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## **Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU)**

### **BECTU**

I'm responding to the above consultation on behalf of BECTU, the media and entertainment union with nearly 25,000 members. We were represented at a meeting with officials yesterday at the TUC, and I understand that responses from attendee unions will be accepted today for consideration.

The Broadcasting, Entertainment, Cinematograph, and Theatre Union wishes to associate itself firmly with the response submitted by the Trades Union Congress, which I understand will be sent to you later today.

In addition, we wish to make a few comments in our own right:

1. We do not understand what problem this piece of legislation is meant to solve. At present our AR21 Annual Return to the Union Certification Officer is prepared by independent accountants and auditors, and as part of this process they perform a thorough audit and reconciliation of our membership list and subscription income. This verifies not only that we have collected and accounted for all monies owed by members, but also identifies whether they are still in membership and contactable. As a union whose membership is more than 50% freelance we have a vested interest in keeping our records up to date in order to collect subscriptions from members, and have no doubt that our processes and systems will stand up to rigorous scrutiny.
2. If the requirement for an annual membership audit certificate becomes statute, we are strongly of the view that qualified auditors, amongst others, should be able to act as independent assurers, and would intend to contract our existing auditors to carry out the work.
3. The need for a meeting of all union members, or an appropriate delegate meeting, before an independent assurer can be dismissed seems unduly onerous. It is not in line with our prerogative in appointing accountants, auditors, and legal advisers, and is likely to become such a severe impediment to changing assurers that competition will be severely restricted in a marketplace that, after all, is going to be very small.
4. The proposed right of the Certification Officer to inspect and copy union membership records should explicitly be subject to a duty of confidentiality and in accordance with Data Protection Principles. We see a glaring contradiction between the CO's new rights, and our current obligation under the Data Protection Act to preserve

confidentiality of members' information. We take this duty very seriously, and routinely expend significant sums of money on technical testing to ensure that our electronic data is secure, and inaccessible to unauthorised parties.

I hope these additional comments can be taken into consideration when you review responses to the consultation.

## **Chantrey Vellacott DFK LLP**



Department  
for Business  
Innovation & Skills

**TRANSPARENCY OF LOBBYING,  
NON-PARTY CAMPAIGNING AND  
TRADE UNION ADMINISTRATION  
BILL**

Certification of trade union  
membership details: discussion  
paper response form

JULY 2013

# Contents

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# 1. Introduction

1. On 17 July 2013, the Government introduced into Parliament the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. The Bill includes measures to deliver assurance that union membership records are kept accurate and up to date through providing an annual membership audit certificate to the Certification Officer and by giving the Certification Officer powers to require production of relevant documents and to appoint inspectors to investigate. Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.
2. The Government's announcement, the Bill and the Explanatory Notes can be found at <http://services.parliament.uk/bills/>
3. At the same time as the Bill was introduced, Vince Cable, the Secretary of State for Business, Innovation and Skills said that he would seek views on the effective implementation of the measures on trade union membership records as well as on what guidance should be provided to ensure that unions can meet the new requirements, with the help of employers where needed. Employers already have a duty to disclose information that is material collective bargaining but the new requirements may have consequences for the kind of information unions may request from employers.
4. This document discusses the provisions in the Bill and invites your views on implementation so that they are fair, proportionate and workable. Details on how to respond are provided at the end of the document.

Issued: 17 July 2013

Respond by: 16 August 2013

Enquiries to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk)

This document is particularly relevant to employers, trade unions and their members, independent scrutineers, solicitors, accountants and auditors.

## 2. Questions

### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

### Q 2. Your name - [REDACTED]

.....

### Q 3. What organisation do you represent (if any)?

Chantrey Vellacott DFK LLP

.....

### Q 4. E-mail address

[REDACTED]

.....

### Q 5. If you are representing an organisation, what type of organisation is it?

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
x	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

## **Section 1 Membership records**

**Q 7. How do you obtain membership details?**

**Q 8. How do you store your membership records?**

**Q 9. How do you keep membership details up-to-date?**

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

Yes

No

**If yes, what were they?**

**Q 11. Will these changes impact on how you collect and maintain membership data?**

Yes

No

**If yes, how?**

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

Yes

No

**If yes, how?**

## Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

Yes  No

**If not, why not?**

**We have ticked “yes” but with significant caveats.**

**As auditors of trade unions we already carry out detailed testing on membership and systems as part of our audit work however our concerns relate to the extent to which our work would need to go beyond that already undertaken.**

**Key questions are:**

**What kind of report would we have to put on the membership audit certificate (what are we signing off?)**

**To whom are we reporting (i.e. to whom do we owe any duty of care?)**

**Point 18 of the discussion document gives a pointer towards the opinion required and suggests it is linked to systems for compiling and maintaining the register however we would welcome sight and input into the wording of the final report.**

**Auditors (or other independent persons) would need to assess their exposure and to whom. If the register is going to be more widely open to public inspection (see later comments) and action then the implications of this will need careful consideration.**

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

Yes  No

**If not, who do you think should do it? Why?**

**There is logic in the auditor acting as the assurer since we already carry out work on the membership systems so the proposals are an extension of that work. If unions wish to appoint someone else then that is their prerogative (although I can't see their solicitors taking this on!)**

### Section 3 Impact on unions

#### Q 15. What will be the costs and benefits to unions?

There will inevitably be a further cost to the unions above and beyond the current annual audit. Depending on the form and content of the report (see point 13) then auditors will need to undertake further specific procedures to enable them to sign off. We will need to assess our risk and that will carry a cost implication in terms of the further work required.

Unions already need to have a membership system that is robust and efficient enough to tell them who their members are. Of course errors can occur (as they can in any membership organisation!) but it has always been in their interests to maintain the register as accurately as possible.

#### Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?

This is impossible to quantify until we see the proposed report and will vary from union to union depending on its size.

#### Q 17. Where do those costs come from?

They will inevitably have to come from the union's reserves. Who else is going to pay them?

## Section 4 Impact on members

**Q 18. What will be the costs and benefits to union members?**

**If costs prove to be significant then subscription rates may need to be reviewed which will impact on members.**

## **Section 5 Impact on employers**

**Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

**Q 20. What types of questions do unions ask employers in relation to union membership?**

**Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

## Section 6 Compliance

**Q 22. What is your view of the remedies for non-compliance with the clauses?**

**The remedies are all well and good – but does the CO have the staff and resource necessary?**

**Point 25 of the discussion document refers to powers of investigation. Is it intended that unions should bear the costs of any such investigation?**

**If “third parties” bring complaints which are investigated and prove groundless is there likely to be any remedy for costs against the complainant?**

**Q 23. Will unions need time to prepare before the new requirements come into force?**

Yes  No

**Why?**

**In point 29 you imply a transition which suggests that unions would first report for year ended 31 December 2014 with certificates filed with the CO alongside the AR21s in 2015.**

**This *should*, if correct, give sufficient time. The preparation will clearly involve knowledge of what is being reported (back to the wording of the certificate) and whether, in their view, they already comply. Auditors may need to consult with their own professional bodies.**

## Section 7 Guidance

**Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

- (a) You refer to maintaining the register that is accurate “so far as is reasonably practical” “TULRCA 24(1)”. It would be helpful if BIS or the CO published guidance based on prior experience of this clause in what is held to be “reasonably practicable”**
- (b) In the first para of the discussion document you say unions should be able to “visibly demonstrate” that they know who their members are. What benchmark or criteria do you envisage to meet this visible demonstration?**
- (c) The wording of the audit certificate and the level of accuracy that this implies is expected.**
- (d) Who we, as auditors, are reporting to.**
- (e) If employers hold records on membership then there needs to be clear guidance for both sides on expectation of information, e.g. unions requesting regular (monthly?) updates on leavers/joiners/changes of address. Even if members are meant to notify unions direct then contacting employers acts as a second check. If this is in place it safeguards a union all the more so it can demonstrate it is taking all practical steps to keep its register up to date.**

## Section 8 Other

**Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

You mention that the changes do not extend to Northern Ireland. Should unions exclude NI members is determining the 10,000 member threshold for self-certification or independent assurer?

What is missing is any protection for a union itself. Many unions have their disaffected member/troublemaker continually going to the CO with complaint after complaint. Unions have learned to live with this and deal with these matters with the CO. Opening up the register seems to increase the likelihood of such actions which will increase the burden on the CO and, potentially, the courts. Having clear guidance on what is "reasonably practicable" would be helpful to all. Perhaps unions themselves should have the right to apply to the court to prevent continuous / malicious actions. There is in law the concept of a "vexatious litigant" which would give protection from such actions and could perhaps usefully apply.

Should unions have the right to recover costs if they are not found to be in breach? There is absolutely no deterrent to complainants in the current drafting.

S24 of TULRCA as currently drafted gives rights to a member relating to his/her entry in a register. As I understand it the proposed legislation enables the general public or other pressure groups to complain to the CO. This leaves unions open to concerted, funded attacks. Has this been foreseen or considered?

Overall cost and benefit implications are hard to gauge at this stage but there will be a cost to unions in providing the certificate. There will be more work because no one is going to sign off these certificates without robust evidence of their work? Too risky otherwise as too politically charged.

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

## 3. How to respond

1. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the response form and, where applicable, how the views of members were assembled. We are seeking your views by **16 August 2013**.
2. For your ease, you can reply online at: <https://www.surveymonkey.com/s/85WLFZF>
3. Response forms can be emailed to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk).
4. Alternatively, you can send written responses to:

Louise Nixey  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

You may make copies of this document without seeking permission. An electronic version can be found at: <https://www.gov.uk/government/consultations/transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper>

### Confidentiality and Data Protection

5. Information provided in response to this document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
6. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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**BIS/13/1051RF**

## **Chartered Institute of Personnel and Development (CIPD)**



# **Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill: Certification of Trade Union Membership Details Consultation**

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Submission to the Department for Business, Innovation and Skills

**Chartered Institute of Personnel and Development (CIPD)**

**September 2013**

## **Background**

1. The CIPD is the leading independent voice on workplace performance and skills. Our primary purpose is to improve the standard of people management and development across the economy and help our individual members do a better job for themselves and their organisations.
  2. Public policy at the CIPD exists to inform and shape debate, government policy and legislation in order to champion better work and better working lives, especially for young people. Our views are informed by evidence from 135,000 members responsible for the recruitment, management and development of a large proportion of the UK workforce.
  3. Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level. We draw on our extensive research and the expertise and experience of our members on the front-line to highlight and promote new and best practice and produce practical guidance for the benefit of employers, employees and policy makers.
- 

## **General Comments**

4. The CIPD sought feedback from members on the maintenance of trade union membership records, by means of an online survey. A total of 54 respondents answered all or some of the survey questions, with the majority of respondents (68.52%) having Chartered Member status or higher. Respondents worked across a wide range of sectors and industries and undertook a range of professional responsibilities. Please find below a summary of responses received along with the raw survey data at the end of the document.

## **Feedback on survey responses by CIPD members: August 2013**

### ***How far are employers involved in helping to maintain union membership records?***

5. The most frequent answers were “very little” or “not at all”. The most helpful individual comment was: “Unions do ask my organisation for information on their members on occasion; this information though is only known for those members who pay subs via pay roll and there are data protection implications for how such data is used.” Other answers also focused on deduction of subscriptions from payroll, suggesting that this is the main (possibly only) area where employers are likely to become involved with membership records. This also tends to confirm that it is not seen as a strategic issue.

### ***Are you aware of problems with union membership records? If so, can you provide examples?***

6. A predictable mainstream response was “We have no confidence in the accuracy of the numbers provided”. Another respondent made clear that “We don't know who is a member any more unless we contact the unions directly”.
7. The link with payroll was confirmed by the following response: “There can be a lag between asking unions for identifying up to date numbers of members and receiving feedback. In some cases unions do not record which employer members work for so that creates a problem for coming up with definitive lists. Some Data Protection issues sharing union membership information indirectly held by employer.”
8. Several responses drew attention to deficiencies on the part of both trade union and employer in keeping on top of changes.

***Where employers recognise one or more trade unions, how are they involved with the sharing and/or updating of union member information?***

9. Most responses made clear that updating records is a job for trade unions, whereas employers' responsibilities tend to begin and end with the collection of subscriptions.
10. Some employers display a more determinedly hands-off approach, based on their lack of support for union membership. For example, "Although Unite the Union are the recognised union there is no information available from the employer to the employee. There is no mention in induction or training, we have never seen any person from Unite and consequently from 200 employees, only a small handful are members. Most employees are scared of joining a union as this wouldn't look good for promotion or career prospects".

***Where employers have agreed with trade unions to use check-off, what types of questions do unions ask employers in relation to union membership?***

11. The answer from those whose organisations that undertook check-off of union subscriptions was essentially name of employee, pay roll number, job function or title and department.

***How would employers respond to requests from a recognised union for staff details that would help them update their membership record? On what grounds might employers refuse to help?***

12. Many responses referred to data protection constraints. Others emphasised that it is the union's job to look after administration of their membership records. One or two saw no problem with notifying unions of new employees and leavers; but if the union wanted more information on an employee, such as date of birth or home address, that would be refused.

***What impact will the new provisions have for employers? Are they likely to mean an additional administrative burden?***

13. There was a mixed response to this question. The majority of respondents stated that they were either unaware of what the administrative implications of the new provisions would be, or expect that there would be some limited additional administrative burdens.

14. Several commented that any additional impact would be offset by ensuring that any supplementary responsibility lay with trade unions.

***Do you see any connection between the Bill provisions and balloting for industrial action? If so, what impact do you imagine the measures will have?***

15. While many responses did not envisage any connection between balloting and the Bill provisions, several commented that, with more accurate union membership information being held, the provisions would make it easier for unions to ballot members more accurately.

***Do you have any views on who should be an 'assurer' of the validity of union membership data?***

16. The majority of general response to this question was “an independent body, such as ACAS”. A smaller number commented that trade unions themselves should be the “assurer”, with one stating that they should have “legal responsibility for accuracy”.

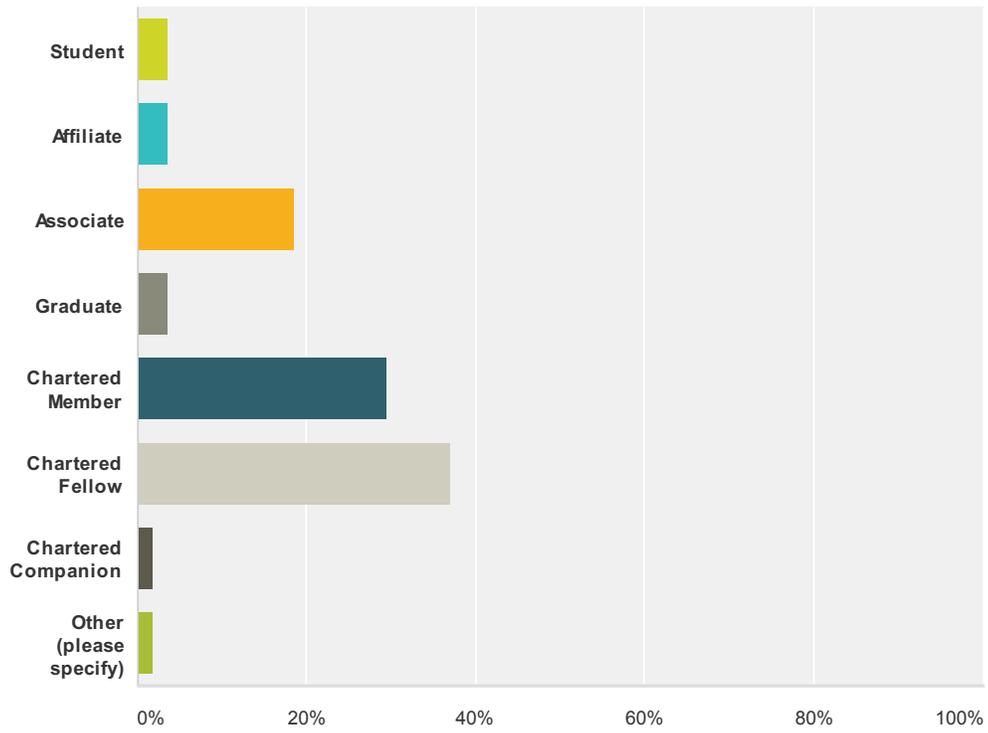
***What kind of guidance might be useful, either for the employer or the Union, to support them in complying with the new requirements and in the sharing, maintenance and updating of membership information?***

17. Most respondents stated that best practice guidance or a code of practice would be desirable. It was commented that guidance clarifying the ownership of the data, the responsibility for maintaining the data and the frequency of updating the data would be useful.

18. The most comprehensive of response stated that “Any guidance documents such as an ACAS guide is always useful, together with flowcharts for different scenarios; covering those who have no/minimal trade union members in their workforce and don’t recognise any trade unions, those who have large numbers of workers as trade union members but don’t recognise any trade unions, and organisations that do recognise trade unions”.

### Q1 Please indicate your current CIPD membership level

Answered: 54 Skipped: 0

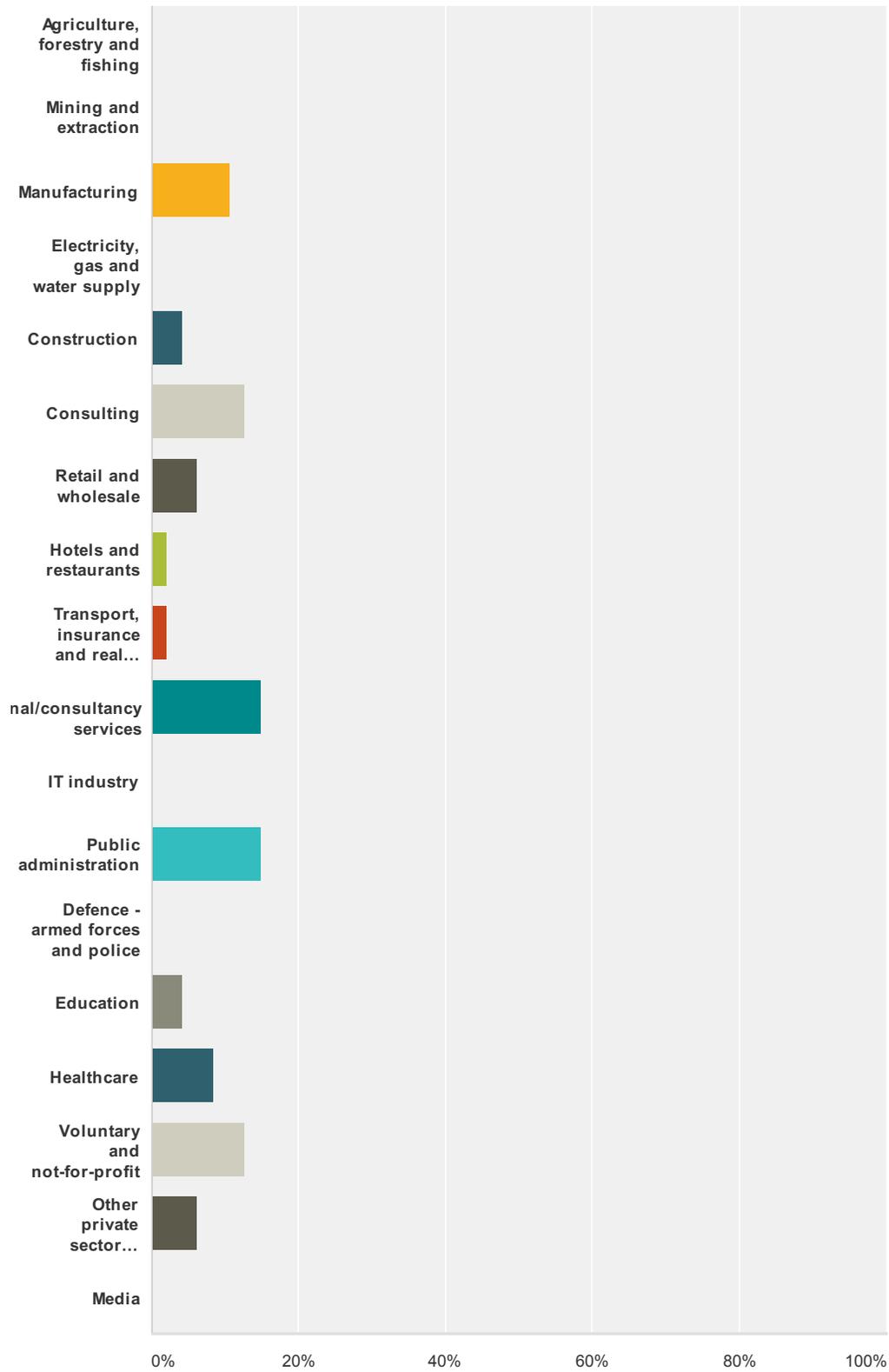


Answer Choices	Responses
<b>Student</b>	3.70% 2
<b>Affiliate</b>	3.70% 2
<b>Associate</b>	18.52% 10
<b>Graduate</b>	3.70% 2
<b>Chartered Member</b>	29.63% 16
<b>Chartered Fellow</b>	37.04% 20
<b>Chartered Companion</b>	1.85% 1
<b>Other (please specify)</b>	1.85% 1
<b>Total</b>	<b>54</b>

#	Other (please specify)	Date
1	Non member	8/19/2013 2:28 AM

## Q2 What industry/sector do you work in?

Answered: 47 Skipped: 7



Answer Choices	Responses
Agriculture, forestry and fishing	0% 0
Mining and extraction	0% 0

# Maintenance of Trade Union Membership Registers

<b>Manufacturing</b>	<b>10.64%</b>	<b>5</b>
<b>Electricity, gas and water supply</b>	<b>0%</b>	<b>0</b>
<b>Construction</b>	<b>4.26%</b>	<b>2</b>
<b>Consulting</b>	<b>12.77%</b>	<b>6</b>
<b>Retail and wholesale</b>	<b>6.38%</b>	<b>3</b>
<b>Hotels and restaurants</b>	<b>2.13%</b>	<b>1</b>
<b>Transport, insurance and real estate</b>	<b>2.13%</b>	<b>1</b>
<b>Professional/consultancy services</b>	<b>14.89%</b>	<b>7</b>
<b>IT industry</b>	<b>0%</b>	<b>0</b>
<b>Public administration</b>	<b>14.89%</b>	<b>7</b>
<b>Defence - armed forces and police</b>	<b>0%</b>	<b>0</b>
<b>Education</b>	<b>4.26%</b>	<b>2</b>
<b>Healthcare</b>	<b>8.51%</b>	<b>4</b>
<b>Voluntary and not-for-profit</b>	<b>12.77%</b>	<b>6</b>
<b>Other private sector services</b>	<b>6.38%</b>	<b>3</b>
<b>Media</b>	<b>0%</b>	<b>0</b>
<b>Total</b>		<b>47</b>

<b>#</b>	<b>Other (please specify)</b>	<b>Date</b>
1	Logistics	8/27/2013 3:08 AM
2	Oil & Gas	8/27/2013 2:52 AM
3	local government	8/27/2013 1:15 AM
4	Market Research	8/25/2013 11:41 AM
5	Various sectors as work freelance	8/25/2013 10:30 AM
6	Public sector generally (currently, nowhere)	8/24/2013 5:26 AM
7	Nuclear Services	8/21/2013 4:14 AM
8	Banking	8/21/2013 1:16 AM
9	Nuclear	8/17/2013 8:39 AM
10	InsurANCE	8/16/2013 3:24 AM

# Maintenance of Trade Union Membership Registers

## Q3 Please indicate your current position

Answered: 53 Skipped: 1

#	Responses	Date
1	Manager	9/5/2013 7:17 AM
2	HR Consultant	9/4/2013 5:21 AM
3	Head of HR Strategy	9/2/2013 5:52 AM
4	Head of Human Resources	9/2/2013 3:00 AM
5	HR Business Partner	9/2/2013 2:23 AM
6	hr assistant	9/2/2013 1:21 AM
7	HR Consultant	9/2/2013 12:37 AM
8	HR Consultant	9/1/2013 11:48 PM
9	HR Advisor Specialising in Governance	9/1/2013 2:52 PM
10	Director	8/31/2013 12:57 PM
11	Director	8/31/2013 12:47 PM
12	HR Director	8/31/2013 6:35 AM
13	Hr Director	8/31/2013 1:44 AM
14	Owner - Managing Director	8/30/2013 11:03 AM
15	HR Consultant	8/30/2013 2:52 AM
16	HR Advisor	8/29/2013 12:37 PM
17	MD	8/29/2013 10:17 AM
18	CEO	8/28/2013 1:49 AM
19	Managing Director	8/27/2013 8:50 AM
20	Director	8/27/2013 8:48 AM
21	Compensation & Benefits Manager	8/27/2013 4:21 AM
22	Regional HR Advisor	8/27/2013 3:08 AM
23	HR Assistant	8/27/2013 2:52 AM
24	Learning and Development Co-Ordinator	8/27/2013 1:15 AM
25	Senior manager	8/26/2013 9:49 AM
26	learning development adviser	8/26/2013 2:45 AM
27	Training Support Manager	8/26/2013 1:37 AM
28	HR Partner	8/26/2013 1:13 AM
29	HR Manager	8/26/2013 12:35 AM
30	Team Manager	8/25/2013 11:41 AM
31	HRConsultant	8/25/2013 10:30 AM
32	Executive Director	8/25/2013 3:19 AM
33	Director	8/24/2013 9:26 AM
34	Looking for next role...	8/24/2013 5:26 AM
35	HR Lecturer	8/23/2013 1:48 AM
36	Meaningless	8/21/2013 10:15 AM
37	HR Consultant	8/21/2013 5:48 AM
38	Engagement Manager	8/21/2013 4:14 AM
39	HR & Training Manager	8/21/2013 3:28 AM

## Maintenance of Trade Union Membership Registers

40	Programme Manager	8/21/2013 3:19 AM
41	HR Director	8/21/2013 2:22 AM
42	Equality & Inclusion	8/21/2013 2:03 AM
43	Senior HR Adv isot	8/21/2013 1:30 AM
44	Director	8/21/2013 1:24 AM
45	HR Manager	8/21/2013 1:03 AM
46	Acting Head of Management Development	8/20/2013 9:27 AM
47	Industrial Relations Manager	8/19/2013 2:28 AM
48	Head of HR Operations	8/17/2013 8:39 AM
49	hEAD OF IR	8/16/2013 3:24 AM
50	Proprietor	8/15/2013 9:34 AM
51	Associate HR Consultant	8/15/2013 7:33 AM
52	Managing Consultabt	8/15/2013 2:42 AM
53	Employee Dev elopment Manager	8/15/2013 2:25 AM

# Maintenance of Trade Union Membership Registers

## Q4 In your experience, how far are employers involved in helping to maintain trade union membership records?

Answered: 37 Skipped: 17

#	Responses	Date
1	non unionised	9/5/2013 7:19 AM
2	larger ones may be more interested	9/4/2013 5:24 AM
3	We ask for an annual update on membership numbers	9/2/2013 5:55 AM
4	Not at all	9/2/2013 2:24 AM
5	Not at all	9/2/2013 1:22 AM
6	Little involvement other than awareness of who is a member as their membership fees are deducted from their salary	9/1/2013 2:54 PM
7	Very little	8/31/2013 1:01 PM
8	Very little	8/31/2013 12:49 PM
9	From experience very little or at all.	8/30/2013 11:20 AM
10	A minimal level of support is provided. I have given details of new starters/locations to union officers. Primary interest of unions appears to be in recruiting new members.	8/30/2013 3:08 AM
11	Usually re collection of membership fees	8/27/2013 8:54 AM
12	Not much involved.	8/27/2013 8:53 AM
13	no access to membership information	8/27/2013 3:10 AM
14	50/50	8/26/2013 9:52 AM
15	Not as regularly as they used to due to changes in how subscriptions are paid	8/26/2013 2:48 AM
16	Not at all	8/26/2013 1:39 AM
17	Depends on how the member pays. If by payroll the local representatives are often dependant on the reports from the HR/Payroll system for who is a member	8/26/2013 12:37 AM
18	Very little, trade union membership is becoming less promoted by employers.	8/25/2013 11:50 AM
19	They don't on a day to day basis, but constantly wonder just how many members there are.	8/25/2013 10:33 AM
20	Very little	8/25/2013 3:21 AM
21	not involved	8/24/2013 9:27 AM
22	Unless subs paid via payroll, not very involved at all - and, even then, it would literally be the info that payroll held for that purpose.	8/24/2013 5:29 AM
23	No involvement	8/21/2013 10:16 AM
24	Some unions inform their employer of changes to part time officials but generally they keep their own records	8/21/2013 4:21 AM
25	Very little.	8/21/2013 3:30 AM
26	Not involved	8/21/2013 3:21 AM
27	Only in terms of membership deductions from pay	8/21/2013 2:27 AM
28	I have not had any experience of employers helping to maintain membership records	8/21/2013 2:03 AM
29	We process deductions from pay arrangements and record details of accredited Stewards, Health & Safety Representatives	8/21/2013 1:27 AM
30	Not at all.	8/21/2013 1:17 AM
31	Unions do ask my organisation for information on their members on occasion, this information though is only known for those members who pay subs via payroll and there are data protection implications for how such data is used.	8/21/2013 1:07 AM
32	Seldom	8/19/2013 2:35 AM
33	PROVIDE A IS PLATFORM	8/16/2013 3:24 AM

## Maintenance of Trade Union Membership Registers

34	Very little - they don't want to encourage the TUs	8/15/2013 9:36 AM
35	Very little, only where some employee pay fees through their pay slip.	8/15/2013 7:38 AM
36	Very involved through payroll deductions	8/15/2013 2:46 AM
37	Our Company provides requested information under Data Protection act	8/15/2013 2:27 AM

# Maintenance of Trade Union Membership Registers

## Q5 Have you been aware of any problems with trade union membership records? If so, please provide examples

Answered: 37 Skipped: 17

#	Responses	Date
1	no	9/5/2013 7:19 AM
2	No	9/4/2013 5:24 AM
3	We have no confidence in the accuracy of the numbers provided	9/2/2013 5:55 AM
4	No	9/2/2013 2:24 AM
5	No	9/2/2013 1:22 AM
6	Trade Union Reps are usually not so forthcoming in sharing this information.	9/1/2013 2:54 PM
7	No	8/31/2013 1:01 PM
8	No	8/31/2013 12:49 PM
9	No	8/30/2013 11:20 AM
10	In ballots for industrial action, membership records were incorrect so legal challenges to declare the results of ballots null and void were successful.	8/30/2013 3:08 AM
11	Sometimes the turnouts are very low and some employees complain about not receiving ballot papers	8/27/2013 8:54 AM
12	In disputes, there have been issues around accuracy and updating.	8/27/2013 8:53 AM
13	no	8/27/2013 3:10 AM
14	Yes member leaves and asks us to stop payments from their wages but haven't informed their union office	8/26/2013 9:52 AM
15	We don't know who is a member anymore unless we contact the unions directly	8/26/2013 2:48 AM
16	Only media coverage	8/26/2013 1:39 AM
17	no	8/26/2013 12:37 AM
18	none	8/25/2013 11:50 AM
19	Some ex members have been sent ballot papers	8/25/2013 10:33 AM
20	No	8/25/2013 3:21 AM
21	n/a	8/24/2013 9:27 AM
22	When trying to find out members of Unite, we had little information and they seemed to have none, or hardly anything.	8/24/2013 5:29 AM
23	Do not keep any	8/21/2013 10:16 AM
24	Unions have stated difficulties at times maintaining the addresses of members	8/21/2013 4:21 AM
25	No.	8/21/2013 3:30 AM
26	No	8/21/2013 3:21 AM
27	No	8/21/2013 2:27 AM
28	Yes, if the system used ie for payroll to make deductions does not report back into the HR system then the records within HR around membership could be out of date	8/21/2013 2:03 AM
29	TU's have not always kept us upto date of who the current stewards are so we can decide whether to agree to requests for time off etc	8/21/2013 1:27 AM
30	Yes. Not up to date on workplace addresses. Not up to date on whether individuals are manager or staff grades.	8/21/2013 1:17 AM
31	There can be a lag between asking unions for identifying up to date numbers of members and receiving feedback. In some cases unions do not record which employer members work for so that creates a problem for coming up with definitive lists. Some Data Protection issues sharing union membership info indirectly held by employer.	8/21/2013 1:07 AM
32	Yes in TUPE situations Trade Unions can have no awareness of exactly who has been transferred to a new employer unless employers/members tell them, which they tend not to	8/19/2013 2:35 AM

## Maintenance of Trade Union Membership Registers

33	NO	8/16/2013 3:24 AM
34	No	8/15/2013 9:36 AM
35	None known	8/15/2013 7:38 AM
36	Occasionally in verifying records in conjunction with trades unions in the mutual administration of voting on proposed pay and benefits increases.	8/15/2013 2:46 AM
37	No	8/15/2013 2:27 AM

# Maintenance of Trade Union Membership Registers

## Q6 In your experience, where employers recognise one or more trade unions, how are they involved with the sharing and/or updating of union membership information?

Answered: 36 Skipped: 18

#	Responses	Date
1	no experience	9/5/2013 7:19 AM
2	Depends on nature partnership. Good partnership = sharing information.	9/4/2013 5:24 AM
3	We allocate time off according to membership numbers and are therefore transparent with the data provided	9/2/2013 5:55 AM
4	No knowledge as our organisation doesn't recognise TU membership, despite having a significant number of medical staff who are members of a TU.	9/2/2013 2:24 AM
5	We do not have any employees in trade unions - that we know about anyway	9/2/2013 1:22 AM
6	little informaiton	9/1/2013 2:54 PM
7	By notification to union representative of a new appointment or a leaver	8/31/2013 1:01 PM
8	Notifying branch secretary of details of new starter	8/31/2013 12:49 PM
9	I have seen two approaches, one where information is shared across the whole of the business, the other approach where information is left to the union itself with no involvement.	8/30/2013 11:20 AM
10	No sharing between unions.	8/30/2013 3:08 AM
11	Not usually, our help is with collection of membership fees	8/27/2013 8:54 AM
12	Not usually involved. In some organisations, unions are highly competitive about attracting employees from other unions.	8/27/2013 8:53 AM
13	Union is responsible for their own records	8/27/2013 3:10 AM
14	As we only recognise one unable to answer	8/26/2013 9:52 AM
15	we don't hold records anymore all requests have to go through the relevant union	8/26/2013 2:48 AM
16	N/A	8/26/2013 1:39 AM
17	they're not	8/26/2013 12:37 AM
18	Although Unite the Union are the recognised union there is no information available from the employer to the employee. There is no mention in induction or training, we have never seen any person from Unite and consequently from 200 employees, only a small handful are members. Most employees are scared of joining a union as this wouldn't look good for promotion or career prospects.	8/25/2013 11:50 AM
19	Only get involved when formal balloting takes place	8/25/2013 10:33 AM
20	Usually providing details from payroll records, and advising when new employees start (manufacturing).	8/25/2013 3:21 AM
21	n/a	8/24/2013 9:27 AM
22	Not at all.	8/24/2013 5:29 AM
23	no sharing of info	8/21/2013 10:16 AM
24	The union records are mainly kept and maintained by the unions themselves	8/21/2013 4:21 AM
25	Our organisation recognises one union, we do not share or update any information with GMB.	8/21/2013 3:30 AM
26	Not involved	8/21/2013 3:21 AM
27	None of the employer's business until requiring the union/s to provide them with information in circumstances such as a dispute - the relationship is between the individual and the trade union	8/21/2013 2:27 AM
28	Not able to answer this	8/21/2013 2:03 AM
29	Other than records for payroll deductions .....none. We do charge a 2% levy for this work.	8/21/2013 1:27 AM
30	Our organisation assists unions where possible if they want information on their membership but information is incomplete.	8/21/2013 1:07 AM
31	We have in the past asked our employees' permission to pass their names to a trade union so that the union can cross-match against membership records	8/19/2013 2:35 AM

## Maintenance of Trade Union Membership Registers

32	N/A	8/16/2013 3:24 AM
33	In my experience, working for a very large Blue Chip company, they would not let the Union have access to the workforce database (to recruit members), nor would they allow anything on the Intranet. They would allow posters etc in all offices.	8/15/2013 9:36 AM
34	Only where someone starts or leaves employment	8/15/2013 7:38 AM
35	Only to the extent of payroll deduction arrangements - check off.	8/15/2013 2:46 AM
36	Provided by the Unions	8/15/2013 2:27 AM

# Maintenance of Trade Union Membership Registers

## Q7 Where employers have agreed with trade unions to use check-off, what types of questions do unions ask employers in relation to union membership?

Answered: 34 Skipped: 20

#	Responses	Date
1	n/a	9/5/2013 7:19 AM
2	Numbers mainly and breakdowns and meeting facilities.	9/4/2013 5:24 AM
3	Ask us to deduct membership fees from salary	9/2/2013 5:55 AM
4	n/a	9/2/2013 2:24 AM
5	n/a	9/2/2013 1:22 AM
6	not aware	9/1/2013 2:54 PM
7	name of employee, pay roll number, job function and department	8/31/2013 1:01 PM
8	Employee pay roll number, department and job title	8/31/2013 12:49 PM
9	Category of employee	8/30/2013 11:20 AM
10	No experience of check off.	8/30/2013 3:08 AM
11	They don't!	8/27/2013 8:54 AM
12	Check-off from pay is decreasingly the case since employees prefer direct payments to unions. Employer talks direct to employee.	8/27/2013 8:53 AM
13	n/a	8/27/2013 3:10 AM
14	We are just asked for updated list from our payroll	8/26/2013 9:52 AM
15	don't know	8/26/2013 2:48 AM
16	N/A	8/26/2013 1:39 AM
17	who has paid, address information	8/26/2013 12:37 AM
18	I have no idea	8/25/2013 11:50 AM
19	None of organisations I currently work with use check off	8/25/2013 10:33 AM
20	N/a	8/25/2013 3:21 AM
21	n/a	8/24/2013 9:27 AM
22	Not aware of any. There has always been a written agreement between union and employer but nothing specific in this regard.	8/24/2013 5:29 AM
23	none	8/21/2013 10:16 AM
24	The employer is generally not asked for information by the unions	8/21/2013 4:21 AM
25	None.	8/21/2013 3:30 AM
26	None	8/21/2013 3:21 AM
27	Not able to answer this	8/21/2013 2:03 AM
28	They rarely if at all ask us to confirm numbers or locations	8/21/2013 1:27 AM
29	N/A	8/21/2013 1:07 AM
30	No experience of this	8/19/2013 2:35 AM
31	Not involved so not sure	8/15/2013 9:36 AM
32	N/a	8/15/2013 7:38 AM
33	Only the paperwork necessary for individual authorisation of payroll deductions.	8/15/2013 2:46 AM
34	Confirmation of membership only	8/15/2013 2:27 AM

**Q8 How do employers respond to requests from a recognised trade union for staff details which would help them update their membership records? On what grounds might employers refuse to help?**

Answered: 34 Skipped: 20

#	Responses	Date
1	n/a	9/5/2013 7:19 AM
2	Works both ways. If an employer had good ER practices than this should not be an issue.	9/4/2013 5:24 AM
3	Where employees have not given consent for us to share the data	9/2/2013 5:55 AM
4	n/a	9/2/2013 2:24 AM
5	n/a	9/2/2013 1:22 AM
6	not aware	9/1/2013 2:54 PM
7	Generally no problem with notifying new employees and leavers. If union want more information on employees such as date of birth or home address, that would be refused.	8/31/2013 1:01 PM
8	No problem for above data.	8/31/2013 12:49 PM
9	It depends on how high the membership is and what formal processes are in place. When levels of membership is low, it is asked for permission from individuals re data collection.	8/30/2013 11:20 AM
10	Basic contact details given. I have never been asked for details of leavers as it is assumed the union would tie things up when subs stop being paid. I often refuse to allow union officials to visit workplaces to speak "informally" to employees about joining their union as it would disrupt work. Other means are available through recruitment literature and induction courses.	8/30/2013 3:08 AM
11	We would not reveal the names of non-members or of any personal details	8/27/2013 8:54 AM
12	Would not give information on grounds of Data Protection. Employees have given the information for the purpose of being employed. Union membership is personal, sensitive information and should not be handed over. The union is a separate entity.	8/27/2013 8:53 AM
13	Acas independent check	8/27/2013 3:10 AM
14	We just give members name unless we have written permission to give other details	8/26/2013 9:52 AM
15	we carry out checks as and when the requests are made	8/26/2013 2:48 AM
16	N/A	8/26/2013 1:39 AM
17	none, we have no communication from the employer or the union.	8/25/2013 11:50 AM
18	Time and resources to action such a request	8/25/2013 10:33 AM
19	Personal confidentiality.	8/25/2013 3:21 AM
20	data protection regulations	8/24/2013 9:27 AM
21	In my experience, we'd expect them to take the lead (they're their members, after all) but generally have been as helpful as necessary, time permitting.	8/24/2013 5:29 AM
22	not relevant	8/21/2013 10:16 AM
23	N/A	8/21/2013 4:21 AM
24	We would not divulge any information to 3rd parties without the express permission of the individual. Therefore we would require a signed consent from the employee.	8/21/2013 3:30 AM
25	Constructively whilst recognising need to protect personal data.	8/21/2013 3:21 AM
26	It is none of the employer's business if the individual chooses to be a member of a trade union and should not be required to act as some kind of unpaid administrative resource for the trade union. At most, if requested the employer should advise the trade union who check off deductions are made for and sufficient identification details for the union to make their own enquiries of the individual	8/21/2013 2:27 AM
27	Not able to answer this	8/21/2013 2:03 AM
28	We would probably give an update on total numbers only	8/21/2013 1:27 AM

## Maintenance of Trade Union Membership Registers

29	New starters information is shared but other sharing raises the issue of whether or not employees have consented to their data being divulged to third parties.	8/21/2013 1:07 AM
30	We would have concerns over data protection issues - so if approached for a more exact list of members we would ask an independent third party, eg ACAS or ERS, if they could cross-match records in confidence and inform the union which of their members are now employed by us	8/19/2013 2:35 AM
31	In my experience they did not help at all	8/15/2013 9:36 AM
32	I have not had such a request. However, if it's not been agreed via a policy or agreement with employees, I wouldn't supply employee details to TU's.	8/15/2013 7:38 AM
33	In respect of validation of check off memberships.	8/15/2013 2:46 AM
34	We seek consent of the employee and will not provide otherwise	8/15/2013 2:27 AM

### Q9 What impact will the new provisions have for employers? Are they likely to mean an additional administrative burden?

Answered: 27 Skipped: 27

#	Responses	Date
1	yes i think it will	9/5/2013 7:21 AM
2	Possibly	9/4/2013 5:31 AM
3	Not aware. Expect most of burden to fall on unions	9/2/2013 6:00 AM
4	Not currently aware of the new provisions or the impact on us.	9/2/2013 2:27 AM
5	yes defiantly more admin	9/2/2013 1:23 AM
6	Unions may well need home address or contact details. That would be declined and it is for the union to obtain from their member. The problem is not with the address of new starters as the employee will generally give that to the union when he/she first agrees to join. If the employee subsequently changes address they do not always notify the employer in a timely fashion and may not notify the union at all. Where there is a likelihood of a ballot it is in the interests of the employer for the register to be up to date. the employer may need to have an authority from the employee to release data to the union when the data changes	8/31/2013 1:11 PM
7	Minimal impact with computerised records and data transfer.	8/30/2013 3:14 AM
8	Not really , we have an interest in accuracy here especially re ballots	8/27/2013 8:56 AM
9	A careful balance will be required between data protection and accuracy of information.	8/27/2013 8:55 AM
10	Unsure about the new provisions and what impact they may have	8/26/2013 9:54 AM
11	Yes, I would expect that extra work will be involved	8/26/2013 1:42 AM
12	Depends on the size of the union and their dependency on the employer for data. For the smaller Union it will increase the admin burden for the employer, the larger ones it should make little difference	8/26/2013 12:40 AM
13	I wouldn't know	8/25/2013 11:52 AM
14	Yes but worth it to have a fuller understanding on the numbers of members	8/25/2013 10:35 AM
15	Possibly - remains to be seen	8/25/2013 3:21 AM
16	quite possibly	8/24/2013 9:28 AM
17	Don't see that it will have any impact at all - the burden is on the union to keep records of THEIR membership.	8/24/2013 5:35 AM
18	do not do anything now	8/21/2013 10:17 AM
19	Yes there would be an extra administrative burden and potential change to fields within the HR system	8/21/2013 4:27 AM
20	Don't know.	8/21/2013 3:30 AM
21	Yes there will be an administrative burden being involved with a relationship to which they are not a party - it can only be a distraction from managing the employers intended activities.	8/21/2013 2:33 AM
22	They shouldnt if the IT is in place	8/21/2013 2:03 AM
23	Feel this would be unlikely	8/21/2013 1:28 AM
24	Perhaps but that is a good thing in terms of transparency .	8/21/2013 1:10 AM
25	yes	8/15/2013 9:38 AM
26	Little impact - the current cooperation in respect of check off and voting on pay and other employment matters which are the subject of negotiation and co-determination will continue.	8/15/2013 2:53 AM
27	It depends on what information is required. however we would ensure that responsibility lay primarily with the trade Union.	8/15/2013 2:30 AM

# Maintenance of Trade Union Membership Registers

## Q10 Do you see any connection between the Bill provisions and balloting for industrial action? If so, what impact do you imagine the measures will have?

Answered: 22 Skipped: 32

#	Responses	Date
1	negligable	9/5/2013 7:21 AM
2	No	9/4/2013 5:31 AM
3	It will make providing notification easier	9/2/2013 6:00 AM
4	n/a	9/2/2013 2:27 AM
5	Certainly . The union can only record the information provided by the member. if the member does not update the union on their address a ballot paper sent by post will not be delivered	8/31/2013 1:11 PM
6	Recent cases in the last 5 years ought to be avoided. It is embarassing for unions when their records are found to be unreliable.	8/30/2013 3:14 AM
7	Closely related, they are likely to make it harder to manipulate outcomes and thus reduce the number of adversarial outcomes.	8/27/2013 8:56 AM
8	Industrial action has frequently been challenged on the basis of inaccurate membership lists.	8/27/2013 8:55 AM
9	?	8/26/2013 9:54 AM
10	Yes, more industrial disharmony & unrest between employer and employee + adverse affect on overall business	8/26/2013 1:42 AM
11	the bill provisions may make the balloting process shorter as the union will already hold the correct information on their members	8/26/2013 12:40 AM
12	This would not happen in my work place	8/25/2013 11:52 AM
13	unsure as yet	8/24/2013 9:28 AM
14	No, especially since this is the one time that both parties can verify records each holds to ensure that the ballot is fair and that non-members don't get counted.	8/24/2013 5:35 AM
15	none	8/21/2013 10:17 AM
16	The onus for maintaining the records will fall on the employer which could expedite the balloting process	8/21/2013 4:27 AM
17	This would seem to be a subliminal encouragement to increase trade union membership by raising its profile and by increasing the membership therefore promoting the opportunity for statutory recognition and consequently balloting and/or industrial action	8/21/2013 2:33 AM
18	Possibly .....especially if local to a certain establishment within the organisation as opposed to a company wide issue	8/21/2013 1:28 AM
19	Unsure	8/21/2013 1:10 AM
20	Probably will make it easier for the Unions to Ballot members	8/15/2013 9:38 AM
21	Not really because ballots for industrial action will be confined to the common interest group with an employer.	8/15/2013 2:53 AM
22	Strengthen fairness in ballots	8/15/2013 2:30 AM

# Maintenance of Trade Union Membership Registers

## Q11 Do you have any views on who should be an 'assurer' of the validity of trade union membership data?

Answered: 22 Skipped: 32

#	Responses	Date
1	no as long as its a statutory responsibility	9/5/2013 7:21 AM
2	The trade union	9/4/2013 5:31 AM
3	External auditor	9/2/2013 6:00 AM
4	n/a	9/2/2013 2:27 AM
5	It is a post that could be filled by an Hr professional or a Chartered secretary	8/31/2013 1:11 PM
6	A recognised independent third party .	8/30/2013 3:14 AM
7	An independent body such as ACAS	8/27/2013 8:56 AM
8	ACAS	8/27/2013 8:55 AM
9	I believe it should be checked by both parties some how	8/26/2013 9:54 AM
10	Independent source	8/26/2013 1:42 AM
11	no	8/26/2013 12:40 AM
12	none	8/25/2013 11:52 AM
13	don't know enough about this to comment	8/24/2013 9:28 AM
14	Only that it should be someone who is truly independent - no connection with either the employer or the union. Or any issue that may be in contention at the time.	8/24/2013 5:35 AM
15	an independent body	8/21/2013 10:17 AM
16	ACAS	8/21/2013 3:30 AM
17	The Electoral Society , ACAS, a CAC equivalent body	8/21/2013 2:33 AM
18	Commissioner	8/21/2013 1:28 AM
19	An independent body with smallest possible cost implications and no risk of them being able to use the data for their own means. ACAS or regional joint union bodies?	8/21/2013 1:10 AM
20	Maybe shared by Employee Relations Specialists/TU Officers	8/15/2013 9:38 AM
21	No views except that the trade union like any other organisation should be responsible fro its own membership information and validation.	8/15/2013 2:53 AM
22	Trade Union and they should also have legal responsibility for accuracy	8/15/2013 2:30 AM

# Maintenance of Trade Union Membership Registers

## Q12 What kind of guidance might be useful, either for the employer or the trade union, to support them in complying with the new requirements and in the sharing, maintenance and updating of membership information?

Answered: 21 Skipped: 33

#	Responses	Date
1	ACAS code of practice	9/5/2013 7:21 AM
2	Mandatory and best practice Guidelines for compliance.	9/4/2013 5:31 AM
3	Type of information to be provided and frequency	9/2/2013 6:00 AM
4	Any guidance documents such as an ACAS guide is always useful, together with flowcharts for different scenarios; covering those who have no/minimal TU members in their workforce and don't recognise any TUs, those who have large numbers of workers as TU members but don't recognise any TU, and those orgs that do recognise TUs.	9/2/2013 2:27 AM
5	Guidance on data that can be provided by the employer to the union	8/31/2013 1:11 PM
6	ACAS/BIS guidance setting out good practice to comply with new requirements.	8/30/2013 3:14 AM
7	Similar to anti-fraud provisions	8/27/2013 8:56 AM
8	ACAS Code	8/27/2013 8:55 AM
9	Unsure at this time	8/26/2013 9:54 AM
10	Joint agreement between all parties	8/26/2013 1:42 AM
11	Tell us about the union, what do they do, who are they? Most employees have no clue	8/25/2013 11:52 AM
12	Who owns the data and how and when it can be shared	8/25/2013 10:35 AM
13	acceptable guidelines and expectations drawn up as a code	8/24/2013 9:28 AM
14	Clarity on whose responsibility it is to maintain records and - in my view - this should be the TU except where members pay subs by check-off and then both would hold records (employers wouldn't need any details, though).	8/24/2013 5:35 AM
15	presentations	8/21/2013 10:17 AM
16	Guidance should be trade union specific to manage/administer their own members	8/21/2013 2:33 AM
17	Not sure	8/21/2013 1:28 AM
18	Just clear bullets	8/21/2013 1:10 AM
19	Guidelines/training	8/15/2013 9:38 AM
20	Where recognition (procedural) agreements are being created or revised to include provision for reasonable cooperation in membership information.	8/15/2013 2:53 AM
21	Good practice Guidance Notes for Employers and trade Unions. The Unions should receive training on completing the records funded by the Trade Union to ensure compliance	8/15/2013 2:30 AM

## **Communication Workers Union (CWU)**

## **CWU SUBMISSION TO BIS CONSULTATION: TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL (CERTIFICATION OF TRADE UNION MEMBERSHIP DETAILS)**

The Communication Workers' Union (CWU) is the largest union in the communications sector in the UK, representing over 200,000 employees in the postal, telecoms and related industries.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill undertakes to make changes in three areas:

1. To establish a register of some lobbyists;
2. To change the legal requirements for people or organisations who campaign in relation to election, but are not a candidate or registered party; and
3. To introduce additional regulations relating to trade union membership records.

The Department of Business Innovation and Skills' (BIS) consultation deals only with proposals contained in the third category. This paper therefore responds only to proposals in relation to trade union administration. This paper does not comment on the suitability or efficacy of the government's proposals in relation to lobbyists and non-party campaigning.

### Trade union administration proposals

The government proposes to introduce further statutory obligations on unions in relation to membership records, to require the provision of an annual membership audit certificate to the Certification Officer (CO), along with the current annual return (in the case of union with more than 10,000 members, this needs to be completed by an assurer: a qualified independent person).

The CO will also be given new powers to: require the production of documents where he or she believes there is good reason to do so; and to appoint an inspector to investigate where there are circumstances suggesting that the union has failed to comply with its duties in relation to the register of members. The CO will be able to act on his or her own authority and can take into account information brought to his or her attention by union members or third parties.

If the CO believes a union has failed to comply he or she may then make an enforcement order – which will be treated as an order of the High Court – requiring the union to take steps to remedy the failure or abstain from specific acts.

### CWU Response

The following provides an overview of the CWU's response to the government's proposals and is supplemented by answers to relevant questions contained in the BIS discussion paper.

The CWU also fully endorses the TUC's submission to this consultation which should be read in conjunction with this paper.

### Summary

The CWU strongly opposes the government's proposals to introduce a new layer of regulation on trade unions in the form of part three of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill. The proposals are unnecessary – the government has provided no evidence of a need for additional regulation in this area – and unfair. The proposals lack clarity and will introduce a high level of uncertainty for trade unions, their members and employers. They will also inevitably be costly to implement and this additional burden will fall on unions and their members.

### The consultation process

Firstly, we would like to record our dissatisfaction with the consultation process. The BIS discussion paper was published on 17 July and the consultation period closes on 16 August (though unions have been given an extension of four days to reflect the timing of a meeting with BIS officials on 19 August). This is a wholly inadequate length of time, especially falling as it does in the summer leave period, and does not allow for adequate reflection on the proposals.

The government guidance principles for public consultation<sup>1</sup> state that: "*Engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account*". This has not happened. We have had no early engagement on this issue; it has instead been presented directly as a government Bill. Government guidance also states that: "*Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response.*" One month, incorporating most of August, is neither a proportionate nor realistic timeframe.

Secondly, it is remiss of the government to not have published a full impact assessment alongside this consultation. Unions are being asked to comment on the proposals in the absence of any detailed assessment of their implications.

### Increasing regulatory burdens

The government's proposals will significantly increase the regulatory burden placed on trade unions, yet no evidence has been provided of the need for greater regulation in this area. Unions are already required, under section 29 of the Trade Union and Labour Relations Act (TULRCA), to maintain accurate membership records. Union's must: "*compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date.*" Union's are also required to provide details of membership in statutory annual returns to the CO, which are independently audited. This information, combined with detailed financial information, means that there is already significant information on union records available in the public domain.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60937/Consultation-Principles.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60937/Consultation-Principles.pdf)

The BIS discussion document makes the uncontroversial statement that: “*As membership organisations, it is important that trade union decisions reflect the will of all their members.*” This is clearly the case; it is in the interest of unions to maintain accurate membership records to enable them to fulfil their duties. This statement applies in the case of all membership organisations. All membership organisations, be they trade unions, political parties, employer organisations or special interest groups, depend for the legitimacy of their decision making and ultimately their organisation on maintaining accurate membership records. And yet, not only are trade unions among the only membership organisation to face statutory regulation of their membership records, they are now being singled out for an additional level of bureaucratic and costly statutory regulation.

The CO already has powers to pursue complaints from union members over the keeping of membership records. It is important to note that the CO has received no complaints from trade union members relating to registers of members since 2004. Since the legislation was brought in, the CWU has received no formal complaints over its membership records. There is no evidence of a problem; the government has failed to identify the problem it is seeking to address with this legislation.

These proposals add considerable regulatory burdens and cost onto civil society, running counter to the government’s professed intention to “*free up business and society from the burden of excessive regulation*”<sup>2</sup>. Their effect on union members is likely also to be considerable. The cost involved, both in paying for assurers, and in terms of staff resources that will need to be committed to responding to queries and investigations, will reduce the services unions are able to provide to their members.

#### Right to privacy

Of serious concern is the extent to which the Bill will allow access to sensitive personal information by third parties and state bodies. Membership of a trade union is private information that many members - not least because of shocking recent cases of blacklisting which have gone on unchecked for years – do not wish to be made available to third parties. The Bill provides powers to the CO, and any third party to whom he or she delegates, to access the details of union members names and addresses. We believe this represents a violation of the individuals’ right to privacy. The provision of such information increases security risks – government bodies have had a poor track record in recent years of protecting confidential data – and should not be required without a very strong justification.

#### Industrial Action Ballots

We have serious concerns over how this legislation may be used to undermine union members’ right to take industrial action. Employers routinely seek injunctions over balloting procedures and use them as a means of preventing industrial action and breaking the momentum in union campaigns. They are rarely upheld when they later come to court, but the mere fact of delaying action serves a useful purpose for employers. Such injunctions do not show a problem with membership records and are an abuse of legal loopholes.

These proposals are clearly intended to help employers secure injunctions against industrial action. The Equality Impact Assessment associated with the proposals states: “*those unions*

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<sup>2</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>

*that intend to take industrial action must be able to ballot accurately those members who may be affected.*"<sup>3</sup>, though it gives no evidence to suggest unions are currently unable to do so.

Recent landmark cases have seen the High Court recognise that small accidental failures are consistent with ballot notifications being as accurate as is reasonably practicable. It is unclear what the government's proposals will add to this situation other than a new route through which employers can seek to delay or prevent industrial action. Employers are likely to instigate investigations into membership records via the CO and use ongoing investigations as a justification for injunctions against unions; the goal of delaying or preventing industrial action will then be achieved, regardless of the merits of the complaint to the CO.

### Duty on employers

If there are to be new standards applied to unions over membership records, there should be a complementary requirement in legislation for employers to provide unions with up-to-date data on employees. Some data is inevitably held only by the employer. It is a perverse situation if employers withhold up-to-date information from unions and are then able to successfully challenge their membership records on the grounds that the union does not have the information the employer has refused to share. Employers should be under a duty to cooperate and should supply relevant information to enable unions to comply with notice and balloting requirements.

### How the assurer and CO will arrive at their determinations

A serious concern with the proposed legislation is the lack of clarity over the criteria to be used by the assurer and CO and the extent to which judgements will rest on their opinion alone. Section 37 states that the membership audit certificate shall state whether or not, in the assurers opinion, the trade union's membership record system is satisfactory. Similarly, section 39 states that the CO can issue an enforcement order where the CO is satisfied that the union has failed to comply.

There is no indication of the criteria the assurer and CO will use in reaching their judgement. Equally, there are no assurances that assurers will apply similar criteria to the CO or even that they will use consistent criteria among themselves.

While introducing great uncertainty, the legislation appears to provide no opportunity for unions to appeal the decision of assurers before its judgement becomes an official certificate and is sent to the CO and only limited opportunity to appeal the decision of the CO. This risks seriously disadvantaging unions, especially given the potentially damaging implications of a negative declaration from the assurer or CO.

While highly prescriptive terms for the assurer and CO may not be desirable, a clear process that ensures a consistent approach from assurers and the CO and the opportunity for unions to formally appeal decisions is essential. Moreover, the government should give strong

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223875/bis-13-1065-trade-union-membership-records-equality-impact-assessment-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223875/bis-13-1065-trade-union-membership-records-equality-impact-assessment-final.pdf)

direction in its guidance that the regulatory approach is intended to be 'light touch' and that the approach of assurers and the CO should be consistent with this.

### **BIS discussion paper questions**

#### **Q7. How do you obtain membership details?**

Membership details are obtained initially via membership application forms. Details are later updated directly by members, union branches and union representatives at all levels; in certain cases records are updated using information supplied by employers.

#### **Q8. How do you store membership records?**

Membership records are stored electronically on a national database.

#### **Q9. How do you keep membership details up-to-date?**

Membership records are kept up-to-date by regularly inputting information received as detailed in Q7.

#### **Q10. Have you encountered problems that mean membership records are not up-to-date?**

No.

#### **Q11. Will these changes have an impact on how you collect and maintain membership data?**

It is not possible to assess the impact of the changes on the collection and maintenance of membership data; the proposals lack detailed information on the criteria that will be used by assurers and the CO to reach an opinion over whether membership record keeping is satisfactory. At this stage we cannot judge what these opinions will be and therefore cannot assess whether we will be required to make changes to the way we collect and maintain membership data.

#### **Q12. Will our proposals have any impact on how you collect membership subscriptions?**

We do not envisage that any change will be necessary. However, again, without knowing the criteria to be applied by assurers and the CO, we remain in the dark about the practical implications of the government's proposals.

#### **Q13. Do you agree with the role and duties of the assurer set out in the Bill?**

No. We do not believe the role of the assurers will add anything to the process of union's undertaking their legitimate responsibility to represent members. It is in union's interest to ensure they maintain adequate membership records to represent their members effectively. The proposed role of assurer adds an additional and unnecessary layer of bureaucracy and cost to an already heavily regulated area.

Moreover, without knowing the criteria assurers will apply in forming his or her opinion means there is great uncertainty about the process. It is therefore very difficult to agree with roles and duties that remain undefined.

Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?

Firstly, as stated above, in the absence of a clear understanding of the process and criteria that will be used by assurers to reach decisions regarding the satisfactory nature or otherwise of membership record keeping, it is very difficult to judge who would be an appropriate party to act as assurer.

Secondly, notwithstanding the above, we disagree with the proposals on the grounds of the additional cost which will have to be borne by unions.

Q15. What will be the cost and benefit to unions?

We do not anticipate any benefit from these proposals. The costs remain largely unknown, given that we do not know the criteria assurers and the CO will apply in reaching their decisions. Nevertheless we expect they will add considerable expense and are likely to require considerable resources from unions to handle the administration involved. Opening up complaints to third parties is likely to lead to spurious and politically motivated enquiries into union records which will inevitably be time consuming and costly.

Q16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?

Given that we do not yet know the process assurers will use to reach opinions on union membership record keeping, it is inevitably impossible to accurately assess the additional cost that this will impose on unions. However, based on our experience of engaging legal and accounting professionals, and given the internal staffing resource that would need to be committed to this process, we anticipate that this could prove very costly.

Q17. Where do those costs come from?

Given the powers of the assurer to ask questions and seek information and assistance there is the potential for this to be very costly. In order to ensure that a union co-operates with an assurer as and when required would necessitate the appointment of at least one individual to be responsible for all matters relating directly to the relationship between the union and the assurer.

Additionally given the list identified in Q.14, the cost of the assurer, being met we assume by the union, will be expensive.

18. What will be the costs and benefits to union members?

Increased administrative costs could lead to an increase in subscription rates to union members or a lesser service. There will be no benefit to union members.

Q19. What consequences do these proposals have for employers? Why do these consequences arise?

N/a.

Q20. What types of questions do unions ask employers in relation to union membership?

We ask for assistance in providing any updated information on our members that comes into their possession.

The current proposals would be improved by placing a complementary legal obligation on employers to provide regular accurate information on changes to members' employment details that come into their possession and for the employer to be required to appoint an assurer to ensure that such legislation is complied with.

Q21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

As an employer, we would respond positively to any request received from a recognised trade union.

We would respond in this way because we recognise that employers are often best placed to provide up-to-date information on changes in the employment details of union members and because we believe in supporting legitimate and effective trade union representation.

Q22. What is your view of the remedies for non-compliance with the clauses?

As non-compliance is not defined, it is difficult to assess whether remedies for non-compliance are appropriate. Nevertheless, we do not expect that they will be appropriate and anticipate costs to be significant, thus limiting the services we can provide to members.

Additionally, as the options open to the CO to issue enforcement orders are not prescribed, there exists the potential for the CO to respond disproportionately to any perceived failure with regards to record keeping and to restrict a trade union from carrying out legitimate and legal trade union activities.

Q23. Will unions need time to prepare before the new requirements come into force and if so why?

Yes. As we do not yet know how the assurer and CO's roles will operate in practice, it is incredibly difficult to prepare. A long period would be necessary to consider all interpretations of the legislation and enable planning and procedures to be put in place accordingly.

Q24. In a guidance document, what information would you find helpful in relation to the proposals?

Greater clarity on the application of the proposals is necessary.

Guidance should ensure a consistent approach from assurers and the CO is applied. Moreover, the government should give strong direction in its guidance that the regulatory approach is intended to be 'light touch' and that the approach of assurers and the CO should be consistent with this.

Q25. Do you have any other comments on any other aspect of the provisions on Trade Union Administration in the Bill?

See sections above under the heading 'CWU Response'.

Q26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?

The accompanying Equality Impact Assessment (EQIA) is of little value. The practical implications of the legislation are very unclear, therefore a meaningful assessment of their impact has not been possible. The EQIA itself states that: “*we will actively engage a range of trade unions and other experts to understand how these provisions will work in practice*”<sup>4</sup>. If the EQIA itself acknowledges that it is not yet know how the provisions will work in practice it is far from clear how its later statement that “*given the minimal changes in terms of regulatory burden placed on trade unions, we expect the additional regulatory cost to be low*” can be justified.

For further information on the view of the CWU contact:

[REDACTED]

20 August 2013

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223875/bis-13-1065-trade-union-membership-records-equality-impact-assessment-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223875/bis-13-1065-trade-union-membership-records-equality-impact-assessment-final.pdf)

## Community Trade Union

### 2. Questions

#### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

**Q 2. Your name**.....

**Q 3. What organisation do you represent (if any)?**  
 .....Community.....

**Q 4. E-mail address** .....

**Q 5. If you are representing an organisation, what type of organisation is it?**

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
X	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
X	25,000-50,000
	50,000-250,000
	250,000+

## Section 1 Membership records

### Q 7. How do you obtain membership details?

Membership details are either sent to us electronically from a join on line website or a paper application is sent by post, people can also sign up by telephoning our call centre.

### Q 8. How do you store your membership records?

The membership records are stored in a purpose built computer system.

### Q 9. How do you keep membership details up-to-date?

- a) Members are encouraged to inform us of any address changes etc., by phone, post or email.
- b) Members' details are audited via the local branches once a year. Additional audits take place before any industrial action ballots.
- c) As members contact our service centre, details are checked and updated.
- d) As mail returns are identified, we chase updated address details by telephone or email.
- e) We use 3rd party mailing address data cleaners to identify people who have moved house.
- f) All non- payers/ lapsed members are removed from membership at the earliest possible time.

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

**Yes**

**If yes, what were they?**

When we receive mail returns from member addresses it can be difficult to contact the member to obtain their new details.

While the onus is on the member to keep their records up to date and inform us of any changes, it would be useful if employers who run check-off systems would also advise the union of changes to the details of members who they employ.

**Q 11. Will these changes impact on how you collect and maintain membership data?**

**No**

**If yes, how?**

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

**No**

**If yes, how?**

## Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

**No**

**If not, why not?**

Membership figures are already reported on the AR21 forms that are returned to the certification officer. There are already clear audit requirements set out that trade unions need to follow, incorporating the need to maintain an accurate register. This additional red tape seems to be an unnecessary burden on trade union reporting.

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

**No**

**If not, who do you think should do it? Why?**

It would make sense if this was just done by the union's appointed auditors

### Section 3 Impact on unions

#### **Q 15. What will be the costs and benefits to unions?**

There would be little or no benefit and some additional costs. Allowing any person (over and above the union's members) to cause the certification officer to begin an investigation could lead to individuals or employers hostile to trade unions making vexatious or frivolous accusations about the register of members when they have no connection to the union whatsoever.

#### **Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

It's not possible to provide an accurate figure. Any additional administration bears a cost in terms of time and resources required.

Although we consider the accuracy of our membership data to be of a high standard, the assurance process may increase that threshold and would subsequently require more audit activity on an ongoing basis

#### **Q 17. Where do those costs come from?**

Costs will be in terms of time for both staff and lay members, potentially an increased requirement for external data cleaning as well as some administrative costs related to increased data auditing activity (mailings to members to check their details; printing branch audits etc) and the costs of the assurer.

Employers who administrate check-off arrangements may seek to increase the payment they receive in return for increasing the accuracy of membership data they provide.

## Section 4 Impact on members

### **Q 18. What will be the costs and benefits to union members?**

There may be an increased burden on branch secretaries (elected lay members) who may be required to increase the amount of auditing of their branch membership data. This sort of activity would diminish the amount of time available to carry out other duties in terms of providing support and representation to members of their branch. This could therefore have a subsequent impact on the quality/availability of support to members at a branch level.

Additional demands may also need to be placed on members to update or confirm their details on a more regular basis.

Depending on the costs involved in the additional statutory compliance burdens, then members could also face a fractional increase in their membership contributions in order to cover the new costs. Alternatively they might face a corresponding reduction in their membership benefits.

## Section 5 Impact on employers

### **Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

We would seek to improve agreements with employers where we have check-off arrangements to more pro-actively provide information on their employees who are members of the union.

The bill also implies that the certification officer would have powers to order employers to disclose information if it was in relation to an investigation or a trade union's register of members/assurance of the register.

### **Q 20. What types of questions do unions ask employers in relation to union membership?**

We ask employers to administer check-off payments and we need to know if a member's earnings change or if they are on sick or maternity leave. We require employers to provide schedules of the payments they have taken on behalf of each individual member.

### **Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

N/A

## Section 6 Compliance

### **Q 22. What is your view of the remedies for non-compliance with the clauses?**

This appears to extend the remit of the CO to any person/organisation that may hold information relating to the register of members of a trade union – given that some employers already provide information relating to the register then investigations could involve them too.

### **Q 23. Will unions need time to prepare before the new requirements come into force?**

**Yes**

**Why?**

Time to understand what would be accepted as 'satisfactory' in terms of meeting the expectations of the assurer and then time to ensure that our membership register complies with that guidance.

## Section 7 Guidance

**Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

A clearer outline or examples of the expectations of an assurer and examples of what might not be deemed 'satisfactory'.

## Section 8 Other

**Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

## DAC Beechcroft LLP

**1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box**

Yes, I would like you to publish or release my response

**2. Your name:**

DAC Beachcroft LLP

**3. What organisation do you represent (if any)?**

A large multi site trade unionised employer

**4. E-mail address:**

**5. Please check a box below which best describes you as a respondent to certification of trade union membership details**

Legal representative

**6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

**No Response**

**7. In a guidance document, what information would you find helpful in relation to the proposals?**

**No Response**

**8. How do you store your membership records?**

**No Response**

**9. How do you keep membership details up-to-date?**

**No Response**

**10. Have you encountered problems that mean membership records are not up-to-date?**

**No Response**

**11. Will these changes impact on how you collect and maintain membership data?**

**No Response**

**12. Will our proposals have any impact on how you collect membership subscriptions?**

**No Response**

**13. Do you agree with the role and duties of the assurer set out in the Bill?**

**No Response**

**14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

**No Response**

**15. What will be the costs and benefits to unions?**

**No Response**

**16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

**No Response**

**17. Where do those costs come from?**

**No Response**

**18. What will be the costs and benefits to union members?**

**No Response**

**19. What consequences do these proposals have for employers? Why do these consequences arise?**

These proposals will have limited consequences for employers who operate a trade union subscription check off system. The greater transparency and accuracy of trade union membership records will be helpful for employers to be able to rely on the accuracy of information provided by trade unions in, for example, in the context of ballots for industrial action.

**20. What types of questions do unions ask employers in relation to union membership?**

As trade unions typically have a range of subscription rates, including sick pay rates and maternity leave rates, trade unions will frequently ask employers to tell them which of their members have changed personal circumstances they can adjust their subscription rate. Trade unions will also ask employers whether employees have changed grades or role, or have changed from, for example, part time to full time working hours.

**21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

As an employer, our client does not provide personal details to the trade union (including the information referred to in question 20 above). Our client does maintain check off records for the trade unions with whom it has recognition agreements and it provides them with a check off list every month as a computer file which is broken down into different workplaces. Our client also has an arrangement whereby they tell the trade unions about new joiners to the organisation and provide them with an opportunity at induction days to meet with people joining the organisation.

**22. What is your view of the remedies for non-compliance with the clauses?**

**No Response**

**23. Will unions need time to prepare before the new requirements come into force?**

**No Response**

**24. In guidance, what information would you find helpful in relation to the proposals?**

**No Response**

**25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

**No Response**

**26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

**No Response**

## Employment Lawyers Association (ELA)



Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill-Certification of Trade Union Membership Details

Response from the Employment Lawyers Association

16 August 2013

## Response from Employment Lawyers Association

### Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill-Certification of Trade Union Membership Details

#### 1. Introduction

The Employment Lawyers Association ("ELA") is a non-political group of lawyers working in the field of employment law. Our membership includes those who represent claimants and respondents in courts and employment tribunals. ELA does not comment on the political merits of proposed legislation, rather making observations from a purely legal standpoint.

ELA's Legislative and Policy Committee is made up of both barristers and solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

The Legislative and Policy Committee of the ELA set up a working group to consider and comment on the Discussion paper 'Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill-Certification of Trade Union Membership Details' published by BIS in July 2013.

Preliminary: Time scale of consultation

Before dealing with the consultation itself, ELA wishes to express our concern about its short time scale. This is a matter we have raised both formally and informally in the past, but it is important enough to repeat yet again.

The consultation launched on the 17th July 2013 and closes on the 16<sup>th</sup> August 2013. This is only four weeks. It is also the height of the holiday season. This is simply not enough time for ELA to consistently produce high quality responses.

Like many organisations ELA has a process for responding to government consultation. Primary responsibility lies with the Legislative and Policy

Committee of ELA. Work on an individual consultation, however, is conducted by a working group made up of ELA members with interest in and expertise relating to the consultation.

A working group must meet to discuss the consultation and their views. In general, the consultation document is divided between the members of the group, who prepare draft answers. These drafts are then circulated between the working group for comment, before a final draft is prepared. The final draft must be approved by the Chair of the Legislative and Policy Committee and the Chair of ELA.

ELA believes that this process is best way of producing high quality responses. It allows us to take advantage of the wide range of experience and knowledge among our membership — and to reflect their range of views. Indeed, given that ELA has only a small paid staff in administrative roles, it is the only practical way of organising a response.

It does, however, take time. Furthermore, when a consultation raises important and complex issues members of the working party need time to consider and formulate their views. Substantial reform of the obligations on trade unions to maintain membership records and the introduction of the office of Assurer may be an obscure area of law but it is an important matter for trade unions and their members. The additional powers to be given to the Certification Officer may have significant Human Rights implications. An off the cuff answer is simply not good enough — yet it is all we have been given the opportunity to provide.

If the government persists in consulting under such short timescales, it is likely to undermine the purpose of consultation. Not only will the quality of responses drop, but stakeholders will become reluctant to engage. They may come to believe that the timescales being provided reflects the government's level of interest in the responses.

ELA has always been keen to assist the government in formulating policy. We hope that our expertise and experience is useful. But it is becoming increasingly difficult to make a meaningful contribution within the truncated timescales being required.

Answers to Questions

Q 1. Yes we would like you to publish or release our response.

Q 2. Employment Lawyers Association (“ELA”).

Q 3. See introduction above

Q 4.

Q 5. See introduction above.

Q 6-12. Not applicable as ELA is not a trade union.

#### Independent Third Party Assurer

Q 13. Do you agree with the role and duties of the assurer set out in the Bill?  
If not, why not?

It is proposed to impose a requirement on a Union with a membership of more than 10,000 to secure from an assurer a membership audit certificate (“MAC”), confirming in particular that the trade union’s system for compiling the register of the names and addresses of its members is satisfactory. We struggle to discern the policy justification for this proposal in view of the current legislative requirements in section 24 TULR(C)A.

Overall, we would question the need for the introduction of this role as it seems that from a cost-benefit perspective, the cost to unions far outweighs any benefits that these proposals confer on employers, employees, unions or their members, or employment law principles or industrial relations more generally.

ELA would question whether these proposals go further than is ‘necessary’ in restricting the Article 11 rights to freedom of association and whether the Government would be able to justify the inclusion of an additional burden (both financial and administrative) beyond what is already contained in section 24 of TULR(C)A as being a proportionate response to a particular issue or concern.

In addition, we are concerned about whether there might be an infringement of the right to privacy in Article 8, on the basis that the proposals make provision for the Certification Officer (“CO”), a state body, to know who is or is not a union member and where they live.

ELA also note that the proposal that the assurer reports difficulties to the CO before the union has a right to challenge that decision, may constitute a breach of the principles of natural justice. We would suggest that, as a minimum there should be some mechanism for a pause before any report is sent to the CO. This would allow the trade union to at least comment on the

alleged difficulties and for those comments to accompany the assurer's report if the assurer is unwilling to change an adverse or qualified report.

ELA consider that some or all of the above points could form the basis of a successful challenge to the introduction of the role and duties of an assurer.

We would also point out that unions must already comply with very detailed requirements when conducting certain types of ballot (eg for industrial action), and some of these requirements already necessitate unions ensuring that their membership lists (which include names and addresses, but also extend to information about workplaces/job types) are accurate and up to date. This again therefore makes us question the purpose and need for these proposals and whether they will actually achieve any substantial benefit.

We are also concerned by the lack of detail within section 24ZD(3) of the Bill as to what constitutes a 'satisfactory' system for compiling and maintaining the register of names and addresses, and as to what constitutes 'necessary' information and explanations. A lack of guidance or detail on these points causes uncertainty, may lead to satellite litigation and may cause inconsistencies between different unions and their different assurers.

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Q 15. What will be the costs and benefits to unions?

Costs/resources will be incurred by unions in identifying and securing the services of an appropriate person to undertake the role of assurer, paying for those services, and in ensuring that requests for information and documentation made by the assurer are complied with.

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membership; the focus in both cases being on the systems in place. An effective system could be the same for a union with 10,001 members as for one with 1,000,001 members, and the cost of an assurer determining whether the system was satisfactory may not be materially different between each organisation. The section 24 duty makes no distinction between unions of different membership numbers.

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The costs associated would arise from (in cases where a trade union does not have an existing process compliant with the likely annual assurance requirements):-

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- The costs of contracting an assurer.

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The additional costs of these proposals to unions, both in terms of resources to ensure compliance with the proposals and paying an assurer's fee on an annual basis, may be passed on to their members which may lead to an increase in subscriptions for members. Given the likely disproportionate impact of these proposals on smaller unions as set out above, it may be that the increase in subscriptions for members of smaller, less financially secure unions is greater than that for members of larger, better off unions. We can see limited benefits to members. These proposals might increase the efficiency of union record keeping, which could benefit members because the increased efficiency might make it easier for unions to organise generally and to ballot for industrial action. Better record-keeping might also benefit members because they would be more informed about their union's activities where the union sought to communicate with members by post. However, given the increasing propensity for communications in all walks of life to be via text message or email, this may be of very limited value.

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ELA anticipate that the CO may be become involved in industrial action ballots. Whether this is a good thing is a policy matter but the CO's reputation for political neutrality may well be lost if the office is drawn into industrial disputes. Where the employer challenges the validity of the ballot on the basis of breaches of section 226A, 227, 230(2)(a) and (b) of TUL(C )A where the evidence is that certain members entitled to vote did not receive a ballot paper at their home address then the employer may also refer the matter as a complaint to the CO and invite him to find there is "a good reason" to investigate in pursuant to section 24ZH as inserted by section 38 of the bill. They could also invite the court to grant an injunction to prevent any industrial action taking place until the CO's investigations are concluded.

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Q 20. What type of questions do unions ask employers in relation to union membership?

The relevance of this question to the specific proposals in the discussion paper is obscure. Usually questions raised by trade unions will arise from the difficulties they have experienced in maintaining an accurate record of the whereabouts of their members who have failed to keep them informed of changes of jobs. This is most often of immediate importance if industrial action is contemplated. It is not entirely unknown for a union to request that an employer state where union members are working within an organisation and neither is it unknown for that information to be supplied but both require the existing relationship to be cordial and supportive which is not the universal experience. Where industrial action is contemplated a union may request information about the number of members working in a particular bargaining unit but the usual response is to refuse to provide that information. If an employer is operating check-off then the union will know how many members

are working for that employer but the number may be irreconcilable with the identity of the workers on the register.

ELA anticipate that unions will make more requests for information about members' workplaces and job titles if these provisions are introduced. Although the register only requires names and addresses, most union membership records contain a lot of additional information. If requests are made to update the register ELA anticipate requests will be made in respect of this other information at the same time.

Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

We reply to this question based on our experience of advising employers. As we have said it is not unknown for co-operation to take place but it is not common. The usual response would be either to ignore or refuse the request. The reasons are usually reflective of the reluctance of the employer to engage with the union even if it is recognised. This would be even more the case if the recognition had been statutorily obtained or any form of industrial action was in the contemplation of the employer. The reason given is often reference to the requirements of the data protection legislation but given the absence of any legal obligation to respond often no reason is given.

It may be considered whether requests for such information come within the scope of section 181 Trade Union & Labour Relations (Consolidation) Act 1992 (TULR(C) A) which places a general duty on employers to disclose information the lack of which would 'to a material extent' impede the union in carrying on collective bargaining. That would be a matter of fact for a court to determine in each case but probably the better view is that it does not. There is an existing rule that information that relates specifically to an individual need not be disclosed without the consent of that individual (section 182(1)(d) TULR(C) A).

If the intent of government is to ensure the registers of trade unions are accurate then an extension of section 181 to include membership information within the scope of the information required to be disclosed would remove uncertainty in this area and provide an answer to any objections based on data protection laws. Issues of reciprocity are likely to arise, however, and create a demand by employers for a right to know which of their workers is a union member and such a request would be fiercely opposed. There are in any case many concerns with the general restrictions placed on the obligation to disclose information, which probably explains why it is a provision that used much less than one might expect. This is a complex and contested area of law and we stress that any changes contemplated would demand extensive consultation, far beyond that undertaken in respect of this discussion paper.

Q 22. What is your view of the remedies for non-compliance with the clauses?

For the purposes of this response “the clauses” are taken to mean those in Part 3 of the Bill.

The remedies of a declaration and an enforcement order (unless an enforcement order is inappropriate), made either by the Certification Officer or the High Court are the same as those already existing for members who make a complaint relating to their own entry on the register. ELA notes with approval the fact that before making an enforcement order under section 24C the CO must give the union an opportunity to be heard.

The main difference introduced appears to be that the Certification Officer can, of his own volition, launch an investigation and make a declaration and enforcement order against the union. A member can then enforce this order against the union as though he or she had made the original application himself. The provisions relating to the assurer and the certificate make such an investigation more likely.

The clauses seek to align the remedies available with existing remedies in respect of complaints by members about the accuracy of the register. By allowing investigation ultimately leading to those potential remedies, even without a complaint having been raised by a member, the clauses increase the likelihood of their use.

In particular, the consequences of a declaration and an enforcement order are that any member may initiate contempt proceedings against the union in respect of an enforcement order which opens up the possibility of sequestration of the union’s assets. In ELA’s view this could be seen as a disproportionate response to what would essentially be an administrative problem. This is particularly the case where there are new obligations on a union which they may take time to adjust to.

The extension of the circumstances in which such orders can be made and enforced with such serious remedies serves, in ELA’s view, to leave unions vulnerable to such proceedings, in circumstances where the purpose of the proposals is unclear.

Consideration will need to be given to how these proposals will be interpreted in order to ensure consistency with article 11 of the European Convention on Human Rights (see our answer to question 13 above). ELA do not consider the duty of confidentiality on the CO as set out in section 24A which is to be extended to assurers and inspectors by the new sections 24ZG and 24ZI is sufficient to counter the argument that the state has access to the names and addresses of every trade union member in the country as long as the CO “thinks there is a good reason to do so”. Put this starkly, ELA anticipate challenges to the new powers using article 11 arguments as set out above.

If further clarity were given on the purpose of these proposals it would be easier to assess how appropriate/proportionate they are and how far they achieve their aims. In ELA's view, if any clarification or amendment were given/ made further detailed consultation would be necessary.

22. Will Unions need time to prepare before the new requirements come into force?

In ELA's view unions will need time to prepare and it is in the CO's interests that they also have time to prepare. It is ELA's understanding that the first membership audit certificate (if required to be provided to the CO at the same time as the annual return) cannot be due before 1 June 2015. This certificate would be in relation to the accounting period 1 January 2013 – 31 December 2014. The commencement provisions of the Bill provide that the provisions of Part 3 will come into force on "such day as the Minister may appoint by order".

How much time is needed will depend on the union and their existing systems and how long it takes those with over 10,000 members to arrange for a rule change to provide for the appointment and removal of an assurer to comply with section 24ZC. How rule changes are implemented in trade unions vary depending on the rulebook. ELA are aware of some unions where some rule changes require a referendum of all the members and others where rule changes can only be made at biennial rule change conferences.

All unions will need time to consider whether any changes to the way in which the register is stored and recorded are required to comply with the duty or for the convenience of arranging for the assurer to assess their compliance with their duties. Unions will also need time to consider whether any changes to their procedures should be made and, if so, they will need time to amend/draft and implement any such procedures as well as training staff where necessary.

Unions with over 10,000 members will also have to comply with their own rules in terms of considering the necessary budget and resources required for them to appoint an assurer. They will need time to consider and find an assurer.

ELA note that a qualified independent person is someone who satisfies the conditions set out in an order made by the Secretary of State or who is listed by name in the order. ELA note this is to be a recognised professional or an independent scrutineer from the statutory list of scrutineers. This means it may be possible for a scrutineer appointed by the union to also act for the same union as an assurer. ELA consider that to carry out the dual role may well compromise the independence of the scrutineer, which is a statutory requirement of both section 49(2) and section 49(4). The scrutineer must check the union register "whenever it appears appropriate to him to do so". He must carry out a check if requested by a member or any candidate in an election who suspects the register is not up to date (section 49(3)(aa) and (3A)). If the suspicion proves accurate it would place the scrutineer in an

embarrassing position if they had recently also carried out the role of assurer and issued a MAC without qualification. A complaint to the CO about their independence could follow from the member or candidate.

Unions with less than 10,000 members who will self-certify will need to explore and implement any changes necessary for them to assess themselves whether their systems are satisfactory for complying with their duty in respect of the register. Again, the more guidance that can be given as to the kinds of steps that will be required, the more easily and quickly unions will be able to comply with this.

23. In a guidance document what information would you find helpful in relation to the proposals?

For the purposes of this response “the proposals” has been taken to mean those in respect of Part 3 of the Bill only.

In ELA’s view it would be helpful to have guidance on the following matters:-

a) information about who can/ cannot be appointed as an assurer.

In particular can a person/body corporate who is acting/has acted/may in the future act for the union as:-

- i) scrutineer in an union election or industrial action ballot; or
- ii) accountant preparing the union’s annual return;
- iii) auditor for the purposes of s33 of TULRA 1992

be the assurer?

b) Any requirements on the assurer to make disclosures that may affect their independence, in particular any which may not be known to the union seeking to appoint them. For example, whether they have acted/are acting/ may in future act for any employer with whom the union is/ has been/ is likely to be in future in industrial or legal dispute with

c) What might be examples of grounds for believing (under s24ZB(3)(b)) that:-

- i) an assurer would carry out their functions otherwise than competently;
- ii) the assurer’s independence might reasonably be called into question

d) Confirmation that the definition of who is a member for this purpose depends on the union’s rulebook definition. ELA’s understanding is that there are potentially different interpretations of the word “member” depending on the context being looked at: National Union of Mineworkers (Yorkshire Area) v Millward [1995] IRLR 411.

- e) The standard expected to meet the test that the union's system is "satisfactory" to secure that "so far as is reasonably practicable, that the entries are accurate and kept up-to-date". In ELA's view it would be helpful if this could include some guidance as to the kinds of steps unions are expected to take.
- f) Any limit on the number of times one person/body corporate can request a copy of the membership audit certificate as required under s24ZA(6)
- g) Guidance as to what level of charge for provision of the membership audit certificate would be viewed as reasonable

#### Impact Assessment

We have no additional comments on the Equality Impact Assessment. ELA are concerned to note that no full impact assessment accompanied the discussion paper.



## Response from Employment Lawyers Association

### Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill-Certification of Trade Union Membership Details

#### 1. Introduction

The Employment Lawyers Association ("ELA") is a non-political group of lawyers working in the field of employment law. Our membership includes those who represent claimants and respondents in courts and employment tribunals. ELA does not comment on the political merits of proposed legislation, rather making observations from a purely legal standpoint.

ELA's Legislative and Policy Committee is made up of both barristers and solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

The Legislative and Policy Committee of the ELA set up a working group to consider and comment on the Discussion paper 'Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill-Certification of Trade Union Membership Details' published by BIS in July 2013.

Preliminary: Time scale of consultation

Before dealing with the consultation itself, ELA wishes to express our concern about its short time scale. This is a matter we have raised both formally and informally in the past, but it is important enough to repeat yet again.

The consultation launched on the 17th July 2013 and closes on the 16<sup>th</sup> August 2013. This is only four weeks. It is also the height of the holiday season. This is simply not enough time for ELA to consistently produce high quality responses.

Like many organisations ELA has a process for responding to government consultation. Primary responsibility lies with the Legislative and Policy

Committee of ELA. Work on an individual consultation, however, is conducted by a working group made up of ELA members with interest in and expertise relating to the consultation.

A working group must meet to discuss the consultation and their views. In general, the consultation document is divided between the members of the group, who prepare draft answers. These drafts are then circulated between the working group for comment, before a final draft is prepared. The final draft must be approved by the Chair of the Legislative and Policy Committee and the Chair of ELA.

ELA believes that this process is the best way of producing high quality responses. It allows us to take advantage of the wide range of experience and knowledge among our membership — and to reflect their range of views. Indeed, given that ELA has only a small paid staff in administrative roles, it is the only practical way of organising a response.

It does, however, take time. Furthermore, when a consultation raises important and complex issues members of the working party need time to consider and formulate their views. Substantial reform of the obligations on trade unions to maintain membership records and the introduction of the office of Assurer may be an obscure area of law but it is an important matter for trade unions and their members. The additional powers to be given to the Certification Officer may have significant Human Rights implications. An off the cuff answer is simply not good enough — yet it is all we have been given the opportunity to provide.

If the government persists in consulting under such short timescales, it is likely to undermine the purpose of consultation. Not only will the quality of responses drop, but stakeholders will become reluctant to engage. They may come to believe that the timescales being provided reflects the government's level of interest in the responses.

ELA has always been keen to assist the government in formulating policy. We hope that our expertise and experience is useful. But it is becoming increasingly difficult to make a meaningful contribution within the truncated timescales being required.

Answers to Questions

Q 1. Yes we would like you to publish or release our response.

Q 2. Employment Lawyers Association (“ELA”).

Q 3. See introduction above

Q 4.

Q 5. See introduction above.

Q 6-12. Not applicable as ELA is not a trade union.

Independent

Third Party Assurer

Q 13. Do you agree with the role and duties of the assurer set out in the Bill?  
If not, why not?

It is proposed to impose a requirement on a Union with a membership of more than 10,000 to secure from an assurer a membership audit certificate (“MAC”), confirming in particular that the trade union’s system for compiling the register of the names and addresses of its members is satisfactory. We struggle to discern the policy justification for this proposal in view of the current legislative requirements in section 24 TULR(C)A.

Overall, we would question the need for the introduction of this role as it seems that from a cost-benefit perspective, the cost to unions far outweighs any benefits that these proposals confer on employers, employees, unions or their members, or employment law principles or industrial relations more generally.

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ELA also anticipate that whenever an assurer qualifies a MAC, an employer faced with an industrial action ballot will use the qualification in evidence in support of injunctive relief even if in the meantime the union has remedied the defect identified (see also our point above in answer to question 13 about the lack of a pause before any qualified MAC is sent to the CO).

Q 20. What type of questions do unions ask employers in relation to union membership?

The relevance of this question to the specific proposals in the discussion paper is obscure. Usually questions raised by trade unions will arise from the difficulties they have experienced in maintaining an accurate record of the whereabouts of their members who have failed to keep them informed of changes of jobs. This is most often of immediate importance if industrial action is contemplated. It is not entirely unknown for a union to request that an employer state where union members are working within an organisation and neither is it unknown for that information to be supplied but both require the existing relationship to be cordial and supportive which is not the universal experience. Where industrial action is contemplated a union may request information about the number of members working in a particular bargaining unit but the usual response is to refuse to provide that information. If an employer is operating check-off then the union will know how many members

are working for that employer but the number may be irreconcilable with the identity of the workers on the register.

ELA anticipate that unions will make more requests for information about members' workplaces and job titles if these provisions are introduced. Although the register only requires names and addresses, most union membership records contain a lot of additional information. If requests are made to update the register ELA anticipate requests will be made in respect of this other information at the same time.

Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

We reply to this question based on our experience of advising employers. As we have said it is not unknown for co-operation to take place but it is not common. The usual response would be either to ignore or refuse the request. The reasons are usually reflective of the reluctance of the employer to engage with the union even if it is recognised. This would be even more the case if the recognition had been statutorily obtained or any form of industrial action was in the contemplation of the employer. The reason given is often reference to the requirements of the data protection legislation but given the absence of any legal obligation to respond often no reason is given.

It may be considered whether requests for such information come within the scope of section 181 Trade Union & Labour Relations (Consolidation) Act 1992 (TULR(C) A) which places a general duty on employers to disclose information the lack of which would 'to a material extent' impede the union in carrying on collective bargaining. That would be a matter of fact for a court to determine in each case but probably the better view is that it does not. There is an existing rule that information that relates specifically to an individual need not be disclosed without the consent of that individual (section 182(1)(d) TULR(C) A).

If the intent of government is to ensure the registers of trade unions are accurate then an extension of section 181 to include membership information within the scope of the information required to be disclosed would remove uncertainty in this area and provide an answer to any objections based on data protection laws. Issues of reciprocity are likely to arise, however, and create a demand by employers for a right to know which of their workers is a union member and such a request would be fiercely opposed. There are in any case many concerns with the general restrictions placed on the obligation to disclose information, which probably explains why it is a provision that used much less than one might expect. This is a complex and contested area of law and we stress that any changes contemplated would demand extensive consultation, far beyond that undertaken in respect of this discussion paper.

Q 22. What is your view of the remedies for non-compliance with the clauses?

For the purposes of this response “the clauses” are taken to mean those in Part 3 of the Bill.

The remedies of a declaration and an enforcement order (unless an enforcement order is inappropriate), made either by the Certification Officer or the High Court are the same as those already existing for members who make a complaint relating to their own entry on the register. ELA notes with approval the fact that before making an enforcement order under section 24 C the CO must give the union an opportunity to be heard.

The main difference introduced appears to be that the Certification Officer can, of his own volition, launch an investigation and make a declaration and enforcement order against the union. A member can then enforce this order against the union as though he or she had made the original application himself. The provisions relating to the assurer and the certificate make such an investigation more likely.

The clauses seek to align the remedies available with existing remedies in respect of complaints by members about the accuracy of the register. By allowing investigation ultimately leading to those potential remedies, even without a complaint having been raised by a member, the clauses increase the likelihood of their use.

In particular, the consequences of a declaration and an enforcement order are that any member may initiate contempt proceedings against the union in respect of an enforcement order which opens up the possibility of sequestration of the union's assets. In ELA's view this could be seen as a disproportionate response to what would essentially be an administrative problem. This is particularly the case where there are new obligations on a union which they may take time to adjust to.

The extension of the circumstances in which such orders can be made and enforced with such serious remedies serves, in ELA's view, to leave unions vulnerable to such proceedings, in circumstances where the purpose of the proposals is unclear.

Consideration will need to be given to how these proposals will be interpreted in order to ensure consistency with article 11 of the European Convention on Human Rights (see our answer to question 13 above). ELA do not consider the duty of confidentiality on the CO as set out in section 24A which is to be extended to assurers and inspectors by the new sections 24ZG and 24ZI is sufficient to counter the argument that the state has access to the names and addresses of every trade union member in the country as long as the CO “thinks there is a good reason to do so”. Put this starkly, ELA anticipate challenges to the new powers using article 11 arguments as set out above.

If further clarity were given on the purpose of these proposals it would be easier to assess how appropriate/proportionate they are and how far they achieve their aims. In ELA's view, if any clarification or amendment were given/ made further detailed consultation would be necessary.

22. Will Unions need time to prepare before the new requirements come into force?

In ELA's view unions will need time to prepare and it is in the CO's interests that they also have time to prepare. It is ELA's understanding that the first membership audit certificate (if required to be provided to the CO at the same time as the annual return) cannot be due before 1 June 2015. This certificate would be in relation to the accounting period 1 January 2013 – 31 December 2014. The commencement provisions of the Bill provide that the provisions of Part 3 will come into force on "such day as the Minister may appoint by order".

How much time is needed will depend on the union and their existing systems and how long it takes those with over 10,000 members to arrange for a rule change to provide for the appointment and removal of an assurer to comply with section 24ZC. How rule changes are implemented in trade unions vary depending on the rulebook. ELA are aware of some unions where some rule changes require a referendum of all the members and others where rule changes can only be made at biennial rule change conferences.

All unions will need time to consider whether any changes to the way in which the register is stored and recorded are required to comply with the duty or for the convenience of arranging for the assurer to assess their compliance with their duties. Unions will also need time to consider whether any changes to their procedures should be made and, if so, they will need time to amend/draft and implement any such procedures as well as training staff where necessary.

Unions with over 10,000 members will also have to comply with their own rules in terms of considering the necessary budget and resources required for them to appoint an assurer. They will need time to consider and find an assurer.

ELA note that a qualified independent person is someone who satisfies the conditions set out in an order made by the Secretary of State or who is listed by name in the order. ELA note this is to be a recognised professional or an independent scrutineer from the statutory list of scrutineers. This means it may be possible for a scrutineer appointed by the union to also act for the same union as an assurer. ELA consider that to carry out the dual role may well compromise the independence of the scrutineer, which is a statutory requirement of both section 49(2) and section 49(4). The scrutineer must check the union register "whenever it appears appropriate to him to do so". He must carry out a check if requested by a member or any candidate in an election who suspects the register is not up to date (section 49(3)(aa) and (3A)). If the suspicion proves accurate it would place the scrutineer in an

embarrassing position if they had recently also carried out the role of assurer and issued a MAC without qualification. A complaint to the CO about their independence could follow from the member or candidate.

Unions with less than 10,000 members who will self-certify will need to explore and implement any changes necessary for them to assess themselves whether their systems are satisfactory for complying with their duty in respect of the register. Again, the more guidance that can be given as to the kinds of steps that will be required, the more easily and quickly unions will be able to comply with this.

23. In a guidance document what information would you find helpful in relation to the proposals?

For the purposes of this response “the proposals” has been taken to mean those in respect of Part 3 of the Bill only.

In ELA’s view it would be helpful to have guidance on the following matters:-

a) information about who can/ cannot be appointed as an assurer.

In particular can a person/body incorporate who is acting/has acted/may in the future act for the union as:-

- i) scrutineer in an union election or industrial action ballot; or
- ii) accountant preparing the union’s annual return;
- iii) auditor for the purposes of s33 of TULRA 1992

be the assurer?

b) Any requirements on the assurer to make disclosures that may affect their independence, in particular any which may not be known to the union seeking to appoint them. For example, whether they have acted/are acting/ may in future act for any employer with whom the union is/ has been/ is likely to be in future in industrial or legal dispute with

c) What might be examples of grounds for believing (under s24ZB(3)(b) that:-

- i) an assurer would carry out their functions otherwise than competently;
- ii) the assurer’s independence might reasonably be called into question

d) Confirmation that the definition of who is a member for this purpose depends on the union’s rulebook definition. ELA’s understanding is that there are potentially different interpretations of the word “member” depending on the context being looked at: National Union of Mineworkers (Yorkshire Area) v Millward [1995] IRLR 411.

- e) The standard expected to meet the test that the union's system is "satisfactory" to secure that "so far as is reasonably practicable, that the entries are accurate and kept up-to-date". In ELA's view it would be helpful if this could include some guidance as to the kinds of steps unions are expected to take.
- f) Any limit on the number of times one person/body corporate can request a copy of the membership audit certificate as required under s24ZA(6)
- g) Guidance as to what level of charge for provision of the membership audit certificate would be viewed as reasonable

#### Impact Assessment

We have no additional comments on the Equality Impact Assessment. ELA are concerned to note that no full impact assessment accompanied the discussion paper.

## Engineering Employers Federation (EEF) Response 1

### Company 1

What is your experience of the maintenance of union membership records?

Over the last 25 years, have been involved with check-off agreements which formed part of the recognition agreement between an employer and a trade union.

Are you aware of problems with union membership records? If so, can you provide examples?

For some years now the only union have dealt with is Unite, which of course is by far the largest trade union in Britain and is the result of various mergers. There have been no issues around membership records since joining the current company. At my last company, which also dealt with Unite, there were significant problems caused by poor record keeping on the part of the trade union. The Regional Official readily admitted that their records were often out of date and lacking in essential detail. A typical record might simply say that John Smith was a member and that he was a Technician in the West Midlands for example. Therefore the union relied heavily on employers to fill in the blanks so that at the very least, they (the union) could identify which members worked for which employer. The problem for Unite was made worse by the fact that they still hadn't managed to create one central database of all members from the different unions that had merged: T&G, AEEU etc. Perhaps inevitably, a request from Unite for information about members would coincide with them making plans to hold a ballot for industrial action against the company that they expected to help them.

How do you currently engage with trade unions with regards to the sharing and/or updating of union member information?

Currently there appear to be no issues. We are a fairly small business of 300 employees, and the two shop stewards appear to have all the information that they need.

Have you agreed with trade unions to use check-off?

Yes.

What types of questions do unions ask employers in relation to union membership?

Again based on my past experience, unions wanted the company to assist them in cross checking their records against a list of all company employees to determine which members were employed by the company in question. They also asked for a list of all employees including non-members, to assist with their recruitment drive. The union asked for employees' name, job title and home address.

As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

Would be prepared to provide details for those staff that were clearly union members because their union contributions were deducted from payroll: name, payroll number, job title. I would not be prepared to give them home addresses or other personal information for data protection reasons. Would agree to a cross check of their membership with our employee database but this would have to be carried out with a member of the HR team on company premises (i.e. would not agree to simply give the employee information to the union).

What kind of guidance might be useful, either for the employer or the Union, to support them in complying with the sharing, maintenance and updating of membership information?

It would be useful to have guidance on the frequency and method of sharing and updating membership information.

In return for being given information by the company on non union members, the unions should be obliged to share some basic information regarding their members who do not have their union dues deducted from their pay (for example they may pay by direct debit). They obviously wouldn't have to disclose the names of such members but they should have to disclose to an independent auditor / assurer how many such members they have, broken down into specific bargaining groups if necessary.

## Engineering Employers Federation (EEF) Response 2

### Company 2

What is your experience of the maintenance of union membership records?

HR do not maintain union membership records

Trade Union take responsibility for holding their union member records in a safe and responsible manner.

Are you aware of problems with union membership records? If so, can you provide examples?

No problems incurred

Union manage the updating of their union members' personal information.

How do you currently engage with trade unions with regards to the sharing and/or updating of union member information?

Trade Union maintain up to date information for their own members. HR do not maintain separate records.

New starters receive a Trade Union application form in their induction pack and trade union informed of all new starters.

Leaver and New starter information provided to enable the Union to update records accordingly

Have you agreed with trade unions to use check-off?

Yes but not all union members choose to use check-off and pay subscriptions personally.

What types of questions do unions ask employers in relation to union membership?

- Headcount numbers including turnover rate, new starters, leavers etc.
- Gender breakdown
- Absenteeism rates and details of main causes of absence
- Health and Safety information e.g. accident rates, health surveillance monitoring

As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

Not experienced an occasion where the Trade Union have requested personal staff information to help them update their union membership records.

All other information mentioned above is provided on a regular basis

Starter/Leaver information forwarded to the Union on monthly basis

## Engineering Employers Federation (EEF) Response 3

### Company 3

What is your experience of the maintenance of union membership records? Are you aware of problems with union membership records? If so, can you provide examples?

With check-off no longer in use, it is difficult to obtain accurate records as this was an employer responsibility under check-off, not TU as currently. With the use of direct debit, blue collar employees may cancel their TU membership and DD payment once they have started in their project role. It can take up to 2 years for the TU to become aware of this. As major projects have an itinerant workforce, this creates a significant issue for GMB and Unite. When conducting a ballot, TUs have difficulty in proving which employees are TU members – hence the TU push for check-off to be reintroduced. An example is a recent 3 year pay deal where there was an 18% vote as the TU could not prove who was a member, and the ballot would be invalidated if a single non union member were to vote. If the TU had refused the deal we would have challenged by asking the TU to prove all TU members were balloted and no non-TU members.

At a varying frequency (6 monthly / annually / bi-annually) TUs ask their local representatives for a membership list, which quickly become out of date. TUs used to conduct a membership card check at branch meetings, but with such meetings so poorly attended, TUs are unable to confirm their current membership. TUs now directly ask employees if they are a TU member. On major projects, TUs seek to have senior shop stewards on site at the start of the project. As part of induction, TUs discuss TU membership, although few TU officials take this opportunity.

TUs do not have a unified way of tracking membership and it remains difficult for them to do so. As an employer, similarly we can only obtain accurate TU membership data directly from employees. We have refused requests from TUs to provide membership information, which is indicative of the difficulty TUs have in obtaining such data. This assists the employer should there be a ballot for action.

With TU officials spread increasingly thin, there is a high dependency on the quality of the representatives on their ability to obtain accurate information.

How do you currently engage with trade unions with regards to the sharing and/or updating of union member information?

We engage generally at a national level, but not in relation to membership. On projects there is a monthly meeting of the Project Joint Council but membership is not discussed. Engagement is also driven by the quality of the relationship with the TU officials. There is no formal mechanism for sharing information – as an employer we are not necessarily interested whether an employee is a TU member or not. The issue is understanding what employee group is covered by a recognition agreement or collective bargaining arrangement.

Have you agreed with trade unions to use check-off?

This is not part of the national agreement, which refers to working with TUs to encourage TU membership, but stops short of check-off. TUs are pushing hard at a national level to get check-off back on the statutes.

What types of questions do unions ask employers in relation to union membership?

This depends on how active local TU reps are, but will ask for membership details. Nationally the TUs do not ask as they know we do not have the information. TUs ask for induction time to speak to employees, and at ballot time ask for details of union membership.

As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

We could provide the information, but the TUs tend not to be proactive. It is also a data protection issue – we would not provide this information without the consent of the individual to do so. If we provided this information to the TU and they approached the employee directly, this would potentially both undermine trust in the employer's management of their data, and send an implicit message on the employer's view of TU membership.

What kind of guidance might be useful, either for the employer or the Union, to support them in complying with the sharing, maintenance and updating of membership information?

It is the duty of the TU to implement a process to maintain this information, and the employer should not be required to support this. The TU has wanted DD payments, so to return to check-off payments would be an anachronism and put the employer in an impossible position. A major issue for the TUs is their membership departments – as TUs have combined into ever larger organisations, they have lost sight of individual sectors and hence find it increasingly difficult to monitor membership.

The employer has a formal duty to explain to employees what TU recognition agreements exist across an entity, and what collective bargaining arrangements are in place. The membership responsibility (including the production of relevant documents to validate such membership and meeting the requirements of the Certification Officer) sits squarely with the TUs, particularly in relation to ballots. If an employer were to supply membership data, it would not be able to challenge a ballot so is a fundamental issue. There is very little balloting now – hence there is far less industrial action and far more 'protesting'. TUs have lost their membership ethos, and are run more as a business than a members' organisation. Whilst we will continue work with TUs, it is their issue to how they manage themselves internally.

**FDA**



# **FDA RESPONSE TO BIS CONSULTATION ON CERTIFICATION OF TRADE UNION MEMBERSHIP DETAILS**

## **BIS CONSULTATION ON CERTIFICATION OF TRADE UNION MEMBERSHIP DETAILS**

### **TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING & TRADE UNION ADMINISTRATION BILL**

#### **FDA RESPONSE**

The FDA is a trade union affiliated to the TUC. We are politically independent and are not affiliated to any political party. The FDA rules clearly state that the FDA is, like our members who are senior managers and professionals in the civil service, politically neutral.

We have contributed to and commend the submission to this consultation made by the TUC. In addition we would like to raise some particular issues that are of concern to the FDA and its membership.

The FDA is fundamentally opposed to the measures relating to trade unions' registers of members contained in Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. These proposals have the potential to impose significant administrative and financial burdens on the FDA without any foundation or justification. We are concerned that in introducing these measures the Government is singling out trade unions for unfair regulation and, in particular, imposing a disproportionate regulatory and cost burden on smaller unions.

In the FDA's opinion these proposals represent a threat to members' privacy and an unjustified intrusion on trade union autonomy and the right of trade unions to govern their internal affairs. These rights are core elements of the right to freedom of association which is protected by Articles 8 and 11 of the European Convention on Human Rights and ILO Convention 87, Article 3.

The Convention states, and the European Court of Human Rights has underlined, that any interference with these rights must be justified, necessary and proportionate. In drawing up the current proposals, the Government has not identified any objective justification for the legislation. The discussion document states that "Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able visibly to demonstrate that they know who their members are and can communicate with them." The FDA agrees and complies with the rules and principles already set out by the Certification Officer, the Information Commissioner and others: for example, the FDA is required to comply with s24 of the Trade Union and Labour Relations (Consolidation) 1992 (TULR(C)A 1992) and the provisions and principles set out in the Data Protection Act 1998.

The grounds for an extra administrative hurdle are not demonstrated in these proposals. In reality, the FDA routinely displays its ability to communicate with members through websites, newsletters, emails, correspondence, branch meetings, union conferences and training events. However, we do not believe

the State, who is also the employer, should know and be continually monitoring which of its employees is a member of the FDA.

The consultation does not produce any evidence of problems that necessitate additional regulation. According to their website, the Certification Office has received no complaints from trade union members relating to registers of members since 2004. Between 2000 and 2004, a total of six complaints were received, five of which were dismissed and in the sixth case the Certification Officer decided not to issue the declaration sought. If union members were concerned about the way in which unions manage membership lists, the number of complaints would be far higher and if there were serious administrative problems, the Certification Officer would have issued declarations to this effect.

Part 3 of the Bill will impose significant administrative and financial burdens on trade unions like the FDA and will also increase the workload and costs for the Certification Officer. It is far from clear what benefits the increased regulation will yield for the wider public, including businesses, and how the increased costs to the taxpayer can be justified.

The Bill also provides the Certification Officer with sweeping new powers to access a union's register of members' names and addresses and related correspondence between individuals and the union, where s/he 'thinks there is a good reason to do so' (new section 24ZH of the Trade Union and Labour Relations (Consolidation) Act 1992). The FDA believes this represents a serious violation of individuals' rights to privacy as protected by Article 8 of the European Convention on Human Rights. It may also act as a significant deterrent for some individuals to exercise their fundamental rights to join a trade union and be represented in the workplace under Article 11 of the Convention.

The explanatory notes accompanying the Bill argue that new provisions imposing confidentiality requirements will provide adequate safeguards for individuals. The FDA does not agree and has significant concerns about members' right to privacy and confidentiality relating to their membership of the union.

The FDA believes there is an inherent contradiction between unions' obligations under data protection rules, which require unions to protect members' names and addresses as highly sensitive data and Part 3 of the Transparency Bill which will require unions to disclose such details to agents of the state. There is also a serious risk that trade union membership data will be misplaced or lost. The ability of the Certification Officer to outsource investigations to third parties only increases this risk and again, the protections afforded to mitigate this risk do not seem adequate as there is still a lot of detail relating to the process of certification and investigation outstanding.

Finally, the FDA is seriously concerned that the Government has tabled the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament before it has completed public consultation or been given an impact assessment, contrary to the Better Regulation Executive's rules. The timing and length of the existing consultation process has been completely inadequate. The Government has provided trade unions with barely four weeks over the holiday period to respond to significant new

regulations and there has been no time to seek clarifications from officials as to the intent or meaning of some of the proposals outlined. The FDA hopes that BIS will seek further engagement with unions during the Bill's progress through the Parliamentary process.

The rest of this submission follows the questions BIS sets out in its consultation paper. The FDA has responded to those questions that we feel we are in a position to answer, or should be if there was greater clarity in the proposals.

We remain committed to working with BIS to ensure that, following the consultation, this Part of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill proceeds into legislation, it is a workable and useful addition to the regulatory landscape.

## Specific Responses to Questions Set Out in the Discussion Paper Response Form

### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties.

Yes, I would like you to publish or release my response

### Q 2. Your name

### Q 3. What organisation do you represent (if any)? FDA

### Q 4. E-mail address

### Q 5. If you are representing an organisation, what type of organisation is it?

<input type="checkbox"/>	Other (please describe)
<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 or staff association

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
✓	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

**Section 1 Membership records**

**Q 7. How do you obtain membership details?**

Membership details are voluntarily provided by relevant individuals seeking membership of the FDA.

**Q 8. How do you store your membership records?**

The FDA securely stores membership records in accordance with data protection requirements and other relevant guidance.

**Q 9. How do you keep membership details up-to-date?**

The FDA as an organisation is mindful of the importance of maintaining up to date information on members and we encourage our members to be similarly vigilant and ensure the union holds their correct details. We conduct regular exercises to update records with members and routinely encourage members to update their records as appropriate i.e. when information changes.

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

No, and nor has the Certification Office raised any concerns with us about the FDA's records.

**If yes, what were they?**

N/A

**Q 11. Will these changes impact on how you collect and maintain membership data?**

The text as drafted is still very unclear, in particular on scope and role of the assurer. Without clarity on the intent of this proposed legislation it is not possible to answer this question definitively.

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

The text as drafted is still very unclear which means it is impossible to assess the full impact of these proposals and therefore the particular repercussions that there may be, for example, on how the FDA collects membership subscriptions. Without significantly greater clarity on this proposed legislation it is not possible to answer this question.

**If yes, how?**

N/A

**Section 2 Independent third party assurer**

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

No

**If not, why not?**

The FDA does not agree with the roles and duties of the assurer insofar as they are described in the Bill. We would also express our concern that these roles and duties are unclear and, it appears, either in conflict with, or exactly duplicating the existing powers of other bodies, for example, the Information Commissioner's Office.

More fundamentally however, the FDA is concerned that these provisions amount to an unjustified interference in trade union internal affairs and threaten an individual's freedom of association and privacy; as such these proposals are inconsistent with the requirements of Articles 8 and 11 of the European Convention on Human Rights.

In our opinion, existing arrangements relating to membership records are adequate and no evidence has been presented to indicate that this is not the case.

As presented, the role of the assurer is to subjectively judge a process of membership record keeping. This means we will have to pay an 'assurer' (the definition of which is unclear) to secure this certificate and will, it appears, incur the same cost as a trade union 100 times the size of the FDA. In contrast, a union that has a few thousand fewer members than the FDA will be able to self-certify thereby avoiding much of the additional cost and red

tape that these proposals will cause. We do not believe this is proportionate and do not see what the legitimate aim being pursued here is when members already have recourse to the union in regard to its record keeping and the Certification Officer and Information Commissioner already have known roles in this area.

There is what appears to be an arbitrary threshold of 10,000 members for self-certification but we have no explanation in these consultation documents, or in discussion with BIS officials that explains this particular cut off point i.e. why self certification is acceptable for a trade union with 10,000 members but not for one with 15,000. In fact there is no explanation for pursuing an 'assurer' method for all trade unions instead of self-certification if it is deemed this approach is needed at all.

The FDA is extremely concerned that the role of the assurer will violate trade union members' rights to privacy as protected by Article 8 of the European Convention. Under section 24ZG the assurer will be permitted to disclose the register of members' names and addresses to the Certification Officer, who is an agent of the State. Such disclosure can be made without the knowledge or consent of the union or its members. It is widely recognised that the issue of privacy and trade union membership is an area of unique sensitivity. This is particularly so when the employer and the State are one and the same. This is the case for FDA members. The FDA is deeply concerned that the proposals as currently set out have a very real potential to jeopardise the security of FDA membership records.

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

No

**If not, who do you think should do it? Why?**

We do not believe a new role should be created. If any new requirements are deemed necessary these should be achievable through the current auditing process.

### **Section 3 Impact on unions**

**Q 15. What will be the costs and benefits to unions?**

As a smaller union the FDA will face disproportionate cost with the new reporting process. As essentially a fixed cost per member, FDA members will bear more cost as a result of these proposals than members of larger unions. As the proposals as to the exact role and remit of the assurer are unclear and no impact assessment has been made available as part of this consultation process it is impossible to quantify the cost at this stage.

Given these proposals simply add a regulatory and financial burden to unions the FDA does not see any benefit of the proposals.

**Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

**Q 17. Where do those costs come from?**

In relation to both question 16 and 17, as reflected above, this cost is unknown as the assurer 'fee' is a new invention meaning that unions will have to pay whatever is charged. Larger unions may be able to use their greater purchasing power to negotiate a lower fee, small unions cannot. However, there is added risk that if these proposals result in a limited list of 'accredited assurers' they will have effectively set up a cartel which will be able to arbitrarily set a level of fee for providing this certificate that the FDA will be obliged to pay.

In addition we may be required to change the way we collect and maintain membership information which will have a significant and disproportionate cost to a small union.

#### **Section 4 Impact on members**

**Q 18. What will be the costs and benefits to union members?**

The costs to members may be financial – see above. However, the much greater cost is to members' privacy and freedom of association as discussed above.

As also reflected elsewhere, there are not any foreseeable benefits to members as members already have a route of recourse in relation to the information the union holds.

#### **Section 6 Compliance**

**Q 22. What is your view of the remedies for non-compliance with the clauses?**

The FDA does not agree with the proposals contained in the Bill and believes that the existing provisions are satisfactory, we are also concerned that compliance with these clauses will conflict with data protection rules and our confidentiality obligation to our members.

The FDA has serious concerns about the proposed extended role for the Certification Officer. The Bill provides the Certification Officer with wide-ranging powers to access registers which contain union members' names and

addresses. Section 24ZH provides the Certification Officer with a very broad discretion to request access to membership lists. The Certification Officer only needs to 'think there is a good reason to do so'. The threshold test is primarily subjective. The Bill provides no objective criteria to determine whether such requests are justified or necessary. The test could be applied inconsistently or as a result of pressure from Government departments or other employers.

In our opinion, these powers are not justified or proportionate and represent a serious intrusion by a state official into unions' internal affairs. The exercise of these powers will also seriously violate individuals' rights to privacy.

The FDA is also concerned that the Certification Officer will be able to initiate investigations on his or her own volition or after receiving information from third parties. It is likely that employers who are involved in a dispute with a trade union, or organisations that are principally opposed to trade unions will contact the Certification Officer requesting an investigation of union membership records. This could politicise, or be seen to politicise, the role of the Certification Officer, thereby undermining their impartiality.

**Q 23. Will unions need time to prepare before the new requirements come into force?**

Yes

**Why?**

Primarily because it is currently unclear what the new requirements are, what they seek to achieve and whether they are compatible with other legislation.

## **Section 7 Guidance**

**Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

The FDA has concerns about the confidence with which we could rely on guidance relating to this proposed legislation when its compatibility with other obligations, contained in both legislation and guidance from organisations such as the ICO, is unclear.

We would however, like further information on a number of issues these proposals raise, for example:

- How the proposal is deemed to be proportionate;
- What recourse there is against vexatious applications to the Certification Officer under this legislation;
- How union members' privacy can be protected;
- Confirmation that time spent by TU representatives in compliance with these proposals will be classed as a statutory duty and therefore should attract paid facility time from employers;

- Why an 'assurer' is deemed the appropriate means of certifying trade union membership details;
- How these proposals interact with unions' other obligations regarding membership recording.

## Section 8 Other

### **Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

Please see the comments made in the introduction to this response.

### **Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

The assumption beneath table 1 that 'smaller unions will not be balloting significant numbers for industrial action' overlooks the fact that many smaller unions are industry specific and therefore while, for example, industrial action in the civil service will cover a relatively small percentage of the biggest three unions' members, it is nearly 100% of the FDA's. FDA has members that work for more than 200, predominantly civil service, employers, and the burdens on membership data collection and maintenance can be disproportionate due to the relatively small numbers of members we have in each employer.

The EQIA shows that the impact of these proposals will be felt particularly by women, older workers and those with disabilities. It is difficult to see how this is justified when there are no discernable benefits to any identified group.

Beyond the EQIA however, the FDA is very concerned that the Government has failed to carry out public consultation and a full economic impact assessment before tabling the Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament. We believe that informed drafting of legislation following detailed consultation and a clear articulation of the aim desired and the rationale for the adoption of a particular means of achieving that aim, after consideration of a range of approaches, leads to workable, successful law. We are concerned that the speed of processing this Bill and the approach taken to its consideration will not lead to the successful regulatory framework that the Government seeks.

## **Liberty**

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Liberty's response to the Department for Business, Innovation and Skills discussion paper on certification of trade union membership details**

**August 2013**

## About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

[REDACTED]

## **Introduction**

1. Freedom of association is an integral part of our human rights regime, linked closely to free expression and fundamental to meaningful democracy. In protecting freedom of association, Article 11 of the European Convention on Human Rights makes explicit provision for the right to form and join trade unions and places a positive obligation on the State to take reasonable steps to facilitate free assembly. Liberty has serious concerns about the potential of measures set out in Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (*the Bill*) to undermine the ability of trade unions to successfully advocate on behalf of their members without fear of intimidation. An attack on the ability of unions to perform this role risks seriously undermining freedom of association rights.

2. The Bill was originally intended to address concerns over the influence of professional lobbyists. Part 3 of the Bill, however, instead targets a completely unrelated issue by proposing to introduce additional compliance and scrutiny measures on trade union registers of members; measures which Liberty believes constitute a breach of Article 11. Presently, trade unions are subject to a statutory duty to maintain a register of the names and addresses of its members and to secure, as far as reasonably practicable, that the entries are accurate and up to date. There are already measures in place to allow both members and an independent scrutineer to question the accuracy of the register. The new proposals seek to introduce a number of additional measures which go far beyond what is necessary and proportionate to ensure public confidence in the accuracy of union registers. It is further not evident that the proposals are based on legitimate concerns. Liberty therefore urges the government not to proceed with the reforms set out in Part 3 of the Bill.

## **The current regime**

### *Duty to maintain the register*

3. Under section 24 of the *Trade Union and Labour Relations (Consolidation) Act* (TURLCA), there is currently a duty on trade unions to compile and maintain a register of the

names and addresses<sup>1</sup> of its members, and to secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date. A trade union must also, on reasonable notice, allow any member to ascertain free of charge whether there is an entry relating to him on the register. On request, a trade union must also supply a member with a copy of any entry on the register relating to him as soon as reasonably practicable, either free of charge or on payment of a reasonable fee.

#### *Disclosure of the register to the scrutineer*

4. Confidentiality of the register of members is considered to be of particular importance.<sup>2</sup> Under the current regime, there are limited circumstances in which a third party may be given access to the register. Trade unions are presently required to appoint an independent scrutineer when certain union ballots take place; namely ballots concerning elections, political resolutions and resolutions to approve a merger.<sup>3</sup> An independent teller (who may be the scrutineer or another person) must also be appointed to distribute the voting papers and to count the votes.<sup>4</sup> The scrutineer must be a “qualified independent person”; that is, a person who satisfies the conditions set out in an order made by the Secretary of State or who is specified by name in an order, and must be someone the union believes will act competently and independently.

5. The scrutineer is appointed to supervise the production, distribution and return of voting papers. The scrutineer’s appointment must also expressly require the scrutineer to inspect or examine the register of members during his appointment whenever it appears to him appropriate to do so,<sup>5</sup> and whenever a request is made by a union member or election candidate who suspects that the relevant register is not accurate and up to date, provided the scrutineer does not consider that their suspicion is ill-founded.<sup>6</sup> This is because the register serves as the electoral role for these ballots.

6. The scrutineer must produce a report to the union as soon as reasonably practicable after the last date for return of voting papers, and is entitled to take such steps as appear appropriate to enable him to produce this report. The report must confirm the number of

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<sup>1</sup> Home address or another address which the member has requested in writing to be treated as his postal address.

<sup>2</sup> Harvey on Industrial Relations and Employment Law, [1537 – 1542]

<sup>3</sup> TULRC Act, ss 49, 75 and 100A.

<sup>4</sup> TULRC Act, ss 51A, 77A and 100D.

<sup>5</sup> TULRC Act, ss 49(3)(aa), 75(3)(aa) and 100A(3)(b).

<sup>6</sup> TULRC Act, ss 49(3A), 75(3A) and 100A(4).

voting papers distributed and returned to the trade union, and must also state whether the scrutineer is satisfied that the ballot has complied with the relevant requirements, arrangements were reasonably practicable to minimise risk of unfairness or malpractice, and he carried out his functions without interference. Additionally, the report must specifically state: (i) whether the scrutineer has inspected or examined the register of members; (ii) if so, whether he was acting on a request by a member of the trade union or at his own instance; (iii) whether he declined to act on any request by a member; and (iv) whether any such inspection or examination has revealed any matter which he considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date. However, the report must not state the name of any member who has requested such an inspection or examination.<sup>7</sup>

#### *Duty of confidentiality on the scrutineer*

7. If a scrutineer (or independent person) is appointed, they are subject to a duty of confidentiality in relation to the register of members. This duty manifests itself in two ways. Firstly, the union is required to include this duty of confidentiality in the scrutineer's appointment. Secondly, the TULRC Act imposes a duty of confidentiality directly on the scrutineer.<sup>8</sup> The scrutineer's duty of confidentiality has two elements:

(a) not to disclose any name or address in the register except in permitted circumstances; and

(b) to take all reasonable steps to secure that there is no disclosure of any such name or address by any other person except in permitted circumstances.<sup>9</sup>

#### *Challenging the accuracy of the register*

8. If a trade union member suspects that a union is not complying with its obligations to keep an accurate and up to date register and to provide members with details of their records on request, they can apply to the Certification Officer or the High Court seeking a

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<sup>7</sup> TULRC Act, ss 52(2A), 78(2A) and 100E(3).

<sup>8</sup> TULRC Act, ss 49(3C), 75(3C) and 100A(6).

<sup>9</sup> These permitted circumstances are: (a) where the member consents; (b) where it is requested by the Certification Officer to discharge of any of his functions or any of the functions of an inspector appointed by him;

(c) where it is required to discharge of any of the functions of the scrutineer or independent person; or (d) where it is required for the purposes of the investigation of crime or of criminal proceedings.

declaration and enforcement order.<sup>10</sup> Although it is possible for members to make a complaint concerning inaccuracies in the register in relation to their own particular entries,<sup>11</sup> in most cases the claimant raises a complaint about the state of the register in general.<sup>12</sup> The Certification Officer commented in a judgment that “*Most of the cases that have alleged a breach of section 24 have involved a consideration of what was reasonably practicable on the facts of that matter.*”<sup>13</sup> A union is not expected to have a 100% accurate register; rather, a *de minimus* rule applies and the court will examine the union’s practices and procedures to determine what was “reasonably practicable” for the union to do in the circumstances.<sup>14</sup>

9. Therefore, under the current regime, members have the right to challenge the accuracy of union registers at any time. Additionally, the registers are subject to scrutiny by an independent person on the necessary occasions; namely every time ballots for which the register serves as an electoral roll are held.

### **The proposed regime**

10. Part 3 of the Bill introduces a number of increased compliance and investigatory measures on trade unions, namely:

- production of an annual membership audit certificate;
- appointment of an independent assurer;
- increase in investigatory powers of the certification officer; and
- appointment of third party investigators.

#### *Section 24ZA: Membership audit certificate*

11. The Bill proposes to insert a new section 24ZA into TULRCA, which creates a duty on any trade union which is already required to maintain a register of members to send a membership audit certificate to the Certification Officer with each annual return. If the trade union has more than 10,000 members the membership audit certificate must be provided by

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<sup>10</sup> TULRC Act, s 24(6).

<sup>11</sup> See, e.g. *Bibby and Amicus* (D/23/03, 5 September 2003) Certification Officer. Available at <http://www.certoffice.org/CertificationOfficer/media/DocumentLibrary/Decisions/D23.03.pdf?ext=.pdf>.

<sup>12</sup> Harvey on Industrial Relations and Employment Law, paragraph [1544].

<sup>13</sup> *Bibby and Amicus* (D/23/03, 5 September 2003) Certification Officer, paragraph 18.

<sup>14</sup> *British Railways Board v National Union of Railwaymen* [1989] IRLR 349; *RJB Mining (UK) Ltd and other v National Union of Mineworkers* [1997] IRLR 621.

an independent assurer (see section 3B below), otherwise it may be signed by an authorised officer of the trade union. The union must supply a copy of its most recent membership audit certificate to any person on request, either free or on payment of a reasonable charge.

*Section 24ZB: Appointment of an independent assurer*

12. Under the new Section 24ZB, a trade union with more than 10,000 members must appoint a “qualified independent person” to act as an assurer for each annual reporting period. Like a scrutineer, a qualified independent assurer is someone who satisfies the conditions set out in an order made by the Secretary of State or who is listed by name in the order, and must be someone the union believes will act competently and independently. The assurer shall be appointed to provide the membership audit certificate, and carry out such enquiries as the assurer considers necessary to enable to assurer to provide the certificate. A membership audit certificate produced by an assurer must state whether, in the assurer’s opinion:

- a) the union’s system for compiling and maintaining the register was satisfactory for the purposes of complying with its duty under section 24(1); and
- b) the assurer was able to obtain all the information and explanations needed to carry out its functions.

If the answer to either of the above is no, the assurer must give written reasons and inform the Certification Officer.

13. The assurer must be given “a right of access at all reasonable times to the register of the names and addresses of the union’s members and to all other documents which the assurer considers may be relevant” to whether the union has complied with its duty to keep an accurate and up to date register. The assurer is also entitled to require from any union officer “such information and explanations as the assurer considers necessary”.

14. Section 24ZG provides that “a duty of confidentiality as respects the register” is incorporated into the assurer’s appointment. This duty encompasses the same two elements as the duty on the scrutineer: not to disclose any name or address in the register of members except in permitted circumstances; and to take all reasonable steps to secure that there is no disclosure of any such name or address by another person except in permitted circumstances.<sup>15</sup>

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<sup>15</sup> The permitted circumstances for disclosure by an assurer are: (a) where the member consents; (b) where it is required or requested by the Certification Officer to discharge of any of the Certification

*Section 24ZH: Investigation by the Certification Officer*

15. The Bill also gives the Certification Officer significant investigatory powers. Under the proposed section 24ZH, “If the Certification Officer thinks there is good reason to do so”, the Certification Officer may give directions to a trade union requiring it to produce “relevant documents” to the Certification Officer or member of the Certification Officer’s staff. The “relevant documents” that the union may be required to produce are the register of names and addresses itself, and “documents of any other description which the Certification Officer or authorised person considers may be relevant to whether the union has failed to comply with any of the requirements of section 24(1)”. The Certification Officer also has the power to require the person producing the documents, a current or former union official or a current or former agent of the union to provide an explanation of the documents. The Certification Officer and its staff members do not owe any duty of confidentiality to the union.

*Section 24ZI: Investigation by third party inspectors*

16. Under the proposed new section 24ZI, the Certification Officer may also appoint a member of its staff or any other person (i.e. a third party) as an inspector to investigate and report back to the Certification Officer on whether a trade union has failed to comply with any of the requirements of section 24(1). The Certification Officer may only make such an appointment if it appears that “there are circumstances suggesting that the union has failed to comply with a requirement of section 24(1), 24ZA or 24ZB”. Where a person appears to be in the possession of information relating to a matter considered by the inspector to be relevant to the investigation, the inspector may require that person to produce any “relevant documents” (as defined in section 3C above), attend before the inspector and otherwise give “all assistance in connection with the investigation which the person is reasonably able to give”. Where a person not belonging to the Certification Officer’s staff is appointed as an inspector, a duty of confidentiality (on the same terms as above) is imposed on them; however, this duty is owed to the Certification Officer, not to the union.

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Officer’s functions; (c) where it is required to discharge of any of the functions of an inspector appointed by the Certification Officer; (d) where it is required to discharge of any of the functions of the assurer; or (e) where it is required for the purposes of the investigation of crime or criminal proceedings.

### *Section 24B and 24C: Enforcement*

17. If the Certification Officer is satisfied that a trade union has failed to comply with any of its duties regarding the register, membership audit certificate or appointment of an assurer, the Certification Officer may make a declaration and enforcement order requiring the union to take certain steps to remedy the failure or refrain from doing certain acts to prevent a similar failure from occurring. Where the Certification Officer is satisfied that a union person has failed to comply with a requirement concerning production of documents or assisting with investigations, the Certification Officer may similarly make an order requiring compliance. Orders made by the Certification Officer can be enforced in the same way as an order of the court.

### **Article 11 analysis**

18. Article 11(1) provides that everyone has the right of peaceful assembly and to freedom of association with others, including the right to form and join a trade union for the protection of his interests. This right is qualified however; Article 11(2) provides that no restrictions shall be placed on the exercise of these rights other than those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of rights and freedoms of others. The European Court of Human Rights has held only “convincing and compelling reasons”<sup>16</sup> can justify an interference with Article 11 rights of association, and that the Article 11(2) exceptions are to be construed strictly.<sup>17</sup>

19. The most commonly relied on exception is “necessary in a democratic society”. Although there is no definitive test to determine whether a measure is “necessary in a democratic society”, in *Sunday Times v UK*<sup>18</sup> the European Court of Human Rights set out the following three-fold test which is generally applied in relation to any of the qualified rights under the Convention:

- whether the interference corresponds to a “pressing social need”;
- whether it was “proportionate to the legitimate aim pursued”; and

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<sup>16</sup> *Tüm Haber Sen and Çınar v. Turkey* (App No 28602/95), 21 Feb 2006, paragraph 35.

<sup>17</sup> Blackstone’s Guide to the Human Rights Act 1998 (6<sup>th</sup> ed), page 251

<sup>18</sup> (App No 6538/74) [1979] ECHR 1.

- whether the reasons given by the national authority to justify it were “relevant and sufficient”.

Of these, proportionality is the key element of the necessity test. Even if a policy has a legitimate aim, it will not be permitted if the means used are excessive in the circumstances. The European Court of Human Rights has expressly recognised that “*there may be specific circumstances in which a legal requirement on an association to reveal the names of its members to a third party could give rise to an unjustified interference with the rights under Article 11 (Art. 11) or other provisions of the Convention.*”<sup>19</sup>

*Is there a “legitimate aim” or “pressing social need”?*

20. The stated aim of these provisions is to ensure confidence in the general public that trade unions have accurate and up-to-date registers to enable them to communicate properly with their members. The July 2013 “Certification of trade union membership details: discussion paper” produced by the Department for Business Innovation and Skills (*the Discussion Paper*) states that:

Trade union activity has the potential to affect the daily lives of members and non-members. The general public should be confident that voting papers and other communications are reaching union members so that they have the opportunity to participate, even if they choose not to exercise it. As a result, unions also have a responsibility to give public assurance that they are keeping up-to-date registers.

21. While this may be considered a legitimate aim, Liberty questions whether these measures address a “pressing social need”; the government has not provided any evidence that there is a concern among the public about the status of union registers, that inaccurate union registers are a widespread problem or that any social issues have been caused as a result. Additionally, as discussed further in section 4C below, the proposed measures go far beyond what is necessary to secure this stated aim.

22. The Government Discussion Paper also states:

at present complaints to the Certification Officer (CO) about the register can only be made by trade union members and no-one else. In addition, members only have a

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<sup>19</sup> *NATFHE v United Kingdom*, page 7.

right to see whether and how their own details are recorded. This means it is difficult for members to make a complaint in relation to the accuracy of the membership register as a whole.<sup>20</sup>

This statement fails to take account of the extent to which, on making a complaint, “*the expectation and experience are that the claimant will be complaining about the state of the register in general,*”<sup>21</sup> rather than their own individual record. Additionally, the independent scrutineer is required to examine the entirety of register of their own volition and report any issues to the union. Therefore, this stated aim does not appear to be a “legitimate” one, as the concerns it purports to address are already adequately covered by the current regime. Granting the Certification Officer and third parties extensive investigatory powers over the register is clearly not necessary to achieve the purported aims of ensuring that persons other than members can investigate the accuracy of the register as a whole.

23. The Government Discussion Paper further comments that “*The CO can investigate and issue a declaration and/or enforcement order against the individual union but that process will be limited to the member’s complaint.*” Again, this is not an accurate reflection of how complaints are made and dealt with in practice. As trade unions are allowed a margin of error in their registers and are simply required to achieve an accurate register “as far as reasonably practicable”, an applicant will not succeed in a challenge under section 24(1) simply by proving that their own individual record was incorrect. Rather, the parties raise evidence based on the union’s record keeping practices and error rates as a whole, not on how mistakes in the individual’s record came about. For example, courts will consider how the union goes about collecting addresses, how often they update records, what measures are in place to correct addresses, and the percentage of incorrect details on file.<sup>22</sup> Any decision made by the court or the Certification Officer will consider whether the register as a whole was sufficiently accurate and up to date, by examining all of the union’s practices and procedures for maintaining their register. Again therefore, this stated aim is not a legitimate one, as under the current system any challenge to the state of the register must

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<sup>20</sup> Department for Business Innovation and Skills, “Certification of trade union membership details: discussion

Paper” July 2013 (**Government Discussion Paper**), page 4. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223649/bis-13-1051-transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223649/bis-13-1051-transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper.pdf).

<sup>21</sup> Harvey on Industrial Relations and Employment Law, paragraph [1544].

<sup>22</sup> See, for example, *Lynch v UNIFI* Decision No. CO/1964/18, 07 October 2004; *Manufacturing Science and Finance Union (MSF)* Decision No. D/63/01, 18 July 2001). Available online at <http://www.certoffice.org/Nav/Decisions/Decision-Category/Register-of-Members.aspx>.

investigate the accuracy of the register as a whole, not just the member's own incorrect records.

### *Proportionality*

24. The various measures proposed by the government constitute a regime that is likely to breach Article 11. Liberty believes that the introduction of another level of scrutiny in the form of the independent assurer, coupled with the broad investigatory powers given to the Certification Officer and to third party investigators, exceeds what is necessary to ensure public confidence in the status of union registers, as this aim is already satisfied by the following features of the existing regime:<sup>23</sup>

- Members already have the right to make an application at any time if they believe the register is not accurate or up to date.
- If a complaint is made, the court or the Certification Officer will consider and hear evidence on the union's procedures and the state of the register as a whole, to determine whether the union is complying with its duty to maintain an accurate and up-to-date register as far as reasonably practicable.
- The court and the Certification Officer have the power to make declarations and enforcement notices against the union, requiring them to take positive action to improve the state of their register as a whole.
- An independent scrutineer must be appointed and given access to the register every time the union holds a ballot for an election, political resolution or merger resolution. These are the times at which it is most important for the registers to be accurate and up to date, as the register functions as the electoral roll.
- This independent scrutineer has a positive obligation to examine the register for themselves (in addition to responding to any member complaints raised) and report any concerns back to the trade union.

25. These existing and less intrusive measures are more than sufficient to achieve the stated aim of ensuring public confidence in the register. Requiring trade unions to appoint a further external auditor in addition to the scrutineer and granting broad investigatory powers to government bodies and third parties (who will not owe any duty of confidentiality to the union) on top of these measures is excessive, and an unwarranted intrusion on the confidentiality of union membership.

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<sup>23</sup> *Campbell v UK* (1992) 15 EHRR 137

26. The grounds on which the Certification Officer can invoke its increased powers are also incredibly broad – namely if it “thinks there is good reason to do so”. In contrast to other provisions, the exercise of this power is not expressly limited to situations where there are reasonable grounds for suspicion that the register is not accurate. It is a highly subjective test, and no guidance is given as to what will constitute a “good reason”. The powers given to the Certification Officer are also wide; the Certification Officer is entitled to view not only the register but any other document that may be relevant to determining whether there is a breach of the section 24(1) duty, and can require a range of people, including former officers and agents, to provide explanations. Furthermore, the Certification Officer does not owe any duty of confidentiality to the union. Given these extremely broad powers that can be invoked for any “good reason”, it is not clear exactly what legitimate aim these measures are addressing that has not already been addressed by other measures. If it is simply to ensure public confidence in the accuracy of union registers, this response is substantially disproportionate and excessive.

27. Similar arguments apply to the ability to appoint a third party inspector to investigate the register. Although the inspector’s appointment is limited to situations where there are circumstances suggesting the union has failed to comply (which further suggests that any “good reason” for the Certification Officer to investigate is intended to be even broader than this), the powers given are again extremely broad. Adding this third layer of external investigation, on top of the independent assurer and the Certification Officer, appears particularly intrusive. Additionally, the inspector only owes a duty of confidentiality to the Certification Officer, not to the union. This will leave the union and its members without any form of redress in the event that the third party inspector breaches its duty of confidentiality as regards the register.

### **Conclusion**

28. Confidentiality of trade union registers is of paramount importance, and is a point of particular concern for trade union members. For many employees, their membership (or lack of membership) of a trade union is an extremely private choice, and one which they desire to keep confidential for many legitimate reasons. The strength and legitimacy of these concerns was recently underlined by HMRC’s decision to back down in its dispute with Equity about providing personal information relating to its members. This followed a strong response by the union, supported by Liberty, calling in aid Article 11 protections.

29. The knowledge that under the new powers, trade unions could be required to provide their membership register to a government body for any “good reason” may act as a disincentive for workers to join unions, particularly in light of on-going concerns over union blacklisting. As this test is highly subjective, there is the potential for this power to be subject to abuse; for example, the government may decide it has a “good reason” beyond that of ensuring public confidence in accurate records for wanting to know whether particular individuals have joined a union, but under the proposed wording will be legally entitled to inspect registers under the guise of checking whether the register has been properly updated to include the suspected new members. It is evident that the stated aim of ensuring public confidence in the status of union registers is already adequately addressed by the current system, which gives members the power to challenge registers at any time and requires the appointment of independent scrutineers at the key points when ensuring accuracy of the registers is important. Introducing wide ranging powers of investigation by government bodies and third parties who do not owe any duty of confidentiality to trade unions, coupled with a second layer of external auditing, are overly intrusive measures and will have an unwarranted detrimental effect on the members’ trust in the confidentiality of union registers. These measures clearly go beyond what is necessary and proportionate to achieve any legitimate aim behind the proposals, if indeed there is one at all, and as such constitute a breach of Article 11 of the Convention. Liberty therefore strongly urges the government to abandon the proposals set out in Part 3 of the Bill in their entirety.

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19 August 2013

Dear Ms Nixey

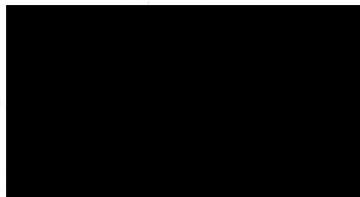
**Transparency of Lobbying, Non-Party Campaigning and Trade  
Union Administration Bill - Certification of trade union  
membership details**

The Musicians' Union (MU) would like to express its support for the response to the above consultation that has been made by the TUC.

In particular, we believe that this section of the Bill would impose significant administrative and financial burdens on trade unions for little purpose, because existing arrangements relating to membership records are more than adequate.

The Musicians' Union (MU) represents over 30,000 musicians working in all genres of music.

Yours sincerely



## **National Association of Head Teachers (NAHT)**



Department  
for Business  
Innovation & Skills

**TRANSPARENCY OF LOBBYING,  
NON-PARTY CAMPAIGNING AND  
TRADE UNION ADMINISTRATION  
BILL**

Certification of trade union  
membership details: discussion  
paper response form

JULY 2013

# Contents

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# 1. Introduction

1. On 17 July 2013, the Government introduced into Parliament the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. The Bill includes measures to deliver assurance that union membership records are kept accurate and up to date through providing an annual membership audit certificate to the Certification Officer and by giving the Certification Officer powers to require production of relevant documents and to appoint inspectors to investigate. Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.
2. The Government's announcement, the Bill and the Explanatory Notes can be found at <http://services.parliament.uk/bills/>
3. At the same time as the Bill was introduced, Vince Cable, the Secretary of State for Business, Innovation and Skills said that he would seek views on the effective implementation of the measures on trade union membership records as well as on what guidance should be provided to ensure that unions can meet the new requirements, with the help of employers where needed. Employers already have a duty to disclose information that is material collective bargaining but the new requirements may have consequences for the kind of information unions may request from employers.
4. This document discusses the provisions in the Bill and invites your views on implementation so that they are fair, proportionate and workable. Details on how to respond are provided at the end of the document.

Issued: 17 July 2013

Respond by: 16 August 2013

Enquiries to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk)

This document is particularly relevant to employers, trade unions and their members, independent scrutineers, solicitors, accountants and auditors.

## 2. Questions

### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Q 2. Your name.. [REDACTED]

Q 3. What organisation do you represent (if any)? NAHT

Q 4. E-mail address: [REDACTED]

Q 5. If you are representing an organisation, what type of organisation is it?

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
√	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
√	25,000-50,000
	50,000-250,000
	250,000+

## Section 1 Membership records

### **Q 7. How do you obtain membership details?**

Member details are captured on line through the NAHT website or via paper applications. We ask for school details and home address, phone number and email which provides us with multiple ways of contacting a member

### **Q 8. How do you store your membership records?**

All membership records are held on our Integra CRM system, which is marketed by Advanced Computer Software Group.

### **Q 9. How do you keep membership details up-to-date?**

NAHT has a team dedicated to processing and updating membership records.

All full members receive a copy of our membership magazine, five times a year, to their preferred postal address. The carriage flyer prompts members to provide NAHT with updates to their contact details. Any post office non-delivery returns are followed up by the membership team.

We provide the ability for members to update their contact details online through our website.

NAHT requests school and home contact details, so that if contact is lost through one address there remains the chance to contact the member through the other.

Members are asked for their home post code when ringing in for professional advice or membership queries, which, in itself, provides an ongoing verification of their details.

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

**Yes**                      **No**    ✓

As outlined in the answer to question 9, we have a variety of methods to try to keep membership records up to date. Occasionally, we find that a member who has given us limited contact details and then moves house and doesn't tell us, will, inevitably lose contact with us. In those instances we attempt to use our local networks to resolve the difficulty.

**If yes, what were they?**

**Q 11. Will these changes impact on how you collect and maintain membership data?**

**Yes**    ✓                      **No**

**If yes, how?**

Currently, where subscription levels change we, of course, notify our members who pay by direct debit (over 90% of members) that the following year's subscription has changed. As a result of this correspondence we sometimes derive some useful information about membership record changes from members. However, if subscription levels remain unchanged we are not required to do this. The most significant change for NAHT might be that we needed to write to all members at their home address at the time of renewal, whether or not the following year's subscription had changed.

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

**Yes**

**No**

**If yes, how?**

## Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

**Yes**                      **No**    ✓

**If not, why not?**

We believe that the role and the duties of the assurer are unnecessary in the context of the existing legislation. Unions are already required to provide detailed information on membership records to the Certification Officer. We question the motivation behind this aspect of the Bill and suggest that it may be more about restricting trade union's ability to take industrial action, than increasing transparency.

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

**Yes**    ✓                      **No**

Notwithstanding NAHT's opposition to the concept of an assurer as outlined in the answer to question 13 above, we are concerned about the consistency of approach. It is vital that the guidance and training on offer to those that undertake the role is fair, consistent and focuses on the concept of what is reasonable. We are also concerned that all unions are treated fairly and that there is a consistency of approach between assurers.

### Section 3 Impact on unions

#### **Q 15. What will be the costs and benefits to unions?**

Until we see the guidance in more detail it is difficult to analyse the costs.

We cannot see any further benefit to NAHT from having a membership audit certificate

#### **Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

As we have said in our answer to question 15, it is difficult to analyse the costs. We have estimated, based on the current cost of our financial audit, that the additional costs of an assurer to issue a membership audit certificate are likely to be no less than £5000 and may be considerably more. It is impossible to say until we see more a framework around how the audit will take place.

#### **Q 17. Where do those costs come from?**

These costs will undoubtedly come from income derived from membership subscriptions

## Section 4 Impact on members

**Q 18. What will be the costs and benefits to union members?**

See answers to question 15 and 16

## Section 5 Impact on employers

**Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

**Q 20. What types of questions do unions ask employers in relation to union membership?**

**Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

## Section 6 Compliance

### Q 22. What is your view of the remedies for non-compliance with the clauses?

With reference to our answer to question 13, we don't believe that this legislation is necessary. Union membership records are scrutinised heavily by employers at the time of industrial action ballots and the Certification Officer currently has powers to hear cases from union members when there is an allegation that a union has broken their own rules or acted unlawfully.

We believe that unions must be given the right to make both written and oral submissions to the Certification officer in advance of the Officer making a declaration to the effect that a union has failed to comply with the requirements set out in 39 (2) (1). Therefore we would urge that the first word of section 39 (2) (2) (c) be changed from 'may' to 'must'.

### Q 23. Will unions need time to prepare before the new requirements come into force?

Yes    ✓                      No

#### Why?

This would be dependent on the extent of the guidance and framework. It would also depend on the time of the enactment of the provisions of the Bill.

## Section 7 Guidance

### **Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

It would be helpful to have a detailed list of requirements, how the audit will be undertaken and what the assurer would be looking at evidence for. This in turn would lead to an understanding of the depth of evidence needed, how that would be provided and whether historical data records would need to be archive over a certain length of time.

It would also be helpful to have access to a helpline, so that immediate questions could be quickly addressed as they arise.

## Section 8 Other

**Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

## 3. How to respond

1. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the response form and, where applicable, how the views of members were assembled. We are seeking your views by **16 August 2013**.
2. For your ease, you can reply online at: <https://www.surveymonkey.com/s/85WLFZF>
3. Response forms can be emailed to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk).
4. Alternatively, you can send written responses to:

Louise Nixey  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

You may make copies of this document without seeking permission. An electronic version can be found at: <https://www.gov.uk/government/consultations/transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper>

### Confidentiality and Data Protection

5. Information provided in response to this document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
6. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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**BIS/13/1051RF**

## National Union of Journalists (NUJ)



### **NUJ submission to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill**

**19 August 2013**

*The National Union of Journalists (NUJ) is the voice for journalism and for journalists in the UK and Ireland, in all sectors of the media as freelancers, casuals and staff in newspapers, news agencies, broadcasting, magazines, online, book publishing, in public relations and as photographers. The NUJ was founded in 1907 and has more than 30,000 members.*

The NUJ fully supports and shares the concerns raised in the TUC's submission in respect of the proposed measures relating to the trade unions' register contained in Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

The proposals represent an unjustified and disproportionate interference by the Government on trade union autonomy.

Specifically in relation to the NUJ and its members, the proposal that a limb of the state should be entitled to obtain a list of over 30,000 journalists in this way would be tantamount to the UK licensing of journalists.

It has been the experience of the NUJ that some companies are incredibly hostile to trade unions and it would be an added concern if the data fell into the wrong hands. Trade unions are already incredibly cautious and diligent in protecting membership lists for vital reasons, as the recent evidence of wide-

scale blacklisting demonstrates, to be forced to facilitate the production of such information is wholly objectionable.

The Government appears to have identified a problem which did not exist and now wishes to legislate for it. These proposals combined with the already significant level of regulation imposed upon unions, not only serves to add to the current burden but will also disproportionately increase costs and impose unnecessary bureaucracy. Most importantly the proposals seek to infringe upon the fundamental rights of union members, to freedom of association and a right to privacy.

In the NUJ's view, the Government has not sought and does not seek to propose a proportionate means of achieving a legitimate aim. The NUJ fundamentally objects to the proposals.

## National Union of Teachers (NUT)



### THE RESPONSE OF THE NATIONAL UNION OF TEACHERS TO THE CERTIFICATION OF TRADE UNION MEMBERSHIP DETAILS DISCUSSION PAPER

#### AUGUST 2013

##### 1. INTRODUCTION

1.1 The National Union of Teachers (NUT), which represents 326,000 teachers in England and Wales across a variety of educational settings from early years to post 16, welcomes the opportunity to respond to the above named discussion paper. The NUT is, however, very concerned that the paper asks for a response within just four weeks, in particular as the paper's release is during the summer period.

##### 2. THE PROPOSAL

2.1 At the heart of this discussion paper are the provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 relating to the duty of trade unions to maintain a register of members' names and addresses. Currently section 24(1) of TULRCA provides that a trade union

*"...shall compile and maintain a register of the names and addresses of members..... and shall secure, **so far as is reasonably practicable**, that the entries in the register are accurate and are kept up-to-date."*

2.2 At present, trade unions subject to section 24(1) must each year provide the Certification Officer with *"a statement of the number of names on the register.... and the number of those names which were not accompanied by an address..."* (Section 32(3)(d)).

2.3 What the government proposes is that, in addition to the requirements of the annual return, unions obtain a *'membership audit certificate'* from an *'assurer'* (chosen from a prescribed list of assurers), who will confirm that in his or her opinion *"the trade union's system for compiling and maintaining the register of the names and addresses of its members was satisfactory for the purposes of complying with the union's duties under section 24(1)."*

##### 3. SUMMARY OF NUT'S POSITION

3.1 The NUT is opposed to the government's proposals for the following reasons:-

- This is an unnecessary and overly bureaucratic and costly burden to place on unions;
- This is a waste of the money our members voluntarily pay out of their wages to be represented;
- There is no proportionality test built into what the assurer can ask for;
- The appeals process is inadequate;
- There is no discernible procedure for amending membership audit certificates or appropriate sanctions against an assurer who acts unreasonably and/or in breach of the duty of confidence;
- Trade unions are already regulated: this proposal adds another burden for a purpose which is unclear.
- The NUT is concerned by the potential implications for the ability of trade unions to organise industrial action.
- There are data protection risks relating to the sensitive personal data of trade union members.
- This is an example of over interference in the self-organisation of trade unions and may be in breach of ILO Convention 87 and Article 11 ECHR.

#### 4. UNECESSARY

4.1 The NUT considers the current proposals to be entirely unnecessary. While the discussion paper implies that unions are failing to "*visibly demonstrate that they know who their members are and can communicate with them*", no evidence has been adduced to support this. Indeed, the occasions on which individual unions have fallen foul of the requirements under section 24 (1) are rare. Of the nine cases of alleged breaches under section 24(1) referred to the Certification Officer between 1993 and 2004 (i.e. a 17 year period), two were upheld. Furthermore, there have been no reported cases to the Certification Officer since 2004, which would suggest that unions have become more transparent and are taking appropriate steps to demonstrate transparency in appropriate circumstances.

4.2 The consultation document suggests that the purpose of the proposals is to allow the general public who might be affected by the actions trade unions to be satisfied that unions' internal systems are robust. This is insufficient justification for state regulation, in particular when industrial action is already over-regulated by law.

## 5. BUREAUCRATIC

5.1 The procedures which it is proposed the unions follow in order to obtain a *membership audit certificate* are onerous and disproportionate given the absence of evidence to support the assertion that unions have failed and are failing to meet their obligations. The Union relies on its members for its membership record information and takes appropriate steps to ensure this is current and accurate.

5.2 Indeed it is in unions' interests to ensure that their records are accurate in order that they can communicate with members effectively, including for the purposes of informing them of services and activities as well as collecting subscriptions.

5.3 The NUT believes that if the government's current proposals are given effect, there must be a matching obligation on employers to give annually to unions the most recent data on those employed, recently retired or resigned, on long term leave etc.

## 6. LACK OF PROPORTIONALITY

6.1 The NUT is extremely concerned that the government's proposal amounts in effect to a usurpation by the assessor of the Union's own judgment about what are the appropriate steps to take to ensure that the register is up-to-date. The decision of the High Court in *Balfour Beatty Engineering Services Ltd v Unite the Union [2012] EWHC 267 (QB)* is quite clear that in drafting the relevant provisions under TULRCA, the legislature did not go so far as to remove from the equation the exercise of judgment by union officers. In that case, Justice Eady said:

*"... While "reasonable practicability" clearly introduces an objective test, there would need to be room for union officers to exercise their own judgment about what are the appropriate steps to take in a given situation. It cannot be right for a judge to hold that all reasonably practicable steps have not been taken merely because he or she would (as an outsider) have done something different. There must be leeway permitted for those who are familiar with the membership, and with their union's particular problems of record keeping, to take their own course in making genuine attempts to achieve the standards required*

*of them by the legislature. In any event, the wording of the statute does not go so far as to impose on the union a positive duty “to take all steps that are reasonably practical” [the NUT’s emphasis].*

6.2 Yet, by imposing no limits on the enquiries that an assurer can make, the proposal will, in practice, impose on unions a positive duty “to take all steps that are reasonably practical”, or failing that, justify their refusal or failure to take the steps which the assurer proposes they take. The discretion or leeway permitted by the current legislation and alluded to by Mr Justice Eady (above) shall effectively be usurped by unelected and unaccountable officials with the power to direct the Union’s internal workings and the allocation of Union resources. If a judge considered that *“it cannot be right... to hold that all reasonably practicable steps have not been taken merely because he or she would (as an outsider) have done something different”* why should an assurer exercise such privilege?

## 7. INADEQUATE APPEALS PROCESS

7.1 It is not difficult to envisage circumstances in which an assurer might ask a union whether it took certain steps which the assurer considers reasonably practicable, but the union does not. What is unclear in the current proposal is how such competing views would be resolved.

7.2 The Bill imposes a duty on the assurer to notify the Certification Officer as soon as reasonably practicable that in his or her opinion the union’s system for compiling and maintaining the register is not satisfactory (section 24ZF). Presumably, upon receipt of such notification the Certification Officer will decide for him or herself whether the assurer’s conclusions are justified, by using his/her powers under sections 24ZH and/or 24ZI. What is less clear, however, is how and when a negative *membership audit certificate* will be rescinded or amended if the union is vindicated.

7.3 Furthermore, other than removal at the next union AGM or annual conference (section 24ZC), there are no sanctions against an assurer who behaves unreasonably or in breach of his/her duty of confidentiality (section 24ZG). Given the power it is proposed assurers have over the reputation and credibility of unions, this seems entirely unsatisfactory.

## 8. BREACH OF ILO CONVENTION 87 and ARTICLE 11 ECHR

8.1 In 1998 the UK reaffirmed its commitment to the core ILO Conventions – along with the other members of the ILO – and signed the ILO Declaration on Fundamental Principles and Rights at Work. For present purposes the most important ILO Convention is convention 87 (the Freedom of Association and Right to Organise Convention, 1948). This convention has been ratified by the UK, as have a number of other

freedom of association conventions . It is part of a group of ILO conventions which are classified as “human rights” instruments.

8.2 ILO Convention 87 is designed to protect trade unions from state interference. Its two central provisions are articles 2 and 3. These provide as follows:

*“Article 2*

*Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

*Article 3*

*Workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*

*The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.”*

8.3 Likewise Article 11(2) of the EC HR states that interference with the right to freedom of association must be justified, necessary and proportionate. The government has failed to identify any objective justification in the consultation paper . It is the NUT’s belief that the current proposals amount, in effect, to unjustified interference with the freedom of unions to administer their register of members within the requirements of section 24(1) of TULRCA.

8.4 The NUT considers that this new proposal allows for auditing to be linked to industrial action ballots in the future. It is anticipated that employers will seek to rely on information provided on audit certification in applications for interim injunctions in an attempt to prevent or delay industrial action. Employers, involved in a dispute with a trade union, may also contact the Certification Officer, requesting an investigation into the union’s membership records. They may subsequently argue in the High Court that an interim injunction should be imposed pending the outcome of the Certification Officer’s investigation.

## 9 DATA PROTECTION CONCERNS

9.1 The NUT believes that the confidentiality safeguards for individuals will be insufficient. The Bill provides sweeping new powers to the Certification Officer to access a union’s register of members’ names

and addresses and related correspondence. The NUT believes this represents a serious violation of individuals' rights to privacy as protected by Article 8 of the ECHR and appears to be contrary to the spirit of data protection. It may also act as a significant deterrent for some individuals to exercise their fundamental rights to join a trade union and be represented in the work place, under Article 11 of the Convention.

## Pinsent Masons LLP

### 2. Questions

#### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Q 2. Your name

Q 3. What organisation do you represent (if any)?

Pinsent Masons LLP

Q 4. E-mail address

Q 5. If you are representing an organisation, what type of organisation is it?

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
x	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

## Section 1 Membership records

### Q 7. How do you obtain membership details?

As we are responding as a legal firm representing employers, this is not applicable to our response.

### Q 8. How do you store your membership records?

As we are responding as a legal firm representing employers, this is not applicable to our response.

### Q 9. How do you keep membership details up-to-date?

As we are responding as a legal firm representing employers, this is not applicable to our response.

### Q 10. Have you encountered problems that mean membership records are not up-to-date?

Yes  No

**If yes, what were they?**

As we are responding as a legal firm representing employers, this is not applicable to our response.

### Q 11. Will these changes impact on how you collect and maintain membership data?

Yes  No

**If yes, how?**

As we are responding as a legal firm representing employers, this is not applicable to our response.

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

Yes

No

**If yes, how?**

As we are responding as a legal firm representing employers, this is not applicable to our response.

## Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

Yes  No

**If not, why not?**

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

Yes  No

We agree that the assurer should be a properly regulated person ie solicitor regulated by the law society, accountant regulated by the FRC, a person on the statutory list of election scrutineers or person eligible for appointment as a statutory auditor under part 42 of the Companies Act 2006. That is in line with other trade union legislation. Some of our clients have experience of organisations which do not fall into these categories asserting that they are regulated to provide services to unions and other employee representative bodies and in our view it is important for the statutory safeguards applicable in other areas of trade union legislation to apply to the areas addressed by the Bill

**If not, who do you think should do it? Why?**

## Section 3 Impact on unions

**Q 15. What will be the costs and benefits to unions?**

As we are responding as a legal firm representing employers, we have no comment to make on this issue.

**Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

As we are responding as a legal firm representing employers, we have no comment to make on this issue.

### **Q 17. Where do those costs come from?**

As we are responding as a legal firm representing employers, we have no comment to make on this issue.

## **Section 4 Impact on members**

### **Q 18. What will be the costs and benefits to union members?**

As we are responding as a legal firm representing employers, we have no comment to make on this issue.

## **Section 5 Impact on employers**

### **Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

Our strong view, and that of our clients and contacts with whom we have discussed this issue, is that this change in the law should be implemented in a way that ensures that there are no adverse consequences for employers and that no additional regulatory burdens or costs are placed on employers, whether directly or indirectly. The issue being addressed in this proposal is not a business issue, nor one for which employers are in any way responsible. Employers should not therefore be impacted by the measures taken by Government to address this issue.

Under the existing law, it is the trade union - and only the trade union - which has the statutory responsibility to ensure that its membership records are kept up to date. Employers have no legal duty to assist unions to meet their statutory obligation. That position must be clearly maintained.

The relevant records to be kept under s24 TULRCA 1992 are the details of names and contact addresses. Maintaining an accurate record of those is something which should be left - in terms of legal obligations - purely between trade unions and their members. Membership of a trade union implies an active relationship between trade union and member and it is up to the direct parties to that relationship to ensure that the relevant statutory records are kept up to date.

The only information which has to be maintained in the register by the union under s24 are the names and postal addresses of

members. There is no reason at all why an employer should be legally required to help the union verify that information in respect of its current or former employees. There are in any event likely to be legal restrictions - eg under Data Protection legislation - on the employer's ability to do so. There are no compelling practical reasons why any assistance from an employer should be necessary in order for a union to maintain an accurate record of names and postal addresses - the union should be able to do this on its own.

It would be invidious for employers if unions were able in any way to "outsource" to an employer all or part of their statutory obligation to maintain accurate membership records. For that reason, we and our clients would strongly favour a clear statement in any legislation (and in any guidance) that nothing in the legislation imposes any legal duty whatsoever on the employer (or former employer) of any person to provide any information to a trade union to assist the union in maintaining an accurate register of its members under s24.

Such a provision would establish a clear and unambiguous default position. If individual employers nevertheless **chose** to provide assistance in response to any specific request, they could do so on a purely voluntary basis, which in our submission is the right approach as it avoids any unintended impact on business.

#### **Q 20. What types of questions do unions ask employers in relation to union membership?**

The information to be maintained by the union in its register of members is the name and postal addresses of its members. Our experience is that unions do not currently ask employers to provide or verify such information or indeed specifically request employers to provide information aimed at ensuring that their register of members is up to date.

Unions are very reluctant to provide information to employers which identifies levels of union membership or which identifies which employees are union members. Furthermore, employers do not themselves have accurate records of which of their employees are, or are not, union members. Employers may know which employers pay subscriptions by DOCAS, but otherwise do not have ready access to, or visibility of, union membership.

The questions typically asked by unions of employers in relation to union membership tend to include the following:

- Information about the numbers and descriptions of employees employed across the business, or in different business units or in different categories of employee.
- In some cases, unions request (or are provided under voluntary recognition and collective bargaining arrangements) detailed information about employees within particular bargaining units, including names, job titles/grades, and movement into and out of the bargaining unit.
- Requests for routine provision of details of new starters and/or leavers
- Access to email addresses (individual or group) or facilities to email employees.

These requests are not for information about union membership as such. Nor are they requests for information about names and postal addresses - the issues relevant to s24. These requests are unconnected to the accuracy of the union's register of members for the purposes of s24 but are made for other purposes:

- To assist with the recruitment of members;
- For the purposes of collective bargaining;
- To assist the union to assess and prepare applications for statutory trade union recognition, by gathering details about the proposed bargaining unit which would allow the union to assess density of membership and facilitate recruitment campaigns
- In advance of industrial action ballots, to gain information which would help the union to check and to provide the required statutory information about the numbers, categories and workplaces of the members to be balloted. The aim of this type of request is to limit the scope for employers to seek injunctive relief restraining industrial action. (As an aside, it should be noted that since current case law stresses that trade unions need only provide such information as they actually possess, the number of such requests for information has declined.). ;
- To assist the union's campaigning and recruitment drives related to the industrial action.

**Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them**

### **update their membership record? Why would you respond to the requests in this way?**

Our starting point is that the record which has to be maintained by the union under s24 TULRCA 1992 is of the names and addresses (home address or otherwise notified postal address) of its members. It follows that the only details which a union *could* request from an employer which would help it to update their membership record would be confirmation of names and addresses or details of any changes notified to the employer.

As indicated above, unions do not currently tend to ask employers to provide this type of information. We have, however, considered what sort of requests unions might make to employers as a result of any change to s24 TULRCA. these might be as follows:

- Requests for confirmation of the names and/or addresses of employees paying subscriptions by DOCAS
- Requests for confirmation that a specific union member is still employed by the employer and for his/her postal address
- Requests for details of employees who have notified a change of address or a change of name to the employer
- Requests for the postal address held by an employer or former employer
- Requests for contact details for the new employer of a former employee

In our view, employers would - legitimately - be unwilling to provide information of this nature, given that it is confidential information and personal. Employers cannot assume that current or former employees have consented to such information being provided to the trade union and for that reason requests are likely to be declined on data protection grounds.

In any event, employers would be resistant to having to provide information of this kind on the basis that, as a matter of policy and principle, it should be the responsibility of the trade union to maintain this information through their direct relationships with their members and/or the obligation of individual trade union members to keep the union notified of changes of name or address. Employers have enough administration to contend with, without providing a free membership record checking service to trade

unions.

It is of course a fact of life that relationships between unions and employers will be contentious from time to time. The nature of the local industrial relations climate between employer and union is also likely to be a factor in determining how an employer would respond to requests for information about union membership. As indicated, our approach would be that the law should be clear that it is down to individual employers to decide whether or not they assist with requests by unions for information which helps them maintain an accurate register of members and there should be no legal obligation on them to co-operate with such requests.

## Section 6 Compliance

### **Q 22. What is your view of the remedies for non-compliance with the clauses?**

Several of our clients have commented that the proposed remedies for non-compliance are not sufficiently stringent. There should be scope for unions to be fined for serious non-compliance or for repeated breaches, not just for failure to comply with enforcement orders.

### **Q 23. Will unions need time to prepare before the new requirements come into force?**

Yes  No

#### **Why?**

In our view, there should be no need for unions to have any significant period of time to prepare for the new requirements. Unions already have a duty to maintain an accurate register. The MAC regime would apply on an annual basis, so requiring compliance within the next 12 months should not be an unduly burdensome requirement.

## Section 7 Guidance

### **Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

As indicated above, the main point which we, and our clients and contacts, would like to see made in any guidance is a clear statement that employers have no legal obligation at all to provide information or assistance to trade unions to assist them to maintain a register of the names and postal addresses of members.

There is a clear demarcation between this information and the type of information to which unions are entitled for the purposes of collective bargaining, and this demarcation should not be blurred by these reforms.

## Section 8 Other

### **Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

Some clients have commented that, while the focus of this particular Bill is understood, further reforms are required to the record keeping obligations on trade unions. Of particular concern to employers is the accuracy and adequacy of information provided by trade unions to employers in industrial action ballot notices and strike notices, regarding details of the members to be balloted by number, category and workplace. Such notices often contain significant errors and therefore do not provide a satisfactory basis for employers to understand the potential impact of any action and make contingency plans. Improvements in the quality of the information provided to employers in this context would be desirable - and not just for employers, since more accurate information would reduce the scope for disputes and the unions' vulnerability to injunctive action. The statutory register under s24 TULRCA only relates to names and postal addresses of members. With the above comments in mind, it would be desirable that unions also had a statutory obligation under s24 to maintain an accurate record of the workplace and/or bargaining unit of their members and an obligation to update that information annually to ensure their ability to provide accurate and meaningful information to employers in the context of industrial action ballots. That would not impose unreasonably onerous responsibilities on trade unions and would reduce the scope for unnecessary disputes.

Several of the clients with whom we have discussed the Bill have pointed out that the nature of trade union membership is becoming more diverse and fragmented. Unite for example has a category of community membership open to non-workers for significantly reduced membership fees of 50p per month. This is a very different form of membership to normal trade union membership. Similarly, union recruitment drives often allow membership by workers at low rates of subscription or even no cost at all, which can lead to reports to employers of the number of members in the workplace or specific bargaining units being inflated and a distorted picture of the depth of the relationship between union and member.

While it is open to trade unions to determine the categories of membership they offer, our clients who have raised this issue consider that the statutory register should be clear and transparent about the type of membership involved and the number of members in each category. In that way, the register gives a more accurate and open account of the true relationship between unions

and their members and (by implication) the strength of the membership commitment.

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

No

## Popularis Ltd

**1. Confidentiality & Data Protection Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box**

Yes, I would like you to publish or release my response

**2. Your name:**

**3. What organisation do you represent (if any)?**

Popularis Ltd

**4. E-mail address:**

**5. Please check a box below which best describes you as a respondent to certification of trade union membership details**

Micro business (up to 9 staff)

Named in Statutory Orders as Independent Scrutineer, QIP and SIP

**6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

**No Response**

**7. In a guidance document, what information would you find helpful in relation to the proposals?**

N/A

**8. How do you store your membership records?**

N/A

**9. How do you keep membership details up-to-date?**

N/A

**10. Have you encountered problems that mean membership records are not up-to-date?**

Yes

The Trade Union and Labour Relations (Consolidation) Act as amended states 'S24(5) for the purposes of this section a member's address means either his home address or another address which he has requested the union in writing to treat as his home address.' The most common problem with data arises from inaccurate and/or incomplete information supplied by the member for their full postal address and postcode. In addition members do not always remember to inform the union of a new or changed address, and when they do, it is not always an accurate address or postcode. In the event of a death of a member, the next of kin are not always aware of the need to inform the union. Many unions receive membership data direct from an employer under individual commercial agreements. The quality of information provided by the employer is not always accurate or up to date. In particular, there are

frequently issues with formats, postcodes and incomplete addresses. It is particularly important that an accurate postcode is provided in writing to the union. All statutory ballots and elections are conducted by post, and Royal Mail now require a high standard of accurate addresses and postcodes for mail to be delivered.

**11. Will these changes impact on how you collect and maintain membership data?**

N/A

**12. Will our proposals have any impact on how you collect membership subscriptions?**

N/A

**13. Do you agree with the role and duties of the assurer set out in the Bill?**

The Trade Union and Labour Relations (Consolidation) Act 1992 as amended provides that an independent scrutineer may inspect a membership register, either at their own initiative or at the request of a member. (Section 49(3)(A)) “(a)that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and (b)that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.” There is a further duty for the scrutineer to include a statement regarding any inspection of the register in their report for each election or ballot. There is therefore already an existing opportunity for a member to complain if they suspect a register is not accurate and up to date, and an existing remedy under the same statutes for that complaint to be submitted to the Certification Officer. A complaint is not restricted to the person’s own record. It can be based on evidence relating to any member, or the membership system used to retain information, or the procedures used to maintain the system, provided it falls within the definition of suspicion that the register is not, at a particular date, accurate and up to date. Further, Popularis has been sent information on individual union members by employers with a request to check the information supplied by the union for the purpose of industrial action ballots. As an independent scrutineer, Popularis considers it has a duty to investigate such complaint or query. It will also regularly request the union to provide information on its membership records and systems, its procedures to update information in terms of changes, adding new members and lapsing members in accordance with the union rules and statutes. It has undertaken its own analysis and inspection of records to assist the union, as required by statute, in keeping their membership records accurate and up to date. The investigations do not necessarily apply only to individual members asking about their own record. Any allegation that members have been wrongly included or excluded from a ballot is always treated seriously by both union and independent scrutineer. Where problems occur is when it is simply an allegation and no evidence is provided to substantiate the complaint. The Scrutineer is required to make a statement in the report for each ballot or election regarding the membership register. It is commonly viewed that a negative statement from the Scrutineer would inevitably lead to a successful complaint to the Certification Officer and the election or ballot would have to be run again. In those circumstances, the union will usually voluntarily terminate the election or ballot, recognising a

failure to comply with current statutes. The remedial action is then taken, and confirmed to the Scrutineer, and the election or ballot run again. In accordance with current legislation, the Scrutineer has a Duty of Confidentiality regarding the register of members' names and addresses. There is a need for any complainant to provide evidence to support their complaint, but once evidence has been received, there has been no conflict or difficulty in investigating the complaint. I would also point out that when an employer has sent information on union members to a Scrutineer, that information is always checked despite the fact that the individual union member has not given their consent for the employer to disclose such information, and there is no legal provision for them to do so.

**14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

Yes

**15. What will be the costs and benefits to unions?**

It is difficult to estimate a benefit in duplicating much of existing legislation. The costs will depend on the Government's approach to members' compliance with disclosure of personal information including trade union membership, and whether such a requirement would make a material difference to current membership systems.

**16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

This cannot be assessed from the information provided in the discussion document.

**17. Where do those costs come from?**

Administration, legal, technical and other advice, time spent on queries from the assurer and the assurers' report.

**18. What will be the costs and benefits to union members?**

It is an obvious benefit to union members for their union to have accurate and up-to-date records so that they can receive regular information. It is however, difficult to see how these proposals will encourage individual members to inform unions of changes in their details, and to ensure the information they give to their union is correct.

**19. What consequences do these proposals have for employers? Why do these consequences arise?**

**No Response**

**20. What types of questions do unions ask employers in relation to union membership?**

**No Response**

**21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

**No Response**

**22. What is your view of the remedies for non-compliance with the clauses?**

There are existing remedies for non-compliance with membership register requirements relating to ballots and elections under current statutes, and it is

not clear why these are either inadequate or should be changed.

**23. Will unions need time to prepare before the new requirements come into force?**

Yes

Personal information on trade union membership and members is a very sensitive issue with members themselves. It is the members who should be consulted on changes to membership records, and extending rights to disclose their personal information. Consideration should be given for individual members to have the opportunity to opt out of disclosure of their personal information similar to the way individuals can for the Electoral Register. Both time and substantial costs would be involved in such an exercise.

**24. In guidance, what information would you find helpful in relation to the proposals?**

The consultation documents do not contain any guidance on what constitutes an accurate and up to date register of member in terms of an annual inspection, over and above the existing requirements for ballots, elections and financial issues. It would be helpful if such information could be provided. The consultation documents state that the assurer must provide an opinion of a trade union's system. This needs some clarification as a system can be perfectly adequate, but the information held on it may not be or may need updating. It is stated that the assurer must provide an "opinion on whether the trade union's system for compiling and maintaining the register was satisfactory....." The current situation is that the union is required to maintain a register, which is now normally done on a computer system, of the name and address of the member which has been supplied to the union by the member. In addition to current statutes, the union's own rules will state who and when a person can become a member, and the criteria for when they are not eligible to become a member or have not paid subscriptions for a specified period and therefore are no longer entitled to be a member, resigned, died or left their particular employment. It is my experience that unions have bespoke software written for their computer systems to meet the requirements of the current statutes and their rule books (also enforceable in law), and will have set procedures eg for confirming a person has not paid subscriptions for the specified time and is therefore no longer entitled to be a member. Further a member may or may not be paying the political fund subscription, and this detail is also recorded for individual members and is relevant for the purposes of who is eligible to vote in political fund ballots. Those issues are regularly reviewed by an independent scrutineer at the time of ballots and elections. Further a scrutineer will be involved in discussions on how information is collected and updated if for example, the union has elections in constituencies based on work categories or geographical locations.

**25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

It has been my experience that any member wishing to complain or raise issues about who is eligible to vote and the electoral register used for that purpose, has not hesitated to do so with either the union or scrutineer or both. It is also my experience that when raising an issue, they have not confined

themselves to their own record, or even those of their colleagues at work, but have raised issues generally about records including systems and procedures, and if not satisfied, they have raised those complaints with the Certification Officer. The Certification Officer has held hearings based on complaints about membership records, and required unions to provide considerable proof that their records are accurate and up to date. The penalty for failing to keep an accurate record is an enforcement order that the ballot or election must be held again. The problem with membership registers is the same for all organisations, whether or not a union. It is that individuals do not update their information. They do not keep all their information up to date, they do not remember to inform of change of address or circumstances, and even after death, the estate executor or next of kin, frequently does not think to inform the union of their demise. Many unions are now using web applications, where an individual member may amend their record using secure online systems, and regularly publicise the need for members to do so. In some unions, local branch officials will hold a specific role as 'membership secretary', almost always on a voluntary basis, and be responsible for ensuring members know how to update their information. An accurate register is reliant on accurate information, and under current statutes, only the member can provide that information. It is my view that the current proposals will in fact undermine much of the role and duties of the Independent Scrutineer relating to the membership register. A union may have several ballots and elections during the course of a year, and each one is subject to the individual provisions for inspection of the register. Each one is also subject to complaints from members, and in the case of industrial action ballots, from challenges by employers. In addition a union must already provide certain membership information to the Certification Officer in their annual returns. To introduce a once only annual membership inspection would create a view, which would possibly then become a legal precedent, that should the union have a satisfactory 'pass', there would be no need to inspect the register for each ballot and election as is now the case. Members may be discouraged by such a certificate, from making complaints in the belief that the union could not be successfully challenged. It would, in my view, be difficult to challenge a union that the information supplied to the Scrutineer was not correct when the union could claim their systems had all been passed as satisfactory. It is for members to hold their officers and Executive accountable for the administration of their union, and they do so by regular elections as required by law and their rule books. The contents of the Scrutineer's report, containing the statement regarding the membership register, issued after each election and ballot must be notified to all members, and a copy of the full report available on request. A member has a regular opportunity therefore, of seeing the report on the membership records, and holding those elected responsible for maintaining an accurate and up to date register. The consultation documents refer to costs to unions, union members and to employers, but do not mention costs to the taxpayer. It would seem that the administration of such a system for annual returns would have implications on resources for the Certification Office, and further any investigation instigated using external advisers could also have substantial cost implications for the taxpayer.

**26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

No

## Public and Commercial Services Union (PCS)

### TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL

#### Introduction

**The Public and Commercial Services Union (PCS)** represents over 260,000 members working in government departments, agencies, public bodies and on privatised government contracts.

PCS is responding to the current consultation in its capacity as the sixth largest trade union in the UK.

PCS is fundamentally opposed to the measures relating to trade unions' registers of members contained in Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. PCS is concerned that in introducing these measures the government is singling out trade unions for unfair regulation. No other membership organisations, voluntary sector groups or businesses in the UK are subject to equivalent rules. There is also no clear connection between Part 3 and the other sections of the Bill. The government appears to be opportunistically using the Bill to introduce additional regulations of unions' internal affairs, even though the rules have no connection to the remainder of the Bill and have not been the subject of wider discussion or consultation in the government's employment law review.

Part 3 of the Bill will impose significant administrative and financial burdens on trade unions. Trade unions are already extensively regulated in the way that they manage membership records. PCS is not only required to comply with section 24 of the Trade Union and Labour Relations (Consolidation) 1992 (TULR(C)A 1992). We are also obliged to comply with the provisions and principles set out in the Data Protection Act 1998 (DPA) – a fact which apparently has been disregarded by the government when drawing up the current proposals.

PCS is concerned that the government has not consulted the Information Commissioners Office prior to drafting the legislation, to avoid the ensuing duplicate regulation.

PCS also notes that new arrangements will also increase the workload and costs for the Certification Office. It is far from clear what benefits the increased regulation will yield for the wider public, including businesses, and how the increased costs to the taxpayer can be justified.

In recent years the coalition government has signed up to a "one-in, two-out" approach to regulation. If Part 3 of the Bill is implemented, the TUC would call on the government to demonstrate what measures will be adopted to alleviate the "burden" of regulation on unions, which are civil society organisations.

In PCS's opinion the government's proposals represent an unjustified intrusion on trade union autonomy and the right of trade unions to govern their internal affairs. These rights are core elements of the right to freedom of

association which is protected by Article 11 of the European Convention on Human Rights and ILO Convention 87, Article 3.

Article 11(2) of the European Convention states, and the European Court of Human Rights has underlined, that any interference with these rights must be justified, necessary and proportionate. In drawing up the current proposals, the government has failed to identify any objective justifications for the legislation. The discussion document states that *'Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able visibly to demonstrate that they know who their members are and can communicate with them.* PCS agrees that the core *raison d'être* of trade unions is to recruit, represent and retain members. Without members trade unions would not exist. Effective communication is essential for all trade unions. PCS communicates regularly with our members through websites, newsletters, emails, correspondence, branch meetings, union conferences and training events. If we failed to communicate we would find it difficult to retain members. However, it is certainly not the appropriate subject matter for regulation by the State.

The government has also failed to produce any evidence of problems which necessitate additional regulation. According to their website, the Certification Office has received no complaints from trade union members relating to registers of members since 2004. Between 2000 and 2004, a total of 6 complaints were received, 5 of which were dismissed and in the sixth case the Certification Officer decided not to issue the declaration sought. If union members were concerned about the way in which unions manage membership lists, the number of complaints would be far higher and if there were serious administrative problems, the Certification Officer would have issued declarations to this effect.

Part 3 of the Bill will impose significant administrative and financial burdens on PCS. These will include the costs associated with the appointment of the assurer, associated investigations and any administrative requirements which may emerge as a result of the legislation. Along with the TUC, PCS believes these measures are unnecessary and disproportionate.

The Bill also provides the Certification Officer with sweeping new powers to access a union's register of members' names and addresses and related correspondence between individuals and the union, where s/he 'thinks there is a good reason to do so' (new section 24ZH of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992)). PCS believes this represents a serious violation of individuals' rights to privacy as protected by Article 8 of the European Convention on Human Rights. It may also act as a significant deterrent for some individuals to exercise their fundamental rights to join PCS and be represented in the workplace, under Article 11 of the Convention<sup>1</sup>. The explanatory notes which accompany the Bill argue that new

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provisions imposing confidentiality requirements will provide adequate safeguards for individuals. PCS does not agree.

In our opinion, it is not the business of the State to know who is or who is not a trade union member, and where they live.

In the last couple of years we have seen increasing exposure of the blacklisting activities in some sectors, where individuals have concerns about joining a trade union for fear of victimisation at work and loss of employment. The increased powers for state officials to access union membership records and addresses can only increase the deterrent facing such individuals. PCS believes that, rather than increasing the regulation on trade unions, the government should be taking active steps to stamp out blacklisting activities in the UK and to ensure that individuals who have been victimised for their trade union membership are fully compensated.

PCS is also concerned there is an inherent contradiction between unions' obligations under data protection rules, which require unions to protect members' names and addresses as highly sensitive data and Part 3 of the Transparency Bill which will require unions to disclose such details to agents of the state.

There is also a serious risk that trade union membership data will be misplaced or lost. In recent years there has been a number of high profile instances of government agencies, and especially contractors, misplacing confidential data. The ability of the Certification Officer to outsource investigations to third parties can only increase this risk.

PCS is also concerned by the potential implications of the legislation on the ability of members to take democratically agreed industrial action. It is anticipated that employers will seek to rely on information provided on audit certificates in applications for interim injunctions in an attempt to prevent or delay industrial action. Employers, involved in a dispute with a trade union, may also contact the Certification Officer, requesting an investigation into the unions' membership records. They may subsequently argue in the High Court that an interim injunction should be imposed pending the outcome of the Certification Officer's investigation.

Finally PCS is seriously concerned that the government has tabled the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament before it has completed public consultation or been given an impact assessment, contrary to the BRE guidance. The timing and length of the existing consultation process has been completely inadequate. The government has provided us with barely four weeks over the holiday period to respond to significant new regulations. The lack of effective consultation demonstrates a determination by the government to drive through legislation, in the absence of supportive evidence and regardless of the views expressed by those directly affected: trade unions or the wider public.

Response to consultation questions

### **Q 1. Confidentiality and Data Protection**

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal

information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

**Q 2.**

**Q 3. What organisation do you represent (if any)?**

**Public and Commercial Services.....**

**Q 4. E-mail address**

**Q 5. If you are representing an organisation, what type of organisation is it?**

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
X	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
X	250,000+

## **Section 1 Membership records**

**Q 7. How do you obtain membership details?**

We obtain details directly from members or individuals applying for membership. This information may be provided via membership forms, websites, and membership

help-lines. We also gather information via workplace representatives, branch secretaries, union officials or regional staff. We have a centralised dedicated Membership Department who are able to pull up comprehensive reports

We also receive information from employers as a result of check off arrangements and established working practices or collective agreements

#### **Q 8. How do you store your membership records?**

We store union membership information on a central electronic database. COMMIX an oracle based platform for simplified maintenance and amending of membership data. The use of paper files is increasingly limited. PCS hold a unique member identifier structure.

#### **Q 9. How do you keep membership details up-to-date?**

We rely primarily on members to inform us of changes in details. We make every effort to keep membership data up to date. It includes reminders on websites and in newsletters asking members to inform us of changes to their addresses, etc. We also gather information through workplace reps, union officials and regional officers.

Where we become aware of possible changes in a member's details, for example where newsletters are returned in the mail, we will attempt to run follow up checks.

We use

Commix

Dedicated Membership department

Web enabled online facility

Activists

Pay provider information

Data cleansing on known information

Comprehensive reports available to PCS Activists

Regular contact with members advising on ways to update

**Q 10: Have you encountered problems that mean membership records are not up-to-date?**

No.

Members are required to keep their ballot address up to date. A small percentage of members move address without notifying us of their new details. We become aware of this once we receive returned mail notifying us that the member no longer lives there.

This is resolved through contact via a member's workplace address or by email seeking ballot address details. We also seek assistance from branch officials asking them to advise the member to contact us or to go online and amend their details

Q 11: Will these changes impact on how you collect and maintain membership data?

The Bill provides very limited detail on the role of the assurer or the criteria against which the effectiveness of current membership systems will be assessed. It is therefore difficult for unions to evaluate whether the proposed legal changes will impact on how membership data is collected and maintained.

PCS notes that the accompanying Equality Impact Assessment refers to a new requirement on unions to undertake an annual audit of union membership. The text of the Bill however does not provide for such a requirement. In the context of industrial action law, the courts have also confirmed that unions are not obliged to undertake an annual audit.

If the Bill leads to a requirement on unions to undertake detailed annual audits, this could have very significant administrative and cost implications for unions.

Q 12: Will our proposals have any impact on how you collect membership subscriptions?

As the draft Bill provides very limited detail on additional duties which may be placed on unions it is difficult for unions to evaluate whether the proposed legal changes will impact on how unions collect membership subscriptions.

Section 2 Independent third party assurer

Q 13: Do you agree with the role and duties of the assurer set out in the Bill?

PCS does not agree with the proposals outlined in Part 3 of the Bill, including the role for the assurer.

PCS believes these provisions amount to an unjustified interference in trade union internal affairs and are inconsistent with the requirements of Article 11 of the European Convention on Human Rights and ILO Convention 87, article 3.

In our opinion, existing arrangements relating to membership records and data protection rules are adequate. The costs that will arise from the Part 3 of the Bill will exceed any benefits which may be achieved for members. The proposals are therefore clearly disproportionate. It is also important to note that unions are required to comply with onerous legal rules in relation to notices and ballots when organising industrial action.

We are extremely concerned that the role of the assurer will violate trade union members' rights to privacy as protected by Article 8 of the European Convention. Under section 24ZG the assurer will be permitted to disclose the register of members' names and addresses to the Certification Officer. Such disclosure can be made without the knowledge or consent of the union or its members. As stated above, the PCS does not believe it is the business of the state to know who is a trade union member and where they live. These rules also appear inconsistent with EU data protection principles which classify union membership data as sensitive personal data, which merits the highest level of protection.

The Bill also provides very limited information on the role of the assurer. For example, the Bill (section 24ZE) provides the assurer with a broad discretion to determine the nature and scope of any enquiries which they can make or the nature of the information or explanations they can require from union

officials and branch officials. According to the Bill, the assurer is entitled to require any such information as they themselves consider necessary for the performance of their functions. These provisions are likely to lead to inconsistent approaches by assurers and will result in an unjustified intrusion into unions' internal affairs.

PCS is also concerned that where the assurer concludes that our system is not satisfactory or they have not received adequate information or explanations the assurer will be under a duty to send a copy of the certificate to the Certification Officer (section 24ZF). The certificate must be sent as soon as reasonably practicable after it is provided to the union. No provision is made for the union to appeal or challenge any conclusions reached by the assurer before the document is sent to the Certification Officer and becomes a public document. We believe these provisions are inconsistent with the basic principles of natural justice.

Q14: Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?

PCS does not agree with the proposals in Part 3 of the Bill. In our opinion the existing rules are adequate. In the event that this Bill becomes law, PCS believes that existing union auditors, scrutineers or individuals or companies who act as qualified independent persons for the purposes of the statutory union recognition scheme should be able to perform the role of assurers.

It is essential that the assurers have knowledge of trade unions and how they operate. Given the extensive access that assurers will have to the register of members, it is critical that the individuals concerned are trusted and respected by trade unions and their members. It is also imperative that PCS and unions are consulted on any specified criteria which assurers must meet and/or any prescribed list of assurers.

Section 3 Impact on unions

Q 15: What will be the costs and benefits to unions?

PCS cannot foresee any benefits in the legislation for trade unions. The new regulations are anticipated to impose significant administrative and financial burdens on trade unions. As stated above, PCS also believes that the proposed legislation amounts to an unjustified and disproportionate intrusion by the government into trade unions' rights to freedom of association and their ability to govern their own internal affairs. We believe that the legislation may violate trade unions' and our members' rights under Article 11 of the European Convention on Human Rights.

Q 16: What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?

In terms of financial costs, it is unclear from the legislation what the new arrangements will involve. It is however anticipated that we will incur significant increased costs, including those associated with:

Contracting an assurer

Paying an assurer to perform their functions

Responding to requests for information or explanations from the assurer

Any investigations carried out by the Certification Officer or inspectors appointed by him or her

Any adjustments which need to be made to existing membership data systems a

Training of union staff

Section 4 Impact on members

Q 18: What will be the costs and benefits to union members?

PCS cannot foresee any benefits for trade union members. We already have systems in place to amend membership data, where an individual is not receiving information or communications from their union.

Trade unions would attempt to accommodate additional costs arising from the legislation within existing administrative costs. There is however a serious risk that the legislation will result in increased subscription rates for members.

As stated above PCS believes that the proposed legislation will lead to a violation of members' rights to privacy. We are also seriously concerned that the legislation may deter some individuals from becoming union members and benefiting from effective workplace representation.

PCS is also concerned that some employers may attempt to rely on the new legislation to argue in applications for interim injunctions which prevent unions from taking industrial action. Any successful injunctions would restrict the ability of the union to act on the democratic mandate from their members.

Section 5 Impact on employers

Q 19: What consequences do these proposals have for employers? Why do these consequences arise?

We have check off agreements with the employer under which the employer discloses the names of individuals who pay union subscriptions via check off to the union.

Q 20: What types of questions do unions ask employers in relation to union membership?

Unions communicate directly with individuals about trade union membership. We will also request membership details under check off and other industrial relations arrangements.

Employers also have an obligation to disclose information to recognised trade unions for the purposes of collective bargaining.

When organising industrial action, unions will sometimes request information from employers about individual's jobs and workplaces. Employers often ignore the request or refuse to supply the information. PCS believes that employers should be under an obligation to co-operate with requests from unions for information needed to comply with rules relating to industrial action notices and ballots.

Q 21: As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

PCS cannot comment on behalf of employers.

Section 6 Compliance

Q 22: What is your view of the remedies for non-compliance with the clauses?

We do not agree with the proposals contained in the Bill and believe that the existing provisions are satisfactory.

We have serious concerns about the proposed extended role for the Certification Officer. The Bill provides the Certification Officer with wide-ranging powers to access registers which contain union members' names and addresses.

In our opinion, these powers are not justified or proportionate and represent a serious intrusion by a state official into unions' internal affairs. The exercise of these powers will also seriously violate individuals' rights to privacy.

PCS is also concerned that the Certification Officer will be able to initiate investigations on his/her own volition or after receiving information from third parties. Such powers are unnecessary. It is likely that employers who are involved in a dispute with a trade union will contact the Certification Officer requesting him or her to carry out an investigation of union membership records. The aim will be to delay industrial action. This is likely to politicise the role of the Certification Officer, thereby undermining their impartiality.

Q 23: Will unions need time to prepare before the new requirements come into force?

Yes. Trade unions will need time to familiarise themselves with the new requirements and to prepare before any new regulations come into effect, if they do.

Time must also be provided to enable unions to make the necessary rule change allowing for the appointment of an assurer. The length of time required will depend on the rule-book of each union. In PCS, a change in the rulebook will require a referendum of all members which is both time consuming and costly.

#### Section 7 Guidance

Q 24: In a guidance document, what information would you find helpful in relation to the proposals?

As stated above it is not clear from the legislation what the new regulations will involve. If Part 3 of the Bill is to be retained, it will be important for the government to introduce guidance to assist unions to comply with the new regulations and to ensure consistency of practice by assurers.

#### Section 8 Other

Q 25: Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?

No.

Q 26: Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?

PCS does not have any comments on the accompanying EQIA. We do however reiterate our serious concern that the government has failed to carry out public consultation or complete a full economic impact assessment before tabling the Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament. The government should have undertaken full consultation and an in-depth analysis before drafting the legislation. Failure to do so can

only result in poor quality policy making and the serious risk of violation of human rights standards.

## Queen Alexandra College

**1. Confidentiality & Data Protection** Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box

Yes, I would like you to publish or release my response

**2. Your name:**

**3. What organisation do you represent (if any)?**

Queen Alexandra College

**4. E-mail address:**

**5. Please check a box below which best describes you as a respondent to certification of trade union membership details**

Charity or social enterprise

Local government

**6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

**No Response**

**7. In a guidance document, what information would you find helpful in relation to the proposals?**

**No Response**

**8. How do you store your membership records?**

**No Response**

**9. How do you keep membership details up-to-date?**

**No Response**

**10. Have you encountered problems that mean membership records are not up-to-date?**

**No Response**

**11. Will these changes impact on how you collect and maintain membership data?**

**No Response**

**12. Will our proposals have any impact on how you collect membership subscriptions?**

**No Response**

**13. Do you agree with the role and duties of the assurer set out in the Bill?**

**No Response**

**14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

**No Response**

**15. What will be the costs and benefits to unions?**

**No Response**

16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?

**No Response**

17. Where do those costs come from?

**No Response**

18. What will be the costs and benefits to union members?

**No Response**

19. What consequences do these proposals have for employers? Why do these consequences arise?

**No Response**

20. What types of questions do unions ask employers in relation to union membership?

**No Response**

21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?

**No Response**

22. What is your view of the remedies for non-compliance with the clauses?

**No Response**

23. Will unions need time to prepare before the new requirements come into force?

**No Response**

24. In guidance, what information would you find helpful in relation to the proposals?

**No Response**

25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?

**No Response**

26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?

**No Response**

## Royal College of Midwives (RCM)



# Response to The Department for Business, Innovation and Skills consultation on Transparency of Lobbying, Non- party Campaigning and Trade Union Administration Bill

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**The Royal College of Midwives' response to the Department for Business, Innovation and Skills consultation on Transparency of Lobbying, Non-party Campaigning and Trade Unions Administration Bill.**

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and

provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our answers to the consultation topics are set out below. We are happy for our response to be published.

## **The Royal College of Midwives August 2013**

### **General Comments**

The RCM would like to make it clear that we are utterly opposed to the trade union membership provisions, as set out in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

We are not persuaded that there is any compelling case for introducing further legislation to regulate the way in which trade unions maintain membership records and communicate with their members. We have yet to see the Government produce any evidence that unions are failing to communicate properly with their members or of deficiencies in the existing duty on unions to maintain a register of members.

Moreover, trade unions are already highly regulated and have to make comprehensive disclosures of their financial arrangements. Trade unions are already very transparent organisations in terms of who they represent; how they are funded; and what their aims and objectives are. We publish this information on our website, along with financial information, our structure and governance and also other organisations we have links to; this means that the public already have access to a large amount of information about the RCM. Whereas there are other organisations who frequently lobby Government but are secretive about who they are, who they represent, other organisations they have links to, and their governance arrangements.

The proposals run counter to the claims made by Government about championing the rights and civil liberties of individuals; as well as further eroding trade union members' democratic right to take industrial action, the proposals are unacceptably intrusive because they require trade unions to hand over members' names, addresses and private correspondence.

The proposals also contradict the Government's 'Red Tape Challenge'. On the Red Tape Challenge website the Government states:

*“Over the years, regulations – and the inspections and bureaucracy that go with them – have piled up and up. This has hurt business, doing real damage to our economy. And it's done harm to our society too. When people are confronted by a raft of regulations whenever they try to volunteer or play a bigger part in their neighbourhood, they begin to think they shouldn't bother. If we want to reverse this trend and encourage greater responsibility in our society, then we have got to trust people and give them more freedom to do*

*the right thing. So this government has set a clear aim: to leave office having reduced the overall burden of regulation.<sup>2</sup>*

These proposals will add another layer of regulation and red tape to already highly regulated trade unions. The proposals completely contradict the Government's aim as stated above and given that the Government themselves believe that cutting regulations will encourage individuals to engage with the wider community we can only assume that the Government's intention is to reduce trade union members engagement with their union.

We are left to conclude that the real purpose behind the legislation is to make it even harder, than it is already, for unions to organise industrial action and to give employers additional, spurious, grounds for mounting legal challenges when union members have voted for industrial action.

### **How many members does your union have?**

The RCM falls into the 25,000-50,000 member category.

### **How do you obtain membership details?**

In the first instance we obtain membership details from individuals when they join the organisation. This information might be submitted directly online or by means of a paper application form.

### **How do you store your membership records?**

We store our membership data electronically.

### **How do you keep membership details up-to-date?**

Members can access the information we hold on them online, and can update or correct that information directly online. They can also update information by contacting the RCM, for example by calling us. Each year we also write to members with a printout of the information we hold on them, inviting them to fill in any blanks, update anything that has changed, or correct anything that is wrong.

In addition to this we have occasionally conducted exercises where we will proactively contact members to fill in any important blanks in their record, for example their place of work. We last did this in last 2011.

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<sup>2</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>

**Have you encountered problems that mean that membership records are not up-to-date?**

Yes. One problem is the failure of individuals to let us know when their circumstances changes, e.g. when they change employer. We try to overcome this with the annual posting to members of the information we hold on them, requesting they inform us of any changes.

**Will these changes impact on how you collect and maintain membership data?**

No

**Will our proposals have any impact on how you collect membership subscriptions?**

No

**Do you agree with the role and duties of the assurer set out in the Bill?**

The RCM does not agree with the role and duties of the assurer because we are opposed in principle to the trade union membership provisions, as set out in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, for the reasons that we state above.

**Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

No, for the reasons stated above.

**What will be the costs and benefits to unions?**

There will obviously be a cost in the additional regulation that is proposed; it is unfortunate that a government supposedly committed to relieving organisations of the burden of red tape seems intent on tying up trade unions in more of it. We do not anticipate any benefits to the RCM.

**What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

Whilst it is difficult at this stage to quantify exactly how much additional cost there will be, we estimate that engaging an assurer would cost the RCM in the region of £5,000 to £10,000 a year.

### **Where do these costs come from?**

The cost would come from engaging the services of an assurer.

### **What will be the costs and benefits to union members?**

Potentially the most significant cost will be further erosion in trade union members' ability to exercise their democratic right to take industrial action, because the legislation will give employers further opportunities to seek injunctions against industrial action.

In addition, members are more likely to receive additional post, additional calls and additional emails chasing them to confirm membership details that are perfectly up-to-date and accurate. It is unlikely that many members will regard this as a benefit. There is also the upward pressure on their membership fees and therefore their cost of living from the additional cost of compliance.

The benefit for some union members – the subset whose details are out of date, who have not updated their union accordingly, and whom the union has managed to get hold of – is that they are more likely henceforth to be communicated with by their union. However, since the RCM already devotes considerable time and resources to contacting all members, any benefit from the legislation is likely to be extremely marginal.

Of course for members whose details are current, who do keep their union informed, who do respond to existing measures for the maintenance of up-to-date data, or who don't respond to emails, calls or letters asking for updates, there is no foreseeable benefit.

### **What consequences do these proposals have for employers? Why do these consequences arise?**

The main consequence for employers will be to give them one further instrument to frustrate trade union members who wish to exercise their legitimate right to take industrial action. As such the proposals provide no incentive for employers to engage in constructive industrial relations with trade unions.

### **What types of questions do unions ask employers in relation to union members?**

The RCM does not currently ask individual employers for information about union membership.

**As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record?**

This is not something our HR staff have prior experience of, but any information about individuals would only be provided with those individuals' consent.

**What is your view of the remedies for non-compliance with the clauses?**

Since the RCM is opposed to the trade union membership provisions contained in the Bill, we are also opposed to the proposed remedies for non-compliance with the clauses.

**Will unions need time to prepare before the new requirements come into force?**

Yes. The full impact of any new requirements will need to be explored and any resultant changes to policies or procedures made; this can take time and may, for some unions, involve changes to IT, new or different training of staff, and so on. This is not a matter of life or death, so it seems reasonable that the Government should allow unions time to assess any new law's impact and to make any relevant changes accordingly.

**In a guidance document, what information would you find helpful in relation to the proposals?**

Any guidance should focus on the practical requirements of the new law. No membership database for example will be 100% accurate 100% of the time, so what in reality will it mean to be up-to-date? What steps to ensure data is as up-to-date as possible will be considered sufficient?

The guidance needs to avoid being unspecific, leaving it open to broad interpretation that is then found wanting by the Certification Officer.

**Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

No

**Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

No

## **Society of Radiographers**



[REDACTED]

[REDACTED]

Louise Nixey  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

27<sup>th</sup> August 2013

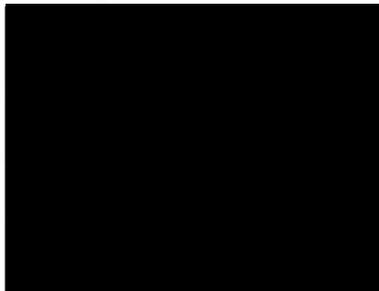
Dear Ms Nixey,

**Re: Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill**

The TUC has recently responded on behalf of its affiliates to the consultation on Part 3 of the above. As the General Secretary of one of the 54 member unions referred to by the TUC, I am writing to place on record this Society's full support for the reasoned arguments raised in objection to the proposals relating to trade unions' registers of members.

The response expresses our serious concerns regarding the proposed legislation as drafted in terms of the unwarranted intrusion on trade union autonomy, the adverse impact on union members' human rights and rights under existing data protection legislation and the lack of a clear public interest rationale.

Yours sincerely,



Society of Radiographers

## **Thompsons Solicitors**

# Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

## Certification of trade union membership details – consultation response

Date: 16 August 2013

### 1. Introduction

Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (the Bill), which was put before Parliament on 17 July, 2013, gives far-reaching new powers to the Certification Officer (CO) in relation to trade union membership registers. The Bill has major implications, as the Government's explanatory notes acknowledge, in relation to the right to privacy and freedom of association of more than 7million trade union members under the European Convention on Human Rights (ECHR).

The Bill's provisions include:

- Creation of a new role of an Assurer from among 'qualified independent persons' as defined by the Secretary of State.
- A requirement for unions with more than 10,000 members to submit to the CO an annual 'Membership Audit Certificate' prepared by an Assurer, in addition to the current duty to submit an annual return.
- The Assurer will have the right to access union membership records at all 'reasonable' times and powers to require officers, including branch officers, to provide information.
- The CO will have the power to require the production of relevant documents and to make copies of them, including membership records and private correspondence from 'anyone who appears...to be in possession of them' (38) (1) (2) if there is a 'good reason to do so'.
- The CO will also be able to appoint inspectors, including outside his own staff, to mount investigations with similarly wide-ranging powers to require the production of documents, including membership records.
- The CO will have enforcement powers that have the status of a court order.

The Bill is unprecedented in its intrusion into the privacy of union members, and yet:

- Less than four weeks has been allowed for consultation over the summer period, giving trade unions no meaningful opportunity to consult those most directly affected, their members,
- The consultation is framed in a way that assumes - without any attempt at justification - that this major change in the law is necessary and seeks views only on limited aspects of its impact and operation.

The second reading of the Bill is scheduled for 3 September. In this response, we set out our comments on what we consider to be the most important issues in the proposals, specifically the far-reaching questions surrounding privacy and freedom of association.

## 2. What is the rationale for the Bill?

The reason for the Bill, given by the Department of Business and Skills in its discussion paper, is the potential of trade union activity to affect people's daily lives. 'The general public', it says, 'should be confident that voting papers and other communications are reaching union members so that they have the opportunity to participate'.

However, no evidence is put forward in the discussion paper to demonstrate that communications are not reaching union members or that there are shortcomings in the existing law relating to a trade union's duty to maintain a register of members. Moreover, no evidence is produced to explain the need for government to acquire yet further (extensive) powers over the lives of its citizens (and voters).

It is axiomatic that trade unions want to have good membership records. It is in their own interests to engage with members in the same way any voluntary organisation wishes to maximise membership fees and ensure people want to remain in membership. Unions are nothing without their members. They exist to represent them. They invest in a wide array of ways of communicating with them, from printed magazines, leaflets and posters to websites, social media and e-newsletters. Such is the importance of member communication, the TUC itself runs the Trade Union Communication Awards annually, attracting intense competition in categories such as best journal, best photography, best campaign and best website.

At present, the standard for unions to meet in industrial action challenges is that membership data is as “accurate as is reasonably practicable in the light of the information in the union’s possession”. That is a significant hurdle in itself for unions to clear and one that has been endorsed by the courts in a series of landmark cases as sufficiently demanding, especially given the voluntary nature of union organisations and their reliance on lay activists for communication with members.

The absence of any rationale or *evidence* for the changes suggests that - rather than being about improving union administration or public confidence in union ballots - the Bill’s authors are looking to help employers to mount injunction proceedings when union members have voted for industrial action, seizing on minor flaws the Court of Appeal would previously have considered ‘de minimis’ or ‘accidental’ (see below).

In the process, a major casualty is privacy. The CO’s new powers - to require trade unions to hand over members’ names, addresses and private correspondence - is unacceptably intrusive and (despite assurances on confidentiality) puts sensitive personal data at risk of being misused or misplaced.

### 3. Is the existing system working?

Under the 1992 Trade Union and Labour Relations Act (TULCRA), a trade union has a duty to maintain a register of the names and addresses of its members and a duty, so far as reasonably practicable, to ensure that entries in the register are accurate and kept up-to-date.

The 1992 Act provides that a trade union should allow any member on request, with reasonable notice, to ascertain from the register, free of charge, whether there is an entry on it relating to him or her. A failure to comply with the requirements of section 24 of the 1992 Act can be made the subject of an application to either the CO or the court.

The CO’s annual report for 2012-13 says 166 trade unions submitted returns (note: not membership lists) recording a total of 7,197,415 members. This compares to 7,261,210 members the previous year. The largest reduction in membership was in the construction sector.

The annual return has to include a copy of the auditor’s report on the accounts, allowing the CO to compare revenue from dues with the numbers reported. In 2012-13, the returns showed income from members increased by 1.3% to £873.11 million. The returns also showed the total number of contributing members was around 90.5%

of the total membership, compared to a figure of 89.4% in the preceding year (the balance being retired and unemployed members, members on long term sick and maternity/child care leave and those on career breaks).

We believe any independent person looking at the report would agree that the government already has extensive information-gathering powers on the finances and membership of trade unions. Significantly, not a single trade union member lodged a complaint with the Certification Officer in 2012-13 concerning the maintenance of the register of members' names and addresses.

This is clearly not about the rights of union members. There are no benefits to them, only the costs associated with extra government-initiated red tape.

## 4. If union members will not benefit, who does?

Employers have persistently attempted to use alleged deficiencies in union membership records as a pretext for seeking injunctions to stop industrial action.

In two landmark decisions on this issue in April 2011 - *ASLEF v London Midland and RMT v Serco Docklands* - the Court of Appeal upheld union appeals. In both cases the High Court had granted injunctions to the employers to prevent industrial action on the grounds that the notices given by the trade unions were defective; and that the explanations they gave to describe the steps they had taken were inadequate. The Court of Appeal allowed the unions' appeals and discharged the injunctions, saying the law should be given a "likely and workable construction". The employers were given permission to appeal to the Supreme Court, but neither did so.

In the ASLEF case, the Court of Appeal said that, although ASLEF had allowed two members to vote in a strike ballot who were not entitled to vote, the small 'accidental failures' provision in the legislation should apply and confirmed the 'de minimis' exception applied to ballot and strike notices. It found that the High Court judge was wrong when he held that ASLEF was under an obligation to obtain further information or set up systems to improve its record keeping and said the information given by the union in the ballot notification was as accurate as was reasonably practicable given the information in its possession at the material time.

In the RMT case, the employers had also obtained an injunction in the High Court, on the basis that the explanation was inadequate and that the job categories in the RMT notices were imprecise. The Court of Appeal found that the explanation was adequate and disagreed with SERCO that the purpose of the explanation was to

enable it to decide whether to take legal proceedings. The Court found there was no statutory obligation requiring the union to use any particular category of jobs and therefore no obligation on the union to adopt the categories used for pay purposes. It accepted that the approach adopted by the union - which was to notify the employer of the jobs identified by the workers themselves - was perfectly sensible and complied with the statutory obligation.

In a further landmark case, in February 2012, the High Court dismissed an application by Balfour Beatty for an interim injunction against Unite, following a ballot of some of its members on industrial action. Balfour Beatty alleged that some employees entitled to vote had not received a ballot paper, while others not entitled to vote had been sent one. However, Unite had taken a wide range of steps to alert members to the ballot, including sending out questionnaires to more than 9,000 members recorded as working for the Balfour Beatty to update its records. In ruling against Balfour Beatty, the Court took the RMT v Serco and ASLEF v London Midland ruling into account. It concluded Unite had gone to 'painstaking' lengths to verify the membership information in its possession and, as far as it was reasonably practicable, sent every person entitled to vote a ballot paper.

These cases demonstrate how some employers will go to considerable lengths to prevent employees from exercising their legitimate right to strike. As noted earlier, if this Bill becomes law, employers will try to use any defect thrown up by membership audits or CO investigations as evidence against unions in injunction proceedings. They will ride roughshod over genuine staff grievances using legal technicalities to avoid dealing with them.

The current debate on zero-hours contracts highlights how some employers will take advantage of their staff, exploiting fears about job security in a time of high unemployment to suit their own ends. People do not consider taking industrial action lightly. When they do, it is almost always because it is the only way they can force employers to concede legitimate demands. The Bill runs the risk of becoming an unscrupulous employers' charter.

## 5. Is there a wider need for change?

Existing laws already impose onerous requirements on trade unions before industrial action can take place. The Government has produced no evidence to show there is a need to make it even harder for union members to take industrial action.

The number of working days lost through strikes remains at historically low levels despite falling real wages, cuts in pensions and other issues. However, fewer strikes do not equate with fewer grievances. The dramatic reduction in strike activity in the last twenty years mirrors the introduction of ever increasing legal constraints on the right to strike. If those constraints are taken even further, it will simply mean that frustrations will build up.

The Government has failed to produce any evidence demonstrating any need for this legislation in terms of the wider economy. We would argue, far from being of benefit, it is potentially damaging to industrial relations by emboldening employers to disregard the views of their employees because they think they will never be able to use the ultimate sanction of taking industrial action.

## **6. Are there grounds to fear the improper use of sensitive personal information?**

The right to join a trade union is a fundamental human right that is recognised in international and UK law as a private matter (see below). People who join a trade union are often genuinely concerned that membership of a union could be held against them by their existing employer or when they are seeking work. They have every right to expect that their personal details will not be disclosed by their union. However, the Bill gives the CO the power to compel disclosure, regardless of the personal wishes of the member.

It is ironic therefore that in the week after the Bill was published the business secretary, Vince Cable, referred evidence of on-going blacklisting of trade unionists at London's Crossrail project to the Information Commissioner's Office. Unite the Union says blacklisting of trade unionists has been going on within the contract for London's Crossrail project run by BFK (BAM, Ferrovial and Kier). The issue has also been taken up by the Scottish Affairs Select Committee, which has been investigating historic allegations of blacklisting in the construction industry and heard union evidence that the practice is still continuing. The committee chair wrote to the business secretary in July asking for a full investigation.

The 1998 Data Protection Act defines data relating to membership of a trade union as 'sensitive personal data'. The Bill provides that all those handling union membership information will have a duty of confidentiality, and explanatory note 186 says 'nothing in the Bill will disapply the safeguards provided by UK data protection legislation'.

However, under the Bill, the number of people with access to and the power to make copies of all or some of the data – sensitive personal information on potentially more than 7m people - could run to hundreds if not thousands. This will include Assurers for each large trade union, the CO's staff and external consultants appointed by the CO as inspectors. Clearly, the Bill creates a risk that membership information could be leaked for improper use.

## **7. Are there also risks of accidental disclosure of private information?**

In addition to the potential for improper use of trade union membership information, this legislation would open up the possibility of sensitive personal information accidentally going astray.

The track record of public bodies in safeguarding data is not impressive. There have been cases of data being lost in postal systems, left on trains and sent to the wrong address. Data lost or misplaced has included patients' files and benefits records containing details such as dates of birth and National Insurance numbers.

We have no reason to believe the CO's office has poor systems. However, the more people that handle data, the more vulnerable it is to disclosure through human error. Trade union members have every right to be concerned about the increased risk of their personal details being accidentally disclosed as a result the wide ranging powers the Bill gives the CO, his staff, Assurers and inspectors to obtain membership lists and private correspondence.

## **8. Is the Bill compatible with international law?**

The European Convention on Human Rights (ECHR, Article 11) provides that 'everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join a trade union for the protection of his interests'. Article 8.1 of the ECHR gives everyone the right to respect for 'his private and family life, his home and his correspondence'.

In both cases, these rights are qualified (Articles 11.2 and 8.2) by 'the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

The Bill's explanatory notes argue (note 185) that the rights in ECHR 8.1 and 11.1 are not infringed because the CO, his staff, the assurers and investigators appointed by the CO are subject to obligations of confidentiality and to act consistently with Convention rights. It says (188): 'the powers conferred to obtain and use these membership details are necessary and proportionate to enable the CO, assurer and inspector to carry out their functions under TULRCA and are therefore justified under article 8(2) of the ECHR'.

However, the Government has not produced any evidence to support its assertion that such far-reaching new powers to obtain and use sensitive personal information are 'necessary and proportionate'.

Is the government asserting that trade unions are a threat to national security, public safety, health and morals or linked to disorder and crime? If not then the Bill needs to be in the interests of 'the economic well-being of the country'. And yet, as noted earlier, the CO already has extensive powers to monitor trade union membership figures, the number of days lost through strikes is at its lowest level since records began and industrial action is tightly regulated to the satisfaction of the Court of Appeal.

Far from being a threat to economic well-being, we believe trade unions have a major role to play in the economy and should have their rights - as representatives of working people - respected.

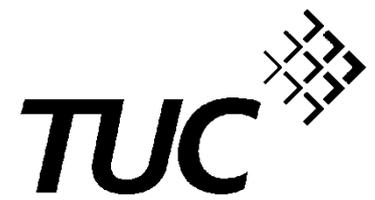
We also believe the Bill infringes the right to privacy under ECHR 8.1 and creates a serious risk of sensitive personal data being lost or misused. In our view, people belonging to or considering joining a trade union will be so concerned by this that it could undermine the right of freedom of association itself.

The Bill is therefore contrary to international law and a serious infringement of the legitimate rights of millions of citizens.

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## **Trade Union Congress (TUC)**



# Certification of trade union membership details

TUC Response to BIS discussion paper

## Introduction

The Trades Union Congress (TUC) has 54 unions in membership. TUC affiliates represent nearly 6 million members who work in a wide range of occupations and industries in the public and private sector. The TUC is responding to the current consultation in its capacity as the national trade union centre in the UK on behalf of its affiliate membership. It is worth noting in this context that there are a number of listed trade unions that are not TUC affiliates, a small number of which have more than 10,000 members. No doubt they will be making separate representations to the Government.

The TUC is fundamentally opposed to the measures relating to trade unions' registers of members contained in Part 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. The TUC is concerned that in introducing these measures the government is singling out trade unions for unfair regulation. No other membership organisations, voluntary sector groups or businesses in the UK are subject to equivalent rules. There is also no clear connection between Part 3 and the other sections of the Bill. The government appears to be opportunistically using the Bill to introduce additional regulations of unions' internal affairs, even though the rules have no connection to the remainder of the Bill and have not been the subject of wider discussion or consultation in the government's employment law review.

Part 3 of the Bill will impose significant administrative and financial burdens on trade unions. Trade unions are already extensively regulated in the way that they manage membership records. Unions are not only required to comply with section 24 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992). They are also obliged to comply with the provisions and principles set out in the Data Protection Act 1998 (DPA) – a fact which apparently has been disregarded by the government when drawing up the current proposals. The TUC is concerned that the government has not consulted the Information Commissioners Office prior to drafting the legislation, to avoid the ensuing duplicate regulation.

The TUC also notes that new arrangements will also increase the workload and costs for the Certification Office. It is far from clear what benefits the increased regulation will yield for the wider public, including businesses, and how the increased costs to the taxpayer can be justified.

In recent years the coalition government have signed up to a “one-in, two-out” approach to regulation. If Part 3 of the Bill is implemented, the TUC would call on the government to demonstrate what measures will be adopted to alleviate the “burden” of regulation on unions, which are civil society organisations.

In the TUC's opinion the government's proposals represent an unjustified intrusion on trade union autonomy and the right of trade unions to govern their internal affairs. These rights are core elements of the right to freedom of association which is protected by Article 11 of the European Convention on Human Rights and ILO Convention 87, Article 3.

Article 11(2) of the European Convention states, and the European Court of Human Rights has underlined, that any interference with these rights must be justified, necessary and proportionate. In drawing up the current proposals, the government has failed to identify any objective justifications for the legislation. The discussion document states that *‘Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able visibly to demonstrate that they know who their members are and can communicate with them.* The TUC agrees that the core *raison d’être* of trade unions is to recruit, represent and retain members. Without members trade unions would not exist. Effective communication is essential for all trade unions. Unions communicate regularly with members through websites, newsletters, emails, correspondence, branch meetings, union conferences and training events. Unions that fail to communicate are likely to find it difficult to retain members. However, whether and how unions communicate with their members is a matter for the unions concerned. It is certainly not the appropriate subject matter for regulation by the State.

The government has also failed to produce any evidence of problems which necessitate additional regulation. According to their website, the Certification Office has received no complaints from trade union members relating to registers of members since 2004. Between 2000 and 2004, a total of 6 complaints were received, 5 of which were dismissed and in the sixth case the Certification Officer decided not to issue the declaration sought. If union members were concerned about the way in which unions manage membership lists, the number of complaints would be far higher and if there were serious administrative problems, the Certification Officer would have issued declarations to this effect.

Part 3 of the Bill will impose significant administrative and financial burdens on trade unions. These will include the costs associated with the appointment of the assurer, associated investigations and any administrative requirements which may emerge as a result of the legislation. The TUC believes these measures are unnecessary and disproportionate.

The Bill also provides the Certification Officer with sweeping new powers to access a unions’ register of members’ names and addresses and related correspondence between individuals and the union, where s/he ‘thinks there is a good reason to do so’ (new section 24ZH of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992)). The TUC believes this represents a serious violation of individuals’ rights to privacy as protected by Article 8 of the European Convention on Human Rights. It may also act as a significant deterrent for some individuals to exercise their fundamental rights to join a trade union and be represented in the workplace, under Article 11 of the Convention<sup>1</sup>. The explanatory notes which accompany the Bill argue that new

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<sup>1</sup> *Wilson and Palmer v UK* [2002] IRLR 568 (E Ct HR)

provisions imposing confidentiality requirements will provide adequate safeguards for individuals. The TUC does not agree. In our opinion, it is not the business of the State to know who is or who is not a trade union member, and where they live.

In recent years there has been increasing exposure of the blacklisting activities in some sectors, where individuals have concerns about joining a trade union for fear of victimisation at work and loss of employment. The increased powers for state officials to access union membership records and addresses can only increase the deterrent facing such individuals. The TUC believes that rather than increasing the regulation on trade unions the government should be taking active steps to stamp out blacklisting activities in the UK and to ensure that individuals who have been victimised for their trade union membership are fully compensated.

The TUC is also concerned there is an inherent contradiction between unions' obligations under data protection rules, which require unions to protect members' names and addresses as highly sensitive data and Part 3 of the Transparency Bill which will require unions to disclose such details to agents of the state. The TUC is concerned that the Bill erodes members' data protection rights.

There is also a serious risk that trade union membership data will be misplaced or lost. In recent years there have been a number of high profile instances of government agencies misplacing confidential data. The ability of the Certification Officer to outsource investigations to third parties can only increase this risk.

The TUC is also concerned by the potential implications of the legislation for the ability of unions to organise industrial action. It is anticipated that employers will seek to rely on information provided on audit certificates in applications for interim injunctions in an attempt to prevent or delay industrial action. Employers, involved in a dispute with a trade union, may also contact the Certification Officer, requesting an investigation into the unions' membership records. They may subsequently argue in the High Court that an interim injunction should be imposed pending the outcome of the Certification Officer's investigation.

Finally the TUC is seriously concerned that the government has tabled the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament before it has completed public consultation or been given an impact assessment, contrary to the BRE rules. The timing and length of the existing consultation process has been completely inadequate. The government has provided trade unions with barely four weeks over the holiday period to respond to significant new regulations. The lack of effective consultation demonstrates a willingness by the government to drive through legislation, in the absence of supportive evidence and regardless of the views expressed by those directly affected, that is, trade unions or the wider public.

## Responses to consultation questions

### Section 1 Membership records

As stated above, the TUC has 54 unions in membership, the names of which are listed in the TUC's annual return to the Certification Officer. The addresses of TUC affiliates are also listed in the TUC Directory and on the TUC website.

The following responses are based on the views and experiences of TUC affiliated unions.

#### **Q 7: How do you obtain membership details?**

Unions mostly obtain details directly from members or individuals applying for membership. This information may be provided via membership forms, websites, and membership help-lines. Many unions find that individuals increasingly apply for membership online. Unions also gather information via workplace representatives, branch secretaries, union officials or regional staff.

Some unions receive information from employers as a result of check off arrangements and established working practices or collective agreements.

#### **Q 8: How do you store your membership records?**

Unions usually store union membership information on a central electronic database. The use of paper files is increasingly limited.

Membership data is stored securely. Unions will and must also observe data protection rules and policies when storing and amending the data.

#### **Q 9: How do you keep membership details up-to-date?**

Unions rely primarily on members to inform them of changes in details. Unions make every effort to keep membership data up to date. Many unions include reminders on websites and in newsletters asking members to inform them of changes to their addresses, etc. Unions also gather information through workplace reps, union officials and regional officers.

Where unions become aware of possible changes in a member's details, for example where newsletters are returned in the mail, unions will attempt to run follow up checks.

Some information may also be received from employers, through check off or established industrial relations arrangements.

Where a union is considering organising industrial action, workplace reps and regional officers will carry out active checks of members' addresses in order to comply with statutory requirements on industrial action notices and balloting rules.

#### **Q 10: Have you encountered problems that mean membership records are not up-to-date?**

No.

**Q 11: Will these changes impact on how you collect and maintain membership data?**

The Bill provides very limited detail on the role of the assurer or the criteria against which the effectiveness of current membership systems will be assessed. It is therefore difficult for unions to evaluate whether the proposed legal changes will impact on how membership data is collected and maintained.

The TUC notes that the accompanying Equality Impact Assessment refers to a new requirement on unions to undertake an annual audit of union membership. The text of the Bill however does not provide for such a requirement. In the context of industrial action law, the courts have also confirmed that unions are not obliged to undertake an annual audit.

If the Bill leads to a requirement on unions to undertake detailed annual audits, this could have very significant administrative and cost implications for unions.

**Q 12: Will our proposals have any impact on how you collect membership subscriptions?**

As the draft Bill provides very limited detail on additional duties which may be placed on unions it is difficult for unions to evaluate whether the proposed legal changes will impact on how unions collect membership subscriptions.

Section 2 Independent third party assurer

**Q 13: Do you agree with the role and duties of the assurer set out in the Bill?**

The TUC does not agree with the proposals outlined in Part 3 of the Bill, including the role for the assurer.

The TUC believes these provisions amount to an unjustified interference in trade union internal affairs and are inconsistent with the requirements of Article 11 of the European Convention on Human Rights and ILO Convention 87, article 3.

In our opinion, existing arrangements relating to membership records and data protection rules are adequate. The costs to unions which will arise from the Part 3 of the Bill will exceed any benefits which may be achieved for members. The proposals are therefore clearly disproportionate. It is also important to note that unions are required to comply with onerous legal rules in relation to notices and ballots when organising industrial action.

The TUC is extremely concerned that the role of the assurer will violate trade union members' rights to privacy as protected by Article 8 of the European Convention. Under section 24ZG the assurer will be permitted to disclose the register of members' names and addresses to the Certification Officer. Such disclosure can be made without the knowledge or consent of the union or its members. As stated above, the TUC does not believe it is the business of the state to know who is a trade union member and where they live. These rules also appear inconsistent with EU data protection principles which classify union

membership data as sensitive personal data, which merits the highest level of protection.

The Bill also provides very limited information on the role of the assurer. For example, the Bill (section 24ZE) provides the assurer with a broad discretion to determine the nature and scope of any enquiries which they can make or the nature of the information or explanations they can require from union officials and branch officials. According to the Bill, the assurer is entitled to require any such information as they themselves *consider necessary* for the performance of their functions. These provisions are likely to lead to inconsistent approaches by assurers and will result in an unjustified intrusion into unions' internal affairs.

The TUC is also concerned that where the assurer concludes that the union's system is not satisfactory or they have not received adequate information or explanations the assurer will be under a duty to send a copy of the certificate to the Certification Officer (section 24ZF). The certificate must be sent as soon as reasonably practicable after it is provided to the union. No provision is made for the union to appeal or challenge any conclusions reached by the assurer before the document is sent to the Certification Officer and becomes a public document. The TUC believes these provisions are inconsistent with the basic principles of natural justice.

**Q14: Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

The TUC does not agree with the proposals in Part 3 of the Bill. In our opinion the existing rules are adequate. In the event that the Bill becomes law, the TUC believes that existing union auditors, scrutineers or individuals or companies who act as qualified independent persons for the purposes of the statutory union recognition scheme should be able to perform the role of assurers.

It is essential that the assurers have knowledge of trade unions and how they operate. Given the extensive access that assurers will have to the register of members, it is critical that the individuals concerned are trusted and respected by trade unions and their members. It is also imperative that the TUC and unions are consulted on any specified criteria which assurers must meet and/or any prescribed list of assurers.

### Section 3 Impact on unions

**Q 15: What will be the costs and benefits to unions?**

The TUC cannot foresee any benefits in the legislation for trade unions. The new regulations are anticipated to impose significant administrative and financial burdens on trade unions. The measures may have a disproportionate impact on smaller unions, with membership just above 10,000. Such unions are likely to incur similar costs in contracting an assurer as larger unions. Such unions often have more limited resources or reserves and may be forced to pass on related costs to members through increased subscriptions.

As stated above, the TUC also believes that the proposed legislation amounts to an unjustified and disproportionate intrusion by the government into trade unions

rights to freedom of association and their ability to govern their own internal affairs. The TUC believes that the legislation may violate trade unions' and our members' rights under Article 11 of the European Convention on Human Rights.

**Q 16: What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

In terms of financial costs, it is unclear from the legislation what the new arrangements will involve. It is however anticipated that unions will incur significant increased costs, including those associated with:

- Contracting an assurer
- Paying an assurer to perform their functions
- Responding to requests for information or explanations from the assurer
- Any investigations carried out by the Certification Officer or inspectors appointed by him or her
- Any adjustments which need to be made to existing membership data systems
- Training of union staff

#### Section 4 Impact on members

**Q 18: What will be the costs and benefits to union members?**

The TUC cannot foresee any benefits for trade union members. Unions already have systems in place to amend membership data, where an individual is not receiving information or communications from their union.

Trade unions would attempt to accommodate additional costs arising from the legislation within existing administrative costs. There is however a serious risk that the legislation will result in increased subscription rates for members.

As stated above the TUC believes that the proposed legislation will lead to a violation of members' rights to privacy. The TUC is also seriously concerned that the legislation may deter some individuals from becoming union members and benefiting from effective workplace representation. This includes civil servants and other public sector staff who are often reluctant to inform their employer – the state – that they are a trade union member.

In recent years there has been increasing exposure of the blacklisting activities of certain employers. Individuals working in such sectors are often reluctant to join a union for fear that this will lead to victimisation at work and the loss of employment. The increased powers for state officials to access union membership records and addresses can only increase the deterrent facing such individuals.

The TUC is also concerned that some employers may attempt to rely on the new legislation to argue in applications for interim injunctions which prevent unions from taking industrial action. Any successful injunctions would restrict the ability of the union to act on the democratic mandate from their members.

#### Section 5 Impact on employers

**Q 19: What consequences do these proposals have for employers? Why do these consequences arise?**

Some unions also have check off agreements with the employer under which the employer discloses the names of individuals who pay union subscriptions via check off to the union.

The TUC anticipates that union requests for information from employers under check off arrangements will increase if the Bill is implemented. This will increase administrative burdens on employers.

Unions report that some employers are increasingly reluctant to comply with information requests from unions, sometimes citing data protection rules as the reason. If Part 3 of the Bill is to proceed the TUC believes that the provisions should be amended to include a statutory obligation on employers to co-operate with requests from unions for information to comply with the additional regulations relating to union membership records.

**Q 20: What types of questions do unions ask employers in relation to union membership?**

Trade unions communicate directly with individuals about trade union membership. Unions will also request membership details under check off and other industrial relations arrangements.

Employers also have an obligation to disclose information to recognised trade unions for the purposes of collective bargaining. The provisions in section 181 of TULR(C)A 1992 are however unlikely to apply to requests from unions for information about members' names and addresses, relating to section 24 of the 1992 Act.

When organising industrial action, unions will sometimes request information from employers about individual's jobs and workplaces. Employers often ignore the request or refuse to supply the information. The TUC believes that employers should be under an obligation to co-operate with requests from unions for information needed to comply with rules relating to industrial action notices and ballots.

**Q 21: As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

The TUC cannot comment on behalf of employers.

Section 6 Compliance

**Q 22: What is your view of the remedies for non-compliance with the clauses?**

The TUC does not agree with the proposals contained in the Bill and believes that the existing provisions are satisfactory.

The TUC has serious concerns about the proposed extended role for the Certification Officer. The Bill provides the Certification Officer with wide-

ranging powers to access registers which contain union members' names and addresses. Section 24ZH provides the Certification Officer with a very broad discretion to request access to membership lists. The Certification Officer only needs to 'think there is a good reason to so' to make such a request. The threshold test is primarily subjective. The Bill provides no objective criteria to determine whether such requests are justified or necessary. The test could be applied inconsistently or as a result of pressure from government departments or employers.

In our opinion, these powers are not justified or proportionate and represent a serious intrusion by a state official into unions' internal affairs. The exercise of these powers will also seriously violate individuals' rights to privacy.

The TUC is also concerned that the Certification Officer will be able to initiate investigations on his own volition or after receiving information from third parties. The TUC believes such powers are unnecessary. It is likely that employers who are involved in a dispute with a trade union will contact the Certification Officer requesting him or her to carry out an investigation of union membership records. The aim will be to delay industrial action. This is likely to politicise the role of the Certification Officer, thereby undermining their impartiality.

**Q 23: Will unions need time to prepare before the new requirements come into force?**

Yes. Trade unions will need time to familiarise themselves with the new requirements and to prepare before any new regulations come into effect.

Time must also be provided to enable unions to make the necessary rule change allowing for the appointment of an assurer. The length of time required will depend on the rule-book of each union. In some unions, a change in the rulebook will require a referendum of all members which is both time consuming and costly. In other unions, changes can only be made at biennial rule change conferences.

## Section 7 Guidance

**Q 24: In a guidance document, what information would you find helpful in relation to the proposals?**

As stated above it is not clear from the legislation what the new regulations will involve. If Part 3 of the Bill is to be retained, it will be important for the government to introduce guidance to assist unions to comply with the new regulations and to ensure consistency of practice by assurers.

The TUC calls on the government to publish draft guidance before the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill completes its Parliamentary Stages. This will assist MPs and Peers to assess the full impact of the new legislation and to determine whether it should be implemented.

## Section 8 Other

### **Q 25: Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

The TUC does not have any additional comments.

### **Q 26: Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

The TUC does not have any comments on the accompanying EQIA. The TUC however reiterates our serious concern that the government has failed to carry out public consultation or complete a full economic impact assessment before tabling the Lobbying, Non-Party Campaigning and Trade Union Administration Bill in Parliament. The government should have undertaken full consultation and an in-depth analysis before drafting the legislation. Failure to do so can only result in poor quality policy making and the serious risk of violation of human rights standards.

### Contact

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[REDACTED]  
TUC  
[REDACTED]

## **Union of Construction, Allied Trades and Technicians (UCATT)**



UNION OF CONSTRUCTION,  
ALLIED TRADES  
AND TECHNICIANS

SDM/KP

19<sup>th</sup> August 2013

Dear Ms Nixey

**Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill:  
Certification of trade union membership details: discussion paper**

I am writing on behalf of the Union of Construction, Allied Trades and Technicians as part of the recent BIS consultation on the proposals for certification of trade union membership details as outlined in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. UCATT wishes to formally register our objection and opposition to the proposals.

We regret that we have been unable to answer the specific questions outlined in the consultation due to the very short time-scale for responses and the timing of the consultation over the summer period during school holidays.

However, as the proposals in the bill have serious implications for our organisation, we do not wish to be disenfranchised. UCATT fully supports the submission made by the TUC and a summary of our key objections to the proposals contained in the certification of trade union membership details are listed below:

- The proposals place additional bureaucracy, administration and financial costs on trade unions by a Government claiming to wish to reduce 'red tape'.
- UCATT fundamentally opposes intrusions into the internal affairs of trade unions and believes that the proposals are ideologically driven, as no other type of membership organisation is required to comply with these additional measures.
- As has been revealed by the Scottish Affairs Committee Inquiry into Blacklisting, the construction industry has been and continues to be blighted by workers being refused work due to their trade union membership. Trade union membership is therefore a sensitive subject and many UCATT members would not like this to be revealed to any third party. UCATT cannot see how we can give such assurances to our members if we are

required to disclose members' names and addresses to the assurer, the Certification Officer and any third party named by the Certification Officer. Furthermore, UCATT believes that such a requirement would be in direct contradiction to our obligations to the Information Commissioner's Office and indeed the right to privacy, as protected by Article 8 of the European Convention on Human Rights.

- Fear of the state having access to details about individual trade union membership will undoubtedly act as deterrent and barrier to construction workers joining a trade union.

## Unite the Union

### **Unite Response to BIS Discussion Paper on Certification of Trade Union Membership Details (Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill)**

This response is submitted by Unite the Union, the UK's largest trade union with 1.42 million members across the private and public sectors. The union's members work in every type of workplace and in a wide range of industries including manufacturing, transport, financial services, print, media, construction, energy generation, chemicals, local government, education, health and not for profit sectors.

Unite has contributed to and supports the TUC's response to the discussion paper, but also uses this letter to highlight some key issues of concern.

We believe that the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill is an unprecedented intrusion into the privacy of union members and an attack on trade union freedoms. The Bill gives extensive new powers to the Certification Officer (CO) in relation to trade union membership registers and has major implications in relation to the right to privacy and freedom of association of trade union members under the European Convention on Human Rights (ECHR).

The discussion paper on certification of trade union membership details can in no way be regarded as a consultation. It allows less than four weeks for responses over the summer period. In addition, no justification is made as to why such a significant change in the law is necessary and views are only sought on limited aspects of its effect and operation.

Furthermore, no evidence is presented to demonstrate that union members are not receiving communications or that there are deficiencies in the existing law relating to a trade union's duty to maintain a register of members. Similarly, no evidence is given to support the need for government to acquire yet further extensive powers over the lives of its citizens.

All membership organisations face difficulties in gathering and storing members' details, not least because all membership organisations are mainly reliant on their members telling them of changes to maintain their records.

The lack of any rationale or evidence for the changes suggests that, rather than being about improving union administration or public confidence in union ballots, this is a move to assist employers mount injunction proceedings when union members have voted for industrial action.

Employers have persistently attempted to use alleged deficiencies in union membership records as a pretext for seeking injunctions to stop industrial action. In a landmark case, in February 2012, the High Court dismissed an application by Balfour Beatty for an interim injunction against Unite, following a ballot of some of our members on industrial action. Balfour Beatty alleged that some employees entitled to vote had not received a ballot paper, while others not entitled to vote had been sent one. However, Unite had taken a wide range of steps to alert members to the ballot, including sending out questionnaires to more than 9,000 members recorded as working for Balfour Beatty to update its records. In ruling against Balfour Beatty, the Court concluded that Unite had gone to 'painstaking' lengths to verify the membership information in its possession and, as far as it was reasonably practicable, sent every person entitled to vote a ballot paper.

Some employers will go to considerable lengths to prevent employees from exercising their legitimate right to strike. Industrial action is not taken lightly, rather as a last resort to force employers to concede legitimate demands. The law already puts onerous requirements on trade unions before industrial action can take place and no evidence is given to demonstrate a need to make it even harder for union members to take industrial action. The Bill risks becoming a charter for unscrupulous employers and damaging industrial relations by spurring employers to ignore the views of their employees because they feel they will never be able to use the ultimate sanction of taking industrial action.

We believe the Bill will have a significant detrimental impact on privacy. The extensive new powers given to the CO - to require trade unions to hand over members' names, addresses and private correspondence - are unacceptably intrusive. Despite assurances on confidentiality, these new powers, and the increase in the number of people who can access and make copies of all or some of the data, put sensitive personal data at greater risk of being misused or misplaced.

The Government already has wide information-gathering powers on the finances and membership of trade unions. We note that no trade union member lodged a complaint with the Certification Officer in 2012-13 concerning the maintenance of the register of members' names and addresses.

The right to join a trade union is a fundamental human right that is recognised in international and UK law as a private matter. People who join a trade union are often genuinely concerned that membership of a union could be held against them by their existing employer or when they are seeking work. They have every right to expect that their personal details will not be disclosed by their union. However, the Bill gives the CO the power to compel disclosure, regardless of the personal wishes of the member.

It is somewhat ironic that shortly after the Bill was published the business secretary, Vince Cable, referred evidence of on-going blacklisting of trade unionists at London's Crossrail project to the Information Commissioner's Office. Unite has highlighted the blacklisting of trade unionists within the contract for London's Crossrail project run by BFK (BAM, Ferrovial and Kier) and given evidence to the Scottish Affairs Select Committee.

Finally, we believe that the Bill is contrary to international law. The European Convention on Human Rights (ECHR, Article 11) provides that 'everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join a trade union for the protection of his interests'. Article 8.1 of the ECHR gives everyone the right to respect for 'his private and family life, his home and his correspondence'.

Despite arguing in the Bill's explanatory notes that : 'the powers conferred to obtain and use these membership details are *necessary and proportionate* [our emphasis] to enable the CO, assurer and inspector to carry out their functions under TULRCA and are therefore justified under article 8(2) of the ECHR', the Government produces no evidence to support this assertion.

We also believe the Bill infringes the right to privacy under ECHR 8.1 and creates a serious risk of sensitive personal data being lost or misused (as explained earlier). We share the concern of others that people belonging to or considering joining a trade union will be so concerned by this that it could undermine the right of freedom of association itself.

## **Universities and Colleges Employers Association (UCEA)**



Department  
for Business  
Innovation & Skills

**TRANSPARENCY OF LOBBYING,  
NON-PARTY CAMPAIGNING AND  
TRADE UNION ADMINISTRATION  
BILL**

Certification of trade union  
membership details: discussion  
paper response form

JULY 2013

# Contents

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# 1. Introduction

1. On 17 July 2013, the Government introduced into Parliament the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. The Bill includes measures to deliver assurance that union membership records are kept accurate and up to date through providing an annual membership audit certificate to the Certification Officer and by giving the Certification Officer powers to require production of relevant documents and to appoint inspectors to investigate. Trade union activity has the potential to affect the daily lives of members and non-members. Unions should be able to visibly demonstrate that they know who their members are and can communicate with them.
2. The Government's announcement, the Bill and the Explanatory Notes can be found at <http://services.parliament.uk/bills/>
3. At the same time as the Bill was introduced, Vince Cable, the Secretary of State for Business, Innovation and Skills said that he would seek views on the effective implementation of the measures on trade union membership records as well as on what guidance should be provided to ensure that unions can meet the new requirements, with the help of employers where needed. Employers already have a duty to disclose information that is material collective bargaining but the new requirements may have consequences for the kind of information unions may request from employers.
4. This document discusses the provisions in the Bill and invites your views on implementation so that they are fair, proportionate and workable. Details on how to respond are provided at the end of the document.

Issued: 17 July 2013

Respond by: 16 August 2013

Enquiries to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk)

This document is particularly relevant to employers, trade unions and their members, independent scrutineers, solicitors, accountants and auditors.

## 2. Questions

### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Q 2. Your name..... ██████████ .....

Q 3. What organisation do you represent (if any)?

....Universities and Colleges Employers Association (UCEA).....

Q 4. E-mail address ... ██████████ .....

Q 5. If you are representing an organisation, what type of organisation is it?

x	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

### Section 1 Membership records

**Q 7. How do you obtain membership details?**

NA

**Q 8. How do you store your membership records?**

NA

**Q 9. How do you keep membership details up-to-date?**

NA

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

Yes  No

If yes, what were they?

**Q 11. Will these changes impact on how you collect and maintain membership data?**

Yes  No

If yes, how?

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

Yes  No

If yes, how?

### Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

Yes  No

If not, why not?

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

Yes  No

If not, who do you think should do it? Why?

### Section 3 Impact on unions

**Q 15. What will be the costs and benefits to unions?**

**Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

**Q 17. Where do those costs come from?**

### Section 4 Impact on members

**Q 18. What will be the costs and benefits to union members?**

## Section 5 Impact on employers

### **Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

This may increase the requests from trade unions for information, in particular information on new starters and leavers. As this would be a major change to the current provisions it will be important to be clear about the nature and level of help that will be required from employers so that the impact on HR resources is kept to a minimum and the expectations of the trade unions for information are managed in a reasonable way.

Some institutions are concerned about falling foul of the data protection provisions. This depends to a certain extent on their current practice which varies between those that already provide regular information on starters and leavers, for example, and those that do not. Those that do will usually have a clear indication in the contract of employment or related documents about this; for example, that the employer participates in collective bargaining and that permission is sought to pass on the individual's name and contact details to the trade union.

Other consequences could arise from the risk that, should the records for some reason be wrong or incomplete, the responsibility for the error(s) might be unclear or that blame for this is transferred to the employer.

A positive consequence is that it will strengthen the accuracy and completeness of trade union records thus minimising unintended errors in trade union ballots.

### **Q 20. What types of questions do unions ask employers in relation to union membership?**

Trade unions normally request information about starters and leavers to aid recruitment and to ensure that former employees are removed from the records. The level of detail that is provided in this information varies from institution to institution depending on their HR resources and approach to what is currently a discretionary decision about the provision of such information.

There have been a few requests to employers for information from the trade unions so that they can amend their records in the run up to a ballot.

### **Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

There are two separate issues in relation to this; there is currently no legal obligation on employers to provide employee data to the trade unions other than for collective bargaining purposes and even then the information is

specific and does not include personal details. Some employers do choose to pass on information on starters and leavers and would only do so having first sought the permission of the individuals to do so.

Given that the legal obligations are quite clear the way that institutions currently respond to the trade unions for requests for information varies. Sometimes this will depend on the reason for the union wishing to update its records. Requests for information that have been initiated as a result of an impending ballot for industrial action will clearly be treated less favourably than potentially reasonable requests to update records or recruit new members

The approach to responding to such requests is influenced by various factors; the limitations on HR resources, the institutional approach to data protection, the employee relations climate, the relationship with local or regional trade union officials, the reasons for the request.

## Section 6 Compliance

### **Q 22. What is your view of the remedies for non-compliance with the clauses?**

Not all universities have a view on this but for those that do it is generally felt that the remedies for non-compliance are fair and reasonable but there are some concerns that the remedies were too measured and may not provide sufficient incentive to comply with the requirements and that something a little more punitive ought to be considered. This may be something that would need to be considered in the context of the level of expectation placed on employers to provide help.

### **Q 23. Will unions need time to prepare before the new requirements come into force?**

Yes  No

**Why?**

This is more a question for the trade unions themselves but employers believe that it is highly likely that trade unions will need time to prepare for this as it may well have resource implications for them. It may also be true that they will have to look at the ways that they currently store data, as many unions still rely on paper records and this may provide a good opportunity to revise storage systems as well as content.

## Section 7 Guidance

### **Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

It is important to note that there is currently no legal requirement to provide individual employee details for the purposes of updating trade union records and so we would expect the rationale for introducing this as a new requirement to be clearly set out and justified.

If the change goes ahead the following list summarises what we would expect the guidance to address:

- What information will need to be provided by employers?
- How often will it need to be provided?
- Will there be limits on the frequency, amount and complexity of requests?
- In what format should the information be provided?
- What is the definition of 'help' from employers?
- To whom will the information be supplied; specific union officers at local, regional or national level?
- What specifically can the trade unions use the information for?
- What is the relationship between the data passed between the employers and the trade unions and the DP Act data protection principles.
- What information will the trade unions be expected to keep?
- Guidance should be written in straightforward, unambiguous language.
- References to the relevant sections in the legislation would be helpful so that the sources of the various obligations on employers and trade unions are clear. This is helpful when advising non-HR colleagues on their responsibilities. It is also helpful to know where legislative requirements end and 'good practice' begins.

## Section 8 Other

**Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

## 3. How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the response form and, where applicable, how the views of members were assembled. We are seeking your views by **16 August 2013**.

1. For your ease, you can reply online at: <https://www.surveymonkey.com/s/85WLFZF>
2. Response forms can be emailed to: [discussion.tuadmin@bis.gsi.gov.uk](mailto:discussion.tuadmin@bis.gsi.gov.uk).
3. Alternatively, you can send written responses to:

Louise Nixey  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

You may make copies of this document without seeking permission. An electronic version can be found at: <https://www.gov.uk/government/consultations/transparency-of-lobbying-non-party-campaigning-and-trade-union-administration-bill-certification-of-trade-union-membership-details-discussion-paper>

### Confidentiality and Data Protection

4. Information provided in response to this document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
5. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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**BIS/13/1051RF**

## **University and College Union (UCU)**

UCU wanted to be acknowledged as a respondent to the Discussion Paper, but did not want their response published.

## Welsh Government

### 2. Questions

#### Q 1. Confidentiality and Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. **If you do not want your response published or released then make sure you tick the appropriate box.**

Yes, I would like you to publish or release my response

No, I don't want you to publish or release my response

Q 2. Your name

Q 3. What organisation do you represent (if any)? **Welsh Government**

Q 4. E-mail address

Q 5. If you are representing an organisation, what type of organisation is it?

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
x	Other (please describe) <b>Devolved Government – Civil Service Employer</b>

**Q 6. If you are responding on behalf of a trade union, approximately how many members does your union have?**

	0-500
	500-1,000
	1,000-5,000
	5,000-10,000
	10,000-25,000
	25,000-50,000
	50,000-250,000
	250,000+

## **Section 1 Membership records**

**Q 7. How do you obtain membership details?**

**Q 8. How do you store your membership records?**

**Q 9. How do you keep membership details up-to-date?**

**Q 10. Have you encountered problems that mean membership records are not up-to-date?**

Yes  No

**If yes, what were they?**

**Q 11. Will these changes impact on how you collect and maintain membership data?**

Yes  No

**If yes, how?**

**Q 12. Will our proposals have any impact on how you collect membership subscriptions?**

Yes

No

**If yes, how?**

## Section 2 Independent third party assurer

**Q 13. Do you agree with the role and duties of the assurer set out in the Bill?**

Yes  No

**If not, why not?**

**Q14. Do you agree with our proposal that a solicitor, accountant, auditor or scrutineer should act as the assurer?**

Yes  No

**If not, who do you think should do it? Why?**

### **Section 3 Impact on unions**

**Q 15. What will be the costs and benefits to unions?**

**Possible Benefits:**

- **More accurate records and compliance with existing legislation**

**Possible Costs:**

- **Greater administrative costs associated with procuring an Assurer**
- **Contracting with an Assurer**
- **Complying with any inspection or enforcement orders**
- **Enhanced and more regular communication with members about the importance of confirming any change in personal information**
- **Developing better system to collect and update membership records**
- **If workload cannot be met within existing resources, increased resource to ensure compliance and liaison with the Assurer and the Certification Officer's Inspectors, where necessary**

**Q 16. What is your estimate of any additional costs in meeting the proposed annual assurance requirements in relation to membership records?**

**Not able to estimate.**

**Q 17. Where do those costs come from?**

**As above**

## Section 4 Impact on members

### Q 18. What will be the costs and benefits to union members?

- **May receive reminders from Trade Union to keep personal details up to date which may mean that they receive all information forwarded by the trade union or no longer receive unsolicited information when they cease to be a member**
- **Potential increase in membership costs to pay for increased costs to trade union arising from the bill**

## **Section 5 Impact on employers**

**Q 19. What consequences do these proposals have for employers? Why do these consequences arise?**

**Trade Unions may decide to undertake advance data cleansing and may ask employers for assistance with communicating messages using workplace channels.**

**Facility time may be requested to undertake this and or any duties relating to legislative compliance.**

**The above will incur associated resources costs for employers.**

**Q 20. What types of questions do unions ask employers in relation to union membership?**

**We have not received any requests to date but data protection considerations may preclude us offering any assistance/information.**

**Q 21. As an employer, how would you respond to requests from a recognised union for staff details that would help them update their membership record? Why would you respond to the requests in this way?**

**Data protection considerations would preclude us from providing any information.**

## Section 6 Compliance

**Q 22. What is your view of the remedies for non-compliance with the clauses?**

**It seems appropriate that Inspectors work with trade unions to ensure compliance.**

**It is not clear what the final outcome will be if trade unions fail to respond to the Enforcement Order although it does say it can be enforced as if it were an order of the court. This may need to be spelt out in the Guidance**

**Q 23. Will unions need time to prepare before the new requirements come into force?**

Yes  No

**Why?**

**Some trade unions may need to upgrade their data collection systems.**

**Some trade unions may wish to undertake advance data cleansing to ensure they are in a strong position to ensure compliance with any new legislation.**

**To consider the most effective way to appoint an Assurer.**

## Section 7 Guidance

**Q 24. In a guidance document, what information would you find helpful in relation to the proposals?**

**Plain English version of the legislation so that requirements**

**are fully understood.**

**Clarity on penalties for non-compliance i.e. what is the outcome of an order of the court e.g. fine and level, imprisonment.**

**Guidance for employers on what is expected of them, if anything.**

**If it is anticipated that this will have any effect on requests for facility time.**

## Section 8 Other

**Q 25. Do you have any comments on any other aspect of the provisions on Trade Union Administration in the Bill?**

No

**Q 26. Do you have any comments on the initial assessment of impact in the accompanying Equalities Impact Assessment (EQIA)?**

No