HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on Trade Union Political Funds and Political Party Funding

Inquiry on

TRADE UNION POLITICAL FUNDS AND POLITICAL PARTY FUNDING

Evidence Session No. 3 *Heard in Public* *Questions 14 - 19*

THURSDAY 4 FEBRUARY 2016

11.30 am

Witness: Professor Justin Fisher

Members present

Lord Burns (Chairman)
Lord Callanan
Lord De Mauley
Baroness Dean of Thornton-le-Fylde
Earl of Kinnoull
Lord Richard
Lord Robathan
Lord Sherbourne of Didsbury
Lord Tyler
Lord Whitty

Examination of Witness

Professor Justin Fisher, Brunel University London

Q14 The Chairman: Professor Fisher, good morning. Welcome to the Committee. This is our first morning of deliberation. Do you wish to say anything by way of opening statement?

Professor Justin Fisher: Yes, if I may. My name is Justin Fisher. I was an adviser to the Committee on Standards in Public Life report in the late 1990s, which led to the Political Parties, Elections and Referendums Act. I was also an adviser to the Hayden Phillips review in the mid-2000s and subsequently to the Committee on Standards in Public Life report, which was published in 2011. I have a long history of work in this area, both in the United Kingdom and overseas.

I have a few points to make. The first is to emphasise that the particular clauses upon which I have been asked to comment are not just about party funding; they affect all trade unions with political funds. Currently some 25 trade unions hold political funds from the last Certification Office report, 14 of which are affiliated to the Labour Party.

The Political Parties, Elections and Referendums Act was in many ways a very successful piece of legislation, but because of its breadth and probably some drafting issues, there have been a number of attempts to impose further reform on party finance since it came into force in 2001. All these have failed because the parties could not agree on some of the finer points. For Labour's part, this was principally about the issue of caps on donations, which could affect the status of affiliated trade unions, and in the eyes of some in the Labour Party, although not all, this could fundamentally affect the constitutional status of trade unions within the Labour Party.

The reforms proposed and subsequently passed by Ed Miliband in respect of the relationship between affiliated trade unions and the Labour Party opened the door for future agreement between the parties. The principal barrier to reform, which has been proposed both by the Phillips review and by the Committee on Standards in Public Life, and by the report of which Lord Tyler was one of the authors, has now been removed. If we were to look at the issue of party funding again, it would be much more difficult to resist agreement between the parties, largely because Labour has dealt with this issue.

For me, the clauses in this Bill, principally Clause 10, risk removing that consensus. There is a significant danger that if a piece of legislation is passed that clearly has a strong impact on one side rather than another, even though it is not just about party funding, there is a danger, if Labour does return to office at some point in the future, that something like revenge might be sought. One would hope that parties would behave properly in this way, but experience tells us that that is not always the case.

In isolation, one could regard the proposal about opting in as a solution to a problem that does not exist, because in fact the opt-out system appears to be working pretty well. Looking at the most recent report of the Certification Office, 17% of members of the Communication Workers Union and some 15% of Unite exercise the right to opt out, which for Unite amounts to around 218,000 people. The argument that has been put before, certainly in the late 1960s when there was a Royal Commission on this, that somehow this is a case where people do not have the opportunity to exercise their right through peer pressure would appear to be failing. However, I do not think the principle of opt-in, if considered in a wider review of party finance, is necessarily an objectionable one. There is an intellectual case to be made for it, but not in isolation, so I was broadly supportive of the proposals made by the Committee on Standards in Public Life in 2011, which seemed to be a way of dealing with this issue of donation caps.

The final point is simply something that came up with the last witness in respect of expenditure by parties and their electoral impact. It is certainly true that at national level there is precious little evidence that spending makes a great deal of difference to electoral fortunes, but at constituency level it is the case that candidates—and it is important to draw the distinction between the two—who spend more of their allowed maximum tend to perform better, although recent research that we have published suggests that that can be offset by the free efforts undertaken by volunteer supporters and members.

Q15 The Chairman: Thank you very much. We have heard the suggestion that in the past the changes to party funding have operated by consensus and that there is, in a sense, an unwritten rule about this. Could you take us through the history and the basis for this? Do you agree with it? How far does it capture your knowledge?

Professor Justin Fisher: The word "consensus" can often be overused, and the number of real reforms that we have had in this country are comparatively few. For the Political Parties, Elections and Referendums Act 2000 it passed through the Commons, not without some debate—there were difficulties between the parties—but, broadly speaking, of all the various attempted reforms it has been the one where we have seen most consensus. It seems to me that that is probably the way to go forward. Where there have been other reforms, they have tended to be acts of revenge or putting something right. Opting in was originally introduced after the 1926 General Strike.

The Chairman: Presumably that was not a consensus.

Professor Justin Fisher: It is fair to say that that was an act of revenge for the strike. Labour reversed that in 1946, and subsequently—

The Chairman: Was that a consensus?

Professor Justin Fisher: It was reverting back to the position that had existed since 1913. Effectively, that created a consensus between the two major parties. The Liberals in that period, up until the 1980s, were effectively a small rump and not particularly relevant in these debates.

A noble Lord: No change.

Professor Justin Fisher: I could not possibly comment on that, but a broad consensus existed there. That was broken by Margaret Thatcher's Government with a series of Acts in respect of the trade unions, of which the 1984 Act was one where unions were required to have 10-yearly ballots. The Green Paper that preceded that, written by the Employment Minister Lord Tebbit, proposed contracting in, but that was dropped by the then Conservative Government on the grounds that it was seen as unnecessary and almost too aggressive, if you see what I mean. Subsequently, all trade unions that held political funds voted to retain them, and I think I am right in saying that of all the ballots since the 1984 Act, not a single union has voted to get rid of its political fund. So there is broad support in unions for having these.

The Chairman: What proportion, typically, of the members have voted in those?

Professor Justin Fisher: I have no idea, but the mechanism exists and it would be wrong to doubt the credibility of the regular ballots and the fact that the unions have done that. If there was an element of revenge for 1984, it was the introduction of shareholder ballots that came in with the Political Parties, Elections and Referendums Act, but it seems to me small beer in the context of the broader reforms.

Lord Whitty: You mentioned the Collins report as fulfilling the part of the Kelly recommendations that relate to individuals, but of course the Collins report and the subsequent rule change relate to affiliation to the Labour Party, whereas these propositions relate to the access of the political fund.

Professor Justin Fisher: That is correct.

Lord Whitty: You have already said that a significant number of unions are not affiliated to the Labour Party, and we heard from Mr McNicol that a significant amount of money which the unions have in their political fund is not spent on the Labour Party. This is not quite the same, is it, as what was envisaged by Christopher Kelly, and it has even wider implications for democratic activity than the funding of the Labour Party?

Professor Justin Fisher: In one sense you are right. My point about the reforms initiated by Ed Miliband and subsequently through the Collins review was that it dealt with the principle that trade union contributions to the Labour Party were a series of positive contributions by individual members and therefore could reasonably be regarded as different from donations from companies. That is a critical point. This proposal extends that principle to whether or not the union should have a political fund at all. In that respect, seen in isolation, it seems to me problematic for the reasons I have given, largely because on the face of it the opting-out system, on the level of the data that we have, does not seem to be failing. It is problematic, but if it were a sacrifice that was made in order to deliver longer-term party funding reform, it would be worth doing.

Lord Robathan: Professor Fisher, you are well versed in these things and I am rather an amateur, I confess. You talk about the consensus in party political funding and how that is broadly the way to go. I do not disagree with a lot that you have said and on capping funds, but I think consensus is rather more difficult to get. Could I take you back to about 2003? I am struggling, because I am an amateur at this, to remember what the Bill was, but there was an allocation of money for trade union training and education in the Bill, which almost exactly coincided with the amount of money the trade union movement gave to the Labour Party in any given year. Can you remind me what it was, or can you not remember, in which case I apologise?

Professor Justin Fisher: I am afraid I do not recall.

Lord Robathan: I remember being involved in it and it was certainly not consensual.

Lord Whitty: It was not political fund money.

Lord Robathan: It was money that went to the trade unions for training, which matched just about exactly the amount that the trade unions gave—

Lord Whitty: They could not use it for political purposes.

Professor Justin Fisher: But it is an important point to stress that, under the legislation, trade unions may only spend money on political activities, which are defined in law, from the political fund. It is quite separate from the general fund.

Lord Robathan: But do you see my point?

Professor Justin Fisher: I see a coincidence.

Earl of Kinnoull: What is the point?

Baroness Dean of Thornton-le-Fylde: What is the point?

Lord Robathan: There is quite a coincidence if public money was given to the trade unions for training.

Lord Richard: Your point is that the Labour Government deliberately gave money to the trade unions for training that they did not give to anybody else. Is that the point?

Lord Robathan: Indeed; they did not give that money to anybody else, but funnily enough it did tie in neatly with the amount that the trade unions gave to the Labour Party.

Lord Richard: What is the implication of what you are saying?

Lord Robathan: The implication, self-evidently, is that money, although it may not have been exactly the same money and may not have come from the same fund, did indeed fund the Labour Party.

Professor Justin Fisher: That cannot be true, because the funds are ring-fenced.

The Chairman: I understood that you were simply challenging the notion that there had always been a consensus.

Lord Robathan: Indeed.

The Chairman: The details of the particular issue are somewhat off our present sensibility.

Q16 Earl of Kinnoull: Could I take you to the issue of percentages of people who might opt in after a notional change in the law? We had some interesting evidence earlier today on that. You have said that you feel the opt-out is working well. Do you have a sense, and do you have any comparable evidence from other jurisdictions maybe, about what the current percentage of people who contribute, which I think is 89%, could go to after this change in the law?

Professor Justin Fisher: The only evidence that we have is historic evidence. Following the change of legislation in 1926 or 1927—I forget the actual year—about a quarter fewer trade unionists chose to opt in. There was an impact on the Labour Party's funds, but that was offset in part because affiliated trade unions raised the sum that was payable to the political fund. In overall terms, Labour Party income fell, but it could have been a whole lot worse. It should be said that the political fund is a very efficient way of raising fairly substantial sums of money at relatively low cost to those who pay.

Earl of Kinnoull: Following up on that, the current percentage, I understand, in Northern Ireland, which remains on an opt-in basis, is 30%. Is that a good data point for the committee at all?

Professor Justin Fisher: As a rule, comparisons between Great Britain and Northern Ireland on aspects of electoral law and this sort of legislation are often difficult to make because of the particular circumstances, so I would hesitate to do that, and because there is not the same tradition of a relationship between trade unions and a political party in Northern Ireland that there is on the mainland. It is an indicator but a rather imperfect one.

Lord De Mauley: I want to go back to something that I think you touched on earlier. According to the report of the Committee on Standards in Public Life, since 2005 nine trade unions have held 10-year ballots to confirm that their members continue to want a political fund. Turnout in those ballots ranged from 14% up to 75%, with an average of 27% turnout to decide this matter over a 10-year period. Do you think that is a reasonable basis for a decision?

Professor Justin Fisher: Given that that is a comparable turnout for European elections, the answer to that question is yes, and there are many local councillors who are elected on as little as 10%. The issue of turnout is a red herring.

Baroness Dean of Thornton-le-Fylde: Before I move to my question, on the point that Lord Robathan was trying to draw you into—and we all took our own implications from what he was saying—it was not just the Government to the trade unions but, I believe, it was with the support of the employers because of the desperate state of industrial training in this country. To convolute the two is very imaginative, but it was totally coincidental.

Lord Robathan: Thank you for your compliment.

Q17 Baroness Dean of Thornton-le-Fylde: Professor Fisher, you have a lot of experience in this whole area, not just visiting it once but several times with the committees that you have worked with. In your view, will Clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

Professor Justin Fisher: They will have an impact on the finances of the Labour Party. The impact of that is likely to be particularly acute so long as, compared with 20 years ago, Labour remains relatively unpopular. Labour's reliance on trade union money has fluctuated significantly, and if we cast our minds back to the mid-1990s, trade unions contributed less than 50% of the funds. Labour was able to attract money from many other sources. Since about 2006, the sources of Labour income have become increasingly focused on trade unions, and, as things stand, unless many of the new members who have joined since 2015 make personal donations themselves, that is likely to continue. There will be a detrimental effect on Labour's finances that is likely to be accentuated by the fact that the party is more reliant on trade unions now than it was 20 years ago.

Baroness Dean of Thornton-le-Fylde: Looking at the two reports of the Committee on Standards in Public Life that you worked with, and the Hayden Phillips review, none of those contained, I believe, the requirement to opt in in isolation. In each case the opt-in argument or the proposed policy was put forward as a package of arrangements, subject also to consensus. Clauses 10 and 11 isolate just opt in or out. What is your view on that?

Professor Justin Fisher: I would share the view of the previous witness that any attempt to reform party funding cannot be attempted in isolation. If you look at caps on donations or restricting the flow of income, you also have to look at what goes in its place and at things like spending. Taken in isolation, this is an unwelcome move because it is unlikely to lead to further reform in party funding. There are no plans on the table, as far as I am aware, from the current Government beyond what was in their manifesto.

Baroness Dean of Thornton-le-Fylde: We have heard a lot this morning about the right of the individual to have the ability to opt into their money being spent on political matters, and if they do not want to they should not have to. The implication has been that people are paying into a political fund who do not want their money to go to the Labour Party, for instance. When the Committee on Standards in Public Life looked at putting caps on and, going back some years, at the vote for shareholders, did the Committee look at the fact that a company has to have a shareholder vote before they make a political donation but within that it is a simple majority? If I was a shareholder of a company that had a vote to pay to any political party but I personally did not agree with it, the money that could well be coming to me in dividends could be spent on a political donation. Are we looking at a fair state of play there?

Professor Justin Fisher: The word "fair" has many meanings.

Baroness Dean of Thornton-le-Fylde: Thank you.

Professor Justin Fisher: It would be reasonable to say that the same provision that is proposed here is not proposed for shareholders.

Baroness Dean of Thornton-le-Fylde: I accept that. I am trying to analyse this. There is great play on people paying into a political fund who do not want to pay, in this case to the Labour Party; it could be any party, and UKIP has been mentioned for instance. In fact, the same would apply to shareholders, because in a company you just have a simple vote at the AGM, "We are going to make a donation". Not every shareholder is balloted individually, and even when there are shareholders who do not agree, company money still goes to a donation.

Professor Justin Fisher: It is very difficult.

Earl of Kinnoull: I was the company secretary of a FTSE 250 company for a number of years. It works slightly differently from that in that every shareholder gets a vote and you tick your box. The thing is not usually for a particular party; it is effectively a political fund.

Baroness Dean of Thornton-le-Fylde: No, it is not.

Earl of Kinnoull: The board is then able to—

Baroness Dean of Thornton-le-Fylde: It is not for trade unionists either, but in the case of companies, if a shareholder does not vote, it is not counted as a vote against, I believe.

Earl of Kinnoull: Absolutely, but the point is usually that the shareholders vote. It is very rare these days for listed companies to make political donations. Usually, you just set up a political fund; you do not direct it at a particular party.

Lord Whitty: Even those provisions on quoted companies do not require the company to have a separate political fund. Also, they do not apply to private companies.

Lord Robathan: Can I ask a quick point of information? Do you know roughly what proportion of political funds to whichever party comes from company donations these days?

Professor Justin Fisher: As with all these things, it fluctuates depending on an election year. For the Conservative Party, in the most recent year we would probably be looking at—and this is a guesstimate—20% to 25%.

Lord Robathan: Really.

Professor Justin Fisher: It fluctuates, and I would have to go back and check the figures on that.

Lord Robathan: We have a clerk who will do it for us.

Professor Justin Fisher: They are easily obtainable because it is all published on the Electoral Commission website. Corporate political funding has declined significantly over the last 30 years for a variety of reasons, not least multinational ownership and the move from a chairperson to a chief executive. The business case for a party donation is not terribly strong.

Q18 Lord Sherbourne of Didsbury: Can I follow on from Baroness Dean's questions? There is a general assumption that if these changes are made in the Bill there will be an impact on funds for the Labour Party. I am trying to work out how that will arise. It seems to me that there are three possible ways, all of which could occur. One is that it will be difficult for members to opt in—the mechanism. We have heard from an earlier witness that the procedure for opting in might make it difficult for members to opt in; this came from the general secretary of the Labour Party. Secondly, it could be that, when members of trade unions are made more aware of the choice they have before them, they may choose, as a matter of conscious choice, not to opt in. Thirdly, if the political fund is reduced as a result of one or two, or both, of those things, the trade union might maintain its current percentage of how much of the fund it donates to Labour, which would mean a diminution. Do you have any views or evidence as to what you think might lead to a reduction in the funding of the Labour Party—which of those might play more?

Professor Justin Fisher: I have to say I find it difficult to believe that members of unions would find it difficult to opt in. I cannot imagine why that would be the case.

Lord Sherbourne of Didsbury: Do you think, therefore, that these changes will have an effect on political funds?

Professor Justin Fisher: There were three items there. As to the first one, whether or not the process of opting in is difficult as a mechanical process, I struggle to understand why that would be the case. It seems to me to be no different from the process of opting out, and opting in or out of receiving further marketing information when you buy something online. Whether or not members may choose to in a sense is unknown. If one is offered the opportunity to save £5, or whatever, some may do that, but it would be incumbent on the trade unions to make the case why a political fund is necessary and why member support is useful. Indeed, trade unions did that very successfully around the campaign to maintain political funds in the 1980s, resulting in every single union voting to continue to do that. It is inevitable, based on historical precedent, that there would be fewer people paying in. The issue is whether or not that reduction could be absorbed by higher political fund contributions. Inasmuch as we have any evidence for this, it would be likely to affect the Labour Party adversely in the short term. It would force the Labour Party to look for other sources of income, which one might think would be a good thing, but I think it would be unreasonable to have a piece of legislation that affected only one party rather than all the parties that raise money in various ways.

Q19 Lord Tyler: You have been uniquely involved in both the Hayden Phillips inquiry and then the Committee on Standards in Public Life inquiry. What is your view of the likely impact, should these two clauses go through the Trade Union Bill in their current form, on future success or otherwise, or whether any further discussions of the wider issues to which you have been referring earlier are addressed? In other words, if we find these two going through in their current form, what are the prospects for cross-party consensual comprehensive inquiry into the party-funding issues you were raising earlier?

Professor Justin Fisher: They are fairly slim, I would have thought, because inevitably this would be seen as a piece of legislation that adversely affected one particular party, and that particular political party may well seek to pursue its own reforms, which might be detrimental to the finances of the Conservative Party. Whether or not there will be another review of party funding remains to be seen. It is difficult to envisage that with the current Government. In a sense, why would they do it? It is only likely to happen, it seems to me, in the next 10 years if there is a particular episode that leads to a consensus that there should be a root-and-branch examination. Those episodes are few and far between and frequently not of the same magnitude that you see in other countries.

Lord Tyler: In other words, as you may have heard the previous witness say, you do not think the commitment in the Conservative Party manifesto to open the discussions particularly linked with this proposal in this Bill is going to be fulfilled; that is a promise that we can assume will be broken.

Professor Justin Fisher: To the extent that manifestos are promises, it is not the kind of issue on which a Government would want to spend a great deal of parliamentary time.

The Chairman: You have made it clear that while it is difficult to see exactly how serious an impact this would have on the major opposition party, it would have a significant one. Given your international experience, can you think of an analogous situation in any other European democracy, say, where action has been taken of this nature that hit the major opposition party but not the major government party?

Professor Justin Fisher: In most major European democracies there is a large element of state funding. I have come across these sorts of things in new democracies. I am not sure they necessarily provide good lessons for the United Kingdom. The closest analogy is one that we have in Canada, where it was decided that no institution should be allowed to make contributions to political parties and therefore only registered voters were able to do so. That, it seems to me, might be explored in the future if we ever look at this issue in detail again.

The Chairman: Professor Fisher, thank you very much. You have been very helpful. We are very grateful.