

# The political attack on workplace representation – a legal response



Rt Hon David Cameron MP  
Leader of the Conservative Party

Wednesday, 23 November 2011

Dear Aidan,

Thank you for your letter of 11 November, regarding the funding of trade union officials from the public purse. I am pleased that you have decided to establish the Trade Union Reform Campaign (TURC), as I strongly believe the current level of public subsidy to the trade unions cannot be sustained, either morally or economically.

...

However, at a time when across the private and public sectors people are having to take very difficult decisions in order to save money, it is difficult to justify some people in the public sector being paid not to do the job they are employed for, but instead to undertake full time trade union activities – much of which should be funded by the unions themselves. We need to question why the public is paying for so much, and whether this is sustainable going forward.

...

I know that your new campaign group is keen to undertake further research into this matter and look at, in particular, the number of 'Full Time Equivalents' working on trade union activities at public expense. I look forward to receiving your research over the coming months.

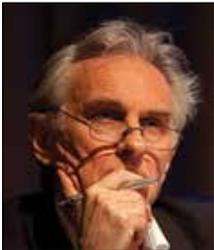
Thank you, once again, for all the work you are doing on this issue, and I wish your new Trade Union Reform Campaign all the best.

Yours,  
David

by Alan Bogg & K D Ewing



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# contents

FOREWORDS	
Bob Crow	02
Mark Serwotka	03
CHAPTER ONE	
Introduction	04
CHAPTER TWO	
A political attack	05
trade union reform campaign (TURC)	05
the taxpayers' alliance	07
CHAPTER THREE	
Victimisation of workers' representatives	08
from taff vale railway...	08
...to london underground	09
CHAPTER FOUR	
Withdrawal of workplace facilities	12
attack on workplace representation	12
questions of legality	15
CHAPTER FIVE	
Trade union representatives in international law	17
protection against discrimination and dismissal	17
facilities for trade union representatives	18
CHAPTER SIX	
Victimisation: the <i>Palomo Sanchez</i> case	21
an unsuccessful application...	21
...so why is the case important?	22
CHAPTER SEVEN	
Workplace facilities: building on convention rights	24
the scope and extent of trade union representation	24
the conditions of trade union representation	25
CHAPTER EIGHT	
Conclusion: a manifesto for trade union representatives	28
APPENDIX	
A note on rights of trade union representatives in other countries	31
lessons from Canada and the United States	31
lessons from France and Germany	32
ENDNOTES	
Report	33
Appendix	35



by Bob Crow  
General Secretary, RMT



This report comes as a timely reminder of the challenges faced by trade unions in Britain and highlights how successive governments have evaded their responsibilities under international law. The increasing intensity with which the current government is attacking workers' rights makes it all the more relevant.

It is clear that the legal system we work under is class law, based as it is on the idea of protecting the property and power of the employing class.

This system sees workers denied protection from the collective attacks of employers. It is a disgrace that the British legal system does not even meet the minimum standard of protection set out by international human rights law.

At a time when the ruling elite are engaged in the greatest assault on workers in modern times, we can expect the current repressive legislation to be expanded upon, further shackling workers and restricting their ability to respond.

Trade union representatives, most often acting in a voluntary capacity, are the most important tier of representation in the trade union movement. They are the ones who ensure that workers are represented on a day to day basis in their workplace, both in terms of working conditions and their terms and conditions of employment.

The failure of successive Tory and Labour governments to afford trade union representatives their basic rights is a national disgrace, and an insult to all workers.

The examples of Eamonn Lynch and Arwyn Thomas who were victimised for being trade union representatives by London Underground clearly show the lack of protections, and the vulnerability faced by those trying to improve the working lives of their colleagues.

RMT took industrial action in defence of our representatives because there were insufficient legal protections even to prevent the victimisation of health and safety representatives in a safety critical industry.

RMT will continue to campaign for the repeal of all anti-trade union laws and for the rights for trade union representatives to reach and then surpass minimum international standards. This study is a key tool in that task. Its ten point manifesto should be used by all trade unionists as a checklist of minimum rights when engaging with those who claim to represent us politically.

The need for democracy and human rights to be respected in the workplace and everywhere else is an immediate concern and this study helps inform that struggle.

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Public and  
Commercial  
Services Union

## by Mark Serwotka General Secretary, PCS



It was no surprise to trade unionists that a Tory-led government would move quickly to try to undermine employment rights.

But readiness for an attack is not enough on its own to fight it off. While the disastrous turnouts in the police commissioner elections have, at least for now, taken the sting out of calls for our strike ballots to be subject to minimum thresholds, workers' rights on issues such as redundancies and tribunals are being curtailed, and brutal cuts to pay, jobs, pensions and working conditions are being imposed.

Trade unions, and the union reps who are their lifeblood in the workplace, are under fire in every conceivable way from a government led by people who have enjoyed the kind of privilege that is the very antithesis of what our movement represents.

As this pamphlet explains, union reps face victimisation and, in many cases, the sack for trying to improve the working lives and living standards of their colleagues. My union has faced a number of such cases in recent times. We are currently fighting for the reinstatement of one of our young reps in the north west who was sacked after complaining about being bullied. Another of our reps at the Equality and Human Rights Commission – the body responsible for upholding trade union freedom and rights in the UK – has recently won a substantial payout after being victimised in the most disgraceful way.

Not only is victimisation being used in a clear attempt to deter others from lifting their heads, the work our reps do day to day for members – and, let us not forget, the organisations they work for – is being severely undermined by cuts to facility time.

These combined tactics must be seen as part of a plan to deunionise our workplaces – and specifically the public sector, where union density and representation means we can still act as an effective counter to employers.

It is impossible to separate this from the wider assault on our public services. If the government wants to carve up our NHS, unpick our welfare state and hand over more of our public services to private companies, it needs to move the opposition to these cuts out of the way.

We know what the Tories' motives are, and we know the government and their friends in the media will foster despair and distrust. Our response must be to offer hope and solidarity. This pamphlet, with its radical and inspiring manifesto for reps, is an important contribution to the public debate on employment rights and the role of unions in our society, and provides another weapon in our armoury to help us win not just the moral arguments but the political, industrial and legal battles as well.

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# introduction

- 1.1 There is no shortage of laws protecting the right to be a trade union member and to take part in the activities of a trade union. Yet this is clearly a difficult time in which to be a trade unionist, with evidence being revealed almost daily about the scale of the blacklisting of trade unionists in the construction industry being used to exclude activists from employment. At the same time, workers loyal to their union have been openly discriminated against and victimised by their employers in clear breach of employment laws. If this were not enough, the right of trade unions to represent their members at the workplace is now the subject of sustained attack by the government in measures so far concentrated in the public sector, which remains an arena of relative trade union strength.
- 1.2 In this report we consider some recent developments relating to the victimisation of trade union activists and the initiatives by government at the behest of the extreme right wing of the Tory party and others to withdraw the facilities necessary for effective workplace representation. It is to be pointed out, however, that these are problems faced by workers all over the world, with workplace rights everywhere being an early casualty of austerity and the response to it by international institutions and Conservative-led governments. So while we were condemning the conduct of Governor Scott Walker in Wisconsin, we were doing so while related anti-union practices were also being deployed by local and central government in this country.
- 1.3 One purpose of writing this booklet was to draw attention to the attacks on worker representation, and to consider the extent to which it is possible to develop a legal response to the attacks now taking place. The development of a legal argument against these threats may help to inform litigation against employers or the government where such litigation seems appropriate. As will be discussed in the pages that follow, the possibility of such action has been greatly increased by recent developments in the European Court of Human Rights (ECtHR).<sup>1</sup> The latter has not only brought to life the freedom of association guarantees of the European Convention on Human Rights (ECHR), but has done so in a manner that relies very heavily on international labour standards.
- 1.4 In many cases these latter standards are treaties in international law, as of course is the ECHR. As such, these treaties give rise to legal obligations relevant to domestic law, it being claimed by the late Lord Bingham in a famous lecture delivered at the University of Cambridge in 2006 that
 

**the existing principle of the rule of law requires compliance by the state with its obligations in international law, the law which whether deriving from treaty or international custom and practice governs the conduct of nations. I do not think this proposition is contentious.<sup>2</sup>**

This is important not only because Lord Bingham has assumed the mantle of every progressive's favourite liberal judge, but also because the rule of law to which he refers is a constitutional principle now recognised by statute.<sup>3</sup> Lord Bingham's lecture was subsequently reprinted in a book described as being 'both original and scholarly and accessible at the same time'.<sup>4</sup>
- 1.5 In light of the guidance from Lord Bingham about the rule of law, it is perhaps an unfortunate coincidence that one of the key players in the political campaign for further restrictions on trade unions is Jesse Norman, Tory MP for Hereford, coincidentally the son-in-law of Lord Bingham.<sup>5</sup> As will be discussed in chapter 2, Mr Norman sought 'to bring in a Bill to provide that pay for hours worked on behalf of trade unions by trade union officials during hours when they are paid by an employer should be refunded to the employer by the trade union; and for connected purposes'.<sup>6</sup> As will be discussed in chapters 5 and 7, there are serious doubts about whether such a measure would be compatible with the United Kingdom's obligations under international law. We nevertheless fully endorse Lord Bingham's observations and the implications thereof.
- 1.6 The other purpose in writing this booklet was to address the political debate about the future of trade union rights. Although it is likely that arguments from legality will cut little ice with the present government and its at times adolescent and bigoted leadership, there is a wider political audience we hope to reach. It ought not to be necessary to litigate to secure laws that respect the treaty obligations of the United Kingdom. By explaining the full extent of these obligations relating to trade union representation, it is hoped that at some stage a political commitment will be made by more progressive forces to legislate to honour these obligations, without a prior need for litigation to remind whatever Government then in power of what it already knows. To this end, we have developed a manifesto for trade union representatives, which we set out in Chapter 8 as a contribution to that process.

## a political attack

- 2.1 Workers and their trade unions have suffered many politically-motivated attacks since the general election in 2010. From Mr Adrian Beecroft's proposals to slash unfair dismissal and other employment rights to Mr Boris Johnson's proposals for new thresholds for strike ballots,<sup>7</sup> the aim is clearly to remove the little protection for workers that remains, and to dis-empower trade unions almost completely. In this climate of attack on employment and trade union rights, trade union representatives at the sharp edge are being shown by experience to be particularly vulnerable, not only to victimisation by employers, but also to a vindictive campaign to silence their voice in the workplace.
- 2.2 These attacks on trade unions are now being led by organisations such as the Trade Union Reform Campaign (TURC) consisting mainly of right wing Tory backbenchers,<sup>8</sup> one of whom at least appeared content to be at a social function in the company of a third party wearing a Nazi uniform.<sup>9</sup> The other prominent organisation in this campaign is the so-called Taxpayers' Alliance (TPA), which is very effective in securing mass media coverage for what appears to be a very Conservative political agenda. Whereas the former (TURC) is largely a one trick pony, the former (TPA) campaigns on a number of issues, though attacks on trade union freedom is prominent amongst them.

### trade union reform campaign (TURC)

- 2.3 The Trade Union Reform Campaign (TURC) was formed in 2010, a key player it seems being Mr Aidan Burley, Tory MP for Cannock Chase, who appears to have lobbied hard to reduce trade union influence in public sector workplaces in particular. Encouraged by Mr David Cameron,<sup>10</sup> Mr Burley has raised questions in Parliament, introduced the matter in an Adjournment Debate,<sup>11</sup> and responded to Cabinet Office consultations which he himself helped to initiate.
- 2.4 The website of the TURC now boasts a 'parliamentary council', which consists of a glittering array of parliamentary stars from the Tory backbenches, albeit most of whom have yet to reach the prominence to which they may aspire. Apart from Burley, they include Nigel Adams MP, Stuart Andrew MP, Karen Bradley MP, Fiona Bruce MP, Caroline Dinanage MP, Liam Fox MP, Matthew Hancock MP, Stephen Mosley MP, Dominic Raab MP, Simon Reeve MP, and Alec Shelbrooke MP.
- 2.5 In terms of its objectives, the website reveals that the TURC campaigns 'for reform of the laws and funding arrangements relating to trade unions'. Reassuringly, '[it does] not oppose trade unions right to exist and to campaign on issues which are important to them'. But it believes that the taxpayer should not be 'forced' to pay for trade union campaigns either directly or indirectly. On this TURC can rest easy: the taxpayer does not pay for trade union campaigns, whether directly or indirectly. TURC also provides 'quality research' into trade union related affairs, though none of this research appears to have been published, even allowing for the fact that 'quality' is in the eye of the beholder.

#### Box 2.1

##### TURC Demands

- Public bodies should not pay for time spent by employees on trade union activity.
- The Trade Union Modernisation and Trade Union Learning Fund should be scrapped.
- Public bodies should charge commercial rates for trade union usage of facilities.
- Public bodies should not be involved in the collection of trade union dues.
- Until TURC's objectives are achieved, all public money, resources, paid and unpaid time off given to trade unions should be accounted for and regularly published.

- 2.6 Unlike the trade unions that are the main target of its bile, the TURC appears not to be required to reveal the sources of its income or to publish its accounts,<sup>12</sup> unless it could be said in light of its origins and published support to be a members' association for the purposes of the Political Parties, Elections and Referendums Act 2000, though this would be a matter for the Electoral Commission.<sup>13</sup> The point may,

**Box 2.2**

**Letter from David Cameron to Aidan Burley<sup>16</sup>**



**Rt Hon David Cameron MP**  
Leader of the Conservative Party

Aidan Burley MP  
House of Commons  
London  
SW1A 0AA

Wednesday, 23 November 2011

Dear Aidan,

Thank you for your letter of 11 November, regarding the funding of trade union officials from the public purse. I am pleased that you have decided to establish the Trade Union Reform Campaign (TURC), as I strongly believe the current level of public subsidy to the trade unions cannot be sustained, either morally or economically.

I believe trade unions are an important part of a free society. Few would take issue with the unions working on behalf of their members in government departments and other public bodies in their own time, or with union funding.

However, at a time when across the private and public sectors people are having to take very difficult decisions in order to save money, it is difficult to justify some people in the public sector being paid not to do the job they are employed for, but instead to undertake full time trade union activities – much of which should be funded by the unions themselves. We need to question why the public is paying for so much, and whether this is sustainable going forward.

Labour cannot distance itself from this scandal. As we all know, today Labour is reliant on the unions for 85 per cent of its funding, even more than under Gordon Brown. That is the same unions that got Ed Miliband elected as Labour leader, who deny this country's deficit, and who are threatening a wave of strikes this winter. No wonder Labour object to us questioning this practice.

I know that your new campaign group is keen to undertake further research into this matter and look at, in particular, the number of 'Full Time Equivalents' working on trade union activities at public expense. I look forward to receiving your research over the coming months.

Thank you, once again, for all the work you are doing on this issue, and I wish your new Trade Union Reform Campaign all the best.

Yours,  
David

however, be academic, given that it is an 'organisation', said to be 'run on a voluntary basis by people who work in both the public and private sectors, outside of their normal work hours'.<sup>14</sup> The volunteers include a chief executive, a press officer, a social media adviser, and a director of operations, all of whom it appears work for free, it being unclear whether this constitutes a donation in kind.<sup>15</sup>

## the taxpayers' alliance

- 2.7 According to its website, the Taxpayers' Alliance was set up by two individuals in 2004, ostensibly 'to speak for ordinary taxpayers fed up with government waste, increasing taxation, and a lack of transparency in all levels of government'.<sup>17</sup> Apparently, 'no party was standing up for taxpayers and nearly all politicians were committed to bigger government, higher spending and secretive deals behind closed doors'. So far as trade unions are concerned, TPA claim to have been 'the first to uncover how much taxpayers' money was given to trade unions and our campaign against these subsidies has gained broad political support'.
- 2.8 A striking feature of the TPA website, however, is its total lack of transparency. It does not publish a list of its '65,000' members or supporters, it does not provide details on its website of its governance structures to reveal whether they are democratic or not, and it does not provide information about income and expenditure. And despite its bizarre concern about trade union salaries and the 'trade union rich list', it does not reveal the salaries of its senior employees. However, a *Guardian* investigation revealed that it had an annual income in excess of £1 million, with a suite at Westminster to house the TPA's 14 staff being donated by a wealthy businessman called David Alberto.<sup>18</sup>
- 2.9 Although it denies being a 'Conservative Party front organization', many of the TPA's donors are said to be 'prominent members of the Conservative Party', with '60% of donations [coming] from individuals or groups giving more than £5,000'.<sup>19</sup> They are said by the *Guardian* to include the Midlands Industrial Council, Sir Anthony Bamford (of the JCB Group), and Stuart Wheeler (who gave the Conservatives £5m before switching to UKIP).<sup>20</sup> Other businessmen said by the *Guardian* to have been named by TPA as supporters include Sir Rocco Forte and Sir John Craven, formerly chairman of Lonmin,<sup>21</sup> who had resigned before the Marikana massacre in which 34 mine-workers were shot dead by police.<sup>22</sup>
- 2.10 It is also clear that the TPA has close links with right wing Tory MPs and with other right-leaning think tanks. It has nevertheless been very effective with its simplistic and superficial demands for trade union facility time in the public sector to be cut to reflect the 0.04% of the total pay bill in the private sector (despite trade union density being much higher than in the private sector). In making these demands, there is no consideration of the real problems of victimisation faced by real people in real workplaces. Nor curiously, is there any consideration of the fact that British law in this area falls short of the requirements of international law, and in particular a treaty that was (*sotto voce*) ratified by a Conservative government.<sup>23</sup>

### Box 2.3

#### Ten Minute Rule Bill 2011

On 11 January 2011, Tory MP Jesse Norman sought leave 'to bring in a Bill to provide that pay for hours worked on behalf of trade unions by trade union officials during hours when they are paid by an employer should be refunded to the employer by the trade union; and for connected purposes'.<sup>24</sup> According to Norman, the Bill addressed an issue that had recently attracted great public attention, having previously been raised in an Adjournment debate by his hon Friend the Member for Cannock Chase (Mr Burley), to whom he paid 'tribute'.<sup>25</sup> This is the same Burley who was later to be reported in the *Mail on Sunday* as having attended a party at which a Nazi uniform had been worn and at which a Nazi toast had been proposed.<sup>26</sup> It was also the same Burley who is reported as having denounced the Olympic opening ceremony as 'multi-cultural crap'.<sup>27</sup>

As the authors of this timely report note in their opening sentence, “There is no shortage of laws protecting the right to be a trade union member and to take part in the activities of a trade union”. And yet, as the report goes on to analyse, there is daily evidence that a growing number of trade union representatives are suffering from blacklisting and victimisation. Moreover, this is happening against a backdrop of a sustained and vindictive campaign of attack from the government, the press and from right wing pressure groups aimed at silencing the union voice at work.

The authors – Alan Bogg and Keith Ewing – outline the political nature of these attacks, focusing on the victimisation of trade unionists by employers and on government proposals to restrict workplace facilities for union representatives. In both instances the authors consider the legality of the attacks with reference to UK administrative law, UK labour law and human rights law as established by the European Convention on Human Rights and developed by recent case law at the European Court of Human Rights. The authors conclude that the UK is “a rogue state” when measured against the “modest yard stick of international human rights law” and they finish by offering a “ten point manifesto as a blueprint for political action and legal reform.”

The publication opens with Forewords from Bob Crow, General Secretary of the transport union, RMT and from Mark Serwotka, General Secretary of the public services union, PCS. It concludes with a useful appendix on the rights of trade union representatives in other countries.



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