

The Carr Report:  
The Report of the Independent Review of the  
Law Governing Industrial Disputes

A Report from Bruce Carr QC to Government  
October 2014



# **The Report of the Independent Review of the Law Governing Industrial Disputes**

October 2014

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## Foreword

I am Bruce Carr QC and I was commissioned by the Secretary of State for Business, Innovation and Skills and the Minister for the Cabinet Office to conduct an Independent Review into the Law Governing Industrial Disputes, with the following Terms of Reference:

To provide an assessment of the:

- Alleged use of extreme tactics in industrial disputes, including so-called 'leverage' tactics, and the
- Effectiveness of the existing legal framework to prevent inappropriate or intimidatory actions in trade disputes

The Review will make proposals and recommendations for change

The Review was of particular interest to me as I have spent nearly 30 years practising predominantly in employment law – representing employers, employees and trades unions – and I thank Ministers for the opportunity to conduct this Review.

First and foremost I regret that I felt unable to fully deliver against the Terms of Reference set by Government and ultimately to make proposals or recommendations for change, whichever direction they may have taken. I came to this conclusion in July due to the increasingly political environment within which I was operating coupled with the lack of a significant enough body of evidence to support any recommendations for change. I believe that any recommendations which I could have put forward without the necessary factual underpinning would have been capable of being construed as making a political rather than an evidence-based judgment. As such I agreed with Ministers to instead produce a scaled-down report which reflected on the process of attempting to obtain evidence and which set out the story as best as I was able to tell it from the limited information gathered.

My Report therefore sets out what has happened in a number of industrial disputes based on the evidence provided, summarises the existing legal framework, and records the principal calls for changes to that framework that were made by contributors to the Review. I have not made any judgment on either the extent or extremity of 'the alleged use of extreme tactics in industrial disputes' nor have I made any judgment on 'the effectiveness of the existing legal framework'.

Notwithstanding this, I hope and believe that this work will still be a useful contribution to further debate in the area, and may be capable of assisting Government or a further Review in considering the issues outlined in the Terms of Reference at some point in the future.

Finally, I would like to thank the Review Secretary, Peter Jinks, and the rest of the Review Team for all their hard work in assisting me in this exercise.



**Bruce Carr QC**





# Chapter 1

## About the Review

### Background

1.1 The origins of the Carr Review go back to October 2013 and the high profile industrial dispute between INEOS and Unite the Union (“Unite”) at the Grangemouth Chemicals and Refining plant. This was a complicated dispute, which is covered in more detail later in this Report, but a key feature of it was the alleged use of ‘inappropriate’ and ‘intimidatory’ tactics by Unite during that dispute, which were widely reported in the media at the time.<sup>1</sup>

1.2 The formal announcement of a Review was preceded by discussion in Parliament and the media about what would be an appropriate response to these alleged tactics. In Prime Minister’s Questions on 6 November 2013, the Prime Minister responded to several questions on the issue.<sup>2</sup> Below is one excerpt from these discussions:

“**Steve Baker**<sup>3</sup>: Hard-working businessmen facing tough decisions, decent trade unionists and newspapers including the *Daily Mirror* will have been appalled by the so-called leverage tactics of Unite in the Grangemouth dispute. Will my right hon. Friend take steps to ensure that families, children and homes are protected from a minority of militants?”

**The Prime Minister:** My hon. Friend makes an important point. This sort of industrial intimidation is completely unacceptable. We have seen “Wanted” posters put through children’s letterboxes, we have seen families intimidated and we have seen people’s neighbours being told that they are evil. What has happened is shocking. It is also shocking that the Labour party is refusing to hold a review and to stand up to Len McCluskey. At this late stage, it should do so.”

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<sup>1</sup> See for example a report in the Daily Telegraph on 31 October: <http://www.telegraph.co.uk/news/uknews/scotland/10416408/Unite-union-accused-of-using-bully-tactics-in-Grangemouth-dispute.html> [accessed 15 September 2014]

<sup>2</sup> *HC Official Report*, 6 November 2013: Column 241 and onwards

<sup>3</sup> Conservative MP for Wycombe

1.3 On 18 November 2013 at the Prime Minister’s morning press briefing it was confirmed that a review would be established to look at these issues, to be led by myself.<sup>4</sup>

1.4 The intention at this stage was for the Review to be a partnership exercise conducted by a panel of three, with the addition of appropriate representation from the CBI and the Trades Union Congress (“TUC”) – either by directly providing a representative to sit on the panel or by proposing an alternative representative from employers and trades unions respectively. It was envisaged at this point that the Review would have a wider scope to consider industrial relations issues in a much broader context and suggest changes to the applicable legal framework. This would include exploring the underlying causes of industrial relations difficulties and assessing where those difficulties had the potential to impact on critical national infrastructure in the UK as well as looking at the respective roles of government, employers and trades unions in relation to disputes within the workplace.

1.5 However, the TUC declined to take a formal role in the Review, and as such it was later agreed to continue the Review with myself only. As the Review had consequently become an exercise to be conducted by a lawyer alone rather than with industry partners, I took the view that revised Terms of Reference would need to be adopted with a much narrower focus, primarily on the alleged use of ‘extreme’ tactics in industrial disputes and the effectiveness of the legal framework governing industrial disputes.

## Announcement of the Review

1.6 The Review was formally announced by Government on 4 April 2014 on GOV.UK, with the full Terms of Reference as follows:<sup>5</sup>

“The government has a keen interest in the resilience of critical industrial infrastructure. Resilience cannot be guaranteed without effective workforce relationships. These relationships, and the law that governs them, have consequences both for the operation of particular, critically important, facilities, as well as more widely in the economy, at both a local and national level. Therefore, the government wants to assess whether or not the current legislation dealing with activities taking place during industrial disputes is fit for the 21st century.

The terms of reference of the review will be to provide an assessment of the:

- alleged use of extreme tactics in industrial disputes, including so-called ‘leverage’ tactics; and the
- effectiveness of the existing legal framework to prevent inappropriate or intimidatory actions in Trade Disputes.

The review will make proposals and recommendations for change.

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<sup>4</sup> Prime Minister’s Spokesperson’s morning press briefing of 18 November 2013, GOV.UK, <https://www.gov.uk/government/news/press-briefing-morning-18-november-2013> [accessed 15 September 2014]

<sup>5</sup> Cabinet Office press release launching the Review, 4 April 2014, GOV.UK, <https://www.gov.uk/government/news/government-review-into-the-law-governing-industrial-disputes> [accessed 15 September 2014]

The Review will be led by an independent senior lawyer from outside government. The senior lawyer will be supported by a Secretariat drawn from officials from BIS and Cabinet Office and across government.

The senior lawyer will report jointly to the Secretary of State for Business, Innovation and Skills and the Minister for the Cabinet Office. The government will consider the proposals and recommendations and its response and position will be agreed collectively in the normal way.”

## Approach to the Review and difficulty in gathering evidence

1.7 The announcement set out that the Review would be expected to report by autumn 2014, which allowed around six months to collect evidence and report. Chapters 2 and 3 cover in more detail the approach taken by the Review, including how it went about gathering evidence, in order to meet the Terms of Reference provided.

1.8 However, as the Review progressed and for reasons which are explored in Chapter 3, it became increasingly apparent that it would not be possible to obtain the quality and breadth of evidence which would be required in order to make evidence-based recommendations or proposals for change. This was in major part due to the inherently politicised environment in which the Review was operating from the outset and which was becoming increasingly politicised in the lead up to the General Election, with manifesto plans being both formulated and promulgated. It was also clear from some of the discussions with potential stakeholders that the political environment made it difficult for them to contribute in what would appear to be a non-partisan way. Without the necessary evidence base and in circumstances in which there might be an overlap between the matters to be considered as part of the Terms of Reference and proposals for change being considered by political parties, I believed that the work of the Review would be increasingly regarded as lacking the independence necessary for its conclusions to carry credibility.

## Revised scope of Report

1.9 As a result of these concerns I agreed with Ministers in early August that I would instead produce a scaled down report which focused on the process of gathering evidence and that set out the story, as best it could, on the basis of the limited amount of material available. This was announced on the Review’s website on 5 August 2014 as follows:<sup>6</sup>

“I have now considered the evidence and information received by the Review over the past few months and I would firstly like to thank those organisations and individuals who have contributed to the Review so far.

However, I have become increasingly concerned about the quantity and breadth of evidence that the Review has been able to obtain from both employers and trade unions relevant to its terms of reference. In addition, I am also concerned about the ability of the Review to operate in a progressively politicised environment in the run

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<sup>6</sup> Bruce Carr QC’s statement revising the scope of the Review, 5 August 2014, <http://carr-review.independent.gov.uk/news/update-bruce-carr-qc/> [accessed 15 September 2014]

up to the general election and in circumstances in which the main parties will wish to legitimately set out their respective manifesto commitments and have already started to do so. Operating in such an environment is also likely to impact on the ability of the Review to obtain evidence in addition to that which it has already received.

That being so, I have reached the conclusion that it will simply not be possible for the Review to put together a substantial enough body of evidence from which to provide a sound basis for making recommendations for change and therefore to deliver fully against its terms of reference. Any recommendations which might be put forward without the necessary factual underpinning would be capable of being construed as the Review making a political rather than an evidence based judgment, whichever direction such recommendations might take.

As such I have agreed with the Secretary of State for Business, Innovation and Skills and the Minister for the Cabinet Office that the Review will produce a scaled-down report which reflects on the process of attempting to obtain evidence and which sets out the story as best we are able to tell it from the limited evidence which we have gathered, but will not make recommendations for change.

I still intend to produce this Report by the early Autumn, as set out in my Opening Statement.”

## About this report

1.10 This Report therefore focuses on the process of conducting the Review and in particular of trying to obtain evidence. It then sets out the story of what happened during a number of industrial disputes as best I am able to tell it, and summarises the existing legal framework surrounding the tactics that are alleged to have happened during industrial disputes, before setting out where contributors have suggested that changes should be made (but without comment on the desirability or otherwise of those changes).

1.11 It must also be emphasised at the outset that the evidence which has been supplied to the Review has been largely one-sided in that it comes overwhelmingly from employers or those acting on behalf of them. Furthermore, that evidence is substantially unchallenged and untested either by contrary evidence being submitted by those on the other side of the industrial fence or by any form of inquisitorial process at oral hearings.<sup>7</sup> For those reasons, I have, as far as possible, not sought to make findings of fact on matters which are likely to be controversial but instead have sought simply to record the evidence that has been submitted to the Review.

1.12 This Report is split into five chapters as follows:

- Chapter 2 sets out the areas of interest for the Review

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<sup>7</sup> Once it had been decided to scale back the Review, it did not seem to me to be appropriate to incur the substantial additional expense associated with a public hearing process.

- Chapter 3 outlines the approach to conducting the Review, the attempts made to gather evidence and engage the trades unions, and the reasons why the Review was unable to meet the Terms of Reference set by Government
- Chapter 4 sets out the story of what happened during a number of industrial disputes, including which tactics were alleged to have taken place, as best I am able to tell it from the limited evidence received or gathered through other means. These industrial disputes have been selected on the basis that together they tell a story of the use of 'extreme' tactics in recent industrial disputes, based on the evidence received, and
- Chapter 5 describes in further detail the themes emerging of alleged 'extreme' tactics, explores the existing legal framework applicable to these actions and the views from contributors on how the legal framework could be amended. As already stated, it does not make any judgement on the effectiveness of the existing legal framework, nor does it make any recommendations for change.

# Chapter 2

## Areas of Interest for the Review

### Introduction

2.1 This chapter sets out the core issues the Review sought to examine within its Terms of Reference (“ToRs”), the interpretation of those terms and the key questions it would aim to resolve.

### Terms of Reference

2.2 As already stated the ToRs for the Review were set out in the Government press release of 4 April 2014 as follows:<sup>8</sup>

“The government has a keen interest in the resilience of critical industrial infrastructure. Resilience cannot be guaranteed without effective workforce relationships. These relationships, and the law that governs them, have consequences both for the operation of particular, critically important, facilities, as well as more widely in the economy, at both a local and national level. Therefore, the government wants to assess whether or not the current legislation dealing with activities taking place during industrial disputes is fit for the 21st century.

The terms of reference of the review will be to provide an assessment of the:

- Alleged use of extreme tactics in industrial disputes, including so-called ‘leverage’ tactics; and the
- Effectiveness of the existing legal framework to prevent inappropriate or intimidatory actions in trade disputes.”

The Review was asked to make proposals and recommendations for change.

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<sup>8</sup> GOV.UK (4 April 2014), Press release: Government review into the law governing industrial disputes, <https://www.gov.uk/government/news/government-review-into-the-law-governing-industrial-disputes> [accessed 22 September 2014]

## Areas of interest

2.3 Although the context paragraph in the full ToRs discussed the Government's interest in the resilience of critical national infrastructure, I did not regard the remit of the Review as being limited to any particular sector or sub-sector of the economy. As such, I approached the Review with this context in my mind, but attempted to gain as much evidence as possible with which to provide an assessment against the two parts of the ToRs, with the aim of then being able to assess whether or not the current legislation dealing with activities taking place during industrial disputes was fit for its 21st century purpose.

2.4 The approach that the Review followed was to consider the two parts of the ToRs as raising independent but interrelated questions:

- The first involves both a factual exercise - to find evidence of tactics adopted (by either employers or trades unions/employees) - and one of critical analysis in assessing the extent to which such tactics could properly be regarded as 'extreme'. In particular as regards that exercise of judgment, the approach taken was on the basis that, even if so-called 'leverage' tactics could be identified, no assumption was to be made as to whether such tactics were in fact extreme.
- The second question was to involve the consideration of the extent to which tactics, which could properly be identified as both current in industrial relations terms and extreme, could effectively be controlled within the existing legal framework whether as a matter of common law or under statute.

### Term of Reference 1 – To provide an assessment of the alleged use of extreme tactics in industrial disputes, including so-called 'leverage' tactics

2.5 As set out in Chapter 1, the origins of the Review were intrinsically linked to the Grangemouth dispute in autumn 2013. However, the ToRs were intended to look more generally at the alleged tactics used in industrial disputes, including the emergence of what have been described as 'leverage' tactics with a view to making recommendations accordingly.

2.6 The key areas of interest for the Review were to understand:

- What were the relevant facts relating to the Grangemouth dispute, and what tactics were deployed by either side during the currency of it
- Whether tactics as exhibited in the Grangemouth dispute were merely an isolated incident, or part of a more widespread approach to the conduct of industrial disputes
- The details of what tactics were actually being deployed during a number of industrial disputes, including so-called 'leverage' tactics, and
- Whether, in my judgement, the tactics being used in industrial disputes could be deemed to be 'extreme' in the context of any particular dispute.

2.7 Although the Review was first set up by reference to alleged 'extreme' tactics said to be being used by trades unions rather than employers, the Review was interested in all

tactics used in industrial disputes, whether they were used by employers, unions or third parties. This was set out clearly in the opening statement.

2.8 'Extreme' tactics were not defined in the ToRs. The Review has therefore taken the view that where information was provided where a party believed the tactics used were 'extreme', then these should be the subject of consideration. A key task for the Review was to gather evidence on the tactics used in a number of industrial disputes, and in doing so, make an assessment of what could rightly be considered extreme.

### About 'leverage'

2.9 The term 'leverage' was expressly referred to in the ToRs. Another task therefore for the Review was to understand what 'leverage' tactics were, and whether these could be considered extreme.

2.10 'Leverage' as a term of art in the context of industrial disputes, came to particular public prominence during the Grangemouth dispute, although the relevant trade union involved in that dispute, Unite, has been clear that the campaign at Grangemouth was not formally a 'leverage' campaign. The Review has obtained a copy of Unite's 'Leverage Strategy' document which explains what leverage is, which disputes are suitable for its use and how organisers should work out what should happen in a leverage campaign. Quoting from the 'What is Leverage?' section:

"Leverage targets all areas of weakness of an employer, group of employers or sector – both direct and indirect.

Leverage is an extension of the understanding that 'weight of argument' does not change the position of an employer. Leverage analyses what will change the position of the employer.

Leverage is the translation of an organising mind-set into the planning and implementation of a campaign strategy, underpinned by the escalation of pressure to create uncertainty"

2.11 It goes on to say that in a leverage campaign "the employer is routinely treated as a target to be defeated not a friend to be convinced."

2.12 The Review did not receive direct evidence from either the employer or the trade union in relation to Unite's highest profile leverage campaigns. Based on what appears on Unite's website these would seem to be the following disputes: de-recognition at Honda's Swindon factory, the BESNA 7/8 building contractors campaign, Mayr Melnhof Packaging redundancies in Bootle, and the London Buses Olympic bonus campaign. Unite's 'leverage strategy' document adds the dispute between 2011 and 2013 at Liverpool Mutual Homes to this list.<sup>9</sup>

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<sup>9</sup> Unite the Union, 'Leverage', <http://www.unitetheunion.org/growing-our-union/organising-toolbox/leverage> [accessed 22 September 2014]



2.13 The Review did receive some views on what ‘leverage’ was thought to be – some of these responses are summarised here. They have elements in common but perhaps reflect their different experiences.

2.14 INEOS described ‘leverage’ as follows:

“The action takes different forms but the common theme is an attempt to publicly intimidate or humiliate the individual or entity in question in order to pressurise the employer to make concessions in the industrial dispute which it would not otherwise make due to the personal or economic consequences of such action.”

2.15 Pinsent Masons LLP described ‘leverage’ as:

“an umbrella term for any action (other than traditional forms of industrial action) by a trade union which aims to put pressure on an employer to settle a trade dispute or otherwise meet the union’s demands.

Leverage tactics may be used in addition to or instead of traditional industrial action, and may be used for example before a trade dispute is officially declared.

Leverage tactics typically seek to pressurise and commercially embarrass employers through targeted campaigns aimed at shareholders, customers and business partners, suppliers and the general public. They also can include action directed at individual directors or managers – and it is this form of leverage action which we, and our clients, regard as ‘extreme’ and, we submit, should be a key area of focus in the Review’s recommendations.”

2.16 The CIPD explained ‘leverage’ as follows:

“... seeking to reinforce or strengthen a trade union’s position in relation to one or more employers by involving third parties.

Leverage tactics can be seen as modern industrial action, including the use of social media, targeted e-mails to senior executives, and focusing on supply chains to bring an organisation to account through corporate social responsibility “soft laws”. In general, this can be seen as legitimate trade union activity designed to ensure an organisation is held to account and reflecting a democratic right to protest within the law. Used properly, this can offer a useful check and balance for organisations.

In its most basic form, leverage might be seen as simply communication – for example, using the media to make a case. [...]

The leverage this affords to trade unions to influence employers’ behaviour is exercised by building on the risks to employers’ “brand” or reputation of any perceived misbehaviour. The adoption by Unite of a declared “leverage” strategy may also reflect an acceptance that employees are increasingly reluctant to sacrifice pay through strikes or other traditional forms of industrial action. Leverage can be seen

as an alternative method of putting pressure on an employer to concede trade union demands.”

2.17 The Engineering and Construction Industry Association (ECIA) offered the following description:

“Leverage tactics’, which can also be ‘extreme tactics’, seek to extend the intimidation and disruption to those parties indirectly involved, such as shareholders, suppliers and customers; and seek publicity through the media to make public the discomfort they are causing – in attempts to embarrass and further intimidate.”

2.18 As this illustrates, there is a range of views on the legitimacy of ‘leverage’ and what it involves. The Review is not going to offer its own definition – it is however worth noting that Unite’s descriptions of leverage tend to focus on the process of establishing the points of influence (the campaign strategy), whereas other contributors have tended to focus on the actual lobbying and direct action which result from the campaign strategy.

**Term of Reference 2 – To provide an assessment of the effectiveness of the existing legal framework to prevent ‘inappropriate’ or ‘intimidatory’ actions in trade disputes**

2.19 In order to provide an assessment of the effectiveness of the legal framework, the intention of the Review was first to seek to establish the tactics being used during a number of industrial disputes, and to then make an assessment of whether these were deemed to be ‘extreme’. In so far as the Review was able to identify the use of ‘extreme’ tactics, its attention would then turn to the second ToR and consideration of the extent to which the existing legal framework was ‘fit for purpose’ in controlling their use.

2.20 The key areas for interest to the Review with respect to this ToR were therefore to understand:

- What was the existing legal framework that surrounded the various tactics taking place during industrial disputes in the broadest sense
- What were the views of relevant parties on the effectiveness of the existing legal framework
- Whether the existing legal framework could currently deal with the tactics described by contributors to the first ToR
- In particular, whether the legal framework sufficiently dealt with those tactics which could be considered as ‘extreme’, but were in the grey area between being lawful and unlawful
- Through considering the evidence provided, along with representations from experts on the subject area, whether and how the existing legal framework could be changed to deal more effectively with ‘extreme’ tactics, and
- What other implications might there be from making any changes to the legal framework, given the complexity of the law in this area.

2.21 The Review would need to consider the entire legal framework which impacted upon the conduct of industrial disputes. That framework covers not only specific matters of

industrial relations law (much of which is statute based), but also human rights law, criminal law, and the law of tort more generally.

2.22 Neither ‘inappropriate’ nor ‘intimidatory’ actions were defined in the ToRs. Much like the approach taken to ‘extreme’ tactics, the Review has generally taken the view that where information was provided where either a party believed that tactics being used were ‘inappropriate’ or ‘intimidatory’, or that the legal framework could be made more effective in preventing actions that they considered to be ‘inappropriate’ or ‘intimidatory’, then these would be the subject of consideration by the Review.

### Topics not within scope of the review

2.23 The general approach taken was to approach the Review with an open mind within the ToRs provided. However, there were a number of topics in relation to trade union legislation that were specifically out of scope of the Review, as they were not related to tactics used during industrial disputes nor the effectiveness of the legal framework to prevent inappropriate or intimidatory actions in trade disputes. These included:

- Introducing participation thresholds for a ballot to be lawful
- Changing the requirement on notice periods for industrial action
- Considering any other issues relating to strike mandates, and
- Blacklisting.<sup>10</sup>

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<sup>10</sup> Whilst I approached the Review on the basis that the subject of blacklisting appeared to be outside the scope of the ToRs, I nevertheless remained receptive to evidence to the effect that blacklisting was being used as a tactic in industrial disputes. This would bring the subject within the ToRs.

# Chapter 3

## The Review's approach

### Introduction

3.1 This chapter explains the approach taken by the Review including: its guiding principles, how it set about its work, how it gathered evidence, how it sought to engage with stakeholders, the information and evidence it received and the reasons for its ultimate failure to deliver against its Terms of Reference (“ToRs”) and therefore to make recommendations.

### Overall approach

3.2 The Review operated on the basis of a set of core principles, in common with other Independent Reviews and Inquiries. The two main guiding principles were:

- *Openness*. All evidence was to be given publicly to the Review save in limited circumstances – this was set out in the ‘Receipt and handling of information’ guidance published on the Review’s website.<sup>11</sup> This meant that any written evidence that contributed to the Review’s findings would generally be made public and that any oral evidence sessions would have taken place publicly.
- *Balance*. The Review sought to bring balance to a difficult political issue by seeking information from all parties equally and being clear that the final Report and its recommendations were to be based on evidence.

3.3 ‘Balance’ for the Review meant seeking evidence from trades unions and employers equally. In practice this meant that when the Review Team identified relevant disputes, it sought evidence from all parties to the dispute, and its intention was to put in place a process whereby if submissions were provided by one party to a dispute, the other party to that dispute should be given the chance to respond. This process was published in the ‘Request for Information’ on the Review’s website which stated that:

”To ensure as far as possible that a balance of evidence and submissions is received, the Review is keen to encourage contributions from all sides of the debate

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<sup>11</sup> The Carr Review, ‘Receipt and handling of information’ <https://carr-review.independent.gov.uk/key-documents/receipt-and-handling-of-information/> [accessed 22 September 2014]

– including for example, evidence and opinions in support of the argument that the tactics used by parties to industrial disputes have not been extreme and/or do not justify any changes to the existing legal framework.”<sup>12</sup>

3.4 It should also be noted that although the Review wanted to receive information from all relevant parties it was not able to compel them to provide it as would have been the case if it had powers under the Inquiries Act 2005. It was therefore open to anybody invited to give evidence or make submissions to in fact decline to do so.

3.5 The Review designed its work programme to enable it to deliver to time and to minimise its use of public money. A detailed breakdown of costs will be available on the Review’s website shortly after publication.

## Timetable for the Review

3.6 When the Review was formally announced by Government on 4 April 2014 the expectation was that it would take around six months to gather evidence and report. In this comparatively short period of time the Review needed to gather sufficient evidence with which to write a credible and substantial report. In common with other reports this had the potential to include written evidence, oral evidence, visits, meetings and desk-based research.

3.7 The Review planned its work in four broad phases:

- A short set up period (to end April)
- Initial evidence gathering (end April to early July)
- Follow up information gathering period, including further written evidence or through oral hearings (June to early September), and
- Report writing (September to October).

These are described in more detail below.

## Review set up

3.8 The Review Team was established in early April and quickly started to build the Review’s public profile, establish its initial evidence base and identify stakeholders.

3.9 An early challenge for the Review was to identify the relevant disputes where ‘extreme’ tactics were said to have been used and then to gather the necessary evidence about them, since these matters were often not widely reported. As such, the Review began to build its evidence base on relevant industrial disputes and stakeholders. It did this through a combination of desk-based research, looking at media reporting and commentary, and conversations with relevant Government officials and business groups such as the CBI.

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<sup>12</sup> The Carr Review, ‘Request for Information’, <https://carr-review.independent.gov.uk/request-for-information/> [accessed 22 September 2014]

3.10 The Review used in-house Government designers to build a website which went live on 25 April 2014.<sup>13</sup> The website included an ‘opening statement’ setting out the approach to be taken in conducting the Review.

## Evidence gathering

3.11 The Review took the decision to effectively separate out the two parts of the ToRs for the purposes of gathering evidence. This was because the two issues could most effectively be dealt with discretely until the final stages of the Review when they would be brought together to provide the final analysis and recommendations. It was also clear that different groups of people may wish to contribute to only one or both parts of the ToRs. A Request for Information was therefore drafted in two sections, with a series of questions underlying each part of the ToRs.

3.12 The Review set different deadlines for written submissions on each part of the ToRs. Initial submissions on the alleged use of extreme tactics were sought by Friday 13 June. Further submissions on this issue, for example where others were to be given the chance to respond to this information, were due by Friday 4 July. Submissions on the legal framework were sought by Friday 11 July.

3.13 The Request for Information was placed on the Review’s website and was open for anyone to contribute. The Review also wrote to stakeholders that it had identified as potential contributors. These can be broadly categorised as follows, but a full list is included in Annex A:

- Employers who had been involved in a relevant industrial dispute with their employees
- Third parties who had been targeted in ‘leverage’ type campaigns
- Organisations representing sectors and employers where relevant industrial disputes may have taken place, including overarching business groups
- Trades Unions and the TUC
- Law firms and organisations representing legal experts, and
- Other organisations that may have relevant information, for example, the Police.

3.14 In total, around 80 organisations were asked to contribute. The Review also wrote to every fire and rescue authority in England. As the Review was not necessarily aware of where ‘extreme’ tactics were said to have been used if these were not widely reported, a number of the organisations contacted were representative bodies such as business groups, trade organisations or law firms who had much greater reach through their members or clients. On the whole, they agreed to discuss or forward the Request for Information to their member organisations or clients and in many cases encouraged them to respond directly to the Review. Therefore, the Review was confident that the reach of the Request for Information was far wider than simply those contacted directly and that relevant employers, as well as trades unions, knew about the Review and how to contribute. This was borne out by the fact that some of the contributions sent to the Review came from organisations that were not directly contacted.

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<sup>13</sup> <https://carr-review.independent.gov.uk>

3.15 The Review Team also followed up the written request to potential contributors with emails and phone calls to offer any support, encourage contributions, and if no response was forthcoming to try to ascertain the reasons why.

### Engaging Trades Unions

3.16 Unfortunately, the Review did not receive any information or support from TUC-affiliated trades unions despite many attempts to engage with them and to invite them to present their side of the story. As set out in chapter 1, the TUC rejected any formal role on a panel, but the Review was still hopeful that they would nevertheless contribute to its work in some form.

3.17 The trade union position from the outset was however one of vehement opposition to the Review, which they considered a purely politically driven exercise. This was demonstrated through their statements in response to the announcement of the intention to set up a Review on 18 November 2013 and towards the Carr Review on 29 March 2014, which is also quoted below:<sup>14</sup>

“This Review may have been announced with great fanfare by the Prime Minister, but the delay in setting it up, the limited terms of reference and the exclusion of the promised consideration of employer behaviour, such as blacklisting, confirms that it was never anything more than a headline grabbing party-political stunt.”

3.18 Consistent with the union attack on the Review as being a politically driven exercise, some trade unionists took the view that it was appropriate not just to attack the decision to set up the Review but also to attack the person appointed to conduct it. By way of example:

Mark Serwotka, General Secretary of the PCS said “This is far from an independent review, it’s a political stunt to try to undermine trade unions and our ability to campaign against rogue employers. Carr is one of the bosses’ QCs of choice who has carved out a career arguing against workers’ rights.”<sup>15</sup>

A Unite spokesperson said: “[...] The inquiry is to be headed by a lawyer with anti-union form going back years - Carr has publicly argued in favour of draconian laws against unions. No-one can place any trust in his objectivity. His only role is to rubber-stamp George Osborne's campaign messages.”<sup>16</sup>

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<sup>14</sup> Trades Union Congress (20 November 2013), ‘Press release: TUC calls for a proper national inquiry into blacklisting – not political posturing over union disputes’ <http://www.tuc.org.uk/union-issues/tuc-calls-proper-national-inquiry-blacklisting-%E2%80%93-not-political-posturing-over-union> and Trades Union Congress (29 March 2014), ‘Press release: Carr review nothing more than a “headline grabbing party-political stunt”, says TUC’ <http://www.tuc.org.uk/about-tuc/carr-review-nothing-more-%E2%80%93-headline-grabbing-party-political-stunt%E2%80%9D-says-tuc> [accessed 22 September 2014]

<sup>15</sup> Power in a Union (29 March 2014), ‘Carr Review – “A Party Political Stunt”’ <http://www.powerinaunion.co.uk/carr-review-a-party-political-stunt/> [accessed 22 September 2014]

<sup>16</sup> Unite the Union (28 March 2014), ‘Press release: Carr inquiry a cynical Tory stunt to divert attention from cost of living crisis, says Unite’ <http://www.unitetheunion.org/news/carr-inquiry-a-cynical-tory-stunt-to-divert-attention-from-cost-of-living-crisis-says-unite/> [accessed 22 September 2014]

Len McCluskey, Unite General Secretary said: “Now the Tories have sought out an obliging lawyer, his name, Bruce Carr, to give a legal thumbs up to their plans ... He has taken his orders from the Tories to provide cover for the further round of laws to shackle trade unionism which they will introduce if they win power next year and he will be well paid for it.”<sup>17</sup>

3.19 It is not difficult to perceive the reasons for the persistent attacks on my own integrity, ill-informed as they were. Establishment of the Review was unwelcome to the trades unions in particular, who did not accept that it had been established for bona fide reasons and who were unable or unwilling to accept that, however fairly conducted, and however well informed and rigorous its eventual conclusions, the Review could possibly be advantageous to them. The strategy of Unite in particular therefore appears designed to ensure that no matter how I carried out the Review and reported in accordance with my ToRs, any recommendations that might be thought to be contrary to the interests of Unite or its members, could simply be written off as the product of a biased reviewer, who had elected to compromise his professional integrity in order to follow instructions from the Conservative Party.

3.20 Despite this, I was very clear from the outset that I wanted to hear all sides of the story and set out in my opening statement that:

“Within my terms of reference, I will approach the review with an open mind and in an open and transparent manner wherever possible. To that end, it should not be assumed that the Review proceeds or will report on the basis that so called “leverage tactics” can necessarily be categorised as “extreme”. What these tactics in fact involve and the extent to which the legal framework ought to be altered so as to limit their use, is one of the key questions for the Review to consider. Equally, the fact that “leverage tactics” are alleged to have been used by trade unions rather than employers, should not be taken as meaning that I do not want to hear from trade unions if they wish to put forward evidence of where extreme tactics have been used by employers against them and their members. I don’t want to rule anything out until I have considered the facts.”

3.21 At the start of May 2014, I formally wrote to the TUC and the General Secretaries of individual trades unions that had been involved in disputes where ‘extreme’ tactics were alleged to have been used, to ask for their input to the Review. Specifically they were asked for any views regarding:

- Evidence of intimidation or ‘extreme’ tactics used by employers
- Evidence to counter any suggestions by employers of intimidation or ‘extreme’ tactics on the part of trade unions, or
- Submissions regarding the effectiveness of the existing legal framework.

3.22 This was supplemented by a number of other attempts at engagement, including private conversations between myself, the Review Secretary and the TUC which made it

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<sup>17</sup> Len McCluskey, Conference Speech 2014, <http://www.unitetheunion.org/uploaded/documents/Len%20speech11-18561.pdf> [accessed 22 September 2014]



clear that the Review wanted input from trades unions, would approach the issues in a balanced way and were happy to meet privately to discuss in the first instance.

3.23 The TUC's response from Frances O'Grady on 10 June, agreed by their General Council, stated that:

"The position of the TUC remains unchanged from that which we have taken publicly since the review was first announced, namely that the review was launched as a headline grabbing party political stunt."

It then went on to say in relation to the first part of the Terms of Reference:

"We are not aware of any trade union using "extreme tactics" in any industrial dispute. Unions in dispute with employers have and will continue to use all and every legally compliant means of persuading the employer to take a different course of action. There has been no such action to assess. We note that despite complaints to the police by a Conservative MP during the recent dispute at Grangemouth, no action has been taken by them."

In relation to the second part of the Terms of Reference the letter said:

"The current legal framework governing the conduct of trade unions during trade disputes is among the toughest in any democratic state. Unions cannot take industrial action without complying with a series of requirements, including notices to the employer in a prescribed manner and postal ballots of all those being asked to withdraw their labour. Secondary action is illegal and picketing is restricted by number and by activity.

Public order legislation, also very stringent in the UK, governs any related activity outside the workplace.

In our view the current legislation is excessive and arguably prone to challenge in the European Court of Human Rights in some respects for impeding the rights of workers to withdraw their labour and engage in legitimate protest."

The letter finished by saying that in the TUC's view the Government should conduct a public inquiry on the practice of blacklisting. As this response was agreed by the TUC General Council, no TUC affiliated trades unions contributed further to the Review.

3.24 I wrote two further times to the TUC. Firstly, on 24 June, to express my disappointment that they had chosen not to contribute and to reiterate both the offer of an informal meeting and to again invite any contributions on 'extreme' tactics alleged to have taken place by employers during industrial disputes. Secondly, on 9 July, to make them aware of an alleged 'extreme' tactic by employers that had been highlighted to the Review but had taken place many years ago, and to invite them to provide any evidence they had on similar tactics they had experienced more recently. Despite my attempts, I did not receive any further contribution to the Review.

3.25 In short therefore, the position of the trade union movement remained one of dogged opposition to the Review and anything connected with it. The upshot of that opposition was that, even before the decision was made to scale back the scope of the Review, it was forced to proceed without any substantive contribution, whether as a matter of evidence or submissions/commentary on the current legal framework, from one of the key industrial partners.<sup>18</sup> It is likely to be the case that the strength of the trade union opposition to the Review also impacted on the willingness of at least some employers to make their own contributions or submit their own evidence. The net effect of all of this was to put the Review at constant and enhanced risk of being seen as simply a political exercise rather than one genuinely and objectively seeking to investigate the current industrial relations landscape. The consequent danger of politicisation was something that as the Reviewer, I was very keen to try to avoid.

## Adapting the Review's approach

3.26 In order to build the evidence base to meet the ToRs and make recommendations the Review needed to receive enough submissions with sufficient detail about a number of industrial disputes to form a picture on which it could credibly base its analysis. By the initial deadline of 13 June the Review had only received a very small number of responses. As such, the Review altered its approach, in order to try and increase the response rate. This included:

- Granting extensions for submissions to all who requested them until 11 July, and then again until the end of July
- Following up with all stakeholders who had already been contacted, through phone calls, emails or meetings to try and address any barriers they had to contributing and to understand the reasons why responses had not been submitted
- Offering private meetings to informally discuss any issues that potential contributors had experienced, but that they did not want to put in writing. These were not formal evidence gathering sessions, instead the purpose was to build trust, reinforce the independence of the Review and provide further background with the aim of obtaining written evidence. Annex B lists the informal discussions that eventually took place
- Researching further into industrial disputes, which identified a small number of additional stakeholders who the Review thought may have relevant information and consequently writing to them to invite them to contribute
- Asking Government to raise the profile of the Review by tweeting about the upcoming deadline. On 30 June, the Department for Business, Innovation and Skills tweeted “Have your say on the law governing industrial disputes – contribute to the Carr Review by 11 July: [bit.ly/1qtT6je](https://bit.ly/1qtT6je) #emplaw”. This was re-tweeted by the Cabinet Office the same day, and
- Asking the CBI and other organisations to communicate through their networks the upcoming deadline for contributions.

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<sup>18</sup> It is of course correct to point out that Frances O’Grady’s letter of 10 June 2014 does set out in broad terms the TUC view of the current legal framework – as to which see paragraph 3.25 above.

## Evidence received

3.27 By the end of July, the Review had received 15 responses which it considered substantive, of which only nine were ‘primary’ evidence that were likely to be able to form the core of the Review’s evidence base (although in some cases I would have still wanted to follow up with further questions or oral hearings). Only one of these submissions was from an organisation representing employees.

3.28 An analysis of the low response rate is set out below.

### Responses from trades unions

3.29 As already stated, this low response rate was substantially due to the lack of active engagement by the trade union movement whose perspective of the Review as being a political exercise, remained unchanged from November 2013 until the time of publication.

### Responses from employers

3.30 Employers have also not contributed to the Review in the numbers anticipated, and in many instances where there was publicly available material suggesting that they would have valuable information to contribute to the Review. From the Review’s perspective and the reasons provided to the Review Team, this would seem to be for a number of different and overlapping reasons, as follows:

- ***Not wishing evidence to be made public or to risk worsening their industrial relations position.*** Some employers have made it clear that they would not submit detailed open evidence to the Review as they were concerned that to do so could worsen their own relationships with employees and those unions that operated in their workplace. To give one example, some employers would not even attend a ‘Chatham House’ discussion organised by the CBI for fear of being named and therefore associated with the Review.
- ***Not wanting to be seen to get involved in an inherently political subject area.*** The progressively politicised environment has influenced the willingness of participants to contribute to a process which was perceived as being politically motivated. For some contributors this led to a sense that the time and effort involved in writing a contribution would not be a valuable use of their time.
- ***Not having relevant evidence to contribute.*** It should also be said that some employers may not have had any relevant evidence to contribute, either because they had not experienced the type of tactics they thought the Review was interested in or they took a different judgement about whether they were ‘extreme’ or not.

### Responses from representative organisations

3.31 A number of organisations representing employers have submitted information to the Review. However, although these have provided interesting context and background, they rarely provided any specific detail and therefore had limited usefulness for the Review as a primary evidence source. The reasons for the lack of sufficient detail seem to follow those set out above for employers. Responses from CIPD, the ECIA and the CBI all fall within this category.

## Responses from legal organisations

3.32 The Review sought the views of a number of legal experts, including some organisations with a particular focus on employment law issues. The response from all the representative legal organisations was basically the same: that they were unable to put forward an agreed position as a body (either because they wouldn't be able to reach such a position, or their constitution was as a group of individuals with divergent views). Some firms of solicitors that submitted evidence were unable to provide the level of detail the Review required due to client confidentiality – their submissions again formed useful background on what extreme tactics have taken place, but the Review was largely unable to identify the primary source of the information and either validate any claims made or ask follow up questions. They have, however, provided useful analysis of the existing legal framework.

## Reasons for scaling down the Review

3.33 The ability of the Review to secure adequate responses was also significantly affected by the wider perceptions of the Review as not being 'independent' and the difficulties in taking the 'politics' out its work. As has already been set out above, the Review was perceived by some to have had political origins, and to have operated successfully it needed to regain the trust lost at the outset so as to ensure first that significant and substantial contributions could be made by those who may have had relevant information to pass on and secondly that any recommendations could not be written off as simply following a party political agenda.

3.34 It has already been mentioned, but the lack of involvement by trades unions meant that the Review was only ever going to be able to bring together a one-sided story, and could not effectively tell the union side of the story or provide their view of the facts – this could only be done to the extent that their view had already been put into the public domain.

3.35 As set out above, by the end of July, the Review had only received a relatively small number of responses, and some of the information provided to the Review was also difficult to verify or support. Industrial disputes can also involve disciplinary or legal proceedings, the contents of which cannot be disclosed publicly. Similarly, and again as set out above, some employers themselves did not wish to be identified to avoid damage to their current industrial relations position.

3.36 Finally, the politics which had been present at the start of the Review did not go away. On Friday 18 July, the Conservative Party published a press release setting out their plans for changing the law on industrial relations should they win the 2015 General Election.<sup>19</sup> The proposal to reform picketing laws appeared to me to fall squarely within the scope of the ToRs and in my view made it difficult for the Review to operate in this area without being seen as partisan. This would then have the knock-on consequence of further inhibiting responses to the Review. As one response from a legal expert said, the

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<sup>19</sup> Conservatives (18 July 2014), 'Press release: 21st-century industrial relations legislation', [accessed 22 September 2014] [http://www.politicshome.com/uk/article/101848/conservatives\\_21st\\_century\\_industrial\\_relations\\_legislation.html](http://www.politicshome.com/uk/article/101848/conservatives_21st_century_industrial_relations_legislation.html)

announcement brought into question 'the viability of the current terms of reference in the light of the announcement at the weekend re changes to picketing laws.'<sup>20</sup>

3.37 This led me to reflect on the progress which the Review had made by the end of July and to conclude that, in the politicised environment in which I was required to operate, the quantity and breadth of evidence that the Review had been able to obtain was insufficient for it to make recommendations for change and therefore to deliver fully against its ToRs.

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<sup>20</sup> Martin Warren, Eversheds, email to the Review Team, 23 July 2014

## Chapter 4

# Alleged use of extreme tactics in industrial disputes

### Introduction

4.1 This chapter sets out the story of what has happened during a number of industrial disputes as best I am able to tell it from the limited evidence gathered. The chapter focuses on tactics which have been alleged to be 'extreme', 'intimidatory' or 'inappropriate'.

4.2 This chapter describes nine case studies, which the Review believes represent the alleged use of 'extreme' tactics in industrial disputes based on the evidence provided by contributors. Given the limited amount of evidence submitted to the Review, it is not possible to assess the extent to which the case studies are representatives of the current state of industrial relations more generally across the United Kingdom.

4.3 These case studies describe either a specific dispute or a series of related disputes (involving particular employers or sectors) where 'extreme' tactics are said to have been used. The information for these case studies has been gathered through direct contributions to the Review (primarily by employers or organisations representing employers) and through other sources readily available to the review, such as newspaper articles, YouTube videos or social media updates.

4.4 The case studies are split into two sections as follows:

*Disputes where the Review has received direct contributions from one or more party to that dispute:*

- a) The INEOS dispute at the Grangemouth Chemicals and Refining plant in 2013
- b) Disputes in London Underground Limited and Transport for London between 2012-14
- c) Fire and Rescue Services disputes in 2010 and 2013-14
- d) Cleaners' disputes between 2012-14, and
- e) Total Lindsey Oil Refinery dispute in 2009.

*Disputes which are either official Unite 'leverage' campaigns, or exhibit 'leverage'-style behaviour, but where the Review has received little or no direct contributions from any party to that dispute, and have instead relied primarily on publicly available material:*

- f) The Building and Engineering Services National Agreement (BESNA) dispute in 2011-12
- g) London Buses dispute in 2012
- h) Howdens Joinery dispute in 2013, and
- i) DP World dispute in 2013.

4.5 Each case study sets out the information it is based on and the contributions received, the relevance to the Review, a short background on industrial relations within that employer/sector, a summary of the reasons for the dispute(s), a chronology of relevant events and a description of the tactics used in the dispute(s).

4.6 The case studies can necessarily only reflect the information provided directly, or otherwise made available to the Review. The consequence of this is that in nearly all the cases where material was submitted to the Review, the picture is evidentially one-sided for reasons which have been explained elsewhere in this Report. Where case studies have been compiled from sources other than contributors to the Review (for example by internet research or media stories), the information has as a consequence been patchy and incomplete and it is accepted that the parties to these disputes may have a different analysis of events from that which the Review has been able to put together. Given the absence of oral hearings, none of the evidence which has come before the Review has been tested by question and answer. The Review has however at all times attempted to provide balance in the way it has provided its assessment and has sought to avoid, as far as possible, reaching definitive conclusions on contentious events. It is also worth adding that in many cases and for a range of understandable reasons neither employers nor unions provide very clear public information on the origins of disputes, the negotiations undertaken, or the eventual outcome reached.

4.7 All the submissions received by the Review which contributed to these case studies are published on the Carr Review website.<sup>21</sup> Where publicly available material has been used, this has also been referenced as footnotes.

4.8 A short conclusion and narrative of the Review's findings on the tactics used and the themes emerging are set out at the end of this chapter.

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<sup>21</sup> The Carr Review (undated) Available: <https://carr-review.independent.gov.uk>

## a) The INEOS dispute at the Grangemouth Chemical and Refining plant

### Introduction

4.9 The dispute at the Grangemouth Chemicals and Refining plant in the summer and autumn of 2013 was the key event which led to the announcement of this Review. This section therefore covers the dispute at Grangemouth in detail, with particular focus on the tactics used by both INEOS and Unite. The tactics used by Unite in this dispute had substantial media coverage at the time, as well as being the subject of Parliamentary interest.

4.10 The Review received detailed submissions about the dispute from the INEOS Group. A submission from the CIPD also referred to it in some detail. The Review obtained a copy of an investigation by Hampshire Constabulary into several protests organised in Hampshire by Unite in support of the INEOS dispute. A protest related to the dispute is also currently the subject of an ongoing investigation by Police Scotland and as such the Review has not been able to obtain a copy of the Police file. Unite did not provide any first hand evidence but the Review considered a large number of news articles available on the Unite website. Additional evidence was also gathered from contemporaneous newspaper articles and comment pieces.

### Issue

4.11 The dispute with INEOS began over the suspension of Unite's convenor, Mr Stephen Deans, at INEOS on 4 July 2013. In response Unite balloted their members on possible industrial action in early September.<sup>22</sup> The ballot was based on the alleged victimisation of Mr Deans and INEOS' use of agency workers. On 27 September 2013 Unite announced the ballot results: turnout was 86% and 90.6% of those workers had voted in support of industrial action short of a strike.<sup>23</sup>

4.12 By early September, the dispute had taken on an additional dimension as INEOS management were raising concerns about the financial viability of the plant. For example, on 6 September Jim Ratcliffe, Chairman of INEOS, gave an interview to the Financial Times raising concerns about the financial viability of the plant.<sup>24</sup> He said, "To have a future it needs cheap feedstocks ... and a sensible cost structure. If we can't resolve those issues, it would need to shut down."<sup>25</sup> He also made reference to the plant's 'expensive' cost base and the costs of pensions. INEOS stated in their submission that there was "a lack of clarity from the union as to what the dispute was

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<sup>22</sup> Unite the Union (20 September 2013) *Unite urges action to avoid Grangemouth dispute* [online] Available: <http://www.unitetheunion.org/news/unite-urges-action-to-avoid-grangemouth-dispute/> [Accessed: 15 September 2014]

<sup>23</sup> Unite the Union (27 September 2013) *Grangemouth ballot result is a 'wake-up call' to Ineos bosses* [online] Available: <http://www.unitetheunion.org/news/grangemouth-ballot-result-is-a-wake-up-call-to-ineos-bosses/> [Accessed: 15 September 2014]

<sup>24</sup> The Financial Times (6 September 2013) *Ineos considers shutting Scottish plant* [online] Available: <http://www.ft.com/cms/s/0/08141296-16e0-11e3-9ec2-00144feabdc0.html> [Accessed: 15 September 2014]

<sup>25</sup> Ibid. And The Financial Times (6 September 2013) *Ineos considers shutting Scottish plant* [online] Available: <http://www.ft.com/cms/s/0/08141296-16e0-11e3-9ec2-00144feabdc0.html> [Accessed: 15 September 2014]



actually about”. INEOS claimed that the Unite representatives thought the dispute was about Stephen Deans but the rank and file were really rejecting the proposed changes to terms and conditions. INEOS said that this confusion made it difficult to communicate with employees.

4.13 The dispute as it developed took many forms including: industrial action short of a strike, strike action, protests, media coverage and campaigning, closure of the plant, negotiations at ACAS, and an eventual resolution, including the resignation of Mr Deans from his role at INEOS.

4.14 This was not the first time that industrial relations at Grangemouth had been difficult, but the speed with which the dispute escalated and became very personal is unusual in industrial disputes. INEOS is a significant employer and plays a large role in the UK’s critical industrial infrastructure as one of the largest chemical and refining plants in the UK – the closure of its Grangemouth plant would therefore be likely to have had significant economic consequences both locally and nationally.

## Chronology

Date	Event
4 July 2013	Suspension of Mr Deans from his role at INEOS.
September 2013 <sup>26</sup>	Unite members at Grangemouth balloted (result in favour of industrial action announced 27 September). <sup>27</sup>
6 September 2013	Jim Ratcliffe is interviewed in the Financial Times raising concerns about the financial viability of the plant. <sup>28</sup>
30 September 2013	Unite gave INEOS management seven days’ notice of industrial action short of a strike. <sup>29</sup>
1 October 2013	Article in The Scotsman outlining the need for a £300m ‘survival plan’ for Grangemouth. <sup>30</sup>
4 October 2013	INEOS wrote down the value of the Grangemouth petrochemicals plant from £400 million to zero in support of its claim that costs must be cut in order for the Grangemouth plant to stay open. <sup>31</sup>
7 October 2013	Unite members at INEOS started industrial action involving working-to-rule and a ban on overtime. <sup>32</sup>
9 October 2013	Unite started using ‘leverage-style’ tactics.
11 October 2013	Unite claimed that INEOS refused to enter into meaningful talks and served a notice of strike action to start on Sunday 20 October and end on Tuesday 22 October. <sup>33</sup> Unite members protested at the Limewood Hotel in Lyndhurst, the Pig in the Wall Hotel in Southampton and the Pig Hotel in Brockenhurst (all part

<sup>26</sup> The Review team was unable to establish when the ballot began

<sup>27</sup> Unite the Union (20 September 2013) *Unite urges action to avoid Grangemouth dispute* [online] Available: <http://www.unitetheunion.org/news/unite-urges-action-to-avoid-grangemouth-dispute/> [Accessed: 15 September 2014]

<sup>28</sup> The Financial Times (6 September 2013) *Ineos considers shutting Scottish plant* [online] Available: <http://www.ft.com/cms/s/0/08141296-16e0-11e3-9ec2-00144feabdc0.html> [Accessed: 15 September 2014]

<sup>29</sup> Unite the Union (30 September 2013) *Patience runs thin as Grangemouth workers announce action* [Online] Available: <http://www.unitetheunion.org/news/patience-runs-thin-as-grangemouth-workers-announce-action/> [Accessed: 15 September 2014]

<sup>30</sup> The Scotsman (1 October 2013) *£300 million survival plan for Grangemouth* [online] Available: <http://www.scotsman.com/news/scotland/top-stories/300m-survival-plan-for-grangemouth-1-3118462> [Accessed: 15 September 2014]

<sup>31</sup> BBC News (4 October 2013) *Ineos writes down Grangemouth assets to zero* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-scotland-business-24396871> [Accessed: 15 September 2014]

<sup>32</sup> BBC News (7 October 2013) *Grangemouth dispute: Ineos says Unite is ‘fiddling while Rome burns’* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-scotland-business-24420533> [Accessed: 15 September 2014]

<sup>33</sup> Unite the Union (11 October 2013) *Unite serves notice of strike action to Ineos* [Online] Available: <http://www.unitetheunion.org/news/unite-serves-notice-of-strike-action-to-ineos/> [Accessed 15 September 2014]

	of Jim Ratcliffe's Pig Hotel chain).
<b>13 October 2013</b>	Unite protested at the Lymington Town Sailing Club, and during the Solent Half Marathon.
<b>14 October 2013</b>	Unite and INEOS began talks at ACAS to avert the strikes planned to begin on 20 October. The talks were unsuccessful. <sup>34</sup> INEOS announced that fuel production at the plant would be stopped in anticipation of the strike on safety grounds and began the process of putting the plant in shutdown. <sup>35</sup>
<b>15 October 2013</b>	Talks resumed at ACAS and carried on until 5am on 16 October but no agreement was reached. Unite called off the planned strike but INEOS decided to continue with the shutdown. <sup>36</sup>
<b>18 October 2013</b>	Talks resumed at ACAS but broke down. INEOS refused to restart the plant unless Unite committed to no further industrial action in that year. Unite demanded a commitment that there would be no cuts to the workforce <sup>37</sup> . Unite wrote to Her Majesty's Revenue and Customs (HMRC) asking it to investigate the tax affairs of the INEOS Group amid claims that the company's arrangements "obfuscate the true position of INEOS". <sup>38</sup> INEOS gave 800 workers new contracts with new pension terms and conditions and told them to sign them by 21 October or face dismissal <sup>39</sup> . Unite demonstrated at the Limewood Hotel in Lyndhurst and at the Pig Hotel in Brockenhurst. Unite also demonstrated outside an INEOS manager's home with flags, banners and an inflatable rat. <sup>40</sup>
<b>20 October 2013</b>	Unite organised a rally at Grangemouth. <sup>41</sup>
<b>21 October 2013</b>	Unite claimed that 665 workers out of over a thousand had rejected the new contracts proposed by INEOS. <sup>42</sup>
<b>22 October 2013</b>	The Scotsman reported that the Scottish government was looking for alternative buyers for the Grangemouth site. <sup>43</sup>
<b>23 October 2013</b>	INEOS made a statement confirming the decision of its shareholders to place the Grangemouth petrochemicals plant in liquidation. In response Unite announced they would embrace the survival plan "warts and all". <sup>44</sup>
<b>25 October 2013</b>	INEOS reversed the decision to close the plant. <sup>45</sup>
<b>28 October 2013</b>	Stephen Deans resigned as an employee of INEOS. <sup>46</sup>

<sup>34</sup> Union-News.co.uk (16 October 2013) *Grangemouth strike called off after bosses "walk away" from talks* [Online] Available: <http://union-news.co.uk/2013/10/breaking-grangemouth-strike-called-bosses-walk-acas-talks/> [Accessed 15 September 2014]

<sup>35</sup> BBC News (14 October 2013) *Grangemouth refinery begins shutdown* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-scotland-business-24515757> [Accessed 15 September 2014]

<sup>36</sup> Unite the Union (16 October 2013) *INEOS team walk from talks - Unite calls off strike to protect national asset from owner's 'scandalous behaviour'* [Online] Accessible: <http://www.unitetheunion.org/news/ineos-team-walk-from-talks---unite-calls-off-strike-to-protect-national-asset-from-owners-scandalous-behaviour/> [Accessed 15 September 2014]

<sup>37</sup> The Scotsman (18 October 2013) *Grangemouth talks: Both sides remain deadlocked* [Online] Accessible: <http://www.scotsman.com/news/politics/top-stories/grangemouth-talks-both-sides-remain-deadlocked-1-3148658> [Accessed: 15 September 2014]

<sup>38</sup> Unite the Union (18 October 2013) *Call for Revenue and Customs probe into Ineos' 'obfuscating' tax affairs* [Online] Available: <http://www.unitetheunion.org/news/call-for-revenue-and-customs-probe-into-ineos-obfuscating-tax-affairs/> [Accessed: 16 September 2014]

<sup>39</sup> UnionNews.co.uk (18 October 2013) *Grangemouth sign or be sacked threat is "a gun at the head of the country"* [Online] Available: <http://union-news.co.uk/2013/10/grangemouth-sign-sacked-threat-gun-head-country/#sthash.1111OEHn.dpuf> [Accessed: 16 September 2014]

<sup>40</sup> The Daily Mail (30 October 2013) *Terrorised by Union bullies: How Labour's Unite paymasters and their children in bitter oil refinery battle* [Online] Available: <http://www.dailymail.co.uk/news/article-2480643/Labours-Unite-paymasters-intimidated-managers-oil-refinery-battle.html> [Accessed: 16 September 2014]

<sup>41</sup> Unite the Union (19 October 2013) *Ineos risk destroying Scottish jobs as Grangemouth supporters rally* [Online] Available: <http://www.unitetheunion.org/news/ineos-risk-destroying-scottish-jobs-as-grangemouth-supporters-rally/> [Accessed: 16 September 2014]

<sup>42</sup> BBC News (21 October 2013) *Grangemouth dispute: Union members reject Ineos offer* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-24603346> [Accessed: 16 September 2014]

<sup>43</sup> The Scotsman (22 October 2013) *Grangemouth: Alex Salmond in hunt for buyer* [Online] Available: <http://www.scotsman.com/news/politics/top-stories/grangemouth-alex-salmond-in-hunt-for-buyer-1-3149580> [Accessed: 16 September 2014]

<sup>44</sup> BBC News (24 October 2013) *Grangemouth dispute: Hopes rise after Unite accepts survival plan* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-24647843> [Accessed 16 September 2014]

<sup>45</sup> BBC News (25 October 2013) *Grangemouth dispute: Ineos says plant will stay open* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-24671184> [Accessed: 16 September 2014]

## Conduct during the dispute

4.15 Unite's campaign during the dispute was significant in scope. According to Annex D of INEOS' submission to the Review, in a two week period 79 protests took place on a national and international level.

4.16 Despite the similarity to leverage campaigns organised by Unite during other disputes, Unite's Director of Organising, Sharon Graham denied that Unite deployed leverage against INEOS during the dispute. Ms Graham describes the tactics used at Grangemouth as follows:

"Leverage was not deployed against Ineos at Grangemouth and it should not be confused with the community awareness activity of decision makers that took place"<sup>47</sup>

4.17 The tactics used in the dispute are considered in more detail below.

### Protests organised by a trade union in furtherance of a dispute

4.18 The submission provided by INEOS stated that as well as protests at Grangemouth protests were held at the following locations believed to have links with INEOS:

- Properties of customers (said to be 27 protests in total) or businesses connected to Jim Ratcliffe
- Trade associations
- Public places e.g. train stations and sports clubs
- 20 financial institutions including RBS, Lloyds and HSBC in London
- Eight suppliers to INEOS including BP, John Laing, PwC and Slaughter and May, and
- Residential properties including Jim Ratcliffe's home in the South of England.

### At the premises of the company organisation

4.19 Media coverage of the protests focused on those taking place away from the actual premises at Grangemouth. However, Unite called a rally at Grangemouth on 20 October attended by hundreds of workers.<sup>48</sup>

### At the private residence of senior managers

4.20 The INEOS submission made clear that there were at least two protests outside the residential properties of senior managers. Channel 4 News suggested that there were three.<sup>49</sup> One of these protests is currently being investigated by Police Scotland. The Review has received limited direct evidence about these incidents but the BBC reported

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<sup>46</sup> BBC News (28 October 2013) *Unite official Stephen Deans resigns from Grangemouth job* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-tayside-central-24716429> [Accessed: 16 September 2014]

<sup>47</sup> Morning Star Online (14 November 2013) *The New Tactics to Meet New Challenges* [Online] Available: <http://www.morningstaronline.co.uk/a-32cc-The-new-tactics-to-meet-new-challenges> [Accessed: 16 September 2014]

<sup>48</sup> BBC News (20 October 2013) *Grangemouth dispute: Staff hold protest rally outside plant* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-24594680> [Accessed: 23 September 2014]

<sup>49</sup> Channel 4 News (31 October 2013) *Union boss: 'We will strike outside directors' homes'* [Online] Available: <http://www.channel4.com/news/unite-union-mob-len-mcluskey-grangemouth-protest> [Accessed: 16 September 2014]

on one such alleged incident saying that Police were called to an address in Dunfermline on Friday 18 October following reports of a protest.<sup>50</sup>

4.21 CIPD and INEOS refer to a protest outside the home of a senior INEOS manager which lasted for about 90 minutes and led to the person concerned fearing for the safety of his wife and two young children. It is alleged that around 25-30 protesters descended on the driveway. The CIPD also stated that the protesters told neighbours the targeted director was “evil” and it was alleged that children were coaxed into joining the protests.

4.22 A picture of the incident shows a number of protesters wearing Unite tabards carrying a large inflatable rat and banners and flags standing on or very close to the driveway of a house.

4.23 The CIPD submission quoted the director whose house was targeted as saying:

“My wife is very concerned that they could turn up at any time again. They know where I live. It’s in the back of my mind....they were trying to humiliate me.”

4.24 Channel 4 interviewed Len McCluskey after the event in which he denied that the protesters went onto the driveway. He denied that protesting at residential homes was intimidatory because it was a legitimate protest.<sup>51</sup>

4.25 From the evidence received from INEOS and Hampshire Constabulary, there is no evidence to suggest that these protests were anything but peaceful. It should be noted that Police Scotland have not yet concluded their investigation into one of Unite’s protests near Grangemouth.

#### **In a public place associated with senior managers**

4.26 As stated above, Unite organised protests at other businesses linked to Jim Ratcliffe. Witness summaries in the Hampshire Constabulary investigation describe a small number of protesters (between eight and twelve people) arriving outside properties in Mr Ratcliffe’s hotel chain waving Unite banners and playing loud music. None of the protests are described as violent or intimidating. It is clear from the Police reports that the protesters were not all (if at all) employees at Grangemouth and included Unite officials.

4.27 At two out of the three protests it was reported that the protesters carried a large inflatable rat. A loudspeaker was used to shout the union’s grievances and a policeman saw protesters conversing with hotel guests as they walked to their cars.

4.28 The witness summaries are not clear on exactly how long each protest lasted. The protest at the Pig in the Wall hotel in Southampton appears to have lasted for about an hour and the others ended when the Police arrived. The Police reported that the protesters immediately responded to requests to turn the music down and leave.

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<sup>50</sup>BBC (31 October 2013) *David Cameron: Unite leveraging allegations “shocking”* [Online] Available: <http://www.bbc.co.uk/news/uk-scotland-24758166> [Accessed 16 September 2014]

<sup>51</sup>Channel 4 News (31 October 2013) *Union boss: ‘We will strike outside directors’ homes’* [Online] Available: <http://www.channel4.com/news/unite-union-mob-len-mcluskey-grangemouth-protest> [Accessed: 16 September 2014]

4.29 The INEOS submission expressed concern that such tactics could lead to “irreparable damage to the business relationships and to the reputation of the business”. However, the Hampshire Constabulary investigation concluded that:

“In all the recent Hampshire incidents, the action of the Unite protesters were clearly designed to highlight the on-going trade dispute at the Grangemouth Petrochemical Plant. There has been no evidence of any threatening behaviour or other violent or intimidatory conduct and the groups have complied with all requests made of them.

All unions have a duty to protect the interests of their members and to highlight what they perceive are injustices. The right to peaceful protest and freedom of speech is enshrined in English law and it is the duty of the police to allow individuals to exercise those rights.

From the evidence available to me there is insufficient evidence to substantiate any offence taking place at any of the recently reported incidents. The policing of these incidents was both lawful and proportionate and met the needs of both those protesting and the companies/organisations targeted.”

**At the premises of another organisation/third party in some way connected with the employer at the centre of the dispute**

4.30 Pictures provided by INEOS show that demonstrators used Unite publicity material (bibs, banners, posters etc) whilst demonstrating outside third party premises, for example the Office for Fair Trading, Sainsbury’s and BASF. The list of protests submitted to the Review by INEOS includes protests at many other third party premises e.g. 20 financial institutions and eight suppliers.

**Alleged victimisation or harassment of senior managers**

4.31 Part of the Unite campaign directly targeted senior individuals in INEOS, and in particular Jim Ratcliffe and Tom Crotty. INEOS’ submission includes an example of a leaflet targeted at Tom Crotty which states that INEOS senior managers are “bullying and victimising their Shop Steward.” The same leaflet refers to Jim Ratcliffe as follows, “The billionaire owner of INEOS, Jim Ratcliffe, is a ‘high-stakes’ operator. He has loaded the business with debt and has retreated to tax havens. He is intent on conflict with his own workforce and to this end is victimising Unite Shop Steward, Stevie Deans.” (A similar leaflet was produced targeting Jim Ratcliffe). The CIPD submission also stated that the daughter of a senior manager at INEOS had “wanted” posters denouncing her father posted through her front door in Hampshire. The Review has not seen an example of these posters.

### Trade union communications with third parties to try and influence the outcome of a dispute

4.32 Unite took out a full page article in the Sunday Herald on 19 October highlighting the dispute, stating that ‘Grangemouth, the powerhouse of Scotland’s economy, stands idle today. Ineos owner Jim Ratcliffe bears full responsibility for this.’<sup>52</sup>

4.33 Unite also sought to influence INEOS through writing to HMRC, and according to INEOS in this letter made “a number of collateral and unsubstantiated accusations related to INEOS tax affairs implying bad practice on the part of the company”. Unite also suggested in a press release that it had written to Petrochina (who held a 50 per cent stake in the INEOS refinery) and met with BP to ask them to use their influence on INEOS to resolve the dispute.

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<sup>52</sup> Unite the Union (undated) *A message to the people of Scotland* [Online] <http://www.unitetheunion.org/uploaded/documents/Sunday%20Herald%20FV11-14056.pdf> [accessed 18 September 2014]

## b) Disputes in London Underground Limited and Transport for London

### Introduction

4.34 Industrial disputes in relation to public transport in London are perhaps in the news more than any other due to the impact that strike action quickly has on the capital and the apparent frequency with which such events occur. In recent years there have been a number of strikes and threats of strike. The Mayor of London has well-known views about striking and the rules governing the process of calling strike action, although this topic is out of scope of the review.<sup>53</sup> This dispute is of relevance to the Review because of allegations relating to conduct during industrial action, and has been included in the Report on this basis.

4.35 The Review received a detailed submission from Transport for London (“TfL”) covering these issues. Unlike most of the other case studies covered in this Report, this section does not cover a single dispute but refers to tactics used in industrial disputes on London Underground more broadly. Because of the frequency of disputes the chronology only covers the last two years.

### Issue

4.36 London Underground Limited (“LUL”) is a subsidiary of TfL, operating the tube network. Employees of LUL include members of the National Union of Rail, Maritime and Transport Workers (the “RMT”), the Transport Salaried Staffs’ Association (“TSSA”), the Associated Society of Locomotive Engineers and Firemen (“ASLEF”) and Unite. Industrial relations in LUL have been historically difficult, with the threat of withdrawal of labour having a negative and immediately disruptive impact on London, which makes the threat of strike action an effective tool for the unions.

4.37 Industrial action has taken place, or been threatened to take place over the last few years, for a range of reasons including:

- Dismissals and disciplinary procedures against union members
- The proposed closure of ticket offices
- Job losses
- Working arrangements during the London 2012 Olympics
- Pay and pensions
- Bank holiday working – in particular Boxing Day, and
- Working conditions, e.g. rest days and rotas.

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<sup>53</sup> For example, Boris Johnson was quoted in The Daily Telegraph (2 February 2014) as saying, ‘We need a ballot threshold – so that at least 50 per cent of the relevant workforce has to take the trouble to vote, or else the ballot is void. That is surely the least we can ask. It is time for the Government to legislate.’ [Online]. Available: <http://www.telegraph.co.uk/news/politics/10613610/I-dont-begrudge-Bob-Crow-his-holiday-but-I-do-mind-his-strike.html> [accessed 22 September 2014]

4.38 Strikes affecting LUL have taken place four times so far in 2014 (with another three called off), involving all the major transport unions – the RMT, TSSA, Unite and ASLEF. There have been continuing allegations of LUL employees carrying out ‘inappropriate’ and ‘intimidatory’ during industrial action, some of which has been the subject of court cases.

## Chronology (key events and only covering last two years due to the frequency of strike action)

Date	Event
<b>1 November 2012</b>	Strike action by RMT staff working for Tube Lines on Northern line (pensions and travel concessions).
<b>22 November 2012</b>	Strike action on 23 November for 24 hours by Tube Lines staff on Jubilee, Northern and Piccadilly lines called off (pensions and travel concessions).
<b>26 December 2012</b>	Strike action by ASLEF (bank holiday working arrangements). Also scheduled for 18 and 25 January 2013 and called off on 11 January. Similar strikes in 2010 and 2011 on Boxing Day.
<b>28 March 2013</b>	Strike action involving members of RMT and ASLEF working on the Jubilee line scheduled for 2 April and 2 May 2013 called off following negotiations at ACAS.
<b>24 September 2013</b>	One day strike by RMT staff on the Victoria line scheduled for that day called off (overtime).
<b>10 December 2013</b>	Boxing Day ASLEF tube strike called off.
<b>28 January 2014</b>	Two sets of two day strikes on the DLR for 29 January and 4 February called by the RMT called off (pay and working conditions).
<b>4 February 2014</b>	Two day strike by RMT and TSSA members (closure of ticket offices and job losses).
<b>11 February 2014</b>	Two day strike by RMT and TSSA members suspended (closure of ticket offices and job losses).
<b>28 April 2014</b>	Two day strike by RMT members (closure of ticket offices and job losses).
<b>5 May 2014</b>	Three day strike by RMT members called off (closure of ticket offices and job losses).
<b>1 July 2014</b>	A small number of RMT, TSSA and Unite members working in London Underground power control go on strike for eight days (working conditions and pensions).
<b>22 August 2014</b>	Strike by ASLEF members on the Waterloo and City and Central lines (safety training).

## Conduct during the disputes

4.39 TfL’s submission to the Review provided examples of what were said to be ‘extreme tactics’ which they believe to have been used in the context of recent industrial disputes. The Review has not been provided with any information relating to ‘extreme tactics’ towards employees by the employer during industrial disputes (although the Review is aware that the unions believe their members have been unfairly treated for their union activities, see the coverage of RMT member Mark Harding’s case for example<sup>54</sup>).

4.40 The Review has sought to find other coverage of the events TfL have included in their submission and this is referenced where possible – it has not been possible in all

<sup>54</sup> Mr Harding was arrested and charged with an offence of intimidation under section 241 TULCRA based on his actions on a picket line in February 2014. He was acquitted of the offence at Hammersmith Magistrates Court on 2 June 2014



cases to do so, and in these cases therefore the Review is merely reporting what TfL has reported to it. It should also be noted that a number of cases pursued by TfL have not led to successful prosecutions, or the defendant has been successful on appeal.

4.41 The tactics used in disputes between LUL and the unions representing its employees tend to focus on inappropriate behaviour towards other staff members in day-to-day business or during strikes, intimidatory behaviour on picket lines and a small number of protests outside TfL and related premises.

#### Alleged inappropriate or intimidatory behaviour on picket lines

4.42 TfL has described the atmosphere and conduct of picket lines as sometimes being intimidating to non-striking staff and potentially customers. They cite the example of alcohol being consumed by a picket outside the Seven Sisters Depot. Pictures of the event are available on the 'RMT London Calling' website, although it is not clear from these pictures that alcohol was consumed.<sup>55</sup>

4.43 The position of picket lines can also sometimes make it difficult for the public to access the station. Transport for London now work with the relevant Police Services to ensure suitable policing at likely hot-spots, but as they have so many sites this is a difficult task.

4.44 TfL alleged that inappropriate behaviour towards colleagues is fairly common, and there a number of cases covered in the media. TfL's submission described a case in 2014 in which "a member of staff was approached by a trades union activist as he entered the premises and was verbally abused in strong terms" [their follow up submission describes a similar incident – it is not clear if it is the same one or not]. The Police attended this incident but there was insufficient evidence to charge the individual involved. Cases involving RMT members Mark Harding and Arwyn Thomas have a lot of media coverage – neither resulted in a conviction, but both give a sense of the atmosphere on picket lines and the strength of feeling on both sides.<sup>56</sup>

4.45 TfL's submission mentioned an incident during industrial action in March 2011, in which a member of TfL staff at Mile End Station who was not participating in the strike "was assaulted on our property by an RMT official". This appears to refer to the RMT official, Steve Hedley, who had his conviction for assault overturned on appeal for 'abuse of process' as British Transport Police had failed to download and provide to the court all relevant CCTV evidence. TfL described the events that took place as follows: the official was attending the picket line outside the station but then entered the unpaid side of the station and had an altercation with the manager standing on the ticket barriers. TfL reported that this resulted in the official being convicted of assault in the Magistrates' Court. However, the conviction was subsequently overturned on appeal. LUL did not take any further action because the official was not one of their employees.

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<sup>55</sup> RMT London Calling (23 April 2009) *RMT Drivers Strike for Justice* [online] Available: <http://www.rmtlondoncalling.org.uk/node/509> [Accessed: 18 September 2014]

<sup>56</sup> BBC News (22 June 2011) *Tube strike driver Arwyn Thomas unfairly dismissed* [online] Available: <http://www.bbc.co.uk/news/uk-england-london-13879563> [Accessed: 18 September 2014] and RMT London Calling (2 June 2014) *Mark Harding Not Guilty* [online] Available: <http://www.rmtlondoncalling.org.uk/mark> [Accessed: 18 September 2014]

4.46 It is suggested by TfL that the word ‘scab’ is often used and that individuals are sworn and shouted at. Other forms of intimidation that are alleged to have been used in the strikes between November 2013 and May 2014 include taking photos of station staff who attended work during a strike and a trade union representative posting them on a Facebook page.

#### Alleged victimisation or harassment of non-striking workers

4.47 TfL has suggested to us that trade unions are less supportive towards their members who do not participate in industrial action, which may include social isolation and treating members who do not take part in industrial action less favourably (e.g. giving them inconvenient shifts, not having the opportunity to swap leave, not offering overtime to them, or withdrawing union support).

4.48 Another tactic which TfL alleges is used is that where an operational manager has people reporting to him/her who have not participated in strike action, they can ‘make life difficult’ by the way that they exercise their discretion over the employee’s working day, such as where they stand in the Underground station and the timing of their rest breaks. It is suggested that this type of behaviour makes the workforce more likely to be heavily unionised with greater likelihood of responding to calls for strike action.

4.49 Similarly where employees have been known not to participate in strike action in the past a trade union member may approach this individual and make it clear that in future they are expected to participate. Employees have been summoned to off-site ‘disciplinary’ meetings held by union officials (an example in TfL’s submission was a meeting which took place in a pub). TfL’s submission states that they are aware of an incident several years ago where an employee received a threatening letter from a trade union activist threatening to burn his house down if he did not participate in future strike action.

4.50 TfL suggests that employees often do not make formal complaints about these types of tactics as to do so would have negative consequences for them, and therefore TfL is not aware of everything which happens due to the large number of sites where industrial action takes place.

#### Protests organised by a trade union in furtherance of a dispute

4.51 ‘Leverage’ type protests have happened in other London transport sectors – instances related to London Buses are covered elsewhere in this chapter. TfL’s submission mentions one instance of this taking place relating to LUL when in 2013 a trade union carried out a number of protests outside several TfL offices and also outside City Hall, the headquarters of the Greater London Authority. This appears to relate to a campaign called ‘Justice for the 33’ in which LUL ended a contract on the Bakerloo line with an agency called ‘Trainpeople’ with the effect of ending the employment of 33 people who had worked for a number of years on that line. The RMT organised a number of protests seeking to persuade LUL to ‘reinstate’ the 33 people, including setting up a soup kitchen outside St James’ Park station (where the London Underground headquarters are located) on 15 January 2013 and another protest on 15

May, protesting outside the TfL headquarters (15 April 2013) and organising demonstrations at Wembley Central station.<sup>57</sup>

4.52 According to the TfL submission the protests at St James' Park were attended by up to 20 people who sought to maximise their noise levels by using vuvuzelas and a brass band, and deterred the public from accessing the adjacent shopping centre and had an adverse effect on local businesses.

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<sup>57</sup> RMT London Calling (13 April 2013) *Justice For The 33 Campaign Goes To TFL Head Office* [Online] Available: <http://www.rmtlondoncalling.org.uk/node/4099> [ Accessed: 18 September 2014]  
RMT London Calling (14 January 2013) *Justice for the 33. The fight goes on. Soup kitchen outside Broadway* [online] Available: <http://www.rmtlondoncalling.org.uk/node/3808> [ Accessed: 18 September 2014]  
RMT London Calling (16 May 2013) *Justice for the 33 - Demo May 20th 2013 @ 0800-1000* [online] Available: <http://www.rmtlondoncalling.org.uk/node/4172> [ Accessed: 18 September 2014]  
The Harrow Times (14 January 2013) *Soup kitchen set up by RMT union at St James's Park station in protest at sacking of London Underground staff* [online] Available: <http://www.harrowtimes.co.uk/news/10160397.Soup+kitchen+set+up+in+protest+at+tube+workers+sacking/> [Accessed: 18 September 2014]

## c) Fire and Rescue Services disputes

### Introduction

4.53 There have been a number of disputes within the Fire and Rescue Services in recent years. This case study will consider the dispute in 2010 between the London Fire Brigade (“LFB”) and the Fire Brigades Union (“FBU”) over shift pattern changes and the more recent national dispute in 2013/2014 over changes to retirement age and pension arrangements.

4.54 The Review received responses from nine different Fire and Rescue Service organisations and carried out open source research to provide additional information. Responses from Buckinghamshire Fire and Rescue, Hertfordshire Fire and Rescue and the LFB were particularly detailed. The other responses came from:

- Kent Fire & Rescue Service
- Merseyside Fire & Rescue Service
- Staffordshire Fire and Rescue Service
- Association of Principal Fire Officers
- Chief Fire Officers Association, and
- The Retained Firefighters Union

### Issue

4.55 The dispute in 2010 between the LFB and the FBU arose as a consequence of national measures to change shift patterns. The proposed shift changes were to be introduced by each employer i.e. each fire and rescue service separately. Trade union action was organised locally rather than nationally and the dispute was resolved in different ways and at different times depending on the region. The FBU launched a prolonged campaign of action in London from September 2010 following an announcement by the LFB that it had begun a formal consultation to terminate all contracts and offer re-employment with new start and finish times.<sup>58</sup>

4.56 The second dispute relates to the Government’s 2012 proposals to raise the normal retirement age of firefighters from 55 to 60. Industrial action had been coordinated nationally with strikes taking place across England and Wales at the same time. In the period between May 2013 and July 2014 there were more than a dozen strikes in England and Wales and the dispute had not been settled at the time of writing.

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<sup>58</sup> London Fire Brigade (11 August 2010) *Brigade takes next step on firefighter shift plans* [Online] Available: [http://www.london-fire.gov.uk/news/NewsReleases2010\\_PR1400.asp](http://www.london-fire.gov.uk/news/NewsReleases2010_PR1400.asp) [Accessed: 15 September 2014]

## Chronology

### London Fire Brigade Dispute 2010

Date	Event
<b>11 February 2010</b>	At least 100 protesters demonstrated at the opening of a new fire station in Harold Hill (Romford) attended by Boris Johnson, Councillor Brian Coleman and Commissioner Ron Dobson. <sup>59</sup>
<b>August 2010</b>	LFB began formal consultation arrangements to terminate all firefighter contracts and offer re-employment with new terms and conditions. <sup>60</sup> London Fire Brigade gave the FBU a 90 day grace period to resolve the dispute. <sup>61</sup>
<b>27 August 2010</b>	London FBU members balloted on whether they would be willing to take action short of a strike. <sup>62</sup>
<b>17 September 2010</b>	Ballot result announced. Of 4,222 FBU members voting, 4,014 voted for industrial action short of a strike, to include a ban on overtime, a ban on new temporary promotion/acting up, and a general withdrawal of good will. Firefighters also marched to the headquarters of London Fire Brigade to protest against the proposed changes. <sup>63</sup>
<b>24 September 2010</b>	Campaign of industrial action began with firefighters refusing to work overtime, undertake higher duties or voluntary projects.
<b>14 October 2010</b>	Results of a further ballot, this time for strike action - 3482 (79%) vote in favour, with 943 against. <sup>64</sup>
<b>23 October 2010</b>	FBU members took eight hours of industrial action. <sup>65</sup> AssetCo start to provide contingency cover leading to complaint by FBU to HSE about competence of their crews. <sup>66</sup>
<b>25 October 2010</b>	FBU announced a 47 hour bonfire night strike starting on 5 November. <sup>67</sup> Talks began to avert the strikes but they were unsuccessful. <sup>68</sup>
<b>1 November 2010</b>	FBU members take eight hours of industrial action. <sup>69</sup>
<b>4 November 2010</b>	LFB obtained a High Court injunction to enable contract firefighters to work unhindered during the proposed 47 hour 'Bonfire Night' strike. The court order allowed contract workers employed by private firm AssetCo, to enter and leave stations without being stopped by picketers. <sup>70</sup> However, the strike was called off at the last minute on 4 November 2010. <sup>71</sup>

<sup>59</sup> BBC News (11 February 2010) *London firefighters protest as new fire station opens* [Online] Available: <http://news.bbc.co.uk/1/hi/england/london/8511804.stm> [Accessed: 15 September 2014]

<sup>60</sup> London Fire Brigade (11 August 2010) *Brigade takes next step on firefighter shift plans* [Online] Available: [http://www.london-fire.gov.uk/news/NewsReleases2010\\_PR1400.asp](http://www.london-fire.gov.uk/news/NewsReleases2010_PR1400.asp) [Accessed: 15 September 2014]

<sup>61</sup> *ibid.*

<sup>62</sup> The Daily Telegraph (21 August 2010) *Firefighters to be balloted for strike action over contract row* [Online] Available: <http://www.telegraph.co.uk/news/uknews/7956946/Firefighters-to-be-balloted-for-strike-action-over-contract-row.html> [Accessed: 15 September 2014]

<sup>63</sup> Fire Brigades Union (17 September 2010) *London firefighters vote overwhelmingly for industrial action* [online] Available: <http://www.fbu.org.uk/news/2010/09/london-firefighters-vote-overwhelmingly-for-industrial-action/> [Accessed 16 September 2014]

<sup>64</sup> Fire Brigades Union (14 October 2010) *London firefighters vote for strike by 79%* [Online] <http://www.fbu.org.uk/news/2010/10/hello-world-2/> [Accessed 16 September 2014]

<sup>65</sup> The Independent newspaper (15 October 2010) *London firefighters set strike dates* [Online] Available: <http://www.independent.co.uk/news/uk/home-news/london-firefighters-set-strike-dates-2107933.html> [Accessed 15 September 2014]

<sup>66</sup> BBC News [3 November 2011] *Inquiry into London fire strike contract staff* [Online] Available: <http://www.bbc.co.uk/news/uk-england-london-11690392> [Accessed 15 September 2014]

<sup>67</sup> The Independent newspaper (26 October 2010) *Firefighters to strike on bonfire night* [Online] Available: <http://www.independent.co.uk/news/uk/home-news/firefighters-to-strike-on-bonfire-night-2116673.html> [Accessed: 15 September 2014]

<sup>68</sup> BBC News (27 October 2010) *Bonfire Night firefighter strike talks break down* [Online] Available: <http://www.bbc.co.uk/news/uk-england-11632554> [Accessed 15 September 2014]

<sup>69</sup> The Independent newspaper (15 October 2010) *London firefighters set strike dates* [Online] Available: <http://www.independent.co.uk/news/uk/home-news/london-firefighters-set-strike-dates-2107933.html> [Accessed 15 September 2014]

<sup>70</sup> BBC News (4 November 2010) *London Fire Brigade gets High Court strike injunction* [Online] Available: <http://www.bbc.co.uk/news/uk-england-london-11694289> [Accessed 15 September 2014]

<sup>71</sup> BBC News (4 November 2014) *London's Bonfire Night strike called off, union says* [Online] Available: <http://www.bbc.co.uk/news/uk-england-london-11699346> [Accessed 15 September 2014]

<b>23-24 December 2010</b>	Further planned strikes called off when London FBU members voted to accept the proposed changes to shift patterns. There was compromise on both sides with the new shift patterns being two ten and a half hour day shifts then two thirteen and a half hour night shifts followed by four days off. <sup>72</sup>
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### 2013/2014 Fire and Rescue Pensions Dispute

Date	Event
<b>June 2012</b>	The Government announced final plans to reform fire fighters pensions raising normal retirement age from 55 to 60. <sup>73</sup>
<b>18 July-29 August</b>	FBU members balloted for industrial action. 78% of members in England, Scotland and Wales voted in favour of strike action. <sup>74</sup>
<b>25 September 2013</b>	Firefighters in England and Wales went on strike. Firefighters in Scotland did not strike as they were in discussions with the Scottish government. <sup>75</sup>
<b>19 October 2013</b>	Five hour strike scheduled for that evening postponed. <sup>76</sup>
<b>1 November 2013-3 January 2014</b>	Seven strikes take place, each for only a small number of hours. <sup>77</sup>
<b>2- 4 May 2014</b>	Three strikes take place, one on each day. <sup>78</sup>
<b>12 June 2014</b>	24 hour strike starting at 9am. <sup>79</sup>
<b>21 June 2014</b>	Seven hour strike starting at 10am. <sup>80</sup>
<b>1-21 July 2014</b>	Nine strikes take place for between two and four hours. <sup>81</sup>
<b>9-16 August 2014</b>	Daily strikes take place for three hours. <sup>82</sup>

## Conduct during the disputes

4.57 The evidence provided by the LFB and Buckinghamshire Fire and Rescue raises a number of issues about the conduct of the FBU. Although the majority of evidence gathered is from the point of view of fire authorities (as the FBU did not contribute to the Review) the Review is aware that the FBU has raised some issues about the LFB and their contingency arrangements in London, and that some of the issues raised particularly in the Buckinghamshire dispute relate to the conduct of the employer.

4.58 The LFB submission suggests that more extreme tactics were used in 2010. The 2010 dispute seems to have been marked by ill-tempered confrontations on the picket line, exacerbated by contingency fire crews working out of LFB fire stations. This meant that it was more likely they would come into conflict with picketers outside of fire stations.

<sup>72</sup>LFB (22 December 2010), *Press release: Brigade Welcome Ballot Result*, [http://www.london-fire.gov.uk/news/NewsReleases2010\\_PR1487.asp](http://www.london-fire.gov.uk/news/NewsReleases2010_PR1487.asp) [Accessed: 22 September 2014]

<sup>73</sup> UK Government (June 2012) *Firefighters' Pension Scheme Reforms* [Online] Available [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224505/firefighters\\_pension\\_scheme\\_reforms.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224505/firefighters_pension_scheme_reforms.pdf) [Accessed 15 September 2014]

<sup>74</sup> Fire Brigades Union [29 August 2012] *Firefighters vote to strike over government's 'unworkable' pension scheme proposals* [Online] Available: <http://www.fbu.org.uk/news/2013/08/firefighters-vote-to-strike-over-governments-unworkable-pension-scheme-proposals/> [Accessed: 15 September 2014]

<sup>75</sup> BBC News (17 September 2013) *Firefighters confirm four-hour strike in England and Wales* [Online] Available: <http://www.bbc.co.uk/news/uk-24129141> [Accessed: 15 September 2014]

<sup>76</sup> FBU (29 October 2013), Executive Council summary, [Online] Available: <http://www.fbu.org.uk/resources/588mw-executive-council-schedules-two-strikes-after-confirmation-that-there-is-no-guarantee-to-avoid-capability-dismissals-no-job-no-pension/> [Accessed: 22 September 2014]

<sup>77</sup> See various press releases on the LFB website <http://www.london-fire.gov.uk/news/B444E198C9D44FD0AAC3249DFD799F8C.asp> [Accessed: 22 September 2014]

<sup>78</sup> BBC News (17 September 2013) *Firefighters confirm four-hour strike in England and Wales* [Online] Available: <http://www.bbc.co.uk/news/uk-24129141> [Accessed: 15 September 2014]

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

The LFB learnt from the 2010 dispute and their contingency crews now do not work from fire stations in the same way. However, evidence received by the Review also suggests that some controversial tactics are still being used in the 2013/2014 dispute and these are also covered below.

#### Alleged inappropriate or intimidatory behaviour on picket lines

4.59 The YouTube clip called *'Firefighters run over by strike breakers'*, appears to show a picket line with a large number of people gathered around a fire engine.<sup>83</sup> Another YouTube clip is called *'LFB Firefighters strike – Southwark FBU mass picket'* and again shows a large number of people listening to speeches made by FBU officials.<sup>84</sup> It appears from these clips that picket lines during this dispute may not have followed the guidance contained in the Code of Practice on Picketing that states “pickets and their organisers should ensure that in general the number of pickets does not exceed six at any entrance to, or exit from, a workplace”.<sup>85</sup>

#### Alleged victimisation or harassment of non-striking workers

4.60 The Southwark YouTube clip referred to above appears to show a crowd of firefighters standing around the entrance to a building listening to individuals who appear to be FBU officials making speeches. One is recorded as saying:

“Tell the scabs that we will follow them wherever and whenever they come into London. And we will be sending them a message saying get out of London and do not come back.”<sup>86</sup>

4.61 The alleged use of social media to intimidate non-striking fire fighters and management is described in all three of the more detailed responses received by the Review. The LFB submission states that non-striking staff were filmed and their details placed on social media sites.<sup>87</sup>

4.62 Hertfordshire Fire and Rescue said that one firefighter has been sacked due to “his comments on Twitter about scabs and other issues”. The submission from Buckinghamshire Fire and Rescue describes the use of innuendo, for example tagging a photo as “Sausage, Chips and Beans” - the acronym of which is “SCAB”. Buckinghamshire Fire & Rescue said this incident was the subject of ongoing disciplinary action.

#### Alleged victimisation or harassment of senior managers

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<sup>83</sup> YouTube (Uploaded on 1 November 2010) *Firefighters run over by strike breakers* [Online] Available: [http://www.youtube.com/watch?v=Zn2wfcy\\_gg4](http://www.youtube.com/watch?v=Zn2wfcy_gg4) [Accessed: 15 September 2014]

<sup>84</sup> YouTube (Uploaded on 1 November 2010) *LFB Firefighters strike – Southwark FBU mass picket* [Online] Available: <http://www.youtube.com/watch?v=7GdQagtVvkg> [Accessed 15 September 2014]

<sup>85</sup> UK Government, (no date) , *Code of Practice: Picketing* [Online] Available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/249871/96-681-code-of-practice-picketing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249871/96-681-code-of-practice-picketing.pdf) [Accessed: 15 September 2014]

<sup>86</sup> Ibid.

<sup>87</sup> The Review found a YouTube video which appears to do this. Uploaded by 'TheAsreco' (25 October 2010), 'Scab force..3GP' [Online] Available: <http://www.youtube.com/watch?v=LzWZr59DfkY> [Accessed: 22 September 2014]

4.63 Hertfordshire Fire and Rescue and Buckinghamshire Fire and Rescue described how striking firefighters and the FBU used social media to victimise senior managers. The submission from Buckinghamshire stated:

“A hate campaign started on Facebook which has been routinely stoked thereafter by FBU influence. I was aggrieved immediately that no account was given [to] the facts or the lawful position adopted by this Brigade. I continue to be regularly reminded of the lawful nature of the strike action (a matter of no contention at all) by people who seem quite delighted to personally despise and slander me in public with no care at all to the equally legal behaviour of our service” .

4.64 Buckinghamshire Fire and Rescue and Hertfordshire Fire and Rescue both sent evidence of tweets and Facebook comments sent during the disputes. The comments provided by Buckinghamshire are particularly aggressive and disparaging towards senior managers.

4.65 Three example comments from Facebook follow:

“Another wxxxxx who’s pension isn’t affected, being a total twat. Feel sorry for the guys and girls in Bucks”. [25 April 15:43]

“Another bullying prick. You can see this twats pension isn’t affected” [25 April 16:14]

“Obviously another “Fast track” selfish, Council controlled puppet. He has obviously also never been a true and dedicated member of the FBU. Does he know the meaning of the term, “Corporate bullying”, or is he and his arsehole Council cohorts all totally ignorant. He has no knowledge of the strike which allowed him the conditions and privileges he enjoyed before he became a disloyal, self effacing twat? Also do his strike breaking arse licking, spineless crawlers remember the meaning of the term “SCAB”? Arseholes everyone of them”. [26 April at 19:31]

#### Allegations of disruption to business, contingency plans and damage to property

4.66 The LFB provided the Review with a slide show presentation by Assistant Commissioner Dave Brown briefly listing a range of tactics that the London Fire Brigade said that it had experienced during the dispute in 2010. These tactics included:

- Stations left open or barricaded and fire alarms activated
- Infrared eyes on bay doors taped to leave sites open and unsecure
- Security codes at fire stations changed
- Station gates padlocked and crews cars blocking forecourts preventing access for stand-in crews
- Private security guards (brought in during the strikes) were abused
- Stand-in crews pursued to incidents and jeered at whilst trying to perform their roles
- Appliances being attacked and malicious called were made
- Graffiti/stickers on non-striking managers accommodation at stations
- Private security bucketed with water from roof level



- Some stand-in crews forced to park at Police stations as they were concerned for their own safety
- Mobs at 'muster locations' following the cessation of each strike, and
- An isolated incident of electronic key safes being sabotaged

4.67 The LFB also provided a set of photographs of the alleged damage to fire engines. The pictures show minor damage to the paint work on fire engines and one picture shows a smeary substance (which may be egg) on the windscreen.

4.68 During the disputes, fire engines are often placed in locations away from the fire station to ensure that they could be mobilised during the dispute by non-striking firefighters. According to the Buckinghamshire Fire and Rescue submission, the location of these fire engines was revealed via a tweet by the Southern Region FBU Executive (which was re-tweeted by the Buckinghamshire FBU Secretary). The Buckinghamshire Fire & Rescue submission included a letter to Matt Wrack, General Secretary of the FBU from their Director of Legal and Governance, Graham Britten, about these tweets. Mr Britten reminds Mr Wrack that a trade union may be liable for damages if it breaches trade union legislation and suggests that pickets at these locations would be such a breach. Mr Wrack responded to this letter denying that the tweets indicate illegal action. However, the Buckinghamshire Fire and Rescue submission states that ultimately there were no pickets at these locations but they believed that protests would have taken place had they not intervened.

#### 'Extreme' tactics alleged to have been used by employers

4.69 The information provided by LFB also contained allegations by the FBU of extreme tactics used by employers at fire stations during or just after strike action. The evidence available is not detailed enough for the Review to be able to state with certainty what happened but it involves two separate incidents. LFB referred to a YouTube clip called '*Firefighters run over by strike breakers*'.<sup>88</sup> The video shows a speech being made at a rally after a strike on 1 November 2010. One of the speakers describes the arrival of a fire engine at a fire station earlier that day in Croydon accompanied by a car driven by the station manager. He states that strikers approached the vehicles to talk to the people inside the car and although the fire engine slowed down and drove through the picket line slowly, the car sped through the picket line hitting a man. The speaker states that the fire engine's crew refused to provide assistance to the man who was eventually air lifted to hospital. The speaker also refers to the use of security guards at fire stations accompanied by German Shepherd dogs.

4.70 The second part of the video is entitled '*A few hours later a scab fire engine hit an FBU officer*'. The clip was shot at night time and shows a fire engine surrounded by individuals wearing high visibility jackets, some of whom are Police officers and one of whom is seen lying on the floor. Little else can be discerned from the clip but newspaper reports at the time stated that two firefighters were hit on picket lines on separate

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<sup>88</sup> YouTube (Uploaded on 1 November 2010) *Firefighters run over by strike breakers* [Online] Available: [http://www.youtube.com/watch?v=Zn2wfcy\\_gg4](http://www.youtube.com/watch?v=Zn2wfcy_gg4) [Accessed: 15 September 2014]

occasions suggesting there were two separate incidents.<sup>89</sup> This incident appears to relate to the return of the AssetCo crews to the Southwark fire training centre at the end of the strike, where they were met by a number of picketing firefighters.<sup>90</sup>

4.71 During the 2013/14 dispute, the FBU were angered by the Buckinghamshire Fire and Rescue Service decision not to allow its employees to partially complete a shift (so that striking workers would lose pay for the whole of the shift despite the fact that the strike was organised for only part of their shift). In a letter to the Buckinghamshire Fire Authority Members dated 23 September 2013, the Chief Fire Officer explained this decision:

“The first strike has been called for a period in the middle of a day shift. Because of the costs and effort involved in what is deliberately planned as a mid-shift strike, we took the decision that it is simpler to not rely upon the crews at all for the entire shift period. The position on whether or not to accept partial performance varies between fire authorities. Of course, when strikes occur, the Authority incurs extra costs of making alternative fire cover arrangements. The alternative arrangements are usually made at stations not involved in strikes or other suitable venues. This requires considerable movement of staff and equipment prior to, and immediately after, strike periods. Employers are legally entitled to withhold pay unless their staff perform their contractual duties in full.”

4.72 This tactic was described by striking firefighters as a ‘lockout’. It is also clear from letters written by FBU to Buckinghamshire & Milton Keynes Fire Authority and Buckinghamshire County Council that firefighters felt that this tactic left fire stations under resourced saying that:

“The resources available to BMKFRS will be extremely limited not only during the period of IA [industrial action] but both prior to and following those periods. I would therefore suggest that you advise your constituents working or travelling through Buckinghamshire & Milton Keynes to be extra vigilant, because the normal professional service will not be available for some considerable time”.

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<sup>89</sup> The Guardian online (1 November 2010) *Two striking firefighters hurt in crashes on the picket line* [Online] Available: <http://www.theguardian.com/uk/2010/nov/01/firefighter-strike-car-arrest> [Accessed: 15 September 2014]

<sup>90</sup> Socialist Party (2 November 2010) *Firefighters hospitalised in brutal strikebreaking* [Online] Available: <http://www.socialistparty.org.uk/articles/10540/02-11-2010/press-release-workers-and-trade-unionists-need-to-come-to-firefighters-aid> [Accessed: 25 September 2014]

## d) Cleaners' disputes

### Introduction

4.73 This case study relates to the cleaning sector, particularly in London. It involves a relatively newly established trade union, the Independent Workers of Great Britain ("IWGB"), who are not yet recognised by any of the employers of their members. They have a different approach to industrial relations to many of the more established trades unions, particularly those affiliated to the TUC. The case study primarily relates to two IWGB campaigns: the University of London and its cleaning and catering contractors' employees; and outsourced workers employed by MITIE.

4.74 Although the areas of dispute may seem relatively narrow and unrelated to the resilience of critical industrial infrastructure, this is the one case study where the Review has received responses from both employers and unions, receiving submissions from the two employers (MITIE and the University of London) and IWGB. This has been supplemented by the Review's open source research.

### Issue

4.75 Terms and conditions for lower paid workers in London have been a source of frequent debate over the past few years, particularly through the London Living Wage campaign.<sup>91</sup> Some of IWGB's members had been members of both Unite or Unison and are said by IWGB to have become dissatisfied with those unions on the basis that they were not giving sufficient focus to the issues faced by cleaning staff and "the unorganised, the abandoned and the betrayed".<sup>92</sup>

4.76 The IWGB have approximately 600-700 members nationally of whom about 200 are contracted to work at the University of London, and another 350-400 work on other outsourced facilities contracts. This case study will cover two of the main campaigns that IWGB have been involved in since their formulation in 2012:

- The '3 cosas' campaign seeking parity in terms and conditions for outsourced cleaning and catering workers at the University of London (employed by Cofely GDF Suez ("Cofely") (until December 2013, Balfour Beatty Workplace Limited ("BBWL") and Aramark Limited) with the University of London's own 'equivalent' employees. The IWGB are not the only supporters of the '3 cosas' campaign, many students at the University of London are also supporters, and this is reflected in the make-up of attendees at protests. Many of the outsourced workers are immigrants from a Latin American background and speak little or no English. Of the 350 such workers at the

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<sup>91</sup> Website of the Living Wage campaign <http://www.livingwage.org.uk/> [accessed 17 September 2014]. The London Living Wage has received support from the Mayor of London

<sup>92</sup> Website of IWGB <http://iwgb.org.uk/> [accessed 17 September 2014]. IWGB's website describes their membership profile and remit

main university site IWGB claim that about 170 are members of the IWGB with the majority of these employed by Cofely.<sup>93</sup>

- To improve terms and conditions of employees, and treatment of IWGB members, at an outsourced facilities provider, MITIE, who provide cleaning services to, amongst others, the Royal Opera House, Clifford Chance LLP, the Barbican and the Tower of London.<sup>94</sup>

The Review is also aware of other IWGB campaigns relating to outsourced facilities providers, for example ISS and Serco. The recurring issues raised in all the disputes are rates of pay, pension provision, holiday provision and sick pay.

4.77 The IWGB became certificated as a trade union by the Certification Office in 2013-14.<sup>95</sup> This means that it must now follow the processes set out in Trade Union and Labour Relations (Consolidation) Act 1992 in terms of its processes, including for ballots and picketing. As already stated, IWGB is not affiliated to the TUC, nor has it yet been recognised by an employer (or via the Central Arbitration Committee) to engage in collective bargaining for the ‘bargaining unit’ (see the Central Arbitration Committee’s recent decision with respect to Cofely and IWGB).<sup>96</sup>

4.78 As the IWGB are not yet ‘recognised’ by any employers they do not have any rights to collective bargaining. As such their campaigns are a mix of protests and industrial action, which are made more complicated by the involvement of those sympathetic to their cause (e.g. students). It is clear from the submissions received that the lack of recognition means that employers are less certain of how to work effectively with IWGB and the IWGB feel unable to pursue their campaign using traditional routes. From the evidence received, both employers and the IWGB feel strongly that the tactics used by the other side could be described as ‘extreme’, and in the case of MITIE, the employer does not believe there to be effective legal recourse to manage the protests and the disruption caused to their business. There may be some confusion (by both parties) with respect to the legal differences between a certified and a recognised union, and the legal framework which applies to their actions.

## Chronology

### 2012-2014 3 Cosas Campaign

Date	Event
11 April 2013	Protest by IWGB at the University of London, Senate House. <sup>97</sup>
30 May 2013	Impromptu ‘Holiday Camp’ protest at the University of London as part of the ‘Summer of Action’. <sup>98</sup>

<sup>93</sup> ReelNews (12 November 2013) *3 Cosas Campaign - Equal Rights for Outsourced workers!* [Online] Available: [https://www.youtube.com/watch?v=W5j3zxXEI34&list=PLqE\\_C7UkMK6Y7MaYRvUVXtANPLakys3d](https://www.youtube.com/watch?v=W5j3zxXEI34&list=PLqE_C7UkMK6Y7MaYRvUVXtANPLakys3d) [accessed 17 September 2014]

<sup>94</sup> IWGB Cleaners Branch (4 September 2013) *Protest against Clifford Chance and MITIE*, [Online] Available: <http://www.youtube.com/watch?v=1FHdaZVVpm8>, [accessed 17 September 2014]

<sup>95</sup> Certification Office, ‘List of Trade Unions at 31 March 2014’, <http://www.certoffice.org/CertificationOfficer/files/64/64ddf7fd-8acf-4d5a-b813-9aa8b8a82b2c.pdf> [accessed 17 September 2014]

<sup>96</sup> Central Arbitration Committee, ‘Decision on a complaint under Regulation 13’, 31 July 2014, [Online] Available: <http://www.cac.gov.uk/index.aspx?articleid=4915> [accessed 17 September 2014]

<sup>97</sup> IWGB (dated 11 April 2013) *UQ IWGB Cleaners Branch, 3 Cosas Campaign demonstration* [Online] Available: <https://www.youtube.com/watch?v=vN8xYMWP4xs&list=UUBiqUdZO9bDz93-DmHWPm> [accessed 17 September 2014].

<b>16-17 July 2013</b>	Protests at Senate House relating to the 3 Cosas campaign.
<b>27-28 November 2013</b>	IWGB members employed by Balfour Beatty Workplace took strike action on the University of London's Foundation Day. This was the first formal industrial action by IWGB, following a successful ballot. <sup>99</sup> On the second day of the industrial action a revised offer was made following negotiations between BBWL and Unison (not the IWGB).
<b>4 December 2013</b>	'Occupy Senate House' protest by students following on from strike action by University employees in Unison, Unite and the University and Colleges Union on 3 December. <sup>100</sup> University of London granted an injunction on the same day to end the occupation by the High Court on the basis of enabling the orderly functioning of the campus.
<b>27-29 January 2014</b>	IWGB members working for Cofely at the University of London took strike action on the basis of the November ballot. <sup>101</sup>
<b>26 March 2014</b>	Protested outside Cofely's headquarters at the Shard London SE1.
<b>May 2014</b>	IWGB protest at Senate House about the job losses consequent on the closure of the Garden Halls hall of residence. <sup>102</sup>
<b>21 May 2014</b>	Protest and 'occupation' at the head offices of Cofely by IWGB members, members of the 3 Cosas campaign and the University of London Union. <sup>103</sup>

## IWGB and MITIE

<b>Date</b>	<b>Event</b>
<b>3 &amp; 21 November 2012</b>	IWGB members protested at the Tower of London to be paid the London Living Wage.
<b>21 March 2013</b>	Strike action taken by IWGB members employed by MITIE working at the Barbican. <sup>104</sup>
<b>April 2013</b>	IWGB members and supporters carried out a surprise protest on Clifford Chance in Canary Wharf where it alleges cleaners were suspended for 2 months without pay. <sup>105</sup>
<b>4 May 2013</b>	IWGB 'stormed' the Barbican building and protested in the reception area. Police called and protest continues outside. <sup>106</sup>
<b>10 May 2013</b>	IWGB members protested outside Clifford Chance alleging poor treatment of MITIE cleaners.
<b>8 June 2013</b>	IWGB organise a protest at the Barbican about the London Living Wage. <sup>107</sup>
<b>29 August 2013</b>	IWGB members protested outside Clifford Chance.
<b>October 2013</b>	Corporation of London (founder and principal funder of the Barbican)

<sup>98</sup> YouTube (uploaded 31 May 2013) *Felipe Mora, Impromptu Holiday Camp at the iconic University of London* [Online] Available: [https://www.youtube.com/watch?v=epK3okUxUJg&list=UU3d-cgmMTTcrIHVF\\_WT\\_-ng](https://www.youtube.com/watch?v=epK3okUxUJg&list=UU3d-cgmMTTcrIHVF_WT_-ng) [Accessed 17 September 2014].

<sup>99</sup> 3 Cosas campaign, *Ballot results in 70% turnout, 97% yes vote*, 14 November 2013, [Online] Available: <http://3cosascampaign.wordpress.com/2013/11/14/ballot-results-in-70-turnout-97-yes-vote/> [accessed 17 September 2014]

<sup>100</sup> Facebook, *Occupy Senate House Solidarity Demo Facebook Event page*, 4 December 2013, [Online] Available: <https://www.facebook.com/events/1442610172626624/> [Accessed 17 September 2014]

<sup>101</sup> IWGB (23 January 2013), *IWGB strike action next week at the University of London*, [Online] Available: <http://iwgb.org.uk/2014/01/23/iwgb-strike-action-next-week-at-the-university-of-london/> [Accessed 22 September 2014] 3 Cosas campaign (10 December 2013), *IWGB University of London branch announces strike dates for the new year*, [Online] Available: <http://3cosascampaign.wordpress.com/2013/12/10/iwgb-university-of-london-branch-announces-strike-dates-for-the-new-year/> [Accessed 22 September 2014]

<sup>102</sup> Demotix (16 May 2014), *Cleaners protest upcoming job losses at the University of London*, [Online] Available: <http://www.demotix.com/news/4761408/cleaners-protest-upcoming-job-losses-university-london#media-4761317> [Accessed 22 September 2014]

<sup>103</sup> 3 Cosas campaign (21 May 2014), *Press release: occupation of Cofely GDF Suez headquarters*, [Online] Available: <http://3cosascampaign.wordpress.com/2014/05/21/press-release-occupation-of-cofely-gdf-suez-headquarters/> [Accessed 22 September 2014]

<sup>104</sup> IWGB Cleaners Branch, YouTube, uploaded 30 March 2013, *IWGB Cleaners strike at Barbican centre*, [Online] Available: [http://www.youtube.com/watch?v=OPaAKH0e\\_DE](http://www.youtube.com/watch?v=OPaAKH0e_DE) [Accessed 22 September 2014]

<sup>105</sup> IWGB Cleaners Branch, *IWGB springs surprise protest on Clifford Chance in Canary Wharf* (uploaded 12 May 2013), [Online] Available: <https://www.youtube.com/watch?v=pjCb25CS8BE> [Accessed 22 September 2014]

<sup>106</sup> The Multicultural Politic (4 May 2013), *IWGB Cleaners Occupy Barbican for a Living Wage and Stand Down Racist Abuse* <http://www.tmonline.org/2013/05/04/cleaners-occupy-barbican/> [Accessed 22 September 2014]

<sup>107</sup> IWGB cleaners (uploaded 12 June 2013), *IWGB cleaners return to Barbican demanding Living Wage, June 2013*, [Online] Available: [http://www.youtube.com/watch?v=p7AlhM3\\_IXU&list=UUBiqUdZO9bDz93-DmHWPmUQ](http://www.youtube.com/watch?v=p7AlhM3_IXU&list=UUBiqUdZO9bDz93-DmHWPmUQ) [Accessed 22 September 2014]

	announced that it will pay the London Living Wage.
<b>6 January 2014</b>	IWGB members at the Royal Opera House voted in favour of strike action (100%). Strike action scheduled for 15-17 February to coincide with the BAFTA awards. London Living Wage pay offer accepted on 31 January so strike action cancelled.
<b>1 February 2014</b>	MITIE announced that cleaners at the Royal Opera House will be paid the London Living Wage from April 2014. <sup>108</sup>
<b>8 March 2014</b>	IWGB protested in Kingston-upon-Thames against an award given to the CEO of MITIE, Ruby McGregor-Smith, by Kingston University on International Women's Day for feminism and support for women. <sup>109</sup>
<b>3 May 2014</b>	IWGB members and supporters protested at the Royal Opera House about the terms and conditions of MITIE's employees working there. <sup>110</sup>
<b>9 May 2014</b>	IWGB posted a leaflet on the IWGB website which according to MITIE contained "derogatory comments about Clifford Chance and MITIE". <sup>111</sup>
<b>10 May 2014</b>	IWGB member employed by MITIE and working at Royal Opera House suspended for signing in another IWGB member without permission.
<b>28 May 2014</b>	IWGB protested at MITIE offices and breach security barriers to reach the reception area.
<b>11 July 2014</b>	IWGB protested at Royal Opera House (following on from dispute notification given to MITIE on 4 July about suspension of an IWGB member, holiday entitlement, and recognition).
<b>September 2014</b>	MITIE employees at the Royal Opera House voted in favour of strike action over annual leave, the reinstatement of a dismissed IWGB member and Union recognition. <sup>112</sup>

## Conduct during the disputes

4.79 Due to IWGB's current status, its tactics rely more on protests and the adept use of social media than the conventional routes available to more established trade unions. This balance is reflected in the summary of the tactics used by IWGB below.

### Alleged inappropriate or intimidatory behaviour on picket lines

4.80 Following a ballot in favour of strike action, IWGB members employed by Cofely at the University of London went out on strike from 27-28 November 2013, and the picket attempted to persuade people not to go to work. IWGB promoted this strike via the '3 Cosas' website encouraging others to join them on the picket line: "There will be a carnival feel, with music, food and flags. Come along! Bring banners from your trade union, SU, or campaign." This website shows a picture of the picket line on 27 November of about 50 people (it is unclear whether these were people on strike or other supporters), and IWGB report that as a consequence of the strike "Senate House library was completely closed, and many deliveries were turned away by the picket." The Police are not reported to have intervened.

<sup>108</sup> IWGB Briefing: Victory over Poverty Pay (1 February 2014), [Online]

Available: <http://iwgbunion.files.wordpress.com/2014/02/briefing-roh-2.pdf> [Accessed 22 September 2014]

<sup>109</sup> IWGB (13 February 2014) *Draft motion on international women's day* [Online] Available: <http://iwgb.org.uk/2014/02/13/draft-motion-on-international-womens-day-defend-working-women-remove-the-award-given-to-ruby-mcgregor-smith-ceo-of-mitie-by-kingston-university/> [Accessed 22 September 2014]

<sup>110</sup> IWGB Cleaners Branch (5 May 2014), *Royal Opera House cleaners protest* [Online] Available: <https://www.youtube.com/watch?v=XIQO026ZJdE> [Accessed 22 September 2014] and Demotix (3 May 2014) *IWGB Cleaners protest at Royal Opera House London* [Online] Available: <http://www.demotix.com/news/4643047/iwgb-cleaners-protest-royal-opera-house-london/all-media> [Accessed 22 September 2014]

<sup>111</sup> Appendix 2 of MITIE's submission.

<sup>112</sup> IWGB (5 August 2014), *The Royal Opera House workers ballot for strike action* [Online] Available: <http://iwgb.org.uk/2014/08/05/the-royal-opera-house-workers-ballot-for-strike-action/> [Accessed 22 September 2014]

4.81 At a strike at the Barbican, picketers (maybe 20-30) made speeches and lots of noise and walked round the building, but do not seem to have caused significant disruption. MITIE's submission reports that RMT and PCS members also attended in order to swell numbers.

#### Protests organised by a trade union in furtherance of a dispute

4.82 IWGB's primary tactic during the '3 Cosas' campaign has been to protest outside relevant premises, primarily the University of London. Frequently these protests have been noisy, arguably disruptive, and have taken place on University property. These protests have tended to be advertised on social media, and videos of some of the protests are available on YouTube. Examples include:

- A few days after the strike of 27-28 November, students and supporters of the IWGB organised an occupation of the University of London's Senate House building, and the University of London successfully sought an injunction to force the protesters to leave the building.
- During the strike at the University of London on 27-29 January 2014, the picketers took their campaign on an open top bus tour around London.<sup>113</sup>
- During the '3 cosas summer of action' University of London students entered the Senate House adorned with beach towels, snorkels, and panama hats, playing Calypso music through the corridors of the building to protest about holiday provision for outsourced workers.<sup>114</sup>

4.83 Most of the campaigns against MITIE have been through protests rather than strike action (although there is currently a live mandate for strike action at the Royal Opera House and cleaners at the Barbican went on strike for one day on 21 March 2013). Instead, they have organised protests at the Royal Opera House, the Barbican, the Tower of London and at Clifford Chance. The protesters seem to fairly frequently enter the employer's premises and the Police have attended on many occasions to supervise the protest. The protests generally involve music (often live, South American music), speeches, drumming, banners, loudspeakers and vuvuzelas, and sometimes speeches recounting the stories of the cleaners. MITIE suggest that the timing of the 'flash' protests is often to follow on from responses sent by MITIE to complaints made by IWGB. They have also targeted MITIE's CEO.

4.84 MITIE's description of the IWGB's tactics is included in detail below in order to be clear about the level of disruption that they feel these tactics cause:

"The IWGB ... more often than not simply rally its members to conduct 'flash' protests at client sites or Mitie offices often breaching security protocols to gain entry in order to seek the attention of senior executives to reiterate allegations previously

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<sup>113</sup> IWGB (23 January 2014), *IWGB strike action next week at the University of London* [Online] Available: <http://iwgb.org.uk/2014/01/23/iwgb-strike-action-next-week-at-the-university-of-london/> [Accessed 22 September 2014]

<sup>114</sup> Facebook, '3 cosas summer of action' event listing 17 July 2013, [Online] Available: <https://www.facebook.com/events/471828312901861/> [Accessed 22 September 2014] Summary of the 'holiday camp' Independent (31 May 2013), *Summer of student action begins in London* [Online] Available: <http://www.independent.co.uk/student/news/summer-of-student-action-begins-in-london-8639848.html> [Accessed 22 September 2014]

addressed - particularly when the IWGB demands have not been agreed to. The reason for the 'flash' protest tactic is to continue raising the same matter with a number of company executives in the belief the adverse publicity and disturbances, such action creates, will persuade the executives to succumb to the demands of the IWGB to avoid further derogatory public statements and disruption at our offices and client sites"

The IWGB organizes protests "in order to disrupt the business which suffers loss due to the adverse publicity directed at the company and the client in addition to the potential loss of contracts which could follow a series of flash protests. Effectively the IWGB impromptu protest tactics fall outside current trade union legislation governing industrial action. In effect such unions are not obliged to follow current trade union legislation as they are unregulated due to their non-certified status. The IWGB have stormed our client's business premises and Mitie offices causing significant disruption whilst distributing leaflets to the general public which contain defamatory statements about Mitie and our client in the course of carrying out very loud protests. They are eventually forced to leave the premises but not before causing significant reputational damage and distress for employees working at the offices/sites targeted. The IWGB have also taken to regularly posting defamatory and untrue comments about the company, its employees and client businesses on the IWGB website, IWGB twitter and IWGB Facebook sites in addition to holding protests at sites and offices to further enhance the adverse publicity - tactics used primarily to bully and intimidate businesses to succumb to their demands."

#### Alleged victimisation or harassment of senior managers

4.85 MITIE's submission alleges that a MITIE supervisor at Clifford Chance LLP has been harassed by IWGB members since January 2013, and as a consequence in May 2014 reported the IWGB to the Police – the Review understands that the Police are not pursuing this complaint. MITIE's submission describe this as follows:

"The contract manager and supervision on the Clifford Chance contract have been under significant scrutiny due to allegations of trade union member victimisation since January 2013 and continue to be subject to these reiterated allegations. [REDACTED] (Clifford Chance contract manager) has in fact reported the IWGB to the Police in London claiming harassment in May 2014 following the IWGB's continuing allegations of racism and union member victimisation against him which is often the subject matter of leaflets handed out to the public naming him personally and derogatory comments posted on the IWGB website."

For example, @IWGBUnion tweeted on 30 March 2014 that 'Supervisors employed by #MITIE are abusing cleaners with impunity at law firm#Clifford Chance. Stay tuned 4 protests!'

4.86 The strained relationship between MITIE and the IWGB seems to be reflected in the frequency of complaints to MITIE made about the victimisation of IWGB members. MITIE suggest that where they have arranged meetings to discuss grievances these have not been attended, or there has been uncertainty about arrangements for attendance. This



seems to result in a significant amount of management time being spent on dealing with these complaints without the expectation that the outcomes will be respected.

### Trade union communication with third parties to try and influence the outcome of a dispute

4.87 As part of the '3 cosas summer of action' IWGB asked members of the public to email the UCL Vice Chancellor Adrian Smith to raise awareness of the "appalling conditions and urge him to take action about the situation." Similar campaigns were organised at the Barbican (see the 'Why Barbican workers are on strike' leaflet in the MITIE submission to the Review).

### 'Extreme' tactics alleged to have been used by employers

4.88 In IWGB's view, the University of London's injunction banning protests from 'the campus and buildings of the University of London, Senate House, London' for 6 months was disproportionate and intimidatory, and similarly that the University of London's locking of the main hall in summer 2013 was not necessary.

4.89 IWGB allege that trade union members at MITIE have been given the hardest workloads, which in one case has led to a nervous breakdown and long-term sick leave posting a photo on their website with the caption "this woman collapse under the strain and has been hospitalised and is more than 6 month off sick".<sup>115</sup> On Facebook the IWGB Cleaners and Facilities Branch described this:

#### Cleaners And Facilities Branch

November 4, 2013 .

Our friend and comrade Graciela, IWGB activist at Clifford Chance has taken seriously ill. Our thoughts and best wishes are with her and her family at this time. Graciela remains defiant and in fighting spirit, this deterioration in her health has been directly linked to the stress she has been suffering in her work where she has been continuously hounded by her management and subject to unfair treatment. After recent protests against bullying and racist behavior by bosses cleaners at Clifford Chance were warned they would be sacked by MITIE if they protest again. This threat followed a meeting with Clifford Chance directors. The threats and conduct of the bosses has been deplorable, all the promises of improvements has increasingly been revealed to be no more than window dressing. IWGB has no intention of ceasing to campaign and protest at Clifford Chance for justice, respect and dignity in the workplace. Solidarity with Graciela, get well soon. !!!!!

4.90 IWGB also allege that an IWGB member was dismissed for directing a trade union representative to a building entrance at the Royal Opera House. The Review has seen a copy of the dismissal letter which refers to the reason for dismissal as being related to allowing somebody who was not an employee onto the site. The IWGB also refer to a letter sent by MITIE to their employees at the Royal Opera House setting out the

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<sup>115</sup> IWGB poster about Clifford Chance (undated), [Online] Available: <http://iwgbunion.files.wordpress.com/2014/05/cliffordchance.jpg> [accessed 22 September 2014]

employer's view of reasonable standards of behaviour as 'intimidating'. The letter is available on IWGB's website.<sup>116</sup>

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<sup>116</sup> IWGB (13 June 2014), *MITIE at the Royal Opera House issue intimidating letter to all staff* [Online] Available: <http://iwgb.org.uk/2014/06/13/mitie-at-the-royal-opera-house-issue-intimidating-letter-to-all-staff/> [accessed 22 September 2014]

## e) Total Lindsey Oil Refinery dispute

### Introduction

4.91 In early 2009, workers at the Total Lindsey Oil Refinery (“TLOR”) staged unofficial strike action about the awarding of a contract for construction work to a company that was proposing to use non-UK workers. The unofficial action at Lindsey spread to other sites, mainly in the energy sector, and became about much wider issues relating to the economy and the freedom of non-UK providers to provide services in the UK. After the dispute was resolved in February 2009, a second phase of unofficial action took place in June 2009 as a number of workers were laid off from the Total site by a contractor. This similarly spread to other sites in the energy sector.

4.92 The Review received a submission on the dispute from Total Lindsey Oil Refinery Ltd and this information has been supplemented by the Review Team’s open source research. The Review has made particular use of ACAS’s February 2009 ‘Report of an inquiry into the circumstances surrounding the Lindsey Oil Refinery dispute’.<sup>117</sup> This case study has been included as a high profile example of unofficial action, and the contagion effect (enabled by the internet and mobile phones) where an issue had resonance for employees of a number of different companies.

### Issue

4.93 The TLOR dispute in January 2009 had its origins in a new sub-contract for the construction of the ‘HSD3’ plant at TLOR being awarded to the Italian contractor, IREM, which would be fulfilled using that company’s own existing workforce (who were mainly Italian and Portuguese). The dispute came at a time where employment and vacancies were both falling, and the general economic outlook was bleak.<sup>118</sup>

4.94 Freedom to provide cross-border services is a central principle of the functioning of the EU internal market.<sup>119</sup> In the case of TLOR this meant that an Italian company employing Italian (and Portuguese) workers was able to compete for work on an equal basis with a UK company employing UK workers. In so doing there was no obligation in English law for the non-UK contractor to sign up to collective agreements (the National Agreement for the Engineering Construction Industry (the “NAECI”) in this case) although in this case it is understood that IREM had committed to do so as it was a term of their contract.

4.95 The key issues in the Lindsey disputes were:

- The awarding of a sub-contract (to assist in a construction project for Total) to a company who explicitly were not going to use UK workers

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<sup>117</sup> ACAS (16 February 2009) *Report of an inquiry into the circumstances surrounding the Lindsey Oil Refinery dispute* [Online] Available: <http://www.acas.org.uk/CHttpHandler.ashx?id=1019&p=0> [Accessed 22 September 2014]

<sup>118</sup> ONS (February 2009) *Labour Market Statistics*[Online] Available: <http://www.ons.gov.uk/ons/rel/lms/labour-market-statistics/february-2009/index.htm> [Accessed 16 September 2014]

<sup>119</sup> European Commission, *Freedom to provide services/Freedom to Commission*, [Online]

Available:[http://ec.europa.eu/internal\\_market/top\\_layer/living\\_working/services-establishment/index\\_en.htm](http://ec.europa.eu/internal_market/top_layer/living_working/services-establishment/index_en.htm) [Accessed 16 September 2014]

- The applicability of existing industry terms and conditions to non-UK workers (the NAECI), and
- The use of unofficial strike action and the employers' response to it.

Of particular relevance to the Review is the unofficial strike action, its spread between sites, and the response of employers to it.

4.96 In neither of the disputes did the relevant unions (in this case Unite and the GMB) ballot for industrial action in any form, although in the first dispute the trade unions had been aware of the issue and discussing it with the employers for a number of weeks. Meetings between the unions and TLOR contractor, Jacobs Engineering, and their Italian sub-contractor, IREM, had taken place since the previous November on a range of issues, including parity of terms and conditions (and NAECI), and the use of locally sourced labour. These did not reach agreement on the latter point, and according to ACAS when “(t)he lack of progress was communicated to workers at the Lindsey site ... the workers decided to take unofficial action.”<sup>120</sup>

4.97 The first dispute was resolved when workers taking unofficial action at TLOR voted in favour of a deal negotiated at ACAS (attended by Total, GMB, Unite and IREM) in which some new local jobs were created.<sup>121</sup> According to Unite, the June dispute was resolved by reinstating all the dismissed workers.

## Chronology

Date	Event
<b>November 2008 onwards</b>	Union representatives meet with Jacobs Engineering and IREM to discuss their concerns about the IREM contract. <sup>122</sup>
<b>December 2008</b>	Jacobs Engineering contract an additional sub-contractor, IREM, to enable them to complete their work.
<b>January 2009</b>	Lack of agreement about UK jobs communicated to workers at the Lindsey site.
<b>28 January 2009</b>	Unofficial strike action by about 800 workers at Lindsey commences. 'Sympathy' unofficial action also taken at: Grangemouth Oil Refinery – involving more than 700 BP and INEOS workers, Aberthaw Power Station, Humber Refinery, BP Saltend, Sellafield, Heysham Nuclear Power Station, Stanlow Refinery, Wilton Refinery, South Hook gas terminal, Longannet Power Station, Cockenzie Power Station and Torness. <sup>123</sup>

<sup>120</sup> ACAS (16 February 2009), *Report of an inquiry into the circumstances surrounding the Lindsey Oil Refinery dispute*, [Online] Available: <http://www.acas.org.uk/CHttpHandler.ashx?id=1019&p=0> [Accessed 22 September 2014]

<sup>121</sup> ACAS (4 February 2009), *Lindsey Oil Refinery worker protests*, [Online] Available: <http://www.acas.org.uk/index.aspx?articleid=2139> [Accessed 16 September 2014]

<sup>122</sup> ACAS (16 February 2009) *Report of an inquiry into the circumstances surrounding the Lindsey Oil Refinery dispute*, [Online] Available: <http://www.acas.org.uk/CHttpHandler.ashx?id=1019&p=0> [Accessed 22 September 2014]

<sup>123</sup> Some of these protests are referred to in INEOS' and TLOR's submissions. Media coverage includes: BBC (4 February 2009), *Foreign labour row 'deal reached'*, <http://news.bbc.co.uk/1/hi/uk/7868777.stm>, Brits4Brits video (uploaded 3 February 2009), *Aberthaw Power Station*, <http://www.youtube.com/watch?v=diMWFk-f-A>, The Guardian (2 February 2009), *Nuclear power workers join wildcat strike action over foreign labour* <http://www.theguardian.com/politics/2009/feb/02/sellafield-wildcat-strike>, CNN (4 February 2009), *Deal reached over 'British jobs' strike*, <http://edition.cnn.com/2009/BUSINESS/02/04/uk.strike/>, The Guardian (30 January 2009), *Strikes spread across Britain as oil refinery protest escalates*, <http://www.theguardian.com/business/2009/jan/30/oil-refinery-dispute> The Telegraph (30 January 2009), *Oil refinery strikes: Protests across Britain over foreign workers*, <http://www.telegraph.co.uk/finance/recession/4396761/Oil-refinery-strikes-Protests-across-Britain-over-foreign-workers.html> [All accessed 16 September 2014]

<b>2 February 2009</b>	Talks commenced with ACAS, including Total, GMB, Unite, Jacobs and IREM. <sup>124</sup>
<b>5 February 2009</b>	'Ballot' by those taking unofficial action at Lindsey on whether to go back to work based on a deal negotiated at ACAS ('ballot' result was that the deal was accepted) – this was not a formal postal ballot as the result was available the same day. <sup>125</sup>
<b>11 June 2009</b>	Jacob's other sub-contractor, Shaw Group UK, laid off 51 workers. Unofficial action by workers at the Total site starts. 'Sympathy' unofficial action also taken at: Stanlow Refinery, Aberthaw Power Station, Ferrybridge Power Station, Staythorpe Power Station, Ensus site (Wilton Chemical Complex), Fiddler's Ferry Power Station, Drax Power Station, Eggborough Power Station, Ratcliffe-on-Soar Power Station, BP Saltend, BOC Scunthorpe, Longannet Power Station. <sup>126</sup>
<b>17 June 2009</b>	Unite announced ballot of members in seven 'major power and petrochemical plants across Britain' for 'improvements' to the NAECI. Ballot to start on 11 August. <sup>127</sup>
<b>19 June 2009</b>	Jacobs Engineering dismisses 650 staff due to unofficial strike action and invited them to apply for their jobs.
<b>25 June 2009</b>	Agreement reached between employers and unions to end the dispute. <sup>128</sup>
<b>29 June 2009</b>	Workers voted in favour of 25 June agreement to end the unofficial action at Lindsey, 'reinstat(ing) all the workers'. <sup>129</sup>

## Conduct during the dispute

4.98 The disputes at Lindsey and the related disputes elsewhere had two notable characteristics: i) they were all unofficial, and ii) they spread rapidly between similar sites, apparently through the use of the internet and mobile phones. The following summary of tactics used in the disputes is mainly taken from TLOR submission to the Review, and it should be emphasised that because of the information available to the Review it has not been able to verify all of their claims.

### Alleged victimisation or harassment of non-striking workers

4.99 The Review has been told by TLOR that one of the key methods for communication between engineering construction industry workers at the time of the dispute was a

<sup>124</sup> BBC (4 February 2009), *Foreign labour row 'deal reached'*, [Online] Available: <http://news.bbc.co.uk/1/hi/uk/7868777.stm> [Accessed 16 September 2014]

<sup>125</sup> Unite (4 February 2009), *Unite's statement on the Lindsey Oil Refinery Dispute*, [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2009\\_archived\\_press\\_releases/unite\\_s\\_statement\\_on\\_the\\_linds.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2009_archived_press_releases/unite_s_statement_on_the_linds.aspx) [Accessed 16 September 2014] and Unite (5 February 2009), *Unite's statement on the Lindsey Oil Refinery Dispute*, [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2009\\_archived\\_press\\_releases/unite\\_s\\_statement\\_on\\_the\\_lin-1.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2009_archived_press_releases/unite_s_statement_on_the_lin-1.aspx) [Accessed 16 September 2014]

<sup>126</sup> Again the dispute received a lot of media coverage. Examples include: The Guardian (11 June 2009), *Lindsey Oil Refinery workers walk out in redundancies row* <http://www.theguardian.com/business/2009/jun/11/lindsey-oil-refinery-industrial-action> The Guardian (19 June 2009), *Hundreds walk out in support of sacked oil refinery workers*, <http://www.theguardian.com/business/2009/jun/19/oil-refinery-construction-workers-dispute>, Wirral Globe (20 June 2009), *Stanlow workers join walkout as wildcat strikes spread*, [http://www.wirralglobe.co.uk/news/4449579.Stanlow\\_workers\\_join\\_walkout\\_as\\_wildcat\\_strikes\\_spread/](http://www.wirralglobe.co.uk/news/4449579.Stanlow_workers_join_walkout_as_wildcat_strikes_spread/) [All accessed 16 September 2014]

<sup>127</sup> Unite (17 July 2009), *Unite announces timescale for construction strike ballot at power stations and petrochemical sites*, [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2009\\_archived\\_press\\_releases/unite\\_announces\\_time\\_scale\\_for.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2009_archived_press_releases/unite_announces_time_scale_for.aspx) [Accessed 16 September 2014]

<sup>128</sup> The Independent (26 June 2009), *Deal ends oil refinery strikes*, [Online] Available: <http://www.independent.co.uk/news/uk/home-news/deal-ends-oil-refinery-strikes-1720247.html> [Accessed 16 September 2014]

<sup>129</sup> Unite (29 June 2009), *Lindsey workers vote to return to work*, [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2009\\_archived\\_press\\_releases/lindsey\\_workers\\_vote\\_to\\_return.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2009_archived_press_releases/lindsey_workers_vote_to_return.aspx) [Accessed 16 September 2014]

website called 'Bearfacts'.<sup>130</sup> It is alleged that this can be used to intimidate co-workers. As the Review does not have access to the 'Bearfacts' website forum, it has been unable to evidence this.

4.100 TLOR's submission to the Review also suggested that contract and company staff were intimidated whilst arriving at and leaving the site. This resulted in all staff being bussed in past the unofficial pickets whilst missiles were hurled at the buses.

#### Allegations of disruption to business, contingency plans and damage to property

4.101 Aside from the evident disruption to production at the plants where contractors took unofficial action, TLOR suggest that as part of the dispute the following tactics were used:

- Destruction and sabotage of company provided facilities including blocking toilets with hand towels, removing soap dispensers and smearing excrement on the walls
- Deliberate sabotage of work completed by others, and
- Destruction and sabotage of project work, plant or equipment.

#### 'Wildcat' strike action said to have been taken by individual union members

4.102 All of the disputes were 'wildcat' as none were supported by a formal ballot for industrial action, and all seemed to happen at short notice. The rapid cascading between sites suggests some form of organisation or a very rapid ripple effect between sites with workers in the engineering construction sector – the disputes affected over ten other sites in both January and June. The main characteristic of the action was large protests forming outside the entrance to the site – there was a good deal of media reporting of the demonstrations which included pictures of the numbers and scale involved.<sup>131</sup> The demonstrations, although not officially organised by a union, included lots of union banners. TLOR describe this as follows:

"In all cases where union reps are involved, they tell the workers they are taking action in a personal capacity, this allows the unions to repudiate any unofficial action as they state the reps are not representing the union. Several local Unite and GMB Union reps were key instigators of the HDS3 dispute, it is a matter of record that their reward from the Unions were offers of full time national positions for those keys reps that had organized the action in a "personal capacity". Note that one of the agitators for HDS3 who appeared waving Unite banners on TV wasn't even employed by an HDS3 contractor, he had recently been laid off from the ICHP Phase 2 project"

4.103 Kenny Ward, a Unite representative, told protesters at Lindsey:

"Over the last week, your heroic actions here have inspired thousands in our county, hundreds of thousands in our country, and millions across the globe"

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<sup>130</sup>Bearfacts construction worker website <http://www.bearfacts.co.uk/> Most content is part of a 'forum' for registered members (which is not visible unless registered). [Accessed 16 September 2014]

<sup>131</sup>The Financial Times (30 January 2009), *Slideshow: Oil refinery protests*, [Online] Available: <http://www.ft.com/cms/s/0/6757da62-eeec7-11dd-bbb5-0000779fd2ac.html#slide0> [Accessed 16 September 2014]  
Demotix (23 June 2009), *Construction workers protest outside Lindsey Oil Refinery*, <http://www.demotix.com/news/construction-workers-protest-outside-lindsey-oil-refinery#media-94539> [Accessed 16 September 2014]

"The fight started here at Lindsey: the fight against discrimination, the fight against victimisation and the fight to put bread on your table for your children. Gordon Brown said it is indefensible. If the prime minister will not defend the working man, if parliament will not defend the working man, then the union will defend the working man."<sup>132</sup>

4.104 As the action was all 'unofficial', it did not need to follow the processes set out in TULRCA for balloting, and TLOR suggest that instead of secret ballots the main way of gauging views was using "a show of hands at site mass meetings which left individuals who did not raise hands open to intimidation".

4.105 This type of contagious wildcat action seems to have been possible because of the internet and mobile phones. How this worked in the January/February dispute is described by a GMB steward:

"They [people working in the sector] were outraged at what was going on. We got calls all morning. There were no orders coming from the shop stewards, it was all coming from the feelings of the members."

4.106 In 2011, ACAS's Chief Conciliator, Peter Harwood, looking back on developments in industrial relations, described what happened at Lindsey and other sites:

"New technology is changing the way in which workers are able to organise. Demonstrations and flash mobs can be arranged at the touch of a button and they can communicate in seconds, not just nationally but internationally. Last year's wildcat strikes at the Lindsey oil refinery are a case in point.

The Lindsey dispute was characterised by the setting up of networking groups. There was a website and text message and email groups, enabling demonstrators to communicate rapidly across the country and to expand the action to over twenty other major construction sites within hours."<sup>133</sup>

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<sup>132</sup> The Guardian (2 February 2009), *Nuclear power workers join wildcat strike action over foreign labour*, [Online] Available: <http://www.theguardian.com/politics/2009/feb/02/sellafield-wildcat-strike> [Accessed 16 September 2014]

<sup>133</sup> ACAS (2 December 2010), *Social media needs to be taken seriously warns Acas*, [Online] Available: <http://www.acas.org.uk/index.aspx?articleid=3199> [Accessed 16 September 2014]

## f) The Building and Engineering Services National Agreement (BESNA) dispute

### Introduction

4.107 The 'BESNA dispute' started in Autumn 2011 when eight of the major building services contractors in the UK tried to break away from the industry's Joint Industry Board (JIB), a trade organisation that sets terms and conditions between contractors and workers.<sup>134</sup> The eight breakaway contractors wanted to introduce a new national agreement for electricians called the Building Engineering Services National Agreement (BESNA). Unite claimed BESNA had inferior terms and conditions for workers and fiercely campaigned to prevent the agreement being adopted. The dispute ended after more than six months campaigning when the building services contractors withdrew the new contracts.

4.108 The Review did not receive any first hand evidence from the parties involved. However, the Review has carried out open source research including national newspapers, industry websites and the Unite website.

### Issue

4.109 Members of JIB agree to only use specific terms and conditions when hiring employees or contractors. The BESNA dispute arose because employers felt the current terms and conditions did not meet the commercial reality of the industry and wanted more flexibility. The eight major building service contractors (Balfour Beatty Engineering Services Limited; NG Bailey Building Services; Crown House Technologies; Gratte Brothers; MJN Colston Limited; SPIE Matthew Hall; Shepherd Engineering Services (SES); TClarke Plc) worked with a trade association, the Heating and Ventilators Contractors Association ("HVCA") (now the Building and Engineering Services Association) to draft a new agreement.<sup>135</sup>

4.110 One of the proposals for the new agreement was to introduce a new grading structure incorporating a new installer grade below the fully qualified electrician pay rate. HVCA denied that this would apply to already qualified electricians but Unite was concerned that this structure would be used to deskill workers and said that the agreement would cause workers to lose 30% of their pay. Unite wanted the building

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<sup>134</sup> JIB was set up on 1st January, 1968 pursuant to an industrial agreement to manage industrial relations between employers and workers in the electricity construction industry. The aim of the JIB is to generally improve the productivity and status of the industry through agreement between Unite the Union and the employer's group the Electronic Contractor's Association. Today, the JIB is governed by its National Board which consists of ten representatives from Unite the Union, ten representatives from the Electrical Contractors' Association and a Public Interest member. Unite the Union and the ECA also provide representatives to a number of specialised Committees which control in detail the operation of National Board decisions. There is also a Regional Board system to deal with regional disputes. The National Board decides wages.

<sup>135</sup> Building.co.uk (undated) *Sparks fly: The row over electricians' wage agreements* [Online] Available: <http://www.building.co.uk/sparks-fly-the-row-over-electricians-wage-agreements/5030743.article> [Accessed 16 September 2014]



services contractors to drop the new agreement but the eight companies felt that it was necessary in order to modernise the industry.<sup>136</sup>

## Chronology

Date	Event
Mid 2011	Eight major building services contractors announced that in March 2012 they would be switching from the JIB to a new agreement. <sup>137</sup>
August 2011	Talks between Unite and the eight companies. No agreement reached.
Early September 2011	The eight companies wrote to 6,000 workers promising that electricians would not suffer a loss by agreeing to the new terms and conditions. Electricians and mechanical workers were given until 7 December 2011 to sign the agreement or be dismissed. <sup>138</sup> Unite and the eight companies began to engage in talks in August but no agreement was reached.
21 September 2011	Around 100 construction workers in Salford protested outside MediaCityUK and protests reported at a Crossrail construction site in Farringdon and the Total Lindsey and neighbouring Conoco Phillips oil refineries. <sup>139</sup>
Late September 2011	MJN Colston announced it would delay forcing through the agreement. <sup>140</sup>
October 2011	Protests at building operations run by T Clarke, Shepherd and Balfour Beatty. Several hundred Unite members protested at the Park House shopping centre on Oxford Street on 5 October (connected to T Clarke Plc). <sup>141</sup> A protest also took place at Sellafield on 13 October. <sup>142</sup>
Late October 2011	Unite announced it would ballot members at Balfour Beatty for strike action. (Unite believed it was the driving force behind BESNA.) <sup>143</sup>
Early November 2011	Unite organise a protest at Ratcliffe-on-Soar power station (links to SPIE Matthew Hall). <sup>144</sup> National day of protest on 9 November: 1,000 electricians targeted the Shard building project, Blackfriars Crossrail, and 100s of Unite members marched on Holyrood. <sup>145</sup> Len McCluskey announced that the ballot for strike action would begin on 16 November. <sup>146</sup>

<sup>136</sup> Channel 4 News (9 November 2011) *Electricians rally over 'de-skilling and pay cuts'* [Online] Available: <http://www.channel4.com/news/electricians-rally-over-de-skilling-and-pay-cuts> [Accessed: 16 September 2014]

<sup>137</sup> Building.co.uk (undated) *Sparks fly: The row over electricians' wage agreements* [Online] Available: <http://www.building.co.uk/sparks-fly-the-row-over-electricians-wage-agreements/5030743.article> [Accessed 16 September 2014]

<sup>138</sup> Construction Enquirer (7 September 2011) *M&E giants promise to maintain pay rates* [Online] Available: <http://www.constructionenquirer.com/2011/09/07/me-giants-promise-to-maintain-pay-rates/> [Accessed 16 September 2014]

<sup>139</sup> BBC News (21 September 2011) *Salford construction workers protest at MediaCityUK* [Online] Available:

<http://www.bbc.co.uk/news/uk-england-manchester-14998914> [Accessed: 16 September 2014]

Construction Enquirer (21 September 2011) *Sparks try to storm Farringdon station site* [Online] Available

<http://www.constructionenquirer.com/2011/09/21/sparks-try-to-storm-farringdon-station-site/> [Accessed 16 September 2014]

Construction News (23 November 2011) *Gratte Brothers condemn "reckless" sparks protesters* [Online] Available:

<http://www.cnplus.co.uk/gratte-brothers-condemn-reckless-sparks-protesters/8622999.article> [Accessed 16 September 2014]

<sup>140</sup> Construction Enquirer (27 September 2011) *Split among M&E rebels as MJN Colston Jumps Ship* [Online] Available:

<http://www.constructionenquirer.com/2011/09/27/split-in-rebel-me-contractors-as-colston-jumps-ship/> [Accessed 16 September 2014]

<sup>141</sup> Construction Enquirer (5 October 2011) *Sparks protests spread as dispute enters sixth week* [Online] Available:

<http://www.constructionenquirer.com/2011/10/05/sparks-protests-spread-as-dispute-enters-sixth-week/> [Accessed 16 September 2014]

<sup>142</sup> News & Star (13 October 2011) *Sellafield contractors stage protest over threats to pay* [Online] Available:

<http://www.newsandstar.co.uk/news/business/sellafield-contractors-stage-protest-over-threats-to-pay-1.887106> [Accessed 16 September 2014]

<sup>143</sup> Construction News (19 October 2011) *Union calls sparks strike ballot against Balfour Beatty* [Online] Available:

<http://www.cnplus.co.uk/union-calls-sparks-strike-ballot-against-balfour-beatty/8621352.article> [Accessed: 16 September 2014]

<sup>144</sup> BBC News (2 November 2011) *Workers protest outside Ratcliffe-on-Soar power station* [Online] Available:

<http://www.bbc.co.uk/news/uk-england-nottinghamshire-15540554> [Accessed 16 September 2014]

<sup>145</sup> Building.co.uk (9 November 2011) *Over 1,000 angry sparks target Shard and Blackfriars*

[Online] Available: <http://www.building.co.uk/over-1000-angry-sparks-target-shard-and-blackfriars/5027498.article> [Accessed 16 September 2014]

<sup>146</sup> Ibid and BBC News (9 November 2011) *Construction workers take protest to MSPs at Holyrood* [Online] Available:

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-15657625> [Accessed 16 September 2014]

<b>18 November 2011</b>	Talks scheduled to take place but were cancelled when the employers refused to meet. <sup>147</sup>
<b>Late November 2011</b>	The seven companies engaged in consultation with the workforce which led to some changes being made to the new agreement. <sup>148</sup>
<b>29 November 2011</b>	Unite members in Balfour Beatty voted in favour of strike action (360 in favour out of 441 who were balloted). <sup>149</sup>
<b>30 November 2011</b>	Balfour Beatty statement criticising the ballot and threatening legal action.
<b>1 December 2011</b>	Unite announced that it would re-ballot. <sup>150</sup>
<b>30 November 2011</b>	Notice given of strike by Balfour Beatty Unite members, but Unite then withdrew notice and decided to re-ballot in the face of threatened legal action from Balfour Beatty.
<b>7 December 2011</b>	Constructions workers staged a number of unofficial 'wildcat' protests in frustration that the strike was not going ahead. <sup>151</sup>
<b>9 January 2012</b>	The seven major building service contractors formally gave notice that they would be resigning from the JIB agreement. <sup>152</sup>
<b>12 January 2012</b>	Unite announced they would re-ballot workers at Balfour Beatty. <sup>153</sup>
<b>January/start of February 2012</b>	Protests in London, Leeds and at Ratcliffe-on-Soar Power Station. The second ballot was in favour of strike action. <sup>154</sup> One day ahead of the ballot result Unite reported the firms to the OFT for acting in an anti-competitive way. <sup>155</sup>
<b>2 February 2012</b>	Reported that Balfour Beatty had applied for another injunction to prevent strike action going ahead. <sup>156</sup>
<b>13 February 2012</b>	Building.co.uk report that HVCA stated that as many as 88% of workers who were asked to sign up to the contract had done so. <sup>157</sup>
<b>14 February 2012</b>	Rolling campaign of demonstrations began, including a protest at an industry gala dinner on 15 February <sup>158</sup> . The same day the American union, the Teamsters, began protesting at and leafleting Balfour Beatty's head office in New York. President of Teamsters, James P. Hoffa also wrote to Ian Tyler, the chief executive of Balfour Beatty, explaining that the Teamsters would be supporting Unite. <sup>159</sup>

<sup>147</sup> Construction Enquirer (22 November 2011) *M&E firms accused of snubbing pay talks* [Online] Available: <http://www.constructionenquirer.com/2011/11/22/me-contractors-accused-of-snubbing-pay-talks/> [Accessed 16 September 2014]

<sup>148</sup> Construction Enquirer (21 November 2011) *M&E giants change pay deal after talks with workers* [Online] Available: <http://www.constructionenquirer.com/2011/11/21/me-giants-change-new-pay-deal-after-worker-feedback/> [Accessed 16 September 2014]

<sup>149</sup> Socialist Worker (29 November 2011) *Electricians at Balfour Beatty vote by 81 percent to strike* [Online] Available: <http://socialistworker.co.uk/art/26403/Electricians+at+Balfour+Beatty+vote+by+81+percent+to+strike> [Accessed: 16 September 2014]

<sup>150</sup> Financial Times (1 December 2011) *Balfour Beatty forces Unite strike rebalot* [Online] Available: <http://www.ft.com/cms/s/0/f4196916-1c0f-11e1-9631-00144feabdc0.html#axzz3DOjgn2KU> [Accessed: 16 September 2014]

<sup>151</sup> BBC News (7 December 2011) *Constructions workers in wildcat strike action over pay* [Online] Available: <http://www.bbc.co.uk/news/uk-england-16065150> [Accessed 16 September 2011]

<sup>152</sup> Construction Enquirer (9 January 2012) *Big M&E firms move to quit JIB agreement* [Online] Available: <http://www.constructionenquirer.com/2012/01/09/big-me-firms-move-to-quit-jib-agreement/> [Accessed: 16 September 2014]

<sup>153</sup> Unite the Union (12 January 2012) *Unite announces strike re-ballot in Balfour Beatty* [Online] Available: [http://archive.uniteunion.org/news\\_events/latest\\_news/unite\\_announces\\_strike\\_re-ball.aspx](http://archive.uniteunion.org/news_events/latest_news/unite_announces_strike_re-ball.aspx) [Accessed: 16 September 2014]

<sup>154</sup> BBC News (2 February 2012) *Balfour Beatty workers vote for strike over pay* [online] Available: <http://www.bbc.co.uk/news/business-16863135> [Accessed: 16 September 2014]

<sup>155</sup> Union News (1 February 2012) *Unite accuses "BESNA cartel" construction firms in OFT challenge* [Online] Available: <http://union-news.co.uk/2012/02/unite-accuses-besna-cartel-construction-firms-in-oft-challenge/> [Accessed: 16 September 2014]

<sup>156</sup> Construction News (2 February 2012) *Balfour moves for court injunction after sparks vote to strike* [Online] <http://www.cnplus.co.uk/balfour-moves-for-court-injunction-after-sparks-vote-to-strike/8625969.article> [Accessed: 16 September 2014]

<sup>157</sup> Building.co.uk (13 February 2012) *Almost 90% of workers signed up to BESNA* [Online] Available: <http://www.building.co.uk/almost-90-of-workers-signed-up-to-besna/5031919.article> [Accessed: 16 September 2014]

<sup>158</sup> The Guardian (16 February) *Electricians and construction workers block Park Lane in protest over pay* [Online] Available: <http://www.theguardian.com/uk/2012/feb/16/pay-protest-workers-block-park-lane> [Accessed: 16 September 2014]

<sup>159</sup> Construction Enquirer (14 February 2012) *Teamsters warn Balfour Beatty boss Ian Tyler* [Online] <http://www.constructionenquirer.com/2012/02/14/teamsters-warn-balfour-boss-ian-tyler/> [Accessed: 16 September 2014]

<b>16 February 2012</b>	High Court refused Balfour Beatty's injunction on the basis that Unite had done enough to ensure democratic legitimacy in the ballot. <sup>160</sup>
<b>17 February 2012</b>	Balfour Beatty announced their withdrawal from the BESNA contracts following talks with Len McCluskey. Unite agreed not to pursue further industrial action and both parties agreed to wide ranging talks on modernising the industry. <sup>161</sup>
<b>22 February 2012</b>	NG Bailey announced that they were also pulling out of BESNA and on 23 February the HVCA announced it would withdraw the proposals. <sup>162</sup>

## Conduct during the dispute

4.111 This dispute was notable for its length and the strength of feeling on both sides. The dispute gained momentum in August 2011 and was not resolved until the middle of February 2012. During this time, dozens of protests and demonstrations were held across the country often involving quite large numbers of people some of which could be described as acts of "civil disobedience" and many required a heavy Police presence.

4.112 Despite the scale of this dispute, it attracted little mainstream media attention. The Review team was able to find occasional articles in national newspapers and on the BBC website but much of the evidence gathered has come from industry focused websites, the Unite website and YouTube clips.

### Protests organised by a trade union in the furtherance of a dispute

#### At the premises of another organisation/third party in some way connected with the employer at the centre of the dispute

4.113 In September 2011 Len McCluskey gave an interview to the Observer newspaper in which he said that union members' protests should not be limited to conventional industrial action, "My view is that we should rule nothing in and nothing out. Every conceivable form of protest and action should be carefully considered, from civil disobedience through to co-ordinated industrial strikes."<sup>163</sup> Many of the protests during the dispute had an element of civil disobedience about them. Tactics included blocking roads and entrances to buildings and encouraging third party employees to go out on strike. One of the YouTube clips shows a protester with a microphone stating that Len McCluskey has sanctioned civil disobedience.<sup>164</sup>

4.114 During a protest at the Electrical Contractors' Association Dinner and Dance at the Grosvenor Hotel in Park Lane on 15 February 2012 the Guardian reported that:

<sup>160</sup> Financial Times (16 February 2012) Balfour Beatty Lose [online] Available: <http://www.ft.com/cms/s/0/62ecb6c6-58b6-11e1-b118-00144feabdc0.html> [Accessed: 16 September 2014]

<sup>161</sup> Construction Enquirer (17 February 2012) *Balfour Beatty U-turn on BESNA working contracts* [online] Available: <http://www.constructionenquirer.com/2012/02/17/balfour-beatty-engineering-services-backtracks-on-new-contracts/> [Accessed: 16 September 2014]

<sup>162</sup> Construction Enquirer (22 February 2014) *NG Bailey confirms BESNA pull-out* [online] <http://www.constructionenquirer.com/2012/02/22/ng-bailey-confirms-besna-pull-out/> [Accessed: 16 September 2014]

<sup>163</sup> The Observer (10 September 2011) *Unite leader Len McCluskey calls for protests and strikes against cuts* [online] Available: <http://www.theguardian.com/politics/2011/sep/10/unite-len-mccluskey-tuc-strikes> [Accessed: 28 September 2014]

<sup>164</sup> YouTube [uploaded on 15 October 2011] *Sparks: Unofficial strikes at Radcliffe while London demos increase* [online] Available: <https://www.youtube.com/watch?v=aaRNFzGhT2k> [Accessed: 16 September 2014]

“about 200 protesters gathered outside the Grosvenor House hotel where a black-tie dinner was being held for construction industry executives. Traffic was halted for almost an hour ... as the group blocked the road outside the hotel’s ballroom”<sup>165</sup>

- 4.115 A YouTube clip of the event shows that protesters turned up with loud speakers and a large inflatable rat.<sup>166</sup> A speaker talks about the intention to “shut entrances down” at the hotel and asks for a show of hands of protesters who want to engage in civil disobedience. Shortly afterwards a number of protesters walk out onto Park Lane to block the road and stop traffic moving. A sound system is moved out onto the road so that protesters can continue to make speeches. One speaker who is not identified in the clips states that the plan is to escalate the campaign to more than just stopping the traffic. He says that they are going to stop power stations and oil refineries legitimately with a successful strike ballot or unofficially without a winning strike ballot.
- 4.116 A number of Police officers arrived at the protest and the clip appears to show that they tried to move the protesters back onto the pavement. The clip also suggests a number of protesters tried to enter the hotel but came back out on to the street. The last section of the clip shows protesters pursuing guests trying to enter the building and shouting “scum”. Guests are followed around the building by protesters.
- 4.117 The submission from INEOS provided information about protests that took place at Grangemouth Chemicals and Refinery Plant (Balfour Beatty is INEOS’ electrical maintenance contractor). INEOS described daily demonstrations outside the management site offices lasting for up to two hours and involving around 20 to 50 people. These protests continued for about three weeks. INEOS also described a series of mass meetings and a couple of work stoppages where “the protesters numbered in the hundreds” and there were attempts to stop tanker movements to and from Grangemouth.
- 4.118 The Police attended the first work stoppage to manage the situation and ensure that the Code of Practice on Picketing was adhered to. However, prior to the second incident INEOS state that the Police informed them that they had been instructed by the Procurator Fiscal that they could not employ the same techniques because the protests were classified as individuals protesting within their rights rather than picketing. INEOS stated:
- “As a result, the police were restricted to managing a demonstration. There were some ugly scenes between the demonstrators and the police and eventually the police used the Road Traffic Act to arrest a few individuals and, as a result, keep the road clear”
- 4.119 These protests and demonstrations caused “major disruption” and INEOS stated that productivity was very poor during this period. The INEOS submission also stated that

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<sup>165</sup> The Guardian (16 February 2012) *Electricians and construction workers block Park Lane in protest over pay* [online] Available: <http://www.theguardian.com/uk/2012/feb/16/pay-protest-workers-block-park-lane> [Accessed: 16 September 2014]

<sup>166</sup> YouTube [uploaded on 16 February 2012] *Sparks – dinner at the Grosvenor – 15 February 2012* [online] Available: <http://www.youtube.com/watch?v=tC6ZCZjdoTs> [Accessed: 16 September 2014]

staff, customers and visitors were intimidated by having to walk past demonstrators. INEOS argued that the aggression during the BESNA dispute was partly because demonstrators were 'bussed' in to protest and had no connection or commitment to the local area. INEOS stated that the majority of individuals were not employed by either the company being targeted or the company involved in the dispute. This distance, INEOS argued, changed the atmosphere and behaviour of the demonstrators who were often more aggressive than would otherwise be the case,

## Trade union communication with third parties to try and influence the outcome of a dispute

### Support from the Teamsters union in the US

4.120 In addition, Unite brought US union support to bear in the dispute. The president of the US Teamsters union offered his support to Unite by writing to Ian Tyler, Balfour Beatty Chief Executive. In addition, they demonstrated and leafleted at the head office of Balfour Beatty's American subsidiary, Parson Brinckerhoff, in New York.

### Complaint to the Office of Fair Trading

4.121 A further tactic Unite employed was to refer the relevant companies to the Office of Fair Trading for anti-competitive practices.<sup>167</sup> The Review was unable to find out about the outcome of this complaint but a similar tactic was used in the Grangemouth and the Fire and Rescue Services disputes when Unite wrote to HMRC asking them to investigate INEOS, and when the FBU wrote to the HSE about training at AssetCo respectively.<sup>168</sup>

### 'Wildcat' strike action said to have been taken by individual union members

4.122 The rank and file membership of Unite was very active during this dispute. Members of Unite appear to have had a heavy presence at all the actions even though they were not officially sanctioned by Unite. One BBC article describes a number of 'wildcat' strike actions on 7 December 2011 following Balfour Beatty's successful injunction application.<sup>169</sup> The article states that Unite had not officially backed the action but quotes Chris Weldon, a regional officer of Unite:

"I fully understand why the guys are taking the action."

"We've been warning employers that unless they come back to the table and negotiate with the union then things like this are going to take place."

4.123 Similarly a YouTube video shows an earlier protest at Oxford Street. The video shows a crowd of people marching on the streets. Text over the top states that the Police

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<sup>167</sup> Union News (1 February 2012) *Unite accuses "BESNA cartel" construction firms in OFT challenge* [online] Available: <http://union-news.co.uk/2012/02/unite-accuses-besna-cartel-construction-firms-in-oft-challenge/> [Accessed: 16 September 2014]

<sup>168</sup> Unite the Union (18 October 2013) *Call for Revenue and Customs probe into Ineos' 'obfuscating' tax affairs* [Online] Available <http://www.unitetheunion.org/news/call-for-revenue-and-customs-probe-into-ineos-obfuscating-tax-affairs/> [Accessed: 16 September 2014]

<sup>169</sup> BBC (9 November 2011), *Constructions workers in wildcat strike action over pay* [Online] Available: <http://www.bbc.co.uk/news/uk-england-16065150> [Accessed: 16 September 2014]

asked Unite to call it off but didn't realise that the dispute was organised by the rank and file and not the Unite leadership.<sup>170</sup>

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<sup>170</sup> YouTube [uploaded on 15 October 2011] *Sparks: Unofficial strikes at Radcliffe while London demos increase* [Online] Available: <https://www.youtube.com/watch?v=aaRNFzGhT2k> [Accessed: 16 September 2014]

## g) London Buses dispute

### Introduction

4.124 In the run-up to the London 2012 Olympic and Paralympic Games (the “Olympics”) members of Unite employed by several London bus operators staged industrial action in relation to their claim for an ‘Olympics bonus’. This is one of the four leverage campaigns referred to on Unite’s website.<sup>171</sup> Although the London Buses dispute is one of Unite’s ‘landmark victories’ using leverage campaign techniques, the evidence available to the Review does not show much use of some of the tactics others would associate with ‘leverage’, such as the direct targeting of shareholders, customers, suppliers and/or senior managers. There is however evidence of the use of protests (as opposed to picketing) as a means of achieving the industrial goal.

4.125 The Review did not receive any formal submissions on this dispute (except for a short mention in the submission provided by Transport for London (“TfL”). Information on the dispute has been found via open source research, for example from the media and the websites of TfL and Unite.

### Issue

4.126 As part of the preparations for the Olympics, TfL negotiated a deal with its directly employed drivers and other operational staff for a one-off payment in return for different working arrangements during the Olympics. These payments did not extend to bus drivers employed by private bus operating companies (so it was for each bus company to decide whether they wanted to reward their staff to work through the Olympics). It was not only TfL employees who were going to receive an ‘Olympics bonus’ – for example deals had been reached between trades unions and Virgin Trains and Network Rail.

4.127 Unite first raised the issue with the Mayor of London in May 2011, but it seems that negotiations between Unite and the bus companies (and to an extent with the contractor TfL and the Mayor of London) did not begin in earnest until the spring of 2012 when the deadline of the opening of the Olympics was looming. This gave Unite a strong bargaining position in terms of getting the dispute resolved before the Olympics opened on 27 July. Resolution came on 17 July following agreement by Unite members to an offer negotiated at ACAS.

4.128 The dispute was heavily covered in the UK media (and overseas) due to its link to the Olympics.

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<sup>171</sup> Unite, *Leverage*, [Online] Available: <http://www.unitetheunion.org/growing-our-union/organising-toolbox/leverage/> [Accessed 22 September 2014]

## Chronology

Date	Event
19 May 2011	Unite press release announced its intention to lobby for a 'special Olympic payment' for bus workers. <sup>172</sup>
13 September 2011	TfL announced agreement with the train drivers' unions over temporary changes to working arrangements and payments during the Olympics. <sup>173</sup>
16 December 2011	Unite press release stated that they had written to the London bus companies 'demanding that they enter into genuine negotiations for an Olympic games award for London's 28,000 bus workers.' <sup>174</sup>
16 May 2012	Unite drove an open top Routemaster bus adorned with a 'Fair Play 4 Bus Pay' banner and Unite flags to TfL's headquarters. <sup>175</sup>
29 May 2012	TfL press release announced RMT acceptance of Olympics offer for station, maintenance and service control staff and operational managers. <sup>176</sup>
8 June 2012	Unite announced ballot result for London bus workers' 'Olympic Award' (around 90% of those voting voted in favour of strike action). <sup>177</sup>
21 June 2012	High Court injunction prevented the employees of Metroline, Arriva the Shires and Go Ahead London General taking part in the industrial action. <sup>178</sup>
22 June 2012	Strike action by Unite's members of the other London bus companies (ending at 0300 on 23 June). <sup>179</sup>
27 June 2012	Unite protest of around 30 people outside the Institute of Civil Engineers, including Scabby the Rat. <sup>180</sup>
29 June 2012	'Flash mob' outside the bus depots of the bus companies who succeeded in getting a High Court injunction to prevent their staff from striking. <sup>181</sup>
4 July 2012	TfL revised offer to London bus staff affected by the Olympics. <sup>182</sup> TfL announced Unite's suspension of their proposed strike action on 5 July pending further negotiation. <sup>183</sup>
10 July 2012	ACAS reported that employers' offer had been recommended by Unite to its members (also see Unite press release of 10 July). <sup>184</sup>

<sup>172</sup>Unite (19 May 2011) *Press release: No second class treatment for London's bus workers, demands Unite* [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2011\\_archived\\_press\\_releases/no\\_second\\_class\\_treatment\\_for.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2011_archived_press_releases/no_second_class_treatment_for.aspx) [Accessed 22 September 2014]

<sup>173</sup>TfL (13 September 2011), *Press release: LU reaches agreement with drivers' unions over Olympics and Paralympics working arrangements* [Online] Available: <http://www.tfl.gov.uk/info-for/media/press-releases/2011/september/lu-reaches-agreement-with-drivers-unions-over-olympics-and-paralympics-working-arrangements> [Accessed 22 September 2014]

<sup>174</sup>Unite (16 December 2011), *Press release: London bus workers demand recognition for the Olympics* [Online] Available: [http://archive.uniteunion.org/news\\_events/archived\\_news\\_releases/2011\\_archived\\_press\\_releases/london\\_bus\\_workers\\_demand\\_reco.aspx](http://archive.uniteunion.org/news_events/archived_news_releases/2011_archived_press_releases/london_bus_workers_demand_reco.aspx) [Accessed 22 September 2014]

<sup>175</sup>Unite's Flickr album *Fair Play 4 Bus Pay campaign* [Online] Available: <https://www.flickr.com/photos/61216352@N04/sets/72157629756192928/> [Accessed 22 September 2014]

<sup>176</sup>TfL (29 May 2012), *Press release: Transport for London welcomes RMT acceptance of Olympics recognition proposals* [Online] Available: <http://www.tfl.gov.uk/info-for/media/press-releases/2012/may/transport-for-london-welcomes-rmt-acceptance-of-olympics-recognition-proposals> [Accessed 22 September 2014]

<sup>177</sup>Unite (8 June 2012), *London Bus Workers Ballot Result* [Online] Available: <http://archive.uniteunion.org/pdf/8455-ballot-result.pdf> [Accessed 22 September 2014]

<sup>178</sup>BBC (21 June 2012), *London 2012: Bus strike to go-ahead despite injunction* [Online] Available: <http://www.bbc.co.uk/news/uk-england-london-18530784> [Accessed 22 September 2014]

<sup>179</sup>BBC (23 June 2012), *London bus workers' strike in Olympics pay row ends* [Online] Available: <http://www.bbc.co.uk/news/uk-england-london-18544552> [accessed 22 September 2014]

<sup>180</sup>[Grade]Videos (uploaded 27 June 2012) *In London 27/06/2012 + small Unite Union protest (Bus Bonus)* [Online] Available: <https://www.youtube.com/watch?v=70H71KFNUPA&list=UUNBt-TbexXqWOQLAKSTB18w> [Accessed 22 September 2014]

<sup>181</sup>Socialist Worker (29 June 2012), *Unite flash protests target bus bosses that ran to the court*, [Online] Available: <http://socialistworker.co.uk/art/28448/Unite+flash+protests+target+bus+bosses+that+ran+to+the+courts> [Accessed 22 September 2014]

<sup>182</sup>TfL (4 July 2012) *Press release: TfL offers to share any additional bus revenue from London 2012 Games with bus staff* [Online] Available: <http://www.tfl.gov.uk/info-for/media/press-releases/2012/july/tfl-offers-to-share-any-additional-bus-revenue-from-london-2012-games-with-bus-staff> [Accessed 22 September 2014]

<sup>183</sup>TfL (4 July 2012) *Press release: TfL welcomes suspension of strike called by the leadership of Unite* [Online] Available: <http://www.tfl.gov.uk/info-for/media/press-releases/2012/july/tfl-welcomes-suspension-of-strike-called-by-the-leadership-of-unite> [Accessed 22 September 2014]



## Conduct during the dispute

4.129 Conduct during this dispute seems to have been restricted to picketing and protesting.

### Alleged inappropriate or intimidatory behaviour on picket lines

4.130 The strike on 22 June appeared to include picketing outside bus depots (for example, a YouTube video shows around 30 picketers outside Arriva's South Croydon depot).<sup>185</sup> According to Unite, bus workers in around 70 garages took part in the industrial action.<sup>186</sup>

4.131 The single day of strike action seems to have been relatively peaceful, although the numbers of picketers on the picket line seems to have frequently gone over the six recommended in the Code of Practice on Picketing. At the South Croydon depot there was some suggestion that picketers were making it difficult for non-striking staff to drive buses out of the depot but it is not clear whether this was the case.<sup>187</sup>

### Protests organised by a trade union in furtherance of a dispute

4.132 The Review has found information about a number of protests organised by Unite to further their 'Fair Play 4 Bus Pay' campaign.

- On 16 May, Unite used an open top Routemaster to travel to 'TfL HQ' – participants waved flags, the bus carried a campaign banner, and one of those involved dressed up as Boris Johnson.
- Protests in support of the 'Fair Play 4 Bus Pay' campaign took place on 27 June in central London. Around 30 people protested outside the Institute of Civil Engineers on Great George Street, including Scabby the Rat. It is not clear why this location was chosen. This seemed peaceful, and from the video available on YouTube did not seem to cause disruption to traffic or bystanders (the video seems to show some staff from the Institute talking to protesters about what they were doing).<sup>188</sup>
- TfL's submission to the Review mentions that Unite organised a protest at a bus station operated by one of the bus companies who successfully obtained the injunction to stop the strikes. Attendees were Unite members, but also included the "protesters from various groups including the Socialist Workers Party who had travelled from outside London to attend."<sup>189</sup> Events which sound similar are reported on the Socialist Worker website and appear to have taken place on 29 June 2012 after the industrial action on 22 June and before the strikes were called off.<sup>190</sup> The

<sup>184</sup> Unite (10 July 2012), *Unite recommends Olympic award offer to London bus workers*, [Online] Available: [http://archive.uniteunion.org/news\\_events/latest\\_news/unite\\_recommends\\_olympic\\_award.aspx](http://archive.uniteunion.org/news_events/latest_news/unite_recommends_olympic_award.aspx) ACAS (10 July 2012), *London Buses Update* [Online] Available: <http://www.acas.org.uk/index.aspx?articleid=3833> [accessed 22 September 2014]

<sup>185</sup> YouTube uploaded by 'Shaleels' (22 June 2012), *Arriva Bus Strike South Croydon South London* [Online] Available: <http://www.youtube.com/watch?v=MzQsyMHODLc> [accessed 22 September 2014]

<sup>186</sup> UniteTheUnion (YouTube) (22 June 2012), *London Bus Strike Solid* [Online] Available: <http://www.youtube.com/watch?v=lbOmrOiphvg> [accessed 22 September 2014]

<sup>187</sup> YouTube uploaded by 'Shaleels' (22 June 2012), *Arriva Bus Strike South Croydon Police Arrive* [Online] Available: [http://www.youtube.com/watch?v=VpEfd-Vv\\_tk](http://www.youtube.com/watch?v=VpEfd-Vv_tk) [accessed 22 September 2014]

<sup>188</sup> GradeVideos (uploaded 27 June 2012) *In London 27/06/2012 + small Unite Union protest (Bus Bonus)* [Online] Available: <https://www.youtube.com/watch?v=70H71KFNUPA&list=UUNBt-TbexXqWOQLAKSTB18w> [accessed 22 September 2014]

<sup>189</sup> Socialist Worker (29 June 2012), *Unite flash protests target bus bosses that ran to the court*, [Online] Available: <http://socialistworker.co.uk/art/28448/Unite+flash+protests+target+bus+bosses+that+ran+to+the+courts> [accessed 22 September 2014]

<sup>190</sup> Ibid.

Socialist Worker report attributed the organisation of these “flash mob” protests to Unite:

“Unite organised protests at Arriva, Go Ahead and Metroline garages in retaliation. The injunction was wrong and the union wanted to make sure these drivers got support,” a Unite organiser and spokesperson told Socialist Worker. “The drivers are giving their support for these protests. We’ve slowed up routes across the city this morning, but we’re also talking to the drivers. There will be further protests until workers get what they deserve.”

## h) Howdens Joinery dispute

### Introduction

4.133 This section looks at the dispute between the logistics company DHL, Howdens Joinery Limited (“Howdens”) and members of Unite employed by DHL servicing a distribution contract between Howdens and DHL’s Widnes depot (the “Widnes Drivers”). The Review was not sent any formal submissions on this dispute, but it has been included on the basis of high profile media coverage of Unite’s campaign, and the fact that the CEO of Howdens, Mr Ingle, sought a High Court injunction to limit the protests by union members near his home.

4.134 The Review did ask Howdens to contribute to the Review but they declined to do so. As has already been set out in some detail in chapter 3, Unite also declined to make any contribution. This case study therefore relies on open-source research, mainly from newspaper, trade union and social media websites.

### Issue

4.135 Howdens Joinery is a manufacturer of kitchens, selling to trades people only (rather than the public). DHL is contracted by Howdens to provide delivery services between factory and depots. Matthew Ingle is the CEO of Howdens and set the company up in 1995.

4.136 At the start of January 2013, DHL informed its employees that it would no longer operate a distribution service for Howdens from Widnes, and instead that Howdens’ ‘northern’ distribution would be focused on an alternative site. There seem to have been 64 people working on this contract in Widnes of whom 53 became involved in the dispute (this may equate to the number of employees who were Unite members). This announcement started a 30 day consultation period about the future of those staff who would be affected by the change which was due to take effect on 5 February 2013. It is not clear what redundancy pay arrangements for the staff affected were proposed. Reporting seems to suggest that the Widnes Drivers were heavily unionised and Unite suggested that this was a reason behind the proposed closure:

“No sound or tangible business rationale has been offered for the relocation of the transport operation. Unite believes the company's decision is an attack on the strongly unionised workers by an anti-union company.”<sup>191</sup>

4.137 Campaigning against the consultation began early in January, and continued beyond the proposed closure date. The campaign seems to have been led by a local Unite representative, Kenny Rowe, and drew on Unite’s leverage strategy. For example on 29 January, the Widnes Drivers twitter account quoted Mr Rowe as saying:

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<sup>191</sup> Unite (11 January 2013), *Unite calls on Howdens to stop the clock on redundancies*, [Online] Available: <http://www.uniteunion.org/news/unitecallsonhowdensceotostoptheclockonredundancies/> [Accessed 22 September 2014]

“its been difficult because they announced the closure whilst I was on holiday the other side of the world but we are now getting Unites Leverage campaign up and running and this will continue indefinitely becoming more and more intense.”

## Chronology

Date	Event
3 January 2013	Consultation began on ending DHL's Howdens distribution operation at Widnes (scheduled for the statutory minimum period of 30 days).
11 January 2013	Widnes Drivers/Unite protested outside Howdens' HQ in Portman Square, London.
25 January 2013	Results of the industrial action ballot announced on Twitter with 97.7% voting in favour of strike action.
29 January 2013	Protest by Widnes Drivers and Unite members at Jaguar Land Rover.
Late January/Early February 2013	Widnes Drivers and Unite members protested outside Matthew Ingle's home nr Skipton. <sup>192</sup>
7 February 2013	The Widnes Drivers participated in the anti-blacklisting Crossrail flashmob on Oxford Street, and also protested outside the London offices' of Howdens' shareholders Cazenove and Blackrock. <sup>193</sup>
19 February 2013	The 'Widnes Drivers'/Unite protested outside Howdens Joinery, Thorpe Road, near Howden. <sup>194</sup>
22 February 2013	The Widnes Drivers protested outside Jupiter Asset Management, Grosvenor Place, London. <sup>195</sup>
Late February 2013	The Widnes Drivers protested outside the DHL depot at Radlett (the 'southern' Howdens distribution point). <sup>196</sup>
14 February 2014	Mr Ingle applied for an injunction to end the protest outside his home.

## Conduct during the dispute

4.138 The Howdens dispute provides an example of the grey area between legitimate and potentially illegitimate (to some at least) forms of protest. The dispute was primarily played out on the Unite side through a series of protests at relevant Howdens/DHL locations, a Twitter feed and a Facebook page (now both deleted) and on the Howdens side by the response of Mr Ingle, to the protests. The Widnes Drivers took their campaign directly to Mr Ingle's local area and applied pressure via 'leverage' type tactics for the decision to close the Widnes depot to be reconsidered.

4.139 The use of these tactics resulted in Mr Ingle seeking a High Court injunction to end the protests near his home, clearly demonstrating his view on the acceptability of Unite's

<sup>192</sup> Craven Herald & Pioneer (31 January 2013), *Wagon drivers protest over potential job losses* [Online] Available: [http://www.cravenherald.co.uk/news/10198355.Wagon\\_drivers\\_protest\\_over\\_potential\\_job\\_losses/](http://www.cravenherald.co.uk/news/10198355.Wagon_drivers_protest_over_potential_job_losses/) [Accessed 22 September 2014]

<sup>193</sup> Widnes Drivers (uploaded 11 February 2013) *Oxford St 2*, [Online] Available: <http://www.youtube.com/watch?v=QAcTZdAE2Xc&list=UUeDG0sgqndulHyAy7NIIU8Q> <http://www.youtube.com/watch?v=9H--AhdLXgw&list=UUeDG0sgqndulHyAy7NIIU8Q&index=2> [Accessed 22 September 2014]

<sup>194</sup> Google Times (undated), *Transport workers protest at Howdens Joinery plant* [Online] Available: <http://gooletimes.info/transport-workers-protest-at-howdens-joinery-plant-p682-118.htm> [Accessed 22 September 2014]

<sup>195</sup> Widnes Drivers (uploaded 10 February 2013), *IMG0647*, [Online] Available: <http://www.youtube.com/watch?v=oYF3lZrqrOs&index=5&list=UUeDG0sgqndulHyAy7NIIU8Q> [Accessed 22 September 2014]

Widnes Drivers (uploaded 27 January 2013), *UNITE* [Online] Available: <http://www.youtube.com/watch?v=rNGaWgHJJw&index=10&list=UUeDG0sgqndulHyAy7NIIU8Q> [Accessed 22 September 2014]

<sup>196</sup> Tweets from the deleted WidnesDrivers Twitter account retweeted by others e.g. 26 February 2012 @NSSN\_AntiCuts RT @WidnesDrivers: [#UniteWidnes](https://twitter.com/hixavR0zSi) Good morning once again from DHL Radlett! [pic.twitter.com/hixavR0zSi](https://twitter.com/hixavR0zSi)

tactics. The protests had involved the use of a number of the key elements of leverage which are of interest to the Review:

- The use of social media (Twitter & Facebook)
- Targeting of senior managers of a third party company (Howdens) and not the actual 'employer' (DHL)
- Targeting other third parties not directly involved in the dispute (e.g. Jaguar Land Rover), and
- The use of the legal framework to end a dispute.

#### Protests organised by a trade union in furtherance of a trade dispute

4.140 Although the DHL drivers at Widnes voted in favour of taking industrial action, it is not clear that they actually had an opportunity to go on strike as the depot closed on 5 February and the results of the ballot were only available on 25 January. Instead of focusing the dispute on their own place of work, the Widnes Drivers sought to progress their case by protesting outside other premises that they thought were relevant, such as the Howdens factory in nearby Runcorn, Howdens' depots and distribution points, the offices of Howdens' shareholders and the home and local area of Mr Ingle.

4.141 The following are examples of protests involving the Widnes Drivers:

- The Widnes Drivers protested outside the Howdens' factory in Runcorn. This YouTube video seem to show the protesters waving Unite flags and blocking the road, and a Howdens driver forcing his way through the protest.<sup>197</sup>
- The Widnes Drivers took part in a Crossrail/blacklisting 'flash mob' protest on Oxford Street on 7 February. YouTube videos seem to show the protesters dancing, playing music, blowing horns whilst located on the road and pavement. There appears to be a bus which is unable to pass the protesters.
- The @WidnesDrivers Twitter account outlined who they believe to be the focus of their protests as follows:  
'So far Unite members at Widnes have persistently hit Howdens and there [sic] shareholders however Unite now see DHL as a target. We have asked DHL to do the right thing they have not and so are a legitimate target in this sham of a closure. This does not mean Howdens are off the hook in fact the reverse.' (19 January 2013)

4.142 The protest outside Howdens Joinery in Howden on 19 February 2013 was attended by the Police who were quoted in the Goole Times as saying:

"Obviously with the inclement weather today and it being quite a busy thoroughfare road we attended to assess the situation and our primary concern was the safety of the public, the protesters and the workers here. We allowed the peaceful protest to take place, which has caused minimum disruption to the company and the wider community, allowing the protesters to get their message across under safe conditions and that is what we are here for."

#### Alleged victimisation or harassment of senior managers

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<sup>197</sup> Widnes Drivers (uploaded on 27 January 2013) *Disgraceful driver* [Online] Available: <http://www.youtube.com/watch?v=D-qVYqxHUA4&index=11&list=UUeDG0sgqndulHyAy7NIIU8Q> [Accessed 22 September 2014]

4.143 As already stated, part of the Widnes Drivers' campaign was directed at Mr Ingle. Where protests were taken directly to his home and local area, there is some coverage of this in local papers, and the Widnes Drivers used social media to highlight what they were doing. As the Twitter and Facebook accounts for the Widnes Drivers have now been deleted, the information which follows has been compiled from 'retweets' and other records such as the Twitlonger and Twtrland websites, as well as conventional media. For information, a Unite press release on 10 January stated that 'Anyone attending any demonstrations in Hetton or Skipton at any time are reminded that they should act in a lawful manner at all times'.<sup>198</sup> The press release also referred to the Unite guidance on protesting.<sup>199</sup>

4.144 The following Facebook and Twitter messages relate to the protests near Matthew Ingles' home:

- The Sunday Times quoted a Facebook from the Widnes Drivers headed "Open letter to Matthew Ingle". This allegedly said:  
"We came to your town where you do your shopping. We came to your village and spoke to your neighbours. We came to your local pub where you have a drink. We came to your house — but you hid behind your large gates."  
"Come back to the table and talk to our Unite reps. We are not going away. We have nothing to lose."<sup>200</sup>

- Example tweets talking about the protests near Mr Ingle's home follow:  
27 January 2013 @WidnesDrivers On Saturday workers and their family's braved the wintery conditions and travelled from Merseyside and Halton to talk to residents of Skipton North Yorkshire. With over 60 supporters in the town centre giving leaflets out highlighting the disgraceful way in which drivers based at Widnes are being treated.  
The reaction from Skipton residents was really supportive they like us they thought treating people in this way was disgraceful and unfair. Only one Toff refused to read the flyer, after all when your that ignorant why bother. We also met many brothers and sisters from are own and sister unions who where doing there weekly shop who all wanted to do more in support of our cause. How could such a friendly and warm hearted people and Town have such a Monster as Matthew Ingle living amongst them, they certainly they deserve better.

[Exact date not known] @WidnesDrivers Yesterday 60 of us leafleted the home of Howdens CEO Matthew Ingle in Skipton north Yorkshire and we had a pint in his local, local people dont like him much but really took to us made us very welcome. two and a half thousand leaflets where handed out.

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<sup>198</sup> Unite (10 January 2013), *Customers of Howdens the kitchen maker could face disruption* [Online] Available: <http://www.uniteunion.org/news/customersofhowdensthekitchenmakercouldfacedisruption/> [Accessed 22 September 2014]

<sup>199</sup> Unite (undated), *The right to demonstrate* [Online] Available: <http://www.uniteunion.org/uploaded/documents/THE%20RIGHT%20TO%20DEMONSTRATE11-7580.pdf> [Accessed 22 September 2014]

<sup>200</sup> Quoted by The Sunday Times (12 January 2014) *Kitchen boss feels heat from union bullies* [Online] Available (behind paywall): [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/People/article1362014.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/People/article1362014.ece) Facebook page since removed. [Accessed 22 September 2014]

[Exact date not known] @WidnesDrivers Boss day in Hetton & Skipton today seems,like us a lot of people dont like howdens ceo. Not everyone can be wrong can they?

15 February 2013 @WidnesDrivers We will give Matthew a Saturday at home,god knows he deserves it. Thank you for your continued efforts you have all been 1st class,a job well done this week. At the meeting we will explore other opportunity's within the Leverage document and do a bit of thinking outside of the box it is always good to keep them guessing.

I know some of you want to get up close and personnel but lets keep a focus on what we want to achieve and how best to achieve it.

### Alleged 'extreme' tactics by employers

4.145 The Review has also found references to alleged 'extreme' tactics by employers during this dispute. The Runcorn and Widnes Weekly News on 31 January 2013 states that Unite shop steward Mr Rowe thought that security staff were intimidating the workers in Widnes. It goes on to say that "Howdens insisted the "marshalls" were brought in following an act of "vandalism", but did not indicate who it thought was to blame. Mr Rowe claimed there were staff deployed to intimidate drivers as they came into the yard. It is understood some security officers have always worked at the site, but the six currently on patrol there have only recently been drafted in."<sup>201</sup>

4.146 The Review found a small number of tweets relating to the Widnes Drivers' protests in Skipton, alleging that Mr Ingle had hired a security firm to film the protesters. Relevant tweets follow:

@StudioLAX 10 February 2013 Immoral, greedy, idiot thugs almost ran me off the road in their haste to illegally film @widnesdrivers protest [ow.ly/i/1v6BM](https://ow.ly/i/1v6BM)

@StudioLAX 10 February 2013 Private 'security' thugs hired by #HowdensJoinery scumbag CEO Matthew Ingle to film & intimidate @widnesdrivers [ow.ly/i/1v6zq](https://ow.ly/i/1v6zq)

@LifeonPawsUK 9 February 2013 Talking to @WidnesDrivers in Skipton protesting about unfair sacking by Howdens Joinery (used private security to film to try to intimidate)

4.147 These events were referred to in another light by The Sunday Times who said "A company boss was forced to hire security guards and seek a High Court injunction after trade union activists subjected him to a campaign of bullying and intimidation."<sup>202</sup>

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<sup>201</sup> Runcorn and Widnes Weekly News (31 January 2013), *Howdens staff threatening to strike 'have been intimidated'* [Online] Available: <http://www.runcornandwidnesweeklynews.co.uk/news/runcorn-widnes-news/howdens-staff-threatening-strike-have-5876844> [Accessed 22 September 2014]

<sup>202</sup> The Sunday Times (12 January 2014) *Kitchen boss feels heat from union bullies* [Online] Available (behind paywall): [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/People/article1362014.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/People/article1362014.ece) [Accessed 22 September 2014]

## i) DP WORLD

### Introduction

4.148 DP World operates marine terminals across six continents. In all, it is responsible for 65 such terminals and generates 75% of its revenue from container handling at those sites.<sup>203</sup> In 2013 Unite began to campaign for DP World to allow Unite's representatives access to employees of DP World's new port, London Gateway, in order to work towards trade union recognition. This campaign appeared to have many of the characteristics of a 'leverage' campaign and was therefore of potential interest to the Review.

4.149 The Review Team approached DP World to provide evidence but they declined to do so. They stated that they did not have any evidence to submit to the review as what had happened between Unite and London Gateway had not formally been an industrial dispute, and that in any event Unite had misunderstood London Gateway's position towards union membership and recognition.<sup>204</sup> The information in this case study is therefore compiled from the Review Team's open source research of relevant websites (including Unite and newspapers), social media and YouTube.

### Issue

4.150 London Gateway is an entirely new container port located in Essex operated by DP World, which when fully operational is thought to be likely to lead to the creation of up to 27,000 jobs in London and the South East.<sup>205</sup> The first phase opened in November 2013.

4.151 Unite sought to represent employees at London Gateway, with the eventual aim of securing trade union recognition so that it could negotiate with DP World on behalf of its members. The aim of Unite's campaign was to gain access to workers at London Gateway (in line with the provisions of Schedule A1 of TULRCA) in order to begin the process of seeking union recognition and to satisfy the 10% membership threshold provided for under TULRCA as a pre-requisite to statutory recognition.<sup>206</sup>

4.152 Typically, a union will be unable to gain access to employees without the co-operation of the employer but the most effective way to gain members in order to meet the '10% test' is to be on the site with the co-operation of the employer. After this initial step then the union can seek to secure enough members to gain collective bargaining rights in the workplace for its members. It is not entirely clear from media reports, but it

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<sup>203</sup> DP World (undated), *Our Business* [Online] Available: <http://web.dpworld.com/our-business/> [Accessed 22 September 2014]

<sup>204</sup> Email from DP World to Review Team, 3 June, 'London Gateway has **not** had an industrial dispute with the workforce. During 2013 Unite had a misunderstanding of London Gateway's position towards Union membership and recognition. At that time Unite the Union used leverage tactics, including promoting propaganda across their affiliate unions in European Ports and Unite in the UK Unite said London Gateway is anti-Union, this included demonstrations outside London Gateway supporters UK offices, i.e. many potential London Gateway target customers, lending banks and DP World Non Exec Director.

During Dec 2013 London Gateway clarify the situation and facts with Unite. During the period from Feb 2014 up until end of April Unite have had almost daily on site Access to meet London Gateway employees. As of end of May the employee's of London Gateway have not asked for Union recognition. Unite are currently considering what to do next.

<sup>205</sup> London Gateway (30 July 2013), *Press release: Mayor of London backs London Gateway as global trade hub & regional job creator* [Online] Available: <http://www.londongateway.com/media-page/press-releases/mayor-london-backs-london-gateway-global-trade-hub-regional-job-creator/> [Accessed 22 September 2014]

<sup>206</sup> Schedule A1 of TULRCA <http://www.legislation.gov.uk/ukpga/1992/52/schedule/A1> [Accessed 22 September 2014]



seems that Unite did not have the co-operation of DP World. DP World/London Gateway’s initial position was quoted on 15 February 2013 as follows:

“Unite representatives have been to visit DP World London Gateway twice within the last year and have asked if we would give ‘site recognition’ to Unite. On both occasions, we have responded that membership of any union, including Unite, would be a free choice matter for London Gateway employees to decide upon, and if membership of one or more unions reached the level where recognition was applicable then we would be very happy to do so.”<sup>207</sup>

4.153 Unite appear to have embarked on a ‘leverage’ campaign encompassing DP World and third party companies with which it has links. Unite’s ‘campaign’, as it transpired at DP World, may not have been painted as an ‘industrial dispute’ as such but clearly shared some characteristics with ‘leverage’ tactics used in industrial disputes and has been included on this basis.

## Chronology

Date	Event
5 February 2013	Unite members demonstrated outside a jobs fair, at which London Gateway had a stand in Dartford.
June 2013	Unite members in Southampton protested about London Gateway including outside a branch of RBS and Debenhams. <sup>208</sup> Unite members protested outside the Triumph motorbikes factory (they refer to Triumph as a customer of DP World). <sup>209</sup>
July 2013	ITF dockers' union representatives resolved to organise a global day of action as part of the campaign to highlight the need for DPW to engage with unions over trade union rights and representation in a number of countries. <sup>210</sup>
30 July 2013	The Mayor of London, Boris Johnson confronted by Unite at London Gateway during his visit to the port. <sup>211</sup>
22 August 2013	Unite organised a protest outside Uniserve’s depot in the Port of Tilbury to “highlight the fact that Tilbury in Essex could lose out to London Gateway whose owners, the Dubai-based DP World, resolutely refuse to recognise Unite”. <sup>212</sup>
29 August 2013	Unite protested with banners and vuvuzelas outside DP World’s London headquarters. <sup>213</sup>
Early November	Unite hosted a meeting of 30 representatives from European dockers’ unions to coordinate international support for the London Gateway campaign. <sup>214</sup>

<sup>207</sup> The Loadstar (15 February 2013), *Unite protests at London Gateway’s labour strategy* [Online] Available: <http://theloadstar.co.uk/unite-protests-at-london-gateways-labour-strategy/> [Accessed 22 September 2014]

<sup>208</sup> John Docker (uploaded 28 June 2013) *Unite4Gateway Campaign. Southampton Dockers march* [Online] Available: <https://www.youtube.com/watch?v=tMaDIsCtZEM> [Accessed 22 September 2014]

<sup>209</sup> Timson (uploaded 14 June 2013) *Unite Dockers make a noise at Triumph, a customer of DP World* [Online] Available: <http://www.youtube.com/watch?v=UuLZeN1OK4c> [Accessed 22 September 2014]

<sup>210</sup> ITF (11 July 2013), *Port unions resolve to organise campaign against DPW* [Online] Available: <http://www.itfglobal.org/press-area/index.cfm/pressdetail/9265/ViewIn/FRA> [Accessed 22 September 2014]

<sup>211</sup> The Telegraph (31 July 2013) *Boris Johnson ambushed by trade union protesters at port* [Online] Available: <http://www.telegraph.co.uk/news/politics/conservative/10213025/Boris-Johnson-ambushed-by-trade-union-protesters-at-port.html> [Accessed 22 September 2014]

<sup>212</sup> Unite (22 August 2013) *Tilbury protest today in London Gateway recognition dispute* [Online] Available: <http://www.unitetheunion.org/news/tilbury-protest-today-in-london-gateway-recognition-dispute/> [Accessed 22 September 2014]

<sup>213</sup> Unite (28 August 2013) *Protests continue in London Gateway recognition dispute* [Online] Available: <http://www.unitetheunion.org/news/protests-continue-in-london-gateway-recognition-dispute/> [Accessed 22 September 2014]

Unite the Union (uploaded 29 August 2013) *Protests continue in London Gateway recognition dispute* [Online] Available: <https://www.youtube.com/watch?v=r8d6sa9LTuk&list=UU-5wiQSXWHulGoHoirx6TkQ> [Accessed 22 September 2014]

<b>7 November</b>	DP World London Gateway opened, and the first vessel to use London Gateway (MOL Caledon) is met at subsequent ports by protests organised by Unite and other international dockworkers' unions. Unite also protested outside the London offices of Maersk who part own the ship. <sup>215</sup>
<b>w/c 11 November</b>	Unite demonstrated at Aviva as part of its campaign against those who 'associate' with DP World. <sup>216</sup>
<b>20 November 2013</b>	Question at Prime Minister's Questions about London Gateway from the Conservative MP for Thurrock (Jackie Doyle-Price) <sup>217</sup>
<b>7 October 2013</b>	International Transport Workers' Federation 'Global Day of Action on DP World' including protests outside DP World premises in Australia, India, Belgium, the Netherlands and the UK. <sup>218</sup>
<b>17 December 2013</b>	DP World and Unite signed an agreement to give Unite access to workers at the London Gateway between February 2014 and the end of April 2014. So far as the Review is aware no recognition agreement has since been reached. <sup>219</sup>

## Conduct during the dispute

4.154 The campaign mainly consisted of a series of protests – targeted by Unite at DP World and a range of linked organisations, and like the BESNA dispute covered elsewhere in this chapter, mobilised linked trade unions internationally.

### Protests organised by a trade union in furtherance of a dispute

4.155 Many of the protests were aimed at DP World directly, and seem to have involved a number of Unite members standing outside the relevant premises, with banners, loudspeakers and vuvuzelas. Unite and DP World seem to have had frequent discussions about 'site recognition' whilst these protests were ongoing.

4.156 Unite organised a number of peaceful protests targeting suppliers/customers of DP World, targeting for example a Triumph motorbikes factory, Marks and Spencer, Uniserve, the European Investment Bank, DNB, the Royal Bank of Scotland, Aviva and Debenhams.

4.157 Unlike other social media campaigns of which the Review has seen evidence, there seems to have been less 'personal' targeting of protests in this campaign and the campaign has focused at the corporate level. The domestic part of the campaign was

<sup>214</sup> Unite (13 November 2013), *Gateway campaign goes international* [Online] Available: <http://www.unitetheunion.org/how-we-help/listofregions/londonandeastern/londoneasternnews/gateway-campaign-goes-international/> [Accessed 22 September 2014]

<sup>215</sup> Ibid.

<sup>216</sup> Unite (20 November 2013), *Gateway to .... congestion?* [Online] Available: <http://www.unitetheunion.org/how-we-help/listofregions/londonandeastern/londoneasternnews/gateway-to---congestion/> [Accessed 22 September 2014] Also see Unite4Gateway tweet of 14 November 'We today asked Aviva to help us secure Human & Basic Labour Rights for workers at London Gateway. Aviva's CEO... [fb.me/2Ej6m1JTO](https://twitter.com/Aviva/status/2516111111)'

<sup>217</sup> House of Commons, *Official Report*, 20 November 2013, Column 1224, Q2. [901146] **Jackie Doyle-Price (Thurrock)** (**Con**): My right hon. Friend will recall visiting the London Gateway port in Thurrock, which is now open for business, but is he as appalled as I am to hear that Unite is picketing the potential clients of that port and encouraging its sister unions to boycott any ship that docks there? Is that not more evidence that Unite's bully-boy tactics cost jobs, not save them?

**The Prime Minister**: My hon. Friend is absolutely right. I have visited the London Gateway port and it is one of the most compelling things I have seen in recent years about Britain's industrial renaissance. It is an extraordinary investment that is going to be of huge benefit, bringing about 12,000 direct and indirect jobs. She is absolutely right about the dangers of union intimidation and bully-boy tactics. That is why it is important that we have a review and, frankly, it is important that both Unite and the Labour party take part in that review.

<sup>218</sup> ITF (undated) *Global day of action on DP World* [Online] Available: <http://www.itfglobal.org/campaigns/campaigns-3821.cfm> [Accessed 22 September 2014]

<sup>219</sup> Unite (17 December 2013), *DPW opens Gateway to Unite* [Online] Available: <http://www.unitetheunion.org/how-we-help/listofregions/londonandeastern/londoneasternnews/dpw-opens-gateway-to-unite/> [Accessed 22 September 2014]

supplemented by Facebook and Twitter accounts, and a series of press notices issued by Unite about their activities.

4.158 Internationally, Unite persuaded trade unions representing employees at other ports to support their campaign – holding a meeting in London to organise this and working through the International Transport Workers’ Federation. For example, when the first vessel to use London Gateway (the MOL Caledon) docked in subsequent ports it was met by protesters from Unite and other international dockworkers’ unions. Unite also organised a protest outside the London offices of the owners of that ship (Maersk).

#### Trade union communication with third parties to try and influence the outcome of a dispute

4.159 DP World runs a large number of ports internationally and the International Transport Workers’ Federation (of which Unite are members) organised a ‘Global Day of Action on DP World’ where dockworkers around the world protested about a range of issues between DP World and trade unions. This followed on from a resolution at the ITF Dockers’ conference in Chicago on 11 July which amongst other things agreed that the Conference:

“BELIEVES that Dubai Ports World is systematically attempting to undermine the wages and working conditions of workers all over the world by engaging in anti-union behaviour, including:

Refusing to enter into meaningful negotiations with UNITE and refusing to sign a collective agreement to cover workers presently being hired at its new London Gateway Terminal;

DECLARES Dubai Ports World London Gateway to be a Port of Convenience, and to be a priority target for the ITF’s Port of Convenience campaign.

CALLS UPON the ITF to develop and strengthen ongoing coordination of global union organization in all Dubai Ports World terminals.

FURTHERS CALLS UPON the ITF to organise a global campaign to highlight Dubai Ports World’s anti-union activities, including a global day of action in September 2013. The campaign should involve unions representing dock workers at other terminal operators, and should also reach out to unions representing workers at Dubai Ports World who are not affiliated to the ITF.

CONCLUDES that the campaign shall have the following demands:

- Dubai Ports World shall recognise legitimate unions and immediately begin negotiations for collective agreements at London Gateway, Chennai, and all other Dubai Ports World terminals,; and
- Where Dubai Ports World seeks to introduce automation to its terminals, that this be done with full union consultation and a genuine attempt to prevent job losses.<sup>220</sup>

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<sup>220</sup> ITF (11 July 2013), Port unions resolve to organise campaign against DPW, [Online] Available:

4.160 In the UK, the ‘Global Day of Action’ involved ‘solidarity action’ at the DP World port in Southampton.

4.161 It is not clear whether Unite’s access to the site has yet resulted in sufficient members to gain recognition at London Gateway. In a Unite posting dated 11 March 2014, Jim Kelly, Chair, London & South Eastern region wrote as follows:

“We have fought a long 14 month leverage campaign at DP World in Essex and after 12 months of picketing DP World shareholder and magnificent solidarity action in 2 Spanish ports by dockworkers we now have an access agreement which we are determined to turn into a recognition agreement.

The port will employ 2000 workers when fully functioning and the logistics park alongside it will house many thousands of new distribution companies, many relocating from sites with existing Unite recognition agreements. It is vital for the workers in the port that Unite organises the port effectively.”<sup>221</sup>

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<http://www.itfglobal.org/press-area/index.cfm/pressdetail/9265/region/1/section/0/order/1> [Accessed 22 September 2014]

<sup>221</sup> Unite (11 March 2014), *March update – Jim Kelly’s view*, [Online] Available: <http://www.uniteunion.org/how-we-help/listofregions/londonandeastern/heart-of-the-union/the-view-from-the-chair/march-update---jim-kellys-view/> [Accessed 22 September 2014]

## Conclusions and themes emerging

- 4.162 It is apparent from the submissions received that a number of employers (and groups representing employers) believe that there are issues in the way that some trade unions conduct industrial disputes, and that these could constitute ‘extreme’ tactics.
- 4.163 There are also clearly some industries where these issues appear to be more prevalent and despite the lack of direct evidence forthcoming from certain sectors, the Review believes that similar issues may have been experienced by a number of other employers who did not contribute to the Review.<sup>222</sup> The industries where these issues appear to be more prevalent are: manufacturing, construction and other production industries, the transport sector and Fire and Rescue Services – some of which could be considered as relating to the Government’s particular interest in critical industrial infrastructure.
- 4.164 The concerns and the tactics described by employers vary considerably in severity and range from actions that many would see as minor inconveniences which are perfectly lawful to other circumstances where there are said to have been instances of violent, intimidatory or clearly unlawful behaviour taking place.
- 4.165 A particular reference was made in the Terms of Reference about ‘leverage’ tactics. A description of ‘leverage’ is set out in Chapter 2. The Review found a mixture of tactics taking place - some of the disputes considered were evidently organised nationally as ‘official leverage’ campaigns and followed a particular pattern of events, other disputes showed similar traits and tactics to ‘leverage’ campaigns, and some disputes followed a very different pattern but with the tactics used still being described as ‘extreme’ by contributors.
- 4.166 Although the tactics used by trade unions vary depending on the dispute, and to some degree the trade union involved, there are a number of themes of tactics that have emerged which will be considered in more detail in the following chapter. These themes are broadly as follows:

### Theme 1 – Alleged inappropriate or intimidatory behaviour on picket lines

In the vast majority of cases, picketing is carried out peacefully and clearly in line with the Code of Practice on Picketing. However, this theme covers examples where this is not the case or where there have been alleged cases of inappropriate or intimidatory behaviour taking place on picket lines

These tactics were primarily said to have been seen in the TfL, INEOS and Fire & Rescue Services disputes.

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<sup>222</sup> This is evidenced through the CBI’s submission, the submissions from law firms and the Review’s own research.

### Theme 2 – Protests organised by a trade union in furtherance of a trade dispute

A clear trend that appears to have emerged in recent industrial disputes is protest activity, either as part of a strike, or outside of formal industrial action, but nevertheless organised as part of the dispute. These tactics are generally considered a key component of ‘leverage’ campaigns. These protests may take place anywhere but can usually be grouped as follows:

- At the premises of the company/organisation
- At the private residence of senior managers
- In a public place associated with senior managers, and
- At the premises of another organisation/third party in some way connected with the employer at the centre of the dispute

These tactics were primarily said to have been seen in the INEOS, BESNA, Cleaners’ and Fire and Rescue Service disputes.

### Theme 3 – Alleged victimisation or harassment of non-striking workers

This theme covers alleged victimisation or harassment of non-striking workers, or those who are covering for striking workers. This may be through a variety of means from social exclusion to overt harassment or bullying.

These tactics were primarily said to have been seen in the Total, Cleaners’, Fire and Rescue Services and TfL disputes.

### Theme 4 – Alleged victimisation or harassment of senior managers

This theme covers alleged victimisation or harassment of senior managers of an organisation usually by a trade union, which can sometimes be personal in nature.

These tactics were primarily said to have been seen in the INEOS, Howdens and Fire and Rescue Services disputes.

### Theme 5 – Allegations of disruption to business, contingency plans and damage to property

This theme covers tactics taking place during industrial disputes which have been alleged to cause actual or active disruption to business, or appear to be deliberate attempts to sabotage contingency plans or damage property.

These tactics were primarily said to have been seen in the Total, BESNA, Fire and Rescue Services and TfL disputes.

### Theme 6 – Trade union communication with third parties to try and influence the outcome of a dispute

This theme considers communication techniques used by trade unions and their members to raise awareness of a dispute and put pressure on the employer. This includes anything from leafleting, to social media campaigns, to contacting customers directly and encouraging them to cease doing business with an employer.

These tactics were primarily said to have been seen in the BESNA, DP World, INEOS, Fire and Rescue Services and Total disputes.

#### Theme 7 – ‘Wildcat’ action taken by individual union members

This theme explores the instances where action appears to have been taken independently by individuals without the backing of their union.

This tactic was primarily said to have been seen in the Total dispute.

#### Theme 8 – Alleged ‘extreme’ tactics alleged to have been used by employers

This theme explores any tactics that unions or their members believe constitute ‘extreme’ tactics taken by employers, which have been highlighted either through direct submission or through the Review’s open source research.

These tactics have been primarily said to have been seen in the Cleaners’ and Fire and Rescue Services disputes.

# Chapter 5

## The Legal Framework

### Introduction

- 5.1 This chapter provides an overview of the law relating to industrial disputes in so far as it relates to the Terms of Reference. It has two main purposes, firstly to provide a context of the existing legal framework available to deal with the actions taking place in industrial disputes, and then to provide a context for the views on the effectiveness of the existing legal framework which have been made by contributors to the Review and which are recorded below.
- 5.2 Given that the agreed position with regard to the conduct of the Review is that it will not be making any recommendations for change, this chapter is not intended to provide anything other than an outline of the legal position in order that one can then better understand the tactics said to be taking place and the views from contributors as to where changes might be made. It is not the intention to make any commentary on, or analysis of, the effectiveness of the legal framework nor to make any endorsement of proposals which contributors have put forward as to how the framework may be altered or amended.
- 5.3 In order to define the scope of the legal framework, it is helpful to separate the tactics described by contributors and gathered from other sources of information, into the following themes as summarised at the end of Chapter 4:
- Theme 1 – Alleged inappropriate or intimidatory behaviour on picket lines
  - Theme 2 – Protests organised by a trade union in furtherance of a dispute
  - Theme 3 – Alleged victimisation or harassment of non-striking workers
  - Theme 4 – Alleged victimisation or harassment of senior managers
  - Theme 5 – Allegations of disruption to business, contingency plans and damage to property
  - Theme 6 – Trade union communication with third parties to try and influence the outcome of a dispute
  - Theme 7 – ‘Wildcat’ strike action said to have been taken by individual union members, and
  - Theme 8 – ‘Extreme’ tactics alleged to have been used by employers.



There will clearly be some overlap between themes, but they have been segregated in this way so as to describe a coherent picture of the applicable legal framework.

- 5.4 As the Review has primarily received contributions from employers, or organisations representing employers, this chapter therefore deals mainly with actions said to have been taken by trade unions or employees, although where evidence has been provided, the ‘extreme’ tactics that unions have said they or their members have suffered are briefly explored in Theme 8.
- 5.5 Given the lack of evidence from trade unions, it would be wrong to assume that any conclusion had been reached to the effect that these themes accurately represent the realities of how industrial disputes are currently being conducted.
- 5.6 Also, given that the Review has only received contributions from a small number of employers, any observations or inferences on the examples highlighted must be seen in that context.
- 5.7 The Review has not been able to look in further detail at the evidence that has been presented or to test it through a question and answer process in oral hearings. As such, this chapter simply outlines what the relevant law is in relation to each theme on the basis of the descriptions that have been provided. Without knowing all the facts surrounding these matters all I can say is that the activities mentioned are the type that may give rise, for example, to prosecution for certain offences, or certain remedies. I am not attempting, nor will I be able to on the basis of the limited evidence before me, to provide detailed legal analysis on the specific matters highlighted to the Review. Such analysis is not warranted in circumstances in which I am not making any recommendations for revision of the existing legal framework.

## Legal context

- 5.8 The law surrounding the conduct of industrial disputes is notoriously complicated.
- 5.9 The relevant areas of law considered in analysing the information received by the Review cover not only specific matters of industrial relations law, but also criminal law, civil law (specifically the law of civil wrongs or torts) as well as the law surrounding internal disciplinary processes. Much of the relevant law is underpinned by consideration of human rights law and the relevant articles of the European Convention of Human Rights (“ECHR”).
- 5.10 The relevant areas of industrial relations law are broadly speaking set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”) which substantially regulates industrial relations in England, Wales and Scotland. In particular section 219 (limitation of liability in tort), section 220 (peaceful picketing), section 224 (secondary action), section 240 (breach of contract involving risk of injury to persons or property), and section 241 (intimidation or annoyance by violence or otherwise) have been considered.

5.11 In terms of criminal law, the relevant legislation and common law in England and Wales that are relevant to the Review are the offences and penalties under:

- The Public Order Act 1986
- The Protection from Harassment Act 1997
- Obstruction of the highway - section 137 of the Highways Act 1980
- Malicious Communications Act 1998
- Breach of the peace, and
- Criminal Damage Act 1971.

5.12 The Review has also considered the range of civil wrongs which may give rise to injunctive relief being sought against workers and trade unions and/or damages. The causes of these actions include:

- Harassment
- Trespass
- Nuisance, and
- Defamation.

5.13 Although the Terms of Reference ask the Review to provide an assessment of the effectiveness of the existing legal framework, it has also been necessary to consider how the criminal and civil law interacts with internal grievance and disciplinary procedures for employers and trade unions, and the overall law surrounding these procedures, which may result in disciplinary warnings or dismissal. As discussed earlier, a substantial underpinning is provided by relevant articles of the ECHR, in particular:

- Article 8: Right to respect for private and family life
- Article 9: Freedom of thought, conscience and religion
- Article 10: Right to freedom of expression, and
- Article 11: Right to freedom of association and assembly.

Particular consideration has been given to Articles 10 and 11 in this chapter.

## Devolved matters

5.14 Although employment matters, including trade union legislation are reserved, the criminal law and certain civil wrongs are devolved to Scotland. Most notably a different criminal legal framework applies in Scotland for breach of the peace, harassment and threatening and abusive behaviour. I have concentrated on the law in England and Wales but have commented on whether certain provisions apply to Scotland.

## Views from contributors on the effectiveness of the legal framework

5.15 In order to explore the second ToR, the Review asked contributors to consider the effectiveness of the existing legal framework to prevent inappropriate or intimidatory actions in trade disputes and describe how, if at all, the law should be changed.

5.16 The Review received a number of submissions setting out either concerns with the legal framework or making proposals for change. These comments are reflected throughout this chapter under each relevant theme.

5.17 This section simply reflects the views that have been received by the Review in response to the Request for Information. Wherever possible, the Review has gone no further than to quote from submissions and has sought to avoid either directly or indirectly making any commentary on them.

# Theme 1 – Alleged inappropriate or intimidatory behaviour on picket lines

## Summary

5.18 In the vast majority of cases, picketing appears to be carried out peacefully and clearly in line with requirements of section 220 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULRCA”) and the Government’s Code of Practice on Picketing.<sup>223</sup> However, this theme covers examples where there has been alleged inappropriate or intimidatory behaviour taking place on picket lines.

5.19 The submissions received by the Review concerning alleged behaviour on the picket line suggested the following behaviour took place:

- Aggressive use of language directed at individuals on a picket line
- Approaching individuals in a threatening way and following them as they go to work
- Evidence of assault on individuals not participating in the picket, and
- Obstruction and other intimidatory behaviour.

## Examples

5.20 Examples described in Chapter 4 which warrant consideration within this theme are as follows:

- TfL told the Review that: “Conduct on the picket line towards employees not participating in industrial action can be aggressive. The word ‘scab’ is often used. Frequently we have seen swearing and shouting directed at an individual, who may be approached very closely by the picketers”.
- In one instance TfL suggested that “During industrial action on 6 February 2014, a member of staff entering Hammersmith Underground Station was approached by a trades union activist on the picket line who shouted at him aggressively inches from the employee’s face and pursued him as he entered the station. After entering the station, the employee contacted the British Transport Police, who arrested the trades union activist”. This was the case of RMT member Mark Harding, who was eventually found not guilty of charges brought against him under section 241 of TULRCA.
- TfL told the Review that: “During industrial action in LU, picket lines are sometimes deliberately set up to obstruct a station entrance and prevent its use by members of the public”.
- TfL told the Review that: “... it is not uncommon for alcohol to be consumed on the picket line and this can have a negative effect on the conduct of those picketing. In one example a few years ago outside Seven Sisters Depot, a barbeque was set up

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<sup>223</sup> The Code of Practice on Picketing is made under section 203 of TULRCA (by virtue of section 300(3) of and Schedule 3, para 1(2) to TULRCA).

and alcohol was being openly consumed by those on the picket. Clearly this would have been very intimidating for staff seeking to exercise their right to work who would have had to cross this picket”.

- SITA UK told the Review that there was “Intimidation of employees who worked through the strike by strikers – harassing loaders whilst carrying out collections, waiting at maintenance providers (private location)”.
- London Fire Brigade provided a list of behaviours they were said to have experienced including the filming of non-striking staff and the abuse of private security guards.

## Legal framework

5.21 The legal framework surrounding this theme encompasses aspects of both civil and criminal law. I have also considered the Code of Practice on Picketing.

5.22 In terms of civil law the relevant areas are:

- Protection of Harassment Act 1997 (“PHA”) (civil)
- Trespass
- Private nuisance, and
- Public nuisance.

5.23 This section also sets out the remedies available to claimants relating to these civil wrongs, which include injunctive relief and/or damages. I have also briefly discussed trade union liability and repudiation under TULRCA. These remedies will also be relevant to the other themes and are referenced where appropriate.

5.24 The relevant criminal law will be the offences and penalties under:

- PHA (criminal)
- Public Order Act 1996 (“POA”)
- Breach of contract involving injury to persons or property - section 240 TULRCA, and
- Intimidation or annoyance by violence or otherwise - section 241 TULRCA.

5.25 The right to picket peacefully is set out in legislation and crucially those who peacefully picket are given protection from liability in relation to certain civil claims. Section 220 of TULRCA sets out in some detail where, and for what purpose such picketing can be undertaken. In addition, the Code of Practice on Picketing makes a number of recommendations on what constitutes peaceful picketing. These recommendations are designed to ensure protection for those who may be affected by picketing - including those who wish to cross a picket line and go to work.

5.26 It is a civil wrong, actionable in the civil courts, to persuade someone to break a contract or to threaten to induce them to break a contract. However, where a person is peacefully picketing, sections 219 and 220 of TULRCA exempt them from this liability, as long as the statutory requirements of peaceful picketing are complied with (in particular, the picketing must generally be at the worker’s place of work and it must be pursuant to a trade dispute).

### **The Code of Practice on Picketing**

5.27 The Code of Practice on Picketing (“the Code”) sets out a number of points of guidance which explain how picketing should be organised and what activities can be carried out.

5.28 A breach of the provisions of the Code does not of itself give rise to liability – whether criminal or civil (see section 207 of TULRCA), but the Code is admissible in evidence and can be used in determining issues that come before a court or tribunal.

5.29 The Code reiterates that a picket can only seek to persuade, but a picket cannot stop or compel others to listen. A person who decides to cross a picket line must be allowed to do so. Certainly under Theme 3 there has been evidence of circumstances where pickets or workers have acted in a way which has harassed or punished those who have not taken part in strikes.

5.30 Further, the Code recommends that “mass picketing” (the Code describes this as stopping people going to work or obstructing people by sheer weight of numbers) should be avoided as it can lead to intimidation. In light of this, it indicates that a picket of up to six people may be peaceful but a picket of more than six is likely to be non-peaceful. The Code also acknowledges that it will nonetheless be for the police to use their considerable discretion in deciding when numbers should be limited, and to what.

5.31 The Association of Chief Police Officers (“ACPO”) told the Review that “The police will have due regard to the Picketing Code of Practice in policing of picket lines and may limit the number of pickets where it is anticipated that disorder may otherwise occur. Whilst the code of Practice identifies a peaceful picket line as comprising up to six pickets, this will only be used as a guide by police and any decision to limit numbers will be taken on a case by case basis”.

5.32 Wherever picketing is officially organised by a trade union, then the Code recommends that a trade union official who represents those picketing should always be in charge of the picket line. The Code also states that, in any event, whether a picket is official or unofficial, an organiser should maintain close contact with the police. Indeed advance consultation with the police on the number of pickets and the location of the picket, is also advised.

### **Civil law**

5.33 Although section 219 exempts picketers from certain liabilities in tort, many of the activities that have been identified in evidence provided to the Review do not benefit from these protections and are likely to be matters that can be tackled through the civil courts.

### **Harassment**

5.34 The PHA provides that harassment is both a civil wrong (tort) and a criminal offence. Those parts of the PHA which deal with harassment as a tort also extend to Scotland. Under the PHA harassment is committed where a person pursues a course of conduct

which amounts to harassment of another and which he knows or ought to know, amounts to harassment. The legislation provides that harassing a person includes alarming them or causing the person distress. In addition, “a course of conduct” must involve conduct on at least two occasions.

5.35 Aggressive behaviour on a picket line towards individuals not taking part in the picket, be it aggressive language or aggressive actions such as approaching those individuals in an aggressive manner or following them to join in a picket, as identified by the evidence brought before the Review, may constitute harassment under the PHA. However, to satisfy the PHA there will have to be evidence of repeated incidents of aggressive behaviour towards those seeking redress in order to establish the necessary “course of conduct” required under the PHA.

### Trespass

5.36 Trespass may be committed where persons misuse the public highway or private property. Whilst the public has a right to pass and trespass over and along the public highway, there is no right to remain on the highway. A temporary stopping may be regarded as incidental to the right to passage but anything more may be regarded as exceeding a right to pass and therefore, may constitute trespass. A demonstration by way of a march through the street is an exercise of the right to pass along the highway but pickets commit a trespass if they walk in a continuous circle in front of factory gates, and in so doing are effectively sealing off the entrance.<sup>224</sup> One of the examples received refers to the blocking of a station entrance by picketers which may well constitute trespass.

### Private Nuisance

5.37 Unreasonable use of the highway may constitute the civil wrong of nuisance. This is particularly relevant where people are interfering with rights of access to private property. Whereas for trespass the claimant must own the land, for nuisance, the claimant need only show some proprietary interest. For example, interfering with an owner’s right of access to his land may be actionable in the courts.

5.38 The damage or interference with the enjoyment of the land must be substantial or unreasonable. The reasonableness of the defendant’s actions will depend upon the circumstances of the case. In *Gate Gourmet London Ltd v Transport and General Workers Union*<sup>225</sup> the High Court was faced with multiple pickets in different locations and relied upon the right of freedom of assembly to allow an unrestricted right to continue picketing peacefully by the side of the public highway, whilst limiting the number of pickets in attendance at the entrance of the employer’s premises.

### Public Nuisance

5.39 The tort of public nuisance is committed where an act or omission takes place which unreasonably causes harm or potential harm to the public at large. In *Tynan v Balmer*

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<sup>224</sup> *Tynan v Balmer* [1967] 1 QB 91

<sup>225</sup> [2005] IRLR 881

pickets walking in a continuous circle were found to be a public nuisance. A claimant must show special damage over and above that suffered by the public generally.<sup>226</sup>

5.40 In *News Group Newspapers Limited v SOGAT (No 2)*<sup>227</sup>, the High Court held that the tort had been committed by pickets unreasonably obstructing the highway and causing the claimant substantial expense in the form of having to arrange buses to bring journalists and other employees into the plants affected. A public nuisance claim may well be engaged in the context of the evidence brought before the Review.

### **Civil remedies and trade unions' liabilities**

5.41 The civil remedies of injunctive relief and/or damages may be available to an employer who makes a claim in the courts.

#### ***Injunctions***

5.42 Where an injunction is sought to restrain unlawful actions the court has a wide discretion in terms of what it may decide to include in the terms of an injunction, depending on the circumstances of a case. For example, a court may decide to define what is a reasonable and proportionate right to picket (or indeed protest in general) by defining the physical area within which demonstrations can take place. It may limit the hours, within which the picket can take place or it may attach conditions to the exercise of the right (for example, no megaphones).<sup>228</sup> In *Gate Gourmet*, the High Court granted an interim injunction against the Transport and General Workers Union and various named and unnamed individual pickets. Behaviour at the picket lines had included obstructing drivers and subjecting them to threats, a substantial amount of shouting and chanting, blocking the employees' route to work, threatening and abusive behaviour against employees and taking photos of them.<sup>229</sup>

5.43 The terms of the injunction granted provided that abusive and intimidatory behaviour on the picket line was prohibited and it restricted the number of pickets at one of the two premises which were being picketed. In making its order, the court balanced the curtailment of the rights of the pickets against what was necessary in a democratic society for the prevention of crime. It refused to limit the numbers attending at another site, though it said the ruling could be changed if the abusive behaviour continued.

#### ***Damages***

5.44 In addition to injunctions, claims for damages may be made in relation to civil claims. Damages can include a number of different types of claims including loss of profit and consequential loss.

### **Trade Union – Liability and repudiation**

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<sup>226</sup> Public nuisance is also a criminal offence, but it is rarely prosecuted. This is because, if the conduct which constitutes a public nuisance also constitutes a specific statutory offence, then it should normally be prosecuted under the statutory offence, rather than common law public nuisance, *R v Rimmington* [2005] UKHL 63

<sup>227</sup> [1986] IRLR 337

<sup>228</sup> *Smithkline Beecham v Avery* [2007] EWHC 948 (QB), a case which involved animal rights' protesters rather than an industrial dispute. Megaphones were not to be used in the future because there was evidence that they had been used to harass employees at Smithkline Beecham.

<sup>229</sup> *Gate Gourmet London Ltd v Transport and General Workers' Union* [2005] IRLR 881



5.45 It is important to note that trade unions are liable for their own wrongful acts, the wrongful acts of their officials and potentially for the acts of their members.

5.46 Under section 20(1)(a) of TULRCA primary liability will arise where a union has rules (in a written form, forming part of the contract between members and other members) which authorise the taking of industrial action in the name of the union.

5.47 A union may be held liable for the acts of its officials (the principal executive committee and the president or general secretary of the union) and a union may also be vicariously liable for the act of a committee of the union or any other official of the union, including shop stewards and other branch level officials.

5.48 Under section 20(4) of TULRCA a union can repudiate acts for which it would otherwise be responsible by following the procedure provided for under section 21 of TULRCA.

### Cap on trade union liabilities

5.49 The damages that can be awarded against a trade union are capped by section 22 of TULRCA. Crucially, whilst the damages that can be awarded against a union are subject to the cap, fines for criminal offences are not. The cap varies according to the number of union members<sup>230</sup>:

- Where there are less than 5,000 members the maximum award of damages is £10,000
- 5,000 or more members, but less than 25,000 – the maximum award that can be awarded against a trade union is £50,000
- 25,000 members but less than 100,000, the maximum award is £125,000, and
- 100,000 members or more the maximum amount is £250,000

5.50 As well as not applying to fines for contempt, the cap on damages under section 22 does not apply to an award of interest, which may be made on top of the damages.<sup>231</sup>

### Criminal Law

5.51 The limited protection from civil liability for peaceful picketing provided by TULRCA unsurprisingly gives *no* protection if a picket commits a criminal offence. The criminal law applies as it does to any other member of the public. The police have a broad discretion in deciding how to apply the criminal law. Activities identified by the review, such as assault or harassment on a picket line, will certainly be matters that may be dealt with under the criminal law. The use of aggressive behaviour or language on more than one occasion may for example be an offence under the PHA. This is discussed further under Theme 2.

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<sup>230</sup> Where the union is a federation of unions the number of members is deemed to be the aggregate number of members in its British constituent unions (section 118(3) of TULRCA).

<sup>231</sup> *Boxfoldia Ltd v National Graphical Association* [1988] IRLR 383, Saville J where the maximum award of damages of £250,000 was made, together with interest of £90,000.

5.52 The police may also use their discretion to decide whether they should intervene to maintain the peace, including whether to use offences under the POA or whether to prosecute other criminal offences, such as harassment.

5.53 More details about relevant criminal offences, particularly those under the POA, are set out in Theme 2.

## **Sections 240 and 241 of TULRCA**

### **Section 240**

5.54 Section 240 provides that a person commits an offence if they “wilfully or maliciously” break a contract of service or hiring knowing or having reasonable cause to believe that the probable consequences will be to endanger human life or cause serious bodily harm, or to expose valuable property to destruction or serious injury. It is envisaged that those most likely to commit the offence will work in emergency services, such as the ambulance service, fire service or hospitals. However, there is no record that this offence has ever been prosecuted – the threshold for prosecution is a high one and the application of this provision to the modern world of industrial relations is extremely limited.

### **Section 241**

5.55 Section 241 of TULRCA sets out a number of offences which were specifically designed to deal with controlling breaches of public order on the part of pickets and others involved in industrial action in the late 19th century. These offences were commonly known as “the picketing offences”. These are discussed in further detail in Theme 2.

5.56 The Review received a submission from TfL which states that a prosecution under section 241 was brought in relation to an incident at Hammersmith Underground in February 2014. Whilst it appears from that case that the prosecution was ultimately unsuccessful, this is evidence that these offences are being prosecuted in order to regulate activity on picket lines.

## **Views received from contributors about the effectiveness of the current legal framework**

### **Views suggesting that the existing legal framework is generally sufficient**

5.57 The Review received five submissions which stated that the existing legal framework is generally effective in preventing the use of extreme and intimidating tactics. Four of those submissions (Fire Officer’s Association (“FOA”), Staffordshire Fire and Rescue, CIPD, and the Local Government Association (“LGA”)) stated that no changes to the law were necessary or made only a very minor suggestion. The remaining submission from ACPO stated that the current framework is generally effective but suggested one or two more significant changes which are dealt with elsewhere in this chapter.

5.58 The submission from ACPO stated that most police forces believe that the current legislative framework is sufficient and effective and concluded in its submission that:

“In general the legislative framework is seen by the police as broadly fit for purpose and the range of criminal offences available to the police sufficient to deal with the situations encountered. The challenges of policing in this area tend to arise from all the parties involved within the dispute having a proper understanding of the impartial role of the police, including that industrial disputes are predominantly governed by the civil not criminal law. This is not a request for additional powers for the police to be able to intervene in industrial disputes, it is more an observation that the civil processes appear to be perceived by employers as slow, costly and cumbersome.”

5.59 CIPD made the overall point that it is important for trade union members to enjoy the same rights as other people to protest or demonstrate. CIPD suggested that the government should focus on improving industrial relations rather than amending the existing law. The CIPD submission also expressed scepticism that the tactics used by Unite at Grangemouth are used widely enough to require a change in the law.

5.60 The LGA echoed this point in their sector by stating: “our view is there are no particular issues for local government in terms of alleged extreme tactics and the appropriateness of the legal framework to deal with inappropriate and intimidatory actions...we are very rarely contacted or hear of such alleged tactics, but if we are made aware of them and investigate further, we find that that the tactics do not amount to extreme ones”.

5.61 The FOA stated that while they were aware of the occasional use of leverage or extreme tactics they believed that the most significant factor for improvement is for fire and rescue services to respond more effectively to unacceptable or inappropriate behaviours.

Views suggesting that the principles in the Code of Practice on Picketing should be updated, clarified and/or made into legislation

5.62 Four of the submissions received by the Review (TfL, ISS, University of London, CBI) thought that the Code of Practice on Picketing should be strengthened or made legally binding.

5.63 The submission from TfL stated that because the current Code is not legally binding it is “extremely difficult to ensure that conduct on the picket line is of an appropriate standard”. TfL also said that there is no obvious legal remedy to deal with picket lines which are intimidatory or obstructive.

5.64 The University of London said “The ACAS code on picketing and the laws on obstruction have not been effective in protecting the business of the university in recent labour disputes... the ACAS code on picketing is in need of review and should move from good practice into a legal framework”.

5.65 The submission from CBI broadly agreed stating that “in order to ensure the line between lawful activity and illegal activity is not crossed...the current picketing guidelines should be strengthened, and penalties increased, in order to provide a greater incentive to remain within the prescribed guidelines”.

- 5.66 Four submissions (TfL, University of London, LGA, ACPO) suggested that the current Code of Conduct on Picketing should be updated and clarified (whether or not in addition to being made legally binding).
- 5.67 TfL stated that picketing has changed in nature and the Code does not reflect these changes e.g. TfL said that picketers take photos of non-striking employees and publish them on social media websites but the Code does not cover such activities.
- 5.68 ACPO offered a slightly different perspective saying that “Further guidance and support would be helpful for police forces in how to interpret the Picketing Codes of Practice alongside the European Convention on Human Rights, particularly the interplay between picketing and protest. The code of practice could also usefully cover not only the rights of workers involved in industrial action but also the rights of local communities, non-striking workers, employers and others to carry on normal business activities during industrial action”.

## Theme 2 – Protests organised by a trade union in furtherance of a trade dispute

### Summary

5.69 A clear trend that appears to have emerged in recent industrial disputes is protest activity, either as part of a strike, or outside of formal industrial action, but nevertheless organised as part of the industrial dispute. These protests may take place anywhere but can usually be grouped as follows:

- At the premises of the company/organisation
- At the private residence of senior managers
- In a public place associated with senior managers, and
- At the premises of another organisation/third party in some way connected with the employer at the centre of the dispute.

5.70 In general, such protest activities follow a similar pattern. They appear to be organised by the relevant trade union; there will generally be a larger number of protesters than would usually be found or permitted on a picket line; they will often contain a mixture of trade union officials and employees but also other people who have no direct connection with the trade dispute but who are in some sense sympathetic to or supportive of, the position of the union and its members. On the whole this activity is carried out peacefully, although occasionally some activity could be perceived to be intimidatory by the person or parties on the receiving end of it.

5.71 Protest appears to be a key component of Unite’s ‘leverage’ strategy, but is also found in many other disputes, with the purpose of pressurising the employer, whether directly or indirectly, to give ground in the dispute. Whilst it would appear that both sides broadly agree that that is the intention, the perceptions of those involved will, unsurprisingly, show a high divergence of opinion:

- INEOS claim that “the common theme is an attempt to publicly intimidate or humiliate the individual or entity in question in order to pressurise the employer to make concessions in the industrial disputes...”, and
- Unite describe leverage as “a process whereby the Union commits resources and time to making all interested parties aware of the treatment received by Unite members at the hands of an employer. Those interested parties may include shareholders of the employer; competitors of the employer; communicates within which the employer operates; customers of the employer and the market place of the employer”.

### Examples

5.72 Examples of the type of protest activity taking place include:

- The ACPO submission referring to the protest at Lymington Town Sailing Club related to the Ineos dispute explains that a witness: “saw a group of approximately 20 protestors with banners, plaques and an inflatable. The group was playing loud music which was interrupted by loud speaker announcements”.
- The INEOS submission claims: “The common theme was as follows. The protestors would arrive waving banners and in many cases with a very large (2-3 metre) inflatable rat. They would play loud music and challenge passers-by to support the union by passing out leaflets claiming that INEOS was victimising the union convener at Grangemouth”.
- The CIPD submission (talking about a protest during the INEOS dispute) explains that: “One Director feared for the safety of his wife and two young children after 25 to 30 Unite protestors ‘descended on his’ drive. Protestors had flags, banners and an inflatable rat and stayed about 90 minutes. The group approached his neighbours telling them he was ‘evil’”.
- The INEOS submission claims that: “The nature of the demonstrations took the form of daily protest outside the site management offices at Grangemouth lasting for up to 2 hours per day and involving 20 to 50 people”. Continuing later INEOS said that “... the Police informed us that they had been instructed by the Fiscal that they could not use the previously successful management of the demonstrators as this was not classified as picketing but rather it was individuals demonstrating as per their rights as individuals. As a result the Police were restricted to managing a demonstration”.
- The TfL submission states: “protestors at five bus garages caused disruption to 33 bus routes on the same day. Those attending the protest included both trades union activists and other members of the public who were not employees of the bus operator, and the protest did not take place during mandated industrial action. Therefore, the conduct of the protest was not governed by the Code of Practice on Picketing, even though it related to an industrial dispute. While both the Metropolitan Police and TfL supported the bus operators in dispersing the protests quickly, many customers were inconvenienced by the action”.
- MITIE submission sets out that: “The IWGB have stormed our client’s business premises and MITIE offices, causing significant disruption whilst distributing leaflets to the general public which contain defamatory statements about MITIE and our client in the course of carrying out very loud protests. They are eventually forced to leave the premises but not before causing significant reputational damage and distress for employees working at the offices/sites targeted”.
- A YouTube video of the Widnes Drivers taking part in a Crossrail/blacklisting ‘flash mob’ protest on Oxford Street on 7 February relating to the Howdens Joinery dispute seems to show the protesters dancing, playing music and blowing horns whilst located on the road and pavement. There appears to be a bus which is unable to pass the protesters.

## Legal framework

5.73 Irrespective of the location of the protest, the legal framework will be broadly the same. The relevant law in relation to this theme encompasses both the criminal law and civil wrongs. Additionally, the legal framework for all forms of protest (including picketing) is underpinned by the European Convention of Human Rights (“ECHR”).

5.74 In terms of criminal law, the relevant legislation and common law in England and Wales that is relevant to this theme are the offences and penalties under:

- Public Order Act 1986 (“POA”)
- Aggravated trespass - Section 68 of the Criminal Justice and Police Order Act 1994
- Breach of the peace
- Obstruction of the highway - Section 137 of the Highways Act 1980
- Intimidation or annoyance by violence or otherwise - section 241 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULRCA”), and
- Protection from Harassment Act 1997 (“PHA”) (criminal).

5.75 The range of civil wrongs which may give rise to injunctive relief being sought against workers and trade unions and/or damages in this theme are:

- PHA (civil)
- Trespass
- Private Nuisance, and
- Public Nuisance.

The usual civil remedies (set out in Theme 1) apply.

5.76 All of the evidence received regarding protests is alleged to have taken place in the context of a trade dispute. The meaning of a “trade dispute” is set out in section 244 of TULRCA. Once a dispute falls within section 244, it opens the way to consideration of the issue of lawful picketing conducted in accordance with section 220.

5.77 However, in their submission to the Review, ACPO noted that ‘a consistent area of challenge and complexity for the police service is the difference between picketing and protest’. The scenarios relevant to this theme fall outside of picketing because they do not meet the conditions set out in section 220 of TULRCA. As explained in Theme 1, picketing is only lawful where it is carried out in contemplation or furtherance of a trade dispute by a worker at or near his place of work for the purpose of peacefully obtaining or communicating information or peacefully persuading others to work or not to work. If a worker protests in furtherance of a trade dispute somewhere which is not near their place of work, it will not be picketing. If a worker is, on the facts, not picketing but protesting, then there is no distinction between a protester who acts in an industrial relations context and any kind of other protester.

## Articles 10 and 11 of the ECHR

5.78 The right for individuals to protest peacefully is guaranteed under the rights of freedom of expression and freedom of peaceful assembly that are enshrined in Articles 10 and 11 of the ECHR.

- 5.79 Freedom of expression includes the right to express your opinion about any matter, even if it shocks or offends somebody else, without interference from a public authority.<sup>232</sup> The right to freedom of assembly entitles individuals to protest in a peaceful way, including demonstrations, parades, processions and rallies. This covers behaviour which might annoy or offend people opposed to the ideas that the protest is trying to promote. Critically, the police have a positive duty to take reasonable steps to protect *peaceful assemblies*.<sup>233</sup>
- 5.80 Both rights under Articles 10 and 11 are limited, so that in certain circumstances interference with the rights can be justified. In both cases, the state would have to show that the restrictions were “prescribed by law” and “necessary in a democratic society”. To establish that the measure is prescribed by law there must be a legal basis for the restriction. The meaning of “necessary in a democratic society” has been interpreted as being a “pressing social need” which strikes a fair balance between the means chosen to satisfy it and the individual’s freedom. The purposes for which the two freedoms may be legitimately restricted are slightly different but both include the interests of national security, public safety and the prevention of disorder or crime. Any restriction imposing a right must also be proportionate to the legitimate aim pursued.<sup>234</sup>
- 5.81 Unless there is compelling evidence that an assembly is likely to lead to violence and serious public disorder, it is unlawful for a state to take sweeping measures to prevent the assembly and expression of views, however shocking and unacceptable the views to be expressed at a meeting might be.<sup>235</sup> Ultimately, the Police’s power to intervene depends upon the actions of protesters and whether or not a criminal offence has occurred or if there is a threat of disorder which would enable the Police to utilise their powers under the POA.

## Criminal Law

### Regulations under the POA

- 5.82 The POA is split into two relevant parts. Part 1 creates a range of public order offences and Part 2 gives the Police the power to regulate processions and assemblies. The POA deals with processions and assemblies quite differently, with greater restrictions being imposed upon organisers of processions. In relation to England and Wales, a public assembly is a gathering of two or more people in a public place, including a highway or a pavement.<sup>236</sup> The examples provided in this theme would likely be assemblies as they are all of static gatherings, rather than moving protests.

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<sup>232</sup> *Sunday Times v United Kingdom* (Application No. 6538/74) [1979] ECHR 6538/74, *Redmond-Bate v DPP* (1999) 163 JP 789, Sedley J explained “Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”

<sup>233</sup> *Home Affairs Committee 8th Report – ‘Policing of the G20 Protests’ (Session 2008-09)* noted that “the police must constantly remember that those who protest on Britain’s streets are not criminals but citizens motivated by moral principles, exercising their democratic rights. The police’s doctrine must remain focussed on allowing this protest to happen peacefully”.

<sup>234</sup> *Handyside v United Kingdom* (Application No. 5493/72) [1976] ECHR 5493/72.

<sup>235</sup> *Stankov v Bulgaria* (Application Nos 2922/95 and 29225/95) [2001] ECHR 29225/95.

<sup>236</sup> Section 16 POA.



5.83 Organisers of assemblies do not need to notify the police of their intention to organise a protest but the police still have the right to impose conditions on an assembly in certain situations. These are if they feel it is necessary to prevent serious public disorder, serious damage to property or serious disruption to the life of the community taking place or if the purpose of the gathering is to intimidate others.<sup>237</sup> In these situations, the police can limit the number of people attending an assembly, or the duration or location of an assembly. The legislation provides that if a person participates in, or incites another person to participate in an assembly which breaches police directions, it is punishable by a fine or three months' imprisonment.

5.84 The POA also includes the power to ban trespassory assemblies.<sup>238</sup> A trespassory assembly is an assembly of 20 or more people which is likely to constitute trespass and threatens serious disruption to the life of the local community or damage to a significant site. Trespassory assemblies can be banned and it is an offence to knowingly organise or participate in a banned assembly.

### **Aggravated Trespass**

5.85 Section 68 of the Criminal Justice and Police Order Act 1994 makes it an offence to trespass on land with the intention of intimidating, obstructing or disrupting persons engaged in a lawful activity. This Act also includes other powers to allow the police to issue dispersal orders and seize vehicles and sound equipment. These provisions have been successfully used against a wide range of protests. In 2011, a number of UK Uncut protesters were convicted of aggravated trespass after they entered Fortnum and Mason's store and stayed there for over two hours. The protesters' activities included chanting using megaphones, beating drums, sounding horns and distributing leaflets. By occupying the store and demonstrating, the protesters were found to be guilty.<sup>239</sup>

### **Public Order Offences**

5.86 The offences introduced by the POA range in severity from threatening conduct up to riot. The most relevant offences to the scenarios that have been reported to the Review are set out below. The offences of affray, violent behaviour and riot are not discussed as these involve a degree of violent behaviour evidence of which was not presented to the Review, but these are all offences that the police may prosecute in relevant circumstances, including in the context of industrial disputes.

### **Harassment, alarm or distress**

5.87 Where a person uses threatening, abusive, insulting words or behaviour, or displays threatening or abusive signs or writing within in sight or hearing of another, they will commit the offence of harassment, alarm or distress.<sup>240</sup> This offence is punishable by a fine, which may be imposed on-the-spot.

5.88 Harassment with intent is a similar but broader offence, which is committed where a person intends or is aware that their conduct may be threatening, abusive or disorderly.

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<sup>237</sup> Section 14 POA.

<sup>238</sup> Section 14A POA.

<sup>239</sup> *Bauer v DPP* [2013] EWHC 634 (Admin).

<sup>240</sup> Section 5 POA.

This is punishable by six months' imprisonment and/or a fine.<sup>241</sup> If it is not possible to show that the individual had intention to harass, then it may be possible to bring a case for harassment under the PHA (discussed later in this theme) or under section 5 of the POA (discussed above) – both of which do not require proof of intent.

5.89 Fear or provocation of violence<sup>242</sup> will be committed where a person intentionally or recklessly uses threatening, abusive or insulting words or behaviour towards another, or distributes or displays any writing or sign which is threatening, abusive or insulting, with the intention to provoke violence or cause the victim to believe immediate violence will be used against them or another person. Again, this is punishable by six months' imprisonment and/or a fine.

### **Breach of the Peace**

5.90 Under the common law, the police have both a power and a duty to take reasonable steps in order to prevent the continuance or recurrence of a breach of the peace, or to prevent a prospective imminent breach of the peace. Significantly, as a breach of the peace involves the use or threat of violence to a person or his property, it is unlikely to be relevant to the examples discussed in this theme.<sup>243</sup> However, it has been used to restrict the numbers of pickets in attendance on a picket line if the police believe that imminent disorder could ensue.<sup>244</sup> It was used extensively during the miners' strikes in the 1980s in particular to arrest 'flying pickets' who travelled from Kent to coal mines in Nottingham in order to picket.<sup>245</sup>

### **Obstruction of the Highway**

5.91 The police will also be able to prosecute the offence of obstruction of the highway under section 137 of the Highways Act if any of the demonstrations prevent free passage to premises, either to people or vehicles (see Theme 4 for further discussion). A successful conviction will depend upon whether or not the protesters were acting reasonably.

### **Section 241 of TULRCA**

5.92 The provision criminalises five specific types of conduct:

- Using violence or intimidating a person or his spouse/civil partner or his children, or injuring his property
- Persistently following a person from place to place
- Hiding any tools, clothes or property owned or used by that person
- Watching or besetting, and
- Following somebody with or two or more people in a disorderly manner.

5.93 It is a criminal offence to carry out any of these types of conduct with a view to compelling a person to do an act which they have the right not to do, or abstain from doing an act which they have the right to do.

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<sup>241</sup> Section 4A POA.

<sup>242</sup> Section 4 POA.

<sup>243</sup> *R v Howell* [1982] QB 416

<sup>244</sup> *Piddington v Bates* [1961] 1WLR 162 and *Kavanagh v Hiscock* [1974] 2 All ER 177.

<sup>245</sup> *Moss v McLachlan* [1985] IRLR 76.

- 5.94 These offences were used in the 1980s in the context of the miners' strikes, mostly for "watching and besetting" miners' homes rather than coal mines. However, significantly, the use of section 241 is not confined to industrial disputes - it has also been used against anti-abortion protesters<sup>246</sup> and anti-road campaigners.<sup>247</sup> Recently, it was successfully used in a fracking case, where two protesters super-glued themselves to a gate and held up the entry of lorries for two hours.<sup>248</sup>
- 5.95 The two most relevant forms of conduct in relation to this theme are "intimidation"<sup>249</sup> and "watching and besetting".<sup>250</sup> The concept of intimidation has been partially defined to include "putting persons in fear by the exhibition of force or violence or the threat of force or violence, and there is no limitation restricting the meaning to case of violence or threats of violence to the person".<sup>251</sup> However, a common sense approach was taken in *Thomas v National Union of Mineworkers (South Wales Area)*.<sup>252</sup>
- 5.96 TULRCA does not define "watching or besetting". It is understood to mean stopping, staying, remaining, surrounding or deliberately being outside some premises. However, the definition may have subtly moved to mean "controlling access to a site" (see fracking case above).
- 5.97 A key requirement of the section 241 offence is compelling. Seeking to persuade, as opposed to compel, will not be an offence under this section. However, this is a difficult distinction to make. In *DPP v Fidler* protesters at an abortion clinic sought to embarrass, shock and shame pregnant women with a view to dissuading them from entering the clinic. Physical force was neither used nor threatened. The protesters were charged with criminal watching and besetting but it was held that they were merely trying to persuade women rather than to coerce them and so did not satisfy section 241. The decision is important in highlighting the nature of the activity which is required to satisfy the wording in the provision. The means of persuasion used by the protesters in *Fidler* was particularly extreme and it was used against vulnerable individuals. The case is likely to limit the use of section 241 where there is no evidence of threats of violence or actual violence.
- 5.98 An interesting consideration is the relationship between section 241 of TULRCA and the PHA. Conduct which may not necessarily constitute harassment under the PHA may be criminalised under the specific categories of behaviour set out in section 241 if it involves an element of compelling.

## Harassment

- 5.99 The criminal offence of harassment under the PHA will be relevant in relation to the types of behaviour described in the examples before the Review. It requires a 'course of conduct' (i.e. conduct on at least two occasions) which is targeted at an individual and is

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<sup>246</sup> *DPP v Fidler* [1992] 1 WLR 91.

<sup>247</sup> *DPP v Todd* [1996] Crim LR 344, Div Ct.

<sup>248</sup> Unreported case, heard at Brighton Magistrates Court, February 2014.

<sup>249</sup> Section 241(a) TULRCA.

<sup>250</sup> Section 241(d) TULRCA.

<sup>251</sup> *R v Jones* [1974] ICR 310.

<sup>252</sup> [1985] 2 All ER 1.

calculated to cause alarm or distress.<sup>253</sup> If an offender is found guilty of this offence they may be tried on indictment and they can be sentenced to a term of imprisonment not exceeding five years, or a fine, or both.

## Civil law

### Harassment

5.100 A course of conduct which amounts to harassment of another is both a criminal offence and a civil wrong. Behaviour which causes a person distress is likely to fall foul of the PHA and therefore, as well as constituting a criminal offence, it can also be subject to injunctive relief and damages in a civil court. The examples described by CIPD and MITIE include actions which could be a matter for such remedies before a civil court.

### Trespass

5.101 As set out under Theme 1, trespass may be committed where persons misuse the public highway or private property. A number of cases in relation to public demonstrations and public protests have tended to suggest that the public's right to use the highway must also be balanced with a right of reasonable demonstration.<sup>254</sup> Such a demonstration may be static or mobile.

5.102 The right to peaceful assembly under Article 11 ECHR generally only applies in public places. If individuals demonstrate at a client's business premises or obstruct the entry to a person's home, without the permission of the occupier, this will likely qualify as a trespass or nuisance. The person with a proprietary interest in the property will then be able to obtain injunctive relief to remove the protesters.

### Private Nuisance

5.103 Unreasonable use of the highway may constitute another civil wrong – nuisance (see Theme 1). Certainly, regular demonstrations at a person's home, such as the example given by CIPD relating to the INEOS dispute, may constitute a nuisance, particularly where the home is being used for ordinary residential purposes.

### Public Nuisance

5.104 If there is a deliberate obstruction of the highway, then a protest may be a public nuisance. As discussed in Theme 1, public nuisance occurs where an act or omission unreasonably causes harm or potential harm to the public at large. Pickets walking in a continuous circle outside a factory gate have been held to be a public nuisance.<sup>255</sup> Similar principles might apply to an example given in the TfL submission.

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<sup>253</sup> *Saha v Imperial College* [2013] EWHC 2438 (QB).

<sup>254</sup> See *DPP v Jones* [1999] 2 AC 240

<sup>255</sup> *Tynan v Balmer* [1967] 1 QB 91

## Views received from contributors about the effectiveness of the current legal framework

### Views suggesting that the law should be updated to deal with protests arising as part of industrial disputes

5.105 The submissions from CIPD, INEOS, Mitie, TfL and ACPO all suggested that the current legal framework should be updated to be deal with protests which arise as part of industrial disputes.

5.106 The submissions from TFL and Mitie expressed the view that the existing legal framework is not designed to cover the kinds of actions now seen during industrial disputes. Similarly ACPO concluded: “A consistent area of challenge and complexity for the police service is the difference between picketing and protest. The line is a fine one and could usefully benefit from clearer definition, particularly given that police powers and tactics will partly be determined by this classification and the relevant protections that it may be necessary to provide to picketing and protest activities”.

5.107 INEOS suggested that employees should only be allowed to picket at their employer’s premises and should explicitly be banned from picketing of the premises of third parties. The legal framework already prohibits secondary picketing (picketing at an organisation not involved in a dispute) except in very limited circumstances and on picketing anywhere other than at or near an employee’s place of work. The Review understands that INEOS meant to suggest that Unions should not be allowed to *protest* at organisations not involved in the dispute.

5.108 The submission from CIPD stated that: “We suggest the review should focus on asking whether the existing public order offences are adequate to address the novel forms of industrial action now emerging. Action by trade unions which takes the form of public demonstrations or other “protest” action should be judged against the same legal standards that apply to similar action undertaken by other groups”.

5.109 SSE, TfL and INEOS also stated that protests at the private addresses of employees should be banned. Pinsent Masons said that protests outside the homes of managers “...could be addressed by changes in the criminal law to introduced specific offences including criminal responsibility for trade unions and their officers. Changes in the civil law to give new rights against this form of harassment may also be considered”.

### Views suggesting that notification requirements should apply when trade unions use leverage tactics

5.110 The submissions from SSE and Pinsent Masons stated that unions should be required to provide advance notice of actions during leverage campaigns.

5.111 Pinsent Masons suggested drawing up a Code of Practice on the use of leverage tactics which could lay down “norms regarding acceptable behaviour”. Pinsent Masons suggested that the Code of Conduct could include “...an obligation on the part of the union to provide advance notice of the action to be taken in the leverage campaign... It would allow those affected by the action to take proactive steps to protect their

legitimate rights and interests if these will, or will be likely to be infringed...In particular, unless there is a “ban” on action which targets individuals and their homes, an adequate notice regime would reduce some of the distress inevitably associated with unannounced and surprise demonstrations or other action aimed at individuals”

5.112 Pinsent Masons also suggested that there should be “...a requirement on the union to provide the employer in advance with copies of its campaign literature and leaflets... this would make clear what materials are “official” and endorsed by the unions. Alternatively, or in addition, it could be a requirement for any of the union’s literature, banners etc to contain a clear statement that their contents are endorsed by the union”.

5.113 SSE offer similar views to those from Pinsent Masons saying “Unions engaging in leverage tactics should be required to comply with a notification procedure. This would require unions to give advance notice to both those that are party to the industrial dispute and any third party that they intend to attempt to influence through protest or other means of their intended action. The notification should give precise details of the form or the action and when it is to take place. There should also be a minimum notification period of at least 21 days.”

## Theme 3 – Alleged victimisation or harassment of non-striking workers

### Summary

5.114 This theme covers alleged victimisation or harassment of non-striking workers, or those who are covering for striking workers. This may be through a variety of means from social exclusion to overt harassment or bullying. With the advent of social media, some of the tactics are said to have become more subtle or changed form in recent years.

5.115 In the evidence submitted to the Review, allegations of victimisation take many different forms. These include:

- Verbal abuse on the picket line specifically targeted at non-striking workers – often using the word ‘scab’
- Trades unions taking disciplinary action taken against employees who choose not to take part in strike action
- Social media abuse and threatening behaviour towards non-striking workers, and
- Non-striking workers suffering social exclusion.

### Examples

5.116 Examples of tactics seen under this theme include:

- TfL’s submission described that: “The trades unions frequently seek to identify individuals who do not participate in industrial action with the intention of singling them out and intimidating them... A Facebook page was created which included photos of those station staff who attended work during one of the strikes”
- TfL’s submission also described that: “After a strike, employees who chose not to participate are often isolated. In locations where the trades unions have a strong presence, such employees may be excluded socially and when there is discretion to manage rosters at a local level they are often given the unpopular shifts, they are not given the opportunity to swap leave and they are not offered overtime.”
- TfL’s submission also described that: “At times, the trades unions have summoned members to disciplinary meetings where they have not participated in industrial action... In addition, when the trades union is aware that an employee has not participated in past strike action, the next time a strike is called, a local activist will commonly approach the individual directly and make it clear that they are expected to join in with the strike on this occasion”
- Hertfordshire Fire & Rescue Service claims: “We know there is low level bullying and intimidation that stops all but a few officers and firefighters from working on strike days. We have sacked one firefighter for his comments on Twitter about scabs and other issues”

- The Buckinghamshire Fire & Rescue Service submission claims: “Disciplinary action has been taken against a member of staff who posted on his Facebook page a photograph that had been taken of a plate of Sausage chips and beans and to which he had added the caption “Sausage chips and beans works in Newport Pagnell””. Sausage Chips and Beans being a reference to ‘scab’ by the taking the first letter of each word and putting them together.
- The Engineering Construction Industry Association (“ECIA”) response describes a situation in an industrial dispute where: “At one site in the North West this year two employees responded to an emergency call out during a weekend whilst there was an unofficial weekend overtime ban in place. Within two days both employees had instructed the employer to donate the wages they should have earned to a local charity and to ensure that was well publicised, solely due to pressure and threats of social exclusion”.
- The Total submission describes: “The feature of people intimidating others by mobile phone should be raised in this submission because we believe it’s fairly widespread in the Engineering Construction Industry (ECI), due to the itinerant nature of the workforce. Threats such as ‘we know where you live’ and ‘you won’t work alongside me at the next job’ were allegedly sent”. The ECIA submission also describes union members: “Making intimidating statements that purport to know when an employee is away from home, or where their children go to school”.
- The SITA UK submission states that “One particular person who worked through the strike attends a Working Mens’ Club. The Club was contacted by a striker (unknown identity) who threatened the steward of the club that if they allowed him to carry on coming into the bar the club would be vandalised, so they barred him”.

## Legal framework

5.117 The relevant law in relation to this theme encompasses both civil wrongs and the criminal law. Disciplinary proceedings brought by both trade unions and employers are also relevant.

5.118 The range of civil wrongs which may give rise to injunctive relief being sought against workers and trade unions and/or damages in this theme are:

- Protection from Harassment Act 1997 (“PHA”) (civil) and
- Defamation.

The usual civil remedies (set out in Theme 1) apply.

5.119 In terms of criminal law, the relevant legislation in England and Wales that is relevant to this theme are the offences and penalties under:

- PHA (criminal)
- Malicious Communications Act 1998
- Postal Services Act 2000, and



- Communications Act 2003.

5.120 In relation to disciplinary proceedings, the relevant legislation is sections 64-66 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULRCA”) - protection from unjustifiable discipline.

#### Civil law

##### Harassment

5.121 As discussed in Theme 1, under the PHA, harassment occurs where a person pursues a course of conduct which amounts to harassment of another and which he knows, or ought to know, amounts to harassment. Conduct includes speech and messages placed on the internet or sent by telephone. Behaviour such as alarming a person or causing a person distress is likely to fall foul of the PHA.

5.122 The types of activity described by contributors in the course of this Review are likely to be matters, if repeated, that would qualify as ‘harassment’ within the meaning of the PHA. It would certainly be possible for individual workers, or groups of workers to bring such a claim against a trade union and the individuals involved.

##### Defamation

5.123 Where statements are published on social media or indeed in leaflets distributed by the union, and those statements are untrue, workers can in theory at least bring claims for defamation (see Theme 6).

#### Criminal law

##### Harassment

5.124 As discussed in Theme 2, if an offender is found guilty of the criminal offence of harassment under the PHA they may be tried on indictment and they can be sentenced to a term of imprisonment not exceeding five years, or a fine, or both.

##### Malicious Communications

5.125 Sending malicious messages through email and the internet may be the subject of defamation claims, but they may also be subject to criminal action by the Police. The PHA has been used successfully to prosecute the sending of offensive emails through the internet. Such messages will also constitute an offence under the Malicious Communications Act 1988.

5.126 Under section 1 of the Malicious Communications Act 1988 it is an offence to send an indecent, offensive or threatening letter, electronic communication or other article to another person. In section 85 of the Postal Services Act 2000 and section 127 of the Communications Act 2003 there are similar specific offences relating to sending postal or telephone messages which are indecent, offensive or threatening.<sup>256</sup> Both offences are punishable with up to six months imprisonment and/or a fine.

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<sup>256</sup> In *Chambers v DPP* [2012] EWHC 2157 (Admin), it was agreed that a message sent by Twitter is a message sent via the “public electronic communication network” within section 127 of the Communications Act 2003.

5.127 In most cases involving malicious communications, however, there will be more than one offensive or threatening letter or telephone call and therefore the police may choose to charge the offender with an offence contrary to section 2 of the PHA. If the messages, emails, phone calls etc. cause the victim to fear that violence will be used against them then the police can choose to charge the offender with an offence contrary to section 4 of the PHA.

### Complaints against a trade union and employment disciplinary proceedings

#### **Sections 64-66 of TULRCA – the right not to be unjustifiably disciplined**

5.128 Evidence has been put forward to suggest that some trade unions have sought to invoke internal union disciplinary procedures against non-striking workers. Sections 64 and 65 of TULRCA provide protection for workers from such action. The provisions give a worker the right not to be “unjustifiably disciplined” by a trade union. This will include action such as the denial of access to a trade union benefit or service. There is also a general provision which states that it can include any action which subjects the worker to “any other detriment”.

5.129 Section 65(2) sets out the types of conduct for which a worker should not be disciplined, and this can include not supporting industrial action or opposing or indicating a lack of support for such action. A worker who is unjustifiably disciplined can bring a complaint to a tribunal under section 66 of TULRCA.

#### **Disciplinary proceedings**

5.130 Actions against employees such as victimisation by ignoring them, putting them on unpopular shifts, pressuring or harassing employees to take part in industrial action when they have refused to, may be the subject of internal grievance complaints against those thought to be responsible. All of the examples of behaviour are likely to be matters of serious misconduct in the context of disciplinary proceedings, and the evidence presented to the Review shows examples of such proceedings being used by employers.

## Views received from contributors about the effectiveness of the current legal framework

### Views suggesting that there should be more legal protection for non-striking workers

5.131 The submissions from TfL and FOA suggest that more legal protection should be given to non-striking workers during a dispute. TfL said that trades unions often inform their members that those who do not participate in industrial action will lose union support in the future. In addition, the submission also stated that trades unions can isolate and treat less favourably members who do not participate in union activities. In order to deal with this problem they suggested that: “Legislation should be introduced to protect trades union members from being disadvantaged by the trades union as a result of non-participation in strike action”.

5.132 The FOA echoed this sentiment saying that: “we are concerned that a person who continues to be employed and is not covered by ‘a protected characteristic’ (as defined by the Equality Act 2010) has no independent external mechanism for dealing with

situations where an employer fails to deal with issues, particularly the seemingly minor instances of harassment that can lead to major health and well-being problems over time”.

## Theme 4 – Alleged victimisation or harassment of senior managers

### Summary

5.133 This theme covers alleged victimisation or harassment of senior managers (of an organisation) by a trade union or their members which can sometimes be personal in nature.

5.134 Some of the protest activity, such as protesting outside a senior manager’s house, is also covered in Theme 2, but the alleged victimisation or harassment is said often to go wider than just protests and includes the production of written material and the emergence of social media as a medium to make personal attacks.

5.135 Submissions from contributors suggest that the purpose of these tactics is to publicly humiliate the individual in question in order to pressurise the employer to make concessions in the dispute. Examples of alleged intimidation of senior managers include:

- Distributing leaflets attacking senior managers directly
- Threatening or abusive comments on social media, and
- Abusive or harassing phone calls.

### Examples

5.136 Examples of tactics seen under this theme include:

- The ECIA submission describes a member who described one situation: “... included posting leaflets through neighbours’ doors that described one manager in extreme and provocative ways, posing for photographs in front of the house door and again publicising the event through posting pictures on social media”
- The INEOS submission describes: “Of greater concern is the targeting of individuals. The leaflets produced by Unite were specific in their accusations against individuals and not just against the company. Most of this was aimed at our chairman... with repeated attacks on his personal situation and lifestyle.”
- The CIPD submission describes during the Grangemouth dispute the daughter of [a] company boss had: ““*wanted*” posters denouncing her father posted through her front door in Hampshire”.
- The Sunday Times quoted a Facebook post related to the Howdens disputes from the Widnes Drivers which allegedly said: “We came to your town where you do your shopping. We came to your village and spoke to your neighbours. We came to your local pub where you have a drink. We came to your house — but you hid behind your large gates.”

- Buckinghamshire FRS provided the Review with social media updates which personally attack senior individuals, some which use abusive language. The submission stated: “A hate campaign started on Facebook which has been routinely stoked thereafter by FBU influence...I continue to be regularly reminded of the strike action (a matter of no contention at all) by people who seem quite delighted to personally despise and slander me in public with no care at all to the equally legal behaviour of our Service”.
- Mitie said that: “██████████ (Clifford Chance Contract Manager) has...reported IWGB to the police in London claiming harassment in May 2014 following IWGB’s continuing allegations of racism and union member victimisation against which is often the subject matter of leaflets handed out to the public naming him personally and derogatory comments posted on the IWGB website”.
- SITA UK said that: “violent threats were made towards the supervisors”.

## Legal framework

5.137 The relevant law in relation to this theme encompasses both civil wrongs and the criminal law. Internal disciplinary procedures will also be relevant.

5.138 The range of civil wrongs which may give rise to injunctive relief being sought against workers and trade unions and/or damages in this theme are:

- Protection from Harassment Act 1997 (“PHA”) (civil)
- Trespass
- Private nuisance, and
- Defamation.

The usual civil remedies (set out in Theme 1) apply.

5.139 In terms of criminal law, the relevant legislation in England and Wales that is relevant to this theme are the offences and penalties under:

- PHA (criminal)
- Intimidation or annoyance by violence or otherwise - section 241 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULRCA”)
- Obstruction of the highway - Section 137 of the Highways Act 1980
- Malicious Communications Act 1998, and
- Public Order Act 1986 (“POA”).

5.140 We have not covered internal disciplinary proceedings here, but matters such as harassing neighbours or family members when demonstrating outside managers’ homes, where an employee is purporting to further a trade dispute, may also be matters which may be the subject of disciplinary action. This is notwithstanding that the acts in question occur outside working hours and away from the place of work.

## Civil law

### Harassment

5.141 As set out in Themes 2 and 3, a course of conduct which amounts to harassment of another is both a civil wrong and a criminal offence. Behaviour such as alarming a person or causing a person distress is likely to fall foul of the PHA.

### Trespass

5.142 As set out under Themes 1 and 2, trespass may be committed where persons misuse the public highway or private property. A demonstration which may cause an obstruction for example to the entry of a person's home – is likely to qualify as a trespass and the person with a proprietary interest in the property will be able to obtain injunctive relief to remove the protesters.

### Private Nuisance

5.143 Unreasonable use of the highway may constitute another civil wrong – nuisance. This becomes particularly relevant where, for example, persons are interfering with rights of access to property. Certainly regular demonstrations at a person's home may constitute a nuisance, particularly where the home is being used for ordinary residential purposes.

### Defamation

5.144 Where statements are published on social media or indeed in leaflets distributed by the union, and those statements are untrue, employees and managers may be able to bring a claim for defamation to recover damages (see Theme 6).

## Criminal law

### Harassment

5.145 The offence of harassment under the PHA will again be relevant in relation to the types of behaviours described in the examples before the Review. As set out in Theme 2, it requires a course of conduct (conduct on at least two occasions) which is targeted at an individual and is calculated to cause alarm or distress.

### Section 241 TULRCA.

5.146 Section 241 TULRCA covers a number of different actions which may be relevant in this theme. As described in more detail in Theme 2, section 241 is intricate as there are several different ways the offence may be committed. However, the examples here of demonstrations at a person's home, combined with evidence of trespass and nuisance (in order to compel a person to agree to demands in the context of a trade dispute) may mean that the police may consider using section 241.

### Obstructing the highway under section 137 of the Highways Act 1980

5.147 This offence may be relevant if there is indeed an obstruction as there was in *Broome v DPP*<sup>257</sup> where the defendant blocked a lorry's access along the highway by standing in front of it. Broome's purpose was to obstruct, not to persuade, and so he could not claim the protections of the picketing provisions. If vehicles are blocked in this way, the police may consider this offence.

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<sup>257</sup> [1974] All ER 314

### **Malicious Communications**

5.148 Once again, as set out in Theme 3, sending malicious messages through email and the internet may be the subject of action through section 2A of the PHA and section 1 of the Malicious Communications Act 1998.

### **POA offences**

5.149 The Police also have available the full range of the offences under the POA.

## **Views received from contributors about the effectiveness of the current legal framework**

### **Views suggesting that there should be more legal protection for senior managers**

5.150 Pinsent Masons, INEOS and ISS suggested that that there should be changes to the criminal law to address trade union activity which “crosses a line”.

5.151 INEOS said that actions which are intimidatory or bullying should be criminalised and suggested that criminal offences for organisations connected to the industrial dispute may be appropriate. It was not clear from this suggestion whether INEOS thought that further offences should be created over and above what is already in the PHA.

5.152 The submissions from INEOS and Pinsent Masons did not give examples of exactly how the law should be amended. However, the submission from ISS suggested that the “Protection from Harassment Act or law on conspiracy should be extended to include the Trade Union as a Corporate body such that if criminal law is broken, as with Ineos, families and the union as a body conspired in this or procured it and/or took no action to prevent this/did not publicly repudiate it, the relevant Trade Union officer(s) and including the General Secretary (McCluskey?) can also be held criminally liable.”

5.153 ISS also suggested that the law on corporate libel and slander should be clearer so that: “obvious malicious or negligent oral or written statements made by full-time TU officers in a dispute are actionable in law, or in the case of local reps they lose immunity for disciplinary action”.

## Theme 5 – Allegations of disruption to business, contingency plans and damage to property

### Summary

5.154 This theme covers tactics taking place during industrial disputes which have been alleged to cause actual or active disruption to business, or appear to be deliberate attempts to sabotage contingency plans or damage property.

5.155 These activities are alleged to occur either as a result of a trade union endorsed strategy or, in the case of property damage, because of the behaviour of rogue trade union members or individuals. Examples of these alleged activities include:

- Stopping vehicles from being loaded or unloaded
- Revealing the location of contingency meeting points
- Causing damage to vehicles and equipment, and
- Disrupting normal business activities at a place of work.

### Examples

5.156 Examples of tactics within this theme include:

- The submission from the ECIA says “One client’s main depot and head office were also targets of a protest which blocked access to the depot, causing traffic disruption and preventing senior managers from attending a meeting”
- The Buckinghamshire FRS submission describes that: “A key element in the resilience and contingency planning was the siting of fire engines in locations away from the fire station from which they would normally be mobilised. A message was tweeted by the twitter page of the Southern Region FBU executive naming these four locations. The potential effect on employees and the intention were clear, whilst an inducement by the FBU to engage in unlawful picketing was simultaneously ambiguous.”
- The TfL submission states that “In 2012/2013, a Trades Union protested outside a construction site and sought to block the entrance to contractors, which caused delays to the projects”
- The INEOS submission describes that: “there were attempts to stop tanker movements to and from the Grangemouth loading station”
- Sita UK said they had experienced “sabotage of property – strikers were visiting the homes of workers and slashed car tyres, threw paint stripper over a car”



- The submission from ACPO reports that the Metropolitan Police Service provided them with evidence of intimidatory behaviour at the 2010 London Fire Brigade Strike which included:
  - “eggs and flour were thrown at appliances being driven”
  - “fire station security door codes were changed by striking staff”
  - “striking staff refusing entry to Fire Station premises by linking arms and forming a physical barrier to the entrance...”
  - “Some concerns have also been expressed about false fire calls to deploy senior staff to locations where they have been intimidated by striking workers upon arrival or actual fire calls where those attending have then been met by ‘flying’ pickets who have followed appliances to the scene”
- The Total response describes a situation where there was: “Destruction and sabotage of project work, plant or equipment”.

## Legal framework

5.157 The relevant criminal law in this context is:

- Obstruction of the highway - section 137 of the Highway Act 1980
- Breach of contract involving injury to persons or property - section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”)
- Criminal Damage Act 1971
- Harassment (criminal), and
- Public Order Act (“POA”).

5.158 The civil law which is relevant to this theme covers:

- Nuisance
- Harassment (civil), and
- Trespass.

### Criminal law

#### Obstruction of the highway

5.159 The police will be able to prosecute the offence of obstruction of the highway under section 137 of the Highway Act 1980 (see Themes 2 and 4).

#### Section 240 of TULRCA

5.160 As described in Theme 1, the offence under section 240 of TULRCA is committed where a person maliciously breaks a contract of service or hiring “knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be (a) to endanger human life or cause serious bodily injury, or (b) to expose valuable property, whether real or personal, to destruction or serious injury”. It does not appear to have ever been used for the purposes of a criminal prosecution.

## Criminal Damage

5.161 Serious damage to property may constitute the criminal offences of criminal damage or aggravated criminal damage (where there is a threat to life for example) under the Criminal Damage Act 1971. The offence of criminal damage, which can apply to a wide range of behaviour, is often alleged in the context of protests, for example, when protesters have written slogans on pavements or buildings, super-glued themselves to fixtures and fittings or damaged machinery at industrial plants.

5.162 For the basic criminal damage offence (section 1(1) of the 1971 Act), the prosecution has to prove that someone destroyed or damaged property belonging to another, with either the intent to do so, or by being reckless, and without lawful excuse.

5.163 The Act includes a number of other offences relating to criminal damage, which include:

- Criminal damage with intent to endanger life (maximum sentence: life imprisonment)
- Criminal damage being reckless as to whether life is endangered (maximum sentence: life imprisonment)
- Criminal damage by arson (maximum sentence: life imprisonment)
- Threatening to destroy or damage property (maximum sentence: 10 years' imprisonment), and
- Possessing an article with intent to damage or destroy property (maximum sentence: 10 years' imprisonment).

## Harassment

5.164 Harassment against workers was also covered in Theme 3 and will equally apply in relation to the matters described in this theme.

5.165 A number of the other criminal offences referred to under separate themes in this chapter may also be relevant in relation to this theme, in particular, the POA offences (see Theme 2).

## Civil law

5.166 Any loss to a business, such as loss of profits can also be recovered by way of damages where there has been a civil wrong, such as nuisance, harassment or trespass for example.<sup>258</sup> The protection from liability for protesters under section 219 of TULRCA again would not protect the actions of a union which are contrary to the civil law even where they relate to a trade dispute.

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<sup>258</sup> Such claims may also fall outside the capping provisions of section 22 of TULRCA, limiting the amount of damages otherwise recoverable in tort actions against a trade union

## Views received from contributors about the effectiveness of the current legal framework

Views suggesting that trades unions should face greater financial penalties for using extreme tactics (as understood by contributors)

5.167 The submissions from INEOS, Mitie, ISS and CBI suggested that effective financial penalties need to be in place to act as a deterrent to trades unions during a dispute.

5.168 INEOS stated that, as well as criminal sanctions against intimidation and bullying, "... trade unions should face unlimited civil liability for damages occurred as a result of actions at third parties".

5.169 The submission from ISS suggested that trades unions are "made responsible for actions of those who support industrial action or demonstrations unless they can show they took all reasonable steps to prevent misconduct..."

5.170 However, the CBI also said that the current cap on trade liability should be raised: "Under the current law, damages may be sought against unions who fail to comply with various obligations including wildcat action. There is a cap on damages based on the number of members a union has. This varies from £10,000 for the smallest unions to £250,000 from the largest. This cap was introduced in 1982 and has not been updated since...The CBI believes the cap on compensation should be increased for the first time since 1982 and damages should be awarded per day of strike action".

5.171 INEOS went even further than CBI saying that "The cap on the general liability of unions should be removed (moving to an equal basis to employers and private individuals)".

Views suggesting that trades unions should be required to take greater responsibility for the use of leverage tactics

5.172 Three submissions (ISS, SSE and Pinsent Masons) suggested that trades unions should take more responsibility for the use of leverage tactics during a dispute.

5.173 SSE stated that "We would welcome the introduction of a framework whereby a Union must "repudiate" or "reject" leverage tactics carried out in its name which have not been officially notified for which it claims it has no involvement. The repudiation framework/rejection framework would be similar in nature to the framework that already exists whereby a Union can reject (and gain immunity [from]) unofficial industrial action".

5.174 Pinsent Masons suggested a similar framework saying that trades unions should be required to "... repudiate "unofficial" leverage action by its members ... in order to avoid liability for those acts. This would mirror the requirements for unions to repudiate unofficial industrial action".

## Theme 6 – Trade union communication with third parties to try and influence the outcome of a dispute

### Summary

5.175 This theme considers communication techniques used by trades unions and their members to raise awareness of a dispute and put pressure on the employer. This includes anything from leafleting, to social media campaigns, to contacting customers directly and encouraging them to cease doing business with an employer.

5.176 The Review received information about a number of forms of communications including:

- Contacting customers to inform them about a dispute and/or encourage them to cease doing business with an employer
- Leafleting customers and people in the community, and
- Making inflammatory statements to the press and publishing incendiary material.

5.177 It has also been suggested to the Review that there were incidents where trades unions provided false and misleading information to customers and suppliers.

### Examples

5.178 Examples of tactics within this theme include:

- The submission from INEOS states "The documentation produced by UNITE attacked Jim Ratcliffe for his approach to the dispute but made a number of collateral and unsubstantiated accusations related to INEOS tax affairs implying bad practice on the part of the company".
- The ECIA submission describes that: "Additional targets involved targeting clients of the companies involved, causing disruption, and leafleting their customers with false and misleading information and suggesting they shop elsewhere rather than at a company who supported the target of the protest".
- Lewis Silkin said that trades unions used the following tactics "(a) Providing misleading anonymous statements to the press; (b) publishing damaging and untrue comments on the union website: (c) leafleting employees with misleading/damaging information".
- The Pinsent Masons submission describes "defamatory/abusive and highly personal comments (on placards, leaflets, social media etc). We are aware of cases where abusive, threatening and defamatory posters...have been put up in public spaces near their place of work".

## Legal framework

5.179 The relevant areas of law in this theme are found in civil law and encompass:

- Defamation, and
- Employment law provisions in sections 146, 152 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”).

### Civil Law

#### Defamation law

5.180 When trades unions are distributing leaflets, writing letters and making statements to the press which may contain inaccuracies, the relevant area of law is defamation.<sup>259</sup>

5.181 Evidence has been put forward alleging that trades unions have circulated untrue and damaging information about employers to customers, politicians and the media. In these instances an employer or an individual who is the subject of the statements, may be able to bring a claim for defamation. The relevant law is found in the common law and in a number of Acts, the most recent being the Defamation Act 2013.

#### *Libel v slander*

5.182 The law of defamation encompasses the civil wrongs of ‘libel’ and ‘slander’. Libel is the publication in permanent form of a defamatory statement (e.g. printed leaflets and statements on websites). Slander is the publication in transitory form of a defamatory statement (e.g. making a statement on a radio show).

#### *Harm threshold*

5.183 It is not enough for the statement to be libellous or slanderous, it must also cause harm to the claimant. The Defamation Act 2013 states that “A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”.<sup>260</sup> The Act goes on to say that in relation to a body that trades for profit, harm is not serious harm unless it has caused or is likely to cause the body serious financial loss.<sup>261</sup>

5.184 It is therefore not enough for the employer to show that statements made are defamatory; they must also show that the statements have caused or are likely to cause serious financial loss. While it is possible that statements made by trades unions could cause this level of harm the Review did not receive enough evidence to conclude if this happened in the examples provided above.

#### *Remedies*

5.185 If the claimant is successful they may be able to obtain an interim or permanent injunction preventing the statements from being published. The courts may also require the defendant to publish a correction or apology in certain circumstances.

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<sup>259</sup> Another area of law which may be relevant is the tort of malicious falsehood. Malicious falsehoods are published statements which are false without necessarily being defamatory because they do not serve to lower the reputation of an individual company or firm. In order to prove malicious falsehood, a claimant will need to prove that: the statement is false; the statement was published maliciously; and the published statement has caused special damage or financial loss to the claimant.

<sup>260</sup> Section 1(1), Defamation Act 2013

<sup>261</sup> Section 1(2), Defamation Act 2013

5.186 A successful claimant may be awarded damages to compensate for damage to reputation. Special damages may also be awarded for actual monetary loss suffered by the claimant. In rare cases exemplary damages may be awarded. Exemplary damages are intended to punish the defendant and are awarded where the defendant knowingly or recklessly published false defamatory material with “the motive that the chances of economic advantage outweigh the chances of economic or perhaps physical penalty”.<sup>262</sup>

### **Protection for trade union officials and members**

5.187 Section 152 of TULRCA protects employees from dismissal as result of engaging in trade union activities. A dismissal will be automatically unfair if the principal reason for it is that the employee had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time. Section 146 of TULRCA provides similar protection against being subjected to a detriment on trade union grounds.

5.188 This protection is in addition to protection from dismissal taking official industrial action found in section 238A of TULRCA e.g. strikes and industrial action short of a strike.

5.189 However, actions carried out by a trade union official or trade union member which are particularly unreasonable or damaging to an employer may not be protected and can be the subject of disciplinary proceedings.

### **Trade Union Activities**

5.190 In order to understand the protection offered in sections 146 and 152 of TULRCA it is important to understand what is meant by trade union activities. There is a distinction between the activities of union officials and those of ordinary members. The range of activities a trade union official can claim to be participating in on behalf of the union is much wider than for an ordinary member.

5.191 Union officials will be protected as long as they are acting within their powers as laid out in union rules or policies. If they do not, they may face disciplinary action or dismissal for gross misconduct. In *Bishop v Nestle UK Ltd*<sup>263</sup> the company and trade union were negotiating a redundancy programme and an employee, who was a shop steward but not a member of the union’s negotiating team, issued a notice to employees and wrote and distributed documents which were anti-company, derogatory and belittling of many employees and were designed to undermined the negotiations. The employee was given a warning and subsequently dismissed for gross misconduct.

5.192 Trade union officials will also lose the protection where they are found to have acted wholly unreasonably or maliciously in the way they carried out their functions.<sup>264</sup>

5.193 Union members who want to benefit from the protection in section 152 of TULRCA must also act through accepted channels in accordance with approved union practices.

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<sup>262</sup> *Cassell & Co Ltd v Broome and another* [1972] 1 All ER 801

<sup>263</sup> ET Case No.4058/96

<sup>264</sup> *Lyon and Scherk v St James Press Ltd* 1976 ICR 413.

As the EAT stated in *Hall-Raleigh v Ministry of Defence*<sup>265</sup> “if a man conducts a campaign of his own without reference in any way to the union he is not engaging in the activity of that union and is not protected”. In addition, a union member may fall outside the protection in section 152, if they make statements which are malicious, untruthful or irrelevant to the matter in hand.<sup>266</sup>

5.194 Employers are unlikely to be able to take disciplinary action against employees who distribute official trade union literature, even if that literature is factually incorrect or damaging to the reputation of the employers. However, this may not be the case if employees distribute damaging literature they have created themselves or write malicious letters to third parties about the employer.

### **Appropriate Time**

5.195 Employees may only benefit from protection if the activities are carried out at an appropriate time. Section 152(2) explains that this means either a time outside the employee’s working hours, or a time within his or her working hours at which in accordance with arrangements agreed with or consent given by the employer it is permissible for him or her to take part in the activities of a trade union.

## **Views received from contributors about the effectiveness of the current legal framework**

### **View suggesting that the law on defamation should be clearer**

5.196 The Review received very few suggestions about how the law could be changed in this area. However, the submission from ISS suggested that the law on defamation could be clearer. The submission from ISS asked for clarity on the “Law on corporate libel/slander for disputes so that obvious malicious or negligent oral or written statements made by full-time TU officers in a dispute are actionable in law, or in the case of local reps they lose immunity for disciplinary action”

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<sup>265</sup> EAT 3/79.

<sup>266</sup> *Bass Taverns Ltd v Burgess* [1995] IRLR 596.

## Theme 7 – ‘Wildcat’ strike action said to be have been taken by individual union members

### Summary

5.197 This theme explores the instances where action appears to have been taken independently by individuals, or groups of individuals, without the backing of their union.

5.198 ‘Wildcat’ strike action is a work stoppage which has not been authorised by a trade union, or at least not overtly so. Trade union officials usually endeavour to distance themselves from approval of the action whilst acknowledging an understanding of why the action has taken place. This is because the union has no immunity in these circumstances and wants to reduce the risk of a claim being brought against it for an injunction and/or damages. Evidence was submitted to the Review which contained allegations that ‘wildcat’ industrial action had occurred. ‘Wildcat’ strikes are unusual because employees can face dismissal if they take part and will have no recourse to an employment tribunal (see section 237 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”).

### Examples

5.199 Examples of tactics within this theme include:

- The Total submission to the Review stated that there was: “Unofficial balloting (raising of hands in the cabins or at site mass meetings)...unofficial strikes/picketing...use of ‘flying pickets’ to launch unofficial strikes at other key locations...”
- The Total submission also described an: “Unofficial picket line – small group of workers decide to block the entrance to a site, no-one dares cross an unofficial picket line for fear of reprisals” and that “In all cases where union reps are involved, they tell the workers they are taking action in a personal capacity, this allows the unions to repudiate any unofficial action as they state the reps are not representing the union”
- The Total submission explained how the internet was used in an apparent attempt to organise unofficial action: “The militant workers utilised a website “Bearfacts” to organise unofficial action, key national union figures can clearly be seen to be supporting and pushing for unofficial action in disputes with companies”
- Following the Total dispute in 2009, ACAS produced a discussion paper from which the CIPD in its submission to the Review quoted as follows: “unofficial action had taken place in other locations within the power and construction industries following the Lindsey events, raising the spectre of wildcat strikes during the recession – a potentially challenging and difficult aspect of employment relations to manage”.



- The BESNA dispute is said to have seen wildcat strikes across the country when Unite withdrew a successful union ballot following the threat of legal action by Balfour Beatty. The BBC reported the incident saying: “An estimated 200 workers gathered at the Conoco oil refinery in Immingham, North East Lincolnshire. In Glasgow, protesters stood outside the headquarters of Balfour Beatty Engineering Services. There were similar scenes at London's Blackfriars station, St Catherine's Hospital in Merseyside, Manchester Central Library, Kelvin Hall School in Hull and a hospital in Cardiff.”<sup>267</sup>

## Legal framework

5.200 This theme encompasses the civil law areas of:

- Trade union repudiation - section 20 of TULRCA , and
- Secondary action - section 224 of TULRCA.

### Civil Law

#### Trade union – repudiation

5.201 The starting point for determining the question of whether a trade union is in fact liable or potentially liable in relation to so-called “wildcat” action is section 20 of TULRCA which sets out the statutory regime for determining the question of vicarious liability. A union may be held liable for acts of persons empowered by its rules to do what is said to have been done as well as for the acts of its principal officials (the principal executive committee and the president or general secretary of the union). It may also be liable for acts done by “any other committee of the union or any other official of the union (whether employed by it or not)”.<sup>268</sup>

5.202 However, in relation to this last category (any other committee of the union or any other official of the union), there is the option of repudiating the act concerned by following the statutory process mapped out in section 21 of TULRCA.

5.203 The effect, however, of repudiation as far as individual members are concerned is that thereafter they are vulnerable to dismissal on the basis of having taken unofficial (as opposed to un-balloted) action with no ability to challenge their dismissal in the employment tribunal.<sup>269</sup> A union therefore often faces a difficult decision when put on the spot with regard to repudiation – repudiate and potentially see members dismissed with no legal remedy or decline to repudiate and face claims for an injunction or damages on the basis that it is vicariously liable under section 20 of TULRCA.

#### Secondary action

5.204 Secondary action is sometimes referred to as ‘sympathy action’. Under section 224 of TULRCA workers are not permitted to take action in support of colleagues employed by another employer in the same group of companies, even though they may be affected by the outcome of the dispute. In *National Union of Rail, Maritime and*

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<sup>267</sup> BBC News (7 December 2011) “Construction workers on wildcat strike action over pay” [Online] Available: <http://www.bbc.co.uk/news/uk-england-16065150> [ Accessed: 24 September 2014].

<sup>268</sup> Section 20(2) of TULRCA.

<sup>269</sup> Section 237 of TULRCA.

*Transport Workers (RMT) v United Kingdom*<sup>270</sup>, the RMT argued that this was an excessive restriction on its ability to protect its members' interests, in violation of its rights under Article 11.<sup>271</sup>

5.205 Whilst the European Court of Human Rights accepted that the ban on secondary action did constitute an interference with Article 11 rights, it went on to say that this was nonetheless a lawful ban because the prohibition had been prescribed by law, pursued a legitimate aim of protecting the rights and freedoms of others (that is to say, those who had no connection with the dispute) and was necessary in a democratic society to achieve that legitimate aim. The Court said:

“the facts of the specific situation challenged in the present case do not disclose an unjustified interference with the applicant’s right to freedom of association, the essential elements of which the applicant was able to exercise, in representing its members, in negotiating with the employer on behalf of its members who were in dispute with the employer and in organising a strike of those members at their place of work.”

5.206 The restrictions on secondary action however only come into play outside the context of what is otherwise lawful picketing (see discussion of section 220 of TULRCA in Theme 1) and in circumstances in which there is an inducement to breach of, or interference with a contract of employment. In many cases it may be difficult to distinguish between secondary action contrary to section 224 and simple protest at the premises of a third party not directly involved in the trade dispute. At least some of the evidence submitted to the Review relating to what might otherwise be regarded as secondary action, has in fact been said to be peaceful protest only – for example, the submission from the Independent Workers of Great Britain is careful to make this distinction.

## Views received from contributors about the effectiveness of the current legal framework on ‘wildcat’ strike action.

5.207 The CBI stated that “the existing regulations on repudiation of non-official, ‘wildcat’ action do not provide enough clarity... When unions are taking advantage of modern technology to share information about disputes and official strike action there is no reason why they can not use the same technology to quickly repudiate unofficial action across their membership. CBI members would like the regulations updated to require unions to repudiate all unofficial action within 24 hours after it comes to the attention of senior officials and ensure that information is disseminated effectively”.

5.208 The views on financial penalties described in Theme 5 may also be relevant here.

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<sup>270</sup> Application No. 31045/10 [2014] IRLR 467

<sup>271</sup> For Article 11 see theme 2

## Theme 8 – Extreme tactics alleged to have been used by employers

### Summary

5.210 This theme explores any tactics that unions or their members believe constitute ‘extreme’ tactics taken by employers, which have been highlighted either through direct submissions or through the Review’s open source research.

5.211 The Review received evidence from a trade union, the Independent Workers of Great Britain (“IWGB”) and has also encountered alleged ‘extreme’ tactics which took place during a dispute between the FBU and the London Fire Brigade.

5.212 This section considers the small body of evidence received by the Review and analyses the legal framework around these tactics. The alleged tactics include:

- Aggressive behaviour towards picketers on the picket line
- Intimidating employees to prevent protests or industrial action taking place, and
- Victimisation of trades union representatives.

### Examples

5.213 Examples of tactics within this theme include:

- The submission from IWGB says “In summer 2013, the University attempted to ban all protests on their property, and threatened that anyone protesting would be prosecuted for trespass. The University sent a letter to the President of the Student’s Union to pass on to the IWGB to this effect”
- The IWGB submission stated “We have concerns over MITIE’s handling of their staff, and in particular union representatives. Union representatives have been given the hardest workloads and one worker has been driven to a nervous breakdown and has been on long term sick for 6 months. They have also issued letters to employees stating that they cannot protest”
- The IWGB submission stated that “Another instance of intimidation of union activists by a big company regards the dismissal of a cleaner at MITIE, who was dismissed for showing the entrance to a trade union rep”
- During a dispute in the Fire and Rescue Services in 2010 it was reported by the Guardian<sup>272</sup> that “Two arrests were made...when striking firefighters were struck by vehicles outside stations that were being picketed in south London. One man was arrested after a striking fireman was hit by a car trying to enter Croydon fire station,

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<sup>272</sup> The Guardian (1 November 2010) Construction workers on wildcat strike action over pay [Online], Available <http://www.theguardian.com/uk/2010/nov/01/firefighter-strike-car-arrest> [Accessed: 24 September 2014]

while a second arrest was made when an executive member of the Fire Brigades Union was hit by a fire engine returning to Southwark fire station.”

## Legal framework

5.214 The relevant law in relation to this theme encompasses both civil wrongs and the criminal law.

5.215 The range of civil protection which may give rise to relief for workers in this theme are:

- Dismissal on union grounds - section 152 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULRCA”), and
- Protection from certain tort liabilities - section 219 TULRCA

The general criminal law will apply.

### Civil Law

#### **Unfair dismissal and detriment related to trade union grounds**

5.216 TULRCA contains specific provisions which deal with the circumstances where an employee is dismissed or suffers any detriment as a result of trade union membership and activities.

5.217 Dismissal on union grounds under section 152 of TULRCA will be automatically unfair. The scope of the section includes dismissal for having taken part in “the activities of an independent trade union at an appropriate time”. Whilst industrial action is likely to be a potentially relevant activity for the purposes of the section, the requirement that this take place “at an appropriate time” means that the provision has limited relevance to dismissals in the context of industrial disputes, particularly strike action. “Appropriate time” generally means either outside working hours or in working hours but with the employer’s consent – going on strike for example, will rarely fit within either of these two possibilities.

5.218 However, where the employee is dismissed for having taken part in official action which is protected under section 219 of TULRCA, any dismissal is likely to be automatically unfair within section 238A, at least if it occurs during the initial protected period of 12 weeks. A dismissal shall also be regarded as unfair for a number of reasons related to union membership or activities.

### Criminal Law

#### **Criminal activity**

5.219 It goes without saying that any act which results in workers being knocked down or being struck by vehicles during picketing or whilst taking industrial action will be matters for the police in accordance with the criminal law.

## Views received from contributors about the effectiveness of the current legal framework

View suggesting that employers should be required to issue a statement saying that employees will not be penalised for taking part in industrial action

5.220 The submission from IWGB states “I think there should be a legal obligation on employers, upon receipt of a valid notification of ballot, to issue a statement (perhaps with the wording being predetermined as is the wording on the ballot), saying that workers will not be penalised in any way for voting in or participating in the industrial action. It should also say that to punish them would be unlawful. I do not feel that wording on the ballots goes far enough to mitigate against workers’ fear of punishment for participating in trade union action....I strongly believe that the current legislation does not go far enough to prevent intimidation tactics by employers in industrial disputes”

View suggesting that employment tribunal fees should be removed

5.221 The submission from IWGB states “I am also aware that there are laws in place to deal with victimisation of trade union representations but in general the union cannot afford legal fees and the cost of tribunals. The current fee system with employment tribunals has made access to justice nearly impossible for low paid workers. Especially for a small union like us, it is extremely difficult to hold an employer to account. The current fee system is a horrendous assault on low paid workers”.

## Annex A

### Organisations contacted by the Review

The following organisations were invited to contribute to the Review and/or asked to contact their member organisations to contribute towards the Review:

ACAS  
ASDA  
ASLEF  
Association of Principal Fire Officers  
Association of Train Operating Companies (ATOC)  
Balfour Beatty  
BP  
British Chamber of Commerce  
Building and Engineering Services Association  
Carillion  
CBI  
Chemical Industries Association  
Chief Fire Officers Association  
CIPD  
Cofely GDF Suez  
Construction Industry Council  
The Co-operative Group  
Crown House Technologies  
DHL  
Downstream Fuel Association  
DP World  
EEF (The Manufacturers' Association)  
Employment Law Bar Association  
Employment Lawyers Association  
Energy UK  
European Employment Lawyers Association  
Eversheds  
FBU  
Fire Officers Association  
Fire Service Chief Executives, Chairs and Cabinet Members in England  
GMB  
Gratte Brothers  
Hertfordshire Fire and Rescue  
Honda  
Howdens  
Hoyer  
Independent Workers of Great Britain (IWGB)  
International Labour Organisation  
Industrial Law Society

INEOS  
Institute of Directors  
John Lewis  
Joint Industry Board  
Liverpool Mutual Homes  
Mayr Melnhof Packaging  
MITIE  
National Express  
National Offender Management Service  
NG Bailey  
Norbert-Dentressangle  
One Housing Group  
PCS  
Pinsent Mason LLP  
Police  
Retained Firefighters Union  
RMT  
Royal Mail  
Shepherd Engineering Services  
SITA  
STUC  
Suckling Transport  
T Clarke Plc  
Transport for London  
The Society of Motor Manufactures and Traders  
Total  
Tank Storage Association  
TSSA  
TUC  
UCATT  
UK Petrol Industries Association  
Unilever  
Unite the Union  
University and Colleges Employers Association  
University of London  
Wincanton

## Annex B

### List of meetings held/attended by Bruce Carr QC

Bruce Carr QC met with the following organisations in relation to the Review:

ACPO (DCC Charlie Hall)

ATOC

CBI hosted 'Chatham House' round table, attended by:

- Barclays
- British Airways
- BT
- Eversheds
- GE Aviation
- MITIE
- Royal Mail
- Transport for London
- UPS

Independent Workers of Great Britain

Lewis Silkin LLP

London Fire Brigade (Commissioner Ron Dobson CBE QFSM)

These were background discussions and not formal evidence gathering sessions, and as such did not contribute to the findings of the Review.