



Trade Union Political Funds and Political Party Funding Committee Oral and Written Evidence

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Associated Society of Locomotive Engineers and Firemen (ASLEF)—written evidence (TUP0027)

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems. ASLEF is affiliated to the Labour Party.
2. ASLEF believes there needs to be a wide ranging debate on party political funding. There has been considerable discussion around trade union financing of the Labour Party over the last year. Regrettably these debates have not extended to the large donations from businesses and hedge funds which bankroll the Conservative Party. Trade Unions are already amongst the most regulated and transparent organisations in the United Kingdom with union finances published for the public inspection by the Certification Officer.
3. The trade union movement created the Labour Party and the links between the two are a cornerstone of British democracy. That is not to say that all trade unionists support the Labour Party. For that reason, many do decide to opt out of the political fund, an option taken by many hundreds of ASLEF members. However, even the Conservative Party until recently recognised this link. Margaret Thatcher said in a cabinet meeting in 1984 "legislation on this subject, which would affect the funding of the Labour Party, would create great unease and should not be entered into lightly."
4. Indeed when the matter was previously investigated, the Conservative Party explained "The question of trade union funding of parties is not a matter of direct concern to the Conservative Party. We recognise the historic ties that bind the trade union movement with the Labour Party [...] The Conservative Party does not believe that it is illegitimate for the trade union movement to provide support for political parties." Perhaps this is why the Conservative Party of the time introduced different regulation in regards to political funding than that currently under discussion. We already have legislation introduced in 1984 that dictates that for a union to have a political fund it must ballot its

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members. To maintain that fund, a union must then re-ballot members every ten years. The Trade Union and Labour Relations Consolidation Act 1992 additionally prevented the transfer of money from the general fund to the political fund. These laws put further obstacles in the way before unions can spend money on political activities. Unions have to be open about where this money comes from, and members can opt out of this funding individually and also vote to end it collectively. ASLEF would argue that this is unnecessary and obstructive regulation as it stands. However there can be no doubt that the political fund is already extremely transparent, democratic and is often correctly referred to as the cleanest money in politics.

5. Big businesses often make large donations to political parties, yet do so virtually unimpeded in comparison to the administrative requirements placed on union funding. For example, companies do not need separate political funds nor do they need company rule books explaining how these funds work. Shareholders are not given the option to contract out of donations or balloted on the matter.
6. It would appear that the current Conservative Government are trying to go even further than the Thatcher government did in weakening the political voice of trade unions. This is for partisan reasons with no other aim other than trying to silence opposition. No matter what an individual's politics are, everyone who believes in democracy would agree that it is damaging for one political party to be vastly better funded than others. Clearly some parties will attract bigger donations than others, especially larger ones or those with wealthy donors. But to deliberately attack one party's funding in a partisan way is fundamentally undemocratic. It also breaks with the consensus that party funding should be discussed cross-party on a non-partisan basis.
7. The main argument given by the Government for changing to an opt-in system is that those who want to contribute to the political fund will still be able to do so by opting-in. However the government is also aware that inertia or oversight likely to mean that most members who do not object to trade union political spending, are unlikely fill in a form and post it out on this matter. Many trade union members are active and follow these matters closely. Many on the other hand, want their trade union to campaign for them,

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and be there when they are needed, however give very little consideration to them at most times. These members will almost certainly know their union is campaigning for them politically and will certainly have access to detailed information about how this is financed. This does not mean they chose to look in to the matter further. In short inertia will lead to people no longer funding something they wish to.

8. Inertia is an area that the government has considered before and legislated on the basis that it does not mean lack of consent. ASLEF fully supports the government's legislation on pensions' auto-enrolment. This legislation means that people must be automatically placed in a pension scheme and must actively opt out of it if they don't want to be. The theory is that that most people would choose to be in a pension, but may not get around to filling in the appropriate paperwork. This is true for union members and political campaigning too. Unions clearly campaign politically as well as industrially so there is no issue of deception. This government by changing to an opt-in system is relying on inertia to reduce Labour Party funding rather than truly giving consideration to how consent works.
9. Consideration must also be given to internal Labour Party changes. Union members must now opt-in in order to become affiliate supporters of the party and have the union contribute £3 a year on their behalf to the party. Therefore the most explicit form of party political donation is already administered on an opt-in basis.
10. The Labour Party General Secretary Iain McNicol has already told this committee estimated that the change will cost the party £8 million a year. This combined with cuts to public funding of opposition parties of 19% show an all-out attack on the Labour Party and a government attempting to silence opposition by any means necessary.
11. Over several decades, the main Westminster parties have always attempted to deal with party funding on a bipartisan, cross-party basis. These changes introduced as part of the trade union bill constitute party funding legislation through the back door. They are significant changes but ones which only impact one political party. Hitting an opposition party's funding unilaterally is undemocratic and the changes to an opt-in

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system are nothing to do with trade union democracy but a party political attack on the Labour Party and an attack on the voice of organised labour.

12 February 2016

Rt Hon Dame Margaret Beckett MP—written evidence (TUP0037)

I was a member of the CSPL at the time of its 2011 report on Political Party Finance.

I dissented, as the committee is aware, from parts of that report and I have been asked whether my position has changed at all since 2011.

My position has only changed to the extent that the more and the longer I think about these issues the more convinced I am, sadly, of the limitations of the committee's extremely well intentioned proposals for reform of political party funding.

It is also very much my view that the proposals in the Trade Union Bill do relate to that report and strengthen my concern.

The impact of the report's proposals

I had, almost throughout our discussions, two particular difficulties with the report by the non-political members of the committee.

I feel a degree of guilt in saying so, because there is no doubt that the committee members put in a tremendous amount of work and thought very deeply about these issues. I have little doubt that if one were starting from scratch in, say, a new democracy and wishing to look at how political parties might be funded there is much in the committee's report that has considerable merit.

I did in fact observe to the committee, somewhat flippantly, that their task would be easier if only there were no Labour party. This was though, an expression of genuine concern. The committee's approach struggles somewhat with the basic fact that the Labour Party is, and has been since its inception more than 100 years ago, in effect, a federation whose membership is drawn from different groups.

There are individual full members of the Party. There are affiliated members, some from the trade unions but others, also, from socialist societies. This is not a structure which applies, as I understand it, in other political parties.

What it means is that a substantial part of the funding received from trades unions is in the form of a membership fee, though one of a different character to the fee due from an individual member.

The Coop party

The committee's specific proposals would indeed have driven out of existence the long established Co-operative Party. This party has been for many years a sister party, but a separate party organisation from the Labour Party as such, and with its own organisation & conference.

The committee's anxiety to ensure that people could not evade their proposals for transparency meant that the Co-operative Party would no longer be allowed to differentiate itself from the Labour party, and raise its own separate funds.

Other sources of income

There was discussion as to the scope for encouraging political parties to rely more on raising funds from their wider membership than from large individual donations.

Contrary to popular perception, this is what the Labour Party already does. Something of the order of fifty percent of its income is already raised from individual small donations.

The scope therefore for the Labour Party to make up a reduction in income from large donations in this way thus appears to be substantially less than is possible for the other major political parties.

Trades unions and 'opting in'

My second major concern was the sheer bureaucracy which would be inflicted on trade unions by the proposals that there should be individual 'opting in' of payment of affiliated membership to the Labour Party, - which costs, presently, SIX PENCE per week.

It seemed to me that the extra bureaucracy which would be called for in the handling of such sums was wholly disproportionate and unjustifiable.

The donor

One of the underlying concerns of the committee was the wish to reduce the influence, real or perceived, of a substantial individual donor.

In this context there was something of a disagreement between myself and other members of the committee.

A parallel was perceived between payment of a single donation by a particular wealthy individual and the payment of a similar donation on behalf of a trade union, often made in the name of its General Secretary. To me the parallel was, by no means, exact.

A trade union General Secretary operates at the behest of his or her members, and is bound by the decisions of their conference, and of the executive elected by those members.

It seemed to me that to equate such a trade union donation to one made by a rich individual was to fly in the face of reality. This is especially the case because members are already empowered to make an individual decision as to whether they wish to make a contribution to their union 's political fund, from which, should the unions' members choose to affiliate to the Labour Party, (about half of trades unions do not), such an affiliation fee must be paid. Similarly it is from the political fund that any donation to the party outside the payment of affiliation must come.

I cannot but notice that, even in the discussions which have been held of late in the House of Lords, it is far from clear that everyone understands that the political fund is NOT THE LABOUR PARTY'S MONEY, even in trade unions which do affiliate to the party. It is required to support ALL the 'political' activities of a trade union .

The CSPL recommendations

The committee adhered from the outset to the principle that nothing should be proposed whose impact might be specifically disadvantageous to any of the parties.

However in making these judgements the committee was seriously disadvantaged by the limited data available to assess such potential impacts.

For example, it recommended a donation limit of £10,000 per individual donation. Because this would be a substantial sum for anyone on median or average earnings the possibility of a (much) lower figure was considered.

However, no information is collected by the Electoral Commission for donations below, as I recall, a figure of £7,500. This meant that it was impossible properly to assess what the impact of such a donation limit would be on the income of existing political parties.

Furthermore, apart from the dearth of specific information, the most recent, and therefore most relevant, period over which any financial information was available was one of the most atypical in the history of both of the major parties.

During the ten year period for which information was available, the Conservative Party was more unpopular, and receiving less financial support, than at, probably, any time in its history.

Conversely the Labour Party was more widely popular and receiving more funding than at any time in its history.

This made it particularly difficult to assess the real long term financial implications of specific proposals.

Spending limits

The CSPL also proposed that limits on campaign spending should be cut. Quite apart from the desire to ease the pressure to raise substantial funds, it was reported to us that, at that time, no party had ever spent up to the existing limit on any national election.

(This committee will however be aware that just before the last General Election, the Coalition Government, far from cutting the then limits on campaign spending, actually increased them.)

Public funding

There was also the proposal for new public support to political parties. Again the CSPL strove to strike a balance between making up to some degree for the reductions in funding which would follow the implementation of the report's proposals, and not making a proposal which would sound unreasonable or over generous.

There was discussion too about funding mechanisms, - public funding related to votes obtained and/or public funding in the form of tax relief on donations.

The first is driven by the electoral support a political party receives from the public.

The second, (tax relief), however means that to those who already have, even more will be given. Although there are precedents, such as charity donations, I was, myself, unhappy about that part of the proposals.

Clauses 10 and 11

As I argue above, it is primarily the impact and the sheer bureaucracy of an opt-in system that causes me concern.

I am aware, of course, that the Collins Report for the Labour Party examines the introduction of such a system, although it seeks to maintain the opportunity for collective affiliation of a trade union as well as individual affiliation of its members.

What is most noticeable, however, is that the Collins Report, (whose practicality has yet, of course, to be tested), proposed a transition period of some five years.

This contrasts sharply with what I understand to be the transition period offered in the Bill. I am told that those who, like myself and millions of others, have already consented to pay into the political fund, will have only three months in which to respond, individually, and IN WRITING, to say that we still wish to reaffirm our contribution. The chances of great numbers of members of the public noticing this abrupt reversal in procedure seems, to me, to be slight.

Moreover I cannot but notice that a government which increasingly insists on people making, and communicating, their decisions online, (for example in applying for Universal Credit, which can only be done online), is refusing to allow trade unions or their members to make or

communicate their decisions online. It is hard to see this is anything other than the most deliberate and contrived obstruction.

The impact of these changes will undoubtedly be considerable and adverse with regard to the relationship between the Labour Party and its affiliated organisations and will have a consequential impact on the finances of the Labour Party. I believe others have made you aware of the likely scale of that financial impact.

But it should also be noted that there will be direct challenge to the structure of the Labour Party itself - for example, altering the voting strength of our affiliates at our national conference which should not be the subject of influence by the government of the day.

Certainly this seems to me to have a major potential impact on political funds and, consequently, on all the activities of trade unions, not just their capacity to support the Labour Party.

As I write I understand the Government is also proposing to prevent or hinder charities from engaging in the kind of campaigning which, for trade unions, has to be supported from the political fund. It would appear therefore that this is part of a bigger picture and it is in this context that it is particularly likely to have, as you ask, a broad effect on party politics.

Donation rules

In your final questions you ask about comparisons with requirements for trade unions and others.

Comparisons are often drawn between the capacity of companies to make donations to, say the Conservative Party, without the active consent of their shareholders, and the existing legal constraints on trades unions, who wish either to affiliate, or to donate, to the Labour Party.

i.e. (The requirement to have a separate political fund, reaffirmed by a membership ballot every 10 years, from which all such moneys must be drawn, and the additional requirement that all union members must be free to 'opt out' of making such a contribution).

I am told that since a requirement for shareholders to be consulted was introduced, very little Conservative party funding is now received from public companies. It is said that the bulk of their funding now comes from private companies or private individuals, where, of course, the question of consent from other participants does not arise.

Consensus

Finally you ask what is the basis for the claim that party funding matters are normally reformed on the basis of consensus. As others have done one need only examine previous reports on party funding and speeches in the house from Churchill to Clegg for such evidence.

That has always been my understanding and certainly it was part of what lay behind the consideration of the CSPL. Indeed because of concern that different proposals in the report could be used to disadvantage one party or another, the committee went out of its way to write into the report the insistence that their proposals should be considered as a whole, rather than being cherry picked.

It seems to me that the developments in the Bill you are considering, alongside others being taken at the present time, is destroying any such convention, should it once have existed, and is likely to have, I would have thought, a quite dramatic and substantial effect on the approach of the different parties to funding issues.

Finally I should not close before reminding the committee that, what I believe to be, the unprecedented action of the government in proposing to reduce, & then freeze for the duration of the parliament, the 'Short' money paid to support the parliamentary work of opposition parties, should be seen as very much part of the picture which has, as its context, the proposals in the Trade Union Bill.

This specific proposal, (which is in sharp contrast to steps taken in the 1990s by the then Labour Government to substantially increase the funding of opposition parties and inflation proof the settlement), does of course affect, not only the Labour Party, but also all the opposition parties. Its impact on the smaller parties is likely to be particularly severe.

It comes at a time when the numbers and funding of government Special Advisors has substantially increased above the level in 2010.

Such other, though more minor, proposals do, I believe, illuminate the climate in which the approach on the Trade Union Bill is being made.

15 February 2016

Alan Buckle—written evidence (TUP0018)

1. Context

I was a partner at KPMG for 20 years, ending up as Deputy Chairman of KPMG International. I served as an auditor and advisor to large companies during a career of more than thirty years.

I have advised the Labour Party since the late 1990s including financial matters such as: the response to the funding crisis that the party faced in 2007, being a member of the Risk and Audit Committee that was set up in response to that crisis to oversee finances, giving strategic oversight to fund raising and budgeting for the 2015 general election campaign, and being part of the team that reviewed the 2015 election result on behalf of the National Executive Committee of the Labour Party.

While I am a Labour Party member, I have in this note applied both my knowledge of the Party and my own professional skill and mind-set.

My overall view is that the Labour Party is already at a significant disadvantage because of its financial capacity and that the proposals under Clause 10 of the Trade Union Reform Bill will increase this disadvantage and could well make it difficult for the party to operate and campaign effectively, with a detrimental impact on the democratic process.

2. Financial position

The party faced considerable financial strain in the mid to late 2000s. It responded to the immediate crisis and put new controls in place. For example, it renegotiated its borrowing from banks and individuals and adopted a new financial strategy that included a requirement to systematically pay down debt as the first priority, while only spending on campaigning from resources that were specifically raised for that purpose.

The party subsequently undertook a restructuring, which reduced head-count, tightened procurement and reduced costs.

The result of all this is that by November 2015, after almost ten years of hard work and good house-keeping, the party was debt free.

While Labour is debt free for the first time in a generation, it can ill afford to lose revenue if it is to continue to act as an effective opposition in Westminster and to campaign effectively across the country. The party had net assets of only £1million at the end of March 2015 and therefore there are no reserves to draw on to absorb shocks. In addition, after many years of needing to focus on managing its debt, it would be highly surprising to find new cost savings or untapped income source that would enable the party to replace any significant level of Union funding.

For any enterprise, there will always be, at least theoretically, new sources of income and more costs to cut. However, in my time at the party both its fund-raising teams and its careful cost management have impressed me. The fund-raising teams are hard working, systematic and professional and throughout the last parliament worked hard to overcome the inbuilt financial disadvantage that the party faces. The Party finance team has already taken advantage of the types of cost reductions, that would be considered best practice across the private sector, while keeping very strict control over day-to-day spending.

In addition, the Party may have to handle the announced cut in “Short money” which while only available for specific activities would cause additional difficulties.

3. *The role of union funding*

Since I began my involvement with the Party, it has been clear that the funding from the Trade Unions is a key component of Labour Party funding. It of course represents a large amount of the funding – in very broad terms, Union funding represents, half of general election campaign costs. The Campaign budget for the 2015 election was met as follows:

- Trade Unions 50%
- High value donors 26%
- Members and digital campaigning combined 24%

Union funding is critical not just for the general election campaign but also for day-to-day operations. Political parties, and specifically the Labour Party, have a relatively high fixed overhead base and therefore it is difficult to operate without funding that is both sufficient and predictable. In my experience, this has become more so in recent years for at least four reasons:

- First, elections and referendums are now regular events –general and local elections, by elections, EU elections, the forthcoming EU referendum, mayoral elections and police commission elections.
- Secondly, the emergence of “big data” gives political parties the opportunity to build a fixed base of systems, campaign staff and information, rather than relying on a burst of activity in the “short campaign” of a general election.
- Thirdly, the fixed term parliament act has meant that the “short campaign” is no longer a rush of activity following a sometimes surprising election being called, but builds in a sustained way over a long period
- Finally, the compliance requirements rightly placed on political parties, along with other regulations, increase the need for high quality staff and external advice in these areas

Union funding is therefore not only important for reasons of scale; it is the bedrock of Labour’s funding, enabling the Party to operate, and to demonstrate to its auditors that it is a going concern. In a typical year the Trade Unions provide around one third of running costs.

There are two other sources of funds. “High value donors” who are able to contribute an individually significant sum to the party, and membership income from a wide group of party members.

Raising money from high value donors is significant for all major parties but proportionately much more significant for the Conservatives than for Labour. This not only places Labour at a monetary disadvantage but also gives the Conservatives the certainty to build its well-publicised large central machine that is required to fight modern elections. The Conservatives have a very wide number of individual supporters to call on and this creates a “portfolio effect” which gives a high level of assurance that income will continue to be received.

If anything, Labour’s ability to raise money in this way, where they were already at a strong historic disadvantage has reduced further, in part because of fear of press intrusion on behalf of potential donors. In the run up to the general election in 2015 and the immediate aftermath my calculation is that:

- The Conservatives received gifts of more than £1million from 10 individuals or closely held private companies, amounting to around £ 14 million
- The Conservatives received an additional 100 gifts of over £100,000 from the same group
- Labour received only one non monetary gift of more than £1million from individuals/companies during this period and fewer than 30 gifts of more than £100,000
- The total received by the Conservatives from these high value donors was more than £37million
- The equivalent amount received by Labour from its high value donors was at most £8 million,

All figure are for the whole of calendar 2014 and the first three quarters of 2015. They therefore might reasonably be taken to represent “Big money donations” relating to the election, its run up and its immediate result.

Labour has made great strides in raising money from the rank and file of its members. It has further professionalised its membership operation and built an effective online fund raising team. However these sources of funding are unlikely to rise significantly in the near future, not least because of the limited financial resources of most Labour members. Much has been made of the increase in Labour membership since the 2015 election but the additional income is not significant when compared with the potential loss of Union funding

4. The 2015 election

While there were other reasons why Labour lost the 2015 election, money mattered. The disparity described above meant that whereas the Conservatives had a substantial “war chest” with which to plan and fight the election. Labour did not. Labour therefore not only could

Alan Buckle—written evidence (TUP0018)

spend much less, but couldn't plan ahead or invest in a long campaign. It is unclear by how much the Conservative Party outspent Labour. It is likely to have been much more than the reported 30% as that figure refers only to central costs for the later stages of the campaign when Labour is relatively more able to spend.

During the review conducted by Margaret Beckett, many Labour candidates in key marginal seats were debriefed. It was quite clear that the Conservative party was able to campaign in ways that were impossible for Labour. This activity was driven by a well-funded central machine which was set up several years ahead of the election and which in turn relied on certainty of funding. For example, the Conservatives were able to plan and fund: a long campaign of individually tailored letters to carefully identified key swing voters, bill boards focused on specific subjects in key marginals, paid for online advertisements and high visibility advertisements in local newspapers. This was all only possible because of the level of funding the Conservatives had available and its predictability well before the "short campaign" started.

While Labour's campaign budget was larger in 2015 than in 2010 it was still very tight, unpredictable and late. It was therefore impossible to hire highly paid full time election managers – in contrast to the well-publicised payments by the Conservatives - and make large investments in systems. Even basic activities such as polling were restricted so that it was only possible to partially understand the electorally landscape.

5. The impact of the TU Bill on union political funds

It is important to put the potential impact in perspective.

The Trade Unions provide much of the support needed to maintain the infrastructure of the party. Costs have been cut and tightly managed and all sources of income maximised. Therefore any significant reduction in Union funding will result in a reduction in activity. There is inevitably a fixed cost of maintaining the party, including its national and regional offices, compliance units, income generating teams. Therefore a fall in income will reduce expenditure in activities that can be cut –including the fighting of elections. Therefore Labour is exposed to a further erosion of its campaigning strength, to an extent that threatens the democratic process.

I have read the "Impact Assessment" which is meant to analyse the likely fall in funding to Labour if the proposals in Clause 10 of the Trade Union reform bill are enacted. I have worked for many years in professional assignments that seek to predict the financial impact of certain decisions and events. I do not believe that the Impact Assessment demonstrates the impact of the proposed legislation on Labour.

An effective Impact Assessment should take the proposed changes and using evidence of similar events in analogous situations demonstrate, within reasonable bounds what the impact will be. The Impact Assessment fails to do this and is (in technical terms) merely a sensitively analysis which illustrates (rather than demonstrating) the impact on administrative costs of

Alan Buckle—written evidence (TUP0018)

Trade Unions, (rather than income to the Labour party) based on possible but necessarily unsupported levels of decreased political contributions.

In the absence of an effective impact assessment, it is impossible to predict with a degree of certainty how large the impact of a switch to “opt in” would be, but my opinion is that it is likely to be significant.

I understand that Labour Party officials believe that the fall in the size of political funds would be between 70% and 90% based on analogous situations such as changes in political funding in Northern Ireland and Union elections.

In the private sector, online businesses seek to encourage customers who buy a single order from them, to become repeat or regular customers. If their experience, is relevant then the expectations of Labour party officials are likely to be optimistic. I understand that a reasonable expectation for repeat business (i.e. simply making a second order) in online companies is in the region of 50% and for becoming a regular customer is in the region of 25%. However online businesses have the advantage of being able to communicate unlimited times with their potential customers, online, whereas the Trade Union reform bill seems to envisage a single written communication. Additionally online businesses will commit substantial resources to customer retention, which Trade Unions are unable to do. Private sector business would expect perhaps only a 5% response from a direct mail campaign towards a “warm” list of contacts and only 1% from a simple cold campaign.

Impact on the Labour party needs to be considered at two levels. Having determined the impact on the size of the Unions’ political funds, one would still need to assess the knock on effect of contributions from those funds to the Labour Party. My experience of advising the party is that the Trade Unions while supportive of the Party’s objectives have a wide range of political activities to finance and that a fall in the size of their political levy may have a disproportionately larger impact on the Labour Party rather than in some way being mitigated.

6. Conclusion

The Labour Party has in recent times been at a financial disadvantage. This has been heightened by the change in the nature of political campaigning. The Labour Party has already reduced costs and worked hard to increase revenues but relies heavily on funding from Trade Unions both to operate and to campaign, whereas the Conservative Party is dependant on large individual donations There has been no effective assessment of the impact of the proposed changes but it is hard to conclude that they will be other than seriously negative for Labour and increase its financial and therefore electoral disadvantage.

10 February 2016

Rt Hon Nick Clegg MP—oral evidence (QQ 67–74)

Rt Hon Nick Clegg MP—oral evidence (QQ 67–74)

Examination of Witness

Rt Hon Nick Clegg MP

Q67 The Chairman: Mr Clegg, we apologise for keeping you waiting. Thank you for that. We have had a busy morning so far. As you know, we have to do the whole exercise in a very compressed timetable. Is there anything you would like to say by way of an opening statement?

Mr Clegg: I am very honoured to be invited to be with you for a short period of time this afternoon. The work of the Committee is tremendously important. Aside from the detailed substance of the Bill under scrutiny, my view—given that its impact, whatever anyone says, is disproportionately aimed at one political party to the exclusion of others—is that it departs from a long-standing habit or tradition, if I can put it that way, that issues to do with money and power in British politics are dealt with on a cross-party basis.

It is a very unwelcome development when a new Government, in effect, Americanises Westminster politics. That is what is going on. In America, there is a very unseemly tradition of new incumbents in power busily trying to rig every rule in sight to the detriment of their opponents. We have generally avoided that in our country, whether it is party funding, electoral reform, House of Lords and so on. In all those quasi-constitutional issues we have sought to try to move as a flotilla of parties working across party boundaries. That is being grievously damaged.

I also think that, politically, the Government will rue the day they do this because one day the boot will be on the other foot. It might not feel like it at the moment, but one day the Conservatives will not be in power. I do not think people will forget in a hurry that they sought to use this legislation for partisan purposes. I know this only because I spent five years blocking these measures precisely because I felt their partisan intent was not right. Quite understandably perhaps, the Conservatives, free from the constraints of coalition, have now decanted all those measures into this measure.

From the Government's point of view, they need all the help they can get from other parties to make the wider case in the national interest about Europe in the run-up to the referendum. This Bill, combined with the cut in Short money, which is a very spiteful and petty measure, the

growing evidence that constituency-wide funding limits have been breached and the politicisation of special advisers and so on, sours and significantly departs from the broad framework of cross-party collaboration on these issues in the past. That is a great shame.

The Chairman: Why do you think the parties were unable to reach agreement following publication of the report of the Committee on Standards in Public Life, which put forward a proposal that had impacts on all parties? It seems to have gone nowhere and, as far as we can see, there is very little activity in this area.

Mr Clegg: Dare I say that your smile might suggest that you anticipate the answer that there was no interest, particularly from the two larger parties, in entering into agreement? I remember vividly over 2012-13 taking Christopher Kelly's committee's recommendations as a loose blueprint. I convened the cross-party committee. The political parties circulated various worthy documents saying they would do this, introduce a limit here and deal with trade union funding there and all the rest of it. When push came to shove, the political decision was taken to pull the plug on the whole thing, because no party, particularly the better funded and larger ones, had any interest in reaching a compromise. Between the Conservative and Labour parties in particular there was always an obvious trade-off between moving to something akin to what we have in this legislation—opt-in and so on—but, on the other side of the ledger, the Conservatives accepting a cap on individual donations. Every single committee and cross-party group that has ever looked at this question has accepted that you need some kind of limit on individual donations. Everyone accepts that that is the basic symmetry of the deal. It became quite obvious, as I was told by senior Conservatives, that they did not want to do anything that would prevent them keeping their coffers in the healthy state to which they had become accustomed.

Q68 Lord Whitty: You indicated clearly that you broadly supported the Chris Kelly report. In relation to various bits of it, the issue we are discussing today about opting in or opting out of the political fund was not in those terms in the Chris Kelly report. The bit in that report, as far as Labour Party money coming from the trade unions was concerned, related to affiliation fees and the individualisation, if I can put it that way, of those fees. Since then the Labour Party has adopted rules that, as far as affiliation fees go, will work out very close to the Chris Kelly

proposition. Would you agree with that? Do you regard it as at least a partial delivery of that side of things, albeit not in the overall context of all the other recommendations of Kelly?

Mr Clegg: I thought Kelly pulled his punches on that particular issue. The Kelly recommendations were a blueprint; they were a compromise among themselves. Personally, I had never had any first-principle objection to the idea of the opt-in model. I am not a Labour Party member so I am not very close to this, but the Collins reforms were clearly about the affiliation fee. Some analysts and academics have observed that, even if the £3 that goes into the affiliation fund is done automatically rather than individually, it would still give trade unions a huge war chest to play with.

I am no sepia-tinted romantic when it comes to the trade union-Labour link. I personally suffered from what I thought was wholly unacceptable use of trade union funds for political purposes in my own backyard of Sheffield for many years. The principle I am defending is not whether the Collins reforms are a sufficient surrogate for what is in the Bill, which perhaps lies behind your question, but the fundamental injustice in my view of applying an asymmetrical solution that affects only one party—in this case the Labour Party. That is what is so very wrong.

I do not have huge objections to the idea that you have an individual opt-in approach and it is renewed every few years. It clearly goes further than the Collins reforms. The Collins reforms go some way to meeting the Kelly suggestions. I agree with all that, but in trying to distinguish one from the other I do not think I am particularly well equipped to adjudicate. I am better equipped to adjudicate when I say it is fundamentally wrong to do this in such a partisan way.

Lord Callanan: You said in relation to the 2011 report that the Government believed the case could not be made for greater state funding of political parties at a time when budgets were being squeezed. Do you still believe that?

Mr Clegg: Yes, at a time of austerity. At the time, David Laws on my behalf distributed countless creative ways of using more intelligently the substantial public funding—rather more substantial than the public is aware—that already goes to parties. Quite a lot of money goes in from the public coffers either by proxy—free airtime, broadcasting—or directly by Short money, Cranborne and so on. What we proposed at the time was not a net increase. I am now speaking

on behalf of myself as then leader of the Liberal Democrats. We did not advocate a net increase in public funding but a more sensible, fairer and more transparent redistribution of it.

I accept these are strong words, but I feel very strongly about it. It is petty and spiteful for a new Government to come in and make a 20% cut in the public money through Short funding that goes to their opponents, particularly when the Conservatives in opposition got a whacking increase in Short money granted by the Government of the day. That is why they will rue the day. The wheel goes round in politics—I hope; I believe. That is why it is so important that over time people take the longer view and do not try to secure short-term advantage when the roulette wheel happens to be spinning in their favour.

Q69 Lord Robathan: Nick, you will be surprised to hear I agree with a couple of things you say, not least that it would be very dangerous to get into an American-style petty war on this. It may be that one day the Conservative Party will not rule this country. Who knows? I take your view that one does not want tit for tat. That is absolutely right. What you have missed out, if I may say so, is that this was a manifesto commitment on which the British people voted. Not many of them may have read the details, but they did vote it in as a manifesto commitment. Do you agree that it is extremely important that a Government just coming in hold to their manifesto commitments?

Mr Clegg: Yes, of course, but you cannot invite me to agree with the Conservative Party manifesto. I thought it was petty and partisan when it was in the Conservative Party manifesto.

Lord Robathan: But it was voted for by the good British people.

Mr Clegg: I did not meet a single constituent in my constituency who said, “The reason we think the Conservatives deserve our vote is because they are going to do in the Labour Party”. I am sorry; actually, that might have been the case. Let me rephrase that: “do in the Labour Party by using legislation for these partisan ends”. The only reason I am very familiar with the thinking behind it is that, as I intimated earlier, very senior Conservatives invited me on numerous occasions over five years of coalition Government to introduce these measures, either the opt-in or the threshold as the trigger for strike ballots, time and time again. I kept saying no, not for the reason that I object to the substance of opt-in—I have no principled objection to it—but because I thought the coalition Government should be what it said on the tin, which was two

parties, albeit temporarily, acting in the national interest, not a permanent realignment of two parties ganging up against another one; and because if we had done it then, it would be, as this legislation now is, a breach perhaps not of a formal convention but certainly a long-standing habit and tendency for political parties to try to agree.

I spent much of my time over the past several years trying to cajole politicians from other parties, whether it be on alternative vote, House of Lords or party funding, all fruitlessly as it happens in those cases.

Lord Robathan: The great British people voted against PR.

Mr Clegg: They did, and thank you for reminding me of it.

Lord Robathan: Overwhelmingly.

Mr Clegg: Okay, but the point still holds that the vote in that instance was preceded by lots of deliberation across parties. As you have raised it, ironically the thing that made its way on to the ballot paper was the policy of the Labour Party, not the policy of either the Conservatives or Liberal Democrats. That is one of those little ironies of history. My point is that all that effort showed meticulous adherence to a cross-party approach to how money and power are circulated in the British political system. That is what is being breached here, and that is wrong.

Q70 Earl of Kinnoull: I am probing the status of the Kelly report. We had Lord Bew here earlier this week. He said a number of interesting things: first, that all the major parties' manifestos said progress was needed in the area of party funding; and, secondly, that not a single party had formally endorsed the Kelly report over the period, which I must say I had not picked up in the past. What is the status of the Kelly report? Perhaps you could comment. Is it a bible that we should all pay a lot of attention to?

Mr Clegg: It is not a tablet of stone. I am afraid it is just one of countless reports on party funding that have been issued over time.

Earl of Kinnoull: But it is the very report we are being asked to examine.

Mr Clegg: It is the latest one and it is a very creditable piece of work. It was done diligently with great authority, but I do not think Christopher Kelly, certainly in the conversations I had with him, ever expected he would produce a tablet of stone and everybody would fall to their knees and say, "Hallelujah! We will adopt it hook, line and sinker". It was always going to be the framework

for cross-party negotiation, but I think everybody accepted the dilemma—the problem it sought to solve—and the basic tramlines and trade-offs it established between a cap on individual donations on the one hand and reform of trade union funding on the other. Those are the two political pillars. They represent the big sacrifices or compromises by the two larger parties in British politics. I think everybody accepted that. Was every “t” crossed and every “i” dotted and endorsed by every party? Of course it was not, and I do not think he would have expected it.

Q71 Lord Wrigglesworth: Would you agree with the assertion that the evidence of the last campaign in particular demonstrates that the Americanisation of British politics, to which you referred, is going on apace in the scale of money being spent, by those parties which have it, on electioneering? Do you agree that in many respects there is a sea change in the amount of money and the part that money plays in our political process?

Mr Clegg: Part of the problem is that we have rules that look a bit quaint, frankly, in the face of the ingenuity with which technology is now used by political parties and campaigners. Do not take my word for it. Jim Messina, the American chap who apparently did so much to help the Conservatives, said publicly that he thought they had spent about £30 million on the election campaign when the national limit should have been £18.5 million. He said that they had spent well beyond the limits under which they should have operated. My hunch is that the way that happened was that they funnelled huge amounts of money through nationally produced literature, which, in effect, was decanted on to people’s doorsteps and doormats and through their mailboxes in the guise of local campaign literature. In other words, the local constituency-wide spending limits were made a mockery of, first, because all this stuff was being mailed out centrally and, secondly—one has to acknowledge—because of some very ingenious, intelligent and smart, if ruthless, use of digital technology, which costs money. You have to buy databases and that costs a lot of money. That is done centrally but then deployed locally. Some of the hired guns of the Conservatives are already on public record as saying they spent far more than they should have done, but the question beyond that is that those slightly old-fashioned constituency-level limits can be easily circumvented through central funding, or through the use of new database campaigning techniques.

Q72 Baroness Dean of Thornton-le-Fylde: Lord Robathan talked about the Conservative Party manifesto and the intention to legislate on trade union opt-in. The second sentence of that said: “We will continue to seek agreement on a comprehensive package of party funding reform”. We have had no evidence from any source that there has been any attempt to carry out that part of the Tory party manifesto. Looking at Clause 10 of the Bill—the opt-in clause—I seek your opinion about not just the opt-in but the fact that every single member of the union will have to opt in, whether or not they have done it before, so it applies to current as well as new members. It will have to be in writing; it will have to be within three months of Royal Assent, or perhaps a little later, as we were told last night in the House; and it will have to be renewed every five years, unless the member, within three months of that five-year period, proactively remembers and then writes again to the union. What is your view of that?

Mr Clegg: As I intimated earlier in response to Lord Whitty, on the substance, I find it quite difficult to recoil from the idea that individual trade union members are invited to make choices for themselves and renew them. I am a liberal. I do not believe in corporatism; I do not like people being signed up en masse either to provide membership fodder or money to political parties. It is not the kind of politics I believe in: I am a liberal. I do not recoil from the process by which it is done formally and explicitly renewed. I find it difficult to object in first principle, although I am not that close to the details.

My objection is that it is clearly intended, whatever the Government say, to have a disproportionate and asymmetrical political effect on their principal political opponents. That is why in the past this was never abstracted in isolation from a wider package of cross-party political funding reform, and it should not be abstracted from that wider picture now. You mentioned, quite rightly, that this and previous Governments have said, although the words seem especially hollow this time round, that they are going to make concerted efforts to resuscitate the cross-party approach to party funding reform. For instance, I remember discussions with my erstwhile Conservative colleagues on tricky issues like taxation of high-end property, when I would be told in no uncertain terms, “We’re not going to do this. It might be a sensible policy, but our donors won’t like it”. If the kind of system we are now operating in is one where very wealthy donors appear, at least according to what I heard, to have a material effect on how taxation policy is

formed in this country, it cannot be right. It cannot be right that that should be happening, and it certainly cannot be right that in that context a party should be able unilaterally to affect the funding stream to its principal political opponent with no sacrifices made to its own funding stream. That seems to me to be wrong.

Baroness Dean of Thornton-le-Fylde: I accept that you have no first-principle objection to an opt-in. That is not really the point I am pressing you on. If the Bill passes into law in its present state, is it your view that it will damage the Labour Party?

Mr Clegg: Clearly, it will damage the Labour Party financially, yes.

Q73 Lord De Mauley: I think you implied earlier that the effect of introducing all the Kelly recommendations would be about equal to the Conservative levy. You used the word “balance”. Do you accept that it would be a big plus for the Lib Dems, because of the introduction of more state funding?

Mr Clegg: We departed from Kelly in some respects. As I hinted earlier, I was not entirely on board with Kelly on his slightly opaque recommendations on trade union funding, but he was much more forthright on an increase in state funding that is politically deliverable or justifiable at a time when the Government are still making huge savings. The Liberal Democrat position in the ill-fated cross-party talks in 2012-13 was not a net increase but a significant reordering and restructuring of the fairly significant amounts of money being provided to parties.

We now have the almost loopy situation where the Chancellor is whacking up the pay of his special advisers by an astronomical amount. Specialist advisers in government are now being paid far more money than was traditionally the case in the past. By the way, because of a change in the *Cabinet Manual* rules, which the Government introduced with no wider consultation, for the first time ever special advisers are now allowed to campaign for their political party even though they are employed by the taxpayer in government. All of that is happening while there is a 20% reduction in the money going to the basic boiler-room operations of the opposition parties that are there in any democracy to keep the powerful on their toes. “Double standards” does not even scratch the surface to describe how flagrantly uneven that kind of approach is. I very much hope this Committee will be forceful in rejecting it.

Q74 Lord Sherbourne of Didsbury: You said you had no objection in principle to opting in. Can I probe it in one particular respect to understand how that lack of objection in principle arises? Is it your judgment that a number of trade union members might not be aware they can either opt out under the present system or that part of their money might be going to a political party and they might be supporting the Labour Party by default rather than by conscious decision? Is that part of the reason you think that?

Mr Clegg: Yes. Perhaps at a more fundamental level, I have never understood the almost assumed equation between being a member of a trade union and supporting the Labour Party. There are plenty of trade unionists who do not support the Labour Party. Would you believe that there are trade unionists who support the Liberal Democrats? They exist. You may be surprised. I regard political opinion, affiliation and support as a sovereign decision for an individual citizen. One of the fundamental building blocks of an open democracy is that people make up their own mind regardless of whether they are princes, paupers, trade unionists or bankers. That is what democracy is about. It is your decision in the privacy of the ballot box, and yours alone.

I have never liked the idea that somehow by hook or by crook an assumption is made about your political affiliation or your opinions just because you happen to be a member of a trade union. Of course, there are long-standing links, institutional and historical, between trade unions and the Labour Party. One needs to be mindful and respectful of that, but I cleave to a fairly old-fashioned idea that we are all completely autonomous in the political choices we make as citizens of Britain.

The Chairman: Thank you very much, Mr Clegg. It was very kind of you to come, and we are very grateful.

Mr David Cockburn—oral evidence (QQ 31–37)

Mr David Cockburn—oral evidence (QQ 31–37)

Examination of Witness

Mr David Cockburn, Certification Officer

Q31 The Chairman: Good morning, Mr Cockburn. Thank you very much for coming to see us. We have had some background on your current responsibilities. Would you like to make an opening statement?

Mr David Cockburn: Simply to introduce myself, I have been the certification officer since 2001. Before that, I was a partner in a firm of solicitors that specialises in trade union law. My appointment is just for three days a week. I have had other appointments since, including being an employment judge for 13 years. My office is a very small one, and, historically, since 1975, it has been a very small one. I currently have seven staff and a budget of £560,000.

You said that you have looked at my responsibilities. They cover a broad spread of quasi-judicial, supervisory and investigatory functions. All my quasi-judicial ones are appealable to the Employment Appeal Tribunal, the Court of Appeal, et cetera, so my accountability is largely through the judicial process. One of my many responsibilities includes the political funds. Historically, the political funds have not occupied a great deal of the certification office's time. My statutory duties with regard to the political funds are largely to approve political fund rules originally and again at the 10-yearly review ballot, as at present. I have to approve the rules of the political fund themselves. Then, if there are complaints about breaches, the statute is framed in such a way that they come to me as breaches of the rules, not as breaches of the statute. My other responsibility is adjudicating on complaints brought by members of the union about such breaches of the rules. I must say that there have been very few cases; two cases in the last 10 years involved complaints about breach of the political fund rules.

The other aspect where I interface with political funds is through the annual report. I require unions to report to me on their political funds, both financially and—although it is not accounting information—on the number of members, exempt members and people who do not qualify for membership of the political fund. After that has been sent to me, a union is under an obligation to send a statement to members within eight weeks summarising the accounting information in

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its annual return, so members will get a statement that includes the total income and expenditure from the political fund. I look at all that again at the end of the year, when I do my annual report. I am sure your briefing note has summarised the information in it about the number of members in the political fund and the number of exempt members. It may have brought out that members can apply to me for exemption certificates. In fact, last year only five people applied to me for an exemption certificate, which I issued.

My last reporting year was a big year for review ballots. Thirteen took place and were reported to me. All of them voted in favour of retaining the political fund, with an average turnout, calculated over the last 10 years, of 27.5%, with fairly large majorities. That is a brief overview.

The Chairman: Thank you very much. Presumably, you have had a look at the Bill that is currently going through Parliament. How do you see your duties in respect of trade union political funds changing as a result of that Bill?

Mr David Cockburn: I take that question in respect of Clauses 10 and 11. Clause 10 is about the opt-in. Trade unions will have to have new rules in place to give effect to the opt-in. If there are new rules, I have to approve them. It is a minimal administrative thing, but I will have to approve 24 new sets of rules. A more practical impact is that, in order to have new rules, trade unions may have to change them in accordance with their rulebook, which may require an annual or a special meeting. That could have an impact on the implementation date, although there is a fast-track route under Section 92 of the 1992 Act that could be used, if it is open to the particular union. That is the impact of Clause 10.

The impact of Clause 11 will cause me a great deal of work. There are a number of reasons why I say that. One is that I can see that it will cause unions quite a lot of difficulty, for very practical reasons. In essence, it all looks very straightforward, but the practical things that I see are as follows. A trade union has to report on every recipient of funds. Trade unions give money from their political funds at not only national but regional and branch level, and there is a job of collating to do. If there is sometimes use of a trade union room for general political purposes, who is the recipient? There is an issue of doubt there. Each payment has to be categorised under one of the six headings in Section 72 of the 1992 Act. A lot of those overlap, so which category is

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it put into? The report has to give the nature of the expenditure. There are issues about the degree of detail.

In my experience, uncertainty gives way to litigation, and there are a number of issues that could give rise to uncertainty. It is not only members who can complain to me about these things; anyone can raise them with me. Given the political nature of the subject matter, which is likely to be highly contentious, and the fact that what is reported to me is likely to be forensically examined, I can see many more issues being brought to me about what is reported.

A further issue is that now, it will not necessarily be a complaint, where it is member X against union Y; it may be someone raising something with me, which I must then investigate. If there is a prima facie case, I will put that together and put it to the union for it to answer, so I am the prosecutor. Then, I adjudicate. The role of investigator, prosecutor and adjudicator has certain tensions, which we are trying to manage. We are trying to sort something out to make this thing workable.

Lord Sherbourne of Didsbury: Can I follow up what you have just said about Clause 11? I have two questions. First—without going into great detail, but in general—do you think that there could be a change in the reporting requirements in Clause 11 that would give the unions the opportunity to explain where their money is going, without some of the detail that is obviously bothering you as regards potential administration?

My other question is quite separate, but it also relates to Clause 11. We know that the political fund, which is what the Bill is dealing with as regards opting in, is spent on a whole range of different things. Often they include affiliation to Labour, but there are other activities as well. Do you have any evidence of how aware members of trade unions are of where moneys from the fund are going?

Mr David Cockburn: On your first question, I think it is an awfully difficult way of putting it. I can see that people would want more information, but I would find it very difficult to come up with a way of expressing it that covers all the situations a trade union would wish to spend its money on. I regard the six headings in Section 72 as my Bible when I am seeing whether unions have spent money outside their political objects. It is a well-worn part of the Act, so it is something the

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unions may or may not collect data on already. I do not know whether they do, but I suspect not. It is an extremely difficult point, and I do not have an answer to it.

On the second point, the average trade union member may not know a great deal about what the political fund is being spent on, although there is a lot of national publicity about the trade unions funding the Labour Party and what have you. For those who care to look—if you become an anorak on the subject—there is quite a lot of information available to trade union members about how it is spent. Their starting point would be the annual return, where there is some detail. The degree of detail varies between unions. There is the statement to members, which might alert people only to the totals, not to the individual amounts to which my Lord’s question is directed. If a union member is seriously concerned about this, under the 1992 Act there is the right to access to accounting records. An application can be made to the union, in the first place, to see the accounting records for the political fund or aspects of the fund—unions keep the information in different ways—and if the union does not give access, there are grounds for complaint to me, and I order the production of the accounting records. In the generality, the answer is, “Not much”, but if you are really interested, there are routes to get to more detailed information.

Q32 Lord Whitty: We are anxious to establish the administrative reasons for the Government’s propositions. You said that you deal with a very low level of complaints. Is there something administratively difficult about the current legislation and the requirements of union rules that you think needed addressing or improving? If the answer is yes, does the Bill actually do it?

Mr David Cockburn: All rules can be improved. No one has complained to me at any time that they have been impaired in making a complaint or pursuing what they want to do. Of course, that does not mean that they do not feel that way—it is just that it has not been reported to me. The answer to the first part of your question is that I am not sure; there is no evidence of that. What was the second part?

Lord Whitty: If there had been evidence or if you had reached that conclusion, does the Bill address it?

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Mr David Cockburn: The Bill approaches it from a totally different perspective. They are not trying to tinker with what exists; they want a new model. I do not think it is fair to say that it is successful or not successful in perfecting the existing model.

Lord Whitty: I have one supplementary, which relates to the accounting and the Clause 11 propositions. Of course, whereas you cannot spend the general fund on political objectives, you can spend the political fund on non-political objectives. Therefore, if you required more detail about the political funds, you would have to address not just what is in the 1992 Act—not just who the recipients were, which is what the Bill says—but the totality of expenditure that was drawn from the political fund.

Mr David Cockburn: That is a moot question. I would have to look at it more closely. My off-the-cuff response is that you have to report just on political expenditure, not on all expenditure from the political fund, but I might be wrong on that.

Lord Whitty: Would you accept that, because of the relatively wide definition of political activities, to be safe, unions have often spent money from the political fund to ensure that they were not challenged?

Mr David Cockburn: Frequently, they report to me on expenditure that is general fund expenditure. I presume that is for the avoidance of doubt, but it is unnecessary.

Q33 Lord Callanan: Are you required to police the form in which unions make the right to opt out of the political fund available to members? Do you have any information on that? It is alleged that some unions are more transparent than others in making members aware of their right to opt out.

Mr David Cockburn: The form of the exemption notice was created by the certification office many years ago. We insist in a very polite way that that form is in the political fund rules and is used by the union as the form of exemption. The nature of the exemption is quite clear. The publicity they give to it is often commented upon, and I have no evidence about that.

Lord Callanan: It is not within your remit to say that they have to write to every member to say, “You have a right to opt out”, or to include a clause on their membership form or anything like that.

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Mr David Cockburn: There is a statutory obligation for them to tell members of the right to be exempted. That statutory obligation is reproduced in the model political fund rules, which become the political fund rules of the union. I would know how and to what extent it is implemented by the union only if someone brought a complaint to me about breach of it. No one has brought a complaint to me about that.

Lord Callanan: They have to tell members that there is a right to opt out—

Mr David Cockburn: Yes.

Lord Callanan: But there is no detailed guidance about the form in which they have to tell them. They could include it in subsection 23 of paragraph 46 of the rules and say, “You have a copy of that; therefore, you have been told”.

Mr David Cockburn: They have to be given specific notice of the right to be exempted, but it does not say in which font and on what page, as you might insist when having a libel apology printed. It is a general obligation to inform the members that they have the right to be exempted. I am not an expert on union membership application forms, but sometimes it is reproduced on those. The obligation is not to send it in a letter to each member. It is a duty to communicate it in a way that is normal for trade unions to communicate “matters of general interest” to their members. That is the statutory formula that appears in four or five places in the 1992 Act.

The Chairman: Can people opt out electronically?

Mr David Cockburn: Can they send an email to the union? I think they can. You can tell from my quizzical look that it is not something I have thought about.

The Chairman: There is quite a bit of debate about opting in electronically, so I wondered about opting out.

Mr David Cockburn: I see that Clause 10 provides for opting in by post or by person. I cannot think of anything in current Section 84 on that subject.

Earl of Kinnoull: I have been looking at the annual report for the last four years—

Mr David Cockburn: I am sorry.

Earl of Kinnoull: Actually, it is very interesting. In particular, I was looking at appendix 9. I noticed that the percentage of those opting out was 24% in 2011-12 and 23% in 2012-13. In 2013-14, it dropped to 15%, and it is now down to 11%. In numbers of heads, more than 800,000 who used

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to opt out are no longer doing so. That is a very big swing. I wonder whether you have any information to tell us about what is going on there and what people are saying. Generally, what are your views on that?

Mr David Cockburn: I did not do those statistics myself. The only general information that I can bring to that idea is that over the past four or five years, a number of unions have been cleaning up their membership lists, partly in view of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, which is now enacted. It may be that, in the course of that exercise, members who were exempt have been deleted as members. I cannot be very helpful in explaining that statistic.

Q34 Baroness Drake: In answer to Lord Burns's opening question, you anticipated one of the questions that I was going to ask. I will finish it off, so to speak. It comes back to the assessment of what is required under Clause 11. You expressed the view that there is a lot of work and detail in there. Given all the debate generally in society about regulation and compliance burdens, would you like to express a view on whether a light, proportionate or heavy compliance burden is imposed by Clause 11?

Mr David Cockburn: It is certainly heavier than is the case at the moment. Time will tell how heavy. Looking at the practicalities of my office—how many staff we have and planning what we are doing—I anticipate a number of complaints in this area, which in itself will make trade unions more alert and will cause extra care and burdens. Working backwards from the impact on my office, I think the impact on the trade unions is likely to be significant.

Baroness Drake: When answering questions, you said that anyone can now raise a complaint about the information provided under Clause 11, and that your role will be to assess whether there is a prima facie case for that complaint and then to take it forward. That means that anyone can raise a complaint, but also that anyone can challenge both your view on whether there is a prima facie case and any decision that you may make on a case. Does that mean that you, as certification officer, could be subject to more legal challenge—to judicial reviews, perhaps? How do you see that affecting not just your relationship with the trade unions but generally, as a regulator, in the extent of the challenge you will face and the legal responses you will have to embrace?

Mr David Cockburn—oral evidence (QQ 31–37)

Mr David Cockburn: Quite correctly, any of my decisions is open to challenge. The problem with this area is that it is so vexed and political. I anticipate that there will be a lot of heat created and that challenges can be expected. I do not know the effect of that in the long term—whether you put more complaints through, for fear of judicial review, or whether you stick to your guns and are judicially reviewed and subject to criticism. It is one or the other. You just have to manage the situation that is before you.

Baroness Drake: Presumably, if more complaints can be raised by external participants, that could well translate into extra duties for the unions because they would also have to provide information and would be subject to querying from you, in order to address the complaint that had come in. That in itself would increase the duties—

Mr David Cockburn: I am not sure that that part would add extra work for the trade union. The judicial review would be an examination of my decision-making, on the information available to me.

Baroness Drake: What if you were pursuing a complaint that had been raised and you had decided that there was a prima facie case?

Mr David Cockburn: The judicial review assumes that I have found that there is no prima facie case. If the person wants to argue that I am wrong and perverse, the High Court will examine my decision on the basis of the facts that were before me then. I suppose my fear is that I will be doing more diligent fact-finding of the trade union before I make my decision to turn down the complaint on the basis that there is no prima facie case, so that my decision that there is no such case is unassailable on judicial review.

Lord Robathan: Maybe I did not quite understand or I was dozing when you said that last year, only five people applied for an exemption certificate. I note that paragraph 7.18 of your annual report last year also says that, yet there are over 619,000 members who do not make a political fund contribution. Could you elaborate slightly on that? It seems counterintuitive.

Mr David Cockburn: Yes. Some members of a trade union do not qualify for the political fund by reason of being retired members, apprentices or non-paying recipients of freebies, as an introductory offer. They are members of the union, but they are not entitled to membership of the political fund. That is a large number of people. Then there are the people who claim

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exemption from paying the political fund of their own volition, by approaching their union and telling it. That is the vast bulk. Some may have difficulty obtaining an exemption certificate from their union. They might come to me and say, “Will you please give me one?” so I send them a draft exemption certificate.

Lord Robathan: To clarify this absolutely, we are talking about a very small number of people who have perhaps entered into some sort of heated discussion with their union. The union would not give them an exemption certificate, but you have them given one. Is that correct?

Mr David Cockburn: Yes. Wouldn't, couldn't, shouldn't—I do not know, but they needed to come to me.

Q35 Lord Richard: Your job is to look at the way in which unions behave. Is it fair to say that you are one of the experts on trade union behaviour and how they react?

Mr David Cockburn: I regard myself as the person who applies the 1992 Act. I do not hold myself out as a general expert on trade unions, although I have been around trade unions all my life and I happen to know a thing or two about them.

Lord Richard: Yes. You know how they work, what they have to do and the technicalities of their operations.

Mr David Cockburn: There are people in this room who know more.

Lord Richard: There are lots of people in this room who know less, including me. The unions are complaining bitterly about two things in the Bill. One is the length of transition for the opt-in procedure, which is three months. The second is the idea that you now have to do it all by post or by personal delivery and that you cannot use any kind of electronic mail. I am not asking you about the merits of that proposal, but, just as a matter of interest, did the Government consult you as to whether that made sense in relation to the way trade unions operate?

Mr David Cockburn: No, I was not consulted.

Lord Richard: You were not consulted at all.

Mr David Cockburn: Not before the Bill.

Q36 Lord Wrigglesworth: I was somewhat alarmed by your comments on the consequences for your office of Clause 11. Have you made any estimate of the impact on the cost to your office of carrying out those functions?

Mr David Cockburn—oral evidence (QQ 31–37)

Mr David Cockburn: We have estimated to the department that the £560,000 budget will go up to perhaps nearly £2 million. There are costs of £1.5 million and some soft costs, because at the moment ACAS pays for our HR and ICT. The trade unions pay a levy. In future, we will have to see how much will be in the levy and we will have to include all those costs. The budget will go up to include all those extra soft costs, on top of the actual costs.

Lord Wrigglesworth: The number of complaints could increase very considerably. You mentioned the word “anorak”, but it is not only the anoraks out there—it may also be political activists who are antagonistic towards the trade unions doing this, and they may want to complain about all the details that will be published under the clause. What estimate have you made of the number of complaints that you may get?

Mr David Cockburn: We have not put a number on that, but you have put your finger on our fear. Apparently, you should do only a certain amount of forward planning while the legislation is at Bill stage, as you cannot move forward too quickly with public expenditure at that point. Our provisional thinking on all this is to recruit some new members of staff and then to play it by ear and recruit as we go along. The figure that I mentioned is our provisional view, but we are warning our funders, ACAS, that we may ask for more money.

Lord Wrigglesworth: You also mentioned that your role was going to change somewhat as a result of the clause. It seemed fairly obvious from the comments you made that you might end up with a conflict of interest, in that you would be carrying out so many different roles that it would be almost impossible for you to do it. How will that problem of conflict of interest be overcome?

Mr David Cockburn: I have no absolute solution firmly in my head at the moment, but the almost trite comment is that I will have to subcontract out either the adjudication role or the investigation role, so that the mind of the adjudicator is not prejudiced by the mind of the person bringing the complaint.

Lord Wrigglesworth: I am not quite sure what the term “subcontract out” means. Does it mean establishing another office, or another officer, to adjudicate or to carry out the separate functions?

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Mr David Cockburn: I have within my powers the power to appoint assistant certification officers and to delegate to them any responsibilities that I care to delegate. It is not the way forward that I have decided, but we are considering appointing further assistant certification officers who will stand apart from the organisation and will be called in as adjudicators, once a case is prepared.

Lord Wrigglesworth: Are the Government aware of the consequences that you have described to us? Have you made it clear to the Government what the consequences may be if this legislation goes on to the statute book?

Mr David Cockburn: We have explained the difficulties of the investigator/prosecutor/adjudicator role. I have tried to find, and have asked for, an example of a body, such as the Financial Conduct Authority, that investigates and adjudicates, as you read in the press, to see how it does that. There is nearly always an independent body. The FCA has an independent body that makes recommendations, and the decision is made by the board. The only example we have been given is that of the groceries adjudicator, who apparently does the same thing.

Lord Wrigglesworth: Has that sort of consideration been included in your £2 million budget?

Mr David Cockburn: Yes. We will have to be fleet of foot as this develops. I do not want to employ rafts of people, only for them to be underused. I want to see what happens, and to be strategically placed to deal with the current position and able to increase numbers as appropriate.

Lord Wrigglesworth: I am slightly puzzled. You said that you had had only two complaints.

Mr David Cockburn: Yes.

Lord Wrigglesworth: Where do you think the pressure for these changes has come from?

Mr David Cockburn: I have no evidence of pressure for change.

Q37 Baroness Dean of Thornton-le-Fylde: I should declare that I am probably the only person in this room who has been subject to a complaint to the certification officer, when I was general secretary of the union. It was not on the political side; it was on general issues, and I think that the complainant fell into the category of the anorak brigade, rather than a messianic political gang. Needless to say, I was completely exonerated.

Mr David Cockburn—oral evidence (QQ 31–37)

Good morning, Mr Cockburn. You talked earlier about the ballots that have been conducted in the last year. You said that there were 13.

Mr David Cockburn: Yes.

Baroness Dean of Thornton-le-Fylde: Based on your vast experience of trade union ballots, what is your view on the requirement to opt in to the political fund in writing or by hand delivery? Do you think that will impact on the Labour Party in a detrimental way, as regards numbers in the fund?

Mr David Cockburn: My office has some experience of problems with the post; some complaints have arisen from that. Our experience of electronic communication is that most union members now communicate with my office by email and download my materials from the website. Some do not; some are paper-and-pen people. By and large, I find that most of the correspondence in my office is dealt with electronically.

Baroness Dean of Thornton-le-Fylde: Would the quid pro quo be that the requirement to switch to handwritten or hand-delivered communication had a detrimental effect?

Mr David Cockburn: The immediate consequence is that any union will send out pre-paid envelopes to members, which will be awfully expensive to procure, to stop the member having to put a stamp on it to send it back. The union will bear that expense. The 1992 Act is premised on postal voting for everything. Trade union members are aware that it is premised on postal voting. The facility that trade union members have with electronic mail suggests that that would be more convenient.

Baroness Dean of Thornton-le-Fylde: Funding for the pre-paid postage would have to come out of the political fund, on this occasion.

Mr David Cockburn: Would that be an expenditure for one of the purposes in Section 72? That is debatable.

The Chairman: Thank you very much, Mr Cockburn.

Committee on Standards in Public Life—oral evidence (QQ 20–30)

Examination of Witnesses

Lord Bew, Chair, Committee on Standards in Public Life, and **Sir Christopher Kelly**, former Chair, Committee on Standards in Public Life

Q20 The Chairman: Good morning, Lord Bew and Sir Christopher. Thank you very much for coming to the Committee today. As you know, we are looking at the whole question of Clauses 10 and 11 of the Trade Union Bill. One issue that has very much come to the fore is the relationship between that and political funding. Do you want to say anything by way of opening remarks?

Lord Bew: I will make a brief opening statement to explain the division of labour between Sir Christopher and myself today. I was appointed chair of the Committee on Standards in Public Life in 2013, for a five-year term. The committee is made up of four independent members and three political members, representing the Conservative, Labour and Liberal Democrat parties. Of the current membership, only two members, Dame Margaret Beckett and Lord Alderdice, were members at the time of the publication of the 2011 report that is at the centre of our discussions today. Indeed, at that point, Dame Margaret Beckett published a dissenting minute, which is included in the body of the report, and which you will have seen.

Sir Christopher Kelly, who was then chairman, is here to speak about the background to that report and its detailed recommendations. However, I repeat the assertions that I made in the House that to extract one element of the reforms recommended by the committee in 2011 is not in the spirit of the report. Time has moved on. The 2011 model was based on information available at the time. Certain perceptions of certain issues have changed, and it now requires updating and remodelling. As the minimum starting point, the gaps in information about parties' funds and expenditure should be filled in and parties should move to the common accounting standard set out by the Electoral Commission, to allow proper comparison and accountability.

The Chairman: Thank you very much. By way of an opening question, can you give us any insight into where you think we are in the whole debate around political funding?

Lord Bew: Right now? I wrote to all the party leaders after the election. I cannot describe the responses as particularly positive. The party manifestos—including the Conservative manifesto,

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not just in 2010 but in 2015—all make reference to progressing the issue of reform in this area. Noticing that, I said, “Look, we have a document”. I was very anxious to convey the fact that I understood the difficulties of the issues, which relate not just to the attitudes of the parties on particular points but to the attitude of the public to one of our suggestions, which is state funding. The public are deeply unsympathetic to that particular proposal. None the less, we really need to advance this and to have a serious discussion; it would be wrong to leave the thing just sitting there, in a very unsatisfactory state.

Only the Conservatives replied. In their reply, they draw attention to the fact that the public are unsympathetic to state funding. It is not a particularly encouraging reply. We are still waiting for replies from the other parties. There have been changes of leadership and so on, but we have asked a number of times and are still waiting for those replies. That gives you some indication that it would be wrong for me to say to the Committee that I was detecting enthusiasm to move the situation forward. There are a range of issues, including the expenses of parties generally, where the parties may have slipped into a slightly too casual mode. I would love to see something more active.

The Chairman: What do you think your next steps will be—first, with the committee?

Lord Bew: Although the public are not sympathetic to state funding, they believe—the Electoral Reform Society figures are 77%—that people give money to political parties only because they expect something in return, such as a peerage. However fair or unfair that may be is not quite the point at this stage. There is that perception, which is deeply rooted. One of the big issues in general for us as a committee is the debate about trust. I prefer to say “trustworthiness”, because the level of real trustworthiness among people in politics may well be higher than the level of trust related to the question of money in politics, which is increasingly showing a worrying downward trend. We intend before too long to encourage a debate in that area. We were talking in the office yesterday about having another seminar on the issue, which would attract some public attention to it.

Lord Robathan: Sorry. Could you say that again?

Lord Bew: I am sorry, Lord Robathan. We will have another seminar and debate on the subject and ask the parties to come. We are also going to poll again on questions such as the cap. Is the

figure in our report for a cap on donations realistic? Would the public have a different view? That might feed into a modernisation of some of our recommendations.

The Chairman: Interpreting what you have said, would it be fair to say that, as far as seeing real progress in this area is concerned, we should not hold our breath?

Lord Bew: Absolutely. All I can do is write to the parties, which I do periodically. I have no reason to believe that there is any enthusiasm at this point to address this or other cognate issues.

I want to let Sir Christopher in. However, while I have the floor, could I make an additional point on this? If we have a discussion, wherever it is promoted, it is reasonable to say that we are moving into new terrain. What justifies my belief that there should be a new look at this is the fact that, for example, as far as the Labour Party is concerned, if the legislation goes through, the situation has changed and, in its view, at least, changed for the worse. That is obvious and is something that we will pick up in the debate. Equally, if you look at Sir Oliver Heald's dissenting minute, which sits alongside Margaret Beckett's in our original report, you will see concern on the Conservatives' behalf that the proposals in our report for the cap are not realistic, because at that time the Conservatives had donors who loved them for a while and then went off. The tacit assumption was that averaging out donations might be a way the Conservative Party could live with the proposals in our report, but he says, "No. Look at what has happened with that", and gives examples of recent donors. The pattern at that time—say, four years ago—was that Conservative donors loved them for a while and then shot off to UKIP. Is that still true? I think we are in different terrain—possibly, significantly different terrain—for both parties. That is why they have every reason to push forward the debate. I am trying to encourage a debate here.

Q21 Lord Tyler: Sir Christopher, could I ask you about the preparation of your report, which the House has specifically asked us to examine? Lord Bew has already referred to the issue that caused most anxiety when the report was published: the suggested increase in state funding. Did your committee look at ways of reallocating existing state funding? For example, I have just seen the figures for last year's general election, in a parliamentary reply yesterday to my colleague Lord Rennard. The cost of delivering election mailings for candidates last year was £41.7 million. There is a similar figure for the European parliamentary election. Did your committee consider

whether there was any possibility of reallocating state funding in a way that might be more acceptable?

Sir Christopher Kelly: We looked at that to some extent, without turning it into a firm recommendation. We tried to put what we were suggesting—a relatively modest amount of state funding, which at that point we thought would probably be necessary—in the context of the much greater public subsidies that were already provided for the purposes of supporting democracy. I refer not just to free postage, but to the availability of buildings, Short money, Cranborne money and all that. We were anxious to make the point, first, that this was not a new principle and, secondly, that some of that money—particularly the postal money, as you suggest—might be out of date, in an age of web-based campaigning.

Lord Tyler: Taking up Lord Bew’s point that life has moved on, are there particular areas that you think your committee would now want to re-examine? For example, presumably your recommendation on cutting the limits on spending is something you would want to look at again in the light of the latest figures. Figures from the Electoral Commission tell us that the Labour Party spent £7.3 million on unsolicited material for electors, the Conservative Party spent £4.3 million, the Liberal Democrats spent £1.9 million—I do not know where they got that from.

Lord Wrigglesworth: Ask the treasurer.

Lord Tyler: UKIP spent £267,000. Obviously, that has increased dramatically since your report.

Sir Christopher Kelly: Lord Tyler, can I answer that question in a slightly indirect way? I will begin by explaining why we thought that this was a package, which is part of the issue anyway. We put this forward and laid a lot of stress on it as a package, for two reasons. One was principled and one was pragmatic.

The principle was that we thought it was wrong that any of the parties should be almost wholly reliant on significant sums from significant donors, whether they were people who had made their own money, or people who were donating through private companies or trade unions. We thought that was wrong in principle. Whether or not the system was absolutely corrupt, it was, in our words, “clearly corruptible”. As Lord Bew said, the public believe that. On the basis of the polling that we did, the public were clearly as worried about donations from trade unions as they

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were about donations from millionaires of one sort or another. The principle was that, if we were going to take big money out of politics, we needed to address both of those simultaneously.

One practical reason was that we were conscious of the difficulties there would be in reaching agreement between the parties on doing this, not least in view of the history and the failed attempt brokered by Sir Hayden Phillips. It was quite clear that, if we were putting forward a set of proposals that had any chance of success, it was important that they looked to be reasonably fair in their effects on the major parties. Fortunately, on the basis of the evidence that we could collect, which was very limited—the figures were incomplete and you needed to predict changes in behaviour, which was very difficult—it looked as if, approaching the proposals as a package, the effects on at least the two main parties were of a similar order of magnitude. Therefore, neither of them would like it, but they might make compromises, if they thought that everybody was having to do so.

The second practical reason was that, even though some people do not like the idea, political parties are a public good, in the sense that if they did not exist we would have to create them in order to run our system of democracy in an effective way. If they are a public good, clearly they need to be funded up to some level. If we are cutting the main source of funds, funds have to be found from somewhere else. That is why we reluctantly came to the view that, in the absence of anything else—particularly since it was a new principle—there should be some limited further assistance from public funds. We also said that you would need to look at this again in the light of experience, and we suggested a long lead-in period. If, at the end of that period, it appeared that no further subvention from public funds was necessary, that would be a consummation devoutly to be wished.

There were other elements of the package. The most important was that we thought it was entirely unreasonable, if you were asking the public to agree to more subsidy from public funds, not to ask the parties to cut their campaign expenditure, because it would be extremely irritating for people to see public funds going and then appearing on the cost of what they might think of as unnecessary election posters. That would probably be symbolic, because at that stage none of the parties was spending up to the limit they could.

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The second element of the package that is worth bringing to your attention is our suggestion for tax relief on small donations, on the analogy of gift aid, with the benefit of the relief going not to the donor but to the recipient. Again, that would probably be symbolic. HMRC told us that it did not think that gift aid had made any difference to the willingness of people to donate to charities. However, we thought, first, that a tax subsidy would be more acceptable to the public than a direct grant and, secondly, that it might in a small way give parties a greater incentive to go after additional membership. Despite what HMRC said, it might make people more willing to donate. That would be good for public engagement, which we thought was also a consequence to be wished.

It was a package, in that sense. You are quite right that if we were to look at it again, in the light of the figures now available, we might want to propose an even lower limit for campaign expenditure, although that is easily got around. We might want to suggest a number of different things, but we would not want to change the overall shape of the package. The additional public subsidy was not a point of principle. It was a residual, after everything else had been done.

Lord Richard: Sir Christopher, I am very interested in what you have just said. Broadly, you were telling us that in the package, which was meant to be a package, you wanted the pain to be evenly spread between the two parties—in the hope, I suppose, that each party would go away equally dissatisfied with your report but would nevertheless accept it. That was probably the strategy you were aiming at.

Sir Christopher Kelly: That is absolutely right.

Lord Richard: You say in your report on a number of occasions that you were trying to achieve a package that was “fair” and “reasonable”. If you looked at it again, presumably those would be exactly the principles that you would use to try to arrive at a fresh report, as opposed to your last one.

Sir Christopher Kelly: Indeed.

Lord Richard: There is no change in the idea of having a package, no change in the idea that it should be “fair” and “reasonable”, and no change in the idea of having an equal balance, as broadly as you can, in the pain between the two parties. Then, you would produce a package that you would hope everybody could accept.

Sir Christopher Kelly: Indeed.

Baroness Dean of Thornton-le-Fylde: Lord Bew, is that still the position?

Lord Bew: Yes. I have said a number of times that I would love to see consensus arrive on the issue. We are nowhere near it at the moment, to be honest. The only conceivable way you could achieve consensus would be if there was a perception that it was a fair and balanced report. That is the only possible route to that end. I agree completely with what Sir Christopher said.

Sir Christopher Kelly: Can I add two points? First, it would have been great if we could have achieved a rough balance between all three main parties. In practice, it was difficult to conceive of a system that did not work to the advantage of the Liberal Democrats, simply because they were not very good at raising money from other people and, therefore, their income looked grossly disproportionate to the number of votes they received.

Secondly, since this is germane to the subject of your inquiry, it seems to me that picking up only one element of the package is not just a missed opportunity but is likely to do further damage—I do not know whether Lord Bew agrees—in the sense that this is not politicians agreeing among themselves to put their house in order in relation to an issue that clearly worries a lot of people, as the surveys keep showing; instead, it looks like a partisan, cynical move that is likely, one would have thought, to bring the whole process into even greater disrepute.

Lord Bew: I understand that there is a manifesto commitment on the Conservative side that is prayed in aid of the current legislation. No committee of our sort is in a position to say, “Millions of people voted in a certain way, but we don’t care”. Having conceded that simple political reality, which everyone in the room accepts and understands, it is none the less absolutely true that the Committee on Standards says in its report, and still believes today, that if you are going to address this question properly you have to do so in a way that is fair and balanced across the terrain. There may be this or that detail in our report where time has moved on, but our report is based fundamentally on that philosophy. The committee is still in favour of that concept. To be absolutely honest, if we are talking about what electoral manifestos say, that was the underlying assumption in what the parties were saying. If there is a manifesto commitment related to this legislation—I understand that point—there is also a manifesto commitment by all the major parties to try to progress the issue. In that sense, I am absolutely for manifesto commitments

that millions of people have voted for. The Committee on Standards is behind that manifesto commitment all the way and wants to benefit from it, if possible.

Q22 Lord Wrigglesworth: I declare my interest, as a member of the Liberal Democrats and, very appropriately, given the comments that have just been made, the national treasurer for the last four years, during which we raised over £20 million for the party and, consistently every quarter, more in individual donations than the Labour Party. That is quite an important point. The Labour Party relies very considerably on trade union funds. We consistently raise more in individual donations than the Labour Party.

My question relates to what is clearly the Achilles heel of your proposals: state funding. It may be premature, because you have not had the further discussions, but I wonder whether you have any further thoughts on how that might be overcome. I cannot see a time when political parties will be willing to go to the taxpayer and ask for money for their own organisations. Do you see any way round that stumbling block of a balanced package?

Sir Christopher Kelly: I would like to think that there was a way round. As I said, we conceived of it only as a residual. If people look at the figures again, it is quite possible that they will find that it is unnecessary. I do not know how we can do that until we put it into practice, because with a very different system in place, all sorts of behavioural changes could be expected. What was in the mind of the committee was that at the point of moving to the new system it would be necessary to have an additional public subsidy. However, the hope would be that, in combination with the other things, as time moved on we would find that it could be phased out.

Despite the fact that I was a civil servant for a long time, I still have some faith in rationality. In the report, we made a lot of play of the fact that at the time we were talking about something that was equivalent to the price of a first-class stamp per elector—a small amount relative to all the other public money already spent in this area. The other thing that we found when we had focus groups—with all the defects of focus groups—was that if you said to people, “Do you think more public money ought to be given to political parties?” of course they would say, “Not on your nelly”. However, if you explained to them, “Do you think that this is a price worth paying in order to make it possible to take big money out of politics?” they would say, “Of course”. If all three parties, particularly at the beginning of an electoral cycle, were to get together and decide

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that there should be an additional, relatively small amount of money of this kind, I do not think it would be impossible to ride the storm that would undoubtedly result. It is easy for me to say that, because I would not have to justify it to my electors.

Q23 Lord Sherbourne of Didsbury: Can I ask about the status of your report, compared with other reports that your committee produced in the past? When you have done other reports, have you sometimes had the parties say, “Yes, we accept the report”? How does that come to you? Presumably, some reports have the agreement of the parties. As I understand it, this report has had no acceptance. Is that correct?

Sir Christopher Kelly: It is a matter of deep regret that this is the first report by the committee that has not been accepted in large part.

Lord Sherbourne of Didsbury: Its status is that it has not been accepted by the parties—neither by the Labour Party, nor by the Conservative Party, nor by the Liberal Democrat party.

Sir Christopher Kelly: Absolutely not.

Lord Sherbourne of Didsbury: Its status is that nobody has accepted it.

Sir Christopher Kelly: Yes—up to now.

Q24 Earl of Kinnoull: Can I take you back to the balance of pain that you were describing? I assume that, while preparing a view of the balance of pain, you had some numbers on what the pain was going to be. I wonder what you had for the transition to the opt-in basis, using your mechanics, rather than the mechanics proposed in the Bill. Could you talk about that subject? We have heard a lot of numbers about what the pain might be. I would be very interested to hear your view.

Sir Christopher Kelly: The numbers we used are in the report. The only fair thing to say is that it would be quite wrong to put too much faith in any of them. In relation to the sizeable donations, we looked at what would have happened to what we knew about donations over the past period if the new rules had been in force. With the affiliation fees, all you can do is stick a finger in the air, because the question you have to ask yourself is: what would happen to behaviour? There is no basis on which to make an accurate prediction about what would happen to behaviour in those circumstances.

Lord Whitty: My question concerns that very point. We are focusing on Clause 10, which provides for an opt-in, rather than an opt-out. Sir Christopher, your report had an opt-in proposition that, whereas a donation from a trade union would be treated under the cap, the affiliation fees could be treated as a series of individual opt-in donations, were the rules of the Labour Party to change. That is different from the proposition we have here, which is an opt-in to the political fund, rather than to the affiliation.

Nevertheless, some things have moved on since your report appeared. Could you tell us two things? First, do you think that the rule changes that the Labour Party introduced meet your proposal for an opt-in to the affiliation fee? Secondly, did you calculate the effect of your proposition and, therefore, the post-Collins review rules of the Labour Party on the level of affiliation fee paid to the Labour Party? What you have just said indicates that you probably could not, but we are anxious to see whether we can make such a calculation. You make a calculation as to what the effect would be if affiliation fees remained the same and were excluded, but obviously they would not remain the same. Did you make any calculation as to what the effect, or the range of effects, would be?

Sir Christopher Kelly: The question we asked ourselves was: what would have to happen to the affiliation fees in order for it to be reasonable to regard them as simply a convenient way of collecting together individual contributions, in the same way as companies can collect together contributions to charity, through payroll deduction? I will probably forget some of the things on the list, but we thought that these were the most important ones. The first was that people should take a direct decision to make the contribution, which is where you get to opt in. The second was that, once they had made the contribution, it effectively became the property of the political party and was not in the ownership of the trade union. It followed from that that the trade union would not be able to decide how many members to affiliate; it would simply pass over the amount of affiliation fees that it collected.

We also suggested that there should be transparency over what had happened and finally—because people thought that this was very important—that it should be possible to continue to make a contribution to the political fund if you wanted to support the political activities of the

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trade union, while not paying an affiliation fee. I do not fully understand the changes that the Labour Party made, but I do not think that they match all those criteria.

As to the amount, the issue of equal pain could be addressed only in a by-and-large way. We had to say, “What is the likely range of impacts, both on affiliation fees and on donations from major donors on the other side?” The judgment about equal pain was very “by and large”. That is one reason why, having proposed a long lead-in, we suggested that a stocktake should be done at the point before implementation. People could then take a decision about where to set the parameters precisely, both on things like the limit on campaign spending and on the cap.

Lord Whitty: Could you indicate in which way the Collins review changes do not meet your criteria? After the transition period, it will be impossible for the Labour Party to pay affiliation fees for anybody who does not opt in to paying them, so I think it meets the main proposition. If there are other aspects, perhaps you could spell them out.

Sir Christopher Kelly: Certainly. Could I be permitted to do so afterwards?

Lord Whitty: In writing? Certainly.

Lord Callanan: Can I probe you further on an answer that you gave the Earl of Kinnoull a few moments ago? This Committee has been asked to look at the possible effect of the change from opt-out to opt-in on the finances of the Labour Party. If I heard you correctly—correct me if I am wrong—you said that you thought that it was impossible to say what the effect of changing from opt-out to opt-in might be. You just do not know. The words that you used were “stick a finger in the air”.

Sir Christopher Kelly: That was probably an exaggeration. It would be very difficult to do so accurately. You could suggest a fairly large range, which is the view that the committee took.

The Chairman: But you took it for granted that fewer people would opt in than are currently there.

Sir Christopher Kelly: Absolutely. It would depend on people’s own wishes, inertia and the arrangements that the different trade unions concerned made to make it easier, or to persuade people to pay their affiliation fees, all of which are variables that could change.

Lord Callanan: The reason I asked you that question was that the general secretary of the Labour Party came along to our meeting last week and told us—he managed to tell the *Times* at the

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same time—that the proposals would have the effect of a £9 million diminution in the finances of the Labour Party. You are saying that it is impossible to come up with a number like that.

Sir Christopher Kelly: He may have access to information that I do not have.

Lord Callanan: If he does, he did not share it with us.

Sir Christopher Kelly: Remember, the information that I have is five years old. He may have different information available.

Lord De Mauley: Sir Christopher, you have talked about the option that you considered—opting in to affiliation fees. Did you consider the slightly different issue of opting in to political funds?

Sir Christopher Kelly: No, we did not.

Q25 Baroness Dean of Thornton-le-Fylde: Good morning. I would like to ask Sir Christopher a question. It is about opt-in, but it is about your proposals on opt-in and what we as a Committee are considering at the moment. Could I hear your view on the concept of renewal of opt-in? Your report talks about opt-in as part of its package. The theme all the way through is fairness. The Bill says that individual members have to opt in in writing, either by letter or by delivering their notice—by no other means. They then have to renew that opt-in after five years, unless they actively notify the union—again in writing, I presume—three months before that five-year period is up. The rules mean that funding for all the administration of that would have to come out of the political fund. What is your view of that concept? Does it attack the proposals that you make in your package? Will it be fair?

Sir Christopher Kelly: We did not go into any detail on the nature of the arrangements, other than to say what principles we thought would follow, because we did not think that was within our remit. We thought that, if the parties could agree, it was a practical matter to be sorted out by sensible negotiation. We did not address the issue of how the opt-in should be done, nor the period for which it should last. I notice that there are different periods around. As I understand it—correct me if I am wrong—the decision to have a political fund has to be renewed every 10 years.

Lord Whitty: Yes.

Sir Christopher Kelly: Quite a long time ago, the rules were changed in relation to donations from plcs, so that a plc could make a donation only if the shareholders voted in favour of it. I believe that the rule is that that vote lasts for four years, or whatever period is specified in the vote.

Baroness Dean of Thornton-le-Fylde: Would you accept that in this case we are dealing with unions that may have half a million members? The five-year period will be up at different times for most of those members, not all at the same time. If the Bill became an Act, they would all have to opt in, if they chose to, but as new members joined, the renewal dates would change. In your view, would that affect the fairness of what we are talking about, as between the parties?

Sir Christopher Kelly: Clearly, it would be a bureaucratic, resource-intensive thing to do. My committee did not take a view on that.

The Chairman: Earl of Kinnoull?

Earl of Kinnoull: My question has been very successfully covered by Baroness Dean.

Lord Richard: I want to dot an “i” and cross a “t”. You were asked a number of questions about whether you could give a firm figure as to how much the Labour Party would lose from this. You cannot do anything with mathematical certainty on this, can you?

Sir Christopher Kelly: No.

Lord Richard: Do you have any doubt that it would have a detrimental effect on Labour Party finances?

Sir Christopher Kelly: No, of course not; absolutely.

Lord De Mauley: A moment ago you talked about the question of the 10-year period or a lesser period. There was a time when people worked for an employer for life. Do you think that has changed? If so, have you any idea how long people work for an employer, on average?

Sir Christopher Kelly: I imagine that it has changed. I have no idea what the current figure is.

Lord Robathan: Sir Christopher, you said that you have no doubt that this would have a detrimental effect on Labour Party funds. In your inquiry, did you find, therefore, that some people who were subscribing to the Labour Party through their union donation were probably doing it unwittingly or unwillingly? That is the implication of what you have just said.

Sir Christopher Kelly: Yes. As we mention in the report, we found that some trade unions at the time—I have no idea how this has changed—were less than fully transparent about what was

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happening to their affiliation fees. It follows from that that it would be surprising if there were not some members who were not aware that they were paying an affiliation fee. The effect would relate not just to that, but to all the other things you would expect, such as inertia about having to take a deliberate decision, rather than having one that happens—

Lord Robathan: A lack of keenness to donate.

Sir Christopher Kelly: That is a different way of describing the same thing.

Q26 Lord Robathan: I have a second, unrelated question. Since your report appeared, the world has moved on and, in particular, the political landscape has moved on. You now have a party in Scotland that almost certainly got fewer votes than the Liberal Democrats—I am not quite sure of the numbers—but has seven times the number of MPs the Liberal Democrats have. Has either of you received representations from the Scottish National Party or, indeed, from other parties—UKIP or whomsoever it might be?

Sir Christopher Kelly: I cannot remember whether at the time we received representations from the SNP. The list of people who gave evidence is at the back of the report. I have just checked it, and, yes, we did receive evidence from the SNP. Clearly, it did not leave a big impression in my mind. We had a chapter at the end about the other nations and the effect on them, because it seemed to us that in a number of respects the rules had not caught up with the fact of devolution. The most interesting discussion we had was with the Co-operative Party, which woke up rather late to the fact that this could have implications for it and that special arrangements would need to be made for it. That was one of the points in Margaret Beckett's dissenting note. In retrospect, it is probably fair to say that we might have had rather more discussion about whether particular different arrangements were needed for the Co-operative Party. I fear that at the time I regarded that as a detail and that, if the major parties could sort out the main issues, there would then be some discussion about any special arrangements that were needed for the Co-operative Party or, indeed, any other of the smaller parties.

Q27 The Chairman: In his minority report, Oliver Heald commented that he thought that the modelling or data were not in a terribly good state for you to make some of the decisions and estimates that you made. Is that information in any better shape today? If one were to redo that exercise, would you feel that you were in a better position to do it?

Sir Christopher Kelly: I was asking Lord Bew that.

Lord Bew: That is why in recent days—partly because I had reread Oliver Heald’s remarks—I have been calling in public for common accounting. No, it is not, to my knowledge.

The Chairman: It is no better.

Lord Bew: Interestingly, in reaction to what I said in blogs and elsewhere, people who are working in this field seem to believe that it is no better.

To be fair to the SNP, may I come back to the previous question? I realise that I was slightly unfair earlier when talking about parties’ reaction. The SNP did respond to my letter after the general election. It pointed out that it was excluded from the previous round of talks and that it stands ready to participate if the two main political parties decide to advance a discussion in this area. In relation to the previous question, it is only fair to the SNP to say that it responded in that fashion.

Earl of Kinnoull: Lord Bew, we have just heard from Sir Christopher, in answer to both Lord Callanan and Baroness Dean, that the methodology for opt-in will affect the percentage of success—or not—of opt-in, which I assume was the evidence when Sir Christopher was in charge. Do you agree with that?

Lord Bew: What Sir Christopher says sounds entirely reasonable to me. The world has moved on in five years, but not quite that much, on that particular point.

Lord Tyler: I do not know whether I am putting words in your mouths, but you both seem to be saying that, although five years have elapsed, there is nothing you can see in the current situation that takes you away from the major principle conclusions of your report five years ago: you felt that this was a wide area of concern to the public, it needed addressing and it could not be addressed on a unilateral basis. If I may say so, you seem to be agreeing with the majority in your Lordships’ House a few weeks ago. Would that be a fair summary?

Sir Christopher Kelly: I am very happy to have those words put in my mouth. I would add only that it is important to produce a result. We should not allow difficulties with the figures to get in the way of addressing a major issue as far as the public are concerned—the distrust that makes it impossible for people to believe that there is no connection between big donations, whether they come from trade unions or from individuals, and subsequent action. That is a major issue

that needs to be dealt with. Allowing uncertainties about the figures to get in the way is just a way of kicking it into the long grass.

Changes of this kind need to be sustainable. We do not need to get into the situation with opting in and opting out in the past, when, as different Governments came into power, they switched from one thing to another. Surely, we need to address this in a way that is sustainable and will last.

Lord Bew: Can I add a gloss to what Sir Christopher said? It is absolutely true. If we are going to address the question of party funding, it should be addressed across the terrain. I would like to add one more thing, for any work that the Committee does. I think it has to be said. While everybody accepts that in certain respects there are figures that have to be looked at again—that more figures are required and so on—I do not rule out the possibility that, in a discussion, ideas and concepts may come in. If the parties agree to concepts that are not there, Sir Christopher will have no objection. One is not simply saying, “You must absolutely accept our conceptual framework. The only thing we are willing to talk about is that we know there are issues with some of the numbers and that the world has changed in certain ways”. It would be very unwise for us to do that. There may well be other concepts or new approaches. What we really want is consensual agreement. We want to be a party to that, rather than to fetishise any detail or idea in the 2011 report.

Sir Christopher Kelly: Absolutely.

Lord Wrigglesworth: I wonder whether either of our witnesses this morning has come across any evidence of pressure from organisations or individuals for the sort of changes we are looking at in the Bill at the moment.

Sir Christopher Kelly: No, I have not, but I would not.

Lord Bew: Have we received any pressure?

Lord Wrigglesworth: No—are you aware of any pressure?

Lord Bew: Absolutely not. It was essential, especially when Lord Tyler’s Motion was put before the House and the later Motion then came forward, for us to make clear our position. If that is pressure, so be it. Apart from that, there has been absolutely none.

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One thing that has to be said is that the Government are not claiming to be implementing one part of our report. We had an understandable concern, going back over quite a period of time, that things might come before this Parliament that would claim to cherry-pick from our report. It is entirely right to say that the view of the Committee on Standards in Public Life is that this should be dealt with across the terrain, in a way that aims for fairness to all parties. That is and remains our view. However, there has been no pressure, simply because the Government are not asking us to say, “That is what we really meant”, or anything like that. It is what they mean. That is where we stand.

Q28 Lord Whitty: You both said that the information available to you in 2011 and now was not sufficient for various purposes. The Electoral Commission publishes a huge amount of information on donations. There are requirements on the unions to make submissions to the certification officer, whom we are about to see. Are there any specific forms of information that you think should be in the public arena that currently are not? You may write in about this, if you would prefer.

Sir Christopher Kelly: I do not know how things have moved on since 2011. In 2011 we discovered that there was no standard accounting practice between the accounts of the different parties. It was therefore difficult to compare the accounts of the different parties at that point. The Electoral Commission had been discussing with the parties a set of common standards. There are difficulties, because the parties have different constitutions—for example, the Liberal Democrat party is a more federal party—so funds are recorded in different ways. My understanding is that not all parties have yet signed up to the common methods of reporting, but I stand to be corrected on that. The second deficiency in the data was simply that the Electoral Commission only publishes donations above a certain level. Information about donations below that level was available only from the party accounts and was in the hands of those who receive them.

Q29 Lord Robathan: One thing in your report with which I agreed entirely—I should say that I did not agree entirely with everything—was that the amount of money that can be spent on political campaigning should be reduced. My own view is that a huge amount of money that is spent on political campaigning is completely wasted. Conservative spending in the 1997 election, when we lost appallingly, having outspent everybody else, was a particular example of that. In

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your investigations for the report, did you receive any evidence that a lot of spending was regarded as, and was indeed, nugatory?

Sir Christopher Kelly: First, there was the factual evidence that said that the limits were not biting. As I recall, at one point the then treasurer of the Conservative Party told us that they had bitten on him, but the figures did not support that contention. There was quite a gap between what the limits were and what was actually spent. That may have changed since 2011. We have received plenty of anecdotal evidence from people who say exactly what you have just said—that a lot of this is wasted. Please tell me which bit of it is wasted, so that I can start working through it.

Lord Robathan: I will give you half an hour, if you want.

The Chairman: I am reminded that there was a very famous actor who said, “Half of all advertising is wasted. The only problem is that we do not know which half”.

Sir Christopher Kelly: Exactly. That is what I meant.

The Chairman: We must wrap up now. Thinking back to your time as a financial ombudsman and what you saw of financial services, if one accepts the arguments that you have made about the balance of funding, do you think that inherently, there is a good case to be made for opting in, rather than opting out, when it comes to people making commitments to all manner of things?

Sir Christopher Kelly: Yes, I do, recognising the point that Baroness Dean made—that it is more complicated administratively. One hopes that, in the age of current IT, that becomes much easier than it might have been some years ago.

Lord Richard: If you are allowed to use it.

Q30 Baroness Drake: First, can I declare my interests, as a Labour peer and a member of the CWU? Sir Christopher, you laid out very clearly the two strands of reasoning for the package—the reason based on principle and the pragmatic reason. Could I ask for your views on how the opt-in requirements for unions compare with what other organisations are required to do if they make donations to political parties? If this change is implemented, what does it mean, in your view, when looking at other organisations?

Sir Christopher Kelly: I am not sure what other organisations you mean. Plcs have to put it to a vote of their shareholders, so in that case a deliberate decision is taken to donate. For third-party organisation donations, the rules are very similar to the rules for individual donations. With

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individual donations, by definition, everyone takes a deliberate decision to donate. When we looked at what would be necessary to conclude that it would be reasonable to regard affiliation fees as simply a collection of individual contributions, the fact that people were taking a deliberate decision that their affiliation fee be used in that way was the most important principle.

Lord Whitty: Let us focus on the plcs. Would you accept that, although there is a requirement for a vote on the largest companies, there is no requirement on those companies to have a separate political fund and no obligation to provide for an opt-out—or, indeed, an opt-in—for individual or collective shareholders?

Sir Christopher Kelly: That is true. Of course, donations from plcs have almost completely disappeared now.

Lord Whitty: Indeed, but not from private companies, of course.

Sir Christopher Kelly: We had a large section on private companies and made a number of suggestions about the way the arrangements there could be tidied up, so that they were not used as a way of disguising donations from individuals.

The Chairman: Lord Bew, Sir Christopher, thank you very much.

Committee on Standards in Public Life—supplementary written evidence (TUP0036)

On Tuesday 9 February 2016, Sir Christopher Kelly (former chair of the Committee on Standards in Public Life) and I appeared before the second evidence session of the House of Lords Select Committee on the Trade Union Bill.

During the course of the evidence session, Lord Whitty asked Sir Christopher to clarify whether the changes introduced by the Labour party as part of the post-Collins review, met the Committee's 2011 report criteria regarding trade union affiliation.

I am replying on behalf of Sir Christopher.

It may be helpful if I outline the relevant recommendations of the 2011 report. As you are aware these provisions were intended to clarify how affiliation fees would need to be managed in order to be treated as individual payments under the donation cap proposed as part of the total package of reforms:

- Individual members of unions or other affiliated bodies should have to make a positive decision to contribute through their organisation to the Labour Party. In other words, they should opt in to the affiliation fee;
- Their decision should be made on the basis of full information. The arrangements for opting in, the amount of the affiliation fee and the different rate payable in the event of not opting in should be clearly set out in information given to members at the point of joining, as well as prominently on the organisation's website;
- Individual members should be able to contribute to their union's political fund, even if they decide not to opt in to the affiliation fee;
- A union or other affiliated body should not be able to give the party in affiliation fees an amount larger (or smaller) than would be implied by the number of members who have opted in;
- It should be clear that the union or other affiliated body is simply collecting the affiliation fee on the part of the party. Once collected, the fee should be the property of the party in the same way that charitable donations collected through payroll giving are the property of the recipient charity and not the collecting employer. Affiliation fees should be handed over automatically and not be capable of being held back for any reason;
- Affiliated unions and other affiliated bodies should include in their published accounts,

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in a prescribed form, how much they donated to which political parties in the year, and how much of that represented affiliation fees.

Lord Whitty asked about the recommendation of the Collins report of February 2014 which, I understand, was that after a transitional period of five years, affiliation fees shall only be accepted on behalf of levy payers who have consented to the payment of such fees.

This would appear to lead to a requirement to opt in to the affiliation fee and thereby meet the Committee's requirement for individuals actively to opt in to the affiliation fee. However, I am not in a position to know whether the rule changes introduced by the Labour Party have met or will meet the other specific provisions outlined above once the transitional period comes to an end.

Lord Bew
Chair, Committee on Standards in Public Life

15 February 2016

Communication Workers Union (CWU)—written evidence (TUP0028)

1. The Communication Workers Union (CWU) represents approximately 190,000 members in the postal, telecommunications, financial and business service sectors. The CWU is strongly opposed to the Trade Union Bill which we believe is an attack on trade unions and the wider labour movement. In particular, we believe the provisions on political funding are designed to reduce political opposition to the government, through both the Labour Party and wider trade union campaigning.
2. The Select Committee on Trade Union Political Funds and Political Party Funding is examining these clauses as part of the Committee stage of the Bill in the House of Lords. We welcome the additional scrutiny of these provisions given the wider political effects they will have and the fact that they are being imposed by a Conservative government unilaterally.
3. The Committee has asked for short submissions on these clauses which it is considering in the light of the 2011 report from the Committee on Standards in Public Life, (CPSL) *Political Party Finance: ending the big donor culture*.
4. The Committee has firstly asked whether the Bill will have an impact on the finances of political parties and it is clear to us that clause 10 of the Trade Union Bill will have a significant direct impact on the finances of one political party, Labour, which we believe will see a sizeable reduction in funding should it take effect. In turn it will have a significant (indirect) impact on the financial position of other parties relative to it.
5. In particular we believe the Committee must recognise that the Bill will give the Conservative Party an even greater financial advantage than it already has. In 2014, the Conservatives received £38m, compared to £32m for the Labour Party, and as the Committee is aware, the Labour Party believes the change will reduce its funding by tens of millions of pounds per year.
6. As has been emphasised in both the House of Commons and the House of Lords stages of the Bill, the CPSL report stipulated clearly that the government should not proceed with reforms to the funding of just one party. Yet this is precisely what is happening under the Trade Union Bill.
7. The CWU is the fifth largest union affiliated to the Labour Party and we have around 160,000 levy paying members. As it is currently drafted, clause 10 would leave unions a window of just three months to get 6 million people to opt-in to paying the political levy (around 4.8 million of whom are affiliated to Labour). This is a huge administrative undertaking which will inevitably mean a significant reduction in these numbers – and unions will have to repeat this exercise, at significant additional cost, every five years.

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8. We believe this change is wholly unnecessary. Trade unions are already obliged to ballot members on the existence of a political fund every ten years; must allow members to opt-out of paying into a political fund; are democratic organisations subject to members control (with, for instance, legal requirements for elections); and are subject to independent regulation through the Certification Officer. We do not, therefore, see any justification for making the change or for proceeding with it in a manner (with a three month window) that appears to be calculated to reduce the political voice of working people.
9. The simple fact is that getting people to opt in to anything is difficult and particularly in such a short space of time. There are countless examples to point to which substantiate this – annual (self-assessment) tax returns, the digital TV switchover and PPI claims are three instances of vast sums of money being spent to encourage people to take some kind of action, over lengthy periods of time, even when it is clearly in their interest to do so. So while the government has suggested the Labour Party should see no reduction in its funding, if trade union members want to be affiliated to it, we regard this as disingenuous.
10. In particular, one of the difficulties unions will have is contacting members with no fixed place of work. We have thousands of members, particularly in the telecoms industry, to whom this applies – they are particularly likely to be disenfranchised should the Bill go through in its current form.
11. In relation to the CSPL report, the Committee is considering the differences between the Bill, and the recommendations this put forward. There are a number of important differences we would highlight. Firstly, the CSPL recommended an opt-in for affiliating to a political party, not into paying into the political levy. Clause 10 is therefore far wider in its scope than the CSPL recommendations and undermines wider political campaigning unions carry out from the political fund.
12. Secondly, clause 10 addresses just one element of party funding, money received from trade union members, and will impact almost exclusively upon the Labour Party. The CSPL's recommendation for an opt-in for affiliation fees was part of a broader package of measures including a £10,000 cap on all donations and it stressed that changes to funding should apply fairly to *all* parties and that should not be taken forward in a piecemeal way by one party for its own advantage – this is exactly what we believe the Bill is doing.
13. Thirdly, clause 10 will leave unions with a window of just three months to get individuals to opt-in to the political fund after the Bill takes effect and require them to repeat this every five years. We believe this contradicts the CSPL's position that time would be required to allow parties to adapt to any new funding arrangements – indeed, the CSPL recommended that the majority of its proposals should come into effect after a four year window. While the CSPL stressed the need for changes to be fair and

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proportionate, and ensure parties have sufficient funding to be able to carry out their democratic functions effectively, this is entirely absent from the proposals in the Trade Union Bill.

14. Finally, the CSPL recognised that its proposal for an opt-in for affiliation fees would be likely to have a significant impact on the Labour Party and therefore recommended that there should be a review of its proposals both at the point of implementation, and two years after this, to ensure fairness between all parties. Again, there is no provision for this under the Trade Union Bill.
15. In each of these four respects the Trade Union Bill will hit political activities of trade unions and the Labour Party in a way the CPSL did not consider to be acceptable. The CWU would therefore call on the Select Committee on Trade Union Political Funds and Political Party Funding to recommend to the whole House of Lords that the provisions covering political funding be dropped from the Bill in their entirety.

12 February 2016

Community Trade Union—written evidence (TUP0024)

1. Community is the modern union for a changing world. We believe that by working with employers, not against them, we can deliver a decent standard of living for our members and a better employment environment. Community has a long and proud history of working constructively with employers, often assisting them to overcome serious challenges through working in partnership and taking difficult but necessary decisions.
2. Community believes that trade unions are an important part of British political and civic life. Embedded within local communities across the country, unions have campaigned for and won many of the employment and social rights which are now celebrated across the political spectrum. Trade unions play a healthy role in democratic life; engaging millions of working people with political debate and activism.
3. Community believes that while this committee will examine only the political implications of the bill, it is important to understand the wider, positive role that trade unions play in our society. Responsible trade unions are a force for good in the workplace and in communities. On a daily basis trade unions are making workplaces safer, smarter and stronger - helping businesses compete globally, delivering public services more efficiently and encouraging long-term thinking. Our problem is that while this approach is recognised by those involved it does not reach beyond a very narrow section of industry and society more generally. Attacking trade unions will only make this problem worse.
4. Trade unions should not be seen as the natural enemies of business or government; responsible trade unionism has a crucial role to play in the UK's economic and social future. Trade unions have a duty to represent their members' interests, but responsible trade unions recognise that their members' interests often align with those of a strong, sustainable businesses and a prosperous country.
5. The proposed changes to restrict the use of trade union political funds are an unashamedly partisan attack on unions. The new requirements to make trade union members opt-in to paying the political levy every five years, as well as the onerous new requirements for reporting campaigning activities to the Certification Officer, are so nakedly party-political and opportunistic that they should be treated with the contempt they deserve.
6. It is perverse that a government that has made so much of reducing red tape and regulation is so determined to ignore that principle when it comes to organisations that collectively represent 6.4 million citizens. Already trade unions have to ballot their members every 10 years to retain a political fund, and political funds are subject to extremely stringent regulation with stiff penalties attached to their misuse. The

Community Trade Union—written evidence (TUP0024)

proposals are designed to attack the finances of the Labour Party, pure and simple. It is shameful that the government is seeking to introduce these changes without a cross-party deal on party funding while continuing to turn a blind eye to massive donations from big business, opaque 'clubs' and wealthy individuals seeking influence.

7. The narrative around the bill's political implications has largely focussed on the relationship that some trade unions have with the Labour Party. This has ignored the fact that much of a trade union's 'political' activity will be focussed towards non-party political activity. In recent year's Community has used our political fund to; campaign for a level playing field for UK manufacturing, call for a living wage, lobby for effective procurement that supports sustainable jobs and skills, push for action to make betting shops safer and back efforts to end legal loan sharking.
8. Clause 11 of the bill seeks to impose punitive regulation on trade unions which the government would ask of no business, charity or public body. A line by line account of every pound spent is simply an unacceptable ask of an organisation whose primary responsibility is to its members. It simply represents a partisan attack by the government, cloaked in the pretence of transparency.
9. The UK economy faces enormous challenges in this era of globalisation and in the wake of recession at home and overseas. Now, more than ever, the UK needs government and trade unions working together to deliver a more sustainable and productive economy that can continue to compete on a global basis. Government needs to recognise that trade unions are not a problem that needs to be resolved; trade unions have to be an integral part of any strategy that works to deliver long-term economic and inclusive growth.
10. By attacking the ability of trade unions to freely campaign on political matters, the government is undermining any hope for a constructive relationship with trade unions. Clauses 10 and 11 of the Trade Union Bill are unnecessary and extremely damaging to constructive modern trade unionism - Community condemns these clauses in their entirety in the strongest possible terms.

12 February 2016

Conservative Friends of Israel—written evidence (TUP0009)

Conservative Friends of Israel works to promote its twin aims of supporting Israel and promoting Conservatism in the UK.

Executive Summary

- The current system of trade union political funding enables trade unions to use their members' fees to fund political campaigns with inadequate transparency, raising serious concerns for accountability. The inclusion of Clauses 10 and 11 of the Trade Union Bill would address the lack of transparency and accountability regarding political funding within trade unions.
- Clauses 10 and 11 of the Bill are not about donations to the Labour Party. Trade Unions spend more than half of their political funds on campaigns and political movements targeting specific causes. On 4 February 2016, Mr Ian McNichol, General Secretary of the Labour Party stated that of the £22million raised by the political funds of trade unions affiliated to the Labour Party, £12million or 54.5% of the sums raised is actually spent on political campaigns and not on donations to the Labour Party.¹
- A number of trade unions support the Boycott, Divestment and Sanctions movement (BDS), a political movement whose objective is the undermining of Israel. The costs amassed from the active support of BDS by trade unions and the significant donations given to parliamentarians who campaign against Israel are financed by the political funds of trade unions.
- At present, union members contribute to the political fund of a union unless they opt-out of doing so. There is no active decision by union members to contribute. As a result, many union members may be unaware that a portion of their membership fee funds campaigns that attack Israel, and other political campaigns. Given the controversial nature of these campaigns, clear consent from the individual member making the financial contribution is imperative.
- The proposed opt-in policy of Clause 10 will ensure that the consent of union members is unambiguous; apathy is not a political decision and should not continue to be regarded as such.
- Political campaigns are funded by the fees of trade union members, yet it is union leaders who determine the direction of spending. Clause 11 will allow members to see a breakdown of political spending, providing them with a clear and transparent understanding of how their money is spent.

¹ Ian McNichol, Evidence to Select Committee on Trade Union Political Funds and Political Party Funding, 4 February 2016

Conservative Friends of Israel—written evidence (TUP0009)

- Due to the lack of transparency for payments into political funds, union members may not be aware that they are inadvertently funding these campaigns. The inclusion of Clauses 10 and 11 would ensure the accountability of the political funding process and empower members to scrutinise the spending of their unions.
- This evidence focuses on four major UK trade unions advocating the BDS movement in order to expose the financial support given to Members of Parliament who actively campaign against Israel. This document is not intended to be a comprehensive review of the political spending of trade unions; this evidence instead seeks to provide a digestible account of the spending policy of major trade unions regarding anti-Israel activity. An additional list of union activity considered to be anti-Israel is attached and marked Annex A.

1) What difference would an opt-in policy make?

1. Between 1927 and 1946, following the repeal of the 1927 Trade Disputes and Trade Union Act, union members were required to opt-in rather than opt-out of the political levy. This was reversed in 1946 by the post-war Labour Government, but retained by the Government in Northern Ireland.
2. The present system does not give union members an active choice. They may not wish to contribute to the political fund of their union but are either unaware of the ability to opt-out or find it difficult to do so. Their fees may therefore be used to fund campaigns that the member would prefer not to support.
3. If union members were required to opt-in rather than opt-out, they may examine more closely how their money is spent and decide against opting-in if their money goes towards supporting campaigns such as BDS and those indicated in Annex A.
4. By implementing an opt-in policy, as set out by Clause 10, members would be able to exert greater control over their union membership fees, and monitor the political expenditure of their union.

Evidence

Unite

5. Unite the Union, the biggest trade union in the UK, with 1.42 million members, supports BDS, and specifically supports: “the boycott of any goods produced from illegal Israeli settlements in the West Bank; divestment from financial holdings in any companies, funds or organisations complicit in the ongoing illegal occupation and oppression of the Palestinian

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people; sanctions against Israel for its continued illegal occupation, flouting of international law, and construction of an apartheid regime”.²

6. A motion passed at the Unite conference in 2014 stated: “Conference notes that the Israeli government continues to govern as an apartheid state and is guilty of the crime of apartheid. The oppression faced by ordinary Palestinians at the hands of their colonial oppressors and the way in which their plight is used as a political bargaining chip cannot be allowed to continue as it has done for so many decades...”³
7. Unite donated £5,000 in June 2015 to Richard Burden MP, a Labour MP with well-documented anti-Israel views. Burden repeatedly accuses Israel of apartheid and uses Twitter regularly to attack Israel.⁴
8. Unite donated £3,000 in June 2015 to Jim Cunningham MP, an anti-Israel campaigner in Parliament. Cunningham regularly denies Israel’s status as a democracy and dedicates a section on his website to expressing his anti-Israel views.⁵
9. Unite donated £3,900 in June 2015 to Louise Haigh MP, the Vice-Chair of Labour Friends of Palestine and the Middle East.⁶
10. Unite donated £4,000 to Lisa Nandy MP (Shadow Secretary of State for Energy and Climate Change) via Wigan Constituency Labour Party in March 2015. Nandy is the Vice-Chair of Labour Friends of Palestine and the Middle East and campaigned strongly for the Labour Party’s boycott of G4S (due to G4S’s contracts with the Israeli Government).⁷

UNISON

11. UNISON, one of the UK’s largest trade unions, with 1.3 million members, supports the BDS movement.⁸
12. In June 2015, UNISON launched a campaign to press local government pension funds to divest from companies “associated with the occupation of Palestine”, including security contractor G4S and defence manufacturers. UNISON instructed members to “make sure that [their] pension scheme doesn’t invest in the occupation”.⁹

² <http://www.unitetheunion.org/news/statement-of-solidarity-with-the-palestinian-people/>

³ <http://www.unitetheunion.org/uploaded/documents/UNITE%202014%20composite%20Israel%20and%20Palestine%2011-18858.pdf>

⁴ <http://www.publications.parliament.uk/pa/cm/cmregmem/160208/160208.pdf>

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ https://www.unison.org.uk/content/uploads/2015/07/2015-National-Delegate-Conference_Decisions_Booklet_20150702.pdf

⁹ <https://www.unison.org.uk/news/article/2015/06/palestine-is-your-pension-fund-investing-in-the-occupation/>

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13. A campaign pack was made available to UNISON members entitled “Palestine: Is your pension fund investing in the occupation?”¹⁰ Also made available was a model presentation for branch meetings and further information on the BDS movement.¹¹
14. This campaign, funded by UNISON members, undoubtedly cost a significant amount of money. There is no clear spending review or published breakdown of costs of UNISON’s political campaigns; members are not informed on how their fees are spent.

National Union of Rail, Maritime and Transport Workers (RMT)

15. The National Union of Rail, Maritime and Transport Workers (RMT) has over 80,000 members and supports the BDS movement; encouraging members to boycott all Israeli goods.¹²
16. RMT boycotts all Israeli goods: “Our union has a clear policy for the boycott of Israeli goods as one of the ways that we can register our outrage and horror at the massacre that has been unleashed on the Palestinian people”.¹³
17. RMT donated £4,000 in June 2015 to Grahame Morris MP. Morris is a staunch anti-Israel campaigner in Parliament and Chair of Labour Friends of Palestine and the Middle East.¹⁴
18. RMT donated £2,500 to Lisa Nandy MP (Shadow Secretary of State for Energy and Climate Change) via Wigan Constituency Labour Party in March 2015. Nandy is the Vice-Chair of Labour Friends of Palestine and the Middle East and campaigned strongly for the Labour Party’s boycott of G4S (due to G4S’s contracts with the Israeli Government).¹⁵

National Union of General and Municipal Workers (GMB)

19. The National Union of General and Municipal Workers (GMB) has 631,000 members and supports the BDS movement.¹⁶
20. In 2013, GMB banned its members from visiting Israel and the Palestinian territories with Trade Union Friends of Israel (TUFI). It voted in June 2013 to uphold a 2011 decision to “take

¹⁰ <https://www.unison.org.uk/content/uploads/2015/06/On-line-Catalogue23247.pdf>

¹¹ <https://www.unison.org.uk/content/uploads/2015/05/TowebPalestine-Pension-pack-appendix-3-presentation.pptx>

¹² <https://www.rmt.org.uk/news/support-for-demonstrations-to-stop-the-massacre-in-gaza/>

¹³ Ibid.

¹⁴ <http://www.publications.parliament.uk/pa/cm/cmregmem/160208/160208.pdf>

¹⁵ Ibid.

¹⁶ http://www.gmb.org.uk/assets/media/documents/congress/congress2013/GMB%20CONGRESS%202013_%20DAY%203.pdf

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a lead in driving forward the boycott and divestment initiatives of “companies who profit from illegal settlements, the occupation and the construction of the wall”.¹⁷

Conclusion

21. Clauses 10 and 11 of the Trade Union Bill have the potential to deliver transparency and accountability and would be well-received by a public increasingly cynical of powerful but opaque institutions.
22. Currently, trade unions use their political funds to gain influence within Parliament, with many donating money to specific MPs as well as directly financing the Labour Party.
23. The financial support provided to a number of MPs inevitably aids activity favourable to the trade union; in this instance the Boycott, Divestment and Sanctions movement has been highlighted as a major cause for concern.
24. Though the trade union leadership have objected to the proposed policy changes put forth in the Trade Union Bill, Clauses 10 and 11 are in the interest of all trade union members as well as the wider public who stand to benefit from such constructive change.
25. In no other walk of life would it be considered acceptable to have to opt-out of donating money to a cause or organisation. Donation to a cause or political party by a member of any organisation should be an act of individual choice. The current opt-out system of the trade union political fund fails to provide this choice and does not offer transparency to a union member.
26. Trade union members should be made aware of how their contribution to political funds is spent; many members may currently be unaware that the political fund of their union is spent supporting campaigns such as BDS and may choose to opt-out if a breakdown of expenditure (as required by Clause 11) was provided.
27. The Conservative Party Manifesto stated that these transparent processes would be put in place during this parliament; it is in the interest of transparency that these changes are delivered.

¹⁷ Ibid.

ANNEX A

TRADE UNIONS: Anti-Israel Activity (2010-2016)

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Unite

- **Unite the Union are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **In 2015, Unite promoted a demonstration arranged by the Palestine Solidarity Campaign outside the Israeli Embassy** (*Unite Protest for Palestine*, 16 October 2015, [link](#)).
- **In 2014, Unite promoted a march through London on the behalf of the Palestine Solidarity Campaign ‘against the massacre of innocent people living in the Gaza strip who are under constant bombardment by the Israeli army’.**

Unite reminded their activists that ‘London and Eastern region is expecting a large turn out from members in a show of solidarity with the people of Palestine’ (*Unite the Union London and Eastern News*, 24 July 2014, [link](#)).

- **Unite launched a campaign against G4S, accusing them of being a ‘serial human rights abuser’.**

In the briefing pack that Unite created for trade unionists, they said the Israeli ‘regime tramples on human rights in sites supplied by G4S’ and said that ‘evidence of G4S complicity in the suppression of Palestinian rights is overwhelming. G4S can carry on until someone

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stops them. Most trade unions in Britain...have strong policies of solidarity. What are we waiting for?' (*Unite the Union Stop G4S*, accessed 4 February 2016, [link](#)).

- **In 2013, Unite hosted a briefing for trade union activists from Action for Palestinian Children and encouraged members to access information about meetings the NGO were holding elsewhere** (*Unite the Union London and Eastern News*, 14 November 2013, [link](#)).
- **At their 2010 policy conference, Unite unanimously passed a motion to boycott Israeli companies.**

The motion called the union to 'vigorously promote a policy of divestment from Israeli companies' with a boycott of Israeli goods and services 'similar to the boycott of South African goods during the era of apartheid' (*The Jewish Chronicle*, 4 June 2010, [link](#)).

- **Unite issued a statement of solidarity with the Palestinian people describing Israel as an 'apartheid state', in July 2014.**

They said: 'Unite further calls on the UK government to demand the Israeli government halt its military action and to make it clear that should it fail to do so then a move for international sanctions will be launched within the United Nations Security Council and the European Union...

Unite is clear about its understanding of the current situation. This isn't about rockets from Gaza. It's about Israel fighting to maintain its control over Palestinian lives, and Palestinian land.

It's about Israel feeling able to commit war crimes with complete impunity. It's about the world media indicating that Palestinian lives are worth less than Israeli lives. It's about the fact that Palestinian children are being killed at the rate of one every three days. It's about millions of Palestinians living under illegal occupation. It's about the brutal siege on Gaza, and the third military assault on a trapped population in less than 6 years. It's about more than sixty laws that discriminate against Palestinian citizens of Israel.

It's about Israeli-state racism and apartheid. It's about ethnic cleansing. It's about colonisation, and over 500,000 settlers. It's about Israel's systematic violations of international law and Palestinian human rights' (*Unite the Union News*, 11 July 2014, [link](#)).

- **Unite called on activists to demand 'an end to the military aggression' to 'support the boycott, divestment and sanctions campaign' and specifically support:**
 - the boycott of any goods produced from illegal Israeli settlements in the West Bank;
 - divestment from financial holdings in any companies, funds or organisations complicit in the ongoing illegal occupation and oppression of the Palestinian people;
 - sanctions against Israel for its continued illegal occupation, flouting of international law, and construction of an apartheid regime (*Unite the Union News*, 11 July 2014, [link](#)).
- **They sent two Unite delegations to the Palestinian Territories in 2013, arranged by PSC, to help 'strengthen Unite's solidarity with Palestinian workers and civil society'.**

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- **A 2013 Unite Conference on Palestine committed to:**
 - ‘Raise awareness, build support, campaign and lobby for a free and independent Palestine;
 - Highlight the suffering, and support the Palestinian population in Gaza living under siege; Palestinians living in the West Bank who are seeing their land illegally seized by Israeli settlements and are forced to navigate checkpoints to go to work, school and hospital and in Israel, where they are treated as second class citizens and subject to racist laws;
 - Work with other NGOs and all other supportive bodies in the UK and around the world and develop a Unite campaigning and leverage strategy around BDS within the next 12 months. Notably against complicit companies involved in the occupation, the apartheid wall and the illegal settlements (such as Veolia, G4S and Sainsbury’s) through workforce pressure, contracts and pension funds;
 - Encourage members to call on supermarkets and retailers to stop using companies which export goods from illegal settlements;
 - Continue to support and offer practical help to the Palestine Solidarity Campaign, and encourage all branches to affiliate to PSC;
 - Encourage branches and regions to send representatives on delegations to Palestine, to further strengthen the solidarity with Palestinian workers;
 - Organise and facilitate with other union bodies and campaigning groups, a national speaking tour to include lawyers and child prisoners/families in the next 12 months;
 - Raise the issue and table motions for support of the BDS campaign in the European and Global Federations;
 - Organise and facilitate national or regional delegations to be sent to Palestine at least twice a year;’

(Unite the Union: Israel and Palestine Global Solidarity & Peace, accessed 4 February 2016, [link](#)).

- **After a three day conference in 2014, Unite joined the BDS campaign and pledged to develop a campaigning and leverage strategy together over the next year.**

The focus would be particularly on companies involved in ‘the occupation, the apartheid wall and the illegal settlements’ (*i24 news*, accessed 4 February 2016, [link](#)).

- **In 2015, the General Secretary signed a letter calling for Prime Minister Benjamin Netanyahu to be tried for war crimes.**

The letter also called for the Prime Minister to ‘impose immediate sanctions and an arms embargo on Israel until it complies with international law and ends the blockade and the occupation’ (*The Guardian*, 7 September 2015, [link](#)).

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- **In July 2014, Unite resolved to campaign for boycott of goods produced by Israeli settlements and divest from any financial holdings in any companies or funds linked to the settlements** (*Unite press release*, 11 July 2014, [link](#)).

GMB

- **GMB are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **GMB supported the National Lobby of Parliament for Palestine which included an e-tool to allow activists to lobby their MPs and attempt to book meetings with their MP, a Parliamentary event in Portcullis House, campaign literature and an evening rally.** The stated aims of the lobbying day was to persuade MPs to:
 - ‘Challenge ethnic cleansing and discriminatory policies; Support the campaign against the ethnic cleansing of Palestinian Bedouin from their homes and land in the Naqab (also known as the Negev desert) in Israel;
 - Ban settlement goods; Israel’s illegal settlements are built on Palestinian land. The UN, EU and UK acknowledge that these settlements are harmful and illegal – but if they are illegal, what are goods produced in settlements doing in our shops?;
 - Respect for prisoners’ rights and an end to Israel’s illegal treatment of Palestinian prisoners, including children; ask your MP to challenge imprisonment without charge or trial and to press for proper medical care. Ask them to pledge support to help end the abuse of Palestinian children;
 - An end to the siege on Gaza; the blockade of Gaza started in 2007 and continues today. Israel severely restricts Palestinians’ freedom of movement; blocks almost all exports and restricts imports, creating a humanitarian catastrophe. Tell your MP it is time to end the blockade of Gaza’. (*Final Lobbying*, 5 February 2016, [link](#)).
- **In July 2013, the GMB voted to support boycott and divestment initiatives against Israeli settlements.**

They also banned its members from visiting Israel on delegations organised by the Trade Union Friends of Israel. The measures included a compromise amendment condemning Hamas as well as Israel (*BDS News*, 11 June 2013, [link](#); [The Jewish Chronicle, 17 September 2009, link](#)).

- **The union had affirmed that it is ‘unashamedly’ affiliated to the Palestine Solidarity Campaign** (*BDS News*, 11 June 2013, [link](#)).

Unison

- **Unison are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **Unison had adopted a policy of BDS before the TUC voted to back the measures** (*The Jewish Chronicle*, 15 September 2009, [link](#)).
- **In June 2015, UNISON launched a campaign to lobby councils to divest their Local Government Pension Schemes from companies linked with 'Israel's occupation of Palestine'** (*A UNISON guide to pension fund engagement and divestment*, accessed 4 February 2016, [link](#)).

Communication Workers Union

- **CWU are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **CWU supported the National Lobby of Parliament for Palestine which included an e-tool to allow activists to lobby their MPs and attempt to book meetings with their MP, a Parliamentary event in Portcullis House, campaign literature and an evening rally.** The stated aims of the lobbying day was to persuade MPs to:
 - 'Challenge ethnic cleansing and discriminatory policies; Support the campaign against the ethnic cleansing of Palestinian Bedouin from their homes and land in the Naqab (also known as the Negev desert) in Israel;
 - Ban settlement goods; Israel's illegal settlements are built on Palestinian land. The UN, EU and UK acknowledge that these settlements are harmful and illegal – but if they are illegal, what are goods produced in settlements doing in our shops?;
 - Respect for prisoners' rights and an end to Israel's illegal treatment of Palestinian prisoners, including children; ask your MP to challenge imprisonment without charge or trial and to press for proper medical care. Ask them to pledge support to help end the abuse of Palestinian children;
 - An end to the siege on Gaza; the blockade of Gaza started in 2007 and continues today. Israel severely restricts Palestinians' freedom of movement; blocks almost all exports and restricts imports, creating a humanitarian catastrophe. Tell your MP it is time to end the blockade of Gaza'. (*Final Lobbying*, 5 February 2016, [link](#)).
- **CWU supported a campaign urging as many people as possible to sign a petition calling for a United Nations Human Rights Commission of Inquiry to investigate possible war crimes in Gaza** (*CWU News*, 15 October 2014, [link](#)).

USDAW

- **USDAW are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).

UCATT

- **UCATT are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **Of their position on Palestine, UCATT said:** ‘UCATT backs Palestinian self-determination and an end to the Israeli occupation. The Executive Council supports the boycott and sanctions campaign against Israel and calls on branches to affiliate to the Palestine Solidarity Campaign’ (*Building Worker*, accessed 5 February 2016, [link](#)).

BFAWU

- **BFAWU are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **Supported the movements calling on the British Government to ‘denounce the relentless attacks on innocent Palestinians and to hold the Israeli Government to account for the attacks in Gaza’.** Ronnie Draper, General Secretary BFAWU said: ‘The BFAWU support the TUCG statement and would urge our members, fellow Trade Unionists and affiliates to join the rallies and demonstrate against the attacks on Gaza and make the call for sustainable peace. In the meantime, we would ask supporters to write to their local MPs asking them to bring these issues into the wider political arena and make the call for a peaceful, two-state solution that works for everyone’ (*Trade Union Co-Ordinating Group*, accessed 5 February 2016, [link](#)).

ASLEF

- **ASLEF supported the National Lobby of Parliament for Palestine which included an e-tool to allow activists to lobby their MPs and attempt to book meetings with their MP, a Parliamentary event in Portcullis House, campaign literature and an evening rally.** The stated aims of the lobbying day was to persuade MPs to:
 - ‘Challenge ethnic cleansing and discriminatory policies; Support the campaign against the ethnic cleansing of Palestinian Bedouin from their homes and land in the Naqab (also known as the Negev desert) in Israel;
 - Ban settlement goods; Israel’s illegal settlements are built on Palestinian land. The UN, EU and UK acknowledge that these settlements are harmful and illegal – but if they are illegal, what are goods produced in settlements doing in our shops?;
 - Respect for prisoners’ rights and an end to Israel’s illegal treatment of Palestinian prisoners, including children; ask your MP to challenge imprisonment without charge

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- or trial and to press for proper medical care. Ask them to pledge support to help end the abuse of Palestinian children;
- An end to the siege on Gaza; the blockade of Gaza started in 2007 and continues today. Israel severely restricts Palestinians' freedom of movement; blocks almost all exports and restricts imports, creating a humanitarian catastrophe. Tell your MP it is time to end the blockade of Gaza'. (*Final Lobbying*, 5 February 2016, [link](#)).
 - **In 2015 the General Secretary signed a letter calling for Prime Minister Benjamin Netanyahu to be tried for war crimes** and for the Prime Minister to 'impose immediate sanctions and an arms embargo on Israel until it complies with international law and ends the blockade and the occupation' (*The Guardian*, 7 September 2015, [link](#)).
 - **ASLEF is affiliated with the Palestine Solidarity Campaign.** In a leaflet ASLEF states: 'Palestinian workers living under Israeli occupation struggle every day: to get work permits, to get past checkpoints, to find work, and to negotiate acceptable wages and working conditions. They struggle to access adequate housing, basic sanitation, health care, food and water. Many have been displaced and forced into exile. It is because of these injustices that ASLEF, along with 14 other national unions, is affiliated to the Palestine Solidarity Campaign and calls for a complete lift of the on-going blockade and for Israeli compliance with international law with regards to the people of Palestine'. The document goes on to stress ways in which ASLEF can support PSC: 'By building awareness-raising, developing international solidarity and using economic, political and social pressure, we aim to bring hope to Palestinians and to realise lasting justice and peace in the region. That is why ASLEF supports the work of PSC and the people of Palestine by promoting PSC's campaigns and events, encouraging local PSC and ASLEF branches to build links, encouraging ASLEF members to visit Palestine on PSC delegations, lobbying MPs for more progressive government policies for the region, speaking about these issues at conferences and fringe meetings and attending PSC Trade Union Advisory Committee meeting' (*ASLEF*, accessed 5 February 2015, [link](#)).
 - Mick Whelan, ASLEF's General Secretary, was part of a trade union delegation to Palestinian Territories. During the trip between the July 21st and 28th 2015 he visited the Palestinian Territories alongside other Union executives including Colin Smith and Marz Colombini. (*ASLEF*, September 22 2015, [link](#)).

TSSA

- **TSSA are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **In 2015 the General Secretary signed a letter calling for Prime Minister Benjamin Netanyahu to be tried for war crimes** and for the Prime Minister to 'impose immediate sanctions and an

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arms embargo on Israel until it complies with international law and ends the blockade and the occupation' (*The Guardian*, 7 September 2015, [link](#)).

- **Sent a delegation alongside Unite to the Palestinian Territories in 2013.** The delegation was sent to Palestine 'to observe, to offer solidarity and to develop ways in which people in Britain can help them achieve the freedom they have long sought' (*TSSA news*, accessed 5 February 2016, [link](#)).
- **Joined a boycott for 'justice in Palestine'.** A TSSA conference in September 2015 joined with the international campaign for boycotts, divestment and sanctions to achieve 'freedom and equality for the Palestinian people'. (*TSSA Journal*, accessed 5 February 2016, [link](#))
- **Made a donation to the Labour Friends of Palestine** (*TSSA Executive Committee Report*, accessed 5 February 2016, [link](#)).
- **TSSA was one of the groups that funded a report into the Palestinians by Union Solidarity International.** The report was published on the 14th September 2015. (*USI*, accessed 5 February 2016, [link](#)).

Fire Brigades Union

- **FBU are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **FBU supported the National Lobby of Parliament for Palestine which included an e-tool to allow activists to lobby their MPs and attempt to book meetings with their MP, a Parliamentary event in Portcullis House, campaign literature and an evening rally.** The stated aims of the lobbying day was to persuade MPs to:
 - 'Challenge ethnic cleansing and discriminatory policies; Support the campaign against the ethnic cleansing of Palestinian Bedouin from their homes and land in the Naqab (also known as the Negev desert) in Israel;
 - Ban settlement goods; Israel's illegal settlements are built on Palestinian land. The UN, EU and UK acknowledge that these settlements are harmful and illegal – but if they are illegal, what are goods produced in settlements doing in our shops?;
 - Respect for prisoners' rights and an end to Israel's illegal treatment of Palestinian prisoners, including children; ask your MP to challenge imprisonment without charge or trial and to press for proper medical care. Ask them to pledge support to help end the abuse of Palestinian children;
 - An end to the siege on Gaza; the blockade of Gaza started in 2007 and continues today. Israel severely restricts Palestinians' freedom of movement; blocks almost all

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exports and restricts imports, creating a humanitarian catastrophe. Tell your MP it is time to end the blockade of Gaza'. (*Final Lobbying*, 5 February 2016, [link](#)).

- **The FBU successfully lobbied to have the TUC back a boycott of Israeli goods.**

Before the vote, their activity prompted Unite and Unison to back BDS (*The Jewish Chronicle*, 15 September 2009, [link](#)).

- **A resolution was passed in 2011 to further the international work of the FBU and to support the Palestinians.** The resolution stated: 'Conference urges the Executive Council to work with political allies to exert continued pressure on the UK Government to not only impose sanctions against Israel, but also to provide support to Emergency Service Workers in East Jerusalem, Gaza and the Occupied West Bank. Conference further instructs the Executive Council to investigate a further project, in conjunction with other UK Trade Unions where possible, which will provide physical support for Palestinian Emergency Service Workers' (*Fire Brigades Union Policies*, accessed 5 February 2016, [link](#)).

- **The FBU have been long standing supporters of Nablus since 1982.** In 2011 the FBU raised money to buy two fire engines and drive them 2,500 miles to the West Bank to donate to the fire service in Nablus. The FBU also provide co-coordinators to firefighters from the Palestine Civil Defence and help them receive training in firefighting, water rescue, traffic collision, and urban search and rescue. (*The Guardian*, 11 February 2015, [link](#)).

RMT

- **RMT are affiliated to Palestine Solidarity Campaign** (*PSC Trade Union Network*, accessed 4 February 2016, [link](#)).
- **In 2015 the General Secretary signed a letter calling for Prime Minister Benjamin Netanyahu to be tried for war crimes** and for the Prime Minister to 'impose immediate sanctions and an arms embargo on Israel until it complies with international law and ends the blockade and the occupation' (*The Guardian*, 7 September 2015, [link](#)).

TUC

(N.B. the TUC is the umbrella group for trade unions in the UK. About seven million workers belong to the 58 unions which pay to affiliate to the TUC. (*BBC News*, 28 August 2008, [link](#)).

- **In 2014 the TUC voted overwhelmingly to endorse a statement from its General Council calling 'for the suspension of the EU-Israel Association Agreement until the rights of Palestinians are established'.**

The statement welcomed 'the creation of a unity government for the Palestinian Authority, which necessarily involves both Fatah and Hamas' and urged 'the UK Government and the European Union to support this development'.

Conservative Friends of Israel—written evidence (TUP0009)

It also called on the Israeli state to pay for humanitarian assistance and rebuilding Gaza and urged unions and their members to give to international trade union humanitarian aid funds aimed at providing assistance to the people of Gaza (*PSC News*, 10 September 2014, [link](#)).

- **The Director of PSC Sarah Colborne responded:** ‘This landmark statement puts the TUC, and the 54 unions it represents, combining a total of nearly six million workers in the UK, firmly behind the Palestinian struggle.

Its significance cannot be underestimated. Thanks to this statement, it is now official TUC policy to campaign for an arms embargo on Israel, a suspension of the EU-Israel Association Agreement and to push forward the campaign to stop companies profiting from Israel’s crimes.

This is a huge boost to the solidarity movement, and is strongly welcomed by PSC, which continues to work with the UK’s unions in the struggle for justice for Palestinians’ (*PSC News*, 10 September 2014, [link](#)).

- **In 2010, the TUC Congress instructed the General Council to actively encourage affiliates, employers and pension funds to disinvest from, and boycott the goods of, companies who ‘profit from illegal settlements, the occupations and the construction of the Wall’** (*TUC Policy*, accessed 2 February 2016, [link](#)).

10 February 2016

Conservative Party—written evidence (TUP0023)

I wish to respond to the call for evidence on behalf of the Conservative Party. I understand Conservative Ministers will be responding on behalf of HM Government. Notwithstanding, this submission provides a party perspective on the salient issues in the Bill.

Trade union legislation and party mandates

1. The Trade Union Bill delivers on clear and explicit Conservative manifesto pledges of trade union reform. The Bill is not about party funding. The 2015 Conservative manifesto states in a section on trade union reform: “We will tackle intimidation of non-striking workers; legislate to ensure trade unions use a transparent opt-in process for union subscriptions; tighten the rules around taxpayer-funded paid ‘facility time’ for union representatives; and reform the role of the Certification Officer” (p.19).¹⁸ The Bill delivers on those pledges, and would be within the scope of the Salisbury Doctrine.
2. We recognise that the Labour Party and the Liberal Democrats may have different policy positions on this Bill. However, trade union legislation has always been subject to different party views, and it has never been the case that it has been dependent on cross-party ‘consensus’.
3. The current law on political funds was substantively amended in the Trade Union Act 1984 by the Thatcher Government to strengthen the rules on political objectives and political fund ballots. As with the 2016 Trade Union Bill, the Conservative Government had clear and explicit pledges to reform political funds in its (1983) election manifesto. The very same arguments made today by the Labour Party against this Bill were deployed back then by the Labour Party. Labour frontbencher, the late John Smith, asserted the Government’s changes to the political fund rules “has to do with party politics, and a party politics in which the Conservative party seeks to use its parliamentary majority to do as much financial damage as it can to the Labour party, through attempting to weaken the financial relationship between the trade unions and the Labour party”.¹⁹ Had such arguments carried weight, no changes would ever been made to trade union law in the 1980s. The Labour Party has historically parroted such lines – that any reforms are somehow partisan or unfair – each time that trade union law has been reformed. Labour continue to cry wolf over the provisions in this Bill.
4. Contracting-in and the debates around it are not new. Opt-in operated in Great Britain for two decades, having been introduced by Baldwin Government in the Trade Disputes and

¹⁸ There is a separate manifesto reference on page 49: ‘in the next Parliament, we will legislate to ensure trade unions use a transparent opt-in process for subscriptions to *political parties*. We will continue to seek agreement on a comprehensive package of party funding reform’ (emphasis added). This is separate from the opt-in reference for union subscriptions on page 19. We address that different issue later in this submission.

¹⁹ *Hansard*, 2 April 1984, Col. 684.

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Trade Union Act 1927 following the 1926 general strike. It was reversed in Great Britain by the Attlee Government through the Trade Disputes and Trade Unions Act 1946. As a consequence of decisions taken by the Stormont Government, Northern Ireland has operated opt-in consistently since 1927, as it resolved not to repeal opt-in in 1946. Indeed, under the period of Northern Ireland direct rule, the House of Lords re-affirmed its continuing operation in 1995, ratifying without dissent the extant secondary legislation that continues to provide the legislative basis for Northern Ireland's opt-in regime.²⁰

5. The minority Labour Government of 1931 attempted and failed to introduce to repeal various provisions of the 1927 Act, including proposing to abolish opt-in. Speaking in Opposition to the 1931 Bill, Stanley Baldwin warned of the workers being unduly pressured from contracting-out under the old system of opt-out: "That is a kind of pressure which, under the old system of contracting-out, hit him [working men] very hard and made it very difficult for him either to claim or to get the exemption to which, I think, he was tally entitled. I am quite sure that the party opposite would have no desire to feel that they were being partly financed by Liberals and by Conservatives. It would be no satisfaction to me to be financed by members of the Labour Party... We on this side of the House feel very strongly that the present regulations should be preserved for the separation of political funds and for the protection of the ordinary funds of a trade union."²¹
6. Labour's 1946 Act was an extremely partisan piece of legislation: it repealed the 1927 Act (in Great Britain) in its entirety, implementing a 1945 Labour manifesto pledge to restore "the freedom of the trade unions, denied by the Trade Disputes and Trade Unions Act 1927". The Labour Lord Chancellor, Lord Jowitt, told the House of Lords: "In moving the Second Reading of a Bill before your Lordships' House, I always make a point of telling your Lordships whether the Bill is or is not controversial. Carrying out my usual practice, let me assure your Lordships that this Bill is controversial in every line and every comma."²² Yet the Lords allowed the Bill to receive Royal Assent, given the clear pledge in the Labour manifesto.
7. Such historical references illustrate a simple fact: we do not deny that the parties have significantly different views on the issue of political funds. But they always have. Political parties have consistently sought to amend (or oppose) changes to the political fund legislation based on their underlying political convictions. There has never been cross-party consensus, and it is unlikely there ever will be. However, we believe that there is a strong public interest – and a democratic mandate – for the Conservative Party to implement its 2015 manifesto pledges on trade union reform.

²⁰ Trade Union and Labour Relations (Northern Ireland) Order 1995, which mirrored broader changes to trade union legislation that were introduced in Great Britain.

²¹ *Hansard*, 22 January 1931, Col. 422.

²² *Lords Hansard*, 30 April 1946, Col. 916.

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8. The assertion made by some that the Conservative Government of the 1980s did not repeal opt-in is a straw man argument. The Thatcher and Major Governments made ten substantives changes to primary legislation affecting trade unions and industrial action.²³ This included overhauling the law on political funds, which the Labour Party of the time vehemently opposed. It was not until the election of Tony Blair as Labour Party leader that Labour came to terms with Conservatives' trade union legislation. By contrast, under the current Labour leadership, the Labour Party not only opposes this Trade Union Bill but also wishes to rip up the broader 1980s trade union reforms.²⁴
9. Moreover, as we outline later in this submission – the Conservative Government in 1984 left open the prospect of legislating for contracting-in if the trade unions did meet certain conditions on transparency on opt-out. We will show that these have not been met.

Trade union political levy – the case for reform

10. Trade unions have a constructive role to play in representing their members' interests, but this must be matched by transparency, with union members able to choose clearly if they want to pay for political campaigning. With opt-in rather than opt-out, there is no change to the underlying policy intent of asking union members to make a choice. But we believe that this should be an active choice, with prior consent. UK trade unions have had no practical problem with operating this opt-in system in Northern Ireland since 1927. Introducing contracting-in would empower four million individual union members, enhancing workers' rights and increasing consumer protection.
11. Our analysis of union membership forms has found that 7 out of 10 trade unions with political funds in Great Britain make no reference at all to the right to opt-out on their membership forms. Only 1 in 10 provide a clear choice on the opt-out. The remainder only mention the opt-out in tiny small print, and require joining members to write in separately in order to opt-out; they fail to provide an opt-out tick box. A full breakdown is listed in Annex 1. A few unions may bury information on the political fund in the depths of their website, yet such information is clearly not visible 'at the point of sale' when the member signs a contract with the union and authorises the financial transaction of a direct debit or payroll deduction.
12. The same unions do provide an opt-out tick box for data protection law. One must ask why an opt-out box can be included for data protection legislation but the unions seem unable to provide one on the same form for trade union legislation. We would observe that forthcoming revisions to data protection legislation (from the re-cast of an EU Directive)

²³ Employment Act 1980; Employment Act 1982; Trade Union Act 1984; Public Order Act 1986; Employment Act 1988; Employment Act 1989; Employment Act 1990; Trade Union & Labour Relations (Consolidation) Act 1992; Trade Union Reform and Employment Rights Act 1993; Employment Rights Act 1996.

²⁴ Jeremy Corbyn quoted in *Daily Telegraph*, "Jeremy Corbyn plans 'ministry for unions' and to scrap Thatcherite anti-strike laws", 23 September 2015. The TUC's so-called Trade Union Freedom Bill is supported by John McDonnell and Jeremy Corbyn.

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are likely to require opt-in to become the default test for consent, such that “silence, pre-ticked boxes or inactivity should therefore not constitute consent”.²⁵ We would correspondingly argue that the absence of an opt-out box effectively deprives members of their right to contract-out.

13. Such misleading selling practices on opt-out would be classed as illegal under consumer protection law – as “marketing by omission”. This is akin to selling a product with an optional warranty, but bundling the warranty into the overall price, and not mentioning the warranty is voluntary. It is a misleading a practice as the Payment Protection Insurance misselling undertaken by many banks over the last decade.
14. Indeed, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ban the opt-out selling of any product which commits the consumer to additional payments under a contract.²⁶ The Financial Conduct Authority is intending to ban opt-out selling in financial services markets (where it is not already covered by the consumer regulations), and move to an opt-in regime.²⁷ We believe a strong case can be made that such consumer protection laws should cover the sale and marketing of trade union membership, given it is essentially a service aimed at individuals. The Trade Union Bill delivers this consumer protection in relation to the sale of political funds through the opt-in provisions.
15. The recent Etherington review into the regulation of fundraising by charities recommended the use of opt-in: “Charities should make a commitment to their donors, promising that they will review their use of supporters’ personal data and adopt a system of ‘opt in’ only for their communications.”²⁸ Such recommendations are clearly guiding and relevant to the consideration of the regulation of fundraising by trade unions.
16. In light of such the current deceptive, rip-off practices by most unions, we believe that the fair and simple solution would be to introduce the tried-and-tested system of opt-in (as operates in Northern Ireland). Of course, one could legislate to spell out that an opt-out box was visibly provided on membership forms. Yet we would argue that opt-in would

²⁵ Recital 25 of the new General Data Protection Regulation states: “Consent should be given explicitly by any appropriate method enabling a freely given specific and informed indication of the data subject's wishes, either by a statement or by a clear affirmative action by the data subject, ensuring that individuals are aware that they give their consent to the processing of personal data, including by ticking a box when visiting an Internet website or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence or inactivity should therefore not constitute consent.”

²⁶ Regulation 40 states: “(1) Under a contract between a trader and a consumer, no payment is payable in addition to the remuneration agreed for the trader's main obligation unless, before the consumer became bound by the contract, the trader obtained the consumer's express consent. (2) There is no express consent (if there would otherwise be) for the purposes of this paragraph if consent is inferred from the consumer not changing a default option (such as a pre-ticked box on a website).”

²⁷ “Forgetting to un-tick a box at the end of a purchase is not making an informed choice. Our work shows that the opt-out model means too often consumers are buying a product when they have not been able to give any thought to whether or not they need it” (*Financial Conduct Authority press release*, 25 March 2015).

²⁸ Etherington et al, *Regulating Fundraising for the Future*, September 2015, p.63.

guarantee active and informed consent by union members on whether they wish to pay for political campaigning. It would avoid the possible evasion of the opt-out option being hidden or obscured in tiny small print; it would be financially detrimental to a union (it wanted to maximise its political fund) if it were to obscure an opt-in box.

17. Contracting-in would also ensure that union members who do not wish to join a political fund receive a lower membership fee, and the monies saved are clearly visible. Parliament will rightly want to consider the administrative procedures by which opt-in should operate, yet the guidelines produced by the Northern Ireland Certification Officer are already understood by the majority of UK trade unions which operate in both Northern Ireland and Great Britain, and would involve minimal changes to IT systems. The Select Committee may want to compare and contrast the membership forms of specific unions – in Great Britain and in Northern Ireland.
18. Although trade unions must undertake a political fund ballot every 10 years, no facility is granted in that balloting process every decade to allow an individual member to opt-out as part of their process. The majoritarian view decides whether a political fund continues. We believe such ballots should operate in addition to an informed choice for individual members on whether to participate in that fund.
19. In 1984, the Conservative Government explicitly told the trade unions that it was prepared to legislate for contracting-in in the future, if the TUC did not deliver full transparency and choice on opting-out. The Secretary of State, Tom King, explained to the Commons:

“Tom King: ... I made it clear, as does the statement, that the **union members must avoid being unaware of their rights on the funds**, and be able to exercise them freely. The statement requires the union to make it clear that its members do not even need a form to contract out. Under the 1913 Act, the members are required to contract out only in such form as is appropriate. Those are not the exact words, but the effect is that a form is not needed for contracting out... I have to repeat what I said in our letter confirming our acceptance to the general secretary of the TUC. I wrote to Mr. Murray in the following terms: I must, of course, make it clear that the Government's decision not to proceed with such changes in the present Bill would rest on the firm expectation that the TUC's action will in practice be effective. **If it were not to prove effective** then the Government must, of course, **reserve its right to legislate to ensure that union members are fully aware of the choice** they have and are readily able to exercise that choice.”²⁹

From the evidence we have shown above, most unions have broken the letter and spirit of that TUC agreement, illustrating why opt-in legislation is now necessary.

Effect of opt-in on political fund membership

²⁹ *Hansard*, 02 April 1984, Col. 753, emphasis added.

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20. We disagree with the assertion by the Labour Party that contracting-in would have significant adverse effects on Labour Party funding. We believe their claims are exaggerated. Labour's underlying calculations assume that a mere 1 in 10 of trade union members would pay the political levy under opt-in³⁰ – which is not borne out from the experience of Northern Ireland. Some unions in Northern Ireland routinely get over 80 per cent opt-in rates.³¹ If the Labour Party really do believe that opt-in rates in Great Britain would be so low, they are effectively admitting that almost 4 million union members are currently being ripped off by deceptive fundraising practices.
21. Notwithstanding, at present, we would observe some unions have astonishingly small opt-out rates. In Great Britain, in 2013-14³², only 1 single individual out of 336,736 members opted-out of NASUWT (0.0003 per cent). PCS had a 0.2 per cent opt-out rate, BECTU 0.6 per cent and UNISON 0.7 per cent³³. Unsurprisingly, none of these unions make any reference to workers' right to opt-out on their membership forms.
22. The Labour Party does not operate in Northern Ireland and the political party system operates on different lines, so far less effort is made to sign union members up to a political levy and in order to drive party affiliation. On that basis, there is no reason why even higher opt-in rates cannot be achieved in Great Britain than Northern Ireland. It merely requires communication with members, persuading them of the merits of the political fund. This improved engagement would be beneficial to the democratic process.

How political funds are spent

23. The terms of reference of this Select Committee are excessively narrow by viewing political funds merely as funding for political parties. We would suggest that the Select Committee should also examine how monies from political funds go towards political campaigning other than through party donations. Of the 25 unions with political funds in Great Britain, 10 are not affiliated to the Labour Party, and the remaining 15 will also fund political campaigning unconnected with the Labour Party.
24. There is a lack of transparency over how such political funds are spent. Clause 11 of the Bill directly addresses this. Such transparency would assist union members in having an informed choice over whether to sign up to paying a political levy. This would build on the reporting reforms introduced by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

³⁰ Internal memos from the Labour Party cited in *The Observer*, 11 January 2016. It is clear that such exaggerated “memos” were designed to leak and be briefed to the media.

³¹ 85 per cent opt-in for POA and 82 per cent for RMT in 2013-14. The figures for 2014-15 were 100 per cent and 72 per cent respectively.

³² Figures from *Hansard*, 9 June 2015, PQ 1755.

³³ UNISON on its membership form provides a choice of political fund – Labour-affiliated or General Political. But there is absolutely no reference to the right to opt-out from either political fund in the first place.

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25. Annex 2 to this submission lists examples of non-party political fund expenditure, based on some initial desk-based research. In particular, it illustrates union funding in relation to:
 - Supporting the Campaign for Nuclear Disarmament.
 - Opposing sale of council housing.
 - Opposing out-sourced contracts in the public sector.
 - Opposing welfare reform.
 - Opposing Israel.
 - Funding a socialist think tank.
26. Many of these are contentious. Britain's nuclear deterrent is supported by the majority of the British public; indeed, many manufacturing jobs depend on it. The public back reforms to benefits to reduce welfare dependency. The Right to Buy has allowed workers to get onto and move up the housing ladder. The right of Israel to defend itself from terrorism would be strongly supported by many, particularly amongst those of the Jewish faith.
27. Whatever one's view of the merits of these issues, it is not unreasonable that union members are actively asked on whether they want their pay packets to support such political campaigning. It will not be to everyone's political tastes. Fundamentally, contracting-in is not an issue about Labour Party funding, rather it is about choice for consumers on whether they want their own money spent on politically contentious issues.

The debate on party funding

28. The Trade Union Bill makes no change to the way that trade unions may decide to affiliate and/or donate from their political funds to any political party. No restrictions are placed on unions' ability to contract with any political party, and whether to pay lump sum donations or donations based on individual affiliation fees.
29. We would note that companies already have to get active consent of their shareholders each year to make a corporate donation, and this decision is made public in their annual accounts. The Labour Government legislated through the Political Parties Elections and Referendums Act 2000 to require companies to pass a shareholder approval resolution if they wish to make donations, above a threshold, to a political party.
30. The Bill's provisions on political fund opt-in are entirely different to the suggestions in the Committee on Standards in Public Life report. The 2011 report proposed that union members opt-in to any affiliation fee to a political party. This affiliation opt-in would be additional and quite separate to the continuing process of opt-out for any member wishing to join a trade union political fund.³⁴ Opponents of the Bill have wrongly conflated the two

³⁴ The CSPL report advocated: 'Individual members of unions or other affiliated bodies should have to make a positive decision to contribute through their organisation to the Labour Party. In other words, they should opt in to the affiliation fee... It should be clear that the union or other affiliated body is simply collecting the affiliation fee on the part of the party... Individual members should be able to contribute to their union's political fund, even if they decide not to opt in to the affiliation fee... The cap would still apply to any other donations made by unions or other affiliated bodies on top of affiliation fees... **The**

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issues. The Bill does not ‘cherry-pick’ recommendations from the Committee on Standards in Public Life, because contracting-in to political funds was never a recommendation of the Committee.

31. Following the 2014 Labour Party “Collins” reforms, GMB and Unite now include a separate opt-in tick box on membership forms asking whether the union member wishes to affiliate to the Labour Party. This was an initiative of the Labour Party, not the (Coalition) Government. But neither the GMB or Unite forms have any mention of there being an opt-out from the political levy. In that context, the 2014 Labour Party reforms are irrelevant to the Trade Union Bill. The reforms included by the Labour Party in 2014 do not add any transparency to informed choices on paying the political levy. At most, the Labour changes of 2014 are little different to the existing Unison practice of giving two choices of Political Fund to sign up to; Unison still fails to mention at all that their political levy is optional on the membership form.
32. An affiliation opt-in is something we support (as indicated on page 49 of the Conservative election manifesto) – asking a union member if they wish to join a political party and have a vote in their elections. But this Bill is not about such a proposal. It does not seek to change the way that the Labour Party signs up its members. Affiliation fees should not be confused with the political levy.
33. There is a danger of giving far too much weight to the 2011 report, which is in a long line of assorted reports on the issue of party funding. The Committee on Standards in Public Life’s recommendations from 2011 did not obtain cross-party consent amongst the political parties, and indeed, it had dissenting opinions in its own report.³⁵ For assorted reasons, Labour, Liberal Democrats and Conservatives disagreed with the report’s conclusions. Hence, contrary to the implication of the resolution setting of this Select Committee, the report did not and does not represent a basis on which to reform party funding legislation. We would also observe that the Committee on Standards in Public Life in its 1998 report (the Neill Committee) took a lead from the 1997 Labour Party election manifesto.³⁶ For obvious reasons, the 2011 report fails to reflect the 2015 Conservative election manifesto and the election of a majority Conservative Government.
34. Any broader package of reform on party funding which involved a cap on donations would also need to consider issues such as state funding. Given the need to pay off the deficit left by the last Labour Government, the Conservative Party does not believe there is a case for more state funding – *savings* need to be made to the cost of politics. Indeed, as then Deputy Prime Minister, Nick Clegg, said in response to the 2011 Life report: “The Government

recommendation does not require any change to the arrangements for opting out of other payments to union’s political funds’ (CSPL, *Political Party Finance*, November 2011, pp.66-68, emphasis added). The Trade Union Bill does not do this.

³⁵ Outlined in Appendix 8 of the 2011 report.

³⁶ As set out in Committee on Standards in Public Life, *The Funding of Political Parties in the United Kingdom*, October 1998, p.15-16.

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believe that the case cannot be made for greater state funding of political parties at a time when budgets are being squeezed and economic recovery remains the highest priority.”³⁷ We believe that this remains the case. The issue of contracting in/out on trade union political funds is not and should not be contingent on state funding of political parties.

35. The assorted inter-party party funding talks over the last decade have failed to reach any consensus – not least since they have focused on controversial and complex structural changes. Party funding reform has become the embodiment of *Waiting for Godot*. Notwithstanding our aspirations towards a comprehensive settlement, we would practically suggest that – entirely separate to this Bill – there may be smaller reforms that could command some broad support, rather than trying and failing to achieve an all-or-nothing, ‘big bang’ solution.
36. There is a recognition across all parties that we should actively encourage more, smaller donations from wider audiences. As part of a broader approach of promoting giving to good causes, the Government may wish to review how it could remove excessive regulation which makes it harder to fundraise, particular in relation to raising funds online from small donors. The Government could even support some pilot schemes to trial innovation and best practice in online giving; this would not have to require changes to legislation.
37. Online fundraising reforms could potentially involve tax relief on small donations, as originally recommended by the Committee on Standards in Public Life in 1998, using the existing Gift Aid mechanisms. Such a cost could be funded by corresponding savings to the cost of politics elsewhere, so it would be neutral to the public purse, given the priority of deficit reduction. Such grassroots fundraising would encourage public engagement and widen parties’ funding base, without giving an advantage to any particular group (other than those that commanded the most public support).
38. However, such considerations are entirely separate from this Trade Union Bill; they could instead be taken forward by the Cabinet Office through a discussion paper. The very act of trying to conflate such an issue with trade union law makes it less likely that such positive reforms would ever get off the ground.

In conclusion, we believe the Trade Union Bill’s reforms are good for public in the face of disruption caused by trade union militancy, and good for four million trade union workers by enhancing their consumer rights. Subject to Parliamentary scrutiny, the majority Conservative Government has a clear mandate to deliver on its promises to the British public.

I hope this clearly sets out our position.

Yours faithfully,

³⁷ *Hansard*, 23 November 2011, Col. 25WS.

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Simon Day

*Chief Executive Officer & Registered Treasurer
Conservative Party*

[Annexes overleaf]

ANNEX 1: MEMBERSHIP FORMS ANALYSIS

The table below outlines what information about the political levy is placed on union membership forms (trade unions in Great Britain, as of January 2016).

| <i>Unions with political funds</i> | <i>Opt-out mention?</i> | <i>Notes</i> |
|--|-------------------------|---|
| Association of Revenue and Customs | yes (clear) | Genuine opt-out box with clear cost of political levy |
| Educational Institute of Scotland | yes (clear) | Genuine choice |
| Musicians Union | yes | Opt-out buried in 1 page of tiny print, and no tick box – member must write separately to opt out |
| National Union of Teachers | yes | Opt-out in tiny print, and no tick box - member must write separately to opt out |
| POA | yes | Opt-out in tiny print, and no tick box - member must write separately to opt out |
| Union of Shop Distributive and Allied Workers (USDAW) | yes | Opt-out in tiny print, and no tick box - member must write separately to opt out |
| Associated Society of Locomotive Engineers and Firemen (ASLEF) | no | no reference at all |
| Bakers Food and Allied Workers Union | no | no reference at all |
| Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) | no | no reference at all |
| Communication Workers Union (CWU) | no | no reference at all |
| Community | no | no reference at all |
| Fire Brigades Union | no | no reference at all |
| GMB | no | separate tick box on supporting Labour Party |

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| <i>Unions with political funds</i> | <i>Opt-out mention?</i> | <i>Notes</i> |
|--|-------------------------|---|
| National Association of Schoolmasters Union of Woman Teachers (NASUWT) | no | no reference at all |
| National Union of Rail Maritime and Transport Workers (RMT) | no | no reference at all |
| Prospect | no | no reference at all |
| Public and Commercial Services Union | no | no reference at all |
| Transport Salaried Staffs Association (TSSA) | no | no reference at all (based on online form) |
| Union of Construction, Allied Trades and Technicians | no | no reference at all |
| UNISON: The Public Service Union | no | choice of two political funds, but no opt-out |
| Unite the Union | no | separate tick box on supporting Labour Party on some forms |
| Unity | no | merged with GMB - referred to GMB joining page |
| University and College Union | no | political levy rate is listed at end, but no mention of opt-out |
| National Association of Colliery Deputies and Shotfirers (NACODS) | n/a | no reference to membership on website |
| National Union of Mineworkers | n/a | no reference to membership on website |

ANNEX 2: POLITICAL FUND EXAMPLES

Unison Political Fund

Campaign for Nuclear Disarmament

Unison is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Campaigning against Israel

In June 2015, UNISON launched a campaign to lobby councils to divest their Local Government Pension Schemes from companies linked with the Israeli occupation of Palestine (*A UNISON guide to pension fund engagement and divestment*, [link](#)).

Evidence political funded: Listed as an affiliated trade union to the Palestine Solidarity Campaign (*PSC website*, [link](#)). The PSC affiliation form requires a payment.

Hope Not Hate

‘Over the last 10 years we have successfully used our political fund to campaign for Hope Not Hate – from the defeat of the BNP to efforts to highlight the corrosive effect of UKIP’ (*Electoral Commission*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Unison*, accessed 2 February 2016, [link](#)).

Campaigns against Government cuts

‘In recent years UNISON has used the fund to campaign for devolution in Scotland, Wales, Greater London and the North of England, lobbying vigorously for effective staff protection. It assisted in the peace process in Northern Ireland. It has also been used in campaigns against cuts, privatisation and attacks on the National Health Service and local government. It has funded a campaign against the BNP in the local and European elections’ (*Political Funds Fact Sheet*, accessed 3 February 2016, [link](#)).

Unison: Campaign against housing sales

‘Much of the high profile political campaign work you see from UNISON is paid for by the GPF. But it’s not just the big things that the GPF funds. All sorts of national and local projects

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and campaigns benefit from receiving funding this way. These include: ... Campaigns against council housing sell-off.' (*Unison South West*, accessed 3 February 2016, [link](#)).

Unite Political Fund

Stop G4S

'Recently, Unite members in the Police Service were threatened by plans to privatise their jobs. Front-line police staff could be outsourced to G4S. Disastrous for jobs, terms and conditions – but also for the public as policing is weakened – Unite campaigned against this. We polled the public. We organised demonstrations. We made it an issue during the Police Commissioner elections, asking candidates to sign a pledge against privatisation. We asked members to send postcards to candidates. We won. The plans to sell off the service were abandoned. Without a Political Fund this would be illegal' (*Unite the Union PFB Activists Guide*, accessed 3 February 2016, [link](#); *Stop G4S campaign page*, accessed 3 February 2016, [link](#)).

Campaigning against Israel

In July 2014, Unite resolve to campaign for boycott of goods produced by Israeli settlements and divest from any financial holdings in any companies or funds linked to the settlements (*Unite press release*, 11 July 2014, [link](#)).

Evidence political funded: Listed as an affiliated trade union to the Palestine Solidarity Campaign (*PSC website*, [link](#)). The PSC affiliation form requires a payment.

Hope not Hate

'Unite is committed to...link with a support the campaigns by HOPE not Hate and Unite Against Fascism' (*Unite Policy Conference*, 2 February 2016, [link](#)).

'In Barking, east London, in 2010, the extreme right BNP was waging a well-resourced campaign to win a Parliamentary seat for their leader Nick Griffin. Unite believed that a racist, Hitler-supporting party would be bad for our society and communities, bad for Barking and bad for our members. We campaigned against the BNP, mobilising our activists, and defeated Nick Griffin. This meant spending small amounts of money from the Political Fund to support the campaign. We could not mount this fight against racism if as a union we had not previously voted Yes to a Political Fund' (*Unite the Union PFB Activists Guide*, accessed 3 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Unite Policy Conference*, 2 February 2016, [link](#)).

Save our NHS

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Unite campaign against ‘the privatisation of our NHS, The Health and Social Care Act [which] has unleashed chaos into the health service. A full competitive market is trampling on cooperation and fragmenting service delivery, paving the way for private companies to cherry pick the most profitable treatments’.

Unite have produced a top tips sheet on how to lobby MPs on the Health and Social Care Act and NHS privatisation. Their stated aims are to get members to lobby MPs to ‘publicly pledge to back an NHS free from profit’ and to ‘Pledge to raise the profile of the Unite Save our NHS campaign in the Houses of Parliament by challenging the secretary of state and by raising concerns of their constituents’ (*Unite the Union Website*, accessed 2 February 2016, [link](#)).

Evidence politically funded: ‘Without a Political Fund, Unite can do nothing to defend our NHS’ (*Unite the Union Political Fund Guide*, accessed 3 February 2016, [link](#)).

Stop Benefit Sanctions

Unite coordinated protests, created a twitter campaign and launched a digital campaign seeking out banning consecutive sanctions. They created a petition against the government and issued a guide for members encouraging them to challenge sanctions (*Unite the Union*, accessed 2 February 2016, [link](#)).

‘How serious would it be if we lost our political fund? We would be barred from spending any money at all on national campaigning activity which criticises the government of the day. Much of the campaigning we currently take for granted would no longer be permitted’ (*Unite the Union Political Fund Guide*, accessed 3 February 2016, [link](#)).

Stop TTIP

Unite and USW [a US union] formed a group called Workers Uniting in 2008 calling for the TTIP to include a tax on financial transactions to support social programs. The statement also demands that the European Works Council directive, chemical safety standards, and other European social legislation be expanded to include American workers (*Workers Uniting*, accessed 2 February 2016, [link](#)).

Campaign for Nuclear Disarmament

The following UNITE unions are affiliated - North West Region, Unite London and Eastern Region and Unite North East, Yorkshire and Humberside have also affiliated. (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Conservative Party—written evidence (TUP0023)

CLASS (Centre for Labour & Social Studies)

In 2014-15, UNISON donated over £1,000 to CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

GMB Political Fund

‘GMB is required to have a political fund and members understand this is so that the union can campaign collectively on the issues important to them like NHS, rights at work, housing, pensions and other political and economic priorities’ (*GMB Newsroom*, 9 July 2013, [link](#)).

Hope not Hate

‘GMB is proud to stand together with...our colleagues at anti-racism organisation Hope not Hate’ (*GMB Website*, 9 December 2015, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *GMB Website*, 9 December 2015, [link](#)).

Campaigning against Israel

In July 2013, the GMB voted to support boycott and divestment initiatives against Israeli settlements, and banned its members from visiting Israel on delegations organised by the Trade Union Friends of Israel ([link](#)).

Evidence political funded: Listed as an affiliated trade union to the Palestine Solidarity Campaign (*PSC website*, [link](#)). The PSC affiliation form requires a payment.

CLASS (Centre for Labour & Social Studies)

In 2014-15, GMB donated over £1,000 to CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

National Union of Teachers Political Fund

Hope not Hate

Conservative Party—written evidence (TUP0023)

‘This is the first general election at which the Union has a political fund and can explicitly campaign against the British National Party (BNP). At these elections there is a real danger that the BNP could take control of at least one local council and win their first parliamentary seat. For that reason we are using members’ contributions to the political fund to help support the work of Hope not Hate’ (*Teachers*, 2 February 2016, [link](#)).

Evidence politically funded: (*General Election 2015 Third Party Returns*, accessed 2 February 2016, [link](#); *Teachers*, 2 February 2016, [link](#)).

Campaign for Nuclear Disarmament

NUT is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

CLASS (Centre for Labour & Social Studies)

In 2014-15, NUT donated over £1,000 to CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

Communication Workers Union Political Fund

‘These are just some of the campaigns made possible by our political fund:

- Save Our Royal Mail
- Closing the Loopholes – Justice for Agency Workers
- CWU ‘Bite-Back Campaign’
- Keep The Post Public Coalition Delivering’

(*CWU CCTV*, accessed 3 February 2016, [link](#)).

Campaign for Nuclear Disarmament

CWU is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Conservative Party—written evidence (TUP0023)

CLASS (Centre for Labour & Social Studies)

CWU funds CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

Fire Brigade Union Political Fund

‘We need our political voice and our political fund to campaign effectively on:

- Attacks on our pensions
- Pay and attacks on pay
- Safety laws and standards
- Cuts or investment in our service
- Employment rights and compensation for those killed or injured
- Fire and rescue legislation and regulations ‘

(*FBU Political Fund*, accessed 3 February 2016, [link](#)).

No to Police & Crime Commissioner takeover

The campaign insists that ‘Firefighters provide a humanitarian service, they are not agents of the state nor are they law enforcers. Firefighters play a neutral role in our communities’ and produced literature advising members on how best to lobby their MPs (FBU Website, accessed 2 February 2016, [link](#)).

Campaign for Nuclear Disarmament

FBU is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

CLASS (Centre for Labour & Social Studies)

FBU funds CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

TSSA Political Fund

Campaign for Nuclear Disarmament

Conservative Party—written evidence (TUP0023)

TSSA is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

CLASS (Centre for Labour & Social Studies)

In 2014-15, TSSA donated over £1,000 to CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

ASLEF Political Fund

Campaign for Nuclear Disarmament

ASLEF is nationally affiliated with the CND (*Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *Campaign for Nuclear Disarmament*, accessed on February 2, 2016, [link](#)).

CLASS (Centre for Labour & Social Studies)

In 2014-15, ASLEF donated over £1,000 to CLASS (*CLASS Online*, accessed 2 February 2016, [link](#)).

Evidence politically funded: (Electoral Commission, *General Election 2015 Third Party Returns*, accessed 2 February 2016; *CLASS Online*, accessed 2 February 2016, [link](#)).

12 February 2016

Simon Cramp—written evidence (TUP0034)

Simon Cramp—written evidence (TUP0034)

Via the portal re clause 10 and 11

I am a disabled person who is also a member of the a union

In answer to the question posed yes of course it will have a impact to the polticial parties . if if the bill is spossed to be so far

1. Why don't the current government cut or restrict heage funds as non guntree income
2. Prosiute all banks that provide funding to parities that have casue or are part of the banking fisco re the credit crunch
3. And finally that the tories with the labour party and other parties do get party funding but that special adviser are cut by 50 per cent for the next 30 years as the public should not have to pay for adviser when everyone else who is poor struggling

Simon cramp
15/02/2016

Sue Dockett—written evidence (TUP0015)

Sue Dockett—written evidence (TUP0015)

Whether you join a union and which union you join is a matter of choice. You can choose to join a trade union which is affiliated to labour, not affiliated or choose not to join a trade union at all. If you choose to join a union which is affiliated you can choose whether or not you want to pay into a political levy which goes to the Labour party.

Given the common knowledge of the link between trade unions it is not beyond the reasonable wit of someone considering joining to ask if any of their subs will be donated to Labour and what to do if not. I would suggest that when someone chooses to join a union that donates to the labour party it is reasonable to assume they are so doing in the knowledge that they may be donating to the Labour Party. The onus therefore reasonably shifts to the individual who feels strongly about that to ask how they can avoid doing so.

In the recent past 2 unions have disaffiliated from Labour with one of those recently choosing to re-affiliate. It is therefore clearly reasonably possible for members to choose to affiliate or disaffiliate or even to affiliate to another political party through the normal democratic decision making procedures of the union. Given that many union members don't vote Labour it cannot be said to be beyond the reasonable ability of members to disaffiliate their union or to affiliate to another political party.

My own union UNISON asks on the application form if they wish to opt in to the affiliated or general political fund. Why should these union members be required opt in again?

The reality of the situation is therefore:

1. There is no pressure from union members who do not support the Labour party to seek any legal changes to the status quo.
2. Union support for Labour is very transparent.
3. There are plenty of opportunities within the rules and procedures of unions for members who are not happy with a union's affiliation or lack of affiliation to a political party to achieve change.
4. There are no impediments for members wishing not have part of their subscription donated to Labour.
5. It is reasonable to presume where someone chooses to join a union affiliated to Labour and chooses not to opt out that they are feely assenting to a small part of their subs being used to support the Labour Party whether or not they would actually choose to make a donation by other means.
6. Where opt in arrangements already exist these should not be disturbed by legislation.

Given the reality of the situation there is no basis for the government and the law to intervene in internal union affairs in this way. It clearly is a piece of vindictive legislation aimed at undermining opposition to the conservative party. It has to be viewed in connection with the

Sue Dockett—written evidence (TUP0015)

Chancellor's decision on short funding which is again determined to undermine opposition to the government. As such it is an attack on our democracy. Should this legislation be passed it would become a stain on our parliament and democratic traditions.

I urge all peers, whatever their party affiliation or none, to use whatever means at their disposal to prevent this section of the TU Bill from becoming law.

11 February 2016

Electoral Commission—written evidence (TUP0030)

Electoral Commission’s role as regulator

1.1 The Electoral Commission is an independent regulator established by the UK Parliament in 2000, following the Fifth Report of the Committee on Standards in Public Life (CSPL). We want to see transparency in party and election finance, with high levels of compliance. The organisations and individuals that we regulate under the Political Parties, Elections and Referendums Act 2000 (PPERA) include political parties, non-party campaigning³⁸ organisations at elections, registered campaigners at referendums, and other political actors including individual members of political parties, holders of elected office, and associations of party members.

1.2 Our statutory functions under PERA include:

- receiving, analysing and publishing information about party donations and campaign spending
- advising those we regulate on how to comply with the law and what the rules mean for their campaigning plans
- monitoring compliance
- dealing with possible breaches of the rules

1.3 We also have responsibilities relating to the compliance of candidates at elections under the Representation of the People Act (RPA) 1983, but breaches are dealt with by the police.

1.4 This response to the House of Lords Select Committee on Trade Union Political Funds and Political Party Funding explains how PERA and our regulatory role relate to trade unions. We regulate donations given by trade unions to political parties and other organisations and individuals regulated under PERA. We may also regulate trade unions’ spending if they carry out election or referendum campaigns intended to influence voters and promote parties, candidates or outcomes (as set out in the Parts of PERA which cover non-party campaigning at elections or referendum campaigning).

Data on donations and campaign spending

1.5 We hold and publish data that is required to be submitted to us under PERA. Registered political parties are required to report to us about their donations, election campaign spending and annual accounts. We also publish information about campaign spending by non-party campaigners at elections and campaigners at referendums, and donations towards that spending. In addition, we publish records of donations given to regulated individuals, such as holders of elected office, and political party members and associations of party members.

³⁸ We use the term ‘non-party campaigner’ to describe individuals or organisations regulated under part 6 of PERA and referred to as ‘third parties’ in that Act.

Charts of relevant donations and spending

1.6 The Select Committee has sought information about trade unions' support for the Labour Party and on other kinds of political expenditure by unions. For the Committee's reference, the first charts in the appendix set out information about reported donations to political parties registered in Great Britain from trade unions and other types of donors. The other charts show reported donations to registered non-party campaigners from trade unions and information about reported campaign spending by trade unions at recent elections.

Further information available from the Electoral Commission website in visualisations and online registers

1.7 Further information about donations, loans, campaign spending and annual accounts regulated under PPERA can be accessed through our website. We publish a range of visualisations on our website. These interactive charts can be adjusted by the user to focus on particular campaigners, types of donors and date ranges.

- Overview charts of reported donations and loans to political parties are available at <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/donations-and-loans-to-political-parties/overview-of-donations-and-loans-since-2001>
- Overview charts of reported party campaign spending at previous elections are available at <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/political-party-spending-at-elections/details-of-party-spending-at-previous-elections>
- Overview charts of reported non-party campaigner spending at previous elections are available at <http://www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations/non-party-campaign-spending-and-donations-at-elections/details-of-non-party-campaign-spending-at-previous-elections>

1.8 All of this data is also available to view as itemised records through the PEF Online searchable register at <http://search.electoralcommission.org.uk/>

The regulatory requirements under PPERA

Donations and loans

1.9 PPERA places obligations on the recipients of donations and loans valued over £500, but not on the donor or lender. Examples of regulated donations include gifts of money or other property, sponsorship, subscription or affiliation payments and free or specially discounted use of property or facilities.

1.10 Registered political parties are only permitted to accept donations and loans from permissible UK-based sources³⁹. Other registered campaigners must follow similar rules in relation to the sources of donations towards their regulated campaign spending. Political parties must provide quarterly reports on donations and loans that they have received and accepted. Other registered campaigners must provide reports on funding towards their campaigns after the relevant election or referendum, and are required to submit reports before some polls. Donations given by trade unions could be accepted and reported under PPERA by political parties or by other regulated individuals or organisations, such as party members or another trade union registered as a non-party campaigner.

1.11 The Select Committee has sought information on how the proposed opt-in requirement for trade unions would compare with what other organisations are required to do if they make donations to political parties. Whilst PPERA does not currently place any obligations on the donor or lender, other types of legislation currently do place obligations upon donors. For example, company law requires public companies to seek shareholder consent in certain situations but this is not relevant to the Commission's remit and we do not receive or record details of whether donor companies are public or private.

1.12 The Political Parties and Elections Act 2009 included two provisions which would expand the requirements placed on political parties and add new responsibilities for donors under PPERA. It included a requirement for donors giving more than £7,500 to declare whether any other person has provided a benefit to them in connection with the donation. It also included a requirement for donors who are individuals giving more than £7,500 to declare that their tax liability in the current year will be determined on the basis that they are "resident, ordinarily resident and domiciled in the UK". The purpose was to prevent individuals who are not domiciled in the UK for tax purposes, but who would otherwise be permissible donors because they are on an electoral register, from making donations. These two provisions have not been commenced so they are not in force. We commented on the workability and enforceability of these proposed requirements in our 2013 Regulatory Review of Party and Election Finance on pages 40-41⁴⁰.

1.13 The changes proposed by clauses 10 and 11 of the Trade Union Bill would alter the working practice of trade unions, but do not appear to affect the obligations of any individual or

³⁹ Examples of permissible sources include individuals registered on a UK electoral register, UK-registered companies and UK-registered trade unions.

⁴⁰ A regulatory review of the UK's party and election finance laws: Recommendations for change, June 2013
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/157499/PEF-Regulatory-Review-2013.pdf

organisation that receives donations from trade unions and is required to report them under PPERA. The Bill does not propose any consequential changes to PPERA or the regulatory remit of the Electoral Commission. We do not therefore have any direct comments on the workability of the proposals. The Select Committee has also sought information on the potential impact of the clauses. To assist with assessing this, the charts in the appendix provide illustrations of donations given by trade unions and other donors.

Campaign spending

1.14 PPERA requires registered political parties that are standing candidates at elections to submit a spending return after the poll. It also requires non-party campaigners to register with the Electoral Commission if they intend to spend over specified sums of money on campaigning that can reasonably be regarded as intended to influence voters and affect the electoral success of political parties or candidates.

1.15 The following trade unions are currently on the register of non-party campaigners⁴¹:

- Communication Workers Union
- UNISON: The Public Service Union
- Union of Shop, Distributive and Allied Workers (USDAW)
- Fire Brigades Union
- GMB
- Unite the Union
- National Union of Teachers
- NASUWT The Teachers' Union
- Educational Institute of Scotland
- National Union of Rail, Maritime and Transport Workers

1.16 The Select Committee has sought comments about the proposed requirement in clause 11 of the Bill for unions to provide more details of their political expenditure in their annual accounts to the Certification Officer. Whilst we do not have any direct comments on the proposals relating to the Certification Officer, we note that trade unions are already required under PPERA to submit details of political expenditure that can reasonably be regarded as intended to influence voters and that costs over £20k in England or £10k in Scotland, Wales or Northern Ireland. We publish this information on our online registers.

1.17 The Select Committee may wish to note this regulation of trade union political expenditure under PPERA, if considering in the round the regulatory requirements placed on

⁴¹ Under PPERA, organisations included on the register of non-party campaigners may have registered in respect of campaign spending planned or incurred within the past 15 months, or in respect of spending that is intended in the future

trade unions. This is a relevant consideration whenever an organisation’s activity is subject to overlapping regulatory systems⁴².

The development of the party funding rules

1.18 The Select Committee has sought views on whether measures relating to party funding traditionally proceed only with the agreement of all parties. The Fifth and Thirteenth Reports of the Committee on Standards in Public Life (CSPL) present a summary of the major published reports over the past 40 years.

1.19 The Fifth CSPL report published in October 1998, included a brief summary of five reports about funding of political parties over the twenty five years prior to its own considerations⁴³. Several of these reports are referred to as cross-party or were undertaken by independent committees. The 1998 report led to the Political Parties, Elections and Referendums Act, which received Royal Assent in January 2000 and which established the UK’s regulatory system for party political finance and us as the Electoral Commission.

1.20 We contributed to the ongoing debate on the nature of the regulatory regime for political finance, through our 2004 report, *The Funding of Political Parties* and a set of principles we published in 2006 in the context of Sir Hayden Phillips’ review. The Hayden Phillips review of 2006 considered the case for introducing limits on party political donations, and led to cross-party talks which ended without agreement in 2007.

1.21 The PPERA regulatory system was strengthened in 2006 and 2009. The 2006 reforms were originally proposed by the Constitutional Affairs Select Committee and were followed by the Electoral Administration Act 2006, which made loans subject to the same transparency rules as donations, whether or not made on commercial terms. In 2007, the CSPL published its Eleventh Report, recommending changes to our regulatory role and powers and these were implemented through the Political Parties and Elections Act 2009. These changes gave us access to new investigatory and sanctioning powers in respect of PPERA offences from December 2010, to help us to secure compliance particularly in respect of breaches of the law that do not warrant criminal prosecution⁴⁴.

1.22 The CSPL’s Thirteenth Report “Political party finance: Ending the big donor culture” was published in 2011. We contributed to this review by commenting on our experience as the regulator and supporting the CSPL secretariat with analysis of financial data. The CSPL’s report proposed a package of measures to meet its aim by “restricting the amount any individual donor can give, reducing the amount the parties need to raise by limiting their expenditure,

⁴² Prior to the May 2015 UK Parliamentary general election and the May 2016 elections to the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly, the Electoral Commission has worked with trade union representative bodies and with charity regulators and charity representative bodies to advise on the practicalities of organisations being regulated by two regulatory systems

⁴³ CSPL’s Fifth Report, pages 19-20: “Previous reports on funding political parties”
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf

⁴⁴ Electoral Commission submission to CSPL inquiry into ending the big donor culture, October 2010,
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0014/106142/Party-funding-The-Electoral-Commissions-submission-to-the-Committee-on-Standards-in-Public-Life.pdf

[and] providing funds from a source which does not risk improper influence, meaning the public purse”⁴⁵.

1.23 Following the publication of the CSPL’s Thirteenth report, it was reported that Deputy Prime Minister Nick Clegg launched talks with representatives of the Conservative, Labour and Liberal Democrat parties”⁴⁶. These talks began in 2012 and continued into 2013 but did not reach agreement.

1.24 In July 2013, the Coalition Government introduced the Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill in Parliament. Part 2 of this Bill proposed changes to the regulation of non-party campaigners originally established by PPERA in 2000. The Bill did not undergo pre-legislative scrutiny but was considered by a number of Parliamentary committees during its passage through Parliament. The Act was passed in January 2014 and included a provision for a statutory post-election review to report not more than 18 months after the date of the first UK parliamentary general election⁴⁷. Lord Hodgson of Astley Abbots has been appointed to carry out this review and is expected to report in 2016.

1.25 On 22 July 2015, Lord Bew the current Chair of the CSPL, wrote to the Conservative Party leader and Prime Minister David Cameron and leaders of five opposition political parties. Following the 2015 UK Parliamentary General Election, his letter called for “all leaders of the main political parties to re-convene those cross party talks to look again at the reforms needed to bring greater integrity into the funding of our political parties⁴⁸. Lord Bew’s letter called for a wider range of parties to be involved in future talks than has previously been the case.

⁴⁵ CSPL Thirteenth Report: Political Party Finance: ending the big donor culture, November 2011

<https://www.gov.uk/government/publications/political-party-finance-ending-the-big-donor-culture>

⁴⁶ BBC News, “New party funding talks begin” 11 Apr 2012

<http://www.bbc.co.uk/news/uk-politics-17677195>

⁴⁷ Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act, s39

<http://www.legislation.gov.uk/ukpga/2014/4/section/39/enacted>

⁴⁸ Letters to the leaders of the Conservative Party, Labour Party, Liberal Democrat Party, UK Independence Party, the Green Party and the Scottish Nationalist Party <https://www.gov.uk/government/publications/cspl-chairs-letters-to-party-leaders-calling-for-reform-of-political-party-finance>

Electoral Commission—written evidence (TUP0030)

Appendix Chart 1

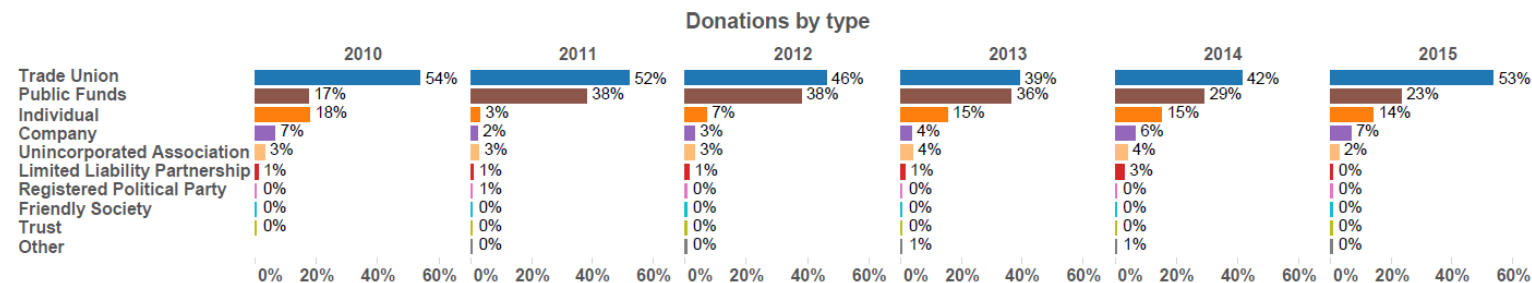
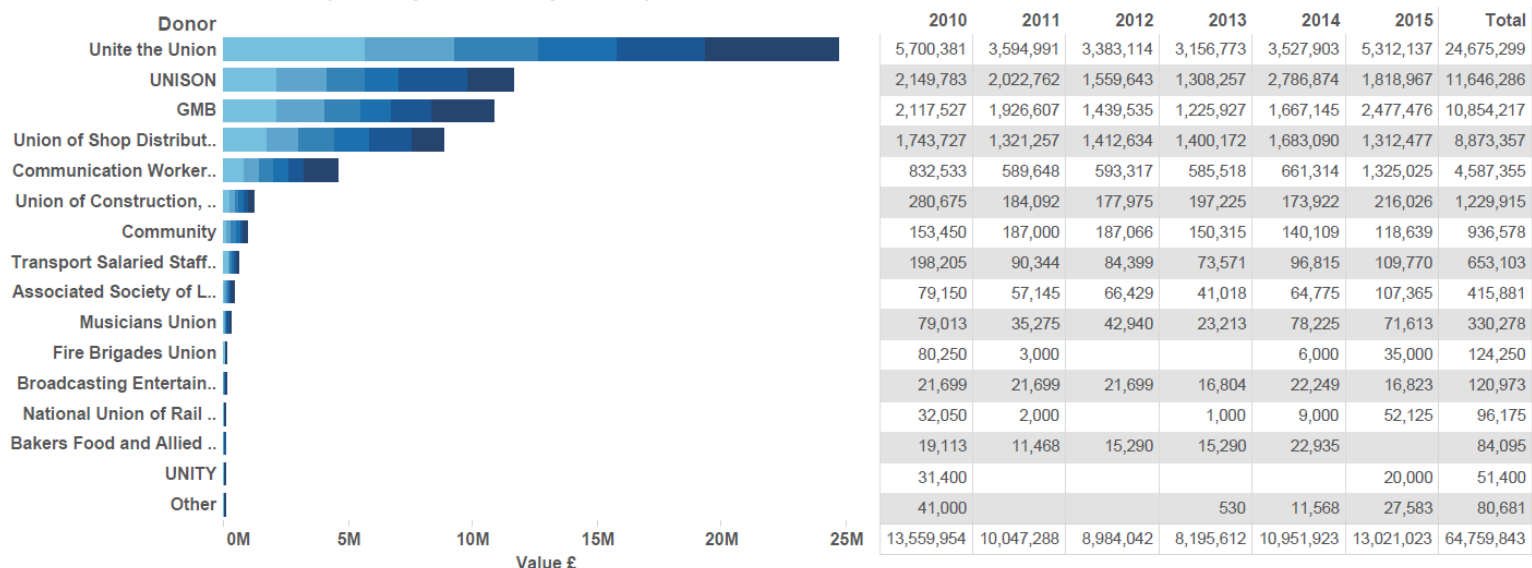


Year donation accepted
2010 to 2015

date published: 12 February 2016

2010 2011 2012 2013 2014 2015

Donations from trade unions reported by Labour Party as accepted in 2010-2015*



*Donations accepted by parties in Quarter 4 (Oct-Dec 2015) are not represented in this chart because the data has not been published yet

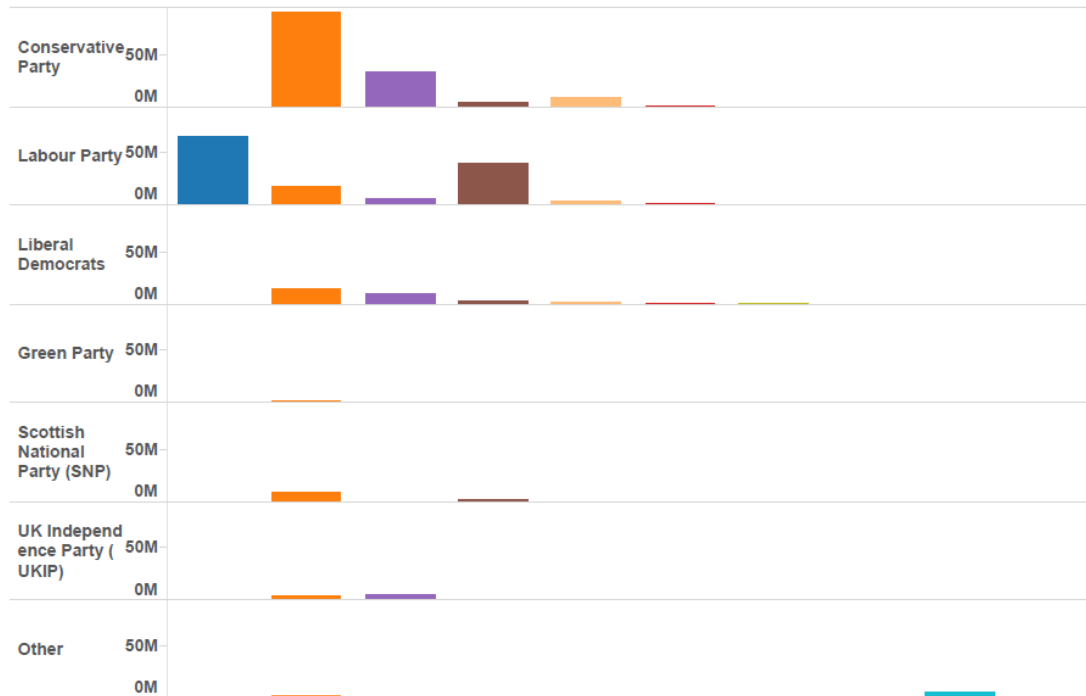
Electoral Commission—written evidence (TUP0030)

Chart 2

date published: 12 February 2016



Donations reported by registered political parties as accepted in 2010-2015*



| | Trade Union | Individual | Company | Public Funds | Unincorporated Association | Limited Liability Partnership | Trust | Registered Political Party | Friendly Society | Other | Total |
|-------------------|-------------------|--------------------|-------------------|-------------------|----------------------------|-------------------------------|------------------|----------------------------|------------------|----------------|--------------------|
| Conservative P.. | | 89,696,496 | 33,538,508 | 3,846,685 | 8,600,712 | 1,101,634 | 313,616 | | 19,500 | 47,253 | 137,164,403 |
| Labour Party | 64,759,843 | 17,110,742 | 6,717,505 | 39,990,459 | 4,308,513 | 1,747,389 | 94,530 | 498,272 | 174,193 | 386,446 | 135,787,893 |
| Liberal Democr.. | | 15,137,105 | 9,504,650 | 3,416,531 | 2,009,954 | 770,469 | 1,496,354 | | | | 32,335,062 |
| Green Party | | 1,700,239 | 77,749 | 347,854 | 7,307 | | | | | | 2,133,149 |
| Scottish Nation.. | | 8,566,194 | 96,287 | 2,379,368 | | | | | | | 11,041,849 |
| UK Independen.. | | 3,969,376 | 5,073,274 | 179,739 | | 151,062 | | | | | 9,373,451 |
| Other | 55,515 | 2,888,505 | 312,289 | 1,029,995 | 11,099 | | 26,758 | 81,200 | 5,884,796 | 12,000 | 10,302,156 |
| Total | 64,815,358 | 139,068,658 | 55,320,262 | 51,190,631 | 14,937,585 | 3,770,554 | 1,931,257 | 579,472 | 6,078,489 | 445,699 | 338,137,964 |

*Donations accepted by parties in Quarter 4 (Oct-Dec 2015) are not represented in this chart because the data has not been published yet

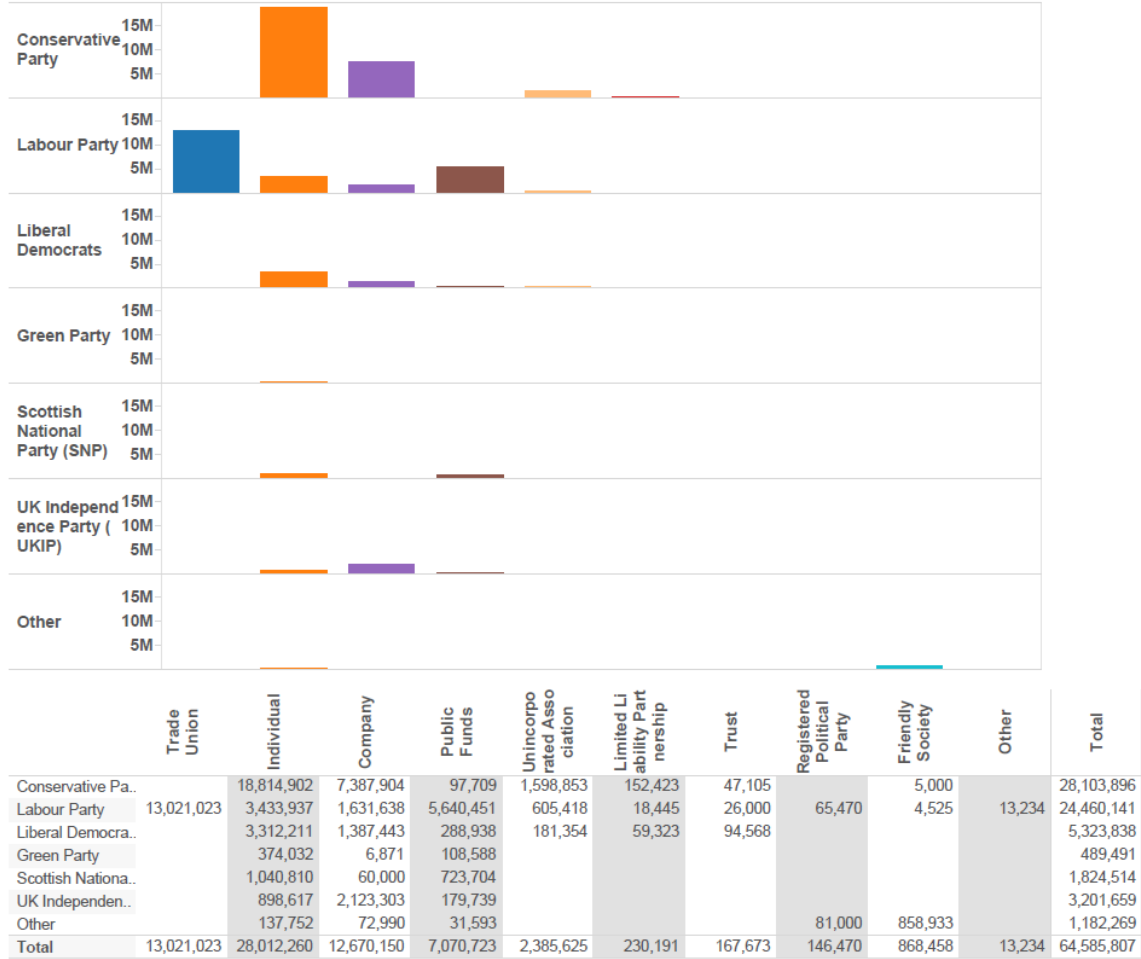
Electoral Commission—written evidence (TUP0030)

Chart 3



date published: 12 February 2016

Donations reported by registered political parties as accepted in 2015*



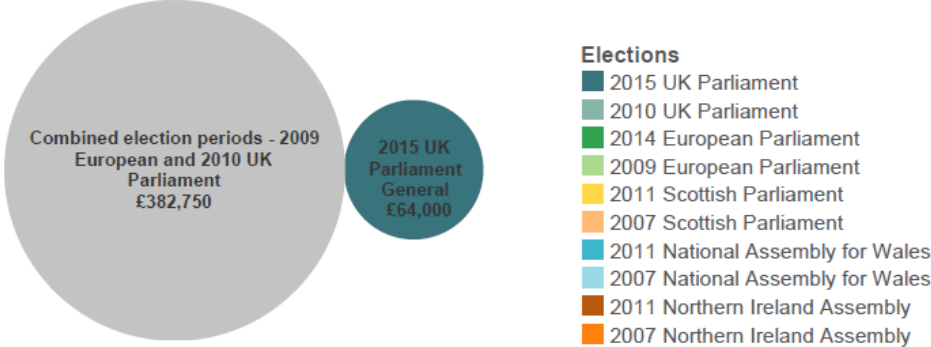
*Donations accepted by parties in Quarter 4 (Oct-Dec 2015) are not represented in this chart because the data has not been published yet

Chart 4



date published: 12 February 2016

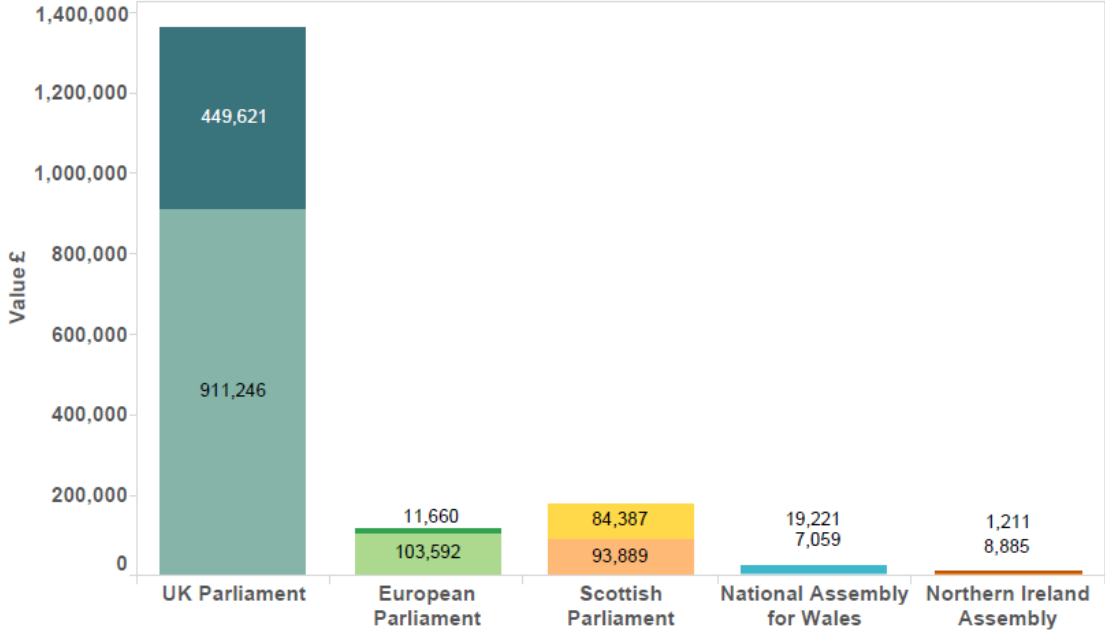
Donations from trade unions reported by registered non-party campaigners as accepted prior to recent elections



Donations were reported by registered non-party campaigners
 Hope Not Hate, Unite Against Fascism, Fabian Society and Centre for Labour & Social Studies (CLASS)

Chart 5

Campaign expenditure reported by trade unions registered as non-party campaigners for elections regulated under PPERA**



** Political parties, Elections and Referendums Act 2000

Electoral Commission—written evidence (TUP0030)

Electronic voting (e-voting) is not used for major statutory elections and referendums in the UK. Electors at UK elections, including United Kingdom general elections, elections to devolved parliaments and assemblies, elections to the European Parliament, local elections, mayoral elections and Police and Crime Commissioner elections may vote in person at a polling station, by post or by proxy, but not online.

Some organisations, including certain mutual organisations and membership organisations, do, however, allow voting using electronic channels. Internationally, 14 countries “have used internet voting for binding political elections or referendums, but Estonia is the only one to have introduced permanent national internet voting.”^[1]

The Commission believes that voter choice is important to encourage participation. However, the security of any proposal to introduce e-voting would need to be properly assessed before any decision is taken to introduce it. That doesn’t mean that e-voting shouldn’t be a part of any coherent modernisation strategy.

Any modernised electoral system needs to be more reflective of how society engages with a range of other public services, and e-voting should be part of that conversation. Electronic and other new ways of voting have the potential to increase participation in the democratic process, and may also improve the efficiency of the administration of elections.

In research published in 2003, the Commission found that there was significant demand for electronic voting. The research showed that more than half (55%) of English adults said that being offered e-voting in some form would encourage them to vote at the next local election. And the youngest group - 18-24 year olds - were most keen to try the new methods with three-quarters saying that e-voting would encourage them to participate.

Voting via the internet was seen as most likely to encourage participation (41%) followed by text messaging (33%), electronic kiosks (30%) and digital TV (26%).

However, it is clear that a number of barriers to nationwide e-voting remain. In 2007, the Government ran a range of electoral modernisation pilots at the local elections, including e-voting. The Commission reported in May 2007^[2] on all the electoral pilot schemes and found that, while the pilots had, on the face of it, been delivered successfully, there was an unnecessary high level of risk associated with all pilots and the levels of testing, security, reliability and quality assurance adopted were insufficient. There was a general lack of transparency around the technology and its use.

Feedback on the e-voting pilots found that the internet voting channel was particularly well accepted by those who used it, with 87% describing the internet voting process as easy. Approximately 73% of all those polled and 87% of those who used internet voting wanted to see the provision continued at some or all elections in the future.

^[1] Digital Democracy Commission (2015) *Open Up! Report of the Speaker's Commission on Digital Democracy*, p. 60.
<http://www.digitaldemocracy.parliament.uk/documents/Open-Up-Digital-Democracy-Report.pdf>

^[2]http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0008/13220/Electronicvotingsummarypaper_27194-20114_E_N_S_W_.pdf

Electoral Commission—written evidence (TUP0030)

There were a greater number of usability problems with telephone voting. Although 67% described the telephone voting process as easy, around one third (32%) said they found the experience difficult. Nonetheless, approximately 66% of all electors polled and 85% of those who used telephone voting wanted to see the provision continued at some or all elections in the future.

Candidates and agents, however, raised a number of concerns regarding e-voting. The main issue was that the internet voting systems were not open to scrutiny and relied almost entirely on trust.

The Commission's report also highlighted the need, for any pilot schemes:

- to ensure that the security and reliability of the remote e-voting process is sufficient
- to increase the transparency of the solutions adopted to ensure continued stakeholder acceptance of the technology
- for a centrally managed accreditation and certification process to provide independent assurance of e-voting solutions and to enable local authorities to make an informed choice regarding the use of appropriate technology

We continue to call on the Government to bring forward proposals for a comprehensive electoral modernisation strategy, setting out how the wider use of technology in elections will ensure the achievement of transparency, public trust and cost effectiveness.

12 February 2016

Electoral Reform Society—written evidence (TUP0007)

Summary of Electoral Reform Society's views:

- The proposed 'opt-in' process for trade union members contributing to political funds is only one piece of the puzzle of party funding reform. Without the other pieces, this measure risks starting a tit-for-tat war between parties, thereby destabilising the party system, damaging the proper functioning of government, and worsening public perceptions of politics, parties and the way parties are financed.
- We would only support the principle of an opt-in process on democratic grounds if measures to tackle the concentration of individual, company and business group donations are introduced at the same time.
- Reforming the party funding system requires a whole range of measures and a transitional timetable, as indicated by the Committee on Standards in Public Life report on party funding. Tackling one aspect of this issue without tackling the rest makes little sense, both in policy and political terms.
- We are concerned that clauses 10 and 11 as currently drafted would create unnecessarily high barriers for those trade union members who wish to opt into political funds. The requirement to give written notice as opposed to opting in through more traditional means – such as use of a tick box – could decrease the number of people participating in our democracy through donations to parties.

Will clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

1. Clause 10 would make it unlawful to require a member of a union to contribute to a political fund unless he or she has indicated in writing a willingness to do so. This would change political fund contributions from an opt-out to an opt-in arrangement. The opt-in agreement would expire after five years, subject to the possibility of renewal.
2. Clause 11 would require unions to publish details of political expenditure in their annual returns if this expenditure exceeds £2,000 per annum. The annual return must detail the amount spent on political objects and the recipient (s) of each item of expenditure.
3. Clauses in the Trade Union Bill which introduce a stringent opt-in process to the political fund will have a significant impact on the finances of political parties – but importantly, not to all parties equally. We agree that an opt-in is an important part of cleaning up party funding, but it is one that should be embedded within wider reforms that deal with party funding equally across all parties and ensure a stable and sustainable footing for party funding in the future.
4. There are serious problems with our system for funding political parties, and these need to be addressed. In our most recent polling research, 72% of the public agreed or strongly agreed that the system of party funding is 'corrupt and should be changed'⁴⁹. However, a unilateral approach to reforming party funding not only undermines the principle of seeking cross-party agreement on such matters, but is likely to lead to retributive attacks on party

⁴⁹ BMG polling for ERS, sample 1504, conducted between 22nd – 27th October 2015

funds, damaging public faith in the process and creating a race to the bottom on party funding.

5. Parties are essential for our democracy. They require sustainable and stable funding to perform multiple functions, from engaging citizens in democratic participation to providing effective scrutiny of governments. It is in no party's interest to undermine these functions by creating a hole in one party's finance. The Electoral Reform Society has long argued that a modest and sensible public funding regime is essential to meet any shortfall from measures to reduce large donations, and that transitional arrangements are necessary. It is not clear from these proposals how the likely impact on funding will be mitigated to ensure that stable future for political finance.

6. Donating to a political party is an important and valuable political act. The Hansard Society's most recent Audit of Political Engagement found that 3% of respondents had donated to a political party in the last year but that 8% were willing to do so if they felt strongly about an issue⁵⁰. We support changes to party funding that would encourage greater and more democratic participation. However, whilst an opt-in process has the potential to improve political engagement around one aspect of party funding, failure to address the huge influence of large individual, company and business group donations at the same time creates a dangerous precedent. Large individual donations – those made by just a handful of citizens – make up a significant proportion of party funding. Donations over £250,000 accounted for a significant part of the three major parties' funds between 2001 and 2010, yet these sums came from just 224 individual donations over the decade. What is more, these 224 donations came from just 60 different 'donor groups' – related individuals and companies as well as trade unions⁵¹. We know that the public are concerned about the role of big money in politics. Our focus group research found that voters readily assume that donors expect something in return for their money and that the system smacks of corruption⁵², but their concern is focused on the influence of large individual donations.

7. Whilst we support the principle of an opt-in within the context of other party funding reforms, we are concerned that the nature of the opt-in could have a significant impact. The Committee on Standards in Public Life report recommended that individual members should have to 'make a positive decision to contribute' on the basis of full information (p.66). The requirement for written notice is an expansive interpretation of 'positive decision' and sets a high bar for opting-in, which is likely to have a significant impact on the numbers of people who donate in this way. We are against any opt-in measures which create unnecessary barriers to payments which constitute a positive form of political engagement.

If the two clauses will have such an impact, how would that relate to the recommendations of the CSPL report and/or party funding reform?

8. The recommendations of the CSPL report represent a package of measures that ensure equality across parties and a logical phasing of reforms. We have tested these reforms in our

⁵⁰ Hansard Society, (2015) Audit of Political Engagement 12.

⁵¹ S, Wilks-Heeg and S. Crone research <http://blogs.lse.ac.uk/politicsandpolicy/just-50-%E2%80%99donor-groups%E2%80%99-have-supplied-over-half-of-the-conservative-party%E2%80%99s-declared-donation-income-in-the-last-decade-a-fact-disguised-by-legal-%E2%80%98fame-avoidance/>

⁵² ERS focus group research conducted by Greenberg Quinlan Rosner, January 2014

research with voters across the political parties⁵³. We found significant support for a donations cap which applies across the board. Support for this reform withstood counter-argument. 67% of those we subsequently polled think no individual should be able to donate more than £5,000⁵⁴. Likewise, voters believe parties should try to reduce their campaign spending. Our focus groups also revealed that funding imbalances between parties are seen as unfair. In sum, our research supports the balance of measures suggested in the CSPL report. It also demonstrates that a unilateral approach affecting one party and failing to address the larger question of major donations across the board is out of step with what the public want to see.

9. ERS supports a package of reforms including a universal donations cap, lower spending cap and review of existing public funding arrangements. For further details of our work on party funding, view our [latest report](#).

9 February 2016

⁵³ Ibid

⁵⁴ ERS poll of 1,402 people by Greenberg Quinlan Rosner (24-27 February 2014)

Electoral Reform Society—supplementary written evidence (TUP0017)

This note provides further details of the ERS commissioned research on public attitudes to party funding referenced in our evidence submission dated 9th February 2016.

In 2014 the Electoral Reform Society, in partnership with the Joseph Rowntree Reform Trust, commissioned Greenberg Quinlan Rosner to conduct research into public attitudes towards party funding reform.

Focus groups were held in January 2014 with swing-voters with a mixture of current voting intentions. The focus groups tested attitudes towards party funding reforms including donations caps and public funding.

The following is a summary of the key findings:

The focus groups have demonstrated that there is a surprisingly receptive and robust audience for party funding reform. Voters readily accept the argument that politics is being bought by ‘big money’ donations and they support measures to limit this.

Donations cap

Voters assume that ‘big money’ donors have an expectation of something in return and believe the system smacks of corruption. They support the idea of a donations cap and remain supportive even in the face of counter-arguments. The level of the cap is not a factor in their support though some felt £5,000 was too low.

Public funding

Whilst voters are not convinced that the money lost through a donations cap needs replacing (they think parties should get by on less), they were surprised to hear that actual spending by parties is just in the tens of millions, believing it to be much higher. Voters also see funding imbalances as unfair, favouring the big guy. Voters view party diversity as important for politics. Whilst they may never vote for them, supporters of established parties see smaller parties and Independents as valuable and want a more level playing field.

Whilst there is a fear that additional public funding could be at their expense, they are receptive to the idea of redistributing existing state funding. One policy which received widespread support was that of reforming the election postage subsidy, consolidating information into a single book to save on costs which could be used elsewhere.

Follow up polling⁵⁵ found:

- **75% of the public think ‘big donors have too much influence on political parties’**

⁵⁵ GQRR poll of 1,402 people (24-27 February 2014)

Electoral Reform Society—supplementary written evidence (TUP0017)

- **61% of the public think ‘the system of party funding is corrupt and should be changed’**
- **41% of the public think ‘a state funded political system would be fairer than the one we currently have’**

11 February 2016

Fire Brigades Union, NASUWT, Union of Shop, Distributive and Allied Workers—oral evidence (QQ 60–66)

Fire Brigades Union, NASUWT, Union of Shop, Distributive and Allied Workers—oral evidence (QQ 60–66)

Mr Tony Dale, Deputy Head of Research and Economics, Usdaw, **Ms Ruth George**, Political Officer, Usdaw, **Mr Matt Wrack**, General Secretary, Fire Brigades Union, and **Mr Gareth Young**, National Official (Campaigns, Policy and Communications), NASUWT

Q60 The Chairman: Thank you very much for coming. It would be helpful if you could introduce yourselves, and follow up with any introductory statements that you would like to make.

Mr Tony Dale: My name is Tony Dale. I am the deputy head of research at Usdaw.

Ms Ruth George: I am Ruth George, political officer at Usdaw.

Mr Matt Wrack: I am Matt Wrack, general secretary of the Fire Brigades Union.

Mr Gareth Young: I am Gareth Young, national official for campaigns, policy and communications at the NASUWT.

The Chairman: Do any of you wish to make an opening statement?

Mr Tony Dale: If I may speak on behalf of Usdaw for a couple of minutes, I would like to thank you for the invitation to give oral evidence today. We welcome the opportunity to share with you some of the information that we have. We are very concerned that there has been no proper consultation on this part of the Bill—this is the first proper consultation that we have had—and we have had no opportunity to comment on the impact assessment.

USDW has 440,000 members. We have a political fund of 420,000 members. The last political fund ballot voted 93% in favour of keeping the political fund. Alongside the whole discussion about opting in and opting out, which obviously we have been following, we want to flag up a couple of issues and the fundamental problems, which are quite often practical problems, with the mechanism outlined in the proposal. At the moment, new members sign up to the union when they meet shop stewards in the workplace and start a job. That is most commonly when people join a trade union. At that point there is a statement on the membership form explaining opt-out. The discussion about opting out takes place with the shop steward at that point.

We are very concerned by the suggestion that there should be a mail-out. Increasingly, we find that mail-outs advertising anything are a very poor way of communicating with the membership. Our response in mail-outs for elections is disappointing. In postal ballots we have

Fire Brigades Union, NASUWT, Union of Shop, Distributive and Allied Workers—oral evidence (QQ 60–66)

turnouts of about 5%, which raises very serious concerns that the whole process of opting in or opting out will be fundamentally damaged by the society-wide issue that people are not very proactive in responding to their mail. We are extremely concerned that the proposals as outlined will result in the decimation of our political fund, not because people are not happy with the fund or because there is general disillusionment with it but because they will not respond to the mail-out that would take place every five years.

Usdaw is unashamedly a strong supporter of the Labour Party, and has been for a very long time. We give hefty funding to the Labour Party because we think that a political party linked to trade unions is important. Currently, we give about £1.9 million in donations, affiliations and conference delegations to the Labour Party. We see that being decimated—being reduced to less than 10% of the current amount we contribute to the party. On a broader level, we feel that will place serious question marks over the funding of the opposition party in this country and over democracy and how it operates.

The Chairman: You are signing up to the notion that you will get only 10% of what you are getting at the moment.

Mr Tony Dale: According to the risk assessment under which we are operating, we think we could get anywhere between 5% and 10%, and we can say why we have come to that explanation shortly. We think that the measures are disproportionate and that there is a whole issue about fairness. On renewal every five years, if we are looking at an initial drop in the political fund to 10%, we could spend one year's political fund just mailing everybody in the union asking them to sign up to the political fund. We would end up having to spend more and more of our political fund just communicating with members, as opposed to funding political activity. The impact would be disproportionate.

The Chairman: You are saying that the cost of what you would be required to do is a high proportion of the existing income of the political fund.

Mr Tony Dale: It would be a high proportion of what we anticipate the political fund would become. For instance, we would expect an initial response of about 5% to the political fund through a mail-out. Through organiser activity, we would hope to push that up to 10%. That would mean that the political fund was reduced to 10% of its current size. As the clause is currently outlined, every five years we would mail all the members asking them whether they wanted to opt in to the political fund. That is a mail-out to 440,000 members. We believe that

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would cost about £200,000, which would be one year's fund. The calculations are outlined in the document we submitted yesterday.

The Chairman: Unfortunately, we have not had a chance to read it yet.

Mr Tony Dale: The end result is that the political fund will be effectively dismantled. We will not be able to have a say. We will not have a political fund to affiliate to the Labour Party and to campaign, because we will have to spend more and more money just communicating with members.

The Chairman: Are there any other opening statements?

Mr Matt Wrack: The Fire Brigades Union represents the vast majority of firefighters across the UK. The perspective that we can bring is that of a smaller or medium-sized union, and I would argue that additional problems arise for us; for example, we have far fewer staff than other colleagues. Echoing one of the points that my colleague has just made, we very much rely on volunteers—firefighters who do work on behalf of the union—because the union is a voluntary organisation of workers who come together to organise themselves to better their interests. We are very much reliant on our lay officials and not full-time staff to do the work required.

We are dealing with an industry with some 2,000, mainly small, workplaces, which might, for example, be a fire station of five people on a Scottish island, so I highlight the need to engage in face-to-face work. The impact of the whole process on us is a huge resource-intensive challenge.

I picked up some of the points made in the earlier session about awareness of the rules and the right to opt out. There is a very high level of awareness of the union's rules among our members, and we can bring to the session today our experience of how members are actually recruited to the union rather than the perceptions that you may have from simply reading websites—again reflecting my colleague. You cannot join the Fire Brigades Union online. There is a membership form online, but you have to apply and go through a process to join. All recruitment is done face to face, and our reps who recruit people explain the process in detail. For example, the contribution rates are clearly set out on our website; the political fund is set out as a specific rate within the contribution, so any member applying to join will be very aware of the different rates of contribution.

Mr Gareth Young: The NASUWT represents just under 300,000 teachers across the UK. We do not affiliate to any political party, so our political fund is used in other forms of campaigns,

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including recent anti-racism campaigns, and campaigns on child poverty, the cost of education, SEN and so on, which are perhaps very different campaigns from some of the others. The amount for the political fund is about £1.

The Chairman: A pound a year.

Mr Gareth Young: Yes. Every member is sent a membership form and with that they are given details of what the cost would be with and without the political fund, so it is very clear.

The Chairman: What is the firefighters' level of political contribution?

Mr Matt Wrack: Our contribution is 16p a week. Our rulebook is based on people being paid weekly, fortnightly or monthly. The rules are still based on people paying weekly.

The Chairman: Is that £8 a year?

Baroness Dean of Thornton-le-Fylde: Is that for the political fund?

Mr Matt Wrack: The political fund is 16p a week.

Mr Tony Dale: For Usdaw, it is 10p a week to the political fund.

The Chairman: It is £8 and £5. Ms George?

Ms Ruth George: I am from Usdaw as well, so obviously I concur with my colleague's statement.

Q61 Lord Sherbourne of Didsbury: As you know, we are trying to get evidence of what the impact of the changes will be. One of the areas that we are looking at is the behaviour of union members, because how they react to different systems is important. I would like to put my question initially to Usdaw; the other unions may want to come in as well. If the same very transparent and clear information that you give your members about how they can opt out was used with an opt-in system, why do you think fewer members would choose to opt in than opt out?

Ms Ruth George: Throughout the history of the unions and the Labour Party movement, unions have supported the Labour Party, so our members very much expect that that is what we do. We campaign quite openly on behalf of the Labour Party at election time. We send every member a magazine about voting Labour, and we send them emails about the differences between the policies. Our members expect the union to vote Labour. They do not expect to have to opt in to contribute; they expect that a proportion of their subscription will go towards those political objects anyway, and they are told about the right to opt out.

Lord Sherbourne of Didsbury: My question was not that. My question was: if you had the same transparent system of informing your members how they can opt out that was used to

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inform them how to opt in, do you think there would be fewer members opting in, and if so, why?

Ms Ruth George: There would be many fewer opting in, because of the history, culture and expectations among union members that unions support the Labour Party and contribute. If someone expects to be contributing and they have a problem with it, they will look to opt out, but if they expect that to happen and do not have a problem with it, they will not do anything.

Lord Sherbourne of Didsbury: Do I deduce from that that if there was an opt-in system, their awareness that part of the political fund was going to the Labour Party might deter them from opting in? Is that what you are saying?

Ms Ruth George: I am not saying that. I am saying that they would expect that part of the union contributions to go to the Labour Party in any case and towards campaigning for the Labour Party, because that is what we do and always have done.

Our members have different political persuasions. Obviously, the majority of them will be Labour supporters, but we do not kid ourselves that all our members are. They do, however, understand that they are part of a trade union movement that is very democratic and collective. Union policies on an entire range of things are decided very democratically at union conferences, where every branch is represented by delegates mandated by members at meetings, and every member can have their say. It is much more difficult for our members to say, “We do not agree with what is happening”. They would be happy for the sake of 10p a week to be paying a political subscription.

Lord Sherbourne of Didsbury: Why would they then not opt in?

Ms Ruth George: Because that is what they expect to be happening anyway; they are quite happy for the union to be affiliated to the Labour Party and to contribute. I think behavioural analysts have come to talk to you about the differences in taking an action. There is a lot of what somebody described as inertia or ignorance. The truth is that there is a lot of inertia among people about doing things. If they are happy with the status quo, and happy with what the union is doing in campaigning on their behalf, they do not see the need personally to do anything.

Mr Tony Dale: One of the fundamental problems with this Bill is that you have to opt in every five years by sending back a form, whereas at the moment you just need to opt out once. In Northern Ireland, where there is an opt-in system, you opt in once on the membership form when you join the trade union. That is a fundamental difference. I agree with my colleague in

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that we have conference decisions committing ourselves to the Labour Party. If an individual member does not like that, for us the principle would be that they should have to opt out, but the proposal as it stands is not a simple debate about whether you opt in or opt out. There also needs to be a debate about the process being advocated, because it is the mechanism that will cause the most damage, not the question of opting in or opting out.

Q62 Lord Callanan: To be fair to Usdaw, I think it says on its membership form that people have a right to opt out. Can I put a question to the gentleman from the Fire Brigades Union? Why do you not say on your membership form that people have the right to opt out? You told us earlier that your website, which I am looking at, says what people pay towards the political fund in contributions and membership, but not that they have any right to opt out. I have searched the website under “political fund”, “opt-out” and “opt-in”, and under none of those search criteria do I get any information as a Fire Brigades Union member about my legal right to opt out. How are you discharging your legal duty to tell members they have the right to opt out?

Mr Matt Wrack: That comes back to my point about how people in the real world join the union.

Lord Callanan: I assume they have to fill in a form.

Mr Matt Wrack: Because of other elements of this Bill, we are going through other changes. Traditionally, some 98% of our members have paid through deduction of contributions at source—check-off arrangements. As a result of the Bill, we are going through the process of moving to direct debit. What is currently on the website is the result of the very recent change that has taken place as a result of our internal decision as a result of the acts of the Government. You would not have found a membership form on the website prior to that, because traditionally, as I said earlier, people do not join the Fire Brigades Union electronically. We have processes by which local branches have control over who joins the union; members have to be proposed, seconded and so on. Bearing in mind that in order to achieve check-off an individual employee has to fill in a form agreeing voluntarily with their employer that the deduction can be made from their salary, at that point it is all very clearly explained, because the individual employee has to state the rate at which they wish to pay. The different rates are explained by the union official, who is a volunteer firefighter doing it in their own time. He explains the different contribution rates, including the trade rate, the political rate and the accident injury fund rate. All of that is explained very clearly at that point.

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Lord Callanan: You do not say it on the form. When you say that members have to sign a check-off, do they get a choice about whether or not they pay for the political fund at the time?

Lord Richard: Could you easily put it on the form if you wanted to?

Mr Matt Wrack: Political fund opt-out forms are put into the pack when people join the union. People have that right. We are required to do that. We have what we call a new member's pack, which includes the rulebook. You referred earlier to the rulebook. We are required under our own rules to send every single member a hard copy of our rulebook, which we revise every three years. Every three years every member of the Fire Brigades Union gets a new hard copy of the union's rulebook, which includes all that in detail. Another point is that evidence of the opt-out—in our case, 17.8% of members opt out—shows us that there is a very high level of awareness.

One further point, on which we may differ from our colleagues, is that we have an additional rule, which was brought in not by the leadership but by members at conference, that allows members of the political fund to choose that none of their political fund should be used for a party political affiliation. That is not required by legislation but it has been brought within the rules, and 19.2% of our political fund levy payers made that choice. That demonstrates quite a high level of awareness among our members of the different options within the union's rules.

Lord Richard: I want to come back to the point Lord Sherbourne is making that somehow or other if the process were the same for opting in as for opting out—I am not quite sure how you would devise it—it would not have much effect. Would there be a distinction between the number of people who would opt in under a system where new members had a form on which they tick a box saying, "Yes, I wish to opt in", and a system where you have to tell a mass of people, who at present are opting out, that you are going to change the way you do it? The first of those may not have very much effect. The second one would have a dramatic effect upon the level of membership. Is that a fair way of putting it?

Ms Ruth George: Absolutely. I have been trying to look at how the proposed system would be implemented in the union. To explain to a member that there has been a change in the law and that, in respect of the 10p a week that they have been contributing and could have opted out of, they have to sign a separate piece of paper in order for that 10p a week to continue to be used for political purposes is extremely difficult and an extremely difficult proposition to

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get over to people in a short letter. You have only so much text that people will read; you have to get your message over within the first three lines, preferably within the subject title of the letter, in order for it even to be considered, to increase the response rate. That is a serious problem.

To answer Lord Callanan's question—two for the price of one—40% of our Northern Ireland members opt in to the political fund.

Lord Richard: All I am saying is that if you have an opt-in system where all you have to do is tick a box on the application form, presumably it would be quite easy to operate, but that is for new members; you cannot do it for existing ones.

Ms Ruth George: Yes. We concur with the experience of the FBU, in that 92% of our members are recruited face to face in workplaces. They have conversations with their workplace rep and can discuss these things.

Q63 Lord De Mauley: My first question follows on from what Lord Richard has just been asking and can be answered in one word, because I have another question that I would like to slip in. I hear and quite understand the strong feeling against opt-in coming across generally, but do you object to the principle of opt-in as set out in the Collins report, for example?

Ms Ruth George: The principle that the union is collectively affiliated to the Labour Party, which is a policy that has been decided by the union's own democratic structures and is therefore one that members in general will abide by but have the opportunity to opt out of, is a sound one.

Lord De Mauley: That sounds like a no. You do not accept the principle of opt-in in the Collins report.

Ms Ruth George: The Collins report does not talk about opting in to the union's political fund but about having a separate tick-box on a union membership form in order for that member to agree that their membership subscription can form part of an affiliation to the Labour Party.

Lord De Mauley: That is an opt-in and you are happy with that. I am just asking about the principle.

Ms Ruth George: On the principle of the political party part, we have agreed with Collins that we will move towards that, but for the political fund as a whole we do not.

Lord De Mauley: Understood. For those who are affiliated, if a member opts out of the political fund—this may differ from union to union; I simply do not know the answer—does

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the same amount still go into the political fund but is simply deployed in a different direction, or does a lesser amount go into the political fund?

Ms Ruth George: If a member has opted out of the political fund, their contribution cannot go into the political fund. In Usdaw they are sent a refund of those contributions.

Lord De Mauley: Do they subscribe the same amount but it simply goes elsewhere in the union's funding?

The Chairman: Do they get a rebate?

Lord De Mauley: Do they get a rebate universally and that is it?

Ms Ruth George: In Usdaw the rate of subscription is the same; otherwise, it becomes very difficult to operate the check-off system. But members are sent a rebate of the political contributions at year end.

Mr Tony Dale: Members are entitled to a refund.

Mr Matt Wrack: For us, the rate of contribution would alter if somebody opted out of the political fund.

Dealing with the other point about rates of affiliation, our union was affiliated to the Labour Party, decided to disaffiliate, and has reaffiliated to the Labour Party. Through our democratic structures we have made it clear that no political fund from our members in Northern Ireland and Scotland will be used for that affiliation.

Q64 Baroness Dean of Thornton-le-Fylde: Predicated on your assessment of the Bill, if it went through it would have an impact on the political fund, but what would its impact be on your political activities? I am not talking about party affiliations. Linked to that, do you have any concerns about the reporting requirements under Clause 11?

Ms Ruth George: A high proportion of Usdaw's political fund goes to the Labour Party. We have a very low political levy, so the affiliation fee is a high proportion of that anyway. About 11% of it in the last calendar year was spent on other activities, mostly political education activities—training, education and conferences to get members talking about politics. We have a lot of young members, and we have a majority of women in membership and a lot of groups that are not as engaged in politics as many others. It is very important to us to try to help them to get a political voice, to raise issues in their workplaces and to bring them to politicians so that they gain in confidence and start voting, going out to the workplace and encouraging others to vote and have a political voice. We are very concerned that those political education activities would suffer and that our campaigns would suffer, too. We are

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running a campaign on Sunday trading at the moment, and we have been talking about tax credits and other issues. By law, those campaigns do not have to come out of the political fund, but the union's subscription rate is always under pressure. Our members are very low-paid; they work primarily in the retail sector. We keep the subscription rate as low as possible, so there is an enormous squeeze on the general fund. The budget is not sufficient for campaigning to come out of the general fund; you cannot assume that a general fund would be able to take on those activities. We have been faced with cuts of about £1.5 million in the education and training of trade union reps over the last year. Those are the sorts of holes that we need to plug.

Mr Gareth Young: We are not affiliated to the Labour Party, so the entire sum of our political fund is spent on political campaigning.

Baroness Dean of Thornton-le-Fylde: Such as?

Mr Gareth Young: We choose to spend some of the money from the political fund on our fringe and party conference stands where we have direct political messages, so we would no longer be able to do that. We spend it on other activities, including anti-racism and anti-fascism, and other campaigns such as our vote for education campaign last year. We would see a reduction in all those things. In addition, the cost of sending out letters and return envelopes would be about £300,000, which is more than our political fund for a year.

Baroness Dean of Thornton-le-Fylde: I asked about Clause 11. I do not know whether somebody could reply to that.

Mr Matt Wrack: I re-emphasise the point that we have a small finance department. For example, monitoring every bit of expenditure to see whether it needs to be allocated to the political fund, which we do anyway, but then having to report that to the CO—if we make an error, we might be investigated and made subject to a levy and potentially fined—would create a huge amount of red tape for voluntary organisations. That seems to us to run completely counter to the Government's stated agenda of reducing red tape elsewhere in civil society.

Baroness Dean of Thornton-le-Fylde: Do the others agree with that point?

Ms Ruth George: Yes, and I would add that the vast majority of our spending under the political fund is already reported. The amount to the Labour Party is reported in quarterly donation reports, and the third-party spending at election time is already declared in a very detailed way.

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Baroness Dean of Thornton-le-Fylde: We are aware of that particular reporting requirement.

Ms Ruth George: The extra reporting requirement would be for conference delegates—union members attending Labour Party conferences. We are very concerned about the requirement to itemise each item of spending. We pay members for loss of wages incurred when they attend a Labour Party conference, because otherwise they could not afford to attend. Effectively, you would be publicising somebody's rate of wages in those declarations. They ask for their train and taxi fares. If somebody has a disability, they might incur excessive taxi fares. All those would be publicised. It would be a real intrusion of privacy for ordinary union members who are just seeking to represent other members by going to a conference. The amount of effort incurred is completely disproportionate.

Baroness Dean of Thornton-le-Fylde: Mr Young?

Mr Gareth Young: Obviously, we do not know the entire impact, but we know that it would create extra bureaucracy for us. We know that as a result of the 2014 lobbying Act there was an increased burden in what we had to do in monitoring the costs and so on.

Q65 Earl of Kinnoull: That folds pretty neatly into what I want to ask. I want to hear about the impact assessment mentioned in Mr Dale's opening remarks. I want to know three things. First, what do you feel about it generally? Secondly, it is silent on what changes in union IT systems might be required; I am thinking particularly of membership and accounting IT systems. Thirdly, it makes assumptions about the cost per letter sent. Do you agree specifically with that costing?

Ms Ruth George: In our written submission we set out an analysis of the impact assessment's costings and how they do not coincide with reality. Our main concern about the impact assessment is the assumption that 100% of trade union members will opt in to the levy, with absolutely no analysis of things like response rates to mailings and what happens with other mailings we send our members, such as the political fund ballot participation or union elections, where we have about 5% membership participation. We ask them to put a cross on a piece of paper and send it back in a prepaid envelope, which is what we would be looking for people to do. That is our biggest concern. It just shows that there is no sense of reality about what this is going to do to trade unions and how members will respond to it.

There are also the costs. The mailing is okay; it is the bureaucracy and inputting written forms that will be the serious problem. The impact assessment claims that it will take 30 seconds from receiving an envelope to open it, take out the letter, extract the information, put the

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membership code into the membership system, find that member's details and update them on a computer. A robot could not do it that quickly, let alone a human. We have trialled it and it takes about five times as long.

Earl of Kinnoull: It would be deeply interesting to hear other people's views on that as well.

Mr Gareth Young: The impact assessment seems to be based simply on the cost of a stamp per member. That is all it seems to be. Besides anything else, we would have to send an SAE. We would have to send one back, so that would double the cost. We could not expect our members to pay to send it back. We mentioned all the other costs. We do a survey called the Big Question every year. We send it out to all our members and about 20,000 fill it in. It is much more complicated than this, but the amount of time and cost it takes to process that survey demonstrates the costs that this proposal would create for us.

Mr Matt Wrack: The impact assessment of the political fund shift to an opt-in seems to contradict the whole rationale of creating the opt-in proposal in the first place. It is made on the basis that people are unaware of it and somehow that is unfair, but if we made the change there would be no difference. That seems to be flawed logic.

We need to look at this in the round. In the public sector, many unions are already dealing with other elements and perceived threats in this Bill, which in our case is the shift from check-off to direct debit. That is already imposing huge administrative burdens on our organisation. We have had to take on large numbers of temporary staff to cope with that process. What this bit of the Bill proposes is a further administrative burden, first, in engagement with the member to explain it, which we believe needs to be done face to face, and then the administrative IT and accounting systems that you have mentioned. All that adds to burdens on what is, I repeat, a voluntary organisation. The impact is to undermine important voluntary organisations in civil society.

Earl of Kinnoull: It would be very helpful if afterwards we could have the figures sent to us.

Mr Matt Wrack: We can do that.

Lord Callanan: You said earlier, somewhat to my surprise, that in Northern Ireland, where they have an opt-in system, you managed to get 40% of your members to opt in. Mr Wrack, what percentage of your members in Northern Ireland opt in?

Mr Matt Wrack: It is 42.9%.

Lord Callanan: Is there any reason to suspect that, if that system was transferred to England, Wales and Scotland, you would not be able to get a similar percentage?

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Mr Tony Dale: That system is very different from the one proposed.

Lord Callanan: I understand that, but if it was an opt-in system with the same transitional timescales, et cetera, would you be able to get a similar percentage?

Mr Tony Dale: It would be hard to put a figure on it, but if people were asked to opt in as they joined the union, we would look to the Northern Ireland figure as the starting point. Given that we are not affiliated to any party in Northern Ireland, that is probably the target we would set.

Lord Callanan: It is somewhat different from the apocalyptic scenario given by other union colleagues earlier, who said it would be only 10%.

Mr Matt Wrack: It is a very different system. It is done on joining as a permanent arrangement with the subsequent right to opt out. It is a very different arrangement from what is proposed under the Bill.

Lord Richard: With great respect, that is a misrepresentation of what has been asked and answered. The question is not whether you would get 40% of new members but what the effect would be on the existing membership of the union. There is no doubt that it would be much more difficult to persuade existing members who have opted out to opt in than it would be to get new members to opt in.

Mr Tony Dale: That is mainly because of the mechanism we would have to use in contacting them. I do not want my comments to be misunderstood. We very much wish to see the opt-out system continue, but what is being proposed is not just a debate about whether there should be opt-in or opt-out but about a mechanism that could effectively decimate trade union political funds as we know them.

Lord Richard: That is the point.

Q66 Baroness Drake: Perhaps we could stay with the mechanism and the manner of introducing opt-in, not the impact of the switch to opt in, so that we give you a chance to comment on all the parts. On the requirement in the Bill that it should be undertaken in writing, we have had your response. To summarise it, you get a much lower response rate to written communications, which would aggravate the impact of the switch to opt-in. Unless anyone wants to contradict it, that seems to be the view of the panel. I invite you to express a view on the other two elements. Could you give us a view on what you think is the impact of the proposed transitional arrangement of three months and of the requirement for opt-in to be reviewed every five years? Usdaw has given us a view on that in relation to how much it

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would have to spend from a reduced political fund. None the less, perhaps the panel would like to comment on the proposed transitional arrangements and the requirement for opt-in to be reviewed every five years in terms of the impact on the political fund and contributions to the Labour Party.

Mr Tony Dale: In that three-month transitional period we would have to communicate with 440,000 members. It would be a huge task to get them to fill in forms to respond. Our members join, and if at any stage they wish to leave they can contact us, or they can contact us to opt out. We have turnover, so it is not as if we have 440,000 members who would always be in that situation. We have a turnover of between 70,000 and 75,000 members each year; about 20% of the union leave and join. We think the transition is unnecessary. Members who are covered by the funds have been asked a number of times, through the political fund ballot, whether they want the fund to continue, and we have also had conference decisions to support that. The three-month transitional period and going back to look at current members is close to unworkable.

Baroness Drake: You say that it is close to unworkable. When you gave evidence about your members' response rate to mailings you said that it was 5%, and then you do a follow-up and get it up to 10%. Are you saying that in those three months you would have to have a double hit on those members to get a 10% response rate?

Mr Tony Dale: Yes. The best-case scenario is that we get 5% written responses, and hopefully we would use organisers and shop stewards to encourage another 5% to respond.

Baroness Drake: Within three months.

Mr Tony Dale: That is very optimistic.

Mr Matt Wrack: Colleagues in the trade union movement and in other organisations are discussing the best way to communicate in the modern world. There is a clear shift away from written and posted communication to electronic communication. There is the idea in the Bill that you simply send a mail-out, but by and large people nowadays think that it is just junk mail, which is one of the difficulties with postal ballots for example. We have had dialogue with external consultants about that. For example, what is the rate at which people open emails if they are not from a personal friend or whatever? I think trade unions have better engagement on the opening of emails. We have found—I suspect my colleagues have, too—that the best way to explain things in a voluntary organisation is face-to-face discussion, because some of these are quite complex issues. There is this idea that you can explain them

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very easily in a couple of sentences and people will say, “I understand that. Let’s tick yes”, but people ask questions, so face-to-face communication is absolutely essential. Doing that in three months in any industry is unachievable. For us, in some cases it is five people on a small fire station on a Scottish island, and that is unachievable.

Mr Gareth Young: Our situation is quite complex, in that 2% of members opt out, so 98% opt in. We campaign on wider issues: child poverty, SEN or whatever it might be. To have a conversation with members in three months about the fact that if they do not vote for that they will no longer get some of those things, and trying to define what they are and what they are not, will be impossible. To try to tell them that we will be able to campaign on X but not on Y would be very complicated.

Mr Matt Wrack: The five-year renewal process will be a huge exercise for every single union, and then to be required externally, when there is no internal demand, to do it again five years later places an unreasonable burden on voluntary organisations.

The Chairman: I would be interested in knowing the total costs of the exercise as a proportion of the income of the fund.

Ms Ruth George: It makes it doubly difficult that we do not have any notice period. The three months are meant to start at the date of Royal Assent for the Bill, according to the draft. That is the basis on which we are working.

The Chairman: I am not quite sure that is right. Last night, the Minister said that it does not necessarily start the day after.

Ms Ruth George: That is what it says and what unions—

The Chairman: That is how they have interpreted it.

Ms Ruth George: That is what the Bill says at the moment. We would welcome much more notice of any transitional period. Any business faced with the amount of work and contact rates that we have to deal with in three months with no notice would be complaining.

The Chairman: Thank you very much. I am sorry that we have to rush. We have already kept another witness waiting outside. We are very grateful to you. If there is anything you want to send us in the light of our discussions, or any other communications, we would be very happy to receive them.

Fire Brigades Union—written evidence (TUP0022)

1. General comments to the committee

The Fire Brigades Union (FBU) welcomes the opportunity to give evidence to the committee on clauses 10 and 11 of the Trade Union Bill. The FBU is the authoritative, professional voice of firefighters across the UK. The union represents the vast majority of firefighters in England, Scotland, Wales and Northern Ireland, including wholetime (full-time) and retained (part-time, on-call) operational firefighters and control staff.

Ensuring that politicians understand the implication of their decisions for firefighters working at the sharp-end of service delivery is central to the FBU's work. The political fund enables the FBU to take workplace campaigns into the political arena to influence political decisions.

All members have the option of opting out of contributing to the political fund when they join or at any point during their membership. The number of FBU members who have utilised their right to opt out of paying the political levy or decided that their contributions should not be used for party affiliation proves that members understand the different rates available, the differences in contribution categories and that the opt-out system currently in place in England, Scotland and Wales is fit for purpose.

The government is attempting to deliberately reduce participation in order to decimate union political funds, their capacity to engage in political debates and ability to support the Labour Party. This is the government’s true intention and represented a deplorable partisan attack on the democratic process.

2. The Fire Brigade Unions political fund arrangements

2.1 Membership and contributions

The FBU offer a range of membership rates in order to reflect the occupational status and individual preferences of members.

| | Wholetime | Retained | Junior | Volunteer | Job Share |
|--------------|------------------|-----------------|---------------|------------------|------------------|
| Trade | £5.46 | £1.80 | £1.80 | £0.36 | £2.73 |
| Political | £0.16 | £0.16 | £0.16 | £0.16 | £0.16 |
| AIF | £0.79 | £0.79 | £0.79 | £0.79 | £0.79 |
| Total | £6.41 | £2.75 | £2.59 | £1.31 | £3.68 |

Table 1: FBU Contributions from 1st August 2015⁵⁶

In addition to the standard ‘trade’ union membership, members also have the option of contributing to the FBUs accident and injury fund (AIF) and political fund.

⁵⁶ Fire Brigades Union ‘Contribution rates’, www.fbu.org.uk/contribution-rates

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The AIF provides financial assistance to eligible members in the event of an injury on or off duty, or bereavement, and handles around £600,000 claims each year. All members who wish to contribute to the fund pay a standard rate of £0.79 per week.

Membership forms and information about the different contribution rates available are detailed on the FBU website. However, the vast majority of members sign up in person through an FBU brigade organiser. Every fire and rescue service in the UK has at least one brigade organiser, trained to advise new recruits and existing members of the different contribution rates and membership options available. All new members are also provided with a hard-copy of the FBUs rule book detailing the different contribution levels in accordance with the FBUs own rules.

Members are able to change their decision on whether to contribute to the AIF or political fund at any point in the course of their membership.

2.2 The Political Fund

Unions are required by law to ballot members every 10 years if they wish to maintain a political fund. The last FBU political fund ballot was held in May 2014: 84% of FBU members voted to keep the FBUs political fund. The turnout was 29%.

Contributions to the FBUs political fund for the year end 31 December 2014 was £256,979. Political levy payers currently contribute 16p per week.

At present, 82.2% of FBU members pay a political contribution. FBU members in England, Scotland and Wales have the option to opt-out of paying the political levy when they sign up as a member or at any point in the course of their membership.

| Political levy opt-out rate | Total political levy paying members |
|--------------------------------|---|
| 15.9% | 84.1% |

Table 2: FBU membership contributions for England, Scotland and Wales on 31 December 2015

FBU members in Northern Ireland must specify that they wish to participate in the fund when they sign up as a member and can change their preferences at any point during the course of their membership. At present, 42.9% of FBU members in Northern Ireland have opted into the political fund.

Levy paying members also have the option of specifying that they do not wish their contributions to be used for party affiliation. As of 31 Dec 2013, 19.2% of levy paying members decided their contributions should not be used for party affiliation.

The variances in the contribution preferences of FBU members clearly demonstrate that members have a good understanding of the different option available to them and are able to

exercise their right to choose whether to contribute to the union’s political fund and if so, whether it is used for party affiliation.

2.3 Non-partisan political fund expenditure

Ensuring that politicians understand the implication of their decisions for firefighters working at the sharp-end of service delivery is central to the FBU's work. The political fund enables the FBU to take workplace campaigns into the political arena and influence political decisions and have a say on changes in the law. Recent examples including campaigns against fire station closures, changes to firefighters pensions and a nationwide “Ring of Fire” tour of the UK to highlight the devastating impact the government’s austerity agenda is having on the fire and rescue service.

2.4 Labour Party political fund income

The FBU disaffiliated in 2004. In this period, the FBU supported the election campaigns of 30 individual candidates who supported firefighters and the fire service and by oppose cuts and defending jobs, pay and conditions. All donations were registered with the Electoral Commission.

In December 2015, the FBUs recall-conference voted to re-affiliate to the Labour Party. The decision to re-affiliate did not result in the FBU affiliating to Labour in either Scotland or Northern Ireland and no political fund money from members in either region would go to the Labour party.

As a result of different affiliation arrangements in different regions and the option for political levy paying members to opt out of paying affiliation fees, the number of people paying into the fund is higher than the number who are affiliated to the Labour Party.

Affiliated members currently pay £3 per year from their political levy (£2.90 to the Labour Party; £0.10 to TULO).

3. The Select Committee Consultation

3.1 The impact on the trade union political fund

The FBU firmly believe that clause 10 will have a detrimental effect upon the unions’ political funds.

The Government’s rationale for the proposed changes is that the ‘opt-out’ system “*may mean that some members are contributing to a political fund that they do not actively support, due to a potential lack of awareness among members about their contribution to the fund*”.⁵⁷ The implication from this is that if members had to opt-in to the political fund then fewer would.

⁵⁷ Department for Business, Innovation and Skills, Impact Assessment, January 2016, p.61

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The FBU completely rejects the notion that FBU members are unknowingly contributing to a political fund they do not support. Our members have a good awareness of different contribution rates available as evidenced by the variances in the contribution preferences of FBU members and the fact that the FBU has a substantially higher opt-in rate in Northern Ireland (42.9%) than opt-out rate in England, Scotland and Wales (15.9%). The current system is fit for purpose.

Nevertheless, there is clear evidence that an opt-in system would lead to fewer members contributing to the political fund. This is because opt-in systems lead to lower levels of participation in all areas of life. For example, we know that many people who express a desire to join the organ donation register fail to do so. Opinion polls consistently show that 9 out of 10 people support organ donation but less than 1 in 3 have signed the organ donation register.⁵⁸ This is why many governments are introducing opt-out systems in order to make it easier for people who support organ donation to give their consent. This government is well versed in behavioural research which is why they have introduced auto enrolment into pension's scheme where the onus is on the employee to opt-out.

There is also a wealth of contemporary evidence that opt-in systems lead to fewer members contributing from within the trade union movement. According to the Government's own figures, around 33% of Northern Irish members of British trade unions with political funds contribute to the funds, compared with the union average of 89% across the UK where union members are required to opt-out.

Furthermore, when the Committee on Standards in Public Life in 2011 recommended a £10,000 cap on donations in the context of trade unions requiring their members to opt in to the payment of an affiliation fee, their analysis estimated that just *"30 per cent of affiliation fees continued to be paid under the new opt-in arrangement."*

3.2 Impact on other areas of trade union funding

The FBU is also concerned that clause 10 could have a knock-on effect on other aspects of union finances. The political fund enables unions to organise high-profile political campaigns that influence decision-makers for their benefit of their members. These campaigns are highly-visible and effective; members can see unions championing their causes, defending their jobs, terms and conditions and securing improvements on their behalf. If unions are unable to finance effective campaign activities, they will be less able to influence decision makers and some members may not see the value of remaining in a trade union.

3.3 The Impact of transitional arrangements

⁵⁸ Cabinet Office Behavioural Incites Team, Applying behavioural incites to organ donation, January 2015 p2

Fire Brigades Union—written evidence (TUP0022)

The Bill requires trade unions to receive written consent from every member who currently pays into the political fund to say they wish to continue within 3 months. They will be also be required to re-new opt-in consent in writing every five years.

The Transition arrangements for moving to an opt-out system imposes an unreasonable, costly and overwhelming administrative burden on unions. This level of bureaucracy does not apply to any other sector and goes against the government's purported commitment to cutting red tape for businesses.

This will be a resource intensive process that will have a disproportionate impact on small and medium-sized trade unions including the FBU. The FBU relies on member volunteers, supported by a small number of paid staff, to raise awareness of changes in procedures and facilitate the transition to new arrangements. It will take time to communicate this to members, a task that is exacerbated in our case given that FBU member are spread across some 2,000 work places including remote stations staffed by just a handful of personnel. In larger stations, members are spread across multiple watches and have different shift patterns.

Unions are already struggling to adapt to the increased workload resulting from the government's intention to end check-off arrangements. 97% of FBU members pay their union subscriptions directly from their pay packets. The FBU has worked tirelessly over the last several months to raise awareness of the change and encourage members to switch to direct debit forms and have been forced to employ temporary staff to facilitate this process. This has diverted precious staffing and financial resources away from FBU campaigns tasked with defending our member's interests and securing workplace improvements.

The 3 month limit is unrealistic and completely unreasonable. It bears no reflection on well-respected research on the subject including the 2011 recommendation of the Committee on Standards in Public Life there should be a four year period for reforms to come into effect. Labour's Collins Report of 2014 is based around a transitional period of five years.

The timeframe and lack of transitional protection is also unprecedented. In no other area have retrospective changes been introduced whilst organisations have been given sufficient time to bring changes into effect. By comparison, the government gave businesses 2 years to put procedures in place to charge customers 5p for plastic carrier bags. The only conclusion is that this arbitrary time frame has been imposed to reduce the number of trade union members paying the political level in order to reduce the capacity of trade union to participate in the political process.

3.4 Impact on the Labour Party

Fire Brigades Union—written evidence (TUP0022)

A decline in the number of members paying the political fund will undoubtedly lead to a fall in the number of members affiliating to the Labour Party which will have serious implications for the Labour Party's funding. Labour's own estimate is that they could see a reduction of up to 90 per cent which would equate to an annual loss of £6 million from affiliation fees. Affiliations form part of the Party's core funding and such a loss could not be absorbed without a fundamental change in how the party operates.

By introducing one-sided political party reform under the guise of the trade union bill, the Conservative Government have failed to address other issues including donation caps, spending limits and transparency that would principally impact *their* funding. This is in contravention of their manifesto commitment "to seek agreement on a comprehensive package of party funding reform" and the longstanding convention that reform of party funding should proceed on a consensual basis. This is a principle supported by the Phillips and Kelly reports and one which previous Conservative and Labour governments have abided by.

12 February 2016

Professor Justin Fisher—oral evidence (QQ 14–19)

Professor Justin Fisher—oral evidence (QQ 14–19)

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.

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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

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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—oral evidence (QQ 14–19)

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—oral evidence (QQ 14–19)

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

Professor Justin Fisher—oral evidence (QQ 14–19)

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

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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.

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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

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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.

GMB Union—written evidence (TUP0013)

1. Summary

- a. The Trade Union Bill will place costly, time consuming restrictions on trade union political activity that will have a detrimental effect on our ability to give members a voice in politics and severely impact on the Labour Party's finances.
- b. The proposals in the Bill impact only on Labour, breaking decades of consensus that changes to Party funding should be done with cross-party agreement.
- c. The Bill seeks to impose restrictions on the union movement while not once addressing any other aspect of political party funding. Wealthy individuals will carry on as they do now. Corporations and organisations such as the United and Cecil Club will find no further hoops to jump through. Yet unions will face changes that cost millions of pounds and create reams of red tape and bureaucracy.
- d. GMB holds a periodic, full postal ballot of all members as required by statute to ask all members whether they wish to retain a political fund. On the last occasion a ballot was held in 2014; the outcome of the vote was 94.4% in favour. Individual members can opt out of the political fund at any given time.
- e. GMB believes the measures around political funds within the Trade Union Bill to be unfair and on a wider point, to be a dangerous path to tread for democracy as a whole.

2. Trade unions are democratic

- a. Trade unions are democratic organisations with lay member governance. GMB has an annual congress through which any branch may submit motions. Those motions are debated and voted on by delegates from across the UK.
- b. No GMB policy is set in stone forever. If there is a will from the grassroots for change, then our structures allow for that to take place.
- c. We have a rule book that is readily available online. This too can be changed through our democratic structures. There seems to be an idea in the media that unions are controlled from the centre via top-down fiat. That is not the case.
- d. It is worth noting at this point that GMB is not simply a donor to the Labour Party. Our predecessor unions were involved in the founding of the Party – a Party founded to be the political voice of working people. Unlike large, wealthy donors or

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corporations, we are part of the fabric of the Party. We hold seats on the National Executive, members hold positions and play a role in local Constituency Labour Parties and attend annual conferences as delegates (something which will be put at risk by the changes proposed by this Bill), all of these roles are laid out – in a transparent manner – in both union and Labour Party rule books. This is something that was recognised by the Committee for Standards in Public Life.

- e. All donations to a political party are already reported to the Electoral Commission. For the purposes of the Electoral Commission our affiliation fees are also counted as a donation and declared (the EC does not differentiate between the two types of funding in their reports). It is unfair to impose further restriction and reporting requirements when no other organisation or individual – even those without the democratic or transparent processes we have – have such burdens placed on them.
- f. Finally, the move by government to interfere in the internal workings of independent organisations and the main parliamentary Opposition is out of kilter with decades of convention that only make such changes by political consensus. If such a mode of working is adopted, it will perpetually leave the opposition (regardless of Party) at the mercy of adverse change from the government of the day.

3. The political fund

- a. Every ten years a union must hold a political fund ballot if it wishes to spend money on political activity.
- b. GMB is required to ballot every member. This is a legal requirement with a process determined by legislation, and of course the ballot paper we send to members has to conform to legislative requirements.
- c. This is a costly exercise. The Bill proposes to add vast layers of bureaucracy on top of this requirement. In total, GMB (at our current size) would be required to issue around 1.9 million pieces of correspondence over the course of a ten year cycle – that's balloting on the existence of the political fund, asking members if they would like to opt in to the political fund, then renewing the political fund opt in after 5 years.

4. Impact on political parties

- a. The introduction of Clauses 10 and 11 of the Trade Union Bill will have a profound impact on the finances of the Labour Party and only the Labour Party. As the

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committee has heard from the Labour Party General Secretary, the Party is on course to lose £8 million.

- b. This has implications for the very basis of our democratic system. We are seeing a government seek to unilaterally impose restrictions on political funding that apply only to the opposition. Intrinsicly, this is unfair.
- c. Because of the nature of the relationship between the Labour Party and the trade union movement, this Bill has potential not just to remove funding but to prompt a whole sale reorganisation of the internal structures of HM Opposition. It has to be asked why and how it is being allowed that the government are able to have such an influence on the day to day business of independent, democratic organisations.

5. The opt in system

- a. The opt in system will impose vast bureaucratic requirements onto unions and will significantly decrease the overall resource available for political campaigning (or campaigning deemed as political by the 1992 Act).
- b. As discussed in the opening paragraph, unions are democratic organisations. Our rule book can be found online for any member to download. If members wish to change the rule book, they can do so using the unions' democratic structures.
- c. When members join the union they sign up to the union's rules and practices – that includes our political work. If members do not want to contribute they can opt out of the political fund. If members wish to change the political affiliation of the union, they can use the union's democratic structures to change the political affiliation to a different Party or to no Party at all (a number of unions are not affiliated to Labour, some have been in the past but no longer choose to do so, an example of a union changing their political activities can be seen in the re-affiliation of the FBU to Labour quite recently).
- d. There are already sufficient mechanisms in place to ensure that no member is obliged to give to the political fund or to a political party if they don't want to while still upholding the collective, democratic will of the union.

6. The impact of the opt in on political activity

- a. The rules around the political opt in this Bill are tightly drawn and would retrospectively apply to all of the members who have signed up to the current union

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policies and rule book. On top of this, we would have 3 months to transition from an administrative set up that has existed for decades, to a completely new system with onerous requirements.

- b. GMB predicts both a large drop off in the number of people opting into a political affiliation and a large cost to the union of changing our systems and communicating the changes to members. The number of people responding to a second ballot in the space of a few years on political funding (we had our political fund ballot in 2014) will potentially be low. There is also a significant cost implication of a mailing for over 630,000 members.
- c. Because we are a democratic organisation, these changes will also require a change in our rules that must be governed by our lay member led structures, the timescale for passage of the Bill may require a costly special conference.
- d. It is likely that we would have to stop collecting any political fund money after the 3 month deadline expires simply because the transition period is unrealistic.
- e. We do not believe these proposals should go ahead at all, but if they must, we urge the committee to consider ending the retrospective nature of the changes (so that the opt in would naturally phase in over time) with the ability for members to opt in via any method the union should see fit (as long as there is an auditable trail). In the interests of fairness, this would give both the union movement and the Labour Party chance to adjust to the new system.
- f. We also ask the committee to end the need for a 5 yearly renewal. When a member has opted in, their opt in should count until they contact the union to opt out.

7. Impact other than Labour

- a. While we won't detail every aspect of campaigning that will be impacted by this Bill, it will certainly curtail our ability to fund organisations like HOPE not hate. HOPE not hate campaigns against the far right and fascism. Many of the activities conducted by HOPE not hate would be classed as 'political objects'. Unions' ability to work with parliamentarians to raise issues/policies that impact our members – but are associated/supported by only one political Party could also be compromised.
- b. GMB will often campaign against political parties where their positions are not in the interest of our members. A previous campaign we have run which would have been impacted by this legislation would be the European Parliament election campaign where we put resource into campaigning against UKIP.

8. Being affiliated to the Labour Party

- a. An argument made time and again by proponents of the Bill is that trade union members don't know that they're contributing to Labour. This is complete nonsense.
- b. On a daily basis newspapers carry headlines about Labour and the trade union movement. We campaign for Labour and invite Labour speakers to our annual congress. When elections come around we campaign with Labour. These facts are far from secret, they are widely advertised by GMB (and other unions).
- c. If anything, the right wing press have actually raised awareness that unions give to Labour. We haven't had an influx of people getting in touch to say they don't want that to be the case, nor have we had motions to our policy making Congress.

11 February 2016

Dr David Halpern, Lord O'Donnell—oral evidence (QQ 38–44)

Dr David Halpern, Lord O'Donnell—oral evidence (QQ 38–44)

Examination of Witnesses

Dr David Halpern, Chief Executive, Behavioural Insights Team, and **Lord O'Donnell**

Q38 The Chairman: Good morning. Welcome, Lord O'Donnell and Dr Halpern. Earlier I explained to the Committee your backgrounds and your interest in this whole subject. Do you have anything to say by way of opening remarks?

Dr David Halpern: I am in your hands. I am happy to talk about defaults in general, to get you going, if you like.

Lord O'Donnell: We might declare interests, as well. To be absolutely clear, I am the chair of the advisory panel on the Behavioural Insights Team and the chairman of Frontier Economics, which does a lot of applications of behavioural economics and other disciplines to both public and private sector issues.

Dr David Halpern: I am David Halpern. I head the Government's Behavioural Insights Team, which is a social purpose enterprise co-owned by the Cabinet Office, NESTA and so on. We advise in many policy areas. One area of great interest in recent years has been the use of defaults and how extraordinarily powerful they are in their impacts.

Lord Robathan: I am sorry—the use of what?

Dr David Halpern: Defaults—where you set it one way or the other.

The Chairman: Opt-in or opt-out.

Dr David Halpern: Yes. That would be the simple example. The most famous example in policy in recent years has been changing the arrangements around pensions, which we have seen not only in the UK but in a number of other countries—in the US, with 401(k), and in the UK, from 2012, stemming from Adair Turner's report. In round numbers—this may give you a clue about what we see elsewhere—less than 10% of people opt out when you change it so that people have to opt out, if they wish, rather than opt into a pensions arrangement. There are almost identical numbers in the US, for 401(k). It is happening on a phased basis, so we get a clue across the piece, and the numbers hold up pretty consistently.

If you want to know why that attracts so much attention in the policy world, you can compare it with the effectiveness of the conventional policy lever that we have used traditionally—a tax subsidy to encourage people to save more, on which we spend, potentially, literally tens

of billions. Our best estimate is that 1p in the pound of extra saving comes through, if you really factor it in. A tax subsidy is not very effective in driving extra saving in relation to pensions, as opposed to simply changing the default from an opt-in to an opt-out, which has been a game changer.

From 2012, we saw it for large firms. More than 90% of people are staying in, if they are eligible. Some people are not eligible. For medium-sized firms, we see an even larger effect, because the baseline was even lower. At the moment, it is gradually reaching out to small firms. We have seen an incredibly powerful effect across the world.

The Chairman: How would that compare with the numbers under the previous opt-in system?

Dr David Halpern: For large firms, it was about 60% or less. For medium-sized firms, it was more likely to be around 40%. Now, with the change in the system, it is reaching numbers that are 20 or 30 percentage points raised from that level. As it moves from the large firms, whose arrangements are quite well organised, into medium-sized and smaller firms, it looks as if the effect is even larger.

The key issue with all defaults is what people want to do: what is the underlying preference of the population? That is perhaps one of the great unknowables in the area you are wrestling with. The general belief is that most people feel that it is a good idea to save. If you make it easy for them, they know that they should do it. That drives extra savings disproportionately among low-income groups and younger people, in particular, who were slow to sign up previously. Essentially, on the back of an envelope, if you want someone to do something, you make it easy. Those frictional costs turn out to be extraordinarily important, particularly around something that people kind of want to do anyway. In relation to other kinds of donations, one big question is: what is the underlying preference? You may have a better idea on that than I do.

Lord O'Donnell: I would add only one point. Some people say, "Ah, that is just because people are ignorant. They did not understand it". As the auto-enrolment programme for pensions moved down to small and medium-sized enterprises, it hit my own, Frontier Economics. Most of our staff have two degrees in economics, so you would think that they knew whether or not to save for pensions. Actually, they are exactly like the rest of the population. That just shows you. If you think that is a question of education, it is not—it is a question of inertia. Inertia is incredibly powerful. That is shown up in most of the behavioural examples, not just

on pensions but on things like organ donation. There is a whole range of different areas where the behavioural literature is full of examples.

Dr David Halpern: In round numbers, 5.2 million extra savers had come through the auto-enrolment route by March 2015. You can see what the graph looks like as it comes into force and moves through the population. It is incredibly powerful in its effect.

Q39 The Chairman: In other walks of life, of course, we have been pressing people to move the other way. In financial services, we have been saying to banks, “You should move in the direction of making sure that people opt in, rather than using their inertia to help the company”. Presumably, you are arguing that the virtue of opting out really applies where there is a strong public interest in the policy, as opposed to financial services, where we are saying that there is quite a strong public interest in people not being imprisoned by inertia.

Lord O'Donnell: There is strong public interest, but I would use organ donation as a good example. We know from surveys that if you ask people, “Do you want to donate your organs?” at least 75% will say yes. How many people have actually signed up to organ donation? The figure is 25%. We know that there is a mismatch. People want to do it, but they have not got around to it for some reason. The reason they have not got around to it is in the title of a book by Sunstein—keep it simple. If you want people to do the right things that work, just make it simple for them. Hence, there have been attempts to think about how we can make it simple for people to sign up for organ donation, to fulfil their own desires—not anybody else's desires, but their own.

Lord Sherbourne of Didsbury: I want to pick up the point about ignorance, which I think I understand. Are you saying that, if you have a system of opting out, people tend not to do it, either because they cannot be bothered, through inertia, or because they are unaware of their right to opt out?

Dr David Halpern: As Lord O'Donnell said, the inertia effects are incredibly powerful. We go with the friction. Recently, a powerful experimental result by George Loewenstein looking at defaults, as we call them, showed that to be the case, even when you reveal to people that a default has been set arbitrarily. He ran an experiment particularly relevant to the US healthcare system, where people have a choice about what kind of insurance premium they pay. It is a significant choice. In crude terms, do you want to pay a lower premium, but when you get knocked over they switch off the machines sooner? How you set the default is quite consequential. They set up the experiment and made it clear to people: “It is for you to choose.

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We have just set it one way or the other. You should check that that is how you want it". It was a randomised control trial, so people could have it one way or the other. People showed a very strong tendency to stick with whatever the default had been set at, even when it was drawn to their attention, in quite a consequential area. Again, that gives you a sense of how powerful defaults are. It is not just a question of transparency.

Lord O'Donnell: It is not just about whether you are in or not; it is often about amounts. If we go back to the pensions example, there is some evidence from US firms. A firm said, "The default is that 3% of your earnings go into the pension scheme but, by the way, we are going to match pound for pound everything up to 6%". The default was 3% and, when they had that, over 25% of people stuck with the default. For new hires, the same firm decided to put the default at 6%, and hardly anybody went for 3%. The defaults matter not just on participation but on amounts.

Q40 Earl of Kinnoull: Your points about process engineering affecting what happens are very clear. Do you have evidence about whether the availability of e-techniques in the process is particularly helpful in engineering a true result, as it were?

Dr David Halpern: There is a lot of interest around that. There are lots of other things going on, but there is some evidence that people's behaviour in e-defaults is different from that in paper defaults. Partly because it is so easy to click on or off, people seem more willing to change a default in the electronic domain. It may also be that people have learnt to be cannier. The everyday example is Ryanair, where there are lots of other charges. People are starting to learn a heuristic—a shortcut—which is always to unclick the box at the bottom that says, "Do you want your details to be shared with everyone else?" Because it is so easy to do that and people have become familiar with it, it looks as though they have become readier to make the changes.

I emphasise and echo Gus's point that what categories are inside it looks like an incredibly important issue as well. The interesting thing about the issue I know you are wrestling with is that we know that a change in default is likely to have a big impact—although it depends a lot on the underlying intention of the population—but it is also an opportunity, potentially, to introduce other choices that would enable people to differentiate. That could be very consequential. In other words, you might say, "Do you want to give this amount, this amount or this amount?" That is a very powerful variable.

I will illustrate it with an everyday example. Most people choose the middle option on most things. The common one is coffee sizes. Most coffee chains offer three sizes. It turns out that, across countries, the absolute size of those varies greatly. If you ask people, “Which size do you take?” generally speaking 74% of people choose the middle size, across countries, but the absolute size is different. If you ask them, “Why don’t you change to the large?” they say, “It would be much too big”. There is a kind of Goldilocks effect. If you change it experimentally, so that the medium becomes the small, the majority of people shift to what was the large.

Lord O'Donnell: It translates to financial issues. When you see the little boxes on the JustGiving page—“Do you want to give £25, £50 or £100?”—I would hope that they have not been chosen randomly, but that the organisation has worked out precisely what impact the number of boxes and the amounts in them have on behaviour.

Lord Callanan: It is what Milton Friedman called “the tyranny of the status quo”. It is just fear of change—people stick with what they know. Like many people here, I study consumer behaviour and the politics of it. I know that I should change my bank account, because the details of the current one are crap, but the trouble is that I cannot be bothered to get round to it. I have seen all the figures, I have read the interest rates, et cetera, and I know I should do it, but I have been with the current one for 30 years and I just cannot be bothered. You can see it in your own personal behaviour sometimes.

Lord O'Donnell: It varies by area. There is quite a lot of evidence that people get very nervous about financial things. When nervous, they tend to default to doing nothing. They kind of assume that someone set up the default in a good way, so in public policy areas having the defaults in the right place is very important.

Dr David Halpern: Yes, hugely so. It has been said before that you are much more likely to get divorced than to change your bank. There are other everyday examples. How you set these things is a huge question for policy in general, beyond this issue, because they are so consequential. In energy markets, why is it that only one person in 10 has switched when there are so many choices? You might think that energy companies are quite skilful at adding little, subtle degrees of friction in order to discourage you from switching, so the policy response becomes, “Make it easy”. One thing that came in at the end of last year is that on your bill you should now have a QR code, which summarises your data. Why is that consequential? It means that you can put your phone against it and in a few seconds it will tell you, “This is the best tariff for you. Click here and you can switch”. It becomes a game changer to lower the friction.

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That is why the e-thing is very important. It is easy. How many seconds would it take you to make the choice?

Lord O'Donnell: Two clicks versus one click has been huge.

Q41 The Chairman: Does the amount make a great deal of difference, too? We are dealing with a contribution of £5 a year, on average, to the political fund. It probably varies between £15 and £1, but the average amount is about £5 a year, from what I can see from the numbers that we have had. Does that lead you to think that the effect of inertia would be greater or smaller?

Dr David Halpern: The wonderful thing about price psychology is that, like most psychology, there are two things in it. First, there is a discontinuity between zero and any small amount. The everyday policy example is adding a 5p charge for a plastic bag, which has been seen to be absolutely spectacular in its effect. People do not think twice about 5p, but when confronted with that versus zero, suddenly there is a 75% or 80% reduction in the number of plastic bags. People are crazily sensitive to even a tiny charge.

When you get beyond that, the main thing is that people often struggle to know what the absolute value is and what a reasonable amount is. The golden rule is that people can work out relative values—how good is this piece of modern art or this bottle of wine? They find it quite hard to work out in absolute terms how much you would pay for it, but they can be pretty good at saying, “This one is better than that one. I will make a contrast effect”. That is why the framing of relative choice categories is so important, not just the absolute amount. If the question is not just, “Would you like to give £5?” but, “Would you like to give £5, £20 or £50?”, what will people’s choice be? They may also be very unclear about what the previous amount was. They will probably be extremely sensitive to the way the choice is presented.

Lord O'Donnell: Way back—about 30 years ago—traditional economics looked only at price and supply and demand; only price and amounts mattered. We have moved an enormous way beyond that. We now have evidence that it depends not just on pricing and incentives but on who the messenger is, what the social norms around it are, what the defaults are, what kind of priming you have and a whole bunch of other issues—how salient it is, the effect, the commitment and the impact on your ego. What I have just gone through is a mnemonic called MINDSPACE, which goes into all those things. They are all important. Particularly in David’s example of the subsidies that we give savings, prices turn out to be, first, not very important and, secondly, incredibly inefficient at influencing behaviour.

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Lord Whitty: Given that the default position is the preferred position for most of the population, does it vary at all depending on the number of times and how frequently people are asked? Presumably, in the pension scheme you have not had a long enough run to see it, but there are other equivalents. If you are given a choice more frequently, are you likely to default more frequently or to pick it up more frequently?

Dr David Halpern: It depends a bit on what your underlying preference is. A big issue that hangs over us is giving people the right to choose not to choose. There are so many possible choices in the world. Do you want to be asked every single time you go in? Sometimes people would rather not be bothered, so you solve it in some other way. You collectively make a decision and reach forward.

Going the other way a bit, an example of multiple prompts is where we are now on organ donation. The defaults on that have been much discussed, although sometimes the issue is slightly overstated. Some countries have a default of presumed content, but some have it the other way around; you have to choose actively. In the UK, we have moved to a situation of prompted choice. We are introducing multiple places where we keep prompting and reminding you. That is steadily dragging up the number of people on the register, and people seem accepting of it. Will you eventually reach the point when you are sick of being asked again every time you do your tax disc, because the system is too stupid to know whether you said yes or no last time? Perhaps, but we do not seem to be at the frontier at the moment.

Lord O'Donnell: Look at the way companies have tried to make the most of human behaviour and inertia through the strength of direct debits. How many of us have signed up to a free trial of Netflix or whatever? After 40 days, it is quite complicated to get out of it, so inertia keeps you in. You sign up to various memberships through direct debit, so you are not asked again. The reason they do not want to ask you again is that it can go only one way. If you are in, it is great for the company, so it really wants to keep it that way.

Lord Whitty: I do direct debit to a number of charities. If they keep reminding me, I do not cancel it, but if they ask me to increase it, generally speaking I do not. That may be meanness on my part. There is an underlying commitment, but constant reminders are increasingly irritating, so you do not go any further.

Baroness Drake: You have two defaults—you stay in, and you settle at the lowest level.

Lord Whitty: Exactly.

Dr David Halpern: When it is used in pensions and savings, you have a so-called smart default that has some escalation built into it. That is what many charities would love to get you to do, too, so that when you make the initial commitment you say, “It will also go up by inflation”, or something. That is essentially what we have in the pensions environment at the moment. One of the unknown questions, as the escalator moves in—because people’s initial contribution is quite small—is: will it reach a point where more people opt back out? It is generally not known. The evidence to date has shown the overwhelming force of the default.

Lord O'Donnell: There is an example where you can test that, although I do not think anybody has quite done it yet. You are asked every year about, for example, car insurance. Let us say that for some reason you have set up car insurance and house insurance so that they are on annual. The company would love you just to reinsure with it. When it sends you the renewal notice, you would look very hard to try to find what the increase on the previous year is, although in fact you almost certainly will not. However, if you go online and use a search engine, you will find that the same company would give you the same deal much more cheaply. People are starting to learn that the default—staying with the same company—is a very bad deal.

Take the example of annuities. In the old days, before the freedom, people could either take their annuity from the company they saved with or shop around. You definitely gained by shopping around. Did people all shop around? No. Quite a lot made a very bad financial choice, which was just to stick with the company. That is why I think that people will need help to make the right choices on annuities, although I am very pleased that we have the freedom. We need a bit of libertarianism, but we need a bit of paternalism as well—hence liberal paternalism.

Q42 Lord Wrigglesworth: This morning, you have given some very powerful evidence on people’s behaviour in various respects. Have you any reason to believe that people would behave any differently in relation to political funds in trade unions?

Lord O'Donnell: I am not aware of any direct evidence on political funding. The only thing I would say is that, in all the behavioural stuff, we emphasise our humility in trying to understand human behaviour. That is why David mentioned randomised control trials. You may have quite a strong prior belief; I would have a very strong prior belief that defaults would be very important in this area, but I would want to test precisely how important. I am not aware that any tests have been done, although they may have been, or of any other country

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that has done them. The only thing is the history, which gives you some evidence, and the Committee has that already. The feeling of both of us about the behavioural stuff is that you will not get precise estimates. We all thought that the auto-enrolment effect would be smaller than it turned out to be. We were surprised by how important the default was there. My gut feeling is that defaults will turn out to be very important.

Dr David Halpern: History is a pretty good guide. It is interesting that the numbers from the history are pretty close to what you see in other domains. You will probably see a 30-odd percentage point movement—possibly more—with more friction.

Lord Callanan: You also have the fact of Northern Ireland, of course.

Dr David Halpern: Exactly. It seems to me that the slight imponderable that bears on this issue is that it depends on how you feel about the source. If you look at it over a historical period, the world has moved in other ways in relation to mass party organisations and memberships, not only in the UK but elsewhere. If the underlying attitude towards parties has changed, maybe the effect will be even larger than history tells you. The interesting countervailing detail is that, if you end up with some kind of prompted choice that moves the default in that kind of way, there is an opportunity really to look at the detail of how it is constructed. You might well find that some people were prepared to give much more substantial amounts if they were offered the choice in a prompted form. In fact, an expression of underlying preference would come through more clearly; some people would not get around to doing it, but other people would probably give more.

Lord Wrigglesworth: You have also made it clear that the background for this and the method by which it is being done have a powerful impact on what happens.

Dr David Halpern: Absolutely.

Lord O'Donnell: Absolutely.

Lord Wrigglesworth: In the case we are looking at, electronic communication, as against writing, on paper, could have a substantial impact.

Dr David Halpern: It absolutely could. One thing that this whole area has taught us is that all these details, which generally do not interest the Cabinet, turn out to be hugely consequential. Literally, the colour of an envelope, the way something is worded or the alternative contrast all make impacts.

Lord O'Donnell: I can give you a stronger result for getting people to switch from using paper statements to using online statements by making sure that the button flashes on their screen.

There are little things like that. That is what you do when you are doing a proper behavioural test: you try out all those sorts of things in randomised control trials. The difference between the worst and the best is usually pretty dramatic.

Q43 Earl of Kinnoull: Could you tell us about the propensity of people of working age at the moment to use the internet for financial transactions or decisions? What percentage of people do that? Could you also give us a view on the direction of travel there, so that we can understand it?

Dr David Halpern: I am not sure that I can give you a confident statistic. Obviously, there are some very big generational effects running through at the moment. To go back to the simple example of energy, we ran trials to see whether we could get more people to switch online or use their phones, but some of the most at-risk groups are not really using the internet or phones to do that. Including an envelope, so that they can put in their details and send them off, is much more effective for those groups. It will vary quite a lot. There continues to be a lot of unease in large sections of the population about the use of the internet for banking, although I know that banks are busy trying to make people more comfortable.

Lord O'Donnell: They are. Virtually every bank is now developing both online and mobile services quite dramatically. There is a lot more on mobile now internationally. That is the way the world is going. It has gone quite a long way. Interestingly, I was talking about issues like BBC licences, to give a random example. It turns out that quite a lot of old people are interacting online for those sorts of things, but there is very much an age issue. As you go up the age profile, the online—

Earl of Kinnoull: Can you give us a feel for that? Is half the population now comfortable with taking decisions and doing financial transactions online? Is it less or more?

Lord O'Donnell: There are two issues. It depends what you mean by a financial transaction. The reason why banks are spending so much time moving people online and to mobile is that they have observed that people who said that they were not interested in those sorts of things are transacting online when it comes to buying products. I will not advertise for them, but lots of companies are now selling stuff online. There has been a dramatic increase. When people start to become happy buying clothes, books and any particular product—you name it—online, it does not take much to go into banking online. The penetration has gone up dramatically, but it varies area by area. The reason why we are not giving you a single number

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is that it is hugely different in different areas. Vast numbers of people are prepared to use Amazon, let us say, online. Slightly fewer would be prepared to bank online.

Dr David Halpern: The majority of the population now have smartphones, so clearly they could do it routinely. On the other hand, a sizeable proportion of the population are not ready to do all their banking in that way. It should feel congruent to how you normally interact with the channel. Again, I use the example of electricity bills. If you are used to doing it in paper form and that is how you have always transacted with your electricity company, you feel more comfortable responding in the same way. If you are 25, you are used to doing it all online, so you think, “Why do you even send me this bit of paper any more? You know I do it all online”. There are some cohort effects moving through.

Q44 Baroness Drake: I looked up your MINDSPACE list of behavioural influences. Let us stay with the default—the opt-out—and ignore for the moment whether an opt-out default decision-making process is desirable in a given situation, because that is a different debate. If participation in something is done by opt-out and then there is a change to do it by opt-in, does the evidence support the expectation that participation rates will fall as a result of that change in the decision-making process?

Dr David Halpern: You have it in the history of this area already. If you look over the century, the cycle gives you a strong sense that, broadly, you get a kind of symmetry. People stick, and you get inertia effects one way or the other.

Sometimes there are examples where people create an event or provoke a choice, when they want it to be more active. It is not very clear, but one area where it has been rehearsed widely in the literature is around generic versus other kinds of drugs, particularly in the US context. A lot of campaigns seemed to struggle to get people to move to generic drugs, but when the patient was required to make a choice, the vast majority—more than 90%—made a choice for generics. It was not the case that there was some underlying preference. If you can create a precipitating moment when you have to choose, sometimes you get much larger numbers. That would be one interesting question about this.

The use of deadlines is an example. It may seem paradoxical, but often the use of a deadline will greatly increase the number of people who conform. You always procrastinate, but you also get a social norm effect—everybody else is making a decision at the same time. A recent one would be voter registration. There were quite effective campaigns, using deadlines, to drag large numbers of people across the line at a given time and moment.

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Baroness Drake: In the absence of other factors that force more active decision-making, is the proposition reasonable that, if you switched from opt-out to opt-in, you would expect a lower participation rate?

Dr David Halpern: Yes, substantially so—20 or 30 percentage points lower.

Baroness Drake: There would be a substantial reduction in the participation rate.

Dr David Halpern: Yes.

Baroness Drake: I listened to what you said about companies being increasingly aware of how they engage with individuals electronically. If you are operating on an opt-in basis of decision-making and people's opt-in options are to do it by post or in writing, rather than online, is the opt-in rate likely to be higher if it is done electronically, as a general proposition?

Dr David Halpern: It depends on how you normally transact. That would be one of the questions. Is it congruent? How would you normally have done it? If you are in a situation where you are routinely transacting in this domain online, you will get a lot more people to come across, as generally we know that online there is lower friction. There is a slight issue. If in your mind you have always transacted with your employer through bits of paper, in a certain way, and then you say, "Go over here to do it differently", you will get a lot of loss from that movement between channels.

Baroness Drake: If a population in general, as opposed to a specific population, is reasonably engaged in transacting or engaging online and you introduce into that doing something by post, it is likely to have less impact than—

Dr David Halpern: Yes. We are saying that it works both ways.

Lord O'Donnell: It goes back to the basic, very strong principle of behavioural economics, which is, "Keep it simple". People will do the simplest thing. If post is much harder than online, you will not get them doing as much.

Baroness Drake: The inertia barriers might be reduced as well, because you do not use the form, you do not have to walk down to the postbox in the rain and stuff like that. You take a lot of behavioural barriers out of the way.

Lord O'Donnell: Yes.

The Chairman: Thank you very much. That was both fascinating and helpful to us in thinking through the issue. It was very good of you.

Lord O'Donnell: I hope you will all buy David's book. It is all there.

Her Majesty's Government—oral evidence (QQ 80–92)

Examination of Witnesses

Nick Boles MP, Minister of State for Skills, Department of Business Innovation and Skills, and
John Penrose MP, Cabinet Office

Q80 The Chairman: Mr Boles and Mr Penrose, thank you very much for coming this afternoon. As I am sure you know, we have a very tight timetable because we have been asked to get a report out by 29 February, so we find ourselves in the slightly curious position of taking oral evidence more or less in parallel with receiving written evidence. We have to live with that. Would either of you like to make an opening statement, which you are welcome to do? If not, I shall kick off with the question that keeps cropping up over and over again. What is the problem to which Clauses 10 and 11 are seen to be the solution? What are we aiming to achieve?

Nick Boles MP: Lord Burns, thank you for offering me the opportunity to try to shed some light on this, although I will never be able to do as good a job as my colleague Baroness Neville-Rolfe did in the main Chamber yesterday on the very same clauses. There are basically two fundamental motivations. One has its roots deep in the past, in the long history of industrial relations and trade union regulation, and the other relates very much to modern times. The historical one, which I believe was debated at some length yesterday, is that of the continuing discussion between Governments over the past 30 or 40 years—indeed, one could say over the past 110 years—about the precise way in which trade unions secure the consent of their members to make contributions to the political fund. Obviously I know that the Committee will be very well aware of that, but it is important to remind everyone that the political fund is not necessarily, and for some unions is not at all, a party political fund but a fund to support campaigning of various different kinds. In the last majority Conservative Government there was a process of discussing with trade unions how they were communicating to members the fact that they had an absolute right not to contribute to political funds. As Lord King set out yesterday, an agreement was reached with the General Secretary of the TUC at the time, Len Murray, in which they agreed that trade unions would go further to make sure that everybody signing up to join a trade union or renewing their subscription was aware of the ability to make a choice not to contribute to the fund. Lord King in his exchange of correspondence with the General Secretary of the TUC made it very clear that the Government's agreement at the time

not to legislate for what we are legislating now—the compulsory opt-in—was based on an understanding that the trade union movement would effectively ensure that all trade union members were always aware of the fact that they did not need to contribute to the political fund and that therefore they had made a choice to contribute because they were aware that they could choose not to. The truth is that that has not happened across the trade union movement. It has happened in some unions, but it has not happened even in the majority of unions that have political funds. I do not know whether the Committee has been provided with the full programme, but if not I am happy to send it to you. As you go through the list of those trade unions that have political funds and look at the online application forms to join them, I am afraid that not even a majority actually make it clear on the form that, first, there is a political fund, and, secondly, that any member of the union can choose not to contribute to it. Bluntly, the deal that was made between the then Employment Secretary Lord King and Len Murray, then general secretary of the TUC, has not been fulfilled. It is therefore entirely reasonable for this Government, as stated clearly in our manifesto, to bring forward legislation to ensure that there is active consent, an active opt-in, to the political fund. That is the historical reason.

There is actually another reason that if anything makes it even more overwhelmingly necessary to make this change, which is that there has been a very substantial shift across a whole range of areas of public life and consumer activity towards the idea that it is important, when you are asking someone to make a contribution to some other organisation—it could be a supplier of a good or a charity—that they should actively consent to do so. I am sure that the Committee is already aware that the consumer rights directive, which was implemented in the UK in 2014 and which applies across the European Union for contracts between a trader and a consumer, reinforces the concept of express consent. Traders need the active consent of the consumer for all payments and pre-ticked boxes are no longer permitted under that directive. I am not going to suggest that the relationship between a trade union member and the consumer of a product or service is exactly the same, but that it is strongly analogous.

Turning to the charitable sector, last year Sir Stuart Etherington led a review of the approach to self-regulation of fundraising in charities and strongly encouraged that, again, all fundraising organisations should take steps towards adopting a system of “opt-in only” in their communications to donors. Charitable donation is another pretty strongly analogous situation. The same applies to financial products. The FCA is very clear that when signing up

to a financial product, consumers should be provided with clear information and be offered an opportunity to actively consent to a new commitment. The combination of the historic conversation, and to some extent a deal that was done between a past Government and the trade union movement not having been fulfilled, as well as the modern drift across all sorts of different areas of interaction between individuals and organisations that are taking money from those individuals, makes it absolutely right and proper to introduce what has long been the case in Northern Ireland, which is a compulsory opt-in process to making a contribution to a trade union's political fund.

Q81 The Chairman: It has been put to us, of course, that, given the way you describe the problem, there may not have been the degree of compliance that you would have liked to see. Nevertheless, the whole content of 10 and 11, taken together, is disproportionate in dealing with that, particularly in many of the arrangements that are built around it, which are both expensive and make it less likely that—in the short term, certainly—consent will be achieved. The question which a number of people have raised is that surely there would have been a lighter-touch way of dealing with the first problem you identified, and even the second one, than that which is described in 10 and 11. We have been through and heard today evidence that the sum of money that people are contributing is, on average, £5 a year and that the whole cost structure that now surrounds this proposal is disproportionate.

Nick Boles MP: I certainly do not think that this is anything other than a proportionate intervention. However, I absolutely accept that we need to make sure that the transition from the pre-existing approach to a modern approach of opt-in is possible for the unions to do in a way that is successful for them and their members and not punishing in terms of costs. I know that Baroness Neville-Rolfe indicated yesterday in the debate that on questions of timing for transition and methods by which an opt-in could be declared she was very much open to arguments and would be reflecting on them before Report. I endorse everything that she said. This is not designed to trip people up. We want it to be done in a normal way. I think Lord Burns is right about the impact assessment. In our slightly unimaginative way, we projected the costs of making this change if existing methods were required. It is perfectly reasonable to say that surely there are methods that could ensure that those costs are not as high as have been projected in the impact assessment and we are very happy to look at that.

Q82 Baroness Dean of Thornton-le-Fylde: Good afternoon, Minister. Perhaps we can turn to the impact assessment—of which, as you are aware, there has been a lot of criticism, not least

that it was not available until the Bill came to the House of Lords after Second Reading. Perhaps I may draw your attention to a few of the clauses in it. In paragraph 263 of the impact assessment you say that you allow 30 seconds for each response to be dealt with within the union. This is on the basis of the written application coming in, being opened, being tracked and the computer being dealt with. Where did you get that assessment from?

Nick Boles MP: Obviously you have to make reasonable common-sense assessments. Yes, it seems reasonable to me because it is not a complicated matter as to whether someone has declared that they do or do not want to tick a box. If you look at how long it takes someone reviewing a ballot paper in an election, which is a similar exercise where there is a box in which someone has put a tick, I would have thought that 30 seconds was a lot longer than for most people who count elections every single year in this country.

Baroness Dean of Thornton-le-Fylde: Yes, but there is a fundamental difference. A union ballot paper goes in its separate envelope, it is opened and then it is counted, usually automatically. This would be different in the sense that the form is coming in and has to be related to the individual member's record on the union computers. That has to be done individually. It cannot be done in 30 seconds.

Nick Boles MP: Baroness Dean, first, all I would say is that I was not referring to union ballots but to all other ballots, ones in which people receive a ballot paper and they have to work out what it says and what the indication means. Secondly, and perhaps more importantly, I have already said that we are open to discussing the precise method of communicating the desire to opt in, as Baroness Neville-Rolfe made clear in Committee yesterday. So while we can certainly have a discussion about the ins and outs of the current system, we are open to replacements for it if they can be suggested in a way that is secure and stable. Secondly, the impact assessment has been reviewed by the real experts who—I hope you will not take this amiss—are not me and nor, I suspect, any other member of this Committee but are on the Regulatory Policy Committee, which looks at impact assessments the whole time. Its job is to single out, without fear or favour, when it thinks we have made unreasonable projections. No doubt you will be on the point of reminding me that in our impact assessments on the consultation, which we published long before the Bill reached the Lords, we did not secure the glowing reports from the Regulatory Policy Committee that we might have wanted. But it has been satisfied that this projection is reasonable and I defer to its judgment on that point.

Baroness Dean of Thornton-le-Fylde: Thank you very much for that sophisticated put-down but it has not worked. I do not accept the point that you are making as regards 30 seconds being sufficient. I am from a trade union myself. Let me take you to the second point, on page 66, paragraph 251, which is the nub of my question to you. You say—or the assessment says—that you have concluded overall, “We do not think that the net behavioural responses are more likely to lead to an assumption of a decrease rather than an increase in contribution levels”. I presume by that you mean individual members, not actual contribution levels: not the level they pay but the individuals.

Nick Boles MP: The level of the percentage of members who will be contributing.

Baroness Dean of Thornton-le-Fylde: The number of members. Thank you. We have taken evidence from the Behavioural Insight Team that worked in No. 10 and it pointed out to us on Tuesday that it felt there would be a fall in membership paying on an opt-in basis but that if you link that with past history—if you like, what has happened in the past—when there have been moves from opt-out to opt-in and back again, in each instance there has been a substantial drop in people opting in. If you look at Northern Ireland, which is often quoted, of course, what you do not have there are unions affiliated to the Labour Party. However, even there, on the trade union figures which have been given, you are talking about 25% to 27% opting in. How do you reach that conclusion in paragraph 251? I have tried to find it in this report but I cannot.

Nick Boles MP: The truth is that we are explicitly acknowledging, which certainly no one has suggested is unreasonable, that a number of different eventualities could arise and it is quite hard to say with any confidence what those will be. You are right that some unions in Northern Ireland which have political funds do not secure the same rates of contribution and percentage of members contributing as unions in the mainland UK which do not offer an opt-in. However, equally, the Prison Officers Association and the RMT secure opt-in rates of 85% and 82%, which compare favourably with unions which are not offering opt-in at all but relying on opt-out. It is of course true to say that there have been historical moves, but they were made in the first half of the 20th century—an age ago in which communication with individual members was much more difficult. Sophisticated marketing techniques, not least advised by people such as the Behavioural Insight Team, were simply not understood and were not available. I do not think there is any clear way of assuming that there will be either a drop-off, an increase or anything in the middle. Ultimately we are motivated by the principle that if you

are asking an individual to contribute money towards another organisation, they should make an active choice to do so. Ultimately, yes, it may have some short-term effects on contribution rates; or it may not. The RMT and the Prison Officers Association seem to suggest that you can get back to a substantial level of support and we are willing to talk about reasonable transition times. However, the fundamental principle that people should make that active choice is one we want to deliver, as we promised in our manifesto.

Q83 Earl of Kinnoull: I want to come on to another aspect of the impact assessment. In particular, I have been concerned about IT systems for the trade unions. It seemed to me that there would be an IT system for the membership-related matters and an IT system for counting-related matters. The effect of Clauses 10 and 11 would require adjustments to be made to those IT systems, for obvious reasons. You have to have an audit trail to see which members are contracting in and another for the various different types of costs that will now have to be reported on as well. The first thing is that that sounds expensive to me—I have some experience—and there is nothing in the transition costs of the impact assessment for that. The second thing is that making adjustments to IT systems is not an instantaneous thing, and according to the Explanatory Notes there is an aggregate amount of time from Royal Assent to the Bill becoming effective of five months, which I felt was frankly impossible. Could you comment in general about that?

Nick Boles MP: I should first say that I am absolutely no expert on the implementation of IT systems and I will not claim to be. I point out that most—I am not suggesting all—of the unions which operate in Great Britain in the area that is covered by the measures in the Bill also operate in Northern Ireland, where they have to operate an opt-in approach, so it is not an unreasonable presumption that they have already worked out what the system is to handle that, because they have to do it for a substantial group of members in Northern Ireland, where opt-in has been in place for a very long time, as you will know. So that is not an unreasonable assumption. However, as I say, and as Baroness Neville-Rolfe said yesterday, this is not designed to trip people up, so if people have very substantive concerns about transition times, we will be very happy to look at them. On the matter of costs, if that was going to be an issue, I would have expected us to have got some push-back from the Regulatory Policy Committee or others on this, but I am not saying that you are wrong, because you sound like you are an expert, unlike me.

Earl of Kinnoull: In the summary of costs, you go down to £3,000 as being material—enough to appear—but I am saying that I estimate that you will have to change 50 IT systems, which, even if your Northern Ireland point is a lucky win, is still more than 25. It sounds to me like it should have appeared in here in the impact assessment. The RPC is not perfect.

Nick Boles MP: I have not yet heard that either from any individual union leader or from the General Secretary of the TUC and I promise you that they have communicated with me regularly on almost every matter in the Bill. However, you may well have come across something and I will be very happy to look at further evidence of that.

Q84 Lord Wrigglesworth: This morning before the Committee we had USDAW, the Fire Brigades Union and the teachers' union, the last of which is not affiliated with the Labour Party. They are very different unions. One of the problems in assessing the cost and the administration is that unions, such as the Fire Brigades Union, with 35,000 members and virtually no full-time staff, which operates largely on a voluntary basis, with volunteers doing a lot of the work, as against USDAW, which told us that it costs £200,000 to mailshot their 400,000 members, and then on to Unison and others—are not a group of organisations that are all the same. They are very different. In the whole of this I am slightly puzzled why there has not been more consultation between the Government and the unions, as there was between Lord King and Len Murray on the occasion that was drawn to our attention in the Chamber last night. Will you have consultations with them about how this will operate? We have raised only the tip of the iceberg as regards how this will operate. If you are going to proceed down the course you are, would it not be sensible, from everyone's point of view, for you to have discussions with the trade union movement about the impact that this will have?

Nick Boles MP: I am a great believer in trying to anticipate problems and in helping people work out how to avoid them. I simply point out that we made this commitment in black and white in our manifesto, which was much discussed. We then spent quite a lot of time last year undertaking very detailed consultations on other measures in the Bill—I think there were three or four public consultations. I have had meetings with Frances O'Grady from the TUC and with the leaders of the Scottish TUC. We took evidence in the House of Commons Committee from leaders of a great many of the most significant and important trade unions in the country. To my best knowledge, while their many concerns have been raised, the specific question of the precise cost of implementing opt-in was not raised. While it is absolutely right to say that we must make sure, as I said, that this is not designed to trip people

up, if we are introducing similar expectations for all people who sell goods and services, many of whom will be very small—quite possibly sole traders—or for all charities, many of whom again will be very small and will not have huge revenues, first, it is not unreasonable to apply the same to all trade unions, but also it is not impossible to do it in a way that is not egregiously expensive.

Q85 Baroness Drake: Coming back to the main estimate that there will be no change in the number of members contributing to the political fund, we took evidence from the Behavioural Insights Team. It is a matter of public record but, if you read its evidence, it quite clearly contradicts your main evidence, because its clear view was that, in the absence of other push forces, opting in produces lower participation rates for all sorts of behavioural reasons and, secondly, opting in in written form produces lower participation rates than doing so by electronic form—the evidence elucidated lots of examples where financial services and other traders were quite aware of this. Therefore its evidence contradicts you on that point.

Coming back to your enunciation of your two motivators and keeping up with modern times, you said that the principle is the knowledge that someone has a choice and can exercise it, then immediately conflated that with opting in—but they are not the same issue, because opting in is a mechanism for knowing that you have the knowledge and can exercise that choice. Running through financial products and insurance products in particular, you may opt in at the point of sale, but thereafter it is an opt-out or default arrangement endlessly onwards—certainly my insurance products work on that base—and employers frequently use opt-out to secure contract changes. As we know from what the Behavioural Insights Team said, increasingly commerce uses electronic means to fast-track opt-in decisions. Even on pensions you can opt out someone into a contract-based insurance product, which is a pension product, albeit that there has been a public policy decision to allow that to happen. Therefore the issue of knowledge of choice and exercising it does not line up automatically with opting in, and in fact your analysis of what is happening in modern times is not quite as black and white as you have enunciated it. However, you seem very clear here that there is only one way of having knowledge and exercising choice, which is, first, that you have to opt in, secondly, that it has to be in writing and, thirdly, that it has to be renewed every five years. Do you really think the evidence supports your opening assertions?

Nick Boles MP: Yes, absolutely. I have to say that I entirely disagree with your characterisation of what I said. I made very clear that we were open to discussion about the method of

communication of that active choice, and Baroness Neville-Rolfe made that very clear in the Chamber yesterday. I am not wedded to the idea that you have to get a quill pen and write on parchment to opt in. We will be open to any reasonable suggestions about how somebody can express their desire to opt in. However, it is also very clear, as I say, from the consumer rights directive, which I have no doubt opposition parties would generally support, and from Sir Stuart Etherington's review of charitable fundraising, that they say that consent should be expressed through an active ticking of a box, not through the failure to untick the other box. That is very clear.

I am grateful to you for raising the matter of pensions and enrolment, because it is important to understand why that is justified when in all these other areas—consumer trading, charitable donations and the like and, in our contention, trade union levies—it is not appropriate. Fundamentally, the difference is this. A pension is an asset of the person who contributes to it. You are not requiring somebody to make a contribution to another organisation that will do whatever it wants to do—maybe it has told you what it wants to do, but nevertheless—with your money. You are asking people to make a contribution to themselves in the future. Even though that is the case, it was nevertheless very controversial. I remember in Parliament long debates about whether it was an inappropriate infringement of people's liberty to require them to make that contribution to their own pension. However, it was justifiable because it is a contribution to themselves in 40 years' time. That is not true of a trade union levy, a purchase online or a charitable donation and that is why we should set a higher bar for consent, in my view through an active opt-in.

Baroness Drake: You put your money into a political fund, but that is a regulated activity and the definition of "political objects"—what you have to do to achieve a political fund and how you will have to account for that in terms of both internal democracy and external regulation, and there is plenty of scope for strengthening the regulation if you do not like what the certification officer does. It is not true to say that it is somehow a vacuum; you hand your money over and there is no control.

Nick Boles MP: Nor did I suggest that it is a vacuum, but I do not think it is in any different status than a contribution to a charity, and we have heard that charities in future are going to be required to secure an active consent for a donation to a charity. Charities are equally regulated; in fact, probably rather more so.

Q86 Lord Callanan: Good afternoon, Minister. Thank you for joining us today. I am an avid reader of the *Socialist Worker*. Browsing through my copy earlier in the week, I was surprised to see an item of correspondence from you appearing in it.

Nick Boles MP: So was I.

Lord Callanan: In that document, you hold out the possibility of the Government making concessions on the method of opting in to political funds, as you said earlier. Would you like to give us a bit more detail on that? Are the Government prepared to allow it to be done electronically, by email et cetera? Also, you referred to Northern Ireland, where some unions achieve quite high levels of active opt-in; we heard figures this morning that show it was up to 43% in the case of the firemen, but they do not have a five-year renewal process. Are the Government prepared to look at that process, alongside electronic methods and possibly a longer transitional time?

Nick Boles MP: Thank you, Lord Callanan. I promise you that it was certainly not welcome to find that leaked document published in full in that magazine. It is, I think, the first time I have ever had the honour of appearing in that magazine, and perhaps the last.

Lord Callanan: You are being quite rude about it.

Nick Boles MP: I hope the Committee will understand that there is a pretty firm principle that we do not comment on leaked documents, especially not leaked documents that were meant to go only between Ministers.

I could perhaps underline two things. The first is what Baroness Neville-Rolfe said yesterday in response to both subjects that you raise: transition and methods. She indicated that she is listening very carefully to the arguments and will reflect on them before Report. In general, and I hope as a further reassurance, we really are not trying to set up people to fail. We would be delighted if every union were able to secure the same level of commitment as the RMT and the Prison Officers Association are able to do in Northern Ireland. We just feel that the relationship between an individual member of a trade union and a trade union—and this, in a sense, is the characterisation of the whole Bill—needs to take advantage of a modern understanding of proper relationships, and modernised in terms of reporting and what is done with their money, which one of these clauses obviously does. That is what this Bill seeks to do. Anything that makes that modernisation more digestible for trade unions we are very happy to discuss.

The Chairman: Just a follow-up question on this. Obviously, we have to deal with whether the amount of funds in a political fund would be likely to be lower as a result of these measures. That is one of the questions that we are looking at.

Lord Callanan: Not that the level of the political fund would be lower, but that the level of contributions to the Labour Party would be lower. It is not the same thing.

The Chairman: I was taking the first step, which is contributions to the political fund. It seems to me that, in the context of your own arguments, the problem that we are looking for a solution for is almost inevitable. All the arguments about why one wants active consent, and your earlier arguments about why there may not have been full compliance with that agreement, combined with the well-known behaviour of inertia, surely imply that the central case must be that the number of people opting in would be lower than the current level.

Nick Boles MP: I do not accept that it is the central case, but I certainly accept that it is a case: it could easily happen. Some unions that are not good at communicating and perhaps not very good at winning the support of members for their campaigns may see a drop, but I do not believe that it is inevitable.

The Chairman: I am not saying that it is inevitable, but I find it very difficult to imagine that it is the central case, as stated in the impact assessment.

Nick Boles MP: Perhaps I can frame it in this way: we are doing this as a matter of principle. In truth, even if you could prove to me that there was going to be a drop, I would still suggest that this is the right thing to do, as it is the right thing to do for the consumer rights directive, for charitable donations and in every other walk of life.

The Chairman: That is not what I am challenging. I am challenging—

Nick Boles MP: The impact assessment range.

The Chairman: Yes.

Nick Boles MP: I think we acknowledge that it could lead to drops or to a steady state. We have examples of when unions have been operating and doing well. Many of the political funds support fantastic campaigns; HOPE Not Hate is a significant one. As many charities will find, charitable donations have not plunged. Of course they have had to re-engineer the way they communicate with potential donors; you now see incredibly sophisticated marketing and communications by charities, and charitable donations have held up very well. So while I accept that it might happen, I do not accept that it is inevitable.

Q87 Lord Richard: I do not think that anyone is suggesting that it is inevitable, but I note that the wording on page 74 of the impact assessment is: “Our main estimate is that there will be no change”—not that there might be some change but that there will be no change—“in the number of members contributing to the political fund”. Where on earth did you get that from? All the evidence that we have heard, from all sorts of sources, contradicts that statement. What is your evidence for that?

Nick Boles MP: As I have tried to explain, there are examples where levels of contribution have remained very high.

Lord Richard: There are examples, but that is not the same.

Nick Boles MP: But I do not think—

Lord Richard: You are not saying “there may be circumstances in which”, you are saying that there will be “no change”. Is that your position?

Nick Boles MP: When you put forward alternative scenarios, you have to decide which one is in the middle of the probability distribution.

Lord Richard: You have not said anything about the middle figure. You have said: “Our main estimate is that there will be no change in the number of members contributing to the political fund”. Where does that come from?

Nick Boles MP: You are very much at liberty to disagree with that estimate. That is the Government’s estimate—

Lord Richard: What is it based on?

Nick Boles MP: It is based on a lot of the evidence I have given you that many unions are able to do it, and that in other walks of life—

Lord Richard: Some unions are.

Nick Boles MP: Can I please answer your question?

Lord Richard: Your answer is to ask another question.

Nick Boles MP: In many walks of life, people could cope with a similar change and managed to sustain levels of commitment to their organisation. It is not my job to assume that unions are going to fail to persuade their members to make very small financial commitments to very worthwhile causes. I do not believe that that is likely and I certainly do not believe that it is inevitable, but ultimately it will be for them to pull that off. We will try, through listening to their arguments about transition and implementation, to make it as easy as possible for them to succeed.

Lord Richard: It is not your business to assume that unions will fail to do it, but it is your business to assume that unions will succeed in doing it because there will be no change.

Nick Boles MP: I will do everything in my power to help them succeed.

Lord Richard: It also says in the impact assessment, two sentences down: “However, we have conducted some sensitivity testing”. What is that?

Nick Boles MP: That is what I meant by scenarios.

Lord Richard: But where is the evidence?

Nick Boles MP: Lord Richard, when you make an estimate in any walk of life, that does not mean that there is only one possibility that you consider; you consider the full range of possibilities. We considered the full range of possibilities and decided that there was no evidence to assume that donations to the political fund would go either up or down. It could be either, and it will all depend on how trade unions go about communicating with their members the advantages of these contributions.

Lord Richard: The impact assessment says, “we have conducted some sensitivity testing.” What sensitivity testing? Whose sensitivity have you tested? What were the results of testing people’s sensitivity, and please can we have a look at them?

Nick Boles MP: I am sure that you are pretending not to understand what sensitivity testing means. It means considering alternative scenarios. We have considered alternative scenarios. We have looked at the full range of trade unions in Northern Ireland, some of which have very high levels of commitment through the opt-in, and some with very low levels of commitment. We considered all of those and we concluded that the best estimate we can make is that there will be no change because it might go up and it might go down.

Lord Richard: So, “some sensitivity testing” means that the Government have considered some scenarios.

Nick Boles MP: Yes.

Lord Richard: That is all it means.

Nick Boles MP: That is what sensitivity testing means. I am sorry, it is a matter of English language.

Q88 Lord Robathan: This question may give Nick a break, because it is more for the Cabinet Office. I am a great believer that political parties should always stick by their manifestos. Indeed I put that to Nick Clegg this morning and he sort of agreed as well. The Conservatives said in their manifesto that, “We will legislate to ensure trade unions use a transparent opt-in

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process for subscriptions,” to political parties. That is a given. However, juxtaposed with that the manifesto states, “We will continue to seek agreement on a comprehensive package of party funding reform.” The juxtaposition cannot be a pure coincidence, so what we would like to know is what progress has been made towards seeking agreement on a comprehensive package of party funding reform.

John Penrose: Before I start, I should say that I am in awe of Nick Boles’ ability to get himself quoted in the *Socialist Worker*. Apparently the Speaker has owned up that he had read the *Socialist Worker* in his youth because he originally thought it would turn him into a Tory. To answer your question, Lord Robathan, since the general election, not a great deal. Members of the Committee will be aware of periodic attempts over many years to create a cross-party consensus on the knotty and difficult question of party funding. Ultimately, creating that consensus is not strictly speaking something for Her Majesty’s Government; it is for the political parties to achieve. When they do, and I hope they will but it has been hard yards up until now, it will then fall to me or my successor to introduce legislation which will change whatever it might be in order to give effect to that cross-party approach. There was quite a determined effort under the last Government to achieve it, but the talks broke down, and there were periodic attempts before then which also foundered on one issue or another. As you will appreciate, it has been a little bit difficult to get things moving since the general election because there have been a couple of party leadership changes that had to go through, and then we have had the Trade Union Bill knocking around which is creating an environment where such things might be easy to start in a constructive fashion difficult to achieve. I hope that it will come back and that we will have further opportunities because clearly there are issues which remain to be addressed. It therefore will come up and it needs to do so.

Lord Robathan: I think that that is a fair comment. You are a Conservative Minister in Her Majesty’s Government rather than just a Minister in Her Majesty’s Government, so presumably it might come to you to take some action on this. Has any action been taken or are you planning on any?

John Penrose: It has not come to me. If you look at the people who were involved in the negotiations under the coalition Government, it was typically the chairman, chief executive or whatever the arrangement was for the major political parties. They were the sort of political party representatives in the room, with sometimes an MP along with them and sometimes not. In the end it will have to be for senior members of each political party, who after all tend

to be the people in charge of the treasury and the funding streams for whatever it might be, who would have to be in the room first. They need to be willing to work out what they think they might be able to live with and what they might be able to talk about in any discussions. It might very well be that at that point there will be some assistance from elected Members of Parliament, or indeed from Ministers. But if you look at what happened last time, the Whitehall machine provided a very limited secretariat function in order to facilitate the discussions, but that was all, and I think quite appropriately so because ultimately it is inherently a discussion between political parties rather than something which is inherently either parliamentary or governmental.

Q89 The Chairman: You will be familiar with this by now, but what has been put to us is that the juxtaposition of these two sentences is not an accident because of course the Kelly report relates to them both. Where there has been what one can almost call outrage in some quarters stems from the fact that one seems to be dealing with the first sentence here while patently ignoring the second sentence. The argument is that these two things should be taken together. The implication in the manifesto is that they are issues that would be taken together, and that then introduces all the arguments about the long tradition of a Government not taking action which is going to affect the funding of the opposition party, particularly as the Kelly report suggested that that would be the consequence of this action.

John Penrose: I shall make a couple of points in response. First, we thought that the idea of opt-in was so good that we mentioned it twice in our manifesto.

The Chairman: Yes, but in different contexts. I have to say that I have struggled to understand what the first mention of it means.

John Penrose: There is one occasion when it is juxtaposed and another where it is less so. The point is that they may be mentioned in one case adjacent to each other and in another case separately within the manifesto, but they are none the less manifesto commitments. It does not mean to say that you can do both at the same time, particularly because, in the case of cross-party talks on the governance of funding, it requires cross-party agreement for them even to be held, let alone concluded. I do not think that we should let one be the hostage to the other, if I can put it that way. I would love us to be able to get under way with more cross-party talks, but the conditions have not yet been right for a constructive dialogue. I hope that those conditions will materialise and be feasible in the future. I would also just say that regardless of the wording, detailed or not, of any political party's manifesto, there is a

fundamental conceptual difference between the way that members agree to fund a trade union and the way that a trade union subsequently decides whether or not it is going to fund a particular political party. It so happens that there is a strong party-political interest in one particular quarter, I agree, but there is an important conceptual distinction between those two things, and we therefore believe that they should be viewed very distinctly indeed.

Q90 Lord Sherbourne of Didsbury: Can I read out to you two statements? The first is from the Conservative Party manifesto which states, “We will continue to seek agreement”—that sounds like momentum to me—“on a comprehensive package of party funding reform.” But in the paper we have received from BIS, the Government say this: “We remain open to action should a cross-party consensus on the broader questions of party funding emerge.” It sounds as though we were proposing action in the manifesto, but now the Government are waiting for something to happen before they act.

John Penrose: As I think I mentioned just now, the conditions are more difficult, I would argue, than they were in the last Parliament. We have had two new leaders—

Lord Sherbourne of Didsbury: We have a Labour Party leader who is in position. This came to us this morning.

John Penrose: Yes, but what I am trying to say is that the circumstances in which you might be able to get cross-party talks under way have got more difficult. It does not mean that they are impossible, but they have got more difficult since the last general election. That is because, first, we had a period of interregnum while new leaders were chosen, and since then we have had this issue with the Trade Union Bill which makes it frankly difficult to establish such things. That does not mean that were conditions to improve we would not be delighted, but it is rather difficult to start leading horses to water if they are not drinking.

Lord Sherbourne of Didsbury: The juxtaposition which the Chairman has referred to of the proposal on opting in has created a difficulty for fulfilling the second sentence.

John Penrose: I do not think that the juxtaposition has anything to do with it at all.

Lord Sherbourne of Didsbury: You seem to be saying that the fact that the Government are legislating for opting in has created a difficulty for fulfilling the second commitment to seek consensus.

John Penrose: No, that is not entirely what I am saying. It has been a factor, but I do not think that it should be. I do not think that we would agree or accept for a moment, as I said before, the notion that how members of trade unions choose to fund their trade unions should

necessarily have a connection with how trade unions then decide to fund political parties of any type or stripe. But some people view it that way, and you will have taken evidence from those who feel very strongly about it. Therefore, even though we would disagree with the central principle behind their argument, it is going to be difficult to create those conditions. However, were the conditions to improve and we were able to convene, of course we would be delighted to come to the table. But it is not just up to one party or another to say, “We are going to hold these talks. We are going to occupy a room and wait for other people to turn up”. You actually have to have other people who are willing to walk in the door and join in the process.

Lord Callanan: I do not see what is so difficult about taking forward the commitment to invite the other parties. You could fulfil the commitment by inviting them to come to a meeting to discuss it. What you are saying is that you are sort of waiting for something to spontaneously emerge—albeit not in the pages of the *Socialist Worker*—to find out whether there is in fact a consensus to be arrived at. It seems to me that you could take forward the commitment fairly easily by inviting the chief executives of the three parties to come together to explore each other's positions to see if there is a possibility that they could reach agreement.

John Penrose: As I said, I think that that would be something which the chief executives or leadership, particularly the organisational leadership of the major parties, would probably need to take a lead on. I do not think it is necessarily a programme for a Government to do.

Lord Callanan: How can three people take a lead to meet spontaneously unless somebody invites them to do so?

Q91 Lord Wrigglesworth: The question is on this point. Is not the truth of the matter that the Conservative Party has consistently been reluctant to see any fundamental change in the funding of its own activities? When the Deputy Prime Minister in the coalition Government called for joint party talks, the Labour Party and the Liberal Democrats put forward spokesmen, but no spokesman was nominated by the Conservative Party until the Cruddas affair broke in the *Sunday Times* and the treasurer of the Conservative Party had to resign. That was the stimulus for the Conservative Party participating in the joint talks that the Deputy Prime Minister had called for. There is a reluctance, I think, that one can see from many bits of evidence, which shows that the Conservative Party is unwilling to give up its position of advantage in party funding. That is why, despite this commitment in the manifesto which one assumes the Government are going to take a lead on, no all-party talks are taking place. All

there is what most people think is going to be an attack on the major opposition party's funds.

John Penrose: Lord Wrigglesworth, I will not seek to countermand your view of history because I was not involved in the earlier rounds of the process at all. But I would just say that it would be entirely open to any of the major parties' leaders to say, "We are going to start convening on this". It would not have to come just from the Government, as you assert. In fact, you have given an example where, because in your view everyone was not involved to begin with, others convened and it was difficult for the missing pieces to stay out of the room. It is entirely possible for initiatives to be taken by party leaderships right the way across the political spectrum. We have a slightly more complicated party geometry nowadays than perhaps we had five years ago, but none the less it would be entirely possible to do that. I think it is wrong to say that it has to come from the Government. This is something which, by definition, if you are going to get cross-party consensus, you have to have cross-party agreement to start, continue and complete the talks.

Baroness Drake: I come back to the point you made about the conceptual distinction between paying moneys into a political fund and paying moneys into the Labour Party. I remember Baroness Neville-Rolfe labouring this point—that is not a pejorative phrase, it just reflects the effort she made—at Second Reading. But of course it is the case that the only moneys that can be paid into the Labour Party by the trade unions has to come through the political fund because you cannot pay moneys into the Labour Party other than through that fund. So if an action or a policy is taken that could impact quite sizeably on the level of moneys going into the political fund, there has to be, either directly or indirectly, an impact on the funds available for trade unions to put into the Labour Party. If I can use an analogy, it is like looking at sex or race discrimination. You do not look only at the direct instance of discrimination, you look at indirect instances as well. I struggled at the time and I struggle now at the ability to say that it is possible to look at and have a policy on the impact on political funds but somehow say that that has no flow-through into funding of the Labour Party.

John Penrose: I do not want to stray into Nick's territory but he made the point, and I think he was right to do so, that you can have plenty of people who, let us assume for the sake of this example, opt in to pay money into a political fund. That union may then decide that it wants to use that money to fund the Labour Party—or not. There are examples of both of those two

things. So there is not necessarily a connection at all. That therefore rather bolsters Baroness Neville-Rolfe's point quite strongly.

Baroness Drake: But the proposition that one does not have an impact on the other is not correct. One can argue about the extent of the impact but, as a proposition, to alter the rules for the political fund and make a clean assumption that it will not have an impact on Labour Party funding is not a sustainable intellectual position, is it?

John Penrose: My point is not that. My point is that the two are conceptually different. There may be indirect impacts, and Nick has already talked about whether or not the impact in some cases may be up or may be down, and there are plenty of debates to be had about that. But there is and there should be, in principle, a distinction between money paid into trade unions and the separate decision as to whether or not any of that money is then used to fund one political party or another political party or no political party at all. At the end of the day, those have to be voluntary individual decisions that are taken without fear or favour and without being pushed one way or another. If the result of that is that funding to one political party of another goes up or goes down, so be it. But they are distinct decisions and the principle behind them, free will, has to be central and more important than anything else, I would argue.

Baroness Drake: But in terms of impact, even if they are separate decisions, it is only one source of funding.

John Penrose: I am sorry, what is your point?

Baroness Drake: If you are going to take a policy action that could affect the flow of funding into a political fund, you have to stand back and look at the impact of that on the subsequent funding to the political party.

John Penrose: You first have to start with the point of principle and say, "Is this right?"

Baroness Drake: The point of principle is whether people should have a choice and whether they should have knowledge on how they should exercise that choice.

John Penrose: That is—

Baroness Drake: But what about judging the impact? It will still impact on Labour Party funding.

John Penrose: I come back to Nick's earlier comments about—

Baroness Drake: We have already rehearsed it. I am just disagreeing with your point that they are conceptually distinct.

Q92 Baroness Dean of Thornton-le-Fylde: I am not sure to whom I am addressing this point, so you can please yourselves as to who answers it. All the evidence we have had in the short time we have been sitting has given us the view that, if the current proposals were introduced, it would mean a diminution of funding for Her Majesty's Opposition. If you look at that against the background of all the reports, including, with respect, the ones that the Ministers have quoted, they have all said you cannot make a major change in our political balance without it being by consensus of all the parties. I believe that that is why the second sentence, about trying to get agreement, was in the Tory party manifesto. If everyone else is right, and it just so happens that, in this one area, you are wrong when you said that it should not affect Her Majesty's Opposition's funding, what incentive will there be to get consensus in the future? And how would you answer the point that there would be absolutely no incentive at all for the Conservative Party to agree to any change from its current big-donor basis of funding?

John Penrose: You are absolutely right that other issues remain to be decided, and there are a number of things, including whether there should be greater taxpayer funding—public funding—of political parties. My party disagrees with that as we think it should be done by individual decisions rather—

Baroness Dean of Thornton-le-Fylde: There is not political consensus on that anyway.

John Penrose: There is not but I am trying to give examples of other issues which still remain unresolved, which therefore would make holding political cross-party discussions worthwhile to try to reach consensus. I started off with that one but there are other ones to do with donor caps and various other bits and pieces. So there are many other topics which people would want to be discussed and to think about and inevitably, if there were to be a cross-party conclusion and consensus, there would have to be some compromise and people would give way on one thing to achieve something they dearly wanted somewhere else. That is in the nature of negotiations. I am sure that you will be far more experienced than I am in that sort of thing. Therefore yes, there are plenty of reasons why it would be advantageous for all parties in due course to come back to the table. All of us have things we would like to achieve; at the moment they have not been the same things and there have been very hard yards achieving it. However, that does not mean that it is not worth even starting for anybody.

Baroness Dean of Thornton-le-Fylde: Can I just press that point? Having potentially completely neutered Her Majesty's Opposition, what incentive would there be for you to change from your big-donor party?

Her Majesty's Government—oral evidence (QQ 80–92)

John Penrose: I am sorry—I start off by not accepting the premise—

Baroness Dean of Thornton-le-Fylde: Although other people do.

John Penrose: Respectfully, I would disagree with them, too. The Opposition is not neutered at all. Interestingly, if you take an entirely different example, the SNP, it is very noticeable that it does not depend on union funding and has been incredibly effective in the first nine months of this Parliament—it has been an extremely effective voting and political operating block within Parliament since it arrived. So there are many different ways of being an effective opposition—either Official Opposition or minority opposition—party. The central principle is that this has no reason at all to neuter anybody as a result of it—there are many different ways of skinning that cat.

Baroness Dean of Thornton-le-Fylde: Which cat do you want to skin?

John Penrose: To achieve being an effective opposition.

Baroness Dean of Thornton-le-Fylde: We will leave that there.

The Chairman: I think we have probably covered all the ground we were hoping to cover, unless there are any other final questions or remarks either of you want to make.

Lord Wrigglesworth: There has been a helpful comment from the Minister about the speech made in the Chamber last night. Is the meaning of that that the Government are prepared to change the Bill to allow the political opting in and opting out to be online or via email?

Nick Boles MP: I am sure that you will agree that it would be grossly disrespectful of me to interpret Baroness Neville-Rolfe's words or anticipate any future words she might want to have to share with you.

The Chairman: We will have to make our own recommendations in the light of this. Thank you both very much, Ministers. It was kind of you to come.

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—written evidence (TUP0011)

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—written evidence (TUP0011)

Evidence to Select Committee on impact of party funding of Clause 10 and Clause 11 of the Trade Union Bill

The Trade Union Bill

The Trade Union Bill seeks to strike a fairer balance between the freedom of unions to take strike action and their responsibilities towards the general public. It will ensure that unions can only disrupt other people's lives if their cause has the support of their members. The Bill also aims to modernise the industrial relations framework to make unions more transparent, more accountable and more responsive. The Bill is not about party funding, but delivers a package of manifesto commitments on reforming trade union law.

The Government believes that strikes and other forms of industrial action should be regarded as a last resort after all other attempts to resolve differences through dialogue have been exhausted.

The Government's modernising reforms will ensure strikes happen only as a result of a clear, positive decision by those entitled to vote. These reforms will restore public confidence that where industrial action takes place, it has the strong support of union members.

The Bill will give union members more information about what unions are doing with their money and will ensure that the member's decision to contribute to the political fund is done only with their explicit assent. This is what Clauses 10 and 11 seek to deliver. It is important to note that the Bill seeks to allow union members an informed choice on whether to join a political fund. This is a completely separate matter from affiliation fees to political parties. The Bill makes no changes to the way that trade unions affiliate or donate to political parties.

Establishing a political fund

Trade unions must set up a separate political fund to finance political campaigning activities. They must comply with statutory requirements in setting up and running such funds. Unions can make contributions to political parties from their political fund, but they can also use the fund for other purposes, such as political campaigns.

Members have a choice about whether to contribute a union's political fund. If they do not wish to do so, they must inform their union of their decision – this means that they can choose to opt out of contributing to the political fund. Under the current system, therefore, a member of a union with a political fund automatically contributes to the fund when they make their subscriptions.

The only time a union member has to be informed of their choice to contribute is at the time of a political fund ballot. The political fund ballot happens once every 10 years. If the outcome of a ballot is to establish a political fund, the rules about the political fund and member contribution levels become part of the union rule book. However, although

members can request a copy of the union rule book, it is not mandatory for the union to provide its rule book to members without such a request.

Furthermore, many unions that have a political fund are not transparent with members on their membership subscription forms about the existence of a political fund; their choice to opt-out of contributing to the fund; or the level of the member's contribution towards the fund.

Trade Union Bill Clauses 10 and 11

The Government is concerned that unions do not readily provide members with the information to decide whether to contribute to a union's political fund nor the level of that contribution. They also do not provide up-to-date information about what the political fund is spent on. These clauses are not about party funding, but make changes to the way that members exercise their choice to contribute to their union's political fund. We are moving to the Northern Ireland system of opt-in which unions (including UK unions) have offered to their (Northern Ireland) members since 1927.

Clause 10 will therefore ensure that members are given an active choice to 'opt-in' to contributing to the union's political fund rather than the current system of making a choice not to contribute.

In addition, 10 years is a long period of time to update members with transparent information about political fund contributions and activities. The Bill provides that members should decide whether to contribute every 5 years. This will ensure that members make their choice based on current and transparent information of spending on political activities. It is up to each individual union to decide whether or not to affiliate to any political party, and how much to contribute from their political fund. The Bill makes no change to the way that unions may decide to affiliate and/or donate to political parties

Clause 11 provides for additional transparency over the expenditure of the union's political fund. It places a requirement on unions to provide more detail about political expenditure in their annual return to the Certification Officer. This information will allow union members to make an informed choice about whether they wish to contribute to the fund.

The Government believes these changes are proportionate and for the benefit of individual union members. They are not designed to determine what unions decide to spend their money on but provide a transparent and up-to-date choice for individual members.

Problems with the current system

There is a large body of evidence to support the Government's concern that unions do not readily provide members with the information to decide whether to contribute to a union's political fund nor the level of that contribution.

We have reviewed the available online subscription forms for the 25 unions which have political funds. We discovered that 12 unions - just under a half (48%) - do not mention the

existence of a political fund. Of the 11 unions that do reference a political fund, a further 5 do not make it clear that a member has a choice to opt-out. In many cases, it is unclear whether there is a reduction in contributions, when a member chooses to opt-out.

The Government believes that every union member should make a proactive decision about whether or not to contribute to a union's political fund. The decision should be informed by clear and up-to-date information about what the political fund is used for.

Clauses 10 and 11 are about the transparency of the decision to contribute to a union's political fund, not the ability of unions to spend money on political activities. The reforms do more to make sure that union members understand what their subscriptions contribute to. If the members want a political fund, then there should be no reason why now, or after future reforms, they should decide not to contribute.

The Modern Case for Opt-in

The move to an opt-in approach for union members to contribute to political fund contributions is in line with current best practice. In many other aspects of life automatic opt-ins by default (opt-outs) is, at best, ill-advised or sometimes simply unacceptable:

- **In consumer law**, reforms have reinforced transparency for consumers when they are charged for goods and services. **The Consumer Rights Directive was implemented in the UK in 2014** and applies across the EU for contracts between a trader and a consumer. This reform reinforced the concept of 'express consent'. Traders need the active consent of the consumer for all payments – pre-ticked boxes are no longer permitted.
- The Information Commissioner's Office provides guidance on **'best practice' in relation to direct marketing communications**. This recommends that best practice is to provide an unticked opt-in box, and invite the person to confirm their agreement by ticking. The guidance goes on to say that "this is the safest way of demonstrating consent, as it requires a positive choice by the individual to give clear and explicit consent".
- Last year, Sir Stuart Etherington led a **review of the approach to the self-regulation of fundraising in Charities**. It strongly encouraged all fundraising organisations to take steps towards adopting a system of 'opt in' only in their communications to donors. A forthcoming EU Regulation⁵⁹ on reforms to data protection is likely to enforce such changes in law.
- **All financial products need to comply with fair treatment principles** so that consumers know what they are agreeing to. All firms must be able to show consistently that fair treatment of customers is at the heart of their business model. **The FCA sets out consumer outcomes** that firms should strive to achieve to ensure fair treatment of customers, one of those is that consumers are provided with clear

⁵⁹ The European General Data Protection Regulation (GDPR) was agreed in Trilogue in December after over 3 years of negotiations. The final text has not yet been published

information, and are kept appropriately informed before, during and after the point of sale.

We have also seen high profile examples of the dangers of opt-out systems. For example, mis-selling of Payment Protection Insurance (PPI) involved some businesses adding PPI automatically, unless the consumer “opted out”. Studies have indicated that the alternative of an ‘opt-out’ that requires an individual to take action to avoid making a payment can lead to different disadvantages, for example they can be less likely to produce the kind of committed follow-up that is often useful and less likely to reflect the decision makers’ true preferences than will more active choices.

In conclusion, there is a clear case for changing to the practice of opting-in. Organisations might need to put more effort into making the case for an individual to opt-in but that does not mean that they cannot make the case successfully. For example, charities use different and innovative ways to make compelling cases to donors to agree to permit gift aid to their donation. If union members wish to contribute to their union’s political fund, there should be no reason why the need to opt-in should discourage them from doing so.

Political Party Funding

Despite a decade of talks, there is still no cross-party consensus on the separate and broader issue of party funding at this time. The 13th report of the Committee on Standards in Public Life (CSPL) on political party funding was published in 2011. Cross-party talks were convened, and representatives of the three main political parties met on seven occasions between April 2012 and January 2013. However, the CSPL recommendations did not obtain cross-party consent amongst the political parties, and indeed, had dissenting opinions in its own report.

The CSPL's 2011 suggestions included taxpayer funding of politicians under a scheme which was estimated would cost around £20m a year at 2010 prices. This would represent a considerable increase in Government funding of political parties and given the need to pay off the inherited deficit, the Government believes there is no public appetite for more taxpayer-funding of politicians. Instead, we believe savings are needed to help reduce the cost of politics.

The Government remains open to constructive debate and dialogue on how we can further strengthen confidence in our democratic process, and increase transparency and accountability. We also remain open to action should a cross-party consensus on the broader questions of party funding emerge in future.

10 February 2016

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—supplementary written evidence (TUP0040)

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—supplementary written evidence (TUP0040)

Lord Burns

Government Evidence to Select Committee on Trade Union Political Funds and Political Party Funding

When I gave evidence to the Committee last week we discussed, amongst other issues, the agreement between Lord King and the TUC in 1984. This followed a Conservative manifesto commitment in 1983 to introduce steps to guarantee the free and effective right of choice for members about whether to contribute to the union's political fund. The agreement with the TUC was that trade unions would ensure that their members were aware of their ability to make a choice not to contribute to their union's political fund and that they would be able to exercise that choice in a free and effective way.

In light of this agreement, Lord King agreed not to bring forward legislation to allow members to opt in to contributing to the political fund as long as the TUC's action would in practice be effective. If it were not, the Government reserved the right to legislate to ensure that union members were fully aware of their choice and readily able to exercise that choice. We do not believe that the agreement between the then Employment Secretary and Len Murray, then general secretary of the TUC, has been fulfilled.

I undertook to send details of the information relating to how union members are made aware of their opt-out rights. A table collating the references on union membership forms to the political fund and choice to opt-out is attached. This was current as of the week commencing 8 February 2016. Not even a majority of the unions make it clear on the form that there is a political fund that any member of the union can choose not to contribute to. Acknowledgement of the political fund and ability to exercise the right not to contribute are essential at the point of agreeing to become a member and making the financial commitment to the union membership charges. We have also looked at the wider information available on these unions' public websites and found that the level of detail about political funds was variable.

The evidence proves that many trade unions are not complying with the terms of the 1984 agreement and that their members are neither aware of their choice to opt out nor readily able to exercise it. It is therefore reasonable for the Government to implement our clear manifesto commitment and bring forward legislation to ensure that there is active consent, in the form of an opt-in by members, to contribute to the political fund.

I also set out a further reason why the Government should make the change to opting in to the political fund. There has been a substantial shift in practice across a whole range of areas of public life and consumer activity when asking someone to make a contribution to another organisation. I gave examples in my evidence where it is now a requirement that people should actively consent to do so and the previous written evidence of 10th February provides further instances where this is the case.

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—supplementary written evidence (TUP0040)

In conclusion, the combination of the failure of many unions to comply with the historic agreement and the modern practice of opting in across a range of different sectors make it absolutely right and proper to introduce a compulsory opt-in process for members to contribute to their trade union's political fund.

I hope this assists in your Select Committee enquiry.

| Unions with political funds | Opt-out mention on membership forms |
|--|--|
| Association of Revenue and Customs (FDA) | Yes |
| Educational Institute of Scotland | Yes |
| Musicians Union | Yes |
| National Union of Teachers | Yes |
| POA | Yes |
| Union of Shop Distributive and Allied Workers (USDAW) | Yes |
| Associated Society of Locomotive Engineers and Firemen (ASLEF) | No |
| Bakers Food and Allied Workers Union | No |
| Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) | No |
| Communication Workers Union (CWU) | No |
| Community | No |
| Fire Brigades Union | No |
| National Association of Schoolmasters | No |
| Union of Woman Teachers (NASUWT) | No |
| National Union of Rail Maritime and Transport Workers (RMT) | No |
| Prospect | No |
| Public and Commercial Services Union | No |
| Transport Salaried Staffs Association (TSSA) | No |
| Union of Construction, Allied Trades and Technicians | No |
| Unison: The Public Service Union | No (mentions union political funds, offers choice between funds but not opt-out) |
| GMB | No (Opt-out of affiliation fee to labour party offered) |
| Unite the Union | Unclear (tick box offered on supporting campaigning in the labour party) |
| Unity (merged with GMB - referred to GMB joining page) | No (political levy rate is listed at end of application but no opt-out option) |
| University and College Union | No (political levy rate is listed at end of application but no opt-out option) |
| National Association of Colliery Deputies and Shotfirers (NACODS) | Not able to obtain form |
| National Union of Mineworkers | Not able to obtain form |

Her Majesty's Government on behalf of the Department for Business, Innovation and Skills—supplementary written evidence (TUP0040)

19 February 2016

Mr Ben Jones—written evidence (TUP0003)

Mr Ben Jones—written evidence (TUP0003)

I think that the argument against an introduction of an opt in system is that union members have consciously chosen to opt into a political fund, they also have to vote every ten years on whether their union should run one at all. I don't see the need for further costly restrictions on political funds.

The Political funds are used to pay for several different campaigns including campaigns against racism and fascist organisations these views damage equality within our societies.

There are some unions affiliated to the Labour party and they use their political fund to support the work undertaken by the party. Others have political funds which don't go towards a specific political party either.

I feel this is a targeted attack purely motivated by intent on reducing funding from Unions that helped found the Labour Party. I know it is usual for proposals to reform party political funding to be negotiated between all the parties concerned. But this is not the case with this Bill. These changes will crush the industrial power of trade unions to negotiate and bargain for their members, it will also reduce the income available to them to use for their own political campaigns, whether it be to make donations to political parties or to campaign against the Conservative party. This Bill completely ignores the funding by big corporations towards the Conservative Party. Trade unions have the rights of ordinary people at the heart of their work, trying to make things better for ordinary people who make up the vast core of any company. Big corporations have a vested interest in ensuring terms and conditions of workers are set so low as this will maximise their profits.

I feel it is undemocratic that a government try's to dictate to democratic members' organisations such as trade unions, whom represent their members' economic and social interests, where and how their funds should be used.

The changes in this Bill are set to come into effect within 3 months. This is completely unreasonable and hasty. All other acts have not come in this quickly. When the plastic bag policy was made shops were given 2 years to comply. So my question is, why is this change to be forced upon trade unions within 3 months?

These changes will separate the member from the organisation of the trade union and undermine the principle of collective power which is fundamental to effective trade unionism. By enhancing the right of the individual in this way, the government contravenes it's own duty to respect the right of workers and trade unions, for which ILO convention 87, art 3, makes very explicit provision.

The government's Regulatory Policy Committee has said that the Bill is 'not fit for purpose'. This bill is an assault on the political freedoms of the British trade union Movement. It shows the government's contempt for the civil liberties of trade unions and their rights under international law.

Clause's 10 and 11 reduce the ability of trade unions to campaign for new laws, such as the repeal of the Trade Union Bill and attacks trade union political freedom. It is also unfair that

no other organisations in the United Kingdom are restrained in the way proposed for trade unions, the political freedoms of which are to be regulated in a discriminatory manner.

When individuals join a trade union, they do so because they acknowledge that as an individual, they have less power to bring about better conditions and terms. They have joined because they know their union is going to work on their behalf using any legal means. They willingly chose to pay into the organisation so that it can negotiate and bargain on their behalf. This means that they have acknowledged what their fees can be used to do, this includes funding the political parties and campaigning with the aim to support ordinary people rather than the privileged elite.

There can be no objection to transparency of political or any other expenditure. But there can be serious objections to disproportionate obligations that serve no conceivable public interest. What is required here is that the union should itemise and publicise every payment over £2,000. This contrasts with the obligations on political parties such as the Conservative Party, where the public interest in transparency is at least as great as the public in trade union transparency. Political parties are required by election law only to report donations received in excess of £7,500, a figure increased from the £5,000 set when the legislation was introduced in 2000. In 1997 the Committee on Standards in Public Life rejected a proposal that even small political donations to political parties should be reported to the Electoral Commission, taking the view that it would be 'unnecessarily intrusive and administratively burdensome'

This Bill attacks the democratic rights of individuals. It is an attack on the democratic members' organisations which work to improve their members working conditions and rights. It is designed to cut off funding for the only real opposition to those who seek to even out the balance between the needs of the majority in society against the greed of the few.

8 February 2016

Joseph Rowntree Reform Trust—written evidence (TUP0025)

1. About us

- 1.1. The Joseph Rowntree Reform Trust Limited (JRRT), founded in 1904 by the Liberal, Quaker philanthropist, Joseph Rowntree, is a tax-paying company. It is therefore free to give grants for political and campaigning purposes, and to promote democratic reform and constitutional change. The Trust aims to correct imbalances of power, strengthening the hand of individuals, groups and organisations who are striving for reform. Since the Trust remains one of the very few sources of funds in the UK which can do this, it reserves its support predominantly for those projects which are ineligible for charitable funding. It rarely funds projects outside the UK, directing most of its resources towards campaigning activity in this country.
- 1.2. The Trust welcomes the establishment of this House of Lords Select Committee as a mechanism both to arrest the government's attempts to reform party finance for one party only, and as a catalyst to break the deadlock on agreeing a comprehensive package of urgently-needed party funding reform. The Joseph Rowntree Reform Trust Ltd is in a unique position to contribute to this debate, as both a substantial donor to one political party and an organisation with a long-standing interest in party funding reform.
- 1.3. During the last four Parliaments, from 1997 to 2015, JRRT donated £8.4m⁶⁰ to the Liberal Democrat party. Over many decades, successive Boards of Directors have believed in the importance of strengthening the one political party that has most consistently promoted democratic reform and defended civil liberties in Britain – causes that are at the very heart of the Trust's purpose. The Trust also supported the 'Yes' campaign in the AV referendum in the sum of just over £1m.
- 1.4. Additionally, JRRT has funded research and campaign activity aimed at promoting the reform of funding arrangements for political parties including:
 - *Funding Democracy: Breaking the deadlock – a draft bill for consultation* (2013), published by Andrew Tyrie MP, Alan Whitehead MP, and Lord Tyler.
 - *Funding Political Parties in Great Britain: a Pathway to Reform* (2010) by Dr Stuart Wilks-Heeg of Democratic Audit and the University of Liverpool. This report summarises the current debate on party funding, explores the myths and realities and offers a way forward.
 - *Purity of Elections in the UK: causes for concern* (2008), also by Dr Stuart Wilks-Heeg of the University of Liverpool. This report looked at the whole range of issues around free and fair elections in the UK, electoral malpractice, postal voting and the question of 'cash for constituencies'.

⁶⁰ This figure represents grants committed during these years, though grants are made in quarterly instalments, so some payments may fall outside this period. All are declared to the Electoral Commission by the recipients, and – in the spirit of openness – we also, on a voluntary basis, send the Commission an annual list of recipients of political grants. Expenditure is also shown in our audited accounts at Companies House.

- A *State of the Nation* poll in 2010 and 2014, commissioned by the Trust through IPSOS/Mori, looking at public opinion on range of reform issues, including political parties and their funding arrangements.

1.5. Members of the Trust’s Board gave oral evidence to the 2004 Electoral Commission inquiry, and to the Committee on Standards in Public Life inquiry in 2010. This written evidence seeks to summarise and update the position put to those inquiries.

Response to Questions and Issues

2. *Will clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?*

2.1. The Committee on Standards in Public Life’s 2011 report spells out in detail the dominance of trade union funding in the Labour Party’s income. A substantial majority of this funding comes from affiliation fees. As the report spells out, its recommendation to move – in the context of a donation cap – to an opt-in system ‘would be likely to have a significant impact on payments to the Labour Party.’⁶¹ The Government’s claim that the Trade Union Bill ‘is not about party funding’⁶² therefore stands in stark contradistinction to the advice of the independent committee, instituted by government, to advise on these issues. It is patently absurd.

2.2. JRRT believes that the effective resourcing of political parties is essential for a healthy democracy. However, the current arrangements entrench a very considerable disparity of income between the two larger parties and all other political players. JRRT has long advocated reform, in the round, to create a more even playing field and to remove both the reality and the corrosive perception that influence in and access to the political process may be bought.

2.3. It is absolutely clear to JRRT that clauses 10 and 11 of the Trade Union Bill do have an impact on party political finance and, taken without any of the other recommendations of the Committee on Standards in Public Life (CSPL), make the political playing field more uneven not less.

3. *If the two clauses will have such an impact, how would that relate to the recommendations of the CSPL report and/or party funding reform?*

Consistent principles for reform

3.1. In considering the evidential basis for claims that measures relating to party funding traditionally proceed only with the agreement of all parties, it may be helpful for the Committee to look at Stuart Wilks-Heeg’s synthesis of this history in our report *Funding Political Parties: a pathway to reform*⁶³. We reproduce here what he calls “remarkably

⁶¹ Committee on Standards in Public Life, *Political Party Finance: ending the big donor culture*, (London: TSO, 2011) p. 67

⁶² HL Deb, 11 Jan 2016, col. 126

⁶³ S. Wilks-Heeg and S. Crone, *Funding Political Parties in Great Britain: a pathway to reform* (Democratic Audit, 2010), p. 17

consistent” guiding principles for reform, and refer back to them as we address the Committee’s call for evidence:

A remarkably consistent set of principles for party funding reform has been advocated in past reviews and academic research. The broad consensus is that reform should seek to:

- 1. Establish fairness:** by promoting equality of opportunity within the party system, and respecting human rights obligations (e.g., freedoms of expression and association).
- 2. Respect the diversity of parties:** taking into account the histories, traditions and cultures of the parties, their respective constitutional arrangements and support bases.
- 3. Promote public engagement in politics:** by deriving party funds from as broad a base as possible, with resources directed to reversing the decline in public engagement with party politics, particularly at the local level.
- 4. Restore public confidence:** by minimising the potential, and the perception, that political influence, electoral success or honours can be bought.
- 5. Achieve sustainability:** by effectively resourcing parties to undertake the roles demanded of them; by reducing the pressures on parties to compete to spend more; and by enabling parties to adjust financially when moving between government and opposition.

Sources: Derived from: K.D. Ewing, *The Cost of Democracy*, (London: Hart, 2007); Electoral Commission, *The Funding of Political Parties: report and recommendations* (London: The Electoral Commission, 2004); H. Phillips, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, (London: HMSO, 2007).

Fairness and Respect for Diversity – the need for a balanced package

3.2. It is clear that the Committee on Standards in Public Life (CSPL) had the first and second principles of fairness and respect for diversity of parties in mind in 2011. Its report is at pains to make clear that while ‘the history of opting in and out has considerable political resonance’ and would therefore be ‘controversial’⁶⁴, ‘the proposal is not an isolated one. It is an essential part of a reform package intended to promote integrity in an important part of our democracy.’⁶⁵

3.3. As has been rehearsed in debates on the Bill, the Committee was also insistent that ‘it is important that proposals are regarded as a package. Failure to resist the temptation to implement some parts, while rejecting others, would upset the balance we have sought to achieve.’⁶⁶ In the view of JRRT, the Bill as it stands plainly upsets that balance, and gives into the temptation anticipated by the CSPL.

Fairness and Sustainability - the need for careful transitional arrangements

⁶⁴ Committee on Standards in Public Life, *Political Party Finance: ending the big donor culture*, (London: TSO, 2011) p. 9

⁶⁵ Committee on Standards in Public Life, *Political Party Finance: ending the big donor culture*, (London: TSO, 2011) p. 67 (emphasis added)

⁶⁶ Committee on Standards in Public Life, *Political Party Finance: ending the big donor culture*, (London: TSO, 2011) p. 89

- 3.4. The Trade Union Bill as it stands not only breaches the principle of fairness by bringing in party funding reform for just one party, but does so over an exceedingly short period, thereby breaching the principle of sustainability.
- 3.5. Both Hayden Phillips and the CSPL suggested that reforms to party finance should be **phased in** over a period 3-5 years. In *Funding Political Parties in Great Britain: a pathway to reform*, Stuart Wilks-Heeg goes further, arguing that donation caps (the essential balance to any change to trade union funding of the Labour Party) should be staggered across two, or even three parliamentary cycles. The cross-party draft Bill, published by Lord Tyler, Andrew Tyrie MP and Alan Whitehead MP in 2013, sought to phase in the arrangements recommended by the CSPL over a period of ten years. In their draft Bill, this tapered approach was common to both the donation cap and the reforms to trade union political funds.
- 3.6. Specifically, under those draft proposals, unions would have moved to the kind of arrangement now proposed by the government in a four stage process:
- first, by enabling trade union members to specify that their donation to a political fund should not be transferred to an affiliated political party (an enhanced opt-out);
 - secondly, each person who paid into a political fund would have to be provided with prescribed information about how the fund is used;
 - thirdly, individual written consent would be required for any donation made through a trade union (the opt-in);
 - fourthly, trade unions would need to alter their record-keeping practices.⁶⁷
- 3.7. Such a tapered approach, alongside a gradually decreasing donation cap, would be welcomed by JRRT.

Fairness and Public Confidence: the case for a donation cap

- 3.8. It has been acknowledged in all previous negotiations that a prerequisite for reform to trade union donations through political funds, is a cap on individual and corporate donations: The legal requirement to disclose all significant donations brought in by the Political Parties, Elections and Referendums Act 2000 (PPERA) was a very welcome step. However, the published figures show substantial dependence of political parties on large donations from wealthy individuals and this undermines public confidence in the political system (Dr Wilks-Heeg's fourth principle). A donation cap is therefore an end in itself as well as vital part of a fair balanced package of reform (Dr Wilks-Heeg's first principle).
- 3.9. The perception problems caused by large donations are illustrated by the JRRT's *State of the Nation* polls, carried out at regular intervals since 1991, which have consistently found significant public concern about how money may affect electoral outcomes, and about the possibility of the integrity of the democratic process being compromised by the reliance of the parties on large donations. The 2014 *State of the Nation* poll⁶⁸, for example, included two relevant findings:

⁶⁷ A. Tyrie, A. Whitehead and P. Tyler, *Funding Democracy: Breaking the Deadlock*, 2013, pp. 9-10

⁶⁸ Full details of all of the Trust's polls are available on our website at <http://www.jrrt.org.uk/publications> and can be made available to the Committee.

- 69% agreed with the statement that “Funding parties by voluntary donations is unfair because there is a risk that wealthy individuals, trade unions and businesses can buy influence over parties”. This included 40% who agreed strongly.
- 65% agreed that “There should be limits on how much individuals can donate to political parties”. This included 40% who agreed strongly.

3.10. Although JRRT is itself a substantial donor and would be affected by any cap, the Trust believes that such a cap is essential to restore public confidence in our democratic system, and strongly urges that one should be introduced over a phased period with a clearly defined end-point and an eventual cap of no more than £10,000.

Promoting public engagement

3.11. As is noted in *Funding Political Parties in the UK: a Pathway to Reform*, “It is often assumed that the reliance on big donations has arisen from a steep decline in party membership. It is true that parties once had far more members than they do now; one in 11 electors were party members in the 1950s, now the figure is closer to one in 100. But even at the zenith of party membership, ordinary members were never the principal source of income for parties – especially during election campaigns.”

3.12. There is however, a clear link between this grassroots decline and the growth in dependence on large donors. Put simply, under the current arrangements it is logical and cost-effective for parties to pursue a small number of large donors, rather than invest the time necessary to source money from the grassroots. Grassroots engagement is crucial for a strong, vibrant democracy. In order to meet this challenge, as set out on Dr Wilks-Heeg’s third principle – promoting public engagement – greater structural support needs to be considered through funding arrangements for political parties. Accordingly, the Trust would welcome efforts to complement small donations from ‘registered supporters’ of all political parties with a modest matching contribution, as recommended by Hayden Phillips.

Public funding

3.13. JRRT believes that there is a strong case for reviewing current arrangements for public funding of political parties and if necessary re-allocating and increasing them in line with principles such as those set out by Dr Wilks-Heeg, in order to institute a pence-per-vote scheme of the kind recommended by the CSPL.

3.14. The *Funding Democracy: Breaking the Deadlock* draft Bill illustrated ways in which existing public spending on freepost election addresses for European and Westminster parliamentary elections could be re-allocated, by placing all candidates’ mailings together in a booklet. Based on the 2009 European Parliamentary elections and the 2010 General Election, this would have yielded a saving of £47.5m over six years.⁶⁹ Recent parliamentary answers suggest the total public spend on mailings at the 2014 and 2015 European and Westminster elections was approximately £109m. By grouping these mailings together at each election, a saving could be yielded which could in turn make up for the loss in parties’ income brought about by a donation cap.

⁶⁹ A. Tyrie, A. Whitehead and P. Tyler, *Funding Democracy: Breaking the Deadlock*, 2013, p. 4

- 3.15. The 2014 *State of the Nation* poll found that 42% of respondents agreed that “Political parties with significant public support should be provided with public funds to reduce their dependency on donations from wealthy individuals, trade unions and businesses.” Only 29% were against. Support for public funding was lower in 2014 than in our previous poll in 2010, when 56% supported this reform⁷⁰, though that is surely a symptom of the pressures on public spending over the preceding four years.
- 3.16. There is a sense in which continuing failure by the parties to implement a comprehensive package of reform contributes – through scandal after scandal – to public disaffection with the political system, and in turn decreases public willingness to see parties properly and equitably funded. This is a vicious cycle, the breaking of which will require leadership from all political parties.
- 3.17. The same 2014 poll found that 58% agree that “if there is to be a system of state funding for political parties it should be targeted to support local activity by parties”.⁷¹ A number of possible schemes to achieve this have been proposed. One that we believe is particularly worth further examination was proposed by the Power Inquiry in 2006⁷². Among the recommendations in its final report, *Power to the People*, was a voucher scheme to support local activity by parties:

Spending limits – levels and operations

- 3.18. Political parties only raise money in order to spend it. JRRT therefore continues to support the CSPL’s recommendation that national spending limits should be reduced, in order to restrain the arms race of donations and spending that exists between parties. However, this implementation of this recommendation on its own will be insufficient to avoid the capacity of wealthy parties significantly to influence the outcome of elections with large sums of money. Since the introduction of the national limits in PPERA, all parties have begun to target ostensibly ‘national’ spending at marginal constituencies, thereby breaching many times over the spirit of traditional constituency spending limits.
- 3.19. As Parliament revisits party funding reform this abuse of ‘national spending’ needs to be examined and a formula agreed for how much of the national limit can be spent in any one constituency. We note that the previous government found a mechanism to link national spending limits with constituencies where it concerns spending by non-party campaigners, in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014. If it is possible to do this for campaigners in the third sector, it ought to be possible for political parties too.

4. Conclusion

- 4.1. The United Kingdom urgently needs comprehensive reform of party political finance arrangements. This need not take years’ more deliberation, since the principles of a comprehensive package have been set out, through cross-party efforts, first by Hayden

⁷⁰ JRRT State of the Nation poll, conducted by ICM, February 2010

⁷¹ JRRT State of the Nation poll, conducted by Ipsos/MORI, September 2014

⁷² The Power Inquiry was the centenary project of the Joseph Rowntree Reform Trust Ltd and the Joseph Rowntree Charitable Trust. Its report is available on the JRRT website.

Phillips and then, compellingly, by the Committee on Standards in Public Life. The Funding Democracy: Breaking the deadlock cross-party draft Bill makes an important contribution on the subject of phasing. Its proposals should be a guide to Ministers in fulfilling their aspiration to change the relationship between trade union members and the beneficiaries of political funds, and those proposals can clearly only be phased in alongside a donation cap.

- 4.2. The Select Committee's call for evidence astutely refers to the impact the passage of the Bill's provisions – in isolation – are likely to have on the prospect for agreement on a comprehensive reform of political party funding. This goes to the heart of the principle of sustainability. Having taken a longstanding interest in party political finance reform, JRRT believes that legislating to alter, at a stroke, the relationship between trade union members and the Labour Party, with no balancing provisions to cap individual donations and no phased introduction of a public finance scheme of the kind proposed by CSPL, would be a counterproductive backward step. It will correctly be viewed as a nakedly partisan attempt to tilt the political system in the interests of the governing party, in breach of all previous understandings about the need to proceed with such reforms on the basis of consensus.
- 4.3. We urge the Select Committee to be bold in recommending that these clauses be removed from the Trade Union Bill, and a new Bill introduced to legislate for the full package of reform proposed by the Committee on Standards in Public Life.

On behalf of the board of the Joseph Rowntree Reform Trust Ltd

12 February 2016

Labour Party—oral evidence (QQ 1–7)

Examination of Witness

Mr Iain McNicol, General Secretary, Labour Party

Q1 The Chairman: Good morning, Mr McNicol. Thank you very much for coming to see the Committee. This is our first evidence session. Normally this would come after we had received written evidence, but because of our very tight timetable we are having to run the processes of written and oral evidence in parallel. Is there anything that you would like to say by way of introductory remarks?

Mr Iain McNicol: Yes. Thank you, my Lord Chairman. No one should be under any doubt that the Trade Union Bill will seriously and immediately undermine the Labour Party's finances. Our own estimate is that a change to trade union political funds as proposed could reduce the Labour Party's income by up to £8 million a year. That will have significant consequences. The Committee has been asked to consider the impact of the Bill in relation to the report of the Committee on Standards in Public Life. Two of the underlying principles of that report were fairness and sustainability for political parties. This Bill goes against those principles.

There are three key problems with the legislation as it stands. The first is timing. The Bill requires trade unions, within three months, to receive written consent from every member who currently pays into the political fund to say they wish to continue. This is a huge administrative task on an unrealistic timescale. By way of contrast, the Committee on Standards in Public Life in 2011 noted the need for a proper transition period for any changes and they recommended four years. The Collins report of 2014, based around transitional reforms, was over a five-year period.

Secondly, Parliament has not been given adequate explanation of the impact of the proposals. The Government's own impact assessment suggests that the Bill will result in no change to the number of members contributing to political funds. This is so inaccurate as to be palpably absurd. Experience from Northern Ireland, the examples of Britain in 1927 and conclusions by the Committee on Standards in Public Life all suggest there would be a significant reduction in the numbers affiliated. Our own estimate is that we could see a reduction of up to 90%.

Finally, even if the timing and the information points were addressed, the third and core criticism of these proposals is that they are fundamentally unfair. The Bill is, in effect, party-funding legislation but is only partial reform in that it impacts solely upon the Labour Party

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while not addressing issues such as donation caps or spending limits. It is, in effect, a partisan attempt to smuggle in reform through the back door. This unfairness goes against a long-standing convention. I could not put it better than Winston Churchill, who told the Commons in 1948: “It has become a well-established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other”. This Bill, in effect, throws that principle of fairness out of the window. It is unfair and ill thought-through. Thank you, my Lord Chairman.

The Chairman: Thank you very much, Mr McNicol. We are required by the rules of the House to declare our interests before we begin questions. I do not consider that I have any interests to declare in this.

Could you take us a little further with some of these numbers? You mention the reduction of £8 million a year. First, what proportion of Labour Party funding comes from trade unions, and then what proportion of that is the £8 million? Did I hear you say that you thought it would lead to a 90% reduction?

Mr Iain McNicol: Yes.

The Chairman: How does that square with the history you described—1926—when I think the impact then was somewhat less than that?

Mr Iain McNicol: It was a different model then for trade unions to collect subs and political levies. There were far more factories and workplaces. They did not have cheques; it was face to face and often done in cash.

To give you a feel about our overall funding and how the trade union loss would impact on that, currently, outside a general election year our income is about £30 million. About 30% of that, £8.6 million, is currently from trade unions in affiliations and donations. The rest of the funding is made up through members’ donations, Short money, et cetera.

The starting point is what is in the Committee on Standards in Public Life, where it talks about a 30% reduction. That is over a transition period of four years. The Bill has another two stipulations. The first is the timescale, which is over a three-month period. There is another issue, which has been discussed in the House, with regard to check-off and if there are changes in the trade union ability to do check-off. Trade unions’ primary priority will be to retain or to sign back on to direct debit as many of the check-off members that they would lose. The primary priority over the next year to 18 months would be doing that. Signing people up in writing—and this is another issue—to the political fund will be a secondary issue to check-off.

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It will have to be in writing. We live in the digital age. I receive my bills; I am online; the forms I fill in are on computer. If you look at the response rate from direct mail by post—in the impact assessment, it would be done by post—it is a small return. If you take the timeframe, the priority of the trade unions dealing with check-off first, and you take the method, that would reduce it from 30% in Northern Ireland just now down to 10%.

Q2 Lord Callanan: I need to declare that I am a member of the Conservative Party. Following on from your point on that, what percentage of a trade union's political fund goes to the Labour Party? They can presumably fund all sorts of campaigns with it or, if they wish, give it to other political parties. I assume it varies from union to union, but perhaps you could help me by giving some examples of how much of that political fund goes to the Labour Party.

Mr Iain McNicol: Half of the trade unions that have political funds are affiliated to the Labour Party. In 2014, trade union political funds that were affiliated to the Labour Party raised £22 million. Of that £22 million in 2014, £10 million came to the Labour Party. So less than 50% of trade union political levy comes to the Labour Party.

Lord Callanan: Presumably, if the case that you are putting is that fewer people would affiliate to the political fund if they were given an opt-in choice as opposed to the current opt-out choice, the option presumably is open to the trade unions, if they wish and their members agree, to spend less on other campaigns and give a bigger proportion of the funds they have left to the Labour Party. How do you arrive at your estimate that you would be £9 million down?

Mr Iain McNicol: Because of the reduction in the number of people who would sign up to be members of the trade union political funds. The 90% is across the board in the number that we would sign up. It comes from that amount, which would then come across. The relationship is at a collective relationship level.

Lord Callanan: Presumably, if I can explore this point, it would be up to the unions whether they wished to continue giving 50%. In future, such is their annoyance at this change, they might want to give 90%, or perhaps 100%, of what they have left over to the Labour Party as opposed to spending the money on other funds.

Mr Iain McNicol: They may well do.

Lord Callanan: Your estimate depends on what the unions do. If they continue to give only the same proportion, your estimate may be true, but they could give a higher proportion of what was left over.

Mr Iain McNicol: They could do, yes.

Lord Callanan: You just assumed that they would continue to give the same proportion out of their political funds to the Labour Party.

Mr Iain McNicol: As to the money that comes across, the affiliations are £3 for each of the individual members. That is on the £2 million trade union levy payers who affiliated collectively through their trade unions, working on those figures. Then there is the impact of a short timeframe, the number of people who would sign up in writing by post and the other responsibilities or pressures that there would be on the trade unions.

Earl of Kinnoull: I have no interests to declare in this matter. Thank you for running us through how you reach the 90%, but am I right in saying that that would be the percentage at day one? In fact, it appeared that you were saying you felt that it would trend back over time to 30%, which is the percentage in Northern Ireland.

Mr Iain McNicol: It could well do. You are correct that 90% is at day one. In Northern Ireland, about 30% of trade union members opt in to the political fund, but in Northern Ireland just now there is not a five-year cut-off. This Bill says three months initially in writing and then repeated every five years. There is an expectation that it would rise. Even if it rose over the five years to the 30%, that is still a 70% reduction in £8.6 million.

Earl of Kinnoull: I appreciate that, and I am just trying to tease out some numbers. It is your belief that only 30% of trade unionists would naturally want to opt in to the political levy now.

Mr Iain McNicol: Through the current system, there are just over 10% who choose to opt out of the trade union political levy. If that was moved to an opt-in basis, then, yes, it could go higher, but, looking at history and looking at Northern Ireland just now, that is round about the 30% level.

The Chairman: But looking at history, it was not that you were left with 30% who were affiliated: there was a reduction of 30%, as I understand it, in 1926, and when it was restored in 1946 it went back to a 50% increase, which is the same as the 30% reduction.

Mr Iain McNicol: Yes.

The Chairman: I do not want to get muddled about the 30%. There are two concepts of 30% here. One is that there would be a reduction of 30%; the other is that you might be left with 30%.

Mr Iain McNicol: Yes. It is the “left”. In 2011, the Committee on Standards in Public Life, on their estimations, said that they expected it would be round about 30% of the current level.

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The Chairman: A 30% reduction on—

Mr Iain McNicol: No, 30% on—

The Chairman: So it goes from 90% to 30%.

Mr Iain McNicol: Yes.

Q3 Lord De Mauley: I declare that I am a member of the Conservative Party. Exploring this point a bit further, are you saying that if members are made aware that they have a choice they will not pay the money?

Mr Iain McNicol: If they are “made aware”, no. What we are saying is this. The system just now is an opt-out. Every 10 years members are made aware. All the trade unions have to carry out political fund levy ballots, which they did in 2014 and 2004. When the trade unions balloted their members on whether to retain the political fund, which was first introduced to the ballots in 1984, the turnout of that was about 30%, but of those turning out to vote, 85% and upwards voted to retain their political fund. It is the mechanisms and the timeframe that would lead to the reduction. There is also a fairness issue at the heart of this, which is that any previous changes to the funding of any of the political parties has been done on a cross-party consensus. This breaks from that cross-party consensus in affecting the funds of one individual political party.

Lord De Mauley: Perhaps I should rephrase my question. If members are made aware that they have a choice as to whether their money goes into the political fund or not, you seem to be saying that your funding is going to reduce by £8 million. I do not understand your answer then.

Mr Iain McNicol: I am sorry, my Lord Chairman, I am not clear on what—

Lord De Mauley: If they have a choice, they will not choose to do so to the tune of £8 million.

Mr Iain McNicol: They have a choice just now. The choice is whether to opt out.

Lord De Mauley: But they are not aware of it at the moment. Why, otherwise, are we going to see a loss of £8 million?

Mr Iain McNicol: Why? Because of the mechanisms written within this Bill, which say that it can only be done in writing and we cannot use telephone, internet or emails. There is a mechanism. If you look at the response to direct mail that is sent out by charities, by organisations that many of us are a member of, the industry response to those is very small—anywhere between 1% and 10%. So there is an issue around the mechanism. The other is the timeframe. The impact assessment only looks at one letter being sent from the trade unions

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to their members, with no money in advertising basically showing and explaining that it is through the political fund. The Government currently use opt-out in the auto-enrolment of pensions, so there are reasons for using and working with auto-enrolment.

Baroness Dean of Thornton-le-Fylde: Good morning, Mr McNicol. I am a member of the Labour Benches in the House of Lords. I am also a member of the Labour Party and Unite the Union.

Picking up the point about opt-in or opt-out, at the moment, as I understand it, every trade union member has to have their attention drawn to their ability to opt out of paying the political fund.

Mr Iain McNicol: Yes.

Baroness Dean of Thornton-le-Fylde: What percentage at the moment do that?

Mr Iain McNicol: Some 11% of trade union members of the affiliated trade unions opt out of the political fund.

Baroness Dean of Thornton-le-Fylde: Are they all notified of that each period that you have to do the—

Mr Iain McNicol: Yes. In the political fund ballot—which has now happened four times: 1984, 1994, 2004 and 2014—all members are balloted on the union retaining a political fund. Every 10 years they have a ballot paper in front of them on whether or not the union should retain the political fund.

Baroness Dean of Thornton-le-Fylde: As I understand it, your point earlier was that, under the provisions, the requirements, they have to write to the members.

Mr Iain McNicol: Yes.

Baroness Dean of Thornton-le-Fylde: They cannot use social media or any of the other stuff that we all use now. The member also has to put it back in writing.

Mr Iain McNicol: Yes.

Baroness Dean of Thornton-le-Fylde: Is that part of the financial impact on the Labour Party that you are talking about?

Mr Iain McNicol: No; that is a financial impact on the trade unions.

Baroness Dean of Thornton-le-Fylde: Yes, I understand that, but the indirect and, at the end of the day, the cost—

Mr Iain McNicol: Yes. The impact assessment talks about a cost of £8.4 million over two cycles. Any political activity of trade unions is heavily regulated, and that regulation means that any

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activities on political work, such as carrying out the political fund ballot, carrying out these activities, would come out of the income that they receive just now. So, yes, there is a financial burden for the trade unions.

Lord Whitty: I should declare that I am a member of the GMB and the Labour Party, and, indeed, I once did your job. In relation to Lord De Mauley’s question, you have made it clear that members joining are made aware of the right to opt out, and every 10 years are made aware of it. The reason why there would be such a big fall-off is primarily because, with the means of communication that are proposed and analogous situations, a significant number of people would not reply.

Mr Iain McNicol: Yes.

Lord Whitty: Those “not replies”, under this system, as I understand it, would be counted as “no”s.

Mr Iain McNicol: Yes,

Lord Whitty: That is what makes a big shift in this system.

Mr Iain McNicol: It does.

Q4 Lord Tyler: I should declare that I am a member of the Liberal Democrat Party. I have also noted a non-pecuniary interest as co-author of the 2013 cross-party report *Funding Democracy* to which the Joseph Rowntree Reform Trust grant-aided the engagement of a legislative drafter to produce a draft Bill on the funding of political parties and thereafter to publish and promote it. I am sorry about the length of that.

You said in your original statement that, as far as you were concerned, the impact statement that the Government produced on the Bill was palpably absurd. Can I ask whether the Government invited any evidence, any data, any views, on the impact statement in relation to the two clauses with which this Committee is primarily concerned—Clauses 10 and 11?

Mr Iain McNicol: We were not requested, as far as I am aware, but I will go back and check. There is a contradiction. The reason why I said that about the impact assessment is because there is a contradiction at the heart of the impact assessment. The contradiction is that it says there will not be any drop-off in the levels of individuals who would sign up to their trade union political levies, but at the same time it says there are people who, they believe in the impact assessment, would not sign up. You cannot really have it both ways. You cannot say that there will be no impact and say that nobody will drop out from the political fund. It is either one or the other.

Lord Tyler: May I follow that very briefly? In the summary of the impact assessment relating to the reform of political funds, it describes the scale and key monetised costs by “main affected groups”. It is implied by your response that Ministers and the Government do not regard the Labour Party as a “main affected group”. Is that your explanation?

Mr Iain McNicol: Yes, that would be mine. If you look at a comment, or a quote, in the House of Lords by Lord Forsyth, he said: “The debate in the Conservative Party and the Government at the time was that we should change the law to make it a requirement to opt in. I decided that we should not do that and the Government took that view. I decided that we should do so not for the reasons about party political funding but because I thought that it would be unfair to the Labour Party, reduce its funding and inevitably start a debate about state funding of political parties”.

Lord Sherbourne of Didsbury: I declare an interest as a member of the Conservative Party; I am an extremely modest donor each year—very modest indeed. May I come back to the mechanism about opting in and opting out? I completely understand that, if people are given the choice to opt in or opt out, one wants to make it as easy as possible. If you had the current mechanism that now exists for opting out, if and when we move to opting in, would you be happy with that?

Mr Iain McNicol: Do you mean if we retained the opt-out?

Lord Sherbourne of Didsbury: No. Let me give you an example. If I am a member of a trade union and I want to opt out under the present system, I have to do certain things.

Mr Iain McNicol: I understand that.

Lord Sherbourne of Didsbury: Would you be happy for that method to be the same for opting in?

Mr Iain McNicol: The current method is a similar method, and the point you are getting to is that you need to write to—to contact—your trade union to opt out of the political fund. I am more than happy to come back to that in writing because I would need to look at what the implications of that would be, but part of the argument against moving to the opt-in with written consent—and only in writing—is that that, coupled with the timeframe, would severely reduce the numbers.

Lord Sherbourne of Didsbury: The point I am getting at is this. If you are unhappy with transferring the current method for opting out to opting in because you think it is not very

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clear to members, are you not emphasising that the present system for opting out is not clear either to members?

Mr Iain McNicol: No, it is clear, as changing to the opt-in method in writing would be clear. There is a mechanism at the start when individuals join trade unions. There is a choice not just about the political fund; there is a choice for individuals as to whether to join a trade union or not. The closed shop does not exist any longer. I will come back to you in writing on that specific point because I need to have a look at how and what the impacts of that would be, but it is the principle of opting in—with the constraints around it—that would lead to the financial difficulties for the Labour Party.

Lord Sherbourne of Didsbury: If somewhere there was a very good system for people to opt out now, one could look at that as being an option for opting in.

Q5 Lord Richard: I am a member of the Labour Party and the GMB. You were being pressed, Mr McNicol, in effect, to give mathematical certainty as far as this is concerned. You cannot give mathematical certainty as to what precisely would happen if you change from an opt-out to an opt-in system.

Mr Iain McNicol: Yes.

Lord Richard: If you cannot give mathematical certainty about it, you have to do it on the basis of a certain set of working assumptions.

Mr Iain McNicol: Yes.

Lord Richard: I want to look at those working assumptions with you for a moment. One of them has been raised slightly by Lord Callanan, which is the percentage of the political fund the trade unions would give to the Labour Party. Of course it is true that they can “up and down” it—not quite at will, but they have a power to do it. Is it your working assumption that, broadly speaking, trade unions give approximately the same amount to the political fund each year, to the Labour Party, in one form or another?

Mr Iain McNicol: Yes, it is approximately at the same level. The figures that I used were the 2014 figures. The affiliated trade unions raised £22 million through their political levy. Of that, in affiliation fees and donations, £10 million came across to the Labour Party.

Lord Richard: If you go back over the years, it is approximately about the same percentage that they give.

Mr Iain McNicol: Yes.

The Chairman: Does it change on the electoral cycle?

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Lord Richard: It depends on the electoral cycle; I accept that.

Mr Iain McNicol: The change is around funding of general elections. All political parties have a core funding, whatever that level is, but in the run-up to a general election, from about 18 months to a year out, funding increases, whether that is from modest donors, high-value donors, trade union funds or from members. There is an increase that comes in donations, but that has been averaged out across to give you the £8.6 million.

Lord Richard: As far as Northern Ireland is concerned, when they changed from one system to the other, was there an immediate rise in the percentage of political funds that went to the party?

Mr Iain McNicol: I do not know the answer to what happened in Northern Ireland at the point of change.

Lord Richard: What about 1927 here?

Mr Iain McNicol: In 1927, the last time that we moved from an opt-out to an opt-in system, there was a dramatic drop in the levels, but it was a different world in 1927. Trade union funds were collected in a different way; it was often cash and face to face in workplaces. We are in a very different world now, but even then there was a significant drop in the level of funding that came into the trade union political funds.

Lord Richard: You cannot be mathematically certain—we all accept that—but doing the best you can, with the assumptions that you make, are you clear that if this happens there would be a diminution in the party's funding of the Labour Party?

Mr Iain McNicol: Yes. That is not just my assertion or assumption; that is Lord Forsyth's, Sir Hayden Phillips and the Committee on Standards in Public Life. There is an assertion in all those that there will be a drop in the numbers affiliating to the trade union political funds and hence the money—

Lord Richard: Do you know why Mrs Thatcher did not do this?

Lord Callanan: That is confusing the two issues.

The Chairman: Let him answer.

Mr Iain McNicol: Michael Forsyth explained in his quote why the Thatcher Government did not do it and—

Lord Robathan: It was a quarter of a century ago.

Lord Callanan: A different world.

Mr Iain McNicol: Absolutely. I am not sure whether it is written or unwritten, but there has been consensual agreement that any changes affecting the funds of any individual party are done on a cross-party consensual basis. If you look at the remit in the Committee on Standards in Public Life, it picks up on that. This is the first time that a Government will be making a change to a political party that is to their detriment financially. It sets a dangerous precedent.

Lord Richard: Mrs Thatcher was not agreeing to it.

Mr Iain McNicol: Yes.

Lord Callanan: Can I come back on this point? I am still unclear. You have been very precise in the figures and in the percentage that might affiliate, but that is to the political fund. I do not see how you could know whether the unions will still choose to give the same percentage of their political fund; at the moment, it is 40% or 45%. They may choose to give 90% of their political fund in future. Do you have any indication from the unions that they will give proportionately more or less of that—in your argument—smaller political fund, if members are given a choice about whether they pay into it or not? The political fund will be smaller, but they could give a bigger proportion of that to the Labour Party.

Mr Iain McNicol: You are right. The political fund would be a great deal smaller because of the timescale and the methodology in individuals responding. I have not had any conversations with any of the trade unions with regard to a possibility of them increasing the level that they give across to the party, no.

Lord Callanan: Your £9 million quotation is speculative. You really do not know. They could give a bigger proportion. As you said, the proportion varies, whether it is pre-election year or a normal parliamentary cycle. We all understand that. They give a larger proportion in the pre-election year, so presumably in previous years they have given a smaller proportion. They might choose to give a bigger proportion in future.

Mr Iain McNicol: They may well do, but through this process their trade union political funds will be severely reduced.

Lord Richard: I suppose it is just as speculative to say that perhaps the hedge fund people in the City would like to donate to the Labour Party the amount that we would be deprived of if this Bill goes through. It is just as speculative as that put by Lord Callanan, is it not?

Lord Callanan: Individuals donate to political parties as individuals donate to—

Q6 Lord Robathan: I should declare that I am a member of the Conservative Party. I donate a certain amount to the South Leicestershire Conservative Association each year. It is not a

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modest sum, as far as I am concerned, but I opt in. Both the questions I have are on the voluntary nature of political donations. Mr McNicol, you referred to this policy being fundamentally unfair. That is the reasoned position you take. I would put it to you that there are a large number of people who donate to political funds who do not support the Labour Party but end up unwittingly paying money to the Labour Party, and I consider that is pretty unfair as well. What do you think?

Mr Iain McNicol: First, an individual has the right or not to join a trade union, so they have an individual choice in that on whether they join or not. Secondly, they have an opportunity to opt out of the political fund, which, as we picked up, about 11% of trade union members do. Thirdly, every 10 years, there is a political fund ballot for any members who are members of a trade union to decide whether or not they still have the political fund.

Lord Robathan: If I were a member of a particular union and wanted to subscribe to the political fund because the union does good for me in political campaigning, in whatever it might be, but happened to vote, God forbid, for the Liberal Democrats, I would not have the opportunity to register that in my subscription to a political fund because that would be by a ballot overall.

Mr Iain McNicol: Correct.

Lord Robathan: That seems to me to be an involuntary donation, if I might say so.

Mr Iain McNicol: With the opportunity to opt out.

Lord Robathan: But I like political parties. My next point is a broader one, again about voluntary donations. Since the winter of discontent in 1978-79, membership of trade unions, as you know, has fallen by half—in fact more than half, and, indeed, membership of trade unions is likely to continue to fall, I would suggest, but that is speculative, so let us not speculate—whereas this last year, in your leadership contest, your own press reports said that something in the region of over 100,000 people joined the Labour Party to take part in the leadership contest. Is that not a better way for you to get voluntary donations—from these obviously keen people who have bothered to sign up to join the party? Is it not, in the long term, a better way forward for the Labour Party to gather funds from voluntary individual donations? Although the Conservative Party has a lot of big donors, it also gets donations, which may seem huge to the Robathan family, from me.

Mr Iain McNicol: Apologies, your Lordship. Can you repeat the end of that?

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Lord Robathan: I am saying, from the Labour Party’s point of view, in the long term, should you not be looking at more individual voluntary donations—I think it was £3 you charged—and would it not be better to charge £30? In fact, I think it is £45 or something to join the Labour Party normally.

Mr Iain McNicol: Yes, it is.

Lord Robathan: Would it not be better to get those 100,000 people to pay their money to the Labour Party direct?

Mr Iain McNicol: We have contacted those. That was one of the big reforms that came through the Collins reforms in 2014. They protected the collective affiliation, which is part of our history between the trade unions and the Labour Party, but we wanted to give individuals an opportunity to have far greater engagement and involvement within the Labour Party. Through the trade unions we looked at a category called “affiliated supporter”, which was over 140,000. The affiliated supporters gained extra rights, but, crucially, their details individually came across to the Labour Party. What these changes in the trade union political funds do, in relation to opt-in or opt-out, is nowhere near the same level of engagement or involvement. The affiliated supporters would become affiliated supporters of the Labour Party; they would have a vote in the leadership and the ability to attend constituency Labour Parties; crucially, their details would come across to the Labour Party, and then we could contact them, which we have done, exactly as you suggest. The fundamental difference is that the changes that this Bill proposes are not in the same area. They go to the core source of this, which is the relationship between the individual trade union member and their trade union on the political levy and political fund. This was a separate level, which was about the individual relationship between the individuals and the party.

Lord Robathan: Finally, and very briefly, have you had any success with these 140,000 new members signing up for rather more?

Mr Iain McNicol: Our membership has increased in the last 12 months.

Lord Robathan: And the income.

Mr Iain McNicol: Yes, and the income, but you know as well as I do that income from membership can—

Lord Robathan: “Blood out of a stone” springs to mind.

Q7 Earl of Kinnoull: I have in front of me the Kelly report. Recommendation 4 of the Kelly report was to move to an opt-in basis. At the same time in preparing for things, I have been

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trying to look at people's commentary on the Kelly report at the time it was delivered. Could you comment on why the issues that you have so eloquently raised today are not really there on the record at the time the Kelly report came as being quite big funding issues for the Labour Party?

Mr Iain McNicol: Is it correct that there are 24 recommendations in the Kelly report?

Earl of Kinnoull: Yes; there is a huge number.

Mr Iain McNicol: Those 24 recommendations cover all the political parties and deal with caps on donations. Was the cap on donations £10,000?

Earl of Kinnoull: Yes.

Mr Iain McNicol: It was not just dealing with one aspect of funding of one political party; it dealt across the board. The recommendations for the £10,000 cap on donations, if I remember correctly, was objected to by a number of the different parties. I am not sure if there was a cap on spending at elections as well to try and reduce the amount of money that was spent on elections. It was an overall package. The final recommendations talk about an increase in state funding for political parties as well, which I think was an issue at the time for some of the political parties. That was a holistic approach across a number of different funding methods, across a number of different political parties. It was not just taking out one political party and one part of their funding, and dealing with that. Fundamentally, it was on a cross-party consensus basis—the principles of the Committee on Standards in Public Life.

The Chairman: Mr McNeil, thank you very much. I am afraid our time is up. You have heard the types of questions we have. If there is any further evidence that you can give us, with some more detail about how it is that you have arrived at your numbers, it would be very helpful. It would also be particularly helpful to know what difference you think it would make if some of the other proposals that were in the Bill were not in the Bill: for example, if you had access to electronic means of doing this. There is the third one too, which you touched on, where you said that the problem is increased because of the check-off move, whereas it seemed to me that was an opportunity itself to ask both questions at the same time and it was not clear to me why that should make the problem worse rather than make this particular part of the problem easier, because you could put the question in terms of the opt-in at the same time as you change to the different method of paying.

I hope that you have heard the types of questions that the Committee has been asking and is interested in, and anything more you can give us in written evidence that sets out your

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assumptions, and what some of the mitigations might be that would help in this, the Committee would find very helpful.

Mr Iain McNicol: Thank you.

The Chairman: Is there anything you want to say by way of closing?

Mr Iain McNicol: No. Thank you for the opportunity to come and present in front of you. The last point to leave you with is the one from the start, which is Winston Churchill's quote that the Government of the day should not use the power of the state to inflict financial penalties or changes in political funds or changes to funding of political parties without consent across all the political parties. It sets a dangerous precedent.

The Chairman: Thank you very much.

Labour Party—written evidence (TUP0026)

1. Introduction

1.1 The Trade Union Bill will seriously and immediately undermine the Labour Party's finances. Our own estimate is that a change to trade union political funds, as proposed, could reduce the Labour Party's income by up to £8 million a year. That will have significant consequences.

1.2 The Committee has been asked to consider the impact of the Bill in relation to the 2011 report by the Committee on Standards in Public Life. Two of the underlying principles of that report were fairness and sustainability for political parties – this Bill goes against those principles.

1.3 There are three key problems with the legislation as it stands:

- (i) **Firstly, timing.** The Bill requires trade unions to within three months receive written consent from every member who currently pays into the political fund to say they wish to continue. This is a huge administrative task on an unrealistic timescale.

By way of contrast, the Committee on Standards in Public Life in 2011 noted the need for a proper transition period for any changes and proposed a four year period for reforms. Labour's Collins Report of 2014 is based around a transitional period of five years.

- (ii) **Secondly, Parliament has not been given an adequate explanation of the impact of the proposals.** The Government's Impact Assessment suggested the Bill will result in "no change" to the number of members contributing to political funds. This so inaccurate as to be palpably absurd.

Experience from Northern Ireland, the example of Britain in 1927 and 1946, and conclusions by the Committee on Standards in Public Life all suggest there would be a significant reduction in the numbers affiliated. Labour's own estimate is we could see a reduction of up to 90 per cent.

- (iii) **Even if the timing and information points were addressed, the third and core criticism is that these proposals are fundamentally unfair.** This Bill is in effect party funding legislation. But it is only partial reform in that it impacts solely upon the Labour Party while not addressing issues such as donation caps or spending limits. It is a partisan attempt to smuggle reform through the back door.

This unfairly goes against the longstanding tradition that reform of party funding should proceed on a consensual basis. This is a principle supported by

the Phillips and Kelly reports and one which previous Conservative and Labour governments have abided by.

1.4 This Bill in effect throws the principle of fairness out of the window. It is unfair, ill-thought through and fundamentally flawed.

2. Impact on the Labour Party

2.1 The measures will have a significant impact on the Labour Party, but this is ignored by the Government's impact assessment.

2.2 The impact assessment states that the Government's main estimate of the impact of the Bill is that "there will be no change in the number of members contributing to the political fund", arguing that it does not have reliable data to estimate any changes in the proportions contributing.⁷³

2.3 The impact assessment bases this judgement on the fact that "historical data suggests that the number of contributing members remains relatively stable",⁷⁴ with no acknowledgement given to the fact that the Bill will completely turn this system on its head.

2.4 Despite the Government's impact assessment there is clear evidence that an 'opt in' system would lead to fewer members contributing to their union's political fund:

- In **Northern Ireland** union members must contract-in to pay the political levy. According to the Government's own figures, around 33 per cent of Northern Irish members of British trade unions with political funds contribute to the funds.⁷⁵ Other reports estimate that around 39 per cent of members choose to pay into their political fund.⁷⁶
- Between **1927 and 1946** trade union members were required to contract-in rather than contract-out of paying the political levy. Between 1925 and 1938 the proportion of trade unionists paying the political levy fell from 75 per cent of the total number affiliated to the TUC to 48 per cent. After the Labour Government repealed the measure in 1945 the proportion rose from 38 per cent of members in 1945 to 60 per cent in 1948.⁷⁷
- When the **Committee on Standards in Public Life** in 2011 recommended a £10,000 cap on donations in the context of trade unions requiring their members to opt in to the payment of an affiliation fee, it provided analysis based on an assumption that "30 per cent of affiliation fees continued to be paid under the

⁷³ Department for Business, Innovation and Skills, Impact Assessment, January 2016, p.74

⁷⁴ Department for Business, Innovation and Skills, Impact Assessment, January 2016, p.75

⁷⁵ Department for Business, Innovation and Skills, Impact Assessment, January 2016, p.65

⁷⁶ Financial Times, 27 May 2015, <http://www.ft.com/cms/s/0/457bb752-046d-11e5-a5c3-00144feabdc0.html%23axzz3l3FXwTLl>

⁷⁷ House of Commons Library, Trade Union Bill, 7 September 2015, p.54

new opt-in arrangement”, while acknowledging that the effect was hard to determine.

2.5 The above examples, while a useful indication, do not take account of the time and format constraints of a shift to opt-in in the current Bill. The impact of a sharp fall in the number of members contributing to the political fund will have serious implications for the Labour Party’s funding.

2.6 According to our own internal analysis the immediate threat is an annual loss of around **£6 million in affiliations fees**. Affiliations form part of the Party’s core funding and such a loss could not be absorbed without a fundamental change in how the Party operates.

2.7 However if we are to look ahead to the next General Election in 2020, the Party will again require additional support from the affiliated trade unions to deliver its campaign. The funds received from unions’ political funds in the last campaign amounted to more than £12 million, if annualised across the Parliament this means that an **additional £2 million of income is under threat**.

2.8 This total figure of **£8 million** is approximately just over a quarter of the Labour Party’s total annual income.

| | £m |
|------------------------------|------|
| Annual affiliations | 6.0 |
| Regional income | 0.2 |
| <u>Donations</u> | |
| 2012 | 0.3 |
| 2013 | 0.4 |
| 2014 | 3.6 |
| 2015 | 7.8 |
| | 12.1 |
| Annualised across parliament | 2.4 |
| | |
| Total annual income | 8.6 |
| | |
| Potential loss 90% | 7.8 |

2.9 This forecast is based on estimates that:

- Around 10 per cent of union members would opt in
- This would mean that the number of members paying the political levy in the five largest affiliated unions would fall from 3.352 million to 333,000 and have a knock-on effect on affiliations

2.10 The figure of 10 per cent primarily reflects the short timescale – three months – over which the changes will need to take effect and is based on our experience of responses to direct mails and other communication with members and affiliates:

Labour Party—written evidence (TUP0026)

- For example, during the 2010 leadership campaign around 10 per cent of ballots sent to members of affiliates were returned.
- During the 2015 leadership election 147,000 affiliated supporters out of a total levy paying membership of 3.7 million in our affiliated unions took part. That equates to just under four per cent.
- It has been estimated that the average response rate for direct mail is around 4 per cent.⁷⁸

2.11 It is worth noting that even if the opt-in rate was closer to 30 per cent (similar to the situation in Northern Ireland) the impact on the Labour Party's finances would still be severe. This would equate to a total loss of £6 million a year which is around a fifth of the Labour Party's annual income.

2.12 During the Committee session on 4 February 2016 I was asked whether the affiliated trade unions could simply choose to donate a bigger proportion of their political fund to the Labour Party to make up for the impact of the changes. While it is true that the trade unions could choose to donate a larger proportion of the political fund to the Labour Party the political fund itself would be much smaller so could in no way make up for the losses sustained. If just 10 per cent of members opted into the political funds of affiliated trade unions the overall size of the political funds of affiliated unions would fall from around £22 million a year to just over £2 million. In other words the pot from which the trade unions can decide to donate to the Labour Party will be greatly reduced. It should also be noted that trade unions will themselves incur extra costs as a result of Bill which they will also need to cover. The Regulatory Policy Committee, for example, estimates that the reforms to the political funds will involve an annual cost to trade unions of £0.9 million, mainly resulting from administrative and postage costs of inviting members to opt in to political funds every five years.⁷⁹

3. The political fund

3.1 In 2013-14 there were just over 4.95 million trade union members contributing to political funds. This equates to approximately 89 per cent of members. Around 3.8 million members of trade unions that are affiliated to the Labour Party contribute to the political funds. The total income for the political funds of those trade unions affiliated to the Labour Party was £22 million.⁸⁰

3.2 Trade unions are required to ballot members by post at least once every ten years on the continuation of political funds. Between 1999 and 2015 an average of 82.4 per cent of voting union members favoured retaining political funds.⁸¹

3.3 The issue of whether people may support the political fund but not the collective affiliation to a political party has been risen in the course of this debate. This is not

⁷⁸ Direct Marketing Association, October 2014, <http://www.dma.org.uk/article/why-direct-mail-in-the-21st-century-1>

⁷⁹ Regulatory Policy Committee, Trade Union Bill, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493739/BIS-16-70-A-trade-union-bill-RPC-Regulatory-Policy-Committee-response.pdf

⁸⁰ Certification Officer annual report 2014-15, appendix 9, p.68

⁸¹ House of Commons Library, Trade Union Bill, September 2015, p.79

addressed by changing the opt-out rules. Paying in to the political fund is a binary choice - in or out. Decisions about how that fund is applied are then, currently, a matter for the union's decision making processes. If this is a genuine concern of the Committee, you should be aware that it is a genuine concern of the Labour Party too. That is why in the Labour Party's reforms (the Collins Review) we require that individual trade unionists paying into a political levy must also agree to the collective affiliation, transforming the relationship over a five year transitional period by 2020. There is no need to legislate for what the Labour Party and its affiliates are already doing. Indeed the proposed legislation does not even attempt to achieve this fundamental shift toward individual choice in relationship with the Labour Party.

4. A break with longstanding understanding

4.1 The measures go against the long-standing understanding that changes to party funding should be built around consensus. They will also have profound democratic implications.

4.2 The report 'Political party finance: Ending the big donor culture' by the Committee on Standards in Public Life (CSPL) and chaired by Sir Christopher Kelly KCB, reported in 2011. Two of its five underlying principles were that:

- It is *"fundamental to our democracy that political parties are financially viable to enable them to function, either in government or in opposition, and to present policy alternatives to the electorate at elections."*
- The system *"should be fair to all parties, as far as possible should have regard to their different histories and structures and should not unduly discriminate against particular candidates or parties."*⁸²

4.3 The CSPL report also stated that "any proposals to reform the arrangements for party funding have to be practical to have any chance of achieving the consensus necessary for success."⁸³

4.4 In 2007 the Hayden Phillips review was published. This cross-party review was tasked with producing recommendations *"as much as possible agreed between the political parties with a view to legislation as soon as Parliamentary time allows"*.⁸⁴

4.5 Phillips also stated that *"it will be necessary to have a transitional period during, which parties are able to adapt to the future regime"* and that *"that matters is that the solution is fair and sustainable and that it is arrived at through agreement."*⁸⁵

4.6 Winston Churchill said in 1948 that *"matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other"*.

⁸² Committee on Standards in Public Life, Political party finance: Ending the big donor culture', November 2011, figure 5, p.28

⁸³ Committee on Standards in Public Life, Political party finance: Ending the big donor culture', November 2011 p.7

⁸⁴ House of Commons Library, Political party funding: controversies and reform since 1997, p.8
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07152>,

⁸⁵ The Review of the Funding of Political Parties, March 2007, p.12

“It has become a well-established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other, but by an agreement reached either between the leaders of the main parties or by conferences under the impartial guidance of Mr. Speaker.”

Winston Churchill, Hansard, 16 February 1948, column 859-860

5. Follow up from Committee session

5.1 This section addresses some of the specific questions which the Committee requested further information on in writing.

5.2 *Whether the Government had invited evidence from the Labour party on the impact assessment relating to clauses 10 and 11?*

No – we were not asked for evidence.

5.3 *If you had the current mechanism that now exists for opting out, if and when we move to opting in, would you be happy with that?*

Currently it is possible for a member to opt out of any political fund by giving formal notice to the union in question that is their wish. The Trade Union and Labour Relations (Consolidation) Act 1992 notes that the opt-out form “or a written request in a form to the like effect” should be handed for sent to the secretary of the branch to which the member belongs. This suggests that acceptance of a letter, email, text or any other non-verbal communication would be sufficient to opt out. A similar approach to opt-in would obviously be preferable to the Government’s current plan however it would in no way address our wider concerns.

The Government’s impact assessment asserts that a switch between opting out and opting in will have no effect on the number of people contributing to political funds. If the Government believes that it is as easy for people to opt in as it is to opt out then the reverse must be true – in which case why propose the change?

If, on the other hand, there is any difference, whatever the scale, between opting in and opting out, then it is clear that the proposals are designed to reduce the size of the political funds in a partisan attack on the funding of the Labour Party. This goes to the heart of the matter that government should not seek to change legislation which has an impact on a single political party without cross party agreement.

5.4 *What difference do you think it would make if some of the other proposals that were in the Bill were not in the Bill: for example, if you had access to electronic means?*

The ability for people to opt in via e-mail and by methods other than in writing would obviously be a better situation than the one proposed. However, it does not change the fundamental problem with this legislation.

This Bill is in effect party funding legislation. But it is only partial reform in that it impacts solely upon the Labour Party while not addressing issues such as donation caps or spending limits. It is in effect a partisan attempt to smuggle reform through the back door.

This unfairly goes against the longstanding understanding that reform of party funding should proceed on a consensual basis.

5.5 *Why would the Bill's provisions for changing the check-off make it harder for trade unions to obtain opt-ins to political funds? Could you put the question of opting in to the members at the same time as proposing new payment methods?*

This is primarily an issue of timing. The check-off proposals allow for a twelve-month transition period to enable trade unions to contact their members to switch to direct debit. The political fund proposals have a three month transition period. Our expectation is that the trade unions will prioritise dealing with the check-off changes.

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Liberal Democrats—oral evidence (QQ 8–13)

Examination of Witness

Lord German, Treasurer, Liberal Democrats

Q8 The Chairman: Lord German, good morning. Thank you for coming to see us. I think you have been present for part of the previous session. Would you like to make an opening statement?

Lord German: Thank you, Lord Chairman. For the record, my name is Lord German and I am treasurer of the Liberal Democrats. I suppose in that context I have an interest to declare in that I have made payments to the Liberal Democrats in the course of my lifetime. Like many other political parties, the Liberal Democrats are committed to the reform of political party funding. We believe, like others, that political parties are the backbone of our democracy; they give us structure and leadership from which voters can choose when they are casting their vote. They develop policy, they build support for those policies by engaging with the electorate, and they provide support for those individuals who serve our country and make up the governments and oppositions across our Parliaments, Assemblies and councils in our country. They need adequate funding in order to do these vital tasks, funding that frees parties from the suspicion of favours and influence in return for donations. That is why all parties were committed to taking the big money out of party politics.

The Committee on Standards in Public Life indicates in its report there are only three ways to do this. Those are: one, capping donations; two, limiting expenditure and increasing transparency; the third one, of course, is providing taxpayer support for democratic activity. There are many international comparators that show all those three elements in play around much of the developed world.

As if by magic, the OECD has produced a report today on the funding of political parties and election campaigns and the risk, as it calls it, of policy capture. It includes detailed case studies on nine countries, including the United Kingdom. I am afraid I have only been able to read the executive summary in the short time that it has appeared on my phone this morning.

To work effectively, as recognised in the report of the Committee on Standards in Public Life, there has to be a combination of all three elements. It is needed now. The evidence is that there is an urgent need to address this matter because there is a spending race, a race that does not appear to have an end. In the lead-up to the 2010 general election, six political parties

Liberal Democrats—oral evidence (QQ 8–13)

spent £31 million. In the lead-up to the 2015 general election, the same six political parties spent £37 million. That is an increase of 19% in spending, which is well above the rate of inflation, which has been very low in the intervening years. The spending race has no end in sight. Therefore, it is of immense importance—to encourage and to receive the confidence of the people of this country—that we are funded in a way that reduces the suspicion of influence and favours.

Q9 The Chairman: Thank you very much, Lord German. Have you tried yourselves to make any estimate of what the impact of the provisions in the Trade Union Bill would be on the funding of political parties?

Lord German: Clearly there is an impact upon the Labour Party and it is for it to identify what the impact would be, but on the Liberal Democrats there will be very little impact on our overall funding, except if people were to choose in some way to be able to fund us as a consequence, but we do not anticipate a large change in the party as a result of these changes. The main reason we are concerned about this is because these two clauses are about party political funding, and I quote in evidence the Conservative Party manifesto, the relevant page of which I have with me, that says: “We will legislate to ensure trade unions use a transparent opt-in process for subscriptions to political parties. We will continue to seek agreement on a comprehensive package of party funding reform”. It is our belief that you cannot do the first without the second. That is the crucial issue that we face with these two clauses, because the net result of doing the first without the second will be what Lord Forsyth called, in his contribution to the debate on 20 January in the setting up of this Committee, “a war of mutual destruction”. I could well see the opportunity for replacing that first sentence with something like: “We will legislate to ensure that there is a cap upon donor income. We will continue to seek agreement on a comprehensive package of funding reform”. Simply changing the first part of that would be a partisan approach just as much as there is a partisan approach here. The crucial issue is that we need to find a way of dealing with this matter collectively. It will be hard for all political parties, but you cannot do the first without the second.

Lord Sherbourne of Didsbury: Do you have a view about people opting out or opting in? Is it a matter of principle that people should be allowed to opt in, or is it simply a matter of pragmatism?

Lord German: No. We agree with the Committee on Standards in Public Life that a change should be made. Our difficulty with it is that it is being done in a unilateral way, which will

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damage the prospect of ever dealing with the whole issue, which, as I said, has three component parts to it. I have no objection to the issue, which would have to be dealt with in a comprehensive way, but dealing with one without the other, as I said before, would not be a recipe for ensuring that we deal with the wider and broader issue that has to be dealt with and which the OECD report today accentuates.

Lord Sherbourne of Didsbury: As I understand it, as a matter of principle you are opposed to opting in, but you do not think we should deal with that unless we deal with other things at the same time.

Lord German: You should follow what the Conservative Party manifesto says: “We will continue to seek agreement on a comprehensive package of party funding reform”. There are steps that could be taken. There has been no indication in this Parliament to attempt to secure any cross-party discussion on political party reform, and that ought to happen, given that it is a party commitment.

Lord Sherbourne of Didsbury: This is my last point. Does it bother you, as a matter of principle, that trade union members do not have a chance to opt in to contribute to a political party?

Lord German: Yes. As I said, the package that is laid out of those three principles bothers me, and I am bothered by all three. That is why, as the Committee says, we have to deal with this in a way that does not harm the balance that we have in our political party structure in the country.

Q10 Lord Whitty: I have two questions. First, on the point you were just raising, would you accept that the recommendations of the Kelly commission, and indeed the wording of the Conservative manifesto, relate to affiliations to the Labour Party and payment of money to the Labour Party, or to any party, whereas the propositions in this Bill relate to the status of political funds in total, whether or not money goes to political parties?

Lord German: Yes. As far as we can see it, this is a matter of dealing with one side of the discussion and not the other. If the commitment was given, as it was, by all parties to take the big money out of party politics, you have to deal with political party donations, high-value donors and that issue at the same time, because the overarching suspicion that political parties are receiving favours in return for donations or getting special treatment is the one we particularly have to deal with.

Lord Whitty: Since you are here as treasurer of the Liberal Democrats rather than a valued colleague, could you perhaps give us a brief idea of where the Liberal Democrat money comes

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from? For example, what proportion of your income comes from individuals, members and companies; and in relation to a company, or indeed any other institution, are you aware of any other institution in the land that is allowed to make political donations but is subject to requiring a separate political fund that the members or shareholders are able to opt out of or are asked every 10 years to reaffirm the validity of?

Lord German: The noble Lord Whitty asks a very weighted question.

Lord Whitty: As ever.

Lord German: The answer to the part you have given me is that I cannot think of one, but I am sure you can. The balance of funding in the Liberal Democrats is that about 19% of our money comes from donations, and beyond that a large chunk of our money comes from our membership and other forms of raising money, which are common to all political parties.

Lord Whitty: Of that 19% donations, it is mainly individuals, is it?

Lord German: It is mostly individuals. There are some company donations.

Lord Whitty: As there are for all parties.

Q11 Lord Robathan: Lord German, basically you refer continually to party political funding and the Committee on Standards in Public Life. Might I pursue that further and, indeed, your role as treasurer of the Liberal Democrats? You used the term “overarching suspicion”. If I might say so, I do not necessarily have an overarching suspicion, but I have a slight suspicion that your argument is for public funding for political parties, as in CSPL, which I am against and by the way, contrary to what it says, I think most people in this country are against. I certainly do not want to fund the BNP, UKIP, the Socialist Workers Party, or whomever it might be. Therefore, my question is: are you, as a party, in trouble with your funding?

Lord German: We are fine, thank you very much.

Lord Robathan: You are flush.

Lord German: I did not say “flush”. As to where we are in the funding race, I am not prepared to speculate where we will be by 2020, but we are confident that we will carry on with the activities that we are doing.

To answer your first point, which is about public funding, I would prefer to look in the round at the issue of public and taxpayer support for democracy. All of us in this room are currently part of the beneficiaries. Taxpayers are paying for the work that we do. There are many other aspects of political funding, which are party funding or, if you like, political party funding, which are a result of continuing activity that we do in this country. There is a case to be made

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for looking at that in the round. I also believe that there might be a case for the way you deal with these things being staged. One of the principal objections for the Conservative Party was that the level of the cap proposed in the Committee on Standards in Public Life report was too high. There may well be a case for staging in the changes agreed by all parties so that over time these things, with a sense of direction of where you are going, are sorted out. It would be wrong to give the impression that the country and the taxpayer do not support political activity and political funding.

Lord Robathan: That is a matter for debate, but my experience as a Member of Parliament for 23 years is that nobody, not even my opponents, suggested that we should be spending more money on supporting political parties. That included the Liberal Democrats with whom I often spoke.

This is my final question or comment. While you are quite right about the spending race—and I deplore it—I would make the point that it does not necessarily have a tremendous impact. I well remember the 1997 election, when I know that we well outspent everyone else and lost over half our seats in the Conservative Party. I would not put too much faith in spending money. My question is a simple one. You can reassure the Committee that this is not a question of self-interest for your party. You absolutely believe that public funding should be increased.

Lord German: I believe that the three elements are necessary to ensure that we have confidence from the public—and by the way, as to the third element, which is the level of public funding, I think we need to look at that in the round. We may well be able to find savings in what we do already that we can divert into other forms. That is a matter of debate between the parties and it seems to me that that is something we ought to achieve. As to your point about the race and whether spending actually works, all I can point to is the increase in funding that parties put into what they call central campaigning, which has no effect on local funding returns, from local campaigns, and that money is where a lot of the extension is going. There will be some learned people who would, I am sure, be able to demonstrate that that has had some effect, but certainly anecdotally and in my party's estimation that sort of spending has had an impact. One element about limiting expenditure and there being transparency in that operation, which is one of the three elements we have to fulfil, is pretty crucial to making sure that we all live in a sane and sensible world and that we have the confidence of the electorate.

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Q12 Lord Callanan: Following on from Lord Whitty's question, I think you answered the question to say that the Liberal Democrats are currently funded in a similar way to the Conservative Party by individual donations and membership fees. I assume—I do not know—that you do not receive anything from trade union political funds.

Lord German: We do not.

Lord Callanan: But you have lobbied and written to the TUC saying that you should.

Lord German: Individually. Members and certainly candidates have. I am hesitant because there are some candidates in elections who will have had some support from unions. Whether they are individual or from their political fund, I could not put my finger on it exactly, but we are not talking about big money here; we are talking about small-scale sums. In passing, I would like to take your first comment about us being funded in a similar sort of way. There is a fair bit of a difference between the 19% and the 59% of all individual donations put together to all parties; 59% of them go to the Conservatives, so there is a bit of a difference in the mean balance between the two.

Lord Callanan: Yes, but if individuals choose to give their money to one political party rather than another, that is an opt-in system and a matter of choice.

Lord German: That was one of the issues the Committee on Standards in Public Life wanted to ensure—that there was transparency of that operation and that we were taking the big money out, and big money is what contributes to that total.

Lord Callanan: We established from the previous witness—surprisingly to me—that less than 50% of trade union political funds are given to the Labour Party. Some 55% of them, presumably, are spent on other political campaigns. You said earlier that you support the principle that members should be allowed to opt into the political levy. The founding purpose of this Committee is to explore what impact the opt-in system might have on the funding of the Labour Party. Given those figures, would you like to share with us your view as to whether it is likely that trade unions may choose to increase the percentage of the political levy that they give to the Labour Party?

Lord German: It would be wrong of me to speculate. I have no internal information based upon any substance, but logic tells me that this would have a major impact on the Labour Party's funding. That is what I would suspect. That is something that presumably the Committee will want to examine. The issue and the nature of how people make their commitment to their political fund ought to be part of a package that political parties put

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together in order to achieve the consequence of all this, which is to get an agreement that can move in the right direction so that we all know that we are all, as parties, giving security to the voter that they are removing fear of undue influence.

Lord Tyler: I have a supplementary to follow up on Lord Robathan's point. You were implying that within the existing level of state funding it might be possible to make a reallocation without a net increase in the total amount. I think all parties at the time of the Committee on Standards in Public Life thought that was not exactly the right moment to make the total increase. Are you aware that the cost of the Royal Mail freepost over a six-year period—admittedly, this was at the time of the Committee rather than now, so presumably it has gone up, and it is a privatised service now—was £47.5 million of taxpayers' money? Can you think of a way in which that might be more effectively reallocated in the present world?

Lord German: I would not like to commit the Liberal Democrat party to an absolute policy on this issue, but it demonstrates that there is a large sum of money going into supporting the activities of the political parties from the taxpayer and that an examination of that, and particularly the large sums that you mention, might mean that you could find agreement between the parties that this could be reallocated in a different way. Heaven forbid, we might even be able to reduce the budget that supports the Members of the House of Lords and reallocate some of that, but I would not like to speculate on that.

Lord Richard: Can I try and sum up the Liberal Democrat position as I understand it? First, you are saying that any change in the existing pattern of party funding should only take place by consensus after discussion and agreement between the parties.

Lord German: Right.

Lord Richard: Secondly, I suppose it follows from that that you believe it would be wrong for radical changes in the pattern of party funding in this country to be imposed by the will of the majority party in the House of Commons.

Lord German: Do you want me to make a comment?

Lord Richard: Go ahead.

Lord German: For the reasons I outlined earlier, a partisan approach to this matter will only result in what Lord Forsyth calls a war of self-destruction. We are all democrats, and democrats believe that there will at some stage be an alternative and different Government of a different political persuasion. That is the nature of our democracy. If we believe in that, people can feel released to be partisan themselves in the future, and it will not encourage the

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second part of that manifesto commitment to continue to seek political agreement. Without having made that attempt yet, it seems that we put horses and carts in the wrong order.

Lord Richard: Just to square the circle, so to speak, Conservatives have been arguing that this Bill and these provisions are nothing to do with party funding but to do with something else. Do I take it that you do not share that view but take the view that this is consummately to do with party funding, particularly the funding of my party?

Lord German: I pray in aid the manifesto of the Conservative Party. Would you put those two sentences together in the same paragraph, at the end of the paragraph, if you do not believe that they are about political party funding? They are there together. The obvious impact on political party funding for one party is one of the key issues related to this matter. I have, as I say, no component disagreements with the contents, but without that consensus it puts the second part of the agreement under real threat.

Lord Richard: I have one final comment on the point that has been put to you by Lord Callanan. If in fact he is saying that the trade unions could make up the deficit by an increased contribution to the Labour Party, does that not assume that the effect of these provisions will be a diminution in the income of the Labour Party?

Lord German: It could be, and I am not in the best place to judge how the internal mechanisms between the trade union movement and the Labour Party work, but if the balance of funding were to be affected, that would have an impact upon the way in which this funding race, which I have described, continues. Our party's view is that this funding race is not helpful to our democratic structure.

Q13 Lord De Mauley: May I refer back to the line of questioning that Lord Robathan was pursuing and ask Lord German if he had made an assessment of the impact on Liberal Democrat party funding should the state-funding component of the report on the Committee on Standards in Public Life be introduced?

Lord German: It depends on the formula that you use and the arrangements that are there to accommodate it. At the moment, we all benefit universally—provided you put up candidates in all constituencies—from the same level of freepost arrangements as anybody else. If the decision were taken by political parties joining together that at this particular time we will not seek an increase but seek to readjust the income that is already there, it depends on the structure of the arrangements that make the difference. If, for example, there were a diminution in the freepost arrangement, that is taken equally in terms of the numbers of

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candidates you put up across the whole country. Where and how that money was redistributed would affect that balance. It would be a bit speculative at the present time to talk about that, but it does predict that we should have the conversation and that dialogue in accordance with the commitment in the Conservative Party manifesto,

The Chairman: Thank you very much. Do you have anything else to say, or is what you have just said your closing remarks?

Lord German: The issue of transparency is crucial in this matter. Whatever else we do in political party funding, it is increasingly important to the electorate that people can see what we are doing and how we are doing it. I do not think that at present there is an effective cap on political parties' expenditure in the way the public expect to see it and, often, as many candidates think there should be.

The Chairman: Thank you very much.

Mr Christopher Lindley—written evidence (TUP0008)

Mr Christopher Lindley—written evidence (TUP0008)

I am a 89 year old member of the Labour Party.

I went to private schools and Cambridge University, and voted Conservative until we emigrated to the USA in 1965. After working for American Cyanamid (a multinational company no longer in existence) for 29 years I retired and returned to Norfolk in 1988. My life changed as a result of going into HMP Whitemoor to take part in a weekly dialogue group for 9 years until 2002. I became aware of how many working class people are treated by the moneyed class, and how trade unions are essential to protect employees from some employers.

My comments on this new Trade Union Bill are:

- 1). It is an attack on the democratic rights of individuals.
- 2). It is an attack on the democratic members' organisations which work to improve the lot of their members.
- 3). One of its main purposes would appear to be to reduce the income of the Labour Party, an essential part of democracy in this country.

10 February 2016

NASUWT, Union of Shop, Distributive and Allied Workers, Fire Brigades Union—oral evidence (QQ 60–66)

NASUWT, Union of Shop, Distributive and Allied Workers, Fire Brigades Union—oral evidence (QQ 60–66)

[Transcript to be found under Fire Brigades Union \(QQ 60–66\)](#)

NASUWT—written evidence (TUP0016)

NASUWT—written evidence (TUP0016)

The NASUWT's submission sets out the Union's views on the key issues identified by the Select Committee in the terms of reference for the Inquiry.

The NASUWT is the largest union representing teachers and headteachers in the UK.

Introduction

1. The NASUWT has had a political fund since 1989.
2. The NASUWT's evidence is given in the context that it is not a union that is affiliated to the Labour Party and that it holds a political fund, established for the purposes of engagement in activity in pursuit of "political objects" as defined under the relevant legislation, on behalf of NASUWT members.
3. The NASUWT political fund is bound by the provisions of the legislation and operates fully in accordance with the guidance published by the Government.
4. The NASUWT political fund is endorsed by the Union's membership and subject to a ballot of members every ten years, in accordance with the requirements of the legislation.
5. The conduct of the political fund ballot is regulated by the requirements imposed on the conduct of such ballots by the Electoral Reform Society. There is no evidence that members of the Union are dissatisfied with these arrangements.
6. In addition, individual members may at any time opt out of the political fund, and the arrangements for doing so are explained to all new members who join the Union and are publicised throughout the year through the Union's communications to members and on the Union's website. The Union operates concessionary rates for members who elect to opt-out of the political fund. These rates are publicly available.
7. The NASUWT political fund is subject to independent scrutiny in accordance with the legislation and is audited annually by independent chartered accountants and auditors appointed each year by the Union's National Conference in accordance with legislative provisions. The Union's accounts are also published annually, together with details of the political fund account, and are open to scrutiny by NASUWT members and the public.

Affiliation to a political party

8. The NASUWT regrets that much of the Government's discourse around the use of political funds has misrepresented the position of the majority of unions, including the NASUWT, by suggesting that the political funds are used to fund political parties, and in particular the Labour Party.
9. In actuality, it is the case that of the 163 trade unions that are affiliated to the Trades Union Congress (TUC), only 15 are affiliated to the Labour Party and are, therefore, required to have a political fund for this purpose.

10. The NASUWT believes that whether trade unions have political funds or not, and whether they are affiliated to the Labour Party or not, is entirely a matter for those unions and their members. Trade Unions are democratically organised bodies, whose policy direction is entirely determined by the will of their members. The NASUWT does not provide financial support to any political party.

11. The Trade Union Bill seeks to encroach upon the democratic mandate of trade unions and upon what union funds are spent on. It is clear that other membership organisations are not subject to the same level of controls upon how their membership subscriptions are spent and that the Trade Union Bill will only place additional, unnecessary administrative and financial burdens upon trade unions.

12. The NASUWT's rules governing the use of the political fund are set out in the NASUWT Rules of Association. Members of the Union are, therefore, provided with clear information about the political fund and its use, including details of how to opt-out, should they desire to do so. Very few NASUWT members elect to opt-out of paying the political fund. In the last calendar year, for example, the total percentage choosing to opt-out was 2%.

13. However, the fact that a small number choose to do so, is evidence of the fact that members have the opportunity to make this choice and are not coerced into doing so. In addition, the opt-out rates are clearly displayed in relation to subscription rates in order to be clear and transparent.

14. The NASUWT does not receive complaints about this process. It is not clear, therefore, why the Government has decided that there is a problem that needs to be fixed, particularly given that the Government has acknowledged, through its own Impact Assessment, that the process it is proposing to introduce will provide additional financial burdens upon trade unions.

Use of the political fund

15. The NASUWT uses its fund primarily for promoting its work and communicating on behalf of its members through attendance at political party conferences. In the last calendar year, the NASUWT, as a union which organises across the UK, attended the conferences of the following political parties:

- The Conservative Party;
- The Labour Party;
- The Liberal Democrats;
- The Scottish National Party;
- Plaid Cymru;
- The Ulster Unionist Party;
- The Democratic Unionist Party;
- The Alliance Party;
- Sinn Fein; and
- The Social and Democratic Labour Party (SDLP).

16. The fund covers attendance, for example the cost of a stand, and any activities such as fringe meetings at the conferences. At all of the political party conferences it attended, the NASUWT engaged directly with the politicians and delegates on policy matters affecting teachers. This annual engagement is reported to all members in the Union's in-house magazine, the Union's Annual Report, which is also circulated to members and subject to approval by the Union's National Conference, and on the Union's website.

17. Details of the spend of the political fund are contained within the Union's annual accounts, which are by law required to be audited and sent to the Certification Officer. The details are sent to all members and scrutinised and adopted by the Union's Annual Conference. It is clear, therefore, that the process is entirely open and transparent for all members.

Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014

18. Since 2014, the NASUWT has been required to operate in accordance with further restrictions placed upon trade unions as a result of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, which is designed to limit expenditure by prescribed organisations during the "regulated period" prior to an election.

19. Given the limitations, bureaucracy and costs that currently apply as a result of this legislation, the proposal by the Government to place further restrictions upon trade union spending on political activities is unnecessary, disproportionate and can only be considered to be ideologically driven.

Opt-in arrangements

20. The Trade Union Bill proposes to require trade unions to operate their political funds on the basis of an opt-in arrangement. The NASUWT is concerned that the Government has failed to offer any rationale for this change which the Union believes is a device to create a further barrier to trade union membership and participation. It is perverse for a Government that claims to be determined to stamp out bureaucracy, to seek to introduce a new level of bureaucracy to any area of the work of trade unions, organisations which are already highly regulated, as described above.

21. The NASUWT political fund operates on a fully transparent basis and the Union rejects emphatically the implication that it, or indeed other unions, are receiving money from members under false pretences or that it is misrepresenting the political work of the Union to members and potential members. The wide range of information provided by the Union and the democratic basis on which the Union operates confirms that this is not the case.

22. The NASUWT believes that the Government's proposals for changing the requirements for political fund opt-out are intended to reduce the number of union members who elect to pay into trade union political funds to restrict union activity. The planned retrospective application of this measure provides further indication that this is the Government's intention. The Union regrets that this appears to be entirely consistent with the deeply worrying pattern which is emerging of a Government seeking to stifle opposition, silence critics and deny working people a voice.

NASUWT—written evidence (TUP0016)

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Trade Union and Labour Party Liaison Organisation (TULO)—written evidence (TUP0006)

Introduction

1. The Trade Union & Labour Party Liaison Organisation (TULO) is the umbrella organisation that coordinates the activities of the 14 trade unions affiliated to the Labour Party. TULO has campaigned against the whole Trade Union Bill, and we welcome this opportunity to address clauses 10 and 11, which represent the most partisan attack by a governing party on the finances of the Opposition since 1927.

2. In preparing this submission, TULO is mindful of the two principal questions about which the Committee has invited responses:

Will clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

If the two clauses will have such an impact, how would that relate to the recommendations of the CSPL report and/or party funding reform?

We are also mindful of the subsidiary questions to which the Committee refers in its call for evidence.

Regulatory Framework

3. Trade union political objects are now governed by the Trade Union and Labour Relations (Consolidation) Act 1992, which consolidates the relevant provisions of the Trade Union Acts 1913 and 1984. The Trade Union Act 1913 was designed to reverse the *Osborne* judgment, in which the House of Lords held that it was unlawful for trade unions to introduce a levy of their members to finance parliamentary representation⁸⁶. This was a decision that had a devastating impact on the emerging Labour Party, until reversed by the then Liberal government.

4. In restoring the political freedoms of trade unions, the 1913 Act provided that trade unions could incur political expenditure, but only if a number of conditions were met to reconcile the wishes of those who supported political objects, with the wishes of others who did not. So:

- members of the trade union in question must approve the adoption of political objects in a secret ballot of the members;
- the union must thereafter establish a separate political fund to be financed by a separate levy of the members;
- political objects, as defined in the Act, may be financed only by payments made from the political fund;
- every member must have the right to opt out of paying the political levy, and not to suffer discrimination or disability for doing so; and

⁸⁶ *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87.

- these various provisions are to be included in the rules of the union approved by the Chief Registrar of Friendly Societies, to whom complaints could be made in the event of their breach.

5. The Trade Union Act 1913 was amended in 1927, by the Trade Disputes and Trade Unions Act 1927 (which applied to Northern Ireland). The political levy provisions of the 1927 Act were the culmination of a back-bench campaign to change the law, the purposes of which was captured in a memorandum by the Conservative Minister of Labour in 1924, who wrote privately that:

The real point which we have to decide is this. Do we wish to attack Trade Unions as such or do we not?.....the major part of the outcry against the political levy is not motivated by a burning indignation for the Trade Unionist who is forced to subscribe to the furtherance of political objects which he abhors. It is based on a desire to hit the Socialist party through their pocket ... What I submit is that at least we should not delude ourselves as to our intentions.⁸⁷

6. As a result of the changes introduced in 1927, the system of opting out was replaced by a system of opting in. It was no longer assumed that everyone would pay the levy unless they indicated otherwise; it was now assumed that no one would pay the levy unless they indicated otherwise. The Act affected different unions in different ways, but many experienced a gradual decline in political levy paying members between 1927 and 1946, when the 1927 Act was repealed. This had an immediate effect on the money available in trade union political funds, which saw a decline in the number of levy payers from 75% of the total TUC affiliated membership in 1927 to 38% in 1945, and a consequent effect on the Labour Party.⁸⁸

7. The opting in arrangement remained in force until 1946, when the 1913 Act was restored under the Attlee government by the Trade Disputes and Trade Unions Act 1946 (which did not apply to Northern Ireland). Apart from the Certification Officer taking over the responsibilities previously exercised principally by the Chief Registrar of Friendly Societies in 1976, the position remained largely unchanged until the Trade Union Act 1984:

- extended the definition of political objects to which the legal framework applied, so that more items of expenditure had to be financed from political funds;
- required trade unions to seek approval of their members every 10 years for authority to continue to operate political funds.

8. It is clear from now released Cabinet papers that in taking these steps to change the law in 1984, the Thatcher government also considered reverting to the opt in arrangements operating between 1927 and 1946. It appears, however, that the Prime Minister vetoed this proposal personally for fear of its impact on the democratic process. As was recognised by Thatcher, a move to opting in would create 'great unease and should not be entered into lightly'.⁸⁹ The ten yearly ballots were introduced instead of 'opting in', and an agreement

⁸⁷ Reproduced in K D Ewing, *Trade Unions, the Labour Party and the Law* (1983), pp 50-51.

⁸⁸ *Ibid*, p 61.

⁸⁹ TNA, CAB 128/80 ('Most Confidential Record' of Ministerial Meeting, 9 February 1984).

was reached between the government and the TUC whereby trade unions would take steps to make the right to opt out more widely known by their members.⁹⁰

Position in Northern Ireland

9. The legacy of the 1927 Act continues in Northern Ireland, to which the 1946 Act was not extended. So whereas opting out has operated continuously in Great Britain since 1946, in Northern Ireland opting in has operated continuously since 1927. The legal position is now governed by the Trade Unions and Labour Relations (Northern Ireland) Order 1995, article 59 of which provides for opting in to the political fund, and for the right of an opted in member to give written notice of withdrawal at any time. The Certification Officer for Northern Ireland (CONI) performs a supervisory role similar to her counterpart in GB, and publishes an annual report with information about contribution levels to political funds by NI trade unionists.

10. According to the CONI's most recent annual report, there were '20 Great Britain trade unions with Northern Ireland members operating political funds at 1 March 2015', of which 15 had Northern Ireland members 'contracting-in'.⁹¹ Only nine of the said 15 unions are affiliated to the Labour Party in Great Britain. The CONI also reports that in 2014, '38,079 Northern Ireland members of these [15] trade unions - representing some 27.8% of the total Northern Ireland membership [of these 15 unions] - contributed £217,468 towards political funds'.⁹² As an appendix to the CONI's report makes clear, the opting in levels vary from union to union.

11. Thus, the percentage of NI members who are in unions affiliated to the Labour Party in Great Britain, and who pay the political levy in NI varies from 0.7%, to 4.9%, to 14.1%, to 39.6%, to 41.9%, to 42%, to 47%, to 51.1%, and to 73.2%. The figures in bold represent the five largest unions affiliated to the Labour Party. It is difficult to provide precise corresponding data about the percentage of members paying the political levy in Great Britain. We can say, however, that 619,174 members who belong to unions with a political fund do not make a political fund contribution, either because they have claimed exemption or they belong to a category of membership from which the union does not collect.

12. The Certification Officer (for Great Britain) does not provide comparable data to that provided by the CONI. It is nevertheless possible to provide information about the number of members paying the political levy in the case of the five largest affiliates (that is to say for the unions in bold in paragraph 11 above). The percentage of members who pay the political levy in Britain in these five unions is 96.1%, 93%, 95.4%, 84%, and 83% respectively. It is not possible easily to give a precise figure for the overall percentage of political levy payers in all unions (Labour Party affiliated and non-affiliated) with political funds, but a conservative estimate would put it in excess of 85%.

13. It is thus clear that there is a huge difference in contribution levels in GB and NI (27.8% v 85%+). We do not claim that the regulatory regime is wholly responsible for these differences: the political culture in NI is different; political party organisation,

⁹⁰ For details of the agreement, see K D Ewing, 'Trade Union Political Funds' (1984) 13 *Industrial Law Journal* 125.

⁹¹ Northern Ireland Certification Officer for Trade Unions and Employers' Associations, *Annual Report 2014-2015* (2015), para 7.17.

⁹² *Ibid*, para 7.18.

representation and presence is different; and there are sensitivities on the part of some trade unions about partisan political engagement in a divided community, and as a result a fairly low key approach to the political fund in NI. But we have no doubt that the regulatory environment provides an important explanation for the different levels of political levy participation in the two jurisdictions, albeit that it is not the only explanation.

14. This is a view shared by TULO affiliates, whose views were sought for the purposes of this submission. When asked why they thought that the levels of political fund contributions in Northern Ireland were comparatively low, responses included the following:

- ‘In Northern Ireland members have to opt into the political fund and this is not an easy process. Unless members decide to opt in as they join it is very difficult to persuade them to do so’.
- ‘Nationally around 80% of [union’s] members pay the levy, so it is half as many in NI. This is due to the opt-in process’.
- ‘Members are asked to pay an additional amount on top of their membership fee – not part of it as in the rest of the UK where members can choose to opt out.’

Likely Effect of the Trade Union Bill

15. It seems clear from the experience of the Trade Disputes and Trade Unions Act 1927, and its continued operation in Northern Ireland, that there will be a sharp decline in the number of trade union members paying the political levy if the Trade Union Bill, clause 10 is enacted. Existing data suggest a fall from in excess of 85% to 28% - 38% levels of participation. There are two reasons to believe, however, that this may significantly over-estimate the levels of participation under the proposed new regime.

16. The first is the more intense regulatory structures in which trade unions operate, including in particular the new powers in the Trade Union Bill relating to the Certification Officer. These will enable the CO – as well as trade union members - to bring proceedings against a trade union that fails to comply with the new regulatory demands. The Bill’s proposal that the CO will be able to bring a complaint before the CO is of course a constitutional solecism, hopefully the subject of examination elsewhere, and likely to be the subject of intense litigation in due course.

17. But it does mean that trade unions are unlikely to have the soft landing that the more lax regime permitted in the 1920s and 1930s. Some trade unions were thus able to mitigate the impact of the 1927 Act for a short period in ways that would not be tolerated today. Unions were in effect thus able to manage their own transition to the new regime:

- By adopting a lengthy implementation, perhaps because of the high levels of support for political activity in the union. This was the practice of the giant Miners’ Federation of Great Britain until the Chief Registrar of Friendly Societies intervened in 1936.
- By aggregating the general and the political levies, with opted in members paying a smaller general contribution than those who had not opted in; the Chief Registrar found this practice to be unlawful in 1928, though a number of unions continued with the practice until the 1930s.

The foregoing did not of course exhaust the ingenuity of unions as they struggled to meet the law's new demands.

18. But it is not only greater regulatory supervision that will depress contribution levels. So too will the regulatory content of the Bill. There are a number of factors that are relevant here. The first is the prohibition of the check off in clause 14. This is predicted to lead to a loss of trade union members, which in turn will lead to a loss of political fund income. Second, the method by which opting in is to take place is deliberately calculated to make it harder for unions to recruit political membership. This is because it will not be possible to opt in online (at the point of joining the union), but only manually in the manner prescribed by the Bill.

19. It will of course be possible for trade unions to devote resources to the manual collection of subscriptions generally and political levies in particular. But the nature of the workplace has changed greatly since the 1920s, 1930s and 1940s. Membership is scattered and branch secretaries do not have access to members at unorganised sites. And even if they do, few employers will welcome regular visits from trade union officials – lay or full-time – on a mission to sign up members to the political levy. Nor is it likely that members themselves would appreciate visits at home from trade union officials collecting political levy funds, even if the human resources were available on the part of trade unions to make such visits.

20. The other major difference of course is the five yearly renewal requirement in the Bill. There was no corresponding provision in the 1927 Act, and no corresponding requirement in Northern Ireland. It is hard to see what purpose this serves, other than a malign one, particularly given the ongoing existence of the 10-yearly political fund ballot. So far as the Bill is concerned, members who opt in will be free to opt out at any time, simply by giving notice in writing to the union (Clause 10(5),(6)). Having opted in they are not bound in perpetuity to pay the political levy. The five year renewal requirement could only be justified – if at all – if members who had contracted in were legally bound to pay the political levy indefinitely.

ECHR and Practice Elsewhere

21. The right of trade unions to engage politically is recognised by the ILO Committee of Experts (in relation to ILO Convention 87),⁹³ and acknowledged by the ECHR, which accepted in *ASLEF v United Kingdom* that

*Historically, trade unions in the United Kingdom, and elsewhere in Europe, were, and though perhaps to a lesser extent today are, commonly affiliated to political parties or movements, particularly those on the left. They are not bodies solely devoted to politically – neutral aspects of the wellbeing of their members, but are often ideological, with strongly held views on social and political issues.*⁹⁴

22. As the *ASLEF* and other cases make clear, trade unions have Convention rights which are in addition to the Convention rights of their members. The Trade Union Bill, clauses 10 and 11, clearly violate the ECHR, articles 10(1) (freedom of expression) and 11(1) (freedom of

⁹³ ILO Convention 87 is an international treaty ratified by and binding on the United Kingdom under international law, and an important source for the interpretation of the European Convention on Human Rights.

⁹⁴ [2007] IRLR 361, para 50.

association), together with article 14 (discrimination in the application of Convention rights). These restraints will have to be justified as being proportionate restrictions for one of the prescribed purposes set out in ECHR, articles 10(2) and 11(2). Having regard to the already tight restrictions on trade union political funding, recent developments in other jurisdictions suggest that this may not be straightforward.

23. There are two issues here that have troubled courts in comparable jurisdictions. One is the excessive regulatory burden on political freedom. This was an issue in the United States where federal law prohibited corporations and labor unions from engaging in partisan electoral activity, insisting that such activity should be financed only by corporate or union (as the case may be) political action committees. The latter are the functional equivalent of trade union political funds, and are financed under an opting in procedure by shareholders and employees (in the case of companies) or members (in the case of unions).

24. In the landmark decision in *Citizens' United v Federal Election Commission*, these provisions were ruled unconstitutional as imposing an unacceptable burden on free speech. As the Supreme Court pointed out:

PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations, For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organisation statement⁹⁵

It is true that PACS are not identical to trade union political funds. But they are close enough. More recently still, the High Court of Australia has shown a similar impatience, this time with political funding legislation that not only imposed excessive regulatory burdens but was transparently partisan, the legislation in question banning trade unions from contributing to the ALP. *Unions NSW v New South Wales* is the first time that Australia's highest court has used its implied power to strike down legislation violating the freedom of political communication since that power was 'created' by the same court in 1992.⁹⁶

25. In essence the NSW legislation was found to be bad because it imposed 'a restriction upon the funds available to political parties and candidates to meet the costs of political communication by restricting the source of those funds'. If the legislation was to survive, it would have to be justified. But the government was unable to provide any justification for the restriction in the legislation 'other than its achievement',⁹⁷ and the offending provisions of the Act were struck down. In other words, the legislation's 'objective' was not a 'justification'. Again, the NSW legislation is not identical to what is being proposed in the Trade Union Bill; but the pungent partisan smell – which clearly offended the High Court – is the same.

⁹⁵ 130 S Ct 876 (2010), p 897.

⁹⁶ (2013) 252 CLR 530, applying *Australian Capital Television Pty Ltd v The Commonwealth* {1992} 177 CLR 106.

⁹⁷ *Ibid*, p 557. For the political context of this decision, see T Ayres and K D Ewing, 'O'Farrell's Funding Flop Ensures Freedom', *The Australian*, 2 January 2014.

26. The comparative jurisprudence suggests that clauses 10 and 11 will need compelling justification. But none has been provided. Nor has the government provided any justification for the discriminatory treatment of trade unions, as required by ECHR, art 14, which applies to trade union rights as it does to other rights.⁹⁸ No other organization is subject to even the current levels of restriction on trade union political freedom. There is no reason why trade unions should not now assert their Convention rights, in relation to both clauses 10 and 11. So far as the latter is concerned, if reporting to the Electoral Commission alone under PPERA is good enough for everyone else, it is good enough for trade unions.

CSPL Report and its Implications

27. The trade union political levy was one of a number of questions considered by the CSPL in 2011.⁹⁹ The Committee made wide-ranging proposals to reform political party funding, including a change in the way in which trade unions affiliated to the Labour Party. Instead of the system of collective affiliation, the Committee proposed that trade unions should only affiliate those members who had chosen to ‘opt in to the affiliation fee’ (para 11.38). Although it is not altogether clear, it appears that this would create three classes of trade union members: Labour Party affiliated political levy paying members; non affiliated political levy paying members; and opted out members.

28. While not dealing with an identical issue, there are a number of points about the CSPL’s report that are relevant for the Select Committee’s current examination. The first is that in proposing a system of opting in for Labour party affiliation fees, the CSPL was aware of potentially damaging implications for the finances of the Labour Party. Thus we are told that the changes proposed by the Committee ‘would be likely to have a significant impact on payments to the Labour Party’, indicating that it was ‘possible that fewer, perhaps, considerably fewer, members will be prepared to make a positive decision to be affiliated than the number currently not opting out of the political fund’ (para 11.43).

29. So how many fewer members would opt in? It is clear that the CSPL had no clue whatsoever, disarmingly stating that the likely effect was ‘impossible to quantify’:

At one extreme affiliation fee payments could be reduced to a fraction of their current levels. At the other they could be relatively unaffected. Our assumption is that the result will be somewhere in between. . . . But that can be little more than a guess at this stage (para 11.44).

The Committee was, however, aware that the move to opting in could lead to unfairness between the parties and for that reason proposed that the matter should be reviewed both at the point of implementation of the proposed legislation and two years thereafter (para 11.45).

30. Putting to one side the fact that this is hardly sound evidence-based policy-making, it is nevertheless notable that in proposing an opting in system for the affiliation fee, the CSPL did not prescribe the means by which the opt in notice would be given. And again unlike the Trade Union Bill the CSPL did not recommend that opt in notices should be renewed every

⁹⁸ *Danilenkov v Russia*, Application No 67336/01, 10 December 2009.

⁹⁹ CSPL, *Political Party Finance – Ending the Big Donor Culture*, Cm 8208, 2011.

five years. On the contrary, the Committee was generally sensitive to the need to minimize the bureaucratic burden that any new legislation would create, and sensitive as well to the costs that the move to a new system would involve, proposing that ‘there may need to be some flexibility about the way these costs are recovered’ (para 11.46).

31. The other important recommendation of the CSPL was that there should be a late implementation date to adjust to the new regime. This is important, as no thought seems to have been given to the mechanics of a move from opting out to opting in. Post-enactment, the Certification Officer will be required to produce new model political fund rules, trade unions will have to amend their rules in accordance with their (contractually binding) rule-book procedures, and the revised rules will have to be approved by the CO.

This will require a long transition time before commencement, while post-commencement it is simply unreasonable to expect a union of over one million members to sign everyone up within three months.

32. It is not only that the detailed requirements of the Bill (method of opting in, renewal, and implementation) have no counterpart in the parallel proposals of the CSPL. They appear also to compound the partisan nature of the attack on trade unions and the Labour Party by making the move from one system to another as difficult as possible. Although the Trade Union Bill does not directly implement a CSPL recommendation, it does gratuitously and deliberately affect one political party, and as such runs counter to the point made by the CSPL that

It is important that proposals are regarded as a package [sic]. Failure to resist the temptation to implement some parts, while rejecting others, would upset the balance we have sought to achieve (para 15.3).

Churchill Convention

33. In the 1948, Sir Winston Churchill (then Leader of the Opposition) said that:

it has become a well-established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other.¹⁰⁰

This is a sound principle, though given Churchill’s role as one of the architects of the 1927 Act, it would have been surprising to have heard it from his lips. Nevertheless, a few years later Quinton Hogg (later Lord Chancellor in Thatcher governments) said that

‘it is repugnant to the feelings of all decent people ... to use the power of a Party majority in the House of Commons to force a division on something which is designed solely to do political damage to their opponents about a controversial matter concerning the machinery of election and party administration’.¹⁰¹

34. This convention has been accepted and applied in recent years, and was generally followed during the Labour governments between 1997 and 2010. The major reform to party funding introduced by the Political Parties, Elections and Referendums Act 2000

¹⁰⁰ HC Debs, 16 February 1948, col 859.

¹⁰¹ HC Debs, 15 December 1949, col 2990 (opposing the annual disclosure of political party accounts).

(during a period of Labour government) was the product of a report of the Committee on Standards in Public Life, to which all the major political parties made submissions. It is notable that in their evidence to the latter Committee, the Conservative party said that

The question of trade union funding of parties is not of direct concern to the Conservative Party. We recognise the historic ties that bind the trade union movement with the Labour Party . . . The Conservative Party does not believe that it is illegitimate for the trade union movement to provide support for political parties.¹⁰²

It is not clear what has caused the Conservative Party to have changed its mind, other than a desire to abuse political power for partisan advantage.

35. Further evidence of this Convention is to be found in the important report of the House of Commons Constitutional Affairs Committee in 2006¹⁰³, which is book-ended by the need for consensus. Thus at para 13:

Party funding and the maintenance of a system of parties that compete fairly within the British polity is an issue of central political importance. It is imperative that the Government take a considered and measured view of any proposals for reform and that reforms command a wide consensus among political parties. Failure to undertake reform, or the promulgating of reforms which are seen to be of a partisan nature, will serve only to alienate the public and damage rather than revive political parties in the eyes of the electorate.

And again at para 146, the Committee recommended that any proposals for the reform of the system of party funding ‘should be based on the following key principles’, one of which is that ‘Every effort should be made to attract a consensus among the major political parties’.

36. More recently, the Churchill convention is to be seen operating in the inquiry conducted by the Committee on Standards in Public Life in 2011.¹⁰⁴ On this occasion (under a Coalition government), the recommendations of the Committee were not implemented, mainly because they were unacceptable to the political parties. Consistently with the spirit of the Churchill convention, the package collapsed. This is not to claim that the Churchill convention should be regarded as giving one party a veto over all changes to party funding and election administration. But there would have to be strong and compelling reasons to justify an attack on the opposition, undertaken unilaterally by the party of government.

37. One possible justification would be that the existing regulatory framework (where one exists) is ineffective. But this is self-evidently not the case in relation to trade union political funds, and would in any event invite only a proportionate response to address an identifiable mischief. Many have looked for evidence of regulatory failure, but no one has been able to provide it:

¹⁰² CSPL, *The Funding of Political Parties in the United Kingdom*, Cm 4057-1, 1997, p 238.

¹⁰³ HC 163-1 (2006-07).

¹⁰⁴ CSPL, *Political Party Finance – Ending the Big Donor Culture*, above.

- ‘He [Mr Robert Carr] thought that he might be able to supply cases of specific cases [of abuse relating to opting out of the political levy] if given the time - an expectation apparently not fulfilled’.
- (*Royal Commission on Trade Unions and Employers’ Associations, 1965-68, Report, Cmnd 3623, para 923*).
- ‘(Frank White MP) ... have you any evidence at all to put before this Committee that that people are paying a political levy unwillingly?(Dr James McFarlane, EEF) Not anything I think you would recognise as evidence, no’. (*HC 243- i (Select Committee on Employment, 1983-84)*).
- ‘We have received no evidence to suggest that the legislation is not working satisfactorily, and no case has been made out for any reform. We do not propose any change in the law in this respect’.
- (*Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, Cm 4057-1, 1997, para 6.23*).

38. There is no evidence of any problem to justify the Trade Union Bill, clauses 10 and 11. When pressed, the government has singularly failed to provide any convincing explanation for the change proposed, reinforcing the view that this is a measure which is being promoted exclusively for reasons of political self-interest, a conclusion which is reinforced further by the Chancellor’s announcement in 2015 to cut the Short money to the Opposition parties, causing even greater disadvantage to the Labour Party. When Labour was in government in contrast, Short money was greatly increased at a time when after the 1997 general election the Conservative Party was financially embarrassed. The money was accepted with alacrity, but subsequently used in circumstances questioned by the Public Administration Committee.¹⁰⁵

Conclusion

39. It is clear from the evidence that clause 10 will lead to a decline in trade union political fund income. Historical experience and current experience in NI suggest that the number of political fund contributors will fall from existing levels of about 85% to between 27.8% - 38%. As explained above, we believe that the actual take up will be substantially lower than this, given the restrictions in the Bill about the opting in procedures, and the requirement for renewal (which was not a feature of the 1927 Act, nor a feature of the current arrangements in NI). But whatever happens, clauses 10 and 11 will clearly have an impact on the finances of the Labour Party. The only contestable question is how big that impact will be.

40. One prediction is that the changes proposed by the Trade Union Bill will lead to a decline in contributions to the Labour Party of about £6 million annually, this representing around £35 million or more over a parliamentary cycle once additional contributions in a General Election year are factored in. At a time when the Conservative Party already enjoys a significant financial advantage, this is both politically unacceptable and democratically unsustainable. In addition, the government’s proposals raise questions of compatibility

¹⁰⁵ HC 293 (2000-2001), para 50: ‘We note that the Official Opposition and its auditors were unable to give a categorical assurance that its Short money funding was being used exclusively for parliamentary business. We have further concerns that, after an approach by the Party to the Fees Office, a description of parliamentary business was arrived at, without consideration by the House, which seems to allow more latitude in how this money is spent. In particular we are not clear how ‘communicating alternative policies to those of the Government of the day’ (which is permitted under the expanded description) is different from ‘political campaigning’ (which is not)’.

Trade Union and Labour Party Liaison Organisation (TULO)—written evidence (TUP0006)

with Convention rights; they violate one of the key recommendations of its own CSPL; and they breach the terms of the Churchill Convention, which discourages governments from launching partisan attacks on rival political parties.

9 February 2016

Trade Union and Labour Party Liaison Organisation (TULO)—supplementary written evidence (TUP0038)

- 1 We refer to our written evidence of 9 February 2016 and take this opportunity to make a number of supplementary points following our oral evidence on 11 February 2016.

Our response to the argument that union members should only be paying into a political fund if they have actively taken the decision to do so.

- 2 The normal principle of ALL democratic organisations is that members are bound by the majority decision properly taken under the rules. We are unaware of any system of government or any organization where the properly taken decision is binding only on those who subsequently affirm their willingness to comply with the decision in question. What is being proposed for trade unions is the equivalent of a new climate change levy being introduced by Parliament, binding only on those companies who subsequently agree to pay.
- 3 As it is, those trade union members who object to the political levy are not bound by the result of ballots in which they participated. Uniquely, they have a right to opt out of the collective decision. This right not to be bound by the majority does not extend to any other organisation making political donations. There are no minority rights for company shareholders, who if unhappy with decisions properly taken under the rules have no option but to ‘like it or lump it’. They have no right to dissociate themselves from the political activities of the company while remaining in membership.
- 4 The unique right to opt out of the trade union political levy was introduced (by a Liberal government in 1913) at a time when closed shop arrangements were prevalent in this country, which meant that it would be a condition of employment to be a trade union member. In these circumstances it was thought inappropriate that workers should be required to pay the political levy as a condition of membership of a trade union, which was in turn a condition of employment. Closed shop arrangements no longer exist, with the result that the primary justification for any regulation collapsed in the 1980s.
- 5 There is no justification for additional regulation given the existing right to opt out and the voluntary nature of trade unionism. There is even less justification to backdating this measure, so that 5 million existing members of political funds (many of whom will have been recently consulted in a political fund ballot) will have that membership cancelled, and will have to be asked to rejoin.
- 6 Furthermore, we would point out that there is no mention of political funds in the Conservative Manifesto, and that the specific provisions set out therein (“we will legislate to ensure trade unions use a transparent opt-in process for subscriptions to

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political parties”¹⁰⁶) are already in the process of being met by the Labour Party’s Collins Review Process.

Our response to the Government’s Impact Assessment

- 7 We have two points to make in response to the IA. First, we were surprised to read that ‘Our main estimate is that there will be no change in the number of members contributing to the political fund’.¹⁰⁷ This seems deliberately provocative in what is an otherwise superficial analysis. It is contradicted by the discussion earlier in the IA about the different impact of opting in and opting out generally (giving the example of organ donation), and it appears to be ill-informed by the 1927 experience, or levels in NI before 1927, or the impact of the Trade Union Bill, clause 14 (banning the use of the check off in the public sector for the collection of trade union subscriptions). Nor is there any consideration of the impact being different on different unions, and consequently no assessment of the implications of the differential impact.¹⁰⁸
- 8 But if it is the case that contribution levels will remain the same, it rather begs the question why we are being compelled to waste (on the IA estimate) £5 million every five years on an exercise that will simply reproduce the status quo. We would point out, however, that the IA greatly under-estimates the costs of the change at £5 million (a wholly disproportionate 25% of existing annual income). This does not include the cost of expensive telephone follow-ups that will be necessary after the stamped addressed envelopes have gone out. Nor does it address the possible response of employers to collecting the political levy in the private sector where check-off arrangements are not yet to be banned.
- 9 It is also unclear to us which union fund will have to be used to meet these costs. It is by no means clear that such expenditure can be met by general funds, having regard to provision of the Trade Union and Labour Relations (Consolidation) Act 1992, s 71 which applies to any expenditure ‘in furtherance’ of the political objects. It could be plausibly and perhaps yet persuasively argued that any expenditure incurred in encouraging members to contribute to the political fund is expenditure ‘in furtherance’ of the political objects, being expenditure without which such objects could not meaningfully be promoted in the first place. If the money is to be met from the political fund, it is quite possible that the costs will exceed the return.

Our analysis of the impact on Labour Party Funding

- 10 The IA fails to analyse the knock on impact on the funding of the Labour Party resulting from the switch from opt-out to opt-in. We continue to predict that the impact on the Labour Party will be significant, with the only question being one of degree.

¹⁰⁶ Conservative Party Manifesto 2015, p49

¹⁰⁷ BIS, *Trade Union Bill – Impact Assessment* (2016), p 74 (box).

¹⁰⁸ K D Ewing, *Trade Unions, the Labour Party and the Law: A Study of the Trade Union Act 1913* (1983), pp 56-63. See also our earlier submission, para 11, for the significantly different impact of opting in between unions in Northern Ireland.

- 11 Our analysis is that a change to opt-in to political funds will reduce funding available to the Labour Party by around £8 million a year – a loss of around a quarter of annual income. Funding to the Labour Party from the trade unions was around £43 million between 2010 and 2015 (over £6million a year in affiliation fees, and a further £12 million in donations over the course of the Parliament). A drop from approximately 85% membership of political funds to 10% would put most of this funding at risk, and reduce total income to around £5 million across a 5 year Parliament.
- 12 We estimate that opt-in rates could be as low as 10%. This is based on the particularly onerous mechanisms included in the Bill, and the fact that typical response rates to direct mail run at about 4.4%.¹⁰⁹ This is likely to be increased for an organisation with an existing relationship with its members, but would still need to be more than doubled to even meet a 10% opt-in.
- 13 Even if opt-in rates are at the more cautious estimate of 30%, the impact on the Labour Party will still be significant, reducing funding by almost £6 million a year – a loss of around a fifth of annual income. A drop from 85% to 30% membership of political funds, similar to the levels seen in NI, would reduce total income to around £15 million across a 5 year Parliament.
- 14 We therefore conclude that the consequence of Clause 10 on the Labour Party is a loss of between 20 and 25% of annual income, a major part of its operating budget. This is a substantial impact, borne by no other Party, and reinforces our concerns that the Bill falls foul of the Churchill convention – to which we refer in our earlier submission - that matters of party funding should be dealt with by consensus, and the long-standing agreement that these matters should be resolved in the round, and not in isolation.

Our response to the reporting requirements in clause 11

- 15 The purpose of clause 11 is opaque. We assume that the simplistic and unreflective justification will be ‘transparency’. But transparency to whom? We note that the duty to report is a duty to report to a State official appointed by the Secretary of State. There is no duty to report to trade union members. This looks very much like a conspicuous abuse of power by the Conservative Party, using a State agency to collect information about the Labour Party for its own electoral purposes.
- 16 There is already a universal duty of recipients of donations to report to the Electoral Commission under the Political Parties, Election and Referendums Act 2000. What is the justification of requiring trade unions and trade unions alone as donors to report donations to another State authority? If this is being done for the benefit of trade union members, why is there a right of access to this information to the world at large, and not to trade union members alone?

¹⁰⁹ Direct Marketing Association, 2012

Trade Union and Labour Party Liaison Organisation (TULO)—supplementary written evidence (TUP0038)

What is TULO?

17 TULO is the National Trade Union and Labour Party Liaison Organisation. We were founded in 1994 and are the body representing the 14 trade unions that are affiliated to the Labour Party. More information is available at www.unionstogether.org.uk.

16 February 2016

Lord O'Donnell, Dr David Halpern (QQ 38–44)

Lord O'Donnell, Dr David Halpern (QQ 38–44)

[Transcript to be found under Dr David Halpern \(QQ 38–44\)](#)

PCS Union—written evidence (TUP0019)

Introduction

1. PCS represents approximately 200,000 members working for the UK Government, in the civil service, associated public bodies and on private sector contracts.
2. PCS has had a political fund since 2005, which was set up following an all-member ballot. Since repeating this ballot in 2015, members voted to continue the political fund, with 91.3% in favour.
3. PCS is opposed to the additional five year opt-in proposed in clause 10 of the Trade Union Bill as this will create substantial administrative burdens to both individuals and unions, which come on top existing tight regulations. Recent experience of moving our membership to direct debit payment method highlights some of these administrative problems and is outlined below.
4. While PCS is not affiliated to any political party, the political fund nevertheless enables political lobbying and campaigning which secures greater scrutiny of government policies and encourages greater community engagement with the political process.
5. This evidence seeks to answer specifically questions 1a), 1b) and 1e) which were set out by the select committee on Trade Union political funds and political party funding. Our arguments are outlined below.

Question 1a): What are the key arguments for and against the introduction of the opt-in system proposed in clause 10 of the Bill?

And

Question 1b): What impact is clause 10 likely to have on the size of unions' political funds, or other aspects of union finances?

6. A lot of the debate concerning political funds and whether to have an 'opt-in' as opposed to an 'opt-out' system has been largely theoretical, regarding the rights of individuals to choose to opt-in and the rights of political parties not to have their funding unilaterally attacked.
7. However, PCS experience with the removal of check-off and signing our members up to direct debit shows that it is not so much whether members want to pay for something or not, it is whether they get round to doing something which is *administratively* burdensome.

PCS Union—written evidence (TUP0019)

8. PCS experience of moving our membership to direct debit demonstrates the vast amount of resource which is needed to get people to actually complete a simple form, even if it is something they fully intend to do.
9. Many members have busy lives and other priorities. They misplace forms or they postpone filling it out until a more convenient time, by which time they may have forgotten. Many also had concerns about the security of filling out their bank details online or on a paper form. In the course to signing up to direct debit, a single member may have had numerous emails, letters and phone calls from the union as well as repeated face to face visits from representatives or full time officials. The cost of this to the union has sometimes exceeded the value (in money terms) of the membership. PCS has had a successful sign-up rate to direct debit, however, this has been a result of over a year of intense resource dedication.
10. With the political fund being such a small monthly amount (in PCS, just 10 pence), this only exacerbates the problems mentioned above.
11. An individual might well support having the political fund but think that 10p a month isn't significant enough to warrant filling out the form. An opt-in every 5 years then actually changes the nature of the question from 'do I want to pay into a political fund?' to 'do I want to fill out this form with my personal details which will allow my union to deduct an additional 10p to go towards their political fund?'
12. However, the opt-in will not just cost the union lost contributions; it will impose vast administrative costs. Because only a small number currently opt out of the political fund, this enables PCS to operate a refund when members choose not to contribute. This is costly per individual but overall is cost effective as it does not cause disruption to our wider subscription collection systems. However, with the requirement for every member to opt-in, the refund system would be unworkable and PCS would have to invest thousands of pounds in changing subscription systems. The cost of changing systems and sending hard-copy opt-in forms every 5 years (approximately £1.50 per returned form) could be more than would be recouped from members paying into the political fund. Nevertheless, PCS would need to retain the political fund, despite the financial burden, as it enables us to campaign politically on behalf of our members.
13. Therefore, a shift to an opt-in system does not enable more choice, it simply creates more barriers for union members who wish to pay into a political fund and drains resources from unions for administrative tasks which could be spent on providing essential services and support to members.

Question 1e): What impact might clause 10 have on other kinds of political expenditure by unions? Is this likely to have a broader effect on party politics?

14. PCS is not affiliated to any political party but nevertheless has a political fund in order to carry out political lobbying to protect our members' interests and further our key aims of equality, anti-racism and anti-facism.
15. PCS has an informal cross-party Parliamentary Group of MPs who are regularly briefed on issues affecting PCS members and raise concerns as a result via various Parliamentary means. A reduction in our political fund could therefore impact on our ability to attain full parliamentary scrutiny on government activities which affect our members.
16. Whichever party is in government needs to be scrutinised and public sector unions play a key role in holding the government to account on their decisions. It is worth noting that in the past, a public sector union without a political fund who challenged the then government's policies (which had a direct impact on their members) was fined because its campaigning was deemed to be critical of the governing party and, it was argued, the union must have a political fund in order to carry out this work.
17. There are other political organisations which could be affected by the attack on political funds. Hope not Hate (an anti-racism, anti-facism campaign organisation which PCS works with) estimates it could lose on average £125,000 per year as a result of the opt-in measure.
18. Hope not Hate has in the past influenced local elections as a result of their campaign activities, for example by highlighting racism in the British National Party. Hope not Hate works to bring communities together, promote equality and encourage greater democratic participation. If their organisational capacity is threatened by the attack on political funds, this could in turn impact community engagement levels in elections and the election outcomes themselves.

Conclusion

19. The five year individual opt-in for political funds would come on top of the 10 year all member ballot, imposing excessive administrative burdens on individuals and unions alike.
20. The effect will be to diminish political funds and the funding of unions more widely. Not only will this affect the finances of political parties but this will threaten all political work done by unions with political funds. As well as protecting the interests of members, this work can often have wider positive outcomes for society in ensuring

PCS Union—written evidence (TUP0019)

parliamentary scrutiny of government and encouraging greater community engagement with politics.

12 February 2016

Dr Michael Pinto-Duschinsky—written evidence (TUP0031)

President, Research Committee on Political Finance and Political Corruption,

International Political Science Association

1. This memorandum is presented in a personal capacity.

2. The author is an academic specialist on political finance. He appeared as a witness before the Committee on Standards in Public Life in its two inquiries into the funding of political parties in the UK in 1998 and 2010-11, was a consultant to the Committee in 2006-7 (on electoral administration) and (on political finance) in 2011. He has been a consultant also to multiple governments and international organisations on the topic, including most recently the Canadian Government, OECD and the Commonwealth Secretariat and previously to the European Union, Council of Europe, and the International Foundation for Electoral Systems. In the UK, he was an expert witness in a major political finance case on behalf of the Labour Party. A list of publications is available on request. In 2011-12, he was a member of the UK Commission on a Bill of Rights.

THE 2011 REPORT OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

3. Whereas the report of the Standards Committee in 1998 (the Fifth Report) commanded general agreement within the Committee itself and was then largely implemented by the incumbent Labour Government, the later report of 2011 was the subject of dissent both from the Labour and the Conservative representatives on the Committee (Margaret Beckett MP and Oliver Heald MP). In any case, as the current Chair of the CSPL Lord Bew, pointed out in the House of Lords, the passage of time since the report was researched in 2010-11 means that further empirical research is now needed.

4. Therefore, while the 2011 CSPL report deserves careful attention, it may reasonably be argued that - taken as a whole - it is not necessarily an adequate point of departure for ongoing discussions about a desirable package reforms of political finance. Certainly, it ought not to be thought of as an agreed formula. It is equally desirable to revisit the Committee's 1998 report and, in particular, the recommendation to provide incentives for small donations to political parties.

5. As part of its research in 2010-11, the CSPL carried out an exercise that modelled possible effects of different levels of donation cap on party incomes. The findings of such an exercise depend heavily on the assumptions fed into the model. These assumptions are themselves subject to considerable dispute.[See APPENDIX 1 below.] As I pointed out in a paper the CSPL commissioned from me on INTERNATIONAL COMPARISONS, research in the USA has indicated less damage to party income from donation caps than assumed both by the inquiry by Sir Hayden Phillips and by the 2011 report of the CSPL..

6. Among several areas of current dispute, two things are widely agreed:

(A) It is far more desirable for parties and candidates to raise funds through a very large number of small donations than through a small number of very large ones. (B) Pressures on

party funds result to a considerable extent from their low and (in the medium term) steeply declining memberships.

7. Insofar as very large donations are - in my opinion, rightly - seen as undesirable, a cap on the size of permitted donations has been proposed as one legal remedy. There are considerable practical difficulties in enforcing donations caps. Moreover, if such caps apply to gifts to political parties and candidates alone, the likely effect is to divert big political gifts into new channels but not to eliminate them. Following the passage of PPERA in 2000, we may already be seeing the diversion of political money from parties to what may be seen as off-shore islands of parties: politically-oriented think tanks, lobbying and the political press.

This reality does not necessarily destroy the case for donation caps but it weakens it. Another way to encourage parties to raise money in small packets from a large number of donors is to provide legal incentives for small gifts. These may take the form of tax relief, tax credits or matching grants. As mentioned in Paragraph 4 above, we need only to look back to the 1998 report of the Committee on Standards to see detailed discussions about the topic.

8. Concerning state financial aid for the routine expenditures of parties, the overwhelming evidence is that it is seen by members of the public in most countries as undesirable but is predictably advocated by politicians and party professionals. Arguments for and against such state aid are fierce, complex and unresolved. Public subsidies are now commonplace internationally but their effects (for example on lessening corrupt practices and "policy capture") are uncertain; some subsidies have been eliminated in Canada, Italy and a few other countries. In any case, the current Government's stated opposition to public funding (expressed by the Prime Minister to the Committee on Standards in Public Life) means that state aid to parties in the form of routine grants appears to be off the table of discussion.

TRADE UNION POLITICAL FUNDS

9. The regulation of the political funds of trade unions in the UK has been a distinct, peculiarly British concern for over a century with repeated changes from "contracting out" to "contracting in" to "contracting out" once again (for Great Britain but not for Northern Ireland) and now, as proposed, back to "contracting in". [For regulations concerning trade union political donations abroad, see the author's 2011 CSPL paper INTERNATIONAL COMPARISONS.]

10. On the merits, there is much for the view that administrative procedures should not lead to union members contributing by default to a party they do not support. Moreover, the possible introduction of donation caps puts the contracting in/out issue in a new context and increases the case for "contracting in" in the interests of trade unions themselves. As the CSPL accepted in its 2011 report, there would be a strong case for regarding donations to a union political fund collected by the current system of "contracting out" as a single block donation and subject as such to the cap. If the cap were set at £10,000 a year, a union could not exceed this even if it had, say, 250,000 members contributing £3 each. By contrast, if each union member contracted in, each donation could then reasonable be considered as a separate donation.

(For clarity, it should be noted that the term "contracting in" may bear two separate meanings: (1) contracting in to paying into the political levy fund, (2) contracting to any payment from that fund to a political party. It was in the latter of these two senses that CSPL spoke of "contracting in" in its 2011 report.)

11. Concerning the likely impact of a change to "contracting in" to trade union political levy funds, this is hard to predict since it would depend to a considerable extent on responses (at present unknown) to the change. Obviously, one might expect a drop in the numbers paying into political levy funds. In response, some unions might then increase the per-member payment rate or might direct a higher proportion of their political levy funds to the Labour Party.

12. Apart from the merits or defects of "contracting in" versus "contracting out", the Committee to which this memorandum is being presented has raised a broader question which is itself highly significant. Should a governing party introduce legislation that attacks (or appears to attack) a significant funding base of an opposing party? To what extent should the main parties strive to reach mutual agreement on the inevitably contentious rules concerning political funding? In setting out the questions it wishes to examine, the Committee refers to a "convention" that agreement between parties is obtained for changes in political financing laws.

13. In past correspondence with the CSPL as its consultant, I have stressed that political consensus is highly desirable when it comes to party funding reform. There are three limits to this. First, that may be a danger in some circumstances of mutual back-scratching by politicians. Victorious parties may be tempted to cushion the funds of their opponents in the hope that these opponents will be equally kind in the event of a future electoral victory. Second, there may be a public interest that is different from that of the parties. Third, there may be genuine differences of principle and judgement that cannot be resolved.

14. Over the past half century, there has been a mixture of partisan measures (attacks by Labour governments on corporate political donations in 1967 and 2000 and restrictions by Margaret Thatcher's Conservative administration on trade union political funds) and occasional cross party concessions on political finance legislation (for example in 1983 by the Conservatives on the size of election deposits and by Labour in 2009 on triggering of candidates' election expenses). This background suggests that cross party agreement is highly desirable but is not subject to a full blown constitutional convention.

15. By contrast, the Bill under discussion is subject to the Salisbury Convention since "contracting in" was a manifesto commitment of the current Government.

APPENDIX 1

Modelling of effects of donation caps on party incomes.

Extract from paper by Michael Pinto-Duschinsky on INTERNATIONAL COMPARISONS commissioned by the Committee on Standards in Public Life, August 2011

TABLE 14
Contribution limits in fourteen countries (in Pounds Sterling)

| COUNTRY | LIMITS |
|----------------|--|
| Israel (2009) | <ul style="list-style-type: none"> - 178 per household to a party (non election year) - 356 per household to a party (election year) - 1,780 from a household to a primary election candidate (up to 5,340 in total to different candidates) - 7,120 to a candidate in a prime ministerial primary or primary for party chair. - 8,900 from foreign donors to primary election candidates |
| Belgium (2009) | <ul style="list-style-type: none"> - 438 each to parties and candidates up to a total of 21,014 per annum |
| Canada (2011) | <ul style="list-style-type: none"> - Up to 706 to a particular registered party - Up to 706 to the registered association, nomination contestants and candidates of a particular registered party - Up to 706 to an independent candidate - Up to 706 to contestants in a particular leadership contest - Third party election advertising: up to 1,925 |
| USA (2011) | <ul style="list-style-type: none"> - An individual may give up to 1,522 to each candidate or candidate committee per election. <p>See also Table 13</p> |
| Iceland (2008) | <ul style="list-style-type: none"> - 2,178 (plus membership subscription of up to 727) |
| Ireland (2009) | <ul style="list-style-type: none"> - 2,223 to an elected representative or candidate - 5,559 to a party |
| Greece (2010) | <ul style="list-style-type: none"> - 2,627 to a candidate - 13,134 to a party (plus donations in kind plus membership subscriptions) |
| France (2009) | <ul style="list-style-type: none"> - 4,028 (or 20% of the permitted campaign spending limit) to a candidate - 6,567 per annum to agents of the same party or group or organisations dependent on it (plus membership subscriptions) |
| Poland (2008) | <ul style="list-style-type: none"> - To a presidential candidate from an individual 4,295 - To a presidential candidate from a "legal person" (company or union) 28,631 - To a party from an individual 4,581 |
| Spain (2009) | <ul style="list-style-type: none"> - To an election campaign 5,250 - To a party 87,558 per annum - To a party foundation 131,337 per annum |

| | |
|---------------|---|
| Cyprus (2011) | - 7,005 from an individual to a party -17,510 from a limited liability company - 26,267 from a company listed on the stock exchange |
|---------------|---|

| | |
|-----------------|--|
| Portugal (2010) | - To a party: 9,325 -To an election campaign 22,380 |
| Latvia (2008) | - 19,963 |
| Japan (2004) | - Individuals: up to 110,709 to parties and political fund organisations - Companies and unions: up to 554,046 to political parties and political fund organisations - Companies and unions: up to 276,719 to fund raising organisations |

SOURCES: GRECO, except for Israel: Levush 2009; Japan: Ejima 2006, 138-139; USA: as for Table 13,. NOTE: currency conversion rates as of 30 July 2011.

How does the introduction of legal restrictions on donations affect party budgets? The director of the US Campaign Finance Institute, Michael Malbin, has argued that American experience indicates that they do not necessarily lead to a fall in party incomes. For example, when the McCain-Feingold Act of 2002 (the Bipartisan Campaign reform Act) stopped national parties from collecting "soft money", they were able to recoup the shortfall:

When the McCain-Feingold law banned unlimited soft money to the national parties, everyone predicted the parties would end up with less money. But then the parties turned their attention to small donors and replaced all of the money they had lost." [Evidence to the Illinois Reform commission, 2009, http://www.cfinst.org/Press/PReleases/09-03-17/Malbin_Testifies_In_Illinois_on_Contribution_Limits.aspx.]

In a report jointly published in 2010 by the Campaign Finance Institute, the American Enterprise Institute and The Brookings Institution, the authors presented the same case:

[P]rior to the adoption of the Bipartisan Campaign Reform Act (BCRA) in 2002, national party committees could accept unlimited soft money contributions, which were the source of about half of the national committee's [sic.] funding (\$496 million) [GBP] in the 2002 election cycle. in response to BCRA's ban on soft-money contributions, the parties had to focus on limited hard money contributions and especially emphasized the solicitation of small contributions as a means of replacing the sums formerly received in soft money sources. As a result, the parties added hundreds of thousands of new small donors to their rolls, and raised as much money through limited contributions in 2004 and 2006 as they had raised in hard and soft money combined in 2002 and 2002. (Corrado et. al. 2010, 35.)

Dr Michael Pinto-Duschinsky—written evidence (TUP0031)

These findings from the USA are relevant to the United Kingdom. A central argument of the review of party funding conducted in 2006-2007 by Sir Hayden Phillips was that the introduction of a donation cap would produce such a large shortfall in party incomes in Britain that it would need to be accompanied by a considerable amount of state aid if the parties were to be able to carry out their functions. Phillips' assumptions seem to have been unduly pessimistic and may have reflected a desire to justify the case for state aid. (See Phillips 2006, 5 and 46-48.) Modelling exercises such as those which appeared in Phillips' report are worth no more than the assumptions on which they are based and all too easily may be expressions of bias.

12 February 2016

Prison Officers Association—written evidence (TUP0020)

The Prison Officers Association is an independent Union representing Employees in Prisons, Correctional Facilities and Secure Psychiatric Institutions. We are grateful for the opportunity to be consulted on clauses 10 and 11 of the Trade Union Bill and would comment upon your specific questions as follows;

1. Clause 10 is intended to attack funding for the Labour Party whilst not affecting the Conservative Party at all. The clauses are a cynical and wholly partisan attack on the funding of one party, which can only be intended to undermine the democratic system. Where are the provisions dealing with rich Tory supporters? Where are the rights of shareholders to opt out never mind to opt in? Where is Government interference in the internal affairs of companies akin to the Certification Officer? All Unions are democratic institutions and their political funds and spending are controlled by their members via their annual or biennial conferences. It is always open to the membership to change the rules of a union concerning political expenditure. Further, all members are free at any time to write a simple letter to their Union to opt out of the political fund. This right is set out in every Union Rule Book together with a pro forma letter for members to use. It is unlawful for a Union to discipline or pressurise a member in any way for opting out. Further, all Unions are presently required to ballot their membership every 10 years in order to maintain the political fund. Voter response is low but always in favour. The format of such ballots is tightly regulated by the Certification Officer. A prominent legal commentator acting mainly for employers has described this proposed legislation generally as using a sledgehammer to crack a nut which isn't there.
 - a. Requiring an opt in will reduce the funding of the Labour Party because if you require people to take a positive step many will not due to apathy as opposed to opposition or may simply forget. This is amply demonstrated by the percentages voting in union leadership elections or amalgamations, or indeed General and Local Elections. Indeed history shows us what the effect of opting in would be. Opting in was required in The Trade Disputes and Trade Union Act 1927 and resulted in a substantial drop in contributions to political funds (See House of Commons Briefing Paper No:593 of 8/8/13 at para 1.3).
 - b. It will reduce the size of Unions' political funds and their ability to protect and further the interests of its members.
 - c. These proposals would reduce Labour Party funding, most probably significantly, for the above reasons.
 - d. The new funding structures introduced by the Labour Party do not generate sufficient funds to cover the likely reduction these proposals would cause.
 - e. Political contributions are widely defined particularly in the run up to elections. Reduction of the political fund will reduce the ability of unions to support a political party that is more likely to produce policies of benefit to its members. It will also

Prison Officers Association—written evidence (TUP0020)

further restrict Unions' ability to contribute to charities or non-affiliated pressure groups for the benefit of its members.

2.

- f. If similar provisions were brought in for Conservative Party donors there would be some equivalence i.e. opt ins for shareholders and a 'Certification Officer' for companies.
- g. The opt in provisions proposed for unions would be much more onerous than those for other organisations. The correlation between that and the party support of such organisations is obvious.
- h. We are not aware of such evidence but the political parties themselves presumably are.
- i. These proposals are a one sided attack on the Labour Party, we anticipate that if they are taken forward the Labour Party and any fair minded politicians from other parties would oppose them thereby making any equitable cross party settlement impossible. Indeed it might be possible that a Labour Party returning to power despite such partisan measures might consider an appropriate response.
- j. Unions are already required to provide an annual return to the Certification Officer detailing their income and expenditure. In addition all members are free at any time to inspect the books of unions to check exactly what their subscriptions are spent on. Members are then free to pursue claims to the Certification Officer if there are any apparent irregularities. The Certification Officer already has effective powers to deal with any such infringement. We are disappointed that the government is proposing an additional level of 'red tape' when members are already properly protected.

STEVE GILLAN

For and on Behalf of the POA

12 February 2016

Mr Jacob Rowbottom—written evidence (TUP0021)

1. In this evidence, I consider Clause 10 of the Trade Union Bill only. Clause 10 will allow trade unions to accept payments into the political fund only with the express consent of members (the opt-in). That provision will change the current position, which assumes union members implicitly agree to pay into the fund unless they state otherwise (the opt-out). Whichever default assumption is set, there will be a number of people that fail to take the necessary steps to either opt-out or opt-in (even if that is the person's preferred outcome). The default position is therefore a matter of strategic importance as it determines whether the force of inertia will result in more or fewer people paying into the political fund. As I will discuss, the default rule is not neutral and rests on a number of assumptions about the role of trade unions and what members implicitly consent to when joining.

2. In this evidence I make the following points:

- Clause 10 rests on a view that the main function of a trade union is distinct from its political activities. That view is controversial and contested [paras 4-12].
- The legislation does not seek to impose similar controls on other institutions that make political expenditures. The current controls on company donations are weaker than the existing trade union regulations [Paras 5, 10-12].
- The Bill takes a proposal from the Kelly Report out of context. The Kelly Report proposed an opt-in provision to allow trade unions to make larger donations in the event of a cap on donations being enacted [para 16]. The current Bill is also more restrictive than the Kelly Report proposals [para 17].
- The provision is likely to be viewed with suspicion on account of
 - (1) the selective regulation of a particular type of institution associated with a particular political party,
 - (2) the lack of cross party support and
 - (3) the failure to reflect the proposals advanced in the Kelly Report.

If the provision is seen to pursue partisan political advantage, then party funding controls are in danger of losing legitimacy and will become more vulnerable to legal challenge as a violation of Article 10 or 11 of the ECHR [paras 13-15, 20].

Political funds and member consent

3. When looking at the case for opt-in or opt-out, the focus of discussion is often on the political consequences and the impact on trade union political funds. Aside from such strategic matters, there is question about what we should assume people intend to do when joining a trade union. Normally when people join an organisation, they are assumed to be signing up to or providing support for all of its activities. For example, if a person joins an animal rights organisation, they cannot as a matter of legal right direct that their membership fee be used to finance a campaign against certain types of intensive farming, but not for a campaign against fur coats. The question is why any further control, beyond the membership decision, should be imposed on an institution before it can make a donation.

4. A starting point is to view certain political expenditures (electoral expenditures in particular) as subject to special considerations.¹¹⁰ Under this view, party politics and elections are primarily about individual choice and matters for the conscience of each voter. If that is the case, the question is then what mechanism is necessary to protect individual choice. Some commentators call for a ban on all institutional donations and to allow only individuals to donate. In my view, such a measure is not necessary to safeguard the rights of the individual. Institutional donations can be reconciled with individual choice when the institution has the clear approval of the people it represents. The current requirement that unions make donations out of a separate political fund, established following a ballot of members, with a right to opt-out of paying into the fund already provides ways for people to express approval and an escape route for those people that do not wish to support the political objectives. The amendment in Clause 10 is premised on a view that the current safeguards are not sufficient and that decisions to contribute to a political fund require a separate positive statement of consent.

5. The difficulty with Clause 10 is that if political contributions do require special protection for dissenting members (with a political fund either as an opt-in or opt-out), then such special controls should apply to institutional donations more generally, and not solely to trade unions. For example, if a person gives money to an environmental organisation, that person does not have a legal right to stop his or her membership fee being used to give money to parties supporting certain environment policies. The requirements currently applied to trade unions already contain more safeguards than found with other institutional donors. It is not clear why the safeguards on trade unions needs to be made stricter without similar provisions for other types of institutional donor.

6. The case for regulating union donations could be modified, so that it does not rest solely on political donations being a special type of expenditure, but also on the nature of the institution in question. Along these lines, the core purpose of an environmental group (in the example above) and its political expenditures may be so closely connected that the decision to join the organisation is taken to signal consent to its political donations. That might explain why no separate political fund requirements are expected of such a group.

7. Applying this approach to trade unions, if political activities are thought to be far removed from the core activities of a union, then the decision to join a trade union may not indicate a member's consent to pay for the political expenditures. For example, if one were to view trade unions primarily as professional organisations that offer representation in the workplace and legal services, then the political activities of the union may be seen as at the periphery of their functions. That view is bolstered if non-membership of a union will lead to some disadvantage in employment rights and if there is no alternative form of representation.

8. By contrast, if one sees a trade union as part of a broader political movement to secure employment rights and fairer wages, then political expenditures in furtherance of those goals would be expected by and implicitly supported by any person joining a trade union. Support for this view can be found in *ASLEF v UK*, in which the European Court of Human

¹¹⁰ However, the political fund is not limited to partisan and electoral activity, so regulating such fees would impact other types of spending to which these concerns do not apply.

Rights noted that unions are not ‘bodies solely devoted to politically-neutral aspects of the well-being of their members, but are often ideological, with strongly held views on social and political issues’.¹¹¹ The logic of this view may be taken to question the need for even the current opt-out provisions.

9. Different unions and their members will take different views on which view better characterises the organisation. The current law reflects a position somewhere between these two views in which joining a union is assumed to signal consent to the political expenditure unless the member states otherwise. By requiring a separate political fund with an opt-out clause, the current law already provides a level of separation between political and general activities. The proposal in the Bill makes an even stronger separation between the two areas of union activity, so that joining a union does not even provide an assumption of support for the union’s political expenditures unless otherwise stated. That is a significant restriction on the ability of the organisation to set the terms of its own membership and defines its objectives.

10. A restriction of a union’s ability to set its terms of membership raises questions concerning freedom of association, which I do not discuss here. My central point is that the approach taken should be applied consistently. If the rationale for Clause 10 is based on a view about the nature of the organisation, that raises the question why similar restrictions are not imposed on other organisations that have core functions that are far-removed from party politics.

11. Moreover, companies can give money to political parties out of general funds. That position contrasts with the US federal law, in which direct company donations to candidates have long been banned, and that ban has so far survived the post-*Citizens United* series of Supreme Court decisions. The position of a for-profit company is complex and the relationship with shareholders is not the same as that of an interest group and its members. However, political campaigning is far removed from the core activities of most for-profit companies. The case for separating political spending from ordinary expenditures is arguably stronger for companies than for trade unions. Nonetheless, the safeguards for company shareholders in relation to political expenditures are relatively weak. The requirement that shareholders authorise a general power to make donations is primarily aimed at preventing the misuse of company funds, rather than to indicate the shareholders’ approval of the political activities being financed by the company expenditures.

12. If concerns about consent and the protection of individual political choice is truly pressing, that would suggest companies be subject to controls similar to those imposed on trade unions. Along these lines, donations from general company funds could be banned, while allowing companies to set up a political fund which shareholders and employees could voluntarily pay into. A similar approach could be taken for all institutional donations. My point is not that such changes should be made, but rather that if the concerns about individual consent and the nature of the institution are truly pressing, the matter should be addressed in relation to a wider range of institutions.

¹¹¹ *ASLEF v UK* [2007] IRLR 361 at [50].

Party funding and process

13. By selecting trade unions only and failing to address equivalent issues in relation to company and other institutional donations, the legislation risks being seen as a strategic partisan measure. Opposition politicians have made that allegation in the debates on the Trade Union Bill. In the literature criticising campaign finance controls in the US, I frequently encounter the argument that the power to regulate political finance may be abused by incumbents to secure an electoral advantage. The suspicion of government and concerns about the self-interested actions of incumbents partly explains the judicial hostility to some campaign finance controls in the US.

14. In the UK, hostility to political finance controls and mistrust of government are not key features of the jurisprudence on freedom of expression. The courts have respected legislative decisions on political finance partly as a result of the process by which the laws are made and amended. An important reason for that respect is cross party support. In *Animal Defenders International v UK* (2013), in which the ECtHR upheld the ban on political advertising on the broadcast media, Judge Bratza stated that it was ‘of central importance that the 2003 Act was enacted by Parliament without any member dissent on either side of the political divide’.¹¹² Of course, support from multiple parties alone does not put legislation above suspicion.¹¹³ Nonetheless, cross party support is an important indicator that the legislation is not an attempt by one party to gain an advantage over its main opponents. Obviously, the current Bill does not enjoy cross party support and thereby requires strong justification.¹¹⁴

15. The second factor that is relevant to the level of respect given by the court to the legislature is the presence of rigorous and independent scrutiny of the particular change. Such a process and a showing of independent support can help distinguish legislation from partisan measures. In *Animal Defenders International v UK*, the ECtHR placed weight on the fact that the ban on political advertising had been subject to ‘exacting and pertinent reviews’ over a long period both inside Parliament (such as the Joint Committee on Human Rights) and outside (such as the Electoral Commission and the Committee on Standards in Public Life).¹¹⁵ The question in relation to the Trade Union Bill is then whether the legislation can claim to reflect the proposals put forward by the Committee on Standards in Public Life (Kelly Report).¹¹⁶

16. The current Trade Union Bill does not implement the proposals in the Kelly Report. The provision in the Bill resembles one of the recommendations, but on closer inspection there are important differences. The Kelly Committee’s specific proposal for an opt-in for trade union political funds was advanced as an attempt to reconcile larger trade union donations with the cap on donations also proposed in the Report. Under the Kelly proposals, unions collecting fees without an opt-in provision would be subject to a £10,000 donation limit

¹¹² *Animal Defenders International v United Kingdom* (2013) 34 BHRC 137.

¹¹³ For example, a measure with cross party support could be an exercise in collusion between leading parties to establish a system that makes entry into the system difficult for new and smaller parties.

¹¹⁴ Sometimes a measure may be justified without cross-party support. For example, if a corrupt party opposes legislation prohibiting blatantly corrupt practices, then the measure will not have cross party support. However, such opposition does not undermine the legitimacy of the law once enacted.

¹¹⁵ *Animal Defenders International v United Kingdom* (2013) 34 BHRC 137 at [116]. See also Judge Bratza at [12].

¹¹⁶ Committee on Standards in Public Life, *Thirteenth Report, Political Party Finance: Ending the Big Donor Culture* (2011, Cm 8208).

(which would be applied to every other type of donor). A trade union with an opt-in provision, however, would be able to donate a higher amount. The thinking behind that proposal was that with an opt-in provision, the trade union donation would be closer to an aggregation of many individual donations from members.¹¹⁷ The important point to note is that the Kelly Committee sought to make the opt-in clause a condition for a more permissive donation limit for trade unions, rather than an attempt to single out trade unions for more restrictive regulations.

17. Another key difference is that the Kelly Report did not recommend a mandatory opt-in provision. Under the recommendations, political parties that do not wish to donate larger sums to parties could continue to collect funds on the same basis as before. By contrast, the Bill will make the opt-in mandatory for union political funds, even if the union will not use the political fund for political donations. The current Trade Union Bill is more restrictive than that envisaged by the Kelly Committee.

18. The Kelly Report proposal on trade union fundraising was put forward as part of a general package of reforms on political finance. The other reforms in that package included a cap on donations, changes to company donations to improve levels of transparency, and an increase in the state support for political parties. All of these measures are more pressing than the changes to trade union fundraising that will be made under Clause 10. The provision of public funds, while controversial, is often proposed alongside reforms to political donations, to ensure that any consequent loss in income does not prevent parties from functioning effectively. Such public funding should at least be considered alongside a significant change to the way trade unions collect money.

19. Targeting the fundraising practices of trade unions, but not other institutions, is also in tension with some of the basic principles outlined at the start of the Kelly Report. The Report states that the reforms ‘need agreement between all the major parties’. As discussed earlier, that condition has not been met. The Report stated that the system must be fair, meaning that ‘rules should not discriminate against particular parties or candidates and as far as possible should have regard to their different histories and structures’. Various parts of the Report also referred to the importance of reforms being even-handed in effects. However, the Trade Union Bill targets the fundraising of a particular type of institution that has had a long historical link with a particular political party. By cherry-picking and modifying a particular reform proposal from the Kelly Report, removing it from the context of the broader package of reforms, the new legislation pursues the single measure that is most likely to hinder an opposing party.

Conclusion

20. My central point is less to do with the merits of opt-in or opt-out, but with the need for the principle to be applied consistently to all other institutions (unless there are very strong and compelling reasons to do otherwise). The current proposals make a significant change to the way trade unions collect political funds, without addressing the lack of an equivalent provision for company donations. The regulations on company donations are not as strong as the requirements currently applied to trade unions. The selectivity of the reforms provides a basis for suspecting that the Bill is really an attempt to secure partisan political

¹¹⁷ The Committee also proposed a number of other considerations.

advantage. In future it would be desirable for a process of independent scrutiny and consultation for major changes to political finance to be agreed in advance. If the system of political finance is seen to be a tool for protecting incumbent government, then those laws will lose legitimacy in the eyes of the public. The area of law may also be treated in a similar way by future governments seeking political advantage. The loss of legitimacy may lead the courts to show less respect for Parliament's judgment on such matters and pave the way towards greater judicial intervention in this field, as has been witnessed in other countries.

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Mrs Joanne Rust—written evidence (TUP0002)

The arguments against the introduction of the opt in system are that union members **already** choose to opt into a political fund and they have to vote every ten years on whether their union should run one at all. There is no need for further costly restrictions on political funds.

Political funds are used to pay for a variety of different campaigns and include campaigns against racism and fascist organisations which hold views that damage equality in our societies.

Some unions are affiliated to the Labour party and use their political fund to support the work undertaken by them. But others have political funds which do not contribute towards a specific political party at all.

This is a deliberate attack motivated by a wish to reduce the funding from the very organisations which helped to found the Labour Party. It is usual for proposals to reform party political funding to be negotiated between all the parties concerned. This is not the case with this Bill. Not only will these changes crush the industrial power of trade unions to negotiate and bargain on behalf of their members, but it will reduce the income available to them to use for political purposes, whether it be to make donations to political parties or to campaign against the Conservative party. Yet the Bill totally ignores the funding by big businesses of the Conservative Party. While trade unions have the rights of ordinary people are the heart of the work they do, trying to make things better for the many, not the few, big businesses have a vested interest in making sure the terms and conditions of workers are set so low as to enable them to maximise their profits.

It is **undemocratic** that a government should seek to dictate to democratic members' organisations like trade unions, dedicated to the defence and advancement of members' economic and social interests, where and how they can use their funds.

This changes within this Bill will come into affect within 3 months. This is totally unreasonable and hasty. When the change from plastic bags was made businesses were given 2 years to comply. Why is this change to be forced upon trade unions within 3 months.

These changes will individualise trade unions, which are collective in nature. It will separate the member from the organisation and undermine the principle of collective power which is fundamental to effective trade unionism. By enhancing the right of the individual in this way, they government contravenes it's own duty to respect the right of workers and trade unions, for which ILO convention 87, art 3, makes very explicit provision.

The government's Regulatory Policy Committee has said that the Bill is 'not fit for purpose'. The bill is nothing less than a full frontal assault on the industrial and political freedoms of the British trade union Movement and a strategic part of the government's austerity policy. This bill is a demonstration the government's contempt for the civil liberties of trade unions and their rights under international law

Mrs Joanne Rust—written evidence (TUP0002)

Clause 10 and 11 would reduce the ability of trade unions to campaign for new laws, such as the repeal of the Trade Union Bill and is an attack on trade union political freedom. It is also the case that no other organisations in the United Kingdom are restrained in the way now proposed for trade unions, the political freedoms of which are to be regulated in a wholly discriminatory fashion.

When individuals join a trade union, they do so because they acknowledge that as an individual, they have limited powers to bring about better conditions. They join because they know their organisation is going to work on their behalf using any legal means. They willingly chose to pay into the organisation so that it can negotiate and bargain on their behalf. Thus they have already opted in and made their choice on what their fees can be used to do, that includes funding the political party which seeks to support ordinary people rather than the privileged elite.

There can be no objection to transparency of political or any other expenditure. But there can be serious objections to disproportionate obligations that serve no conceivable public interest. What is required here is that the union should itemise and publicise every payment over £2,000. This contrasts with the obligations on political parties such as the Conservative Party, where the public interest in transparency is at least as great as the public in trade union transparency. Political parties are required by election law only to report donations received in excess of £7,500, a figure increased from the £5,000 set when the legislation was introduced in 2000. In 1997 the Committee on Standards in Public Life rejected a proposal that even small political donations to political parties should be reported to the Electoral Commission, taking the view that it would be 'unnecessarily intrusive and administratively burdensome'

This Bill is an attack on the democratic rights of individuals. It is an attack on the democratic members' organisations which work to improve the lot of their members and it is designed to cut off funding for the only real opposition to those who seek to even out the balance between the needs of the majority in society against the greed of the few.

7 February 2016

Scottish Government—written evidence (TUP0042)

Thank you for seeking the Scottish Government's views on the UK Government's Trade Union Bill and the clauses relating to political funding, I very much welcome this engagement. I am deeply concerned by the way in which the UK Government has developed this Bill. They have taken it forward without any meaningful consultation with the devolved administrations prior to its introduction and we have had a very limited response to our concerns as the bill has progressed.

The Scottish Government strongly opposes this legislation, including clauses 10 and 11. While the issue of political funding, is not the Scottish Government's primary concern, my SNP colleagues in the House of Commons have made a number of interventions on this point, and supported attempts to remove these clauses from the Bill. I fully support this position. These clauses underline the extent to which this fundamentally flawed piece of legislation is unfit for purpose and similarly I hope that the Parliamentary process now underway will prevent further unnecessary clauses such as those on picketing, "check off" and facility time from being passed.

As with many aspects of this Bill, there is no evidence to support this legislation and we hold the view that this Bill is an attack on the fundamental principles of trade unions and worker's rights. In particular, we are concerned that many of the clauses within this Bill are unnecessary and move to tackle a problem that simply does not exist.

Clauses 10 and 11, in keeping with the other aspects of this Bill, are poorly thought through and are driven by ideology rather than any evidence. We would support any move to stop these clauses and all other parts of this legislation.

It may interest the committee to know that in Scotland we have adopted a co-operative approach to workplace relations in Scotland and as a result, industrial relations here are strong. The number of working days lost due to strikes has declined by 84% since 2007, which is the highest reduction anywhere in the UK. Last year, in Scotland we had the lowest days lost relative to our working population, than in any other part of the UK.

We believe that this cooperative approach would be a far more beneficial strategy across the UK rather than this regressive and aggressive legislation.

We will continue to press for Scotland to be exempted from the provisions of this Bill in order to protect Scottish worker's rights. However we will continue to make the case that all aspects of employment law should be transferred to the Scottish Parliament.

Cabinet Secretary for Fair Work, Skills and Training

Roseanna Cunningham MSP

Rt Hon Jack Straw—written evidence (TUP0033)

A. Introduction:

1. I submit this memorandum as I thought that the Committee might find it helpful to have some background on the approach which the Labour administrations, 1997 – 2000, took on the issue of party funding.
2. I was Home Secretary between 1997 and 2001. It was during this period that the Political Parties, Elections, and Referendums Act 2000 became law.
3. As Leader of the House of Commons, 2006 -2007, I had responsibility for representing the government (and in practice the Labour Party as well) in the tri-partite talks (between the Conservative, Liberal Democrat, and Labour Parties) which were chaired and facilitated by Sir Hayden Phillips.
4. As Lord Chancellor and Justice Secretary, 2007 -2010 I resumed responsibility for party funding and election law. During this period the Political Parties and Elections Act 2009 was passed into law.

B. Labour's approach:

5. Throughout our time in government, we had significant working majorities over all other parties. Indeed for the first eight years (1997 -2005) our majority was larger than the total size of the main opposition party.
6. Despite this, we collectively took the view that we should not use our majorities to force through changes in the party funding regime by which we would secure partisan advantage, and worst our political opponents.
7. I referred to this during the Second Reading of the 2009 Act I said that “there is little purpose served by the House ramming through changes to the party funding regime that do not command a consensus.... We have to be very careful. In particular, there is a responsibility on the Government, who have a majority, to be careful.¹¹⁸”.
9. This approach was not itself without controversy. In the same Second Reading on the 2009 Act, David Heath MP, Liberal Democrat, complained of me that “effectively he has given a veto to the Conservative party when the Conservative party benefits from the existing situation continuing?”¹¹⁹.
10. The first measure, **the Political Parties, Elections and Referendums Act 2000**, received unopposed Second and Third Reading in the House of Commons. This measure sought to implement the Report of the Neill Committee (Committee on Standards of Public Life), and was preceded by debate on that report and by consideration of a draft Bill. There were specific issues on which both Houses (usually in Committee) divided, but we sought to deal with these on a consensual basis, and I think achieved that.
11. In 2006, following some public controversy about party funding, **Sir Hayden Phillips** was asked to lead tri-partite talks on party funding, including that of trade union financial support to parties. As Sir Hayden said at the time, these negotiations proceeded on the basis that “nothing is agreed until everything is agreed”. Despite indefatigable efforts by Sir Hayden and his team, the negotiations terminated without result in the late summer of 2007, with each side engaged in mutual recriminations as to which side had been responsible for the failure to agree.

¹¹⁸ Commons Hansard, 20 October 2008, col 43

¹¹⁹ Ibid, col 45

12. In autumn 2007 I published a White Paper on further changes in electoral law, prompted by a report by the Committee on Standards in Public Life, and by the report of Sir Hayden Phillips. Some of the proposals were well received, some were not. A Bill was brought forward in July 2008. This was subject to a carry-over resolution; after extensive debate it was passed into law a year later, in July 2009, as the **Political Parties and Elections Act 2009**.

13. Proceedings on this Bill were more contentious than on the 2000 Act. The then Conservative Opposition divided the Commons at Second Reading both on a reasoned amendment, and on the main question. During the passage of the Bill extensive changes were made to try to accommodate the Opposition's concerns. At Third Reading Francis (now Lord) Maude for the then Opposition said: "the Bill is completely different from what was introduced in the autumn of last year". The official Opposition did not divide the House on Third Reading, though there was a vote on this, called by the Liberal Democrats. The Third Reading was passed - Ayes 273, Noes 67, with the Conservatives abstaining.

14. The Appendix to this Memorandum has selective quotations from the debates on both Bills.

C. Conclusion:

14. The demography, history, social base and funding sources of our political parties are asymmetrical. A change in the law on funding may have little or no impact on one party, but profound consequences for another. This makes it all the more important that so far as possible change does proceed on a consensual basis, and that the government of the day recognises that in this area it is a trustee for our democratic system, and should put these considerations above partisan advantage. It is of course a fact of life that on an issue like this the starting point for legislative proposals is likely to reflect the views of the party of government; that was true for both these major pieces of legislation. But as I believe the record shows, we did, achieve substantial consensus by the conclusion of each Bill.

Jack Straw

Appendix:

1. Political Parties, Elections and Referendums Bill 2000, Second Reading, 10th January 2000

Jack Straw, Home Secretary¹²⁰

“.....I also say, particularly to Conservative Members, that the revised expenditure limits set out in the Bill are not necessarily our last word on the matter. We remain open to argument if better, more workable proposals can be introduced. I have to say—I do not say this with any arrogance—that, so far, I have not seen any better and more workable alternatives than those in the Bill. I have asked the Opposition to come forward with their further and better particulars for some months. If they present them to us, we shall certainly consider them on their merits.

Sir George Young, for the Conservative Opposition:

“The Second Reading of this Bill marks a further step in the progress towards the statute book of the Neill committee's recommendations. Since the report was published in October 1998, we have had a full day's debate in the House on 9 November that year and the publication of the White Paper and the draft Bill, launched by the Home Secretary's statement, followed by questions and answers on 27 July last year. Just before Christmas, the Bill and the explanatory notes were published, and they are now before the House.

“At each stage, the Opposition have made it clear that we accept Lord Neill's recommendations, and we will not obstruct their passage on to the statute book. I join the 46 Home Secretary in paying tribute to Lord Neill and his committee—they have managed to build consensus out of the bricks of political contention. We accept the establishment of the Electoral Commission, the accounting requirements for political parties, the principle of containing national campaign expenditure at a general election, and the reporting of major donations and the restrictions on third parties. I agree with almost everything that the Home Secretary has just said.

Third Reading 10th March 2000¹²¹

“**Sir George Young:** My party will not obstruct Third Reading for the reasons that it did not obstruct Second Reading. The Bill has a key role to play in cleaning up British politics by setting out a framework with clear rules and an independent umpire and greater transparency. Throughout our discussions there has been a commendable restraint from scoring party points on past transgressions. No party is above criticism and we have a common interest in elevating public esteem for our profession.

The Bill has been much improved since 10 January. We raised points on the penal regime for volunteers, which has been softened, and the role of the Electoral Commission has been changed. We have made progress on the regime for overseas voters and on the Speaker's Committee. The Bill is in better shape, though not yet of the Savile row quality that Conservative Members like to see. The upper House has adjustments to make on sponsorship, overseas voters, the federal party structure and Northern Ireland, and we shall

¹²⁰ Hansard, col 40 et seq

¹²¹ Hansard col 270 et seq

need a lot of time to consider the raft of Lords amendments when the Bill returns to this House.

We could not reach agreement on a number of issues on which we backed the Neill committee and the Government opposed it. The Bill faces a tough timetable, as the Minister reminded us yesterday.

“I am grateful to my hon. Friends the Members for Beaconsfield (Mr. Grieve) and for North Dorset (Mr. Walter). They bore the burden of the Bill—which was subcontracted to them by my right hon. Friend the Member for Maidstone and The Weald (Miss Widdecombe), the shadow Home Secretary, who is fully stretched by keeping an eye on what the Home Office is getting up to—but were ably assisted by two jobbing builders, my hon. Friends the Members for Ribble Valley (Mr. Evans) and for South Staffordshire (Sir P. Cormack).

“It would be churlish not to compliment the two Ministers on their conciliatory approach, which assisted consideration of the Bill. I referred to one as the tough copper who shines the bright light in our eyes and to the other as the chap with the cigarettes. They extracted no confessions from the Opposition, but their co-operative approach made it easier to deal with a long and complicated Bill. Although we differed from the hon. Members for Battersea (Mr. Linton) and for Hazel Grove (Mr. Stunell) at times, we very much welcomed their thoughtful and constructive approach.

“I am pleased that it has been possible to complete consideration of the Bill without the savage guillotines that the Government have applied on other occasions to get their legislation through the House. We have not seen the last of the Bill. It is not perfect, although we have improved it. The Opposition wish it well. “

2. Political Parties and Elections Bill 2008 **Second Reading 20th October 2008¹²²**

Jack Straw, Lord Chancellor and Justice Secretary

“Although there was, quite properly, careful scrutiny of the Government’s proposals, and arguments about some of them in the 1999 Bill that became the 2000 Act, I was determined that there should be cross-party consensus on the new Act if it was at all achievable, and indeed it was. I was, and still am, in no doubt that the need for broad consensus in this area of policy is a third key principle.

“At the risk of tedious repetition, I repeat that there is little purpose served by the House ramming through changes to the party funding regime that do not command a consensus. “f the right hon. Gentleman does not believe me, he need only consider what happened in another area of electoral law when there was not consensus. He went to the United States; there is no consensus there about boundaries, so what happens, as he will know if he has ever seen a boundary map of congressional districts, is that each side gerrymanders the boundaries, which are subject to one rule only in basic law, which is that the boundaries should connect. It leads to a ridiculous position. I do not want to get into that situation. Nor do I want us to experience what has happened in at least two western European countries, where the electoral system was changed for political advantage. We have to be very careful. In particular, there is a responsibility on the Government, who have a majority, to be careful.

David Howarth: I thank the Secretary of State for giving way before he moves off the consensus point. Is not the difficulty with his position that effectively he has given a veto to

¹²² Hansard, col 42

the Conservative party when the Conservative party benefits from the existing situation continuing? Should he not have thought, “Where are the public on this? Where is public opinion?” and proposed what the public wants, and then challenged all Opposition parties to explain why they are not in favour of it?

Mr. Straw: I have my views about the kind of changes that ought to be introduced. I have made my point. Different parties will look at the issue from different perspectives. The parties’ position, demography and social base are asymmetrical and there is always an inherent difference between the party in power and the main party in opposition, as well as the smaller parties, including the Liberal Democrats, in opposition.

I understand what the hon. Gentleman says, but we should not make what we think is the best the enemy of the good. If we use the partisan advantage that Government parties, by definition, have and force through changes that do not command broad consensus—not in every detail, but broad consensus about their principles—all those involved in politics and the reputation of politicians will suffer a further knock.

Votes on Conservative reasoned amendment, and on Second Reading

Third Reading 2 Mar 2009¹²³ :

Jack Straw:

In the short time available to me, I wish to place on record my thanks to all those on both sides of the House who have worked to make this Bill better. It began its journey as a set of proposals in a White Paper, which I brought before the House in June last year. It was introduced on 17 July, and there was then a three-month period over the summer break for Members to consider it. Its Second Reading was on 20 October, it moved upstairs into Committee in November and it has been back on the Floor of the House on two days—in February and now in early March.

The Bill is now different from the Bill that was published on First Reading, and it has, in our judgment, been improved. One of the reasons why we have had to take time over it, and in some cases introduce amendments at quite a late stage, is that we have been listening with great care to representations made on both sides. We have sought wherever we can to improve the Bill, and I believe that it has been improved.

The provenance of the Bill goes back to the establishment of the Hayden Phillips inquiry more than three years ago. That time scale is similar to that of the original Political Parties, Elections and Referendums Act 2000. The reason why that Act and this Bill have taken so much time is twofold. First, party funding is inherently complicated—we have just had a little introduction to that. Secondly, and more importantly, from whatever perspective Members may start debating—and it can sometimes be very partisan—they have in general been careful to recognise the importance of not seeking partisan advantage in the regime for party funding and elections. That was certainly the approach I took in 1999 and 2000 in respect of what became the 2000 Act, and I have taken the same approach on this occasion.

Mr. Francis Maude (Horsham) (Con): Tonight’s episode has been a pretty unseemly end to what I believe the Justice Secretary will admit has not been a particularly glorious legislative

¹²³ Hansard Col 694

process that the Bill has gone through in this House. The Bill started life in autumn last year as a thoroughly partisan measure designed to achieve—let us face it—political advantage. The policy goals were exceptionally poorly thought through, leaving the unfortunate parliamentary draftsman an impossible task. The main provisions attracted significant criticism from all sides; the Electoral Commission pointed out that a number went well beyond what it had sought and that other provisions provided no benefit and had a significant downside. All the political parties, including his own, attacked several of the Bill's original provisions.

The storm of obloquy that the Bill attracted prompted the Secretary of State to return, belatedly, to the path of discussion and common sense, even if consensus was not achieved in all matters. The requirement to verify the source of donations was sensibly dropped, the powers for the Electoral Commission were sensibly trimmed back and the thoroughly partisan proposal to reintroduce triggering was dropped; the Bill is completely different from what was introduced in the autumn of last year. This has been achieved much less by dint of having full and open debate in the Commons—in this House and in Committee—because of the rigidity of the programme motion that was introduced, which allowed very little scope for the sort of matters that my hon. Friend the Member for New Forest, East (Dr. Lewis) raised this evening and has led to what most of the House would recognise to have been a fairly unseemly process.

The Bill is a massive missed opportunity to deal with the big donor culture by having a genuine across-the-board cap on donations.

David Howarth *rose*—

Mr. Maude: I do not have time to give way. The Liberal Democrats have occupied enough air time tonight and I am certainly not going to give them any more.

There was a real opportunity to put together a cap that would have applied to all donations, including those to political parties from trade union affiliation fees. At some stage these issues will need to be addressed thoroughly. Every effort should be made at all times to seek consensus on these matters.

I am glad that at the eleventh hour the Government have, at last, agreed to move ahead with individual voter registration, albeit in what still seems to be a lamentably leisurely time scale. They committed to the principle of individual voter registration many years ago, but a bit like St. Augustine, they seem to be saying, "Make me chaste, but not yet." Some Labour Back Benchers seemed to be suggesting that this process, which is scheduled not to be completed until 2015, should be allowed to run yet further, but that is quite wrong. We approve of

2 Mar 2009 : Column 696

the decision to go ahead, and we believe that what is sought can be accomplished earlier than that. We believe that it could be accomplished by 2013, and there is support even from the Electoral Commission for that. It would be our intention that that should be achieved. Much progress has been made, not all of it willingly, especially in the early stages by the Government, and because the Bill is now such a very different—

10 pm

Debate interrupted (Programme Order, 9 February).

The Deputy Speaker put forthwith the Question already proposed from the Chair (Standing Order No. 83E), That the Bill be now read the Third time.

Rt Hon Jack Straw—written evidence (TUP0033)

The House divided: Ayes 273, Noes 67.

Trades Union Congress, Trade Union and Labour Party Liaison Organisation (QQ 45–59)

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 23, 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-in 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 opted in to that process. I do not believe that people are opting in to 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.

Trades Union Congress—supplementary written evidence (TUP0039)

Introduction

The Trades Union Congress (TUC) has 52 affiliated trade unions, representing nearly 6 million members who work in a wide variety of industries and occupations across the public and private sectors. While the TUC does not maintain a political fund itself, 24 of our affiliated trade unions do, of which 14 affiliate to the Labour Party.

The TUC is opposed to all proposals in the Trade Union Bill and associated regulations as they will:

- Threaten the fundamental right to strike in the UK.
- Introduce tighter restrictions on union peaceful pickets and protests, undermining the civil liberties.
- Restrict the ability of unions to represent their members effectively in the workplace.
- Prevent public sector employers from deciding how best to manage industrial relations with their own employees.
- Impose excessive ‘red tape’ on unions.

With respect to Clauses 10 and 11 of the Bill, the TUC is seriously concerned that these measures will constrain the ability of unions to engage in political debates and to campaign on key issues affecting people at work. All the evidence shows that these measures will lead to a reduction in the numbers of members contributing to political funds. They will place new and costly bureaucratic requirements upon unions and, through further reporting requirements, invite significant public scrutiny of how unions choose to use their political funds.

It is also a matter of significant concern to the TUC that to date government has failed to demonstrate how these measures comply with the UK’s obligations in relation to ILO Convention 87, the European Social Charter and Article 11 of the European Convention on Human Rights.¹²⁴ The government’s own memorandum on the European Convention accompanying the Bill fails even to consider the human rights implications of these provisions.

We are also strongly of the view that these measures are disproportionate. Many political fund contributions are a few pounds a year. The scale of change the government is proposing in this area appears wholly unrelated to the impact that current arrangements have for individual trade union members. Public concern around political funding in the UK relates primarily to political funding provided by wealthy individuals and corporations, not to funds provided by individual trade union members. In this context, the government’s proposed course of action seems particularly poorly targeted.

For these reasons, the TUC believes that the government should withdraw its proposals relating to political funds, as well as the wider measures contained within the Trade Union Bill.

Clause 10 – Opting in by union members to contribute to political funds

¹²⁴ See the decision of the European Court of Human Rights in *Aslef v UK*.

Existing political fund requirements on unions

The current complex rules on political funds can be summarised as follows:

- Section 72 of the Trade Union and Labour Relations (Consolidation) Act 1992 defines what counts as expenditure on political expenditure and therefore must be funded from a political fund.
- Unions that wish to contribute to political parties or engage in other political activities as defined in section 72 must establish a political fund.
- Before establishing a fund, the union must first ballot their members - which since 1984 must be renewed every 10 years - on a political fund resolution. The rules for the ballot must be agreed with the certification officer (CO). The ballot must be overseen by an independent scrutineer and must be fully postal.
- If a majority of members vote in favour, the union is required to adopt detailed rules regulating the fund. The union rules must comply with statutory requirements and should reflect the model rules issued by the CO. The union rules on political funds must also be agreed with the CO.
- The union rules must state that members have the right to be exempted (to 'opt-out') from contributing to the fund and that members who are exempted will not be discriminated against in terms of access to union services or representation.

Trade unions wishing to maintain a political fund therefore already face requirements far in excess of those places on other civil society or corporate organisations wishing to campaign on political issues. They are required to:

- Hold a paper ballot of all existing union members every ten years seeking their agreement on maintaining a political fund.
- Ensure that trade union members are aware of their ability to opt-out from their subscriptions automatically being used by the fund for political activities.
- Facilitate the opt-out of any member who wants to do so.

Each union will also have its own democratic processes for determining how political fund revenues are spent. Union members thus have authority both over the establishment of political funds and how they are used, as well as having an individual choice over whether or not to contribute to them.

It is also perhaps obvious, but important, to point out that individuals actively 'opt-in' to join trade unions in the first place, fully aware of the workplace and campaigning work that unions undertake on their behalves. It is only the political fund contribution that that the 'opt-out' approach applies to. The political concerns of trade unions are prominently displayed on their websites and marketing materials. To argue that individuals joining unions are not aware of the political activities that membership subscriptions support is simply misleading.

Existing arrangements for opting-out of a political fund

- Where a union has established a political fund, they are required to notify members of the right to be exempted from contributing to it. The method of notification will vary from union to union, but must comply with the unions' political fund rules, as approved by the

CO. The CO's model rules provide guidance, advising that unions should use the same methods used by the union to inform members of other important notifications. The CO states that 'this may be by sending a letter to each member and/or by publishing in the union's magazine and/or on its website and/or by e-mail to members and/or by posting a notice on a conspicuous place for at least 12 months and/or by branch circular with evidence of communication to members.'¹²⁵

- Unions have a duty to ensure that members who are exempted do not make contributions to the political fund.

The TUC notes that this process is far more significant than required of other organisations seeking to make political donations. For example, companies face fewer requirements.

- Individual shareholders do not have a right of opt-out from the overall company decision.
- Shareholders are not required to opt-in to the overall company decision.

Operation of Clause 10

If passed, Clause 10 of the Bill will replace the existing arrangements for members to opt-out of contributing to political funds and replace them with an 'opt-in' system. Members will also be required to renew their opt-in every five years. Once opted-in they will still retain the right to opt-out at any stage.

In addition, should the Bill receive Royal Assent, unions will have a transitional period of just three months during which all existing members who have chosen to pay into political funds will be required to opt-in to them again, thus applying a retrospective change to the terms of their membership. To allow them to opt-in, these existing members will be required to provide the union with written notice confirming they are willing to contribute towards the political fund. In the absence of this notification, unions will be required to ensure that members' contributions to the political fund cease at the end of the three month transition period.

Union members will also be further required to renew, in writing, their opt-in to the political funds every five years. Again, an email communication or text to the union will not suffice and without a renewal notice being received political fund contributions must cease.

The TUC has concerns both about the replacement of an opt-out with an opt-in, as well as about the ways in which its implementation is proposed.

Impacts of requiring an opt-in

The TUC's assessment of the evidence is that these measures will lead to a reduced number of members contributing to political funds. This will inevitably hamper the ability of unions to organise political campaigns on workplace issues.

It is widely recognised that opt-in processes reduce participation. For example, the government's approach to auto-enrolment for pensions, which followed an opt-out model, was purposefully chosen to maximise participation based on substantial behavioural economic evidence. Similarly the government's behavioural insight team has found that where charitable donations are deducted from payroll, with employees given the

¹²⁵

www.gov.uk/government/uploads/system/uploads/attachment_data/file/493062/Guidance_for_TUs_and_EAs_wishing_to_establish_a_PF.pdf.

opportunity to opt-out, giving increases from 49% against 6% under an opt in model.¹²⁶ Across the studies the team describe an opt-out model as ‘making it even easier for individuals to participate’ and state that ‘switching the default to an ‘opt out’ system, with a clear option to decline, is an effective way’ of increasing participation. Their reports are clear that opt-out systems are not about reducing choice, but about increasing participation opportunities.

During the 20 year period when an opt-in process operated in the UK, between 1927 and 1946, the proportion of trade unionists paying the political levy fell from 75 per cent of the total number affiliated to the TUC in 1925 to 48 per cent in 1938. There was a further fall between 1938 and 1945 while the opt-in was in operation. The repeal of the legislation in 1946 was accompanied by an increase in contributions, from 38 per cent of members in 1945 to 60 per cent in 1948. Evidence from Northern Ireland, discussed in more detail below, also shows that opt-in systems lead to far lower contribution rates.

The TUC is concerned that the government’s impact assessment (IA) makes no mention of the significant evidence base on the consequence of choosing an opt-in rather than opt-out model, nor of previous experience of using an opt-in system. While the IA references behavioural economic evidence the findings of these studies are not applied to the government’s estimates of impact.

Implementation challenges

Use of written communications

Under Clause 10, the requirement to use written notices will prove time-consuming for members and cumbersome for unions. It will also increase costs for unions, in the form postage costs and additional staffing. The government’s impact assessment stated these costs will reach over £4.2m every five years. The TUC believes this is an underestimate, not least as the IA anticipated higher level of union communication to members to increase opt-in rates, without ascribing any costs to them. Furthermore, the assessment that it will take a union administrator 30 seconds to print and envelope each item of correspondence, and only a 30 further seconds to handle returns. Again, this seems optimistic.

Should unions wish to write more than once to encourage members to consider opting into the political fund, the significant postage costs would further increase? Evidence from the behavioural insight team has also shown that in general limiting communications to postal methods further reduces participation, meaning that confining communications around the political fund to written methods will further depress contributions.

Three month transition

As a result of existing trade union legislation, in order to comply with the Clause 10 requirements, unions will be required to revise their rulebooks to update their rules on political funds. Any rule changes will need to be agreed by members and also approved by the Certification Officer. These changes will bring significant costs for unions. The costs of organising special conferences are substantial (but again are excluded from the impact assessment).

It is also not feasible for unions to achieve these changes within a three month period. Some union executive committees will have the delegated authority to adopt interim rule changes

¹²⁶ www.gov.uk/government/publications/applying-behavioural-insights-to-charitable-giving.

where it is necessary to comply with legislation. However, other unions require a conference decisions before a rule book change can be made, with most unions only holding a rule-making conference once a year, every two years or in some cases every five years. Were the Bill to receive Royal Assent some union representatives would struggle to secure the requisite time off to attend a conference within three months of the Bill becoming law, meaning that even if they were able to fund and convene a conference unions may face problems with quorums.

Retailers were granted two years to prepare for new charges on plastic bags, whilst unions are to be given an eighth of that time to accommodate new rules which will have significant implications for their funding models. The three months it is proposed that unions will be provided with to implement such a significant change is far less than is provided in usual government policy making practice.

Retrospective application of policy

The government's proposals are that all existing members, who have already agreed to be political fund members on the basis that they can opt-out at any time, will have the terms of their contract with the union changed retrospectively, and will be required to provide their union with a written opt-in notice to ensure their political fund contributions continue. It is unprecedented for government policy to seek to retrospectively change the basis of an agreement in this way. In general, shifts in government policy are based upon future circumstances. For example, welfare reform such as the shift to Universal Credit includes transitional protection for existing claimants.

Current operation of the opt-out

In addition to the requirements relating to opt-out set out above, in 1984 the TUC reached an agreement with the Minister for Employment on a TUC Statement of Guidance on good trade union practice in respect of political fund arrangements and related matters. The requirements of this statement are reflected in current guidance to unions from the CO (referenced above).

Over the last 22 years we have no records of any Government Minister ever contacting the TUC to express concern with respect to non-compliance with the 1984 agreement, nor of evidence of non-compliance being presented to us. Over the last five years, the CO has received just two complaints relating to political funds. In one case, the CO refused to make a declaration as no breach was found. The second case was struck on the grounds that it had no reasonable prospect of success.¹²⁷

However, in his evidence to the Lords Committee, Minister of State Nick Boles MP asserted that the historical justification for introduction of Clauses 10 and 11 was apparent union non-compliance with the 1984 agreement. This is a matter of great concern to the TUC as our assessment of the evidence does not support the view that unions are either in non-compliance with the law or with the additional requirements of 1984 this agreement (or, for that matter, with the current requirements set out by the Certification Officer). The TUC is also surprised that there has been no public consultation by government around this evidence, nor any advance notification to unions of its existence. Given apparent non-compliance with the 1984 agreement is now being cited by government as a central part of its case for reform, we are also surprised that no mention of this agreement and unions'

¹²⁷ Source: Annual Reports of the Certification Officer, 2010-11 to 2014-15

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compliance with it was made during the Commons stages on the Bill, in the impact assessment accompanying it or in meetings between government and the TUC.

In the two working days we have had since we first heard of the Minister’s assessment of non-compliance, which has not been backed up by any written evidence to the TUC around the nature of the claim, we have undertaken an initial scan of union approaches, drawing on publicly available information on the internet. This assessment suggests that our affiliated members are going well beyond their legal obligations in informing members of their opt-out rights from the political fund. In the time available to us we have generally only been able to assess the content of union rule books and general practice in terms of publicising the political fund online. Of our 24 affiliated unions with political funds, the TUC notes that two (with small and mostly retired memberships) operate offline and one is in the process of re-drafting its rulebook. We also know that many unions also take supplementary action well beyond the internet references we have been able to report here. For example, in addition to complying with TULCRA in setting out the opt-out procedure in its rule book and informing members of their opt-out rights in the membership form, Usdaw informs members again in its membership magazine, alongside announcements of its annual increase in subscription fees. The magazine is sent to the home address of each member. References to opt out rights are also included on union posters that Usdaw representatives keep on union noticeboards in each workplace, and this is updated annually. Usdaw representatives are trained on the issue of political funds and can advise members on the issue through their direct contact. Other unions follow similar practices including distributing paper copies of their rule book.

We also note that there is no reference in the 1984 agreement nor in any CO guidance to unions being required to notify provide notification on union membership forms of the political fund opt-out (although again, some unions do). In her letter of 9th February to Rt Hon Lord Forsyth Parliamentary Under Secretary of State Baroness Neville-Rolfe set out that the government had ‘reviewed the available online membership forms for the 25 unions which have political funds’ (one of which is not a TUC affiliate). ‘We discovered that 12 unions – just under a half (48%) – do not mention the existence of a political fund’. Again, the TUC is concerned that government has not consulted with or engaged with unions on this issue, and that no government concerns around trade union membership forms have previously been drawn to our attention. There is no requirement on unions to mention the opt-out on their membership forms, however if government is of the view that this practice would be desirable, the most obvious first step would be to consult with unions rather than taking the disproportionate action of removing the opt-out.

The following table sets out information that is easily publicly available by using the internet.

| Union | Resources |
|--------------|---|
| ASLEF | The ASLEF website has a section on the political fund including information on opting out and a clear link to the rule book www.aslef.org.uk/information/100011/112987/how_the_union_works/ |

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| BECTU | The BECTU website has a section on the political fund with information on opting out and a named national official to contact. The exemption form is also available online /www.bectu.org.uk/about/political-fund |
| BFAWU | The BFAWU website has a clear link to its rule book where information on opting out is available www.bfawu.org/rule_book_document |
| Community | The Community website has a clear link to its rule book where information and an exemption form is available www.community-tu.org/wp-content/uploads/2015/11/Community-Rule-Book-August-2015.pdf |
| CWU | The CWU website has a clear link to its rule book where information and an exemption form is available www.cwu.org/assets/cwu/legacy-assets/documents/jul_15/cwu__1437987851_Rule_Book_-_June_2015.pdf |
| EIS | The EIS website has a page on the political fund which explains the opt-out procedure and directs you to the EIS online constitution for further details (member-only access to that page). The general information is here www.eis.org.uk/About/how_we_are_funded.htm#Political Fund Contributions |
| FBU | The FBU oral evidence to the select committee explained that most recruitment is done face to face by lay reps in the workplace (most of which are small in number) and there is a members' pack which includes information on the political fund and exemption procedures. On their website the rule book is easily downloaded and the political fund exemption gives details on how to opt-out www.fbu.org.uk/publication/rule-book |
| GMB | Detailed information is available on the website about the political fund: www.gmb.org.uk/about/gmb-and-politics/gmb-political-fund The GMB rule book is easily available online and includes full details on the option to opt-out of the political fund including a sample opt-out notice: www.gmb.org.uk/about/how-gmb-works/gmb-rule-book |
| Musicians union | The MU website publishes its rule book online and there is a clear reference to the political fund exemption form and details of how to opt-out www.musiciansunion.org.uk/Home/About-Us/How-the-Union-Works/MU-Rules |
| NACODS | This is a small coal union with 231 members, many of whom the TUC understands are retired. The union relies on written correspondence with its members, all of whom have copies of the union rule book which we understand complies with reporting requirements on the political fund. |

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| <p>NASUWT</p> | <p>The NASUWT website has a dedicated page on its website about its political fund and its purpose. It informs members of their right to opt out: www.nasuwt.org.uk/JoinNASUWT/NASUWTSubscriptions/PoliticalFund/</p> <p>Its Subscription Rates website sets out that members can contact the Membership Team directly to discuss the fund and conditions for opting out www.nasuwt.org.uk/groups/public/@recruitmentandevents/documents/nas_download/nasuwt_011888.pdf</p> |
| <p>NUM</p> | <p>This small union has 1,087 members who work across around three sites in the UK or are retired. In the case of active members communications are primarily through workplace correspondence and promotion. The TUC is confident that the NUM hardcopy rule book, which is provided to all members, sets out accurate details on the political fund and the opportunity to opt-out.</p> |
| <p>NUT</p> | <p>The NUT website has a dedicated page on its website about its political fund which sets out clear reasons for setting up the fund while maintaining party political independence. The page has direct links to both the exemption notice and the exemption form www.teachers.org.uk/node/8118</p> <p>The NUT rule book is easily available online and includes full details on the option to opt-out of the political fund including a sample opt-out notice: www.teachers.org.uk/files/nut-rules-2015_16.pdf</p> |
| <p>PCS</p> | <p>The PCS website has a downloadable rule book which clearly states how to apply for exemption to the political fund www.pcs.org.uk/en/utilities/document_summary/document_summary.cfm/docid/A93B39E7-22F5-40EF-98F680751A402A1D</p> |
| <p>Prospect</p> | <p>Prospect has a dedicated page about its political fund here www.prospect.org.uk/about_us/what_we_stand_for/political with a clear statement about its political neutrality and the cost to an individual of the political fund contribution. In addition, there is a direct link to its opt-out form.</p> |
| <p>POA</p> | <p>The POA website has a downloadable membership form which clearly states that members can exempt themselves from the political fund www.poauk.org.uk/index.php?join-the-poa It also has a section on political fund exemptions and a model form in its rule book available online www.poauk.org.uk/index.php?rules-and-constitution#f</p> |

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| RMT | The RMT website has a clear link directly to the political fund rule 23 of its rulebook which includes the specimen form and gives full details of how to opt-out www.rmt.org.uk/about/rmt-rule-book/rule-23/ |
| TSSA | The TSSA website states “A copy of the Political Fund Rules are supplied to every new TSSA member. A copy of the complete Rule Book is available to every member on request and copies of any changes to the Rules are available on request”. www.tssa.org.uk/en/Your-union/TSSA-democracy/tssa-rulebook/index.cfm |
| UCATT | <p>Members can receive a political fund exemption notice from the General Office, the regional office or their branch or they can simply write to the General Office to inform the union they no longer wish to pay the political fund.</p> <p>These rules are stated in the UCATT rulebook. UCATT is currently completing finalising the process of agreeing a new rulebook and this will then be placed online for all members to view.</p> |
| UCU | <p>The UCU website has a dedicated page on the political fund here /www.ucu.org.uk/politicalfund</p> <p>The exemption is explained in the rule book which is also online here www.ucu.org.uk/media/7355/UCU-rules-2015-16/pdf/UCU_Rules_2015-16.pdf</p> |
| UNISON | <p>Top search item is a page of top level information which informs members of UNISON’s political work. www.unison.org.uk/about/our-organisation/political-affiliations-and-support/our-political-funds/</p> <p>The page states</p> <p>“Our political funds</p> <p>To take part in political activity unions have to maintain a political fund – and in UNISON you can choose whether to pay a proportion of your subs into the affiliated political fund (Labour Link), the general political fund (GPF), both, or neither.”</p> <p>The page provide a link to a downloadable exemption form: www.unison.org.uk/content/uploads/2014/11/On-line-Catalogue228372.pdf</p> <p>The UNISON rule book is easily available online and includes full details on the option to opt-out of the political fund including a sample opt-out notice: www.unison.org.uk/content/uploads/2015/06/23301.pdf</p> |

Trades Union Congress—supplementary written evidence (TUP0039)

| | |
|--------------|--|
| <p>Unite</p> | <p>Top search item is a downloadable form which provides members with the means to exempt themselves from the fund www.ourunion.org.uk/PoliticalFundExemption.pdf</p> <p>Second top search item is a link to membership page www.ourunion.org.uk/join.htm where the following text is provided: “The subs rates referred to above are the Contracted In rate - members who opt out of paying into the political fund will be excused the small amount that is the contribution....If you wish to opt-out of the political levy then the easiest way is to phone your regional office (contact details here). Alternatively, you can use the form available here (pdf format, note that the regional office link in the form is out of date, see earlier link).”</p> <p>The Unite rule book is easily available online and includes full details on the option to opt-out of the political fund including a sample opt-out notice: www.unitetheunion.org/about_us/structure/unite_the_union_rule_book.aspx.</p> |
| <p>Unity</p> | <p>Unity’s website has a downloadable rule book in which the political fund exemption is explained and includes a model exemption form here www.unitytheunion.org.uk/rule-book/</p> |
| <p>USDAW</p> | <p>Information on members’ rights to opt out of political fund contributions is clearly available on the USDAW website: www.usdaw.org.uk/Terms-Conditions</p> <p>The USDAW rule book is easily available online and includes full details on the option to opt-out of the political fund including a sample opt-out notice: www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=f357a829-e9a2-435f-b0ac-b8efa9c1de79</p> |

This initial and quickly undertaken search suggests that all unions go to significant efforts to notify their members of their right to opt-out, and also (within the restrictions of existing legislation, which permit opt-outs to be submitted by written notice only) to provide their members with the means to do so. As stated above, information provided via the internet is supplemented by widespread workplace and wider written and email communications.

Should the government believe (as the Minister of State put on record in his evidence to the Committee) that there is evidence to suggest unions are not in compliance with existing requirements with respect to notifying members, or that further action is needed to further strengthen members’ knowledge of the opt-out, a proportionate next step would surely be to discuss any perceived problems with the TUC and our affiliated unions. This would allow consideration of whether moves should be made to enhance the operation of the current arrangements (which, as we set out above, already go well beyond the legal requirements unions operate under and are already being complied with). If, following discussion and

consultation between government and the TUC, the introduction of further requirements was deemed necessary, then both parties should trigger a review of existing arrangements to consider improvements and updates.

It is our strongly held view that previous precedent, which in this case is for voluntary measures (negotiated between government and the TUC) to be taken in this area, should not simply be discarded without the opportunity to revisit whether there is scope to agree further changes to existing practice. If the government is concerned, for example, to ensure that a reference to the opt-out is published on union membership forms, surely it should consult with unions over this concern rather than simply asserting they have failed against a standard they have not previously been informed about and which is not an existing legal obligation? We also note that if the government wants to increase members' choice to opt-out then allowing members to opt-out by electronic means rather than a written notice would also make this choice easier to exercise.

The TUC has therefore written to the Minister of State setting out our willingness to discuss both any concerns the government may have around the 1984 agreement (given they have not been previously raised with us or with our affiliated unions) and the potential to update this approach in the future. We would welcome discussions which sought to replace Clauses 10 and 11 with a modernised approach.

Comparisons with Northern Ireland

Comparisons have been drawn between proposals contained in Clause 10 and practices in the Northern Ireland where union members are required to opt-in, in writing, before making a contribution to a political fund.

The different approach to political funds in Northern Ireland is historical, and dates back to 1958 when the Stormont Government decided to retain opt-in requirements, first enacted in 1927, even though they had been repealed in 1946 in Great Britain.

The situation with political levies in Northern Ireland is unique and was influenced by the geo-political situation in the region which was in sharp contrast to the situation in the rest of the UK. A House of Commons debate on this subject from 2003 suggests that this position resulted from the Unionist party in 1958 seeking to curtail trade union funding as it believed its opposition party was the sole recipient of such funds.¹²⁸ A House of Commons briefing suggests that 'the broad reason given for the retention was that the levy would go by default to the left wing parties'.¹²⁹ This suggests both that the retention of the opt-in method in Northern Ireland is unique to the particular politics of the nation, and that the motivations behind this position were political (rather than resulting from a concern about the administrative implications of an opt-out model).

It is also important to note that members in Northern Ireland are only required to contract into paying the political fund once and once only. They are not required to renew their opt-in. In contrast, union members in the remainder of the United Kingdom will be required to opt-in every five years.

Nevertheless it is clear that the opt-in requirement has had an impact on the size of union political funds in Northern Ireland. The Annual Report of the Certification Officer for Northern Ireland suggests that even a one-off opt-in process can lead to a reduced number

¹²⁸ HC (Northern Ireland) Debate 18 November 2958 c651.

¹²⁹ House of Commons Library (2013): Trade Union Political Funds and Levy, pp. 4-5

of union members deciding to contribute to their union's political fund. For example, in 2014-15 just 40 per cent of Usdaw members, and 42 per cent of Unite members based in Northern Ireland had contracted in to the political fund.¹³⁰ Overall, only 27.8 per cent of union members in Northern Ireland contract in.

In evidence to the Committee the Minister of State for Skills cited two unions in Northern Ireland that achieve high levels of political fund contributions under an opt-in model. However there are particular circumstances around the unions in question. In the case of RMT there 111 members in Northern Ireland, who nearly all work on single sites across the ferries which travel between Scotland and Northern Ireland. Similarly, in the case of the POA all of their 228 members work across three prisons in Northern Ireland. In the cases of such low numbers of union members, as well as membership bases which are concentrated in specific locations with high levels of face-to-face contact with workplace reps, higher levels of opt-in are not surprising. But the experiences of these unions are not representative of the majority in Northern Ireland or the UK more widely.

Clause 11

Clause 11 will provide the Certification Officer (CO) with new power to investigate how unions' political funds are used and where the money goes. As part of their annual return, unions will be required to report to the CO on how all expenditure from their political fund has been used – who it has been paid to and for what purpose.

The information on political fund expenditure is likely to be published on the CO's website alongside a union's annual membership form.

The government claims the rules are even-handed because they apply to employers' associations as well as unions. However, none of the 94 employers' associations currently listed by the CO have a political fund. Companies instead make political donations via other channels, which require a far lower level of transparency that will be required of trade union donations.

The TUC sees no case for the changes that Clause 11 could bring. Unions already provide significant financial information to the Certification Officer in their annual return and are further bound by Electoral Commission rules on political donations. Beyond exposing trade union political activity to even higher levels of public scrutiny, it is hard to see what the government's rationale for these proposals is.

The change would also significantly increase administrative burdens for unions, as a result of them having to collect detailed information on political expenditure from branch and regional offices. Publication of this information would also invite increased public scrutiny of trade union political activity, which will be subject to reporting requirements far in excess of those applied to any other civil society or corporate groups. Litigation costs for unions may also increase, as the uncertainty around the operation of Clause 11 could find unions facing unexpected legal challenges.

In addition, the TUC is seriously concerned about the new enforcement regime which will be introduced alongside Clause 11. Clauses 15 to 18 provide the CO with wide-ranging new investigatory and enforcement powers which would mean that if the Bill becomes law, the CO will be able to initiate investigations into unions' political fund processes and

¹³⁰ www.nicertoffice.org.uk/fs/doc/publications/ni-certification-office-annual-report-2014-15.pdf

Trades Union Congress—supplementary written evidence (TUP0039)

expenditure, even though no union members have complained or even raised concerns. The CO will also have the power to demand access to union documents relating to political expenditure, even though there is no evidence that the union has breached reporting requirements. Again, such investigations will likely lead to substantial additional cost for unions.

15 February 2016

Transparency International UK—written evidence (TUP0041)

1. Introduction

1.1 Transparency International UK's (TI-UK) research indicates that there are serious and systemic problems with our politics and policy-making process in the UK. This includes the opacity of lobbying, the conduct of officials and inequality of access to decision-makers. These have contributed to a continued and worsening trust in political parties, parliament and government. Political party funding sits within the wider context of these issues with our political system.

1.2 At the heart of many of these problems is the distortive impact of those with large financial resources at their disposal. According to research by our international secretariat, the UK public perceive the government's response to these problems to be inadequate¹³¹. Our overall assessment is that recent reforms in this area fail to address the scale, nature and breadth of the problem.

2. Public Trust in Government

2.1 TI's Global Corruption Barometer (GCB) 2013 revealed the scale of the problem. The Barometer surveyed over 114,000 people in 107 countries for their views on corruption:

- 90 per cent of UK respondents believe that the UK Government is 'run by a few big entities acting in their own interest'
- 67 per cent of UK respondents said they thought political parties in the UK were corrupt or extremely corrupt
- 55 per cent felt that the UK Parliament is corrupt or extremely corrupt
- 62 per cent of UK respondents think that the UK Government's actions in tackling corruption are ineffective

2.2 Voter engagement is low and we are living in a society that is sceptical of politicians and the political process. The steady stream of political corruption scandals in recent years has eroded public confidence not just in individual politicians, but also in political institutions. All political parties must act with urgency to demonstrate to the public that they are cleaning up politics and can be trusted.

3. Political party finance

3.1 Political party finance is one of a number of areas in which special interests, backed by money, can subvert democracy. Despite several steps towards reform, it remains a major source of concern in the UK. The 2013 TI Global Corruption Barometer found that political parties were judged the second most corrupt among a list of key sectors of UK public life.

3.2 Political parties are essential to democracy. However, they exercise significant influence within our political system and have become increasingly reliant on a small amount of wealthy donors. This raises risks that funders will expect gratitude in the form of special

¹³¹ Transparency International '2013 Global Corruptions Barometer', UK specific data.

influence and that parties will allow themselves to be influenced in return for much-needed funds. There is particular concern that a handful of wealthy individuals and organisations can buy access, influence or positions of power through making large donations.

4. The current situation

4.1 The Political Parties, Elections and Referendums Act 2000 (PPERA):

- introduced a ban on political donations and loans to political parties from outside the UK over £500¹³²
- set limits on national campaign spending at parliamentary elections
- provided that all donations and loans above £7,500 to the central party, all donations and loans above £1,500 to an ‘accounting unit’ of a party, and all donations above £50 to a candidate must be disclosed as a matter of public record
- introduced transparency about donation and loans to other political actors, including holders of elective office and members of political parties

4.2 Whilst this law improved the transparency of political party financing, and introduced some loose controls on the demand for funding through national spending limits at elections, there are still issues with:

- parties being overly reliant on a few large donors
- insufficient controls on the demand for funding, with national spending limits being too high to be effective
- big donors seemingly buying access and influence
- continued attempts to evade the transparency rules through both legal and illegal means

5. Permissible behaviour under current rules

5.1 The following behaviour is currently permissible within the rules that govern political financing and the UK political institutions:

- big donors can contribute unlimited amounts of money to political parties within any one year
- political parties can spend up to £19million on campaigning in the year before a UK Parliamentary general elections, and this does not include potentially expensive campaign staff costs, which means the figure is actually much higher
- big donors can buy access to senior politicians and seek to influence party policies

¹³² The ‘permissibility’ threshold for candidates is only £50 and applies only to donations

- big donors can be offered positions in the legislature – through appointment as Peers
- donors can evade the transparency rules so their identity remains anonymous, for example, by contributing via unincorporated associations or donating just below the £7,500 threshold for central parties

6. Recommendations

- **Donation cap:** there should be a £10,000 cap on the amount individual donors or organisations can give to political parties within a year to reduce the supply of big money in politics.
- **Spending controls:** there should be greater controls on the amount political parties can spend at elections to reduce the demand for large donations.
- **Company transparency:** private companies donating to political parties should declare their ultimate owner to demonstrate that their owners would be permissible donors if they had given the same money directly.
- **Honours:** if a cap is not placed on donations to political parties, a political party should be prohibited from nominating a person for honours where that person has provided financial or other support of more than a total value of £10,000 in any one year to that party or to a person or organisation associated with that party.

7. About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for Corrupt Capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.

www.transparency.org.uk

11 February 2016

Trade Union and Labour Party Liaison Organisation, Trades Union Congress (QQ 45–59)

**Trade Union and Labour Party Liaison Organisation, Trades Union Congress
(QQ 45–59)**

[Transcript to be found under Trades Union Congress \(QQ 45–59\)](#)

Transport and Salaried Staffs Association—written evidence (TUP0035)

- Clause 10 of the Trade Union Bill would mean trade unions could only collect contributions to their political funds from members who had actively opted in by written notice.
- Clause 11 would require trade unions to provide more information about their political expenditure, if it exceeds £2,000 a year, in their annual return to the Certification Officer.

The Committee, chaired by Lord Burns, are inviting evidence on the following two key questions:

1. Will the Trade Union Bill have an impact on the finances of political parties?
2. If so, how would that relate to the recommendations of the CSPL report and/or party funding reform?

About TSSA:

TSSA - the Transport Salaried Staffs' Association - is the union for people in transport and travel.

Founded in 1897, we represent 20,000 administrative, managerial, professional and technical workers in the railway, London Underground, the travel trade, ports and ferries. We have one of the most diverse memberships of any trade union of our size. Our members range from highly skilled engineers and senior managers to booking office staff and call centre workers

The Committee is focusing on two main questions.

For the sake of simplicity and we have sought to answer each of the questions and subsidiary elements in turn.

1. Will clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

The proposals are likely to have a dramatic impact on political parties supported by the Trade Union movement. So dramatic an impact in our view, that it will fundamentally undermine democracy, by crippling financially one of the major established party's in Britain. It is key to understand that financial support between the Labour Party and affiliated Trade Unions happens at a local - branch level, a regional level, and a national level. So the impact is as great of local ward my ward democracy, as it is on the national stage. Trade Union local branches will often, if those branch members desire, affiliate to local units of the Labour Party, similarly at a regional level and again at a national level.

In the case of TSSA, affiliated to the Labour Party since 1910 – our rule book provided to every member upon joining TSSA, states clearly that this fund is explicitly to support the Labour Party only. Other political and lobbying work of a political nature is also funded from

Transport and Salaried Staffs Association—written evidence (TUP0035)

it, but it can only be used in electoral terms to support one party; Labour. Point 51.2 of the Associations rule book states *“No such payment shall be made unless the person concerned is a candidate, member of Parliament or holder of a political office and an individual member of the Labour Party, or the purpose for which the payment is made is in support of Labour Party Policy”*.

To move towards an opt-in system, when our Union very clearly in its recruitment materials, annual journal magazine, rule book, and website states our relationship with the Labour Party, will create a huge additional administrative burden, complex in nature, and a huge cost in transitioning and going back to each member. Our fear is that without huge expenditure, time and resource, the levels of opt-in could drop as low as 10% of membership from a currently high levels. With over 94% paying the levy we have at the moment around 5.8% of members that actively take the opportunity to ‘opt-out’ of paying the levy through all the clearly advertised mechanisms for doing that at every level from a branch to a national level.

To comply with legal requirements, in September 2014 TSSA ran its latest ten yearly Political Fund Ballot. In itself, this was a very costly exercise, both financially and in terms of staff time – with a clear explanation to every member of the uses of our political levy. The results were a 25% turnout in the ballot of all members, and an 89% vote in favour of retaining it. 11% voted against. We feel that this is already a strongly indicative mechanism of support of the political levy and its collective administration. It is worth noting that support for this Political Fund ballot had increased from 78% in 2004.

The recent Labour Party Leadership election, with its highly convoluted mechanism for allowing participation by TSSA members, saw participation drop to around 10% because of the huge administrative burden it placed upon TSSA through using an opt-in system via a paper based, online or telephone based arrangement.

The worst case scenario then is that funding available to be spent on Labour Party related campaigning, as well as other public affairs lobbying work, could diminish to as low as 10% of current levels. In election years especially, this figure suggests that our campaigning work at a local, regional and national level could potentially drop by hundreds of thousands of pounds.

In answering, you may wish to consider the following subsidiary questions.

- a. What are the key arguments for and against the introduction of the opt-in system proposed in clause 10 of the Bill?

Trade Unions, including TSSA, are collective organisations, with democratic structures at every level. Donations to political party’s from Trade Unions are an aggregations of individual members donations, and that money, in the case of the TSSA can only be spent with the democratic agreement of our Unions National I Executive Committee that agrees all significant donations. At a local level TSSA branches can make modest donations to local Labour Party Units that they choose to affiliate to. Moving from a collectively agreed

donation system, to an individual one undermines one of the key principles of Trade Unions democratic structures.

We have a fully transparent process in place to allow opt-out, which is well promoted and easily available.

The potentially huge administrative and financial burden, on a yearly and 5 yearly basis to meet the potential new requirements will force a Union such as ours (which is modest in size and resource), to have to spend tens of thousands of pounds administering this new imposed system if brought in, rather than focused on representing members in the workplace and bringing all the benefits of healthy industrial relations.

If an opt-in system led to a collapse of Labour Party funding, as we fear it might, then the Government will have brought about a fundamental undermining of British democracy.

- b. **What impact is clause 10 likely to have on the size of unions' political funds, or other aspects of union finances?** What role, if any, might the proposed transitional arrangements play in this impact? Will the means by which the Bill requires unions to seek opt-ins from their members have any bearing on the impact on political funds?

As explained previously the potential is from political funds - especially if a Labour Party only element was to set up as a separate fund, could see a worst case scenario of the fund shrinking to 10% of its current size.

The transitional arrangements do not put in place significant financial compensation for Trade Unions for the work that will be needed to be undertaken – in what are totally unrealistic timeframes. The cost of balloting all members, the staff time, the changes to membership databases and internal administrative processes could run into hundreds of thousands of pounds even for a small Union, to the point of making them untenable. The Lords should consider recommending a significant financial compensation package to assist Trade unions implementing any measures that override over a hundred years of democratic, transparent, collective affiliations and donations to political parties.

TSSA's rule book is a legally binding document for example, and can only be changed at a 'rule change conference' of the Association, so if the new law was to be brought in, the ability of TSSA to be able to implement it within those timeframes would be impossible.

If the means by which a union would be made to seek 'opt-in' remained only through a paper based balloting mechanism, this would be a further hindrance in an age when digital communication and digital balloting on opt-in should be the default mechanism.

- c. **What impact might clause 10 have on unions' support for the Labour Party in the form of (a) affiliation fees and (b) other payments?**

The likely scenario is that funding available to be spent on Labour Party related campaigning, as well as other public affairs lobbying work, could diminish to as low as 10% of current levels. Given, especially in election years, our campaigning work at a local, regional and national level that equates to a drop of potentially hundreds of thousands of pounds.

TSSA branches affiliate to local Labour Party Constituency Parties, and local branches are able to make modest donations to local Council candidates, and indeed Parliamentary or other National election candidates (Welsh Assembly, Holyrood) etc. So at a local level there would be an immediate impact, and instead the much more limited funds available would have to be decided upon nationally by our Executive Committee, undermining another element of local community democracy. At the moment all large donations to candidates, the Labour Party, and other related activity are decided upon by the democratically elected lay member Executive. TSSA Divisional Councils and regional branches may also affiliate at a regional level to the Labour Party, again there would be a cessation of those payments at a Regional level if the overall Political Fund was diminished.

d. How do the provisions of clause 10 align with the new approach to affiliation fees agreed by the Labour Party in 2014 following Lord Collins of Highbury's report The Collins Review into Labour Party Reform?

There is a degree of alignment, however the system designed by Lord Collins was not fit for purpose and lead to a huge financial and time cost to TSSA, to administer and a great outcry from many members who despite all the processes, did not obtain a ballot in time. This experience of 'opt-in' was very negative and acted as a hindrance to participation and meant repetition of many processes relatively recently undertaken such as the Political Fund Ballot of 2014.

The recent Labour Party Leadership election, with its highly convoluted mechanism for allowing participation by TSSA members, saw participation drop to around 10% because of the huge administrative burden it placed up TSSA through using an opt-in system via a paper based, online or telephone based opt-in.

d. What impact might clause 10 have on other kinds of political expenditure by unions? Is this likely to have a broader effect on party politics?

Given that most Trade Unions use their fund to support non party 'political' work; campaigning on a multitude of issues from anti-racism to women's equality, and many other single issue policy campaigns, the impact will be felt far beyond the Trade Unions themselves and into wider civic society. Coupled with the already anti-democratic measures put in place to limit charities and NGO's activity in election periods, many civil society groups that are supported from Trade Union political funds could cease to exist.

Additionally political lobbying work, in terms of activities with MP's in Westminster and other devolved institutions could be hugely impacted; this work is undertaken on industrial issues and policy issues, and can sometimes be funded from the political fund. This would

Transport and Salaried Staffs Association—written evidence (TUP0035)

again even further unbalance the vastly incomparable lobbying efforts of huge public affairs firms employed by large corporations, with the public affairs work undertaken by most unions in support of their members' workplace conditions and industrial issues. Private companies, are after all, not democratic bodies, and are only accountable to their owners, board or shareholders, contrasting sharply to the lay member lead democratic structures within every Union that have oversight of a Unions work.

The changes proposed signify a fundamental re-writing of the best part of one hundred years of British democracy, in which on the whole, private interests and corporations have funded one major party of Government, and the other major party of Government has been funded by the contributions of millions of ordinary people.

Without an immediate move towards state funding to compensate, and dramatically lower capping levels for donations from corporations and individuals, it would leave the major parliament of this Isles so lopsided in every aspect of how our majoritarian party system has developed, as to lead to such a level of unbalance that could ultimately lead to major civil unrest.

2. **If the two clauses will have such an impact, how would that relate to the recommendations of the CSPL report and/or party funding reform?** In answering, you may wish to consider the following subsidiary questions.

- f. What is the relationship between the provisions of clause 10 and the recommendation by the CSPL that trade union affiliation fees could be treated as a collection of individual payments (thereby avoiding the £10,000 cap) provided that the members were required to opt in to the affiliation fee?

Trade Union affiliation fees are already a collection of individual payments; it would be illogical to describe them in any other way. The issues about administration of a new process still stand as set out above. It is an individual choice already, not to opt-out given the transparent process that TSSA operates in highlighting the opt-out to members in membership packs, to branches, branch officers and on our website.

- g. How would the opt-in requirement for unions compare with what other organisations are required to do if they make donations to political parties?

TSSA notes that companies that have shareholders will not have to enact a similar mechanism to decide whether each shareholder wants to 'opt-in', and directors or boards of such companies will be able to continue to make donations within the current donation caps. This seems grossly un-balanced, and indeed can only be construed as a deliberately partisan move, undermining long standing conventions on party funding normally reached through consensus, clearly designed to emasculate one of this country's major political parties.

- h. What is the evidential basis for claims that measures relating to party funding traditionally proceed only with the agreement of all parties? What

would be the long-term impact (if any) of a departure from such a convention?

The conventions of agreeing consensually party political funding arrangements will be well understood by our revered noble Lords. The long term impact would be every future Government taking a similarly partisan line.

TSSA as a Union would undoubtedly push for a robust and similarly draconian package of measures so as to ensure that Labour Party funding was enhanced and that these measures proposed would be abolished, alongside as draconian measures as possible to totally curtail corporate donations, donations from wealthy individuals and ensure that the Conservative Party faced a reduction to 10% of its available funding. It would create an ongoing tit-for-tat scenario wholly out of step with the values of democracy expected by the British people from its Governments.

- i. Would the passage of these provisions have an effect on the prospect of agreement being reached on comprehensive reform of political party funding?

The passage of these provisions would make agreement on comprehensive reform far more difficult, if not impossible.

- j. Do you have any comments or concerns about the requirement in clause 11 for unions to provide more details of their political expenditure in their annual returns to the Certification Officer?**

A further hugely burdensome administrative requirement that trade union financial staff will have to undertake, with additional costs, processes and procedures having to be put in place. TSSA already publishes the minutes of every Executive Committee meeting online, and we strongly feel we are already highly transparent. We also of course comply as needed with any Electoral Commission donation logs as per PPERA.

12 February 2016

Union of Construction, Allied Trades and Technicians—written evidence (TUP0012)

Introduction

Clause 10 and Clause 11 - To restrict the Political activity of the Trade Union

Movement

1. UCATT is the largest specialist union for construction workers in the UK and the Republic of Ireland, with members both in the public and private sectors. UCATT is the lead union among the signatories to the *National Working Rule Agreement of the Construction Industry Joint Council* and the *Joint Negotiating Committee for Local Authority Craft and Associated Employees*. UCATT is represented on a number of construction industry related bodies by the General Secretary including the *B&CE* and the *Construction Skills Certification Scheme*.
2. UCATT welcomes the opportunity to make this submission to the Select Committee and does so in the expectation that intense scrutiny of the Bill will show it to be a vindictive, barbaric attack by an ideologically motivated Conservative leadership intent on preventing any legitimate defence of workers' rights across the UK by the trade union and labour movement. Should this Bill be passed we will oppose it by any political and industrial means necessary.
3. Trade Unions are already subject to onerous legislative requirements. Under legislation (Trade Union Act 1984) unions must ballot their members every 10 years on the continuance of having a political fund. Additionally this ballot must be conducted via post and gives unions logistical difficulties and is extremely costly and time consuming. It is telling however that each time our union has balloted on the political fund a large majority have voted for it to remain in place. UCATT's latest political fund ballot is currently taking place during February 2015.
4. Members have the right to opt out of the levy under section 82 of the TULRCA (Trade Union and Labour Relations (Consolidation) Act 1992), and there are procedures laid down to ensure that unions comply with any request. UCATT members who do not wish to pay the political levy can and do opt out, with roughly 20 per cent of our membership not paying the levy.
5. It should also be noted that the political fund is used for a wide range of campaigning. It does not merely exist to be transferred to the Labour Party. The

Union of Construction, Allied Trades and Technicians—written evidence (TUP0012)

union affiliation to the Labour Party is a matter of policy which is decided upon by the policy making body of the union, its National Delegate Conference that meets biennially and is confirmed in the union rulebook.

6. Areas where UCATT has used its political fund in the past include: campaigning against blacklisting, campaigning for stronger safety laws, in opposition to umbrella companies and false self-employment and encouraging members to register to vote in elections.
7. Trade Unions in the UK already have the most onerous restrictions on their actions through the current regulations that govern their actions. Trade Unions must have a ballot to set up a political fund, and a membership ballot every 10 years to maintain a political fund. Trade Unions already have a burdensome amount of reporting on their political activity which includes Representation of the Peoples Act 1983, TULR (Consolidated) Act 1992, the Political Parties, Elections, and Referendums Act 2000, and the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.
8. The Government proposals in this Bill to create an opt-in to the political fund, with a small transition period of three months, then every 5 years thereafter, is overly restrictive and UCATT would argue interferes with both Article 11 of the European Convention on Human Rights (in law in UK as Human Rights Act) which protects the freedom of assembly and trade unions necessary in a democratic society. In addition Article 5 of the European Social Charter is also relevant as it identifies that national law should not be used to undermine the freedom of the right of workers to protect their economic and social interests.
9. Even if this appalling measure is proved to be legal the rules on transferring members from an opt-out system to an opt in system are unworkable. Members can only give authority by post and a three month window makes it virtually impossible to hold an effective campaign and awareness raising exercise in order to ensure that members understand the changes and have an opportunity to opt-in, during such a restrictive time frame.
10. Not only is there a major question about the potential government influence over the internal affairs and the autonomy of a trade union, but this is an overt attack on the historical link between trade unions and the Labour Party. The Labour Party was

formed with the support of trade unionists in order that workers could be represented and have a voice in Parliament. This has been recognised by all administrations for more than 70 years including Conservative-led Governments opposed to the aims of the Labour movement. If passed this will undermine the engagement of trade unions in political engagement, seek to neuter financial support for the Labour Party and see declining political involvement across the workplaces of the UK.

11. The reality is that this change in legislation would result in a massive reduction in funding to the Labour Party and the campaigning influence of unions. This is nothing more than an ideological attack on both the trade union movement and the Labour Party, being orchestrated by Government. If it was not then one would rightly question why the issue of electronic voting or opting in is not being considered? It seems like there is one rule for parties to conduct business in elections and votes which is efficient, however trade unions are prevented from utilising the same technology.
12. By having to opt-in to the Political Levy and be firstly signed up to it by post or completion of a form, then every five years resigned, the size of the task would be huge for Trade Unions, who it should be remembered, primarily exist to deal with the industrial and workplace concerns of members. Trade unions do not have the staff levels or manpower to carry this task out and it would undoubtedly see a huge reduction in those opting in.

11 February 2016

Union of Shop, Distributive and Allied Workers, Fire Brigades Union, NASUWT—oral evidence (QQ 60–66)

Union of Shop, Distributive and Allied Workers, Fire Brigades Union, NASUWT—oral evidence (QQ 60–66)

[Transcript to be found under Fire Brigades Union \(QQ 60–66\)](#)

Union of Shop, Distributive and Allied Workers—written evidence (TUP0010)

Introduction

Usdaw is the UK's fourth largest trade union with 440,000 members. Usdaw members work in sectors such as retail, distribution, road transport, food manufacturing and the dairy industry. The Union's membership is employed entirely in the private sector.

Usdaw has serious concerns over the proposals contained in Clause 10 and 11 in relation to the operation of the Political Fund as the Union believes that these proposals are neither fair nor proportionate. We believe that the proposed procedure for opting-in is deeply flawed and will in itself result in a substantial decrease in the number of people in the Union's Political Fund.

The fundamental practical problem the Union will have is the procedure that we will have to follow to reconfirm with members that they wish to remain in the Political Fund. The proposals, as outlined, mean that the Union will have to write out every five years to every Union member to ask if they wish to remain in the Political Fund. The Union will only be able to include members in the Political Fund if we receive written confirmation back from the member.

It is the Union's estimate that only 5-10% of the membership will respond to the Political Fund confirmation letter. This level of return is an estimate based on other returns to written communications from the Union, eg internal union elections.

It would be a mistake to view a return of less than 10% as a lack of support for the Union's Political Fund. Instead, it is more a reflection of the weakness of direct mailings requiring a response as a form of communication.

Usdaw is a strong supporter of the Labour Party. The mandate for this support is regularly reaffirmed by the Union's membership through Usdaw conference decisions and Political Fund ballots. Usdaw spends nearly all of our Political Fund in affiliating to and supporting the Labour Party. In total, Usdaw is funding the Labour Party by donations and affiliations totalling £1.9 million per year.

Usdaw believes that under the proposed changes Usdaw's Political Fund is likely to reduce to less than 10% of the current level. Of this reduced Political Fund an increased proportion will be required to administer a smaller fund. The financial impact on the Labour Party will be huge.

Usdaw believes that the proposals on the operation of the Political Fund are:

- Unfair in that it is dismantling a significant part of the Labour Party's funding without any practical replacement funding being put in place and without party funding being dealt through a cross-party consensus.

Union of Shop, Distributive and Allied Workers—written evidence (TUP0010)

- Disproportionate as it will put in place a system that will decimate Unions' Political Funds when the declared aim is to look at the opt-out/opt-in issue.
- Hostile to Trade Unions as it will implement measures that, in practice, will prevent trade unions from having Political Funds sufficient to campaign effectively in support of agreed policies and affiliate to a political party of its choice.

The attached document outlines in more detail the basis for Usdaw's position on the Trade Union Bill proposals regarding the operation of Trade Union Political Funds.

1. Usdaw and the Union's Political Fund

- Usdaw's Political Fund is made up of contributions from members of just 10p a week out of our weekly subscription rates of £2.32 for members in full-time work, and £1.45 for those working part-time.
- At 31 December 2015, 419,769 members were paying the political levy, giving the Political Fund an annual income of £2,159,661 in 2015.
- The numbers contributing are made up of:
 - 412,521 members out of 422,524 in England, Scotland and Wales who have not opted out.
 - 7,248 members out of 18,079 in Northern Ireland who have opted in.
- Usdaw works hard to ensure that our members are aware of the political campaign work we undertake on their behalf and promote how the world of politics is relevant to their daily lives.
- We publicise the political fund and how members can opt-out of contributions in line with legal requirements, but we also advertise our political affiliation to all our members and enable any who object to opt-out of the Political Fund.
- In the latest Political Fund Ballot in September 2013, 93% of those who voted supported keeping the Political Fund.
- At the time of the Political Fund Ballot, even with heightened awareness of the Political Fund, less than 100 members opted out.

2. Trade Union Political Funding Is Already Highly Regulated

2.1 Usdaw Rule Book

Usdaw complies with the law on the Political Levy and our opting out procedure is as prescribed in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).

2.2 Membership Forms

Members are informed of their right to opt-out of the Political Fund on the main page of the Union's membership form, using the wording spelt out in the Trade Union and Labour Relations (Consolidation) Act 1992.

2.3 Information in Membership Magazine and on Union Noticeboards

The same information on the Political Fund and members' rights to opt-out are included in Usdaw's membership magazine, alongside the annual increase in Union subscriptions, when members will be considering their membership fee. The magazine is sent to the home address of each member, complying with the requirement to provide each member with the information.

It is also included on a poster that Union reps keep on the Union noticeboard in each workplace, and is updated annually. Union reps are informed of the legal requirement to keep this poster on the noticeboard in their standard training course.

2.4 Political Fund Ballots

The Political Fund Ballot, held every ten years in accordance with TULRCA, involves sending a letter regarding the Political Fund to every member and a ballot paper for them to vote for or against keeping the Political Fund.

The ballot paper includes a short Explanatory Statement with the paragraph:

"This ballot is about keeping Usdaw's Political Fund. It is not about whether or not you contribute to the fund. All members have the right to vote and, if the vote is in favour of retention, the right not to contribute to the fund."

2.5 Political Fund Ballot – Advice To Reps

Our advice to union reps in workplaces, contained in a 'Frequently Asked Questions' factsheet about the Political Fund Ballot, reiterated the procedure for any member asking about opting out:

Q. Can I stop paying into the Political Fund/stop my money going to Labour?

A. Any member can stop contributing to the Political Fund by signing a simple form with your name and address that says you want to opt-out. (This will also stop any of your money going to the Labour Party.)

3. Accountability to the Union's Membership over Labour Party Affiliation and Political Campaigning

Usdaw's affiliation to the Labour Party is decided democratically at conferences of delegates from all Usdaw branches, known as the Annual Delegate Meeting. All branches are able to send delegates and to submit motions, with the annual conference typically consisting of around 800 delegates, representing the vast majority of branches.

The original decision on affiliation was taken shortly after the Union's formation. That support has been tested over the years, with branches sending a motion not to continue the affiliation from time to time. The last time such a motion was submitted in 2006, it was defeated with only a handful of votes in favour.

Other positive resolutions have been passed more recently, such as that from 2012:

Labour Party Membership

"This ADM calls upon the Executive Council to instruct all its Training Officers, Divisional Officers and Area Organisers to incorporate within any training needs to all reps the importance of joining the Labour Party and its importance to the Trade Union Movement as a whole."

Other policy positions, such as those on referendums for Scottish independence or membership of the EU are also taken democratically and transparently at the Annual Delegate Meeting.

Usdaw's political affiliation is made clear to our members. The Union is constantly campaigning on political issues and we encourage members to vote Labour at election time.

In the run-up to the General Election, we sent a special election edition of the members' magazine *'Arena'* to each member who has not opted out of the political levy. The magazine encouraged members to use their vote and set out the policy differences between the political parties, with the overall message being to vote Labour. We also sent a series of emails on specific policy issues and the message to vote Labour.

Any member who emails, writes or telephones to complain of Usdaw's political affiliation is reminded of their right to opt-out of the Political Fund and offered a Political Exemption Notice to sign.

In the run-up to the Scottish Independence Referendum, Usdaw campaigned for a No vote and sent both a letter and emails to members in Scotland to encourage them to vote no. This caused concern among some members, who were asked if they wished to opt-out of the Political Fund and around 200 Scottish members opted out at this time.

4. Transparency

Usdaw is transparent over our Political Fund and report income and spending both to our members and to regulators.

4.1 Audited Accounts and the Certification Officer

Usdaw produces annual accounts of both our general and Political Funds which are fully audited by an external body and reported to the Certification Officer, in full compliance with our legal requirements.

4.2 Annual Report to Annual Delegate Meeting

Usdaw produces an annual report for our branches, including details of the Union's industrial and political activity throughout the year, and financial statements including full reports of income and spending of both the general and political funds.

These reports are sent to all branches in advance of the Annual Delegate Meeting, and questions and comments from delegates are invited on each section separately, enabling any delegate with concerns about political spending to raise these. No concerns have been raised about political spending in recent years.

4.3 Political Parties, Elections and Referendums Act and Electoral Commission

All Usdaw's affiliation fees and donations to the Labour Party over a value of £2,000 per year are reported to the Electoral Commission in donation reports on a quarterly basis.

Union of Shop, Distributive and Allied Workers—written evidence (TUP0010)

Usdaw also registers with the Electoral Commission as a Third Party for the purposes of electoral and referendum campaigning and we have to submit highly detailed returns of spending. These costs have to be apportioned where relevant between England, Scotland and Wales.

The latest Third Party Return following the General Election took approximately two weeks for skilled and experienced staff members to interpret the advice from the Electoral Commission and apply it as accurately as possible to Usdaw's third party campaigning, do the necessary calculations and apportionment to arrive at the declarable figures, and complete the Third Party Return.

This experience causes us concern for the amount of staff time that would be required to comply with the enormous level of detail required for annual returns of all political expenditure to the Certification Officer, as required under clause 11.

5. Cost Of Compliance with the Proposed Rules

5.1 Cost of a Mailing to all Members

The cost of sending a mailing to 420,000 members with an identifiable response form, explanatory letter and leaflet, and reply paid return envelope would be around £180,000, based on our recent Presidential election mailing. The cost of around 21,000 responses - the amount that we envisage - would be around £8,822, making a total cost of £188,822.

5.2 Cost of Administration

In the Impact Assessment, the costs for additional trade union administration are based on an estimate that it will take a member of staff 30 seconds to process a form from when the form is received at the office. After consultation with the Usdaw Records Department, we believe that a process requiring us to; open the envelope, sort the form, look up a member, amend the membership record, and scan and file the form would take on average 2 minutes 30 seconds - five times the speed estimated.

Also, the significant additional work of processing these forms from our members, concentrated into a short period of time, would mean that we would not be able to cover it using existing staff and would need to either contract out the work or hire agency workers.

This would represent a significant cost. The 21,000 responses that we envisage would take 875 hours of work to process. At the cost assumed in the Impact Assessment of £13.68 per hour, this would cost £11,970 to process.

Additional forms that were received from members in workplaces, that did not necessarily include an identifiable membership number, would take considerably longer to process - around one every 5 minutes on average.

The additional 21,000 members that we hope to recruit into the Fund during the rest of the year would therefore take an additional 1,750 hours to process at a cost of £23,940.

The cost of the paper form system to the Union would therefore be:

| | |
|--------------------------------------|-----------------|
| • 420,000 Mailing | £180,000 |
| • 21,000 Responses | £8,822 |
| • Administration - initial 21,000 | £11,970 |
| • Administration - additional 21,000 | £23,940 |
| Total | £224,732 |

5.3 Organising Staff Resources

In addition, the organisation would have to make time for chasing up members at workplaces, using Union staff and lay representatives. In Usdaw workplaces it can be extremely difficult to contact members, who can work on a wide variety of shifts over a 24/7 working pattern.

Whilst there will not be a direct cost to the Union, much of the time of our officials and lay reps is used for recruitment as the Union needs to recruit around 80,000 new members a year. Any organisational effort that detracts from recruitment will impact severely on our income.

6. Impact on Employers

The Trade Union Bill seeks to make it as difficult as possible for unions to run a Political Fund. This will also have an impact in three ways on employers:

- The need for employers to update their records based on whether a member has completed the form to opt-in to the Political Fund and whether the form has been renewed every five years.
- The requirement for huge amounts of paperwork will be very disruptive to workplaces.
- Make it much harder, if not impossible, for political campaigns or lobbying work to be undertaken by trade unions for the wider benefit of the sector as a whole.

7. Difficulties for the Check-Off System

92% of Usdaw's members pay their subscription through check-off, whereby their union subscription is deducted from their wages by their employer, and then paid over to the union, less an administration fee.

Many employers, Usdaw has agreements with, are currently more than willing to operate check-off as part of their agreements with the Union.

The requirement for union members to opt into the Political Fund within a period of three months, rather than simply opt-out if they wish, will lead to much greater movement of members in and out of Political Fund contributions, and far more changes required to payments made through check-off.

Whilst Usdaw's Political Fund payments are only 10p per week, the legislation as drafted insists:

'that relief shall be given as far as possible to all members who are not contributors on the occasion of the same periodical payment,' Section 10, (2)2a

And also that:

'A withdrawal notice takes effect at the end of the period of one month beginning with the day on which it is given.' Section 10, (1)(1) (6)

7.1 Requirement for a withdrawal notice to take effect within one month

The requirement for a withdrawal notice to take effect within one month is not practical for members who pay either monthly by check-off, or by monthly Direct Debit.

If a withdrawal notice is received shortly before a payment is due, there would not be time for the employer to change the rate of union subscription on the payroll deduction, or for a bank to change the Direct Debit in time for the next payment.

Relief would therefore have to be given in the following month's payment, but include the relief for both that month and the time in between the receipt of the withdrawal notice, and the payment that followed it.

7.2 Workplace Activity – Getting Members to Sign Up

Udaw organises in private industries that operate on a 24/7 basis. The best place to speak to, and get the signatures of Usdaw members is in the workplace; and with just three months to sign members up, workplace engagement will be the only format that Usdaw can use to gather enough signatures.

This will involve diverting significant lay rep and Union official resources away from advising and representing members on day-to-day workplace issues.

The requirement to re-run this process every five years is likely to lead to a repetitive cycle of lost productivity, bringing with it reduced economic performance and increased costs for businesses. This proposal is the quintessential definition of tick box, red tape, regulation offering no demonstrable benefit, purpose or requirement.

8. Impact on Political Campaigning Over Sector-Wide Issues

Usdaw's political campaigns and lobbying have focussed on issues which are sector-wide issues affecting the workplaces and businesses that we organise in. This is important campaigning on behalf of our members over legitimate concerns.

These issues include:

- Sunday trading: supporting the existing six hours of Sunday opening.
- Opposing massive tax credit cuts: that would have impacted on the ability of staff to manage financially on existing wages.
- Opposing 'claimant conditionality' on part-time workers on Universal Credit which will be extremely stressful for part-time staff and limit their flexibility to do different or additional hours of work, to the detriment of their main employer.
- Usdaw's 'Freedom From Fear' campaign has moved the issues of retail crime and violence massively up the political agenda of all parties including pushing for a new law to protect shopworkers.
- Opposing cuts to Criminal Injuries Compensation: seeking to protect the statutory compensation for victims of assault.

9. Impact on Number of Members Contributing to the Political Fund

It is difficult to estimate how many Usdaw members would opt into the Political Fund on the basis of the proposals in the Bill. However, from experience of other paper-based mailings requiring a response, the typical turnout is between 5% and 9%.

A mailing to individual members to ask them to sign and return a form in order to opt into the Political Fund is a process for which it will be difficult to explain to members why they need to do this and it is something they have not had to undertake before.

It is therefore highly likely that there will be a lower turnout response to the request to the letter asking them to sign and return the form than we have seen from other mailings:

- **Election of Union President:** in the latest election in February 2015, 21,230 members participated in the ballot, a turnout of less than 5%.
- **Political Fund Ballot** of September 2013, the total turnout was 11.2%, with 42,425 (93.1%) supporting the continuation of the Fund and 3,141 (6.9%) voting against.
- **Labour Leadership elections** - 15,202 Usdaw members voted in the Labour leadership ballot of 2010, a turnout of 4.3%. In the Labour Leadership election of 2015, to be entitled to a vote through Usdaw, members had to complete a form to sign up to become individual Labour Supporters; around 6,000 members did so.

Union of Shop, Distributive and Allied Workers—written evidence (TUP0010)

Based on the figures above, Usdaw's best estimate for the number of members who would sign and return a written form is similar to the number who voted in the recent Presidential election - around 5%.

With a concerted campaign in workplaces, involving our workplace representatives reminding members, we may be able to recruit a further 20,000 or 5% over the next few months, leading to 10% in total.

Whilst the opt-in rate is much higher in Northern Ireland at 40%, this is on the basis of members opting in when they are recruited to the Union. This is a far more practical method of speaking to members about the Union's political affiliation, at the point at which they join Usdaw. 90% of Usdaw members are recruited through face-to-face discussions with union representatives, so they have an opportunity to explain issues and discuss any areas of concern, with the member having the final choice of whether to opt-in to contribute to the Political Fund.

10. Impact on Labour Party Funding

Usdaw's Political Fund costs 10p per week, with each member contributing £5.20 if they are in membership for a full year. In 2015, the fund had income from Political Fund contributions of £2,159,661.

Usdaw affiliates to the Labour Party nationally on the basis of the membership of the Political Fund, so the cost of affiliation alone is £3 per year per member: £1,242,774 in total, or 57.5% of the fund. In addition, regional and local Labour Party affiliation cost £50,033 in 2015.

A further £408,744 was paid in donations to Labour from the Union nationally, regionally and from local branches. £267,877 costs of Labour Party Conferences, of which £136,145 went directly to the Labour Party in terms of delegate fees, room hire and exhibition stand costs.

Total payments direct to Labour were therefore £1,837,696 or 85% of income

In addition to these contributions, election materials were produced for use by both union members and Labour Party candidates. The leaflets, policy booklets, balloons, stickers and carrier bags which were used by the Labour Party were included on the Union's return of Third Party expenditure which totalled £92,150.

Both direct and indirect contributions to the Labour Party therefore totalled £1,929,846 or 89.4% of Usdaw's Political Fund.

The majority of the remainder of the Fund is used for organising conferences with political speakers so that Usdaw members can get involved in political discussion, and both hear from speakers and give their views.

Part of the Fund is also used for Usdaw's campaigns and lobbying on issues such as Sunday trading, tax credit cuts, and Freedom From Fear.

11. Full Financial Consequences of Clauses 10 and 11

Usdaw believes that, by the end of the first year of operation of the new rules, the number of members opting into the Political Fund will fall to less than 10% of those who currently contribute. Income to Usdaw's Political Fund will therefore fall to: $42,000 \times \pounds 5.20 = \pounds 218,400$.

With costs every 5 years of $\pounds 224,732$, plus knock-on organisational costs that will impact on Union membership, we believe that the costs of the system proposed are disproportionate to the Political Fund income that would be generated.

As members leave Usdaw at a rate of around 18% per year due to high turnover of staff in the sectors we organise, average membership length is 4.3 years. The Political Fund income per member is therefore on average $\pounds 22.36$ if they contribute for the whole period of their membership. However, the cost of recruiting that member to the Political Fund is $\pounds 5.35$ or 24% of their income.

Usdaw believe this is not only a disproportionate cost, but will impact even more heavily on Labour Party funding.

If the number of members contributing to the Fund was higher, then the total recruitment costs will also be higher.

From an annual contribution to the Labour Party of $\pounds 1,929,846$, Usdaw's Political Fund would be shrunk to a total of $\pounds 218,400$ per year.

Of this, an average of $\pounds 44,946$ a year would be spent in administration of the system, leaving $\pounds 173,454$ net annual income to the whole Political Fund.

Even if 100% of this income were given on affiliation and donation to the Labour Party, the Party's income would drop by $\pounds 1,756,392$ or 91% from the impact on Usdaw alone.

Conclusion

Usdaw believe that the impact of the Trade Union Bill as currently framed to apply retrospectively and to require all members to opt in every five years with a paper only system, is vastly expensive, bureaucratic and inefficient. As a result, the provisions will lead to most members not opting in.

The Political Fund and the amount received by the Labour Party will be impacted enormously.

John Hannett
General Secretary

Union of Shop, Distributive and Allied Workers—written evidence (TUP0010)

Usdaw

10 February 2016

Union of Shop, Distributive and Allied Workers—supplementary written evidence (TUP0029)

Introduction

Usdaw has two main concerns on Clause 11:

1. Usdaw believes that Clause 11 will impose highly disproportionate reporting requirements on trade unions. The vast majority of trade unions' Political Fund spending is already subject to strict reporting requirements, and this clause requires a different set of reporting criteria for the same information.
2. The main class of information that would become subject to new reporting requirements is expenditure on delegates to political party conferences. We are also very concerned that the level of detail required will reveal personal information about our members as set out below.

Usdaw understands and wholeheartedly accepts the need for transparency over how political campaigns are funded. However, such a need for transparency clearly should not extend to providing detailed information on the costs of hosting a conference. Usdaw, as a large organisation, frequently negotiates preferential rates with various companies when hosting conferences or other events with the terms of such agreements remaining confidential between the parties. If the Government were indeed to intervene and require that the terms of such arrangements be publicly divulged, Usdaw is likely to be unable to agree such terms in the future. The organisations with which Usdaw agrees such terms could also have their market competitiveness under threat.

Usdaw has seen no evidence or argument that trade union political funding is not already entirely transparent.

- Details of a trade union's political expenditure are already publicly available.
- Trade union political donations, like donations from many other sections of society, are already subject to clear reporting requirements to the Electoral Commission.
- And, a trade union with a Political Fund is required to submit an Annual Report of the Fund to the Certification Officer.

The existing requirements not only ensure that Usdaw members, as well as anyone else, can clearly see how Usdaw uses our Political Fund, they also enable members to use that information when deciding whether to contribute to the Fund. Trade union political expenditure is already far more transparent than any other form of political funding and requiring a union to submit an annual, line by line, set of accounts is an unnecessary regulatory burden that is not seen anywhere else.

1. Proportionality

Union of Shop, Distributive and Allied Workers—supplementary written evidence
(TUP0029)

Clause 11 requires that every union with political expenditure exceeding £2,000 a year (ie practically every union), should include on their return to the Certification Officer full details of each item of expenditure from the fund, including the recipient, the amount paid and the nature of the expenditure.

The political objects under S72 of TULRCA to which this applies are:

- (a) on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;
- (b) on the provision of any service or property for use by or on behalf of any political party;
- (c) in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the union in connection with any election to a political office;
- (d) on the maintenance of any holder of a political office;
- (e) on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;
- (f) on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.

Besides the 25 page return to the Certification Officer, including income and expenditure by the Political Fund, that unions already make, almost all of the expenditure is already subject to detailed reporting requirements.

Spending under TULRCA S72 part (a) and (b) are covered by PPERA and are already fully reported on a quarterly basis by the Labour Party to the Electoral Commission. The Electoral Commission keeps full records of donation by donor, so each union's contributions are already fully reported and transparent.

Money spent under TULRCA S72 part (f) is considered to be third party spending, and is subject to strict limits and stringent reporting requirements to the Electoral Commission.

The amounts that Usdaw will need to report, but which are not already reported, will be:

- Very small and occasional spending on leaflets or posters for Union noticeboards to encourage members to register to vote or obtain a postal vote - probably maximum £1,000 a year.

Union of Shop, Distributive and Allied Workers—supplementary written evidence (TUP0029)

- Very small and occasional support in selections. If an Usdaw member is successful in getting onto a shortlist for a Parliamentary or other national level election, Usdaw assist them in the production of a leaflet and a mailing to all Labour Party members in the constituency. This ensures that they can compete with more wealthy candidates. Usdaw has supported four such candidates in the last five years. The maximum Usdaw will spend in any constituency is £1,000, however most candidates spend less.
- Spending on Usdaw members who are elected onto the Union's delegations to Labour Party conferences. These are ordinary Union members who are interested in politics and want to find out more through attending a regional or national Labour Party Conference.
- Members' loss of wages that is legitimate expenses claimed as members would otherwise be unable to afford to take the time off work to attend the conference. This would mean we were effectively publicising their rate of pay - an unnecessary invasion of privacy.
- Members' travel expenses - often members claim for a train fare paid in advance, then for any taxi fares after the conference when they have the receipts. Any members with mobility problems often need to take more taxis and would potentially feel embarrassed if this were to be publicised. They could also be open to unfair criticism for what some people may see as excessive spending. This would act as a further disincentive to members with a disability participating in politics. There are already considerable barriers and under-representation of disabled people in politics; new regulations should not exacerbate this.

Cost of Compliance

The estimate in the Impact Assessment that these reporting requirements would take one day by a very junior member of staff is a serious underestimate. The level of reporting required will be similar to the current Third Party Spending Return. This return currently takes a senior member of staff around two weeks to complete to the required level of accuracy with a comprehensive amount of information. With the potential financial and reputational damage the Union could suffer as a result of accidentally inaccurately completing such returns, Usdaw is unable to allocate this work to a junior member of staff.

Bearing in mind that almost all spending is already reported, and no clear rationale has been provided to include the additional, ie conference delegate expenses, Usdaw urges the Committee to consider whether there is any need for Clause 11.

John Hannett
General Secretary
Usdaw

UNISON—written evidence (TUP0014)

1. UNISON is the leading public service trade union representing over 1.3 million members, over one million of them women, working across local government, the health service, education, the voluntary sector, police and probation, the utilities and for private companies.
2. UNISON is unique among trade unions in having a political fund which has two sections, one the Affiliated Political Fund which is affiliated to the Labour Party and the General Political Fund which funds UNISON campaigning independent of any political party.

Members have a clear choice between joining a fund affiliated to the Labour Party or not. They can also opt out or transfer between funds whenever they wish. This structure has existed since the formation of UNISON in 1993 reflecting the political traditions of the partner unions which merged to form UNISON. The Affiliated Fund carried on the tradition of links to the Labour Party which COHSE and NUPE had since the party was formed. The non party campaigning General Political Fund had been established in 1987 following legal action against NALGO's Make People Matter public service campaign, which had been deemed to be 'political'. This led to NALGO recognising the need to establish a political fund so that it could undertake such campaigning.

3. The General Political Fund has around 800,000 members, the Affiliated Fund 400,000 and nearly 100,000 members do not contribute to the political fund. Members accept that as part of the union's function to represent and protect them a key element is to campaign in the public and political spheres. Members also recognise the long direct relationship some unions have had with the Labour Party where policies are promoted that will help them. With the ability to opt out at any time for those who wish, there is no pressure from members to change the political fund arrangements. Indeed these arrangements have to be agreed by all members every ten years through the Political Fund Ballot which is overseen by the Certification Officer. Ballots in 1995 and 2005 confirmed this arrangement and our most recent ballot at the end of 2014 agreed our political fund with 87% voting in favour.

Will Clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

4. It is a major change to the operating arrangements of trade union political funds whose effect will not only be to reduce the numbers contributing to the funds, and so reduce the ability of unions to campaign in the public arena, but also through the affiliated unions it will have a huge impact on the funding of the Labour Party. No other party will be affected. It will have serious implications for the leading opposition party and therefore impact on the democratic accountability of the Government and on the ability of Labour to fight election campaigns on a near to equal footing.
5. In the case of UNISON, members have made a clear choice as to contributing to the Affiliated Fund linked to Labour. The retrospective nature of this Bill rips up that agreement with our members. The very limited transitional arrangements of requiring renewed agreement within three months in writing provides an almost impossible task for unions to undertake and will in reality undermine the political funds in many unions, particularly the affiliated unions with a diverse working class membership.

6. UNISON currently has 1,200,000 members in the two sections of our political fund. As the Bill is retrospective rather than just for new members we will have to contact all of them again about their membership. All evidence suggests that it is likely that over 90% will not respond in the manner required by the Bill – in writing within three months. These figures are based on the experience of response rates to general mailings not just in unions but across the board for a range of organisations who undertake mail shots. Most of our members have their connection with the union through face to face contact in their workplace or local branch and do not respond to mailings to their home address.
7. An opt-in process also changes the perspective of members to the work of the political fund. They expect the union to campaign as part of our normal activity. Suddenly asking them to pay what would be seen as a separate additional amount for the campaign work and affiliated organisation of the political fund is not something most will respond to. This will mean that the union's political fund will lose about £6 million per year, each fund losing £3 million. It will also cost the union several millions of pounds in mailings and staff time.
8. The law requires members who opt out to either be reimbursed the amount of their membership fee that goes into the political fund or not to pay the political fund element by their membership rate being adjusted. This will mean the union having to undertake the task of paying back to members who do not opt-in the relevant small amounts due to them or changing every member's subscription rate.
9. UNISON has a sliding scale of 11 membership rates related to earnings and the amount going into the two sections differs, with the Affiliated Fund element being 6.5% and the General Political Fund being 3%, so there could be more than 30 rates of payment to be calculated for reimbursement or for subscriptions levels. The ability to do this with direct debits and the willingness of employers to undertake this complexity with check off is problematic. Given this task it may call into question the whole structure of UNISON's political fund for the future.
10. The transitional arrangements require this to be done in three months and for the member to respond in writing. In addition, this agreement by the member will have to be repeated every five years. These requirements are made, one would have to conclude, with the intention of making it difficult to get members to opt-in and close down the 'political' campaigning work of trade unions and their funding and participation in the Labour Party. No other organisations are subject to such onerous conditions. The work and spending of the political funds is subject to legislation and is overseen by both the Electoral Commission and the Certification Officer. The Lobbying Act also brought in new reporting requirements and reduced by half the money that third parties such as our General Political Fund could spend during election periods. Whilst we believe that both Clauses should be dropped from the Bill, if it were to pass the requirements should not be retrospective on current members who have made a clear choice.
11. The framework of the opt-in to be done within three months in writing is not credible or possible. In UNISON's case our rulebook is very clear about the membership processes for the two sections of the fund and their organisation which has been agreed by annual

conference and is agreed and overseen by the Certification Officer. The rule book changes and the agreement of the Certification Officer could not be done in this time frame. The various proposals by the CSPL regarding opt-in proposals have always suggested a possible timeframe of five years. The political fund ballot is every ten years. The three month period is untenable.

12. As stated earlier, the framework proposed by the Bill would reduce membership of our political fund by over 90%. In the case of UNISON's Affiliated Fund our current income of around £3 million per year would be reduced to less than £300,000.
13. At present we pay the Labour Party an annual national membership affiliation fee of £3 for each of the 430,000 members who choose the fund. This amounts to £1,290,000.

We also pay affiliation fees for the number of members relevant to the Scottish, Wales and English regional party organisations and to local CLPs. Membership payments are recorded as donations by the Electoral Commission. Other direct donations are made to the party to support its election campaigns. For the General Election in 2015 we donated £1 million nationally and further amounts to regions. There are now significant elections every year and so we make donations for these campaigns - for the Scottish Parliament, Welsh Assembly, Mayors, PCCs, EU elections and local government elections each year. All of this is declared officially and is in the Party returns to the Electoral Commission. So the national affiliation fees to the party would be reduced by £1,150,000 per year and also the regional affiliations by £60,000. Election donations average out over the five year cycle nationally and regionally to around £550,000 per year and would be reduced by around £500,000. On average the UNISON Affiliated Fund support to the Labour Party would be reduced by £1,700,000 per year.

14. The Committee should note that the Affiliated Political Fund is not just a fund that provides money for the Party. We have our own democratic structures of elected lay members which reflect those of the Party with national and regional committees. We also have our own regional and national meetings to discuss policy and elect delegates to the Party – at constituency level, to party regional conferences and boards and to the National Conference and Labour NEC. Our representatives being involved at every level of the Labour Party broadens the democratic involvement of many working people in the political life of this country when so many feel excluded. It also brings to the fore policies such as the National Minimum Wage, maternity and paternity rights and health and safety matters among many others which union members have called for. It will also affect our joint work with socialist societies on issues such as equalities and the environment.
15. Our delegations to Labour conferences reflects our requirements that two thirds must be women and have reserved places for under represented groups so we add to the diversity of the party and widen the experiences that are heard. We also provide training and mentoring to support people to become councillors for their local communities and building on this have supported many of the 'working class' MPs at Westminster. Our fund pays for this work which allows ordinary lay members to have a voice in the Party and our wider democracy.

All this would be massively curtailed, or even ended, by the Bill's undermining of our political fund. It would fundamentally change the social make up of the Labour Party and bring into

question its current, and historic, structure of being a party of individual members and affiliated societies and unions.

16. The changes to the Labour Party rules following the Collins report are significantly different to those of the Bill. What it did was to make it a requirement that members of union political funds actively made a choice that they agreed some of their payment was to be used for the affiliation to the Labour Party. Under these party rules, union political funds may still have an opt-out system. Unions have flexibility in how they organised their political fund and the member agreement framework. In this respect it followed a similar model to that of UNISON where members have a choice as to being 'affiliated' to the Labour Party or not. Our fund meets the Collins requirement. The Bill is prescriptive in that it moves everything to an opt-in political fund system. It also differed in that the transitional period was for five years and various forms of communication could be used for that agreement to be recorded, not just in writing. Also, the exercise did not have to be repeated every five years.
17. The Bill will significantly affect the union's wider involvement through the reduced funding to our General Political Fund:
 - i. *Voter registration.* At the 2010 General Election the General Political Fund (GPF) supported extensive 'register to vote' campaign activity. This included helping union branches to set up workplace level stalls and events - stressing the importance of participation at the General Election, encouraging the disengaged to register to vote, and informing those who worked shifts and/or who led very busy lives how to apply for a postal vote. These activities, and the material that supported them, were completely non-partisan.
 - ii. *Promoting political engagement.* At the 2010 General Election the GPF paid for a programme of member communication that sort to set out in easy to understand letters, magazines and electronic communications (including an app and social media advertising) the key issues at talking points at the election. Again these communications were non-partisan. A follow-up survey revealed that the communications were well received and found to be useful and informative by members.
 - iii. *Combating racism and the political far right.* Since the formation of the union in 1993, the GPF has supported a range of work aimed at combating extremism and the far right. This has included: community and national campaign activity during elections against the NF and BNP; support for campaigns that promote community cohesion and tackle prejudice and organisations such as the EDL
 - iv. *Extensive support for equalities campaigns.* The GPF has provided consistent funding for a wide range of equalities activities. This has included support for pride and barrio events in all parts of the country, funding for important educational resources provided by organisations such as Show Racism the Red Card and research funding for organisations like the Fawcett Society and their campaign to advance women's rights. In Northern Ireland UNISON GPF's support for the Equality Coalition and the

broader Human Rights agenda has contributed significantly to civil society engagement in the peace process.

18. The broader effect of Clause 10 on party politics will be significant. UNISON's political funds are used to campaign and lobby at local, regional and national levels on work and public services issues. They have supported parliamentary lobbies, fringe events and exhibition space at a range of different party conferences, including SNP, Liberal Democrat and Labour (the Conservative Party turned down an application for exhibition space that would have showcased non-party aligned campaigns in 2014).
19. To diminish this capacity, which is already subject to considerable regulation during elections (most recently through the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014) will risk all but silencing the voice of organised working people from day to day political debate. Quite apart from this, it should be noted that union political funds play a significant role in funding the training, structures and support mechanisms that get working women and men elected into parliaments, assemblies and council chambers across the UK. At a time when there is growing public disaffection with what many perceive to be an unrepresentative professional political elite, reducing the capacity of trade unions to get working class people elected risks creating further alienation from the political process.

If the two clauses will have such an impact, how would that relate to the CSPL report and party funding reform?

20. The CSPL report by Kelly, and the previous Hayden – Philips report, contained proposals regarding union political fund opt-in requirements that were part of a wide package of party funding reforms that would meet public concerns while treating all main parties equally to maintain a fair playing field. Recognising the reduction in funds for the main parties by their proposals, additional state funding was suggested along with reduced election spending caps. The major changes proposed were not enacted because it was accepted that change needed to be with consensus between the parties. As well as being part of a wide reform package it also proposed a possible transition period of five years.
21. The current Bill is a unilateral proposal by one party in Government to make changes to union structures that will have a fundamental effect on the funding and organisation of one other party, the main opposition Labour Party. Unions are already subject to more regulation and oversight than any other organisations that operate in the civic and 'political' arena. As well as electoral legislation union spending is overseen by the Electoral Commission and the Certification Officer in regards to our political funds The recent Lobbying Act particularly affected the operation and reporting of the UNISON General Political Fund and reduced its spending as a third party in election periods.
22. The Government's own independent Regulatory Policy Committee view of the impact assessments produced for the Bill said it added unnecessary burdens and red rated it.¹³³ The proposals on political funds would be an additional burden.

¹³³ <https://www.gov.uk/government/collections/red-rated-impact-assessment-opinions-since-may-2015>

23. Other donors to party funding are much less regulated. Companies can donate following a one off vote of shareholders at the AGM. Non-incorporated associations without shareholders have no restrictions. However, the profile of political donations has changed over the years with that for the Conservatives coming much more from rich individuals or private companies as well as funding coming through other bodies than from party members. Here there is little regulation in comparison to that faced by trade unions.
24. It has been the accepted since the 1950s that changes to the basic framework of party funding should be by consensus of the leading parties and be seen to be fair. This was the position of Churchill, Thatcher and others in the Conservative Party until recently. It was also the accepted basis of the Hayden Philips review and the Kelly report. The other leading political parties still accept this convention. Indeed, Labour introduced Short money to support the policy work of opposition parties recognising that democracy required a level playing field for Governments to be held better to account and in 1999 significantly increased it when the Conservative Party had financial problems. It is to be noted that the current government has recently said it will cut Short money by 19% to opposition parties while itself increasing its own spending on special advisors.
25. The departure from this convention on getting agreement on changes to party funding will have major consequences. It will undermine just one party who are the main opposition and make day to day running of the organisation difficult leading to significant staff cuts. It will undermine the ability of Labour to fight elections on a fair basis by cutting off funding from Labour's main donors, the affiliated unions, for election campaigns at all levels of representation from councils to Westminster and devolved administrations.
26. Through the Conservative Party taking unilateral action that attacks a key funding stream of the opposition Labour Party it will make future reform more difficult to reach through consensus. It will give financial supremacy to one party over the others which means there is no pressure to reach common agreement. Government by a different party would have the example now being set of taking action against the funding sources of other parties. The matter could become a tit for tat battle between parties that undermines our democratic system and bring politics into greater disrepute.
27. The requirement in clause 11 for unions to provide more details of their political expenditure in their annual returns to the Certification Officer is yet another bureaucratic burden that other organisations do not face. UNISON is strongly of the view that no purpose will be served by providing more details of political expenditure to the Certification Officer. Returns to the Certification Officer and, during and after controlled spending periods, to the Electoral Commission, already mean that union political expenditure is amongst the most transparent in politics – and certainly more transparent than political spending by non-incorporated associations and the funding of campaign organisations on the right such as Tax Payers Alliance.
28. The low ceiling of £2000 would mean reporting on a host of small scale expenditure such as hotel accommodation for delegations, training events, equipment, regional forums, room hire, booking stands at conferences, local campaigns about libraries or hospital closures. This

UNISON—written evidence (TUP0014)

is regulation and reporting taken to an extreme degree. All Affiliated Fund membership fees and donations to Labour are declared by the Party to the Electoral Commission.

11 February 2016

Unlock Democracy—written evidence (TUP0004)

Unlock Democracy is a grassroots campaign for fair politics, accountable government and citizen engagement.

1. Will clauses 10 and 11 of the Trade Union Bill have an impact on the finances of political parties?

1. Clauses 10 and 11 of the Trade Union Bill will have a significant negative effect on the funding of the Labour Party, while leaving other parties unaffected. We estimate that Labour's income from trade union donations will fall by around £6m a year.

2. Switching trade union political funds to an opt-in system will significantly reduce the numbers paying the political levy. At present, 90% of trade union members do not choose to opt out of paying the political fund. In Northern Ireland, where trade union members must opt in to paying union political funds, 30% of union members choose to opt in. We see no evidence to suggest that the proportion opting in will be higher than this level in the long term if the Bill is passed in the UK. In fact, since the system in Northern Ireland only requires members to opt in once, rather than every five years, the level in the UK is likely to be lower. The extremely short three month period which trade unions will have to secure opt-ins in writing means that this level is likely to be significantly lower in the first years of the new system.

3. This estimate of the numbers who will choose to opt in represents a two thirds reduction in the size of trade union political funds. We believe there will be a corresponding reduction in the level of trade union donations to Labour. On this estimate, the money available in the political funds of unions affiliated to Labour will fall from £22m (2014) to around £7m a year. Of the £22m raised in 2014, £10m was donated to Labour. We would expect this to fall to £3.3m, a reduction of over £6m a year.

4. Affiliated trade unions contribute to Labour both through individual trade unionists' affiliation fees and through donations from political funds. Since the reforms agreed in 2014, there already exists an opt-in system for individual trade unionists to affiliate to Labour. However, since these reforms, the majority of trade union funding to Labour now comes through donations whose size is determined by trade union leadership rather than individual members.¹³⁴ If the size of trade union political funds falls, affiliated trade unions will have to cut both their donations to Labour and the scale of their other political activities. These unions are unlikely to increase the proportion of their political funds that they give to Labour at the expense of their other political activities. We therefore expect the proportion of political funds donated to Labour to remain roughly constant.

2. If the two clauses will have such an impact, how would that relate to the recommendations of the CSPL report and/or party funding reform?

5. The reduction in trade union funding to Labour would dramatically shift the balance of party funding in the UK. In electoral terms, the principal beneficiary would be the Conservative Party, whose funding would be unaffected by the changes in the Bill. These changes would widen the funding gap between the two largest parties, with serious

¹³⁴ <https://next.ft.com/content/05870dfa-b129-11e4-9331-00144feab7de>

implications for the fairness of future elections. By handing one party a significant funding advantage, the changes to union funding would also reduce the incentives for parties to reach agreement on comprehensive party funding reform in the future. We believe there is a strong case for reforming trade union donations to Labour as part of a wider package of party funding reform, but proceeding with these changes on their own would worsen existing problems in UK political party finance. We therefore recommend that the government remove the political funding element of the Trade Union Bill and call on political parties to reopen cross-party talks on party funding.

6. The 2011 CSPL report on political party finance proposed reforms to reduce the influence of big donors - whether trade union, individual or corporate - on political parties. Clauses 10 and 11 overlap with some of the recommendations made in the report relating to trade unions. However, these recommendations were merely one component of a comprehensive package of reforms designed to reduce the influence of big donors to political parties. The report was very clear on this issue:

It is important that proposals are regarded as a package. Failure to resist the temptation to implement some parts, while rejecting others, would upset the balance we have sought to achieve. (CSPL 2011, 89)

7. Clauses 10 and 11 would reduce trade union funding to Labour while wealthy individual or corporate donors would be unaffected. This would hand the Conservative Party, who receive a much larger proportion of their donations from wealthy individuals and private companies, a considerable advantage during an election campaign. This one-sided approach to party funding reform is the antithesis of the principle of fairness which underpins the CSPL report.

Fairness: The system should be fair to all parties, as far as possible should have regard to their different histories and structures and should not unduly discriminate against particular candidates or parties. (CSPL 2011, 28)

8. The funds available to a party at an election campaign should reflect the breadth of its support in society, not the depth of its relationships with a handful of big donors. Free and fair elections require a level playing field for all parties. If these changes go ahead, the next election will be fought with rules that hobble one party's finances before the campaign starts.

9. We also find the proposals run counter to the CSPL report's principle of integrity. In the absence of wider party funding reform, these changes would encourage Labour to seek more large individual and corporate donations in order to make up the funding shortfall. This would increase the influence of big donors and the potential for policy capture.

10. If the Trade Union Bill is passed with Clauses 10 and 11 in their current form, we believe that agreement on comprehensive party funding reform will be less likely in the future. The changes to trade union funding will hand the Conservatives a significant funding advantage. They will have little incentive to compromise or reach agreement on changes that will reduce their advantage. If these changes go ahead, securing cross-party agreement on further party funding reforms will be like playing poker where one player has their cards face up. With these clauses, the government have succeeded at reopening the debate on party political finance. Support for party funding reform is higher than ever, with a recent poll for

the Electoral Reform Society reporting 77% believing that big donors have too much influence over our political parties, and 57% supporting a publicly funded party funding system, up from 41% in 2014. This is the perfect opportunity to reexamine party funding as a whole.

11. We would warn against viewing Clauses 10 and 11 as a step towards the CSPL recommendations. The switch to an opt-in system for trade union political funds appears to implement one of the recommendations in the CSPL report. However, because the Trade Union Bill has not been explicitly designed as party funding legislation, Clause 10 and 11 have quite different effects to the system proposed by CSPL. If legislation were introduced to implement the remainder of the CSPL recommendations, there would need to be further changes to trade union political funds.

12. The aim of the opt-in system proposed in the CSPL report is to ensure that trade union donations represent an active choice on the part of individual trade union members to donate to a political party. If these conditions were met, trade union affiliations would be regarded as an aggregation of individual donations rather than a single large donation, thus avoiding the proposed £10,000 donation cap.

13. These conditions are not met by Clause 10 and 11 of the Bill. The 2014 reforms already ensure that individual affiliation fees are the result of an active choice on the part of the individual member to affiliate to Labour. However, the majority of trade union contributions come in the form of donations from political funds which are made at the discretion of affiliated trade union leadership. This would not change under the new opt-in system. Clauses 10 and 11 of the Bill do not give individual trade union members an opt-in on whether to donate to a political party, but an opt-in on whether to contribute to a political fund. The decision about how much of that political fund is donated would remain in the hands of union leaders. Changes to trade union funding of political parties are a vital element of party funding reform, but they must be explicitly designed with the aim of achieving transparency in donations.

Alexandra Runswick
Director, Unlock Democracy

9 February 2016

Welsh Government—oral evidence (QQ 75–79)

Examination of Witness

Leighton Andrews AM, Minister for Public Services, Welsh Government (via video link)

Q75 The Chairman: Mr Andrews, can you hear me?

Leighton Andrews AM: I can hear you, Lord Burns.

The Chairman: Thank you very much. It may seem on your screen that there are only three of us here, but in fact a good number of us are gathered around the table. Thank you very much for speaking to us. Would you like to make an introductory statement?

Leighton Andrews AM: I would just say thank you for inviting us to give evidence. Perhaps I may give you a flavour of the context of the Bill as it is seen in Wales. We as a Government believe that the Bill is damaging, that it is divisive, that it risks undermining public services and economy, and that it raises serious constitutional issues. The UK Government believe that the Trade Union Bill relates to employment and industrial relations issues, which are not devolved. The Welsh Government are clear that that is not the case, and indeed the leaked letter from the BIS Minister Nick Boles to Oliver Letwin and Chris Grayling published earlier this week demonstrates that the UK Government's lawyers agree with us. I do not know whether that leaked letter has been entered into evidence to your Committee, but it is certainly worth reading.

The National Assembly for Wales voted against a legislative consent Motion to allow the UK Government to legislate on our behalf on Clauses 3, 12, 13 and 14, but all the clauses in the Bill will impact on Wales, including those we are discussing today, Clauses 10 and 11. I should also say that three of the four political parties in the National Assembly, the Labour Party, the Liberal Democrats and Plaid Cymru voted against these clauses. I cannot speak for the Scottish Government, of course, but it is a matter of public record that I have regular conversations with my counterparts in the Scottish Government, and they also oppose the Bill.

The clauses that the Committee is considering will have a significant impact on Labour Party finances, reducing Labour Party income by up to £8 million a year. There are specific issues with these clauses. The first is the unrealistic timescale. Unions will have just three months to re-recruit their members, which is clearly an enormous administrative task, and they will have to do that every five years. In contrast, the Committee on Standards in Public Life noted in

2011 the need for a proper transition period of four years. Secondly, we do not consider that we have had a full explanation of the impact of these clauses. The impact assessment states that there will be no change to the number of members contributing to political funds because of the Bill. We dispute that. Experience from Northern Ireland and the Committee on Standards in Public Life suggests that there will be a significant reduction in the numbers affiliating.

Even if these two key issues are addressed, the clauses are still fundamentally unfair. This Bill is party funding legislation through the back door. It will have a significant impact on the Labour Party in Wales as well as throughout the UK while not addressing the significant issue of broader party funding such as donation caps or spending limits. We believe that the Government are going against the Churchill convention, which is the long-standing consensus that the party of government should not abuse its power by forcing changes on other parties without their agreement.

Overall, we believe that the Bill is unfair, flawed and should not be pursued.

The Chairman: Thank you very much. Are you able to tell us what the main sources of political party funding are in Wales?

Leighton Andrews AM: There is a variety of sources, which are probably common across the UK: individual donations, corporate donations, sponsorship from various sources, legacies, and a variety of fundraising activities both large and small. That is as common in Wales as it is in the rest of the UK, and that means of course that Wales is not isolated from the impact of the Trade Union Bill as trade union contributions are automatic here in Wales.

The Chairman: Thank you very much. Lord Whitty.

Q76 Lord Whitty: Would you say that there is any noticeable difference in the impact on political parties in Wales? Is it any different from the rest of the United Kingdom? Also, if we move to an opt-in system, do you have any views about the level of take-up that there would be by trade union members in Wales? After all, Wales has been a traditionally Labour area. Would you expect to see a slightly higher take-up than in Great Britain as a whole?

Leighton Andrews AM: I think it is fair to say that it is not only the Labour Party in Wales that has had trade union donations, but it would impose something of a double whammy on the Labour Party in Wales. First, trade unions do not have the same level of resources at the devolved level in order to organise members to opt in; and, secondly, if affiliations going to the Labour Party at the UK level were to fall significantly, that would have a proportionately

negative impact on the funds distributed to Welsh Labour. We think that this will have an impact on devolved democracy.

I know that some have argued that if there was a drop in the numbers affiliating because of opt-in, unions could simply increase the size of their affiliations or donations. But if the total size of the political funds of the affiliated unions were to drop from over £20 million, as it was in 2014, to £2 million or £3 million, they simply would not be able to increase their affiliations to cover that overall loss. The overall loss is estimated to be around £8 million for the Labour Party. We work with colleagues in other parts of the United Kingdom in UK general elections, and in other campaigns of course, so it will have an impact on us here in Wales.

Q77 Lord Richard: Mr Andrews, good morning. Is there any case for moving to an opt-in system for trade union political funds, either now or in the future?

Leighton Andrews AM: The issue really is that the clauses are designed to cut off trade union financial support for the Labour Party. As the law will be backdated, it will affect 5 million current members in union political funds, and you will have their next contributions. I would argue that trade union members already enjoy what might be called a triple lock of protection on political funds. First, each member can opt in or opt out at any time. Secondly, union members all get to vote every 10 years on whether their union should have a political fund. Thirdly, unions can choose democratically to disaffiliate from the Labour Party, and indeed some have done so. It is perhaps worth stating that there are 52 trades unions in the UK and only 13 of them affiliate to the Labour Party. Some are involved with and donate to other political parties, and we have seen that in Wales. From our point of view, this comes on the back of the attack on Short money to opposition parties, and we regard this as a vindictive measure. We know that about 10% of union members in Labour affiliated unions already opt out of the political fund, so we believe that union members are already protected.

Lord Richard: Have you had any views on the details of the opt-in scheme that is proposed in Clause 10? Is that a workable way of doing it?

Leighton Andrews AM: As the law will be backdated, the state is essentially changing a lawful membership contract agreed by two freely contracting parties, the union and the individual. First, it was our understanding that, according to the Solicitor-General, retrospective legislation should be introduced only where there is a clear public interest in doing so and where the proposed change does not contravene human rights. Given that there have been no complaints to the certification officer in the last 20 years, it is difficult to see how the public

interest is being served. Certainly if this change were to go through, we do not believe it should be retrospective and that it should apply only to new members.

Secondly, unions will of course have only three months in which to re-recruit members. Every member will be sent a form and will have to fill it in and send it back. We know that standard response rates to direct mail can be as low as 2%. This will also have to be done every five years. No reasonable transition time is allowed for in the Bill; three months is inadequate. Thirdly, unions will have to re-recruit in writing. It seems odd that in an electronic era that business should be conducted only through pen and paper.

There is also a question about whether someone might support paying into a political fund but not the collective affiliation to the Labour Party. I know that has been raised, but it entirely misses the point, since the in/out, opt-in/opt-out question does not resolve that. In fact it has already been addressed by the Labour Party with the reforms introduced under Collins, where each individual political levy payer must consent to their share of the collective affiliation. There are serious practical problems with these clauses as well as issues of principle.

Lord Richard: Thank you very much.

Q78 Earl of Kinnoull: Good afternoon, Mr Andrews. What do you think the future holds for the reform of party political funding if Clauses 10 and 11 are passed as is, and in the absence therefore of a wider package of reforms?

Leighton Andrews AM: It is very clear that we are not moving forward on the reform of political finance in a balanced way. This is a partisan, sectarian, vindictive and malicious measure. It has always been held that no legislative change that has a major impact on an individual political party should be introduced without all-party consensus. We believe that this is a major deliberate assault on the funding of the Labour Party and that there is no consensus. Certainly we as a Government wish to see party funding being considered in the round. The backdating proposals are particularly pernicious. Perhaps I may repeat, since I have this opportunity before your Lordships, that we believe that there are other significant areas of the Bill that breach the devolution settlement, as indeed the UK Government's own lawyers seem to be aware.

Lord Wrigglesworth: I wonder if I might pursue that a bit, because I am unclear what aspects of this you feel should be devolved. Could you say a bit about that?

Leighton Andrews AM: The issues that are of concern to us are the specific areas of the Bill that relate to public services and the provision for strikes in public services, the issues of check-

in and facility time. On that, the National Assembly, supported as I have said by three political parties, has been very clear. The leaked letter from the BIS Minister Nick Boles makes it clear that the Treasury Solicitor believes that the UK Government have “a very weak case” in relation to Wales on these issues. We have very good relations with the public service trade unions. There was no junior doctors’ strike in Wales yesterday, although there was a strike in England. Given that public services such as education, health, fire and rescue are devolved to Wales, it should be for the Welsh Government to set the terms of industrial relations in those areas, and clearly we believe that we have the legal powers to do so.

Lord Wrigglesworth: But on the aspects of political funding and the political funds of trade unions, which this Committee is considering, are there any aspects of that which you feel should be devolved?

Leighton Andrews AM: At present, political financing is a non-devolved issue. Electoral arrangements are still not devolved, although there are plans to change that. Certainly at this stage we would say, in the context that overall electoral arrangements are not devolved, that we are not seeking the immediate devolution of the laws relating to political financing.

Q79 Baroness Dean of Thornton-le-Fylde: Good afternoon. You have made a wide-ranging statement, which is helpful. We do not have a copy of the letter that you referred to, but hopefully we will get one. If Clauses 10 and 11 are passed in the absence of a wider package on party funding, what is your opinion for the future?

Leighton Andrews AM: I think it will lead to an unbalanced situation in relation to political funding overall. We would very much welcome a discussion on a proper analysis of political funding arrangements that is not conducted on a partisan basis. If you are going to look at trade union funding issues you need to look at corporate funding issues as well, and we would certainly be prepared to take part in that. But the outcome of these arrangements will be unbalanced. We would obviously be happy to make available to you the leaked letter, but it is in the public domain and I am sure that you will have access to it.

Baroness Dean of Thornton-le-Fylde: It is being indicated that we have a copy here.

The Chairman: Thank you. We will circulate it after this meeting. Are there any other questions? Mr Andrews, would you like to say by way of closing remarks anything that you have not had an opportunity to put to us so far?

Leighton Andrews AM: I think that I have covered everything, Lord Burns. Thank you.

Welsh Government—oral evidence (QQ 75–79)

The Chairman: Thank you very much for making yourself available. I am sorry that we were a little late, but we have had a busy morning.

Workers of England Union—written evidence (TUP0001)

The Workers of England Union are a new and relatively small Trade Union with ambitions to represent all types of workers in England.

The Workers of England Union submits that no Trade Union should be giving money into a political fund in supporting any political party. A Union's campaigning funds should be used to support campaigns which are in the Interests of its members.

The Workers of England Union therefore opposes all political party funding from Trade Union funds.

The proper purpose of a Trade Union has been lost sight of by the big established Labour supporting Trade Unions. A Trade Union should support its members and campaign on issues that in the view of the leadership and members of the Union are in the interests of that Trade Union's members.

In the alternative, contrary to our submissions, if Unions are to be allowed to continue to operate political funds then the Workers of England Union supports an annual cap on donations to any political party of £50,000. We also support the principle that individual members should have to opt in in order for it to be legal for the Union to use part of their subscription for their political fund.

As a general principle Trade Unions should not be affiliated to any one political party because all parties have at least some policies which are in the interests of Union members. Trade Unions should focus on campaigning on issues which are in the interests of their members.

This submission is made on behalf of the Workers of England Union by:-

Edward Bone, Union President
Stephen Morris, Union General Secretary
Robin Tilbrook, Chairman of NEC

6 February 2016