

**To: Chief Executives in England, Wales and N Ireland
(additional copies for HR Director and Finance Director)
Members of the National Employers' Organisation
Regional Directors
Secretaries of the Local Government Associations**

10 November 2011

Dear Chief Executive,

PLANNING FOR INDUSTRIAL ACTION 30 NOVEMBER 2011

This circular covers the following two topics to help you prepare ahead of 30 November:

- **Exemptions**
- **Contingency planning**

1. EXEMPTIONS

In view of the strike action planned for 30 November authorities may wish to seek exemptions from the strike with the unions. The general picture is for these to be negotiated at the local level. Past experience indicates that they will not be minded to agree exemptions in areas not regarded as emergency such as education and refuse. However, this can be discussed at the local level.

Agreement on exemptions

In previous disputes union guidance advised that agreements on exemptions should be reached where there would otherwise be a direct danger to life or limb of any person. They made clear that exemptions should not be agreed for administrative ease and that they would not be necessary where management make other arrangements, including the deployment of staff prepared to break the strike. Since the current action is for a single strike day the impact will be less than it would for a longer period and therefore different arrangements could apply if longer action takes place.

Authorities are advised to seek exemptions for the following groups of employees:

- Residential Homes for Children and the Elderly
- Emergency Duty Social Work
- Emergency Meals on Wheels Services
- Emergency Housing Repairs

- Emergency Public Health services
- Emergency Housing for the Homeless
- Wardens in Sheltered Housing
- Emergency Health and Safety
- Critical Home Care Services
- Fire Control Staff
- Emergency DLO Call Out
- Matters relating to the health and safety and well-being of the community
- Employees involved in health scares
- Employees involved in major incidents
- Schools Road Safety Officers and School Crossing Patrols
- Priority Lighting
- Engineers Emergency Highways and Street Lighting
- Drainage
- Employees involved in legal commitments
- Payroll staff
- Security Staff
- Grave Diggers and Crematorium Operators
- Residential Special Schools

Employee exemptions

In previous disputes the unions have agreed that the following categories of employees can work normally in order that they do not suffer long-term financial loss, so local branches are likely to want to include exemptions for these categories of employees:

- Employees in their last year of service who are in the pension scheme
- Pregnant women who have notified their employer of their expected date of confinement, unless the employer gives an assurance that they will not suffer detriment
- Employees whose state benefits may be affected if they take part in strike action

2. CONTINGENCY PLANNING

Objectives

The key objectives of contingency planning are:

- To minimise the impact of the dispute (by doing this the Council can retain the support of the community and non-striking employees and help to convince strikers that their action is ineffective)
- To ensure that statutory duties are met
- Maintain essential services (to protect vulnerable members of the community)
- Ensure health and safety obligations are met (to protect the public and non-striking employees, and to reduce pressure on the employers)
- To secure council property (to ensure it is available to allow the delivery of services)

Risk assessment

Councils are familiar with the concept of risk assessment from their emergency planning and health and safety functions. The same approach should be taken to contingency planning for industrial action. Councils need to review their services to establish which are 'essential', and then look at the key elements in those services that need to be in place if they are to be delivered. Those key elements then need to be assessed as to their vulnerability to industrial action, and as to the likelihood of such action taking place.

For example, a council may determine that its home care service is 'essential', and that it must be maintained. Examination of the service may indicate that its control centre is a key element in delivery. The facts that the control centre is highly unionised, and has its own shop steward, and a recent history of local disputes, will confirm this as a high risk area with a need for special attention in contingency planning.

The nature of the threat

Councils are faced with the threat of three types of industrial action, especially if the dispute lasts for a period of time beyond the initial one day of action on 30 November.

- Short-term all out strikes
- Selective strikes in specific councils and specific services at specific times
- Withdrawal of goodwill and voluntary practices (such as overtime, flexible working, cover for vacancies etc)

As regards selective action, councils should note that unions are legally bound to give at least 7 days' notice of any industrial action. This should give sufficient time to implement contingency plans, provided adequate preparatory work has taken place.

Organisation

During industrial disputes, events move quickly. Decisions will need to be taken without delay. The council needs to put in place a decision-making apparatus to allow it to both manage the dispute and manage during the dispute. Once again, the council's emergency plans may be instructive. A similar emergency team should be put in place ahead of the dispute, drawn from the key Cabinet and management team members.

Larger councils may want to put departmental teams in place to support the corporate team.

Keeping services in operation

There is a range of tools available to those charged with maintaining council services.

Prioritise

If numerous workers are on strike at a given time there will not be enough people available to keep all services running at normal levels. It is essential to prioritise. An example priority system is set out below.

- Services essential to communications and decision-making

- Life and Death services
- Health and safety obligations
- Statutory obligations
- Protecting council property and reducing costs of the dispute
- Other Services

Communicate with consumers

If we can forecast the extent of the action and are confident about our contingency plans, we can inform consumers which services will be available, when and where. This will enable them to modify their behaviour, which will reduce the impact of the action.

Negotiate

Sometimes unions will be willing to co-operate to keep essential services in place, by not targeting them, or by giving members working in them exemption from the action. Clearly it will be worthwhile exploring the possibilities in advance. However, there are risks. Negotiation of this type tends to give the dispute legitimacy. It can lead to the unions becoming closely involved in decisions about how the council should operate. Sometimes union members will not follow their union's advice. Finally, these sorts of discussions may allow the union to avoid responsibility for its actions in the eyes of the community.

Reallocate work to non-striking members of the workgroup

This should present no contractual problems. However, care will be needed to avoid endangering the goodwill of non-striking staff by asking them to perform additional duties. Giving these workers additional payments may be inflammatory. All disputes eventually come to an end. Actions that undermine team spirit and divide the workforce, may have negative medium-term effects on service performance.

Reallocating work to other groups of staff

This will be more difficult. The first thing to consider is the use of volunteers. Such staff will require some training, particularly in relation to health and safety. Managers may provide a pool of volunteers. However their knowledge may not be up to date. Training should be undertaken as soon as possible.

Employees cannot be forced to do work which conflicts with their contracts of employment unless it is reasonable for the employer to ask them to do so. Reasonableness will depend upon the importance of the task and the employee's ability to perform it.

So, asking a receptionist from the civic centre to perform that function in a nearby day centre (an essential service) might be reasonable, whilst asking a lawyer to take over the role of a street-sweeping supervisor might not be. If a request is reasonable, refusal by the employee may entitle the employer to regard him or her as a party to the dispute.

However, councils may wish to act sensitively with employees who are not participating in the dispute.

Using temporary, agency, or contract workers / contractors

Where priority services cannot be maintained by the actions above, it may be necessary to consider the use of additional labour. This is not likely to be of much use in dealing with short term industrial action. Temporary staff cannot usually be hired so quickly, and they are unlikely to be available in specialised and skilled areas of work. Employment agencies are severely restricted by legislation from providing staff to break strikes.

Contractors may be able to assist in certain fields, but are unlikely to be interested in very short term assignments. The use of contractors in some fields (such as refuse collection) may make it unnecessary to negotiate clear up payments, back to work agreements etc. The absence of payments of this type may put more pressure on strikers to give up the action.

Securing council property

Previous disputes have seen councils lose control of important pieces of their property. This has tended to magnify the impact of strikes.

The key things we need to safeguard are:

- Keys and alarm access codes for buildings
- Access to depots
- Access to fuel
- Power, heat and light
- Vehicles and their keys
- Access to information systems
- Access to ICT equipment and systems

Each of these needs to be considered in detail. If control of any rests in the hands of employees who may go on strike, alternative arrangements must be made in advance.

Health and safety

Employers continue to have a statutory duty in respect of health and safety during a dispute. Sometimes the impact of industrial action is magnified by the impact on important health and safety provisions. For example, it may not be acceptable for staff to work in a building where the evacuation procedures have been undermined by the absence of telephonists or fire marshals.

If lift alarm and emergency procedures are not available, lifts may have to be closed.

If these problems can be anticipated it may be possible to introduce alternative arrangements and discuss these with employee representatives in advance.

Communications

During any period of industrial action the council needs to:

- Adopt a communication strategy
- Protect its ability to undertake the communication required by the strategy

The council should have emergency plans to hold key meetings away from council premises if these are denied to them. Similarly, the council should have contingency plans to allow it to communicate should its normal communication facilities be interrupted.

Key communication channels include:

- Members of the Council
- Line Managers
- Employees
- Service Users
- The Community as a whole
- The Press
- The National and Regional Employers
- The local unions and their regional offices

Communication methods might include face to face regular meetings, telephones and telephone trees, e-mail, post and written communication, web site, posters etc.

More advice can be found online at:

<http://www.lge.gov.uk/lge/core/page.do?pageId=13846641>

Yours sincerely,



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