TUC

Changing the world of work for good

TUC response to Making Work Pay: Consultation on creating a modern framework for industrial relations

December 2024

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together around 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.

We warmly welcome this consultation on creating a modern framework for industrial relations and appreciate the opportunity to respond.

A principles-based approach

Question 1 – Do you agree or disagree that these principles should underpin a modern industrial relations framework? Is there anything else that needs consideration in the design of this framework?

The TUC is supportive of establishing principles to guide and promote a positive industrial relations framework that delivers a meaningful voice for workers in the workplace and secures their ability to gain a fair share of the fruits of their labour.

With a few suggested textual amendments, we support the principles of collaboration, proportionality, accountability and balancing the interests of workers, businesses and the wider public. We do, however, believe that these are incomplete, as they do not mention collective bargaining. The principles should be expanded to include reference to collective bargaining, because without collective voice within the workplace the other aims are not realisable. At the moment, the principles do not explicitly recognise this.

As the principles imply, relationships between employers and trade unions are key, but unfortunately many workers in the private sector are currently not collectively represented by unions. Without union representation and collective voice, the imbalance of power between an individual worker and their employer is too great to make a balance between the interests of workers, businesses and the wider public possible, or to fully enable meaningful collaboration, proportionality and accountability. Promoting and extending collective bargaining so that workers can speak collectively with one voice, and anonymously if necessary, through their trade union, is an essential component of creating a fair and sustainable industrial relations system and should be explicitly included as a guiding principle.

The UK's industrial relations framework should also reflect and promote international standards to which the UK is a signatory, and in particular the ILO Conventions and Principles, required to be upheld by all ILO members. 'Freedom of association and the effective recognition of the right to collective bargaining' is the first ILO Principle, underlining the case for including promoting and extending collective bargaining within the guiding principles designed to govern UK industrial relations.

Collective bargaining coverage across the UK has declined from over 70 per cent in 1979 to under 40 per cent today, and is just 21 per cent in the private sector[1]. The decline of collective bargaining coverage has directly contributed to stagnation in wages, growing inequality and weak economic performance in the UK economy[2]. As the OECD has concluded, "Collective bargaining, providing that it has a wide coverage and is well co-ordinated, fosters good labour market performance."[3] Recognition of the role of collective bargaining as an underlying policy objective that can support growth and reduce inequality would be welcome.

In July 2022, the European Commission acknowledged that "countries with high collective bargaining coverage tend to have a lower share of low-wage workers, lower wage inequality and higher wages." The Commission has recently established an objective that asks Member States where the collective bargaining coverage is less than 80% to establish an action plan to promote collective bargaining.[4] It would be welcome if the UK government set a similar goal for collective bargaining coverage of at least 80%, with a timeline for achieving this.

In addition, the right of workers to have some say over decisions that affect them at work is an essential principle of positive industrial relations. This could be incorporated into a new principle on collective bargaining or could be incorporated within existing principle 3 on accountability.

We also suggest the following minor textual amendments:

- In line 2 of collaboration, replace 'employees' with 'workers' or 'workforce' to clearly include all workers, not just those who are directly employed (and reflecting the wording elsewhere in the principles).
- In the final line of proportionality, add 'negotiation' after 'engagement' (or replace engagement with negotiation), as negotiation is the core role of trade unions in the workplace.

Question 2 – How can we ensure that the new framework balances interests of workers, business and public?

The TUC would argue that in many instances there is a convergence between the long-term interests of workers, business and the public. Businesses succeed best with a

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[1] 2023 figures from ASHE data cited in DBT (29 May 2024) Trade Union Membership, UK 1995-2023: Statistical Bulletin; 1970s figure from TUC (2019) A stronger voice for workers – how collective bargaining can deliver a better deal at work

[2] OECD (2022), *OECD Employment Outlook 2022: Building Back More Inclusive Labour Markets*, OECD Publishing, Paris, https://doi.org/10.1787/1bb305a6-en

[3] OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, OECD Publishing, Paris, https://doi.org/10.1787/1fd2da34-en

[4] European Commission Press Release (7 June 2022) *Commission welcomes political agreement on adequate minimum wages for workers in the EU* available at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3441

secure, motivated and confident workforce and the public interest is served through businesses and public services that are delivered by workers who are well trained, fairly paid and fully engaged in their work.

However, there is a high road and also unfortunately a low road to short-term success. In recent years, the industrial relations and labour market policy of the UK has at least facilitated and arguably encouraged businesses to take a low road approach to business and employment models. The government is rightly aiming to address this through strengthening the floor of individual employment rights and the framework for collective rights. We believe that a significant strengthening of both is needed to facilitate the creation of business and employment models that deliver for workers, businesses and the public.

In addition, the priority given to the interests of shareholders within the UK's corporate governance system can encourage businesses to take a short-term approach to decision-making and lead to business models based on insecure, low-paid work. Reform of corporate governance to require company directors to promote the long-term success of the company as their primary aim and to ensure all companies with 250 or more staff include elected worker directors on their boards would encourage the development of businesses models based on decent work. This would support the government's programme of much-needed employment rights reform by creating an institutional environment where employment reform is going with, rather than against, the grain of business models.

Unfair practices during the trade union recognition process

Question 3 – Do you agree or disagree with the proposal to extend the code of practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process from the point when the CAC accepts the union's application for statutory recognition? Please explain your reasoning and provide any evidence on cases that support your view.

The TUC strongly supports the proposal to extend the code of practice on access and unfair practices during recognition and derecognition ballots (henceforth code of practice on access and unfair practices) to cover the entire recognition process.

While many employers respond to a request from a union for recognition and access in a constructive and pragmatic manner, there are others who take a hostile and destructive approach to unions' attempts to organise. This stymies the ability of workers to have a meaningful choice over their right to join a union and to have that union recognised for collective bargaining. Union representatives experience a wide range of employer actions, sometimes aggressive, that are designed to frustrate unions speaking to workers.

Employer responses to union representatives leafleting or speaking to workers outside work premises include:

- ordering the union away, even if on public ground
- calling the police
- monitoring and intimidating union reps and workers with the use of drones
- ensuring that workers leave by another door
- telling workers not to speak to the unions or take any materials
- watching to see who talks to the union/takes leaflets etc and then putting pressure on those workers, sometimes in one-to-one meetings, not to join or engage with the union.

At the moment, unions gain some access to workers once a statutory recognition ballot has been ordered by the CAC, but not before. This means that a hostile employer can use the time before that point is reached to put its view across to the workforce without the union being able to do so, creating an incentive for the employer to delay reaching agreement with the union on access to support a recognition campaign. This creates an imbalance between employer and union opportunities to engage with and influence the workforce, which goes against the principle of equal access that runs through the code of practice on access and unfair practices.

Unscrupulous employers may use this period before a union gains access to begin maneouvring to avoid recognition, including engaging union busting companies and signing sweetheart deals with non-independent unions.

Giving unions access rights from the start of the recognition process is vital to make the statutory recognition system fairer and ensure workers have the opportunity to hear from unions as well as their employer throughout the whole process. This would be a significant improvement on the current framework.

There is, however, a question of how the start of the recognition process should be defined. As the first step of the recognition process is for the union to write to the employer to see if the employer will recognise the union voluntarily, it would make sense for the code of practice on access and unfair practices to apply from this point. Otherwise, there will still be a period during which the employer may deny access to the union and engage in unfair practices designed to influence the workforce against unionisation.

Question 4 – Do you agree or disagree with the proposal to introduce a requirement that, at the point the union submits its formal application for recognition to the CAC, the union must provide the employer with a copy of its application? Please explain your reasoning.

Question 7 – Are there any alternative mechanisms that you consider would prevent mass recruitment into a bargaining unit for the purpose of thwarting union recognition applications? Please provide as much detail as you can.

The TUC understands the rationale for requiring unions to copy the employer into an application to the CAC for recognition, and is broadly supportive, but believes additional proposals are needed.

Employer manipulation of the bargaining unit is not limited to flooding the bargaining unit with new recruits. Other examples of employer practices to undermine a proposed bargaining unit include:

- moving staff in and out of a proposed bargaining unit
- restructuring so the proposed bargaining unit no longer exists or is fundamentally altered.

It is vital that the proposals address all the ways in which employers use control of the bargaining unit to thwart unionisation, including, but not limited to, mass recruitment into the bargaining unit. So the proposal to have an effective 'freeze date' on who is entitled to vote in a ballot should be extended to prevent employers from moving staff out of the bargaining unit in a way that undermines the union's proposed bargaining unit.

It is important that delay cannot be used by a hostile employer to justify a restructure that is designed to undermine the union's proposed bargaining group. This should be specifically addressed in the proposals. Section 19B of Schedule A1 should be revised so that where there is any evidence of employer manipulation of a proposed bargaining unit, this is taken into account by the CAC in its determination of an appropriate bargaining unit. In addition, we suggest that this should be covered in a refreshed code of practice on access and unfair practices.

If the union is required to copy the employer into its application to the CAC, it is vital that this does not give a hostile employer time to start briefing its workforce against the union in a way that would undermine the proposal to extend the code of practice on access and unfair practices to the whole of the statutory recognition process. It is important that the sequencing and interaction of these proposals is fully thought through to ensure they work together as a package.

Question 5 – Do you agree or disagree that the employer should then have 10 working days from that date to submit the number of workers in the proposed bargaining unit to the CAC which could not then be increased for the purpose of the recognition process? Please explain your reasoning.

As set out above, we are concerned about the potential for hostile employers to use the time from when a union has submitted its statutory recognition application to start moving staff in and out of the bargaining unit. Given electronic communication methods, it is not clear why an employer should need two full weeks to let the CAC know the number of workers in the proposed bargaining unit. We would propose that this is reduced to a maximum of five working days.

It is important to be clear that the 'number of workers in the proposed bargaining unit' refers to the number of workers on the date that the union ends its recognition request to the CAC, copied to the employer.

Question 6 – Can you provide any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim? Please provide as much detail as you can.

The main example of mass recruitment into a bargaining unit is Amazon and the information below is taken from The GMB Union Campaign for Statutory Recognition in Amazon Coventry[5].

As background, the GMB union had been organising and supporting workers at Amazon's BHX4 site at Coventry over many years.

"By 25th April 2023, there were 718 members of GMB Union employed at the BHX4 site. In December 2022 Amazon had reported that there were 1400 employees working at the site. Based on the understanding that over 50% of workers in the proposed bargaining unit were members of GMB, a letter requesting voluntary recognition (issued under Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992) was sent to the company on this date.

GMB confirmed that the union was willing to engage with ACAS to help facilitate any discussions.

Amazon had 10 "working days" to respond. As "working days" in this context does not include weekends or Bank Holidays, Amazon was able to issue a response on 11th May 2023. The response stated that Amazon would not agree to voluntary recognition and refused to engage with ACAS. GMB Union made an application for statutory recognition to the CAC (Central Arbitration Committee) on 12th May 2023.

A law firm representing Amazon responded to the application on 22nd May 2023. The response stated that there were now 2749 employees in the proposed bargaining unit."

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[5] Available from the GMB or the TUC on request

Question 8 – Do you have any views on a possible alternative to place a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent a union from being recognised? How would this alternative work in practice?

We believe that a revised version of this proposal could be helpful, but that this should supplement, rather than replace, other proposals to prevent employers manipulating the bargaining group in order to thwart union recognition.

We propose that within Schedule A1, a new requirement is placed on employers not make changes to the constituency of a bargaining group once a union has submitted a recognition request, including through recruitment or moving staff within an organisation, for the purpose of thwarting union recognition. This would also create a disincentive for employers to create unnecessary delays in the access and recognition process.

If changes to a bargaining unit are made, the burden of proof should be on the employer to demonstrate that these were for an important purpose unrelated to unionisation. The CAC should be required to take account of any changes made to the constituency of the bargaining unit in its determinations on the case, including its determinations on the bargaining unit and whether there is evidence of unfair practices. A provision should be introduced to allow the CAC to conclude that the recruitment was for the purpose of influencing the number of workers in the bargaining unit for the purpose of an application for statutory recognition, if there are facts from which it can reach this conclusion.

One problem with a requirement based on the purpose of an action is that it is difficult to prove motivation. We strongly suggest that the CAC is required to take account of the union's view in any matter relating to changes made in the constituency of a proposed bargaining unit. In cases where changes are based on other factors, it is highly likely that this would be apparent to the workers concerned and the union. However, where the changes relate primarily to thwarting the union's organising efforts, this will, again, very likely be apparent to the workers concerned and the union. The union should be able to express this view to the CAC, who should be able to consider it.

Question 9 – Do you agree or disagree with the proposal to introduce a 20-working day window to reach a voluntary access agreement from the point when the CAC has notified the parties of its decision to hold a trade union recognition ballot?

We support the proposal to introduce a deadline for unions and employers to reach a voluntary access agreement and fully recognise the problem that the proposal is designed to solve. However, we believe that the proposal should be refined and supplemented.

Firstly, we believe that the proposed window of 20 working days is too long. This gives hostile employers a whole month over which to plan and implement strategies to thwart unionisation. We propose that the window should be 10 working days, but that either party should be able to apply for an extension of another ten working days where they can demonstrate that progress is being made but more time is required to complete negotiations. In these cases, the assumption should be that, so long as there is evidence of genuine progress, an application for an extension would generally be granted. In particular, joint applications for an extension would be clear evidence that discussions are taking place in good faith and that progress is being made.

An alternative proposal with similar effect would be to leave the window at 20 working days but add a stipulation that either party (though in reality it would generally be the union) could apply after ten working days for the CAC to adjudicate and make an order on access if insufficient progress had been made. This should help to remove the incentive for employers to drag their feet on access, with the effect of wasting union resources and potentially using the time to promote anti-union sentiment.

Both these suggested proposals would have implications for the capacity of the CAC to respond promptly to applications. The substantive role for the CAC on both statutory recognition and access as set out in the Employment Rights Bill will require a significant increase in the CAC's resources to be fulfilled effectively. If it is considered unlikely that the CAC will have the resources to respond in a timely manner in the ways suggested above, we strongly suggest that the window is simply reduced to ten working days.

In addition, we believe that the process of seeking voluntary access agreements would greatly benefit from the development of default, or standard, access agreements, covering both physical and digital access. This is explored further below.

Question 10 – If no agreement has been reached after 20 working days, should the CAC be required to adjudicate and set out access terms by Order? If yes, how long should CAC be given to adjudicate?

We agree that if no agreement is reached after the stipulated window (please see answer to Q9 for our proposal on this), the CAC should be required to adjudicate and set out access terms by Order.

However, as mentioned briefly above, we also believe that the process of seeking voluntary access agreements would benefit greatly from the development of some default or standard access agreements that the CAC could, unless there were reasons to the contrary, generally impose in the absence of a voluntary access agreement being agreed. This would reduce the workload of the CAC in determining an access agreement and speed up the process of putting access in place. Variations in default or standard agreements could reflect relevant differences in workplace and working patterns and what sort of access arrangements will work best in those circumstances. Default access agreements must be sufficient to enable unions to carry out the access purposes as set out in the Employment Rights Bill.

If employers know that a default access agreement, perhaps with minor variations, will be put in place in the event of their refusal to engage with the union on access, this should create an incentive to liaise with the union to agree a voluntary access agreement. However, it will be important that default or standard access agreements are sufficiently strong to ensure that this is the case.

Question 11 – Once 20 working days have expired, should the CAC be allowed to delay its adjudication in instances where both parties agree to the delay? Should this delay be capped to a maximum of 10 working days?

Where both parties agree to a delay, we agree that the CAC should be allowed to delay its adjudication. It is vital, however, that this provision is used only where there is genuine agreement from both parties and that unions are not put under pressure to agree to delays that are not justified.

Question 12 – Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim? Please explain your reasoning?

As the consultation document rightly notes, the current framework for preventing unfair practices during a recognition case is not working effectively, as evidenced by the vanishingly low number of successful union complaints of unfair practices. One of the reasons for this is the difficulty in meeting the second test for a successful unfair practices challenge, whereby the CAC requires evidence that the unfair practice changed, or was likely to change, the vote of a worker entitled to vote in the ballot.

An effective framework for preventing, and where they occur, addressing, unfair practices is essential to ensure that workers' right to join a union and to have that union recognised for collective bargaining is realisable.

The TUC believes that option one, whereby the second test is removed from Schedule A1, should be adopted. This is much simpler, clearer and easier to enforce than either of the alternative options included. Creating clarity that carrying out unfair practices is sufficient to trigger a successful claim will be a much more effective deterrent than a regime that depends on the CAC considering evidence from workers or satisfying a 'purposive approach' that relies on the CAC taking a view on the likely impact of unfair practices on workers' votes. As the government notes in the consultation document, unfair practices should not be happening, and adopting option one is by far the best way to send a clear message that this is the case and that unfair practices will lead to consequences when they occur.

In addition, the negative impacts of unfair practices are not limited to their direct impact of workers' votes. They can also make the process of accessing a workplace and speaking to workers much more difficult for unions to navigate and waste union representatives' time and other union resources. Critically, they go against the development of relationships based on trust and respect that is at the heart of the

principles set out in the consultation document. The TUC believes that they should be banned outright, which is achieved by removing the second test.

Question 13 – Should the government extend the time a complaint can be made in relation to an unfair practice to within 3 months of the date the alleged unfair practice occurred?

There can be circumstances in which it is not practical to bring a complaint of unfair practices within the first working day after the closure of the recognition ballot. We would support an extension of the deadline for doing this but believe that three months is longer than is needed and could lead to a period of uncertainty following a recognition ballot which could detract from constructive engagement in next steps to establish collective bargaining. We would suggest that extending the deadline to two weeks after the closure of the recognition ballot would be sufficient.

One reason for our caution on this point is a concern that as employers are also able to take cases of unfair practices, hostile employers that have lost a ballot may seek to use this process as a means through which to delay the implementation of collective bargaining. We would support this being changed so that the requirements on unfair practices apply only to employers and not trade unions, in line with other countries.

Question 14 – Do you agree or disagree with the proposal to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund? Please provide your reasoning.

We agree with the proposal to remove the requirement.

Whether a union operates a political fund and the ends to which it is put is an internal matter for a trade union.

If a member does not want to contribute to their union's political fund, they will continue to be able to opt out.

If members do not want their union to operate such a fund, then they can use its democratic structures to make their views known and seek change.

We further note that the existing requirement is likely to be contrary to Article 11 of European Convention given the way it interferes with freedom of association.

Running a ballot also places a significant and unnecessary cost on trade unions.

As the government considers this matter it should also look at again at the requirement that all changes to political fund ballot rules need to be approved by the Certification Officer, in addition to approval by a union's Executive Committee or annual conference. This applies even to administrative changes such as a change of address for the Certification Officer.

This should be reformed to remove the requirement for the Certification Officer to approve changes to political fund rules by the union, so long as those changes are

compliant with legislation. At a very minimum the Certification Officer should not be required to sign off administrative changes to rules.

Question 15 – Should trade union members continue to be reminded on a 10-year basis that they can opt out of the political fund? Please provide your reasoning.

We believe that such a reminder is unnecessary.

It would be an additional regulatory burden on trade unions.

Rules relating to unions' political funds already set out clearly that members can object to contributing to the political and how to obtain an exemption notice. These rules are readily available on trade unions' websites.

It is not at all clear to us why such a process as suggested in this question would be required nor that it would generate much of a response from members.

Question 16 – Regulations on political fund ballot requirements are applicable across Great Britain and offices in Northern Ireland belonging to trade unions with a head or main office in Great Britain. Do you foresee any implications of removing the 10-year requirement for unions to ballot their members on the maintenance of a political fund across this territorial extent?

We do not foresee any problems.

We would be keen that the Northern Ireland government remove the 10-year renewal requirement as well.

Question 17 – How should Government ensure that our modern framework for industrial relations successfully delivers trade unions a meaningful mandate to support negotiation and dispute resolution?

The Employment Rights Bill reverses virtually all of the Trade Union Act 2016 and repeals the Strikes (Minimum Service Levels) Act 2024.

These are vital steps towards developing an industrial relations framework that encourages employers to negotiate with trade unions over issues of workplace conflict, rather than rely on legal blocks to worker action.

In particular, removing the additional threshold requirements for taking industrial action contained in sections 2 and 3 of the Trade Union Act 2016 is significant. Industrial action is a last resort for trade union members. After all, workers usually suffer a significant loss of income.

A positive vote in favour of industrial action does not mean that industrial action will be taken. However, it is reflective of the strength of workers' feelings and their willingness to take action, such as withdraw their labour, to achieve a fair settlement

Therefore, a vote for industrial action can give real power and weight to union negotiations and help to kickstart negotiations when progress has stalled. In a great number of situations, the mere vote of members for industrial action is enough to prompt a settlement even before any action has been taken. An effective industrial action regime, without artificial barriers, is part of the framework needed for effective collective bargaining.

It is notable that during the period thresholds have been in place, there has been no evidence of an improvement in industrial relations. Industrial action thresholds are not an effective means of achieving this goal and should be removed. Any attempt to use additional thresholds as a tool to seek to achieve the objective of ensuring a meaningful mandate would be ineffective.

It remains the case that a trade union and its representatives will want to know that industrial action has strong member support in order for it to be effective, no matter what the legal thresholds are.

Likewise, workplaces where industrial action votes have been defeated by artificial hurdles, are likely to be workplaces where workers continue to feel discontent. Therefore, preventing workers from threatening industrial action does nothing to improve industrial relations. This can only be achieved by successful negotiation.

The continued use of additional thresholds would also be at odds with the commitment made by the government to repeal the Trade Union Act 2016. The anti-democratic nature of those thresholds was a key reason for union and wider civil society opposition to the legislation.

We also note the repeated concerns expressed by the International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations on Section 3 of the Trade Union Act 2016 governing the additional thresholds in sectors deemed to be "important public services". On several occasions it has asked previous UK governments to review that element of the legislation.[6]

By making it harder for unions to take industrial action, these provisions distorted already lopsided power in the workplace. Their repeal will go some way to addressing the imbalance. This must not be undermined by the imposition of additional thresholds that serve only to weaken workers' bargaining power.

With their repeal, some unions may wish to put provisions in place to ensure that any proposed industrial action has the support of a significant proportion of the workforce

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[6] International Labour Organisation Committee of Experts on the Application of Conventions and Recommendations (2023). *Observation (CEACR) - adopted 2023, published 112nd ILC session (2024) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom of Great Britain and Northern Ireland (Ratification: 1949)* https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:4378461,102651

beyond a simple majority. This is a matter for those trade unions' members. It should not be a matter for government.

After all, with repeal of the 2016 Act, any action will still require majority support from the relevant workforce and any action is unlikely to be effective without the strong backing of members.

It should be noted that even after these reforms, British law will continue to place tight restrictions on the purposes for which industrial action may be taken, as well as the procedures that must be followed in advance, while also banning all forms of political and solidarity action. Removing these additional thresholds simply brings the UK more towards the international mainstream.

The TUC also calls on the government to examine the definition of "trade dispute" in British trade union law which is increasingly out of step with the structure of the modern economy with its often lengthy labour supply chains.

It has been well documented that the grounds for taking industrial action in the UK are much narrower than in many continental European countries.[7]

The current definition is too limited, failing to allow workers in the same labour supply chain to take industrial action in support of their colleagues or engage in disputes with a future employer occasioned by a TUPE transfer.

This was revealed as long ago as 2007 when BA sold off its in-house catering arm. When there was a dispute there due to widespread dismissals, staff at BA were unable to take official action in support because they now had separate employers.

Likewise, other maritime and dock workers were unable to take action in support of the illegal dismissals of 800 workers by P&O Ferries in 2022. This prompted the International Labour Organisation's Committee on Freedom of Association to highlight the implications of the situation for trade union freedom and the government's obligations under ILO Convention 87.

Question 18 – Do you agree or disagree with the proposed changes to section 226A of the 1992 Act to simplify the information that unions are required to provide employers in the notice of ballot? Please explain your reasoning.

Trade unions are of the view that there should be no requirement for them to issue a s226a notice. There is already provision in legislation for unions to provide employers with details of the result of any ballot and to give notice of any action.

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[7] Bogg, A. (2023). *The Right to Strike, Minimum Service Levels, and European Values* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4410323

We note too that the European Committee of Social Rights stated that "the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, was excessive".[8]

As a result, the committee declared that UK law does not conform with Article 6 of the European Social Charter 1961. This government should be seeking to bring British law into line with the country's international commitments.

This requirement provides an employer with a mechanism for challenging the validity of a ballot by seeking to claim a technical breach of the law. This is a distraction from seeking to resolve the issues in dispute.

It also provides the employer with a prolonged period to prepare to mitigate the impact of industrial action and therefore tilts the balance of power further in their favour.

However, if the notice is to be retained, we agree with the proposal to remove the items referred to from the notification requirements.

Question 19 – Do you have any views on the level of specificity section 226A of the 1992 Act should contain on the categories of worker to be balloted?

It is important that the legislation allows unions to list categories by reference to its usual categorisation.

These should be general job categories and it should be accepted that this might be by occupation, grade or pay band.

It should not be expected of a union to provide any more specific information even if it holds it.

Question 20 – What are your views on the proposal to amend the requirement that unions should provide information on the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable'?

We don't see any reason for a specific timeframe to be proposed.

Question 21 – What do you consider is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot?

It should be for the union to determine when and how to advise members and the employer of the outcome of the ballot, which would occur before any action took place.

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[8] European Committee of Social Rights (March 2023). *Conclusions XXII-3 (2022) United Kingdom*

There is no reason for there to be statutory requirements on this matter which simply provides another avenue for legal challenge to the action.

If the government is determined to provide a legislative requirement, we think that three working days after the close of the ballot would be the minimum timeframe.

A failure to notify the result within a particular timeframe should not be sufficient to invalidate the ballot. That would be a disproportionate sanction.

Question 22 – What do you consider are suitable methods to inform employers and members of the ballot outcome? Should a specific mechanism be specified?

As above, it should be for the trade union to determine the best method to inform members and the employer.

If the government is determined to maintain a legislative requirement, placing the result on a prominent position on a trade union's website should be sufficient.

After all, union members and employers will know that a result is imminent, so further requirements are unnecessary.

However, unions should be able to use additional mechanisms if they wish to.

Anything more onerous than this would simply provide a tool for a hostile employer to seek to disrupt the action.

Question 23 – Do you agree or disagree with the proposal to simplify the amount of information that unions must provide employers in the industrial action notice? Please explain your reasoning.

We agree that there is a need to simplify the amount of information unions must provide.

The more information that is required, the more opportunity there is for a hostile employer to challenge the action on technical grounds.

This can relegate the importance of resolving the dispute at hand.

Question 24 – What are your views on the degree of specificity section 234A of the 1992 Act should contain on the categories of worker?

It is important that the legislation allows unions to list categories by reference to its usual categorisation.

These should be general job categories and it should be accepted that this might be by occupation, grade or pay band.

It should not be expected of a union to provide any more specific information even if it holds it. This would put it in the position of assisting an employer against the interests of its own members.

Question 25 – Do you agree or disagree with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months? Please explain your reasoning and provide any information to support your position.

Unions require a democratic mandate for industrial action.

Without member support industrial action will be ineffective.

There is a strong risk with the imposition of a mandate limit that members will feel they need to take action early on while the mandate is still active instead of focusing on resolving the conflict.

We urge the government to conduct a review of this aspect of the legislation to examine whether a mandate expiry date is required at all.

If the government position is to maintain a mandate, the shortest limit that should be considered by the government is 12 months.

Question 26 – What time period for notice of industrial action is appropriate? Please explain your reasoning.

Employers will be aware of impending industrial action long before it happens. As it stands, there is a requirement for seven days' notice of ballot, followed by a ballot period, and then the period of notice of action. This stands in stark contrast to most other OECD countries where the rules are more straightforward.[9]

By allowing, say, 14 days' notice, there would be a disproportionately long period of time before action takes place.

Given that there is effectively already significant notice for employers, we believe a period for notice of industrial action is unnecessary.

If the government is determined to retain some legislative requirements in this area, then reverting to seven days' notice of industrial action would be adequate.

Question 27 – Which (if any) of the options provided do you agree with in terms of modifying the law on repudiation? Please explain your reasoning.

We agree with the government that the current law on repudiation is flawed.

The law as it is stands only provides protection for workers and trade unions in narrowly-drawn trade disputes and if the union has followed a highly prescriptive set of measures to ensure the actinon is deemed lawful.

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[9] Deakin S. and Barbakadze, I. (2024). *Falling behind on labour rights* (TUC)

The consequences of taking unofficial industrial action are severe. Most notably workers taking part have no right to complain of unfair dismissal, save in limited circumstances.

Having additional requirements on trade unions to repudiate action is unnecessary and can cause conflict.

Where industrial action is being considered, feelings in the workplace will be strong.

If any question of unofficial action emerges, a union repudiating an act of its members according to the current requirements is hugely divisive. Crucially, it does nothing to resolve the issues at the heart of the dispute.

We therefore urge the government to remove the requirement for unions to repudiate unofficial action as introduced by the Trade Union Reform and Employment Rights Act 1993.

Question 28 – Currently the notice by the union is prescribed by legislation. Do you think that prescription of the notice should remain unchanged? If not, what changes do you propose?

See our answer to question 27.

Question 29 – Do you agree or disagree that the current legislation on repudiation should be left unchanged? Please explain your reasoning.

See above our answer to question 27. The current legislation should be repealed.

Question 30 – Do you agree or disagree with the Government's proposal to amend the law on 'prior call' to allow unions to ballot for official protected action where a 'prior call' has taken place in an emergency situation? Please explain your reasoning.

We agree there is a need to change the law on prior call.

However, we are concerned that the proposals set out by the government are too narrowly drawn.

Unions should be able to ballot subsequently to take official protected industrial action where employees had previously walked out.

The consultation provides that the ability to ballot for protected industrial action in that situation would only apply 'so long as that action covered the issues in the emergency situation that led to the walkout in the prior call'.

That still risks leaving a situation that doesn't fall under the narrow parameters of an "emergency situation" where a union is prevented from balloting on any action arising out of the prior call.

That is undesirable because it provides little lawful outlet for workers to express and resolve their grievances.

At the moment the law is so widely drawn that it can prevent a union for balloting for industrial action in any way connected with the action arising out of the 'prior call'.

Question 31 – What are your views on what should be meant by an "emergency situation"?

We think that the appropriate threshold for an 'emergency situation' should be 'circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety' (see section 44(1)(c) Employment Rights Act 1996).

But as set out above, we urge the government to consider a wider reform.

Question 32 – Are there any risks to the proposed approach? For example increased incidences of unofficial action or of official action which does not have the support of a ballot and is taken without the usual notice to employers? Please explain your reasoning and provide any information to support your position.

We wouldn't expect such changes to lead to more unofficial action.

Workers only take strike action as a last resort.

The consequences for an individual worker of taking unofficial action can still be severe.

Right of access

Question 33 – Do you agree or disagree with the proposed approach for the CAC to enforce access agreements? Please explain your reasoning.

The UK's obligations under Article 4 of ILO Convention No.98 on the Right to Organise and Collective Bargaining provide a useful starting point and underpinning for policies on access: '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.'

Union rights to access workplaces are critical to extending collective bargaining, particularly in the private sector, where union density and collective bargaining coverage is low. We are concerned that while a right of access will be an important measure to increase workers' opportunities to benefit from union representation, the detailed process for access involving the CAC set out in the ERB may provide opportunities for employers to frustrate or delay union access. An effective enforcement regime is absolutely critical to make the proposed process for access work

effectively and ensure that employers are not able to use the system to effectively veto union access. We welcome the inclusion of this area in the consultation and urge the government to act to strengthen the proposals on access as currently set out in the ERB. As set out in answer to question 10 above, we also believe that default or standard access agreements that allow unions sufficient access to carry out their role in terms of meeting, representing, recruiting or organising workers and facilitating collective bargaining, would support the smooth working of the proposed system).

We believe that to work effectively, the enforcement process must

- act as a deterrent to employers delaying or frustrating access;
- be timely to avoid the significant waste of union time and other resources that takes place when employers act to delay and frustrate access;
- be proportionate to the size of the employer and the scale of the breach, including whether it is a first or repeat breach, in order both to act as an effective deterrent and reflect the severity of the breach;
- compensate the union for time and resources wasted by employer intransigence within the access process.

We do not see the need for a four-stage process with different consequences depending on the stage, and believe it will make the enforcement of access unnecessarily long and cumbersome. We would support the process set out in the consultation document being changed in the following ways:

- The CAC should be able to issue a penalty at Step 2, in other words, after an initial breach, rather than waiting for a repeat offence to occur.
- Parties should be able to make as many additional complaints as are merited by the other party's actions, with increasingly severe consequences for subsequent breaches.
- A CAC order or declaration given at Step 2 should be able to be relied upon as though it were a Court Order. We do not see why this should only be the case for repeat offences and are concerned that without stronger sanctions in place hostile employers will delay and frustrate access.
- Penalty fines should not be used as an alternative to using the legal system to enforce access – in other words, issuing a penalty must not release the employer from their obligations to provide access.

Question 34 – Do you have any initial views on how the penalty fine system should work in practice? For example, do you have any views on how different levels of penalty fines could be set?

As set out above, we believe that the size of the penalty fines required should reflect both the size and financial resources of the employer; this is important to ensure that the penalties act as a genuine deterrent and that the penalties are proportionate within

the body of employers in terms of their impact. One option would be to follow the approach taken for enforcement of GDPR, where the Information Commissioner can levy fines up to the higher of £17.5m or 4% of annual worldwide turnover.

In addition, penalty fines should reflect the scale of the breach, including whether it is an initial breach or the latest of a long line of breaches. Where breaches are clearly the result of employer hostility and an unwillingness to deal constructively with unions or comply with legal requirements, this should be reflected in higher fines.

There are examples of employers that have used very significant financial resources to thwart union access and recognition. It takes significant resource for unions to organise workers in the face of such employer hostility; yet it is often these workers who most need the protection of unionisation to come together to challenge abusive practices and poor working conditions. We believe that fines for breaches of access rights should be paid to unions; this would compensate them for the additional costs they incur when employers delay and frustrate access. It is in the public interest that unions should organise the most vulnerable workers employed by the most anti-union employers and the costs of employer intransigence should not be borne by scarce union resources, which are ultimately paid by individual workers' subscriptions.

Question 35 – Do you think the proposal for a penalty fine system is proportionate or not, and would it be effective? Please explain why.

We believe the proposal for a penalty fine system is an essential part of an appropriate enforcement system. To be proportionate, the level of fines should reflect the financial resources of the employer and the scale of the breach. To be effective, the level of the fines must be set sufficiently high to act as a genuine deterrent.

It is important, however, that issuing penalty fines is not a substitute for other enforcement action to ensure that employers comply with their legal duties to facilitate union access to workplaces. Employers should not be able to buy their way out of their responsibilities. A system that allowed this would bake in inequality in workers' employment rights, depriving those working for hostile employers with large financial resources of their right to unionisation and collective bargaining.

Question 36 – Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a CAC order requiring specific steps to be taken (Step 2 above) be able to be relied upon as if it were a court order? What other approaches would be suitable?

The TUC believes that CAC orders made after an initial complaint (Step 2 in the proposal) should be able to be relied upon as if it were a court order. As set out in response to question 33, we believe that initial complaints and subsequent complaints should be subject to the same enforcement system, though, as set out in response to question 34, it would make sense for fines to become higher with subsequent breaches.

Going further and next steps

Question 37 – Are there any wider modernising reforms relating to trade union legislation that you would like to see brought forward by the government? If yes, please state these and why.

The TUC welcomes this opportunity to propose additional reforms to improve and modernise trade union legislation and ensure that it serves its core purpose of facilitating the ability of workers to make effective use of their right to unionise and bargain collectively with their employer.

Expanding the scope of collective bargaining

Collective bargaining enables workers to negotiate collectively with their employer over issues that affect their working lives. It is essential to moderate what can otherwise be an entirely top-down relationship, with those affected by decisions given no part in making them or having their interests taken into account.

Many unions and employers conduct collective bargaining in a way that enables anything that one party brings to the table to be discussed, allowing unions to raise issues of concern to their members and employers to raise issues that are of concern to them. This will often supplement established areas of discussion, including on pay and pensions, working time and holidays, equality issues (including maternity and paternity rights), health and safety, grievance and disciplinary processes, training and development, work organisation, including the introduction of new technologies, and the nature and level of staffing.

Ensuring that collective bargaining is sufficiently broad in scope is fundamental to enabling people to have an effective voice within their working lives. It is also fundamental to achieving the full benefits that collective bargaining can bring for workers and employers. However, where employers do not recognise unions voluntarily for collective bargaining but are compelled to do so using the statutory recognition route, they are only required to bargain over pay, hours and holidays. Important though these issues are, they are only part of the remuneration and working practices that affect workers.

We propose that the scope of collective bargaining as set out in Schedule A1 3 (3) should be expanded to include pensions, equality issues (including maternity and paternity rights), health and safety, grievance and disciplinary processes, training and development, work organisation, including the introduction of new technologies, and the nature and level of staffing.

- **Pensions** are often referred to as deferred wages and as such are a vital element of overall remuneration. Workplace pensions play a key role in the government's pensions policies and if workplace pensions are going to make a meaningful contribution to people's retirement incomes it is essential that workers can bargain with their employer over pension quality and contribution rates.

- The exclusion of **equality issues (including maternity and paternity rights)** from the scope of collective bargaining is an anachronism that should be urgently rectified. Collective bargaining on equal opportunities increases the likelihood of workplaces having equal opportunities practices in place[10] and unionised workplaces have more work-life balance measures than comparable non-unionised workplaces – the stronger the union presence in a workplace, the more work-life balance practices it is likely to have. And employers are more likely to recognise their responsibility for addressing the work-life balance of their staff, and less likely to say it is the responsibility of the individual staff member, in workplaces with unions and collective bargaining than in similar but non-unionised workplaces.[11] The exclusion of equality issues from the collective bargaining agenda risks cementing outdated practices and reinforcing gender, ethnicity, disability and social pay and seniority gaps within organisations.
- **Health and safety** is critical to the interests of workers and employers. Having designated workforce health and safety representatives leads to lower health and safety risks for workers compared with comparable workplaces without health and safety representatives[12]. The positive role of workplace health and safety representatives is reflected in the Safety Representatives and Safety Committees Regulations 1977, which require employers that recognise unions to consult designated health and safety representatives on health and safety matters affecting the workers they represent. This falls short, however, of a requirement to negotiate. Given the critical importance of health and safety issues, which can be life-critical and have significant impacts on workers' health, it is extremely problematic that representatives' rights are limited to consultation. Ensuring that collective bargaining includes health and safety issues would plug a significant regulatory gap and create greater consistency between different parts of the regulatory system.
- Ensuring that **grievance and disciplinary processes** are fair, transparent and work effectively is key to upholding workers' rights at work and enabling disputes to be resolved without recourse to the Employment Tribunal system, with all the costs and delays that this entails. Research shows that disciplinary procedures are more systematic in workplaces with recognised unions and more likely to follow the three

[10] Hoque K and Bacon N (2014) "Unions, joint regulation and workplace equality policy and practice in Britain: evidence from the 2004 Workplace Employment Relations Survey", Work, Employment and Society, 28, 2: 265-284 in Alex Bryson and John Forth, The added value of trade unions A review for the TUC of existing research, TUC 2017

[11] Professor Alex Bryson (UCL) and John Forth (NIESR), Work/life balance and trade unions Evidence from the Workplace Employment Relations Survey 2011, TUC 2017

[12] Bryson, A. (2016) "Health and Safety Risks in Britain's Workplaces: Where are they and who controls them?", UCL mimeo in Alex Bryson and John Forth, The added value of trade unions A review for the TUC of existing research, TUC 2017

steps recommended by Acas[13] (i.e. setting out the issue in writing, holding a meeting to discuss the issue, and giving the employee the right of appeal). There is also evidence from case studies of the role that union representatives play helping to resolve disciplinary and grievance issues.[14] Ensuring that grievance and disciplinary processes are included in the scope collective bargaining would generate mutual benefits for employers and workers in ensuring that these processes work effectively and would complement the existing rights of workers to be accompanied in disciplinary and grievance meetings with their employer.

- **Training and development** is another area where the involvement of unions generates significant benefits for both workers and employers and the wider public interest. Research shows that workplaces with union representation delivered up to 5 days more off-the-job training for those covered by collective agreements than at comparable non-unionised workplaces.[15] It is vital that training and development strategies are delivered equitably across organisations and take account of workforce views and experiences, which can be best achieved by including training and development within the scope of collective bargaining.
- **Work organisation, including the introduction of new technologies**, can have a major impact on those affected, who therefore have the right to a voice in those decisions; and at the same time, workforce engagement is vital to successful organisational and technological change. Research shows that job-related anxiety accompanying organisational change at work is significantly reduced when unions are involved in discussions on the introduction of the changes.[16] And a 2016 survey of nearly 7,500 workers found that while 87% agreed with the statement "I am keen to embrace technology and maximise its benefits", and 73% agreed that technology would improve productivity, less than one in four (24%) said that their employer gave them a say in how technology affects their work.[17] The benefits of including discussion of work organisation and new technologies within the scope of collective bargaining is demonstrated by research showing that unionised workplaces are more likely to employ 'high performance' methods of work organisation, such as

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[13] Wood S, Saundry R and Latreille P (2014) "Analysis of the nature, extent and impact of grievance and disciplinary procedures and workplace mediation using WERS 2011", Acas Research Report 10/14, London: Acas in Bryson and Forth 2017, op cit

[14] Professor Alex Bryson (UCL) and John Forth (NIESR), The added value of trade unions New analyses for the TUC of the Workplace Employment Relations Surveys 2004 and 2011, TUC 2017

[15] Professor Alex Bryson (UCL) and John Forth (NIESR), The added value of trade unions New analyses for the TUC of the Workplace Employment Relations Surveys 2004 and 2011, TUC 2017

[16] ibid

[17] The productivity puzzle' A view from employees, A Smith Institute survey supported by Prospect, BECTU, USDAW, Community, the FDA, the Association of Teachers and Lecturers, and the Society of Radiographers March 2016

team-working and problem solving groups, than non-union workplaces[18]. Including work organisation, including the introduction of new technologies, within the scope of collective bargaining would also support the implementation of the commitment in Make Work Pay that 'proposals to introduce surveillance technologies would be subject to consultation and negotiation, with a view to agreement of trade unions or elected staff representatives where there is no trade union'.

- **The nature and level of staffing** is perhaps the employment-related issue with the greatest potential impact on workers. This is reflected in the requirements to consult when collective redundancies are being made. But proposals to change staffing levels or roles have no less impact on the workers affected when they are made in smaller numbers. Including this area from the scope of collective bargaining would give workers and their representatives the opportunity to feed in their views and suggestions for how jobs and roles can be developed in order to protect the interests of the workforce while ensuring the sustainable success of the organisation.

Digital access

Currently, the Employment Rights Bill includes provisions for physical access to workplaces, but does not include provisions to give unions digital access to workplaces. The ability of unions to contact workers though digital and other electronic means is an essential part of a modern industrial relations system and it is vital that this gap should be rectified. The TUC would support a broad right of digital access being included in primary legislation, and the development of more detailed provisions in secondary legislation.

Why we need digital access rights

The Employment Rights Bill as drafted defines access as "physical entry into the workplace". However, relying on physical entry to workplaces to communicate with workers, while vitally important, is insufficient to meet the policy intention. This is because:

- Many workers work remotely and are rarely or never based at a workplace site.
- Varying shift patterns, workers having work duties across different sites, the need to ensure that reception and phones are covered and other work-related requirements mean that it is often not possible to find a time and place that enables all relevant workers to meet with unions at a workplace.
- Where physical access is the main way of communicating with workers, digital access is an essential component of making this work, as it allows the union to

[18] Askenazy P and Forth J (2016) "Work organisation and HRM – does context matter?", in T Amossé, A Bryson, J Forth and H Petit (eds) Comparative Workplace Employment Relations: An Analysis of Britain and France, Basingstove: Palgrave Macmillan in Bryson and Forth, 2017, op cit

inform workers of proposed dates and times of meetings, send introductory and follow-up information and communicate between meetings. It is very hard to make physical access rights work effectively without digital communication.

Access rights that exclude digital access and electronic communication would be incomplete and, given the reliance of most employers and workers on digital communication methods, unworkable.

It is vital that this is addressed by including explicit reference to digital access rights within the Employment Rights Bill. Explicit reference to digital access is important to create clarity for employers and unions that access rights include electronic communications alongside physical access to workplaces. A right to digital access could be supported by more detailed guidance on what digital access is and how it may be used set out in secondary legislation or statutory guidance.

It will be important that rights to digital access in primary legislation are set out at a high level so that they can encompass future developments in communications.

Precedents for digital access rights

There are significant precedents for digital access rights.

Where unions currently have rights of access, which is in the run up to statutory recognition ballots, Schedule A1 of TULCRA stipulates that the employer must "give to the union (or unions) such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to inform the workers of the object of the ballot and to seek their support and their opinions on the issues involved."

The statutory Code of Practice Access and unfair practices during recognition and derecognition ballots (henceforth Code of Practice) sets out how existing rights of access in the run up to recognition ballots should work. The Code of Practice makes it clear that the union's access methods should be able to mirror those of the employer:

"It is reasonable for the union to request information from the employer to help it formulate and refine its access proposals. In particular, the employer should disclose to the union information about his typical methods of communicating with his workforce and provide such other practical information as may be needed about, say, workplace premises or patterns of work. Where relevant to the union in framing its plans, the employer should also disclose information about his own plans to put across his views, directly or indirectly, to the workers about the recognition (or derecognition) of the union." Explicit reference to email is made in this section, making it clear that this is one of the methods that may be included.

The Code also says that:

"the employer's typical methods of communicating with his workforce should be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period."

This is said in the context of the location and frequency of meetings, reflecting the fact that the Code of Practice's was published in 2005 and has not been updated since. But the Code does make clear that electronic communications can be used, saying that:

"Campaigning can also be undertaken by circulating information by e-mails, videos or other mediums."

In practice, access agreements in the run-up to a recognition ballot generally include some digital access as well as physical access, reflecting the prevalence of electronic communication in today's working relationships.

The concept of equivalence in the methods of access is an important and useful principle that should be updated to include the digital and electronic communication methods that are so widely used in working relationships today.

It would be helpful to include the concept of the union also being able to use the 'employer's typical methods of communication', as in the Code of Practice, in primary legislation on digital access rights.

Purpose of digital access

The purposes of digital access rights should be the same as for physical access rights, as they are set out in the Employment Rights Bill:

- to meet, represent, recruit or organise workers (whether or not they are members of a trade union) and/or
- to facilitate collective bargaining.

Extension of Fair Pay Agreements to other sectors

The TUC believes that re-establishing sectoral bargaining in the UK would bring significant social and economic benefits, generating higher wages and improved working conditions for workers, and making a vital contribution to economic growth. We warmly welcome the inclusion of proposals to establish a Fair Pay Agreement in adult social care in the Employment Rights Bill. However, we are very disappointed that as drafted the Bill does not include provisions for Fair Pay Agreements to be extended to other sectors.

Sectoral bargaining was once common in the UK across both the public and private sectors. Within the private sector it has now all but disappeared, with the regulations and machinery that supported it systematically dismantled by the Conservative governments of the 1980s and 90s. However, sectoral bargaining remains common across much of the rest of Europe, while Australia has a system of multi-employer bargaining.

Where it is in place, sectoral bargaining has played an essential role in maintaining collective bargaining coverage. In a major study of collective bargaining, the OECD has concluded that "collective bargaining coverage is high and stable only in countries

where multi-employer agreements (mainly sectoral or national) are negotiated"[19]. Research has also shown that co-ordinated bargaining systems, in which sectoral bargaining is an important element, are particularly successful in generating wider economic and social benefits. OECD research has found that "co-ordinated [bargaining] systems are shown to be associated with higher employment, lower unemployment, a better integration of vulnerable groups and less wage inequality than fully decentralised systems"[20].

We urge the government to include powers in the Bill that would enable Fair Pay Agreements to be applied to other sectors. This could be done by giving powers to the Secretary of State to initiate Fair Pay Agreements in others sectors, and, in order to ensure that the use of such powers was accompanied by appropriate scrutiny, could require that the Secretary of State consult with relevant parties before the power is used.

Remove the three-year limit for reapplying for statutory recognition

Currently, Schedule A1 stipulates that where a union has been unsuccessful in a statutory recognition attempt, it cannot apply again for three years. This applies regardless of how close the vote was or the way in which the employer has conducted itself throughout the process and creates an incentive for employers to engage in unfair practices, knowing that a three-year interval will follow where the union cannot reapply for collective bargaining. During the three-year interval, workers are deprived of their right to unionise and achieve recognition where a majority of the workforce support it.

The TUC does not believe that this three-year interval before a union can reapply for recognition is justified and calls for it to be removed.

Access purposes

The purposes of access in the Employment Rights Bill as drafted specifically excludes organising industrial action. The TUC believes that this exclusion is unnecessary; unions spend a tiny fraction of their time organising industrial action and the core purposes of access are, as set out in the Bill, to meet, organise, recruit and represent workers and engage in collective bargaining. Industrial action is important as a last resort to give weight to union negotiations and some genuine power to the workforce and the ability of unions to organise industrial action is therefore an essential part of the framework needed for effective collective bargaining; it therefore needs to be included within the purposes of access. The exclusion of industrial action could give rise to confusion and heighten conflict at times of tension; for example, what is the line between discussing next steps if a negotiation has reached an impasse, and organising industrial

[19] OECD Working Party on Employment Chapter 4: Collective Bargaining and Workers' Voice in a Changing World of Work, March 2017
[20] OECD Employment Outlook 2018 (page 83)

action? The TUC calls for the exclusion of industrial action from the purposes of access to be removed.

Mandatory Seafarers' Charter

We welcome the government's commitment to introduce a mandatory Seafarers' Charter to strengthen the employment rights and protections for seafarers and urge the government to include enabling powers for this in the Employment Rights Bill.

Independent unions

The Employment Rights Bill, as drafted, grants rights of access to listed trade unions. This would give access rights to organisations that are not independent of the employer. We welcome recently tabled government amendments that specify that such rights apply to independent trade unions, defined as those with a certificate of independence granted by the Certification Officer.

The use of sweetheart deals to prevent independent unions from applying for statutory recognition

Employers voluntarily recognising listed but not independent trade unions for collective bargaining precludes an independent union from successfully applying for statutory recognition.

This issue was raised in relation to PDA vs Boots (2013). It was also used by a subsidiary of Coventry University, which recognised a staff association which it had listed specifically to forestall a statutory recognition application by the UCU. As unions gain access rights and the statutory recognition regime is simplified, there is a danger that employers will increasingly attempt to use 'sweetheart deals' to stymie recognition of an independent trade union.

Schedule A1 should be amended so that the existence of a recognition agreement with a listed union is no longer an impediment to statutory recognition of an independent trade union.

Repeal of wider anti trade union legislation

It remains TUC policy to repeal all anti trade union legislation. This Bill is a significant step forward.