



Department for
Business, Energy
& Industrial Strategy

CODE OF PRACTICE

on Picketing



March 2017

Contents

Section A	4
Introduction	4
Section B	6
Picketing and the Civil Law	6
In contemplation or furtherance of a trade dispute	6
Appointment of picket supervisor under section 220A of the 1992 Act	6
"Secondary" action	7
Attendance at or near a picket's own place of work	8
Trade union officials	9
Lawful purposes of picketing	10
Seeking redress	11
Determining whether a union is responsible	12
The need for a ballot	13
Section C	14
Picketing and the Criminal Law	14
Section D	15
Role of the Police	15
Section E	16
Limiting Numbers of Pickets	16
Section F	17
Organisation of Picketing	17
Functions of the picket supervisor or organiser	17
Consultation with other trade unions	18
Right to cross picket lines	18
Section G	19
Essential supplies, services and operations	19

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.

The Code's provisions apply equally to men and women, but for simplicity the masculine pronoun is used throughout. 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.

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 has been revised to include references to the requirement to appoint a picket supervisor as a result of section 220A of the 1992 Act (which was inserted by section 10 of the Trade Union Act 2016).

The term "industrial tribunal" has been changed to "employment tribunal" throughout the Code in accordance with section 1 (industrial tribunals to be known as employment tribunals) of the Employment Rights (Dispute Resolution) Act 1998.

¹ See the Employment Code of Practice (Picketing) Order 1992 SI 1992/476.

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 and also requires trade unions to appoint a picket supervisor during picketing and comply with certain requirements – see paragraphs 12 to 16 of this Code. 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 his 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 his contract of employment because he is 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.
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

² See the further explanation in paragraph 32 in Section B of the Code

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.***

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 his own place of work; a trade union official, in addition to attending at or near his own place work, may also attend at or near the place of work of a member of his trade union whom he is accompanying on the picket line and whom he represents;***
 - iii. Take place where a picket supervisor has been appointed in accordance with section 220A of the 1992 Act and the requirements at sections 220A (3) to (8) (see paragraph 12)³.***

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 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 35 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.***

Appointment of picket supervisor under section 220A of the 1992 Act

12. ***Where a trade union either organises the picketing or encourages its members to take part in picketing, the union must appoint a picket supervisor who is either a trade union official or other member of that union. Where more than one union is involved in the picketing, each union must appoint its own picket supervisor. The picket supervisor must be familiar with the provisions of this Code that deal with picketing⁴ in order to***

³ Section 220A of the 1992 Act was inserted by section 10 of the Trade Union Act 2016.

⁴ See section 220(3) of the 1992 Act.

be able to advise others on what constitutes 'peaceful' picketing. Peaceful picketing means that people involved in, or affected by, picketing activity can go about their business without fear of intimidation. Intimidatory behaviour by any individual may constitute a criminal offence and such a person will be treated in the same way as any member of the public who breaks the law. The picket supervisor has responsibility in relation to the pickets where the union has approved the picketing. Further information on the function of the picket supervisor is set out at Section F.

13. ***The picket supervisor must be present on the picket line or be readily contactable and able to attend at short notice.*** The term 'short notice' is not defined however the intention is that where the picket supervisor is not in attendance, they must be contactable in order to be able to return quickly so as to provide advice on peaceful picketing. Depending on the nature of the industrial dispute, it may be possible for a union to appoint a picket supervisor to supervise more than one picket line provided that they continue to be able to attend each picket line at short notice.
14. ***Either the union or the picket supervisor must take reasonable steps to inform the police of his name, contact details and the location of the picketing.*** This will mean contacting the police so that they have the necessary information. As the picket supervisor does not have to be on the picket line all of the time, this will enable the police to contact the picket supervisor should an issue arise which does not require police intervention but which could benefit from the picket supervisor's advice.
15. ***The union must provide the picket supervisor with a letter stating that the picketing is approved by the union.*** There is no legal requirement for the approval letter to contain the picket supervisor's personal details and the union should ensure that the letter does not breach Data Protection requirements. ***Only the employer involved in the trade dispute, or an individual acting on behalf of the employer, at whose workplace the picketing takes place, is entitled to see this letter.*** This provides confirmation that the union has approved the picketing activity. ***Where a request to see the letter has been made, the picket supervisor must show the letter as soon as reasonably practicable.*** This takes account of the possibility that the picket supervisor may be absent from the picket line. It may be good practice for the union or the picket supervisor to provide a copy of the letter with the employer in advance of the picket in any event.
16. ***When present, the supervisor must wear something that readily identifies him to both others and the picketers as being the supervisor*** to help others on the picket line or those seeking advice or further information. This could be achieved in a number of different ways, for example, by way of wearing a tabard, armband or a badge.

"Secondary" action

17. ***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.

18. However, a worker employed by a party to a trade dispute, picketing at his own place of work may try to persuade another worker, not employed by that employer to break, or interfere with the performance of, the second worker's contract of employment, and/or to interfere with the performance of a commercial contract. This could happen, for example, if a picket persuaded a lorry driver employed by another employer not to cross the picket line and deliver goods to be supplied, under a commercial contract, to the employer in dispute. Such an act by a picket would be an unlawful inducement to take secondary action unless provision was made to the contrary.
19. **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 dispute⁵ ; or**
 - b) **by a trade union official whose attendance is lawful** (see paragraphs 27 and 28 below).
20. 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

21. **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 he pickets at or near his own place of work.**
22. The expression "at or near his own place of work" is not further defined in statute law. The provisions mean that, except for those covered by paragraphs 27 and 28 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.

⁵ **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 circumstances** – see paragraph 25

23. The law does not enable a picket to attend lawfully at an entrance to, or exit from, any place of work other than his 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.

24. **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**
- **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.

25. 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 his former place of work. This special arrangement ceases to apply, however, to any worker who subsequently takes a job at another place of work.**

26. 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

27. 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 official⁶ to be present on a picket line where his members are picketing. This person may or may not be the picket supervisor under section 220A of the 1992 Act. **The law provides that it is lawful for a trade union official to picket at any place of work provided that:**

- he is accompanying members of his trade union who are picketing lawfully at or near their own place of work; and**
- he personally represents those members.**

⁶ **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 he is elected to represent.** This could include, for example, a shop steward.

28. 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 his union whom he has been specifically appointed or elected to represent.** An official cannot, therefore, claim that he represents a group of members simply because they belong to his trade union. He must represent and be responsible for them in the normal course of his trade union duties.

For example, it is lawful for an official - such as shop 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 his branch are lawfully picketing; for a regional official to be present only where members of his 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 his union are picketing lawfully.

Lawful purposes of picketing

29. 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 he asks 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 his union because he has crossed a picket line⁷.**

30. **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.**

31. 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.**

32. 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

⁷ **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 64 to 65 in Section F of this Code.)

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.

33. 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 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.

34. 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.

35. Similar principles apply in respect of any breach of the criminal law by pickets, or their picket supervisor or 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

36. 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. He may apply to the court for an order⁸ 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 him 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.

37. 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

⁸ An injunction in England and Wales; an interdict in Scotland.

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.

38. 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 his behalf or on his 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.
39. 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.
40. 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, he 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

41. 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.
42. ***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 so, authorise or endorse acts of the kind in question; or***
 - c) any other committee of the union, or any official of the union⁹ including those who are employed by the union, and those who are employed by the union, and those, like shop stewards, who are not¹⁰ (on next page).***

⁹ See footnote to paragraph 27 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***

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.

43. 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 42 above.

The need for a ballot

44. 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.

45. ***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. In all ballots for industrial action, at least 50% of the trade union members entitled to vote must do so in order for the ballot to be valid. In addition, where the union reasonably believes that the majority of those entitled to vote in the ballot are normally engaged in the provision of a specified important public service the union must obtain the support of at least 40% of all members entitled to vote in the ballot. In all cases, a simple majority (i.e. more than half) of the votes cast must be in favour of industrial action in order for it to go ahead. These, and other requirements of the law in respect of such ballots, are restated in the statutory Code of Practice on Industrial Action Ballots and Notice to Employers.***

belonged at the relevant time if the group's purposes included organising or co-ordinating industrial action.

¹⁰ ***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.***

Section C

Picketing and the Criminal Law

46. If a picket commits a criminal offence he is 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 him in any way.

47. The criminal law protects the right of every person to go about his lawfully daily business free from interference by others. No one is under any obligation to stop when a picket asks him to do so, or, if he does stop, to comply with a request, for example, not to go into work. Everyone has the right, if he wishes to do so, to cross a picket line in order to go into his place of work or to deliver goods or collect goods. A picket may exercise peaceful persuasion, but if he goes beyond that and tries by means other than peaceful persuasion to deter another person from exercising those rights he may commit a criminal offence.

48. ***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 his duty.***

49. A picket has no right under the law to require a vehicle to stop or to be stopped. The law allows him 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

50. 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.
51. The police have no responsibility for enforcing the civil law. An employer cannot require the police to help in identifying the pickets against whom he wishes 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 plaintiff 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.
52. 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 disorder¹¹. 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, he is liable to be arrested for obstruction either of the highway or of a police officer in the execution of his duty if the obstruction is such as to cause, or be likely to cause, a breach of the peace.

¹¹ 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

53. 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.
54. 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.
55. 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.***
56. 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

57. 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.

58. Paragraphs 41 to 43 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 supervisor or organiser

59. Pickets should not 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.

60. Whether picketing is "official" (i.e. organised by a trade union) or "unofficial", the picket supervisor or the organiser (in the case of an unofficial 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 picket supervisor or organiser and 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.

61. The other main functions of the picket supervisor and in the case of an unofficial picket, the organiser, is to ensure that:

- the pickets understand the law and are aware of the provisions of this Code¹², 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 picketing¹³;
- 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;

¹² ***Under section 220A(3) the picket supervisor of an official picket is required to be familiar with the provisions of this Code which deal with picketing.***

¹³ ***Under section 220A(8) of the 1992 Act the picket supervisor of an official picket will be required to wear something which makes them easily identifiable in this role.***

- 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 56 in Section E of this Code);
- close contact with his 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 66 to 68 in Section G of this Code) are understood and observed by the pickets.

Consultation with other trade unions

62. 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

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

64. ***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.***

65. ***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

66. 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, the carrying out of essential to the life of the community are not impeded, still less prevented.
67. 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 66 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.

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



© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available from: www.gov.uk/beis

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at: labourmarket.consultations@beis.gov.uk