

COLLECTIVE DISPUTES POLICY

		POLICY	
Reference	HR/0033		
Approving Body	JSPF		
Date Approved	1 st February 2023		
For publication to external SFH website	Positive confirmation received from the approving body that the content does not risk the safety of patients or the public:		
	YES	NO	N/A
	X		
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Supersedes	3		
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Author (Position & Name)	People Operational Lead		
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Associated Documents/ Information		Date Associated Documents/ Information was reviewed	
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1.0 INTRODUCTION

1.1 This policy is designed to assist employers, employees and their representatives to establish joint procedures for resolving collective disputes. The advantages of resolving disputes and avoiding the need for any actions which disrupt services are considerable for the employer, employees and the wider NHS community.

2.0 POLICY STATEMENT

- 2.1 This procedure applies to all employees of the Trust including Medical staff.
- 2.2 This procedure however can only be instigated by recognised Trade Union representatives, acting on behalf of their members, and not by individual members of staff (who should raise their concerns via the Trust's Grievance Policy).
- 2.3 This policy consists of 2 main sections:
- Collective Grievances by one or more Trade Unions, on behalf of their members
 - Formal Disputes, involving some form of industrial action

3.0 DEFINITIONS/ ABBREVIATIONS

- 3.1 For the purposes of this procedure a collective dispute is defined as a grievance involving more than one colleague in which the issue involved is precisely the same for all such colleagues who are aggrieved and as outlined by the Trust's Grievance Policy.
- 3.2 A collective dispute may be raised in the first instance at stage 1 of the grievance policy, and if it can't be resolved at that level it will be referred to stage 2 and 3.
- 3.3 In all cases, the appropriate parts of the grievance policy will be followed.
- 3.4 A collective dispute may arise from circumstances beyond the direct control of the Trust or its officers, e.g. national action. In such circumstances, staff organisations will, where possible, and through full time officials where appropriate, co-operate with officers of the Trust in establishing channels of consultation and negotiation and will co-operate thereby in discussing and agreeing maintenance of emergency services. It is recognised that in some circumstances these discussions may take place at a national level.
- 3.5 Before initiating a formal dispute, The Trust and recognised Trade Union officials should explore the possibility of inviting ACAS to assist them in identifying an alternative resolution. The various roles of ACAS can be utilised in the following ways:

- **Conciliation** - the act of reconciling or bringing together the parties in a dispute with the aim of moving forward to a settlement acceptable to all sides;
- **Arbitrating** – an independent arbitrator deciding the outcome of a dispute. The decision may well be binding in law;
- **Mediating** – acting as an intermediary in talking to both sides. The aim is for the parties to resolve the problem between themselves but the mediator will make suggestions along the way.

3.6 TUL(C)RA defines a trade dispute as "a dispute between workers and their employer which relates wholly or mainly to one or more of a number of specified matters:

- terms and conditions of employment (including physical conditions of work);
- engagement or non-engagement, or termination or suspension of employment of a worker or workers;
- allocation of work or duties between workers;
- disciplinary issues;
- a worker's membership or non-membership of the union;
- facilities for union officials; and
- machinery for negotiation and consultation."

3.7 The dispute must be between existing workers and their employer, and not over matters that may concern future workers.

3.8 From a legal perspective, it is important to distinguish between "lawful" and "unlawful" and "official" and "unofficial" industrial action:

- Lawful within the context of this policy refers to industrial action where the union complies with and satisfactorily meets a series of statutory requirements including those on balloting and notification as set out in TUL(C)RA. (Failure to do this leaves the Union vulnerable to employers seeking injunction and/or damages).
- If the union has authorised or endorsed industrial action then it will be classified as "official"; irrespective of whether it is lawful or not.

4.0 ROLES AND RESPONSIBILITIES

4.1 This is the Trust's understanding of the legal position and its minimum expectations from the Unions and employees. However, employees and unions are expected to comply with all relevant legal provisions from time to time and take their own advice as appropriate.

4.2 A union will be liable if it induces its members to participate in industrial action without first complying with the balloting and notification requirements laid down in the Trade Union and Labour Relations (Consolidation) Act 1992. (TUL(C)RA)

- 4.3 In order to obtain immunity the industrial action must arise out of a dispute on one of a number of specified matters. Further, the union must ballot all its members whom it reasonably believes will be called upon to take part in the industrial action and no others. Detailed provisions govern the conduct of any such ballot.
- 4.4 Provided that the union has complied with these requirements, any employee participating in industrial action will have additional protection from unfair dismissal for the first 12 weeks of any industrial action during which time their dismissal for participating in the industrial action will automatically be unfair.
- 4.5 If an employer has evidence that a union has tacitly authorised or endorsed its members to take industrial action without going through the balloting and notification requirements then it can demand that the union repudiate the industrial action and, if it refuses to do so, the employer can issue proceedings against the union for an injunction and/or damages.
- 4.6 Trade Unions will offer an opt-in system for new members on contributing to political funds upon joining the Union.

5.0 APPROVAL

This document was approved at JSPF in.

6.0 DOCUMENT REQUIREMENTS

6.1 The requirement to hold a Ballot

- 6.1.1 To be lawful, all industrial action organised by a union must be authorised by a ballot of relevant members. It should be noted that precise rules govern the content of the voting paper for the ballot. This must include confirmation that an overtime ban and a call-out ban will constitute industrial action short of a strike and, further, that any dismissal for taking part in a strike which is official and otherwise lawful will be unfair within the first 12 weeks following the individual participation in that action.
- 6.1.2 To be valid the ballot must be governed by an independent scrutineer, which is usually one of three specified bodies - namely, the Electoral Reform Ballot Services Limited; the Industrial Society; and Unity Security Balloting Services Limited, unless the number of individuals being balloted is fewer than 50.
- 6.1.3 The ballot must be a secret postal ballot and the union must obtain a formal scrutineer's report and make this available to interested parties if requested to do so.
- 6.1.4 The issue of who should be balloted is a very complex matter. TULR(C)A provides that the union must allow all members whom it reasonably believes "at the time of the ballot" will be called on to take part in the industrial action, and no others, to vote.

- 6.1.5 The ballot must be postal (excluding delivery by hand) and so far as is "reasonably practicable" every member entitled to vote must be sent a voting paper. (the union will not lose its protections against legal action as a result of accidental failure however).
- 6.1.6 Members must be able to vote in secret without interference or constraint by the union, although it is free to campaign openly for a "yes" vote.
- 6.1.7 A majority in number of those voting must support the relevant industrial action for it to be protected by the statutory immunity.
- 6.1.8 If the members balloted have different places of work there must normally be a separate ballot for each workplace and a separate majority must be obtained in each workplace for the industrial action to be lawful.

6.2 Notification to the Trust of the Ballot

6.2.1 Under TULR(C)A, to be protected, the union must ensure that the employer of members to be called out on industrial action is given:

- notice of the ballot in writing - with a clear statement that the union intends to hold a ballot, who the union believes will be entitled to vote and the first voting day - no later than 7 days before the opening of the ballot. A sample voting paper must also be provided no later three days before the opening of the ballot.
- a clearer description of the trade dispute and the planned industrial action on the ballot paper, so that all union members know what they are voting for.
- provide more detailed information to union members about ballot results, including how many union members were entitled to vote and whether the relevant thresholds have been met.
- report more detailed information on industrial action, ballot results and expenditure of political funds to the Certification Officer, the unions' regulator, which will then be made public.
- notice of the result of the ballot as soon as reasonably practicable after it has been held; and
- notice of the intended industrial action within the "appropriate period" starting with the day that the union notifies the employer of the result of the ballot and ending with the seventh day before the day that the affected employees are due to take part in the intended industrial action
- At Sherwood Forest Hospitals NHS Foundation Trust notice should be provided to the Chief Executive and Director of People.

6.2.2 The notice of the ballot must contain:

- a list of the categories of employee (NB not the names of individuals) to which the employees concerned belong and a list of the workplaces at which they work; and
 - detailed figures setting out the total numbers of employees concerned, including a breakdown with reference to the categories of employees and workplaces.
- (Alternatively, if some or all of the employees concerned are employees from whom the employer deducts payments to the union, the notice must contain either those lists and

figures or such information as will enable the employer readily to deduce the total number of employees concerned, with reference to their categories and workplaces.)

- Any lists and figures that are provided must be as accurate as reasonably practicable in the light of the information in the union's possession.
- A statutory Code of practice on industrial action ballots and notice to employers giving further advice on ballots and notices is available on the Department for Business Innovation and Skills website: [Department for Business, Energy & Industrial Strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

6.3 The Outcome of the Ballot

- 6.3.1 For industrial action to be lawful the union must obtain a simple majority of the votes cast in favour of industrial action. In important public health services, such as those provided at Sherwood Forest Hospitals NHS Foundation Trust, an additional threshold of 40% of support from all eligible members must be met for the action to be legal.
- 6.3.2 The union must, if it wishes to rely on the ballot, call industrial action to begin within four weeks of the last voting day unless it has the consent of the employer to delay taking action in reliance on the ballot, in which case it may wait for up to eight weeks after the completion of the ballot before beginning industrial action.
- 6.3.3 The outcome of the ballot and proposed arrangements for industrial action (see 8 below) should be provided to the Chief Executive and Director of People.

6.4 Industrial action

Notice of industrial action

- 6.4.1 Under TULR(C)A, the notice of industrial action must be in writing and must:
- state whether the industrial action is to be continuous or discontinuous and, if continuous, the date of commencement, and, if discontinuous, the intended dates of the action; and
 - contain specified information concerning the affected employees (those whom it is anticipated will take part in the industrial action).
 - contain a list of the categories of employee to which the affected employees belong and a list of the workplaces at which the affected employees work; and
 - detailed figures setting out the total number of affected employees, including a breakdown with reference to the categories of employees and workplaces.
 - set a six-month time limit - which can be increased to nine months if the union and employer agree - for industrial action so that mandates are always recent.
- 6.4.2 Alternatively, if some or all of the affected employees are employees from whom the employer deducts payments to the union, the notice must contain either those lists and figures or such information as will enable the employer readily to deduce the total number of affected employees, with reference to their categories and workplaces.
- 6.4.3 Any lists and figures that are provided must be as accurate as reasonably practicable in the light of the information in the union's possession.

6.4.4 The notice must be given at least 14 days prior to the commencement or resumption of industrial action. If the industrial action is discontinuous then the union may suspend the industrial action for a prolonged period and still rely on the ballot provided that the underlying dispute remains and the renewed industrial action is called in support of that dispute.

6.4.5 Unions must ensure supervision of picket lines to ensure they are peaceful

6.5 Actions excluded from Protection

6.5.1 Even following an appropriate balloting process and due notification to the Trust, some actions are excluded from statutory immunity, these being:

- action which constitutes unlawful picketing;
- action to enforce trade union membership;
- action in response to the dismissal of participants in unlawful industrial action;
- action which constitutes secondary action (which is not lawful picketing);
- action to enforce union recognition by third parties; and
- the workplace of each member entitled to vote in the ballot is the same as that of at least one member of the union affected by the dispute;
- all the union's members who share a particular occupation vote in the ballot; or
- all the members of the union (irrespective of grade) who are employed by a particular employer or employers vote in the ballot.

6.6 The impact on individuals involved in the industrial action

6.6.1 **Pay:** The Trust reserves the right to deduct wages for staff undertaking industrial action in accordance with normal legal principles.

6.6.2 **Disciplinary Action / Dismissal:** Any employee participating in unofficial industrial action will usually (but not always) be in breach of contract and may consequently be subject to disciplinary proceedings.

6.6.3 If the employer has evidence that the union has authorised or endorsed employees' participation in unlawful industrial action, the union - and not the individual - will be liable to the employer for inducing its employees to breach their contracts of employment and consequently for any losses arising from those breaches.

6.6.4 Dismissal of participants in official industrial action: can however occur if the action is official, but unlawful so long as:

- all those participating are dismissed and,
- all or none of the participants are re-engaged within three months of their dismissal.

Those involved in lawful industrial action have legal protection against dismissal.

6.6.5 Dismissal of participants in unofficial industrial action: can occur in the following circumstances:

- If an employer has evidence that industrial action has been taken without going through the balloting and notification requirements, it can demand that the union repudiate the industrial action and, if it refuses to do so, it can issue proceedings for an injunction and/or damages. AND

If the union agrees to repudiate the industrial action it will become unofficial and any employees continuing to participate in the industrial action for longer than one day after the repudiation will be deprived of any right to claim unfair dismissal. (If the union does not repudiate the industrial action in these circumstances (whether or not requested to do so by the employer) and evidence is available to prove that it had authorised or endorsed industrial action, the industrial action will be deemed to be official and consequently the employees will enjoy protection from disciplinary proceedings)6.7 Whilst both the Trust management and their Trade Union colleagues are committed to working in partnership wherever possible, both parties recognise that there may be occasions when this relationship is not able to resolve differences. It is also recognised that, given the complex management arrangements within the wider NHS, there will be occasions when the source of differences between the Trade Unions and the Trust management are at a national level and not within authority of Trust management.

- 6.7.1 In developing this procedure, there is a mutual commitment to establishing clarity about the legal and internal processes required to manage formal disputes effectively, in the event that they arise.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
Monthly	Divisional Performance Meetings	Performance Meetings	Monthly	Divisional Performance Meetings
Monthly	JSPF	Audit	Monthly	JSPF

8.0 TRAINING AND IMPLEMENTATION

8.1 Monitoring of grievance cases is undertaken on an ongoing basis by the Deputy Director of People.

9.0 IMPACT ASSESSMENTS

- This document has been subject to an Equality Impact Assessment, see completed form at Appendix 2
- This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

- ACAS Resolving Disputes and Grievances
- Gov.Uk
- Relevant Primary Legislation
- Legal advice from Browne Jacobson LLP

11.0 KEYWORDS

National action.
Industrial action.
Ballot.

12.0 APPENDICES

- Equality Impact Assessment

APPENDIX 1 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: Collective Disputes Policy			
New or existing service/policy/procedure: Existing			
Date of Assessment: October 2022			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	A potential lack of cultural awareness and training amongst the workforce	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Gender	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Age	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Religion	Lack of understanding, education and information about religious needs	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Disability	Failure to make or implement reasonable adjustments. Lack of awareness and training.	Advice and support from the OH Departments	None

Sexuality	Less favourable treatment due to lack of awareness or inappropriate comments or behaviour	CARE values Harassment in the Workplace (Dignity at work) Policy	None
Pregnancy and Maternity	Managers and staff have access to relevant information and advice/support	Advice and support from the HR Department	None
Gender Reassignment	Lack of awareness and understanding	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Marriage and Civil Partnership	Less favourable treatment due to lack of awareness or inappropriate comments and behaviour	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Socio-Economic Factors (i.e. living in a poorer neighbourhood / social deprivation)	None	None	None
What consultation with protected characteristic groups including patient groups have you carried out?			
JSPF and JSPF Subgroup			
What data or information did you use in support of this EqIA?			
None			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments?			
None			

Level of impact From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact: Low Level of Impact (<i>Delete as appropriate</i>) For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.
Name of Responsible Person undertaking this assessment: People Operational Lead
Signature: A Hardy
Date: October 2022