

## TRADE UNION BILL

### Memorandum from Voice, the Union for Education Professionals

#### EXECUTIVE SUMMARY

- As a non-striking union, Voice is keen to make its position known on this issue.
- A key concern is that the Trade Union Bill may create perverse incentives which will increase the profile and influence of more militant trade unions at the expense of those which are more moderate.
- We are opposed to the removal of Regulation 7 as we believe it risks compromising the moderate and neutral stance taken by our non-striking members when other unions are taking industrial action.
- Removal of Regulation 7 would also put agency staff in a difficult position as many such staff are unionised and so would not want to act as strike-breakers.
- Most employers would not want to run the risk of compromising children's safety, or the quality of their education, by hiring temporary staff at short notice.
- We believe that there is very limited scope for the recruitment of agency workers to cover for strikers in the education sector.
- We do not accept the figures, cited by the Government, of between 17% and 27% of working days lost due to industrial action being potentially covered by temporary agency workers; this is grossly over estimated and could not be realistically achieved in the education sector.
- Most employment agencies are likely to continue to abide by the international convention which regards it as poor practice to supply agency workers to replace strikers.
- Whilst many of our members have experienced or witnessed intimidation of non-strikers by striking colleagues, much of this has happened away from the picket line, either in staff rooms or on social media.
- Whilst we would favour the code of practice being updated to include banning the taking of photographs of non-strikers crossing picket lines (and posting them online), we do not believe that legislation can address the, often, subtle types of intimidation which are of most concern to our members.
- We favour measures to promote meaningful dialogue between employers and employees rather than hastily passing measures which might provoke a potentially destructive backlash.
- It would be better to strengthen the law in relation to anti-social behaviour in general rather than risk damaging good industrial relations by criminalising trade union activity in particular.
- 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.
- Many of the proposals are complex and confusing and may be difficult to enforce with due proportionality and fairness in practice.
- Additional fees needed to cover increased powers and duties of the Certification Officer would unfairly penalise moderate unions which choose not to strike.
- Current legislation is sufficient to ensure that trade unions are democratic and accountable.
- Proposals in relation to facility time, if implemented, are likely to have a detrimental impact on industrial relations within the education sector.
- Many of the proposals are regressive rather than progressive and fail to learn the lessons from both history and research on how to reduce industrial strife and promote good relations between government, employers and workers.

#### INTRODUCTION

Voice: the union for education professionals is pleased to have the opportunity to respond to the Public Bill Committee's call for written evidence on matters contained within the Trade Union Bill. Voice is an independent trade union with members (including both teaching and non-teaching staff) across all sectors of education, from nursery to tertiary. Founded in 1970 as the Professional

Association of Teachers, the organisation re-branded as Voice in 2008 and now represents education professionals who are prepared to commit themselves to the principle of not striking or participating in any kind of industrial action.

## COMMENTS

1. Voice has submitted responses to the consultations by BIS on tackling intimidation of non-striking workers and hiring agency staff during strike action<sup>i</sup>. The current submission is both complementary and supplementary to those responses. We have not responded to the BIS consultation on ballot thresholds as Voice is a non-striking union, opposed to any form of industrial action, and so would never be involved in balloting members for strike action. Our submission is informed by a survey of our members<sup>ii</sup>.
2. As a moderate, non-striking, union, Voice is concerned that this legislation may provoke those unions which are more militant and could, therefore, be counter-productive in triggering more industrial unrest, resulting in more action short of strike action and also more localised strike action, all of which risks undermining the work and influence of more moderate unions. 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 either action short of strike action or targeted localised strike action).
3. As a non-striking union, we are concerned that removal of Regulation 7 would put pressure on our members to cover for striking colleagues. Our current advice to members is that they should continue with their normal duties but, out of respect for the rights of others, not take up duties laid down by striking colleagues. Many of our members report that they are put under pressure to cover for strikers, and this invariably causes stress, anxiety and general upset, whilst also making it difficult to resume positive working relationships with colleagues once the strike is over.
4. We also have members who are employed as agency staff and, if Regulation 7 is abolished, we would expect their employers to accept that, as a matter of conscience, such members would not want to act as strike-breakers by covering for strikers – and also to understand that they must not suffer unfair discrimination on grounds of their union membership. This point should be made clear in any advice and guidance issued by the DfE and/or BIS.
5. If employers were intent on employing a temporary labour force to cover for strikers, they would currently be hiring workers directly, but there is no evidence of such a practice, in spite of current legislation allowing employers to recruit staff to cover for strikers, providing such workers are hired directly rather than through agencies. Most employers would be cautious about having a large influx of untrained staff on their premises, especially in the education sector, where inexperienced agency staff could only expect to provide a child-minding service rather than know immediately where each child was at in terms of their educational progress (so that they could differentiate their teaching appropriately). There is also a risk that inexperienced agency staff could pose a safety risk to themselves and to the children, and no employer would want to take such a risk.
6. There is very limited scope for the recruitment of agency workers to cover for strikers in the education sector. Agency workers generally seek regular work and very few would be waiting for the odd day when a strike might happen to take place in the world of education. Moreover, many agency staff are members of trade unions and so would abide by their unions' rules in the event of a strike. For this reason, members of striking unions would be unlikely to withdraw from industrial action merely because agency staff might be brought in.
7. Any impact of the removal of Regulation 7 on the wider economy and society in general is likely to be very limited, not only because there is limited scope for the recruitment of agency workers in the education sector but, also, because strike action in the education sector is rare and

short-lived, such that it is not safe to assume that there would be a sufficiently large agency workforce available to offset the safety hazards of schools remaining open in the event of a strike involving large numbers of permanent staff. The figure, cited by the Government, of between 17% and 27% of working days lost due to industrial action being potentially covered by temporary agency workers could not, therefore, be realistically achieved in the education sector, especially as many agency staff are in trade unions (and so would be affected by a strike in the same way that their permanently employed colleagues would be).

8. It is also unlikely that the agency industry would choose to become involved in industrial disputes which were not of their own making. It is generally considered good practice within the agency industry to desist from providing agency workers to cover for those engaged in lawful industrial action. Indeed, most respectable employment agencies abide by paragraph 6 of the International Labour Organisation's 'Private Employment Agencies Recommendation 1997', which guards against the use of agency workers to replace striking employees.
9. As refusal to strike is a cardinal rule of this trade union, 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.
10. 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 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.
11. 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.
12. 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.

13. 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.
14. The proposal that unions should be required to report their plans for strike action would not apply to Voice, as we are a non-striking union. However, we would still 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. 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.
15. The proposal to require unions to report on their own misdemeanours appears odd. 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. If the intention is to charge all unions additional fees, we would consider this to be unfair as it would penalise moderate unions which choose not to strike.
16. 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.
17. Clauses 12 and 13 of the Bill, in relation to facility time, if implemented, are likely to have a detrimental impact on industrial relations within the education sector. The reserve powers to require employers to report on the use of facility time would impose an unnecessary bureaucratic and economic burden on employers and may discourage employers from providing facility time. In the case of academy schools, academy trusts are likely to want to avoid this burden by withdrawing from collective arrangements to participate in the funding of facility time. This would threaten harmonious industrial relations by restricting the extent to which unions are able to engage in collective bargaining, negotiation and consultation with employers, represent individual members, and generally attempt to resolve disputes at an early stage and prevent them from escalating.
18. The reserve power for the government to impose a cap on facility time (clause 13) is likely to have a similar effect. It is not clear what the purpose of this would be, but one of the likely consequences is that it will make it more difficult to engage in positive and constructive dialogue between employer and employee representatives. It would also be a very undemocratic way of operating, using draconian powers to rob employers of their autonomy to determine how they choose to manage employment relations. All of this is regressive rather

than progressive and fails to learn the lessons from both history and research on how to reduce industrial strife and promote good relations between government, employers and workers<sup>iii</sup>.

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<sup>i</sup> see <http://www.voicetheunion.org.uk/index.cfm?cid=1518&page=1>

<sup>ii</sup> The survey asked the following questions: (1) In which area/s of education and childcare do you work? (2) Do you have experience with or have you ever witnessed intimidation of non-striking staff by their colleagues on or off the picket line? (3) How important is it to you that the regulations are updated to protect non-striking staff from all forms of intimidation? (4) What do you think about the proposal to remove Regulation 7 from the Conduct Regulations to allow employers to employ agency staff to cover duties of striking colleagues? (5) In the event of a strike by another union, do you feel your employer will ask/expect you to cover the workload or responsibilities of your striking colleagues? (6) As an agency worker or permanent employee, if asked to cover the workload or responsibilities of your striking colleagues, how would you feel? We would be happy to make a copy of the survey responses available to the Committee.

<sup>iii</sup> See <http://www.gov.scot/Publications/2014/08/4647> for a recent review of progressive workplace policies in Scotland.