

Trade disputes

Background

1. Decision making on trade disputes is undertaken at central locations within each region. For ease of reference, this chapter will refer to the Trade Dispute Decision Maker.
2. The owning region is the one in which the 'employer' Jobcentre is based, regardless of whether there is more than one region involved.
3. When making their decision no account of the merits of the dispute or whether the loss of employment is caused by the action of the employer or the claimant is taken by the Decision Maker.

Definitions

Trade Dispute

4. Trade dispute means any dispute between:
 - employers and employees;
 - employees and employers; or
 - employees and employees which is in connection with:
 - the employment or non-employment; or
 - the terms or conditions of employment;
 - any people, whether or not they work for the employer with whom the dispute starts.
5. For example, if there is a trade dispute involving employees at one place of employment, and employees at another place strike in sympathy, the dispute is extended to the other location even if employees there are not affected by the matter in dispute.
6. Based on information provided by the Jobcentre office Decision Maker will establish the existence of a trade dispute before any consideration is given to whether or not employees are involved.

Place of work

7. Place of work means the premises or place at which people are employed.
8. When a place of work consists of several buildings on one or more adjoining sites, but which are all parts of one business, they are still usually considered to be one place of employment. Ask for advice from your Decision Maker where there is any doubt.

Stoppage of work due to a trade dispute

9. Stoppage of work does not necessarily mean a complete standstill of work. It can simply be that work that could have been done is not being done because of action such as an overtime ban, work to rule or attendance at meetings.
10. A stoppage of work may still be due to a trade dispute whether it is caused by the actions of the employer or the employees.

11. If the Decision Maker is satisfied that there is both a trade dispute and a stoppage of work at the employees place of work they will then decide if the stoppage is due to the dispute and not for some other reason.

The 12-day rule

12. If the employment is indefinitely suspended and a stoppage of work due to a trade dispute occurs at the place of employment there is a doubt about whether the lack of employment is due to the dispute. To decide this question the Decision Maker will apply the 12-day rule.

13. The effect of the 12 day rule is that employment indefinitely suspended within 12 working days, excluding days of recognised or customary holiday, of a stoppage is treated as having been suspended because of the stoppage and disallowance of JSA will apply.

Lost employment because of a stoppage

14. If the Decision Maker decides that there is stoppage of work due to a trade dispute at an employee's place of work the next step is to decide if the employee lost employment because of that stoppage.

15. An employee personally involved in the strike or lockout has lost employment directly because of a stoppage of work.

16. In other cases, the loss of employment can also be because of a stoppage of work. For example:

- people laid off because a dispute at their place of employment causes production difficulties;
- intermittent workers who are not actually at work when the stoppage begins, for example:
 - casual shipyard workers;
 - printers; and
 - newspaper workers;

who do not satisfy the 12-day rule.

- people dismissed as a result of the stoppage;
- people due to terminate employment, for reasons other than the stoppage, whose employment is suspended earlier because of the stoppage;
- people who voluntarily leave their employment in anticipation of the stoppage of work;
- people indefinitely suspended from employment, for reasons unconnected with the dispute, within 12 working days of the stoppage at their place of employment;
- people whose employment is suspended for a definite period and who are prevented from resuming work at the due date because of the stoppage of work at their place of employment; and
- under some circumstances, people absent from work through illness when the stoppage of work begins at their place of employment and who become fit for work during the stoppage but cannot resume work.

Directly interested

17. An employee can escape disallowance if they can show that they are not directly interested in the outcome of the dispute.

18. People are normally held to have a direct interest in a trade dispute if they will benefit directly from the outcome of the dispute.

19. The following have resulted in employees being regarded as directly interested in a dispute:

- pay or superannuation;
- method of calculating bonus earnings;
- conditions governing payment of bonus;
- time allowed for un-penalised lateness;
- tea breaks;
- redundancy;
- interchangeability or demarcation of duties;
- heating arrangements;
- trade union membership;
- safety procedures.

Withdrawal of labour

20. A person withdraws their labour if they:

- do not attend for work;
- go to work but refuse to do any of the work they are expected to do, even if the employer lays them off because of this;
- refuse to return to work after a period of lay-off.

21. When deciding if an employee has withdrawn their labour the Decision Maker will consider:

- what the claimant was asked to do;
- what duties the claimant was obliged to do under their contract of employment;
- what, if anything, the claimant did;
- what the claimant was prepared to do.

Identification of dispute

22. The existence of trade disputes may be identified from:

- Media:
 - Newspapers;
 - television; or
 - radio;
- employees;
- ES85;
- other Jobcentres;
- employers;
- trade unions (TUs).

Roles and responsibilities

Jobcentre Manager's Role

23. Jobcentre Managers should personally direct Jobcentre Plus action in trade dispute cases but may delegate the collection of evidence and immediate supervision of other action to a nominated officer.

Responsibility of 'employer' Jobcentre

24. An 'employer' Jobcentre is the one in whose area the place of employment is located. If there is any doubt about which is the 'employer' Jobcentre, consult the District Manager (DM).

25. In the case of offshore rigs the 'employer' Jobcentre is that of the main port supplying the rig.

26. The 'employer' Jobcentre is responsible for:

- completing a stencil to initially report the stoppage from information given by the employer and passing it to the benefit processing section. A copy should also be given to the Jobcentre manager and DM.
- informing and advising any other Jobcentres affected, about all action on claims arising from the trade dispute; seeking Regional Office (RO)/Office for Wales (OW) and Scotland (OS) assistance to do so if necessary;
- collecting further evidence at the request of the Decision Maker.
- referring to the Decision Maker, and implementing decisions on individual claims at the 'employer' Jobcentre;
- publicising the outcomes of these claims or agreeing that this will be done by RO/OW/OS.

Responsibility of other Jobcentres

27. The responsibilities of Jobcentres not identified as the 'employer' Jobcentre are:

- informing the 'employer' Jobcentre of any trade dispute in the 'employer' Jobcentre area as soon as it is identified;
- referring cases to the Decision Maker of the 'employer' Jobcentre irrespective of the Jobcentre's own region and implementing the decisions on individual claims when received.

Identification of claims

28. Claims which may be affected by a trade dispute are made by people;

- laid-off by the employer at the location of the dispute;
- sick when the stoppage begins but become fit for work during the stoppage and cannot resume work;
- involved in an indefinite lay-off within 12 working days of a stoppage of work;
- who are intermittent workers not actually working on the day the stoppage begins and who have had no days of work within the 12 days preceding the start of the stoppage of work;

- who have been laid-off by the employer for a definite period but the dispute prevents them going back to work;
- dismissed because of the stoppage of work;
- due to terminate employment for reasons other than the stoppage of work but who are suspended from work earlier because of the stoppage. For example, those under notice of redundancy;
- leaving employment voluntarily in anticipation of the stoppage;
- who have withdrawn their labour.

Suspension of JSA

29. Where a claim may be affected by a trade dispute suspend JSA indefinitely, from the earlier of:

- the date of claim; or
- the first unpaid day if JSA has been paid; or
- the Sunday of the week in which employment was first lost because of the stoppage;

30. Do not take overpayment action in respect of paid JSA days. Issue form ES48/ESL48 worded 'you may have lost employment as a result of a trade dispute'. All DMA action must also be recorded onto the Labour Market System (LMS).

31. If any claimant wishes to make an individual claim, they must be allowed to do so.

32. Advise the claimant that by making an individual claim they become personally responsible for any appeal action on their claim.

33. Individual cases must always be submitted to the DRT of the 'employer' Jobcentre irrespective of the region of the referring Jobcentre. Later claims must be referred as soon as all the information is gathered.

Reference to Decision Maker

34. The following forms and documents are used to refer cases to the Decision Maker. Amend forms if the dispute concerns a lock-out instead of a withdrawal of labour:

- ES567 - a report form for each claimant;
- ES133 - giving details of the claimant;
- any other documents, for example:
 - form ES85;
 - copies of notices issued by the parties to the dispute;
 - statements by the:
 - employer;
 - trade union; or
 - claimant.

35. Refer on report form ES567 to the Decision Maker

36. Invoice the case on form ES66 and record on LMS using the following AR Codes:

- JSA/720:

- trade dispute - stoppage of work;
- JSA/721:
 - trade dispute - withdrawal of labour.

37. A statement, if in writing, must be signed and dated by the person making it. Information obtained orally must be recorded, signed and dated by the interviewing officer and contain:

- the name of the source;
- the date; and
- circumstances of the conversation.

Action on receipt of decision

38. On receipt of decision:

Step	Action
1	record and implement those decisions relating to your office;
2	note the decision on LMS;

39. The payment decision maker will make the decisions about whether the claimant is entitled to JSA based on the outcome of the labour market referrals.

Dissatisfaction with a decision

40. If any claimant is not happy with, or does not understand the basis of, a decision made on their claim to JSA, they may ask for an explanation of that decision. After receiving the explanation, they may apply for a revision of the decision.

41. If the claimant asks to have the decision explained, Jobcentre Plus staff must first provide a basic explanation of it and, if necessary, contact the Decision Maker that gave the decision for them to provide a detailed explanation.

42. If the claimant does not require an explanation at all, or if after receiving the required explanation(s) they still do not agree with the decision, it must be explained that they may, if required, apply for a revision of the decision.

43. This means that a decision maker, not necessarily the one who gave the original decision, will look at the case again, taking into account any new evidence or information provided since the decision was given.

44. Any claimants who have received a formal single outcome decision notification relating to their claim to JSA has the right to apply for a revision of it.

45. If a letter is received, it may be possible to accept this as an application for revision. Due to the time limit involved, it is vital that prompt action is taken to contact the claimant, where appropriate, to clarify any details.

Appeal to the Appeal Tribunal

46. Any claimant who has received an outcome decision on their claim has the right of appeal to an appeal tribunal.

47. Take further action if an employee enquires about appealing against an outcome decision incorporating a Labour Market component concerning a trade dispute or if form GL24 is received.

Appeal to the Social Security Commissioner

48. An employee can appeal against the appeal tribunal's decision either:

- when leave to appeal is granted by the tribunal chairman. This is done either at the hearing or on written application by the claimant; or
- if the chairman refuses leave but application is made to a Commissioner who grants leave.

49. Employees enquiring about appealing to the Commissioner may be advised in general terms but must be referred to the clerk to the tribunal if enquiries are made about a specific case.

Any other communication received in connection with an appeal, or leave to appeal, to the Commissioner must be sent urgently to the Decision Maker with a covering note.

50. If an employee, or their union, makes an appeal to the Commissioner, decisions on the claims of those people who had agreed to await the outcome of the test claim will be deferred until the result of the appeal to the Commissioner.

End of stoppage

51. It is for the Decision Maker to decide the date on which the stoppage of work can be treated as having come to an end. In cases where there is no doubt the Decision Maker will notify the employer Jobcentre.

52. In these circumstances there is no need to refer cases back to the Decision Maker. However, if an employee wishes to claim JSA the claim must be treated as a completely new claim

Claims made by the dependant of an employee involved in an industrial dispute

53. Dependants of employees involved in a trade dispute can claim JSA in their own right. Any dependant wishing to claim JSA must be made aware that they will have to satisfy all the usual JSA entitlement conditions.

Credits only cases

54. Submit all cases to Decision Maker for decision in the same way as JSA claims. Note form ES567 that the claimant is not entitled to JSA.