



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Legislative Scrutiny: Strikes
(Minimum Service Levels) Bill, [HC 1088](#)

Wednesday 8 February 2023

3 pm

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Members present: Joanna Cherry MP (Chair); Lord Dholakia; Lord Henley; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer; Bell Ribeiro-Addy; David Simmonds MP.

Questions 13 - 26

Witnesses

[II](#): Kate Bell, Assistant General Secretary at Trades Union Congress (TUC); Tim Sharp, Senior Employment Rights Officer at Trades Union Congress (TUC)

Examination of witnesses

Kate Bell and Tim Sharp.

Q13 Chair: I am delighted that we are now joined by our second panel of witnesses. First, we have Kate Bell, who is the assistant general-secretary of the Trades Union Congress. She joined the TUC in 2016 as the organisation's head of economics international and employment rights department. We also have Tim Sharp, who is the TUC senior policy officer for employment rights, which means that he is responsible for trade union and employment law focusing on collective employment rights.

I think you both sat through the previous session, and clearly we will ask you questions following on from the ones we asked our panel of lawyers and legal academics, but very much from the point of view of trade unions and your experience in the sector. Just to clarify something before we get started, the Government seem to be suggesting that the impetus for this Bill is a problem that arose during the ambulance strike, when there was a breakdown in the informal arrangements for minimum service cover. Could you comment on that?

Tim Sharp: That is not our understanding. The union members, particularly in the health service, are dedicated professionals. They take strike action as a last resort, and it has been custom and practice in safety-critical areas that arrangements are put in place so that a minimum level of care is provided and these are discussed at the appropriate level. When it comes to the ambulance trusts, for example, that is at trust level. As a result, arrangements are appropriate to that particular geography. As I understand it, unions will also have national-level contact going on during a dispute if they have any issues that arise. The key thing is that appropriate arrangements are made at the appropriate level, and that will vary from trust to trust.

Kate Bell: Thank you for inviting us to give evidence. Frankly, the paramedics we have spoken to and the unions representing them have been pretty insulted by the suggestion that they do not take seriously the safety of the people they look after day in, day out. We visited picket lines where people are regularly leaving in order to deliver that cover. You will have seen strong statements from the leaders and representatives of all those unions refuting very strongly the idea that that cover has not been delivered across these strikes.

Q14 Chair: Thank you. We are limited on time, so maybe you could choose who between you answers which question. Could you give an overview on the role a trade union plays in organising a strike, and what the union has to do to make sure that the strike is lawful?

Kate Bell: Obviously, strike action is a last resort when negotiations have broken down. The union's role is ensuring that workers can exercise the power to withdraw their labour in a way that is compatible with our framework of industrial action law, and protects those workers from being dismissed as a result.

I am very conscious that we have a row of legal experts behind us, but to be legal, a strike has to relate to a trade dispute. That means that it is related to employment conditions with the employer in question; there is a secret postal ballot with heavily prescribed wording, and a 25-page code of practice on balloting, which unions must follow in order to be compliant.

In order for the strike to go ahead, unions have to have met certain thresholds: a 50% turnout threshold and 40% of membership in important public services must be in support of the action as defined in the 2016 Trade Union Act. Two weeks' notice—14 days—has to be given to employers; this provides many opportunities for employers to challenge the legality of that strike, as many frequently do. Unions have been pushing for reform; during the passage of the 2016 Trade Union Act, unions asked for the opportunity to ballot their members electronically, as is common in a wide other range of democratic contexts.

The review commissioned by the Government recommended pilot schemes, but Kwasi Kwarteng, in his role as Secretary of State, announced that these would not be going ahead. We have a highly restrictive framework conducted in quite an old-fashioned way.

Baroness Kennedy of The Shaws: It is a postal ballot?

Kate Bell: It is a secret postal ballot, which must be sent to the worker's home. It cannot be conducted at the workplace.

Q15 **David Simmonds:** Could you outline to us how you feel the Bill would impact on the ability of trade unions to act to protect the interests of their members, something that has been recognised as the right to freedom of association in the ECHR?

Kate Bell: As I think you heard in the first part of the session, the Bill is currently extremely light on how minimum service levels are actually expected to work and, as yet, we have no impact assessment with which to take a considered view of what these impacts might be. Much of the key detail will be in regulations, over which unions, employers, and indeed you as parliamentarians, will have very little influence. At the moment, assessing the full impact of this Bill is difficult, because we have not been provided with that detail. As I think you heard in the previous panel, minimum service levels could be set at 90% of the existing service, something that is not being achieved very frequently in our public services on non-strike days. We have no clear evidence at present regarding where those minimum services levels will be set.

It is clear that the Bill is intended to undermine the right to strike and to chill industrial action, and to shift the balance of power away from workers. What is very clear is that somebody could vote democratically to take industrial action in—as you have heard—a reasonably process-heavy ballot, and then be told that the votes that have taken on a legal basis are no longer valid and they must be compelled to attend the workplace.

I think you heard from the previous panel that this could present union members, and indeed union officers, with the potentially humiliating prospect of being asked to cross their own picket lines. We do know that workers who fail to comply with that direction could face the threat of dismissal and that there could be huge consequences for unions that fail to comply with the requirements.

As Keith was just explaining, there is uncertainty over exactly what those requirements mean by “reasonable steps”, and unions could face extremely large damages; the cap on damages that unions may have to pay was raised to £1 million last year. At the minimum, this poses a fundamental attack on the democratic right to take industrial action at your workplace and on union democratic processes. We do not know the extent of this, because we do not have the detail about whether any industrial action would in fact be possible under the level of minimum service that government will prescribe.

Q16 Lord Henley: You obviously accept that a fair balance in competing freedoms has to be struck between the individual and the community itself under Article 11. You have said that you heard that it was around 90%. Where do you put the balance, or is this a matter for negotiation?

Tim Sharp: Yes, we have to think about the applicability of minimum service levels and that broader industrial relations landscape. Kate has already set out the significant hurdles that unions have to get over in order to conduct industrial action at the moment. There are already significant restrictions, which include a 14-day notice period to employers that effectively gives them time to make preparations. We also need to consider the context of the different industrial relations landscapes; collective bargaining coverage in this country is a lot lower than in places like France. Unions and their members have less industrial strength to influence things like terms and conditions.

We should also remember that the UK has already had criticism from the ILO about our existing provisions. The ILO made three observations in relation to the 2016 Act, with particular concerns about the thresholds that the workers, in what are deemed important public services, have to clear in order to take industrial action.

The particularly draconian version of minimum service levels that the Government are proposing gives significant power to Ministers and employers to impose decisions on who works and what they do, with minimal consultation with unions. One of the notable interventions in this discussion has been from the ILO director-general, who said that he is not aware of any bilateral discussions in this matter. We are very worried that workers may have to accept situations that are below par in order not to lose their job. It feels quite clear that Britain is at great risk of falling even further behind international norms on industrial relations.

Lord Henley: Are you suggesting that the Government should never impose minimum levels or that it should always be by negotiation?

Tim Sharp: The Government have not shown any evidence that the existing system does not work. For instance, we have set out what happens in ambulance trusts; we have a particularly onerous regime in that situation. We cannot see any justification for a legislating a statutory minimum service regime.

Kate Bell: Chair, you asked earlier about the justification for this Bill. It is notable that these proposals were being floated in summer 2016 by the then Secretary of State, Grant Shapps, before the current wave of industrial action. This was in the context of the Conservative leadership contest, during which there was no evidence, as the strike action that we are currently experiencing had not taken place.

Q17 **Bell Ribeiro-Addy:** The Government are saying that they have drafted this legislation because there are issues with the current minimum service levels in place. It would be helpful if you could explain to us the arrangements that are being challenged.

Tim Sharp: Picking up the earlier example, it has been custom and practice, in the public and the private sector where you have safety-critical jobs, that unions put arrangements in place. In the public sector such as in hospitals and in ambulance services, and in the private sector where for example gas workers will be put in play, unions negotiate with employers to put arrangements in.

It is worth remembering the backstop of Section 240 of the Trade Union and Labour Relations (Consolidation) Act, which was touched on earlier. As far as I know, that has not been revoked, because it has been custom and practice for unions to put these things in place. It may be done at national level in some services. In some businesses, it may be done at local or regional level. As we have seen with ambulances, it tends to be at the appropriate trust level, so that services provided can reflect the challenges and needs of those particular areas.

Kate Bell: One point to emphasise is that one of the many strange things about this Bill is that it replaces the system done at an employer level—at the level at which the service is delivered—with a minimum service dictated solely by a Minister who will now presume to know the minimum service level required in every ambulance trust and every nuclear site across the country. It replaces a system that has been tailored to the needs of individual workplaces and individual employers with one that has been dictated entirely centrally at ministerial level.

Q18 **Bell Ribeiro-Addy:** The Secretary of State said that the Government do not want to use the powers in the Bill and that voluntary arrangements can be made. Do you think this statement of intent is enough to ensure that the powers in the Bill would not be used if these voluntary arrangements are actually made? If not, is there an alternative that would be sufficient? Are there any particular amendments that we could make to the Bill to achieve this?

Kate Bell: The brief answer to your question is no. It is notable that the Government have not consulted on this legislation; they have not taken

any steps to discover the views of unions or employers. We do not know the views of employers in the private sector that could be covered in the Bill, or indeed of the public sector employers that will be asked to implement it. It is difficult to see this as a good-faith attempt to solve a problem that has arisen when there has been no discovery process about what those arrangements on the ground look like or how are they working, and no opportunity for unions or employers to make representation.

Tim Sharp: It is notable that service levels could be imposed in very broad categories of sectors ranging from core workers to ancillary workers. The number who could be affected is absolutely enormous, and it is being held over workers at a time when industrial action is being taken, or being considered, in a range of areas. We have to consider what the actual intention is and whether the intention really is just to have a chilling effect on the disputes that are happening rather than a genuine worry about the level of services provided during industrial action at the moment.

Q19 Bell Ribeiro-Addy: We have heard through anecdotal evidence some of the reasons why certain sectors are striking. Do you have any information about sectors where minimum levels are being met during strike periods, and are levels that are not being met during your average day because of issues with the particular sector or service?

Kate Bell: I do not have it in front of me, but I know that the GMB looked at research on the provision of ambulance bays. It is worth emphasising that one reason why we are seeing many workers on strike, across the public sector in particular, is because they feel that they cannot deliver in their normal day-to-day work the service that they came into that profession to do. If you talk to any of the workers on strike, that is something they feel very strongly about. The low staffing levels are, of course, also a factor of the pay and conditions in delivering the service of care to their patients, to the people they wish to look after in a range of sectors.

Q20 Bell Ribeiro-Addy: I am sorry, but I forgot to declare that I am a member of a trade union and I attend many picket lines. The strikes Bill would not involve trade unions in the setting of minimum service levels, and it would involve employers only consulting with the trade union before setting out who must work and what they must do during a strike where minimum service level is being applied. Do you believe that this level of involvement for trade unions allows trade union members to observe their rights in accordance with Article 11?

Tim Sharp: No, we do not. As Kate touched on, it seems absurd that you have a Secretary of State sitting in Whitehall dictating what a service looks like across the country, with no obligation specifically to consult with employers or trade unions. As I think you mentioned in the first part of the session, the system put in place is a shortcut, even compared to the transport strikes Bill. We were sceptical about quite how much scope there was for genuine collective negotiation in that Bill, but they have

just decided to dispense with that altogether. Now it is just the Secretary of State who consults with such persons as they consider appropriate. When it comes to the work notices, yes, the employer has to consult with a union, but that is very different from negotiation and it is definitely very different from having an obligation to take those views on board.

Another thing that has been dispensed with since the transport strikes Bill is any sort of arbitration. We still do not think you should have statutory minimum service regimes, even when you bring cloud negotiation and arbitration, but it is notable that this Bill dispenses entirely with those niceties. We cannot see how such an approach can be consistent with ILO jurisprudence, which would be key to establishing compliance with Article 11. It is also out of kilter with what you would see in most of Europe, where there are minimum service regimes. Research out today shows that 85% of those countries have forms of collective negotiation and that arbitration is part of their arrangements, but the Government do not see fit to include these in this Bill.

Q21 Bell Ribeiro-Addy: You have answered my question on your views on the transport strikes Bill. I asked the other panel this question: in terms of Article 4, do you see what the Government intend to do with this Bill as potentially moving into the realm of modern-day slavery, given that people are being forced to work?

Kate Bell: It is probably best to defer to the previous panel, who will have more expertise in that area of law.

Chair: Tim, you mentioned research out today. Is that research from the UK in a Changing Europe, by Dr Joelle Grogan and Professor Catherine Barnard, and what was the statistic?

Tim Sharp: Eighty-five percent of countries with a statutory regime have a form of collective negotiation and arbitration. Again, that is not to say that we think that would make for a good Bill, but that is the norm, which is absent here.

Chair: Thank you very much.

Q22 Baroness Lawrence of Clarendon: In our last panel, we talked about freedom of association. Would the introduction of minimum service levels be effective in meeting the aim of reducing the disruption caused by the public strike?

Kate Bell: Again, we do not have the impact assessment; we do not have the details. Our aim, and what we think employers want to see, whether they are in the public or private sector, is an improvement in industrial relations. We are very clear that this Bill will certainly not do that. You cannot legislate away the level of dissatisfaction that has been caused by a decade of pay freezes and increasingly heavy workloads. That is at the root of the current level of industrial disputes.

It is also difficult to see this creating a system in which industrial relations are easier to conduct for employers. That is not necessarily an

aim that we would have, but even from the employer perspective, this is a highly bureaucratic piece of legislation. It will require them to name individuals; we assume they will have to conduct some form of equality impact assessment when they name those individuals and be mindful of their duty not to discriminate against those who are trade union members. We do not think that employers, particularly in the middle of a set of negotiations, will want to enter into that willingly.

The only impact assessment we have, which, as we discussed, was for the transport strikes Bill, suggested that there was a risk of more action, short of a strike taking place. Of course, a strike is just one of a range of negotiating tactics which trade unions might use. We have had examples, particularly in transport, of potentially more frequent strikes. What we, and we believe most people, would like to see is an improvement in industrial relations and a resolution to dispute; there is certainly no evidence that this Bill will achieve that.

Q23 Baroness Lawrence of Clarendon: Earlier I asked the other panel about the level of service that the ambulance service provide. Do you know, across the board, if there are other areas where that level of service is provided by other workers?

Kate Bell: All workers in critical services will have forms of life and limb cover in place, and those have tended to be negotiated in the tradition of those levels of industrial relations. Somebody providing nuclear security is obviously in a different position to someone in ambulances or providing education. Of course, the Bill covers an enormously wide range of education, from the independent sector to primary schools, which will have a different approach to providing a level of minimum service from that of buses, or indeed taxi cabs, which, as the Bill is currently drafted, are included in the definition of transport. At the moment, those traditions have been very different when industrial action has been negotiated. It comes back to the point that we do not have evidence that those procedures negotiated across those different sectors in the tradition of UK industrial relations have not worked.

Q24 Baroness Kennedy of The Shaws: I took up my yellow highlighter, because there was a quote from Professor Ewing that really took us to the heart of this. He said, "This piece of legislation imposes a duty on the union to co-operate with the employer to defeat the strike". This in itself seems to work against the very purpose of your union, which is to listen to what its members are saying. The members have voted to strike, with very strict rules as to how they do that, and yet the duty is placed on the union basically to take what they say are reasonable steps to ensure compliance with a work notice. What will the unions have to do? Have we any idea what you are supposed to do? Drag people in? What are reasonable steps?

Tim Sharp: That is one of the gaping holes in this legislation; we simply do not know what reasonable steps might look like. It appears that it will be up to the courts, rather than Parliament, to define what reasonable steps are. One of your previous panellists talked about whether it could

just mean informing members about the work notice. In which case, why are they doing the job that the employer should really be doing? Does it mean providing other members with a list of names that they should not try to dissuade from crossing a picket line? Where does the line lie? The consequences of getting this wrong for a union are really serious. Kate touched on this previously; last year, the Government quadrupled the cap for damages to £1 million. These are really significant consequences, even for the largest unions, if they get this wrong.

Q25 Chair: As you heard in the previous session, I asked the witnesses about the Government's claim that this Bill simply replicates what is happening elsewhere in Europe. Tim has referred to the research that came out today from UK in a changing Europe. Overall, do you think the Government's comparison with what happens elsewhere in Europe is a legitimate comparison, and if not, why not?

Kate Bell: Tim has talked about the research on the details but, as the previous panel also said, we are talking about fundamentally different industrial relations landscapes. In France, collective bargaining is at 95%, compared to around 27% here. In Italy, an employee who refuses to attend work under the terms of their minimum service levels cannot be threatened with the sack. Union rights are fundamental to the constitution of Italy, as they are to France and Spain. There are very different circumstances in which strikes are called in France; there is no obligation to inform the employer, or indeed to seek to conclude an agreement before strike action takes place.

We are talking about a very different framework of industrial relations into which this one particular measure is being cut. It is worth quoting the European Trade Union Confederation, which has said, "The UK already has amongst the most draconian restrictions on the right to strike in Europe, and the UK Government's plans would push it even further away from normal democratic practice across Europe". I do not think we can put it better.

Q26 Bell Ribeiro-Addy: That quote touched on something I was going to ask. What are the views on legislation that we already have on the right to strike? As a trade unionist, I know that many think it is already restrictive. The Chair pointed to countries that the Government, by making this legislation, would like to compare themselves to. Are there any countries that you would say we compare to, given the view that we are quite restrictive already, and are we going further down that road by passing this Bill?

Kate Bell: I am reluctant to pick the most draconian regime to compare ourselves to. To reframe your question, there were plenty of elements of trade union rights in those European countries; in particular, the right to sectoral collective bargaining, which we think would improve industrial relations significantly and improve the conditions for the workers who have currently been forced into taking strike action. If the Government would like to cherry-pick elements of industrial relations, we suggest it might start there.

Baroness Kennedy of The Shaws: You said 95% collective bargaining in France and around 27% here. For those who are not familiar with trade unionism, what is involved in collective bargaining, given that you are saying that that is the route you would like to see people going down?

Kate Bell: It fundamentally means that minimum terms and conditions are set at a sectoral level through a process of negotiation between workers and their representatives, with employers, and their representatives.

Tim Sharp: Negotiated at a workplace level.

Kate Bell: And negotiated above that workplace level.

Baroness Meyer: In France, trade unions and the Government have a terrible relationship. It is quite complicated to compare France with England, as they have many more strikes, many of which are very, very bad. In fact, they are also on strike now.

Tim Sharp: It is complicated, and we have made that point when the Government have tried to suggest that France, Italy and Spain are the examples we should be following. We do think that if the Government are concerned about having a better industrial relations landscape, they might want to consider collective bargaining, including more at a sectoral level in the UK.

Also, when our unions talk about starting the process of industrial action, given the current complicated system, a lot of attention on the side of the employer and on the side of the worker suddenly goes into how to comply with all these different complicated laws. The actual dispute goes on to the back burner. Bringing in more complexity, rules and obligations, as the minimum service level legislation seeks to do, will make that problem even worse. It will then take even longer to get to the heart of the issues that caused the dispute in the first place, making them even harder to resolve.

Chair: Thank you, that is very clear. Thank you to you both, and indeed to all our witnesses today, for an excellent session.