

Making Work Pay: Creating a modern framework for industrial relations

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing over 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.
4. We are happy for our response to be published in full.

B. Key points

5. ASCL's main interest in this area is to promote effective industrial relations and to ensure that ASCL, as a trade union, is able to represent our members' best interests in dealings with employers.
6. In general, we agree with the direction of travel and wish to see an industrial relations framework that allows trade unions to organise and bargain collectively without the onerous restrictions imposed by previous legislation.
7. It is ASCL's view of that any additional employer costs which fall to schools and colleges as a result of the Employment Rights Bill must be covered through increases to funding. As public sector bodies, schools and colleges are not able to pass any associated costs on to 'customers' and it is not acceptable that these costs should come at the expense of the education of children and young people.

C. Answers to specific questions

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?

8. ASCL agrees with the four principles.
9. We believe that the emphasis should be on collaboration and promoting effective industrial relations based on dialogue and dispute resolution.
10. As an employer, the government has a key role in modelling this through partnership. We welcome the partnership approach adopted by the DfE that extends beyond the remit of the independent pay review body for teachers and school leaders (the STRB). It is important that this partnership approach reaches across the entirety of state-funded education, and that academies and free schools are included.
11. We believe that the principle of collaboration should be strengthened to include a commitment from the government that it will model best practice and lead the way.

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

12. We believe that encouraging dialogue, negotiation and dispute resolution needs to be at the heart of the new framework. Employers should be encouraged to listen to unions, and unions should be encouraged to negotiate before contemplating industrial action.

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 Central Arbitration Committee (CAC) accepts the union's application for statutory recognition? Please explain your reasoning and provide any evidence on cases that support your view.

13. We agree with the proposal.

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 Central Arbitration Committee (CAC), the union must provide the employer with a copy of its application? Please explain your reasoning.

14. We agree with the proposal.

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 Central Arbitration Committee (CAC) which could not then be increased for the purpose of the recognition process? Please explain your reasoning.

15. We agree with the proposal.

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.

16. No. We have no experience of this.

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.

17. No.

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?

18. It is difficult to see how a recruitment ban could work in practice. We agree with the principle, though, that any new employees should be excluded from the ballot and determination of the size of the bargaining unit.

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 Central Arbitration Committee (CAC) has notified the parties of its decision to hold a trade union recognition ballot?

19. We agree with the proposal.

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

20. No opinion.

Question 11: Once 20 working days have expired, should the Central Arbitration Committee (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?

21. No opinion.

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?

22. We agree with option 1 – unfair practices by employers should always be addressed.

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?

23. Yes, this brings the timeframe into line with most other employment-related matters.

Political Funds

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.

24. No opinion.

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.

25. No opinion.

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?

26. No opinion.

Simplifying Industrial Action Ballots

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?

27. We welcome the proposed changes which will remove arbitrary thresholds for industrial action ballots and the onerous requirements for the provision of information at various stages of the process.

28. We believe that the proposals get the balance right in recognising the needs of employers whilst providing a legal framework for lawful industrial action.

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.

29. We agree with the proposed changes.

30. Currently, the mandatory information supplied by trade unions is used to enable legal challenges by employers to seek to prevent trade unions from balloting for industrial action, rather than being used by employers to be able to plan and make contingencies around any likely industrial action.

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?

31. As above, we believe that the information provided should not be used by employers as a vehicle to thwart legitimate industrial action.

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'?

32. We agree with the proposed changes.

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?

33. No opinion.

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

34. We see no reason why a specific mechanism needs to be legislated for.

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.

35. We agree with the proposed changes.

36. Currently, the mandatory information supplied by trade unions is used to enable legal challenges by employers to seek to prevent trade unions from balloting for industrial action, rather than being used by employers to be able to plan and make contingencies around any likely industrial action.

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

37. Information about category of worker should enable an employer to plan around industrial action but not be used to challenge the legality of action based on a minor technicality.

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.

38. We agree with the proposed changes.

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

39. We would favour a return to seven days' notice. The balance needs to be struck to provide sufficient notice to employers so they can make contingencies but also not to place unreasonable hurdles in the way of union members taking lawful industrial action.

Updating the Law on Repudiation of Industrial Action

Question 27: 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.

40. No opinion.

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?

41. Care should be exercised to avoid the unintended consequence of union members not finding out about their union's repudiation of action and, therefore, rendering themselves liable to action by their employer.

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

42. No opinion

Clarifying the Law on Prior Call

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.

43. We agree with the proposed changes.

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

44. No opinion.

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.

45. We don't believe there to be any substantial risks from the proposal.

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.

46. We agree with the principle that trade unions should have reasonable access to workplaces. Consideration needs to be given to safeguarding issues (of which there are many in an educational setting) and the safety of children and young people must be ensured by the headteacher (or other responsible person) being able to control access to their premises.

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?

47. No opinion.

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

48. No opinion.

Question 36: Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a Central Arbitration Committee (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?

49. It is important that any remedy put forward by the CAC to address issues of union access is enforceable.

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.

50. We welcome the proposal to allow for electronic voting systems to be used for industrial action ballots. This will allow for improved participation in such ballots and will remove an unnecessary impediment to the balloting process.
51. This proposal, whilst welcome, will have little day-to-day impact for the vast majority of unions and their activities.
52. The removal of the requirement for postal ballots for union elections would be much more impactful. Member participation in union executive elections is notoriously low and it would be legitimately expected that voter turnout would improve significantly if they were run electronically.
53. The changes to union recognition, union access and industrial action legislation are timely and necessary. They will not, however, help to shift the dial towards better and more effective industrial relations.
54. The four principles referred to at the start of the consultation will achieve more, so long as they become a reality in workplaces across the UK. It is notable that the majority of the changes being consulted on are related to a narrow band of rights for trade unions to organise and take action. There is little in the proposals to enable and encourage collaboration.
55. It is appreciated that this is difficult to legislate around. We hope that we will see an improvement to the industrial relations landscape through a combination of the public sector leading by example, a more permissive environment for unions to operate, and greater encouragement by public bodies such as ACAS for employers and unions to work together.

D. Conclusion

56. We welcome the proposals put forward to modernise the industrial relations framework in the UK. Whilst the framework is important, it is equally important that the governments finds non-legislative ways of promoting effective industrial relations.
57. We hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

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