

FREQUENTLY ASKED QUESTIONS REGARDING ONGOING ACTION SHORT OF A STRIKE:

Non-participation in the Performance and Development Review process, including MyJourney

We have updated these FAQs to reflect the introduction of MyJourney as the replacement to the old paper/PDF based P&D process.

Below are responses to your FAQs, if you have any questions that are not answered here, please ask a rep tfl@tssa.org.uk

ANSWERS TO FAQs: Non-participation in the Performance and Development Review process

Q1. Should I participate in MyJourney?

No. Because MyJourney is a direct replacement for the old paper-based P&D process it is covered by this Action Short of Strike (ASOS).

Q2. If my manager asks me to take part in the P&D process, including MyJourney, what should I do?

You should respond to your manager telling them that you are taking part in industrial action and therefore will not be participating in the P&D process.

Q3. Does Action Short of Strike (ASOS) mean that I don't need to have any performance or development conversations with my manager?

The ASOS is a withdrawal of cooperation with the formal corporate process, but it doesn't prevent you from discussing your work plans and development needs with your manager.

Q4. What should I do if I have any concerns about my ASOS?

Speak to your local rep or email us at tfl@tssa.org.uk (email).

Q5. I am performing well and am worried that this won't be taken into account by my manager when allocating a score for me. What should I do to make sure that my achievements are recognised appropriately?

You should not experience any detriment from participating in ASOS, including non-recognition of your achievements. You can gather evidence of your achievements from stakeholders and ensure that your manager is aware of this. This will also provide evidence of underscoring of your rating, if that proves to be necessary.

Q6. How do I record my own achievements? – provide a link to a different page – supporting you/helping us to support you – tips on recording your own achievements, managing your career development etc

Q7. My manager has made a few comments about my not participating in ASOS which sounds like I am not going to be scored fairly. What can I do?

Make a record of any negative experiences and comments and contact your local rep for help and advice. You are legally protected from detriment and overt comments from your manager will be strong evidence that they intend to treat you less favourably because of your participation in ASOS.

Q8. What can TfL do if I don't participate in my P&D process?

Refusing to participate in your P&D review could be considered as part performance of your role Since 2014, and currently, TfL has accepted part performance.

However, in the case of part performance an employer has a number of options. It can:

- A. accept part performance and negotiate to resolve the problem.
- B. refuse part performance and lock out staff, without pay.
- C. dock a portion of staffs' salaries.

Clearly B and C are worst case scenarios, but we must advise you that these are possible outcomes. TSSA would need to take a position on this matter if the employer attempted to raise this issue with staff. **However, since 2014 TfL have taken (and continue to take) option A – to accept part-performance.**

The issue of part performance potentially applies to all those staff who are currently undertaking action short of strike; thus far we have not been advised of any cases in which this has led to any sanction by the employer and we would therefore urge all members to continue to withhold their participation in the new P&D process being imposed on staff.

However, if you encounter any difficulties, pressure or threat of sanctions as a result of taking action, please get in touch immediately.

Q9. Can I be treated differently if I don't take part in the MyJourney and P&D process?

You are legally protected from detrimental treatment as a result of taking part in lawful industrial action. In September 2021 TSSA has received the following assurances from TfL

'With reference to the Pay for Performance (PfP) Review agenda item at yesterday's TfL CC, we can confirm that we are reviewing the situation of those who have chosen not to participate in the P&D process previously (due to action short of strike) and the impact of introducing MyJourney. We hope to come back in a couple weeks before we confirm

our position. In the meantime, employees in the 'early adopter' groups who do not wish to participate in MyJourney can speak to their Line Manager and will not be disadvantaged in any way.

In relation to the Engineering pay progression scheme, further discussions will continue to ensure that the skills, knowledge and experience can be captured and demonstrated. Those taking action short of a strike for the P & D process will not be disadvantaged.'

These assurances apply equally to all staff participating in this lawful industrial action and we are seeking further written confirmation from TfL that this is the case and we believe that this should be included in guidance to managers.

Q10. If we don't engage with the objective setting process, does that mean we won't get any pay increases in future years?

The current funding settlement prevents TfL from awarding pay rises to staff. This may change for future settlements or when TfL no longer receives Government funding.

However, the key point is that non-payment of any uplift (should there be one) to those staff who are taking industrial action (by refusing to participate in P&Ds or MyJourney) may be unlawful victimisation.

Q11. Will I end up on a Performance Improvement Plan if I don't comply/take part in my P&D review?

Putting someone on a PIP because they are taking industrial action would be unlawful victimisation. Plus, previous years' P&D scores are a recent reference point for performance. TfL would struggle to argue that placing a member of staff on a PIP only a couple of months after they scored a 3 or above can be related to anything other than victimisation.

Q12. I have informed my managers that I will not be participating in the P&D process. They have contacted me to say that as a result they cannot assess my skills and therefore identify my training and development needs, and have asked me how they should proceed. How do I respond?

You are taking lawful action short of strike and have informed your employer that this is the case. It is not your responsibility to then advise your employer about how they should proceed. Remember, you are not the only member of staff taking this action, and your managers should seek advice from HR. Below is a template letter that you may wish to use to respond to any such enquiries from your managers:

Dear _____

Thank you for your email setting your concerns about the lawful industrial action I am taking, particularly my non-participation in the P&D process.

I appreciate your difficulty but TfL imposed, without consultation, a new performance related pay system (PfP) and have failed to address the legitimate concerns my Union has expressed.

TSSA has never been against P&Ds per se, nor the creation of a high performing culture at TfL. Indeed, the opposite is true. However, we believe that P&Ds must be fair and consistent and continue to raise our concerns with TfL about the process.

I am unable to provide any suggestions as to how your concerns might be overcome. It seems as if these problems would be better directed to HR, rather than to myself as an employee taking lawful industrial action.

I hope TfL will resolve the dispute as quickly as possible, at which point my colleagues and I will be happy to re-engage in the revised P&D/MyJourney process.

Best Regards

Q13. What do I do if my manager is pressuring me to take part in the P&D/MyJourney process, or they are discriminating against me because I'm not participating?

If you encounter any difficulties, pressure or threat of sanctions as a result of taking lawful industrial action, please get in touch with your local rep immediately. If you are not sure who your local rep is then call the TSSA Helpdesk on 0800 328 2673 or contact Mel Taylor, TSSA Organiser: taylor@m@tssa.org.uk.

Q14. I am a manager responsible for undertaking P&Ds for my team. Should I carry them out or not, and if I don't carry them out, can TfL take action against me?

If a member of your staff you manage is not participating in the action short of strike and wishes to take part in the P&D process/MyJourney you should conduct the P&D process/MyJourney as usual.

If a member of your staff is undertaking action short of strike, then you can continue to support and engage with them around their development and workload programmes, outside of the P&D and MyJourney processes. TfL has provided updated Guidance for Managers in relation to MyJourney and action short of a strike as follows:

"It is important and expected that everyone has a review to discuss progress, development, career aspirations and wellbeing. If an employee chooses not to participate in their annual or mid-year performance conversation, due to participation in the PCS, RMT, TSSA and Unite industrial action, then the manager needs to assess that employees performance based on the information they do have. The new performance approach is built on the principle of a two way conversation and supported by continuous feedback from their manager plus other feedback from colleagues and stakeholders, all of which means

performance ratings are based on a more rounded view of performance and behaviours. Over the past few years, in the vast majority of cases, those employees participating in industrial action have had constructive discussions with their manager on how they are progressing with their work without direct participation in our formal P&D process and we encourage our employees to continue with this. This should allow the manager to assess their employee's performance going forward in order to ensure a balanced view. However, if an individual chooses not to participate in any of these conversations, the manager has no option than to give a rating based on their own assessment of the employees performance. That rating should still be evidenced in the same way – and potentially could be any of the four ratings available.”

However, if you encounter any difficulties, pressure or threat of sanctions as a result of taking or supporting action, please get in touch immediately.