**The Conservative Government’s proposed strike ballot thresholds:**

**The challenge to trade unions**

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***ISBN***

***August 2015***

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**Chapter One Introduction**

Even though strike levels in the UK have fallen to their lowest ever historical levels, the far reaching effects of recent strike action (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 2015 of a Trade Union Bill by the newly elected majority Conservative government. National strikes by teachers, civil servants, and fire fighters, a threatened national strike on Network Rail, and the complete shutdown of the London Underground network by four unions engaging in 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 since the Thatcher era of the 1980s with new voting thresholds in trade union strike ballots,[[1]](#footnote-1) as well as a variety of other restrictive measures beyond the remit of this paper.[[2]](#footnote-2) 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[[3]](#footnote-3) made it more difficult for unions to take lawful strike action, including requiring unions to organise secret postal ballots in respect of industrial action. As a result, the UK laws on industrial action are widely regarded as some of the strictest in Europe. Subsequent New Labour and Conservative/Liberal Democrat coalition governments left this legislation largely unchanged.

The new Conservative majority government’s proposed legislation contains two changes with respect to strike mandates. First, all unions will have to persuade a minimum of 50 per cent of their members 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 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.

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).[[4]](#footnote-4) Thus for a strike ballot of 1,000 eligible union members (such as firefighters, nurses, teachers, railway or 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’[[5]](#footnote-5)

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[[6]](#footnote-6)* 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. The mayor of London, Boris Johnson, took the CBI proposals to the Conservative Party conference, following clashes with the RMT union over a London Underground strike threatened despite a relatively low ballot turnout, focusing on the need to restrict the right to strike in order to avoid disruption to the 2012 Olympic Games.[[7]](#footnote-7) Similar arguments were marshalled in a Policy Exchange think-tank report[[8]](#footnote-8) and Greater London Authority Conservatives Report on the London Underground.[[9]](#footnote-9)

The ‘democratic legitimacy’ of strike mandates and the debate about minimum turnouts in union ballots was highlighted by 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 (and 57 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’. [[10]](#footnote-10)

 With such considerations in mind this paper explores the following questions:

* To what extent are the Conservatives justified in pointing to a ‘democratic deficit’ with the majority of indifferent union members surrendering strike decisions 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 processaffect the level of participation?
* What *other* factors might potentially influence whether union members vote or not?
* What is the likely effect of the Conservative government’s two new balloting thresholds?

 To answer these 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 that do not apply to any other ballots. After considering 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. The restrictive parliamentary model of democracy underlying the secret individual postal balloting process, is compared with a participatory model of democracy based on collective decision making at workplace union meetings.

It proceeds to identify the enabling/inhibiting factors for strike ballot participation, including both *general* factors (economic/employment restructuring, employment legislation, strike defeats and the ‘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 successful industrial action ballots conducted from 1997-2015 by 28 unions, 158 of which are strike ballots. We find that unions often failed to achieve the proposed 50 per cent participation threshold. Examining the effect of introducing an additional 40 per cent 'yes' threshold for ‘important public services’ we find that this would have little *further* effect because most had already failed the 50 per cent turnout test. However, for both thresholds, there are significant variations across different sectors, unions and ballots.

Many unions will find the legislation makes it very difficult to mount officially sanctioned strikes as a means of challenging employers, especially in national collective bargaining negotiationsand against government-initiated austerity measures, both of which have greatest impact on the public sector. The paper identifies some important contributory factors to more positive voting figures.

It 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 strike action.

**Chapter Two Justification and motivation**

The case for change

Many business leaders have welcomed the introduction of ballot participation thresholds that would stop strike action called by a minority of union members. As the 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’.[[11]](#footnote-11) It has been claimed[[12]](#footnote-12) 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.[[13]](#footnote-13)

Business leaders have also 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.[[14]](#footnote-14) Thus while Simon Walker, director-general of the Institute of Directors, acknowledges the right to strike is a ‘fundamental part of our democracy’, he has argued ‘that 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’. [[15]](#footnote-15)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’.[[16]](#footnote-16) 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.[[17]](#footnote-17)

Katja Hall, CBI deputy director-general, has welcomed the reforms to ‘outdated industrial relations laws’,[[18]](#footnote-18) 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’.[[19]](#footnote-19) 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 head bangers’.[[20]](#footnote-20)

The case against

The TUC have claimed that imposing minimum turnouts would leave unions with ‘about as much power as Oliver Twist when he asked for more’.[[21]](#footnote-21) As a recent International Labour Organisation report reiterated,[[22]](#footnote-22) the fundamental right to free association 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 strike 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.

From this perspective, the government’s legislation would effectively undermine collective bargaining by removing the 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. Ironically, although Prime Minister David Cameron has declared he wants the Conservatives to be the ‘party of working people’,[[23]](#footnote-23) he is committed to making it harder for those people to organise themselves in a trade union.

Assessment

In some respects, the pledge to introduce further restrictions on strike balloting might seem ironical given that the three main indicators of UK strike activity (number of strikes, number of workers involved, and number of strike days lost) show that strike activity has remained at historically low levels for the last 20 years. 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, but such spikes have not altered the overall trend, nor have sporadic one-day national strikes by civil servants, teachers, firefighters, 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.[[24]](#footnote-24) This contrasts with the period when the Conservative government introduced balloting reforms in the early 1980s on the back of a wave of industrial discontent. So what actually explains the pressure for legislative change, and what are the underlying 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, closing down schools, disrupting the fire service, and paralysing the railway and London tube networks.

Third, notwithstanding historically low levels of strike activity, it would appear the Conservatives’ perceived ‘problem’ is less one that exists *now* than what is 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’.[[25]](#footnote-25)

**Chapter Three Unsubstantiated assumptions and** **illogical implications**

The introduction of secret postal ballots was based on the controversial assumption that given the chance to vote in secret, members would be opposed to going on strike. However the introduction of balloting thresholds for industrial action is arbitrary and some of the practical implications are illogical.

 Stanley[[26]](#footnote-26) points out that the Conservative’s requirement for a 50 per cent turnout is illogical, which he demonstrates with 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.

Are non-voters against strikes?

The 50 per cent threshold gives people who do not participatein strike ballots a special status - they are in effect assumed to 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. 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.

Despite the fact that formal voting figures in strike ballots 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.

Moreover, it is often the case, particularly with large-scale strikes, that hundreds or thousands of non-members will join an appropriate union in order to be able to strike. 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 direct result of the dispute, with an unprecedented level of recruitment activity at branch and workplace level.

The impact of tactical abstention

Significantly under the government’s proposed legislation the special status of the person who does not vote would potentially have greater weight than those who oppose the action and take the trouble to register a vote. If 1,000 people are eligible to vote in a strike ballot and 499 voted in favour and one against, it would nullify the validity of the vote if this one person decided not to vote instead, thereby reducing the turnout below 50 per cent. Thresholds make it more beneficial for active opponents of strike action to collectively *non-vote*, since by not voting they could prevent the ballot from reaching the ‘legitimatising’ threshold, whereas by actually voting ‘no’ when most vote ‘yes’ they might be guaranteeing passage. In other words, while the government complains about participation rates, the legislation could potentially reduce them.

Are members opposed to strikes?

Strike ballots were enacted in the early 1980s with the expectation that union members are reluctant to take strike action and if given the chance would vote accordingly - the ‘silent majority’ verses the ‘hot-headed’ militant union leadership thesis. Yet this has clearly proved to be false with most members supporting 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

In the wake of the manifest failure of postal ballots to prevent workers voting to take industrial action, employers have complained that ballots have actually strengthened unions’ bargaining position. Thus frequent amendments to the legislation (of which the threshold measures are the latest initiative) have intentionally made balloting more difficult for unions. As the balloting provisions have become more complex, some employers have mounted highly technical legal challenges to strike ballots by threatening and obtaining injunctions, and occasionally claiming damages.[[27]](#footnote-27) These have resulted in the ballot being suspended or strike cancelled; for example, British Airways took Unite to the High Court in 2010, in 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.

Why the special treatment for strike ballots?

There is also the argument that it is unreasonable to impose electoral thresholds on strike ballots that do not apply to the UK’s political system. 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) referendum it was just 41 per cent. In the May 2015 general election, only 37 per cent of voters, and less than 25 per cent of the eligible electorate as a whole, supported the Conservatives. Many individual MPs were returned with a small proportion of the eligible vote. 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.

**Chapter Four 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 attempt to overcome what is regarded as the main obstacle to higher voting levels: namely 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.[[28]](#footnote-28)

Some people believe that removing the requirement for unions to post ballot papers to their members’ home addresses (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 smart phones would increase voter turnout, as well as reduce the cost of ballots for unions considerably.[[29]](#footnote-29) Mark Serwotka (PCS General Secretary) argues that the turnout in strike ballots would ‘rocket’ if union members were allowed to vote electronically or by phone.[[30]](#footnote-30)

The campaign for electronic voting in strike ballots is part of a wider campaign for the introduction of an online voting option in UK elections. 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 WebRoots Democracy, claim that the introduction of an online voting option could increase turnout in UK General Elections by up to 79 per cent, producing up to 9 million extra voters and reversing the growing political apathy and low electoral turnout, particularly among young people.[[31]](#footnote-31) As well as wanting an online voting option for the 2020 General Election, it also wants online voting in trade union strike ballots by 2016.

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. The University and College Union’s (UCU) 2014 online consultative ballot on revised pension change proposals, produced a turnout of 39 per cent,[[32]](#footnote-32) compared with 44 per cent for the earlier strike ballot.

Ballots and democracy

On the basis of what could be viewed as a parliamentary model of democracy, the level of participation in strike decisions has been seen as a measure of union democracy.[[33]](#footnote-33) In the process the linking of ballots and democracy has always been central to the debate about secret postal ballots with governments successfully portraying balloting legislation as a necessary means to democratise unions by increasing membership participation in important decisions.

 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 many unions required members to attend branch meetings in order to vote on policy issues, elect their general secretary, or vote for industrial action, but the vast majority of members were not willing or able to attend. As a result, it was claimed that branch meetings, and therefore decisions, were controlled by unrepresentative minorities of militant, politically motivated left-wing activists. The solution was to introduce legislation that would make it compulsory for unions to involve members through secret postal ballots. It was claimed that this would 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. The presumption was that decisions would be more ‘rational’ if the individual worker was insulated from the direct pressures of work colleagues and union activists and the emotion of the mass meeting. Ensuring that membership participation was as *individuals* rather than as members of a *collective* was a central objective of the balloting legislation. However arguably the balloting legislation had little to do with democracy, the objective being simply to make strike decisions and action more difficult.[[34]](#footnote-34)

Collective versus individual participation

Critics of the parliamentary model of democracy argue that the balloting legislation failed to recognise that trade unions are collective organisations, 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. 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. Even though online voting would undoubtedly make it technically easier for union members to participate in strike ballots, it would not overcome the inherent fragmentation and atomisation of the balloting process. Secret postal ballots 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 individuals.[[35]](#footnote-35)

The case for workplace ballots

Fairbrother[[36]](#footnote-36) 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 representatives. 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.[[37]](#footnote-37)

It was argued that a more genuinely democratic channel for participation would involve discussions, debates and decisions taken at workplace union meetings, rather than a secret postal vote. 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. When 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, where the only real ‘discussion’ of the proposal would come in the form of a positive union recommendation, on the one hand, and a negative media campaign, on the other. Workplace meetings would vastly increase membership participation in the decision making process and be hugely more democratic.

When the 1984 Trade Union Act required trade unions to hold industrial action ballots, which could be workplace ballots, it had the effect of increasing membership participation.[[38]](#footnote-38) A number of 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 pithead ballots. But in 1993[[39]](#footnote-39) workplace ballots for strike action were banned by the Conservatives and only fully *postal* balloting allowed. This reduced the turnout compared to workplace ballots.[[40]](#footnote-40) According to the Electoral Reform Balloting Services[[41]](#footnote-41) who looked at 242 postal ballots in 1994, in ballots of over 1,000 members participation 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.

During the 1960s and 1970s, workplace mass meetings and show-of-hands strike votes, were often held in canteens or in the car parks outside the factory. They were an expression of a collective form of decision-making based on open debate, in an atmosphere of strong, dynamic worker interaction. The NUM’s method of holding such ballots at the pithead was particularly attractive, as it gave every union member the right to vote in a secret ballot, but under conditions that 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’.[[42]](#footnote-42)

Yet even in their heyday, mass workplace union meetings appeared to cut against the grain of society. As Beynon noted,[[43]](#footnote-43) ‘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’ during the 1970s, when 'union firebrands' allegedly intimidated members at open air mass meetings, militant shop stewards did not always win support for strike recommendations, and mass meetings constrained the activities of stewards.[[44]](#footnote-44) Conversely postal ballots may have reduced participation but have not guaranteed moderation.

There is a strong case for workers having the right to take decisions at workplace union meetings, whether by a show of hands or by a secret ballot (possibly including the option for online voting) held after the meeting and subject to independent scrutiny. It should be noted that under the New Labour government’s Statutory Recognition Procedure, 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 and would, to some extent at least, address the problem of low voter turnouts.

But even if such alternative ways of attempting to increase ballot participation were implemented, although they would increase turnout, there is still a serious doubt as to whether they would increase enough to meet the proposed thresholds, which raises the question of why turnouts in strike ballots are not higher, and whether there are broader problems for the unions which cannot be solved through changes in the method and location of voting.

**Chapter Five Other 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.

Undecided members

Paul Nowak,[[45]](#footnote-45) deputy TUC general secretary, suggested that non-participation may be because union members genuinely cannot make up their mind whether strike action will succeed and so 'sit out' the vote to see what others think; or whilst they may be very sympathetic to the union cause, 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 importance of the issue at stake with concern about the impact that strike action could have on their customers, especially patients, pupils or members of the public, and therefore defer their decision in the hope that a settlement might be reached.

It should be noted when strike proposals were voted on in mass meetings in factory canteens or car parks in the strike-prone days of the 1970s, anecdotal evidence suggests that few people abstained. Of course, in large part this may have reflected a more confident belief in the strength of unions and their prospects of success during the 1970s. Nonetheless, even during these times, some people were more hesitant to put their hands up than others. Undecided workers might have been persuaded by listening to the arguments and observing others. But with secret individual postal ballots, undecided 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.

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

General factors

*Economic climate and employment restructuring*

The long post-war boom and full employment underpinned high levels of union membership and union militancy. Since the mid-1970s, periodic and serious recessions, the decline of the strike prone industries (car factories, docks, coal mines), and the contraction of the highly unionised areas of manufacturing industry together with the growth of the largely non-unionised private services, has produced a changed industrial relations climate with a steady decline in union membership and the coverage of collective bargaining. There has been a significant reduction in the size of the average workplace, which also has a negative impacted on union membership. Recent neoliberal austerity measures have undermined the bargaining power of unions, reinforced the fear of job loss in the event of strike activity, and encouraged the view that strikes would be self-defeating, which in turn affects ballot participation rates.

*Employment laws*

A series of employment laws since the early 1980s have progressively limited legal immunity from claims for damages by unions engaged in strikes, 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 forcing unions to call off industrial action[[46]](#footnote-46) The (no doubt intended) consequence of balloting requirements that were supposed to ensure union democracy is that they have increasingly been used to prevent strike action. This hostile legal climate has also 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, dock and print workers, and notably in the year-long 1984-5 miners’ strike, has had a significant ‘demonstration effect’ as each strike defeat discourages others from risking a strike. Not only have the number of strikes decreased, but also their character has changed, with those strikes that do take place being overwhelmingly official, 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. Those strikes that do occur are often discontinuous, with demonstrative large-scale one day strikes in the public sector. This reduces workers’ confidence, willingness to take action and level of ballot participation.

*The crisis of political 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 that may have further impacted on strike ballot participation levels. There has been a growing disaffection and disengagement from political elections. 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 by the 2010 election it had dropped to 65 per cent. The drop is most acute amongst young people with only 46 per cent of 18-24 year olds voting. 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 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). It is important to appreciate this broader political context in understanding low voting levels in strike ballots.

Specific factors

*Size of the union*

Does the size of the union affect turnout rates?It could be 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 assumptions is that smaller unions (such as the train drivers’ union Aslef) are likely to have a lower ratio of members to full-time union officials, as well as officials who have closer links and contacts with their members, and a higher membership identification with the union and its policies, than larger unions (such as Unite or Unison). 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.

*Nature of the union*

The nature of an individual union could also be an influential variable in terms of ballot turnout, for example more general unions (such as Unite and the GMB), which organise across a number of different industries, organisations, employers and occupational groups, may be less likely to obtain a high turnout than 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. Thus the RMT, an ‘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, and achieves creditable levels of strike ballot participation, at least on the railways.[[47]](#footnote-47) But it does not explain why the National Union of Teachers’ strike ballot turnouts have not been much higher than general unions, so again other factors would need to be taken into account.

*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 for strike ballots. By contrast, with the trend towards a more fragmented and dispersed workforce, it can be much more difficult for workers who are physically isolated to gain the support and strength gained by working alongside others, for example, in local and national government and civil service employment. This isolation is accentuated when postal ballots are delivered to individual members’ home addresses.

 It also seems possible that 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 the extent management supports local union representation and organisation, in terms of provision of facilities (such as time off work for representatives, office space, etc) and leeway for independent initiative for unions to take up their members’ grievances, could be significant.[[48]](#footnote-48) If members feel that management support union participation, they may be more likely to vote. If management are opposed to unions, members may feel that it is risky to participate in a union, even to the extent of participating in a secret ballot. However this is not automatic, for example, at British Airways, the severity and nature of the perceived managerial attack on workers conditions and union organisation together with widely acknowledged managerial bullying contributed to widespread discontent and support for strike action.[[49]](#footnote-49) While managerial imposition of change without adequate consultation is viewed as unreasonable, this does not necessarily produce high turnout rates, but it seems likely to be an ingredient in the mix.

*Trade union leadership*

 Often the popular media claim that militant union leaders and activists are responsible for stimulating strike action. With reference to the Conservatives new balloting thresholds, Jonathan Isaby, of the Taxpayers’ Alliance commented: ‘This would be a reasonable step to ensure a minority of militant union activists cannot cause misery for millions’.[[50]](#footnote-50) 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 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 has shown,[[51]](#footnote-51) 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 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 degree of interaction between national union leaders and workplace representatives/members, with a propaganda and organisational campaign at every level of the union, including leaflets, text messages, Facebook and Twitter communication, meetings 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 be won or that workers are not prepared to fight, can also have a potentially influential impact on the level of participation in strike ballots.

*Workplace union organisation*

 The nature and health of workplace union organisation is also likely to be an important factor in the extent to which members vote in strike ballots. The key factor is whether union representatives exist and operate in each workplace (or section/department) and are able to carry arguments and mobilise the membership in a way that supports national union campaigns. Where there are active workplace representatives, workplace union meetings can take place reasonably regularly, with union members encouraged to attend. Greater levels of strike ballot participation are likely where there is workplace union activity involving the members, compared with workplaces where union organisation is poorly organised. Indeed as Fosh and Cohen have argued,[[52]](#footnote-52) there is a link between the extent to which there is a highly participative style of workplace union leadership that encourages local representatives to place an emphasis on consulting and reporting back to their members and including them in local decision making as much as possible, and members’ commitment to collectivism and their participation in union organisation and activity.

 Where the momentum for a strike ballot is generated *from below*, with demands on union officials to support calls for action (especially if this has been expressed through rank-and-file networks of members) then the strike ballot participation rate is likely to be higher. But the severe weakening and atrophy of workplace union organisation compared with the past, with the ‘challenge from below’ currently at its lowest ebb since the 1930s, means this is less likely to happen. Although many workplace union representatives have undoubtedly displayed an extraordinary level of commitment to holding together workplace union organisation, some of them also are left feeling beleaguered and defensive in relation to employers and governments, and fairly cynical towards their members, resulting in an unwillingness to mobilise them into taking action. Nonetheless, workplace representative organisation is central to the process of winning strike ballot votes, mobilising hundreds of thousands on TUC and anti-austerity marches, and providing leadership in national/local disputes by rail, tube, postal, fire, civil service, university, and local government workers.[[53]](#footnote-53)

*Variable mix*

To sum up, each of the general and specific explanatory variables outlined above interact and have to be seen as collectively explaining the level of turnouts in strike ballots, and the differences between ballots. 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 their relative importance indicates the difficulty in achieving a satisfactory explanation. While there may be some common features, each union/ballot has a distinct make-up/dynamic, and there is considerable complexity and variation, which means there could never be one over-arching explanation.

**Chapter Six Database evidence**

We can now turn our attention to our empirical findings on strike ballots and action short of strikes (ASOS). 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 publicly 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, the monthly average turnout rates vary dramatically from 25 to 67 per cent, clearly indicating 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.

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, 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 (fire fighters 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 ‘important public services’ that might be covered by the Act has not been decided and is open to public consultation until September and will ultimately be subject to Regulations issued by the Secretary of State.[[54]](#footnote-54) There is always scope to extend the Regulations to deal with other occupations threatening strike action within the specified sectors. However it is intended that the balloting requirements will not just apply 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 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. In only 55 out of these 90 strike 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 Chiropodists 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,[[55]](#footnote-55) 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).[[56]](#footnote-56) 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 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 need for the introduction of an additional ‘important public services’ balloting threshold.

**Chapter Seven 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.

The level of collective bargaining

There is a clear tendency for workplace, area or single employer ballots to obtain ‘higher’ turnouts and be more likely to clear the 50 per cent threshold while national ballots obtain ‘lower’ turnouts and are less likely to meet the threshold. For example, most of BFAWU’s ballots cleared the 50 per cent threshold, but all were single employer ballots, often at a single workplace. FBU’s area ballots averaged 70 per cent turnout compared with 60 and 48 per cent for its two national ballots. The average turnout for the NUT’s national ballots was under 31 per cent whereas the average turnout for single school ballots was 64 per cent. Similar examples could be cited from PCS, RMT, UCU and Unite. This confirms the picture found by a previous study 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.[[57]](#footnote-57)

Occupational identity

Unions with members who have close occupational identities appear to be able to generate higher strike ballot votes than more general unions*.* Certainty, 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 fire fighters’ job, as well as their collectivist trade union forms of organisation at station/watch level.[[58]](#footnote-58) Likewise, turnouts by cabin crew at British Airways were high, despite a workforce dispersed into small groups and geographically located across the world.[[59]](#footnote-59) In some industries, workers with different occupations identify with the industry in a way which produces similar characteristics to occupational identities, for example, steel workers and railway workers.

Left-wing union leadership

There is some evidence that union leadership, specifically left-wing leadership, can also be a positive enabling factor. Darlington’s studies[[60]](#footnote-60) 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 representatives and activists have held fairly explicit left-wing values, ideology, motivation and commitment. They have also exercised considerable industrial and political influence in shaping the union’s antagonism towards the employers and government, persistently stressing the virtues of militant resistance, collectivism and solidarity and mobilising members to vote for and support strike action. Similarly left wing local and national leadership in the FBU obtained relatively high majority votes in favour of strike action and on high turnouts in its campaign over pensions.

However, left wing leadership is not a guarantee of success. RMT leaders have had more success in achieving high turnouts on the railways than on London Underground. Similarly, local left wing leadership in the UCU had more success in delivering high turnouts in FE Colleges than in Universities.

 **Chapter Eight Union responses**

How have the British labour movement’s leaders responded to the Conservative government’s Trade Union Bill that threatens to undermine effective trade union organisation, collective bargaining and the right to strike? Significantly all the 2015 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.

Illegal action

Unsurprisingly the TUC general council and 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.[[61]](#footnote-61)

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, 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’.[[62]](#footnote-62) 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 seen since the 1980s.[[63]](#footnote-63)

It remains to be seen whether 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, this campaign may well be doomed given the determination and parliamentary majority of the Conservative government. In a context in which strike action which lacks the support of a legal ballot would leave unions exposed to injunctions, claims for damages, and even action for contempt of court and sequestration of unions assets, it seems unlikely that union leaders will defy the law, unless they are subjected to enormous pressure from their members from below.

Strategic balloting

It is more likely that unions will become consciously strategic, only balloting those groups of workers who they can be confident would attain a 50 per cent participation threshold and for 'important public services' also the 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, their negotiating position may be stronger, with or without a strike.

Legal challenges

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), or to the ILO. 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.[[64]](#footnote-64)

Leverage campaigns and citizen bargaining

If unions find their ability to mount strike action is curtailed, one 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 employers and 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, forcing companies such as Walmart and MacDonald’s to offer pay increases following customer and public protests outside stores. Likewise, 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’.[[65]](#footnote-65) In the face of the tightening of the rules on industrial action, such campaigns (which operate outside the law on industrial action ballots), may become the ‘weapon of choice’ for unions.[[66]](#footnote-66) However these tactics can only be used in limited cases and are no alternative to a system of effective collective bargaining backed by the threat/use of strike action.

Unofficial strikes

Another possibility is the return of unofficial strikes, 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’. Triggered by a new wave of deep public spending cuts affecting pay, working conditions and jobs, some groups of workers may take matters into their own hands notwithstanding the potentially severe legal penalties against unions that do not repudiate unofficial action and/or against individuals taking unofficial action. If this happens, 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, and disputes more difficult to resolve.

1. While the proposed legislation refers to ‘industrial action’ embracing both strikes and action short of a strike, this paper concentrates on strike ballots. [↑](#footnote-ref-1)
2. The bill includes other measures outside the scope of this paper which are potentially very damaging to unions: 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; moves to force unions to make members 'opt-in to their political fund (rather than current ‘opt-out’) and to be re-confirmed every 5 years, aimed at reducing unions donations to the Labour Party, and restricting unions ability to engage in 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 limits on the proportion of paid working 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.

On 6th August 2015, the Government announced a last minute provision to end 'check off' arrangements (whereby union dues are deducted from salary) across all public services is to be included in the Trade Union Bill (a measure already recently taken in some central government departments, notably the Home Office, HM Revenue and Customs, and the Ministry of Defence). [↑](#footnote-ref-2)
3. Trade Union Act (1984), Employment Act (1988), Trade Union Reform and Employment Rights Act (1993) and Code of Practice on Industrial Action Ballots and Notice to Employers (2005) [↑](#footnote-ref-3)
4. This is the same threshold that applies in ballots for union recognition under the statutory recognition procedure. [↑](#footnote-ref-4)
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12. The source of these figures is unstated and is unknown to the authors. [↑](#footnote-ref-12)
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14. *Impact Assessment: Ballot Thresholds in Important Public Services: Consultation Impact Assessment*, London: Department for Business, Innovation and Skills. [www.gov.uk/bis](http://www.gov.uk/bis) [↑](#footnote-ref-14)
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