

No. 047/26

13th February 2026

To: All Branches

Dear Colleagues,

CWU BRANCH GUIDANCE ON PICKETING

The purpose of this letter is to introduce and share with you the CWU's new Branch guidance on picketing, attached below, which has been produced to conform with changes coming in under the Employment Rights Act and changes to the government's Code on Picketing.

This reflects the repeal of some of the most draconian anti-union legislation introduced under successive Conservative governments, and the CWU can be extremely proud of the role we have played in securing these important changes through our New Deal for Workers campaign.

Key points reflected in the CWU Branch guidance on picketing

- **The right for employers to impose minimum service levels and issue work notices in six key sectors was repealed in December 2025** (this could have affected CWU members working in 999 call operations).
- **From 18th February 2026, there is no longer a requirement for trade unions to appoint a picket supervisor.**
- **The repeal of these statutory requirements reduces the legal burden on unions** and removes the risk of serious legal consequences for compliance failures.
- **The Code on Picketing continues to set out the responsibilities of a 'picket organiser'** and can be taken into account in court proceedings.
- **It is necessary for the CWU to ensure compliance with the new regulations, and we ask that you familiarise yourself with the Code on Picketing** which has been reproduced in full within the attached guidance document.

The provisions of the Employment Rights Act are being phased in throughout the course of 2026 and 2027. Several changes are being implemented from 18th February 2026,

including the repeal of the great majority of the Trade Union Act 2016 and with it the removal of the requirement to appoint a picket supervisor and the various administrative duties associated with this role.

The entirety of the Strikes (Minimum Service Levels Act) 2023 was repealed in December 2025, thereby removing the right for employers to issue work notices relating to minimum service levels during strikes in six key sectors, including emergency services and transport services. Though the majority of CWU members were not affected by the 2023 Act, the regulations could have allowed BT to issue work notices to CWU members working in BT 999 call operations during periods of strike action, and the rules on transport services could have been expanded in future to cover parcels and postal delivery.

The government's Code on Picketing has been revised to bring it into conformity with these changes, and the new Code is due to complete its laying period in parliament on 25th February 2026. For the short intervening period between 18th February and 25th February, the "old" Code will no longer apply.

As the Branch guidance document notes, the repeal of the statutory requirements relating to picket supervisors and minimum service levels reduces the legal burden on unions and represents a significant step toward returning to the pre-2016 industrial relations framework.

However, the Code of practice on picketing continues to set out the responsibilities of a 'picket organiser' including that they should have a letter of authority from their union which they can show to the police and that they should maintain close contact with the police. The Code remains admissible in evidence and can be taken into account in the event of proceedings before any court, employment tribunal or Central Arbitration Committee where they consider them relevant. Therefore, it is necessary for the CWU to ensure compliance with the Code, and as such we ask that you familiarise yourself with the requirements of the Code, which has been reproduced in full within the attached guidance document.

If you have any questions, please contact the General Secretary's department at dlynch@cwu.org.

Yours sincerely



Dave Ward
General Secretary



The communications union

BRANCH COORDINATION, PICKETING & ORGANISATION 2026

- CODE OF PRACTICE ON PICKETING

BRANCH GUIDANCE

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Colleagues will be aware that the Employment Rights Act 2025 repeals the great majority of the Trade Union Act 2016 (“the 2016 Act”) and the entirety of the Strikes (Minimum Service Levels Act) 2023 (“the 2023 Act”). The government’s Code of practice on picketing has been revised to bring it into conformity with these changes.

This CWU Branch guidance document sets out the new rules under the amended Code of practice on picketing, and explains how the law has changed. It updates and replaces the previous CWU guidance documents on picketing, titled *‘Branch Coordination, Picketing & Supervision – Code of practice on picketing’* and *‘Picket Supervisor Guidelines’* that were published in 2017 and are no longer valid under the new framework.

The most significant change to the law in relation to picketing is the removal of the statutory requirement for a picket supervisor and the various administrative duties associated with this role. The repeal of these requirements reduces the legal burden on unions and represents a significant step toward returning to the pre-2016 industrial relations framework.

However, it is important to note that the Code of practice on picketing remains admissible in evidence and can be taken into account in the event of proceedings before any court, employment tribunal or Central Arbitration Committee where they consider them relevant. Therefore, it is necessary for the CWU to ensure compliance with the Code, and as such we ask that you familiarise yourself with the requirements of the Code, which has been reproduced in full within this document.

The previous legislation and Code of practice on picketing

The Code of practice on picketing was previously revised in 2017 to include references to the requirement to appoint a picket supervisor contained in section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 (which was inserted by section 10 of the 2016 Act (union supervision of picketing)). The Code on picketing was subsequently revised in 2024 to include references to minimum service levels contained in sections 234B to 234G of the 1992 Act (which were inserted by the 2023 Act).

How the law has changed as a result of the Employment Rights Act 2025

- The 2025 Act amends section 219 (protection from certain tort liabilities) of the 1992 Act and omits section 220A (union supervision of peaceful picketing), through the repeal of section 10 of the 2016 Act.
- Section 10 of the 2016 Act required the appointment of a picket supervisor responsible for ensuring that people on the picket line follow the rules applicable to them, with failure to comply meaning that the picketing would not qualify for statutory immunity from tort liability under section 219 of the 1992 Act. Repeal of Section 10 and the related amendments to the 1992 Act mean that **appointment of a picket supervisor is no longer a requirement**.
- The 2025 Act amends the 1992 Act to omit sections 234B to 234G (minimum service levels for certain services), through repeal of the 2023 Act.
- The 2023 Act allowed employers to impose minimum service levels during strikes in 6 key sectors, as follows:
 - health services
 - fire and rescue services
 - education services
 - transport services
 - decommissioning of nuclear installations and management of radioactive waste and spent fuel
 - border security
- Though the majority of CWU members were not affected by the 2023 Act, the regulations for health and fire and rescue services could have allowed BT to issue work notices to CWU members working in BT 999 call operations during periods of strike action. Furthermore, whilst transport services focused on passenger rail transport for the purposes of the Act, the Conservative government indicated that the legislation could be expanded to other areas of the transport sector in future, such as parcels and postal delivery.
- Repeal of the 2023 Act means that there is no power for the government to set minimum service levels and **employers in specified sectors can no longer issue work notices relating to minimum service levels during strike action**.

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Transition to the new law and date of commencement

Section 75 of the Employment Rights Act 2025, which removes the requirement for unions to appoint a **picketing supervisor**, comes into force on **18th February 2026**. For illustration purposes, where workers are picketing each day from 17th February to 19th February 2026, a picketing supervisor is required on 17th February but not on 18th or 19th February.¹

The Strikes (Minimum Service Levels) Act 2023 was repealed **immediately upon Royal Assent** (18 December 2025). Therefore, employers have not been able to issue **work notices** during strike action since **18th December 2025**.

How the Code on Picketing has changed

The key changes to the law that require a change to the Code on Picketing are:

- There is no longer a requirement for unions to appoint a picket supervisor.
- Employers can no longer impose work notices on trade unions for minimum service levels during strike action.

As a consequence of the changes to the law, the Code on Picketing has changed as follows:

- The paragraphs under Section B titled 'Appointment of picket supervisor under section 220A of the 1992 Act have been completely removed. This means:
 - There is **no longer a requirement for a picket supervisor** to be present on the picket line or be readily contactable and able to attend at short notice.
 - There is **no longer a requirement for the union or the picket supervisor to take reasonable steps to inform the police** of his name, contact details and the location of the picketing.
 - There is **no longer a requirement for the union to provide the picket supervisor with a letter** stating that the picketing is approved by the union.
 - There is **no longer a requirement for the supervisor to wear something that readily identifies him** to both others and the picketers as being the supervisor
- The paragraph under Section A titled 'Picketing and the requirement to take reasonable steps under section 234E of the 1992 Act in relation to minimum service levels' has been completely removed. The Code of practice on reasonable steps was referenced in the 2024 Code of practice on picketing. This means:
 - There is **no longer a requirement for trade unions to instruct the picket supervisor to ensure that picketers avoid trying to persuade members who are identified on the work notice not to cross the picket line.**

¹Trade union law: transition to Employment Rights Act 2025, 8th January 2026, accessed at:

Trade union law: transition to Employment Rights Act 2025 - GOV.UK

Key areas where the Code of practice on picketing has remained the same

Aside from the changes outlined above, much of the Code on picketing remains largely the same as the 2017 version that was published following the implementation of the Trade Union Act 2016.

This includes:

Section B

- Picketing and the civil law
- In contemplation or furtherance of a trade dispute
- "Secondary" action
- Attendance at or near a picket's own place of work
- Trade union officials
- Lawful purposes of picketing
- Seeking redress
- Determining whether a union is responsible

Section C

- Picketing and the criminal law

Section D

- Role of the Police

Section E

- Limiting Numbers of Pickets

Section F – 'Organisation of Picketing' and the distinction between the Code and Statutory Law

Under the new Code, 'Section F - Organisation of picketing' removes all previous references to the 'picket supervisor'. Even so, it is worth noting that the Code continues to set out the responsibilities of a 'picket organiser', including that they should have a **letter of authority** from their union which they can show to the police, and that they should **maintain close contact with the police**.

This mirrors some of the conditions relating to the picket supervisor under Section 220A of the 1992 Act which has now been repealed. However, the requirements under Section 220A were **statutory legal obligations**, meaning unions could face serious legal consequences – potentially including loss of immunity from tort liability (allowing employers to sue for damages) – if they failed to meet them. The removal of Section 220A from the 1992 Act eliminates those risks, reducing the legal burden on unions, and returns the law on picketing to its pre- 2016 status. Unlike the 1992 Act, the Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings.

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It is important to note that whilst failing to follow the Code of practice does not in itself create a liability, the Code can be taken into account by the courts in the event of a legal case. It therefore remains necessary for CWU Branches to familiarise themselves closely with the Code of practice on picketing and to ensure compliance with the Code.

For ease of reference, the new Code of practice on picketing which conforms with the law that takes effect from 18th February 2026, is attached in full as Annex A. The Code is also available online from the Department for Business and Trade.²

Consultation with the Police

As mentioned above, there is **no longer a statutory requirement for the union or the picket supervisor to take reasonable steps to inform the police** of his name, contact details and the location of the picketing. However, the Code continues to state that the picket organiser should have a **letter of authority** from their union which they can show to the police, that they should **maintain close contact with the police**, and that **advance consultation with the police** is always in the best interests of all concerned.

With the aim of supporting this process, listed below for ease of reference are the names of the various Police Forces for England, Northern Ireland, Scotland and Wales.

The geographical makeup of CWU Branches may cross over one or more Police Force boundaries.

England

- Avon and Somerset Constabulary
- Bedfordshire Police
- Cambridgeshire Constabulary
- Cheshire Constabulary
- City of London Police
- Cleveland Police
- Cumbria Constabulary
- Derbyshire Constabulary
- Devon & Cornwall Police
- Dorset Police
- Durham Constabulary
- Essex Police
- Gloucestershire Constabulary
- Greater Manchester Police
- Hampshire Constabulary
- Hertfordshire Constabulary
- Humberside Police
- Kent Police
- Lancashire Constabulary
- Leicestershire Police
- Lincolnshire Police
- Merseyside Police
- Metropolitan Police Service
- Norfolk Constabulary
- North Yorkshire Police
- Northamptonshire Police
- Northumbria Police
- Nottinghamshire Police
- South Yorkshire Police
- Staffordshire Police
- Suffolk Constabulary
- Surrey Police
- Sussex Police
- Thames Valley
- Warwickshire Police
- West Mercia Police
- West Midlands Police
- West Yorkshire Police
- Wiltshire Police

² Picketing: draft revised code of practice, Department for Business and Trade, updated 9th January 2026, accessed at:

Picketing: draft revised code of practice - GOV.UK

Northern Ireland

- Police Service of Northern Ireland

Scotland

- Police Scotland

Wales

- Dyfed-Powys Police
- Gwent Police
- North Wales Police
- South Wales Police

Branches can access information about their locations covered by a particular Police Force by visiting the police web page directly on <https://www.police.uk/forces>

Annex A

Code of Practice on Picketing Issued by the Secretary of State under section 205 of the Trade Union and Labour Relations (Consolidation) Act 1992 January 2026.³

³ Code of practice issued by the Secretary of State under section 205 of the Trade Union and Labour Relations (Consolidation) Act 1992: picketing

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Preamble

The legal framework within which this Code operates is explained in the text. While every effort has been made to ensure that explanations included in the Code are accurate, only the courts can give authoritative interpretation of the law.

Wherever it appears in the Code, the word "court" is used to mean the High Court in England and Wales and the Court of Session in Scotland, but without prejudice to the Code's relevance to any proceedings before any other court or tribunal.

Passages in this Code which are printed in ***bold italic type*** outline or re-state provisions in primary legislation.

This Code was made by the Secretary of State for Employment and came into force on 1 May 1992¹. It was subsequently revised in 2017 to include references to the requirement to appoint a picket supervisor as a result of section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 (which was inserted by section 10 of the Trade Union Act 2016). It was then revised again in 2024 to reflect updates to the law on minimum service levels and work notices (as introduced by the Minimum Service Levels (Strikes) Act 2023).

The Code has been revised for the purpose of bringing it into conformity with amendments made to the Trade Union and Labour Relations (Consolidation) Act 1992 by the Employment Rights Act 2025, which repeals the Minimum Service Levels (Strikes) Act 2023 and the great majority of the Trade Union Act 2016, including section 10 of the Trade Union Act 2016.

The Code has also been updated to adopt gender-neutral language in its content.

Section A

Introduction

1. The purpose of this Code is to provide practical guidance on picketing in trade disputes for those:
 - contemplating, organising or taking part in a picket or activities associated with picketing, such as assemblies or demonstrations; and/or
 - employers, workers or members of the general public who may be affected by a picket or any associated activities.
2. There is no legal "right to picket" as such, but attendance for the purpose of peaceful picketing has long been recognised to be a lawful activity. However, the law imposes certain limits on how, where, and for what purpose such picketing can be undertaken. These limits help to ensure proper protection for those who may be affected by picketing - including those who wish to cross a picket line and go to work.
3. It is a **civil** wrong, actionable in the civil courts, to persuade someone to break their contract of employment, or to secure the breaking of a commercial contract. But the law exempts from this liability those acting in contemplation or furtherance of a trade dispute, including – in certain circumstances - pickets themselves.
4. This exemption is provided by means of special "statutory immunities" to prevent liability arising to such **civil law** proceedings. These immunities - which are explained in more detail in Section B of this Code - have the effect that trade unions and individuals can, in certain circumstances, organise or conduct a picket without fear of being successfully sued in the courts. However, this protection applies only to acts of inducing breach, or interference with the performance, of contracts, or threatening to do either of these things.
5. These "statutory immunities" afford no protection for a picket, anyone involved in activities associated with picketing, or anyone organising a picket who commits some other kind of civil wrong - such as trespass or nuisance². Nor do they protect anyone - whether a picket, an employee who decides to take industrial action or to break their contract of employment because they are persuaded to do so by a picket, or anyone else - from the consequences which may follow if they choose to take industrial action or break their contracts of employment. These could include, for example, loss of wages, or other disciplinary action or dismissal from employment (although note that the

² See the further explanation in paragraph 27 in Section B of the Code

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Employment Rights Act 2025 includes additional protections in relation to detriment and dismissal³).

6. The **criminal** law applies to pickets just as it applies to everyone else. No picket, person involved in activities associated with picketing, or person organising a picket, has any exemption from the provisions of the criminal law as this applies, for example, to prevent obstruction, preserve public order, or regulate assemblies or demonstrations.
7. This Code outlines aspects of the law on picketing - although it is, of course for the courts and employment tribunals to interpret and apply the law in particular cases. Sections B and C, respectively, outline provisions of the civil and criminal law and, where relevant, give guidance on good practice. Section D describes the role of the police in enforcing the law. Sections E, F and G also give guidance on good practice in relation to the conduct of particular aspects of picketing and certain activities associated with picketing.
8. ***The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But statute law provides that any provisions of the Code are to be admissible in evidence and taken into account in proceedings before any court, employment tribunal or Central Arbitration Committee where they consider them relevant.***

³ See section 76 (Protection against detriment for taking industrial action) and section 77 (Protection against dismissal for taking industrial action) of the Employment Rights Act 2025.

Section B

Picketing and the Civil Law

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

- i. be undertaken in contemplation or furtherance of a trade dispute;*
- ii. be carried out by a person attending at or near their own place of work; a trade union official, in addition to attending at or near their own place work, may also attend at or near the place of work of a member of their trade union whom they are accompanying on the picket line and whom they represents.*

Furthermore, the only purpose involved must be peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

10. Picketing commonly involves persuading workers to break, or interfere with the performance of, their contracts of employment by not going into work. Picketing can also disrupt the business of the employer who is being picketed by interfering with the performance of a commercial contract which the employer has with a customer or supplier. If pickets follow the rules outlined in paragraph 9, however, they may have the protection against civil proceedings afforded by the "statutory immunities". These rules, and immunities, are explained more fully in paragraphs 11 to 30 below.

In contemplation or furtherance of a trade dispute

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

"Secondary" action

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

13. However, a worker employed by a party to a trade dispute, picketing at their own place of work may try to persuade another worker, not employed by that employer to break, or interfere with the performance of, the second worker's contract of employment, and/or to interfere with the performance of a commercial contract. This could happen, for example, if a picket persuaded a

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lorry driver employed by another employer not to cross the picket line and deliver goods to be supplied, under a commercial contract, to the employer in dispute. Such an act by a picket would be an unlawful inducement to take secondary action unless provision was made to the contrary.

14. ***Accordingly, the law contains provisions which make it lawful for a peaceful picket, at the picket's own place of work, to seek to persuade workers other than those employed by the picket's own employer not to work, or not to work normally. To have such protection, the peaceful picketing must be done:***
 - a) ***by a worker employed by the employer who is party to the dispute⁴ ; or***
 - b) ***by a trade union official whose attendance is lawful* (see paragraphs 22 and 23 below).**
15. Where an entrance or exit is used jointly by the workers of more than one employer, the workers who are not involved in the dispute to which a picket relates should not be interfered with by picketing activities. Particular care should be taken to ensure that picketing does not involve calls for a breach, or interference with the performance, of contracts by employees of the other employer(s) who are not involved in the dispute. Observing the principle will help avoid consequences which might otherwise be damaging and disruptive to good industrial relations.

Attendance at or near a picket's own place of work

16. ***It is lawful for a person to induce breach, or interference with the performance, of a contract in the course of attendance for the purpose of picketing only if they picket at or near their own place of work.***
17. The expression "at or near their own place of work" is not further defined in statute law. The provisions mean that, except for those covered by paragraphs 22 and 23 below, lawful picketing must be limited to attendance at, or near, an entrance to or exit from the factory, site or office at which the picket works. Picketing should be confined to a location, or locations, as near as practicable to the place of work.
18. The law does not enable a picket to attend lawfully at an entrance to, or exit from, any place of work other than their own. This applies even, for example, if those working at the other place of work are employed by the same employer, or are covered by the same collective bargaining arrangements as the picket.
19. ***The law identifies two specific groups in respect of which particular arrangements apply. These groups are:***
 - ***those (e.g. mobile workers) who work at more than one place; and***

⁴ However, the peaceful picketing may be done by a worker who is not in employment but was last employed by the employer in dispute in certain circumstance – see paragraph 20.

- *those for whom it is impracticable to picket at their own place of work because of its location.*

The law provides that it is lawful for such workers to picket those premises of their employer from which they work, or those from which their work is administered. In the case of lorry drivers, for example, this will usually mean, in practice, the premises of their employer from which their vehicles operate.

20. Special provisions also apply to people who are not in work, and who have lost their jobs for reasons connected with the dispute which has occasioned the picketing. This might arise, for example, where the dismissal of a group of employees has led directly to the organisation of a picket, or where an employer has dismissed employees because they refuse to work normally, and some or all of those dismissed then wish to set up a picket. **In such cases the law provides that it is lawful for a worker to picket at their former place of work. This special arrangement ceases to apply, however, to any worker who subsequently takes a job at another place of work.**
21. The law does not protect anyone who pickets without permission on or inside any part of premises which are private property. The law will not, therefore protect pickets who trespass, or those who organise such trespass, from being sued in the civil courts.

Trade union officials

22. For the reasons described in Section F of this Code, it may be helpful to the orderly organisation and conduct of picketing for a trade union official⁵ to be present on a picket line where their members are picketing. **The law provides that it is lawful for a trade union official to picket at any place of work provided that:**
 - i. **they are accompanying members of their trade union who are picketing lawfully at or near their own place of work; and**
 - ii. **they personally represent those members.**
23. If these conditions are satisfied, then a trade union official has the same legal protection as other pickets who picket lawfully at or near their own place of work. **However, the law provides that an official - whether a lay official or an employee of the union – is regarded for this purpose as representing only those members of their union whom they have been specifically appointed or elected to represent.** An official cannot, therefore, claim that they represent a group of members simply because they belong to their trade union. They must represent and be responsible for them in the normal course of their trade union duties. For example, it is lawful for an official - such as shop

⁵ **The law defines an “official of the union” as a person who is an officer of the union (or of a branch or section of the union), or who, not being such an officer, is a person elected or appointed in accordance with the rules of the union to be representative of its members (or some of them), including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom they are elected to represent.** This could include, for example, a shop steward.

steward - who represents members at a particular place of work to be present on a picket line where those members are picketing lawfully; for a branch official to be present only where members of their branch are lawfully picketing; for a regional official to be present only where members of their region are lawfully picketing; for a national official who represents a particular trade group or section within the union, to be present wherever members of that trade group or section are lawfully picketing; and for a national official such as a general secretary or president who represents the whole union to be present wherever any members of their union are picketing lawfully.

Lawful purposes of picketing

24. In no circumstances does a picket have power, under the law, to require other people to stop, or to compel them to listen or to do what they ask them to do. A person who decides to cross a picket line *must* be allowed to do so. ***In addition, the law provides a remedy for any union member who is disciplined by their union because they have crossed a picket line⁶.***
25. ***The only purposes of picketing declared lawful in statute are:***
 - ***peacefully obtaining and communicating information: and***
 - ***peacefully persuading a person to work or not to work.***
26. The law allows pickets to seek to explain their case to those entering or leaving the picketed premises, and/or to ask them not to enter or leave the premises where the dispute is taking place. This may be done by speaking to people, or it may involve the distribution of leaflets or the carrying of banners or placards putting the pickets' case. ***In all cases, however, any such activity must be carried out peacefully.***
27. The law protects peaceful communication and persuasion. It does not give pickets, anyone organising or participating in any activity associated with picketing, or anyone organising a picket, protection against civil proceedings being brought against them for any conduct occurring during the picketing, or associated activity, which amounts to a separate civil wrong such as:
 - unlawful threat or assault
 - harassment (i.e. threatening or unreasonable behaviour causing fear or apprehension to those in the vicinity);
 - obstruction of a path, road, entrance or exit to premises;
 - interference (e.g. because of noise or crowds) in the rights of those neighbouring properties (i.e. private nuisance);
 - trespassing on private property.
28. Both individual pickets, and anyone - including a union - organising a picket or associated activity, should be careful not to commit such civil wrongs. It is possible, for example, that material on placards carried by pickets - or, for that

⁶ A member disciplined for crossing a picket line is "unjustifiably disciplined"; the remedy for unjustifiable discipline is by complaint to an employment tribunal. (See also paragraphs 60 to 62 in Section F of this Code).

matter, by those involved in activities associated with picketing - could be defamatory or amount to a threat or harassment. Pickets will also have no legal protection if they do or say things, or make offensive gestures at people, which amount to unlawful threat or harassment. Section C of this Code explains that such actions may also give rise to prosecution under the criminal law.

29. Similarly, if the noise or other disturbance caused to residents of an area by pickets, or those associated with picketing activity, amounts to a civil wrong, those involved or responsible are not protected by the law from proceedings being brought against them.
30. Similar principles apply in respect of any breach of the criminal law by pickets, or their picket organiser. As explained in Section C of this Code, a picket, or anyone involved in an associated activity, who threatens or intimidates someone, or obstructs an entrance to a workplace, or causes a breach of the peace, commits a criminal offence. Where pickets commit a criminal offence, then in many circumstances they will not be acting peacefully; consequently, any immunity under the civil law will be lost.

Seeking redress

31. An employer, a worker, or anyone else who is party to a contract which is, or may be, broken or interfered with by unlawful picketing has a civil law remedy. They may apply to the court for an order⁷ preventing, or stopping, the unlawful picketing, or its organisation. Such a person may also claim damages from those responsible where activities of the unlawful picket have caused them loss. An order can be sought against the person - which could include a particular trade union or unions - on whose instructions or advice the unlawful picketing is taking place, or will take place.
32. In making an order, the court has authority to require a trade union which has acted unlawfully to take such steps as are considered necessary to ensure that there is no further call for, or other organisation of, unlawful picketing. An order may be granted by the court on an interim basis, pending a full hearing of the case.
33. If a court order is made, it can apply not only to the person or union named in the order, but to anyone else acting on their behalf or on their instructions. Thus, an organiser of unlawful picketing cannot avoid liability, for example, merely by changing the people on the unlawful picket line from time to time.
34. Similarly, anyone who is wronged in any other way by a picket can seek an order from the court to get the unlawful act stopped or prevented, and/or for damages. Thus, for example, if picketing, or associated activities, give rise to unlawful disturbance to residents so affected can apply to the court for such an order and/or for damages. Such proceedings might be taken against individual pickets, or the person - including a union where applicable - responsible for the unlawful act.

⁷ An injunction in England and Wales; an interdict in Scotland.

35. If a court order is not obeyed, or is ignored, those who sought it can go back to court and ask to have those concerned declared in contempt of court. Anyone who is found to be in contempt of court may face heavy fines, or other penalties, which the court may consider appropriate. For example, a union may be deprived of its assets through sequestration, where the union's funds are placed in the control of a person appointed by the court who may, in particular, pay any fines or legal costs arising from the court proceedings. Similarly, if a person knows that such an order has been made against someone, or some union and yet aids and abets that person to disobey or ignore the order, they may also be found to be acting in contempt of court and liable to be punished by the court.

Determining whether a union is responsible

36. Pickets will usually attend a place of work for the purpose of persuading others not to work, or not to work normally, and may thereby be inducing them to breach, or interfere with the performance of, contracts. The law lays down rules which determine whether a union will be held liable for any such acts of inducement which are unlawful.

37. ***The law provides that a union will be held responsible for such an unlawful act if it is done, authorised or endorsed by:***

- a) ***the union's principle executive committee, president, or general secretary;***
- b) ***any person given power under the union's own rules to do, authorise or endorse acts of the kind in question; or***
- c) ***any other committee of the union, or any official of the union⁸ including those who are employed by the union, and those who are employed by the union, and those, like shop stewards, who are not⁹.***

A union will be held responsible for such an act by such a body or person regardless of any provisions to the contrary in its own rules, or anything in any other contract or rule of law.

⁸ See footnote to paragraph 22 for the relevant definition of "official". *In this case, however, an act will also be taken to have been done by an "official of the union" if it was done (or authorised or endorsed) by a group of persons, or any member of a group, to which such an official belonged at the relevant time if the group's purposes included organising or coordinating industrial action.*

⁹ *However, if an act which is done (or authorised or endorsed) by a union committee or official is "effectively repudiated" by the union's principal executive committee, president or general secretary, the union will not be held responsible in law. In order to avoid liability in this way, the act concerned must be repudiated by any of these as soon as reasonably practicable after it has come to their knowledge. In addition, the union must, without delay*

- a) *give written notice of the repudiation to the committee or official in question; and*
- b) *do its best to give individual written notice of the fact and date of the repudiation to:*

- i. *every member of the union who it has reason to believe is taking part – or might otherwise take part – in industrial action as a result of the act; and*
- ii. *the employer of every such member.*

38. Pickets may, of course, commit civil wrongs other than inducing breach, or interference with the performance, of contracts. The question of whether a union will be held responsible for those wrongs will be determined according to common law principles of liability, rather than by reference to the rules described in paragraph 37 above.

The need for a ballot

39. If what is done in the course of picketing amounts to a call for industrial action, and is an act for which the union is responsible in law, the union can only have the protection of statutory immunity if it has first held a properly-conducted secret ballot.
40. ***The law requires that entitlement to vote in such a ballot must be given to all the union's members who it is reasonable at the time of the ballot for the union to believe will be called upon to take part in, or continue with, the industrial action, and to no other member.*** The detailed requirements of the law in respect of such ballots, are covered in the statutory Code of Practice on Industrial Action Ballots and Notice to Employers.

Section C

Picketing and the Criminal Law

41. If a picket commits a criminal offence they are just as liable to be prosecuted as any other member of the public who breaks the law. The immunity provided under the civil law does not protect them in any way.
42. The criminal law protects the right of every person to go about their lawfully daily business free from interference by others. No one is under any obligation to stop when a picket asks them to do so, or, if they do stop, to comply with a request, for example, not to go into work. Everyone has the right, if they wish to do so, to cross a picket line in order to go into their place of work or to deliver goods or collect goods. A picket may exercise peaceful persuasion, but if they go beyond that and try by means other than peaceful persuasion to deter another person from exercising those rights they may commit a criminal offence.
43. ***Among other matters, it is a criminal offence for pickets (as for others):***
 - ***to use threatening, abusive or insulting words or behaviour, or disorderly behaviour within the sight or hearing of any person - whether a worker seeking to cross a picket line, an employer, an ordinary member of the public or the police - likely to be caused harassment, alarm or distress by such conduct;***
 - ***to use threatening, abusive or insulting words or behaviour towards any person with intent to cause fear of violence or to provoke violence;***
 - ***to use or threaten unlawful violence;***
 - ***to obstruct the highway or the entrance to premises or to seek physically to bar the passage of vehicles or persons by lying down in the road, linking arms across or circling in the road, or jostling or physically restraining those entering or leaving the premises;***
 - ***to be in possession of an offensive weapon;***
 - ***intentionally or recklessly to damage property;***
 - ***to engage in violent, disorderly or unruly behaviour or to take any action which is likely to lead to a breach of the peace;***
 - ***to obstruct a police officer in the execution of their duty.***
44. A picket has no right under the law to require a vehicle to stop or to be stopped. The law allows them only to ask a driver to stop by words or signals. A picket may not physically obstruct a vehicle if the driver decides to drive on or, indeed in any other circumstances. A driver must - as on all other occasions - exercise due care and attention when approaching or driving past a picket line, and may not drive in such a manner as to give rise to a reasonably foreseeable risk of injury.

Section D

Role of the Police

45. It is not the function of the police to take a view of the merits of a particular trade dispute. They have a general duty to uphold the law and keep the peace, whether on the picket line or elsewhere. The law gives the police discretion to take whatever measures may reasonably be considered necessary to ensure that picketing remains peaceful and orderly.
46. The police have no responsibility for enforcing the civil law. An employer cannot require the police to help in identifying the pickets against whom they wish to seek an order from the civil court. Nor is it the job of the police to enforce the terms of an order. Enforcement of an order on the application of a claimant is a matter for the court and its officer. The police may, however, decide to assist the officers of the court if they think there may be a breach of the peace.
47. As regards the criminal law the police have considerable discretionary powers to limit the number of pickets at any one place where they have reasonable cause to fear disorder¹⁰. The law does not impose a specific limit on the number of people who may picket at any one place; nor does this Code affect in any way the discretion of the police to limit the number of people on a particular picket line. It is for the police to decide, taking into account all the circumstances, whether the number of pickets at any particular place provides reasonable grounds for the belief that a breach of the peace is likely to occur. If a picket does not leave the picket line when asked to do so by the police, they are liable to be arrested for obstruction either of the highway or of a police officer in the execution of their duty if the obstruction is such as to cause, or be likely to cause, a breach of the peace.

¹⁰ In *Piddington v. Bates* (1960) the High Court upheld the decision of a police constable in the circumstances of that case to limit the number of pickets to two.

Section E

Limiting Numbers of Pickets

48. Violence and disorder on the picket line is more likely to occur if there are excessive numbers of pickets. Wherever large numbers of people with strong feelings are involved there is a danger that the situation will get out of control, and that those concerned will run the risk of committing an offence, with consequent arrest and prosecution, or of committing a civil wrong which exposes them, or anyone organising them, to civil proceedings.
49. This is particularly so whenever people seek by sheer weight of numbers to stop others going into work or delivering or collecting goods. In such cases, what is intended is not peaceful persuasion, but obstruction or harassment - if not intimidation. Such a situation is often described as "mass picketing". In fact, it is not picketing in its lawful sense of an attempt at peaceful persuasion, and may well result in a breach of the peace or other criminal offences.
50. Moreover, anyone seeking to demonstrate support for those in dispute should keep well away from any picket line so as not to create a risk of a breach of the peace or other criminal being committed on that picket line. Just as with a picket itself, the numbers involved in any such demonstration should be conducted lawfully. ***Section 14 of the Public Order Act 1986 provides the police with the power to impose conditions (for example, as to numbers, location and duration) on public assemblies of 20 or more people where the assembly is likely to result in serious public disorder; or serious damage to property; or serious disruption to the life of the community; or if its purpose is to coerce.***
51. Large numbers on a picket line are also likely to give rise to fear and resentment amongst those seeking to cross that picket line, even where no criminal offence is committed. They exacerbate disputes and sour relations not only between management and employees but between the pickets and their fellow employees. Accordingly pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to, or exit from, a workplace; frequently a smaller number will be appropriate.

Section F

Organisation of Picketing

52. Sections B and C of this Code outline aspects of the civil law and the criminal law, as they may apply to pickets, and to anyone, including a trade union, who organises a picket. While it is possible that a picket may be entirely "spontaneous", it is much more likely that it will be organised by an identifiable individual or group.
53. Paragraphs 36 to 38 in Section B of this Code describe how to identify whether a trade union is, in fact, responsible in terms of civil law liability, for certain acts. As explained in these paragraphs, the law means, for example, that if such an act takes place in the course of picketing, and if a trade union official has done, authorised or endorsed the act, then the official's union will be responsible in law unless the act is "effectively repudiated" by the union's national leadership.

Functions of the picket organiser

54. Wherever picketing is "official" (i.e. organised by a trade union), an experienced person, preferably a trade union official who represents those picketing, should always be in charge of the picket line. They should have a letter of authority from their union which they can show to the police officers or to the people entering the workplace who want to cross the picket line. Even when they are not on the pickets, they should be available to provide advice if a problem arises.
55. A picket should not be designated as an "official" picket unless it is actually organised by a trade union. Nor should pickets claim the authority and support of a union unless the union is prepared to accept the consequent responsibility. In particular, union authority and support should not be claimed by the pickets if the union has, in fact, repudiated calls to take industrial action made, or being made, in the course of the picketing.
56. Whether picketing is "official" or "unofficial", an organiser of a picket should maintain close contact with the police. Advance consultation with the police is always in the best interests of all concerned. In particular the organiser of the pickets should seek directions from the police on the number of people who should be present on the picket line at any one time and on where they should stand in order to avoid obstructing the highway.
57. The other main functions of the picket organiser should include ensuring that:
 - the pickets understand the law and are aware of the provisions of this Code, and that the picketing is conducted peacefully and lawfully;

- badges or armbands, which authorised pickets should wear so that they are clearly identified, are distributed to such pickets and are worn while they are picketing;
- workers from other places of work do not join the picket line, and that any offers of support on the picket line from outsiders are refused;
- the number of pickets at any entrance to, or exit from, a place of work is not so great as to give rise to fear and resentment amongst those seeking to cross that picket line (see paragraph 51 in Section E of this Code);
- close contact with their own union office (if any), and with the offices of other unions if they are involved in the picketing, is established and maintained;
- such special arrangements as may be necessary for essential supplies, services or operations (see paragraphs 63 to 64 in Section G of this Code) are understood and observed by the pickets.

Consultation with other trade unions

58. Where several unions are involved in a dispute, they should consult each other about the organisation of any picketing. It is important that they should agree how the picketing is to be carried out, how many pickets there should be from each union, and who should have overall responsibility for organising them.

Right to cross picket lines

59. Everyone has the right to decide for themselves whether they will cross a picket line. Disciplinary action should not be taken or threatened by a union against a member on the grounds that they have crossed a picket line.

60. *If a union disciplines any member for crossing a picket line, the member will have been "unjustifiably disciplined". In such a case, the individual can make a complaint to an employment tribunal. If the tribunal finds the complaint well-founded, it will make a declaration to that effect.*

61. *If the union has not lifted the penalty imposed on the member, or if it has not taken all necessary steps to reverse anything done on giving effect to the penalty, an application for compensation should be made to the Employment Appeal Tribunal (EAT). In any other case, the individual can apply to an employment tribunal for compensation. The EAT or tribunal will award whatever compensation it considers just and equitable in all the circumstances subject to a specified maximum amount. Where the application is made to the EAT, there will normally be a specified minimum award.*

Section G

Essential supplies, services and operations

62. Pickets, and anyone organising a picket, should take very great care to ensure that their activities do not cause distress, hardship or inconvenience to members of the public who are not involved in the dispute. Particular care should be taken to ensure that the movement of essential goods and supplies, and the carrying out of activities essential to the life of the community are not impeded.
63. The following list of essential supplies and services is provided as an illustration of the kind of activity which requires special protection to comply with the recommendations in paragraph 62 above. However, *the list is not intended to be comprehensive*. The supplies and services which may need to be protected in accordance with these recommendations could cover different activities in different circumstances. Subject to this caveat, "essential supplies, services and operations" include:
 - the production, packaging, marketing and/or distribution of medical and pharmaceutical products;
 - the provision of supplies and services essential to health and welfare institutions, e.g. hospitals, old peoples' homes;
 - the provision of heating fuel for schools, residential institutions, medical institutions and private residential accommodation;
 - the production and provision of other supplies for which there is a crucial need during a crisis in the interests of public health and safety (e.g. chlorine, lime and other agents for water purification; industrial and medical gases; sand and salt for road gritting purposes);
 - activities necessary to the maintenance of plant and machinery;
 - the proper care of livestock;
 - necessary safety procedures (including such procedures as are necessary to maintain plant and machinery);
 - the production, packaging, marketing and/or distribution of food and animal feeding stuffs;
 - the operation of essential services, such as police, fire, ambulance, medical and nursing services, air safety, coastguard and air sea rescue services, and services provided by voluntary bodies (e.g. Red Cross and St. John's ambulances, meals on wheels, hospital car service), and mortuaries, burial and cremation services.
64. Arrangements to ensure these safeguards for essential supplies, services and operations should be agreed in advance between the pickets, or anyone organising the picket, and the employer, or employers, concerned.



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