

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## TRADE UNION BILL

*Fourth Sitting*

*Thursday 15 October 2015*

*(Afternoon)*

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Examination of witnesses.

Written evidence reported to the House.

Adjourned till Tuesday 20 October at twenty-five minutes past Nine o'clock.

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**Monday 19 October 2015**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY  
FACILITATE THE PROMPT PUBLICATION OF  
THE BOUND VOLUMES OF PROCEEDINGS  
IN GENERAL COMMITTEES

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**The Committee consisted of the following Members:**

*Chairs:* SIR EDWARD LEIGH, † SIR ALAN MEALE

† Argar, Edward ( <i>Charnwood</i> ) (Con)	† Howell, John ( <i>Henley</i> ) (Con)
† Barclay, Stephen ( <i>North East Cambridgeshire</i> ) (Con)	† Kennedy, Seema ( <i>South Ribble</i> ) (Con)
Blenkinsop, Tom ( <i>Middlesbrough South and East Cleveland</i> ) (Lab)	† Mearns, Ian ( <i>Gateshead</i> ) (Lab)
† Boles, Nick ( <i>Minister for Skills</i> )	† Morden, Jessica ( <i>Newport East</i> ) (Lab)
† Cameron, Dr Lisa ( <i>East Kilbride, Strathaven and Lesmahagow</i> ) (SNP)	† Morris, Anne Marie ( <i>Newton Abbot</i> ) (Con)
† Cartlidge, James ( <i>South Suffolk</i> ) (Con)	† Prentis, Victoria ( <i>Banbury</i> ) (Con)
† Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/Co-op)	† Stephens, Chris ( <i>Glasgow South West</i> ) (SNP)
† Elliott, Julie ( <i>Sunderland Central</i> ) (Lab)	† Stevens, Jo ( <i>Cardiff Central</i> ) (Lab)
† Ghani, Nusrat ( <i>Wealden</i> ) (Con)	† Sunak, Rishi ( <i>Richmond (Yorks)</i> ) (Con)
	Glenn McKee, <i>Committee Clerk</i>
	† <b>attended the Committee</b>

Witnesses

Professor Keith Ewing, Professor of Public Law, King's College London

Janet Davies, Chief Executive and General Secretary, Royal College of Nursing

Dr Patrick Roach, Deputy General Secretary, NASUWT, The Teachers' Union

Mark Serwotka, General Secretary, Public and Commercial Services Union (PCS)

Jon Skewes, Director for Policy, Employment Relations and Communications, Royal College of Midwives

Matt Wrack, General Secretary, Fire Brigades Union (FBU)

Paul Kenny, General Secretary, GMB

Len McCluskey, General Secretary, Unite

Frances O'Grady, General Secretary, Trades Union Congress

Dave Prentis, General Secretary, Unison

Nick Boles MP, Minister for Skills, Department for Business, Innovation and Skills

Matthew Hancock MP, Minister for the Cabinet Office and Paymaster General, Cabinet Office

## Public Bill Committee

Thursday 15 October 2015

(Afternoon)

[SIR ALAN MEALE *in the Chair*]

### Trade Union Bill

#### Examination of Witness

*Professor Keith Ewing gave evidence.*

2 pm

**The Chair:** We will now hear oral evidence from Professor Keith Ewing, professor of public law at King's College London. This session will run until 2.30 pm. Professor Ewing, could I just outline how we are going to play this? I will ask you to introduce yourself and outline why you are here. It will then become a hearing, with Members from alternate sides asking you questions. Could you be as succinct as possible? I would urge my colleagues to do the same, but it does not always work that way. Remember that the time you are using is the only time you have, so use it well, if you can. Would you care to introduce yourself?

**Professor Ewing:** My name is Keith Ewing. I am a professor of public law at King's College London.

**Q337 Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op):** Professor Ewing, could you set out in a little more detail your experience working on issues around trade union law at a domestic and international level?

**Professor Ewing:** In terms of my experience?

**Stephen Doughty:** Yes. Your experience, background and qualifications.

**Professor Ewing:** I have been professor of public law at King's College since 1989. Before that, I taught at the University of Edinburgh and at Cambridge. I have taught overseas in many countries. I have worked as an adviser to a number of trade unions, both in this country and overseas. I have worked as an adviser to the International Trade Union Confederation. I do a lot of work with the International Labour Organisation in terms of evidence that I prepare and cases that I help to submit. I work very, very closely, I suppose, with the trade union movement.

**Q338 Stephen Doughty:** Thank you. That is very helpful. Given that level of experience, and looking at the Bill as a whole, where do you feel it falls down or potentially conflicts with both international and domestic conventions and law?

**Professor Ewing:** I have two concerns with the Bill. The first is the extent to which it is compatible with our treaty obligations. The second, because of my other interest, is the extent to which it is compatible with the constitutional principles, conventions and practices that operate in this country.

As far as the first of those is concerned—international labour treaty obligations—there are a large number of treaty obligations binding this country that relate directly to the provisions of the Bill. I will start with the International Labour Organisation. There are three treaties that are particularly relevant and are binding on this country: conventions 87, 98 and 151. I can go into some detail, if you would like.

**Q339 Stephen Doughty:** Can you expand a little on where you feel the Bill conflicts with those?

**Professor Ewing:** Convention 87 is relevant because it deals with the right to strike. The right to strike is not expressly referred to in convention 87, but it has been read into convention 87 by the supervisory bodies over a number of years. One issue that I think arises in relation to the right to strike is the additional requirement of two weeks' strike notice. There are lights flashing in my head about that. The second issue relates to the thresholds for industrial action, and in particular the 40% threshold for support for industrial action in some sectors. That, too, is beginning to make lights flash in my head about the compatibility with ILO convention 87.

There are two other conventions: 98 and 151, which deal with the question of collective bargaining. Convention 98 applies to collective bargaining generally, and 151 deals specifically with collective bargaining in the public sector. One reason I think there might be problems here relates to the Minister's announcement after the Bill was published about abolishing check-off in the public sector. I think that will cut across collective agreements and raise questions in relation to 98 and 151.

Another point relates to trade union facility time and the provisions in the Bill, which will give a Minister the right to rewrite collective agreements. That cuts across the idea of collective agreements being voluntary and runs into problems with 98 and 151.

Before I finish, there is the good question of why we should take the conventions seriously. There are two reasons. First, although people were quite indifferent to ILO obligations in the past, the European Court of Human Rights has, since 2008 in particular, begun to pay particular attention to the importance of the conventions in determining the scope and boundaries of the European convention on human rights itself. There was a very important case to that effect in 2008.

Secondly, we are reaffirming our vows to the conventions in the free trade treaties that we are now signing. We signed such an agreement with Korea in 2010, and we are about to sign a free trade agreement with Canada. In these treaties, we commit ourselves not only through the European Union, but as a member state to complying with the international labour obligations to which we have subscribed. The conventions are very important.

**Q340 Stephen Doughty:** May I ask a specific question about the certification officer? The Bill's proposals amount to an extensive expansion of the role. We have heard from other witnesses that there is potentially a serious blurring here between the investigating, adjudicating and enforcing of complaints. Does that breach international conventions or domestic principles about natural justice and not blurring such roles in a quasi-judicial position?

**Professor Ewing:** The certification officer provisions are extremely serious. I say that partly because we have to bear in mind who appoints the certification officer.

Under the 1992 Act, the appointment of the certification officer is in the gift of the Minister, so the Secretary of State effectively appoints the certification officer. You referred to powers of investigation, which are deeply troubling because, in a sense, they give the certification officer this extraordinary power where he thinks there is good reason to do so. That is the test. It is where the certification officer thinks there is good reason to do so. They can then embark upon this extraordinary power of investigation to demand documents, to require individuals to co-operate and to require the attendance of individuals at a particular location. The certification officer then has the power to demand that—*[Interruption.]*

2.8 pm

*Sitting suspended.*

2.15 pm

*On resuming—*

**The Chair:** Professor Ewing, I apologise for that interruption. Sometimes technology is to blame. One of the first things people do when they get downstairs and outside is light up a cigarette and that can be a bit of a problem. Mr Doughty, would you like to continue?

**Stephen Doughty:** Thank you, Sir Alan. I also apologise for the disruption. Sir Alan, I hope with your agreement it will be okay if we need to go on a few minutes longer.

**The Chair:** I have had a word with Professor Ewing and he says he might be able to finish in the timescale set, but if we cannot, we will continue.

**Q341 Stephen Doughty:** Thank you, Sir Alan. Professor Ewing, we were talking about the certification officer. Recalling what you were saying, essentially you are worried that a Minister—a member of the Executive—will appoint an individual who is effectively police, judge, jury and executioner with some fairly wide-ranging powers.

**Professor Ewing:** Let me say, I hope it was not anything I said that led to the disturbance.

My concern with the Bill is, first, these very extensive powers of investigation, which could eventually lead to someone to being imprisoned for non-compliance. What would worry me is what would trigger that process. What triggers the process is the suggestion that the certification officer can take these steps where he thinks there is good reason to do so. Given the nature of the power that has been given to the certification officer, you would be looking for much a higher threshold before powers of that kind could be triggered.

That is the power of investigation, but there is also the power of adjudication, which has been greatly expanded under, I think, what is now schedule 2. The issue is that the certification officer can initiate a complaint, so in a sense he is the complainant. The certification officer as a complainant will bring his or her own witnesses, cross-examine his or her own witnesses and then make a decision in his or her own cause. They will then have a new power to impose a financial penalty.

That seems to me to be a violation of fundamental principles of natural justice, which apply in this case and I refer to in my written submission: fundamental principles of justice rehearsed by Lord Chief Justices as

far back as the 1920s. It would certainly contravene the well-established principle of English and Scots law that no one should be a judge in his or her own cause. I think that provision needs to be looked at very carefully again.

**Q342 Rishi Sunak (Richmond (Yorks)) (Con):** Thank you, Professor, for being here. I want to ask you about thresholds and that part of the Bill. I am obviously not a legal expert on rights, but I think what the threshold provision is trying to do is balance the right to strike—which certainly no one is saying should not exist—with the right of people to go about their ordinary business, send their kids to school, use the trains and tubes, gain access to hospitals and so on. That balancing seems moderate and reasonable. Do you think any weight should be given to the rights of people to go about their ordinary business? Do you agree with the general secretary of the Unite union who, you may have read, has said in principle that he can agree with the idea of thresholds and time-limiting ballots?

**Professor Ewing:** I do not want to intrude into these very sensitive debates. Whether or not it is moderate or reasonable, I would ask whether it is lawful. That would take me back to the ILO conventions that I referred to earlier—in particular, ILO convention 87—and there to the jurisprudence of the supervisory bodies that emphasise two points.

One is that we should be counting the votes of only those people who vote in strike ballots. If you do not vote, in a sense, you do not count for these purposes. Secondly, when we get to questions of thresholds, the ILO supervisory bodies have said, in a long line and expanding group of cases, that any threshold has to be reasonable. On the question of what is reasonable, what they have said so far is that a threshold of 50% of those eligible to vote is not reasonable. The Bill pitches that at a bit less—at 40%—and the question is, is 40% reasonable?

In determining whether 40% is reasonable or not, I think you have got to take into account the voting methods. The problem with the 40% threshold in the context of the legal framework within which it will be dropped is that it will be dropped into a very rigid system of voting. And if you are going to make an argument for thresholds, I think you have got to be a bit more relaxed about the way in which people go about voting. To have mandatory postal balloting is, I think, probably excessive, too rigid and does not apply elsewhere.

**Q343 Rishi Sunak:** Thank you for that. Just so that we are clear, I understand your concerns about the details on how voting works, but in principle you think that the idea of a threshold is fine.

**Professor Ewing:** No, no, you are putting words into my mouth. My starting point would be the principle of freedom of association. My starting point as a result is that it must be ultimately for trade unions to decide their own internal methods of governance and their own relationships with their members.

If we are going to intrude into that principle of freedom of association that we have subscribed to as a nation, there has to be some compelling reason to do so. That compelling reason has to be compatible with our international legal obligations, and I think there are serious doubts about whether the threshold we are about to introduce will be compatible with the requirements of ILO convention 87.

**Q344 Rishi Sunak:** In your opinion, but the ILO convention does accept the principle of a threshold.

**Professor Ewing:** Well, the ILO supervisory bodies have said that if you introduce a threshold, it has to be reasonable. What I am saying to you is that a 40% threshold in my view is too high in the context of the very rigid voting system we have in this country.

**Q345 Rishi Sunak:** I understand, but there is no opposition to the threshold in principle under the convention.

**Professor Ewing:** Well, the ILO bodies are very unclear. In a sense, they say, “If you have a threshold, it’s got to be reasonable,” but they also say, “You should only be counting people who vote.”

**Q346 Chris Stephens (Glasgow South West) (SNP):** Professor Ewing, in relation to the devolved Administrations, what impact will the Bill have on both their policies and criminal or civil law?

**Professor Ewing:** This is going to be a really difficult question in the months ahead. The issue here particularly for Scotland is the proposals on the check-off and the powers in relation to facility time—the duty on public bodies to publish facility time arrangements. I think there are two problems here. One is a question of whether these provisions fall within the reserved powers of the Westminster Parliament.

I am sure that a lot of people are taking advice—legal or otherwise—about this at the moment, but I am not sure if the check-off provisions would satisfy the requirement that they fall within the reserved powers of the Westminster legislature and there are lots of reasons why that might be the case. I would hope that the Scottish Parliament will have an opportunity to think about and comment on this question. But, at the end of the day, this is a sovereign legislature and you can push through whatever legislation you think appropriate, whether or not it is incompatible with the devolution settlement. I have doubts about whether all of this package will be compatible with the devolution settlement, but I have no doubt that you have the right to push it through, despite the incompatibility.

The problem that I think will come will not necessarily be a legal one. The problem will be a very severe political problem in the future. The problem will be if a Scottish public body decides, “We are not going to comply with this ban on the check-off,” or “We are not going to publish the facility time arrangements that we give to trade union representatives.” What will happen at that point? We are looking at the question of who will enforce those obligations against Scottish public bodies. Are we really saying that the Secretary of State for Scotland will bring a case against a major Scottish public authority to enforce those obligations? The Government are walking, almost blindfolded, into a major constitutional crisis around the Bill. That constitutional crisis could be as explosive for this Government as the poll tax was for the Thatcher Government in the late 1980s and early 1990s. This is a big, big problem, and I am not sure that people have really thought through the consequences.

**Q347 Chris Stephens:** One last question on the thresholds. Do you think that there are also gender equality issues, where in workplaces a majority of women workers

might not be able to go on strike because a shift change would impact on them more than it would on male workers?

**Professor Ewing:** That is a good point, which I had not thought of, and it is something that I would like to think about before coming back to you. I am happy to address the Committee on that point, but I would like to think about it first.

**Q348 Victoria Prentis (Banbury) (Con):** You talked about the ILO conventions. A great deal of your report is concerned with ECHR conventions, and I accept you cannot mention everything in your brief summary today, but would you accept that as recently as last year, the European Court acknowledged that it was legitimate for the Government to legislate to impose some constraints on article 11? Would you accept that there is a wide margin of appreciation for the Government in the way that this can be handled?

**Professor Ewing:** Are we talking about the RMT case?

**Victoria Prentis:** Yes.

**Professor Ewing:** Yes, the British Government won in that case, but what I would say to you is that that case was really quite eccentric. There have been five or six decisions on article 11, specifically in relation to the right to strike, since April 2009, and the only case in which the Court has held in favour of the Government is the RMT case involving the United Kingdom. If I were the Government here, I would not be feeling very complacent or comfortable about that decision, because we have got cases from Croatia, Ukraine, Turkey and Russia in which the Court has said that the right to strike is protected and restrictions have to be justified. That case on its facts accepted that the restrictions could be justified, but you cannot conclude from that that all restrictions will be justified.

**Q349 Victoria Prentis:** No, no, and I do not think that anybody on the Government side would disagree that the right to strike should be protected and that restrictions should be justified. That is absolutely the Government’s position. Let me turn it around. Are there any cases that support your view that it is not legitimate for the Government to make proportionate restrictions under article 11?

**Professor Ewing:** It is quite difficult to answer that question directly, because every case is different. In this case, whatever the challenge is under the convention to this legislation, first, it is not clear yet what the challenge will be, and it will be a strategic question for trade unions to consider which will be the best way in to attack the legislation, I imagine; and, secondly, when the challenge takes place it will also be informed by the influence of other treaty obligations. The European convention is not an island that sits on its own. We have regard to the decisions of the Social Rights Committee of the Council of Europe, which has also expressed criticism about our existing law. We will have regard to ILO supervisory bodies and their views on it. That will help to construct the case, so at this stage, it is hard to know what the case will be. We have got pointers as to what it might be, but the case will have to be built. I guess a very careful case will be built in order to learn from the lessons of the RMT case.

**Q350 Victoria Prentis:** Okay. Can we move on to certification officers? I am thinking about the type of person who is a certification officer. It tends to be an Employment Appeal Tribunal judge or people of that type. Do you really feel it is unreasonable for others with a legitimate cause for complaint, because of the results of industrial action, to encourage the beginning of an investigatory process?

**Professor Ewing:** The certification officer is not a judge. The existing officer is a solicitor or partner in a law firm. Previous officers, I think, were former civil servants who did not have legal qualifications. You are telling me something I did not know, in the sense that the certification officer's powers are going to be triggered by complaints made to him.

**Q351 Victoria Prentis:** No, I am just suggesting that is one type of person who might feel—

**Professor Ewing:** Are you thinking about employers who might use the certification officer as a kind of surrogate rather than going directly to court?

**Q352 Victoria Prentis:** More someone with a legitimate cause for complaint—someone who is affected by strike action.

**Professor Ewing:** Looking at the powers in schedule 2, we are talking about provisions relating to trade union elections, trade union expenditure and trade union amalgamations. This is about the internal affairs of the union, principally. If employers or whoever have a problem with strike ballots or whatever, they already have a remedy by way of complaint to the ordinary courts, which would be much quicker.

**Q353 Victoria Prentis:** I do not want to go on too long, but I was not thinking of employers; I was thinking more of those who are affected by the results of strike action.

**Professor Ewing:** I am not sure how they would have access to the CO.

**Q354 Victoria Prentis:** The certification officer himself might be able to take a view that it was appropriate to investigate non-compliance.

**Professor Ewing:** Non-compliance with what, in the case of a strike?

**Q355 Victoria Prentis:** His job is to investigate non-compliance.

**Professor Ewing:** Yes, but only with specific obligations. If you look at page 16, the obligations to which the investigatory powers apply are listed in paragraph 1(a) to (h). They do not seem to apply to industrial action. The powers in schedule 2 are to make complaints against a union that he himself will adjudicate. These are powers that relate to the internal affairs and government of the union, so I do not know where the power you refer to arises. This was a power we used to have from the last regime, but I thought it had gone.

**The Chair:** Professor Ewing, thank you very much. You have been very helpful indeed. We will now move on to the next panel.

### Examination of Witnesses

*Janet Davies, Jon Skewes, Matt Wrack, Mark Serwotka and Dr Patrick Roach gave evidence.*

2.33 pm

**Q356 The Chair:** We will now hear oral evidence from the Royal College of Nursing, the Royal College of Midwives, the Public and Commercial Services Union, the Fire Brigades Union and, of course, the NASUWT. Ladies and gentlemen, we have until 3.5 pm at the absolute latest because of the difficulties we experienced earlier. We will allow you to introduce yourselves briefly, and the Committee will then put questions to you either collectively or individually. The Government are on the right-hand side, and the Opposition are on the left. The three main political parties in Parliament are present, and all evidence gathered will be available for other Members to browse, if they so wish.

**Jon Skewes:** I am Jon Skewes, director of policy, employment relations and communications at the Royal College of Midwives. The RCM is a professional body and trade union, representing about 45,000 midwives and support workers in the United Kingdom. We have no affiliation to any political party and we work with all in Government and outside Government. At the end of last year and the start of this year, we took our first industrial action in 134 years in England. That was closely followed by similar action in Northern Ireland; it was essentially on the same dispute. In England, it has been amicably settled with the Secretary of State following discussions. We are particularly concerned about the issues of agency staff, picketing restrictions and good industrial relations in the NHS.

**Janet Davies:** I am Janet Davies, the chief executive and general secretary of the Royal College of Nursing. We are also a professional organisation and trade union, with approximately 420,000 members across both the public and the private sectors. The majority of our members are registered nurses and health visitors, but we also have healthcare assistants as members. We have never taken strike action in our nearly 100-year history, but we are exceptionally concerned about the Bill, particularly in terms of facility time—clauses 12 and 13—and placing added bureaucracy and added cost on a health service that is already struggling with finances and bureaucracy.

**Dr Roach:** My name is Patrick Roach. I am the deputy general secretary of the NASUWT, the teachers' union. We are the largest teachers' union that organises right across the United Kingdom. We represent about 300,000 teachers. We have fundamental concerns about the provisions in the Bill, including the definition of "important public services", the use of agency workers and the powers of the certification officer, which we are happy to discuss.

**Matt Wrack:** I am Matt Wrack, the general secretary of the Fire Brigades Union. We represent some 85% of the uniformed fire service workforce and over 90% of whole-time firefighters across the UK. We have had, which you heard some evidence on this morning, a number of industrial disputes. However, much of our time is spent, through our well established industrial relations procedures in the National Joint Council, resolving disputes at local level before they arise. We have concerns about the impact of the Bill on the rights

of firefighters to organise, to protect their safety, which is of particular importance to us, their terms and conditions and the impact that will have on industrial relations in the fire service.

**Mark Serwotka:** I am Mark Serwotka, the general secretary of the Public and Commercial Services Union. We have a quarter of a million members—overwhelmingly, civil servants and public sector workers working on public contracts and in non-departmental public bodies—and a significant membership in the private sector as a result of outsourcing where people have remained members of PCS.

We have lots of concerns about the Bill, but I know that you are hearing lots of evidence, so I will just draw particularly to your attention at this point the effect of the Bill on people's right to take lawful industrial action. We are particularly representing public sector workers, who in our case have had 11 years of pay restraint. Secondly, we think much of what is in the Bill was trialled in the civil service by the last Government. Therefore, we have direct experience of the withdrawal of check-off, the withdrawal of facility time and the attempt to openly undermine trade unions by public servants working at the Government's behest. Thirdly, as a non-affiliated public sector union that spends over £1 million a year on campaigning, much of which is political but not party-political campaigning, we have very clear concerns about the effect of the changes to the political fund rules.

**The Chair:** Thank you. Before we proceed to hon. Members asking questions, can I just tell you that we have only until five minutes past 3? Our time is very brief, so please be aware of all the time you are using in the replies to the questions put to you. Try to make them succinct, because you are using each other's time up. I am just giving you a bit of advice. If you could be helpful to both Members and yourselves, that would be much appreciated by Members.

**Q357 Stephen Doughty:** I have a few short questions that I would like to put to different groups if that is okay. First, to Jon and Janet, given what we have heard about the relatively small incidence of industrial action in the history of the health sector, particularly in relation to your two bodies, fundamentally do you think that this Bill is needed?

**Jon Skewes:** Not at all. I do not think we have plans to repeat that industrial action over and over again by any means. I think we think it is disproportionate, absolutely; and also it could be quite dangerous in terms of safety in the NHS.

**Janet Davies:** We do not think it is necessary at all. In fact, we think it will damage relationships, which are very good in the health service. We know that productivity is increased with the facilities time and with having trade union representatives in the workplace. We know it affects patient safety. We think it will be expensive. We think it will introduce extra bureaucracy and could be quite damaging for the good relationships we have got, which could have an effect counter to what is required.

**Q358 Stephen Doughty:** Janet, we had a Government witness yesterday, from an organisation called 2020 Health who, you may have heard, had a whole half hour

to explain that they did not appear to know anything about the Bill. Nor did they know what facilities time was. Unfortunately, you have not got very much time, but could you briefly give us an example of how facilities time benefits employees and patients?

**Janet Davies:** Yes. We know that facilities time has benefits; we have looked at the evidence and the University of Warwick has done some studies for us and we know that productivity is increased. Certainly, in terms of staff leaving and recruiting, it is much better in a place where there is trade union facilities time, and where there are trade union representatives. Actually, we have worked out that that difference in turnover would save an average teaching hospital £1 million a year. It is a really positive effect that the time gives.

What happens is that our trade union representatives work in partnership with employers, often introducing change, introducing new clinical practice, and investigating things and stopping problems before they start. The proposal could be counterproductive for the good relationships that we have at the moment. Importantly for us as a nursing organisation it could have a detrimental effect on patient care, as it would seriously affect the positive practice environment that we try to create.

**Q359 Stephen Doughty:** Thank you for that. Matt, we heard some evidence from the London Fire Brigade this morning and you have referred to it. I wondered whether you wanted to respond to any of the comments and whether you could also tell us about the different approaches to industrial relations in the fire sector across the UK. Some quite important contrasts were drawn between what has happened in Wales and what happened in some disputes in London.

**Matt Wrack:** Yes, I do want to correct the impression that was given this morning. I have known Ron Dobson a long time and was surprised to hear some of the things he said. He mentioned that he was unaware of any arrests. There were two arrests in that dispute. They were not of FBU members. One was of a non-union middle manager and one was of an agency driver—in both cases for driving into members of the Fire Brigades Union. Two of our members were injured, one of whom is sitting in this room, behind us. Ron Dobson was also unaware of the outcome, which is again surprising because his own authority paid compensation to the two FBU members who were injured as a result of those two incidents.

**Q360 Stephen Doughty:** So you were surprised that he did not appear to be aware of that fact.

**Matt Wrack:** I am surprised that the senior executive of that organisation did not know that his organisation had paid compensation to two members of mine who had been injured by agents of his during an industrial dispute.

He also used the word “barricades”, which gives the impression of watching “Les Mis”, or something. There were no barricades on London fire stations in 2010. It is utterly misleading to claim that. He also was asked a question, by Jo Stevens, I believe, about the unlawful docking of pay. He said that three cases had been settled. Most people will know that actually in many such cases you run test cases. We ran three test cases of 368 individuals who had had pay stopped. We won

those test cases. The London Fire Brigade has decided not to appeal, and the London fire authority has set aside several tens of thousands of pounds to pay compensation for the 368 Fire Brigades Union members who had pay unlawfully stopped. Those are the facts of the situation.

**Q361 Stephen Doughty:** It is very concerning to hear that, and the commissioner made it clear that he would write to the Committee with some of the information that he did not appear to have at his fingertips. I hope that he will correct some of what he said in the light of what you have said to us just now.

I want to ask about devolution and perhaps this could be touched on broadly across the panel. Clearly, you all operate in public services that are, to a large extent, wholly or partially devolved across the UK. We have just heard from Professor Ewing that the Bill could lead to a fairly serious constitutional crisis in terms of cutting across the devolution settlement. How would you respond to that? Do you think that there are serious risks for relationships across Wales, Scotland and local government across England, of which the Bill shows no awareness, and does not address? I am happy to take a couple of comments, though I am sure we do not have time to hear from everyone.

**Mark Serwotka:** I share Professor Ewing's concerns, and I will illustrate that with these examples. We have very good industrial relations currently, for example, in Scotland and Wales with the devolved Administrations, who have sat down and agreed with us the need for positive industrial relations, and made it clear that they do not wish to see the withdrawal of check-off or facility time. What we are in danger of seeing is those bodies that have entered into agreements with their workforce for the smooth running of public services being compelled to act against what they think is in the best interests of themselves as an employer and public service users.

That is particularly concerning because if we look at the civil service when this was done, the last Government effectively compelled all Government Departments to do the same thing, under the guise of this activity being a waste of taxpayers' money. The Committee needs to know that in the civil service our union offered to pay every penny of every cost that was required to take check-off, so there would be no cost to the taxpayer. Not only was that rejected, but we saw the absurd situation in the Department for Communities and Local Government, where Eric Pickles, as the Secretary of State, withdrew check-off. We took him to the High Court; he lost the case and we won it, on a contractual right to check-off. He cost the taxpayer £100,000 to save £320 a year in the entire Department's administration.

**Q362 Stephen Doughty:** Given what you have just said and given the evidence from the Welsh Government and others, do you think that there is a serious risk here that we will end with significant legal disputes about contractual provisions that have already been entered into, particularly with regard to check-off?

**Mark Serwotka:** Absolutely inevitably and it will be very, very costly, as the example I have just given proves. We can furnish you with the evidence of that case.

**Stephen Barclay** (North East Cambridgeshire) (Con): Sir Alan, I will just point out that Opposition Members have used up pretty much half the sitting so far, before there has been any question from Government Members.

**The Chair:** We have sittings such as this one to try to get the message across. I have got a little bit of leeway to gain back time; I am aware of that. But I would like to move on, because the next questioner is Edward Argar.

**Q363 Edward Argar** (Charnwood) (Con): Mr Wrack, thank you very much for your clarification there, particularly of that court case, and thanks to my hon. Friend the Member for North East Cambridgeshire (Stephen Barclay) for his comment. Going back to the evidence from the commissioner this morning, in the course of that dispute in 2010, was access in any way to any fire station being used by contingency crews impeded by any FBU members at any point?

**Matt Wrack:** Again, I found it somewhat surprising that Mr Dobson presented it in that way. We had pickets on fire stations, as we are perfectly entitled to do, and there were no such barricades. There was a police presence on some occasions. We co-operated, and we had interesting evidence from the police earlier today. We co-operated with the police on every occasion that there were discussions. It is utterly misleading, as again was suggested, to say that there were any delays to emergency calls as a result of the actions of FBU pickets during that dispute.

**Q364 Edward Argar:** That is not quite what I asked; I am grateful for that, but it is not quite what I asked. Did those pickets in any way impede any ingress or egress to and from those stations?

**Matt Wrack:** They were picketing their place of work. What happened in general is that the replacement agency staff drove up to the fire station and drove off.

**Q365 Edward Argar:** So you say that they were picketing their place of work. What happened in general? Were there any occasions when access was physically blocked?

**Matt Wrack:** I think I have explained that. Firefighters were picketing their place of work. Replacement agency staff drove up and drove off. That is what happened. There was no pushing and shoving; if you have got images of 1970s TV programmes, that is not what happened in any of these situations.

**Q366 Edward Argar:** Would you agree or disagree with the view—I suspect that I know the answer, but I will ask the question—that what you have just said, if we accept it, that some people drove up and drove off again, shows that those people felt intimidated by the presence of those pickets and the behaviour, which caused them to drive away again?

**Matt Wrack:** Let us be clear about the right to picket. The right to picket is being interpreted by some people as an attempt to intimidate. The right to picket is about trying to persuade other workers to comply with the call to take action. In this case—again, Ron Dobson seemed to forget the cause of the dispute. The cause of the dispute was that he had issued a sacking notice to 5,000 London firefighters; the entire workforce were being sacked. So you can imagine that some of them

were quite irate about that. However, where we had the opportunity to speak to those agency replacement staff, we did so, and in a number of cases the police assisted us in doing that. We put our case to those agency staff; unfortunately, they carried on with the work they were undertaking.

**Q367 Edward Argar:** I have a couple of very quick follow-ups. You will be familiar with the Carr report. Paragraph 4.66 refers to evidence provided by Assistant Commissioner Dave Brown on behalf of the London fire brigade, in which he made a number of allegations. I would be grateful for your reaction to them, either collectively or individually. He said that,

“tactics included...Stations left open or barricaded and fire alarms activated...Security codes at fire stations changed...Station gates padlocked and crews cars blocking forecourts preventing access for stand-in crews.”

Those are just a few of the number of things he suggested. Do you have any reaction to the assertions in that report, Mr Wrack?

**Matt Wrack:** Again, I have known Dave Brown a long time. I worked on the same watch as him at one point. His report has not been backed up by any evidence. The interesting point in all this is the question: what did the police do? If there were concerns about this and implications of serious breaches of public order, the police would have intervened. The police did not intervene. We had good relations and good co-ordination with the police throughout all the protests that took place during that dispute. None of our members were arrested. The only two arrests were of two people who decided to work through that dispute and ran over two people who were protesting. I reject those suggestions from Mr Brown, but we are happy to look at any evidence that he actually has with any detail on that.

**The Chair:** May I point out to people giving evidence and answering questions and to Members that we are approaching having used two thirds of our time? We should make it more succinct if you want to get the answers in. I call Chris Stephens.

**Q368 Chris Stephens:** Thank you, Sir Alan. First, I ask the panel for their thoughts on whether they regard the threshold proposal to have any impact on women who wish to pursue industrial action. Secondly, can they give examples in relation to their political funds? I believe that they are all at the moment not affiliated to a political party. How will the Bill affect those political funds, and what organisations will it affect?

**Mark Serwotka:** Very briefly, the changes to political funds will have an enormous effect. People should not confuse it with affiliation to the Labour party in our case, because we are non-party politically affiliated. It is timely that we have been asked that question, because I am here on the very day that the Government announced that they were essentially backing down on the privatisation of criminal fines enforcement in the Ministry of Justice. My union has waged a five-year political campaign pointing out that that privatisation is wrong, and the Government have accepted that argument today.

A year and a half ago, we made a political argument not to privatise the Land Registry, which was also successful. Those campaigns are funded by political funds, which would be devastated by the opt-in, rather than opt-out method. It would massively curtail things.

Directly, there is evidence that had we not run those campaigns, the Government would probably have made the wrong decision on two occasions.

On the right to strike—I will keep this short so other people can speak—all I would say is that in my union, it is predominantly the women membership who are suffering from 11 years of low pay and freezes to tax credits. Some 40% of PCS members claim tax credits. It is quite clear that there is a disproportionate effect on them if their ability to strike is undermined.

All I would ask the Committee is to consider this: do the Government really care about thresholds? Over the past 10 years, during the last Labour Government, the coalition Government and now, I am on record as saying that we would love to sit down and talk about changes in ballot methods to allow secure, online workplace balloting. In my union, we have done pilots. Where the law allows ballots in the workplace, the turnout is treble what it is when you have a statutory ballot by post. There is irrefutable proof that in comparable elections, three times the number of people vote in work. We have the technology to do it securely. That is what the Government should be talking about, because that would have a massive upwards effect on turnout.

**Matt Wrack:** Very quickly on the political fund, we were affiliated to the Labour party. We are not currently affiliated to the Labour party, but we have a political fund. Our members have the right to opt out of that political fund. In our union, they also have the right to make clear that they would not want any political fund going to a political affiliation, even if we were affiliated. They have a number of choices on the political fund. As Mark said, our political fund is primarily used for key political campaigns around the terms, conditions and safety of firefighters. In our view, were the Bill to proceed, it would seriously undermine our ability to function in that regard.

On the point about balloting, we note that both major political parties have recently used modern forms of balloting—for example, electronic balloting has been used by the Tories for the appointment of the candidate for London Mayor—so it seems bizarre to us that trade unions are being told that we cannot use such balloting methods going forward.

**The Chair:** May I pause you for a second? We have 10 minutes remaining and four Members want to ask questions, so we need to speed up the replies and the questions.

**Q369 Seema Kennedy (South Ribble) (Con):** Dr Roach, when your members go on strike, the people affected will all have to arrange alternative childcare because of the nature of your members' profession. In relation to clause 7, which is on the notice period, do you not recognise that giving parents 14 days, rather than seven, would give them more scope to organise alternative arrangements?

**Dr Roach:** We do not agree with the proposed measure to increase the notification period for industrial action. It has to be borne in mind that, as a trade union, we are engaged in industrial action that does not always include strike action. In fact, by and large, our industrial action is pupil and parent-friendly. It includes action short of strike action, which is to say working to an idea about

what the teacher's contract should be in order to raise educational standards, so that children's education is not disrupted.

**Q370 Seema Kennedy:** But when there is strike action and there is disruption to children's education and their parents' ability to go to work, would you not recognise that giving them 14 days' notice would give them more ample opportunity to re-arrange their lives, so that they can contribute to the economy by going to work?

**Dr Roach:** I am not going to challenge the logic of what you are saying. What I would argue is—

**Q371 Seema Kennedy:** So you accept it then.

**Dr Roach:** I am not going to challenge the logic of the argument you have put forward. The best way to minimise disruption to parents up and down the country is through sensible dialogue, genuine negotiation and a will to resolve industrial disputes before disruption becomes necessary. I would take you back to a point I made at the outset: by and large, our industrial action features action short of strike action, which does not disrupt the rights and ability of parents one jot. At the moment, we have in the Bill a blanket or universal provision affecting all forms of industrial action. That seems to us to be unnecessary and disproportionate.

**Q372 Jo Stevens (Cardiff Central) (Lab):** I have a question for Mr Skewes. Earlier this week, we heard from a Government witness from 2020 Health who seemed unaware that trade unions already have life and limb cover in hospitals when industrial action is taken. Do you believe that the Government's wider proposals on the use of agency workers during strike action are required?

**Jon Skewes:** No, not at all. The last thing the English NHS in particular needs is more agency workers, the cost of which has gone up by a factor of 11 over the past two years. If there were proposals to bring in agency workers instead of, for example, midwives, first of all, someone attending a woman giving birth has to be, by law, a midwife or a doctor. We think it would undermine quality and safety. Frankly, in our last industrial action, we ensured that every woman in this country had the service that would normally be available to them. Most of our members were not on strike—I would say that 90% of our members were providing that cover and 10% were on what were essentially protests. I think that that was hugely supported by the British public.

There are a number of other things. First, there are not that many of those people. If we look at the figures—I think this is in our written evidence—most agency workers are already working in the NHS at the moment. They are probably also our members, so the agency workers themselves would be on strike.

Secondly, I think it would have a really bad effect on team morale and the way in which safety is underpinned. Those people do not have the knowledge of trust safety protocols, quality protocols and so on. We resent the fact that, given the way we absolutely went out of our way with trusts and NHS England to underpin safety during that dispute, we would be faced with a dilemma in the future. Do we allow them to just replace our members with agency workers, which would be much more costly but we know would not be as safe? I do not think we would do that. It is a dilemma that we resent.

**The Chair:** Two Members want to ask questions. I am going to take them both together. If for any reason you wish to come back in the short period we have got left, I will allow that.

**Q373 Rishi Sunak:** I have a quick question for Mr Serwotka. I understood your points about online balloting. Just so I understand, do you support the principle of a threshold for strike action, so that when there is disruption to the public services that people depend on, they know it has been backed by a reasonable number of members involved?

**Mark Serwotka:** No, I do not. Unless the Government were to say that thresholds should apply to all referendums and all other comparable ballots, it singles out the trade unions. It means that people who do not vote are counted as no votes, which to my mind is completely unacceptable.

**Ian Mearns (Gateshead) (Lab):** This is a question for Dr Roach. The NASUWT organises across England, Wales, Scotland and Northern Ireland. Could you let Members know whether there is any significant difference in levels of industrial action in the four areas, where the governance is different?

**Dr Roach:** Yes, we do indeed organise right across the United Kingdom. There are very real differences in the industrial relations contexts in each of those jurisdictions. Our ability to engage in genuine dialogue with the Administrations in Northern Ireland, Scotland and Wales is, frankly, far superior to our ability to engage in genuine dialogue, with the view to resolving teachers' very real concerns about their pay, pensions, working conditions and job security, in England. There are acute differences, but I would come back to the issue of the importance of the trade unions' ability to represent the interests of their members. They ensure that their members' working conditions are adequately protected through the use not only of strike action but of other means, including the intelligent use of action short of strike action. That has been an important mainstay of our strategy for protecting the interests of our members right across the UK.

**The Chair:** Thank you very much. That brings us to the end of the time allotted to your panel. Thank you very much for attending. If we have any queries arising from the evidence you have given, we will be in touch to ask you to reply.

#### Examination of Witnesses

*Len McCluskey, Sir Paul Kenny, Frances O'Grady and Dave Prentis gave evidence.*

3.4 pm

**Q374 The Chair:** First, may I welcome you all to the Committee? It is an illustrious bunch we have in front of us who represent an awfully large body of members. It is very rare that Parliament has the opportunity to get such a group together and ask them questions. You will very quickly introduce yourselves to the Committee. We will then move on to queries and questions from Members, which will alternate between the Government and Opposition sides. We will go to Members who wish to raise questions relating to the Bill.

**Dave Prentis:** Good afternoon, everybody. My name is Dave Prentis. I am general secretary of Unison—the public service union of 1.3 million paying members who provide our public services. We recruit everybody in public services, except doctors and teachers. We do compete for members with other unions—probably 10 in local government and maybe 15 in the health service.

My view is very strongly that the Bill as worded at the moment is a major attack on workers' rights in this country, and it will make industrial relations, especially in public services, far more difficult. We have partnership working throughout all of our public services. We have agreements that bring in many of the issues that are going to be made illegal and we think that it will lead to far worse industrial relations.

**Frances O'Grady:** My name is Frances O'Grady. I am the general secretary of the TUC, representing 52 unions who organise around 6 million workers UK-wide. The TUC opposes this Bill and the associated proposals. We believe it threatens fundamentally the right to strike and other critical civil liberties in this country. We note that the Regulatory Policy Committee said that the Bill was not fit for purpose, and we believe that it would fundamentally shift the balance of power from ordinary working people towards employers and make it harder for unions to defend jobs, pay and fairness at work.

Can I add that I am conscious that a good deal of the debate has focused on thresholds, even though that contravenes the ILO's clear standards on this issue? It is important to note that, even if all those tests and thresholds were met, the Government also propose that employers should be able to replace striking workers with inexperienced and possibly untrained agency workers, therefore completely pulling the rug from beneath the right to strike. We know that if this was about improving turnout in ballots, the best way to do that would be through allowing unions to use electronic and workplace balloting.

I end by saying I think it is important to be clear from the start that we believe that the real aim of this Bill and the proposals that go with it is to give employers new ways to take unions to court and thereby impose penalties and seek damages and injunctions against unions. I would suggest that the approach of this Bill is straight out of Norman Tebbit's textbook from the 1980s.

**Sir Paul Kenny:** Paul Kenny, general secretary of the GMB—not a failing business, as some people might have you believe. We have actually, as a union, grown every year for the last 10 years, so we must be something right about appealing to people. We are opposed to the Bill. We had 625,000 members all above ground as at the end of 2014. That figure is now at 635,000.

I will not take a long time. We have agreements with global players, as well as household names that you would know, from energy companies to Asda-Walmart—the only collective bargaining agreement they have anywhere in the world is with us in this country, and they do not see, as I understand it, a need to support this Bill, either. I would describe my view personally and that of my colleagues by saying that, if this Bill was on the pudding menu at the Carlton Club, it would be called an ideological Eton mess.

**Len McCluskey:** Len McCluskey, general secretary of Unite, Britain's largest union, with 1.4 million members, covering all sectors of the economy—manufacturing,

transport, financial services and public services, as well as private services. I obviously agree with all the comments my colleagues have made. The Bill is a threat to democracy; I think you have been told that by a whole range of different organisations from across the spectrum of our society. It is also a threat to the cohesive nature of the communities in which we work. I am hoping that this Committee will record our views as clearly and sincerely as possible, and that the Prime Minister and the Government might rethink elements of the Bill.

**The Chair:** Thank you. Although you have chosen not to send along national officials of various sectors in your union, which is a very large group of organisations, the same rules apply. We will have a series of questions asked, with replies and opinions given back. We only have until 4.15 pm to do that, so we need to do it quite succinctly. If not, you are using your own time. Members might ask you to go on and on, but what you want to do is get as many replies across as possible.

**Len McCluskey:** Sir Alan, I have brought some additional written information that I can present either now or at the end of the session.

**The Chair:** Len, if you hand it to the Clerk, we will distribute it to all Members in due course.

**Q375 Stephen Doughty:** Frances, can I turn to you first? Correct me if I am wrong, but I think you said that the TUC represents 6 million workers—one tenth of the UK population. That is a huge number. Given the severe implications of the Bill for a whole range of issues and its potential impact on those individual members and, indeed, the member unions of the TUC, are you satisfied with the level of consultation and how the Government have gone about the consultation in drafting and presenting the Bill?

**Frances O'Grady:** Absolutely not, nor was the Regulatory Policy Committee. I am afraid that bad laws are made in haste. We were given an eight-week period over the summer holidays for the consultation period, and of course that has left huge holes and uncertainty in the proposals, which I am very happy to list separately. Very big and important questions appear not to have been considered and thrown in belatedly—for example, the proposals on removal of check-off in the public sector. Critically, this has meant that unions, employers and those with practical experience of industrial relations have not had the chance to influence the nature of the Bill in the way we should. I think it contravenes the Government's own standards in that respect.

I have been pleased to belatedly have contact with Department for Business, Innovation and Skills Ministers and officials, but I wrote to the Prime Minister on 15 May, following the election of the Conservative Government, asking to meet to discuss precisely this issue, and I have not yet received a reply. Frankly, I think my members would see that as discourteous to working people.

**Q376 Stephen Doughty:** So the Prime Minister is not willing to meet an organisation that represents a tenth of our population—that is quite surprising. Are you also surprised that we are discussing the Bill, in both this format and the line-by-line sessions, without having seen the responses to the consultation process from the Government or much of the secondary legislation that the Bill gives them very wide powers to implement?

**Frances O'Grady:** Absolutely. Perhaps there will be a question later on this, but it is not just unions that are worried about it; employers are, too, because we believe it poisons industrial relations in this country.

**Q377 Stephen Doughty:** Thank you. I wonder if I could turn briefly to Dave. I understand Unison has significant concerns about the aspects of the Bill that address facility time, check-off and so on. Could you briefly outline your key headline points of concern?

**Dave Prentis:** I will try to be as quick as I can. To deal with check-off, these are voluntary arrangements made with employers. No employer is forced into the arrangement. We have 9,334 check-off arrangements with separate employers, 7,242 of which are in the public sector. It is a means by which we organise our partnership work and it is based on three contracts. There is the contract involving the member agreeing the payroll arrangement. It is voluntary, and they are given the option of other means of paying. There is a collective agreement with the trade union, part of which includes training arrangements, facility time and check-off. Obviously, there is also a contract between the union and the member. The systems work incredibly well. From an employer point of view, they know who is in a union.

You can have deductions at source for 14 or 15 different things, including buying a bicycle, paying crèche charges or for season tickets. Why would an employee's contribution to their trade union be the only thing excluded? Why are the Government pushing auto-enrolment for pensions, which we think is right, while denying trade unions the ability to collect money? It singles out trade unions and will have a major effect on partnership working in health, schools and local government, because the arrangements are part of our participation arrangements.

If we have to spend all our time seeking to transfer people over, that means changing 800,000 people from check-off to direct debit. It will be a massive undertaking, using all the union's resources. We represent 1 million women members, most of whom are low paid, and we do not see the need to disrupt arrangements that employers have been willing to enter into. It about localism. It is about the employer having the right, at the local level, to decide what agreements they want to reach with their trade union, without having authoritarian legislation preventing them from doing so. There is no logic to singling out the public sector and not the whole economy. It is based on prejudice, and it will badly affect our working relationships with the employers that recognise us.

Connected to this is time off for trade union duties. I will be as brief as I can. Our relationship with employers is based on our local reps having partnership working with them, sitting in the committees that deal with major issues, and representing people in the workplace, which the employers need for their disciplinary or grievance procedures. This is all done by activists under the time-off arrangements. If those arrangements are taken away from our people, it will mean that the joint working that has been fostered in public services since 1948 will become far more aggressive. There will be far more industrial action, and we will have major problems.

We have union learning reps who are involved in getting people to train not just as stewards, but professionally. We do dementia, mental health awareness, lesbian and gay rights and service user training. We provide training for the employers when they sign the

agreement. Many thousands of low-paid public service workers benefit from this. They actually get on in life through this and get promotions as a result. All of that will end if these draconian attacks on check-off and facility time take place. They are part of the fabric of the work that we do as a union across all our public services.

**Q378 Stephen Doughty:** That is very helpful. Turning to another section of the Bill and the provisions that deal with picketing, we have heard the police's serious concerns, shared by many witnesses, about the workability of a number of the proposals, in particular the proposals in the consultation relating to policing Facebook and Twitter. What has your experience of picketing been? Do you think that these proposals would simply not work?

**Sir Paul Kenny:** The reality is that the police are looked at in picket line situations almost exclusively as the middle people. They are independent and the co-operation with the police, which is vital for the police to do their job, comes about as a result of being seen in that light. With these proposed regulations, effectively, it is a whole new ballgame.

Please, do not anybody tell me about intimidation on picket lines. I have seen lots of it. I have seen people blacklisted from work for 20 years because they stood on a picket line. I have seen people intimidated about going back to their job by managers, but there is nothing in this Bill is about any of that, is there? I hear—it is illusory, almost—these stories about intimidation on picket lines. My experience is that the police are effective at dealing with that, and they do it by consent and they do it clearly. It is not what trade unions condone or seek and the police operate very much on a consensus basis.

The side wagons to the main Bill—if you will forgive me for putting it that way—are issues such as the notice-posting and the rest of it. This is just beyond belief. It would be uncontrollable by us anyway—that we would be able to predict what is going to be put on Twitter or Facebook by other people, who may not be particularly connected with the union at all—but we would effectively find ourselves involved. You are criminalising what is effectively a civil right. That is why I described it earlier as just a mess. This is clearly a mess.

**Q379 Stephen Doughty:** Can I ask a separate question on participation? Perhaps some of the others will want to answer; I know that Len has concerns about that. As union representatives, I am sure that you all want to increase participation in ballots and to see the maximum turnout in those. We have heard a lot about the fact that the Government do not seem to be willing to consider e-balloting, secure workplace balloting and other methods. Could you briefly comment on that, Sir Paul, and then Len? I looked closely at your evidence, Len, and you speak about Central Arbitration Committee ballots, for example, where secure workplace balloting is already used. What are your views on why the Government will not accept methods that would boost the participation that they say they want to see?

**Sir Paul Kenny:** I will briefly answer, then pass the question to Len. In a sense, this gets to the heart of what this Bill is all about. This is a dishonest approach, because if it was really about getting more people to participate and more people to engage, you would

modernise a balloting process that is actually a third of a century old. That is how old it is, but the truth of the matter is that you do not want to. The Government are not seeking to help people to participate or seeking to get conflict resolution. If you think frustrating people through a ballot will mean that the problem will go away, it will not. It will get bigger and then it may erupt in a way that is not controllable by the selected agreements. This is absolutely a dishonest approach.

**Q380 Stephen Doughty:** So facilitating better participation would benefit industrial relations more.

**Sir Paul Kenny:** Of course. I forget how many countries use this now, but a whole host of countries do. There was a quote from the Speaker's Commission saying this was unfair, or unreliable, but I am not sure that that is actually what they did say. I went back and had a look at it and I do not think that is right. Clearly, people are talking about maybe modernising our general election participation by moving to electronic balloting. You clearly want the vast majority of people to participate. That is what you want, and it is why the thresholds issue is not one that I am particularly—I would like to see every person participate, but this Bill does not even attempt to deal with the issue of encouraging people to participate, thereby encouraging dispute resolution. What it seeks to do is to suppress it and therefore foster it.

**Len McCluskey:** Obviously, Paul has made the point that this is the nub of the Bill. In fact, the Prime Minister himself on 4 October, in an interview with Andrew Marr, made it clear that lots of things in the Bill can be debated and discussed. The inference was that they could be changed and amended, but he said that this was the most important element of the Bill. Everyone in this room will know that I have written to the Prime Minister suggesting that if he is genuine about wanting to increase the turnout, given that he has expressed his concerns about low turnout, which all of us have concerns about, then he should move towards, and get involved in a proper debate about, modern methods of balloting—the same balloting that the Conservative party has just elected their London mayoral candidate with—and most importantly, secure workplace balloting. All of that is feasible. The Electoral Reform Society has said that that is easily achievable with independent assessors.

You asked me, Stephen, why it is not being supported, but you need to ask that question of your colleagues opposite in the Conservative party. When you are considering the whole nature of the situation, you have to ask yourself what is wrong with secure, independent workplace balloting. The point that Paul makes about where this may lead us is something that members of this Committee, and indeed the Government in general, will need to consider seriously. We may well find that our members—ordinary, individual, decent trade unionists, who contribute massively to the wealth of our nation—are pushed outside the law. What this Bill will do, if it is not changed, is to require general secretaries such as myself to repudiate, or distance themselves from, those workers. Unite will not do that. We will not repudiate and we will not distance ourselves from people who are engaged in legitimate action.

I have said to the Prime Minister, extending the hand of pragmatism, “Please sit down with us. There is no reason why you cannot concede the principle of

independent, secure workplace balloting. If you did so, the issue of thresholds would become an irrelevance. Workplace balloting would consistently produce high turnouts.” I am puzzled as to why there has not been a positive response to that offer. I am confused about why that was not snatched at immediately, unless the Prime Minister is being disingenuous. With the greatest respect, I have to say that it did not fill me with confidence when he said yesterday in Prime Minister's questions:

“I notice that Len McCluskey now supports our position.”—*[Official Report, 14 October 2015; Vol. 600, c. 314.]*

That is wrong and disingenuous, and he knows that. My appeal to him, to the Government and to the Conservative members of the Committee, is: please, stop playing games and tell us why you believe secure workplace balloting is not acceptable. Nobody is giving a reason. If that was grasped in the manner in which it has been offered, a huge element of the controversy surrounding the Bill would be removed.

**Frances O'Grady:** Chair, I wonder if I can add very briefly to that. I know that this issue of safety and security has been raised a number of times, including by the Minister in a meeting I held with him—although I think, Nick, you actually quoted the lack of security of a postal ballot in a local authority election, perhaps in error.

The real issue here is: is electronic balloting any less safe than postal balloting? The Electoral Reform Society report confirms that it is no less safe, given the risk run in postal balloting. Of course, a number of employers, such as the Royal Bank of Scotland, use electronic balloting already to elect worker representatives to their consultative committee. We see it used across a whole range of organisations, including political ones. Frankly, if it was not safe, that selection ballot for the Conservative Mayor of London candidate should be rerun as a postal ballot.

**The Chair:** May I just say that we have got a very short period of time left? The purpose of the session is to get in touch with you. You got in touch with us and said that you wanted to say things, and we said that we would like to ask questions of you. I have got about seven or eight Members of Parliament, on both sides, who want to do so. If you can be more succinct—that goes for Members too—we will try to get as many answers out as possible, and that may help both sides.

**Q381 James Cartlidge (South Suffolk) (Con):** I thank all four of you for coming. I am pleased that we have focused on the thresholds issue, and I agree that it is by far the most important point. In evidence on Tuesday, we heard a large number of examples of serious disruption caused to ordinary members of the public on relatively low turnouts. For example, David Martin, who is a director of Arriva buses, which operates in London, referred to the London strike in 2012. He said:

“The fact that 17% of my staff voted and 50% of the buses did not run in London over that period of time shows us that we need a failsafe, and this Bill delivers that failsafe.”—*[Official Report, Trade Union Public Bill Committee, 13 October 2015; c. 7, Q4.]*

My question is for Frances O'Grady. At the beginning, you mentioned thresholds in relation to the ILO, and we are now talking about thresholds in relation to e-voting. Are you saying that you oppose the threshold change in principle or that you would accept it if it came with electronic voting?

**Frances O'Grady:** The TUC's position is very clear. The labour arm of the UN is very clear that you cannot count abstentions as no votes. We are arguing for a positive, 21st-century solution to boosting ballot turnouts by using modern means, including electronic balloting, in a way that is safe and secure and independently supervised. If that is what this is really about, give us the right to do it, as many of the organisations represented around this table—

**Q382 James Cartlidge:** When you say “what this is really about”, this is not a conspiracy. We are extremely concerned about ordinary members of the public whose lives are disrupted when schools close, when buses and trains are not available and when London comes to a standstill on the basis of a ballot that has a low turnout. If it has a high turnout, we accept that. We accept the right to strike, and we accept many of the principles upon which your organisations are based. I have a question for Sir Paul—

**Sir Paul Kenny:** Paul is fine.

**James Cartlidge:** Okay. That is what it says.

In relation to the police, we heard this morning from a senior police officer who was referring to the ability to identify someone when a strike happens and how useful it would be for them if it were easier to identify the lead—the person co-ordinating it. I would be interested in your comments on that.

**Sir Paul Kenny:** I do not know how many picket lines you have been on—

**James Cartlidge:** Not one as an MP, I must admit.

**Sir Paul Kenny:** I would be happy to take you.

Look, I have been on a few, for obvious reasons—it is the nature of the job. Before I was a union official, I exercised my right to go on strike. My experience is that where picket lines are correctly policed, they are policed by consent. That normally always means that the officers strike up a relationship over a long period of time. They will introduce themselves and ask exactly who the union official is and who the steward is. The union officials normally wear some identification, but there is a fairly limited number of people. It is not 500 people in the road—the police would deal with that.

The idea that you need to supply lists of names and addresses is a real problem for us, and I will tell you again why. We know, thanks to the Scottish Affairs Committee, that thousands of working people were blacklisted—some for little more than attending a union meeting. There is nothing in the Bill about that. I see nothing that says there are protections and penalties. It is not unnatural for us to say that you have the police, who police by consent, and we support them in that. They strike up relationships with people almost every day—you might hear about the odd occasion here or there. I think that relationship is a good, professional one. Moving that on, so the police take names, keep registers and identify individuals who have attended, leads it into another area that we have incredible mistrust about.

I do not know what the police's official reaction is, but I would have thought that this is not something they particularly like. I know what you said about one bit of evidence, but I am not certain that that is the view of all policemen.

**Dave Prentis:** Could I just take up the point about thresholds? We are not just talking about simple thresholds; we are talking about a second threshold in public services. We have no knowledge of which areas will be covered—it is very, very vague. The second threshold means a negation of democracy. If you reach a 50% threshold in, say, a health ballot, 80% of the members have got to vote for action, not a simple majority. It will be impossible to achieve. You are denying the right of public service workers under national agreements to use industrial action as a very final resort. That is how far it is going. You have to realise the unintended consequences of the double threshold—it is not one, it is two. It will bring to an end the right of millions of workers in public services to take action. It will never be achieved. You should be aware of that.

It is a very difficult area for us. We want to increase participation—we know that we have strength the more people participate—but you do not do it in that draconian way, because it will just lead to unofficial action and a breakdown in industrial relations in our public services. You will regret it.

**Q383 Dr Lisa Cameron** (East Kilbride, Strathaven and Lesmahagow) (SNP): What are your opinions on the use of agency workers? What effect could that have on public safety and, where you represent healthcare workers, patient safety?

**Frances O'Grady:** We have very good relations and agreements with agencies and the federation representing agencies in this country. We have always worked very closely on the fair principles of employers needing flexibility to cover peaks and troughs in production, or staff absences, and doing that on the basis of equal treatment within the framework of the union agreement. This proposal is obviously quite different. We are potentially talking about employers having the right to replace wholesale workers who have democratically voted to go on strike with, potentially, untrained and inexperienced agency workers.

As we know, labour providers source from all over Europe, so is the idea that workers would be bussed in, perhaps from another country, perhaps not knowing what they are being bussed in to do, and be put in the invidious position of being asked to cross a picket line? Many employers, including the industry federation, have said publicly, very clearly, that it is absolutely wrong-headed to put agency workers in the middle of difficult disputes. It is not something we have seen in this country for 40 years or more, and frankly it is either naive or positively dangerous to deliberately seek to undermine legitimately decided and democratically voted on strikes by the use of agency labour.

**Dave Prentis:** It is a very final resort when a public service worker or a health worker takes industrial action. Last year was the first time in 34 years that our members have taken action over pay, and it was to achieve the Government's 1% pay award, which the Secretary of State had denied the workers, but we reached written agreements to provide cover. We provided written agreements—we signed them with the other unions involved—on ambulance workers to make sure that ambulances were there, all ready to go in an emergency. We reached written agreements for cover on wards. Sometimes, they have better cover than they do at times

when they have staff absences because they want to ensure that the critical wards are covered. There is no need for agencies to be brought in.

With the change in the thresholds and the idea of agency workers—even Margaret Thatcher did not propose this. The idea of using agency workers, combined with all the other restrictions on industrial action, is punitive. Somebody wants to attack trade unions, but they are basing it on 1980s values, and we have moved on. The Bill will not in any way affect the productivity of the country, which we should be looking at—whether competition in Britain is good enough to take on the rest of the world. We are just going to end up fighting with each other, when we should be working together to ensure that workers benefit, the organisations they work for benefit and, in our case, patients benefit.

**Q384 Nusrat Ghani (Wealden) (Con):** To continue on agency workers, we took evidence earlier from Mr Jon Skewes from the Royal College of Midwives. He mentioned how potentially disruptive it could be if midwives were to go on strike. There are two issues: the fact that it costs so much to bring in agency staff, and the need to ensure that staff have the right skills to support mums and babies. If midwives were to go on strike, it would put at risk pregnant mums and their babies. Are you saying you would not want any agency staff available at that unit if a mum was going into labour? Would you not then allow agency staff to come in to work, to help those mums and babies?

**Dave Prentis:** I heard Jon's evidence, and he said very clearly to you that they put in far more workers—midwives—than they have brought out in demonstrations.

**Q385 Nusrat Ghani:** I am just asking as a point of principle, because Ms O'Grady said she did not want to see any agency staff. In this sector, would you not want to see any agency staff covering the shifts of striking midwives?

**Frances O'Grady:** You are being completely disingenuous. As you may well be aware—perhaps you are not—unions have long-standing voluntary agreements with employers in emergency services to ensure that life and limb are not put in danger during a strike.

**Q386 Nusrat Ghani:** So agency staff will be brought in.

**Frances O'Grady:** The agreements are between the employers and the unions. I refer you to the NHS employers that have written to Ministers saying they are concerned that this Bill, its tone and the aggressive approach taken by it are jeopardising the good, long-standing social partnership arrangements we have in health and many other public services.

**Q387 Nusrat Ghani:** I just want to establish whether agency staff would be acceptable in this situation, if nobody else was available.

**Dave Prentis:** I have never known a time when we have taken action in health and an agency would be needed, because we provide the full-time staff to stay in. We give them a dispensation, and we reach agreements with management on the levels of staffing they think they need to run those services. On many occasions, we have more staff in than are in on a normal Saturday or Sunday.

**Sir Paul Kenny:** Do you honestly think that a midwife looking after a mother would walk out—

**Q388 Nusrat Ghani:** No, I do not. I was just asking because there was a huge discussion about agency staff. I want to know where the principle would stop and start.

**Sir Paul Kenny:** Yes, but you use the most emotive issue.

**Frances O'Grady:** I was speaking to a midwife called Natalie who went on strike because of the rejection of the 1% offer. They made sure that no mother or baby lost out. *[Interruption.]*

**The Chair:** Order. When the Chair calls for order, you will please desist. Members are asking questions. We want replies, and we do not do it as a collective; we do it individually, through the Chair. That is normal behaviour in this place.

**Q389 Nusrat Ghani:** You represent a large proportion of the working people in our communities and our constituencies. We heard some damning evidence this morning about what happens to people who choose not to go on strike. We heard from the London fire brigade about how difficult it is for people who choose not to go on strike to get into their fire stations and carry on with their duties, and how they are possibly putting themselves at risk by continuing to go into work.

We also heard evidence from SITA. In its written evidence, it told us that non-striking workers during a strike in Doncaster in 2011 had been subject to “sabotage of private property”. Its evidence goes on to say that “strikers visited the homes of workers, slashing car tyres and throwing paint stripper over a car. The Working Men's Club used by a non-striker was contacted by a striker...who threatened the steward of the club that if they allowed him to use the bar, the club would be vandalised. The club barred the non-striker.”

How are you able to represent your non-striking union members and other workers? Who is supporting them?

**Len McCluskey:** That is an extraordinary thing for you to put forward.

**Nusrat Ghani:** It is not for me to put forward; it was evidence given by witnesses.

**Len McCluskey:** Fine, and I am going to answer it. There are current laws to deal with any action of that nature, which is criminal. You have put forward a specific incident that suggests striking workers are engaged in criminal activity. The police will deal with that when it is brought to their attention. If you asking whether I support that type of criminal behaviour, no, I do not. The police have sufficient laws to deal with those issues. There is certainly no need to introduce more laws, and I will not repeat the comments that my colleagues have made about the nature of those laws. I will just remind you of what I said right at the beginning: a threat to the cohesive nature of the communities we live in is something you need to take on board. Laws already exist to deal with all of that type—

**Q390 Nusrat Ghani:** The 2010 dispute was discussed earlier on. This evidence from 2011 is that there are people who wish to go to work but feel intimidated.

**Len McCluskey:** What has that got to do with the Bill? If they feel intimidated and there are incidents of vandalism, I assume they bring that to the attention of

the authorities, who will deal with it. It is certainly nothing to do with trade unionism or the right to strike: the right to exercise our democratic views to an employer. It has really got nothing to do with us and nothing to do with the Bill.

**Sir Paul Kenny:** I am not privy to that particular evidence that was given to you—I would love to see it—but it seems to be four or five years old and I would have thought in those four or five years that the criminal acts that you seem to be describing here would have been reported to the police. I wonder what action the police took, because it sounds like individuals were known. Forgive me; I am not trying to be difficult here, but I am wondering where this fits in with our discussion.

**Q391 Nusrat Ghani:** Who represents the workers who want to continue going to work, especially if only a minority of union workers are calling for the strike in the first place?

**Sir Paul Kenny:** If that is the question, that is dead easy to answer. I do not know why it had to be prefaced with stuff from four or five years ago. If you say what happens to people in the union who decide, even if they voted in a ballot, to go to work, they go to work. There are already adequate laws covering no victimisation for those individuals. There is nothing in the Bill that adds to that. Sorry, that already exists. Truthfully, I wonder how much knowledge there is in existence about the rules governing trade union bodies. That is already covered. They have a right. If they go to work, they go to work.

**Q392 Nusrat Ghani:** They are obviously finding it difficult to go to work in these circumstances.

**Len McCluskey:** It is not a question about it being difficult to go to work. The current legislation allows people to go in and out of work. It allows contractors to deliver in and out of work. It allows the striking workers to exercise their right to explain why they are on strike.

If you are talking about evidence-based, I know that my own union was accused of thuggery and intimidation in the INEOS dispute. That complaint was brought by a Conservative MP—a woman whose name I forget at the moment. The result of that was that Police Scotland and the Hampshire police force said there was no case to answer. There was no criminal activity whatever. There was nothing abusive or intimidatory. If you read the headlines in the daily newspapers, you would think the complete opposite, so I ask you to understand the nature of a dispute and the manner in which trade unions try to organise in a disciplined way, because the one thing that we want when our members are out on strike is to get them back into work. We want a negotiated settlement. And trust me, this Bill will make it more difficult to achieve those types of aims.

**Q393 Ian Mearns:** Professor Keith Ewing talked of his concerns about the potential future role and appointment of certification officers. Do you have any particular concerns about that?

**Len McCluskey:** I can answer that question, because we have huge concerns. Again, I am addressing Conservative colleagues on this. The first question I would ask is: what problems are supposed to be addressed by this

element on the certification officer? What current problems exist? The certification officer is currently seen as an independent individual, and the current person there is highly respected by both sides of industry. It will no longer be independent.

There are no criteria about who can be the certification officer, and the most damning issue here is that anyone can complain. Any member of the public can complain to the certification officer, who would have the power to go into a union, disrupt its business and crawl all over its business in relation to how it operates. That is in stark contrast to what happens with individuals who are seeking redress at an industrial tribunal. They have to pay £1,200 up front and can be accused of vexatious behaviour. The measure would cause unnecessary upheaval in trade unions.

The slap in the face on top of it is that our members have to pay for it. Can you imagine the number of people who want to complain about Unite or any other union? We would have the certification officer, or whoever they determine, constantly working in our building, clawing over issues, with our members' money paying for it. The big question that needs to be answered is, "What are the problems?" Why is this bit about the certification officer in the Bill? I have never heard any criticism of the certification officer's current methods.

**Frances O'Grady:** With the Chair's agreement, I am happy to add to that. As Len has pointed out, I suspect that these are some of the aspects of the Bill that David Davis was suggesting were more appropriate to Franco's Spain than a modern democracy such as Britain. Many people are extremely worried about the idea that a certification officer can respond to complaints by employers, have the power to seize documents from union offices, impose fines and so on. The idea that the CO could, in real time, send inspectors down to picket lines does not feel like a good use of our money, given that we are also expected to pay for the privilege. It is taking industrial relations into territory that would be poisonous for both employers and unions.

Perhaps we also need to make it clear for the record that the total number of disputes that took place in Britain last year was just over 150, with a tiny proportion of days lost as a result. You have to come back to asking, "What is the problem that we are trying to crack here?" As a *Financial Times* leader pointed out, it smacks of the Government crossing a road to pick a fight.

**Dave Prentis:** Can I supplement that? There were 160 disputes and only 640 ballots—four times the number of disputes—because we negotiated settlements before announcing a ballot. The ballots are not the important thing. It is about the settlements that we reached that then led to less industrial action.

There are three major Acts of Parliament covering what we do. We are the most regulated sector within the economy, if not the western world. This merely adds to that over-regulation. It is an over-burden for which there is no need. It shows the views of the people who are putting the Bill forward. There is absolutely no need for the certification officer to have additional roles. We are well policed by them already, if not too well.

**Sir Paul Kenny:** I am yet to have any understanding of the justification for the certification officer's additional powers. The powers are already wide-ranging, and I do

not understand the justification, other than to shackle or restrict the ability of unions to do their job. I thought that this Government were about deregulation, but it appears that they are until it comes to unions, which they want to regulate through the teeth.

**The Chair:** Mr McCluskey, when Nusrat Ghani asked you a question a bit earlier on, you referred to a case that she raised and you alluded to evidence of the case and that there was no action by the police, who noted that no action was needed. Could you send the Committee a note about that? It would be quite useful to Members on both sides when they come to judge the evidence that has been given.

**Len McCluskey:** Yes.

**Q394 Seema Kennedy:** I think it was you, Mr Prentis, who mentioned productivity earlier on. I accept that your organisations often prevent strikes, but they do happen. Do you accept that when millions of people are out of the workplace because of a strike or when a strike is threatened—we have heard a lot about the threat of strikes being disruptive to lives and businesses—it will inevitably have an impact on productivity?

**Dave Prentis:** It will inevitably have an impact, otherwise why would the workers be doing it? The issue is when you take the action. You take it as a final resort. We represent low-paid women, nearly 1 million of them, and they cannot afford to miss a day's pay. It must take something drastically wrong and unfair. They are not motivated by aggrandisement. Something happening to them that is unfair will motivate a low-paid woman public service worker to vote for industrial action.

We cannot just talk about the effect on the public and ignore the effect on the individual striker, because they are doing it for a real reason: they feel very aggrieved about how they have been treated. They have to have the ability to seek a settlement. If we cannot get settlements, the right for workers to withdraw their labour is obviously a final resort that is allowed in the ILO conventions, which Frances has been talking about. It is impossible to take industrial action that does not have some effect on people, otherwise why take it?

If you are talking about productivity, productivity is everything that happens during the course of a year. For our members, on average, a member will take action every 15 years, yet we are obsessing over productivity. The issue with productivity is getting more skilled, higher-paid workers within our environments and ensuring that people are well treated and can contribute. It is about having the investment to increase productivity—that is not necessarily coming through—and having a fairer society where people want to contribute. You cannot connect productivity with the small number of days that are lost.

**Q395 Seema Kennedy:** Can I just bring it back to women? You say that you represent a lot of women who are low-paid.

**Dave Prentis:** A million.

**Q396 Seema Kennedy:** Many of whom will be mothers or have other caring responsibilities, perhaps for other family members. In the TUC submission, where you are talking about the notice period, you say that it will needlessly delay the start of industrial action. Do you

not recognise that for those women, they might need those 14 days to arrange extra care for their dependants? Extending the period from seven days to 14 days might be useful for them, because of the disruption.

**Frances O'Grady:** I am not aware that the Bill is only targeting the 14-day notice period in areas where mothers will be affected by the strike. It is a false prospectus. Let us be clear about this: the extension of the notice period is designed to reduce momentum and participation in the strike and weaken the union's hand.

With your agreement, I will make a very small point on productivity, on which I can give you some hard evidence. The number of days lost through industrial action during the past year adds up to just one half of one ten-thousandth of a percent of all working days. To put that in perspective, the number of days lost through issues around health, safety and wellbeing is 450 times that—

**Seema Kennedy:** I would not dispute that, but we want to increase productivity in everything.

**The Chair:** Order.

**Frances O'Grady:** I just wanted to make the point that our union representatives play an absolutely critical role in delivering higher productivity in the workplace, including through health and safety. A number of those strikes are directly relevant to issues, such as health and safety, that in the long run are important for business and the economy, as well as for working people. Again, I think you have to understand that trade union activity and strength actually improves Britain's productivity by creating safer, healthier and better trained workforces.

**The Chair:** I wonder, Ms O'Grady, whether you can send us the stats you have been referring to. If you can send it to the members of the Committee, we will distribute it on either side.

**Q397 Chris Stephens:** I think all four of you have an interest in public services. Obviously, you will be aware, as was alluded to at the start, that not all UK employers, including the devolved Administrations, support the Bill and the impacts it will have. Can I ask each of you whether you believe that all public sector employers in the UK should either provide their consent to parts or all of the Bill or get opt-outs to parts or all of the Bill?

**Len McCluskey:** First, it is a serious issue that, again, I have raised publicly and Conservative members of this Committee will want to take it on board. At the general election, the Conservative party ran part of its campaign on English votes for English laws. The reality that we find with this Bill currently is that the Scottish Parliament has indicated that it will not implement the Bill; Stormont has indicated that it will not implement the Bill; and the Welsh Assembly voted yesterday not to implement this Bill. There is a real danger that English workers will be the worst treated workers not only in the whole of Europe, but indeed in the British Isles themselves. That is what is deeply divisive. The direct answer to your question is, yes, we know that there are local authorities and employers right throughout the British Isles who are indicating that they will not implement this measure, and certainly the devolved powers should have that view.

I will finish on a quick point, which is again for colleagues on the Conservative side. I deal with every single major manufacturing company within our nations—blue chip companies. Not a single CEO of any of those companies is in favour of this Bill, and I ask that that is taken seriously on board. So, yes, I am in favour of an independent approach to this.

**Sir Paul Kenny:** I will be quick. I think the consent issue is quite clear.

Just dealing with the issue about check-off, as it is commonly called, effectively it will still remain lawful. If the wagons roll on for a deduction to be made to just about any organisation—to the bowling club, to Uncle Ben's shop, to any appeal whatsoever—despite all the arguments about how difficult it is and costly, it seems the only organisations that will not be allowed to use that facility are trade unions. I am sort of getting the drift that someone has got it in for me, you know? Basically, when you look at it like that, you cannot justify that argument.

Also, in terms of facilities, there are statistics coming out of the walls about the job that people do in saving so much in employers' time: stopping stuff going through to litigation, dealing with health and safety issues and dealing with grievances. You know, kettles have spouts for a reason and you are trying to put a sock in it, and that will not do. That is not the way to deal with genuine grievances and disputes. So it is one of those occasions when I am beginning to think that devolution is a pretty good idea.

**Dave Prentis:** I will concentrate on check-off and sign-off, as I did at the beginning, and I will remind you that we have 7,242 employers who operate check-off systems and with whom we have agreements on time off. Not a single one of those employers has said anything in relation to this Bill that would lead you to believe that they want this blanket ending of check-off arrangements. In fact, nobody was asked before the Bill was put together. The NHS employers were not asked; the local government employers were not asked; individual employers were not asked. It takes away all these ideas of localism and the idea that employers should have a right to talk to trade unions or not, as they feel, and reach agreements that they wish to have.

The Bill brings in draconian central planning, and all the discussion has been not just about devolution within the nations of Britain—Scotland, Wales and Northern Ireland—but also in English regions and the combined authorities. Combined authorities will be allowed to do everything, but what will be taken away from them is the right to talk to their staff trade unions about the arrangements that they want in place, either for check-off or not for check-off.

At the moment, any employer can withdraw check-off; it is in their gift. There is nothing in law that prevents them from doing that, and it would be virtually impossible to take industrial action to stop them doing it. And some employers do take us off check-off. Wandsworth did; one of the new private probation companies has just done it; and we deal with it as a local issue, because it is an issue between us and that employer, and maybe we will reach compromises. But the thing I will say, which seems to have been forgotten completely, is that we pay for these check-off arrangements. They are not the gift of the employer; it is not costing the taxpayer money.

I will give you examples: Fife Council and East Lancashire Hospitals NHS Trust. Both of them cost us at 5% for collecting it, and it does not cost them anything like 5%. Bradford City Council charges £38,000—that is the cost of running our social workers. You end check-off and you are talking away one and a half social workers in Bradford. Derbyshire County Council charges around £5,000 a quarter. Others will hold on to the money for three months, put it in the bank account, get interest on it—it is small at the moment, but it is usually fairly big—and then give us the money and they make arrangements from it.

What I will say is I do not believe that any taxpayer should pay for this arrangement. Where we do have agreements, we are more than willing to pay a commercial amount of money to have these arrangements stay in place. Taxpayers should not pay, but neither should central Government issue a diktat saying that employers are doing something unlawful in reaching an agreement with their local union reps about the collection from source of union dues when there are so many different areas where the member of staff can have deductions from salary, including MPs and councillors, which are denied to our members for reasons that we do not understand.

**The Chair:** Mr Prentis, can you also get the detail of that and send it to the Committee? We will distribute it. It has been a very useful piece of information and I think both sides would welcome it.

**Dave Prentis:** I am saying categorically here that we believe that taxpayers should not fund this arrangement. If that is the issue, we will make sure that we have stronger commercial arrangements.

**The Chair:** I well understand that. It is not your view; it is the evidence that you have come up with that we need the detail of for consideration. We have got eight minutes left and we have still got four questioners to ask their questions and get a reply, so could we be more succinct on both sides—the interviewees and the Members?

**Q398 Victoria Prentis:** I was a public sector worker myself for 17 years, and although you may feel that we have got it in for you on this side of the Committee, I learnt a certain amount about industrial relations in that time and I am fully aware that we are very lucky to have giants of negotiation strategy in front of us, helping us with this Bill.

Mr McCluskey, in a way that does not surprise me at all, has put forward his position in writing and he has given his position is on thresholds: 50% if he gets e-balloting—*[Interruption.]* Sorry, workplace balloting. Do the other three of you share that position?

**Dave Prentis:** I do not believe that there is a need for thresholds. If the aim is to increase participation—that was the pretence behind it—I believe in moving to e-balloting, but, more than that, workplace balloting. Do not make the assumption that all of our members have got access to computers. Our refuse collectors do not sit at a computer all day; they are out on the streets, collecting our rubbish, as so many other public service workers are.

We do want to bring in e-balloting. We do want a safe computer in the workplace, but we also want workplace balloting. You may have been a member of my union in the past, but I come from a union that, before our

merger in '93, we always had secret postal ballots that went to the workplace and the turnout was 70%. As soon as Thatcher's law came in that said that they had got to go to home addresses, it dropped to 22%.

**Victoria Prentis:** I will take that as a no.

**Frances O'Grady:** The TUC is clear, as I said before, that it is actually the ILO that the Government need to answer to. The real issue here that all good democrats should be focused on is how we improve participation in ballots across the board.

**Victoria Prentis:** I will take that as a no, too.

**Frances O'Grady:** It is a yes to modernising methods of balloting.

**Victoria Prentis:** But no to thresholds. Sir Paul?

**Sir Paul Kenny:** I am a negotiator.

**Victoria Prentis:** I thought you might be.

**Sir Paul Kenny:** My position is that no vote should not count, but that is a principled position I can hold. What Len McCluskey has done is put down a challenge: if people are serious about improving participation, come and talk. That may mean people have to move their principled positions, but I always understood that the end result was to find something workable and real. I do not know where you are going to put me down.

**Victoria Prentis:** I am going to put you with Mr McCluskey in my head.

**Dave Prentis:** It is a no to the two thresholds.

**Q399 Jessica Morden (Newport East) (Lab):** The ILO definition of public services talks about "essential". The Bill talks about "important". Are you clear from the Government so far how important public services will be defined and, crucially, which workers will be covered?

**Frances O'Grady:** No, and I do not think the Government are clear either. In particular, the proposal that so-called ancillary roles could be included is extremely interesting but has yet to be defined. It makes it very difficult to have an intelligent discussion about this aspect of the Bill when we do not even know what jobs and functions could be covered.

To give a practical example, if a call centre is providing public services as part of its work and for parts of those call centre workers' jobs, but it is based in the private sector, does it fall under the 50% threshold or the 40% threshold? Quite genuinely, how are unions supposed to run a lawful ballot when it is simply not clear how that would work in the real world? So far, we have not had an answer to those questions. It could be cleaners, call centre workers, ancillary staff—all sorts of job could be covered—but I am not sure how the Government's proposals are supposed to work in the private sector that is providing public services.

**Dave Prentis:** It will be a nightmare, and it will be a goldmine for solicitors because for every work group we try to define, it will be fought out in the courts. None of us want that, surely. It is so ambiguous and so badly worded that it is difficult to find out how essential these

people who are caught are. At the moment, it catches teaching assistants, who work in our schools at different levels, may only work at term time and, in many cases, are abused in the way they are treated, yet they may find themselves caught by this idea of important public services. It is ill defined and will lead to litigation going on for many, many months around disputes. Instead of trying to solve the disputes, we will be involved in fighting out in the courts whether or not we should be balloting, or whether we need an 80% majority or half of the members actually voting. It is going to be an absolute nightmare for industrial relations in public services.

**Frances O'Grady:** What is clear is that the Government are going way beyond any international definition of an essential service. International bodies are very clear that it is not enough to say you are further restricting strike action purely because of—however bad it is, however inconvenient and however disruptive to other businesses, that in itself cannot constitute a reason for further restrictions on the right to strike in certain sectors. In any case, the Government's definition—carefully worded, I think—of important services goes way beyond any international definition of "essential".

**The Chair:** We are moving into an area that we should be wrapping up. We should finish in about one minute, but I have leeway of up to five minutes. I will call Julie Elliott as the final speaker, but before I do, we may have a brief response from Stephen Doughty.

**Q400 Stephen Doughty:** Frances, you talked about the international context. We heard factual comparisons from Amnesty and Liberty. Obviously, it was David Davis who compared parts of the Bill to Franco's Spain. If the Bill was enacted as it stands, how would we compare internationally? Which countries would we find ourselves alongside?

**Frances O'Grady:** I always avoid naming particular countries because I am hopeful of persuading the Government that we should not be in that league. We already have what is widely recognised as one of the most restrictive legal frameworks on unions in developed western industrial democracies.

**Q401 Stephen Doughty:** But it would put us somewhere near the bottom.

**Frances O'Grady:** This would take us further down that very unsavoury league.

**The Chair:** I am sure that you can write to us on that subject, Ms O'Grady. It would be helpful.

**Q402 Julie Elliott (Sunderland Central) (Lab):** Paul and Len, we took verbal evidence this morning from David Palmer-Jones, the chief executive of SITA UK. He made what I regard as very serious allegations about officers from GMB, Unite and UCATT. Obviously, the latter are not present, so I cannot put the allegations to them. He was talking about intimidation at what he said was picketing, but, upon further questioning, turned out to be demonstrations in Teesside relating to issues with SITA. He said that officials of your unions tacitly approved of the tactics deployed—that is, intimidation—and were actively supporting them. I wanted to give you the opportunity to share your thoughts on that.

**Sir Paul Kenny:** I do not know what he said to you, but if he wants to write to me, I am happy to look into those concerns. I can tell you that Teesside is a bit of a flashpoint because it involves a company that is importing labour and paying them below the market rate, denying jobs to local people. That is always a difficult situation and there are protests about that. They come from a wide variety of people, including us. I checked yesterday what the situation was—I try to stay in touch with what I think are difficult areas—and I was told that there had been absolutely no arrests and that relations with the police were okay, because I ask those questions. I was told that if ever there is an issue, the inspector talks to whoever the group are, exactly as I described earlier, and if there are any concerns, they are relayed and then dealt with by the people on the ground.

I realise that that has been said to you and I appreciate the fact that you have put it to me. I have absolutely no knowledge of it. I would love to see some substantive evidence of it, and if there was some, we would deal with it. My latest check—presumably, the police can confirm this—is that there has not been any evidence. If there was any sort of behaviour like this, I expect the police would step in. They are there when they are needed, but relationships are pretty good, as I understand it. The dispute has been on for a while now, and to my knowledge not a single person has been charged with any sort of behaviour like this at all.

Forgive me if I am a bit sceptical of people coming along and saying, “At the bottom of the garden there’s lots of fairies.” There may be, but I have not seen them. I would like to see them before I start to legislate against them.

**Len McCluskey:** Like Paul, I try to keep abreast of sensitive issues, and this is a really sensitive one. It cuts to the very cohesion I was talking about in our society, because people are being brought in—migrant workers—and being asked to work at way below the national rates negotiated with employers. The company itself has a lot to answer for.

I checked recently on the newsreels, and, talking about this dispute, a spokesman for the police said that “officers then spoke with members of the group and facilitated a peaceful protest while working to minimise disruption to residents and businesses in the area.”

That sums up the way we would expect to conduct our business.

**The Chair:** Thank you. That brings us to the end of the evidence session. We are grateful for your attendance. You are obviously very busy people, representing an awful lot of people, so we are grateful that you did not send anyone else but came yourself.

**Sir Paul Kenny:** I beg your pardon, but if I could make one last point, this is it. We spent about three years of parliamentary time discussing whether we were going to charge for plastic bags; we have spent weeks talking about these major changes. None of us knows the implications of many of the questions you have asked. It seems that carrier bags are more important than the future of industrial relations and rights of workers in this country.

**The Chair:** Thank you very much.

### Examination of Witnesses

*Nick Boles MP and Matthew Hancock MP gave evidence.*

4.23 pm

**The Chair:** Order. We now come to our final session for today, in which we will hear oral evidence from the Department for Business, Innovation and Skills and the Cabinet Office. This session will last until about 5 o’clock. I know that you both know the drill very well because you have done Bills before. Minister, you have been here throughout, which is not usual for some Ministers. We are going to try to get through this as best we can, and the best way to do that is to be as succinct as possible. We recognise that you want to put on record various stuff that you have got from the Department, but please leave us enough time, because the whole purpose of this is to try to get evidence from you and ask you questions. Without further ado, Mr Boles, would you like to start?

**Nick Boles:** Thank you, Sir Alan. It is a pleasure to be in the hot seat now, rather than in the stands. I am going to give a brief opening statement, if that is okay—I will try to be very brief—on the main measures in the Bill, and then my colleague and friend Mr Hancock will address the facility time and check-off proposals.

We had what I thought was an absolutely gripping evidence session earlier with the four giants of the trade union movement, and we heard some pretty lurid language. The Bill was described as an ideological Eton mess, and as something straight out of the Norman Tebbit playbook. I think we are all aware of, and quite enjoying, the Labour party’s embrace of 1980s retro, which seems to have gripped them since the election. I would love to be able to live up to the caricature that has been painted, and I would love to have my name put, if only in very small type, at the bottom of a Bill that people were talking about in 100 years’ time as one of the most radical and dramatic Bills to change the laws of our country, but I am afraid that I have bad news for the Committee. The bloodcurdling rhetoric, although enjoyable and entertaining, is entirely out of place. The boring reality is that the proposals are modest. They are marginal adjustments to the rules governing strikes and members’ financial contributions. In two years’ time, I fear, this Bill and my role in it will be almost entirely forgotten, except in the privacy of my own bedroom.

I will quickly go through the main measures in the Bill, and then I am happy to take questions. I understand that the strike threshold proposal causes a lot of upset and argument, but the fundamental truth is that most strikes over the past few years would have met the threshold. Members of the Committee made reference to the fact that we did not get an absolutely glowing review from the Regulatory Policy Committee for the impact assessments on the first consultation. I regret that they were done in haste, but it is entirely my responsibility. The main mistake that we made, as the committee pointed out to us, was to make a crude assumption about the effect of the thresholds on the number of future strikes, because in that assessment, rather stupidly, we said that we thought that any strike that would not have passed the threshold in the past clearly would not pass it in future. Well, of course that is not going to happen. What will happen is that unions,

as you have heard, will make great efforts to ensure that the thresholds are met. In most cases, they are already met. I predict to the Committee that the thresholds will produce a small decrease in the number of strikes. Critically, however, there will be a large increase in the perceived legitimacy and validity of strikes among the public affected by them, which is entirely desirable.

We had a discussion on notice periods, and members of the Committee made a good argument for why it is surely not unreasonable to give people two weeks' notice, rather than a week, of something that could cause them to have to take a day off work or make alternative childcare arrangements.

There has not been much discussion on time limits for ballots, but it is an important measure. Currently, and in the recent past, strikes have taken place in the public sector on ballots that were passed two or three years previously. Frankly, many of the people who voted may no longer be working in the institutions where the strikes are taking place and the issues are surely not at the front of people's minds. The four-month time limit is therefore reasonable.

There has been much discussion on agency workers, so I simply point out to the Committee that withdrawing, as we propose, the prohibition on the use of agency workers in a strike does not require any agency worker to take up an offer of employment and does not require any employer to seek agency workers in the first place. We heard good arguments about levels of training and tensions with permanent staff. We also heard good arguments as to why, both for individual workers and for employers, it was unlikely to be something that would solve any problems. We simply believe that the option should exist.

Finally, on the much-debated rules regarding the political fund, we take a simple position, which is that if someone wants to support a political party, it is not too much to ask them to tick a box every five years that says, "Yes, I want to support political activity and a political party." If the political party believes in its arguments as passionately as members of this Committee do, I have absolutely no doubt that it will be able to persuade everyone currently contributing to political funds to carry on doing so.

**Matthew Hancock:** I am not sure that I can match my colleague for rhetoric, but I want briefly to set out the principles behind the two changes that are the Cabinet Office's responsibility for policy purposes and therefore mine. First, on facility time, clause 12 simply makes the change that public sector employers need to publish information on the amount of facility time, which is similar to a change that we made in the civil service that saved £52 million in the last Parliament. The first step before making any savings, however, was to publish the information, because we currently do not know how much taxpayer money is spent on facility time. Clause 13 contains a reserved power to be able to limit the facility time taken by union representatives to a percentage of working time, which is similar to the reasonable changes made in the civil service. A legal entitlement to facility time exists at the moment and we do not propose to change that in this Bill.

Secondly, check-off is a name for the relationship in which a trade union member, instead of paying their dues direct to the trade union, pays their dues through the employer taking the payment from the pay cheque

before paying it to the trade union. I think it is reasonable that the trade union relationship, which is valuable in many cases, is one that is between an individual and their trade union. Often, one of the primary purposes of trade unions is to mediate on behalf of their members. It is old-fashioned to think that the payment from one to the other needs to be intermediated by the very employer with whom the trade union is often the interlocutor, on behalf of the member.

These are reasonable changes. We have made them in the civil service, and the Bill simply proposes to broaden the principles and apply them to the public sector as a whole.

**The Chair:** Thanks very much. It is true that when every Member of Parliament is elected, then takes the oath and signs the book, they become seasoned politicians. I ask Members on both sides of the Committee to direct their questions to the appropriate Minister, rather than the collective, otherwise we will get very few answers done.

**Q403 Stephen Doughty:** We have heard some pretty interesting evidence during the course of these two sittings, and of course, on Second Reading and outside this House as well. We are in a situation where many Government witnesses could not appear to find reasons for the Bill, did not appear to have read or to understand parts of it, and certainly could not justify it. There have been passenger bodies who were not willing to comment on it; the police, who think parts of it are unworkable; the unions, who obviously do not want it; civil liberties organisations, who do not want it; legal experts, who do not want it and think it violates various conventions; and devolved Governments, who do not think they are going to give their legislative consent for significant parts of the Bill to go forward. So where was this dreamt up? Was it done by Minister Hancock? Was it in Minister Boles's bedroom? Or was it the Chancellor? We seem to have a Bill without a purpose and without a need that appears to be largely unworkable. How was this dreamt up?

**Nick Boles:** Well, Mr Doughty, I am sure you remember—you were paying as close attention as I was—the evidence that was given by the Confederation of British Industry. The director general or secretary general—whatever he is called—John Cridland made it clear that it was a policy that the CBI had adopted five years ago and had been campaigning on for five years. We in the Conservative party think that the business community is important and should be listened to. You will also be aware that in the last five years, in which we were in government in coalition, there were a number of strikes—I must always emphasise that these are the great exception to strikes in general—that caused huge disruption to members of the public who have no alternative means of securing the service that the organisations offer.

**Stephen Doughty:** I—

**Nick Boles:** I am just going to finish, Mr Doughty. Those strikes cause great disruption to members of the public, and they did take place either on very old ballots, or on very old ballots that were also secured by a very low turnout. Therefore, we have put together these proposals, which we think the public support.

**Q404 Stephen Doughty:** We have heard the myth of mass industrial action that the Government are presenting, when the facts simply do not bear that out. It is important that we use the latest evidence—

**Nick Boles:** Did you hear me say “mass industrial action”? I do not think I said that. I said it was very much a minority of industrial action.

**Q405 Stephen Doughty:** Yes, but that is not the impression created by Ministers. In the media, we had Minister Hancock going out over the summer talking about—*[Interruption.]* I have here what Minister Hancock said over the summer. He was talking about having “hit squads” to deal with strikes. He said:

“We are ready to use the Cobra system if there are strikes. We are ready to respond”—

to a wave of industrial action. Talk about 1980s rhetoric—that is exactly what we are getting from Minister Hancock. Let me return to the facts. The Ministers should be familiar—

**Matthew Hancock:** Hold on.

**Q406 Stephen Doughty:** Did you say those things, Minister?

**Matthew Hancock:** You are confusing the difference between headlines and what I said in that case.

**Stephen Doughty:** I have your exact quotes here, Minister.

**Matthew Hancock:** Hold on, because you have just accepted that you had moved away from the facts and are now having to return to them, and I look forward to that. There is one further thing that motivates some of the changes in this Bill, and I know it is not something that the Labour party cares much about.

**Q407 Stephen Doughty:** Minister, did you say the things that were reported in the summer?

**The Chair:** Order.

**Matthew Hancock:** In the last Parliament, in the civil service, which is about a tenth of the public sector by headcount, the changes proposed in this Bill, which would be enabled as reserve powers in this Bill, saved over £50 million. I know that saving and looking after taxpayers’ money is something that different MPs care about more or less, but I think it is important—and I know it is important to the general public—that we run public services as effectively and efficiently as possible. Saving taxpayers’ money is important, and at the moment we do not know how much taxpayers’ money is spent.

**Q408 Stephen Doughty:** Minister, we will come to the potential costs of the Bill in due course. Given that you are speaking about the public sector and that you wanted to return to facts, could you tell me how many working days were lost due to industrial action in the past six months, based on the latest figures from the Office for National Statistics? What proportion is that of the overall number of working days in the public sector?

**Nick Boles:** Sir Alan, you may remember, though of course you have not been chairing all the sessions, and other Committee members will certainly remember that,

on the first day of evidence, we had a lively debate about the difference between direct impacts of days lost—we have always accepted and been very clear that the number of days lost is low, historically; that is very welcome—and the indirect impacts on people who have to completely reorganise their lives because the bus they use to get to work is not running or the school to which their children normally go of a morning is closed.

That is what we are focusing on, and we have been explicit: this is not trying to dramatically reduce the number of days lost to strikes. We have never said it is. We have acknowledged that the number of those days is low. We have said that we are trying to reduce the impact of strikes with low support on members of the public. Their days lost and their disruption is not measured by the ONS. I would love it to be measured by the ONS, though I suspect it might be quite challenging to capture those data. It is a real thing. You just have to ask the public what they think of our proposals, and they clearly support them.

**Q409 Stephen Doughty:** So we are making a Bill based on evidence that the Minister admits does not exist. The British Chambers of Commerce and the Confederation of British Industry could not provide that evidence either. I have the facts: for the public administration, defence and social security sector, 145,400 working days were lost to strikes in the six months before August 2015, according to the latest ONS statistics. The total number of working days in a year is 393,580,000. The days lost to strikes are less than 1%; it is a tiny proportion.

**Nick Boles:** It will not come as a surprise to any member of the Committee that the Labour party is not interested in what the public think about the situations with which they are faced. This idea that everything important in life is captured in an ONS statistic is, frankly, perhaps what has led the Labour party to its current position. We take the view that when the public say they do not like being disrupted, they do not like having to miss work and they do not like having to look after their children mid-week because a strike that took place on 37% turnout closes the school their child goes to, we should pay attention. These proposals have been supported by a great majority of the public when tested in opinion polls, and we are doing the public’s bidding on this.

**Q410 Stephen Doughty:** With respect, Minister, nobody likes being disrupted. We have heard repeatedly from witnesses that industrial action is always a last resort. We have also heard extensively about how unions put in extensive measures, particularly when there are health and safety issues and life and limb are at risk, to deal with that and ensure the public are not adversely affected. Whether you look at the TfL figures for the underground or the health and safety figures that Frances O’Grady mentioned, we know that the days lost or disrupted for citizens and customers in this country are vastly outnumbered by those lost due to causes other than industrial action. This is a huge sledgehammer to crack a relatively small nut.

I want to ask a few specific legal questions of Mr Boles and of Mr Hancock, given the impact on the areas he covers. We have heard clearly about the Bill’s potential conflict with the devolution settlement. We heard very

clear evidence from both the Welsh and Scottish Governments that they would consider withholding legislative consent and that they believe this could lead to significant challenges. We have also heard about potential breaches of international conventions, let alone breaching principles of natural justice.

We talked about costs to the taxpayer. Given the cost to the taxpayer of, for example, the Supreme Court case that the Welsh Government were involved in with the UK Government over the Agricultural Wages Board, what estimate have the Law Officers made of the potential legal cost to the Government as a result of this legislation being challenged in its current form?

**Nick Boles:** I am glad to say the Law Officers have advised us that all the proposals in the Bill are entirely compatible with both devolution law and the European convention, so we are not anticipating legal costs to fight. If, of course, trade unions or others want to challenge, we will defend robustly our proposals, but we are absolutely satisfied that they abide by all the conventions that apply.

**Q411 Stephen Doughty:** Do you plan to go back to them, given some of the evidence that has been presented and the very public positions of the Scottish and Welsh Governments?

**Nick Boles:** No, because, as I think you will remember, the representatives of the two Governments did accept, although grudgingly, that employment is currently a matter that is reserved to the UK Parliament, so it is entirely proper for us to make changes to employment rules and apply them across the United Kingdom. They might prefer it was otherwise, but they accepted that that is the current legal position.

**The Chair:** Ms O'Grady spoke on this matter and promised to provide written evidence to all Committee members, so I suspect it will come up again when line-by-line scrutiny gets under way.

**Q412 Stephen Doughty:** On balloting, the Minister and other witnesses have referred extensively to the Speaker's Commission on Digital Democracy in advancing an argument against the use of e-balloting that I think most members of the public would find absolutely nonsensical, given that if we want to increase participation, we should increase the methods by which people can participate. The evidence to the commission from the Open Rights Group, which I think influenced what the Minister has been saying, made it clear that it was based on a comparison between general election voting in polling stations and online voting. The evidence did not consider the current union context of postal ballots under the Trade Union and Labour Relations (Consolidation) Act 1992, so it is not relevant to the discussion of the Bill. Why does the Minister keep citing the Speaker's Commission on Digital Democracy as evidence to stand in the way of e-balloting?

**Nick Boles:** I do not know why voting in a strike ballot is essentially different from voting in other elections. We have been very clear about our position and the Prime Minister has replied to Mr McCluskey's letter to make it clear that, as I have said several times—I certainly said it in the wind-up on Second Reading—we do not have an in-principle objection to the exploration of alternative methods of voting, including e-balloting,

but we have some practical concerns that were set out very well in the evidence from the Open Rights Group and also in other discussions about various forms of voter identity protection, voter fraud and the like. If those practical objections can be overcome, this question might well be revisited in future, but we are not currently satisfied that voting can be done safely online in these elections. That may well change.

**Q413 Stephen Doughty:** Have you taken advice from the Electoral Reform Society? It advises that, in 2014 and 2015, the Nationwide building society, Yorkshire building society, the Co-operative Group, the British Medical Association, the Chartered Institute of Marketing, the Federation of Small Businesses and the Institute of Chartered Accountants in England and Wales—the list goes on and on—have all used these methods. Most members of the public listening to this debate will struggle to understand why the Government are not willing to come forward, have a sensible discussion about e-balloting and secure workplace balloting, to which I can see no objections whatever, and get to a solution.

**Nick Boles:** The hon. Gentleman has started that debate, Sir Alan, and I am sure that this is not the end of it. We will debate the different forms of voting and the practical objections, or otherwise, to them. All we are saying are that our concerns, which we have not just made up—they are shared by others, independent of Government, and were elaborated upon in the Speaker's commission, which met only last year—have to be overcome. Frankly, internal elections in organisations to choose office-holders have to meet a much lower test than elections that involve the withdrawal of labour, the closure of services and great disruption to the public, so we are right to attach a higher level of demand—

**Stephen Doughty:** But it is fine for the annual general meetings of major financial organisations.

**The Chair:** I think we have tested this enough. We will move on, because we have very little time remaining and there are Members on both sides who want to ask questions. These issues will be tested in Committee when we reach that part of the Bill and more evidence is presented.

**Q414 John Howell (Henley) (Con):** It is clear from the evidence we have heard that a charge is being made that your proposals go against the International Labour Organisation. Would you like to deal with that now?

**Nick Boles:** There is no question but that representations have been made to the ILO, and within ILO discussions, that some of the restrictions that we propose could conflict with ILO provisions. What is clear is that the governing body of the ILO has never accepted those arguments. Having looked at all the governing body's comments and decisions, we are entirely satisfied that nothing that we propose would conflict with them. Reference has been made to the European Economic and Social Committee; the truth is that we do not entirely accept its actions and status. It often says things that we and the governing body of the ILO do not agree with.

**Q415 John Howell:** Like you, I listened intently to John Cridland's evidence on Tuesday, but the intention of the questions we have been asking has not been to show that the Bill is a pro-business measure. What we have tried to show is the impact of that on parents, patients, carers and commuters. I think we have actually demonstrated that quite effectively. Would you like to comment on how that fits into the purpose of the Bill?

**Nick Boles:** That is absolutely right. We were always thinking, when drafting the Bill, about what to tell the public when a strike has happened to reassure them. The public support unions' and individuals' ability to strike, and they often would like to feel that they have the ability to avail themselves of that right in an extreme situation. There is absolutely no question about it; the public do not support something that withdraws people's legitimate right to withdraw their labour in a case where they are being badly treated or a dispute that cannot be resolved otherwise. The public are frankly not very impressed when a strike happens that closes schools or bus services on an incredibly low turnout or a ballot that is several years old, and we are responding to that concern.

**Q416 Chris Stephens:** Mr Boles, in relation to political funds, I want to outline my discomfort with dealing with this issue via the Trade Union Bill and not through other mechanisms in Parliament. Political funding should be dealt with across the board. I also point out to you that it is not just about those trade unions that fund the Labour party—those unions are in the minority, actually—but a trade union's ability to campaign to change Government policies. The general secretary of the PCS made that point. Do you not think that it is inappropriate to deal with political funds only through this Bill and not to look at political funding arrangements across the board?

**Nick Boles:** I do not, and perhaps I could explain why. We have heard about the contributions that the political funds made to HOPE not hate. We certainly heard that on Second Reading. We have heard of other very worthwhile causes that are supported by unions' political funds, but we live in a society, thank God, where there is an amazing proliferation of charities and campaign groups that are successfully and endlessly raising money from members of the public. They are lobbying for all sorts of changes in laws and practices here and around the world. It does not seem to me to be an unfair restriction or to be likely in any way to undermine the support for fantastic organisations, such as HOPE not hate, to say that if an individual wants to contribute part of their income towards an organisation, they should make an active choice to do so. That will not choke off any worthwhile campaigning activity in this country, where there is a huge array of it happening already.

**Q417 Chris Stephens:** That breaches the Churchill convention, do you not agree? What you propose in the Bill breaches what has been referred to as the Churchill convention.

**Nick Boles:** Yes, there was a gentleman, a member of the Labour party, who gave extensive and fluent evidence earlier this morning, which we were all gripped by. He referred to a Churchill convention. Winston Churchill was a great man who said many great things, but not everything he said necessarily becomes a constitutional convention.

**Q418 Chris Stephens:** Professor Ewing also referred to the Churchill convention.

**Nick Boles:** Yes, he would, wouldn't he?

**Q419 Chris Stephens:** Surely employers, when they are given notice of the ballot—currently, it is a seven-day period—at that point they know that there is a potential for industrial action, usually 45 days down the line. Why would you want to change the strike action period from seven days to 14?

**Nick Boles:** Again, this is a very revealing question and, I hope, a revealing answer. This is less about the employers than it is about the public. The public are not going to know, necessarily, because frankly we do not all read the papers or listen to the radio every day, when notice of a ballot has been given. What they will know is when a union that effectively controls a service on which they rely will have a strike. That is when the public, as colleagues of mine have adequately described, will know. Frankly, it could make a huge difference to the public if they had two weeks' warning, rather than a week's warning, to have to arrange emergency childcare because their school is going to close.

**The Chair:** I appeal to Members that we have 10 minutes or so left and five speakers. Could both Members and Ministers please be a bit more succinct?

**Q420 Chris Stephens:** I will just ask Mr Hancock one question. Why have the devolved Administrations not been consulted or contacted by you in relation to facility time or check-off? Surely, they should have the right to maintain good industrial relations by keeping those things in place.

**Matthew Hancock:** The reason is that this area of policy is reserved, as confirmed by the Smith commission.

**Q421 Chris Stephens:** Industrial relations is not reserved. That is the point. Surely, the Scottish and Welsh Governments have the right to make a policy decision on industrial relations in terms of check-off and facility time.

**Matthew Hancock:** This is a question of labour market policy. Labour market policy is reserved, as confirmed by Smith.

**Q422 Chris Stephens:** So it is okay for a staff association to use check-off, but not a trade union?

**Matthew Hancock:** It is very different. There is a difference between deducting something from source when it is paid to an external and outside body compared with when it is part of a wider set of non-pecuniary remuneration such as a staff association or, indeed, a pension. These are two completely separate matters.

**Q423 Chris Stephens:** Charities, credit unions—these all come off employees' salaries. I am aware of many organisations that are external bodies that get check-off arrangements. Are you looking at them as well?

**Matthew Hancock:** No. It is perfectly reasonable. For instance, your pension, which is often deducted at source, is completely different. It is part of your non-cash benefits of being in work. If you look at each item on its merits, in a modern trade union system and a modern labour market—this is an area of labour market policy—it is perfectly reasonable and sensible that the relationship between a union and its members is just that and not one that is intermediated by the employer.

**Q424 Chris Stephens:** I think the Minister needs to do more research on this.

**The Chair:** Let me appeal once more, finally, to Members. You only have a few minutes left and five Members want to ask questions. To be fair to each other, make it short and make the replies short, too.

**Q425 Nusrat Ghani:** The Bill aims to modernise trade unions in just the way that work is modernised. Very few people now get a pay packet; the salary goes into your bank account. Surely, in that way, any worker should be able to choose whether they want to subscribe to a union or which union they want to subscribe to. That is why there needs to be a change in check-off.

**Matthew Hancock:** I agree with that and I will add something to it. It improves public protection because it ensures that it is an active choice of the member to be a member of the union, rather than getting the form in a pile of paperwork on day one, signing it off and the money always going out of your pay cheque before you receive it.

On check-off, I reassure Members about how sensible this change is by quoting the PCS union, which is the biggest union in the civil service. As of this morning, its website said:

“It’s quick and easy to sign up for direct debit—you can do it online in a couple of minutes... We are asking all members to do something very simple but very important—get ready to switch payment of your subs to direct debit. It only takes a few minutes”.

That demonstrates that this is not something that people should overreact to. Rather, it is a perfectly sensible change that has taken place largely already within the civil service. The PCS, which is the union that is mostly affected, confirms on its website that it is very simple and only takes a few minutes.

**Q426 Jessica Morden:** In the previous session, we discussed the definition of important public services. From talking with Frances O’Grady, it seems that trade unions obviously are not clear who is going to be affected. Dave Prentis said he thought it was a “nightmare”, “ill defined” and would “lead to litigation”. Will we have a chance to debate these regulations and why have they had no consultation with you about what this will mean to them in practice?

**Nick Boles:** To correct you, we have had consultation, which is why it is not yet clear. The consultation only closed as the other consultations did. It is one of those funny things in government: you either get into trouble for not being specific, or you get into trouble for not having consulted. We wanted to say that we are clear about the sectors that this should apply to—health, education, transport, fire, nuclear decommissioning and border control. Then the question is, is it right that it should apply to anybody and everybody working within those sectors, whether in the private sectors, ancillary jobs or core jobs? Is there a practical way of narrowing down? We consulted on this point. We have had a lot of responses to the consultation. We will bring forward specific proposals before the legislation has received Royal Assent.

**Q427 Jessica Morden:** It is just me, then. Why, then, have we not seen the draft regulations before now?

**Nick Boles:** Because we were waiting to analyse the very, very substantial response to the consultation that finished, I think, only at the beginning of September.

**Q428 Edward Argar:** I have two very brief questions, the first of which is for the Minister for Skills. Minister, you have been very clear that you respect the right to strike, as we all do, and that this Bill does not, despite some alarmist suggestions, remove that right. The NASUWT actually acknowledged in its evidence that strikes would continue. Would it be a fair characterisation to say that it ensures that all the people and families currently at risk of having their daily and working lives significantly disrupted by strike action on a very low turnout will have a slightly more balanced set of protections to ensure that strikes have genuine support?

**Nick Boles:** Yes, exactly. The NASUWT should know well, because there have been strikes in the teaching profession on a very low turnout and on ancient ballots. Ultimately, that just really irritates people. They accept that they are going to be disrupted in a legitimate strike; they just want to know that it is at least recent and that enough people supported it.

**Q429 Edward Argar:** I also have a quick question to the Minister for the Cabinet Office, reflecting on the comments that were attributed to him over the summer. My recollection—I hope he will correct me and clarify this—is that he was saying, quite rightly, that if there were a major strike that would significantly impact people’s daily and working lives, the Government would do what we would expect them to do and ensure that they put the British public first and do what they could to minimise the disruptions. Is that a fair characterisation of what you actually said, Minister?

**Matthew Hancock:** That is a fair characterisation. It is a remarkable position for the Labour party to come to and a point of political point scoring if they think it is wrong for a Government Minister to say that we will do all we can to protect the public from the disruption of major strikes. This was in the context of Len McCluskey calling for a general strike and a series of unions making a lot of noise about that. It is perfectly reasonable for the Government to use their co-ordinating facilities to ensure that the response to a strike—especially a generalised and widespread strike—is as well co-ordinated and reasonable as possible. The idea that a Government should not use such facilities is, frankly, ludicrous.

On the same point, I would add one other thing. This is an evidence session, so it is important to bring a few facts to bear. When Mr Doughty talked about the number of working days lost, it struck me that there was something odd about saying “over the last six months”, because that is a very unusual way of using statistics. It rankled because it did not quite ring true, and yesterday I read the labour market statistics that the Office for National Statistics published. In 2011, 1.39 million working days were lost from labour disputes. In 2014, 788,000 working days were lost. When there is further debate on this, which no doubt there will be in Committee, people should probably use the ONS statistics, rather than the odd attribution made by Mr Doughty.

**The Chair:** If both sides are not being helpful, I am going to be. I want to ensure that the Members who are left to ask questions can ask questions. If they are not replied to in this Committee, I will ask the two Ministers

to go away and reply to them in writing. I am going to ask Members to be very succinct in what they are asking for.

**Q430 Ian Mearns:** We are clearly in the throes of going through the Bill. Do you not think it is a bit odd, given that this is an evidence session, that we are going through the Committee stage of an important Bill without seeing the evidence that has been thrown up by the consultations that are clearly related to the enactment of the Bill? Is that not a bit perverse?

**Nick Boles:** No, because the consultations that we have been conducting have been about either the proposals that are not in the Bill—the thing that has got everyone very excited about restrictions on online campaigning was a question in a consultation about whether current offences sufficiently captured any criminality that might take place online. We have asked that question; the responses have come back; and we will be concluding and bringing that forward to the Committee. It has not been about evidence.

On the important services sectors, we have been very clear which sectors we think should be in the Bill—that was in our manifesto in most part. The only question has been: should it be all workers or some? That is a classic matter to settle through regulations, but we will be bringing forward our proposals before Royal Assent, so that everyone can discuss the detail of the regulations as well as the main measures in the Bill.

**The Chair:** Minister, I do not want you to reply orally to the following questions; I want you to reply in writing, if you can. That is the only way that we will get the questions in.

**Q431 Ian Mearns:** You mentioned non-cash benefits of work. Would you not accept that being a member of a trade union brings non-cash benefits such as legal protection?

**The Chair:** The Minister will reply in writing.

**Q432 James Cartlidge:** I was merely going to quote Roy Rickhuss, the general secretary of Community, which includes a lot of steelworkers, who said on Tuesday to the Committee:

“I do believe a threshold of 50% plus one is fair and reasonable”.—*[Official Report, Trade Union Public Bill Committee, 13 October 2015; c. 27, Q66.]*

We heard today from Paul Kenny that his position was that he would negotiate and we heard from Mr McCluskey that he is willing—*[Interruption.]*

**The Chair:** Question.

**James Cartlidge:** You get the point. There seems to be growing support for the proposal from some moderate voices.

**Nick Boles:** I think that is the first time that Len McCluskey has ever been described as a moderate—he might shoot you, Mr Cartlidge.

**Q433 Jo Stevens:** I have a question and I would be very grateful for an answer in writing from the Minister for the Cabinet Office. The Bill will give powers to extend the facilities time cap to the private sector. Which private sector businesses do you intend to apply that facilities time cap to? Bear in mind that we heard evidence from John Cridland on Tuesday that private sector employers have no strong views or attach any importance to that.

**Q434 Julie Elliott:** My question is to Minister Hancock. We heard evidence this afternoon that check-off actually makes a profit for employers in the public sector and figures were quoted about the numbers of workers who were employed as a result of the profit the public sector makes out of that. Will he answer in writing why he thinks it is correct to put people out of work as a result of removing the check-off facility, the obvious consequence of removing funding from the public sector?

**Matthew Hancock:** I dispute the premise of the question, but I will answer in writing.

**The Chair:** Stephen Doughty, very briefly.

**Q435 Stephen Doughty:** Given what the Minister said, it would be very helpful for the Committee—perhaps you can arrange this, Sir Alan—to have a full compendium of the ONS labour market statistics, including all of the forms of industrial action and how those compare with days lost for other reasons. I think that the Minister is selectively quoting.

**The Chair:** Members, that is the end of today's session. We are very grateful to everyone who participated and the final Ministers in particular.

*Ordered.* That further consideration be now adjourned.—*(Stephen Barclay.)*

5.2 pm

*Adjourned till Tuesday 20 October at twenty-five minutes past Nine o'clock.*

**Written evidence reported to the House**

TUB 27 SUEZ (formerly SITA UK)