

TU RULES - *Rules were regarded as unlawful at common law and could give rise to charges of criminal conspiracy. S.11 TULR(C)A states that the rules will not be unenforceable/void as a restraint of trade. TU free to adopt own rules if within statutory framework. Rules between TU and members are contractual. ***Taking disciplinary action against a member:** Power to discipline/expel/impose fines must be contained in rules. *Courts can imply disciplinary powers into rules in certain circumstances: *McVitie v UNISON* *Procedure for disciplining a member must be followed. *TU cannot oust the jurisdiction of the courts. *If there is an appeal procedure and member excluded without allowing appeal, will be invalid. *Expelled member can seek declaration, injunction and damages from the courts. ***Rights of members & liability for TU** - If rules provide right to legal advice and none provided/negligent: TU sued for damages. Failure to properly advise/submit claim at ET will see TU liable. ***Ability of official to act:** Action by TU officials must be contained in rules: *Weakly v Amalgamated Union of Engineering Workers*. This covers payment of strike money not contained in rules and imposing a levy whose purpose is ultra vires. If TU takes action which benefit majority, minority who are not benefitted can bring action eg TU need to be mindful of equality to their members. **TU GOVERNANCE** ***Executive Committee** - Governed by s.46 TULR(C)A. Elected by a ballot every 5 years. *Every member of the TU can vote except: Excluded class under the list; Members not in employment; Members in arrears; Student/apprentice members. ***Accounts and records:** Duty to keep accounts and records s.28. *An annual financial statement must be sent to all members. *Members have a rights to inspect accounts. *It is like a trust system. ***Similarly, remedies against trustees** - Property held on trust by trustees. *S.16 provides a remedy against trustees. *Allows for removal of trustees. ***It is possible for TU to collect political fund and political objects** - *Amalgamated Society of Railway Servants v Osborne*. *Legal for TU to have a political fund and pursue political objects under ss.71-74. Trade Union Act 1913. *Requirement for a ballot by all members every 10 years. *Members can contribute to fund but no other TU assets can be added. *Members can contract out of contributing to fund. *Fund can be used to finance political parties, support candidates, literature and pay for conferences. *Labour party receives considerable funds from TU's hence role of TU in running of the party. TU could support Conservatives or Liberal Democrats. ***TU under a duty to keep a register of members** - S.24 TULR(C)A stipulates this requirement. Rights of the members: Confidentiality (s.24A); Limited disclosure: consent, required by certification officer, and investigation a crime. **TU MEMBERSHIP** *TU will decide who is eligible to join. This might be included in their rules. Tends to be particular workforce. *Cannot accept membership from those outside class/ or create additional class outside TU's rules: *Martin v Scottish Transport and General Workers' Union* *Can create excluded class in rules. ***Limits on restricting membership: Cannot exclude membership or arbitrary and unreasonable grounds.** Cannot discriminate/restrict benefits on grounds of sex or race: this will now be governed by the Equality Act 2010. *S.174 TULR(C)A prevents exclusion/expulsion if this is against statute.

TU MEMBERSHIP RIGHTS: *Access to employment; Inducement relating to TU membership or activities; Action short of dismissal; Time off work for trade union duties; Time off work for trade union activities; Dismissal on grounds of trade union activities/ membership; Dismissal in connection with industrial action. ***Access to employment:** s.137(1) *When a person will be regarded as having refused employment: S.137(5) if the employer. *A claim can then be made to the Employment Tribunal within 3 months of the act complained of. S.137 prevents closed shops within the UK. *TU blacklists: Consulting Association helped employers sort out suitability for employment in the construction industry, with a heavy focus on trade union membership and names of potential or actual troublemakers (over 3,000 names). An investigation by the **Information Commissioner** led to the Employment Relations Act 1999 (Blacklists) Regulations 2010. ***Inducement relating to TU membership or activities** - s.145A - extension of s.137. It should be a free choice to join a union. ***Action short of dismissal** - S.146 worker protected from detriment/deliberate failure to act by employer, if for purpose of: Deterrence/penalising because of membership; Preventing/deterring taking part in activities at **appropriate time**, or penalising; Preventing/deterring or penalising use of TU services at **appropriate time**; Compulsion to join a TU. *Appropriate time means a member picketing in their own time for example ie doesn't interfere with work. *Need to show that action taken against worker as an individual. *Employer can raise a defence. ***Time off work for TU duties:** S.168 TULR(C)A an employer must allow an e'ye who is an **official** of a recognised independent TU to take time off work during working hours for her official duties: negotiations/collective bargaining; Performance of duties under collective bargaining; Information/ consultation in connection to redundancies/TUPE. ***Time of work for TU activities:** S.170 an employer must allow member of a recognised TU time off work to undertake relevant activities *Reasonableness depends on the circumstances. *The employer does not have to pay the employee for time off in relation to TU activities. ***Dismissal on grounds of TU membership/activities** - S.152 states that a dismissal of an employee will be unfair if the reason was because the employee: Is/proposes to become a member of an independent TU; Proposes to/has taken part in TU activities/sought services at an appropriate time; If dismissed because of refusal to join a TU or a particular TU; Made use of TU services at an appropriate time. *Employer's have to be careful how to treat their staff in this way. Emee can not be dismissed if they have followed correct procedure re strike action. **MEMBERSHIP RIGHTS - INDUSTRIAL ACTION** - *Dismissal in connection with industrial action: dismissal where emee imposes a lock out (s.238(1)) - emee protection as breach of contract by emr; *dismissal where unauthorised strike (s.237)- protection more for emr; *an extension of that is dismissal where strikers are not members (s.238)- protection for emr, but emr cannot pick/choose who to dismiss if that is the reason for their misconduct. Must follow fair procedure; *TU supports industrial action but unprotected (s.219 excludes these). Members lose statutory protection. This is worse case for members, as a lot of time it transpires after strike that what they were doing was unprotected, and subsequently they are lawfully dismissed*; official protected strike and the protection afforded to members under s.238A. - it would be emr to pay out in this situation.

ET: **LEGAL FRAMEWORK** *Governed by the Employment Tribunals Act 1996 *Constitution and procedure contained in Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 *Statutory claims (such as unfair dismissal and discrimination) can only be brought to the ET *Contractual claims (e.g. wrongful dismissal) can be brought at both the ET (under £25,000) and the County Court. Usually claims have to be brought within 3 months (discrimination, UD, WD), or 6 months (equal pay). *Extend time limit when not reasonably practical (out the country, postal strike etc), breach of contract, TUPE. For extending time limit is discrimination it has to be just and equitable. ***NOT REASONABLE PRACTICABLE TEST:** *Constance v Peterborough Foundation NHS Trust v Crouchman/ Palmer v Southend-On-Sea BC/ Times Newspapers v O'Reagan*; but see *Union Cartage Co v Blunten*. **JUST AND EQUITABLE:** *Department of Constitutional Affairs v Jones/ Berry v Ravensbourne NHS Trust/ Cohan v Derby Law Centre, COMMISSION FOR PROCEEDINGS AND ACAS* *Discrimination arises *Try sort it out *Get advice *Send Claim to tribunal office (claim not accepted if in complete, wrong merit/out of time, etc) *Claim accepted until the end of conciliation starts. Form ET3 includes whether intends to resist application and upon what grounds. Copies of completed ET3 sent to employee and ACAS. *within 28 days response accepted. If no response received/response not accepted so claim can be entered. The 28 days can be extended upon successful application. *After this within 26wks there is case management directions and a hearing is held at further 2wks after this allows j'ment to be made. **Role of ACAS:** promote agreement without need for a hearing; produce ACAS Code and Guidance *Claim on the Agreement: S203 ERA 1996 can not voluntarily surrender of statutory rights. Any attempt will be void (*Council of Engineering Institutions v Medinon*). *Unless: ACAS or a representative who has authority to negotiate; collective agreement; A compromise agreement. **RULES AND COMPOSITION OF THE ET** *Less formal than cts - procedural governed by statute (Rules of Procedure); can hold Case Management Discussions (for Directions); can hold Pre-hearing Reviews to get more info re what the case is about. *Disclosure: there is no automatic disclosure (to give up documents). It is usual to make voluntary disclosure, but ET can make an order. *At tribunal, there is an Employment Judge and two lay members with employment law background. *Person on whom burden of proof rests goes first eg UD cases it is employer, and in constructive UD it is employee. *The parties usually state their cases each, then cross-examination, with finally each giving a summation. *There is a 42-day time limit to appeal the decision on a point of law.