TUC

Changing the world of work for good

TUC submission to ILO committee of experts

UK government breaches of Articles 87 and 98

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together the 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

The UK government has shown a consistent record of failure to respect the labour rights conferred by Conventions 87 and 98.

Unions in the UK are highly regulated to an extent that we believe infringes their rights to freedom of association and protection of the right to organise under Convention 87 and the right to organise and collective bargain safeguarded by Convention 98.

A series of restrictions were placed on trade unions by the Conservative governments from 1979 to 1997 and 2010 onwards.

This culminated in the Trade Union Act 2016 which hinders the right to strike and ensures greater state interference with unions' internal affairs.

This submission highlights:

- The failure of the UK government to respond to issues previously raised by the Committee of Experts on the Application of Conventions and Recommendations and other ILO bodies.
- Actions of the UK government that have exacerbated some of those issues.
- New issues that demonstrate the failure of the UK to comply with Conventions 87 and 98.

Previous issues raised by the CEACR

We note the observation published by the committee in 2016 in relation to Convention 87 that requested the government provide an update on the introduction of electronic balloting; that the government review the impact of new ballot thresholds; and that it review with social partners the impact of an expanded role for the Certification Officer set out in sections 16-20 of the Trade Union Act 2016.

In addition to this, the committee made a direct request in 2018 for the UK government to review with social partners the protection available to workers who stage industrial action and sections 8 and 9 of the Trade Union Act 2016 that relate to procedural requirements for industrial action.

The committee also made a direct request, in connection with Convention 98 for information concerning the measures taken to promote collective bargaining in the agriculture sector.

We will demonstrate below that the UK government has failed to fulfil those requests.

New issues

The UK government has since taken additional steps to infringe rights due to trade unions under the conventions.

In relation to Convention 87, these include:

- implementing additional powers for the Certification Officer, without further consultation with social partners on the key issues
- introducing legislation that allows employment businesses to supply agency workers to replace workers taking industrial action in non-essential sectors
- quadrupling to £1 million of the maximum damages that an employer can seek if a union's industrial action falls foul of the UK's onerous and complex laws regarding industrial action.

Government ministers have started the process to put in place a new set of restrictions that will further hinder industrial action.[1]

These include:

- imposing minimum service levels in transport and other "critical" sectors. Ministers have suggested that these will include power, education and the health service. Liz Truss, currently Foreign Secretary and a candidate to be Prime Minister has pledged to pass primary legislation on this issue within 30 days of assuming office[2]
- banning strikes by different unions in the same workplace within a set period
- setting a limit of six pickets at points of "critical national infrastructure", irrespective of the number of unions involved, and outlawing "intimidatory language"
- requiring ballot papers to set out the specific reason for industrial action and the form of action to be taken
- giving employers the right to respond to issues cited on the ballot paper before strike dates are announced
- requiring a separate ballot for each single, continuous bout of strike action
- imposing cooling-off periods after each strike, lasting up to 60 days

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[1] Shapps, G. (26 July 2022). "My prescription for an end to rail strike chaos", *Daily Telegraph*; Line, H. and Churchill, D. (25 July 2022). "Liz Truss vows to curb militant unions", *Daily Mail* www.dailymail.co.uk/news/article-11047743/Liz-Truss-vows-curb-militant-unions-Foreign-Secretary-unveils-plan-stop-strikers-crippling-UK.html

[2] Maddox, D. (26 July 2022) "Truss to pull rug from under unions and forge new emergency law within DAYS of becoming PM". *Daily Express* www.express.co.uk/news/politics/1645697/Liz-Truss-Tory-leadership-strikes-RMT-emergency-law-RMT-update

- increasing the minimum notice period for industrial action from two weeks to four
- raising the threshold for industrial action to support from 50 per cent of members and extending this requirement to all sectors.

The TUC is extremely concerned that these plans would severely impinge on unions' rights under Convention 87, in particular by making it extremely difficult to take effective industrial action.

Rather than taking on board previous concerns raised by the committee about measures introduced in the Trade Union Act 2016, ministers have effectively doubled down, by announcing plans to make some of the most oppressive elements of this legislation even more stringent and seeking to impose minimum service levels without regard to the views of social partners.

Meanwhile, the UK government has also failed to safeguard union members' rights under Convention 98.

In particular, we note the failure to ensure that trade union consultation rights were adhered to when 800 seafarers were dismissed with no notice by P&O Ferries. This is a particularly important example because the employer made no attempt to meet their statutory responsibilities concerning collective consultation and informing the appropriate authorities of their plans in adequate time.

We have also set out significant failings in both the agricultural and hospitality sectors.

Convention 87

Previous committee requests

We would like to draw your attention to the failure of the UK government to meet previous requests of the Committee of Experts on the Application of Conventions and Recommendations.[3]

Article 3 of the Convention. Return of workers to their posts following lawful industrial action

The committee noted the TUC's concern that protection from being dismissed for taking industrial action applies only for the first 12 weeks of the dispute. It does not guarantee that workers involved in a dispute will be entitled to reinstatement, there being no prohibition on employers hiring permanent replacements.

The committee requested that the government review the legislation, in full consultation with workers' and employers' organisations, with a view to strengthening the protection available to workers who stage industrial action.

The TUC, which as the trade union centre in the UK is the most representative organisation for workers, has not been involved in such a consultation.

In addition, we are increasingly concerned about the lack of protection for workers who are disciplined, short of losing their jobs. The Court of Appeal judgment in Mercer v Alternative Future Group and others found that the law did not protect striking workers from being disciplined or other unfair treatment.[4]

It is notable that the Secretary of State for Business, Energy and Industrial Strategy Kwasi Kwarteng, rather than the employer, took the case to the Court of Appeal, which overturned the Employment Appeal Tribunal decision in favour of Ms Mercer.

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[3] International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (2016). *Observation (CEACR) - adopted 2016, published 106th ILC session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom of Great Britain and Northern Ireland,* ILO www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3299875
International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (2018). *Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom of Great Britain and Northern Ireland,* ILO www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:3962761,102651

[4] Mercer v Alternative Future Group (24 March 2022) www.bailii.org/ew/cases/EWCA/Civ/2022/379.html

The court decision and the government's intervention leaves a loophole in protection for striking workers that is incompatible with the UK's duties under Convention 87 by undermining the ability of workers to take industrial action.

In addition, unions have reported to us threats (made to workers by employers) of conviction under section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 governing breach of contract involving injury to persons or property.

It is commonplace in safety-critical workplaces or environments like hospitals for unions to negotiate arrangements that safeguard public safety during industrial action.

But earlier this year members of the GMB trade union at gas giant Cadent were threatened by their employer with action under section 240 if they proceeded with industrial action that was being considered.

Industrial action did not go ahead and so the threat was not realised. However, we believe that this is a clear example of the UK government failing to safeguard workers' rights under Convention 87 by permitting the intimidation and potential discrimination against union members considering industrial action.

Gas workers are an example of an occupations where there is no specific restriction on the right to strike, but where the consequences of strike action may give rise to a criminal offence (as set out in section 240 of TULRCA), which potentially has the same outcome.

Procedural requirements for industrial action

The committee asked the government to review sections 8 and 9 of the Trade Union Act 2016 in consultation with the social partners. This part of the Act governs the notice given to employers for industrial action and the expiry of an industrial action mandate.

No such consultation has taken place.

On top of the notice period, unions are required to give seven days' notice of balloting, and to spend time conducting a postal ballot because electronic balloting is not permitted. This gives a huge amount of time for employers to put in place measures to reduce the impact of industrial action. With mandates for industrial action ending after six months, whether or not the dispute has been resolved, the laws make it extremely difficult for continuous industrial action to be taken.

Indeed, rather than seek to address the committee's concerns, ministers have proposed further procedural requirements.

These include:

- requiring ballot papers to set out the specific reason for industrial action and the form of action to be taken. Ministers say they want to ban "vague, catch-all descriptions"

- giving employers the right to respond to issues cited on the ballot paper before strike dates are announced
- requiring a separate ballot for each single, continuous bout of strike action
- imposing cooling-off periods after each strike, lasting up to 60 days
- increasing the minimum notice period for industrial action from two weeks to four.[5]

This would further hinder unions' ability to take effective industrial action by giving employers an enormous amount of time to prepare for industrial action and making continuous industrial action impossible.

Electronic balloting

We note the observation of the committee that the government should provide information on the progress made and the measures taken to facilitate electronic balloting (eballoting).

The TUC is extremely disappointed that the government has made no progress in this period.

Unions increasingly use electronic balloting for non-statutory ballots such as indicative votes on pay claims. Other organisations such as the National Trust, use eballoting for key votes.

Indeed, members of the Conservative Party have been invited to vote electronically when deciding on the party's new leader and therefore new Prime Minister.[6]

A review of eballoting, which was required by the Trade Union Act 2016, which was published in December 2017, recommended pilots of eballoting in non-statutory areas as a first step. But nearly five years on, ministers have yet to formally respond to this review. The only notable development has been a media report that the Secretary of State for Business, Energy and Industrial Strategy plans to reject the recommendation of pilots on the grounds that eballoting could be "manipulated by 'ill-intentioned' states such as Russia".[7]

Unions strongly believe eballoting would better meet the expectations of members and would encourage greater participation in unions' democratic structures. It is inappropriate for modern unions that postal-only ballots are the only option for statutory ballots.

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[5] Shapps, G. (26 July 2022). "My prescription for an end to rail strike chaos", Daily Telegraph
[6] Leadership Election FAQs www.conservatives.com/leadership-faqs
[7] Malnick, E. (25 June 2022). "Kwasi Kwarteng to axe plans for unions to hold electronic strike votes," *The Telegraph Online*

We also note that Conservative Party members choosing their next party leader and therefore the next Prime Minister are able to vote electronically.[8]

Ballot thresholds in education and transport

We note that the committee requested that the government review section 3 of the Trade Union Act with the social partners concerned and that it take the necessary measures to exclude education and transport services from the requirement that 40 per cent of all union members in a bargaining unit support industrial action for it to go ahead.

The definition employed in this legislation does not accord with ILO jurisprudence on essential services, which doesn't include transport and education.

However, the thresholds continue to apply to these sectors and provide a significant barrier to union members exercising their right to strike because it can require support of as many as 80 per cent of those voting if only 50 per cent turn out.

Ministers have now stated an intention to raise the threshold from 40 per cent to 50 per cent and extend the requirement to all sectors.[9] This means that even in a workplace with a turnout of 60 per cent of members, more than 83 per cent would have to agree to industrial action for it to clear this absurdly high hurdle.

Picketing

The TUC remains concerned that the requirements of the Trade Union Act 2016 are discriminatory against trade unions. In particular, they require the disclosure of the identity and contact details of activists to the police which may expose them to blacklisting.

We note the CEACR has itself raised concerns about the potential for blacklisting of trade unionists as a result of these changes and asked the government to provide information on blacklisting.[10] Given the history of blacklisting in the UK, this remains a significant risk, particularly if levels of industrial action increase.

We note, too, ministers' plans to put additional restrictions on picketing by setting a limit of six pickets at points of "critical national infrastructure", irrespective of the number of unions involved, and outlawing "intimidatory language". It is not clear what

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[8] Aratesh,, A. (4 August 2022). "Tory leadership timetable: What happens next in the battle to be prime minister?", *The Telegraph Online*

[9] Shapps, G. (26 July 2022). "My prescription for an end to rail strike chaos", Daily Telegraph

[10] International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (2016). Observation (CEACR) - adopted 2016, published 106th ILC session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom of Great Britain and Northern Ireland, ILO www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3299875

the government will regard as critical national infrastructure or indeed what would be classed as intimidatory language.

These measures come at a time when further restrictions have been placed on the right to protest, which could be used to limit unions' right to protest and picket. These include the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Bill.

We believe that current rules on picketing and protest place undue and excessive restrictions on freedom of expression and freedom of assembly. Tightening those further would further exacerbate this.

Additional powers for the Certification Officer

The Trade Union Act 2016 contained measures to overhaul the role of the Certification Officer (CO) which is responsible for statutory functions relating to trade unions and employers' associations.

These included:

- a levy paid by trade unions and employer organisations to fund the CO
- financial penalties on unions for breaches of statute
- for the CO to be given greater investigatory powers.

For six years these provisions remained dormant.

However, without warning, in June 2021 the government announced it intended to activate those powers. After passing the short Parliamentary process required, they became active in April this year.

Before these rules were brought into force Britain's trade unions were already highly regulated.

These changes tip the balance of power further towards the state and, we believe, put the government at odds with Convention 87 Article 4.

In the last financial year, the Certification Officer dealt with just 30 complaints. That's just one for every 233,000 union members. And only one resulted in an enforcement order requiring a union to take action.[11]

There was clearly no pressing problem to resolve.

We note that the committee invited the government to review the impact of these provisions with the social partners concerned with a view to ensuring that workers' and employers' organisations can effectively exercise their rights to organise their

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[11] Certification Officer (2022). *Annual Report of the Certification Officer 2021-2022*, Department for Business, Energy and Industrial Strategy www.gov.uk/government/publications/annual-report-of-the-certification-officer-2021-2022-pdf-format

administration and activities and formulate their programmes without interference from the public authorities.

The government has failed to carry out this request, despite its claims to the contrary.

In a statement to the House of Commons, a government minister said that a consultation entitled *Trade Union Act 2016: Consultation on the Certification Officer's enforcement powers* conducted in 2017, meets this request.[12]

However, this dealt only with the new powers for the Certification Officer to impose financial penalties, not the wider changes.

It was also not a specific review with the social partners but a broader public consultation inviting input from the general public.

Third-party complaints

The changes are problematic. They would allow non-members to make complaints to the Certification Officer about trade unions. Unions are therefore vulnerable to being tied up responding to complaints made by hostile employers or campaign groups, particularly during legitimate industrial disputes.

The Certification Officer has stated that the threshold for acting on a third-party complaint is merely that statute "can have been breached".[13] This is an extremely low bar (and in any case is not binding on future Certification Officers) and could lead to trade unions having to respond to myriad spurious complaints. At the very least, it could take up large amounts of staff time and be an unreasonable drain on union resources.

Investigatory powers

New investigatory powers will allow the Certification Officer to demand documents with sensitive information on the slimmest of bases.

The sensitivity of information about trade union activities is recognised in data protection laws which give it special protection. There is a long history of hostile employers or extremist groups seeking to victimise trade unionists.

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[12] Trade Union Act 2016 Question for Department for Business, Energy and Industrial Strategy UIN 41881, tabled on 3 September 2021 https://questions-statements.parliament.uk/written-questions/detail/2021-09-03/41881

[13] Certification Officer (2022). *Implementing the Remaining Provisions of the Trade Union Act 2016 - April 2022*, Department for Business, Energy and Industrial Strategy www.gov.uk/guidance/implementing-the-remaining-provisions-of-the-trade-union-act-2016-april-2022

The Certification Officer has stated that she will demand documents "where she has good reason to do so, and where she has reason to believe that the specific documentation exists".[14]

This is too low a threshold and leads to lots of scope for a Certification Officer in future.

Financial penalties

The government has introduced penalties of up to £20,000 for statutory breaches, for example in the running of general secretary elections.

These penalties resemble fines in criminal proceedings. However, they can be imposed of the basis of the civil rather than criminal standard of proof.

There is no justification for these new penalties. Unions are accountable to their members through their democratic structures and have a strong track record of complying with their legal duties.

As set out above, very few complaints are made about unions. Just one enforcement order was issued last year and there were none the year before.

Levy

A new levy has been introduced to cover the vast majority of the costs of the Certification Officer. The vast majority of this will be covered by trade unions.

The measure is deeply flawed.

The CO has estimated that she is likely to need a budget of £1.15m from April 2022.

The TUC believes it is inappropriate to treat trade unions like profit-making companies that are often required to fund their own regulator. Other bodies with social roles like political parties or charities do not pay levies to the Electoral Commission or the Charity Commission respectively.

As a result of the levy, unions will have less capacity to negotiate better pay and conditions for working people.

Crucially, there is no significant limit on how much the levy can grow in the future. There is huge scope for a future Certification Officer, perhaps encouraged by a government hostile to unions, to further expand their role, confident that the expenses for such activity will be met by those very trade unions.

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[14] Certification Officer (2022). *Implementing the Remaining Provisions of the Trade Union Act 2016 - April 2022*, Department for Business, Energy and Industrial Strategy www.gov.uk/guidance/implementing-the-remaining-provisions-of-the-trade-union-act-2016-april-2022

Effect of the Certification Officer changes

The combined effect of these changes is to obstruct and hinder trade unions in their core working of representing their members. In addition, there is great uncertainty about many of the new powers, such as the extent to which the levy will rise as future COs expand their activities, or the level of financial penalties that might be levied. This leaves unions extremely vulnerable to a hostile CO or a CO who is under political pressure to make life difficult for trade unions.

Failure to adequately respond to other ILO committees

We note that the UK has a record of failing to respond adequately to concerns raised by other ILO committees.

We note, for example, Case No 2473 filed by the Transport and General Workers' Union (TGWU, later to merge with other unions to form Unite) considered by the Committee for Freedom of Association. Among other requests, the committee said that it "encourages the Government to continue to pursue vigorously its dialogue with the social partners on the above matters with a view to bringing the Employment Relations Law into full conformity with Conventions Nos 87 and 98".

Additional issues for the committee's attention

Repeal of regulation 7 of the Conduct regulations.

In July 2022, the government ended a ban on employment agencies supplying workers to replace those taking industrial action, or standing in for those taking industrial action.

Such a prohibition has been in place since 1976. The current law prohibiting agencies from supplying workers to perform 'duties normally performed by a worker who is taking part in a strike or other industrial action' is to be found in the Employment Agencies Regulations 2004 (SI 2004 No 3319), regulation 7, made under the Employment Agencies Act 1973.

The change was opposed by both employment agency businesses and trade unions.

It is notable that the secondary legislation required to undertake the change was introduced without the consultation required under the Employment Agencies Act 1973. Rather, the government relied on a consultation conducted in 2015 when ministers previously considered similar changes. This is despite the political, economic and industrial context having changed considerably since 2015. It is also significant that both employment agency employers and unions representing workers objected to the

change. The TUC and the Recruitment and Employment Confederation, which represents agency employers, put out a joint statement condemning the plans.[15]

An impact assessment was published only shortly before Parliament debated the issue. This was not submitted to the Regulatory Policy Committee (RPC). This is notable because the impact assessment published in 2015 was declared "not fit for purpose" by the RPC. Without any consultation with those most affected, including employment agencies and workers, it was difficult to give any credibility to the assumptions in this latest assessment.

The committee has previously taken the view that "provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike."[16] We believe therefore that this measure contravenes Convention 87.

Increase in damages cap for unlawful action

The government has quadrupled the maximum damages that employers and others can claim from unions to recoup losses from unlawful industrial action.

The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022 came into force on July 21, 2022.

Number of members in a union	Old limit	New limit
Less than 5,000	£10,000	£40,000
5,000 or more but less than 25,000	£50,000	£200,000
25,000 or more but less than 100,000	£125,000	£500,000
100,000 or more	£250,000	£1,000,000

[15] Trades Union Congress and the Recruitment and Employment Confederation (22 June 22). "TUC and REC urge government to abandon plan to allow agency staff to replace striking workers," TUC and REC www.tuc.org.uk/news/tuc-and-rec-urge-government-abandon-plan-allow-agency-staff-replace-striking-workers

[16] International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (2018). *Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Eswatini*, ILO www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3963818

It remains unclear if these maximum damages apply per instance of industrial action or per day of industrial action.

In either event, such damages could financially ruin a trade union.

Trade unions in the UK are subject to extensive legal obligations relating to industrial action from providing notice of the ballot and sample voting paper to employers at the beginning of the process to providing notice of the industrial action dates. This means that a union can easily fall foul of statutory obligations despite attempting in good faith to abide by them.

There are therefore innumerable bases on which for an employer to seek to show a union has not met its statutory duty. This is less of an issue under the current set-up because the relatively low level of damages available means that employers tend to seek legal action at an early stage to stop it occurring rather than obtain damages after the action has taken place.

The effect of this will be to deter unions and union members from seeking to undertake industrial action and undermine their rights under Convention 87.

Trade union access

Article 11 of Convention 87 states that: “Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.”

We note also that the ILO’s Committee on Freedom of Association has said: "Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization."

It has also confirmed that: “Workers’ representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function.”

Further it has stated: ”For the right to organize to be meaningful, the relevant workers organizations should be able to further and defend the interests of their members, by

enjoying such facilities as may be necessary for the proper exercise of their functions as workers representatives, including access to the workplace of trade union members."[17]

Yet, in the UK, trade unions have no right to access workplaces to talk to members about joining a trade union. Nor do they have an equivalent digital right of access to engage with workers who work remotely.

This has become an increasing barrier to trade unions organising freely as the economy has evolved to incorporate more hard-to-reach roles.

The lack of a right of access makes it extremely to recruit members, for examples at remote secure sites such as distribution centres, where workers drive or are bussed in.

Likewise, platform economy jobs such as food deliver or taxi driving often have no central hub. Therefore, without a digital right of access it is extremely hard to recruit people in these roles.

The committee should also note the cases studies provided below in relation to Convention 98 and the UK hospitality sector which notes examples of employers denying access to trade unions.

Failure of compensatory mechanisms

Where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation this places on their freedom of action with regard to disputes.

The UK government is failing in these obligations, and the situation is deteriorating.

An example of this failure may be seen in the context of prison officers. Currently, no national dispute resolution framework exists within the prison service, but prison officers are unable take industrial action by a combination of s.147 of the Criminal Justice and Public Order Act 1994 and a 2017 permanent injunction. A breach of the injunction would allow the government to seek the imprisonment of officers of the Prison Officers' Association (POA).

The necessary compensatory mechanism on matters of rates of pay and allowances relates to the Prison Service Pay Review Body (PSPRB). Government appointees make annual non-binding recommendations to the secretary of state. The non-binding nature of the PSPRB's recommendations was adjudged to be an inadequate compensatory mechanism in the ILO's 336th Report of the Committee on Freedom of Association (March 2005).

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[17] International Labour Organization Committee on Freedom of Association. *Compilation of decisions of the Committee on Freedom of Association*
www.ilo.org/dyn/normlex/en/f?p=1000:70003:::NO:::

Although the government has stated that recommendations would only be departed from in "exceptional circumstances" that phrase is not defined and thus open to abuse. As the PSPRB's 2022 report noted: "Despite having rejected a number of significant recommendations over the past four years, the government continues to reaffirm this commitment."[18]

In 2020 the government's imposition of a pay freeze for public sector workers earning £24,000 or more further undermined the PSPRB's role as compensatory mechanism.

These failings have forced the POA into the situation where it must rely upon the courts to adjudicate on disputes. However, this is necessarily limited to issues of law (usually deriving from human rights legislation). It cannot extend to broader industrial concerns as might be covered by a national dispute resolution framework. The mechanism is slow and expensive and, since the government enjoys a wide margin of appreciation in the management of essential services such as prisons, it enjoys a structural advantage.

The committee should note that even this route is being undermined by the government. Ministers are intent on limiting reliance on human rights generally, and the availability of judicial review as a remedy in particular with restrictions on judicial review and proposals to water down human rights legislation with the Bill of Rights Bill 2022.[19]

Therefore, it is clear that there are no adequate compensatory mechanisms in this country for prison officers, and that the situation is continuing to deteriorate.

Proposed legislation

At the time of writing, ministers had announced a range of measures to further restrict industrial action.

Many of those build on measures in the Trade Union Act 2016 which has previously been examined by the committee. Therefore, we have covered them above in relation to previous concerns raised by this committee.

However, there are some new areas being proposed by ministers, including minimum service levels in some industries and prohibiting a union from taking industrial action if another union in that workplace has previously done so.

Minimum service levels

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[18] Prison Service Pay Review Body (2022). *PSRB 21st Report on England and Wales 2022, page xii,* Prison Service Pay Review Body www.gov.uk/government/publications/psprb-twenty-first-report-on-england-and-wales-2022

[19] E.g. see the Bill of Rights Bill 2022 (analysis at https://publiclawforeveryone.com/2022/06/23/1000-words-the-bill-of-rights/) and the Judicial Review and Courts Act 2022

Additional measures include a threat by the UK government, in response to industrial action in the rail industry, to introduce legislation to ensure that minimum service levels are maintained in certain sectors.[20]

Details of how ministers would implement such a measure are scant.

This was previously mooted in 2019 when similar plans were set out, albeit restricted to the rail sector. Government documents said: "Any strike against a rail employer shall be unlawful unless a Minimum Service Agreement is in place. If the Minimum Service Agreement is not honoured, the strike shall be unlawful and injunctions or damages may be sought against the union in the normal way."[21]

Ministers have suggested that sectors in which such restrictions will be put in place will include power, education and the health service.[22] This does not accord with ILO jurisprudence on essential services, which doesn't include transport and education.

It is not at all clear how minimum service levels would operate in many sectors. For example, would signalling staff be effectively barred from industrial action if they had to be in place to ensure a minimal service ran safely? What would a "minimum service" mean in education?

Such measures could have a chilling effect on unions' ability to undertake industrial action. Indeed, simply threatening such measures is clearly intended to deter unions from going on strike.

It is particularly alarming that the current Foreign Secretary, Liz Truss, who is seeking to become leader of her party and Prime Minister has promised to legislate on this issue within 30 days of entering taking on the role.[23] This would make it impossible for there to be meaningful consultation with social partners and the wider public.

In addition to minimum service levels, ministers have also pledged to ban strikes by different unions in the same workplace within a set period. This would effectively prevent many trade unionists from taking industrial action.

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[20] Malnick, E. (21 May 2022). "Tories poised to torpedo unions after threat to bring country 'to a standstill'", *Sunday Telegraph* www.telegraph.co.uk/politics/2022/05/21/tories-poised-torpedo-unions-threat-bring-country-standstill/

[21] Prime Minister's Office (2019). Queen's Speech 2019 background briefing notes www.gov.uk/government/publications/queens-speech-december-2019-background-briefing-notes

[22] Shapps, G. (26 July 2022). "My prescription for an end to rail strike chaos", *Daily Telegraph*; Line, H. and Churchill, D. (25 July 2022). "Liz Truss vows to curb militant unions", *Daily Mail* www.dailymail.co.uk/news/article-11047743/Liz-Truss-vows-curb-militant-unions-Foreign-Secretary-unveils-plan-stop-strikers-crippling-UK.html

[23] Maddox, D. (26 July 2022) "Truss to pull rug from under unions and forge new emergency law within DAYS of becoming PM". *Daily Express* www.express.co.uk/news/politics/1645697/Liz-Truss-Tory-leadership-strikes-RMT-emergency-law-RMT-update

The TUC is extremely concerned that these plans were severely hinder unions’ rights under Convention 87, in particular by making it extremely difficult to take effective industrial action or in some cases take industrial action at all.

Convention 98

Previous cases

We note that the UK government has a poor record of following what has been asked of it by ILO committees. We note, in particular Case No 1518 taken by the National Union of Teachers (NUT) and the World Confederation of Organisations of the Teaching Profession (WCOTP) to the Committee for Freedom of Association.

The committee's report no 275 of November 1990 requested that the UK government "accord the highest priority to putting in place arrangements for the determination of terms and conditions of employment of schoolteachers in England and Wales by processes of collective bargaining which are in full conformity with the requirements of Article 4 of Convention No. 98".

This issue remains unresolved.

New examples of breaches

P&O Ferries example

On 17 March 2022, P&O Ferries summarily dismissed 786 seafarers who were directly employed by the company. It was a clear example of the failure of the UK government to protect the right to collectively bargain protected by Convention 98.

The employer made no attempt to meet its statutory obligations. The driving motivation was to replace staff with terms and conditions determined through collective bargaining with workers supplied by employment agencies.

No collective consultation

There was no prior consultation with the seafarers' unions before dismissals took effect.

This is despite the requirements to do so under both the collective agreements between the company and its recognised trade unions and under statute.

P&O Ferries had collective agreements with the RMT and Nautilus. Among the terms were that the agreements remained in force subject to six months' notice. The terms and conditions set out in these agreements were incorporated into the contracts of employment of the seafarers.

There was also a disputes procedure in the agreements with a series of stages culminating with the possibility of mediation and arbitration and the involvement of Advisory, Conciliation and Arbitration Service, mediators or arbitrators.

However, P&O ‘s actions effectively terminated the agreements without giving any notice at all.

Meanwhile, under s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992, an employer who wants to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less must consult with appropriate representatives. In this case that would be the recognised trade unions. And where the anticipated redundancies total over 100, this consultation must begin at least 45 days before the first dismissal.

Among the obligations placed on the employer is to consult on ways of avoiding dismissals, reducing the number of employees to be dismissed and mitigating the consequences of dismissal.

As well as denying unions the ability to negotiate changes to the employers’ plans, the lack of notice also effectively denied the ability to take any form of industrial action as well.

At a joint meeting of the House of Commons transport and business select committee, Peter Hebblethwaite, chief executive of P&O Ferries, acknowledged that the company had a statutory duty to consult the unions but decided to flout it. He said: “There is absolutely no doubt that we were required to consult with the unions. We chose not to do that.”

He added that any "consultation process would have been a sham" and that the unions would “not accept” the new employment model, so the company decided to bear the cost of the anticipated compensation instead.

P&O Ferries offered the dismissed seafarers enhanced redundancy packages which included compensation for the failure to consult the unions, unfair dismissal and all other claims. The settlement agreement barred them from starting claims in the employment tribunal.

Of particular importance is that the fixed (and low) level of awards ensured that P&O could calculate the cost of the dismissals very accurately. And therefore they could establish whether and when this would be offset by the savings from employing low-paid new crews supplied by agencies.

No notice given to the appropriate authorities

P&O Ferries also failed to meet its duties to give notice to the appropriate authorities in of its plans at least 45 days before the first dismissals took effect.

This is contained in sections 193-193A of the Trade Union and Labour Relations (Consolidation) Act 1992.

Yet, we note that the Insolvency Service has declined to take criminal proceedings against the company and its directors on the basis that there is "no realistic prospect of a conviction".[24]

TUPE

Further to this, P&O Ferries failed to carry out its obligation to inform and consult Nautilus and the RMT, as required by regulation 13 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations), which includes informing of the legal, economic and social implications of the transfer for any affected employees.

That the TUPE regulations applied cannot be doubted since the employer out-sourced crew management to Malta-based, International Ferry Management (IFM), which engaged new crew through agencies to replace the dismissed seafarers thus amounting to a "service provision change".

Violation of Convention 98

ILO Convention 98 obliges the UK to "encourage and promote" collective bargaining machinery "with a view to the regulation of terms and conditions of employment by means of collective agreements".

What the P&O Ferries scandal shows is that UK law allows employers to simply ignore collective bargaining machinery including the text of collective agreements and the collective consultation rights contained in statute.

In this case the employer clearly did not seek to negotiate in good faith, a key principle of the ILO, and one that has been emphasised repeatedly by the Committee on Freedom of Association. We note paragraph 1329 of the "Both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence."[25]

The dismissal of the 786 workers is clearly an act of anti-union discrimination. A unionised workforce was dismissed so P&O could hire an entirely non-unionised group.

UK legislation is insufficient to deter anti-union discrimination as employers like P&O Ferries can, in practice, on condition that they pay the compensation require by law for

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[24] Insolvency Service (19 August 2022). *P&O Ferries: update from the Insolvency Service* www.gov.uk/government/news/po-ferries-update-from-the-insolvency-service-19-august-2022

[25] International Labour Organization Committee on Freedom of Association. *Compilation of decisions of the Committee on Freedom of Association* www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3948068,2

cases of unfair dismissal, dismiss any worker, for being a union member with better terms and conditions under a collective agreement.

With secondary industrial action prohibited in the UK, the immediate dismissal of the workers concerned gave unions few potential options for collective action.

The UK government has failed in its proactive duty, as a member of the ILO and as a party to Conventions 87 and 98, to protect the fundamental rights of workers, to associate and bargain collectively.

Agricultural wages board

Background

Minimum wage legislation in Britain can be traced back to Winston Churchill's Trade Boards Act 1909.

The Agricultural Wages Act 1948 set the legislative framework within which the AWB operated.

In April 2013, the Conservative led, coalition government, abolished the Agricultural Wages Board. This was the collective bargaining forum that negotiated key terms and conditions in the agricultural sector.

Members of the AWB from both employer and union sides engaged in a process of negotiated and agreed reform and adaptation to the changing requirements of the industry.

Abolition of the Agricultural Wages Board and the AWB Order is contrary to the UK's obligation "encourage and promote" collective bargaining machinery "with a view to the regulation of terms and conditions of employment by means of collective agreements" under Convention 98 and has led to real term pay cuts for agricultural workers.

Impact of abolition

The Agricultural Wages Board (AWB) for England and Wales brought together employers and unions to set wages and conditions for 150,000 agricultural employees. The costs of abolition for workers were predicted to result in £131million a year in lost wages; £81million from annual leave; a further £4.4 million in sick pay, and more.

Employers were concerned about the abolition of the AWB. One employer representative from Anglia Farmers', HR manager Suzanne Smith, stated: "The move means that with no AWB guidelines, wage rates and other terms and conditions will be individually negotiated, and without proper processes to deal with this, could lead employers open to equal pay claims, discrimination issues and greater competition with other local employers."

Criticism of the government's consultation process

Unite the union flagged up that the government failed to consult properly before abolishing the AWB.

The government did not engage in a meaningful consultation or impact assessment. Page 1 of the consultation document on the abolition stated, with reference to the AWCs and ADHACs: "it is considered that the impact of their abolition will be very minimal and it would be a disproportionate effort to collect evidence to carry out a detailed analysis".

At the time Unite the Union, the main union representing agricultural workers said: "We find the dismissive tone of this statement deeply offensive, given the gravity of the proposed abolition for our members; it perhaps betrays the government's attitude to the whole consultative process."

Social context of agricultural employment and the need for collective bargaining machinery

The consultation document relating to the abolition of the AWB called for agriculture to be treated like any other industry. But agriculture is unlike any other industry, given its unique social setting. Effective collective bargaining machinery is vital for the sector.

The consultation stated: "Agricultural wages legislation is based on circumstances prevailing in the immediate aftermath of the world wars, when agricultural workers were often isolated, immobile and dependent on the local landowner for their livelihood and home. Therefore they needed the specific protection of a body which could determine wage rates on their behalf."

Unite argued most agricultural workers would view this as an accurate account of their lives today. Agricultural members of Unite have described the inter-woven social and employment fabric of their lives as 'feudal'.

Unite highlighted that most workers in retail, construction or the car industry do not go home to a house owned by their employer, unlike 30 per cent of agricultural employees.

In a small rural community, a farm worker's employer, employer's spouse or other members of their family may be in positions of social control such as a justice of the peace, a parish councillor and school governor. In rural areas, workers have a narrower range of jobs and often wholly dependent on their own transport to travel to work.

In some ways agricultural workers are more isolated now than at the time of the 1948 Agricultural Wages Act, when dozens of farm workers would have lived in a village, with a pub to call their own and with members of their extended families working in the industry.

Collective bargaining is vital for agricultural workers

For employees, this situation is heightened of course by their weak negotiating position relative to their employer.

When the AWB was in place thousands of farm workers had access to a professional and fully researched pay claim, current data on farm incomes and industry statistics. Individual farm workers are unlikely to have access to comparable information on the state of their employer's finances.

For many farm workers, this is more acute because their employer is also their landlord. This employment relationship is unique in the UK, and presents a compelling reason to continue with depersonalised negotiations between professional national pay negotiators.

The AWB was not solely concerned with pay and pay rates. Because of the history of abuses in the industry and the isolated nature of the rural workforce, there has been and still is a need to have clear definitions and detailed statutory explanations of working time, training, accommodation, sickness absence, types of worker.

Breaching international law

As part of the attempt to abolish the AWB in the 1990s, the UK government renounced ILO conventions on wage-fixing machinery in agriculture (signatories include most EU countries including France, Germany, the Netherlands); and paid holidays in agriculture (again, key EU countries including Austria, France, the Netherlands, Poland and Spain are signatories).

A range of ILO conventions to which the UK remains a signatory govern pay and conditions, employment, collective bargaining, and safety in agriculture. We believe, in particular, that the abolition of the AWB breaches Convention 98.

Breaches in the hospitality sector

The hospitality sector in the UK is marked by widespread hostility towards trade unions, and the prevalence of low wages and insecure contracts.

The environment is such that the UK is in clear breach of Convention 98 governing the right to organise and collectively bargain.

We note, in particular, the failure of the government to meet the obligations of Article 4: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

We set out below three case studies involving Unite, the key union in this sector.

1. TGI Friday

TGI Friday is a global restaurant brand within the casual dining sector. Its license in the UK is owned by Thursday U.K. formed in a management buyout.

In 2018 the company redirected a substantial chunk of staff tips processed via the payroll from minimum wage front-of-house waiting staff to higher-paid back-of-house staff.

The senior manager who made this decision was clear from the outset that this was to address recruitment and retention issues for back-of-house staff. However, no increase in basic pay was offered for the staff. An uplift was financed by taking tips left by customers for waiting staff and given to kitchen staff.

As a result, the predominantly female front of house staff, many of whom were single parents, saw immediate devastating cuts to their income, while the higher-paid, predominantly male back-of-house staff enjoyed substantial increases in their income.

Unite assisted a large number of front-of-house staff to compile and submit a collective grievance.

The company refused to meet staff reps or provide them with access to the grievance procedures.

The company rejected all approaches by Unite to meet and try to resolve the issue.

The company also rejected approaches by a senior highly experienced ACAS official to assist in mediation with a view to a constructive outcome.

Despite being an affiliate of the employer organisation UKHospitality, the company refused to comply with a Fair Tips Code sighed between UKHospitality and Unite. This states that workers who wished to raise complaints about tips allocation should have access to a grievance process and that parties should use the offices of ACAS where grievances could not be resolved.

A second collective grievance was submitted concerning various potential breaches of the minimum wage identified in discussions with members.

The company refused to hear this unless it was signed by everyone who supported it at each restaurant where it had been circulated.

Union activists seeking to obtain signatures from colleagues were harassed and obstructed by local managers. In one instance a grievance letter signed by around 20 staff at one location was confiscated by the local manager and never returned.

Nevertheless, around dozen restaurants submitted minimum wage grievances with multiple signatures. However, rather than honouring its commitment to meet worker representatives nominated to present the grievance, the company dispatched senior managers to each of the grievance locations and called lead union activists to one-to-one meetings where they were questioned about their motives and actions.

The company then moved to undermine the collective nature of the grievance by insisting that every signatory attended an individual grievance hearing. The majority declined these meetings as they were not what they had asked for.

However, in order to ensure there was no collective voice at one restaurant, a senior manager squandered an entire day from 8am to 8pm hearing back-to-back individual grievances which were identical in nature and content.

Industrial action ensued with workers at restaurants in London, Milton Keynes and Manchester taking part in legally balloted strike action across several days.

The strikers were heavily monitored with senior managers present at each picket, armed with clip boards writing down every word uttered by members, listening in on press interviews, taking pictures and video footage.

The motive for this excessive level of monitoring was revealed when the lead union rep from the Milton Keynes restaurant was subjected to an extremely hostile investigation where, over the space of several meetings, she was subjected to a disciplinary investigation on her conduct in allegedly bringing the company into disrepute.

She was forced to watch video footage of herself on picket lines and as a speaker at a rally called by the TUC and questioned about comments or opinions she had expressed. Similar challenges were made to her about social media and press comments. The fact that she was acting as a spokesperson for union members during a lawful and legitimate trade dispute made no difference to the stated intention to pursue charges of gross misconduct which would have led to her dismissal.

It was only leverage by Unite and consequential intervention by a major shareholder that prevented this threat of dismissal from being carried through.

The strike was resolved by the company conceding and changing position on several key issues. But in doing so they never acknowledged the strikers or reached any actual agreement with Unite.

Post-strike the company systematically pursued the more vocal strike leaders charging them with gross misconduct for issues that had previously been considered minor infractions. Several were dismissed and others left their jobs to avoid being targeted in this manner.

2. IHG

IHG is a major global hotel chain registered in the UK, operating brands such as Holiday Inn and Intercontinental.

Unite's predecessor union the TGWU first began attempting to engage with IHG in 2009. At that time, on the back of becoming a UN Global Compact signatory, the company had acquired status as the preferred hotel provider for the 2012 London Olympics.

The TGWU's approach focused on Global Compact Principle 3 stating that businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

The union pointed out in correspondence that LOCOG (the delivery authority for the games) had signed a protocol with the TUC providing for, amongst other elements, trade union access to workers and the London Living Wage as a minimum in companies with contracts or association with the games.

The initial approaches by the TGWU, which had members in several of IHG's London properties, to engage and reach agreement were either ignored or dismissed out of hand.

When pushed further, IHG argued that the protocol only applied to workers actually engaged in work at the Olympic site and stadiums and not to it as an offsite hotel provider.

It was only after protest actions and intervention from LOCOG that IHG agreed to a meeting facilitated by the TUC. The position taken by the company at this meeting was that a commitment to freedom of association also meant a commitment to support the right not to associate and on this basis allowing trade union access to their properties would be wrong because it would favour the right to associate over the right not to associate.

However, further leverage on the company ahead of the Olympics brought them to a position whereby they gave a commitment to the Mayor of London to phase in the Living Wage at its managed London properties over a five-year period, and to the TUC to engage with the TGWU on the question of trade union access.

Ultimately these turned out to be entirely false commitments. Four years after its Living Wage pledge the company formally announced it would no longer honour the phasing in of the Living Wage rate.

It took three years of consistent delays and avoidance for the company to sign off a single page trade union access agreement. Within a fortnight of this being signed it was rescinded on the grounds that access was not something the property owners of the managed hotels would agree to. No evidence to support this assertion was ever produced. The company then agree to place union information on notice boards and issue union materials to staff in these hotels. Again, this agreement was never honoured.

In the meantime, the company continued to operate a hostile environment deliberately undermining freedom of association and workers' rights.

Some examples include:

- A union official was physically escorted from a hotel where she was attempting to assist members who were pursuing a collective grievance on tips allocation.

- Police were often called when union organisers handed out union literature at staff entrances.
- IHG refusing to allow staff representatives elected during a contracting out consultation for one of their hotel housekeeping departments any right to be accompanied by a union official in those consultations, and refusing those elected reps access to the financial information upon which the sub-contracting decision was made.
- During a redundancy consultation IHG forced migrant workers with English as a second language to choose between a union rep and an interpreter at meetings. Not allowing both to be present and refusing to have written information translated. Those workers were told that meetings would be shut down if union officers made too many challenges to the company position.

The experiences of the TGWU and subsequently Unite were detailed in a report entitled Unethical IHG which was sent with a formal complaint to the UN Global Compact.[26]

The recommendation of the Compact was that the union and company voluntarily utilise the offices of the ILO in order to agree a constructive way forward.

This was readily accepted by Unite, but to date the company has continued to maintain a position of non-engagement and avoidance.

3. Whitbread

Brewery company Whitbread's Premier Inn brand is the largest hotel chain in the U.K. with 840 locations and around 400 pubs and restaurants. It's expanding globally with a huge program of new openings, particularly in the German market.

In 2018 the company applied for Foundation status with the Ethical Trading Initiative (ETI). At that time it also owned Costa, the largest U.K. coffee chain (since sold to Coca-Cola).

Unite had members in many Whitbread locations and considered itself a legitimate stakeholder in terms of the issues of freedom of association and collective bargaining.

Unite took note of the section on freedom of association and collective bargaining in the Whitbread human rights policy, drawn up as part of their application for Foundation status within the ETI.

The policy states: "We recognise that our people, without distinction, have the right to join or form trade unions or other comparable, legal organisations of their own choosing and to collectively make representations to, or enter into negotiations over employment issues with their employer."

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[26] Unite the Union and Unite hotel workers branch LE/1393 (2019). *Unethical IHG*, Unite https://unitetheunion.org/media/2384/unethical-london-brochure-ihg-crowne-plaza.pdf

Despite these positive words the company insisted it would not permit formal trade union access to any of its workplaces.

In Unite’s discussions with senior managers, including the human resources director who was a board member, Whitbread presented a position that contradicted its policy statement:

- Staff were free to join a union but would have do this of their own volition and not on company premises.
- For staff to meet with union officials they could only do so in their own time.
- The union could seek to speak to Whitbread staff but through social media or other platforms but not on company premises.
- If workers themselves requested a union official to visit their workplace they would not allow this, but they would send a senior manager to that site to question staff about what concerns they had.
- Managers were specifically instructed to advise staff not to engage with any Unite organisers visiting premises to hand out union literature. Whitbread said that it would not accommodate any notion that workers should be able to pursue collective grievances on issues of common concern, stating these could only be pursued as individual complaints even where there was a common issue.
- The company refused to accept that this was in any way contrary to their freedom of association commitments in their policy.

Often Whitbread’s statements and positions taken were identical word for word to those previously relayed by IHG.

Whitbread said it didn’t believe its staff wanted or needed a union but they were free to join individually. It said to prove this it would hire an external consultant to conduct a mock union recruitment visit and then provide Unite with a report on how staff reacted.

Most disturbingly was its belief that their obligation as an ETI member would be to ensure companies in its supply chain complied with ETI base codes on freedom of Association and collective bargaining but that this did not extend to its directly-employed workforce.

Unite raised concerns with the ETI which confirmed to Whitbread that the base codes had to apply to their own staff. This did not change the company position on union access. Unite then submitted a formal complaint about their conduct. However, rather than submit to an investigatory panel, Whitbread resigned with immediate effect from the ETI.

Over the past year or so there has been a slight improvement. Having been made aware that Unite had established a National Whitbread Membership Forum, senior human resources officials now meet with union officials regularly to discuss and act on issues raised at the forum.

One important concession has been an acceptance of the principle of collective grievance as a legitimate route for staff to raise issues of common concern and a revision of the company policy to consolidate this.

To date, however, no concession has been offered on trade union access to company premises and the workplace have no access to collective bargaining on pay and conditions.

Return of workers to their posts following lawful industrial action

As set out above, the TUC has a longstanding concern that protection from being dismissed for taking industrial action applies only for the first 12 weeks of the dispute. It does not guarantee that workers involved in a dispute will be entitled to reinstatement, there being no prohibition on employers hiring permanent replacements.

In addition, we are increasingly worried about the lack of protection for workers who are disciplined, short of losing their jobs. The Court of Appeal judgment in Mercer v Alternative Future Group and others found that the law did not protect striking workers from being disciplined or other unfair treatment.[27]

This amounts to discrimination against trade unionists in breach of Convention 98 Article 4. We note the previous comments of the Committee on Freedom of Association that: "The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98."[28]

Picketing

As we noted above, the TUC believes the requirements of the Trade Union Act 2016 as regards picketing discriminates against trade unions by placing obligations on them that other organisations do not face.

In particular, unions are required to disclose the identity and contact details of activists to the police which may expose them to blacklisting.

Given the history of blacklisting in the UK, this remains a significant risk, particularly if levels of industrial action increase.

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[27] Mercer v Alternative Future Group (24 March 2022) www.bailii.org/ew/cases/EWCA/Civ/2022/379.html

[28] International Labour Organization Committee on Freedom of Association. *Compilation of decisions of the Committee on Freedom of Association paragraph 957* www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3946398,3