



Department for Business, Innovation & Skills

Consultation on tackling intimidation of non-striking workers response form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The consultation was issued on **15 July 2015**

The closing date for this consultation is **9 September 2015**

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Organisation (if applicable): **Voice: the union for education professionals**

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The form can be submitted online, by email or by letter to:

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 Department for Business, Innovation and Skills
 1 Victoria Street,
 London SW1H 0ET
 Email: labourmarket.consultations@bis.gsi.gov.uk

Please tick a box from a list of options that best describes you as a respondent.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input checked="" type="checkbox"/>	Trade union
<input type="checkbox"/>	Staff association

Other (please describe)

Question 1:

Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?

Refusal to strike is a cardinal rule of this trade union, so most of our members will, at some point, have faced the prospect of being a non-striking worker when colleagues have chosen to strike. Whilst many of our members report that relations with striking colleagues have remained cordial (largely owing to the fact that, during strike action by other unions, our members are advised to carry out their own duties as normal rather than undertake the work of striking colleagues), over half of our members report that they have either witnessed or experienced intimidation of non-striking staff by striking colleagues.

Whilst this sometimes takes place on the picket line (for example, through verbal abuse or putting both staff and students at risk by forcing them into the road in an attempt to block their access to school buildings), much of it occurs away from the picket line, either in the staff room or via social media.

We would like the code of practice to be updated to include banning the taking of photographs of non-strikers crossing picket lines (and posting them online). We also welcome the proposal to seek evidence of what constitutes peaceful picketing.

However, what concerns many of our members is the more subtle intimidation which occurs mainly in staff rooms (or staff offices), which may take the form of repeated verbal taunts (sometimes expressed ambiguously, so as to be difficult to challenge), strained relationships, whispering campaigns, aloofness, withholding cooperation, unfriendly body language, and generally making life difficult.

Whilst much of this may be seen as 'low level' in comparison with the more extreme cases reported recently in the media, it is, nevertheless, insidious and undermines professional relationships whilst, at the same time, being very difficult to manage. It would be very hard to legislate against such behaviour, and we are concerned that introducing statutory penalties for more explicit intimidation may lead to an escalation of these more subtle behaviours, as striking colleagues may feel that they are left with no other recourse to vent their feelings.

Whilst we welcome proposals for regulating picket lines, as long as they are proportionate, we would want to avoid any potential backlash, which could affect working relationships for some time after the strike action has taken place. It would be better to encourage meaningful dialogue between employers and employees rather than hastily passing measures which might provoke those who feel that their right to strike is being unfairly curtailed, thus resulting in more non-strike action which could be more disruptive as it would tend to be more protracted.

Question 2:

The Government is interested in whether there are any further gaps in the legal framework (see Box 1 on page 5) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be a new criminal offence, such as for intimidation on the picket line?

Whilst we would like our members to be protected from cyber-bullying and other intimidatory conduct and are, therefore, open to proposals which would seek to tackle intimidation of non-striking workers, we are sceptical about the extent to which this could be implemented in practice. In the education sector, the real threat derives more from insidious subtle intimidation which is difficult to legislate against and which could be exacerbated by too heavy-handed an approach towards more explicit attempts at intimidation. We would find it difficult to justify introducing a criminal offence in relation to intimidation in a trade union context, as this would indicate a weakness of the law in relation to intimidation and harassment in general. It would be better to strengthen the law in relation to anti-social behaviour in general rather than risk damaging good industrial relations

Question 3:

The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views.

Whilst we agree that strikers should protest by peaceful means, and any form of intimidation is unacceptable, we would acknowledge that what is perceived as intimidation by one person may be interpreted as persuasion by another, and it is very difficult to legislate when distinctions become too subtle. In general, our view is that, whilst there is a need to protect non-strikers and to impose sanctions for infringements by strikers, this would be better achieved through more general legislation rather than legislation specific to picketing. Any significant intimidation should be illegal regardless of the context, so we would be in favour of strengthening the law in general rather than seeking to criminalise trade union activity in particular.

Question 4:

Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?

As Voice is a non-striking union, this is not something that we would need to consider. However, if the intention is to charge all unions additional fees (for example, to cover the cost of extending the powers of the Certification Officer), we would consider this to be unfair as it would penalise moderate unions which choose not to strike.

Question 5:

What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer.

This would not apply to Voice as we are a non-striking union. However, we would urge caution as this proposal could lead to costly legal action (and penalties) for little benefit. The new proposals are complex and confusing in many respects and unions could be faced by challenges from employers on technicalities. As much picketing is conducted by volunteers, who cannot be expected to know all the details of what would appear to be very intricate legislation, minor or innocent mistakes could lead to serious consequences which are disproportionate to the alleged crime. We would prefer the emphasis to be on encouraging meaningful dialogue to resolve trade disputes rather than legislating on the minutiae of picketing.

Question 6:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?

This would not apply to Voice as we are a non-striking union. However, we would foresee a greater problem in unions ensuring that their volunteer members are fully compliant with any plans which are published. Also, whilst it is not common in the education sector, we are aware that some protests in other areas (generally, civil rights protests, rather than trade union protests) can occasionally be hijacked by anarchistic groups who are intent on causing havoc and have no legitimate link to the planned protest. Any legislation must ensure that penalties for such behaviour are applied to those duly responsible rather than to the organisations which are protesting peacefully.

Question 7:

What are your views on the Government's proposal to strengthen accountability?

It seems odd to require unions to report on their own misdemeanours. As the consultation document states, this is likely to result in unions seeking to dissociate themselves from activity to which they have been publicly linked. In any case, it would significantly change the role of the Certification Officer, who will not be able to take on new regulatory powers within existing resources and will, therefore, need to levy additional charges on all unions, most of which will not have been involved in strike action (and some of which, Voice included, will never be involved in such action). This would seem to be a case of attempting to solve one injustice by creating another.

Question 8:

Do you have any other suggestions how union accountability and/or transparency could be improved?

Unions are accountable to their members. It is, therefore, up to members to determine, via democratic means, how to hold each other (and the union in general) to account. Trade union law is already sufficient to ensure that unions have appropriate procedures in place for self-governance, and lack of accountability or transparency can be legitimately challenged by aggrieved members.

Question 9:

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?

This would not apply to Voice as we are a non-striking union. We would, simply, be required to make a nil return.

Question 10:

How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.

Apart from comments that we have already made, above, in relation to modernising the Code to cover social media and providing a clearer description of peaceful picketing, we have nothing further to add.

Please use this space for any general comments that you may have. Comments on the layout of this consultation would also be welcomed

We are grateful for the opportunity to contribute to this consultation. As a moderate, non-striking, union, we are concerned that legislation which provokes the more militant unions could be counter-productive in triggering more industrial unrest, resulting in more action short of strike action. In the education sector, where strike action is quite rare, and is often limited to one-day strikes, other types of industrial action are often more harmful and more protracted and may make it more difficult for moderate unions to engage in constructive dialogue with employers (especially if other, more militant, unions refuse to participate in collective bargaining, or attempt to use this as an opportunity to escalate a trade dispute by engaging in action short of strike action).

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



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