

INDUSTRIAL ACTION AND THE LAW

Citizen's right to prevent
disruption

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Introduction

The Trade Union Reform and Employment Rights Act 1993 inserted section 235A into the Trade Union and Labour Relations (Consolidation) Act 1992, thereby providing a new right which enables any individual who is (or is likely to be) deprived of goods or services because of unlawful industrial action to bring court proceedings.

This document describes: the circumstances in which this "Citizen's Right" can be exercised; and the remedies which it offers.

The legislative and underlying common law provisions which are relevant to the Citizen's Right are dealt with only in outline, and details which might be significant in particular cases may not be covered. This booklet gives general guidance only, and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.

The contents of this document apply equally to men and to women but, for simplicity, the masculine pronoun is used throughout. "Court" means the High Court in England and Wales and the Court of Session in Scotland.

When can the citizen's right be exercised?

The statutory "Citizen's Right" empowers any individual ¹ to prevent disruption to his supply of any goods or services because of "unlawful" (as defined) inducement of industrial action.

What tests apply to the exercise of the right?

In order to establish whether an individual can exercise the right, two basic questions are relevant:

- Has the individual been deprived, or is he likely to be deprived of any goods or services, and or subjected, or is he likely to be subjected to any other detriment or disadvantage in respect of any goods or services by industrial action?
- Was the inducement of the industrial action "unlawful" or is it likely to be?

The inducement of industrial action is unlawful if:

- It is "actionable in tort² by any one or more persons" - ie the inducement is unprotected against certain civil law proceedings that can be brought by a person (such as the employer of workers called on to take the action) party to a contract which is (or would be) broken, or the performance of which is (or would be) interfered with, by the action; **or**
- In the case of an inducement by a trade union, the industrial action does not have the support of a properly conducted ballot - with the result that a member could exercise his statutory right to restrain the union from calling on him, and others, to take part in the industrial action.

These issues are examined in more detail below.

Has there been (or will there be) deprivation of goods or services?

In order to obtain a remedy from the court under the right, an individual will have to be able to demonstrate, to the satisfaction of the court, that he is (or is likely to be) deprived of goods or services by the industrial action.

It is not possible to indicate **exactly** what evidence a court would require to satisfy itself of this in any particular circumstances. However, the individual would have to be able to show that:

¹ It should be noted that the right can be exercised only by one or more "individuals". Because of the legal definition of an "individual", the Citizen's Right cannot be exercised by, for example, any corporate body (such as a limited company).

² "Delict" in Scotland

- he was - or was likely to be - a customer for, or recipient of, particular goods or services at a time when their provision to him was (or would be) disrupted or denied; and
- the cause of that disruption or denial was the inducement of industrial action by the person (which could include a trade union) against whom the proceedings are brought.

It should be noted that, for these purposes, **it is not necessary to show that any particular goods or services will be completely unavailable.** The right can be exercised where the supply of goods or services is merely delayed, or the quality of goods or services supplied is reduced - provided, of course, that this results from the “unlawful” (as defined) inducement of industrial action.

Nor does the legislation require an individual to satisfy the court that he has tried, and failed, to mitigate any such deprivation by, for example, seeking alternative sources of the goods or services in question. The court simply needs to be satisfied that the individual is (or would be) deprived of goods or services, and that the cause of that deprivation is the unlawful inducement of industrial action.

Finally, **it is irrelevant whether the individual has any kind of contractual right to receive the goods or services concerned, and whether the intended purpose of the action was to deprive the individual of particular goods or services.** An individual exercising the right will not be called upon to prove any kind of entitlement to the goods or services which he would have received (or have been likely to have received) but for the industrial action. Nor will he have to show that the organiser of the action intended it to have the particular result of depriving him (or anyone else) of those goods or services.

Is the inducement of industrial action protected by the “statutory immunities”?

A remedy can be obtained under the Citizen’s Right if, in addition to the deprivation test described above, the individual can show that the inducement of the industrial action is “actionable in tort by one or more persons”.

This technical expression simply means that the act concerned (i.e. the organisation of the action):

- involves inducement to break, or interfere with the performance of, contracts - including contracts of employment or for services, or contracts for the supply of goods or services.
- is unprotected by the special “statutory immunities” which can protect such an act against civil law proceedings if it is done “in contemplation or furtherance of a trade dispute”.

The circumstances in which an act may have the protection of the statutory immunities are set out in more detail in the document Industrial Action and the Law.

In broad terms, however, the organisation of industrial action which involves breach, or interference with the performance, of contracts cannot have the protection of statutory immunity if any of the following circumstances apply:

- It is not done “in contemplation or furtherance of a trade dispute” (i.e. a dispute between workers and their own employer, wholly or mainly about employment-related matters) - which means the protection would not be available for the organisation of industrial action about, for example: (i) any “political” issue, such as an aspect of Government policy unrelated to any dispute with the workers’ own employer; or (ii) something occurring overseas, except where workers taking action in this country are likely to be affected by its outcome.
- The action organised is “secondary” action - such as a call for action by workers who have no dispute with their own employer, to support action being taken by other workers against another employer.
- Its aim is to promote any kind of union closed shop practice, or to prevent an employer using non-union firms as suppliers.
- Its purpose is to support any employee dismissed while taking part in unofficial industrial action.
- It is done in the course of, or involves calls for, unlawful picketing - for example, picketing which is anything other than peaceful, or which is undertaken by workers other than at their own place of work.

Furthermore, **where the act is done by a union**,³ protection of statutory immunity is also unavailable unless the industrial action: (i) has the support of a properly-conducted secret ballot; and (ii) proper notice of official industrial action has been provided, by the union, to the employer of those it intends to take that action.

How would an individual know whether an inducement of industrial action was “unlawful”, (e.g. without the protection of statutory immunity)?

As in other circumstances where an individual may believe that he has a case for obtaining a legal remedy, it is for that person to decide - taking into account any legal advice he may have obtained - whether he is likely to have sufficient evidence to satisfy the court and obtain the remedy he seeks.

If an individual is unsure about this, he may wish to consider whether he has sufficient knowledge of the facts to make it worthwhile seeking further legal advice on the matter before deciding to bring proceedings

³ The law sets out the circumstances in which a union will be held responsible, in law, for the organisation of industrial action. These are described, in detail, in the third section of the guidance document Industrial Action and the Law.

Procedure and remedies

In the circumstances described in the first section of this document, the Citizen's Right gives any individual the right to apply to the court for an order to restrain the unlawful inducement of industrial action which deprives, or is likely to deprive, him of goods or services.

How quickly can a court hear an application?

The timetable for hearing an application for an order under the right is a matter for the court. However, it can grant an injunction on an interim basis, to restrain the organisation of the industrial action pending a full hearing of the case. A court may be willing to consider an application on this basis very quickly.

What can a court do?

If the court is satisfied that the individual has been, or is likely to be, deprived of any goods or services because of unlawfully-organised industrial action, it must make an order requiring the person against whom the proceedings are brought - which could be a trade union - to take steps to ensure that:

- there is no, or no further, inducement to take or continue to take part in the industrial action; and
- no person does anything after the order is made as a result of unlawful inducement prior to the making of the order.

This could mean, for example, that a union would have to withdraw any authorisation or endorsement of the industrial action which led to the order, and do so in such a way as to leave its members in no doubt that it has been withdrawn.

Would a court order protect only the person bringing proceedings?

It is for the court to decide the terms of any order it may make. However, as indicated above, the order which the court must make is one directed at the organisation of the industrial action. That is likely to mean that the order will protect not just the individual who brought proceedings to obtain the order, but anyone else who is (or would be) deprived of the goods or services in question.

What if a court order is disobeyed?

If the court order is not obeyed, anyone who sought it can go back to court and ask that the person(s) against whom it was made be declared in contempt of court.

A person found to be in contempt of court may face heavy fines or other penalties which the court may consider appropriate. For example, if a union acted in contempt of court, it might be fined; if it refused to pay the fine, the court might then order the union's assets to be seized ("sequestered").

Can an individual get compensation, or damages, for deprivation of goods or services because of unlawful organisation of industrial action?

The Citizen's Right enables an individual to get an order restraining the unlawful organisation of industrial action. It does not provide any other remedy.

