simplified the 2004 Regulations, and integrated the fees regime into the rules of procedure. To very much simplify the considerable 2013 revisions, the new regulations facilitate the sifting and striking out of weak claims on examination of the claim and response forms, and at preliminary hearings, and oblige tribunals to promote the use of alternative dispute resolution by the parties at all stages of a claim.

2013 The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order

- The minimum period for consultation with workers where an employer proposes to make 100 or more employees redundant within a 90 day period was cut from 90 days to 45 days before the first of the dismissals.
- Workers coming to the end of fixed term contracts were excluded from the consultation regime.

2013 Parental Leave (EU Directive) Regulations

The regulations are, as the title suggests a grudging implementation of the bare minimum demanded by the Parental Leave Directive, and the rights conferred are exercisable in addition to paternity and maternity leave entitlements.

- An employee is now permitted a total of up to 18 weeks unpaid leave for each child (it had previously been 13 weeks), and instead of being required to take that leave prior to the child's 5th birthday it can now be taken at any time before the 18th birthday, provided 21 days' notice is given.
- The employer cannot refuse to permit the employee to take the time off, but are able in certain circumstances to postpone the leave. Parents who insist on taking any of their leave and perceive that they have suffered a detriment at work as a result can make a claim against their employer at tribunal.

2014 The Flexible Working Regulations

- The right to request 'flexible working' has been extended to all employees with six month's service.
- However, the right amounts to little more than a requirement for an employer to follow a set procedure when 'considering' the request.
- If an employer fails to consider an employee request, the employer could face a tribunal claim and the prospect of having to pay a modest award to the disappointed employee, but this assumed that the employee is willing to gamble paying a more substantial employment tribunal fee on the result.

2014 Collective Redundancies and Transfer of Undertakings (Protection of Employees)(Amendment) Regulations

- The impact assessment in December 2013 made the rather feeble claim that the reforms under these Regulations "seeks to remove unnecessary gold-plating, allowing parties to concentrate on the key issues, and discouraging delay or avoidance of consultation."
- The anticipated repeal of the 2006 'gold plating' did not occur. In what might be seen as a victory for pragmatism over more ideologically led reform, the BIS consultation had indicated that employers did not want to see 'service provision changes' – perhaps better known as 'contracting out' – taken out of the reach of the TUPE employee protection, wary of a return to the uncertainty of the pre-2006 days, and the business disputes that had led to the domestic augmentation of basic rights.
- However, the 2014 TUPE regulations, in accord to a then recent 'employer friendly' CJEU ruling, provided that where the terms and conditions of transferred staff are governed by a collective agreement, changes made under that agreement subsequent to the transfer will not apply to the contracts of the transferred employees, and allow employers to seek to re- negotiate changes to

terms and conditions one year after the transfer of the business.

2014 Children and Families Act

2014 The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations

2014 The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations

2014 The Employment Tribunals (Early Conciliation: Exemptions and rules of Procedure) Regulations

2014 The Paternity and Adoption Leave Regulations (Amendment) (No2) Regulations

2014 Maternity and Parental Leave (Amendment) regulations

2014 Statutory Shared Parental Leave Regulations

- These rather complex regulations have introduced a new flexibility to maternity, paternity and adoptive leave, permitting working parents to split the available leave between them.
- 'Additional paternity leave' has been dispensed with, but 'ordinary paternity leave', of one or two weeks remains.
- Now, for example, after 5 months a mother may elect (having given 2 months' notice) to 'curtail' her full paid leave (39 weeks out of the 52 available as statutory maternity leave or 'SML') by splitting the 4 months remaining to her to allow her husband to spend the next 2 months at home with her. She might choose to return to work, allowing her husband to spend four months at home with the baby. Portions of the available leave can be taken at almost any time during the first year after birth, although taking in excess of 3 periods of 'discontinuous leave' requires the employer's permission.
- The same statutory rights which protect workers taking other forms of parental/caring leave from disadvantage, unfair dismissal, and discrimination, are the same requirements for the employer to hold the job open, which apply in relation to SPL.
- The major drawback to SPL is that, as with SML, unless the employer chooses to enhance the statutory £139.53 weekly pay, then financial considerations usually make it very difficult for parents to take any leave beyond the first six weeks during which the mother/ main adopter receives 90% of her normal take home pay (earnings related SML cannot be shared).

- The system does not extend to permitting grandparents or other relatives to share leave – it is restricted to two partners during the year following the birth or adoption. It is not, for example, available to a single parent to share with the child's grandmother.

- Only one partner 'takes' the SPL, which can then be split between the partners. Up to 50 of the 52 weeks of SML can be shared, although only 37 weeks of paid leave can be shared (and 4 of these weeks will be in the initial 6 weeks of earnings related to the SML period, which will not be likely to be sacrificed for 4 shared weeks on £153.38). Where both are employed, have been employed for 6 months, and have satisfied the earnings requirements, both are entitled to SPL and to Statutory Shared Parental Pay – the weeks of unpaid leave can be divided up between them. However, if one of the partners is not employed, and therefore not entitled to SPL, the couple may still be able to take advantage of SPLand Statutory Shared Parental Pay.

2016 The National Minimum Wage (Amendment) Regulations

These regulations doubled the financial penalty for underpayment of the National Minimum Wage and increased the NMW for those over 25 to £7.20 an hour calling this 'the national living wage rate.' However, this new increased rate is not the same as the real Living Wage which is calculated each year by the Living Wage Commission
By regulation 4A the NMW for 21-25 year olds is £6.70; for 18-21 year olds £5.30; for those under 18 £3.87 and £3.30 for apprentices.

2016 Trade Union Act

The principal aims of the Act appear to be to make it extremely difficult or impossible for workers to engage in lawful industrial action, and to starve the trade unions and the labour movement of funds.

The major changes made under the Trade Union Act 2016 are:

- In all industrial action ballots, at least 50% of those entitled to vote must do so and a simple majority must be in favour of action. Therefore, if 100 members are balloted, at least 50 must vote. If 50 vote, at least 26 must vote yes for there to be a valid mandate. If all 100 vote, 51 would need to vote in favour.

- If the majority of those entitled to vote are 'normally engaged' in the provision of 'important public services' (specified as health, education, transport, border security and fire-fighting services) at least 40% of those entitled to vote must vote in favour of action (in addition to the 50% turnout threshold). Therefore, if 100 members are balloted, a minimum of 50 must vote and at least 40 must vote yes for there to be a valid mandate. A simple majority is still required in all ballots, so if all 100 members had voted, then 51 votes in favour would be required to enable action.

This 40% threshold is arguably discriminatory: 73% of those likely to be in these 'important public services' will be women and the Act's definition of what counts as an essential service is out of keeping with international legal norms. The International Labour Organization defines"essential services" as services where "the interruption of which would endanger the life, personal safety or health of the whole or part of the population". It is hard to see how the Central Line not running or a child missing one day of schooling would "endanger life, personal safety or health of the whole or part of the population".
Unions now must give 14 days' notice of any industrial action (unless the employer agrees that 7 days' notice is enough). The previous requirement was to give 7 days' notice.
Unions now have to include additional information on ballot papers, including a clearer description of the trade dispute and the planned industrial action, so that workers know exactly what they are voting for.
Previously, industrial action must have taken place within four to eight weeks of the ballot and action could be taken indefinitely, provided the industrial dispute remains live. This was repealed under the 2016 Act which provides that a ballot mandate expires after six months, or up to nine months if both sides agree.

For employers in the public sector (and some private sector employers that provide public services), 'check-off' (the deduction of trade union membership subs via payroll) will only be permitted if the worker can pay their subscriptions by other means and the union contributes to the cost of administering the system.
Some of the current Code of Practice on picketing has been given statutory force e.g. the requirement to appoint a picket supervisor.
A new process for trade union subscriptions is being introduced that allows new members to make an active choice about whether to pay into political funds. Information on opting out from such contributions will need to be provided on an annual basis. These provisions represent another bid to starve the labour movement of funds. After a transitional period, unions will only be permitted to invite new members to contribute to a union's political fund, and existing members will have to be reminded every year that they can opt out if they wish. Unions which establish political funds after the transitional period will similarly be restricted to inviting members to opt in to the fund.
Employers in the public sector (and some private sector employers that provide public services) will have to publish information on 'facility time' such as the amount of paid time off for union duties and activities. The Act also allows the government to issue regulations restricting facility time at particular employers.
The government must commission an independent review of possible methods of electronic balloting, although the Act does not include any commitment to its introduction.
There are new powers under the 2016 Act for the Certification Officer to investigate and take enforcement action against trade unions for breaches of their statutory duties. Theresa May's Conservative government initiated a consultation exercise in April 2017 with proposals for the Certification Officer, who will be able to issue fines of up to £20,000 for breaking the law including serious breaches of election rules or mismanagement of their political funds.

Source: http://www.ier.org.uk/resources/chronology-labour-law-1979-2017

2019 employment law: eight changes to look out for

Although Brexit dominates the news, there will be a number of important employment law developments in 2019. Clio Springer sets out an eight-point plan so employers can prepare.

1. Post-Brexit immigration rule changes

Regardless of whether a deal on the UK's exit from the EU is agreed, the rules around the employment of EU nationals will change sooner or later.
Once the UK leaves the EU, free movement will end, although in practice this is likely to be delayed pending legislation to repeal the current arrangements. Also, it will take time to put in place the practical arrangements necessary to make this possible.
The government has introduced a scheme under which EU workers already in the UK will be able to apply for "settled status", to be able to live and work in the UK indefinitely.
However, employers need to be aware that, going forward, the employment of workers from the EU is likely to be subject to restrictions in the same way as the employment of other foreign nationals, so will need to adjust their recruitment processes accordingly. Recruitment and retention policies will need to be reviewed for effective workforce planning.

2. Start gathering evidence for executive pay reporting

Rules coming into force on 1 January 2019 mean that UK quoted companies with more than 250 employees will have to report on ratios between the CEO and employees' pay and benefits.

The requirement applies to financial years beginning on or after 1 January 2019 so the first tranche of reporting will start in 2020. However, affected companies should gather their evidence in good time to be able to calculate their pay ratios by the deadline.

The information will have to be included in the directors' remuneration report.

3. Extend itemised pay statements to workers

From 6 April 2019, the right to an itemised pay statement will extend to workers, not just employees.
Further, where a member of staff's pay varies according to time worked, the employer will have to include on the itemised pay statement the total number of hours worked for which variable pay is received.
This can be done either as an aggregate figure or as separate figures for different types of work or different rates of pay.

4. Publish second gender pay gap report

Employers with 250 or more employees on the "snapshot date" (31 March in the public sector and 5 April in the private and voluntary sectors) must report on their percentage gender pay gap annually within 12 months of that date.
This means that the deadlines for the second round of reports are 30 March or 4 April 2019.
Employers need to gear up to publish their second report, if they have not done so already.
Organisations must publish reports on their website and on the GOV.UK website. In the private and voluntary sectors, reports must also be accompanied by a written statement confirming their accuracy, and be signed by a senior person as prescribed by the legislation.
There is no obligation on employers to provide a narrative around any gender pay gap but they should bear in mind that an explanation may help to limit any reputational damage. Given that comparisons are likely be made with the previous year's report, consider highlighting any reduction in the gap or be able to provide good reasons for any increases in the gap.

5. Be aware of national minimum wage rate increases

The national living wage is due to increase to £8.21 per hour from 1 April 2019.
Other national minimum wage rates are also due to increase, with hourly rates rising to £7.70 for workers aged at least 21 but under 25, to £6.15 for workers aged at least 18 but under 21 and to £4.35 for workers aged under 18 who are no longer of compulsory school age.
The hourly apprentice rate will increase to £3.90 and the daily accommodation offset will increase to £7.55.

6. Meet increased statutory family and sick pay rates

The weekly amount for statutory family pay rates is expected to increase to £148.68 for 2019/20. This rate will apply to maternity pay, adoption pay, paternity pay, shared parental pay and maternity allowance.

The increase normally occurs on the first Sunday in April, which in 2019 is 7 April.

The weekly rate for statutory sick pay is expected to increase to £94.25 from 6 April 2019.

7. Start preparing for parental bereavement leave and pay

The government has confirmed that it intends to introduce a right for bereaved parents to take paid time off work.

Under the current proposals, bereaved parents will be able to take leave as a single two-week period, as two separate periods of one week each, or as a single week. They will have 56 weeks from their child's death to take leave.

The new right is expected to come into force in April 2020, but employers should start preparing for it during 2019, and could decide to introduce their own bereavement leave policy if they don't already have one.

8. Look out for other developments in the pipeline

Employers should keep abreast of other proposed and potential employment law developments, including:

Reform to intermediaries legislation (IR35) to be extended to the private sector (expected 6 April 2020).

Changes to employer NIC treatment of termination payments (expected 6 April 2020).

Requirement to publish family-friendly policies.

Duty to consider whether roles can be carried out flexibly.

Ethnicity pay reporting.

Changes to rehabilitation of offenders periods in Scotland.

We could also see the development of further legislation as per the recommendations made in the Taylor review of modern working practices, including the equal treatment of agency workers and further clarifications on employment status.

Source : https://www.xperthr.co.uk/legal-guidance/2019-employment-law-eight-changes-to-look-out-for/163943/?keywords=employment+law+changes+2018

ACTIVITY 3: Union – Employer relations: Power and influence

ECONOMIC FACTORS AFFECTING WAGE BARGAINING

The impact of globalisation on wage bargaining:

Since the 1980s in particular, huge economic and social changes have altered the world of work. These dramatic changes have clearly affected wage bargaining in the United Kingdom. Some of those key global changes are shown below.

- The fall of the Iron Curtain and the opening up of China and India has increased the labour available in the global market economy from 1.46 billion in the 1980s to 2.93 billion workers now, doubling the number of people in the job market.
- Globalisation of the workforce, not only in manufacturing and assembly but in services like call centres, means that many of us are indirectly competing with workers overseas; this clearly puts pressure on the unions when it comes to negotiating better pay and conditions.

* The huge increase in available and cheap labour has savagely shifted the balance of power between employers and employees, meaning that workers in the UK, for instance, are constantly being told by management that they can “shut the place down and move overseas” or maybe being told “you have to go without a pay rise this year so we can keep competitive with our rivals in Poland”.

- Money saved by companies on labour costs has boosted profitability at the expense of wages.
- Many traditional union demands have been gradually built into legislation, particularly in Europe, including the UK. The union welcomes anything that improves the lot of workers, but would point out that although the Labour Government has introduced some worker-friendly legislation, it still doesn’t encourage unions and workers to fight for fair wages; serious disputes between public service workers and their employers over pay provide evidence of this.
- The ascendancy of the service sector as the economic powerhouse of the developed world has left manufacturing, the traditional base of trade unionism, in relative decline. This means that unions need to organise and build up membership in ‘difficult to reach’ sectors of the economy. Moreover, decline in traditionally strongly unionised sectors means it’s tougher for workers in those sectors when it comes to collective bargaining (i.e. weaker leverage). In relation to globalisation, we can say that it has the effect of weakening trade unions, which has impacts on wage bargaining ability and hence wage increases.
- In the service sector, employees and bosses tend to mingle more, job types; hours and pay are more varied and collective bargaining more complicated. With membership almost always voluntary, incentives to join unions are low because extra pay won is awarded to members and non-members alike.
- Unions have changed too. Some unions in the UK have a service model and non-adversarial approach. They focus heavily on offering cut-price insurance policies and other forms of low-cost insurance rather than on organising. Moreover, they adopt a passive approach to working with management, which can be of detriment to their members if this passivity goes too far. Over-willingness to work closely with management can cause union leaders to fail to support their members effectively when it comes to collective bargaining.
- All the above means that employers now see themselves as being able to “flex their muscles more” when it comes to pay claim time.

Louth, N., Can trade unions reverse their decline? 20 October 2006, http:llmoney.uk.msn.com

Outsourcing:

Outsourcing refers to a company which contracts with another company to provide services that might otherwise be performed by in-house employees. Many large companies now outsource jobs such as call centre services. These jobs are handled by separate companies that specialise in each service, and are often located overseas. Although outsourcing is often associated with globalisation (e.g. call centres in India and manufacturing in Poland etc.), it can also apply to the local economy (e.g. a company or organisation may use another local company to transfer paper documents onto discs).

There are many reasons why companies outsource various jobs, but the most prominent advantage is the fact that it often saves money. Many of the companies that provide outsourcing services are able to do the work for considerably less money, as they don't have to provide benefits to their workers, and have fewer overhead expenses to worry about. Many workers in India and China, for example, are on extremely low wages. This all has a significant impact on wage bargaining in the UK, particularly in those companies that do outsource or threaten to outsource some of their work in order to pacify their employees at wage claim time.

The following article looks at how outsourcing affects the Information Technology (IT) industry in the UK. However, we should recognise that many of the trends in this sector may equally apply to other sectors of the economy. For example, as wage demands increase in the developing countries, employers might think about reverting work to the UK. If that happens, it could strengthen trade unions and the role of collective bargaining. The trouble that may arise is that because of the decline of UK manufacturing, for instance, many factories have shut down and the skilled workers that went with them have gone also. This obviously leaves the problem of a lack of skills and the need for re-training.

Outsourcing work abroad cuts UK pay:

The outsourcing of computer contracts to other countries has cut the wages of workers in the UK, according to a new report. The wages of new information technology (IT) support staff have remained stuck at £18,000 over the past five years, while longer serving employees have only seen their pay increase by 0.8 per cent a year, said the ATSC. But salaries for managers have increased by 20 per cent over the last five years to an average of £45,000, the research found. Low skilled jobs leaving the UK acted as a disincentive for people in the UK to study IT, which could worsen skill shortages in the industry, the report warned.

Ann Swain, chief executive of ATSC, said: "The outsourcing of entry-level IT jobs has meant fewer graduate-level jobs are available in the UK. It is like removing the bottom rung from the career ladder. The shortage now is of candidates with a few years' experience looking for second and third jobs. But how do you get that experience if entry-level jobs are being sent offshore? Concerns over quality of service and data security in outsourced operations are constantly being voiced. However, these concerns haven't yet prompted organisations to bring their IT support roles back onshore en masse".

The report predicted that a turning point would arise when Indian salaries, currently increasing at more than 14 per cent a year, came close to those of UK workers. "As the gap converges, it will make less and less economic sense to outsource support functions to India," added Ms Swain.

Virgin Media, Outsourcing work abroad cuts UK pay, 26 May 2008, http:lllatestnews.virginmedia.com inewslukl2008/05/26/ outsourcing work abroad cuts UK pay

Globalisation and balancing the power of multinationals:

One aspect of globalisation is the increasing power of multinationals to disrupt collective bargaining agreements or bargaining structures. Multinational enterprises also operate in countries where external control of their practices is difficult if not impossible (China, for example). Add to this a very complex structure of sub-contractors, suppliers, outsourcing, networks, etc. and the need for strong international trade union structures becomes apparent.

A key trade union tool for addressing the growth of corporate power is the framework agreement. Framework agreements are signed by Global Union Federations (GUFs) and multinational companies. As the global-level representatives of workers in a particular company or industry, the Global Union Federations have the mandate to negotiate agreements with multinational companies. Such agreements establish frameworks of principles. They are not detailed collective bargaining agreements and are not intended to compete with agreements at the national level. Framework agreements are intended to help create the space for workers to organise and bargain at the local level. These agreements cover trade union and other workers' rights. In some cases, they cover other issues as well, including those concerned with suppliers. They establish a relationship with a company that makes it possible to resolve problems, often before conflicts become serious.

Local and economic factors affecting bargaining:

Employment and unemployment levels in the local community can affect bargaining. In relation to this will be the level of skills and amount of training required for a particular job or jobs. If employment is high in a particular area, it may not be easy to recruit staff and this will give the existing workforce more bargaining leverage. Conversely, if unemployment is high in a localised area, employers may suggest to union representative wage bargainers that "there are plenty of people nearby who'll work for less." This is a particularly useful 'weapon' for management in situations where the skills and training required in order to be competent in a job are minimal. Local companies that carry out outsourcing work for the customer company will usually be able to do specialised work for the customer company at a reduced cost than if they did the work themselves. The customer company may then use the threat to outsource more work locally if wage demands become "too excessive".

Clearly, if there are also local companies producing similar products, this can have an effect on bargaining as each competitor company seeks to minimise labour costs. In other cases where local companies may be in the same sector (e.g. engineering), workplace representatives, union branches and individual members will know the wages being paid to, say, skilled workers, semiskilled workers etc. in the higher paying companies. Members in those lower paying companies will then want to close the wage differential between themselves and their better paid counterparts. However, to succeed in such objectives is very difficult due to a wide range of factors such as the demand of the products being produced and the specialisation of the products.

Looking at product demand more closely, the elasticity of demand is important. If the demand for the product for which labour is being used is highly inelastic, it will be relatively easy for the firm to pass increased wage costs onto the consumer. Conversely, an elastic demand will make it difficult to pass on increased costs and, thus, make it difficult for unions to obtain wage rises.

Other economic factors include:

- **The proportion of total costs which labour represents** – if labour costs make up a large proportion of total costs this will tend to make it more difficult for workers to obtain wage rises. On the other hand, if the labour costs are a small proportion of the organisation's costs and, more especially, if the worker's task is vital, this will tend to make it easier to win a wage rise.
- **The ease of factor substitution** – if it is relatively easy to substitute another factor of production for labour, e.g. capital, this will mean that as unions demand more wages the business will employ fewer workers. In the UK, rising labour costs have encouraged employers to substitute capital for labour wherever possible, e.g. in engineering, the use of multi-cell CNC machines operated by a single worker instead of conventional machines such as single-operative lathes

or milling machines.

- **The level of profits** – if an organisation is making little or no profit then the effect of a rise in wages could well be to put it out of business. Conversely, high profits would make it easier for unions to obtain higher wage and job security.

Macro-economic influences:

The influences mentioned above are all micro-economic. However, wage bargaining can also be influenced by the macro-economy. First, the general state of the economy affects wage bargaining. If there is economic growth it is easier for unions to obtain wage rises and wage earners tend to capture a larger share of national income, although the reverse is true in times of economic recession and unemployment. Second, inflation influences wage claims. Inflation decreases the real value of wages and, therefore, stimulates demand for higher wages. Whether wage earners are able to keep pace with inflation depends upon their relative bargaining power. Inflation may also make it easier to obtain higher wages if the increased costs can easily be passed on as higher prices because of the inflationary prices.

Workers Uniting – linking globalisation to the local level:

On 2 July 2008, Unite, the UK's biggest union and the United Steelworkers (USW), the largest private sector union in the USA and Canada, signed an agreement creating the first global union. The union, to be called Workers Uniting, will represent three million working people from every industrial sector in Britain, Ireland, the USA, Canada and the Caribbean. The agreement to form a global union was initiated by the leaders of the two unions in response to the challenges of globalisation; in particular, the casualization of employment and reductions in pay and conditions for millions of working people in North America and Europe. A year in the making, the agreement will lead to the synchronisation of collective bargaining in companies with operations on both sides of the Atlantic. It will also enable joint political campaigning. Unite is the Labour Party's biggest affiliate and donor and the USW is a major contributor to and supporter of the Democrats in America and the New Democrats in Canada.

The pictures and text are from Michael Moore's Downsize This! Which is a critique of the actions and their consequences of corporate America. The two buildings are as described; the top one is of the Alfred P Murragh building blown up by a right wing extremist, at the bottom is the GM plant in Flint Michigan.

Moore's point is a simple one: in terms of consequence but not intention both can be seen as acts of terrorism – with this difference. The right wing terrorist was probably less successful in killing and injuring people by his act than were General Motors when they took the decision to disinvest. As Moore argues, when the plant closed and people lost their jobs the whole community suffered in that all the indices of deprivation in Flint went through the roof – from suicide, spousal and child abuse, to substance misuse, mental and physical ill health and premature death.

For a fuller account, see his book, published by McMillan, 1997. If you are going to use this you might want to get a better photocopy of the photographs although the originals are not much better.

The etiquette of downsizing

Compiled from various internal memos of companies that are currently downsizing, including Chemical Bank and the Times-Mirror Company, among others.

Termination guidelines: Quotes from employers!!

1 The termination meeting should last no more than five to 10 minutes.

2 The termination meeting should be held in a neutral location, with easy access for security.

3 Avoid any small talk. Get to the point. Don't debate. Don't discuss any issues of "fairness".

4 The downsized employee should clearly understand that he or she is being fired and this will be his or her last day of work.

5 Have Kleenex available.

6 Be supportive and empathetic, but not compromising. Use silence to give the employee an opportunity to react to the news.

7 Don't be defensive or argumentative. Don't be apologetic.

8 Don't provide extensive justification for the downsizing decision.

9 Do not try to make light of the situation by making jokes or trying to be funny.

10 Remain calm and try not to display any emotion.

11 If the employee becomes too emotional, suggest that he or she see a counsellor. You may need to restate the message that he or she has been fired to ensure that the employee knows that the decision is final and has been made at the highest level for the good of the company.

12 The following are the four most common emotional responses employees have upon learning of their termination and the best way for the manager to handle them.

- **ANGER:** The louder the downsized employee talks, the softer the manager should talk. The idea is to diffuse confrontation, since the employee cannot have a one-sided argument.
- **DENIAL:** Just because a person has been told, "You're fired", does not mean that he or she really hears it or believes it. The manager's role is to let individuals know the importance of getting their lives back together as soon as possible.
- **DEPRESSION:** This type of emotion should send an immediate warning signal. The person should be referred to a human resources counsellor.
- **HYSTERIA:** Both men and women are capable of overreacting to news of their termination. For terminated people who begin to cry after hearing the news, have a glass of water handy.

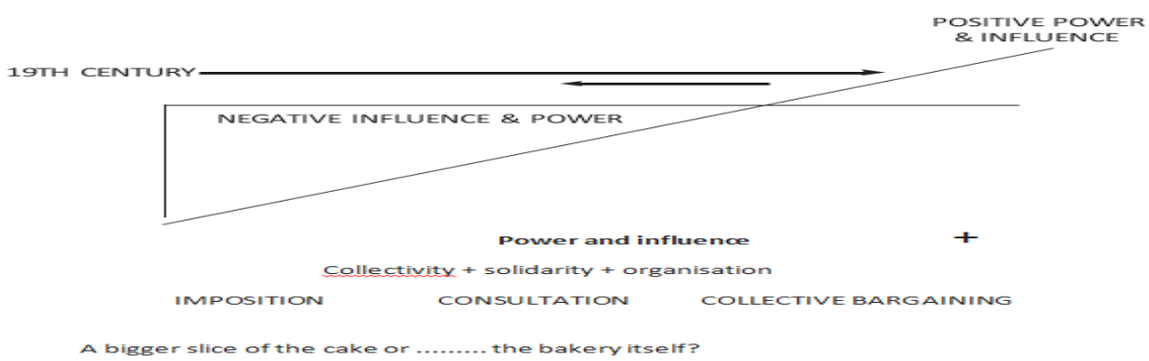
13 The manager who conducts the termination wants to hear a fired employee say "Can I see you again?" or "How much am I getting in severance?" Such comments show that the downsized individual is getting over the news and thinking about the future.

14 Managers need to recognize the following symptoms during the meeting that may indicate the terminated worker could turn violent: expression unusual or bizarre thoughts; a fixation on weapons; romantic obsession; depression; and chemical dependence.

15 Request that the employee turn over his or her keys and other property of the company. Secure all access to the computers

16 Contact security immediately if any assistance is required to escort the terminated employee from the property.

17 Offer the number of any services that may be of help to the terminated individual, such as temporary employment agencies, government assistance programs, out-of-state job banks, and a list of phone numbers for nearby moving services such as U-Haul and Ryder Truck.



Twenty five years of trade union history

'Turning the corner'

It's clear that British trade unions in the 21st Century face a number of key challenges. It is also, as we know, going to be very difficult to produce rapid and satisfactory growth in British trade union membership (growth in membership density). Some of the reasons for decline are shown below along with a few suggestions that may help the very difficult task of regaining 'the missing millions'.

First, we need to be aware that the weakening of trade union strength (organizational, positional and in terms of contributing to the conditions leading to membership decline), started long before the 1980s. From early 20th century onwards, Britain was dominated by the old staple industries such as shipbuilding, iron and steel production, coal mining, textiles and rail production. For example, in the First World War and during the immediate post-war boom the capacity of British shipyards expanded and employment in the industry rose to 300,000 workers. In 1914 British shipyards were producing more new tonnage, both naval and merchant, than the rest of the world put together. And in the coal industry, over a million people were employed by the start of the First World Ward. Similarly, engineering and textiles had massive workforces.

From a trade union organisational standpoint, the great beauty about not only the massive numbers of employees in those industries, but also in how those industries were laid out – was that many hundreds, even thousands, of workers were located in the same workplace. This made organising and recruiting easier and created a great sense of 'union consciousnesses. Compare to that today and how industry has been fragmented (industrial parks, workplaces that may be numerous but with few workers at each location, call centres with management that doesn't want union recognition etc.)

Yet really from these sort of old staple industry peaks, there began a long period of 'relative economic decline' as a result of strong foreign competition. The future path for world shipbuilding was being blazed in the United States, where new methods of rapid production were being used. In the textile industry, Britain again struggled, partly due to a failure to introduce new technologies and secure new markets, but also because, following independence in 1947, India virtually closed to British manufacturers and instead, produced its own textiles at much lower labour costs. By the late 1950s most textiles manufacturing companies were in serious trouble, many were closing, and all were under threat. Inevitably, this was to have a drastic effect on the local economies of the Lancashire cotton towns. Meanwhile, in the coal industry, although by 1950, 700,000 were still employed there, a decline was taking shape. Moreover, during the 1960s and long before the spectre of Thatcherism, a damaging spate of pit closures began to reduce the number of employees (and union members) dramatically.

Second, we need to consider the concepts of positional and organizational power. Positional power is basically when a sector, union, organisation etc. has a dominance and power over another organisation (or government). A good example of this was NUM power from the post-war period up to the early 1980s, Britain was strongly reliant on domestic coal as things like nuclear power, North Sea gas and cheap coal from abroad were not sufficient to keep the country going. Neither was the government prepared to take the miners on. In 1971, for example, the strike was cleverly planned to take place in winter; government and coal-owners didn't stock up in preparation for confrontation; laws were ineffective and the police didn't have paramilitary gear (as they did in 1984-5). Positional power then, is about having a hold over your 'adversary'. In 1971, when the miners went on strike, the country soon ground to a halt because it has relied so heavily on domestically produced coal. The NUM, of course, won, and following a further major strike in 1974, effectively brought down the Tory Government. How does this link to membership?
Well if you were a coalminer, you'd certainly want to be in a union that defeated the government twice and got substantial wage rises on each occasion into the bargain. Here was the vanguard of the trade union movement – a symbol of union power.

Organizational power adds to that union strength. I've already mentioned how the fragmentation of industry has led to a reduction in organisational power. We have far fewer massive companies in sectors such as steel production and engineering. Instead, there are small to medium enterprises (SMEs), industrial parks, anti-union bosses who can get away with rejecting unions in their workplace, union-busters from the USA, and sometimes multi-union representation in workplaces where these different unions don't always get on together and don't contribute to organisational power. Big unions like Unite are in a better position than most in terms of achieving organisational power, but even we know the difficulties of getting employers to recognise us in their workplaces. We might get an organisation that has multiple sites to recognise us on some of those sites, but not others. It was far easier in the first of the 20th century to gain organisational power; for example, in 1914, in the North East alone, there were 250,000 miners – a massive workforce in close proximity, and the majority very union conscious, great for organisational power.

Third, the Winter of Discontent did damage both the unions and the Labour Government. Unions were seen as out of control and too powerful and Labour was seen as unable to stem that power. It was a similar thing under the Heath government; many people were asking "Who governs the country?" Ironically, Labour Prime Minister, Jim Callaghan, was considering having a general election in the autumn before the Winter of Discontent, and all the signs were, that Labour would have won. Yet Callaghan held back and the rest is history.

Thereafter, Thatcher always went back to the Winter of Discontent, pointing out that 'this is what Labour governments and strong trade unions do for the country.' She constantly used the Winter of Discontent to undermine both Labour and the unions. Again, this had the effect of turning much of the British public against unions.

Fourth, the emergence of the New Right. The New Right was in the 1970s/1980s movement personified by Ronald Reagan in the USA and Margaret Thatcher in Britain. Its key threads are the free market economics of Milton Friedman and F. A. Hayek, a commitment to individualism and personal responsibility, and a staunchly authoritarian stance on crime and other moral issues. It believes in 'reversing the ratchet of creeping socialism' and emasculating the trade union movement and is quite willing to use the full force of the state to achieve its aim. The New Right was, as its name suggests, a significant, distinct break with the conservative thinking that had gone before. It was a radical break with the post-war Keynesian 'social democratic' consensus on the economy, and this can be seen as challenging the old definition of Conservatism.

On the subject of the New Right, we should recognise that this was a break from traditional forms of 'One Nation' Conservatism. In the past, people like Stanley Baldwin and Ted Heath were not confrontational Prime Ministers, even though they did get involved in major industrial disputes. For example, during the General Strike of 1926, it was Churchill who wanted to set the army – armoured cars and all – onto the strikers; Baldwin restrained him and after the strike, urged employers not to hold grudges against the strikers. And Heath, despite the turmoil of his premiership, never wanted a divided nation and could not be described as hard-line. Thatcher and the New Right can be described as 'everything that the Heath Governments weren't'.

Thatcherites hated the old school tie elite of the Tory party – people such as Sir Ian Gilmour. They regarded them as 'Wets', too soft on unions and the working class and too keen for national harmony – paternalistic, even. Ironically, the 'upper classes' in the 20th century were more considerate of the working classes than the hard-nut middle-class, individualistic capitalists such as Thatcher and her cronies. Will Hutton accurately described Thatcher's politics as 'The politics of greed'.

Even before Thatcher came to power, the New Right was preparing to change the face of Britain. In 1974, Thatcher, Keith Joseph and Alfred Sherman set up the Centre for Policy Studies (CPS). The CPS was very right-wing – promoting free-market capitalism and destroying the unions were among its key aims. During Thatcher's tenure as Prime Minister, the CPS enjoyed a considerable influence over policy, which declined rapidly following the departure of Keith Joseph from government in 1986, and Thatcher's removal in 1990.

Today, it claims credit for 'initiating policies such as privatisation, trade union reform, council house sales, pensions deregulation, education reform, free trade, health service reform and the recent restructuring of the tax system to favour traditional families.'

A key event, the Grunwick strike of 1976, was just the sort of dispute the New Right wanted to crush. At Grunwick, a group of mainly Asian women working in a backstreet factory in Willesden, north-west London took a decision that would lead to one of Britain's toughest industrial disputes, lasting two years and involving clashes with police, hundreds of arrests, legal battles and a Cabinet crisis. The workers at Grunwick photo processing were earning around £28 for a forty hour week when the national average was £72 a week. Conditions particularly in the mail order department were bad, and work was being speeded up to meet summer demand. The women's toilet breaks were timed, and the management instituted compulsory overtime. There were complaints of harassment and bullying, and allegations that white workers had been paid more than the others.

When Mrs Jayaben Desai was told to work overtime she refused and, together with her son, who also worked at the plant, walked out. She returned to stand outside the factory collecting signatures demanding trade union recognition. Other workers joined her. They'd got a picket. The clerical union APEX, far from the most militant in the country, made the strike official. Gone was the myth that Asian women were docile and uncomplaining. Workers from elsewhere rallied to the support of these workers standing up against injustice and exploitation. The rightwing National Association for Freedom (NAFF) and racist Lady Birdwood's Self-Help group organised strike-breaking operations. Police swarmed into Chapter Road, the street outside Grunwick, to battle pickets. Incidentally, The Freedom Association was involved in numerous anti-trade union actions in the run up to the election of Thatcher, including Operation Pony Express during the Wapping dispute. It was founded as the National Association for Freedom in 1975, by the Viscount De L'Isle, Norris McWhirter, Ross McWhirter and John Gouriet and had close links to the Thatcherites.

Some 600 arrests were made, including miners' leader Arthur Scargill who had brought some of his members to join the pickets, and some Labour cabinet ministers who were members of APEX. Some policemen plainly enjoyed brutally attacking workers and student supporters, and some magistrates boasted of their harsh treatment of those brought before them for alleged picketing offences. One group of workers who took vital action in support of the Grunwick strikers was the postal workers at Cricklewood who refused to handle Grunwick mail. Post Office management responded with a lock-out, stopping other people's mail. The NAFF helped Grunwick boss George Ward to take legal action against the Union of Postal Workers, which dropped its ban in return for a supposed promise of arbitration.

Grunwick was a turning point for the workers, who showed their willingness to fight, and found they were not fighting alone. Unfortunately it was a turning point in another sense for the unions. With powerful allies, the company refused to back down even when an inquiry under Lord Justice

Scarman recommended re-instatement of strikers and union recognition. The unions which could have closed Grunwick by cutting essential services backed off, partly fearing legal action – the UPW actually disciplined its Cricklewood members – but also waiting for a call from the all-too 'moderate' APEX, which never came. The Grunwick strikers were reduced to calling a hunger strike outside the TUC headquarters, Congress House.

To reclaim a saying from the right, "moderation in the defence of liberty is no virtue". And in the following decade, we paid the price for being too reasonable. The police were used en masse against the miners, and the print-workers at Wapping, while the Tories armed themselves with the anti-union laws which New Labour has still not repealed. More recently it was the Gate Gourmet workers who tried to hold the line against sackings, pay cuts, union busting and organised scabbing, and the baggage handlers at Heathrow who stopped British Airways in solidarity, and were victimised. With the law threatening in the background the Unite had to accept a compromise. Clearly, we can see here how laws brought in by the Tories – laws that should be reversed – played a key role.

To show how the New Right was preparing to emasculate the unions, we need to consider the Ridley Report (1978), which planned to combat "enemies of the next Tory government". It was developed by a committee led by one of Thatcher's closest cronies, Nick Ridley. The report argued that the battleground upon which the government should take on and defeat the unions had to be carefully selected and prepared. The coal industry was seen as the most likely arena for such a confrontation. Towards this end, the 'Ridley Report' recommended importing coal and building up stocks (especially at power stations), converting power stations to oil/coal-fired, encouraging the recruitment of non-union drivers to move supplies, cutting off social security payments to strikers and organising large mobile police squads to counter picketing.

Al the resources of the state were to be mobilised by the government during the strike, given the special place the NUM had in the lexicon of the labour movement. Defeating the miners was seen as a body blow to the confidence and combativeness of trade unionists far beyond the pit villages. As one commentator stated 'If the vanguard of the union movement can be defeated then all the rest are easy.'

While on the subject of all this New Right subterfuge, we need to be aware of a shady character called Sir John Hoskyns. Hoskyns developed an important yet top secret report call 'Stepping Stones', which was enthusiastically embraced by Thatcher. Basically it was a plan of how Hoskyns believed Britain should be – economically, politically etc. One of the key New Right ideas was to change the mind-set of the British people – to get people to 'see the irrelevance (evil even?) of trade unions and socialism. 'We should be individuals, free to make our own choices, management should be allowed to manage with a free hand, workers should be grateful for their jobs etc., etc.' Moreover, the media was seen as one of the tools to change public perception.

In a sense, Hoskyns and his like wanted the whole nation to be 'Thatcherites',. Unfortunately, these New Right ideas have reverberated through to this very day; for example, how union conscious are the British public in general and young people in particular? Not very much!! As we know, this apathy and lack of knowledge about what strong unions can do for those means millions don't join us.

There is no doubt that the New Right was ideological, but also both patient and pragmatic. In 1981, for example, Thatcher backed down from a confrontation with the miners because 'the government was not yet ready'. Also, instead of hitting the unions with one blow – which might have led to something akin to the General Strike of 1926 – Thatcher cunningly used incremental anti-union laws, nibbling away at bit at a time. So there were a number of Employment Acts that 'tightened the screw' on us (1980, 1982, 1984, 1988, 1989, 1990). Outlawing secondary picketing, making unions liable to injunctions and damages for officials calling 'unlawful' industrial actions, employers permitted to dismiss strikers even if dispute is legal, and much more, were each brought in stealthily.

Of course, mass unemployment and the continuous erosion of manufacturing led to further decline in union membership. And many people simply felt that because of this and Thatcher's damaging influences, unions were now too weak to do much for them. Below, I add a few ideas for our struggle to renew and rebuild our union(s), but I recognise it won't be easy.

The Organising Model – As we know, Unite and many other unions are using the Organising Model to strengthen our union. This is an obvious means of organising and growing and is based on a number of strategies such as a commitment to trade union education, grassroots' activism, information sharing and open communication channels, development and dependence on members' skills and abilities, collective action and a decentralised organisation structure. Unite is committed to increasing funding for the organising strategy. In its Instrument of Amalgamation, it states "Recognising the central importance of the organisation of workers into the New Union, the union will devote no less than five per cent of membership income to organising each year and will aim to move to no less than ten per cent within no less than three years of amalgamation. Organising Units shall be maintained by these funds in each Region and shall be controlled by a national organising department under the control of the "Joint General Secretaries". This is a big commitment, yet John Sweeney – probably the USA's most influential union leader – talks of devoting up to 30 per cent of union funds to organising strategies.

ICT – Information Technology, the Internet and e-mailing for example, are regarded by some commentators as underused by trade unions in terms of organising and recruiting. In 1999, Bill Gates said "Here on the edge of the 21st century, a fundamental new rule of business is that the Internet changes everything". This sentiment also applies to organisations such as trade unions. According to Roger Darlington, "trade unions – like all other bodies in our society – have to re-invent themselves as an e-organisations. This means that trade unions have not simply to use computers to assist certain activities, but to put the Internet at the centre of their purpose and strategy. Second, this re-invention will affect everything that trade unions do and ought to do. This means that information and communications technologies (ICT) will influence profoundly all current union activities and, even more so, all future activities if unions are to survive and prosper."

Second, Darlington says, "The obvious starting point here is the union's web site which enables a union to communicate directly with all its individual members and indeed others interested in the union's information and views. The first point here is to make the homepage a compelling attraction. Some unions still have very few 'buttons' and no news on the homepage which should be viewed as prime virtual real estate. By contrast, other unions have made sure that they have lots of 'buttons' linking to useful parts of the site and plenty of current news items – see, for example, the UNISON site.

However, the next stage is to make such web sites both personalised and interactive. By personalised, I mean that, because an individual union member will register on the site providing certain basic information about him or her, when that individual accesses the site in future, he or she will be welcomed by name and directed to those parts of the site which are most relevant, taking account of factors such as the individual's industry or occupation or gender. By interactive, I mean that the individual should be able to search the site for specific information, e-mail specific union officials, and conduct transactions. If business-to-business commerce is known as B2B, we could call this type of interaction union-to-member or U2M … Union web sites should become much more topical. In the larger unions at least, there should be a news story every day.

Some unions – probably acting collaboratively – may wish to go beyond the provision of a web site to the development of a portal providing access to a whole range of external services. The simplest way to start this is to provide a link to the Labour Start site run by Eric Lee, which offers a comprehensive and continuous news service on union activities around the world. A fully fledged union portal has been created by the AFL-CIO (John Sweeney's organisation) in America, which enables each participating union to customise the experience for its members.

Union web sites should host discussion groups which enable their members to discuss with each other issues of current interest or controversy in the union. This might be the union's current pay claim or some future policy initiative. We could characterise this form of interaction as memberto-

union or M2U … Union web sites should also host electronic networks, enabling members with specific interests or commonalities to interact together. A good example of this is provided by the union Connect which represents managers and professionals in BT and other communications unions. The Connect site hosts members' networks under the headings of Black and Ethnic Minority, Disability, Graduates, International, IT Contractors, Lesbian, Gay & Bysexual, Personal Contractor Group, Sales and Women … Web sites should increasingly enable the electronic purchase of goods and services from the union centrally or locally.

All communications between Head Office and branches could be electronic. From the Head Office point of view, this should be easy because most of the information they communicate was produced on a PC or Mac and therefore already exists in digital form. From the branch point of view, a major attraction is that they can then very easily pass on this information to members with e-mail addresses or cut and paste it into newsletters or leaflets. Connect is one union which already does this. All accident claims could be electronic. A secure part of the web site should have standard templates for each kind of claim. When I put this idea to one union, I was told it would not work because their existing paper forms were in different colours!

Finally, it is most important that there should be a careful integration of on-line and off-line communications. The address of the union's web site should be on every piece of off-line material: headed papers, business cards, recruitment packs, campaign literature, conference reports. One union I know omitted to have the address of their site on the annual conference brochure and even on a leaflet announcing a new revamping of the site and even incredibly on the business card of the Website Development Manager! Every major feature in the union's newspaper or journal should give the address of a relevant part of the union's own web site or another web site that will provide further information on that topic.

Next, I want to look at how information technologies can shape those activities which revolve around organising, recruiting and servicing individual members which, after all, is the heart of trade union activity:

- As a starting point, every Branch of every union should have a web site which is constantly up-dated. Each union headquarters should be actively promoting Branch web sites and providing or promoting the necessary training and skills. One option is for the union headquarters to provide a template for a branch web site and host the site on the union's central server.

- We should make greater use of electronic organising, so that, for instance, if we can obtain e-mail addresses of potential members in companies that will not provide us with physical access, we can communicate with the potential member electronically and directly. Often before we have recognition, there will be no branch structure, so we could communicate with members at home by e-mail.

- We should enable electronic registration for membership. By this, I do not simply a declaration of interest. Too often, a union web site enables one to register an interest in joining, but then one is told that "a membership pack, appropriate to your needs, will be sent in due course". This means that a pack has to be sent by post, the potential member has to complete a form physically, the form has to be returned to the union head office by post, and the membership card is then sent out by mail. All this is an incredibly laborious process and must act as a disincentive to membership. It ought to be possible simply for a potential member to provide credit card details, so that the membership registration is completed on screen within seconds. When I put this idea to one union, the objection was that the union did not want certain people to join!

- We should be looking at the development of membership smart cards which would enable the membership card to contain a great deal of information about the union, its activities and its services and possibly allow the member to conduct transactions.

- We should permit the electronic change of membership details which would involve the individual member having access to his or her own membership details and no others. Over time, this would cut down the incredibly time-consuming and costly process of union head offices constantly up-dating membership details and indeed the likelihood is that it would ensure that such membership records were much more up-to-date than under current arrangements.

- Equally, Branches should be able to download full details of their own Branch members from the Head Office membership system. The Labour Party already allows constituency parties to do this through its new Labour People system.

- We should be pro-actively collecting the e-mail addresses of as many members as possible, so that we can use them to send out electronic newsletters and conduct consultative ballots (in the UK the law does not allow statutory ballots to be conducted electronically). The communications union Connect has the e-mail addresses of some 80 per cent of its membership, but currently most British unions only know the addresses of a small fraction of their membership. In Australia, the unlikely-named Liquor, Hospitality and Miscellaneous Workers Union sends out an electronic newsletter every fortnight to more than 5,000 members. This is a good illustration of what can be done.

- We should be using carefully targeted, electronic circulation lists to specific groups of members. Increasingly union members do not identify with the union as a whole or even the local branch, but with members in the same company or employment unit and what they would really like is information from the union which is specifically targeted to their place of work delivered in timely and accessible way. Collating e-mail addresses of members in different companies or units into group lists, union officials at local, regional or national level can deliver such information at almost no cost and almost instantaneously.

- We might see the development of the virtual branch. If this seems a strange phenomenon, then I would refer to the example of the Communication Workers Union of Ireland which has created a virtual branch for tele-workers.

- We could even envisage the development of a virtual union. Again, at first, this may seem a bizarre concept but, in effect, the Communication Workers of America (CWA) has already created virtual unions for specific sections of their membership, such as the Washington Alliance of Technology Workers (WashTech) for the staff in companies like Amazon.com and Alliance@IBM for staff in the computer giant. Another case where one might want to create a virtual union is in the case of a joint venture company with partners from different countries, where unions from different countries are organising the members in the different nations but wish to represent a common front to the generality of the members in the JV.

- Many of the services which we provide to members could benefit from an on-line facility or web presence. For instance, the union Connect runs a recruitment consultancy called Opus2 and details of available jobs are contained on its web site. The same union enables members to arrange a personal loan on-line and the relevant site includes a loan calculator which enables the member to calculate monthly repayments for the chosen loan amount and chosen repayment period.

- We should be using the Web to reach out to potential, as well as actual, members. An excellent example of this is the Trouble at Work site run by the trade union UNISON in conjunction with the National Union of Students. The site has three main aims: to show how trade unions can help working students by offering on-line advice on common work problems; to raise the profile of trade unions to a generation that often has not had any contact with the union movement; and to offer tailored advice to groups that UNISON recruits such as student nurses. A more recent example of reaching out to the nonunionised comes from the Trades Union Congress (TUC) itself under the logo Work smart. This aims to be a one stop shop for all information concerning rights at work. It includes a union finder to direct those wishing to join a union to the appropriate organisation.

(You can read this full article, include a section on trade union education using ICT, 'The Creation of the E-Union: the use of ICT by British Unions', at: http://www.rogerdarlington.co.uk/Eunion.html for

more on unions and the use of ICT, go to Eric Lee's website at http://www.ericless.me.uk

Getting employment laws changed:

Clearly, this is not easy. Under Blair, very little was done to reverse Thatcher's (and Major's) antiunion legislation. Hopefully (and I believe it to be the case), Gordon Brown is more of a union man than Blair. But saying this, he's not likely to make drastic changes – he's hardly a Nye Bevan. As we know, trade unions have had, from time to time, a bad press. Yet Parliamentary democracies and free societies require strong, independent trade unions – on that there can be no qualification. From their outset, the concept of working people coming together to serve their interests and prevent exploitation – has been for the social good. Despite changes over the years, the trade union movement has continued its core business of providing services to members, negotiating on their members' behalf, and at times organising actions in defence of those members and in lobbying Parliament to bring about change.

Unions lobby Parliament over a range of things: gender issues; health and safety; tackling poverty; furthering Social Justice; and fighting against all forms of discrimination. But we also need to lobby and campaign for a reversal of Thatcher's anti-union laws. We've seen how the law damages union morale and prolongs injustices (Gate Gourmet and many other disputes, for example). Allowing secondary picketing; non-sequestration of union funds, and the ending of secret ballots and complexities of current balloting structures. All need to be made legal.

I recognise that regaining these rights will be very, very difficult, but it's better to try for them under a Labour government than under a Tory one (already, we have seen how the reactionary core of the Conservative Party – which is always there – turning against Cameron, who they regard as too weak, and again, referring back to the Thatcher era, Cameron the upper-class toff doesn't go down well with the right-wing hardliners of the Daily Mail et al.

Finally, we need to change the public mind-set of a nation that now had little union consciousness. Thatcher used the media and the whole apparatus of State power as two of her tools to turn people against the unions. As trade unionists, we need to use media, word of mouth, good publicity, successful campaigns, union wins, ICT, educating people about the benefits of trade unions, and a whole lot more to help us regain the 'missing millions'.

Additional note

With the election of the CON/DEM Coalition in 2010, coupled with this, latest crisis of capitalism, we can expect some tough times ahead for working people. On the other hand, we've seen this all before and have learned the lessons of history in that we need to organise effectively and advance our argument that there are better ways of organising the economy for the benefit of working people.

2015 Conservative win election with a 12 seat majority 2017 Snap election by prime minister May ends with the conservatives -8 seats short of a majority leading to her doing a deal with the DUP and now leading a hung parliament.

The Trade union bill 2016 introduced even more anti-trade union legislation & since 2010 a number of reforms have introduced a number of changes to the H&S legislation to ease the burden on business.

ACTIVITY 7: European and Global Context

Employment Law and European and global context

In employment regulation, there are three principal and relevant aspects of European law:

Treaties of the European Union; directives; and rulings of the European Court of Justice.

The original Treaty of Rome 1957, founding the then European Economic Community, has been amended on several occasions since – by the Single European Act 1986, the Treaty on European Union 1992 (the Maastricht Treaty), the Treaty of Amsterdam 1997, the Treaty of Nice 2000 and the Treaty of Lisbon 2008. As a consequence of the Lisbon Treaty which came into force in December 2009, two treaties govern the European Union:

The Treaty on European Union (TEU): This outlines the aims of the Union and its institutions.

The Treaty on the Functioning of the European Union (TFEU): This replaced the original Treaty of Rome and came into force in December 2009. It includes articles of relevance to employment law (e.g. Article 157 on equal pay).

A treaty article can be enforced as a direct right in the courts of member states where it is 'sufficiently clear, precise and unconditional as to require no further interpretation'. Such a treaty article can have 'direct effect' both 'vertically' and 'horizontally'. This means that, in the first situation, the article confers rights for the citizen against the state. In the second situation, it confers rights for the citizen to exercise against another (e.g. an employer). A clear example of such 'direct effect' is the principle of equal pay for equal work between men and women. This was in the original Treaty of Rome and has subsequently been enacted as Article 157 in the current treaty (the TFEU).

In addition to the Treaties, there are three sets of EU secondary legislation: regulations, directives and decisions. Directives are the principal means for establishing employment rights within the European Union.

Directives

These are adopted through a legislative process known previously as 'co-decision' and, under the TFEU (art. 251), as the 'ordinary legislative procedure'. This involves the European Council (which comprises the heads of government of all member states) and the European Parliament (comprising elected MEPs from each member state). After many ministerial meetings and discussions in the European Parliament, ultimately they can be agreed and adopted. Originally, agreement had to be unanimous. However, in 1987 amendments were made to permit the adoption by 'qualified majority vote' (QMV) of certain directives (those defined as health and safety measures). It is also possible, under procedures adopted in the Maastricht Treaty, for the 'social partners' to negotiate a 'framework agreement' on a particular policy proposed

by the Commission. These 'social partners' are BUSINESSEUROPE (formerly UNICE), the European private-sector employers' confederation; CEEP, the public-sector equivalent; UEAPME (representing small and medium-sized enterprises); and the ETUC, the European Confederation of Trade Unions. Framework agreements may then be adopted by the Council of the European Union as the basis of a new directive. Three significant examples are the 2010 Directive on Parental Leave, the 1997 Directive on Part-time Workers and the 1999 Directive on Fixed-term Work.

The main advantage of such framework agreements is the ability to take into account, at the drafting stage, the practical implications (reflecting the experiences of employers and unions) of such policies proposed by the Commission. It may be that rather than provide detailed provisions, general principles are agreed which can guide employment practice in individual workplaces. This is particularly so with the 1997 Part-time Workers Framework Agreement and Directive.

Generally, directives are enforceable against member states. Each country is obliged to transpose a directive into national law within a specified number of years. In Britain, this is achieved by passing an Act of Parliament or laying regulations before Parliament (under the European Communities Act 1972) for approval. So, for example, the original Working Time Directive 1993 was enacted through the Working Time Regulations 1998.

The enforcement of directives has a particular significance for those employed in the public sector (and in certain private-sector companies which carry out public functions under law). These employees may use a directive in a national court without it having been transposed into national law. This arises because they work for the state (the civil service) or 'an emanation of the state' (e.g. a local authority, an NHS trust or an agency created as a result of the reorganisation of central government). The directive is said to have 'direct effect'. However, a directive must be 'sufficiently precise and unconditional' to be enforced without the need for domestic legislation. In practical terms, this means that a person employed in any public-sector body can complain that a specific right has been infringed from the date of adoption of the directive by the Council of the European Union – even if there is no British legislation. Unlike a treaty article, a directive can only have 'vertical direct effect' – i.e. enforceability against the state or an emanation of the state.

Some employees who work in certain parts of the private sector may be able to use this route to enforce rights. The concept of 'emanation of the state' has been interpreted by the courts to embrace certain privatised corporations (notably British Gas and water companies). Three tests have been developed to help establish whether an organisation can be so defined:

- Is there a public service provision?
    - Is there control by the state?
    - Does the organisation have special powers?

It was ruled in a judgment of the European Court of Justice that 'A state body is a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the state, for providing a public service under the control of the state, and which has, for that purpose, special powers beyond those which result

from the normal rules applicable in relations between individuals' (Foster v British Gas plc [1990] IRLR 353).

Rulings of the European Court of Justice

The Court is responsible for determining the application and interpretation of European law (see Table 1.2). Together with Treaty articles and directives, its rulings have been the other most significant European influence on the development of employment regulation within Britain. These rulings are binding on all member states, irrespective of the country of origin of a particular case. The Lisbon Treaty 2008 provided for the EU's accession to the European Convention on Human Rights 1950 (see below) so that ECJ rulings must be compatible with the Convention.

Among the key rulings to affect British employment relations are the following:

- Deciding whether an EU member state has failed to fulfil a treaty obligation.

  For example, the ECJ decided that because of the failure of the Italian government to implement the 1980 Insolvency Directive by the due date in 1983, citizens could sue their government for the loss they had sustained, provided that there was a clear link between a government failure and the damage suffered by an individual (Francovich and Bonifaci v the Republic of Italy [1992] IRLR 84). The consequence of this case is that 'Francovich claims' can now be made in the British courts, subject to certain conditions.

- Dealing with infraction proceedings. For example, the United Kingdom's failure to provide for full consultation rights in respect of redundancies and business transfers was referred by the Commission to the Court for a ruling (EC Commission v United Kingdom (C-383/92) [1994] IRLR 412). Ultimately, this case resulted in the adoption of new consultation regulations in Britain that were compliant with EU law.

- Reviewing the legality of decisions of the Council of the European Union and the Commission. For example, the court determined, following a complaint by the British Conservative government, that the Working Time Directive 1993 was properly made as a health and safety measure under the treaty procedures (United Kingdom v European Council (C-84/94) [1997] IRLR 30).

- Reviewing the failure to act of the European Council and the Commission where the treaty obliges them to act.

- Giving preliminary rulings on points of European law at the request of a national court.

- To hear complaints on the application and interpretation of European law.

- To determine the wider application of European law. For example, in 1990, the court ruled that national courts are obliged to interpret that country's domestic legislation in the light of European directives regardless of whether the domestic legislation pre-dates or post-dates the directives. This wide view of interpretation also concerns law enacted in the member states prior to that country's entry into the EU (Marleasing SA v La Comercial Internacional de Alimentacion (C-106/89)).

In interpreting the law, the ECJ adopts a 'purposive' (as opposed to 'literal') approach to interpretation. So, it will consider the intention of the legislators and the 'spirit' of the legislation rather than the strict 'letter'. This is compatible with the character of much law in the original

EU member states which is in the form of broad statements of overriding aims and principles. The House of Lords has accepted that such an a pproach might be ac cepted in the British courts for complying with European law (Lord Justice Templeman in Pickstone v Freemans plc [1988] IRLR 357).

European Convention on Human Rights 1950

From 2 October 2000, this Convention was incorporated into law in the United Kingdom through the Human Rights Act 1998. The Convention was drafted under the auspices of the Council of Europe – an intergovernmental body, founded in 1949, primarily to promote democracy, human rights and t he rule of law throughout Europe. It is separate from the European Union, although member states of the EU are also members of the Council and the EU accepts and expects compliance with the Convention.

The Convention was ratified by the UK in 1951. Until 2000, those alleging that their human rights had been infringed needed to embark on a lengthy process to the European Court of Human Rights in Strasbourg. Following the implementation of the Human Rights Act 1998, the Convention is gradually woven into the fabric of law in the UK and complainants have easier access to possible redress in the domestic courts.

The Human Rights Act 1998 has three fundamental effects which in varying ways can have an effect on law relating to employment:

- Common law. This must be developed compatibly with Convention rights.

  This means that previous judgments can be q uestioned. In relation to employment, this is likely, over time, to affect the common law of contract.

- Legislation. All legislation (Acts of Parliament, regulations and orders) must be interpreted and implemented in compliance with the Convention 'so far as it is possible to do so' (HRA 1998, s 3(1)). Where there are two possible interpretations of a statutory provision (i.e. one compatible with the Convention and one not), that which is compatible must be adopted. Previous interpretations, under case law from courts in the United Kingdom, may no longer be relied upon. Where it is not possible to interpret particular legislation compatibly, a court (in England and Wales, the High Court and above; and in Scotland, the Court of Session and the High Court of Judiciary) may:

- Quash or disapply secondary legislation (regulations and orders).

- Issue a 'declaration of incompatibility' (HRA 1998, s 4) for primary legislation (an Act of Parliament). This will not rescind the legislation. It will remain in force. However, the declaration will draw the issue to the government's attention and enable the appropriate minister to invoke the 'fast track' procedure to amend the legislation in Parliament by a remedial order.

- Require UK courts and tribunals to take account of case law from the European Court of Human Rights in Strasbourg but not necessarily be bound by it.

- Activities of public authorities. It is unlawful for a public authority to act incompatibly with Convention rights. The Human Rights Act covers all activities of a public authority, for example: policy-making, rules and regulations, personnel issues, administrative procedures, decision-making. There are three broad categories of public authorities:

- 'Obvious' or 'pure' public authorities. This describes, for example, a government department or statutory agency, a Minister of the Crown, local authorities, NHS trusts, education authorities, fire and civil defence authorities, the armed forces, the police and the immigration service, and the prison service. Everything done by these is covered by the Human Rights Act

– whether in their public functions or in their private functions (e.g. offering an employment contract).

- Courts and tribunals. Their responsibility for interpreting and implementing the law is outlined above. In the employment context, neither employment tribunals nor the Employment Appeal Tribunal have power to quash or disapply secondary legislation not to issue declarations of incompatibility. If this were done in an employment case, it would be at the appeal stages in the Court of Appeal or the Supreme Court. Nevertheless, employment tribunals and the EAT must interpret the law compatibly with the Convention.

- 'Hybrid' or quasi-public bodies. These are bodies which carry out some public functions. They are not a public authority for all their activities. Examples include the privatised utilities (gas, electricity and water companies).

- Remedial action. The Human Rights Act 1998 creates two effects:

  (1) A direct effect. This is where a person (i.e. a victim) can enforce Convention rights directly in court through starting legal proceedings (s 7). Such action can only be taken against a 'public authority'. A victim may be a company or other organisation as well as a private individual. The complaint has, normally, to be made within one year of the act complained of. If a court finds that a public authority has breached a person's Convention rights, it can award whatever remedy is available to it within its existing powers and is just and equitable (s 8(1)). This may include the award of damages; quashing an unlawful decision; ordering the public authority not to take the proposed action.

  (2) An indirect effect. There is no means of enforcing Convention rights directly against private individuals (including private companies or quasi- public bodies when they are carrying out their private functions). In these cases, where a private individual or organisation is involved, there is an indirect effect. This means that the law (statute and common law and secondary legislation) in cases involving such private 'individuals' must be applied and interpreted compatibly with the Convention.

Complaints under the Human Rights Act may be initiated in a number of courts or tribunals, depending on which is appropriate. If the claim is based on a contract or in tort (e.g. a claim for personal injury), action should start in the High Court or the county court (or, in Scotland, in the Sheriff Court or Court of Session). Where the case relates to the decision of a public body, the appropriate action will usually be judicial review in the High Court. It is still possible for a complaint to be made, ultimately, to the ECHR.

Human rights and employment law

The explicit significance for employment law cases of the Human Rights Act 1998 and the European Convention has been slow and gradual. In two areas Convention rights have been explicitly referred to by the Courts in their judgments:

- Legal representation in internal disciplinary procedures where a person's prospect of future employment is jeopardised (see R (on the application of G) v Governors of X School and Y City Council [2011] IRLR 222); and
- The determination of whether a par ticular 'belief' is protected under equality law (see Grainger plc v Nicolson [2011] IRLR 4, EAT).

Role of the International Labour Organisation

The ILO aims to ensure that it serves the needs of working women and men by bringing together governments, employers and workers to set labour standards, develop policies and devise programmes. The very structure of the ILO, where workers and em ployers together have an eq ual voice with governments in its deliberations, shows social dialogue in action. It ensures that the views of the social partners are closely reflected in ILO labour standards, policies and programmes.

The ILO encourages this tripartism within its constituents and member States by promoting a social dialogue between trade unions and employers in formulating, and where appropriate, implementing national policy on s ocial, economic, and many other issues.

The ILO accomplishes its work through three main bodies (The International labour Conference, the Governing body and the Office) which comprise governments', employers' and workers' representatives.

The work of the Governing Body and of the Office is aided by tripartite committees covering major industries. It is also supported by committees of experts on such matters as vocational training, management development, occupational safety and health, industrial relations, workers' education, and special problems of women and young workers.

Since 1919, the International Labour Organization has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and di gnity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.

International labour standards are primarily tools for governments which, in consultation with employers and workers, are seeking to draft and implement labour law and social policy in conformity with internationally accepted standards. For many states this process begins with a dec ision to consider ratifying an ILO convention. Countries often go through a per iod of examining and, if necessary, revising their legislation and policies in order to achieve compliance with the instrument they wish to ratify. International labour standards thus serve as targets for harmonizing national law and practice in a particular field; the actual ratification might come further along

The path of implementing the standard. Some countries decide not to ratify a convention but bring their legislation into line with it anyway; such countries use ILO standards as models for drafting their law and pol icy. Still others ratify ILO conventions fairly quickly and then work to bring their national law and practice into line; the comments of the ILO's supervisory bodies and technical assistance can guide them in this process. For such countries, ratification is the first step on the path to implementing a standard.

Ratifications for United Kingdom

87 Conventions and 1 Protocol

Fundamental Conventions: 8 of 8

Governance Conventions (Priority): 3 of 4

Technical Conventions: 76 of 177

Out of 87 Conventions ratified by United Kingdom, of which 57 are in force, 30 Conventions have been denounced; 1 has been ratified in the past 12 months.

World Trade Organisation

Labour Standards in the World Trade Organization are binding rules, which form a part of the jurisprudence and principles applied within the rule making institutions of the World Trade Organization (WTO). Labour standards play an implicit, but not an overt role within the WTO, however it forms a prominent issue facing the WTO today, and has generated a wealth of academic debate.

The debate about the extent to which the WTO should recognise labour standards is typically based on the principles found in Conventions of the International Labour Organisation (ILO), as well as mainstream human rights treaties, most prominently, the International Bill of Human Rights.

The WTO currently does not have jurisdiction over labour standards and the only place in which they are mentioned in the entire set of WTO Agreements is in GATT Article XX e) “relating to the products of prison labour”. Since the formation of the WTO in 1995 there have been increasing calls for action on the labour standards issue, and requests for a “human face on the world economy”. The United Nations is among those bodies which have criticised the current system, and have called for a shift to a human rights oriented approach to trade, with steps to be taken "to ensure that human rights principles and obligations are fully integrated in future negotiations in the World Trade Organization", as the “primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from”. It is clear that states have both a legal and a moral obligation to uphold human rights standards, inclusive of their activities in the economic sphere. The United Nations (UN) Charter states that in "the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". ‘Charter of the United Nations’, Chapter XVI, Article 103 of Charter. The UN Charter explicitly advocates the upholding of human rights and fundamental freedoms. ‘Charter of the United Nations’, preamble, art. 62(2).

This means that respect for human rights, and w ithin this, labour standards, effectively trumps any conflicting WTO Agreements. However, not all WTO members are members of the UN (e.g. Taiwan), which raises issues.

The role of the IMF

In 2011 the ITUC reported that major changes in Romania's labour laws, introduced at the behest of the International Monetary Fund, the European Commission and the European Central Bank, have stripped away key protections for the country's workforce and are denying large numbers of workers the right to union representation. More people are now forced to take a second job to make ends meet as labour market conditions become more precarious and incomes stagnate.

"The IMF prescription in Romania contradicts the positive signals about workers' rights from its Washington Headquarters, and the government has ignored the advice of the ILO despite promising to respect international labour standards. A small number of employers and foreign investors are getting the benefits of the government's lack of concern for the men and women who produce the goods and provide the services that keep the economy running," said ITUC General Secretary Sharan Burrow.

The new laws, which the Romania's trade union movement are trying to have amended, exclude workers in the "liberal professions" from the right to union membership, and introduced a series of legal and procedural obstacles to remove workers' collective bargaining rights. Government claims that the laws have reduced unemployment are not supported by its own statistics.

"Powerful corporate and financial interests are succeeding in turning back two decades of democratic progress for Romania's workers. These laws are a threat to the country's economic and social stability, yet the government is putting ideology ahead of the interests of its own citizens," said Burrow.

ACTIVITY 8 : Workplace Rights

There are a number of online resources to search for your employment rights. Be aware though that not all results found via search engines such as Yahoo and Google can be trusted. Remember just because a result is at the top of the page, doesn't mean is the best source of information. It just means they have the most money to spend.

Create yourself a list of trusted sites starting with the likes of:

Gov.uk
ACAS
XpertHR
Personell Today
HSE

ACTIVITY 10 : The Employment Contract

The Employment Contract

A contract of employment is an agreement between employer and employee and is the basis of the employment relationship. A contract is made when an o ffer of employment is accepted. A number of rights and duties, enforceable through the courts, arise as soon as this happens.

Most employment contracts do not need to be in writing to be legally valid, but writing down the terms of the contract will cut down on disagreements later on.

you might recall that we discussed the Employment Rights Act 1996 earlier. This Act requires employers to provide most employees with a written statement of the main terms within two calendar months of starting work. Many employers include an introduction to terms and conditions as part of the induction programme for new starters. This gives employees a chance to ask questions and for the employer to test understanding of the employment contract.

An employee and their employer are bound to the employment contract until it ends (usually by giving notice) or until the terms are changed (usually in an agreement between the employee and their employer).

Contract terms can come from a number of different sources; for example they could be:

- Verbally agreed
- In a written contract, or similar document
- In an employee handbook or on a company notice board
- In an offer letter from the employer
- Required by law, for example, the employer must pay the employee at least the minimum wage
- In collective agreements
- Implied terms

Employees should note that if there's anything in their contract that they're unsure about, or which is confusing, they should ask the employer to explain it to them.

It should be made clear what is are the legally binding parts of an employee's contract and what are not. The legal parts of a contract are known as 'terms'. If either the employee or their employer breaks a term of the contract, the other is entitled to sue for breach of contract.

Not all terms are always explicitly agreed in writing (express terms). The courts have established through common law that all employment contracts have the following terms included, whether express or implied:

- To maintain trust and confidence through co-operation
- To act in good faith towards each other
- To take reasonable care to ensure health and safety in the workplace

Some implied terms can become part of the contract because of the employer and employee's behaviour over time. This is often referred to as custom and practice. Similarly a firm's rules and procedures may form part of your contract (but only if the employee has been made aware of them and given access to them). Implied terms might include those that are too obvious to be expressly agreed (for example, a term that the employee must accept reasonable instructions from the employer, or that the employee must turn up for work) those that are necessary to make the contract workable and those that are established by custom and practice in the particular organisation or industry concerned.

Express terms are those expressly 'stated' in the contract, either by word of mouth or in writing. The various "written particulars" employers must provide employees come under the definition of express terms, as do other employee benefits, arrangements for paying expenses, confidentiality clauses, requirements for mobility and flexibility, etc.

Incorporated terms are those drawn into the contract by their agreement elsewhere, such as in a collective agreement between an employer and a union. A collective agreement isn't a legally binding contract in itself. It cannot be enforced in the courts by the union, but its terms, incorporated into an individual employee's contract, can – by the employee.

Statutory terms are those that reflect basic statutory rights, such as the right to equal pay; not to be discriminated against, and to statutory minimum periods of notice, sick pay, maternity leave, paternity leave etc.

Lastly, custom and practice which we mentioned earlier is an informal arrangement at work that has come to be accepted by both workforce and employer. It can find its way into a contract, provided that it's well-known, well-established and reasonable.

Continuity of employment and qualifying service:

In the eyes of the law, your employment begins on the day you start work under your contract, and the law presumes continuity, unless the employer can prove the contrary. Continuity is preserved through holidays, contractual sick leave, and the first 26 weeks' absence of sick leave over and above the contractual entitlement.

Weeks also count where an employee is absent through a temporary cessation of work, other than a strike – not just lay-offs and short-time working are covered, but continuity has been extended by tribunals to intermittent contracts and to seasonal and sessional employment, where it's regular. Absence from work through pregnancy counts towards continuity on a woman's return to work.

Strikes and lock-outs don't break continuity, but do count as days lost. Continuity is also preserved, under TUPE, through a change of employer.

The written statement:

As an employee, your written statement must include:

- Your name
- Your employer's name
- The date when your employment (and the period of continuous employment) began
- Pay and the intervals at which you will be paid
- Hours of work
- Entitlement to sick leave, including any entitlement to sick pay
- Pensions and pension schemes
- Yours and your employer's entitlement to notice of termination
- Job title or a brief job description
- Where it is not permanent, the period for which your employment is expected to continue or, if it is for a fixed term, the date when it will end.

ACTIVITY 11 : Employment Law and the Workplace : A Unite Approach

Unite approach to employment rights in the workplace

Not everyone has the same employment rights, this depends on their employment status. We've all heard over recent years the number of individuals hired on zero hours contracts, unable to look for other work due to their contract, yet still expected to be ready for work when their employer wants them. Legislation has changed to prevent employers blocking workers on zero hour contracts from finding alternative work. The reality though is a different matter, fear of losing what little hours they have, forces many workers to simply capitulate to the employers demands.

Agency and temporary workers were in a similar situation some years ago, however through trade union action, legislation was brought in to ensure that agency and temporary workers enjoyed the same benefits and protections that permanent employees did.

Increasingly employers try to use employment status as a way of depriving individuals of their rights. Here are some differences between the employment rights that employees enjoy and other kinds of workers don't:

Employees

All employees are workers, but an employee has extra employment rights and responsibilities that don't apply to workers who aren't employees.

These rights include all of the rights workers have and:

- Statutory Sick Pay
- statutory maternity, paternity, adoption and shared parental leave and pay (workers only get pay, not leave)
- minimum notice periods if their employment will be ending, for example if an employer is dismissing them
- protection against unfair dismissal
- the right to request flexible working
- time off for emergencies
- Statutory Redundancy Pay

Some of these rights require a minimum length of continuous employment before an employee qualifies for them. An employment contract may state how long this qualification period is.

Worker

A person is generally classed as a 'worker' if:

They have a contract or other arrangement to do work or services personally for a reward (your contract doesn't have to be written) their reward is for money or a benefit in kind, for example the promise of a contract or future work they only have a limited right to send someone else to do the work (subcontract) they have to turn up for work even if they don't want to their employer has to have work for them to do as long as the contract or arrangement lasts they aren't doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client

Employment rights

Workers are entitled to certain employment rights, including:

- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday
- the statutory minimum length of rest breaks
- to not work more than 48 hours on average per week or to opt out of this right if they choose
- protection against unlawful discrimination
- protection for 'whistleblowing' - reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time

They may also be entitled to:

- Statutory Sick Pay
- Statutory Maternity Pay
- Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

Agency workers have specific rights from the first day at work.

Workers usually aren't entitled to:

- minimum notice periods if their employment will be ending, for example if an employer is dismissing them
- protection against unfair dismissal
- the right to request flexible working
- time off for emergencies
- Statutory Redundancy Pay
- Casual or irregular work

Someone is likely to be a worker if most of these apply:

- they occasionally do work for a specific business
- the business doesn't have to offer them work and they don't have to accept it - they only work when they want to
- their contract with the business uses terms like 'casual', 'freelance', 'zero hours', 'as required' or something similar
- they had to agree with the business's terms and conditions to get work - either verbally or in writing
- they are under the supervision or control of a manager or director
- they can't send someone else to do their work
- the business deducts tax and National Insurance contributions from their wages

- the business provides materials, tools or equipment they need to do the work

Self-employed and contractor

A person is self-employed if they run their business for themselves and take responsibility for its success or failure.

Self-employed workers aren't paid through PAYE, and they don't have the employment rights and responsibilities of employees.

Someone can be both employed and self-employed at the same time, for example if they work for an employer during the day and run their own business in the evenings.

Employment rights

Employment law doesn't cover self-employed people in most cases because they are their own boss.

However, if a person is self-employed:

- they still have protection for their health and safety and, in some cases, protection against discrimination
- their rights and responsibilities are set out by the terms of the contract they have with their client
- Working out if someone is self-employed
- HM Revenue and Customs (HMRC) may regard someone as self-employed for tax purposes even if they have a different status in employment law.

Employers should check if a worker is self-employed in:

- tax law - whether they're exempt from PAYE
- employment law - whether they have an employee's rights
- Either the place of work or, if you're required or allowed to work in more than one location, an indication of this and of your employer's address
- Details of the existence of any relative collective agreements which directly affect your terms and conditions of employment – including, if your employer isn't a party, the persons by whom they were made
- A note giving certain details of disciplinary and grievance procedures, and stating whether or not a pensions contracting-out certificate is in force for your employment

If you're normally employed in the UK but will be r equired to work abroad for the same employer for a period of more than one month, the statement must also cover:

- The period for which the employment abroad is to last
- The currency in which you will be paid
- Any additional pay or benefits
- Terms relating to your return to the UK

Where there are no details to be given for one of the items required in the statement (for example, where there is no pension entitlement), this must be stated.

ACTIVITY 13 : Employment Law - What's it for?

Understanding Employment Law

Broadly speaking, the employment relationship is regulated by both voluntary and legal measures. Voluntary measures comprise agreements and other decisions that derive from collective bargaining, arbitration, conciliation, mediation, and grievance and discipline handling. They also include voluntarily accepted standards of good employment practice (for example, those advocated by the Chartered Institute of Personnel and Development). Legal measures are European Union (EU) treaties and directives, the European Convention on Human Rights and F undamental Freedoms 1950, British statute law, the common law of contract and of tort, case law, statutory codes of practice and some international standards. In practice, these are not isolated sets of measures. As we shall see, voluntary and legal measures invariably interlink and influence each other.

What are the purposes of voluntary and legal measures?

There are two broad purposes. First, at various points, they influence the function of management – i.e. the ways in which managers exercise power, control and organise workforces and manage conflicts of interest. This influence can be illustrated in the following way. It is widely accepted that the employment relationship is characterised by an imbalance of power in favour of the employer. Both voluntary and legal regulation can restrain the unfettered exercise of this employer power. So, for example, collective bargaining with a trade union can minimise the exploitation of individuals at work by agreements on pay and conditions, and also by helping to process grievances. Furthermore, legislation can establish minimum conditions of employment (e.g. national minimum wage), and s et limits on the action that an employer might take against employees (e.g. in relation to discipline and dismissal).

The second purpose of this regulation is to assert certain principles. On the one hand, there are those principles that influence the nature and quality of decisions

fairness, equal treatment, reasonableness, etc.). In addition, there are those principles which mould the regulatory process itself. Examples of this include the fundamental importance of consent in agreeing and c hanging contracts of employment, and of fairness and reasonableness in disciplinary procedures.

How does the law influence substantive issues?

Traditionally, it was accepted in British employment relations that, as far as terms and conditions of employment (the substantive issues) are concerned, the law may set a general framework but the details would be determined either by employers alone or after negotiation with trade unions. Indeed, in 1954, one academic lawyer was able to make the following comment:

'There is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of (industrial) relations than in Great Britain and in which the law and legal profession have less to do with labour relations' (Kahn- Freund 1954).

This characterisation, however, soon began to change. Increasingly, over the following decades, statute law was enacted to establish both certain principles to guide employer behaviour and also the terms and conditions of employment offered to staff. So, for example, 'fairness' is now a basic criterion used to judge the reason for sacking an employee. 'Reasonableness' is widespread as a reference point for assessing health and safety standards. The prohibition of 'less favourable treatment' is fundamental to equality law.

There has also been a growing tendency towards more detailed prescription of certain terms and conditions of employment. This has arisen from some statute law and, in part, from case law. These more detailed requirements have an impact on all employers. For example, the outlawing of indirect sex discrimination – unless it can be justified – has created a body of case law which steers employers to scrutinise their employment practices. This law requires consideration about the legality and justification for such practices as, for example, seniority-based promotion, requirements that work should be full time, age barriers in employment, etc.

How does law affect procedural issues?

The procedural aspects can be subdivided into those that concern the individual employee and those which concern collective relationships. Individual employees work under a contract of employment agreed with the employer. Consent is at the heart of contract formation and also contract variation. The courts have asserted, in numerous cases, that when an employer wishes to change terms and conditions of employment, then, procedurally, the employee must be consulted and agreement sought.

In disciplinary matters involving individuals, procedural fairness is essential. This is specified in the ACAS Code of Practice on Disciplinary and Grievance Procedures. This has been confirmed in case law. As far as grievances are concerned, it has been established that individuals have the right, through an implied term of their contract of employment, to raise grievances through an appropriate procedure (WA Goold (Pearmak) Ltd v McConnell and Another [1995] IRLR 516). Furthermore, a worker has a statutory right to be accompanied in a grievance and a disciplinary hearing (ERA 1999, s 10).

As far as collective relations are concerned, Britain, historically, had a strong tradition of voluntarism for determining employment relations procedures. So, employers could freely decide whether or not to negotiate with trade unions and about which terms and conditions of employment. They could also determine any consultation arrangements. There is still considerable employer freedom in this area. However, European and British law have circumscribed it to some extent. The principal examples are:

- Collective redundancies: consultation with unions or employee representatives over specified redundancies (Trade Union and Labour Relations (Consolidation) Act 1992).
- transfers of undertakings: consultation with unions or employee representatives about the transfer (Transfer of Undertakings (Protection of Employment) Regulations 2006).
- Health and safety: consultation with unions or employee representatives about safety standards and safety organisation in the workplace (Safety Representatives and Safety Committees Regulations 1977; Health and Safety (Consultation with Employees) Regulations 1996).
- General workplace information disclosure and consultation: relating to the economic circumstances of the organisation, likely changes in the labour force, and contractual

changes (Information and Consultation of Employees Regulations 2004).

- Information disclosure and consultation: in specified multinational companies operating in the European Union (Transnational Information and Consultation of Employees Regulations 1999; and the 2010 Regulations).
- Recognition for collective bargaining purposes: statutory obligations to negotiate with trade unions on certain employers who meet various statutory hurdles (Trade Union and Labour Relations (Consolidation) Act 1992).

ACTIVITY 14 : Employment Law Reform

Employment Law Reform

The Government has been busy pressing ahead over the past two years with many of its employment law reforms and consultations. The summary below provides a quick reference guide of the reform programme that has been undertaken and t he continued reforms. The current coalition Government say that;

"The UK still has one of the most lightly regulated labour markets in the world. However over the last two decades a steady flow of new employment regulation has added complexity and, to a degree, undermined the overall efficiency of the labour market.

We launched the Employment Law Review to systematically to test our existing laws. Through the Review and other consultative processes we have listened. Two years into the Review, we have delivered significant improvements. Our reforms support better relationships between workers and employers. They aimed to make evolutionary improvements to the labour market so it retains a flexibility and dynamism that benefits individuals, employers and the economy".

April 2013

Collective redundancies consultation: The consultation period for collective redundancies involving 100 or more employees was reduced from 90 t o 45 days. Employees on fixed-term contracts which are due to expire are excluded from collective consultation requirements.

Statutory sick pay: SSP increased from £85.85 to £86.70.

Statutory maternity, paternity and adoption pay: SMP etc rates increased from

£135.45 to £136.78

June 2013

Whistleblowing: For whistleblowing claims, disclosures must be made in the "public interest", so an employee's complaint about a breach of their employment contract will not usually be covered under the new provision. Protected disclosures need no longer be made in good faith to qualify for protection although the Tribunal may, if it considers it just and equitable, reduce an award made to a complainant by up to 25% for disclosures not made in good faith.

Political opinion/affiliation dismissals: There will be no qualifying period for unfair dismissal claims where the reason for a dismissal is, or relates to, the employee's political opinion or affiliation.

July 2013

Unfair dismissal compensatory award: The award is now capped at the lower of one year's gross pay (excluding pension contributions, benefits in kind and discretionary bonuses) and the existing limit (currently £74,200).

Pre-termination negotiations: If an employer makes a settlement offer before an employee's contract is terminated and the employee subsequently brings an unfair dismissal claim, the settlement negotiations will not be admissible in the Tribunal, unless there has been "improper behaviour". However, discrimination and whistleblowing claims fall outside these new rules.

Compromise Agreements: Have been renamed "Settlement Agreements".

Employment Tribunal reform: Various reforms were introduced as a result of the new Tribunal and EAT rules coming into effect.

Employment Tribunal fees: In addition to an "issue fee" and "hearing fee" in the Employment Tribunals and Employment Appeal Tribunal, a fee is payable for certain applications. The amount of these fees depend on the type of claim.

September 2013

Employee shareholder status: Employees can be given shares in the company, in exchange for giving up certain employment rights (unfair dismissal, redundancy pay and the right to request flexible working).

October 2013

Equality Act 2010: Third party harassment provisions removed.

National Minimum Wage: All rates will increase, namely the standard adult rate to

£6.31, the development rate (age 18-20) to £5.03, the young person's rate (under

18) to £3.72 and the apprentice rate to £2.68.

Directors' remuneration: A new voting and disclosure regime will apply for the remuneration of directors of quoted companies.

April 2014

Employment Tribunal penalties: Employers who lose at tribunal may have to pay a financial penalty of half the award made against them, up to a maximum of £5,000, and reduced by 50% for prompt payment.

Mandatory pre-claim conciliation: Prospective claimants will have to make a request to ACAS for "early conciliation" before they can bring certain claims. If no settlement is reached, ACAS will issue a certificate which the claimant will need in order to present a claim to the Tribunal.

Discrimination questionnaires: The rules in the Equality Act 2010 relating to discrimination questionnaires will be removed.

Health and work assessment and advisory service: This independent assessment service will provide free occupational health expertise, including an independent assessment of employees who have been off sick for four weeks and expert advice on whether and how employees can be supported in their return to work.

Flexible working requests: All employees with 26 weeks' service will have the right to request flexible working.

Equal pay audits: Power for tribunals to make recommendations to carry out an equal pay audit to employers who are found to have been in breach of the Equality Act 2010 will be introduced

National minimum wage: The NMW rules will be simplified and consolidated.

2015

Shared parental leave: The current maternity and paternity leave rules will be replaced with shared parental leave.

Parental leave: Unpaid parental leave will be available for parents of children aged up to 18.

See Resources for ACTIVITY 2 for additional legal changes

ACTIVITY 17 : Agreements

Collective Bargaining

Collective bargaining arrangements are a system of rules, jointly agreed by employers and employee representatives, for negotiating matters such as pay and conditions of employment and resolving any differences that can arise from them. Collective bargaining can only exist in organisations where employees have some form of representation, usually in the form of a trade union.

Typical issues covered by collective bargaining are hours, wages, benefits, working conditions, and the rules of the workplace. The roots of collective bargaining lie in the nineteenth century, when workers began to agitate for more rights in their places of employment. Many skilled trades started using their skills as bargaining tools to force their employers to meet their workplace needs. Other workers relied on sheer numbers, creating major strikes to protest against poor working conditions.

How has the Collective Bargaining Agreement been reached?

Where a number of employees have joined a trade union, a request for recognition may be made to the employer. Recognition normally confers upon the union the right to negotiate (or bargain) on behalf of its members. Since mid-2000 provision exists under schedule 1 of the Employment Relations Act 1999 for trade unions to apply to the Central Arbitration Committee (CAC) for statutory recognition. If a company receives a request for recognition, all the circumstances should be considered. These would include the appropriateness of the union and in particular, the strength of support from employees.

In some cases, it may be agreed that there is insufficient support to justify full recognition at that time, but that representation rights, which entitle members to be represented by their union individually (e.g. in disciplinary cases or if the employee has a grievance), would be more appropriate. The right to be accompanied at a grievance or disciplinary hearing is set out in section 13 of the Employment Relations Act 1999, and came into effect in 2000.

Recognised unions have certain statutory rights including the right to:

- Information for collective bargaining purposes
- Time off for trade union duties and activities (including training
- Be recognised by the new employer in certain circumstances when there is a transfer of a business
- Appoint a safety representative

How can collective bargaining be made to work effectively?

Employers and trade unions should write down simple recognition and negotiating agreements, setting out the rights and duties of the parties involved and how collective bargaining should be conducted. Agreed procedures can assist orderly negotiation and help avoid industrial disputes. It is good practice for the parties to agree that a strike, lock-out or other form of industrial action will not take place until all stages of the procedure have been exhausted. It is also important to ensure that:

- Managers and trade union representatives have employment relations training
- Results of negotiations are communicated accurately and rapidly to employees
- Workplace reps have adequate facilities to enable them to keep in touch with their members and to represent them effective
- Managers and unions meet regularly, not only when trouble arises

In general, experienced people from the union will play an important part in putting together a draft of their bargaining requirements. The union will then put the desires of the workforce to the company. Numerous meetings between representatives of employer and employees will be held until the two sides can come to agreement if at all possible.

Procedural arrangements:

Now, we need to carefully consider the procedural arrangements. First, we need to know what is expected from each side – the management and the union. Trade union responsibilities:

Trade unions should identify and request the information they require for collective bargaining in advance of negotiations whenever practicable. Misunderstandings can be avoided, costs reduced, and time saved, if requests state as precisely as possible all the information required, and the reasons why the information is considered relevant.

Requests should conform to an agreed procedure. A reasonable period of time should be allowed for employers to consider a request and to reply.

Trade unions should keep employers informed of the names of the representatives authorised to carry out collective bargaining on their behalf.

Trade unions should review existing training programmes or establish new ones to ensure negotiators are equipped to understand and use information effectively.

Employers' responsibilities:

Employers should aim to be as open and helpful as possible in meeting trade union requests for information. Where a request is refused, the reasons for the refusal should be explained as far as possible to the trade union representatives concerned and be capable of being substantiated should the matter be taken to the Central Arbitration Committee.

Information agreed as relevant to collective bargaining should be made available as soon as possible once a request for the information has been made by an authorised trade union representative. Employers should present information in a form and style which recipients can reasonably be expected to understand.

So, because of the collective agreement, employers and trade unions should try to arrive at a joint understanding on how the provisions on the disclosure of information can be implemented most effectively. They should consider what information is likely to be required, what is available, and what could reasonably be made available.

Consideration should also be g iven to the form in which the information will be presented, when it should be presented and to whom. In particular, the parties should try to reach an understanding on what information could most appropriately be provided on a regular basis. This reinforces our position on exercising our information and consultation rights and also enables us to work within the framework of correct procedural arrangements.

One area where there will be a need to exercise those rights will be in preparation for an annual wage increase. Perhaps the easiest way to look at this would be to determine what workplace reps and workplace reps' committees could be doing to plan how the negotiations will take place. The following 4 stages are a suggestion as to how you could go about this.

Stage 1: Preparation

- Gathering information and deciding the negotiation goals. What is realistically achievable in terms of a wage claim? Have previous claims set a trend where wage increases have been determined by management? Do your members have any input into what the wage claim should be? Compared to the size of your organisation does your company's financial status influence your claim? From which other sources can you look towards to gather information on industry standard wage claims? To how many people does the wage claim equate?
- Analysis of the information. What does the information you have gathered tell you? How can you display this information to give a clear and accurate picture of the company's financial situation?
- Using the information to devise your negotiation strategy Once you have checked the accuracy of your information you are now in a position to start planning how you will deliver your claims and proposals to management.

Stage 2: Introduction and positioning

If your objectives are too vague you will have too wide a range of ways for those who you are negotiating with. The other side's negotiators will not be able to make sense of what you are actually wanting from the negotiations. On the other hand, if your objectives are too precise and if you do not know what the other group's objectives are, you are in danger of pitching your claim at an inappropriate level. Have you thought out your proposals carefully and do they appear realistically achievable or is your claim based on wildly held assumptions about the organisation's ability to pay?

Many claims fail at the introductory stage simply because the figures you have presented cannot be verified and may be vastly exaggerated. You need to consider making an introduction as to why you are making a wage claim – the cost of living, extra costs of fuel and i nflation could be your starting points but remember – increased costs affect everyone so there may be some counter claim to your proposals.

Stage 3: Bargaining and negotiation Bargaining techniques

The objectives of negotiating are to achieve a result.

What is your bargaining stance? Are you prepared to be flexible or rigid in your approach?

Will you consider trading off to come closer to your goals? Are you looking for a win–lose situation or a win–win situation? You need to remember that to maintain a professional position, the relationship between the bargaining team and management should not be a points scoring activity but should look at arriving at a solution where both parties make gains. That is not to say that you are going to bargain away members' rights but you are going to bargain for increases that are achievable and easy to accommodate for both sides.

Stage 4: Finalising the settlement

Once you are satisfied that you have achieved your stated objectives, having negotiated around all the obstacles, it is very important that you receive written details of your proposed agreement and check those details for accuracy before presenting this to your members. If the members are satisfied then you can continue with formalising the agreement and make sure management stick with its content.

Substantive and procedural rules and collective bargaining:

Procedural rules concern the establishment of processes by which cases are dealt with; for example, in a workplace context, the procedures to investigate individual employee grievances, or to carry out decisions to dismiss employees in a fair manner. Frequently, procedural agreements are put into the company rule book which provides information on the overall terms and conditions of employment and codes of behaviour.

Substantive rules refer to matters such as basic pay, overtime premiums, bonus arrangements, holiday entitlements, hours of work, etc. – mainly things that will contractually affect the member.

Procedural rules, once established, are expected to be in use for some years, although they will include provisions for being altered. Substantive rules, on the other hand, are more likely to be changed on a regular basis. In the world of work we may take substantive rules as shorthand for economic rules and procedural rules for management rules.

Rules about the way work is to be done and the conditions for rewarding people for doing it may be made unilaterally by management. In certain situations, strong unions such as Unite may be able to impose a unilateral decision on management. On the other hand, usually where unions are recognised by management for collective bargaining, both the procedural and substantive rules are made jointly.

The world of employment relations also has procedures and facilities to settle disputes by third-party intervention. In the UK, the main body for this is ACAS, the Advisory, Conciliation and Arbitration Service. Although set up by government, ACAS is required to act impartially in seeking to promote good industrial relations. As its name suggests, ACAS officers can offer advice. They can conciliate whereby they endeavour to get disputing parties back together again to talk through their problems and reach agreement. Lastly, they can arbitrate by appointing an independent third person or persons to make a final decision, which both parties agree in advance to accept.

Finally, there are a number of areas of the employment relationship where governments have chosen to intervene and lay down substantive rules, such as on the minimum wage, or maximum hours of work. They have also set out procedures governing the relationship between employers and trade unions as in the conduct of strikes or picketing.

Collective agreements and works rules relating to the employment contract:

As mentioned earlier in the course, under sections 1 and 2 of the Employment Rights Act 1996 (ERA 96), employees have the right to a written statement of particulars of their employment. This must be given to the employee no later than two months after their employment begins and must include: the names of the employer and the employee; the date on which employment began and the period of continuous employment; the scale and rate of remuneration, pay intervals and the method of calculating pay; terms and conditions relating to hours of work and holiday entitlement; the job title and description and: the employee's place of work. These must be contained in a single document. However, provided that they are given within the two-month deadline, other employment particulars can be documented by instalments and one of these could include details of collective agreements affecting employment.

Works rules, guidelines or rules about how work should be carried out can be part of the contract, even if the employee has no option but to accept the rule.

Although most collective agreements are not legally binding on the parties that have concluded them (the employer and the union), items within the agreement that can be incorporated into the individual's contract become binding conditions of that contract.

A company reached an agreement with the T&G (now merged with Amicus to form Unite) giving workers the right to 20 days' leave plus bank and public holidays.

The company then published a staff handbook which said that the bank and public holidays were part of the 20 days. The EAT held that the collective agreement's effect was to amend existing contracts, and the employer could not unilaterally change them. (Wood Hall Personnel & Transport v Harris and Gonsalvez EAT/156/02).

Tribunals have to look at the "contractual intention" of the parties, when deciding whether the terms of a collective agreement are incorporated. In the case of Kaur v MG Rover (2004) EWCA Civ 1507 ([2005] IRLR 40), the Court of Appeal held that the term in a collective agreement which stated that there would be no redundancies was "aspirational" and did not amount to a contractual term.

However, in Harlow v Artemis International [2008] EWHC 1126, an employee successfully obtained access to a collectively agreed enhanced redundancy policy.

The High Court noted that the policy was identifiable as an entitlement, the method of calculating payment was clearly set out and the policy was referred to in individuals' contracts.

Changes agreed in negotiations are binding on all employees, even if they might not like what has been negotiated, particularly if a considerable amount of time has passed before they voice their objections (Henry v London General Transport Services (2002] EWCA Civ 488 ([2002] IRLR 472)).

In the case of Trotter v Grattan EAT/0179/03, a collectively agreed stop and search policy was incorporated into the contracts of every employee, even if they had not all individually agreed to the policy:

Objecting to a new company policy of random searches, Mr. Trotter resigned and claimed constructive dismissal. The EAT held that while the policy change did amount to a fundamental breach of contract, the constructive dismissal was fair. The policy had been introduced after consultation with the unions, so was not imposed arbitrarily, and it would not be reasonable for

the employer to have to differentiate between employees who had agreed the change and those who had not.

It is useful for workplace representatives to know that if the representative(s) has apparent authority to negotiate, the employer can reach a deal at that level, even if the procedures say that a full-time official should be informed of any deals concluded (Harris v Richard Lawson Autologistics [2002] EWCA Civ 442 ([2002] IRLR 476)). However, if a change has not been agreed by all recognised unions, it may well be the case that it is not universally incorporated:

A local authority wanted to change holiday terms, but only reached agreement to do so with one of its two recognised unions; nevertheless, it introduced the change.

The EAT noted that the collective bargaining "rests upon a foundation of consensus and process" and that the processes for voting agreed between the unions had not been followed. This meant there had been no local agreement to the change, which therefore had not been incorporated into employees' contracts. (South Tyneside MBC v Graham EAT/0107/03).

Once a change is incorporated into an employee's contract, it becomes a binding contractual term. The employee cannot revert to the previous contractual agreement without a further agreement.

Union and collective organisation rights relating to collective bargaining:

Union and collective organisation rights are principally governed by the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which was amended by the Employment Relations Act 1999 (ERA 99) and the Employment Relations Act 2004 (ERA 04).

It is unlawful (section 145B of TULRCA) for an employer to offer a worker an inducement to stop, or prevent, their terms and conditions being negotiated by a union through a collective agreement ("collective bargaining").

In 2006, supermarket chain Asda was ordered to pay £850,000 for offering inducements to 340 members of the GMB general union to give up their collective bargaining rights. The workers at its distribution depot in Washington, Tyne & Wear, were offered a 10 per cent pay rise in order to end collective bargaining at the site.

ACTIVITY 21 : Workplace Rights - The Right To Information

The following is the text from the ACAS COP 2 - Disclosure of information to trade unions for collective bargaining purposes

Introduction

1 Under the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (Acas) may issue Codes of Practice containing such practical guidance as the Service thinks fit for the purpose of promoting the improvement of industrial relations. In particular, the Service has a duty to provide practical guidance on the information to be disclosed by employers to trade union representatives in accordance with sections 181 and 182 of that Act, for
the purposes of collective bargaining.

2 The Act and the Code apply to employers operating in both the public and private sectors of industry. They do not apply to collective bargaining between employers' associations and trade unions, although the parties concerned may wish to follow the guidelines contained in the Code.

3 The information which employers may have a duty to disclose under section 181 is information which it would be in accordance with good industrial relations practice to disclose. In determining what would be in accordance with good industrial relations practice, regard is to be had to any relevant provisions of the Code. However, the Code imposes no legal obligations on an employer to disclose any specific item of information. Failure to observe the Code does not by itself render anyone liable to proceedings, but the Act requires any relevant provisions to be taken into account in proceedings before the Central Arbitration Committee[1].

1 Trade Union and Labour Relations (Consolidation) Act 1992, sections 181(2)(b), 181(4) and 207(1) and (2).

This Code replaces the Code of Practice on Disclosure of Information to Trade Unions for Collective Bargaining Purposes, issued by the Service in 1977.

Provisions of the Act

4 The Act places a general duty on an employer who recognises an independent trade union to disclose, for the purposes of all stages of collective bargaining about matters, and in relation to descriptions of workers, in respect of which the union is recognised by him, information requested by representatives of the union. The representative of the union is an official or other person authorised by the union to carry on such collective bargaining.

5 The information requested has to be in the employer's possession, or in the possession of any associated employer, and must relate to the employer's undertaking. The information to be disclosed is that without which a trade union representative would be impeded to a material extent in bargaining and which it would be in accordance with good industrial relations practice to disclose for the purpose of collective bargaining. In determining what is in accordance with good industrial relations practice, any relevant provisions of this Code are to be taken into account.

6 No employer is required to disclose any information which: would be against the interests of national security; would contravene a prohibition imposed by or under an enactment; was given to an employer in confidence, or was obtained by the employer in consequence of the confidence reposed in him by another person; relates to an individual unless he has consented to

its disclosure; would cause substantial injury to the undertaking (or national interest in respect of Crown employment) for reasons other than its effect on collective bargaining; or was obtained for the purpose of any legal proceedings.

7 In providing information the employer is not required to produce original documents for inspection or copying. Nor is he required to compile or assemble information which would entail work or expenditure out of reasonable proportion to the value of the information in the conduct of collective bargaining. The union representative can request that the information be given in writing by the employer or be confirmed in writing. Similarly, an employer can ask the trade union representative to make the request for information in writing or confirm it in writing.

8 If the trade union considers that an employer has failed to disclose to its representatives information which he was required to disclose by section 181 of the Act, or to confirm such information in writing in accordance with that section, it may make a complaint to the Central Arbitration Committee. The Committee may ask the Advisory, Conciliation and Arbitration Service to conciliate. If conciliation does not lead to a settlement of the complaint, the Service shall inform the Committee accordingly who shall proceed to hear and determine the complaint. If the complaint is upheld by the Committee, it is required to specify the information that should have been disclosed or confirmed in writing, the date the employer failed to disclose, or confirm in writing, any of the information and a period of time within which the employer ought to disclose the information, or confirm it in writing. If the employer does not disclose the information, or confirm it in writing, within the specified time, the union (except in relation to Crown employment and Parliamentary staff) may present a further complaint to the Committee and may also present a claim for improved terms and conditions.

If the further complaint is upheld by the Committee, an award, which would have effect as part of the contract of employment, may be made against the employer on the terms and conditions specified in the claim, or other terms and conditions which the Committee considers appropriate.

Providing information

9 The absence of relevant information about an employer's undertaking may to a material extent impede trade unions in collective bargaining, particularly if the information would influence the formulation, presentation or pursuance of a claim, or the conclusion of an agreement. The provision of relevant information in such circumstances would be in accordance with good industrial relations practice.

10 To determine what information will be relevant, negotiators should take account of the subject-matter of the negotiations and the issues raised during them; the level at which negotiations take place (department, plant, division, or company level); the size of the company; and the type of business the company is engaged in.
11 Collective bargaining within an undertaking can range from negotiations on specific matters arising daily at the workplace affecting particular sections of the workforce, to extensive periodic negotiations on terms and conditions of employment affecting the whole workforce in multi-plant companies. The relevant information and the depth, detail and form in which it could be presented to negotiators will vary accordingly. Consequently, it is not possible to compile a list of items that should be disclosed in all circumstances. Some examples of information relating to the undertaking which could be relevant in certain collective bargaining situations are given overleaf:

(i) Pay and benefits: principles and structure of payment systems; job evaluation systems and grading criteria; earnings and hours analysed according to work-group, grade, plant, sex, outworkers and homeworkers, department or division, giving, where appropriate, distributions and makeup of pay showing any additions to basic rate or salary; total pay bill; details of fringe benefits and non-wage labour costs.

(ii) Conditions of service: policies on recruitment, redeployment, redundancy, training, equal opportunity, and promotion; appraisal systems; health, welfare and safety matters.

(iii) Manpower: numbers employed analysed according to grade, department, location, age and sex; labour turnover; absenteeism; overtime and short-time; manning standards; planned changes in work methods, materials, equipment or organisation; available manpower plans; investment plans.

(iv) Performance: productivity and efficiency data; savings from increased productivity and output, return on capital invested; sales and state of order book.

(v) Financial: cost structures; gross and net profits; sources of earnings; assets; liabilities; allocation of profits; details of government financial assistance; transfer prices; loans to parent or subsidiary companies and interest charged.

12 These examples are not intended to represent a check list of information that should be provided for all negotiations. Nor are they meant to be an exhaustive list of types of information as other items may be relevant in particular negotiations.

Restrictions on the duty to disclose

13 Trade unions and employers should be aware of the restrictions on the general duty to disclose information for collective bargaining.[2]

14 Some examples of information which if disclosed in particular circumstances might cause substantial injury are: cost information on individual products; detailed analysis of proposed investment, marketing or pricing policies; and price quotas or the make-up of tender prices. Information which has to be made available publicly, for example under the Companies Acts, would not fall into this category.

15 Substantial injury may occur if, for example, certain customers would be lost to competitors, or suppliers would refuse to supply necessary materials, or the ability to raise funds to finance the company would be seriously impaired as a result of disclosing certain information. The burden of establishing a claim that disclosure of certain information would cause substantial injury lies with the employer.

2 Trade Union and Labour Relations (Consolidation) Act 1992, section 182. See paragraphs 6 and 7 of this Code.

12 Disclosure of information to trade unions for collective bargaining Trade unions' responsibilities
16 Trade unions should identify and request the information they require for collective bargaining in advance of negotiations whenever practicable. Misunderstandings an be avoided, costs reduced, and time saved, if requests state as precisely as possible all the information required, and the reasons why the information is considered relevant. Requests should conform to an agreed procedure. A reasonable period of time should be allowed for employers to consider a request and to reply.

17 Trade unions should keep employers informed of the names of the representatives authorised to carry on collective bargaining on their behalf.

18 Where two or more trade unions are recognised by an employer for collective bargaining purposes they should co-ordinate their requests for information whenever possible.

19 Trade unions should review existing training programmes or establish new ones to ensure negotiators are equipped to understand and use information effectively.

Employers' responsibilities[3]

20 Employers should aim to be as open and helpful as possible in meeting trade union requests for information. Where a request is refused, the reasons for the refusal should be explained as far as possible to the trade union representatives concerned and be capable of being substantiated should the matter be taken to the Central Arbitration Committee.

3 The Stock Exchange has drawn attention to the need for employers to consider any obligations which they may have under their Listing Agreement.

21 Information agreed as relevant to collective bargaining should be made available as soon as possible once a request for the information has been made by an authorised trade union representative. Employers should present information in a form and style which recipients can reasonably be expected to understand.

Joint arrangements for disclosure of information

22 Employers and trade unions should endeavour to arrive at a joint understanding on how the provisions on the disclosure of information can be implemented most effectively. They should consider what information is likely to be required, what is available, and what could reasonably be made available. Consideration should also be given to the form in which the information will be presented, when it should be presented and to whom. In particular, the parties should endeavour to reach an understanding on what information could most appropriately be provided on a regular basis.

23 Procedures for resolving possible disputes concerning any issues associated with the disclosure of information should be agreed. Where possible such procedures should normally be related to any existing arrangements within the undertaking or industry and the complaint, conciliation and arbitration procedure described in the Act.[4]

4 Trade Union and Labour Relations (Consolidation) Act 1992, sections 183 to 185. See paragraph 8 of this Code.

ACTIVITY 22 : Ending the Employment Relationship

The employment relationship can be ended in a number of ways, the most typical being dismissal.

When is a dismissal fair?

Dismissal is normally fair if an employer can show that it is for one of the following reasons:

- A reason related to an employee's conduct
- A reason related to an employee's capability or qualifications for the job
- Because of a redundancy
- Because a statutory duty or restriction prohibited the employment being continued
- Some other substantial reason of a kind which justifies the dismissal.
- And that they acted reasonably in treating that reason as sufficient for dismissal.

Employees have the right not to be unfairly dismissed. In most circumstances employees will need to qualify before they can make a complaint to an employment tribunal:

- At least one year's continuous service for employees in employment before 6th April 2012
- Two years for employees starting employment on or after 6th April 2012.

However, there is no length of service requirement in relation to 'automatically unfair grounds'.

Constructive dismissal

Constructive dismissal occurs where an employee resigns because you have substantially breached their employment contract, for example:

- Cutting wages without agreement
- Unlawfully demoting them
- Allowing colleagues to subject them to harassment, bullying, victimisation, humiliation or discrimination
- Unfairly increasing their workload
- Changing the location of their workplace without contractual authority
- Making them work in dangerous conditions

The breach of contract can result from either a single serious event or the last in a series of less serious events.

An individual may claim constructive, unfair dismissal. A constructive dismissal is not necessarily an unfair one but it's hard for an employer to show that an action in breach of the contract was, in fact, fair.

Wrongful dismissal

Wrongful dismissal is where a contractual term is broken in the dismissal process, for example, dismissing someone without giving them proper notice.

UNFAIR DISMISSAL

Since the 6th April 2012, employees require two years' continuous employment in order to bring a claim for unfair dismissal. Certain dismissals fall into a category of "automatically unfair" whereby the two year rule is not a requirement, ie being dismissed for joining a trade union or being discriminated against in the employment relationship. It is extremely important union members see their full time officer for any claim of unfair dismissal.

For those employees with two years' service and more, employers will need to act "reasonably" before dismissing employees by reason of misconduct. Misconduct is one of five potentially fair reasons for dismissal.

Since 29th July, 2013 all claims in the employment tribunal attract a fee prior to a case being heard. A claim submitted without the correct fee or a completed application for fee remission will be rejected. (For fee remission see Form EX160A: Court and Tribunal Fees-Do I have to pay them? Available online from the Ministry of Justice website)

A claim of unfair dismissal is a Type 2 claim and attracts an issue fee of £250 and a hearing fee of £950; (£1200). This money is to be paid by the employee prior to the case being heard by the employment tribunal.

Band of reasonable responses

If an employee presents a claim for unfair dismissal, an employment tribunal must determine whether in all the circumstances, (including the employer's size and administrative resources), if the employer acted reasonably or unreasonably in treating the misconduct as a sufficient reason for dismissal This must be judged in accordance with equity, (ie fairness) and the substantial merits of the case, (section 98 (4) of the Employment Rights Act 1996).

The Court of Appeal in 2000 confirmed that the approach to the issue of whether a dismissal was reasonable or unreasonable was to consider if it fell within the "band or range of reasonable responses" open to that employer at the time it made its decision to dismiss, adopting the following guidelines laid down in *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439, EAT:

- the starting point should always be the words of section 98(4);

- in applying the section, a tribunal must consider the reasonableness of the employer's conduct, not simply whether they, (the members of the tribunal) consider the dismissal to be fair;

- in judging the reasonableness of the employer's conduct the tribunal must not substitute its decision as to what was the right course to adopt for that of the employer; (ie if the tribunal panel was faced with the conduct of the employee as an employer, would they dismiss or not?);
- in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

- the function of the tribunal, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is potentially fair; if the dismissal falls outside the band, it is potentially unfair;

- the tribunal will need to consider what alternative courses of action were open to the employer; (ie was the employees action a dismissable offence or an action where a warning would suffice) and;

- whether the particular dismissal, at the time and in the circumstances in which it took place, was reasonable – not whether a dismissal at a later date was likely to have been reasonable.

In *Whitbread plc (t/a Whitbread Medway Inns) v Hall* [2001] EWCA Civ 268, IRLR 275, CA, the Court of Appeal confirmed that the band of reasonable responses test applied not only to the dismissal but also to the disciplinary process.

This isn't all that there is to a misconduct unfair dismissal claim. The employment tribunal will still have to consider whether the ACAS Code of Practice on Disciplinary and Grievance Procedures was followed by the employer, and whether or not the misconduct was so serious that a reasonable employer could have dismissed the employee for it. There may also be some special features of the particular case to be considered. However, it remains the single most important case on the question of the fairness of a dismissal for misconduct.

There are other types of claim, such as a wrongful dismissal (or breach of contract) claim, where the employment tribunal will have to decide whether or not the employee was actually guilty of misconduct. However in an unfair dismissal case the focus is on the employer's decision, and not whether the employee actually committed the misconduct they were accused of.

Management process: (aspects of the following taken from a management orientated law firm).

1. Establish the facts

Employers must carry out a reasonable investigation of potential disciplinary matters without undue delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary meeting.

In *British Home Stores v Burchell* [1978] IRLR 379, EAT (as approved and applied by the Court of Appeal in *W Weddel & Co Ltd v Tepper* [1980] IRLR 96, CA) the Court formulated a three stage test for determining whether an investigation was reasonable:

(i) the employer must establish the fact of its belief;

(ii) the employer must have reasonable grounds for its belief; and

(iii) at the stage the employer formed its belief it must have carried out as much investigation as was reasonable in all the circumstances of the case.

In deciding whether their investigation has been adequate, employers should consider the following:

- whether evidence has been taken from all potentially relevant witnesses, including those who could provide evidence on behalf of the employee, and properly considered;
- whether all other potentially relevant evidence, including documentary evidence, has been obtained and properly considered;
- whether the investigating officer was sufficiently independent; and
  if appropriate,
- whether the evidence has been tested on the balance of probabilities.

2. Provide the employee with the opportunity to answer the allegation(s)

The employee should be notified in writing and provided with:

- the specific allegation(s) of misconduct they need to answer;
- sufficient information about the alleged misconduct to enable the employee to answer the case against them; it would normally be appropriate to provide copies of any written evidence, which may include any witness statements;
- an indication of the possible outcome of the disciplinary meeting, particularly where it is possible the employee will be dismissed;
- the time and venue for the disciplinary meeting; and
- the employee's right to be accompanied at the meeting.

The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. At the meeting the employee should be allowed to:

- set out their case and answer the allegation(s) against them;
- ask questions, present evidence and call relevant witnesses; and
- challenge any information provided by witnesses against them.

Where the employer or employee intends to call witnesses at the meeting, they should give advance notice that they intend to do this.

3. Make a decision

After the disciplinary meeting, the employer should decide whether or not the allegation(s) of misconduct has been proven and, if so, what disciplinary penalty is appropriate. The employee should then be informed as soon as possible in writing. Where misconduct is confirmed it is common practice to give the employee a warning and notification of how long the warning will remain current and the consequences of further misconduct.

Depending upon the conduct the employee is accused of it is common practice to provide employees with:

- a written warning for a first act of misconduct; (known colloquially as a “verbal”)
- a written warning for a further act of misconduct, or a more serious act of misconduct that does not warrant the lesser “verbal warning”,
- a final written warning for a further act of misconduct, or a more serious matter that does not warrant the employee receiving the lesser sanctions available,
- dismissal for a further act of misconduct or serious act of misconduct (ie theft)

A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed of the reason(s) for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. It is extremely important that the employee knows the exact date his/her employment ended as the time limit for presenting an ET 1 begins from this date; (EDT, Effective Date Termination).

Some acts, termed ‘gross misconduct’, are so serious or have such serious consequences as to warrant dismissal without any previous warning or any period of notice, known as summary/instant dismissal. An employer’s disciplinary rules should ideally give examples of acts which it regards as gross misconduct, (eg theft, fraud, physical violence). Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause an employer can make a decision on the evidence available.

4. Provide the employee with an opportunity to appeal

If an employee believes that the disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay. The employer should confirm in writing the time and venue for the appeal meeting and the right to be accompanied at the meeting.

Employees should be asked for the grounds of their appeal in writing before the appeal meeting. The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case. After the appeal meeting, the employer should inform the employee of its decision as soon as possible in writing. Each case should be decided on its own facts. There is no ‘one size fits all’ approach to dismissals for misconduct. Following a transparent and balanced disciplinary process is paramount.

ACTIVITY 23: Settlement Agreements & Dismissal

Pre-termination negotiations

From 29th July 2013 a change to the Employment Rights Act 1996 allowed these 'pre-termination negotiations' to be kept confidential, which means they will not be able to be used as evidence in unfair dismissal claims at an Employment Tribunal unless there has been 'improper behaviour' (they can be used as evidence in circumstances of a discrimination claim or a breach of contract claim for example). Employees will not be able to use the discussions as evidence, for example, that he or she was constructively dismissed from their job.

Such negotiations can happen whether there is, or is not, an existing employment dispute, or where one or more of the parties is unaware that there is an employment problem. 'Without Prejudice' discussions that existed before pre-termination negotiations can only be held where there is an existing dispute between the parties.

Employees can also propose to their Employer that they start a pre-termination negotiation, although this will be unusual (the Government earlier called these negotiations 'protected conversations').

Pre-termination negotiations are defined as "any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee".

This change will allow employers to hold discussions with an Employee about ending their employment and reaching a 'Settlement Agreement'. Prior to 29th July 2013 Settlement Agreements were called Compromise Agreements.

Pre-termination discussions are not protected if the employee has been dismissed for an automatically unfair reason. For example, asserting their right to:

- Receive a written statement
- Receive the minimum wage
- Take statutory maternity leave / paternity leave / parental leave
- Use a grievance or disciplinary process
- Holiday entitlement
- Whistle-blow
- Ask to work flexibly
- Be automatically enrolled in a pension scheme Or if they

have:

- Been discriminated against
- Been dismissed because of your political opinions or affiliations

Therefore in these circumstances an e mployee can use the contents of such discussions as evidence to support their claim.

In addition, if a Tribunal is of the opinion that the employer or employee said or did something wrong, the contents of the discussion will only be protected to the extent that the tribunal considers 'just'. For example, if a Tribunal believes the employers or employees behaviour amounts to bullying or intimidation, the Tribunal can decide that the employee / employer can rely on this evidence.

Other examples of improper behaviour given in the ACAS Code (below) are harassment, physical assault or the threat of physical assault or any other criminal behaviour, victimisation, discrimination; and putting undue pressure on a party by not giving reasonable time for consideration of the agreement, or by the employer telling the employee they will be dismissed if they do not agree the settlement proposal or where an employee threatens to undermine an organisation's public reputation if the employer does not sign the agreement, unless the provisions of the Public Interest Disclosure Act 1998 (Whistle-blowing) apply (this list is not exhaustive).

Such examples do not prevent one party setting out in a neutral manner the reasons that have led to the proposed settlement agreement, or factually stating the likely alternatives if an agreement is not reached, including the possibility of starting a disciplinary process if relevant.

Settlement agreements

Settlement agreements are legally binding contracts that waive an individual's rights to make a claim covered by the agreement to an employment tribunal or court.

- The agreement must be in writing.
- They usually include some form of payment to the employee and may often include a reference.
- They are voluntary.
- They can be offered at any stage of an employment relationship.

Settlement agreements are legally binding contracts which can be used to end an employment relationship on ag reed terms. They can also be u sed to resolve an ongoing workplace dispute, for example, a dispute over holiday pay. These agreements can be proposed by either an employer or an employee, although it will normally be the employer.

Once a valid settlement agreement has been signed, the employee will be unable to make an employment tribunal claim about any type of claim which is listed on the agreement.

Where the employer and e mployee are unable to reach an agreement, the settlement discussions cannot usually be referred to as evidence in any subsequent unfair dismissal claim. Where the settlement discussions are held to resolve an existing dispute between the parties they cannot be used as evidence in any type of claim.

Reaching a settlement agreement

For the settlement agreement to be legally binding the following conditions must be met.

- The agreement must be in writing.
- The agreement must relate to a particular complaint or proceedings.
- The employee must have received advice from a relevant independent adviser, such as a lawyer or a certified and authorised member of a trade union.
- The independent adviser must have a current contract of insurance or professional indemnity covering the risk of a claim by the employee in respect of loss arising from the advice.
- The agreement must identify the adviser.
- The agreement must state that the applicable statutory conditions regulating the settlement agreement have been met.

Employees should be given a reasonable amount of time to consider the proposed conditions of the agreement; the ACAS Code of Practice on settlement agreements specifies a minimum of 10 calendar days unless the parties agree otherwise.

Settlement agreements are voluntary and parties do not have to agree to them or enter into discussion about them. There can be a process of negotiation during which both sides make proposals and counter proposals until an agreement is reached or both parties decide no agreement can be reached.

If a settlement agreement is not reached and depending on the nature of the dispute or problem, resolution may be pursued through a performance management, disciplinary or grievance process, or mediation whichever is the most appropriate. It is important that employers follow a fair process and use the ACAS Code of Practice on Discipline and Grievance procedures because, if the employee is dismissed, failure to do so may be grounds for a claim of unfair dismissal.

Settlement agreement meeting

Although there is no statutory right for the employee to be accompanied at any meeting to discuss the agreement, an employee may want to involve someone to help them, such as a work colleague or a trade union representative. Employers should, as a matter of good practice, allow an employee to be accompanied when meetings are held as this can often help progress settlement discussions.

Ending the employment relationship

When the settlement agreement includes an agreement to end the employment relationship, then employment can end with the required notice, or the timing can be agreed as part of the settlement agreement.

Details of payment and the timing should be i ncluded in the agreement; any payments should be made as soon as practicable after the agreement has been reached.

Your role in settlement agreements

The ACAS Code of Practice will not be legally binding. While it may deter some good employers from bad practices in settlement agreements, it is unlikely to alleviate the practices of bad employers.

As a Unite Rep, you have an important part to play in how we respond to confidential conversations and settlement agreements;

- Seek advice from a full time officer if an e mployer proposes the use of a settlement agreement to end a members employment
- Advise members not to agree to settlement agreements in an i nitial meeting with an employer
- Remember that settlement agreements can be subject to negotiation; an employer's initial offer may not be their last offer
- Ensure that members receive independent advice before agreeing to sign a settlement agreement

You should also seek agreement with employers that:

- They will not offer settlement agreements as a means of avoiding effective performance management, disciplinary procedures or redundancy payments
- Employees will receive written details of a settlement offer and the reasons for it before any meeting to discuss a settlement agreement
- Employees will have the right to be accompanies and represented by a Unite in all discussions about settlement agreements
- Employees will be given at least 10 working days to decide whether to accept the offer of a settlement agreement

ACTIVITY 24 : Understanding TUPE

TUPE

What is a transfer of an undertaking?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006) protect employees when a business changes to a new owner and apply to what are known as 'relevant transfers' which may occur in many situations. The two broad categories are business transfers and service provisions changes.

Business transfers

To determine if there is a TUPE transfer, the relevant definition asks if there is a transfer of an economic entity that retains its identity. The factors to consider include:

- Is the type of business being conducted by the transferee (incoming business) the same as the transferor's (outgoing business)?
- Has there been a transfer of tangible assets such as building and moveable property (although this is not essential)?
- What is the value of the intangible assets at the time of the transfer?
- Have the majority of employees been taken over?
- Have the customers been transferred?
- Is there a high degree of similarity between the activities carried on before and after the transfer?

If the answer to all (or in some cases several of) the above questions is 'yes', it is safe to assume that there has been a transfer of undertaking.

Service provision changes

A 'service provision change' occurs when a client who engages a contractor to do work on its behalf often referred to as outsourcing, and is either:

- Reassigning such a contract (whether by contracting out, outsourcing or re- tendering), or
- Bringing the work 'in-house' (where a contract ends with the service being performed in-house by the client themselves).

The activities undertaken must also be essentially the same after the transfer as before it.

It will not be a service provision change if:

- The contract is wholly or mainly for the supply of goods for the client's use, or
- The activities are carried out in connection with a single specific event or a task of short-term duration.

Acas guidance – Handling TUPE Transfers

	Outgoing Employer	Incoming Employer	
STAGE 1: Before committing	At this stage the outgoing employer **should** consider whether to: • Inform representatives/employees of a potential sale/expiry • Consider whether to bid or rebid for a contract or service (in service provision changes).	At this stage the incoming employer **should** • Consider informing trade unions and employee representatives/employees of a potential purchase/bid • Weigh up the pros and cons of committing to a transfer/service provision • Begin to construct a TUPE process plan.	**STAGE 1:** Before committing
STAGE 2: Prepare for the transfer	At this stage the outgoing employer **must**: • Inform/consult about the transfer and any measures • Identify who will transfer • Provide ELI to the incoming employer.	At this stage the incoming employer **must**: • Inform/consult about the transfer and any measures • Identify who will transfer • Request ELI from the outgoing employer.	**STAGE 2:** Prepare for the transfer
	Transfer Occurs	**Transfer Occurs**	
STAGE 3: The transfer	At this stage the outgoing employer loses the transferring staff and: • **Must** inform/consult about the transfer with remaining staff • **Should** ensure that all remaining employees are managed, settled and clear about their duties.	At this stage the incoming employer gains the transferring staff and: • **Must** inform/consult about the transfer • **Should** ensure that all employees/teams are managed, settled and clear about their duties.	**STAGE 3:** The transfer
STAGE 4: After the transfer	At this stage the outgoing employer: • **Must** inform/consult about potential redundancies (if any) • **Should** inform/consult in general as good practice to preserve good morale • **Should** address concerns to avoid drops/falls in performance and quality of work.	At this stage the incoming employer: • **Must** inform/consult about potential redundancies (if any) • **Should** inform/consult in general and ensure reasonable allowances are made whilst employees adjust and integrate • **Should** review the effectiveness of procedures.	**STAGE 4:** After the transfer

www.acas.org.uk/tupe

Acas Helpline **0300 123 1100**

Acas has training on TUPE and other workplace topics.
Call the Acas Customer Services Team on **0300 123 1150**

ACTIVITY 27 : Redundancy Rights

Redundancy

If your employer is making 20 or more employees redundant at the same time, the consultation should take place between your employer and a representative (rep).

This will either be:

- A trade union rep (if you're represented by a trade union)
- An elected employee rep (if you're not represented by a trade union, or if your employer doesn't recognise your trade union)

Collective consultations must cover:

- Ways to avoid redundancies
- The reasons for redundancies
- How to keep the number of dismissals to a minimum
- How to limit the effects for employees involved, eg by offering retraining

Your employer must also meet certain legal requirements for collective consultations.

Length of consultation

There's no time limit for how long the period of consultation should be, but the minimum is:

- 20 to 99 redundancies - the consultation must start at least 30 days before any dismissals take effect
- 100 or more redundancies - the consultation must start at least 45 days before any dismissals take effect

Fixed-term contract employees

Your employer doesn't need to include you in collective consultation if you're employed under a fixed-term contract, except if they're ending your contract early because of redundancy.

Selection criteria

Employers should consult affected employees regarding the selection criteria. The criteria must be consistently applied and be objective, fair and consistent. Basing any selection on skills or qualification will help to keep a balanced workforce appropriate to the organisation's future needs. Employers should also establish an appeals procedure.

Examples of such criteria are:

- attendance record (you should ensure this is fully accurate and that reasons for and extent of absence are known).
- disciplinary record (you should ensure this is fully accurate).
- skills or experience.
- standard of work performance.
- aptitude for work.

Formal qualifications and advance skills should be considered, but not in isolation.

Avoiding redundancies

Organisations should develop a strategy for managing human resources, which will minimise disruption, reduce or avoid job losses and make any organisational change easier. If organisations plan ahead properly they can decide on what current and future staff needs should be, avoiding short-term solutions and mistakes. If making compulsory redundancies is necessary then consider:

- natural wastage
- restrictions on recruitment
- retraining and redeployment to other parts of the organisation
- reduction or elimination of overtime
- Introduction of short-time working or temporary layoff (where this is provided for in the contract of employment or by an agreed variation of its terms)
- seeking applicants for early retirement or voluntary redundancy
- termination of the employment of temporary or contract staff.

ACTIVITY 32 : Considering Industrial Action

Employment rights and industrial action

Forms of industrial action

Strike action or action short of a strike?

Industrial action can take many forms all of which are protected by a ballot of our members. The important question to ask early on in preparation for the ballot is; given the information we have about our employer, what action(s) will be most effective?

- Strike action itself is the withdrawal of your labour, either for a discontinuous period of one or more days with breaks in-between or for a continuous period of time. Action short of a strike can involve many other actions such as; working to contract or 'to rule', refusing to cooperate with your employer by completing paperwork or using company phones, refusing to work overtime beyond contractual hours or rest day working.

- Maximum flexibility would be gained by asking two questions on the ballot paper; 'Are you prepared to take strike action?' and 'Are you prepared to take action short of a strike?'

It maybe that given the issues involved and the time available to act, only strike action would be effective. If this is the case asking the second question on the ballot paper may dilute the message and give members an alternative voting option. This may ultimately be unhelpful as some members may vote for action short of a strike while voting against a strike itself, believing that the dispute can be won by taking weaker actions and preventing a strike call.

- The strike committee needs to consider its options in light of other work being undertaken in preparation for the dispute; vulnerability mapping and leverage planning, as well as work done to reinforce membership confidence and a 'willingness to act' on the issues in dispute.
- In a joint union workplace ensure that all unions are working together and in agreement with the types of actions being considered and that all unions are asking the same questions of their members in the ballot.

Definition: Action Short of a Strike

Action short of a strike is when the employees of an organization engage in an action that cannot be classified as a strike nor is it the work that the employee is hired to do, but it is somewhere in between these two.

Workers engage in action short of a strike to interrupt the normal flow of business and functions in the workplace or department so as to make the employer realize that they are dependent

on the employee's goodwill to run the business and hence they should not engage in practices which are against the interests of their employees like job cuts and pay cuts.

When an 'action short of a strike' is designed it includes maximum number of people possible so that the impact is strong.

Examples:

1. Workers withdrawing their goodwill

2. Work to rule

3. Workers refusing to cover up for others

4. Workers refusing to work overtime

5. Go-slow

6. Workers refusing to work overtime or outside contracted working hours

7. Workers refusing to do any work outside their Jo description.

It is different from a strike as a strike is a walk -out by workers for a particular period of time. Example: All employees leaving the workplace at the same time during normal office hours.

Continuous or discontinuous action?

The question of whether industrial action should be taken on a continuous basis; i.e. for a defined or open period of time greater than covering more than one day, or discontinuous basis, i.e. a series of days with normal working in between, is a question of tactics and effectiveness.

Working with the strike committee you will need to ensure that any industrial action is effective and in doing so should consider whether tactical strikes on key days/dates would be more effective than a continuous two, three or five day stoppage. Further, the timing of disputes to ensure that the action crosses over more than one day in a 24 hour period should be considered; i.e. a noon to noon stoppage covering two days may be more effective than a single midnight to midnight one.

- The effectiveness of any action will of course depend on the type and nature of the business operation, one strategy does not fit all. Only the strike committee can determine what the most appropriate form of action should be and any lessons learnt can be reflected in further notices to the employer as the dispute progresses.

- In addition the strike committee will need to consider carefully who they are intending to call out on strike. Balloting all members for strike action does not mean that we have to take them all out at the same time.

- The committee should consider whether or not calling out small, but core groups in key areas of the business may have the maximum impact on the business;

  i.e. engineers, IT workers or those with high visibility or a public focus.

- Such a strategy may disrupt the company's operation while keeping up its costs as the majority of members remain at work at any one time. This also gives us the option of introducing a levy on those in work to provide additional monies to those taking action.

- In the 2011 Southampton City Council dispute, this tactic enabled members taking strike action to remain on strike without loss of earnings.

- In disputes involving members collecting revenue such as parking or bus services, one tactic may be to take action limited to a refusal to collect revenue while maintaining a service to the travelling public. Our dispute is not with the users of services but the employer. Keeping our members at work keeps cost up and our members in paid work while severely affecting revenues.

It is important to ensure however, that all members are involved in some sort of action together – maybe at the start and at regular intervals throughout the dispute. This ensures that all members have a 'stake' in the dispute and that it is not seen as a battle to be won or lost for all by a small group.

Avoiding industrial action

Industrial action should only be taken if it's not possible to resolve a dispute by other means, as it can be costly and damaging to both sides. There are likely to be formal arrangements for resolving disputes which usually involve your union. Sometimes it may be s ensible to bring in outside help. ACAS help employers and u nions to resolve disputes in a number of different ways.

What's the correct procedure for taking industrial action? Industrial action is

protected by law as long as:

- The dispute relates to a trade dispute between workers and their employer
- A secret postal ballot has been held and the majority of members voting have supported the action
- Detailed notice about the action has been given to the employer at least seven days before it commences

There's no protection for:

- Unofficial industrial action
- Action called by a union unsupported by a ballot
- Secondary industrial action that is in support of workers of another employer
- Action promoting 'union labour only' practices
- Action in support of anyone dismissed for taking 'unofficial action'

Holding a ballot for industrial action

There is no legal protection for union members taking industrial action unless there's been a secret ballot. An independent scrutineer is needed if more than 50 workers are being balloted.

If there is majority support the action must begin within four weeks of the ballot or eight if it's agreed between union and employer

Industrial action ballots

If your members take part in industrial action, be aware that your members may:

- Be in breach of contract and not receive any pay for the duration of the industrial action
- Could lose their job
- Could lose any company benefits
- Be dismissed and may not have the right to claim unfair dismissal

The last point doesn't apply if the correct procedure for industrial action has been followed and anyone is dismissed less than 12 weeks after action began. Lock-out days aren't counted in the 12 weeks. After 12 weeks of action, you have the right to claim unfair dismissal if:

- The employer hasn't taken reasonable steps to settle the dispute
- You stopped taking part in the industrial action during the 12 week period and are dismissed for taking part during that period

If the action is official, but unsupported by a ballot or unprotected because the action is secondary, for example, you can only claim unfair dismissal if you are dismissed and others taking part are not.

ACTIVITY 33 : ACAS and the Employment Tribunal

Understanding Employment Tribunals

Recent Changes

In recent years there have been some big changes to Employment Tribunals, some more known than others.

From April 2014, new changes were introduced to the way employees submit employment tribunal claims. From the 6th April, individuals had to notify ACAS of their intention to claim and are offered early conciliation. This is designed to help the parties to resolve disputes before submitting a tribunal claim;

Before making a claim

Contact ACAS - Prospective claimants will need to contact ACAS before lodging their claim with the tribunal. This involves submitting an EC form to ACAS, providing the name, address and contact details of the claimant and the respondent. When a completed form is received by ACAS, the prospective claimant will have satisfied the EC requirement and the limitation period for bringing the relevant claim(s) will be suspended (i.e. the clock will stop) to allow conciliation to take place.

Early Conciliation Support Officer Contact – An Early Conciliation Support Officer (ECSO) will make telephone contact with the prospective claimant. The ECSO will check the details supplied by the prospective claimant and outline the EC process. The ECSO can discuss any misunderstandings surrounding the prospective claim

α.γ. qualifying periods.

Conciliator contact - The ECSO will pass the relevant details to the conciliator, who will then contact the prospective claimant. Where the prospective claimant wishes to attempt to settle the dispute, the conciliator will contact the prospective respondent. Where both parties agree to EC, the conciliator will have up to one calendar month from the date of receipt of the EC form to facilitate a settlement between the parties. This period may be extended by up to a further two weeks if there is a reasonable prospect of achieving a settlement.

The EC certificate - If the prospective claimant cannot be contacted by the ECSO, the case will be closed by issuing a certificate to confirm that the prospective claimant has complied with their obligation to contact ACAS. The prospective claimant will then be able to present a claim to the tribunal, should they wish. Similarly, where, following a conversation with the ECSO, the prospective claimant concludes that are unlikely to be able to bring a claim (e.g. because they are out of time) and does not wish to participate in EC, ACAS will issue a certificate. If EC is

unsuccessful, the prospective claimant can proceed to present their claim at the Employment Tribunal. If EC is successful, a legally binding settlement would be signed by both parties and no claim would be brought.

Financial penalties

From April 2014, Employment Tribunals may now introduce financial penalties on employers. This is about the only pro-worker changes brought in by the current coalition Government to changes in Employment Tribunals. Financial penalties are:

A penalty may be levied where the employer's breach has "one or more aggravating features" (i.e. penalties may be imposed where a Judge determines the breach involves unreasonable behaviour, for example where there has been negligence or malice involved).

The financial penalty will be hal f the amount of the total award made by the Employment Tribunal, so that the level of financial penalty is proportionate to the award.

There will be a minimum threshold of £100 and an upper ceiling of £5,000.

As an incentive for any penalty to be paid quickly, the penalty will be reduced if there is prompt payment. This is set at a 50% reduction if the payment is made within 21 days.

Employment Tribunals should have regard to an e mployer's ability to pay when deciding whether to order the employer to pay a financial penalty.

The financial penalty is in addition to any compensation paid to the employee, however the penalty payment is made to the Ministry of Justice.

Other changes

A whole range of other changes have been introduced intro the way Employment Tribunals work, these were intended by the coalition Government to reduce the length of cases, and 'sift out' vexatious claims. Some of these changes are:

- Employment Judges sit alone in Unfair Dismissal cases. However in complex cases either side can request members)
- Lay Members still used in Discrimination cases
- Shorter hearings
- Employment Judges can order parties to pay witness expenses
- Witness statements taken as read
- Employment Judges can make larger costs awards and deposit orders
- Costs orders: Increased to maximum of £20,000 but as issued in only 2% of cases, unlikely major impact.
- Deposits under Rule 20: Increased to £1000 – used in minority of cases
- Witness expense claims to be disallowed

Presenting a claim: The Tribunal will have the power to reject a claim if it does not include certain required information, if it is not accompanied by the prescribed fee or, if it is "in a form which cannot sensibly be responded to". It is unclear how this last requirement will be interpreted, but it may well impact on unrepresented Claimants with poor language skills who have inadequately drafted their claim form or whose details of claim are illegible. It is possible that particularly lengthy claim forms may also be rejected under these rules. If a claim is rejected in this manner a claimant may apply for a "reconsideration".

Rejecting Responses: If the deadline for an employer to present their Response has passed they will no longer be required to show that it has a reasonable prospect of successfully responding to the claim or part of it. The Respondent will now have to apply for a "reconsideration" of the decision and will be required to explain why the rejection of the Response was wrong, or how any defects on the Respondent's form can be rectified.

Default Judgments: The Tribunal will no longer automatically issue a default judgment if a response has not been received by the 28-day deadline. An Employment Judge will decide whether they can determine the Claim from the information they have before them. They will also be able to decide the extent to which a respondent who has not presented a response should be permitted to participate in any future proceedings.

Sift stage: One of the most important changes is the implementation of a sift by an Employment Judge after a response has been accepted by the Tribunal. An Employment Judge will consider all of the documents it has and decide (based on that information) whether the Claim or Response, or any part of it, should be dismissed, either because there are no arguable complaints/defenses or for lack of jurisdiction.

The Employment Judge carrying out the sift may also decide what case management orders are required to get the case ready for final hearing, decide that a preliminary hearing should be listed or propose judicial mediation at that stage. The fact that pleaded issues will be subjected to scrutiny at that stage is likely to mean that hopeless claims are identified and dealt with more quickly. It may also mean that the parties will assess the merits of their cases at an earlier stage and encourage settlement negotiations. From a practical perspective, it is important that the parties ensure that the pleadings are comprehensively drafted in the first place.

Preliminary hearings: The new rules replace Case Management Discussions and Pre-Hearing Reviews with "Preliminary Hearings" at which both case management and substantive preliminary issues may be decided. The parties will have to be prepared to deal with technical jurisdictional issues such as time bar or amendment of claim arguments at these hearings. This may mean that these types of hearings last longer in practice but may ultimately reduce parties' costs as they will not need to attend two separate hearings.

Applications: The procedure for making an application is relaxed as there is no longer a requirement to explain how granting the order sought will assist the Tribunal in dealing with the case efficiently and fairly. Additionally, the requirements to copy an application to opponents is

slightly amended; all that will be required will be for the applicant to provide their opponent with a copy of the application and inform them that if they wish to object to it, then they should write to the Tribunal as soon as possible.

Withdrawal and Dismissal of Claims: Where a claim or part of it has been withdrawn, the Tribunal will automatically issue a judgment formally dismissing the claim, unless at the time of withdrawing the claim, the Claimant specifically expressed a wish to reserve the right to bring a further claim against the Respondent and they have a legitimate reason for doing so, which is likely to be rare. This should mean that employers no longer have to apply for dismissal of proceedings, however, as there is no time frame stated in the rules for Tribunals to dismiss proceedings, parties may end up chasing the Tribunal.

Reconsideration of decisions: Decisions of the Tribunal can be "reconsidered", either on the Tribunal's own initiative or on the application of a party. A party must apply for a reconsideration in writing within 14 days of the date the original decision was sent out to the parties, explaining why the decision was wrong. This new type of application will be similar in nature to the current "review" process.

Timetabling: a Tribunal may impose time limits on parties in terms of presenting evidence, questioning witnesses or making submissions. In practice this happens already and can be quite effective in focusing the parties' minds on the core issues in the case.

Costs assessment: The new rules remove the requirement for costs awards to be referred to the county court for detailed assessment. Employment Judges will be able to carry out this exercise themselves.

- Advantages of prior workplace solutions?
- Potential disadvantages?

Please check all figures quoted for the most up to date examples online

APPENDIX

Conciliation Explained

Acas – Working for everyone

May 2018

About Acas – What we do

Acas is a publicly funded independent organisation that promotes good employment relations and helps sort out employment disputes. Our advisers and conciliators are workplace experts.

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to www.acas.org.uk for more details.

If someone has a dispute at work and that person or their employer asks for our help, we can work with them to find a solution acceptable to both, so that they can avoid the need for an Employment Tribunal claim or (if a claim has been made) a tribunal hearing and decision. This process is known as conciliation and this guidance explains what it is and the context in which it is available.

This guidance is also available in alternative formats – braille, audio and large print. Please email the Acas Customer Services Team (CST@acas.org.uk) for further details.

May 2018
Information in this booklet has been revised up to the date of publishing. For more information, go to the Acas website at www.acas.org.uk.

Contents

What is Conciliation?

Many issues which may lead to an employment dispute can be resolved informally in the workplace between the individual and their immediate line manager. It is Acas' advice that issues are best dealt with as early as possible. Internal procedures should be in place to deal with more difficult cases, and Acas can provide employers with advice about best practice policies and procedures to help you avoid difficulties. You can contact our Helpline on 0300 123 1100 or see our **Advice A-Z** for more information.

However, sometimes these issues escalate and they can become formal legal claims. In these circumstances people must first notify Acas before they lodge an Employment Tribunal claim, and we will try to help. Reaching a settlement through conciliation is quicker, cheaper and less stressful for all concerned than a tribunal case.

Conciliation is offered to both sides with the aim of settling the matter without the need for a legal claim to be lodged. It's voluntary, and both parties must participate in the process for conciliation to be able to work.

Conciliation involves an independent Acas conciliator who discusses the issues with both parties in order to help them reach a better understanding of each other's position and underlying interests. Without taking sides, the conciliator tries to encourage the parties in a dispute to come to an agreement between themselves.

This is different from **Acas Collective Conciliation**, where Acas facilitates talks to help resolve disputes between groups of employees (usually via trade unions) and employers to help prevent industrial action. Again, our role is not to direct either party on what to do; but to help them develop options and solutions to resolve the dispute.

Seven key features of Acas conciliation:

- **It's voluntary**. You are legally required to contact us before making a tribunal claim, however neither party is obliged to take part in conciliation and can stop whenever they wish.

- **You are in control**. Agreements are decided by the parties, not imposed by a tribunal. Agreed outcomes can include things not available at an employment tribunal, such as an employment reference or an apology.

- **It informs**. Parties can get a clearer idea of the strengths and weaknesses of their case, and can explore the options for resolving their differences.

- **It saves time and money**. Acas conciliation is free, and often is concluded by a few telephone calls. If parties can settle their differences, this will avoid the time, expense, risk and stress of making or defending a tribunal claim, or, if a claim has been made, of going to the tribunal hearing.

- **We're impartial and independent**. Acas doesn't represent either the employee or the employer and we are not part of the tribunal system.

  It's confidential. Anything you tell us can only be discussed with the other party if you agree that it will be helpful in trying to settle your case. Settlement discussions cannot be used by either party at a tribunal hearing. Tribunals are heard in public.

- **It can restore trust**. If the claimant is still employed it increases the chance of avoiding a permanent breakdown of the employment relationship – if that is what both sides want to achieve.

The role of the Acas conciliator:

Acas conciliators have substantial experience of dealing with disputes between employers and employees. To explore how the potential claim might be resolved the conciliator will talk through the issues with the employer and the employee separately. Mostly this will take place over the telephone, but sometimes a meeting, chaired by the conciliator, can be helpful. The conciliator will also, where appropriate:

- **Explain** the conciliation process.
- **Encourage** the use of internal procedures such as disciplinary and grievance procedures if available.
- Explain the way **tribunals** set about **making their decision** and what things they take into account.
- Explain how **tribunals** decide what to **award**.
- **Discuss the options** available, for example the appointment of an independent arbitrator under the Acas Arbitration scheme in appropriate cases.
- **Help parties to understand** how the other side views the issues.
- **Discuss any proposals** either party has for a resolution.

What the conciliator cannot do:

The conciliator:

- **Cannot** know what the outcome of a tribunal hearing would be if it went ahead.
- **Cannot** advise either side whether to accept or make any proposals for resolution.

- **Cannot** take sides, represent either party or help prepare either a case for tribunal or a defence to a claim.

- **Cannot** take a view on the merits of a claim or advise whether a claim should be made.

Stages of Acas Individual Conciliation:

Wherever possible we will try and ensure that the same conciliator deals with the case throughout its life:

- **Before an Employment Tribunal claim has been lodged**, the claimant must contact Acas and we will offer Early Conciliation to try and help settle the dispute without the need to lodge a tribunal claim.

- Acas has a statutory duty to offer **Early Conciliation** for an initial period of up to a calendar month, with the conciliator having the discretion to extend that by two weeks if both parties agree that extra time may help resolution.

- During the Early Conciliation period, the time limitation for putting in a tribunal claim is paused (*see section below for details about the time limitation for lodging an Employment Tribunal claim).

- When the Early Conciliation period is over, the time limitation clock starts again, but **Acas conciliation** continues to be available.

- At the end of Early Conciliation, we will issue a Certificate with a number on it. That number is required to lodge an Employment Tribunal claim.

If the claimant goes on to lodge an Employment Tribunal claim (on form ET1), we will continue to offer a **free conciliation service** right up until the tribunal hearing to help parties try and find a solution, and avoid the cost time and stress of a hearing. We can provide conciliation after the hearing has started and up to the point a judgement is made.

Time limitation for lodging an Employment

Tribunal claim

Tribunal claims have to be presented within a certain amount of time, known as limitation periods, usually three or six months depending on the type of claim. For example, after being dismissed a person has three months from the date the employment ended in which to make a claim of unfair dismissal.

When someone notifies Acas of their intention to make a tribunal claim, the clock stops ticking on their limitation period. The clock starts again once Early Conciliation ends and extra time is added to ensure everyone has at least one calendar month in which to present a tribunal claim after Early Conciliation ends. However, if someone is already late for making a tribunal claim by the time they notify Acas, they will still be late when Early Conciliation ends as no adjustment is made in these circumstances; if an ET1 is lodged, the Claimant would have to rely on the tribunal's discretion to allow a late claim.

It is the claimant's responsibility to make sure that their claim is presented to the tribunal in time. Only a tribunal can decide whether the claim is in time or not; the conciliator cannot decide or advise on this point.

How does Early Conciliation work?

How is a notification for Early Conciliation made?

The quickest and simplest way to notify Acas is online using the form on our website: www.acas.org.uk/earlyconciliation. If you cannot access the internet, contact Acas' Early Conciliation support on 0300 123 11 22. Nine out of ten people who notify do so online as it's very easy.

The form asks for the names and basic contact details of the person intending to make a tribunal claim and the employer or individual they intend to claim against. Claimants need to ensure that the correct legal name of the organisation or person they want to claim against is given. If the name of the employer on a tribunal application does not match the name on the early conciliation notification form, the claim may be rejected by the tribunal. The correct employer name can usually be found on job offer letters, a contract of employment or a wage slip.

Is notifying Acas always mandatory?

The requirement to notify Acas applies to nearly all intended tribunal claims but there are a small number of exemptions. For example, where a group of people are making a tribunal claim against the same employer in the same dispute, if one person has already notified Acas, the others may not have to.

Further information about exemptions can be found on the Acas website (www.acas.org.uk/earlyconciliation) or in the tribunal leaflet "*Making a claim to an Employment Tribunal*" at (https://hmctsformfinder.justice.gov.uk/courtfinder/forms/t420eng.pdf)

People can try to resolve the dispute through Early Conciliation, even where an exemption exists.

What happens after an Early Conciliation notification?

First we send the claimant an acknowledgement. We quickly make initial contact to check the information provided, find out what the claim is about and explain the conciliation process. The timing and nature of subsequent contact will depend on the circumstances of the case, and preferences of the parties. The conciliator will only approach the employer or respondent after the claimant has agreed they want to participate in Early Conciliation.
For the period of Early Conciliation, Acas will talk to both the claimant and respondent (or their representatives) and try to find common ground to reach agreement. We will help both to understand the process of conciliation and what getting involved in a tribunal would involve. Our involvement takes out some of the emotion from difficult circumstances, and helps people to step back and think about how they could resolve the situation.

If contact with the claimant cannot be made, Early Conciliation is formally stopped, and the time limitation for lodging a tribunal claim restarts. However, the opportunity to participate in Acas conciliation remains available.

Do I need to be represented (e.g. by a trade union representative or a lawyer)?

There is no obligation to have a legal (or other) representative if taking part in Early Conciliation or making a tribunal claim. If you appoint a representative to act for you, we can conciliate through them. A representative is someone of your choosing and could include a trade union official, a lawyer, or someone from a Law Centre or Citizens Advice Bureau.

Your representative has the power to agree a settlement on your behalf. As settlements are legally binding, it is important to ensure that your representative fully understands your requirements, has your full authority to enter into an agreement on your behalf, and regularly keeps in touch so that you are aware of any progress.

What is the Early Conciliation Certificate?

If the Acas conciliator cannot get hold of either party; if either party (or their representatives) advise that they do not wish to take part in Early Conciliation; or if the conciliator believes that no resolution can be reached, the Early Conciliation Certificate will be issued.

When the Certificate is issued, the time limitation clock for lodging an Employment Tribunal claim restarts. However, Acas can continue to offer conciliation right up to the point of a claim being decided by the Tribunal.

Claimants must quote the unique reference number from the Acas Certificate on their tribunal application form as evidence that they have notified Acas of an intention to make a tribunal claim. A copy of the certificate is only sent to the employer or their representative if the Acas conciliator has had contact with them.

What happens when parties reach a resolution?

When a resolution is reached, the Acas conciliator will record what has been agreed on an Acas settlement form (known as a COT3). Both parties will sign this as a formal record of the agreement.

The COT3 is a legally binding enforceable contract, which means that the claimant will not be able to make a future tribunal claim

in those matters, or, if a tribunal claim already has been lodged, it will be closed.

Lodging an Employment Tribunal claim

What happens when a claim is received?

If parties cannot reach an agreement through Acas Early Conciliation, the claimant may choose to proceed to a tribunal. They will complete the lodgement claim form (called an ET1), which will be copied to Acas and to the employer. We will offer conciliation services to both parties right up until the tribunal hearing and decision. Where the dispute was previously the subject of an Early Conciliation notification, the same conciliator will continue to offer support.

Will talking to Acas affect the tribunal process?

No. Conciliation is a confidential process and separate from tribunal proceedings. Tribunals base their decisions on an individual's application and the respondent's reply and on the evidence the parties give in the tribunal hearing. If conciliation is not successful a tribunal is not entitled to take this into consideration, and Acas does not share the content of conciliation discussions with anyone, not even an Employment Judge.

Acas conciliation and the tribunal process can run alongside each other. Even if a claim appears to be progressing towards a resolution it is important that both parties comply with any Orders that the tribunal makes. If a case were 'struck out' as a result of an Order being ignored, conciliation could not continue.

What are the possible outcomes of a tribunal claim?

If someone has made a complaint to an employment tribunal, there are a number of possible options:

- **Settling the complaint through Acas** - we can continue to conciliate in most claims about individual employment rights.
- **Settling the complaint privately**.
- **Withdrawing the complaint** - if someone has made a claim to a tribunal but no longer wishes to continue with it, they should withdraw it by writing to the tribunal. This should be done without delay, as the tribunal may award costs if they think someone has acted unreasonably.
- **Having the complaint decided by an arbitrator** - if both parties agree, certain complaints can be decided by an independent arbitrator appointed by Acas. For more details ask your conciliator.
- **Having the complaint decided by a Judge** – if the complaint proceeds to the Employment Tribunal, the case will be heard in public and the decision made by the Judge. You can get information explaining tribunal procedures from HMCTS, Citizens Advice Bureaux and Law Centres.

Where can I get more advice and information?

Acas conciliators can help you identify sources of advice and information appropriate to your situation. Alternatively, the following may be helpful:

The **Acas Helpline** 0300 123 11 00 can give information and advice about employment rights, but is not able to assist with preparing or presenting a claim or defence to the tribunal. See www.acas.org.uk/helpline

The **Equality Advice and Support Service** 0808 800 0082 can give free help and advice relating to equal pay and discrimination in employment. See www.equalityadvisoryservice.com

Trade Unions and employers' associations may be able to advise and support their members.

Citizens Advice Bureaux, lawyers, law centres and some specialist consultants can provide advice and representation on all matters concerned with employment rights and potential claims.

The **Employment Tribunals Public Enquiry Line** on 0300 1231024 (England & Wales) and 0141 3548574 (Scotland) for information about how tribunals work. They cannot give legal advice. See also www.justice.gov.uk/tribunals/employment

General Data Protection Regulation 2018

If you are party to a conciliation case, we will put some of the information you give us on to our computer database. This information will help us to monitor progress and to produce anonymised statistics. The information we collect in this context may be disclosed to the Department for Business, Energy and Industrial Strategy (BEIS) to assist in research into the use and effectiveness of Acas.

...and finally

If you have a disability, please let us know if we need to make any particular arrangements for dealing with your case.

If you need to use an interpreter, we can arrange for communication through The Big Word, which is a completely confidential and impartial service.

We do our best to provide a high standard of service at all times but if you are not satisfied with the service you should address your complaint to:

Complaints - Delivery Directorate
Acas National
Euston Tower
286 Euston Road
London NW1 3DP

Email: complaints@acas.org.uk

Keep up-to-date and stay informed

Visit www.acas.org.uk for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training and arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of upcoming Acas training courses, conferences and events

Sign up for the free Acas e-newsletter:
The Acas email newsletter is a great way of keeping up-to-date with changes to employment law and to hear about upcoming events in your area. Find out more at: www.acas.org.uk/subscribe

Acas e-learning. Our e-learning covers a range of employment relations topics and can help you understand both best practice and current legislation. Our e-learning is free to use and can be accessed directly on our website:
www.acas.org.uk/elearning

The Acas Model Workplace. This engaging and interactive tool can help you diagnose employment relations issues in your workplace. The tool will work with you to identify areas of improvement you could consider and will point you toward the latest guidance and best practice:
www.acas.org.uk/modelworkplace

Acas Helpline. Call the Acas helpline for free and impartial advice. We will provide you with clear and confidential guidance about any kind of dispute or query that you have about relationship issues within the workplace. You may want to know about employment rights and rules, best practice or you may need advice about a dispute. Whatever it is, our team are on hand. Find out more: www.acas.org.uk/helpline

Look for us on:
Facebook - https://www.facebook.com/acasorguk
LinkedIn - http://linkd.in/cYJbuU

Conciliation Explained

Twitter - http://twitter.com/acasorguk
YouTube – https://www.youtube.com/user/acasorguk