NASUWT
The Teachers' Union

CONSULTATION RESPONSE

Department for Business and Trade Consultation on the Right of Trade Unions to Access Workplaces

GENERAL COMMENTS

1. NASUWT welcomes the opportunity to respond to the Department for Business and Trade (DBT) consultation on the right of trade unions to access workplaces.

2. NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.

3. NASUWT recognises the need for good jobs and a stronger economy that delivers for working people. It is therefore welcome that the Government should look at the vital role that trade unions play in addressing issues associated with insecurity, inequality and low pay and ensuring fairer outcomes for workers as part of its *Make Work Pay* plan.[1]

4. The decline in the coverage of collective bargaining and unionised voices in the workplace has resulted in the rise of flexible contracts and precarity in the profession, as unions and workers have been unable to negotiate better terms and conditions and more secure work.

5. For example, data from the Office for National Statistics (ONS) Average Weekly Earnings Survey shows that real wages have stagnated with the real total and regular pay at levels similar to 2007/08, and close to a quarter of full-time jobs

[1] https://www.gov.uk/government/collections/make-work-pay

have a low weekly wage.[2] This creates a situation where many experience in-work poverty and are faced with having to turn to food banks in order to support their families., Indeed, research has shown that 56% of low-paid workers with dependent children had been forced to use food banks due to severe hardship.[3]

6. Furthermore, the number of those employed on zero hours contracts has increased consistently to in excess of one million since the second half of 2022,[4] meaning that a significant number of workers face the risk of more precarious, intermittent and insecure work.

7. Overall, between 1995 and 2024, union membership levels among UK employees fell from 7.1 million to 6.4 million, representing only 22% of the proportion of employees.[5] This is a far cry from the 13.2 million employees who were trade union members back in 1979.[6]

8. In addition, the number of UK employee jobs that have wages set through collective bargaining has dropped from 50% in 2005 to 39% in 2023.[7] Indeed, the UK is below the Organisation for Economic Co-operation and Development (OECD) average and is lower than almost every other European Union (EU) Member State in terms of collective bargaining.[8]

9. It should be noted that collective bargaining and higher trade union density in workplaces is associated with a smaller share of low-wage workers and high minimum wages. For example, EU Member States with a high collective barging coverage (e.g. 80% or more) tend to have a smaller share of low-wage workers.[9]

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[2] https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf

[3] https://www.livingwage.org.uk/news/work-poverty-causing-misery-over-half-low-paid-parents-forced-turn-food-banks%C2%A0

[4] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts

[5] https://www.gov.uk/government/statistics/trade-union-statistics-2024/trade-union-membership-uk-1995-to-2024-statistical-bulletin#:~:text=%5Bfootnote%201%5D.1995%20to%2022.0%25%20in%202024.

[6] Ibid.

[7] https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf

[8] https://bills.parliament.uk/publications/57051/documents/5400

[9] Ibid.

10. This is supported by an International Monetary Fund (IMF) Working Paper that shows that reduced bargaining power for workers results in a drop in real wages relative to what they would have been.[10]

11. Research by the National Institute of Economic and Social Research (NIESR) suggests that trade unions involved in collective bargaining have historically helped in limiting wage inequality and raised the pay of the lowest paid in bargaining units, as well as generally improving terms and conditions.[11]

12. Indeed, research undertaken by the Chartered Institute of Personnel and Development (CIPD) found that of those employers with employee representative arrangements, only 3% said that there were no benefits to having employee representatives in the workplace.[12]

13. The evidence presented above shows the central role that trade unions have in raising living standards, acting as a vehicle for better pay, safer working conditions and fairer workplaces.

14. Currently, existing legislation provides very little scope for an independent trade union to access workplaces, other than as part of the ballot process for trade union recognition, the purposes of collective consultation on proposed redundancies (Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) – and/or to support a member at a disciplinary or grievance hearing under the Employment Rights Act 1999.

15. These arrangements are not fit for purpose and have significantly impacted on trade union right of access and the ability of trade unions to bargain collectively on behalf of members, as demonstrated by high-profile cases such as GMB's attempt to access Amazon during its 2024 recognition ballot.[13]

16. The rights conferred on trade unions in the UK do not offer scope to recruit or investigate workplace issues and sit outside numerous International Labour

[10] https://www.elibrary.imf.org/view/journals/001/2012/008/article-A001-en.xml
[11] https://www.niesr.ac.uk/wp-content/uploads/2021/10/Bryson-and-Forth-2017-lit-review-4.pdf?ver=ols1gmVztDcbNtnSCM58
[12] https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/collective-employee-voice-report-july-2022_tcm18-110238.pdf
[13] https://www.tuc.org.uk/blogs/amazon-dispute-gmb-pushes-historic-recognition

Organisation (ILO) conventions,[14] as well as the ILO Committee on Freedom of Association (CFO), which references the necessity of access to workplaces for trade unions and that governments should guarantee the access of trade union representatives to workplaces.[15]

17. Indeed, the legislative barriers in the UK impose additional hurdles well before any access is permitted, as a trade union seeking recognition is expected to have a determination from the Central Arbitration Committee (CAC) to the effect that members make up at least 10% of workers in the bargaining unit and that the majority of these would favour trade union recognition.

18. As such, it has been argued that this '*requires the Union to have virtually won the battle to win over members before the fight for trade union recognition can begin, despite the lack of a statutory right of access for recruitment purposes.*'[16]

19. The Union welcomes the Government's commitment to modernise industrial relations by addressing issues associated with the right of trade unions to access workplaces, as this will help address the imbalance of power between worker and employer and improve the bargaining position of workers and trade unions.

20. If the Government is determined to intervene to ensure that the collective voice of workers is stronger and contributes to better workplace conditions, higher standards of living and greater equality, then trade unions must have the right to access workplaces and organise.

21. NASUWT maintains that the right of trade union entry to the workplace should be seen as essential component of the freedom of association.

[14] https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243 and https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C087,/Document

[15] https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3949137,2#:~:text=Facilities%20for%20workers%20representatives18&text=The%20Committee%20has%20drawn%20the,functions%2C%20including%20access%20to%20workplaces.

[16] https://academic.oup.com/ilj/article/54/3/597/7917392

SPECIFIC COMMENTS

Please indicate whether you are responding:

- As an individual
- As an academic, or on behalf of an academic or research organisation
- An employer
- A legal representative
- A business representative organisation (please specify)
- A trade union or staff association (please specify) – The National Association of Schoolmasters Union of Women Teachers (NASUWT – The Teachers' Union).
- A charity or interest group
- Other – please specify

Which region are you located in?

- North-East
- North-West
- Yorkshire and The Humber
- East Midlands
- West Midlands
- East of England
- London
- South-East
- South-West
- Wales
- Scotland
- Northern Ireland

What sector are you based in?

- Accommodation and food service activities
- Activities of households as employers; undifferentiated goods and services-producing activities of households for own use
- Administrative and support service activities
- Arts, entertainment and recreation
- Agriculture, forestry and fishing
- Construction
- Education
- Electricity, gas, steam and air conditioning supply

- Financial & insurance activities
- Human health and social work activities
- Information and communication
- Manufacturing
- Mining and quarrying
- Production
- Professional, scientific and technical activities
- Public administration and defence; compulsory social security
- Real estate activities
- Services Sector
- Transportation and storage
- Water supply; sewerage, waste management and remediation activities
- Wholesale and retail trade; repair of motor vehicles and motorcycles
- Other service activities

Section 1A: How to apply for access and respond to a request for access

Question 1 – Do you agree access requests and responses should be made in writing?

- Yes
- No

22. NASUWT agrees that it makes sense to create a standardised, transparent system for receiving access requests in writing, so there is a record held by all parties involved and it can be effectively monitored by the CAC.

Question 2 – Do you agree access requests and responses should be provided directly via email or letter?

- Yes
- No

23. NASUWT agrees that letters and/or emails should be provided directly when trade unions and employers are dealing with any requests and responses, as this enables a record of any communications to be recorded and retained by both parties.

Question 3 – Do you agree access requests and responses should be made through a standardised template provided by the government?

- Yes
- No

24. NASUWT believes that in order to avoid any confusion that could impact or delay trade union access, it would be prudent that requests and responses are made using a standardised template.

25. However, any standardised template provided by the Government must be fit for purpose and should not be too prescriptive or overly complicated in respect to the information that a trade union must provide when seeking to gain access to a workplace.

26. Given this, the Union maintains that any template for requesting access should be simple and not create unnecessary administrative and bureaucratic burdens on trade unions.

27. Furthermore, it is important that the CAC and employers take a pragmatic approach to access requests in order to avoid situations where the failure to provide prescribed information is used by more unscrupulous employers to challenge an access request.

Information contained within access requests from the trade union

Question 4 – Do you agree with the proposed information to be included in a trade union's request for access?

- Yes
- No

28. NASUWT does not agree with the proposed information to be included in a trade union's request for access, as we believe it is overly prescriptive and could be used by more unscrupulous employers to challenge an access request.

29. For example, the proposed list contains reference to information to be included that a trade union may not have access to, or be reasonably expected to know at the time of the request, such as the description of the group of workers that a trade union is seeking access to,[17] especially if a trade union is looking to organise and recruit at a workplace or is not aware of the types of worker in a workplace.

30. As such, any proposed template will need to take account of this and provide for a trade union to say 'all workers' or similar in order to avoid prejudicing their right of access.

31. It cannot go unnoticed that the requirement to provide the list of information detailed in the consultation runs the risk of trade union requests for access being turned down,[18] thereby creating the possibility of unnecessary acrimony and disharmony in the initial interactions between a trade union and the employer.

32. It would therefore seem reasonable that some of the information that is currently proposed to be provided is subject to discussions with the employer once the access request has been granted, such as the date of the first access visit, as well as the period between access being granted and first access visit taking place.

33. The Employment Rights Bill sets out a minimum of two days' notice for access visits and NASUWT would expect that any variation on this is subject to discussions and agreed with the employer.

34. In regards to providing information regarding the purpose of the requested access, NASUWT is concerned about the purpose and rationale of the question, particularly as the purposes of access are clearly laid out for both trade unions and employers as being, '*to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union); to facilitate collective bargaining.*'[19]

[17] https://assets.publishing.service.gov.uk/media/68f905d40794bb80118bb7b2/make-work-pay-consultation-right-of-trade-unions-to-access-workplaces.pdf
[18] Ibid.
[19] https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf

35. In addition, it should be noted that the purpose of access to a workplace may change and evolve over time. For example, the initial reason could be to organise and recruit members and this could evolve into discussion on a specific issue in the workplace that leads into a request for trade union recognition.

36. As stated previously, there is a risk that the requirement to provide the purpose of the requested access will result in requests being turned down if an employer believes that the access purpose has changed. Given this, it is likely that trade unions would list all the access purposes, and, in doing so, render the inclusion of this on the template pointless.

37. When a union is already recognised for collective bargaining, there are clear differences in the form of access that will be required in comparison with the other access purposes. The proposed information to be included should enable a trade union to capture this accordingly, if it believes it is relevant to its request.

38. On the specifics of the type of access that is requested (e.g. physical and/or digital), NASUWT maintains that the default position should be that a trade union automatically has access to both, unless specifically stated otherwise. In doing so, a trade union automatically has access to all workers at a workplace, such as those who may work unsociable hours.

39. If a trade union is specifically seeking physical access, NASUWT maintains that there must be a standalone duty on employers, including large, multi-site employers such as multi-academy trusts (MATs), to provide all the relevant details to trade unions who wish to submit an access request.

40. In relation to the proposal to provide details on the number of members a trade union has at workplaces, NASUWT is strongly opposed to this, on a number of levels.

41. To begin with, if a trade union is seeking access to a workplace to organise and recruit, then it may not be in a position to provide information on the number of members it has at a workplace.

42. In addition, the Union is unclear as to the purpose of disclosing the number of members it has at a workplace as the provisions within the Employment Rights Bill and the consultation make no reference to a membership threshold by which a trade union can request access.

43. Indeed, this would appear to sit at odds with the fundamental purpose of the legislation, namely to improve the ability of workers to choose whether to join unions and for unions to have access to workers in the workplace in order to recruit and organise with a view to promoting strong collective bargaining.[20]

44. NASUWT has serious concerns that disclosing information on membership at such an early stage with an employer could be prejudicial to our members' interests, especially if this could risk members being identified by an employer where there are relatively few of them at a workplace or across specific workplaces.

45. Furthermore, under Article 9 of the General Data Protection Regulations (GDPR), trade union membership is one of several Special Categories of data that is considered to be particularly sensitive,[21] so the processing of any such personal data should not be disclosed without consent.

46. NASUWT would want to see this data removed from any proposed information to be included in a trade union's request for access, as it is surplus to requirements and could impact on the ability of a union to build trust and cooperation when making an initial access request.

47. NASUWT maintains that any proposed template should make it explicit that the information provided is without prejudice to the access, and that an employer cannot refuse access on the grounds that the information provided by a trade union is inaccurate or incomplete, including in situations where sections have been left blank by a trade union.

[20] https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf

[21] https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guidance-for-the-use-of-personal-data-in-political-campaigning-1/special-category-data/#whatis

48. However, the Union does believe that rights of access should only be provided to independent trade unions. As such, any trade unions who want to access a workplace should be expected to provide details of a certificate that has been cross-checked against the information held by the Certification Officer and the Trades Union Congress (TUC).

49. Furthermore, the proposed information to be included in a trade union's request for access should include provisions for joint access requests to be made where trade unions want to apply for access together, as this will reduce bureaucracy and administrative burdens and make it simpler for both trade unions and employers, as well as mirror the current provisions in TULRCA.[22]

50. In addition, in order to avoid any unnecessary delays in the process, the template should enable the contact details of more than one person to be included, to provide for backup and continuity in case of any eventualities.

51. NASUWT maintains that if the Government is committed to strengthening collective bargaining rights and trade union recognition,[23] then the requirement for trade unions to provide such detailed information runs counter to this.

Information contained within access responses from the employer

Question 5 – Do you agree with the proposed information to be included in an employer's response to a trade union's access request?

- Yes
- No

52. Whilst acknowledging that the proposals on the information expected to be provided by an employer is welcome, NASUWT believes there should also be an explicit duty on the employer to provide a number of other key pieces of information, such as the number of workers in different job roles and work sites, as well as the locations and addresses of all workplaces.

[22] https://www.legislation.gov.uk/ukpga/1992/52/schedule/A1

[23] https://hansard.parliament.uk/commons/2025-10-22/debates/CAF081A9-2402-4F4F-A2A7-73FE12DF8EE9/TradeUnionWorkplaceAccess

53. In addition to this, the employer should be obligated to provide the details of the usual means by which the employer communicates with the workforce.

54. The Union maintains that there is already precedent for this in terms of Section 18 (2) of Schedule 1A of TULRCA in relation to statutory recognition.[24] This requires employers to provide to the union/s and the CAC information on the categories of worker in the proposed bargaining unit, a list of the workplaces at which the workers in the proposed bargaining unit work, and the number of workers in each category at each workplace.

55. As stated previously, the process for requesting access should be seen as a collaborative and constructive approach, and the provision of accurate and detailed information by an employer should be seen as a fundamental part of building trust and cooperation.

56. Given this, NASUWT would want the Government to give serious consideration to placing a clear duty on employers to provide unions with the information needed to plan effective access.

57. Furthermore, as referenced above, in order to avoid any unnecessary delays in the process, the template should enable the contact details of more than one person to be included in the information provided by the employer in order to provide for backup and continuity in case of any eventualities.

Notifying the CAC that access has been agreed

Question 6 – Do you agree with the proposal on how the parties should notify the CAC that an access agreement has been reached?

- Yes
- No

58. NASUWT agrees that the trade union and employer should contact the CAC directly and in writing to inform them that access has been agreed using a

[24] https://www.legislation.gov.uk/ukpga/1992/52/schedule/A1

standardised approach, as this enables a record of any communications to be recorded and retained by both parties.

59. However, there should be no requirement for verification from the CAC, as this has the potential to cause delays in a trade union gaining access.

Form and manner of joint notifications to the CAC of a variation or revocation of an access agreement

Question 6 – Do you agree with the proposal on how joint notifications to the CAC of a variation or revocation of an access agreement are made?

- Yes
- No

60. NASUWT agrees that the trade union and employer should contact the CAC directly and in writing to inform them if a variation or revocation of an access agreement has been agreed using a standardised approach, as this enables a record of any communications to be recorded and retained by both parties.

61. However, there should be no requirement for any voluntary variation of an access agreement to receive verification from the CAC, as this has the potential to cause delays in the commencement of any agreed variation.

Section 1B: Response, negotiation, and referral to the CAC periods

Response period for employers

Question 7 – Do you agree with the proposed time period of 5 working days for the employer to respond to the trade union's request for access?

- Yes
- No

62. NASUWT agrees that there should be a limit of five working days for the employer to respond to a trade union's request for access in order to avoid a situation where employers look to stall and delay the process.

63. The Union maintains that the employer's response should be seen as the beginning of discussions between a trade union and employer in regards to an access agreement, and, as such, there should be no expectation that all details relevant to access are provided during these discussions.

64. NASUWT believes that any Code of Practice should make it clear that in order to avoid any unnecessary delays in the process, the employer will provide the contact details of more than one nominated person to a trade union when making an initial approach, so as to avoid situations where the employer argues that the request was not received or went to the wrong person.

Negotiation period

Question 8 – Do you agree with the proposed time period of 15 working days for the employer and trade union to negotiate the terms of an access agreement?

- Yes
- No

65. NASUWT agrees in principle to a proposed negotiation period of 15 working days for a trade union and employer to negotiate the terms of an access agreement, as this should ensure that more unscrupulous employers cannot delay access and waste time by unnecessarily dragging out the process.

66. However, the Union believes there should be the provision for a trade union and employer to jointly request an extension to this, specifically if a trade union and employer are negotiating in good faith and it appears that an agreement can be reached with an agreed extension to the timescales.

67. NASUWT believes that any application to extend the 15 working days should come from both the trade union and the employer, as this provides safeguards

over extensions being used to deliberately delay or undermine access rights by more unscrupulous employers.

68. As stated previously, the Union believes there is a precedent for a longer period to be agreed by the parties in Section 10 of Schedule 1A of the statutory recognition process.[25]

69. Any voluntary extension should not require verification from the CAC in order to allow negotiations to continue without any delay.

70. However, in circumstances where the employer is simply not responding or clearly not negotiating in good faith, NASUWT maintains that a trade union should be able to apply to the CAC before the end of the 15 working days' notice period.

Period for CAC referral

Question 9 – Do you agree that there should be a limit of 25 working days for a party to request that the CAC make a decision on access following an access request being submitted?

- Yes
- No

71. NASUWT believes that the current time limit of 25 working days is too short when seeking to request that the CAC makes a decision in regards to access following the submission of an access request.

72. In addition, the Union is concerned that the way in which the proposal is currently framed would only provide a trade union with five working days after negotiations have concluded unsuccessfully to submit an access request. This creates an unnecessary and unrealistic deadline that could easily be missed if those dealing with the request are absent.

73. For example, trade union colleagues dealing with the same access request may work in different departments (e.g. legal department and organising department)

[25] Ibid.

and have little time to discuss and confer on possible next steps if only given five working days to do so.

74. Furthermore, NASUWT fails to understand why a trade union is expected to wait for the 'negotiation period' to pass before applying to the CAC in situations where an employer does not respond or refuses to negotiate to a request for access, as this provides unnecessary delay in the process and gives more unscrupulous employers the opportunity to spread anti-union myths among its workforce. Instead, NASUWT maintains that a trade union should be able to apply immediately.

75. The Union also notes that this sits at odds with established practice and procedure in other areas of employment law regarding the fact that the time limits start from the point in which the incident occurred. In the case of a referral to the CAC, this would be 25 working days from the denial of access to the workplace by an employer, or sooner if an employer simply refuses the union's initial request.

76. Furthermore, NASUWT is not convinced at the suggestion in the proposals that the deadline is there to avoid uncertainty on the part of employers, as there is very little detailed evidence provided in either the Final Stage Impact Assessment[26] or the consultation itself[27] that indicates why or how a longer timeframe would cause difficulty for employers.

77. It cannot go unnoticed that employers are able to achieve certainty by negotiating in good faith and reaching agreement with trade unions in access requests. NASUWT believes that a negotiated agreement with employers should be the preferred means of securing access, so if employers reciprocate, any so called 'period of uncertainty' can be avoided.

78. The Union refers to previous points above regarding the fact that if a trade union and an employer are able to agree an extension to the period for negotiations,

[26] https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf

[27] https://assets.publishing.service.gov.uk/media/68f905d40794bb80118bb7b2/make-work-pay-consultation-right-of-trade-unions-to-access-workplaces.pdf

then this would prevent access requests having to be taken to the CAC in the first place.

79. Finally, NASUWT would welcome consideration being given to the CAC having time limits by which its deliberations and decisions on an access request are concluded, as this would bring it into line with the current statutory regime.

80. This would require the CAC to have the appropriate level of funding and resources so that it can effectively undertake its role. For too long, regulatory and enforcement bodies have seen woefully inadequate levels of funding and resources available to them.

81. It should be noted that, compared to European countries, UK enforcement agencies are under-resourced and underfunded. For example, in France, there are nearly 19 inspectors for every 100,000 people, whereas in the UK there is just one inspector per 100,000 workers.

Section 2A – Central Arbitration Committee (CAC) determinations

82. In regards to determinations by the CAC and the five access principles that will apply,[28] NASUWT would welcome clarification on the way that '*unreasonably interfering with an employers' business'* and '*unreasonable steps to facilitate this'* will be defined,[29] so as to avoid situations where some employers use this as a means to frustrate the process and deny a trade union access to the workplace. The same could be said for situations where it is considered that an employer can refuse access *'only where it is reasonable to do so'.*[30]

83. In addition, the Union is concerned over the fact that CAC determinations should follow the five access principles subject to any 'other factors' the Government instructs the CAC to consider via secondary legislation and whether or not this

[28] Ibid.
[29] Ibid.
[30] Ibid.

is significantly 'future proofed' against a government that is less favourable to the vital role played by trade unions.

84. It should be noted that the system in New Zealand as set out in the Employment Relations Act 2000 means that a trade union official has more autonomy when conducting workplace visits and can effectively enter a workplace without any warning.[31]

85. It has been reported that this legislation has had a positive impact on the workforce without causing disruption to the workforce/business. Indeed, it is held that the '*statutory right of access must be respected even if it causes some reduction in, or interruption to, the employer's business.*'[32]

Circumstances where access must not be granted: size of the employer

Question 1 - Do you agree that employers with fewer than 21 workers should be exempt from the right of access policy?

- Yes
- No

86. NASUWT strongly opposes this proposal, as there should be no reason why size of the employer provides an exemption from trade union access requests.

87. Indeed, the Government's own Final Stage Impact Assessment references the fact that having an independent voice and representation, such as that provided by independent trade unions, can benefit workers across *any* size of workplace.[33]

88. Given this, coupled with the acknowledgement of the vital role that trade unions play in ensuring fairer outcomes for workers, NASUWT believes that there can

[31] https://academic.oup.com/ilj/article/54/3/597/7917392
[32] Ibid.
[33] https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf

be no justification for excluding employers with fewer than 21 workers from the scope of the proposals.

89. The Government has failed to provide any compelling evidence to suggest employers with fewer than 21 workers might find the process of facilitating access requests difficult to manage. Indeed, it could be argued that it may be a simpler and easier process to agree an access arrangement with a smaller workforce in comparison to a larger workplace where workers have more complicated working arrangements.

90. In addition, NASUWT disputes the suggestion that trade unions are more interested in seeking access and recognition for collective bargaining in larger workplaces, as there are numerous examples of schools with fewer than 21 teachers working in them, specifically in the primary sector.

91. The proposal to exempt those employers with fewer than 21 workers risks excluding approximately 5.3 million workers from the benefits created by the introduction of this legislation, including access to the protection that trade union membership brings and enhanced terms and conditions brought about through collective bargaining.

92. Furthermore, any exemption would mean that a trade union would be unable to access a workplace to meet with workers and discuss issues associated with exploitative workplace practices, thereby leaving those workers feeling more vulnerable and unable to speak out to secure their rights and entitlements.

93. As stated previously, the purposes of access as set out in the Employment Rights Bill are much wider than just facilitating union recognition. They include '*to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union); to facilitate collective bargaining.*'[34] The Union believes that excluding smaller workplaces on the basis of the threshold for statutory recognition is inconsistent with full delivery of the aforementioned access purposes.

[34] https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf

94. Of even greater concern is the fact that the proposal to exempt employers with fewer than 21 workers will have a detrimental impact on certain sectors and groups of workers, and, in doing so, will mean that the Government has failed to strengthen worker practices in whole sections of the economy.

95. For example, social care is a sector characterised by low pay and poor working conditions, as well as the exploitation of migrant workers, yet estimates suggest that approximately 12,240 care organisations would be exempted from trade union access rights under the proposals in the consultation.[35]

96. This is compounded by the fact that the Government is putting in place a Fair Pay Agreement in the adult social care sector that requires trade union access in order to monitor the implementation and strengthen the voice of workers and representation on the Negotiating Body.[36]

97. Furthermore, there are concerns that an exemption for employers with fewer than 21 workers will have a disproportionate impact on younger workers aged 16-24, who are more likely to work for employers with fewer than 21 workers.

98. It cannot go unnoticed that the introduction of this exemption could result in a situation where more unscrupulous employers look to 'game the system' and put in place avoidance measures by ensuring that their workforce is comprised of fewer than 21 workers, or using outsourcing to employment agencies and/or umbrella companies to keep below 21 workers.

99. There is also an argument that the proposed exemption would increase the pressure on the CAC, as it would in all likelihood be given the responsibility to verify workforce numbers in situations where this was a matter of contention between trade unions and employers.

Initial notice period

Question 2 - Do you agree that the CAC should refuse access unless the access agreement specifies that there will be a minimum of 5 working days

[35] https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/workforceintelligence/Reports-and-visualisations/National-information/The-State-of-report.aspx

[36] https://www.gov.uk/government/consultations/fair-pay-agreement-process-in-adult-social-care/fair-pay-agreement-process-in-adult-social-care-consultation-document

between when the terms of the initial access agreement are finalised and when access takes place for the first time?

- Yes
- No

100. Whilst NASUWT believes that five working days between finalising the initial access agreement and the first instance of trade union access to the workplace is reasonable, there should be the option to shorten this through mutual agreement.

Access agreement expiry dates

Question 3 – Do you agree that access agreements should expire two years after they come into force?

- Yes
- No – there should be a different time limit
- No – there should be another mechanism to remove dormant access agreements.
- No – there should be no requirement for access agreements to have an expiry date.

101. NASUWT believes that access arrangements must be fit for purpose and provide trade unions with the ability to fulfil the access purposes as set out in the Employment Rights Bill, which are '*to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union); to facilitate collective bargaining.*'[37]

102. The Union recognises that numerous trade union applications for access will be for the purpose of meeting and organising workers, so it vital that access agreements give unions and workers the required time to build trust and understanding. As such, NASUWT agrees in principle to the proposal that two years is generally a reasonable timeframe for this, with the proviso that if a trade

[37] https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf

union is still using the access agreement then it can continue to be in place for a period beyond two years.

103. This is particularly important when there are circumstances in which a little more time is required, such as may be needed when a trade union is seeking to finalise an application for union recognition. As such, there should be an option for a trade union to be granted a short extension.

104. However, in some cases, trade unions will apply for access to support an existing recognition agreement and in this case there should be no expiry date, as union recognition already points to an ongoing relationship between the employer and union. Placing a requirement on a trade union to apply repeatedly for access every two years would therefore be unacceptable and unnecessary.

Question 4 – In general, are there other circumstances under which you think that the CAC must refuse access?

105. NASUWT maintains that the range of circumstances by which the CAC must refuse access should be kept to an absolute minimum and should be subject to regular review, including with trade unions and employers, in order to ensure they are still fit for purpose.

Section 2B: Circumstances where it is reasonable for access not to be granted

Presence of a recognised union

Question 5 – Do you agree that the presence of a recognised union representing the group of workers to which the union is seeking access be considered a reasonable basis for the CAC to refuse access to another union?

- Yes
- No

106. In the education sector it is important to recognise that there are different groups of workers (e.g. teachers and support staff) that different recognised

independent trade unions may want access to under an access arrangement. In this situation, the presence of a recognised union in the workplace may have a detrimental impact on the ability of another trade union to gain access to the workplace and meet with its members.

107. NASUWT has examples where some unscrupulous employers have sought to avoid recognising affiliated unions with an occupational and established membership claim, including through the practice of 'sweetheart' recognition agreements.

108. The Union maintains that these arrangements do not represent the interests of workers and the trade union movement, and, as such, there is a legitimate concern over a situation whereby the presence of another trade union can be considered as a reason for access not to be granted by the CAC.

109. However, NASUWT recognises that there will be conflicting views and opinions as to whether or not the presence of a recognised trade union representing the group of workers to which the union is seeking access is a reasonable basis for the CAC to refuse access to another union, and, as such, will require careful consideration and further discussion.

110. The Union notes the important distinction made in the proposal between reasonable and automatic. While it may be reasonable for the CAC to refuse access where an independent union is recognised for the same workers, it should not necessarily be automatic. The CAC should be able to use its judgement in order to protect against sweetheart deals as referenced above and ensure that workers, not employers, are given a genuine choice over which union represents them.

111. As such, the CAC should be expected to take into account a range of factors when reaching a decision in a situation like this, including evidence of and a history of regular collective bargaining, in addition to recognition, from the incumbent union. Furthermore, where this condition is not met, there should be strong evidence of workforce support, such as significant membership levels, from the requesting union.

112. In reaching a decision and assessing reasonableness, NASUWT believes that the CAC should be mindful (where appropriate) of whether the issue is, or has been, under consideration under the TUC's disputes principles and procedures.

Ensuring employers are not obligated to allocate more resource than is required to fulfil the terms of the access agreement

Question 6 – Do you agree that an access application that would require an employer to allocate more resources than is necessary to fulfil the agreement (e.g., constructing new meeting places or implementing new IT systems) should be regarded as a reasonable basis for the CAC to refuse access?

- Yes
- No

113. As stated previously, if the Government is determined to ensure that the collective voice of workers is stronger and contributes to better workplace conditions, higher standards of living and greater equality, then NASUWT maintains that there should be no grounds for limiting trade union access to the workplace.

114. The Union notes that access arrangements and recognition agreements already exist across a diverse range and size of employers operating in different sectors and locations in the UK, thereby demonstrating that access arrangements can be made to work in any situation where trade unions and employers are willing to engage positively to address potential barriers.

115. Furthermore, NASUWT is not aware of situations where employers are expected to go beyond simply modifying existing systems, processes and procedures in order to facilitate suitable access.

116. The Union believes that there should be clear guidelines for assessing what this means in practice so that 'reasonable modification requirements' cannot be used to refuse suitable access.

‘Model’ agreements

a) Frequency of access

Question 7 – Do you agree that weekly access (physical, digital, or both) be included as a ‘model’ term in access agreements, to help support regular engagement between trade unions and workers?

- Yes
- No

117. NASUWT believes that weekly access should be included as a ‘model’ term in access agreements between trade unions and employers, unless it is mutually agreed that access can take place more than once a week.

118. The Union maintains that it is fundamental to the access purposes if trade unions are allowed to develop regular communication with workers in order to establish relationships.

119. Nevertheless, it is important to clarify that ‘weekly access’ refers to a physical visit or meeting and not emails/digital access, or other form of message, to publicise a meeting or make contact with members.

120. In addition, it should be recognised that ‘weekly access’ refers to workers and not buildings/premises, which may result in a situation where a union accesses a workplace more than once a week in order to address situations where workers have different shifts and working patterns.

121. Furthermore, it should be at the discretion of a trade union to decide what is the most convenient time and day of the week to meet with members, recognising that this may vary week on week in order to ensure the timings are best suited for workers.

122. If this results in a situation where there has been more than one meeting in a week, then there should be scope within the model access arrangements for weekly access to be averaged over a longer period of time.

123. Given this, NASUWT believes decisions regarding reasonable access should be pragmatic and reflect the fact that there are different sectors and workplaces that might require more bespoke arrangements. However, this should be guided by the fundamental principle that access must be suitable and sufficient to enable the aforementioned access purposes to be fulfilled and the 'spirit' of weekly access is respected.

124. Finally, in regards to access, it is imperative that the CAC is empowered to deal with employer conduct and has the ability to impose fines when more unscrupulous employers seek to block access to the workplace (discussed in more detail in Section 3 below)

Question 8 – Please describe any other terms that you think should be regarded as 'model' terms.

- **Location and privacy**

125. NASUWT believes that the location of access and the privacy of meetings and any associated communications between trade unions and workers should be included as a 'model' term and underpinned by statute.

126. In addition, the Union believes that the location should be suitable to permit trade unions to access workers, as NASUWT is aware of numerous examples where trade union representatives are put in rooms that are far away from the workforce and/or met with at times when it is not possible to engage with them meaningfully, such as during staggered break times or lunchtimes that last less than 30 minutes.

127. Given this, the Union maintains the 'model' term should reference the fact that a suitable location for access visits is somewhere where workers are naturally going to congregate during their working day, such as a staffroom at lunchtime, or other place where they gather at the end of the working day (e.g. main hall of a school for a staff meeting).

128. Furthermore, to reflect situations where there are no staffrooms or break rooms, it would be appropriate for provision to be made to access workers where they undertake their work, such as classrooms or departmental areas in schools.

- **Digital access**

129. NASUWT maintains that there needs to be greater detail and clarity provided over the definition of 'digital access'.[38] For example, digital access should include the fact that trade unions have the right to regular communication with workers, and that this is not subject to restrictions in respect to 'weekly access'.

130. In addition, the means of communication should include, but not be limited to, those areas generally used by the employer, though there would have to be restrictions against the employer monitoring workplace communications.

131. Furthermore, digital access should permit trade unions to set up online/virtual meetings in order to address workers.

- **Employers' information and communication responsibilities**

132. NASUWT believes that in order for trade unions to be able to engage and communicate meaningfully with workers, employers should be required to pass information on the location and timings of work to unions in a timely manner, as well as pass on information on the timings and location of union visits/meeting to workers.

- **Physical and/or digital noticeboard**

133. NASUWT maintains that all employers should be required to provide physical and/or digital noticeboard/s that can be accessed by all workers where trade union materials can be displayed.

[38] https://assets.publishing.service.gov.uk/media/68f905d40794bb80118bb7b2/make-work-pay-consultation-right-of-trade-unions-to-access-workplaces.pdf

- **Inductions**

134. NASUWT believes that trade union representatives should be able to meet new workers as part of any induction that it is undertaken by an employer, including when it occurs outside of the normal working day, or at a venue that is not a recognised workplace, as appropriate.

Question 9 – Do you agree that access agreements include a commitment from the union to provide at least two working days' notice to the employer before access takes place?

- Yes
- No

135. Whilst NASUWT believes that two working days' notice as the maximum time that should be given to an employer before access takes place is reasonable, the 'model' terms should take account of situations where less notice may be required (e.g. 24 hours).

136. It should be noted that the notice period that operates in Australia is 24 hours and this is seen to provide an employer with '*some forewarning of the proposed entry and of its purpose'*, whereas in New Zealand the absence of any notice period permits trade unions to enter workplaces without any forewarning, and this has been seen as a powerful tool because it reduces the ability of employers to hide non-compliance.[39]

Question 10 – Are there any further matters to which you think the CAC must have regard when making determinations on access? If so, what are they? For example, you might want to suggest practical, legal, or workplace-specific considerations that haven't already been covered.

- **Right of transit where physical access requires passage through privately owned land**

[39] https://academic.oup.com/ilj/article/54/3/597/7917392

137. NASUWT believes that it is important that the CAC provides for the right of trade unions to pass through private premises or land to reach workplaces and workers in situations that are not publicly accessible and/or not part of the employer's premises.

- **Workers employed to work on another organisation's premises**

138. NASUWT maintains that access should be provided to workers who are employed through third party intermediaries, such as supply teachers working through an employment agency and/or umbrella company.

- **Multi-employer sites**

139. NASUWT believes that the CAC should provide for an 'umbrella access agreement' to permit trade unions to speak to different groups of workers in situations where there are different groups of workers operating on one site.

- **Time limits for CAC decision-making**

140. NASUWT believes that it is imperative that the CAC is able to make decisions in a timely manner that do not create unnecessary delays in the access process, particularly as this has the potential to create uncertainty and hinder progress in trade union organising amongst a workforce.

141. As such, it seems wholly appropriate for the CAC to have fixed time periods for CAC determinations, as is the case with the current statutory recognition regime.

- **CAC resources and approach**

142. As stated previously, if the CAC is to cope with the increased workload associated with its role in access determinations and enforcement, then it must be given sufficient funding and resources to do this.

143. The Government is still failing many workers. For many employers, including agencies and umbrella companies, the threat of detection and having a sanction applied represents a good risk.[40] For example, estimates suggest that an employer could expect a visit every 320 years from a National Minimum Wage (NMW) Inspectorate, or every 39 years by the Employment Agency Standards (EAS) Inspectorate.[41]

144. In addition, the Gangmasters and Labour Abuse Authority (GLAA) was identified as an enforcement body that was impacted by serious budgetary cuts, whilst having an extended remit.[42]

145. Furthermore, despite recent funding increases in the EAS Inspectorate, up to £1.525 million for the year 2020/21,[43] this still represents approximately 29 staff covering around 40,000 agencies operating in the UK. As such, they *'lack the resources and the statutory tools to protect workers and ensure a level playing field across the agencies sector.'*[44]

146. The CAC must therefore be resourced at an appropriate level; otherwise, there is a real danger that a key metric of its success will not be fit for purpose. It is vital that the CAC carries out its role within the access regime in a reasonable manner that facilitates access and avoids an overly legalistic approach which enables unscrupulous employers to block trade union rights of access.

Section 3: Maximum value of fines and how the value of fines for breaches are determined

Question 1 – Which of the following options do you consider most appropriate for setting the maximum value of the fine?

Option A: A fixed maximum fine of £75,000

[40] https://www.mdx.ac.uk/__data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=35242825
[41] Ibid.
[42] https://assets.publishing.service.gov.uk/media/6733432479e9143625613546/uk-labour-market-enforcement-strategy-2024-25-annex-a-accessible.pdf
[43] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040316/E02666987_UK_LMES_2020-21_Bookmarked.pdf
[44] https://assets.publishing.service.gov.uk/media/6733432479e9143625613546/uk-labour-market-enforcement-strategy-2024-25-annex-a-accessible.pdf

Option B: A two-stage system: £75,000 for initial breach and up to £150,000 for repeated breaches

Neither of these options

147. NASUWT strongly disagrees with both options A and B and the proposal for capped fines as a mechanism to ensure compliance on the part of unscrupulous employers when there are breaches of access arrangements.

148. Instead, the Union believes that fines should reflect both the resources of the employer and the severity of the breach if they are to act as an effective deterrent and prevent a situation where extremely hostile employers simply factor in any payment as part of its operating costs.

149. Whilst it is recognised that the intent is to ensure consistency with the Information and Consultation of Employees (ICE) Regulations,[45] it cannot go unnoticed that the ICE Regulations have been seen as '*ineffective because of weak penalties and no means of compelling employer compliance'.*[46]

150. Furthermore, in the 20 years since the ICE Regulations were introduced there have only been a handful of instances where trade unions have pushed an employer for failure to comply with CAC orders.[47]

151. NASUWT is clear that enforcement penalties must ensure that there is a level playing field, and that employers who break the law can expect significant repercussions for their actions, whilst providing workers and the wider public with confidence in the system.

152. Unfortunately, the proposals in the consultation will fail to achieve this and will enable large companies with deep pockets to buy their way out of the obligations in regards to access responsibilities, thereby rendering the new rights and

[45] https://www.gov.uk/guidance/the-information-and-consultation-regulations#:~:text=1)%20The%20Information%20and%20Consultation,and%20operation%20of%20these%20arrangements.
[46] https://hansard.parliament.uk/commons/2025-10-22/debates/CAF081A9-2402-4F4F-A2A7-73FE12DF8EE9/TradeUnionWorkplaceAccess
[47] https://www.ier.org.uk/wp-content/uploads/The-Employment-Rights-Bill-An-IER-briefing-25-11-2024.pdf

entitlements available to trade unions and workers as unfit for purpose, and thereby failing to address the key pillars of the Government's *Make Work Pay* plan.

153. The Government will be well aware of the extraordinary lengths that Amazon has gone to in its response to the GMB's application for trade union recognition, including refusing to recognise GMB voluntarily, refusing to engage with Acas, and packing the bargaining unit so GMB no longer has 50% membership.

154. P&O Cruises provides another example of an employer simply pricing in the cost of breaking the law when it sacked 800 of its staff by video message with no notice or consultation.

155. Given this, the suggestion of a fine of £75,000 will not deter the likes of Amazon, P&O or any other unscrupulous employers from budgeting for this and seeing it as a price worth paying.

156. Furthermore, NASUWT is unsure how the proposed level of fines can be considered 'proportionate',[48] as fines of £75,000 to £150,000 will be a far greater proportion of the income of a smaller business.

157. A genuinely proportionate approach that acts as an effective deterrent would see companies fined according to their size and finances, as is the case with penalties imposed for breaches of GDPR.[49]

158. In addition, whilst the CAC is empowered to adjudicate the process, it is still going to be trade unions that will bear the cost, both financial and logistical, of pursuing penalties, yet fines will be payable to the CAC and then paid to a Consolidated Fund,[50] not the trade union. As such, this creates a risk that enforcement will remain weak, whilst potentially denying trade unions of the ability to recuperate the costs.

[48] https://assets.publishing.service.gov.uk/media/68f905d40794bb80118bb7b2/make-work-pay-consultation-right-of-trade-unions-to-access-workplaces.pdf
[49] https://ico.org.uk/for-organisations/law-enforcement/guide-to-le-processing/penalties/
[50] https://assets.publishing.service.gov.uk/media/68f905d40794bb80118bb7b2/make-work-pay-consultation-right-of-trade-unions-to-access-workplaces.pdf

159. It is only right and proper that there is a remedy for any violation of trade union rights and the costs incurred from a union trying to assert its rights, such as legal costs.

160. On another related point, NASUWT believes careful consideration will need to be given to the process by which a further complaint must be made when there is an alleged breach, as the suggestion of three months from the alleged breach risks not being aligned with the extension of employment tribunals from three to six months as part of the Government's *Make Work Pay* plan.[51]

Question 2 – Do you agree with the proposed matters the CAC must consider when determining fines?

- Yes
- No

161. Whilst the NASUWT agrees with the proposed factors that should be considered by the CAC in deciding the value of fines, it is important that the scale and size of the organisation includes reference to its financial scale, and not just the size of its workforce.

162. If the CAC has the ability to give consideration to a wide range of factors when determining penalties, then it removes any risk that more proportionate fines, as described above, will lead to crippling fines for small employers, as CAC will be able to moderate the level of fines accordingly.

163. In addition, the factors set out in the proposals mean that the CAC can easily make a distinction between inadvertent, minor breaches and deliberate breaches.

164. NASUWT does not believe that trade unions and employers should be subject to the same scale of fines as employers, as there is clearly a distinction between

51 https://assets.publishing.service.gov.uk/media/67c5725416dc9038974dbd3c/Impact_assessment_employment_tribunals_time__limits.pdf

an uncooperative, anti-union employer and a trade union representative inadvertently walking into the wrong room in a workplace.

ADDITIONAL COMMENTS

165. If the commitment of the Government to strengthen collective bargaining rights and trade union recognition, including through the right of access, is genuine, then the Union maintains that concerns over situations where the employer refuses to comply with an imposed agreement must be addressed.

166. If the right of access is not to become a 'dead letter' then the sanctions for non-compliance will need to be greatly improved. The Union believes that there must be a statutory avenue for trade unions to seek compliance with orders from a court or tribunal, with penalty provisions to deter misconduct, such as provisions enabling CAC orders to be enforceable as High Court injunctions.

167. It is more than evident that trade union access, as proposed in the flagship Employment Rights Bill,[52] represents a once-in-a-generation opportunity to strengthen collective bargaining rights and the vital role played by trade unions in addressing the current inequity in the labour market. The Government should not, therefore, shy away from its vision to make work pay for *all* workers in the UK.

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[52] https://publications.parliament.uk/pa/bills/cbill/59-01/0011/240011.pdf

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