Codes of Practice to be issued under the

Employment Relations (Jersey) Law, 2007

INTRODUCTION

1. Under the terms of Article 25 of the Employment Relations (Jersey) Law 2007, the Social Security Minister is empowered by Order to approve codes of practice which may, in particular, provide for –

> "*(a) the recognition of trade unions*
> *(b) the manner in which ballots of members of trade unions may be held to support the doing of acts by unions in contemplation or furtherance of employment disputes;*
> *(c) conduct that is or is not reasonable conduct when done in contemplation or furtherance of employment disputes; and*
> *(d) recommended procedures for the resolution of employment disputes."*

2. The provisions of these Codes are admissible in evidence and may be taken into account in determining any question arising in proceedings before the Jersey Employment Tribunal or a court.

3. The Codes summarise the relevant statutory provisions, however only the Jersey Employment Tribunal and the courts can interpret the law authoritatively.

4. In preparing the Codes, consideration has been given to Jersey's international obligations, in particular under the Human Rights (Jersey) Law 2000 and International Labour Organisation (ILO) Conventions No.98, Right to Organise and Collective Bargaining, and No. 87, Freedom of Association and Protection of the Right to Organise.

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Code 1 – The Recognition of Trade Unions

Note: This Code does not require the parties to any trade union recognition agreement which exists prior to the introduction of the Employment Relations (Jersey) Law 2007 and codes of practice to engage in a new process of recognition.

Trade Union Recognition

To obtain legal status in the Island, a trade union must be registered in accordance with the registration provisions contained in the Employment Relations (Jersey) Law, 2007 ("the Employment Relations Law").

A trade union can be registered, but this does not necessarily mean it is recognised by an employer.

A trade union is recognised by an employer where it is agreed that the employer and union will engage in collective bargaining for any purposes.

Collective bargaining is a process of conducting negotiations in relation to matters relevant to the workplace. Typically, it involves negotiations relating to working conditions including pay, working time, holidays and other benefits. The desired outcome of the process is a collective agreement, the relevant parts of which are then incorporated into the individual contracts of employment of those employees covered by the collective bargaining process.

Collective bargaining can have benefits for both employees and employers. Employees can protect and further their interests through acting in concert with their colleagues, backed up by the security of an organised trade union. Employers, on the other hand, often see collective bargaining as a democratic process for agreeing pay reviews and other changes to terms and conditions without having to enter into detailed negotiations with each individual employee.

Circumstances may arise, however, in which a trade union seeks recognition from an employer who does not wish to enter into a process of collective bargaining. It is clearly desirable that arrangements between unions and employers should, wherever possible, be a matter for agreement between the parties. However, it is also desirable that where such agreement is not possible, there should be a fair and transparent mechanism for determining the best way to proceed.

Tribunal Jurisdiction

Under Article 25 of the Employment Relations Law, the Social Security Minister has approved this Code of Practice to facilitate good practice in seeking voluntary recognition agreements between employers and employees. Where a voluntary recognition agreement cannot be achieved, the voluntary procedure described in this code also provides the basis upon which recognition disputes are dealt with by the Jersey Employment Tribunal ("the Tribunal").

A dispute as to whether this code of practice is being observed (a "recognition dispute") may be referred by either party for resolution by the Tribunal, provided that two criteria are met;

- The trade union is one that fulfils criteria for its recognition as set out in this code and

- The employer has employed an average of at least 21 employees in the 13 weeks immediately preceding the day on which the dispute arises

If a recognition dispute is referred to the Tribunal, then depending on the view it takes of the conduct of the parties in the circumstances, in relation to the implementation of this code, the Tribunal may declare whether a union should be recognised by the employer for the purposes of collective bargaining in relation to pay, hours of work or holidays only.

In giving that declaration, the Tribunal may specify a method by which collective bargaining should be carried out and that method will then have effect as if it were contained in a legally enforceable contract made between the employer and the union.

It is hoped that references to the Tribunal under these provisions will be rare and that both trade unions and employers will usually be able to resolve any differences regarding recognition agreements voluntarily, through negotiations conducted in a respectful, open and reasonable manner, and without undue delay.

Seeking Recognition

Where an employee or a group of employees are represented by a trade union and the union seeks recognition from an employer with respect to a those employees, then it is recommended that both parties engage in a

process of discussion and negotiation with a view to agreeing the most appropriate way forward to formal recognition. The Jersey Advisory and Conciliation Service ("JACS") is available to assist in this process when the parties so request.

If informal talks do not succeed then the union should make a formal request to the employer for recognition of their union. This request should:

- Be in writing and dated
- Identify the trade union making the request
- Be authorised by an officer of the trade union who has been named in the registration process required by the Employment Relations Law.
- Identify the bargaining unit in relation to which recognition is sought (The bargaining unit is a group, itself perhaps comprising smaller groups, of employees, which is covered by a recognition agreement).
- Specify the issues in relation to which collective bargaining is being sought
- Give details of the number of employees in the proposed bargaining unit whom the trade union claims to be members of the union
- Include a copy of the trade union's certificate of registration (where applicable)

An employer should respond to the trade union's request within 20 working days. If the employer agrees to recognise the union, talks can begin on reaching a formal recognition agreement (see below). The employer may reject the specific request made by the union but express willingness to negotiate over the extent of recognition granted or the definition of the appropriate bargaining unit. Where this happens, the parties should engage in negotiations in an attempt to reach agreement. JACS may be requested by either party to assist this process.

If an agreement is not possible, it remains in the interest of good employment relations that clear criteria should be set out to determine when trade union recognition should be granted, together with a

straightforward procedure for determining whether those criteria have been met for future reference.

With this in mind, it should be noted that there are two key criteria for trade union recognition,

1. **The existence of a bargaining unit** - An appropriate bargaining unit has been identified or agreed.

2. **The wishes of the employees** – The majority of employees within that bargaining unit want the trade union to be recognised by the employer.

These criteria, which are discussed further in the following two sections, are referred to in this code as the criteria for recognition. A union which fulfils the criteria for recognition and has followed the provisions of this code of practice should be recognised by the employer for the purposes of collective bargaining.

1. The bargaining unit

This criterion will be taken to have been met if the trade union and the employer have reached an agreement as to the composition of the bargaining unit. Even where the employer does not accept the principle of recognition, it may be possible to agree what the appropriate bargaining unit would be if recognition were to be granted. JACS may be called upon to give assistance in reaching an agreement on this issue.

Where no agreement has been reached, this criterion will only be taken to have been met if:

- The trade union's proposed bargaining unit is compatible with the effective management of the employer's business (see below) and

- There are no employees within the bargaining unit in respect of whom the employer already recognises one or more trade unions for the purposes of collective bargaining

Whether a given bargaining unit is compatible with effective management depends on a range of factors. These include:

- the description of employees who are covered by the bargaining unit

- whether the employer's business is structured in such a way as to allow the employees covered by the bargaining unit to be treated as a distinct group

- the desirability of avoiding small, fragmented bargaining units within the employer's business.

The fact that the bargaining unit proposed by the trade union is not the most favourable from the employer's point of view does not prevent it from being compatible with the effective management of the business.

Where no agreement on the existence of a valid bargaining unit has been reached, both parties may agree to seek an order from the Tribunal as to whether the union's proposed bargaining unit is compatible with effective management. For the purposes of such an application (and only for such purposes) the union shall be taken to fulfil the criteria for recognition.

Where both sides do not agree to seek an order from the Tribunal then the union and employer shall seek to determine whether the majority of the employees within the unions proposed bargaining unit support recognition. If that is established, then, in any recognition dispute subsequently brought before the Tribunal, it shall remain open to the employer to argue that the union should not be recognised because the bargaining unit is not appropriate.

2. The wishes of the employees

An employer should only be required to recognise a trade union where it can be clearly demonstrated that the majority of the employees within the bargaining unit want the trade union to be recognised by the employer.

To avoid speculative claims by a trade union, which could be disruptive to the business, this criterion will be taken not to be met if the union fails to demonstrate that at least 10 per cent of the employees in the bargaining unit are members of that particular trade union.

If the union can demonstrate that more than fifty per cent of the employees in the bargaining unit are members of that union, then the union will be taken to have met this criterion and the parties should proceed to negotiate a recognition agreement (see below).

If less than a majority of employees are members of the trade union, then a ballot should be held of members of the bargaining unit to determine whether the union should be recognised. If a majority of those voting in the ballot vote in favour of recognition – and a majority of the employees entitled to vote in the ballot have done so – then the union should be granted recognition.

In showing levels of union membership, a union is not required to disclose the individual names of members to the employer. Where the union's claimed membership level is not accepted by the employer, then JACS can be asked by the union to verify the level of membership based on information given in confidence to it by the union. If JACS is satisfied that the union has demonstrated the appropriate level of membership, described above, then the union will be taken to have done so for all purposes.

Recognition Ballots

Where a recognition ballot is required, the union should write to the employer asking that a ballot be organised. Provided the union has demonstrated the requisite level of membership in the proposed bargaining unit, as described above, the employer should agree to the request and work with the union to ensure that a fair ballot is held. In the run up to a recognition ballot, both the union and employer will be entitled to campaign for a particular result. Both the union and the employer must, however, respect the right of employees to vote as they wish. Neither side should threaten employees with any penalty for failing to vote in a particular way, or give any personal incentive for doing so. Nor should any employee be coerced into disclosing how they have voted, or intend to vote.

Access prior to the Ballot

Both sides are encouraged to reach a formal access agreement governing how the union will be permitted access to the workforce for the duration of the balloting process. Within 10 working days of the union's written request for a ballot having been received by the employer, the employer should respond by inviting the union to a meeting to discuss arrangements for the ballot and – in particular – the issue of access. This meeting should usually take place within a further 10 working days of the union's written request for a ballot.

The access agreement should cover who will have access to the employees in the bargaining unit and where, when, for how long, and in what form, this access is to be provided. The arrangements should reflect

local circumstances and JACS will provide parties with a model access agreement if requested by either party.

In the absence of an access agreement being reached, the following principles should apply as a minimum:

A union shall be entitled to distribute written material to employees and should be given access by the employer to the workplace in order to do this.

Each side must bear its own costs in relation to the production and distribution of written materials.

Where reasonably practicable, the employer should agree to allow all employees (or a substantial proportion of them) the opportunity of attending a meeting with the union of at least 30 minutes for every 10 working days in the period leading up to the ballot. This meeting may take place in scheduled break times, but if it takes place during working time it must be without loss of pay. No extra pay will be due to an employee for attending work other than during normal working hours for the purposes of attending a meeting with the union.

The union should ensure that any disruption to the business of the employer is minimised. This can be done, for example, by scheduling meetings so as to avoid busy periods, or by ensuring that a reasonable level of service is maintained during meetings. This may be achieved by planning the meetings in advance following consultation with the management of the business and considering, for example, holding more than one meeting so that attendance may be staggered over the course of the working day.

Sufficient notice of any intended meeting should be given to the employer to allow appropriate arrangements to be made to minimise any disruption.

Where practicable, the employer should provide a notice board for the trade union to display written material at the place of work. The notice board should be in a prominent location in the workplace and the union should be able to display material, including references to off-site meetings, without interference from the employer.

No abusive or defamatory material should be displayed on any notice board.

Conduct of a Recognition Ballot

The trade union and employer should agree on the date of the ballot, which should normally take place within 15 working days of the conclusion of the access agreement. Where no agreement is reached, the ballot should take place within 15 working days after the breakdown of talks aimed at agreeing access.

- For the ballot to be valid, all employees employed in the bargaining unit must be entitled to vote and given an appropriate opportunity to do so. The ballot should be conducted in such a way as to ensure that those voting do so in secret.

In most cases a ballot should take place at the workplace. In exceptional circumstances the union and employer may agree that the ballot should take place by post, or by a combination of the two.

The time available for voting should be agreed between the union and the employer but must be such as to ensure that all employees entitled to vote have an opportunity of doing so without incurring any additional expense or any loss of pay or benefits. The union and employer should agree on how best to ensure that absent employees, or those working shifts, are given the opportunity to vote. If no agreement is reached then each employee absent on the day of the ballot must be sent a ballot paper by post and given two weeks to return the ballot paper, either in person or by post.

The precise arrangements for conducting the ballot and counting the votes should be agreed between the union and the employer. In the absence of any agreement to the contrary the following protocol should apply:

- Each employee entitled to vote should be issued with a single ballot paper. Each ballot paper should be numbered to ensure that only valid ballots are counted. No record should be kept of which numbered ballot any employee was given.

- The ballot paper should ask a single question to this effect: 'Do you agree that the [insert name of union] should be recognised by [insert name of employer] for the purposes of collective bargaining'.

- Ballots should be placed in a box suitable for the purpose.

- This box should either be sealed in an appropriate way or supervised for the duration of the ballot by representatives of both the union and the employer, or an independent party appointed for the purpose, such as, JACS, the Chairman of the Tribunal, or a Jurat of the Royal Court.

- At the end of the balloting period, the box should be opened and the votes counted either by both the representative of the union and the employer, or the independent party.

- The result of the ballot should be put in writing and a copy given to the employer and the union.

- The ballot papers should be kept for a period of three months following the ballot, either by the independent party or by the employer, and destroyed at the end of that period.

The Recognition Agreement

If the result of the process is that the union should be recognised for a particular bargaining unit then the parties will need to reach a framework agreement covering the method by which collective bargaining will be conducted and the scope of any agreement reached. A model "Recognition Agreement" is available from JACS.

As a minimum, the agreement should set out sufficient detail to ensure that effective collective bargaining can take place. The agreement should provide that meetings will take place at regular intervals in the run up to a regular date of pay review which is specified in the agreement. The agreement should include provision for the union to be provided with sufficient information about the state of the employer's business to allow meaningful negotiations to take place. It should also provide that the employer will be represented at the meetings by sufficiently senior managers to ensure that discussions are meaningful and capable of being conclusive.

It is strongly recommended that a recognition agreement provides a mechanism by which any failure to agree or other collective dispute which arises can be resolved through negotiation or conciliation before any action in contemplation or furtherance of an employment dispute takes place. The parties may also wish to provide for independent arbitration in relation to any dispute.

A union which has sought recognition from an employer but which has failed to meet the criteria for recognition shall not be regarded as fulfilling those criteria, and is therefore not entitled to reapply for recognition, until a period of at least one year has elapsed since the initial application was made to the employer.

A union which has fulfilled the criteria for union recognition shall be regarded as continuing to meet those criteria for the period of at least three years following the initial granting of recognition.

De-recognition

After the three year period of recognition has elapsed, the de-recognition of a trade union may be appropriate where it becomes clear that the union no longer fulfils the criteria for recognition. This may be because of changes in the levels of union membership, or it may be that organisational changes mean that the composition of the original bargaining unit has changed significantly, or that the bargaining unit is reasonably no longer compatible with the effective management of the undertaking.

If an employer believes that a union no longer fulfils the criteria for recognition and wishes to derecognise, then the employer should notify the union of this intention. Should the union contest the employer's claim then the union may submit a request for continued recognition following the same procedure, and within the same timescales, as described above for the initial request for recognition.

Until this procedure has been completed the employer shall continue to recognise the union and the union shall continue to be regarded as fulfilling the criteria for recognition.

Joint Recognition

In some cases it may be appropriate for an employer to voluntarily agree to recognise more than one union in relation to the same bargaining unit. Where this is the case, it is the responsibility of the unions concerned that they act jointly in relation to collective bargaining matters. Where they choose to act jointly then references above to 'the union' will be taken to include references to 'the unions' and references to the union fulfilling or not fulfilling the criteria for recognition will be taken to be references to each of the unions fulfilling or not fulfilling those criteria.

References to the Jersey Employment Tribunal

The reference of a recognition dispute to the Tribunal should normally be seen as a last resort, to be undertaken only when voluntary attempts to reach an agreement, in accordance with the procedure set out in this code, have failed.

Where a trade union meets the criteria set out in this code and the employer employs 21 or more employees, both parties may agree to seek a declaration from the Tribunal if they are in dispute about recognition.

If both parties do not agree to refer the recognition dispute to the Tribunal, then one party may seek a declaration from the Tribunal if the other party has behaved unreasonably by not following this code of practice.

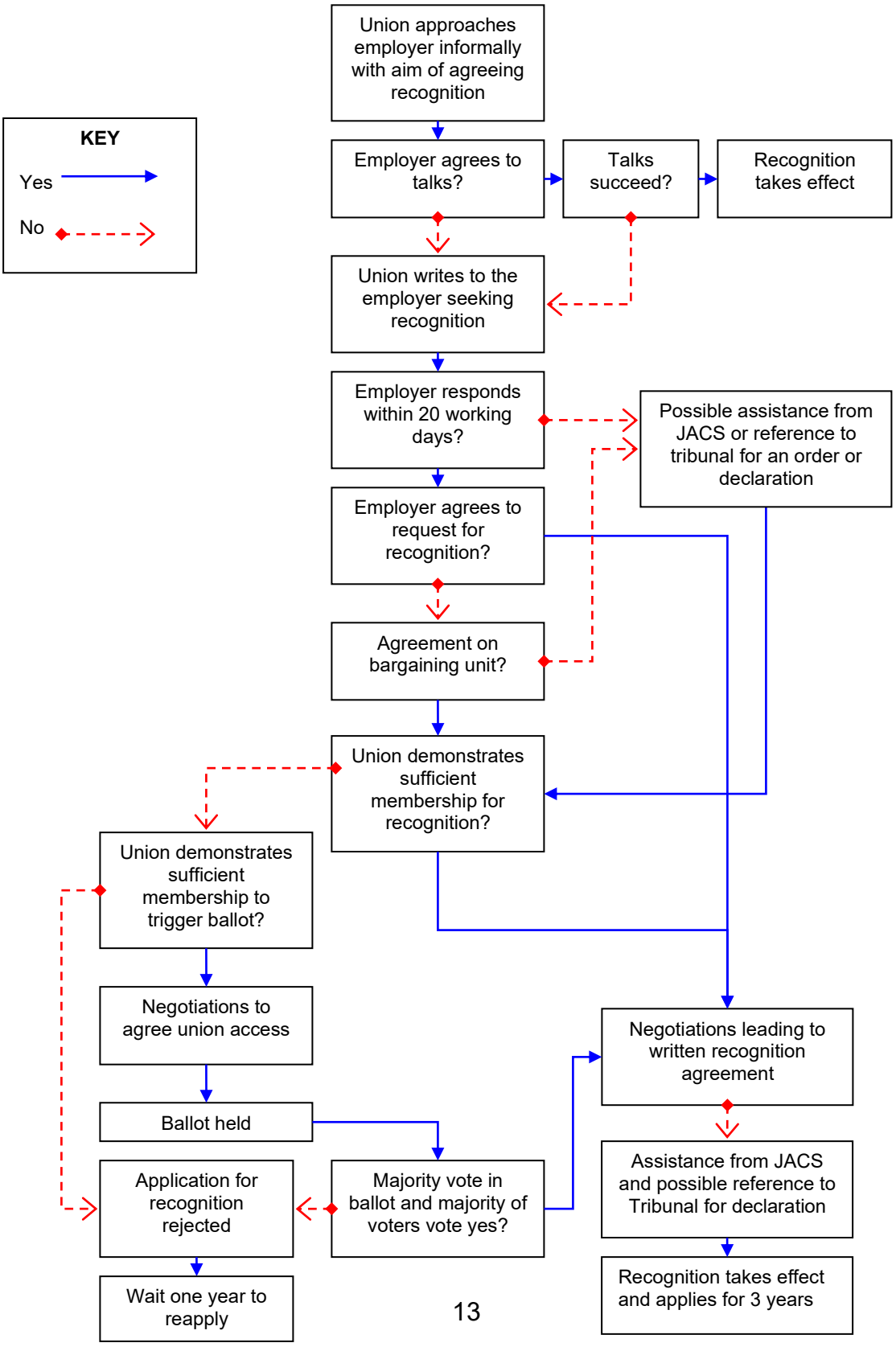
If, as a result of either a unilateral or a joint referral, the Tribunal declares that the employer should recognise the union, then recognition shall be granted to the union. A Tribunal declaration may also specify a method by which collective bargaining shall be carried out in respect of matters relating to pay, hours of work or holidays, and the method is legally enforceable.

If recognition is granted, there should be no attempt by the employer to derecognise the union for at least three years. If however the Tribunal declares that the union is not entitled to recognition then the union will not be taken as fulfilling the criteria for recognition for at least one year following the declaration.

Where a trade union does not meet the criteria set out in this code, or the employer in question does not employ 21 or more employees, the Tribunal does not have jurisdiction to make declarations in regard to disputes about union recognition.

The process of seeking recognition

The following flowchart shows an outline of the mechanism by which recognition should be sought by a union.



Code 2 – Balloting and Conduct in Employment Disputes

Introduction: the importance of this Code

Article 20 of the Employment Relations (Jersey) Law, 2007 ("the Employment Relations Law) deals with the limitations on immunities from liabilities in tort and refers to approved Codes of Practice that will be used for guidance. This second Code relates to that part of the Employment Relations Law.

Action in furtherance of a dispute

'Strike' is defined in the Employment (Jersey) Law 2003 ("the Employment Law") as;

> *"the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment."*

Action taken in furtherance of an employment dispute, but short of a strike, is not always easy to identify. There is no legal definition of "industrial action" or "acts done in furtherance of an employment dispute", although both terms are used in the Employment Relations Law.

Action done in furtherance of a dispute must be concerted action against the employer's interests (it would not usually cover action taken by an individual) and it must be taken in order to put pressure on the employer in an attempt to achieve some objective relevant to the dispute.

Examples of action in contemplation or furtherance of an employment dispute include where employees collectively;

- Withdraw their labour
- Refuse to undertake some of their duties
- Refuse to carry out reasonable instructions

- Take part in a sit-in, go-slow or work to rule
- Take part in picketing

Most forms of action in furtherance of a dispute would amount to a breach of contract on the part of each of the employees taking part. Those organising the action or calling on individuals to take part in it would ordinarily be committing a legal wrong (Tort) and would be liable to be sued for damages or issued with an injunction preventing them from taking further action.

However the Employment Relations Law recognises that individuals and unions are entitled to organise and take part in legitimate action in furtherance of a dispute in order to protect and further their interests. Article 18 of the Employment Relations Law provides that an employee shall not be liable in damages for a breach of his or her contract of employment committed through taking part in action in contemplation or furtherance of an employment dispute, where there has been a cessation of work, a refusal to work, or a refusal to work in a manner lawfully required by the employer.

More significantly, Article 19 of the Employment Relations Law provides wide-ranging immunity in tort for those (including trade unions) who organise such action and seek to induce employees to take part in it. To take advantage of this immunity a trade union must be registered in accordance with the Employment Relations Law.

However, in two instances the Employment Relations Law removes that immunity from a trade union:

- Immunity is lost if an approved code of practice provides that a ballot should be held before performing the act in question and the union has not held a ballot in accordance with the code.

- Immunity is lost if the union has engaged in conduct defined in an approved code of practice as not being reasonable conduct.

This Code is therefore of central importance in setting out appropriate standards in the organisation and conduct of action in furtherance of an employment dispute. A union which endorses or takes action without the support of a ballot, or engages in conduct that is defined as unreasonable by this code, will lose its immunity in relation to any action. This can have consequences, including financial consequences, for the union which will then be vulnerable to legal action.

Unofficial or 'wildcat' action

Where action begins without the support of a trade union, but a union becomes involved at a later stage, its conduct will be unreasonable if it takes any steps in support of the action or its continuance. However, where such action ceases, it will be open to the union to call for further action without losing immunity, provided that the provisions of this code regarding conduct and balloting are subsequently complied with.

Calling action in furtherance of an employment dispute

While a union is entitled to organise action in protection of the interests of its members, in a modern employment relations system, it is recognised that such action:

- should be a last resort
- should only be undertaken with the support of the employees involved
- should only be taken after appropriate notice has been given to the employer
- should not be targeted at employers who are not parties to the dispute and
- should not place members of the community at risk or cause serious disruption to the provision of essential services

This Code addresses each of these issues:

Action as a last resort

It would be unreasonable conduct for the union to take action in furtherance of an employment dispute without first making reasonable attempts to resolve the dispute through negotiation.

If the recognition agreement between the parties specifies a dispute resolution procedure then it would be unreasonable for the union to take action without first completing that procedure. If, however the employer refuses to co-operate in applying the procedure then it would not be unreasonable for the union to take action before that procedure is completed, provided the union follows this code in all other respects.

Where there is no agreed procedure in place then the union should normally seek the assistance of the Jersey Advisory and Conciliation Service ("JACS") in promoting a settlement through conciliation or mediation. It would be considered unreasonable for the union to take

action without first making a bona fide attempt to resolve the dispute by this method, unless the employer has clearly indicated an intention not to engage with any such process.

While arbitration may be a useful method of dispute resolution, a union does not act unreasonably in refusing to engage in arbitration. This is so even if it is specifically provided for in an agreed dispute resolution procedure.

The support of employees - Balloting

A union will lose its immunity if it authorises or endorses any action in furtherance of a dispute unless the majority of employees voting in a ballot have indicated their support for the action. A ballot may be held at any stage in the negotiation or dispute resolution procedure and should not interrupt attempts to resolve the dispute.

The support of employees for action must be freely expressed. The union and the employer must not threaten or intimidate any employee with sanctions for voting against action, or to threaten or intimidate employees planning to vote in favour of the action. This would not prevent both sides from campaigning for a particular result from the ballot provided this is done in a reasonable way.

To ensure that the ballot is carried out in a fair way the following principles should apply:

- An independent person should be appointed to conduct the ballot. A person is independent for these purposes if he or she is a nominated representative of JACS or is a solicitor, accountant, independent consultant or Jurat with no direct employment relationship with the union.

- The independent person will be responsible for distributing the ballot papers, supervising the voting process and counting the votes. At the end of the ballot the independent person should notify the union of the number of votes cast and the number of members voting for and against action.

- The ballot should be conducted in such a way as to ensure that those voting should cast their vote in secret.

- The union should be responsible for any expenses incurred in the conduct of the ballot – including the reasonable expenses of the independent person appointed to conduct the ballot.

- The ballot can take place in the workplace if the independent person believes that individual employees will not be intimidated into voting in a particular way. The employer should provide appropriate facilities for the holding of a ballot and ensure that employees are given a reasonable opportunity to vote without loss of pay.

- The independent person may however consider that it is more appropriate for the ballot to be conducted by post, or by a combination of workplace and postal voting.

- All members of the trade union whom the union believes will be called upon to take part in the action must be entitled to vote. The union must not deliberately exclude from the right to vote any of its members who could have been called upon to take part in the action.

- Provided the union has taken reasonable steps to ensure that all those members entitled to vote have the opportunity to do so, it will not be unreasonable conduct for the union to proceed with action if members are not able to vote because of accidental omissions or technical errors which could have made no difference to the outcome of the ballot.

- The ballot paper may contain more than one question. However any question should ask merely for a yes or no answer. All questions should be clear and easily understood. Translated papers should be available on request.

- Each ballot paper must be numbered and all members entitled to vote must be issued with a single ballot paper. Spoilt papers may be exchanged for new ballot papers only at the discretion of the independent person.

Action will have the support of a ballot if the majority of those voting in the ballot vote to support the action.

It would be unreasonable action if the union called action that is beyond the scope of the question asked in the ballot. For example, if a majority of members voted 'yes' to the imposition of an overtime ban it would be

unreasonable for the union to call on those employees to take part in an all-out strike on the basis of that ballot.

Appropriate notice

When the union has been informed by the independent person that a majority of those who voted supported the taking of action, the union should inform the employer of this result.

To allow both sides to pursue a negotiated settlement, no action should actually be taken until adequate notice has been given by the union to the employer.

The notice should be given in writing and sent to the employer so that it is received:

- in the case of essential services (see below) at least 20 days and
- in any other case, at least 7 days

before the action commences.

The notice should state the date on which the action will begin and, if relevant the date when it will end. If the action is to be open-ended then the notice should state this fact. The notice should also give the employer sufficient information about the employees who are to be called upon to take part in the action to allow the employer to assess the likely impact of the action on the business or any customers of the business and to make appropriate contingency plans for dealing with the consequences of the action.

Targeting employers not party to the dispute – secondary action.

It would be unreasonable conduct for a union to call upon employees to take part in secondary action in furtherance of an employment dispute.

Secondary action is action in pursuit of an employment dispute which is not a dispute between the employees concerned and their own employer. It also includes situations where the dispute directly concerns employees at a particular workplace and the union seeks to induce employees at a different workplace to participate in the action.

Note that under Article 5(3) of the Employment Relations Law, any dispute between a Minister of the States of Jersey and employees is treated as a

dispute between an employer and employees, notwithstanding that the Minister in question is not actually the employer. It will amount to secondary action for a union to call on employees to take part in action that relates to any such dispute if the employees in question are not actually party to that dispute.

Picketing

It is not unreasonable conduct for a union to call upon employees who are involved in the dispute to assemble at or near their place of work for the purpose of picketing. That is:

- Peacefully obtaining or communicating information
- Peacefully seeking to persuade others not to attend work or enter the employer's premises

Picketing, or calling upon employees to picket, a place of work other than that of the employees taking part will amount to unreasonable conduct.

Picketing will not be covered by any immunity in tort in so far as those conducting the picket engage in any of the following:

- Unlawful threats, assaults or violence
- Harassment (threatening or unreasonable behaviour which causes fear or apprehension to those in the vicinity)
- The obstruction of any path, road, entrance or exit to premises
- Interference (e.g. because of noise or crowds) in the rights of neighbouring properties (i.e. private nuisance)
- Trespassing on private property

Where a lawful picket has been called, it will not be unreasonable for union officials to join the picket, even though they are not employed at the premises concerned.

Action whilst a Collective Agreement is in force

It would be unreasonable conduct for a union to call for action while a collective agreement is in force with the employer, unless the employer has broken the terms of that collective agreement.

Where such an agreement is in place, it should provide for a formal, rapid and impartial dispute resolution mechanism in the event of a dispute arising which cannot be resolved through negotiation. This may include

the use of conciliation, mediation or arbitration services, including the involvement of JACS and the Jersey Employment Tribunal.

Any individual or collective complaints about the interpretation or application of the collective agreements should be examined and resolved while the agreements are in force to allow problems which have arisen during the period of validity of the collective agreement in question to be identified for future rounds of negotiation.

Action in Essential Services

It will be unreasonable conduct for a union to call for action that would endanger life or result in a real risk of physical harm to individuals.

Where a union and employer agree that a particular service is essential to the well-being of the community, it would be unreasonable for the union to refuse to reach an agreement with the employer that action will not be taken if it would seriously disrupt such a service.

Any such agreement should provide for a formal, rapid and impartial dispute resolution mechanism in the event of a dispute arising which cannot be resolved through negotiation. This may include the use of conciliation, mediation or arbitration services, including the involvement of JACS and the Jersey Employment Tribunal.

Where such an agreement is in place, it will be unreasonable for the union to call action in breach of the agreement.

It is widely accepted that a small Island community such as Jersey may have services which are considered essential to society which are different to those in the mainland United Kingdom, for example, a stoppage in transport links services would cause greater difficulties and inconveniences that are detrimental to the population.

Protection from Dismissal

Where action has been called by a union in accordance with this Code of Practice (i.e. the action is not defined as unreasonable conduct and has been supported by a properly conducted ballot in accordance with this code), it will be automatically unfair, in accordance with the Employment Law, for the employer to dismiss any employee for taking part in that action. In such a case the usual provisions of the Employment Law relating to the qualifying length of service and upper age limit do not apply.

Where any action is taken in breach of this code, there are no special rights applicable and the dismissal is governed by the normal rules of unfair dismissal, as set out in the Employment Law.

Code 3 - Resolving Collective Disputes

In the Employment Relations (Jersey) Law 2007 ("the Employment Relations Law" a "collective employment dispute" is defined as a dispute between employers and employees where the employees are represented by a trade union that is recognised by the employer for collective bargaining purposes, and the dispute relates to one or more of the following:

- The terms and conditions of one or more employees
- Working conditions
- Issues relating to the recruitment or dismissal of individuals
- The allocation of work or duties to or between employees
- Matters of discipline or grievance
- The membership or non-membership of a trade union on the part of one or more employees
- Facilities granted to union officials
- An issue as to whether an approved code of practice is being observed by one or more employees, or one or more employers
- Recognition disputes

This Code is intended to provide a framework by which the two parties to a collective employment dispute (an employer and a trade union that is recognised by that employer) should seek to resolve their differences. It is hoped that the adherence to this code will help to avoid the escalation of minor disputes and will also prevent unnecessary action in contemplation or furtherance of an employment dispute.

Many recognition agreements provide specific procedures to be followed in the case of a 'failure to agree' or in the event of some other dispute arising. Where such agreement exists both sides must take all reasonable steps to complete that procedure before taking any action in respect of the dispute. Failure to follow an agreed procedure will be regarded as unreasonable conduct.

Unless otherwise specified in the agreement, balloting for action shall not be taken to be unreasonable conduct, no matter when it occurs. However it will be unreasonable conduct for a union to call on employees to take part in action without first making reasonable attempts to reach a negotiated settlement with the employer.

In the absence of a specifically agreed procedure for resolving disputes, the following principles shall apply.

Where attempts to reach a negotiated settlement have broken down, either or both parties may request assistance from the Jersey Advisory and Conciliation Service ("JACS") or other suitable independent body. That third party will attempt to facilitate discussion between the parties with a view to reaching an agreement.

Where appropriate, JACS may facilitate the appointment of an independent mediator or conciliator to assist the parties in reaching a formal non-binding agreement. A mediation agreement would set out who will be involved, the information to be shared, the date of mediation and the proposed timescale.

Where this is unsuccessful the parties may agree to submit their dispute to binding arbitration. Again, JACS can assist in this process if requested. Note that a refusal to submit to binding arbitration will not render action taken in furtherance of a dispute unreasonable.

Tribunal Jurisdiction

Referral of a collective dispute to the Jersey Employment Tribunal ("the Tribunal") is the last resort if a voluntarily negotiated settlement cannot be reached by other methods at any stage of the dispute, with or without the assistance of JACS.

Referral of a dispute to the Tribunal does not preclude a settlement by other means, if at all possible.

In some cases a collective employment dispute may result in proceedings before the Tribunal. However it should be noted that the Tribunal's jurisdiction in relation to such matters is strictly limited.

At any stage, both parties can agree to refer the matter to the Tribunal. Referral of disputes to the Tribunal must be submitted in the appropriate format, as required by the Tribunal.

Article 23 of the Employment Relations Law provides that, where both parties to a collective employment dispute give their consent to the matter being referred to the Tribunal, then the Tribunal is empowered to make such order as it thinks fit.

It would be unreasonable conduct for either party to seek to withdraw consent to the Tribunal issuing an order once the reference has been made. Any order made by the Tribunal will be binding on the parties and it would be unreasonable conduct for either party to fail or refuse to comply with the order. As a last resort, compliance with a Tribunal order may be enforced through the Courts.

It is not possible for a Tribunal to make an award for the specific performance of a contract, or to make a declaration as to the merits of a dispute.

The Tribunal may also – with or without the consent of the parties – make a declaration. Such a declaration may relate to any of the following matters:

- Whether any party to the dispute is not observing relevant terms and conditions of employment

- The interpretation of any terms and conditions of a collective agreement that are relevant to the dispute or

- The incorporation of such terms and conditions into individual contracts of employment

Where the Tribunal declares that terms and conditions are to be incorporated into the individual contracts of employment, they remain as contractual terms until such time as they are varied by subsequent agreement between the parties or by a subsequent declaration by the Tribunal or until such time as different terms and conditions of employment are settled by the parties through negotiation, mediation, conciliation or arbitration (where both parties agree).

A joint and voluntary approach to referrals to the Tribunal is favoured, however, in limited circumstances any party to the dispute (which may be a body or person) can refer the matter to the Tribunal without the agreement of the other party. This is possible only where:

1. The party making the reference considers that as far as is practicable all other available procedures have been applied and have been unsuccessful in seeking to resolve the dispute and

2. A party to the dispute is acting unreasonably in relation to its compliance with an available procedure.

An available procedure is:

- A dispute resolution procedure contained in a collective agreement, relevant contract of employment, or a relevant handbook for employees that has previously been agreed by, or on behalf of, the parties to the dispute.

- A dispute resolution procedure contained in an approved Code of Practice

- A dispute resolution procedure established by this law or another law within the trade or industry concerned.

Need Help? Contact **JACS** for advice:

- Phone: (01534) 730503
- Email: jacs@jacs.org.je

September 2025

Not part of the Codes of Practice

Draft Recognition Agreement & Disputes Procedure (2015)

The Code of Practice makes it clear that once a union is recognised, the employer and the union should agree a method for conducting collective bargaining on pay, hours and holidays as a minimum, since otherwise recognition is virtually meaningless.

The Recognition Agreement should set out sufficient detail to ensure that effective collective bargaining can take place and should provide that meetings will take place at regular intervals in the run up to a regular date of pay review, which is specified in the agreement.

It is strongly recommended that a Recognition Agreement provides a mechanism by which any failure to agree or other collective dispute which arises can be resolved through negotiation or conciliation before any industrial action takes place. The parties may also wish to provide for independent mediation or arbitration in relation to any dispute.

A model Recognition Agreement is given below but of course is intended to be adapted to the particular circumstances/business sector:

RECOGNTION AGREEMENT BETWEEN

(NAME OF THE EMPLOYER)

AND

(NAME OF THE TRADE UNION)

IN RESPECT OF (NAME OF BARGAINING UNIT)
Section 1: The Agreement

This agreement between (Name of Employer) (**the Company**) and (Name of Trade Union) **(the Union**) is effective from (date) to recognize the Union within the

Company for the purpose of representation of employees and to establish a framework for consultation and collective bargaining.

The Company and the Union both accept that future mutual success depends on a successful business and the key to this is the commitment and involvement of the staff.

- The Agreement builds on the best aspects of our relationship and it depends on mutual trust. It is based on our commitment to the objectives, principles and practices set out below.

- A commitment to building a better, healthy working environment as part of a better business environment.

- To work together to further the success of the business by enabling a flexible approach in a time of rapid and continuous change.

- To work together in a spirit of mutual confidence and co-operation, both formally and informally.

- To achieve fairness and equality in the treatment of staff, including transparent pay systems, contractual provisions that encourage equal treatment.

Principles and Practices

- The Company recognises the Union's right to represent staff and to consult with the Company on behalf of all its members across a range of issues including those listed below, details of which are set out in Section 3.

- Each party recognises and respects the other's different and shared interests;

- Both parties seek to avoid conflict, which will result in damage to the business; should a dispute arise, it shall be dealt with in accordance with the dispute resolution procedures set out below and during such dispute resolution, neither party will take any action to the detriment of the other party.

- The Union recognises the Company's right and duty to manage.

- The Company undertakes to support the Union's recruitment efforts within the group of staff covered by this agreement, where appropriate.

- The relationship will be based on transparency. The Company will provide to the Union information about the state of the Company's business, so as to allow meaningful negotiations to take place.

- Not only will the minimum requirements of the law be adhered to but also the spirit of social legislation.

- Respecting confidentiality and sensitivity of information is paramount.

- The Union recognises its responsibility to ensure representatives receive appropriate training to successfully undertake their duties. Similarly, the Company recognises its obligation to support and provide release for such training.

  Unresolved conflict is a sign of mutual failure. Any conflict that may arise will be managed in accordance with the agreed dispute resolution procedure as detailed in section 2. 3.

Section 2: Dispute Resolution Procedure

1. The issue giving rise to concern to either party to this agreement will be discussed between the Company's Representatives, authorised by the Company to act on its behalf, and Staff Representatives (including Shop Stewards) at a regular or specially convened meeting at the earliest possible date, such discussions to be undertaken in the spirit of this agreement.
   Notes of the outcome of discussions will be taken and circulated to those present.

2. If there is a failure to resolve the issue to the mutual satisfaction of both parties, then reference shall be made to:

   a Director, or the Proprietor Senior Company Representative (whichever is appropriate) of the Company
   and to the full-time Officer of the Union or in their absence their nominee.

A meeting of the (*Director or the Proprietor, whichever is appropriate*) and Officer (or nominee), in the presence of Staff Representatives/Shop stewards if agreed by both parties, to specifically focus on the issue of concern will be held within 15 working days. Notes of the outcome of discussions will be taken and circulated to those present.

3. If there is a continued failure to agree, within a period of 15 working days from the date of the above meeting both Parties will jointly seek third party conciliation facilities via the Jersey Advisory & Conciliation Service, (JACS) in order to ensure that every effort is made to resolve the conflict within the spirit and procedures contained within this agreement.

4. The Union is committed to a procedure requiring an independently monitored, secret postal ballot on all issues amending pay & conditions of employment.

5. Non-resolution of the issue will be recognised by both parties as a mutual failure to achieve the principles and practices set out above. If the issue is not resolved by third party conciliation, both parties will give full and proper consideration to a reference to a mutually acceptable Arbitrator, whose decision shall be binding on both Parties. In the event the Parties do not agree to refer the issue to an Arbitrator, it is recognised that some form of action may take place.

6. In the event that the parties wish to seek arbitration, JACS are able to assist with the appointment of an arbitrator from the Acas Panel of Arbitrators after consultation with the parties.

7. No industrial action will be taken by employees of the Company, who are members of the Union, in furtherance of or in connection with any dispute or grievance with the Company without a majority of those employees having voted in a secret ballot to take that industrial action.

Both Parties undertake to maintain the Status Quo in so far as normal business and Union relationships are concerned and neither Party will take any action to the detriment of the other Party until such time as a properly conducted secret ballot has taken place, all other attempts at dispute resolution having failed.

Status Quo: In the event of any difference arising that cannot be resolved, then whatever practice or agreement existed prior to the difference shall continue to operate pending a settlement under the Dispute Resolution Procedure. It shall be the spirit and intention of both Parties that there will be no undue or unreasonable delay in progressing issues through the agreed procedure.

Section 3.

Consultative meetings

Representatives, authorised by the Company to act on its behalf, and Staff Representatives (including Shop Stewards) will meet on a regular (e.g. quarterly or other such period as is agreed) basis for the purposes of formally communicating and informing one another. Matters of concern to one party or the other will be discussed at such meetings, and any agreed outcomes will be formally minuted and circulated to those present and other relevant parties. Either the Company or the Union may request that a special meeting be convened and such requests will not unreasonably be refused.

Negotiation

Both parties agree to negotiate and reach agreement on any issues relating to the matters as agreed below:

The following matters have been agreed as being subject to consultation and negotiation:

Pay Awards (this should include a pay review date)

Pay rates will be reviewed annually at each pay review date. A pay review meeting with staff representatives/shop stewards will be held at least (number) weeks before each annual review.

Rates of pay effective from the date of this agreement

(List of job categories and rates of pay expressed as hourly, weekly or annual sum.)
(Statement concerning any agreed overtime or shift rate)

Normal hours of work

(Detail the normal working hours/commencement and finish time and the days of the week over which the hours will be spread e.g. 40 hours per week, 8 a.m. to 5 p.m. Monday to Friday with an unpaid 1 hour lunch break between the hours of 12 noon and 2 pm)

Annual holiday

(Detail the holiday entitlement; the holiday year; allocation of annual leave (ie on a first come first served basis); and times during the year that holiday is not allowed; application for more than 2 weeks holiday etc)

Public/Bank holiday

(Any requirement to work and the rate of pay that will be paid; time off in lieu etc)

Note 1: The employer and union may agree that the scope of the collective agreement will include specific provision to cover any other terms that the parties agree will be appropriate. If so, sufficient detail should be included under each heading to adequately describe the negotiated provision got example:

Sick Pay
Parental leave
Redundancy
Equal Opportunities
Training
Any other mater which both sides agree to refer to.

Note 2: In addition to the terms as set out in this agreement, each employee should be given Written Terms of Employment, at the latest within 4 weeks of commencing work.

Section 4: Review of pay and conditions

This Agreement shall continue to be in place unless 6 months notice to terminate is given in writing by either party. Rates of pay and or other conditions as set out in section 3 will be reviewed with representatives of the trade union on (date) each year in line with usual negotiated methods or long-term agreements. This commitment to review does not necessarily mean that pay or conditions will be increased.

If either party seeks to amend any aspect of the agreement or working methods currently in place, then that party shall give written notice of X (*date)* of their requirement to discuss such change(s) to the other party; unless both parties consent to such changes at the time.

In the event that such notice is given or received, a consultative meeting between authorised company representatives and staff representatives/shop stewards will be arranged by the company. The full-time officer of the union may request that they are present at any such meeting and the company shall not unreasonably refuse such a request.

Signed for and on behalf of Signed for and on behalf of
(Company name) (Trade union name)

……..
……..

Date of signature: ……..

JACS July 2015