

# The Conservative Government's Proposed Strike Ballot Thresholds: The Challenge to the Trade Unions

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## **Abstract and Summary of Key Findings**

*Persistent disruptive bouts of strike action in recent years by teachers, civil servants, firefighters, and rail and London Underground workers amongst others, sometimes called with only a small proportion of union members voting in favour of strike action, has provided the backcloth to the publication on 15 July of a Trade Union Bill by the newly elected majority Conservative government. The Bill promises (amongst a variety of other measures) the most sweeping and radical tightening of the rules on industrial action seen since the Thatcher era of the 1980s with a minimum 50 per cent ballot participation threshold alongside a requirement for unions in 'important public services' to obtain a minimum 40 per cent majority of all those eligible to vote. It would have a devastating effect on many unions' ability to take lawful industrial action.*

*This Salford Business School Research Paper explores the following research questions:*

- To what extent are the Conservatives justified in pointing to a 'democratic deficit' in which a majority of indifferent union members have surrendered control over whether to strike to a committed minority?*
- How can we explain strike ballot participation rates? Why do some union members not vote?*
- To what extent does the secret individual postal balloting process affect the level of participation?*
- What other factors might potentially influence whether union members vote or not?*
- How are the unions likely to fare in the face of the Conservative government's two new balloting thresholds?*

*To answer such questions the paper first explores the justification and underlying motivation for the introduction of new tougher strike ballot laws, and the illogical implications of such provisions which do not apply to any other ballots. After considering some alternative ways to potentially increase ballot turnouts advocated by the TUC and some unions, notably online voting, the paper questions whether the implementation of such an essentially technical and procedural measure would increase balloting turn-outs to meet the Conservatives' threshold levels.*

*Drawing on a range of existing academic and practitioner literature over a number of years, it compares the restrictive parliamentary model of democracy underlying the secret individual postal balloting process, compared with a participatory model of democracy based on collective decision making at workplace union meetings.*

*It proceeds to identify the multi-dimensional enabling/inhibiting factors for strike ballot participation, including both general factors (economic/employment restructuring, employment legislation, strike defeats and 'demonstration effect', and electoral and political disengagement within society more generally) as well as specific factors (size and nature of unions, nature of the workforce, management structures and behaviour, role of national trade union leadership, and health of workplace union organisation).*

*In order to examine the potential effects of the proposed legislation, the paper then retrospectively applies it to previously held ballots by analysing a database the authors have compiled of 162 industrial action ballots, 158 of which are strike ballots, involving 28 different trade unions (including BFAWU, CWU, FBU, NUT, RMT, UCW, Unison and Unite) over the period 1997-2015. Although the database confirms Electoral Reform Services statistics which show unions have generally been overwhelmingly successful in winning majority 'yes' votes in favour of strike action under the existing legislation, it also provides evidence to suggest they have often failed to achieve the Tories' proposed 50 per cent participation threshold:*

- *Only 85 of the 158 strike ballots covered by the database reached the 50 per cent target, and the number of workers who failed to reach the target was completely disproportionate to those that did – while 444,000 workers could have taken strike action because they had a turnout rate of over 50 per cent, 3.3 million workers would have been prevented from going on strike. Even if you take out the large-scale 2011 public sector strikes, it still means 880,000 workers would, under the proposed legislation, no longer have been able to go on strike.*

*As a result some major national strikes would have been deprived of legal protection under the proposed legislation, especially those relating to national bargaining in the public sector.*

*Even when unions have succeeded in reaching the 50 per cent turnout, some would still fail to obtain the 40 per cent majority threshold of those eligible to vote, although these would not necessarily be affected by the proposed legislation which only applies to the specified 'important public services'.*

- *Out of 90 strike ballots in the 'important public services' covered by the database, 55 of them produced turnouts in which more than 40 per cent of the electorate voted 'yes', such that the proposed legislation would have reduced the number of strikes in these areas by nearly 40 per cent.*

*However there are important differences by sector:*

- *The proposed legislation would have had no effect on the Fire Service because all 11 strike ballots cleared the 40 per cent threshold with an average of 54 per cent of balloted workers supporting strike action.*
- *The picture is completely different in Health where only 2 of the 5 national strikes would have cleared the 40 per cent threshold. Of those that failed to meet the 40 per cent, only 20 per cent of eligible voters supported the action. It is the small specialist unions that achieved the highest turnout and high support for strike action.*
- *The picture in education is more nuanced; only 19 of the 29 strike ballots would have been able to go ahead, but while every ballot conducted in an individual school would have passed the 40 per cent threshold, only two national strikes did so and neither of these involved the main teaching unions.*

- *In transport, only 23 of the 44 strikes cleared the 40 per cent threshold, so the proposed legislation would have prevented half of transport strikes. However, again there was variation, for example, while the BA cabin crew ballots easily cleared the 40 per cent hurdle, a recent Greater London bus workers ballot would not, and while the proposed legislation would have little effect on strike ballots in the railway sector it would have prevented most strikes on London Underground.*
- *The one strike ballot that could be regarded as border security would have been prevented by the new legislation.*

*On the basis of the database evidence available, while the 50 per cent threshold would dramatically reduce the number of legally protected strikes, the introduction of an additional 40 per cent threshold for the 'important public services' would have very little further effect. Nonetheless, overall many unions will find the legislation will make it very difficult for them to mount officially sanctioned strikes as a means of challenging employers in national negotiations and in response to government-initiated austerity measures, especially those relating to national bargaining in the public sector.*

*The paper identifies some important contributory factors to more positive voting participation rates:*

- *There is a clear overall tendency for workplace, area or single employer ballots to obtain 'higher' turnouts and national ballots to obtain 'lower' turnouts.*
- *Unions with members who have close occupational identities and solidaristic loyalties also appear to often be able to generate relatively higher strike ballot votes than more general unions.*
- *There is evidence the role of union leadership - specifically the influence of left-wing leadership - can also be a positive enabling factor.*

*The paper concludes by reflecting on the unions' potential response to the forthcoming new legislation, including official union opposition, the use of more strategic balloting of selective groups of workers confident of achieving the thresholds, 'leverage' and 'citizen bargaining', and unofficial and 'wildcat' strike action.*

# The Conservative Government's Proposed Strike Ballot Thresholds: The Challenge to the Trade Unions

## Introduction

Even though strike levels in the UK have fallen to their lowest ever historical levels, the far reaching effects of persistent bouts of strike action in recent years (notably within the public sector), sometimes called with only a small proportion of union members voting, has provided the backcloth to the publication on 15 July of a Trade Union Bill by the newly elected majority Conservative government. National strikes by teachers, civil servants, and firefighters, a threatened national strike on Network Rail, and the complete shutdown of the London Underground network by four unions engaging in 24-hour strike action, have all served to illustrate the potential disruptive impact of strike action on the wider public. Hence the government's attempt to rush into law the most sweeping and radical tightening of the rules on industrial action seen since the Thatcher era of the 1980s with new voting thresholds in trade union strike ballots,<sup>1</sup> as well as a variety of other restrictive measures beyond the remit of this paper.<sup>2</sup> The legislation proposes enormous obstacles to unions' ability to strike and may produce the biggest showdown over industrial relations for a generation.

Between 1980 and 1993, a series of Conservative laws made it more difficult for unions to take strike action and remain within the law, with specific measures requiring unions to organise secret postal ballots in respect of industrial action contained within the Trade Union Act (1984), Employment Act (1988) and associated regulations and Code of Practice (Undy and Martin, 1984), which the New Labour governments during 1997-2010 and the Conservative/Liberal Democrat coalition government of 2010-15 left on the statute book. As a result of such changes, the UK laws on industrial action ballots are widely regarded as some of the strictest in Europe; even though making comparisons with other

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<sup>1</sup> While strictly speaking the legislation proposed refers to 'industrial action' and thereby embraces both strikes as well as action short of a strike, this paper will concentrate attention and refer from here on to 'strike ballots'.

<sup>2</sup> This paper concentrates purely on the strike balloting thresholds, but amongst other measures included are: the removal of the ban (in place since 1973) on using agency workers to cover for striking workers; a new requirement for 14 days' notice (instead of the current 7 days) of planned strike dates; a time limit of 4 months after the date of each ballot to prevent unions undertaking action based on historic strike ballots and to make it harder to engage in rolling strike action; making it an offence for trade unions not to supervise picketing arrangements, with a named individual required to be available to ensure union members comply with an existing Code of Practice that sets a maximum number of only six pickets and requires only peaceful persuasion (rather than 'intimidation') of others not to work; moves to force unions to make members' contributions to their political fund an 'opt-in' arrangement (rather than as currently 'opt-out'), to be confirmed every 5 years, in an effort to reduce the ability of trade unions to donate money to the Labour Party or any other party, as well as a wide range of other non-party political activities; regulations requiring public authorities to publish detailed information on union reps employed by them who have to time-off work ('facility time') to carry out union duties and activities, in a bid to encourage employers to set a limit on the proportion of working time taken and the total amount of money spent on such facility time; measures to increase the remit and powers of the Certification Officer to investigate alleged breaches of statutory provisions and to impose financial penalties on trade unions.

countries is not straightforward, in some countries unions are not required to hold a ballot to call industrial action, and of those that do, few specify a turnout threshold; most require a simple majority to back action.

The new Conservative majority government's proposed legislation aimed at further tightening up such balloting regulations contains two aspects with respect to strike mandates. First, all unions will have to persuade a minimum of 50 per cent of their members eligible to vote to participate in any strike ballot in order for it to be lawful (currently balloting rules do not require any specific level of participation by union members). Thus in a strike ballot of 1,000 eligible union members at least 500 would have to participate; a participation rate of 499 members would be invalid on the basis of being less than the required 50 per cent threshold. The PCS civil servants' union, which frequently calls strikes amongst its members, has never achieved a 50 per cent turnout on a national ballot in recent years; neither on a national ballot has the NUT teachers' union.

Secondly, in six specified so-called 'important public services' – health services, education of those aged under 17, fire services, transport services, border security, and nuclear decommissioning including the management of radioactive waste and spent fuel – an additional threshold will have to be met. As well as obtaining the 50 per cent minimum turnout, at least 40 per cent of those eligible to vote must support strike action for it to be lawful (ballots currently require a simple majority to back action).<sup>3</sup> Thus in a strike ballot of 1,000 eligible union members (embracing such workers as firefighters, nurses, teachers, or railways and tube workers) at least 400 would have to back strike action. A vote by 399 members in favour of strike action and no votes against (in other words, a 100 per cent majority of those who voted) would be regarded as invalid on the basis of being less than the required 40 per cent majority threshold. As TUC general secretary Frances O'Grady has claimed: 'The Conservative Party is not just proposing a few more bureaucratic obstacles that will make life a bit more difficult for trade unions... they would effectively ban strikes by the back door...[introducing a] threshold no other ballot in Britain is required to meet and that many would fail....effectively end[ing] the right to strike in the public sector' (*BBC News*, 7 September, 2014).

The clamour to introduce higher strike ballot thresholds gathered pace in June 2010 with a Confederation of British Industry report entitled *Making Britain the Place to Work* (CBI, 2010) which aimed to set the agenda for the new coalition government's labour policy. The CBI argued that the individual and collective rights introduced under New Labour had made the British economy uncompetitive in a changed global economy. Alongside a raft of measures to roll back the new employment rights, the CBI proposed the introduction of new requirements for a minimum threshold of 40 per cent support among members for strike action. The right-wing press (in particular the *Express* and *Times* in their editorials) enthusiastically took up the campaign. Mayor of London, Boris Johnson, following clashes with the RMT union over a London Underground strike organised on the basis of a relatively low ballot turnout, took the CBI proposals to the Conservative Party conference, focusing in particular on the restriction on the right to strike which he argued was needed in order to avoid disruption to the Olympic Games in 2012 (*Daily Telegraph*, 4 October 2010). Similar

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<sup>3</sup> This is the same threshold that applies in ballots for union recognition under the statutory recognition procedure).

arguments were marshalled in a Policy Exchange think-tank report (2010) and Greater London Authority Conservatives Report on the London Underground (Tracey, 2013).

The 'democratic legitimacy' of strike mandates and the debate about minimum turnouts in union ballots was subsequently brought into sharp relief following alleged derisory voting levels in ballots by a number of other public sector workers. For example, when PCS threatened strike action over cuts to jobs and a pay freeze by border agency and passport guards on the eve of the 2012 Olympics on the basis of a 20 per cent ballot turnout of members (on a 57.2 per cent vote in favour), Dominic Raab, Conservative MP, said: 'These reckless and damaging strikes strengthen the case for a voting threshold, so the militant minority can't hold the hardworking majority to ransom. It can't be right that union bosses can paralyse vital infrastructure and humiliate the nation on a malicious whim, when just 11 per cent of their members support strike action' (*Daily Telegraph*, 19 July 2012).

With such considerations in mind, this paper seeks to explore the following research questions:

- To what extent are the Conservatives justified in pointing to a 'democratic deficit' in which a majority of indifferent union members have surrendered control over whether to strike to a committed minority?
- How can we explain strike ballot participation rates? Why do some union members *not* vote?
- To what extent does the secret individual postal balloting process affect the level of participation?
- What *other* factors might potentially influence whether union members vote or not?
- How are the unions likely to fare in the face of the Conservative government's two new balloting thresholds?

To answer such questions the paper first explores the justification and underlying motivation for the introduction of new tougher strike ballot laws, and the illogical implications of such provisions which do not apply to any other ballots. After considering some alternative ways to potentially increase ballot turnouts advocated by the TUC and some unions, notably online voting, the paper questions whether the implementation of such an essentially technical and procedural measure would increase balloting turn-outs to meet the Conservatives' threshold levels. Drawing on a range of existing academic and practitioner literature over a number of years (including Fairbrother, 1984; Fredman, 1992; Martin et al, 1991; 1995; Simpson, 2002; Undy and Martin, 1984; Undy et al, 1996), it compares the restrictive parliamentary model of democracy underlying the secret individual postal balloting process, compared with a participatory model of democracy based on collective decision making at workplace union meetings.

It proceeds to identify the multi-dimensional enabling/inhibiting factors for strike ballot participation, including both *general* factors (economic/employment restructuring, employment legislation, strike defeats and 'demonstration effect', and electoral and political disengagement within society more generally) as well as *specific* factors (size and

nature of unions, nature of the workforce, management structures and behaviour, role of national trade union leadership, and health of workplace union organisation.

In order to examine the potential effects of the proposed legislation, the paper then retrospectively applies it to previously held ballots by analysing a database the authors have compiled of 162 industrial action ballots, 158 of which are strike ballots, involving 28 different trade unions (including BFAWU, CWU, FBU, NUT, RMT, UCW, Unison and Unite) over the period 1997-2015. Although our database confirms Electoral Reform Services statistics which show unions have generally been overwhelmingly successful in winning majority 'yes' votes in favour of strike action under the existing legislation, it also provides evidence to suggest they have often failed to achieve the Tories' proposed 50 per cent participation threshold, and that even when they have done so, some unions have still failed to obtain the 40 per cent majority threshold of those eligible to vote, albeit there are significant variations across different sectors, unions and ballots. While the introduction of an additional 40 per cent threshold for the 'important public services' would have little *further* effect, many unions will clearly find the legislation will make it very difficult for them to mount officially sanctioned strikes as a means of challenging employers in national collective bargaining negotiations and government-initiated austerity measures. The paper identifies some important contributory factors to more positive voting figures, including the size and location of the numbers of workers being balloted (local v national); degree of occupational identity and solidaristic loyalty; and the link between left-wing union leadership, collective mobilisation and strike ballot participation rates. It concludes by reflecting on the unions' potential response to the forthcoming new legislation.

## **Justification and motivation**

Not surprisingly many business leaders have welcomed the prospect of another round of legislation on strike action with its introduction of ballot participation thresholds, concurring with the Conservatives that it would stop strike action on the basis of ballots that only involve a minority of members, thereby increasing the democratic legitimacy of action taken by unions. As the new Conservative government's Business Secretary, Sajid Javid, has claimed: 'We've seen...in the last five years, strike action that took place where perhaps only 10 per cent to 15 per cent of the members of that profession actually voted for it, and that's not right, it's unfair' (*BBC News*, 12 May 2015). It has been claimed that of the 119 major ballots for industrial action between August 2010 and December 2014, nearly three quarters would have been invalid under the proposed rules, with strikes in some cases going ahead with the support of as few as one in 10 workers (*Daily Mail*, 12 May 2015).<sup>4</sup>

In addition, business leaders have welcomed the Conservative's plans to introduce a second majority vote threshold in 'important' public services, on the basis that strike action in these areas can have far-reaching adverse effects on a wide range of third parties who have no association with the dispute, with a strike in health impacting on patients, a strike in teaching affecting parents and a transport strike affecting commuters and businesses (DBIS, 2015a). Thus while Simon Walker, director-general of the Institute of Directors, acknowledges the right to strike is a 'fundamental part of our democracy', has argued 'that

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<sup>4</sup> It should be noted the source of these figures is unstated and is unknown to the authors.

does not mean public sector unions should be able to bring mass disruption to commuters, parents and people who need public services on the basis of ...very small turnouts' (*Financial Times*, 10 January 2015). Likewise John Longworth, director-general of the Chambers of Commerce, has commented: 'When it comes to transport, education and health, which individuals and business depend on, the right to strike must only be exercised with the greatest restraint. So higher standards should apply when a strike would put people at risk or affect the ability of large numbers of their fellow citizens to earn a living' (*Financial Times*, 10 January 2015). As Sajid Javid has made clear, 'by increasing the thresholds it will certainly increase the hurdles that need to be crossed', and at the same time tackle the 'disproportionate impact of strikes' in these areas (*BBC News*, 12 May 2015). In the process the proposals are seen as a 'commonsensical attempt to prevent unrepresentative, highly-politicised activists from hijacking unenthusiastic workforces' on the basis 'there has always been a gulf between union leaders and their membership...this is the government's chance to isolate and discredit the headbangers' (*Daily Telegraph*, 13 May 2015).

Katja Hall, CBI deputy director-general, has welcomed the reforms to 'outdated industrial relations laws' (*Guardian*, 15 July 2015), with the introduction of balloting thresholds 'an important, but fair, step to rebalance the interest of employers, employees, the public and the rights of trade unions' (*Daily Mail*, 10 January 2015). By contrast the TUC have claimed, imposing such minimum turnouts would leave unions with 'about as much power as Oliver Twist when he asked for more' (*Guardian*, 12 May 2015). Certainly, as a recent International Labour Organisation report (ILO, 2015) has reiterated, the right to strike is a fundamental right to free association. But it is not simply a right to come together as a discussion group or to advocate an idea or a cause; it is the right to act in concert as much as it is to combine. With the social and economic power of employers much greater than that of the individual worker, the right to strike is a necessary collective means to redress the imbalance of the employer/employee relationship (Kahn Freund and Hepple, 1972; McFarlane, 1981; Wedderburn, 1995).

From this perspective, the government's legislation would effectively undermine collective bargaining by removing the implicit strike threat from the union side. Such a shift in the balance of power away from ordinary workers would further undermine the pay and conditions of workers, exacerbate the growing gulf between wages and the cost of living, increase inequality, and destroy long-established workplace rights introduced to protect employees from exploitation (*Labour Research*, 2014; *Centre for Social and Labour Studies*, 2015). Ironically, although Prime Minister David Cameron has declared he wants the Conservatives to be the 'party of working people' (*Daily Telegraph*, 12 May 2015), he is committed to making it harder for those people to organise themselves in a trade union.

In some respects, the pledge to introduce further restrictive regulation of strike balloting might seem ironical given that, according to the three different main indicators of strike activity in the UK (number of strikes, number of workers involved, and number of strike days lost), strike activity has for the last 20 years remained at historically low levels. Of course there have been some very large set-piece one-day public sector strikes over pensions in June and November 2011 and over pay, pensions and workload in July 2014 (Gall and Cohen, 2013; Hale, 2007; 2008; 2009; 2010; 2012; Lyddon, 1998; 2007; 2009), but such spikes have not altered the overall trend. Nor has sporadic one-day national strikes by

civil servants, teachers, firefighters, and rail network and London Underground workers. Whatever the public profile of such disputes, levels of strike action remain at very low levels compared to the heyday of union militancy in the 1970s and 1980s, with average number of working days lost through strikes between 1980-1989 at 7.2 million compared to the period 2010-14 when it was 647,000, albeit slightly higher in 2014 at 788,000 (Office for National Statistics, 2015). Indeed what is notable about when the Conservative government introduced balloting reforms in the early 1980s is that it was on the back of a wave of industrial discontent, whereas today union militancy has been considerably diminished. So what is it that actually explains the pressure for legislative change, and what are the underlying real motivations? Arguably there are three factors at play.

First, there is the Conservatives' ideological agenda of seeking to utilise austerity and the government's neoliberal offensive as a means to impose even further restrictions on a relatively weak and defensive trade union movement so as to cement that weakness. Second, there is the location of those strikes that still do take place, namely in so-called 'monopoly sectors' like transport and communication and the public services, and the nature of these strikes, which have tended to be relatively large and with immediate and direct effect on essential services and the public, for example closing down schools, disrupting the fire service, and paralysing the railway and London tube networks (Gall, 2010).

Third, notwithstanding historically low levels of strike activity overall, it would appear the Conservatives' perceived 'problem' is less one that exists *now* than one that is foreseen and feared in the *future*. With an economic and political imperative to proceed with much deeper spending cuts than previously and to maintain a 1 per cent freeze on public sector pay over a 4-year period, the new Conservative government's proposed legislation appears to have been principally designed to try to make it much harder for unions to take strike action and to weaken potential future union resistance to more austerity. As Dave Ward, the new general secretary of the Communication Workers Union (CWU), has said: 'This is a Tory government that is planning to undermine the incomes and conditions of working people whilst at the same time cynically sabotaging the very means they have to speak out in protest' (*Express and Star*, 27 May 2015).

## **Illogical implications**

Stanley (2014) has compellingly pointed out there is illogicality to the Conservative's requirements for strike ballots to have a 50 per cent turnout before they are considered valid. He utilises the example of two hypothetical strike ballots of two different 1,000 strong workforces. In Acme Rivets, there is an overwhelming vote for action, with 495 in favour and 4 against, whereas in Gradgrind Mills the workforce are more divided, voting for action by just one vote, 251 in favour and 250 against. Union negotiators might be wary of calling action in Gradgrind Mills as the vote reveals a divided workforce, and the employer might not feel under pressure to make a much better offer. But in Acme Rivets there is a clear mandate for action, and any employer would find the vote impressive. However, under the Conservative's plans, a strike in Acme Rivets would be illegal as the turnout is just below the 50 per cent threshold needed to make action lawful. By contrast, despite the split vote at Gradgrind Mills, and even though 244 fewer workers voted for action, a strike would be

legal. But if only one person who voted ‘no’ abstained instead, the vote would become invalid as the turnout would no longer be in excess of 50 per cent.

As Stanley (2014) has explained, under the proposals the people who do *not* vote in a strike ballot attain a special status. First, they are assumed to, in effect, be opponents of strike action. Yet arguably whilst apathy or lack of opinion might be anathema for active trade unionists, it is nonetheless a legitimate position, and does not equate to supporting one side or the other. The fact that they do *not* vote does not necessarily mean that if they had they would have voted *against* taking strike action. Second, the special status of the person who does not vote goes further in that they can potentially have greater weight than those who oppose the action and take the trouble to register a vote. So if there were 1,000 people eligible to vote in a strike ballot and 499 voted in favour it would nullify the validity of the vote, as the turnout would fall below 50 per cent on the basis of one abstention.

In reality, we cannot really infer the intent of those who do not vote. All we really know about non-voters is that they don’t know, are not sure, or do not care enough to participate when they are provided a chance – and therefore it could be argued that they should not get to help to decide. In fact, thresholds would make it theoretically more beneficial for active opponents of strike action to collectively *non-vote* if they knew they were in the minority, since by not voting they could prevent it reaching the imposed ‘legitimatising’ threshold and thus defeat the strike decision, whereas by actually voting ‘no’ when they knew most would vote ‘yes’ they would be guaranteeing passage. In other words, the legislation could potentially *reduce* participation rates.

Strike ballots were initially enacted in the early 1980s with the expectation that union members would generally be reluctant to take action and would vote accordingly, such that the incidence of strikes would be reduced. Yet the argument that the so-called ‘silent majority’ would vote in a ballot against ‘hot-headed’ militant union leaderships has proved to be false; since strike votes have been formally measurable it can be shown that most members support their leaders’ recommendations to strike.

Trade union strike ballots 2007-2014

Year	Ballots calling for ‘strike action’	Ballots voting FOR strike action	Ballots voting AGAINST strike action	Split result
2007	713	637	64	12
2008	794	658	123	13
2009	561	458	93	10
2010	555	487	61	7
2011	964	904	51	9
2012	585	487	89	8
2013	469	417	48	4
2014	628	550	68	10

Source: Office for National Statistics, 2015

The frequent amendments to the legislation on industrial action ballots (of which the threshold measures are the latest initiative) are no doubt, in part at least, a response to employers' concerns that members' support for union claims registered in ballots can actually strengthen unions' bargaining position. Likewise the repeated legal challenges and threats of injunctions to trade unions' calls on members to take strike action which have been made by employers, often on the grounds of alleged failure to satisfy the complex statutory prescription for ballots and associated notices to employers (Simpson, 2012; 2013). Sometimes this legal action has succeeded and resulted in the ballot being suspended or strike cancelled (Gall, 2006); for example, Unite was taken to the High Court by British Airways in 2010, over a long-running dispute with cabin crew. Despite eight out of ten workers voting for strike action on the back of a 78 per cent ballot turnout, the High Court judge banned the strike because the union had failed to give notice by text message that eleven out of 9,282 votes had been spoilt. But the employers' use of legal action is also a reflection of the fact that the introduction of postal industrial action ballots has manifestly failed in its intention of preventing workers from voting in favour of strikes.

Unions do not necessarily take strike action following a positive mandate. Indeed there have always been far more successful ballots and notices of strike action than actual strikes. It is the willingness of union members to vote in favour of, and participate in strike action, that has resulted in unions using ballots as a negotiation tactic, as a means of attempting to force employers to make concessions previously denied. Often the strike threat, stemming from a successful ballot, can act as a proxy for a strike itself, as the employer becomes willing to make compromises and the union is able to achieve a more favourable settlement without the need to take action (Brown and Wadhvani, 1190: 62). Nonetheless, a sizeable number of ballots will result in a credible prospect of strike action occurring (Gall, 2006: 335-6).

There is also the argument that it is not reasonable to impose electoral thresholds which do not apply to the UK's political system generally. Thus there have been a number of recent local elections in which turnout has been nowhere near 50 per cent. In the 2008 London Mayoral election it was just 45 per cent and in 2012 Boris Johnson was elected with less than 50 per cent of both first and second preference votes and on a turnout of only 38.1 per cent. The lowest ever by-election turnout of 18.2 per cent was recorded in the 2012 Manchester Central by-election (with the incumbent Labour MP Lucy Powell winning with just 12 per cent support). Recent local Police and Crime Commissioner elections have resulted in turnouts as low as 16.4 per cent in Northumbria and 10.3 per cent in the West Midlands.

A similar pattern has been played out in general elections. Turnout for the 2014 European Parliament elections was just over 34.2 per cent, and for the 2012 Alternative Vote (AV) electoral system referendum it was just 41 per cent. In the May 2015 general parliamentary elections only 37 per cent of voters and less than 25 per cent of the eligible electorate as a whole supported the Conservatives. David Cameron managed to obtain 60.1 per cent of the vote on a turnout of 70.2 per cent, but only 41.1 per cent of the eligible electorate, and the Chancellor George Osborne managed to obtain 58.6 per cent of the vote, on a turnout of 70.2 per cent, but only 41.1 per cent of the eligible electorate.

Yet despite these poor turnouts for political elections the Conservatives have not proposed similar thresholds to those that trade unions are going to be expected to meet.

## Competing models of union democracy

The TUC and many unions have pointed out that there are more proportionate and measured ways to address the issue of low ballot participation rates, and which attempt to overcome what is regarded as the main obstacle to higher voting levels: secret individual postal ballots sent to the home. As Frances O'Grady has said:

It is everyone's interest to ensure that as many people as possible participate, but the government has saddled unions with twentieth century postal balloting methods that make it harder for working people to do just that. Online voting is the way to bring balloting bang up to date and help ensure some equality in the workplace (*Independent*, 21 March 2015).

Removing the requirement for unions to post ballot papers to their members' home addresses (notably in an era when most post tends to be junk mail or bills) and instead allowing union members to complete ballot papers electronically via a secure online link on their work computers, home laptops, tablets or smartphones would seem likely to encourage increased voter turnout, as well as reduce the cost of ballots on unions considerably.<sup>5</sup> Such an initiative is part of a wider drive by pressure groups such as WebRoots Democracy, who campaign for the introduction of an online voting option in UK elections on the basis that, despite being able to email, follow, and tweet their elected MPs online, electors are not yet able to vote for them online. The pressure group maintain that to reverse growing political apathy and low electoral turnout in the UK, particularly among young people, the UK needs to introduce an online voting option in time for the 2020 General Election, as well as online trade union strike ballots by 2016. It is claimed the introduction of an online voting option could increase turnout in a General Election by up to 79 per cent, with up to an extra 9 million voters (WebRoots Democracy, 2015: 11-13). Likewise, according to PCS general secretary Mark Serwotka, turn-out in strike ballots would 'rocket' if union members were allowed to vote electronically or by phone (BBC News, 19 May 2015).

However, online voting does not always increase turnout, with data from Estonia – where online voting has been available since 2005 – showing that it is often people who were voting already who are switching to the service. Evidence from the University and College Union's (UCU) 2014 post-strike action online consultative ballot (as opposed to a strike ballot, albeit further strikes were implicit in a 'no' vote) on whether to accept revised pension change proposals was that voting levels may have been encouraged slightly, with a turnout recorded of 39.1 per cent (15,706 in total), involving 10,538 (67 per cent) voting 'yes' to accept and only 5,168 voting 'no' to reject (32.9 per cent). (UCU Circular, 26 January

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<sup>5</sup> The cost of strike ballots was initially borne by the state. The 1980 Employment Act encouraged the extension of postal ballots by providing state funding for the first time under statutory instrument; initially these applied to closed shop ballots but were extended by later Acts to include strike ballots. After a number of ballots, including strike ballots, had been made effectively compulsory, state funding was withdrawn with effect from 1996 by Statutory Instrument in 1993. The result has been that since 1996 unions can be obliged to spend many thousands of pounds on the balloting process.

2015). Yet even though online voting would undoubtedly make it technically easier for union members to participate in strike ballots, it does not overcome the inherent fragmentation and atomisation of the balloting process.

The more fundamental underlying problem is the way government legislative initiatives with respect to strike ballots over the last 30 years have often been successfully portrayed as a necessary means to increase union membership participation in critically important decisions, and thereby improve democracy - when arguably it has had very little to do with democracy, the objective being simply to make strike decisions and action more difficult (McCrystal and Novitz, 2012). This linking of ballots and democracy has always been central to the debate about secret postal ballots. A 1976 Conservative Party manifesto, *The Right Approach*, argued that the system of union democracy enshrined in union rulebooks did not function in practice. Because the members of many unions were required to attend branch meetings if they wished to vote on policy issues, elect their general secretary, or vote for industrial action, it was claimed they were controlled by unrepresentative minorities of militant and left-wing politically motivated activists. The vast majority of members were not willing or able to attend branch meetings or to take part in policy debates and elections.

The solution was seen to lie in introducing legislation that would make it compulsory for unions to involve members through secret postal ballots. This would, it was claimed, take power away from the militants and 'give the unions back to the members'. Union members would receive a ballot paper through the post and be asked in the isolation of their own homes to exercise their choice as to whether to vote 'yes' or 'no' to industrial action proposals (Undy and Martin, 1984: 15; Farnham and Pimlott: 1995: 127-128). The presumption was that decisions would be made on a more 'rational' basis if the individual worker was insulated from the direct pressures of work colleagues and union activists and the emotion of the mass meeting (Martin, et al, 1991: 198).

A central objective of the legislation was to sanctify through particular ballot procedures union members' participation as *individuals* rather than as members of a *collective* - involving a separation of the receipt of ballot papers from the workplace and the elevation of individualist over collectivist values as a means of subverting collective union organisation and orientations (Smith et, 1993; Martin et al, 1995; Undy and Martin, 1984; Undy et al, 1996). On the basis of what could be viewed as a *parliamentary model of democracy*, the level of participation in strike ballots has been viewed as a measure of union democracy, such that the higher the participation rate the more democratic the union (Edelstein and Warner, 1979: 63). In the process, it effectively dispensed with the need for dialogue, debate and continuous involvement by an active membership, and replaced it with a highly atomised one-off vote by a collection of aggregate individuals as the total sum of membership participation (Davies and Freedland, 1993: 484; Fredman, 1992: 29).

Critics of this parliamentary model of democracy argued the balloting legislation failed to recognise trade unions as collective organisations that were formed in order to increase the power of individual employees, with union strength dependent on members acting collectively to organise and express the conflicts inherent in the employment relationship (McIlroy, 1998: 154). Replacing collective decision making by individual secret ballots undermined (or prevented the emergence of) the solidarity required for effective

strike action. It essentially counter posed the idea of working class *collective* strength with that of *individual* rights and decisions, thereby fragmenting and isolating union members away from their fellow workers and in circumstances where they were most open to self-doubt and moderate ideas (Hyman, 1989: 247).

Fairbrother (1984) advocated an alternative *participatory model of democracy* which emphasised the central importance of collective membership participation and decision-making via a process of discussion, debate and examination of policies and decisions founded on the continuous interaction between union members and their reps. From this perspective:

Union democracy is...a continuous process rooted in the daily experience of most workers and involving a continuous struggle about the conditions of employment, the authority of employers and the organisation of work...

Disagreement and discussion, argument and counter-argument, are the key features of this process – a sign of the vitality and indeed the essence of union organisation. The reason for this is that the experience of members is often varied and there are not always obvious and clear-cut ways to proceed and advance the interests of the membership. Through meetings, discussions and debate, decisions are made and policy formulated (p. 23-24).

From this viewpoint it was argued that, compared with the secret individual postal ballot, a much more effective – and more genuinely democratic – channel for participation would involve discussions, debates and decisions *taken at workplace union meetings*. This would allow questions to be raised about, for instance, the likely length of the strike, its objectives and the ‘bottom line’ for a settlement. Under such circumstances, in which members were encouraged to actively participate in the deliberations, they would be more likely to understand the issues and arguments, and be in a better position to consider their collective interests than if they voted as isolated individuals at home, and where the only real ‘discussion’ of the proposal for many members would come in the form of a positive union recommendation, on the one hand, and negative media campaign, on the other. It would vastly increase membership participation in the process and be hugely more democratic.

Certainly when the Trade Union Act 1984 (TUA 1984) introduced a statutory requirement for trade unions to hold industrial action ballots which could be workplace ballots and to achieve a majority vote in favour of industrial action, it had the effect of increasing the levels of membership participation, according to an analysis of the turnout in workplace ballots between 1985 and 1993 (Undy et al, 1996: p. 220). A number of interviewed trade union officers estimated that turnout averaged 20 per cent in union branch-based systems and 50 per cent when conducted at the workplace. In one district of the AEU engineering union an average turnout of 81 per cent was recorded in 17 workplace industrial action ballots held during 1987, similar to the level achieved by the National Union of Mineworkers’(NUM) traditional workplace ballots. But in 1993 workplace ballots for strike action were banned by the Conservatives and only fully *postal* balloting was allowed, with the effect that it reduced the turnout compared to workplace ballots (p. 242). According to the Electoral Reform Balloting Services (ERBS, 1994: 3) who looked at 242 postal ballots in 1994, in ballots of over 1,000 members it fell to approximately 44 per cent. In other words, if the concern is simply to increase turnout then *workplace* ballots would

appear to represent a much better channel than a secret individual postal vote, but of course democracy and strike ballot legislation is not simply about turnouts.

As for the type of direct union democracy signalled in workplace mass meetings and show-of-hands strike votes, in the 1960s and 1970s these were often either held in canteens or in the car parks outside car factories and other workplaces (Thornett, 1987: 47-8; Darlington, 1994: 234). They were an expression of a collective form of decision making based on open debate, in an atmosphere of strong, dynamic worker interaction (Cohen, 2006: 166-7). The NUM's method of holding such ballots at the pithead was particularly attractive, as it gave every union member the right to vote, but under conditions which encouraged voting by reference to collective rather than merely individual self-interest. Indeed one commentator has gone so far as to comment: '...the use of strike meetings for reaching strike decisions...is perhaps the clearest expression to be found of industrial democracy at work' (McFarlane, 1981: 92-3).

Yet even in their heyday the notion of such mass workplace union meetings appeared to cut against the grain of society. As Beynon (1973: 305) noted, 'it is anathema to many people. Few things raise middle class Britain to a greater show of moral outrage than workers packed into large halls, voting on important issues by a show of hands'. Despite the caricature of the 'bad old days of trade union militancy' of the 1970s painted by the tabloid press, in which allegedly there was the potential for 'intimidation by union firebrands' at such open mass meetings (Crossman, 2014), it was not always the case that militant shop stewards were able to win support amongst shopfloor members for strike recommendations; sometimes the decisions made at such meetings involved constraints on the activities of stewards, with leadership strike calls being rejected (McCarthy, 1967: 22; Goodman and Whittingham, 1973: 191; 1999; Batstone et al, 1977: 92-3; Darlington, 2006: 494-497). Conversely although postal ballots have probably reduced industrial militancy by denying union negotiators the opportunity to call for strike votes at mass meetings in which appeals for solidarity could potentially more effectively overcome concern with individual profit and loss, postal ballots have not guaranteed moderation, such that the method and location of voting has not been a major determinant of outcome (despite its effect on participation) compared with other contingent factors (McCrystal and Novitz, 2012: 212).

Moreover there is much justification to the view that workers should have the right to take decisions at open workplace union meetings, whether this is by a show of hands or by a secret ballot held after the meeting - potentially in today's world being facilitated via online channels after the meeting - with all such elections subjected to independent scrutiny. It should be noted as a result of the New Labour government's Statutory Recognition Procedure, under which unions were given rights with respect to union recognition, balloting takes place at the workplace, in secret and under the supervision of a qualified independent person. A similar procedure in the case of industrial action ballots could be introduced in a fashion that would, to some extent at least, address the problem of low voter turnouts.

But even if such alternative ways of attempting to increase ballot vote participation are both justified and, if implemented, likely to succeed, there is nonetheless *still a serious doubt as to whether they would materially increase the turnout sufficient to meet the Conservatives new ballot thresholds*. Even if many unions were able to obtain a 50 per cent

participation rate, they would still find it very difficult, if not virtually impossible in some cases, to obtain the necessary 40 per cent majority vote. Such apparently insurmountable dilemmas raise the more *underlying question of why exactly turnouts in strike ballots are not higher*, and whether there are broader problems at stake for the unions - than merely attempting to ameliorate through technical means the method and location of voting – in confronting the Conservative’s proposed stringent legislation?

## **Other potential factors influencing participation rates**

How can we explain strike ballot participation rates? Why do some union members not vote? What are the different enhancing or inhibiting factors affecting participation? There are many potentially related and complex factors that could explain this. As we have seen, *if unions did not have to jump through the hoop of a bureaucratic and atomising secret individual postal balloting process, away from the collectivism and solidarity of the workplace, it is likely there would be a higher level of participation*. But beyond the balloting process, what other factors might come into play to explain why some union members participate and others abstain?

The apparent apathy of some union members in not voting might be caused by the fact they do not think the issue is important enough to them, or because they have busy working lives, families to care for, and a social life, and they just do not feel motivated enough to complete a voting paper and then take the initiative to post it. But as Paul Nowak (2011), deputy TUC general secretary, has suggested, lack of participation may also be because union members genuinely can’t make up their mind, and so decide to sit out the vote to see what others think; or whilst they may be very sympathetic to the union cause, they hold back from voting on the assumption that strike action is a ‘big deal’ and will cost them lost wages; or they may balance the cost of the substantive issue at stake – for example, with government proposals on pensions meaning they would pay more, work longer, and get less - with an understandable reluctance to do anything that could impact on their patients, pupils or members of the public who rely on them, and therefore they defer their decision in the hope that an agreed compromise settlement might be reached.

It should be noted when proposals for strikes were voted for in mass meetings in factory canteens or car parks in the strike-prone days of the 1970s, anecdotal evidence suggests few people abstained (Thornett, 1987). Of course, in large part this may have reflected a more confident belief in the strength of unions and their prospects of strike success. Nonetheless, even during these times, some people in mass meetings were no doubt more hesitant to put their hands up than others. When it comes to today’s individual secret postal ballots, it seems reasonable to assume that at least a significant proportion of workers do not necessarily abstain because they do not care about the issues at stake, are opposed to strike action, or are opposed to the potential loss of wages involved in taking action, but because they are unsure whether striking is likely to succeed – otherwise, if they *were* sure, they would probably vote ‘no’ straight off. Instead, they often feel uncertain about whether the union, or the workforce, is strong and determined enough to make the strike effective and likely to succeed. In the past, at mass meetings, those unsure workers might have decided by observing others and, if there was a large enough body of workers putting their hands up for a strike straight away, then casting their vote in favour

accordingly. But with secret individual postal ballots, unsure workers are probably more likely *not* to vote, and to wait and see what the balance of opinion is among workers more confident than themselves (Dalcassion, 2011).

Another way of looking at the problem is to separate out some *general* and *specific* factors that may influence voting levels.

### *General Factors*

- *Economic/employment restructuring* – If the long post-war boom with its generation of full employment was an essential underpinning of union militancy prior to 1980s, the onset of serious and sustained recession from the mid-1970s followed by the 1980s and 1990s restructuring and massive contraction of industries where trade union militancy was most concentrated (car factories, docks, pits, etc), undoubtedly undermined this militancy (Joyce, 2015). In turn it seems reasonable to assume it also had a significant deleterious effect on the propensity of union members to vote for strike action and, once legislation had been introduced, to participate in strike ballots. The heavily unionised and relatively ‘strike-prone’ industries of the past either do not exist or are significantly smaller. Likewise restructuring has accelerated the long-term shift in UK employment towards the private service sector, which is poorly organised and has continued to see a steady decline in the coverage of collective bargaining and union membership. While low bargaining coverage and union density in the private sector does not necessarily negatively affect strike ballot participation rates, it is likely to reflect the extent to which a union has the capacity to generate the necessary mobilisation to obtain a high turnout, such that the greater the union density the greater the potential for ballot participation and vice versa. In addition, there has been a significant reduction in the size of the average size of workplace, which has also impacted in a negative fashion. Beyond such factors, the impact of economic restructuring will have affected ballot participation rates in other ways, with the sustained increase in unemployment and more recent neoliberal austerity measures undermining the bargaining power of the trade unions - for example, reinforcing fear of job loss in the event of strike activity and encouraging the view that strike activity would be self-defeating.
- *Employment laws* – As we have seen, the current Conservative government’s balloting threshold proposals follow on from a series of employment laws which since the early 1980s have progressively limited legal immunity from claims for damages by unions engaged in strike action, and made it more difficult to take strike action and stay within the law. Although the law has only actually been used in a minority of disputes, unions have repeatedly found themselves in legal difficulties with injunctions leading to action being called off (Evans, 1987; Gall, 2006; Prassi, 2011; Simpson, 2013). The (no doubt intended) consequence of balloting requirements that were supposedly introduced to ensure union democracy have not only increasingly been used to prevent strike action directly, but are also likely to have had an indirect effect on workers’ willingness to participate in strike ballots and vote ‘yes’.

- Strike defeats* - the hugely damaging and demoralising strike defeats of powerful unions in the 1980s both by the employers and the government, including key groups of workers in the car and steel industry, the dockers, print workers, and notably in the year-long 1984-5 miners' strike, has had a significant 'demonstration effect', whereby it seems as though industrial struggle is a futile exercise, undermining confidence of workers in their collective power in the workplace; in this period of 'coercive pacification', 'each strike defeat discourages others from the risk of a strike' (Hyman, 1984: 225). This has also contributed to the level of strike activity having dropped to historically low levels, with a likely negative effect on the willingness of workers to participate in strike ballots and vote 'yes'. Not only have the number of strikes decreased, but also their character has changed, such that those strikes that do take place are overwhelmingly official and top-down centralised strikes called by national officials following balloting procedures, in contrast to the 1960s and 1970s when pressure for strike activity was often generated *from below* by rank-file members, and unofficial strikes were common. In turn, balloting procedures, while they have allowed unions to gain some limited bargaining advances by utilising strike mandates, have also encouraged negotiated settlements rather than strike action per se, with most strikes that do occur being discontinuous, and with large-scale public sector strikes only lasting for one day and usually being of merely a demonstrative nature (Lyddon, 2007; Joyce, 2015). All these features are reflective of a strike mobilisation process which is more indicative of a 'managed activism' (Heery et al, 2000), in which worker's confidence and willingness to take action has been undermined, with spill-over effects in terms of the level of balloting participation.
- Broader political crisis of engagement* - the massive decline in the level of trade union membership, coverage of collective bargaining and overall strength of workplace trade union organisation over the last 30 years has been accompanied by other broader political developments which may have further impacted on strike ballot participation levels. To begin with, there has been a growing disaffection and disengagement from political elections (Manning, 2015). When Harold Wilson won the 1964 general election, more than three-quarters of people cast their vote and turnout was roughly equal across the generations. But according to data from Ipsos Mori, at the 2010 election it had dropped to 65 per cent (albeit while 76 per cent of over-65s were still voting only 46 per cent of people aged 18-24 were going to the ballot box), underlining the extent to which the many millions of people have opted out of the process for one reason or another. While one-off events, such as the Iraq war, or MPs' expenses scandal, and the impact of austerity, may have contributed to disillusionment with the political system, the decline is undoubtedly longer and more structural, although the reasons for such lower political engagement are difficult to pinpoint exactly. Meanwhile, according to the Electoral Commission in 2011 less than 1 per cent of the population were members of one of the 'big three' political parties, a figure which has fallen by more than half since New Labour took office in 1997 when it was 2 per cent; in 1983 it was twice as high again at almost 4 per cent. In addition, local Labour Party infrastructures are much weaker; whereas in 1945 the Labour Party had almost 1 million members and took almost 50 per of the popular vote in general elections, by 2007 Labour's membership had hit an all-time low of

177,000, with its share of the vote in 2010 down to 29 per cent (6.2 per cent less than in 2005 and 10.7 per cent less than in 2001). The remnants of the Communist Party and Labour Left are considerably diminished, reflecting the wider organic crisis of the Labour Party. Clearly it is important to bear in mind this broader political context in understanding low voting levels in strike ballots – at the very least it suggests it would be unfair to expect trade unions to pay the price for a crisis brought about by myriad broader factors beyond their control (Lowe, 2014).

Beyond these general factors, there are also some more *specific* explanatory variables affecting strike ballot participation levels.

### *Specific Factors*

- *Size of the union* – it could be that that within relatively small, compact unions with membership restricted to a single occupation, it is easier to obtain a higher ballot turnout, and a higher overall percentage of voting for action. Underlying such an assumption is the notion that a smaller union (such as the train drivers' union Aslef) is likely to have a lower ratio of members to full-time union officials, as well as officials who are have closer links and contacts with their members, and a higher membership identification with the union and its policies, than a larger union (such as Unite or Unison), (Farnham and Pimlott, 1995: 130). However, such general observations could be misleading as clearly even smaller unions can struggle to obtain high participation rates, and anyway levels of membership participation in strike ballots cannot simply be drawn directly from the size of a union, but are likely to depend on other factors as well (Gall, 2011b).
- *Nature of the union* – the nature of an individual union could also be an influential variable in terms of ballot turnout, for example with more general unions (such as Unite and the GMB) which organise across a number of different industries, organisations, employers and occupational groups, less likely to obtain as high a ballot vote as those unions (such as the First Division Association, or National Association of Probation Officers) which are more specifically focused on a single occupation or profession and/or where their members are characterised by their occupational homogeneity (Martin, 1968). Nonetheless, if the nature of the union in these terms were the main factor it would not easily explain why the National Union of Teachers' strike ballot turnouts have not necessarily been much higher than general unions, so again other factors would need to be taken into account (Gall, 2011b). Moreover, there is some evidence that the RMT, a specialist (rather than general) 'industrial' union that organises across the transport sector and embraces all-grades of employees, provides a clear identity and relatively high degree of attachment and loyalty by members to the union, that can be reflected (at least on the railways) in creditable levels of strike ballot participation (Darlington, 2009a).
- *Nature of the workforce* – there could be a number of potential influencing factors here. First, employment concentration might be important – with a greater propensity for higher levels of ballot participation where the union is based on large concentrations of members in a few worksites. This could be because members more readily identify issues and grievances as collective and thus as union problems,

act together to deal with issues at meetings or together in industrial action, know their workplace union reps, and give support to each other in their unionism, and are therefore easier for unions to mobilise in relation to strike ballots. By contrast, with the trend towards a more fragmented and dispersed workforce, it can be much more difficult in the case of workers who are physically isolated and separated from each other, as for example, in local and national government and civil service employment. The problem in these contexts is that the support and strength gained by working alongside others is diminished (Fairbrother, 1984: 84), and it might create a situation in which it is harder to engender the collectivism that is an essential foundation for workplace union mobilisation. This is all the more accentuated when the ballots are postal ballots delivered to individual members' home addresses. Likewise, it seems possible the smaller the bargaining unit being balloted (for example, in one individual bus garage, bakery or fire station) the more likely the participation rate will be higher than compared with a larger bargaining unit, such as a national ballot across many different workplaces that are dispersed geographically (for example, civil service benefit offices across the country). But again, such factors relevant to the nature of the workforce cannot be the only (or necessarily main) ones explaining levels of balloting participation and their variation in different unions and ballots.

- *Management structures and behaviour* – the degree of managerial authority over workers and extent of support offered to local union representation and organisation (Fairbrother, 1984: 84-5), in terms of provision of facilities (such as time off work for reps, office space, etc) and leeway for independent initiative for unions to take up their members' grievances, could be a significant factor. Likewise the severity and nature of the perceived managerial attack on workers' conditions and union organisation - for example, with widely acknowledged managerial bullying at British Airways contributing to widespread union discontent (Taylor and Moore, 2015) – can also be important. To what extent is management's behaviour viewed as being unduly unreasonable, imposed without adequate consultation, and/or far-reaching in its consequences for conditions of employment? Not that such perceived injustices would necessarily determine a high balloting participation rate, but it seems likely to be a potential ingredient in the mix.
- *Trade union leaders* - Often the popular media claim that it is militant union leaders and activists who are responsible for calling ballots and trying to stimulate strike action. With reference to the Conservatives new balloting thresholds, Jonathan Isaby, of the Taxpayers' Alliance has commented: 'This would be a reasonable step to ensure a minority of militant union activists cannot cause misery for millions' (*Daily Express*, 10 January 2015). The assumption that it is militant union leaders 'egging on' their more moderate members was often brought into play with the late RMT general secretary Bob Crow. Yet such an analysis, of course, often ignores the fact that union 'bosses' are elected and accountable to the democratic procedures of their union, and that it might be the national executives of unions (or section committees) not their general secretaries who have the sole authority to organise strike ballots. Nonetheless, it is undoubtedly true that the role of *subjective* agency can be central to transforming collective grievances into collective action. As Kelly

(1998) has shown, dissatisfaction must be perceived as an *injustice*; the injustice must be seen as a *collective* issue; the cause of the injustice must be *attributed* to the employer; workers must make a *calculation* about their chances of success with any proposed industrial action, and must decide that the benefits outweigh the possible costs; and workers must have sufficient *organisation* to make the action a reality. In all these processes the role of official trade union leadership can be crucial. It seems unlikely there would be high ballot results unless there was a high level of interaction between national union leaders and workplace reps/members, with a propaganda and organisational campaign at every level of the union, including leaflets, text messages, Facebook and Twitter communication, meeting and rallies, etc. Certainly the enthusiasm and willingness of many thousands of workers to respond to official union calls for strike action over recent years, is a clear illustration of this process. Conversely, where union leaders appear only half-heartedly to encourage strike action, reflecting a pessimistic outlook which assumes that strikes cannot win and that workers are not prepared to fight (as when officials call for strikes but then retreat as soon as minimal concessions are made despite the fact they may have pushed forward and won much more) can also have a potentially influential impact on the level of participation in strike ballots (Darlington, 2014a).

- *Workplace union organisation* - the nature and health of local workplace union organisation is also likely to be an important factor in the extent to which members vote in strike ballots. The key factor here is whether union reps exist and operate in each workplace (or section/department), able to carry arguments and mobilise the membership in a way that backs up national union campaigns. Where there are active workplace reps, where workplace union meetings take place reasonably regularly, where more union members are encouraged to attend meetings, and where there is workplace union activity involving the members, it is likely there are greater levels of strike ballot participation than in workplaces where workplace union organisation is poorly organised. Indeed as Fosh and Cohen (1990: 138-141) have argued, there is a link between the extent to which there is a highly participative style of workplace union leadership that encourages local reps to place an emphasis on consulting and reporting back to their members and including them in local decision making as much as possible on the one hand, and members' commitment to collectivism and their participation in union organisation and activity on the other. Likewise, in general where the momentum for a strike ballot is generated *from below*, with demands on union officials to support calls for action (notably if this has been expressed through rank-and-file networks of members at local or national level) then the strike ballot participation rate is likely to be higher. Yet the severe weakening and atrophy of workplace union organisation today compared with the past, with the 'challenge from below' currently at its lowest ebb since the 1930s, has meant that even though many workplace union reps have undoubtedly displayed an extraordinary level of commitment to holding together workplace union organisation, some of them have also, as a result of often feeling beleaguered and defensive in relation to employers and governments, become fairly cynical towards their members, reflected in an unwillingness to make attempts to mobilise them into taking action. The unwillingness of many national trade union leaders to encourage militant strike resistance to the neoliberal offensive over

recent years has in turn fostered a dependence on these officials, as workers have rarely been willing to act independently. The continuing low level of struggle (and its limited and often short-lived nature) has not recreated the forms of rank-and-file organisation (typical of the 1970s) that could exert pressure on the official union apparatus and/or provide an alternative leadership in the fashion that existed in the past. Nonetheless, the centrality of workplace reps' organisation to the process of collective action has been demonstrated in the winning of strike ballot votes, the mobilisation of hundreds of thousands on TUC and anti-austerity marches, and in providing leadership in national/local disputes by rail, tube, postal, fire brigade, civil service, university, and local government workers, amongst others (Darlington, 2010; 2014).

*To sum up, clearly each of the general and specific explanatory variables outlined above interact and have to be seen as collectively contributing to explain the level of turnouts in strike ballots, and the differences between different ballot results. Of course it could be argued there is a problem with simply listing a range of influencing factors without assigning weights or priorities either to the different factors or the various interactions between them. Yet the lack of agreement on the relative importance of such different factors indicates the difficulty in achieving a satisfactory explanation, given that each union/ballot has a distinct make-up/dynamic, so that while there may well be some common patterns there is considerable complexity and variation, involved, which means there could never be one over-arching explanation.*

## **Evidence from database**

We can now turn our attention to our empirical findings on strike ballots. In order to examine the potential effects of the proposed legislation, we have attempted to retrospectively apply it to previously held ballots. Clearly unions are likely to change their behaviour once the legislation is introduced, so this approach has the advantage of better capturing the effects of the legislation. Unfortunately, there is no publicly available database of strike ballots, so we attempted to compile our own data from a variety of sources. Alas, obtaining information on strike ballots is extremely difficult. Unions have to notify members of the results of industrial action ballots and some of these enter the public domain, but only rarely do these disclose the number of workers balloted and while unions are required to notify employers of the workers who are being balloted, only a few employers put this information in the public domain, largely to contest the result on the basis of the small percentage of workers or members balloted who supported industrial action.

Some unions forward the ballot reports of the Electoral Reform Services (ERS) to members, and again some of these are publically available. Unfortunately, for our purposes, the ERS reports follow a standard format and give numbers voting for, against, and spoilt papers, but do not give the numbers of workers who were balloted. ERS supplied us with data from 2002 to 2014, but this data aggregated all monthly strike ballots, and therefore could only provide the sketchiest overview of the likely effects of the proposed legislation. While it is clear from this data that when unions call a strike ballot they invariably win support for strike action with a large majority, the monthly average turnout rates vary

dramatically from 25 to 67 per cent, clearly indicate that the proposed legislation is likely to cause considerable problems for some unions.

Our own database of individual industrial action ballots (see Tables 1 and 2 below) is compiled from several sources, and includes the numbers of union members voting for industrial action, the percentage in favour, total number of votes cast, turnout rates, and the percentage of the total membership balloted who voted in favour. The last two figures are rounded down on the assumption that any future legislation is unlikely to allow rounding up. We have only included ballots that voted in favour of industrial action. A few unions responded to our requests for information and our database is to some extent weighted to these unions and the years they covered (some unions gave extended periods, others only a few years), with some supplying more comprehensive data than others. We supplemented this information from individual national/local trade union officers, union websites and press releases, employers, and news media reports. This sometimes resulted in incomplete information derived from several sources, but an entry was only included when we obtained enough information to enable any missing data to be calculated. Rounding errors are present in a number of entries, and reliability checks impossible. As a result of this data collection exercise, we have evidence on 162 industrial action ballots between 1997 and 2015 conducted by 28 different unions, 158 of which are strike ballots. We have the largest number of entries for the period 2008-2015.

Given that most unions do not routinely maintain a database of strike ballot figures, some unions were unable to accede to our research request to compile one on the basis that it was time consuming and they did not have the staffing resources. However, it is also possible that some unions were reluctant anyway to reveal full details of their ballot participation figures for fear it would reflect negatively on the union. It therefore seems possible that our data may underestimate the impact of the proposed legislation.

Table 1: Unions with successful industrial action data (strike and ASOS)

Union	No of ballots	Union	No of ballots	Union	No of ballots
AHDS	1	GMB	2	Prospect	1
ATL	1	NAHT	1	RMT	31
ASLEF	2	NAPO	1	SCP	1
BFAWU	18	NASUWT	1	TSSA	2
CPS	1	Nisa	1	UCATT	1
Community	1	NUT	33	UCU	20
CWU	8	PCS	3	UCAC	1
EIS	1	PFA	1	UNISON	4
FDA	1	POA	1	UNITE	12
FBU	11				
			Total	28	162

Table 2: Successful industrial action ballots (strikes and ASOS) by year

Year	No of ballots	Year	No of ballots	Year	No of ballots
1997	1	2003	1	2009	10
1998	2	2004	2	2010	9
1999	1	2005	1	2011	40
2000	0	2006	2	2012	23
2001	1	2007	4	2013	16
2002	5	2008	8	2014	19
				2015	17
				Total	162

*The effect of introducing a 50 per cent turnout threshold*

Our database confirms that unions typically obtain high majorities in favour of industrial action (see Table 3 below). For example, in June 2015 both ASLEF and the Community union achieved very large majorities for strike action (ASLEF’s majority was 97 per cent on London Underground and Community achieved 88 per cent in Tata Steel). The FBU firefighters’ national ballot of 15,700 members in 2014 achieved an 85 per cent majority in favour of strike action.

Table 3: Majorities in favour of strike action

Majority in favour	No of ballots
50-59	14
60-69	15
70-79	44
80-89	51
90-100	34
Total	158

However, although unions achieve high majorities for strike action, they often fail to secure a high turnout (see Table 4). In calculating the effect of the 50 per cent requirement, we have restricted our analysis to strike ballots only, excluding action short of a strike data (ASOS). Turnout figures vary widely and in our data range from a low of just 19 per cent to several ballots that recorded a turnout of 87 per cent. Overall, only 85 of the 158 strike

ballots reached the 50 per cent target (with a tendency for workplace ballots, area ballots, single employer ballots and workers with a close occupational identity to obtain higher turnouts, while national ballots usually obtained lower turnouts – this is explored further later in the paper).

Some major national strikes would have been deprived of legal protection under the proposed legislation, especially those relating to national collective bargaining in the public sector. In its high profile dispute over pensions, the UCU ballot in December 2014 of 38,900 members employed in 69 higher education institutions achieved a 78 per cent majority for strike action but the turnout was only 44 per cent. Most of the large public sector unions, who held one-day strikes in June and November 2011, would not pass the 50 per cent rule. The PCS obtained a 61 per cent vote in favour of strike action but on a turnout of only 32 per cent; the National Union of Teachers (NUT) obtained a 92 per cent ballot vote in favour of strike action, but on a turnout of only 40 per cent of state school members and 27 per cent of private school members; and the Association of Teachers and Lecturers (ATL) obtained an 83 per cent vote in favour of strike action, but on a turnout of only 35 per cent. GMB's ballot of local government workers achieved an 83 per cent majority in favour of strike action, but on a turnout of only 33 per cent. Similarly, Unite's ballot of local government workers achieved a 77 per cent majority for strike action but only on a 31 per cent turnout.

Table 4: Turnout in strike ballots

Percentage turnout	No of ballots
19-29	19
30-39	27
40-49	27
50-59	28
60-69	22
70-79	25
80-89	10
Total	158

Not only did many union ballots not achieve the 50 per cent turnout threshold, but also the number of workers affected in such ballots was completely disproportionate to those that did reach such a target. On the basis of the 158 strike ballots data we compiled, 444,000 workers could have taken strike action because they had a turnout rate of over 50 per cent, but 3.3 million workers would have been prevented from going on strike because they achieved less than 50 per cent turnout. Even if you take out the large-scale 2011 public sector strikes, it still means 880,000 workers would, under the proposed legislation, no longer be able to go on strike.

### *The effect of introducing a 40 per cent 'important public services' threshold*

The Trade Union Bill confirmed four previously identified so-called 'important public services' are to be covered by the 40 per cent balloting threshold. These are fire services (firefighters and fire control staff), health services (NHS and foundation trust staff), education services (staff involved in the education of those aged between 5-16 year-olds), and transport services (bus, railway, London Underground, and some aviation and maritime staff). Other essential services, such as water, gas and electricity, have not been included. However the Bill's provisions extend wider than earlier proposals by adding two other public services, namely those occupations engaged in the 'decommissioning of nuclear installations and the management of radioactive waste and spent fuel' and those engaged in 'border security'. Moreover, the exact coverage of the 'important public services' that might be covered by the Act has yet been decided, but has been opened up to public consultation until September and will ultimately be subject to Regulations issued by the Secretary of State (DBIS, 2015b). There is always scope to extend the Regulations to deal with other perceived potential or actual strike threatened occupations.

Within the Bill's six specified public services there is still uncertainty about which occupations/activities will be covered by the Act. This will only become clear when the regulations are published, but it is clear that 'public' will not mean 'publically employed' but will include workers who work for private sector companies contracted to work in the delivery of public services, as well as to completely privatised industries such as rail and other transport workers. In addition, the balloting requirements will apply not only to those who 'provide', but also those who do work that is 'ancillary' to the provision of 'important public services'; for example in health this would embrace not just medical staff but also hospital cleaners or technicians. The provision of 'education under 17' could pose problems for some further education colleges and sixth-form colleges who may have a small number of students aged 16. It seems inevitable there will be extensive discussion during the passage of the Act about which workers and sectors should precisely be included.

In order to consider the potential effect of the legislation, we have again used our database of strike ballots (ignoring ASOS ballots). In the absence of any information about how wide or narrow the legislation will be, we have looked at all strikes that occurred within the six sectors. We have no strikes within our data that relate to the nuclear industry. Ninety strike ballots would have been covered had this legislation been in place; 29 in school education, 44 in Transport, 11 in the Fire Service, 5 in Health, and 1 in border security. Out of these 90 strike ballots, in only 55 ballots did more than 40 per cent of the electorate vote 'yes' (see Table 5). The proposed legislation would therefore have reduced the number of strikes in these four sectors by nearly 40 per cent. However, it is interesting to note the differential impact by sector.

Table 5: Yes as a percentage of eligible voters in ‘important public services’

Percentage of voters	No of ballots
11-19	3
20-29	15
30-39	17
40-49	20
50-59	17
60-69	11
70-79	5
80-89	2
total	90

### Fire Service

The proposed legislation would have had no effect on the Fire Service because all 11 strike ballots cleared the 40 per cent threshold with an average of 54 per cent of balloted workers supporting strike action. However, the 9 regional strikes were supported by 56 per cent of those eligible to vote, compared with 43 per cent for the two national strikes. For example, in 2011, 90 per cent of London fire fighters voted in favour of strike action on a 54 per cent turnout with 48 per cent of those eligible to vote supporting strike action.

### Health

The picture is completely different in Health where only 2 of the 5 national strikes would have cleared the 40 per cent threshold. Of those that failed to meet the 40 per cent, only 20 per cent of eligible voters supported the action. It is the small specialist unions that achieved the highest turnout and high support for strike action. For example, in 2011, the Chartered Society of Physiotherapy (CSP) achieved an 86 per cent ‘yes’ vote on a 66 per cent turnout. Similarly the Society of Chiropractors and Podiatrists (SCP), and Prospect, also overwhelmingly voted to join a public sector strike with majorities/turnouts of 85/52 per cent and 75/52 per cent respectively.

### Education

The picture in education is more nuanced and provides a clear indication of the likely effect of the legislation. In education, only 19 of the 29 strike ballots would have been able to go ahead, but disaggregating the ballots reveals an interesting picture. Every ballot conducted in an individual school would have passed the 40 per cent threshold, with an average of 59 per cent of those eligible to vote supporting strike action, whereas only 27 per cent of eligible voters supported industrial action in national strike ballots. Only two national strikes cleared the 40 per cent threshold and neither of these were the main teaching unions - the

small EIS (Scottish teachers) produced an 82 per cent majority for strike action on a 54 per cent turnout with 44 per cent of those eligible to vote supporting strike action in 2011.

## Transport

In transport, only 23 of the 44 strikes cleared the 40 per cent threshold, so the proposed legislation would have prevented half of transport strikes. However, again the breakdown reveals an interesting pattern. The long running dispute involving BA cabin crew in Unite easily cleared the 40 per cent hurdle with an average of 60 per cent supporting the strike action. Similarly, a Unite ballot on the Manchester Metro easily cleared the 40 per cent hurdle with 55 per cent of eligible voters supporting strike action. However not all local ballots achieve high turnouts; in 2015 a Unite ballot of Greater London bus workers (averaged across the 18 companies involved) produced a majority 'yes' vote of some 85 per cent, but on the basis of figures well below both proposed balloting thresholds.

The RMT is an interesting case. Over the last 13 years the RMT's 'brand image' has essentially been that of a *striking* union (Connolly and Darlington, 2012; Darlington, 2014b), conducting well over 250 strike ballots across the national railway network and London Underground. Per thousand members, the RMT has probably organised more ballots for industrial action and then taken more strike action than any other union in Britain over recent years. In the process, almost every single one of the union's ballots on the Underground and the railways has returned overwhelming majorities in favour of action, with a mean of 79 per cent based on our database. Our data suggests that the proposed legislation would have little effect on RMT's strike ballots in the *railway sector* - with 12 of the 14 ballots clearing the 40 per cent hurdle easily, with an average of 49 per cent of eligible members supporting strike action, and with one of the two which failed coming close with 38 per cent. However the proposed legislation could have much greater effect on *London Underground*, where in spite of majorities in favour of strike action ranging from 58 to 92 per cent, only one of the 16 strikes clearing the 40 per cent threshold (but would not have been able to have gone ahead because it failed the 50 per cent test).<sup>6</sup> Two strikes were close with 38 and 39 per cent, but the others fell well short with an average of 31 per cent of eligible members supporting the strike action.

## Border Security

We have only one strike ballot that could be regarded as border security, the PCS ballot by border agency and passport guards in June 2012, which would have been prevented by the new legislation because just 11 per cent of those eligible to vote supported the action.

### *The case for a separate important public services threshold*

Finally we can consider *how much effect the 40 per cent important public services threshold would have over and above the 50 per cent overall participation rate?* The short answer, on the basis of the database we have compiled, is not very much. While the 50 per cent threshold would dramatically reduce the number of legally protected strikes, the

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<sup>6</sup> It should be noted the database does not include the July 2015 RMT strike ballot on London Underground.

introduction of an additional threshold for the important public services would have very little *further effect*. It would have no effect at all in the Fire Service, Health and Education. Its only effect would be in Transport where it would have prevented just three of the 20 strikes which could have gone ahead because they cleared the 50 per cent threshold - one strike in London Underground, one strike of railway signal staff, and one at Network Rail (albeit the Network Rail ballot was subject to a legal challenge anyway and would not have prevented the RMT strike which was called at the same time). Of these three strikes that would have been potentially prevented by the introduction of a 40 per cent threshold, two achieved 38 per cent. Based on our database, it appears there would be no case need for the introduction of an additional 'important public services' balloting threshold.

### *The role of 'no' and 'non-voters'*

It is clear that the legislation is likely to have a major effect in reducing many unions' ability to take strike action, especially national or large strikes, however its elevation of 'no' and 'non-voters' is controversial. Despite the fact that formal voting figures in strike ballots (as well as in union elections)<sup>7</sup> have often been relatively low, *this has not meant that union members who have voted 'no' or did not participate have not been willing to take strike action when a ballot vote has produced a majority in favour and action has been called by their union*. On the contrary the custom and practice in the UK is that many 'no' voters and most of the non-voters have often tended to join their striking colleagues. For example, the PCS, RMT and NUT have often been able to mobilise a considerably larger constituency of their members than merely those who voted. Indeed, it could be argued the real test of a strike ballot is not merely how many people vote for strike action, but how many 'vote with their feet' on the strike day itself. Many non-voting union members, no doubt out of respect for both the union generally as well as the majority ballot mandate specifically, have participated in strike action, and in some cases actively joined demonstrations and picket lines. Thus a turnout threshold does not necessarily test the level of support for a strike. However, the proposed legislation contains complex provisions to make picketing more difficult.

Moreover, it is often the case, particularly with large-scale strikes, that many hundreds or thousands of non-members will join an appropriate union in order to be able to strike. In other words, the 'political punch of action will be greater than the ballot results alone indicate' (Gall, 2011a). For example, in the run up to the 2011 one-day public sector strike over pensions, Unison experienced a surge of new members across the country as a

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<sup>7</sup> It should be noted that such relatively low trade union participation rates are reflected more broadly than merely within strike ballot votes. For example, within PCS, 2014 National Executive Committee elections produced a turnout of just 8 per cent, with no less than 92 per cent of the union's members declining to exercise their vote. Within the Home Office group of PCS members, the position was hardly much better: in elections for the Group Executive Committee the turnout was only a marginally better 11.8 per cent. The 2014 RMT general secretary election, carried out in the wake of Bob Crow's death, and with a strong field of three 'hard left' candidates and the acting general secretary, produced only a marginally better turnout of 24.1 per cent. Likewise within the NUT, elections for the senior and junior vice president positions in 2013 resulted in a turnout of only 10.2 per cent. Within Unison, 2013 elections for the retention of a political fund resulted in an 86.9 per cent majority vote in favour but on a turnout of only 10.2 per cent.

direct result of the dispute, with an unprecedented level of recruitment activity at branch and workplace level. (Kimber, 2012: 22).

### Three enabling features of participation

Having considered some of the broad figures for strike ballot participation rates drawn from our database, we can now turn attention to highlighting some of the contributory factors to positive voting outcomes. Three enabling features can be identified.

*First, there is a clear overall tendency for workplace, area or single employer ballots to obtain 'higher' turnouts and national ballots to obtain 'lower' turnouts. The local versus national difference can be explored in the case of a number of unions:*

- PCS: While its strike ballot of border agency and passport guards in 2012 only achieved a 20 per cent turnout, its ballot of staff at the National Gallery in 2015 achieved a 60 per cent turnout.
- BFAWU: 13 out of 17 ballots cleared the 50 per cent threshold. All were single employer ballots, often at a single workplace.
- FBU: In its area ballots the average turnout was over 75 per cent, whereas its two national ballots achieved 60 and 48 per cent. The latter was the only ballot that achieved less than 50 per cent.
- NUT: The average turnout for its national ballots was under 31 per cent and not one ballot came close to clearing the 50 per cent threshold. By contrast in its single employer ballots it achieved an average of over 64 per cent turnout, with only one ballot falling below 50 per cent (with 48 per cent).
- UCU: In its national strike ballots it achieved an average of 32 per cent turnout over 11 ballots. Even its 2014 pensions ballot it only achieved 44 per cent. Not one strike ballot came near to clearing the 50 per cent threshold. By contrast its ballots of Further Education colleges achieved an average turnout of 62 per cent with every ballot clearing the 50 per cent threshold. Of the two ballots at individual universities not one came close to clearing the 50 per cent with 37 and 42 per cent.
- UNITE: In the long running dispute involving British Airways cabin crew the turnout averaged 77 per cent over five different ballots, and the union's ballot of Manchester Metro workers also achieved a 75 per cent turnout. By contrast its ballot of local government and health workers in 2011 only achieved a 31 per cent turnout.
- RMT: Only one ballot on London Underground cleared the proposed 50 per cent hurdle. Yet in its ballot of individual railway companies it achieved an average of 66 per cent turnout over 13 strikes. In its only national railway strike ballot (Network Rail) in 2015 it achieved a turnout of 59 per cent. In only two of its railway strikes did

it achieve less than 50 per cent turnout and then it came close at 47 per cent and 49 per cent.

So ballots involving single workplaces appear more likely to achieve the 50 per cent turnout threshold. The database evidence confirms the picture that was previously recorded in Undy et al's (1996: 247) study, which found that turnout in small bargaining units (50 or fewer members) recorded very high turnouts, averaging over 75 per cent, whereas if there were 1,000 or more members in the ballot, then turn-out dropped to 44 per cent on average. Nonetheless, large turnouts did not correlate with the *rejection* of industrial action; in fact, between 1987 and 1993 90 per cent of those balloted voted consistently in support of union recommendation for some form of industrial action. Likewise our own data suggests large turnouts show no less a propensity to produce majority support for strike action, despite their differential figures for participation.

Secondly, *unions with members who have close occupational identities also appear often to be able to generate relatively higher strike ballot votes than more general unions.* Certainly, it is noticeable that the unions who obtained some of the largest ballot turnouts for the 30 November 2011 one-day public sector strike were specialist unions with a distinct occupational status, such as Chartered Society of Physiotherapists and Society of Chiropodists and Podiatrists. Every one of the 11 Fire Brigades Union ballots recorded 'above threshold' figures, no doubt reflecting the close social interactive nature of the firefighters' job, as well as their collectivist trade union forms of organisation at station/watch level (Darlington, 1998: 62-63). Likewise, as we have seen, turnouts by cabin crew at British Airways were relatively very high. Despite the fact that the workforce was dispersed into small groups and geographically located literally across the world, their concentrated 'home' base at Heathrow and Gatwick airports, deep wells of informal collectivism springing from a distinctive labour process which generated social bonds and work solidarities, and role of BASSA (section of Unite) in shaping representational effectiveness and providing an ideological framework through which BA's action could be understood, transcended geographical dispersion and gave structure and meaning to cabin crews' collectivism (Taylor and Moore, 2015).

However, as Hyman (1975: 75) has suggested, while occupational homogeneity can be a positive it would be rash to conclude it automatically acts to encourage democratic tendencies; likewise it would be mistaken to assume a heterogeneous membership creates *irresoluble* tendencies towards sectionalism and fragmentation. In this respect, the 2015 RMT ballot result in Network Rail demonstrated that even a relatively fragmented workforce (spread across numerous different work sites (involving track and maintenance, station and signal workers) can still produce a relatively high (59 per cent turnout and 48 per cent of those eligible to vote), particularly in a context where the decentralisation of bargaining has led to different company councils and union reps organisation to match.

Thirdly, *there is some evidence the role of union leadership (specifically the influence of left-wing leadership) can also be a positive enabling factor.* Darlington's studies (2009a; 2009b; 2012; 2014b) have shown that in the case of the RMT it has been of central importance that most of the union's national and regional officers, and a significant number of local reps and activists have held fairly explicit left-wing values, ideology, motivation and

commitment, and have exercised considerable industrial and political influence in shaping the union's antagonism towards the employers and government and its persistent stress on the virtues of militant resistance, collectivism and solidarity.

In the process, this network of assertive and combative RMT officials and lay activists have played a crucial role in advocating and winning support for the mobilisation of union members in strike action against employers. They have engaged in 'collective action framing' (Snow et al, 1986) and 'repertoires of contention' (McAdam et al, 2001) by deciding what issues and initiatives to take up and pitting them in antagonism to management via a variety of propaganda and agitation communication channels (such as section/mass meetings and regular company/grade/union branch newsletters, leaflets, emails and text messages) so as to 'mobilise bias' (Batstone et al, 1978) by articulating workers' sense of injustice and targeting it at employers and the government, and advocating the need for strike action as an effective means of collective redress. Such a strike mobilisation approach and the left-wing politically-informed objectives that has crystallised membership anti-government sentiments has in turn helped to shape membership attachment and participation. It appears to provide some credence to the notion of 'political congruence' (Upchurch et al, 2012), a convergence of shared political frames of reference, collective identity, expectations and intended outcomes between left-wing union leaders, activists and a critical mass of members, who have been able to work together to a sufficient degree that it has acted to subdue the inherent bureaucratic cleavages between paid full-time officials and activists/members that in other unions have tended to be much more pronounced.

Darlington's studies also provide evidence of a direct relationship between union militancy, effectiveness in 'delivering' collective bargaining gains, membership growth and the development of relatively vibrant forms of union organisation and representation. Likewise Carbo et al (2015) have suggested there is a 'virtuous cycle' between union strategies of democracy and militancy, both complementing and stimulating one another to achieve union revitalisation. A belief that a movement can be successful is a critical factor driving involvement in that movement, and successes of militant action can encourage the perception of potential future success, thus driving involvement (p. 16). In other words, on the one hand, militant action focused on members' interests and driven by the membership is not only likely to prove successful in improving the lives of members, but also in driving membership views of instrumentality, and increased membership satisfaction, while on the other hand, the activism and participation that is needed for these types of tactics to be powerful and successful can only exist in a democratic union (member-driven decision making) where members have a say in the battles they wage (p. 23), and hence the importance of participative union leadership, with support for members' direct participation and freedom to voice opinions (p. 43). Moody (2007: 178) has also suggested workplace union democracy is not just about structures and processes, it is about 'developing, a culture of activism, involvement, transparency in union governance, and openness in debate'. In this respect, workplace union organisation that is directly responsible to members in the workplace is vitally important.

However, whilst RMT case study evidence points to the important dynamic interaction between leaders and members in the process of strike mobilisation, such a development has clearly not necessarily, in itself, always been sufficient, to overcome the

barriers preventing the union from achieving the strike ballot turnout thresholds contained within the Conservative's proposals on the London Underground, albeit it has had a much more positive response on the railway network. Similarly, with reference to the UCU's ballots at Salford and Dundee Universities in 2014 and 2015 at which both 50 per cent turnout and 40 per cent eligibility thresholds were not achieved, left-wing workplace union leadership by no means guarantees a positive outcome. Notwithstanding such exceptions, the pattern in a number of instances does seem to suggest linkages between union democracy, left-wing leadership and collective mobilisation, and strike ballot participation rates.

In this respect, it is noticeable that, apart from its strong occupational identity and solidarity union loyalty, the coordinated campaign over pensions by left-wing national and local union representatives within the FBU has also played a crucial role in explaining the relatively high majority votes in favour of strike action and on high turnouts. Likewise important contributory factors to producing an 89 per cent majority on a 71 per cent turnout, representing 64 per cent of those eligible to vote, in the UCU's 2014 Lambeth College ballot, was the presence of a number of left-wing political activists and the well-organised campaigning stance by the local union leadership, buttressed by widespread external support generated from UCU branches and other trade unionists elsewhere. In PCS's 2015 National Gallery strike ballot, in which some 94 per cent of PCS members voted in favour of strike action on a 61 per cent turnout and 57 per cent of those eligible to vote, the politically-influenced local union branch leadership and broader support from national PCS officials were also influencing factors.

## **Union responses**

How have the British labour movement's leaders responded to the Conservative government's Trade Union Bill that threatens, along with the legislation's other restrictive measures, to undermine effective trade union organisation, collective bargaining and the right to strike? Significantly all the Labour Party's leadership contenders have indicated they are opposed to the Bill, notwithstanding inevitable accusations of being 'too close' to the trade unions and encouraging strike action that negatively impacts on the economy and society.

Not surprisingly the TUC general council and other individual union leaders have also unanimously opposed the measures. Len McCluskey of Unite, one of the UK's biggest unions with nearly 1.5 million members, has even gone so far as to suggest the unions might defy the new laws and risk imprisonment (*Guardian*, 19 March 2015).

People have intrinsic rights but sometimes these are violated even by democratically elected legislatures – the right of working people to combine, to organise, is one of those rights. So if partisan legislation is driven through parliament, designed to push the legitimate democratic work of trade unions outside of the law, then we in Unite will not go gently into the night. We will rage against the dying of the light.

A union's job is to fight for working people's rights. If in the year we mark the anniversary of Magna Carta, the government wants to challenge fundamental rights of the citizen, then I believe they will be facing not just the trade union movement, but a huge section of our civil society too.

When the law is misguided, when it oppresses the people and removes their freedoms, can we respect it? I am not really posing the question. I'm giving you the answer. It ain't going to happen.

Unite's recent rules revision conference agreed to remove a clause from its rule book stipulating protests can only take place 'so far as may be lawful', thereby opening up the possibility of allowing its members to hold illegal industrial action. While McCluskey emphasised that the rule change did not commit the union to defy the law in a 'reckless or impulsive' way and promised he would not allow that to happen, he also stated: 'We must also guard against simply being turned into an advisory agency. What would be the point of that? Unite is a fighting union' (*The Times*, 13 July 2015). Meanwhile Dave Prentis of Unison has also threatened to break the law by holding illegal strikes to fight against job losses and pay restrictions, suggesting 'nothing is ruled out' in the long conflict against a 'vindictive' and 'hostile' government which could produce the kind of confrontation between the government and the unions not since the 1980s (*Independent*, 15 June 2015).

It remains to be seen whether such militant rhetoric by trade union leaders is matched by action in practice. While they will campaign vigorously against the introduction of the proposed new law, they will also be confronted with the dilemma that such a campaign may well be doomed to defeat given the Conservatives' majority in parliament. From the stalling of the public sector pensions battle after the mass one-day demonstrative strike of 2.6 million public sector workers in November 2011, and then again after the one-day strike by 1.4 million over public sector pay in July 2014, as well as in many other disputes, some have argued that trade union officials have often squandered the potential to encourage action that could effectively resist employers' and government attacks and help to rebuild the strength of the unions in the process (Kimber, 2012; Darlington, 2014a; Joyce, 2015). Nonetheless the resilience of membership bitterness towards the burden of austerity has continually created pressures for the unions to act, such that when official action is called, the response has often been very strong, demonstrating further potential in the future. The TUC's support for a national demonstration outside the Conservative Party conference on 4 October, as well as protests against the passage of the government's Trade Union Bill through parliament, is likely to reflect the mounting level of opposition.

Yet in a context in which strike action which lacks the support of a legal ballot would leave the unions exposed to injunctions, claims for damages, and even action for contempt of court, it seems unlikely that union leaders will defy the law, rather than 'bend the knee', unless they are subject to enormous pressure from their members from below. More likely is that unions will become more consciously strategic, by only balloting those groups of workers who they can be confident would attain a 50 per cent participation threshold and 40 per cent majority threshold; this might mean identifying particularly strategic groups within a national bargaining unit whose action could then be supported financially by other sections. Paradoxically, if unions can attain the new thresholds, it may make it harder for employers to defeat strikes, with union members identifying more strongly with the cause and, with union officials being less willing to call strikes off because their negotiating position is stronger; and the proposed legislation could make the price of an eventual settlement higher (Emmott, 2015).

Depending on if, and how, the Bill is amended as it passes through parliament, the unions may have some leeway to mount a legal challenge to the new restrictions on the

right to strike based on the Human Rights Act unless it is repealed (manifesto commitment). The government could be forced to justify whether the balloting thresholds are a proportionate restriction, and also justify the thresholds in the context of a postal voting system that appears disproportionately expensive and designed to produce a low turnout (Ewing and Hendy, 2015).

If unions find their ability to mount strike action is curtailed, one likely prospect is an increased tactical reliance by unions on so-called 'leverage campaigns' and 'citizen bargaining' – whereby unions (like Unite in the Ineos oil refinery dispute at Grangemouth in 2014) use demonstrations, protests, boycotts, and social media campaigns to open up new lines of attack on the employers and its senior management, with the aim of getting shareholders, customers, suppliers and local communities to put pressure on the employers to back union demands. In America community campaigns have been used to help win improvements in pay and conditions in different industries, forcing companies such as Walmart and MacDonal'd's to offer pay increases after customer and public protests outside stores. Likewise, in the UK staff at the Ritzy cinema in Brixton, south London, fought off redundancies and won the living wage in 2014 after the threat of a boycott by cinemagoers. As Frances O'Grady has remarked: 'Imagine if we could scale that up to cinema workers in the whole industry. Imagine if we could win systematic broad support from families, communities and the public. Collective bargaining almost becomes "citizen bargaining" with the employer, to win fair treatment for workers' (*Observer*, 14 June 2015). In the face of the tightening of the rules on industrial action, such campaigns (which operate outside the law on industrial action ballots), are likely to become even more a 'weapon of choice' for the unions (Pinsent Masons, 2015), albeit their limitations compared to the alternative mechanisms of collective bargaining and the threat/use of strike action within the workplace is also likely to be stark.

Meanwhile, it is possible that, against the backcloth of a new wave of deep spending cuts affecting jobs and working conditions, combined with the continued imposition of a public sector pay cap, some groups of workers coming into collision with the legal liabilities of organising strike ballots will take unofficial and 'wildcat' strike action, thereby undermining the legislation. As the *Financial Times* has commented: 'The government should be wary of making it so hard to call an official strike that employees feel justified in taking unofficial action', notwithstanding the potentially severe legal penalties against unions which do not repudiate unofficial action and against individuals taking unofficial action. In other words, far from 'improving' industrial relations as the government have claimed, the proposals might create a more bitter and destabilising state of affairs, with unofficial strike action likely to be more problematic for employers, as well as trade union leaders, to resolve.

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