



HOUSE OF LORDS

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**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. 7

Heard in Public

Questions 45 - 59

THURSDAY 11 FEBRUARY 2016

10.15 am

Witnesses: Ms Nicola Smith, Ms Helen Pearce and Professor Keith Ewing

Members present

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

Examination of Witnesses

Ms Nicola Smith, Head of Economic and Social Affairs Department, TUC, **Ms Helen Pearce**, Head of Campaigns and Communications, Trade Union and Labour Party Liaison Organisation (TULO), and **Professor Keith Ewing**, Trade Union and Labour Party Liaison Organisation (TULO)

Q45 The Chairman: Good morning and welcome to the Committee. Thank you very much for coming. Could I begin by asking each of you to introduce yourselves, please, and maybe tell us a little bit about TULO and its responsibilities? Then I invite you to make any opening statements that you would like to make.

Ms Nicola Smith: My name is Nicola Smith. I am head of the economic and social affairs department at the Trades Union Congress. We represent over 50 affiliated trade unions across the UK, not all of which have political funds, and we remain strongly opposed to the entire Trade Union Bill, in particular Clauses 10 and 11, which we worry will place real challenges in the way of allowing trade unions to engage in political debates with the aims of improving life for people who work in the United Kingdom.

Ms Helen Pearce: I am Helen Pearce. I am head of campaigns and communications for TULO, the Trade Union and Labour Party Liaison Organisation. We are the body that represents the 14 trade unions that are affiliated to the Labour Party. We are also strongly opposed to the whole Trade Union Bill and have particular concerns about the Clauses 10 and 11, particularly on the impact they will have on political funds and unions' ability to campaign politically. The consequence of that will be a dramatic impact on the funding available to the

Labour Party, creating a big imbalance in party funding in the UK and breaking the Churchill convention and the consensus that party funding is dealt with on a cross-party consensus basis.

Professor Keith Ewing: My name is Keith Ewing. I am an academic lawyer based at King's College London. My credentials here are that I work as an adviser for TULO and have done for many years. Before that, I acted as an adviser to the Labour Party at the time of the Neill committee in 1997-1998.

The Chairman: Thank you very much. In addition to what you have already said, would you like to make opening statements?

Ms Helen Pearce: No.

Ms Nicola Smith: I am quite happy to go into questions.

Q46 The Chairman: Thank you very much. Could we begin with some broad statistics and, in outline, a sense of the scale of this? Would you remind us how many unions have political funds, what the range is of the annual contribution to those funds, and how much is given annually by the unions to the Labour Party, either in affiliation fees or in donations, so that we can get some idea of the scale of what we are engaged in?

Ms Nicola Smith: If I was answering from the perspective of the TUC, I would first put on record that we ourselves as an organisation do not have a political fund. Of our 52 affiliated unions, we think around half do. Around 24, we think, have political funds. Not all of those unions are affiliated to the Labour Party; around 40% are not and around 60% are. We know that our unions use their political funds to support a range of political parties and to campaign on issues of significance to people who work across the United Kingdom.

Ms Helen Pearce: With regard to the trade unions that are affiliated to the Labour Party, as I said, we represent 14 of those. Of those 5 million members of those trade unions, 2.2 million are affiliated to the Labour Party through their trade unions. Of those unions, about 85% are opted in to their political funds; contribution levels vary slightly and are worked out in slightly different ways. It is worth having a look at union rulebooks, but, for example, one union charges 10p per member per week; others charge a small proportion of the membership fees across the year, say, 5% of whatever the annual subscription is. They average at about £5—maybe slightly more—per member per year. In terms of the funding that goes—

The Chairman: I tried to do the calculation just looking at the total subscription and the number of people, and they seem to vary from about £1 or £2 to £15.

Ms Helen Pearce: I have not seen ones at the £15 level, but the ones I had a brief look at come in at about £5 to £8. They are worked out in a variety of ways; they are not all calculated in exactly the same way. The funding that goes from the trade unions to the Labour Party comes in two forms. One is the affiliation fees that go to the Labour Party. That comes in at about £6.5 million a year. In addition to that, there are donations from trade unions to the Labour Party, all of which are declared through the Electoral Commission, and those average over a Parliament at about £2.4 million a year, although they tend to come in larger amounts nearer a general election. The average income to the Labour Party from trade unions is almost £9 million a year over a Parliament.

The Chairman: To what extent does it vary year by year through the Parliament? Does it increase as you get closer to an election?

Ms Helen Pearce: Do you mean in terms of the donations?

The Chairman: Yes.

Ms Helen Pearce: Yes. The affiliation fees remain static—that is the largest part of the money that goes from the trade unions to the Labour Party—but the donations, and I have some figures from the Electoral Commission, range from under £1 million to over £7 million nearer a general election.

The Chairman: The £9 million is an average.

Ms Helen Pearce: Yes. It is an average across the last Parliament and comes in at about £2.5 million per year over that Parliament.

Q47 Lord Sherbourne of Didsbury: One thing we are looking at is the impact on union political funds. It seems to me that, if we were to move from opt-out to opt-in, there are two ways in which that might create problems as to the impact. One is that the mechanism—I am not talking about the timing, by the way—of opting in might prove more troublesome than currently opting out, or it might be that people choose not to opt in when they have that choice to make. Which of those might have more of an impact and what is the evidence for your view on that?

Ms Nicola Smith: If I may start on that, I agree with you that a move to an opt-in would have a very significant negative impact.

Lord Sherbourne of Didsbury: For the record, I did not say it would; I said it might.

Ms Nicola Smith: Apologies. My view is that it would have a very significant impact, but that view is informed by the evidence that I have reviewed with colleagues in the run-up to this session, much of which has been published by the Government's own Behavioural Insights Team—I know you have heard from them already—about the power of inertia on human behaviour and the behavioural economic evidence by which much government policy these days is informed. We know, for example, when we look at evidence that the Cabinet Office unit published on monthly deductions from payroll to charities that they found there was an automatic increase in subscriptions to 49% against 6% on an opt-in model. Making that small change in the way that you give people a choice can have a very significant impact in the likelihood of that choice being taken.

On your second point of people being unable to take a choice at the moment, I would argue that people are very well able to take a choice at present. There are significant numbers of trade union members who opt out from being in the political fund under the current arrangements. Members are aware of their choice to opt out of the fund, should they choose to, and it is clear that many of them exercise that right at present. The question I think is: what does the evidence tell you about the way a choice is presented to people? The evidence base is quite clear that opting in is the choice to make if you want to limit take-up of something.

Lord Sherbourne of Didsbury: If you are saying that the choice is clear now, would you be happy with the same process for opting in as now exists for opting out and, if not, why not?

Ms Nicola Smith: No. People are aware of their choice at present, and the evidence shows very clearly that, if you require people to actively opt in, people who might want to make that choice are discouraged from doing so because of the way that the choice is presented to them. If you look at the government evidence on payroll giving, I cannot believe the Government are actively encouraging people to give their money to charities without knowing about it, or without making a choice. It is about trying to find a way of allowing them to make a choice that is also easy for them, which fits with modern times and allows them not to have to spend a long time in correspondence over allowing them to make that choice. It is about facilitating a choice.

Lord Sherbourne of Didsbury: That point was made when we saw the behavioural unit people the other day and they claimed that the reason that happened was either through ignorance or inertia. Is that your view as well?

Ms Nicola Smith: No, because I think people make very significant financial choices on opt-out models at the moment. When you look at auto-enrolment, millions of people across the UK choose to spend a quite significant proportion of their earnings on saving for a pension because they have been automatically opted in to that process. I do not believe that people are remaining in that process because they do not have knowledge of the financial decisions that they are making. Similarly, on the evidence on contributing to charities, I do not believe that people are giving money to charities by accident; I believe they have chosen to do so, but we have chosen to set up a system that makes that choice one that is easier for them to exercise rather than making it incredibly difficult for them to exercise.

Lord Sherbourne of Didsbury: This is my final question. Are you saying that, therefore, it is a conscious decision not to opt out?

Ms Nicola Smith: Yes, because people have information available to them at the moment that would allow them to opt out if they want to.

The Chairman: I am not quite sure what you are saying here, but surely there must be rather a big difference between the opt-out/opt-in situation when it comes to pensions and charities. Nobody gives money to charities without making a conscious decision to do so and signing up for it, whereas with pensions, I think without doubt, it has moved to an opt-out of places you are in unless you consciously make the decision to come out.

Ms Nicola Smith: With respect, Chairman, I am referring to an article that was published by the Cabinet Office Behavioural Insights Team, which looked at what happened to charitable giving when you gave people the choice to opt in to payroll deductions relative to opting them in and giving them the choice to opt out from payroll deductions, if that makes sense.

Q48 Lord Callanan: Can I explore this point further? Ms Smith, you said that members are aware of the choice that they have to make. As I understand it, unions have a legal obligation to inform members of that choice.

Ms Nicola Smith: They do.

Lord Callanan: I have looked at the membership application forms from a number of unions. In the ones I have looked at, they say nothing about this choice. I have just been looking at

the websites of UNISON and the Fire Brigades Union. If you do a search for “political funds”, you get lots of information about what they spend on—or sometimes what they spend on—and nothing about your choice to opt out. If I search for “opt out”, it gets no results. I am not convinced that unions are exercising their legal obligation and telling people that they have a right to opt out. No doubt if you write in specially saying, “Do I have a right to do this?”, if you are aware of your ability to do so, you might be able to find out, but it is not easy, it is not available, and they do not go out of their way to tell people that they have a legal right to opt out from paying these political funds.

Ms Nicola Smith: Thank you for your point. Let me first say that it is very important, if we are going to discuss whether or not unions are complying with the law, that we do so on the basis of a full assessment of the evidence. I understand that you heard from the certification officer the other day, who has responsibility for holding unions to account against their compliance with the legal framework they operate in. He, I believe, gave evidence to the effect that no complaint has ever been made to him about the lack of compliance with the legal requirement that you rightly say is on unions—

Lord Callanan: If people are not aware of the right, they are hardly likely to complain they do not have it, are they?

Ms Nicola Smith:—to make it clear to people that they have the right to opt out from a political fund. As you say, there is a legal requirement on unions to inform members about the political fund and there is also a requirement to hold a ballot every 10 years on the very basis of having the political fund. Once the political fund is established, it is up to the union’s democratic structures to determine how it is spent, and the union also has to provide information in its rulebook to the effect that there is an opt-out for the political fund and to provide an exemption notice in the rulebook. Those rulebooks are available online for members to find. I also know that, in the modern age, unions provide information on the political fund in a whole range of ways. Perhaps we both have different ways of making use of Google, but our own use of Google has suggested to us that there is a very large amount of information available on political funds and the opportunities that members have to opt out from them. Indeed, when you look at the figures, as I referred to earlier, large proportions—around 15% or 16% in some cases—of union members do opt out. So it is hard

to see how, if there was not an opportunity to exercise a choice or if information was not available, those people have managed to do so.

I would also put on record that no government Minister, to my knowledge, has ever raised with the TUC any concern about compliance with this particular part of the law with respect to unions having to provide notification to members of their ability to opt out. There is nothing, to our knowledge, that suggests there is a significant problem. I do not know if others have more to add.

Ms Helen Pearce: The only thing I would add is that we talk about a triple lock for trade union members having access to ways of opting out. There is obviously the ability to opt out as an individual, the 10-yearly political fund ballot, and trade union members are perfectly entitled to get involved in the democracy of their union, go to their conference and try to change the rules of their union to change the political fund. Some unions have disaffiliated from the Labour Party as a result of members taking that kind of action and reaffiliated to the Labour Party, so it is perfectly possible for union members to do that.

The other thing I want to say is that trade unions are the only organisation where individuals have an opt-out from the democratic decisions made by that membership organisation. Members of the National Trust do not have a legal right to opt out from funding stately homes and only fund gardens as part of their membership. When we join a membership organisation, there is generally an assumption that our funds and the decisions the membership organisation makes democratically are put in practice on behalf of the whole membership, and unions are unique in having protection for individuals to have an opt-out at all. When corporations make donations to political parties, there is a vote of the shareholders, but individual shareholders have no right to opt out from their part of the pot going into that particular political donation. So there is already a higher bar for trade unions than any other kind of organisation of this sort.

Q49 Lord Richard: I want to follow up the question that Lord Callanan has been asking you. It seems to me, looking at the whole process, that there are two basic principles as far as donations to the political fund are concerned. One is that the individual who is joining a trade union knows that there is a political fund and, secondly, he knows that he has a choice. That is the second issue. There is the knowledge that there is a political fund and knowledge that he has a choice as to whether or not he wishes to be part of that political fund. As

somebody has just said, that particular structure is unique to trade unions. You cannot opt out of all sorts of things that you do not belong to, but, as far as trade unions are concerned, the two principles, it seems to me—I do not know whether you would agree with this—are, first, that the individual should be properly informed and, secondly, that the individual should know that he has a choice. Do you agree with those two principles—that that is the principle behind political funding?

Ms Nicola Smith: Those two principles are the principles on which the current framework operates at the moment, to my understanding.

Lord Richard: Precisely, and that is the next point I am about to make. So long as you have an individual who joins a trade union and he knows there is a political fund attached to the trade union, quite honestly I do not think it takes much mental activity to work out that, if it is a political fund, it is a fund that is going to be used politically; he knows generally what use the fund is going to be put to. So long as he knows that, and so long as he knows he has a choice that if he wants to he could opt out of it, then whether the trade union goes on to provide a mechanism whereby he can opt out rather than opt in is a matter for the trade union, is it not, and not a matter for anybody else.

Ms Nicola Smith: I would argue that we have a system of allowing trade unions, as the representatives of people at work, to maintain political funds, which allows them to seek to influence political debate in the best interests of people who work in the UK. As I set out in my opening evidence, that is not always through donations to the Labour Party; it can be through donations to a range of political parties and through political activity that is not directed at support for a particular party, such as campaigns with respect to issues like Sunday trading, voter registration, anti-racism or activity to prevent cyberbullying at work. It is very important that people who join trade unions know that they can join a union that can actively seek to influence political debate in their interests, as has been the case for many decades in UK political life. I would reiterate the points that my colleague made about the fact that when someone joins a union they know they have a political fund; there has to be a ballot every 10 years to confirm that that is the case; and trade unions are unique among organisations that make political contributions in having to provide their members with the opportunity to opt out of that political activity. You could argue—and I would at the moment—that there is even more—

The Chairman: We are getting dangerously near to repeating ourselves.

Ms Nicola Smith: Apologies.

The Chairman: I would like one answer, otherwise we are not going to get through the questions.

Ms Nicola Smith: Perhaps I should just say I agree with the noble Lord.

The Chairman: Thank you.

Q50 Lord De Mauley: You have not yet convinced me that members fully understand that they have a choice. Taking Lord Callanan's point, seven of 10 unions with political funds do not mention on their membership forms that the right to opt out exists. I have a couple of supplementary questions to that. First, given that unions often bundle their membership with other financial products, why should the sale of union membership not be subject to the full application of consumer protection law?

Professor Keith Ewing: Can I come in on that? This question about the membership form is a bit of an issue that is being raised at the moment, but the legal position is quite clear. Trade unions have a duty to inform their members of the fact that there is a right of exemption—individual members have a right to opt out once they have joined a union—but unions are now being judged by obligations that do not exist in the sense that there is no obligation on the part of a trade union to put this information on the membership form. If you think that it would be a good idea that that information should be on a membership form, as it is in the case of some trade unions, it would be perfectly easy for that to be done in the sense that there are easy options available to us to make sure that that happens without going down the full step that has been taken in Clauses 10 and 11. In a sense, if that is your problem, there are proportionate ways of dealing with it that would be much better than the provisions of Clause 10. The fact is that many unions do, and all unions provide that information in their rulebook, as they are legally required to.

Also, coming back to the point that was made earlier, if you use Google and start searching—for example, you mentioned UNISON—if you put in “UNISON rules”, you will get the UNISON rulebook even though you are not a member of UNISON. If you go on to the UNISON rulebook and search for the word “exemption”, you will find there are about 25 references to the word “exemption” and you will come at some point, very quickly, to an exemption notice, which you can then sign and submit to UNISON and, if necessary, to the

certification officer. It is all very clear and transparent for those who wish to have access to this information. Nothing is withheld and nothing is hidden; it is all there clearly available in a way that applies uniquely to trade unions.

Lord Whitty: Last night we had a fairly lengthy debate in the Chamber on this very clause. There was a very interesting exchange between Lord King, who was Secretary of State at the time of the 1984 Act, and John Monks, who was a TUC staffer at the time. There followed from that a discussion as to whether the letter of the law had been observed or whether the understanding between the TUC and the Government had been kept. This led to assertions and counter-assertions about the nature of the method of informing the individual member of their right to opt out. Prior to the appearance of this Bill, had any government Minister or the certification officer approached the TUC about non-compliance with either the code of practice or the law?

Ms Nicola Smith: Not to my knowledge, no, and I am happy to follow up with supplementary written evidence to confirm that if it would be helpful.

Lord Whitty: Thank you. It would also be useful, because everybody seems to be Googling independently at the moment, if a comprehensive package could appear as to what the major unions do on informing their members so that we could have that rather than waving pieces of paper across the Chamber. That would be useful.

The Chairman: It would help. As Lord Whitty said, last night there were a number of pieces of paper waved across the Chamber, which none of us could read. It would be very helpful if you could put together a package of what the various unions do—in a sense, their view of what they have to do—to comply with the agreement that was reached on this.

Professor Keith Ewing: It would be waving laptops across the Chamber because in the digital age that agreement of 1984 has to reflect modern realities. The information is now available on the web if you want to find it.

The Chairman: What we would like to see, though, is the different ways in which the different unions are bringing this to attention. It would be quite useful to have the whole list, otherwise we are getting different people putting forward different examples.

Q51 Lord Robathan: Could I bring you back to the political funding issues? First of all, as was raised in the Chamber yesterday, a survey—whether you believe opinion polls or not—of Unite members found in 2013 that in the 2010 election some 40%-odd, and I have it here,

voted Labour and 28% voted Conservative. Whatever it may be—let us say half of them voted Labour—would you accept that those people contributing to a political fund who vote Conservative, or do not vote Labour, would probably rather that their money did not go to support a party that they do not support? It is a fairly simple question and is at the philosophical heart of this, I would say.

Ms Helen Pearce: I would point out that when trade unions donate to the Labour Party it is a donation from the union to the Labour Party; it is not a collection of individual donations. When an individual makes a payment into a political fund, it is an individual contribution, but the union makes a decision collectively to support the Labour Party. It is not something that is individualised in that way. Trade union members are well aware that those unions that are involved in the Labour Party are involved in the Labour Party. It is not something that they hide. They receive their magazines through the post every three months, as I do, telling them about that political involvement. Again, it comes back to the point that, if trade union members feel very strongly about that, they can opt out of that political fund or they can get involved in their union and take their union out of the Labour Party if they wish to, as some unions have done.

Lord Robathan: Indeed, but I think you have confirmed that this is a matter of semantics. There are people who would probably rather not contribute money to a political fund, some of which goes to a party that they do not support. You have confirmed that.

Ms Helen Pearce: No, I do not confirm that.

Lord Robathan: Then where does the money come from? Please explain where the money comes from for the political fund if it is not from individual donations.

Professor Keith Ewing: I do not have a mandate here to speak for Unite, which is the union you—

Lord Robathan: Essentially, it is the poll that—

Professor Keith Ewing: If you look at Unite's rulebook, it is quite clear that Unite is committed to the Labour Party quite explicitly in a way that is quite unusual among our trade unions, but the fact is that the money raised by Unite through its political fund does not all go to the Labour Party.

Lord Robathan: I accept that.

Professor Keith Ewing: There is, in the case of a number of unions, in my experience, a practice whereby they will not affiliate on the basis of the full number of people who pay the levy because, as a matter of respect to those people who do not support the Labour Party, they will use that money to fund other political campaigns that may enjoy the sympathy of these members who are not Labour Party supporters. A political fund is not used simply to support the Labour Party.

Lord Robathan: I know that.

Professor Keith Ewing: The political fund is used to support other campaigns that may be of general interest to all the levy-paying members of the union, whether it be against the Trade Union Bill, austerity or the cuts, which will affect all members, against racism, or the BNP. All these things will be funded from the political fund.

Lord Robathan: We know that. I am not suggesting anything else.

Professor Keith Ewing: But that is the point.

The Chairman: We have been round this already.

Lord Robathan: May I have a second question, please, or not?

The Chairman: Yes, as long as it is not the same as the first question.

Lord Robathan: It is not the same question, but it relates to what Lord Whitty was saying. There was this King-Murray agreement, which was mentioned yesterday. Sadly, only one of those gentlemen is alive. Len Murray was a rather good man, in my opinion. So I am not anti-unionist; I know his son, as it happens, from the Ministry of Defence. Lord King, who was one part of this agreement—and I have the agreement in my hand—said: “It will be difficult to persuade the Government that the previous voluntary code—which I entered into in entirely good faith ... has been honoured and respected by a number of individual unions ... Their failure to do that is perhaps why we are discussing this”. I am quoting Lord King, who was part of that agreement. What do you have to say to that?

Professor Keith Ewing: When was that?

Lord Robathan: It was 1984.

The Chairman: I have to say that is what we have now asked for—to have the written material about exactly how people are honouring it.

Ms Nicola Smith: May I come back on that point in particular? The key issue here is that, while Lord King may assert that that has been the case, in my period at the TUC the—

The Chairman: Yes, but we have asked you for—

Ms Nicola Smith: But could I just say that no one has come to us to ask us to adjudicate on this and—

The Chairman: We understand that.

Ms Nicola Smith:—were the department to be interested in—

The Chairman: I am sorry, but can I stop you? We have a lot of questions and, unfortunately, we cannot just keep answering the same questions.

Professor Keith Ewing: Let us judge what happens today and not what the position was in 1994.

The Chairman: Yes, and, as I said, what we have asked for is—

Professor Keith Ewing: The Murray quote was from 1994.

Lord Robathan: It was Murray-King 1984.

The Chairman: This gets tied up with the question of what information is being made available and we are not going to resolve this issue by arguing it between us in this Committee. We need to see how it is that each union is engaging.

Ms Nicola Smith: Without wanting to answer a supplementary, the key challenge here is if the question is, “To what extent are unions making their members aware of the ability to opt out of a political fund to the satisfaction of those who would be in agreement with the principles that were set out in that agreement?”, that is an entirely separate question to whether it is proportionate to simply end the opt-out and require everybody to opt in. The point I would make would be that, if there is an opportunity to have that discussion and to discuss whether there are improvements that could be made to the way that a voluntary code operates, that would perhaps be a far more proportionate response than simply imposing Clauses 10 and 11 on the trade union movement.

The Chairman: If you want to submit evidence on that, we would like to see that as well.

Ms Nicola Smith: I will be happy to do so.

Q52 Earl of Kinnoull: Could I go back to the percentages of opting out? We had the certification officer here at a previous evidence session and noted that in his annual report for 2011-12 the percentage of trade unionists who were opting out was 24%. These are the figures from appendix 9 in the report. In 2012-13 that had dropped to 23%; it went down to 15% in 2013-14; and in the most recent report, 2014-15, it is down to 11%. Could you

comment generally about the direction of travel, because that is a tremendous drop-off in the percentage of people opting out? Is it in fact evidence of how good the trade unions are at persuading members to effectively opt in because they are reducing the opt-out percentage?

Professor Keith Ewing: There is a piece of information here that is not clear. If you look at the CO's annual report, he gives two figures. He speaks about people who are not contributing to the fund and people who are exempt from contributing to the fund, so there are two categories. One category is people who are not eligible to pay the levy because they are part of a section of the union to which the levy does not apply. Then you have this other group of people who opt out, or consciously contract out, of paying the levy. I am not clear if that 24% applies to both combined or to the latter only. If it is to—

Earl of Kinnoull: I can clear that up for you straightaway. It applies to both.

Professor Keith Ewing: That is significant.

Earl of Kinnoull: The numbers come straight from his report, which are the numbers that the TUC has supplied. As I said, it would be nice to have a general comment about what is going on because it does not matter if—

Professor Keith Ewing: Maybe I can help with that.

Earl of Kinnoull: It is a huge percentage change.

Professor Keith Ewing: The reason for that may be because it reflects patterns of amalgamation and merger within trade unions. As a number of unions merge together, they may take into membership a group of people from a union that does not have a political fund, so they will effectively be brought into a new union that does have a political fund and they will be gradually assimilated into the process of the new organisation. You cannot just look at the figures and say there has been a massive change. It is explicable to some extent in the changing patterns of merger and amalgamation that have taken place over the last five years or so.

The Chairman: Baroness Dean.

Ms Nicola Smith: Could I answer?

Q53 Baroness Dean of Thornton-le-Fylde: We have had evidence—and I would like to touch on these figures—from the certification officer, who said he had had two complaints in 10 years. The fact is that some of the stuff you want to say can be sent in afterwards in writing,

provided that it is quick. If we are looking at the opt-in, which we seem to be concentrating on enormously, the members who have opted out must have had some communication on being able to opt out. The point about whether information is given so that people can respond and opt out is quite self-evident. As to the issue of the numbers reducing, I cannot give an answer to that. I might say, in political terms, that it might well be that people were getting more concerned in the last few years about the political direction outside and wanted to join. I would like you to confirm one way or the other—although the unions can give us evidence on this later—whether the members have to firmly indicate if they wish to opt out of the political fund. I presume that will be on the membership form, and I do not know if Lord Callanan went online to see if he could join the union he was looking at.

Lord Callanan: I did.

Baroness Dean of Thornton-le-Fylde: You did.

Ms Nicola Smith: The legal position is that all members have to be notified of their opportunity to opt out of the political fund, and if they want to do so and they give the union written notice, the union has a responsibility to opt them out of the fund.

Baroness Dean of Thornton-le-Fylde: I take that point; I know the law. The supplementary to that, Lord Chairman, is that in making that clear to the members there has to be this communication given. When the union votes every 10 years it is not to join the Labour Party; I believe the vote is on whether to have a political objective. That is my language.

Professor Keith Ewing: Yes, to renew the resolution.

Baroness Dean of Thornton-le-Fylde: The members who pay the political contribution are paying it to the political fund, not all of which goes to the Labour Party. Am I correct?

Ms Nicola Smith: Yes.

Baroness Dean of Thornton-le-Fylde: Some of the political fund is then used for other purposes, such as the campaigning. When decisions are taken to donate to the Labour Party or anyone else, am I correct in thinking that only members of the political fund are able to vote in those decisions? The 24% or the 11% who have opted out of the political fund would not take part in that decision-making process.

Professor Keith Ewing: That would depend on the unions. Each union has its own rules and procedures, but, as a matter of law, non-levy-paying members could be excluded from these decisions, but there is no requirement that they should be.

Q54 Lord Callanan: Can I ask this of the lady from the TUC? You presumably have member unions in Northern Ireland that already operate the opt-in system. Could you tell us what percentage of members of those unions in Northern Ireland choose to opt in? Presumably—and I am not an expert on unions—the big unions that exist in England, Wales and Scotland also exist in Northern Ireland, so they must operate parallel systems in the two jurisdictions.

Ms Nicola Smith: My understanding is that that must be the case. I can provide further written evidence to confirm on the specifics of Northern Ireland, but while we are talking about Northern Ireland, it is very important to note that there is a key difference with the system there from the one that is being proposed here, in that people in Northern Ireland are only required to contract in to paying into the political fund once—and only once. They are not required to renew their opt-in, whereas the proposals on the table in the UK are that people will be required to opt in every five years. Would I be able to respond to the point made previously?

Lord Callanan: Can you answer the rest of my question? What percentage choose to opt in?

Ms Nicola Smith: I do not have those figures to hand and am happy to write with further evidence. Would I be able to answer the point previously made by the colleague here? There has been a range of discussion about presuming what the motivations of members who are or are not members of the political fund are. It is very important that we remember that correlation does not necessarily mean causation. We have no basis to fully know what information every single member has had available to them. If the question is about whether or not there should be a way to ensure that more union members are better informed as to their ability to opt out of a political fund, that is a very different decision from simply jumping to ending the opt-out altogether. It strikes me that there is a lack of certainty among this Committee at the moment as to exactly what information is being provided to which members. You have asked for supplementary evidence, but that, to me, speaks to the rapidity with which this Bill is being pushed through and the lack of an evidence base for it. Without that evidence base for information, we have simply jumped to a conclusion that Clauses 10 and 11 are appropriate. Perhaps the more appropriate response is to review the existing voluntary arrangements and to consider how they might be upgraded and improved.

The Chairman: We get that message; thank you.

Q55 Lord Wrigglesworth: One of the central issues in this debate is how much impact this Bill is going to make on the funds going into the Labour Party. Various people have made assertions. We had lots of assertions on the debate in the Chamber last night and various assertions being made by various people from both sides of this argument. What is your estimate of the impact that these changes will make on the income of the Labour Party, and what is the basis upon which you have made that calculation?

The Chairman: Could I add a rider to that? How much of that effect is down to the opting-in itself and how much to the issue about the speed with which it has to be done, the form in which it has to be done and the issue of renewal every five years? I would like to separate the two—the impact between the principle of the opt-in and the issues to do with the way in which it is being introduced.

Ms Helen Pearce: Shall I start? First, we are very clear that there will be a dramatic impact on the funding available to the Labour Party. There is a debate to be had about the extent of that impact, but, even from the most cautious estimates, we would say that impact will be very dramatic.

The Chairman: Like what?

Ms Helen Pearce: I will go into the numbers now. At the moment the unions support the Labour Party, on average, to the tune of around £9 million a year over a Parliament. If the political fund were to drop to what our estimates would be—and the anecdotal evidence from our affiliates would be around 10% membership under the current arrangements in the Bill—we would estimate that the unions could support the Labour Party to the tune of only £1 million a year.

The Chairman: What are you expecting the number of people who opt in to come down to?

Ms Helen Pearce: Ten per cent opted in.

The Chairman: So we go from 10% opted out to 10% opted in.

Ms Helen Pearce: Yes, largely due to the mechanisms in the Bill and, as Nicola has been alluding to, due, I believe, to the difference between opting in and opting out, and people making a decision being influenced by whether it is an opt-in or an opt-out. We talked about that previously.

The Chairman: The last time it happened it fell by 30%; it went from 90% to whatever it was—75%. Why should it go from 90% to 10%?

Ms Helen Pearce: One reason we are basing it at 10% is that the industry average for response to direct mail—a letter in the post—is around 4.4%; that is how much you would expect to be sent back. If you are sent something in the post, about 4.4% of people will respond to that. So 10% would be doubling the expected average return to a letter in the post. That is probably with a huge amount of investment in telephone calls and talking to union members to get that to happen. At 10%, we would estimate the impact on the Labour Party to be to the tune of £8 million a year. At a much more cautious estimate of 25% membership of political funds, which is more akin to the Northern Ireland situation, we would estimate the impact to be still around £6 million a year. The question, if you like, is about the extent of the dramatic impact on Labour Party funding—not whether there will be a dramatic impact.

The Chairman: I want Baroness Drake to come in, but I find it very difficult to describe this as parallel to a direct mailshot. These are people who are members of the union with whom you are in regular communication and they are paying their affiliation fees. To use direct mail as the comparator to this flies in the face of what happened on previous occasions when the opt-in/opt-out change took place. It was still quite large. It went from 75% to 48%.

Professor Keith Ewing: TUC-affiliated members affiliated to the Labour Party fell from 75% to 38%.

The Chairman: My number is 48%.

Professor Keith Ewing: We have 48%. The work I did many years ago says 38%. The numbers were—

The Chairman: It went up from 38% to 60% in 1948.

Professor Keith Ewing: It fell from 75% to 38%. Those are the figures we are working with. Even that is optimistic, because there are a number of factors that have to be taken into account about how these figures were inflated from 1927 to 1946, which suggests that that 38% cannot be presumed to be replicated today. We point out a number of factors in our written submission. One was that under the 1927 Act the degree of regulatory supervision was much lighter than it will be under the Bill, given the new powers of the certification officer. We fell to 38% despite the fact that the big Miners' Federation, for example, did not comply with the law until 1936. There was a very slow response to the legal changes on the part of some unions, which meant that the new legislation had a very soft landing for some

unions. The other point that is very significant is the way in which trade unions are organised and subscriptions are collected. In those days, unions were organised in very big workplaces; there was a trade union presence through stewards and others in these workplaces, who would have a weekly contact face to face with members in order to collect subscriptions. They would indeed—

The Chairman: Okay.

Professor Keith Ewing: This is important. Let me answer the question. There were collection stewards in those days who would be going round persuading people to make these contributions, if you like, on a regular basis. It is also the case, of course, that in 1945 the figures would be lifted because political parties were much more popular and the Labour Party was on the cusp of its greatest ever election success. So all these factors helped to inflate the level of opting in to what we regard on our figures to be 38%. We cannot presume that that will apply today. More likely is the Northern Ireland figure of about 25% to 27%, but we also have the doomsday figure, which many of our affiliates believe will be closer to 10%.

Q56 Baroness Drake: We have had a lot of discussion about the impact of changing from an opt-out to an opt-in system, but there is the other issue of how one operates an opt-in system. We had evidence from the Behavioural Insights Team of the behavioural responses both on the difference between opt-in and opt-out, and how you operate an opt-in system. In the Bill there are three elements of moving to an opt-in system: one is the proposed transition arrangements; the second is the requirement for opt-in to be undertaken in writing; the third element is the requirement for the opt-in to be renewed with each member every five years. Taking each of those elements, would you like to comment on what you think their impact would be on opting in to the political levy, expressing your view on each of those three elements?

Professor Keith Ewing: Can I give an overview and then I will pass on to my colleagues? These three aspects reveal a very malign purpose behind this change. In a sense the three changes are designed, both individually and collectively, to make it harder for trade union members to opt in, harder for trade unions to operate effective political funds and, in the process, to diminish the voice of trade unions in the political process. I cannot for the life of

me understand why there should be a five-year renewal in a system where people who contract in can contract out again at any time they like.

The Chairman: I think that what Baroness Drake is getting at is this. Suppose those aspects were not in the Bill and the changes that are made there. What do you think the impact would be without them?

Professor Keith Ewing: The evidence that we have from—

The Chairman: In other words, if we did not do any of those things—

Professor Keith Ewing: The evidence we have of opting in from the two previous experiences, in 1927, or the existing experience from Northern Ireland, suggests that, whatever happens, there is going to be a dramatic fall. These additional measures will ensure that that dramatic fall is even more dramatic still and that we get closer to the doomsday position than to the Northern Ireland position. That would be my view. That probably reveals the intention of the Government—that this is the impact that the legislation should have. It exaggerates and makes worse an already bad situation.

The Chairman: We understand the point that you are making. We are trying to get at what the magnitude is of the two parts.

Professor Keith Ewing: Who can say?

The Chairman: How much of it is attributed to the whole question of opting in as against opting out, and how much of it do you believe is due to the particular way in which it is proposed?

Professor Keith Ewing: I do not see how the two can be disconnected in the sense that one reinforces the other. Opting in, whatever happens—

The Chairman: Yes, but last night in the Chamber we had amendments asking to change some of those aspects of it. What I am trying to get at is, if there was a softening in some of those things to do with the way in which it is implemented, what then is your estimate of the size of the impact?

Professor Keith Ewing: Nobody knows what the size will be. A softening would be very welcome, but a move to contracting in will still be very damaging even with that softening. In so far as the terms of reference of this Committee are concerned, there will be a decline. Whatever happens, if we move to a system of contracting in, it will have a dramatic impact on the funding of the Labour Party in relation to the recommendations of the Kelly

committee in 2011. That cannot be gainsaid; that will happen. The only question really is the extent.

The Chairman: The Kelly committee estimate was rather smaller than the one you are now talking about.

Professor Keith Ewing: Kelly said he did not know. He said it is a guess; we do not know.

The Chairman: But his central estimate was—

Professor Keith Ewing: It was an estimate somewhere between, but it was an estimate; he did not know. It was an uninformed estimate.

Lord Callanan: Can I go back to the points that Ms Pearce made earlier about—

Baroness Drake: I would like to hear from the other people on my question before we start on another.

The Chairman: That is fine; you are quite right.

Ms Nicola Smith: I will be brief. To add a little to what Keith said, the three-month transition is extremely tight. If you look at the amount of time that retailers, for example, were provided with the opportunity to prepare for providing plastic bags at the cost of 5p, they had two years from the point at which the regulations were brought in until the point at which the policy was brought into practice. Also, it is not in line with general precedent in government policy-making to impose retrospective changes to contracts that people have already entered into. The idea that existing trade union members who have already opted in or are already part of the political fund under one arrangement should retrospectively have that change is unprecedented. With welfare reform, for example, transitional protection is nearly always put in at policy start for new claimants. That is important to note.

Finally, there is no reference in the Conservative Party manifesto to the process by which these proposals should be implemented, in particular to the three-month period or to the requirement that communication by members and from the union should be in writing, which, as the CO highlighted in his evidence, is quite a significant potential additional cost to unions from their political fund revenues, if that is the main means they have to communicate with members.

Ms Helen Pearce: Briefly, I agree with everything my colleague has said, specifically on the idea of this being backdated. Whatever mechanisms are put in place to allow union members to opt in to a political fund, going back to 5 million people who are already

members of something and asking them to rejoin is a massive task and one that I cannot see having that sort of take-up, just because the idea of rejoining something that you are already in is a difficult question to ask.

Going back to the estimates—it is very difficult to speculate about tweaking different mechanisms and what outcome that will have—even looking at an optimistic estimate of, say, 40% membership of political funds, that will still reduce by half the money available to the Labour Party to the tune of £20 million over a Parliament. On absolute best estimates, which I believe are very unrealistic, we are talking about a significant impact on the funding available to the Labour Party. That still gives rise to the question: is this fair, and is this dealing with party funding in the way we have previously dealt with party funding by consensus?

Q57 Lord Callanan: Can I ask you further about this point? You are confusing, I think, the donations to the political fund and donations to the Labour Party. What surprised me in evidence that we heard earlier was that only 45% of unions' political funds are donated to the Labour Party. Presumably, the figures you are quoting are for the reduction of members who will affiliate to the political fund. To draw that across towards donations to the Labour Party, I assume that you are assuming that the unions will only donate to the Labour Party in the same percentage from the political fund. Presumably, it is open to them to spend less on other campaigns, such is their annoyance at this, and to give more from their political funds—a higher percentage of the smaller fund—to the Labour Party, and in fact there might be no diminution at all.

Ms Helen Pearce: On that, I would ask why unions should be obliged by legislation to make a choice between whether they want to support the Labour Party or oppose the BNP, for example.

Lord Callanan: But they are not being.

Ms Helen Pearce: That is what you are arguing, I think.

Lord Callanan: No, it is not. I am asking you this. You drew a parallel between the numbers affiliating to the political fund and the effect that might have on the Labour Party. The assumption is that unions continue to donate in the same proportion. They may choose to donate in a bigger proportion.

Ms Helen Pearce: Our figures are based on the assumption that the political fund is apportioned in the same way, to which I would say that there is a lot of variation between union political funds on this in any case. Some unions spend a very large proportion of their political fund in supporting the Labour Party. There are things that unions have to spend their political funds on that can only come out of that fund—for example, campaigning against political parties and campaigning against political issues, the anti-racism work that we have talked about, and involvement in the Labour Party’s internal democracy. Unions might decide to spend a slightly higher proportion of their political fund to increase slightly the amount of money they give to the Labour Party; that may not leave them enough money to fund sending a delegation to Labour Party conference to engage in the internal democracy of that party. I would also say that, yes, unions might be able to make that decision, but if the pie is going to be significantly smaller, giving a slightly larger proportion of a very tiny pie to the Labour Party will make very little difference to the funding available.

Q58 Lord De Mauley: I want to go back to something from much earlier in the debate. Ms Smith, you quoted as one of her three planks on which she defended the status quo the fact that there is a ballot every 10 years. My observation is that the average length of time of which an employee remains with an employer these days is about two years. I wonder whether that undermined, to some extent, what you said.

Ms Nicola Smith: People often transport their trade union membership from one workplace to another, but I suppose the broader point is that if somebody is not a member of the union at the point at which that ballot is held, of course the union still has the legal requirement to make them aware of their choice to opt out of the political fund. That information is available in the rulebook and widely across union websites and broader sources of communication with their members, as we have set out and as we have committed to provide further evidence on.

Professor Keith Ewing: Can I confirm the point that membership is portable in the way that jobs are not? If I am a member of my union, for example, I take that membership with me wherever I am employed in the way that I cannot take my job with me. In a sense, it really does not make much difference.

Baroness Drake: I have two quick questions related to that. Do unions, because of the definition of political objects, spend quite a bit of their political fund on campaigning with

charities? When you are choosing how you spend your political fund, if you redistribute it one way you have to cut down on campaigning activities in other areas. You would have to make a choice. UNISON, for example, affiliates to certain charities and does campaigning on family rights and things like that, and that would come out of the political fund and political campaigning.

Secondly, it is correct, is it not, that unions cannot hand over money to the Labour Party in any form other than through having a political fund in the first instance? If you impact the political fund, you must impact the fund of money available that can be transferred across to the Labour Party. Would you like to comment on that?

Ms Helen Pearce: Yes, absolutely. Your second point is correct: it has to come out of the political funds of the union. If there is an argument that unions could choose to spend a higher proportion of their political funds on the Labour Party to make up a shortfall—not that I think there would be enough money in political funds to make up that shortfall—that will involve them deciding to stop doing other things, and significant numbers of other things, from campaigning against the BNP to campaigning against cuts in their particular sector, to not even being able to get involved in the internal democracy of the party to which they have spent millions of pounds affiliating.

Professor Keith Ewing: The political voice of trade unions would be diminished as a result, when there is a cacophony of noise now from the other side, and that is what this Bill will do.

Ms Nicola Smith: I concur. I have given examples of the sorts of key workplace campaigns that unions run to advocate for people at work who are their members and who are the people who fund these political funds. It is hard to see any rationale for a piece of legislation that seeks to reduce the amount of campaigning work that unions can do on registering young voters, for example campaigning against racism at work and protecting their members from working additional hours. It is a core principle of British parliamentary democracy that there should be a voice for working people as part of political debate in this country. We are very concerned that, on the basis of no evidence and no full assessment of the situation, the Government have simply decided to take action that we think will significantly undermine their capacity to have that role in the future.

The Chairman: That is very helpful. As you will have seen from quite a lot of the questioning, we are trying to get at some of the detail—in a sense, the data and the analysis—to support or to contradict some of the statements that have been made. Most of the broad general political statements we have heard a number of times in the debate. What we are lacking in some of these areas are facts, or estimates even—but reasoned estimates. That is where we are still struggling, which is why I think a lot of the questioning has been pointed in this direction. When you go away and think about it, if there is anything else you can do to provide that kind of analysis to support some of the statements and the debate that has taken place, it would be very helpful. Thank you all very much.

Lord Wrigglesworth: My Lord Chairman, I would also welcome a note about what TULO does and what its activities are.

Q59 The Chairman: I had one other question, but we are running out of time. We have heard the Collins reforms referred to a number of times in these meetings, and some of us still struggle to quite understand how this fits in with the opt-in/opt-out issue: the suggestion that union affiliation fee should reflect, in a sense, some process of opting in, although it is on a long transition, we were told. Can you help us on exactly the impact that that is going to have?

Professor Keith Ewing: Helen probably can do this better than I can, but my understanding is that this will not affect the overall support from unions to the party, but it will shift the balance by which the payments are made; it will shift the balance from affiliation to donations. One consequence of that will be to remove one of the obstacles that faced Hayden Phillips and Kelly in the past, an obstacle to proper party funding reform—the question of trade union collective affiliation that was always seen as an obstacle. If we move away from collective affiliation to this process of individual affiliation, with less money going in the form of affiliation fees and more money in the form of donations, it opens up the possibility of the Conservative Party coming forward and saying, “Okay, we now have a basis on which we can reduce our donations and introduce a legal donations cap”. That is what Collins invites the Conservative Party to do now and why this debate is very closely related to the type of arguments that the Conservative Party does not want to have.

The Chairman: Okay. Thank you very much.