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**Making Work Pay: Consultation on creating a modern industrial relations  
framework**

Submission to the Department for Work & Pensions



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**About the CIPD**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our members.

**General remarks**

We welcome the government’s consultation on creating a modern framework for industrial relations. Having a voice at work can make a fundamental difference to people’s working lives. It can also bring benefits to the business in terms of better employee engagement, commitment and performance.

However, [CIPD research](#) across the UK shows that not all forms of voice are used equally: where employee voice is present, direct individual forms dominate. For example, over half (52%) of employers say they don’t use employee representatives to inform and consult their workforce, such as through a staff forum or trade union. This is a missed opportunity for employers to leverage the benefits of collective voice, and having a holistic framework that combines both direct individual forms of voice with collective ones.

With 2023 UK-wide trade union membership/density recorded at just 12.3% in the private sector, the majority of employers across a huge section of the economy have no firsthand knowledge of unions and how they operate in workplaces, let alone the potential benefits of this form of collective voice. Understandably, this lack of experience and unfamiliarity can lead to a lack of skills and confidence. It can also result in wariness on the part of some employers in terms of how they perceive trade unions. Therefore, it’s not surprising that CIPD research shows UK employer attitudes towards trade unions are mixed:

CIPD 2022 research on collective voice: employer attitudes to the trade unions: Source: 1,075 UK senior decision makers	Employers (%)
Direct, individual voice channels are more effective than collective, indirect channels in boosting employee participation and engagement	43
Working in partnership with trade unions can benefit the organisation	59
The trade unions still have the power to cause serious problems for the UK economy	58

Unions provide essential protection for employees from bad management	55
Unions are good at pursuing their own political agenda rather than simply looking after the interests of members	66
Unions are more relevant than ever during a time of economic downturn and increased redundancies	38

At the same time, many employers do appreciate the potential mutual gains that working with recognised trade unions can bring. [CIPD research](#) reveals an openness on the part of many to working with trade unions, with 59% agreeing that ‘*working in partnership with trade unions can benefit the organisation*’. Further, the majority of employers believe that unions provide essential protection for employees from bad management (55% compared with 22% who disagree).

**Legal changes in the Employment Rights Bill that are not covered in this consultation**

We respond to the issues covered in the government’s consultation below. However, some important legal changes contained in the Employment Rights Bill (ERB) are not covered in the consultation, which we believe are of real significance to the future of industrial relations. It’s also very important that all aspects of the government’s reform agenda and accompanying legal changes are considered when assessing their combined impact.

Therefore, we take this opportunity to provide feedback based on a CIPD survey of 1,176 employers carried out in September 2024, as well as a number of policy roundtables convened with our membership of HR professionals, and one-to-one interviews with a panel of senior CIPD members who are very experienced in the employment relations field.

**(1) Trade union recognition - Section 47 of the ERB**

We note the government’s stated intention to consult/engage further on lowering the admissibility requirements for the statutory trade union recognition ballot process, which we welcome.

However, the measures in the ERB are cause for concern for some of our members, as they will completely transform the recognition process and we are not convinced it will support the principle of trying to ensure there are workplaces with democratic mechanisms for employee voice. By reducing the thresholds to such a degree, in practice this could mean that a very small proportion of a workforce is in support of obtaining union recognition.

**(2) Section 2 of the Trade Union Act 2016 on turnout and voting thresholds for industrial action ballots**

Having consulted with senior CIPD members we are concerned that a complete repeal of Section 2 will not deliver trade unions a meaningful mandate to support negotiation and dispute resolution. Nor do we believe that a complete removal of the requirement for a 50% turnout level in an industrial action ballot will support in practice the espoused four principles, particularly in relation to proportionality, accountability and balancing the interests of workers, employers and the public. As



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one senior HR leader of a very large organisation commented: *‘So effectively that means in a bargaining unit of 100 workers, if only three voted and two were in favour of industrial action, you’ve got the valid ballot for the whole bargaining group, which can’t be right or equitable. So I do think the situation that we’re returning to is grossly unfair for employers and not representative for workers, and therefore, for me, that 50% threshold ought to be maintained or at least reduced, maybe to 40%.’*

(3) A new right for workers to be informed of their right to join a trade union - Section 45

Our survey finds that almost half (47%) support the obligation to inform new employees of their right to join a union (as part of their ‘Section 1 statement’) and to inform all staff regularly (26% neither support nor oppose, 20% oppose and 7% don’t know)

(4) Electronic balloting

The majority of respondents (54%) support the introduction of e-balloting (just 10% oppose and 22% neither support nor oppose).

## Our response

### A principles-based approach

*Question 1 - Do you agree or disagree that these principles should underpin a modern industrial relations framework?*

*Is there anything else that needs consideration in the design of this framework?*

Yes, we agree that taking a principles-based approach - based on collaboration, proportionality, accountability and balancing the interests of workers, employers and the public - is a good foundation to developing a modern industrial relations framework.

We are very supportive of the government’s aim to promote effective and meaningful dialogue between workers, employers and government in a tripartite social dialogue approach, and that a partnership approach should be replicated and encouraged at a workplace level. The 2024 joint [CIPD and Prospect policy paper](#) on *Strong partnership, good jobs, productive partnerships* makes the case for resetting employment relations in the UK. It underlines the urgent need to rebuild a mission of productive dialogue and shared understanding between workers and employers to enable effective change management and a renewed focus on mutual gains. This new emphasis on social partnership - industrial peace - and meaningful employee engagement can play a key role in helping organisations innovate and adapt to the multiple challenges facing them, for example as they seek to adopt new technology and manage competing demands on resources.



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However, it's essential that the government's legal and policy reforms reflect the four principles and we have some concerns that in practice some of the proposed statutory changes could undermine rather than reinforce them.

It's also crucial that the four principles of modern industrial relations and partnership working are reinforced through a Code of Practice that helps to bring the principles to life at a workplace level. There also needs to be oversight to ensure that both employers and trade union officials behave in a way that reflects the four principles. This would help to ensure that both parties conduct industrial relations in a way that is courteous and professional (see below).

We welcome the government's aims for 'modern industrial relations' set out in this consultation. However, they will only be achieved if the reforms are underpinned by an effective infrastructure. The role of the CAC, Acas and the Employment Tribunal are crucial to their achievement. Some proposals place greater responsibilities on the CAC, and the government will need to ensure that the CAC has the resources and expertise it needs to fulfil these when implemented. The same applies to Acas and the Employment Tribunal system. Acas collective conciliation and other dispute resolution and advisory services play a fundamental role in helping both parties to find mutually acceptable solutions, which is a far more preferable approach than moving too quickly to enforcement. Acas needs additional resources to ensure it can continue to support collective voice in the context of these reforms. Further, the Employment Tribunal system needs urgent attention and resources, given the very long waiting times.

**Question 2** - *How can we ensure that the new framework balances interests of workers, business and public?*

### **A code of practice and supporting guidance**

The recent spate of collective disputes across many UK public services are a sharp reminder of the need for organisations to build positive industrial relations. CIPD's advice is that to do this effectively, organisations should be proactive and develop a holistic employee voice framework that combines individual with collective voice mechanisms. Where there is significant employee demand for trade union representation this needs to be approached constructively by the organisation. Most employers and senior managers in the private sector have no experience or expertise of working with trade unions. On the other hand, there are also occasional examples of trade union representatives not acting constructively during engagement with employers.

**The planned statutory changes around workplace access rights and union recognition have significant implications for employers and a Code of Practice with accepted principles and ways of working could help guide both employers and unions in developing constructive relationships.**

The new Fair Work Agency should have the resources necessary to assume responsibility for ensuring that employers and trade unions adhere to the Code of Practice, with the excellent and trusted expert advisory and conciliation services



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of Acas available to work with both sides to upskill managers and representatives and help them to develop joint solutions.

There is already a range of helpful good practice resources available to draw on the development of a Code of Practice and supporting guidance. For example, [CIPD research](#) as well as guidance on [working with trade unions](#) offers practical advice for building productive working relationships with unions. For example:

- If there is a request for union recognition, it’s better to engage with the unions and form an agreement based on mutual understanding, preferably as part of a joint working approach. Develop effective working relationships between senior management and trade union representatives, as well as non-union reps.
- Build trust through honesty and direct communications - this approach is key to developing positive working relationships between management and employee representatives.
- Ensure a positive joint working ethos is cascaded throughout the organisation, so that managers at all levels approach working relationships with representatives in a constructive way and build trust.

Our research with employers also outlines the critical success factors for working effectively with recognised trade unions and their representatives:

CIPD research on collective voice 2022: How important, if at all, are the following for effective working relationships between senior management and employee representatives? (%)			
	Important	Unimportant	Don't know
Clear standards describing expected behaviour	91	5	4
Clearly defined overarching values or purpose	89	6	5
Developing managers’ or employee representatives’ people skills more generally	89	8	4
Developing managers’ or employee representatives’ consultation skills	88	7	5
Formal procedures for who will be consulted	82	12	5
Getting to know each other on a personal level	78	18	4
Formal agreements on what issues will or will not be discussed	76	18	6

Base: All employers with recognised trade unions: 484.

### Strengthening sector based social partnership and collective employer representation

The [CIPD and Prospect policy paper](#) notes that a central foundation of a strategy to strengthen social partnership and improve workplace practices would be the development of stronger sector institutions. The Government could set out the ambition to enhance key sector bodies and strengthen their ability to drive collective employer action on workplace practices to improve skills development, job quality and technology adoption. This ambition could be supported by the establishment of a £50 million sector-based social partnership fund which sector bodies could bid for to improve their ability to support partnership working

between employers and unions at a sector level.

## Improving locally delivered HR support for SMEs

A further cornerstone for a strategy to improve firms' employment relations and workplace practices would need to be much better local business support for SMEs on HR and people management.

There is also emerging evidence from CIPD's People Skills HR support pilots for SMEs that the provision of HR support to SMEs can have a positive impact on workplace relations, labour productivity and financial outcomes. Improving the availability of high-quality HR support to SMEs at a regional level would support efforts to improve job quality, skills investment and productivity at a regional level. CIPD has previously estimated that if a People Skills model of business support was rolled out across all 38 LEP areas it would cost between £20m-£40m a year and could support 20,000 to 40,000 SMEs a year depending on the level of funding provided.

## Unfair practices during the trade union recognition process

**Question 3** - Do you agree or disagree with the proposal to extend the code of practice on access and unfair practices during recognition and derecognition ballots to cover the entire recognition process from the point when the CAC accepts the union's application for statutory recognition?

Please explain your reasoning and provide any evidence on cases that support your view.

Yes. CIPD research shows that most employers recognise the mutual benefits of working with trade unions where there is genuine and significant interest on the part of employees/union members to gain recognition in a workplaces. However, as the current law applies only to steps 3 and 4 of the statutory recognition process, it leaves the process open to potential unfair practices by a minority of employers. In the interest of proportionality and fairness, it would represent a more balanced industrial relations approach to cover the entire recognition process from the point when the CAC accepts the union's application for statutory recognition.

**Question 4** - Do you agree or disagree with the proposal to introduce a requirement that, at the point the union submits its formal application for recognition to the CAC, the union must provide the employer with a copy of its application?

Please explain your reasoning.

Aside from the one instance cited in the consultation paper, we are not aware of any situations whereby an employer has conducted a mass recruitment campaign in order to circumvent the law under which the CAC can directly recognise a union without a ballot (i.e. the bargaining unit's union density has been reduced to below 50% as a result of the new recruits). Although we understand this to be a minority practice, in the interests of fairness and a balanced approach to industrial

relations it is reasonable to prevent this from happening in the future. Therefore, we support the proposal to require the union to provide a copy of its formal recognition application to the employer.

We agree that employers would then be required to provide the number of workers it reasonably believes are in a proposed bargaining unit to the CAC within 10 working days of the recognition application being submitted. For the purpose of the recognition process, this number could then not increase throughout the recognition process. However, it would be important to be mindful and allow for the numbers to decrease through normal departures, for example, workers leaving or retiring. We note that an employer would be free to recruit more staff post the date when the union submits a recognition application to the CAC, but these new staff would not be eligible to count towards the number in the bargaining unit for the purposes of the recognition process and would not be entitled to vote in any subsequent recognition ballot.

However, we do note the concerns set out in the paper, that this statutory change would somewhat complicate the recognition process and would also diminish the rights of workers recruited into the bargaining unit following the date of the union's application, quite possibly for sound organisational reasons unrelated to the recognition process.

**Question 5** - *Do you agree or disagree that the employer should then have 10 working days from that date to submit the number of workers in the proposed bargaining unit to the CAC which could not then be increased for the purpose of the recognition process?*

*Please explain your reasoning.*

Yes - if the proposal above is legislated for, 10 working days is a reasonable timescale in which to require the employer to submit the number of workers in the proposed bargaining unit to the CAC which could not then be increased for the purpose of the recognition process.

**Question 6** - *Can you provide any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim?*

*Please provide as much detail as you can.*

No, we are not aware of any instances where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim.

**Question 9** - *Do you agree or disagree with the proposal to introduce a 20-working day window to reach a voluntary access agreement from the point when the CAC has notified the parties of its decision to hold a trade union recognition ballot?*

Yes - we believe that a 20-working day window to reach a voluntary access agreement from the point when the CAC has notified the parties of its decision to hold a trade union recognition ballot is reasonable. However, any process should allow for the CAC to grant extensions to this time limit where it believes that there is a genuine intention to reach a voluntary agreement. Further, we believe that Acas still has an important role to play in working with both parties to reach a mutually acceptable access agreement before the imposition of an order by the CAC.

**Question 10** - *If no agreement has been reached after 20 working days, should the CAC be required to adjudicate and set out access terms by Order?*

*If yes, how long should CAC be given to adjudicate?*

We appreciate that the process of negotiating an access agreement can be unnecessarily drawn out if overly long, and could increase the potential for unfair practices by some employers. However, more robust action by the CAC and the speedier imposition of notice needs to be balanced with the need to engender a problem-solving and partnership approach to employment relations between the union and the employer. As a trusted and independent third party, Acas' conciliation services are very effective in resolving collective issues and helping the parties to reach a mutually acceptable agreement. It could be beneficial for employers (and unions) to have the benefit of Acas services at an earlier stage of the process, as well as more upfront and proactive guidance, education and training on how to navigate recognition and access agreements.

Given the lack of skills in many organisations dealing with trade unions and access arrangements for the first time, there needs to be some flexibility in the process to allow for external advice and support, e.g. by the CAC granting extensions to the process and from Acas. Otherwise, relationships between the union and employer could get off to a bad start before the union has been recognised.

**Question 11** - *Once 20 working days have expired, should the CAC be allowed to delay its adjudication in instances where both parties agree to the delay?*

*Should this delay be capped to a maximum of 10 working days?*

We believe that slightly longer timescales could be needed to allow more time for the employer and union to negotiate an access agreement before one is imposed via adjudication by the CAC. It is far preferable, in the interest of longer-term productive employment relations, to legislate for a slightly lengthier negotiation phase that includes the ability of the CAC to grant extensions to the time limit and for the support of Acas conciliation services. Having the benefit of an expert third-

party service could stand the organisation in good stead to build a problem-solving partnership approach and manage negotiations further down the line if statutory recognition is granted.

**Question 12** - Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim?

Please explain your reasoning?

We appreciate that under current law it is difficult to prove that an unfair practice has changed, or was likely to have changed, the vote of a particular individual or group of workers in the bargaining unit. We also appreciate that individual workers may not feel safe to speak up when faced with an employer that is hostile to trade union recognition. Therefore, we agree with the government's preferred approach under Option 1, to remove the second test from Schedule A1 to ensure unfair practices are always addressed. However, it should still be necessary to demonstrate clear evidence that unfair practices have occurred.

**Question 13** - Should the government extend the time a complaint can be made in relation to an unfair practice to within 3 months of the date the alleged unfair practice occurred?

We agree that the current timescale, to make a complaint relating to unfair practice during the balloting period before the first-working day after the closure of the recognition ballot, is too short. It is reasonable to assume that, in some cases, allegations of unfair practices could emerge after the recognition ballot has closed. However, we are not convinced that a time frame as long as three months after the ballot closure is needed to lodge unfair practice complaints. We believe a more reasonable timeframe would be between six and eight weeks. This would strike a better balance between allowing enough time for workers and unions to identify unfair practices and preventing 'sour grapes' complaints once the ballot result is known, which the current legislation was introduced to prevent.

## Simplifying industrial action ballots

**Question 17** - How should government ensure that our modern framework for industrial relations successfully delivers trade unions a meaningful mandate to support negotiation and dispute resolution?

We believe that the principles-based approach - based on collaboration, proportionality, accountability and balancing the interests of workers, employers and the public - should underpin the government's approach to ensuring that trade unions have a meaningful mandate to support negotiation and dispute resolution. However, in repealing many of these reforms it's important that all four principles are adhered to. In particular, proportionality needs to be a core principle underpinning any reforms on simplifying industrial action ballots. It's also imperative that any legislative changes balance the interests of workers, employers and the public. Please see our opening remarks for feedback on the reforms that are not a focus of this consultation in relation to repeal of Section 2 of the Trade Union Act 2016 on turnout and voting thresholds.

**Question 18** - Do you agree or disagree with the proposed changes to Section 226A of the 1992 Act to simplify the information that unions are required to provide employers in the notice of ballot?

Please explain your reasoning.

No.

On the planned reforms relating to industrial action ballot provisions, we appreciate the government's rationale to focus employer and union efforts and resources on resolving disputes, relieving pressure on the courts and protecting individual union members from identification. However, these broad aims need to be balanced with the need for employers to have access to timely, accurate and adequate information to make contingency resourcing and service delivery plans ahead of planned industrial action.

Striking a reasonable and fair balance for unions and their members, employers and the public in this context is not straightforward. However, given the inevitable disruption to its operations and the need to ensure the health and safety of its employees and the public, it's reasonable for an employer to have as much detailed information ahead of the planned action in order for it to make alternative arrangements where needed. In some cases, the action will impact on important public services and could impact negatively on vulnerable sections of society if the employer has not had the opportunity to put in place contingency arrangements. Therefore, on balance we are not supportive of simplifying the information that unions are currently required to provide employers with in the notice of ballot.

On another proposed change, we agree with the government's plan to update the code of practice on industrial action ballots and notice to employers following Royal Assent of the Employment Rights Bill to recommend that email is used instead of first-class post, where possible. This is a much quicker and more established communication channel suitable as befitting today's modern workplace.

**Question 19** - Do you have any views on the level of specificity Section 226A of the 1992 Act should contain on the categories of worker to be balloted?

See above response under Question 18.

**Question 20** - What are your views on the proposal to amend the requirement that unions should provide information on the results of the ballot to those entitled to vote and their employers 'as soon as reasonably practicable'?

Yes we agree that there should be more clarity on the expected timescale within which the unions should provide information on the results of the ballot to those entitled to vote and their employers.

**Question 21** - *What do you consider is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot?*

Following consultation with a panel of senior CIPD members experienced in the employment relations field, we think that unions should provide information on the results of the ballot within 24 hours of the ballot closing.

**Question 22** - *What do you consider are suitable methods to inform employers and members of the ballot outcome?*

*Should a specific mechanism be specified?*

In line with established channels of communication in the modern workplace, email would be a suitable method to inform employers of the ballot outcome.

**Question 23** - *Do you agree or disagree with the proposal to simplify the amount of information that unions must provide employers in the industrial action notice?*

*Please explain your reasoning.*

Disagree. See our response under Question 18.

**Question 24** - *What are your views on the degree of specificity Section 234A of the 1992 Act should contain on the categories of worker?*

Not applicable - see above.

**Question 25** - *Do you agree or disagree with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months?*

*Please explain your reasoning and provide any information to support your position.*

No. Given the potential workforce changes that can occur even over a six-month period in a workplace, in order to preserve a democratic mandate for action we feel it's important not to increase a trade union's legal mandate for industrial action from 6 to 12 months.

**Question 26** - What time period for notice of industrial action is appropriate?

Please explain your reasoning.

Our view is that the current 14-day period for notice of industrial action should be maintained. Our senior HR leaders felt that this was important in order to give employers and unions in dispute the time to reach agreement rather than end up with industrial action.

We are also mindful of the need for employers to have adequate time to prepare for the disruption industrial action will have on its operations and service delivery. This is particularly important in the case of important public services where, in the case of the NHS for example, there are significant workforce shortages. The amount of logistical arrangements that an employer has to undertake in preparation for industrial action, particularly a strike, are extensive and could be severely challenged if the timescale was reduced to a seven-day notice period. Therefore we recommend retaining the current 14-day notice period under the 2016 Trade Union Act, unless a shorter period is agreed by the employer.

## Updating the law on repudiation of industrial action

**Question 27** - Which (if any) of the options provided do you agree with in terms of the tests set for making an unfair practice claim?

Please explain your reasoning.

Unofficial industrial action in Great Britain is unusual. By removing some of the barriers to balloting for official and protected industrial action, the reforms set out in the Employment Rights Bill should have the effect of making unofficial action by some union members an even rarer occurrence.

Therefore, we believe that **Option 2** would be a reasonable change to the law on repudiation, thereby requiring a union to show that it has issued a general notice of repudiation, posted on its website and notified to the officials and employers involved. This would remove the current requirement of a union having to write to every single member of a union whom it believes could be involved in the unofficial action, as it may not have the correct details on this. To add clarity, this option could be pursued in conjunction with **Option 3**, by changing the requirement to 'act without delay' to take action within a set timescale of three working days.

**Question 28** - Currently the notice by the union is prescribed by legislation. Do you think that prescription of the notice should remain unchanged?

If not, what changes do you propose?

Even if the requirement for the union to inform each individual member it believes could be involved in the unofficial industrial action is removed, it could still be helpful to require the union to inform its members of the potential serious consequences of going forward with unofficial action without protection.

Therefore, the law could still require the union to include wording to the same effect as that in the current prescribed notice (ie ‘*Your union has repudiated the call (or calls) for industrial action...If you are dismissed while taking unofficial action, you will have no right to complain of unfair dismissal*’) in the general notice of repudiation posted on its website and notified to officials (under Option 2).

**Question 29** - Do you agree or disagree that the current legislation on repudiation should be left unchanged?

Please explain your reasoning.

Disagree - see response above.

## Clarifying the law on prior call

**Question 30** - Do you agree or disagree with the government’s proposal to amend the law on ‘prior call’ to allow unions to ballot for official protected action where a ‘prior call’ has taken place in an emergency situation?

Please explain your reasoning.

Yes. If there is an emergency situation where union members walked out as a result of a genuine fear for their safety, it seems fair and reasonable following this ‘prior call’, that unions can then ballot for official protected action. We agree that unions should only be able to subsequently ballot to take official protected industrial action, provided that the action covered the issues in the emergency situation that led to the walkout in the ‘prior call’.

**Question 31** - What are your views on what should be meant by an “emergency situation”?

The Employment Rights Act Sections 44 and 100 set out the broad circumstances whereby workers are protected from detriment or dismissal where there exist circumstances of danger which they reasonably believe to be serious and imminent, and they leave or propose to leave, or otherwise refuse to return to their place of work (or any dangerous part of the workplace (i.e. ‘*in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work*’ etc).

However, we agree with the consultation paper that it is important to be clear about what is meant by an ‘emergency situation’, an issue that many employers, employees and trade unions had to deal with during the COVID-19 pandemic. As a result, some organisations and unions, such as the [RMT](#), produced specific guidance to explain the law relating to ‘serious and imminent danger’. Claims arising from these associated protections for workers in the Employment Rights Act 1996 (ERA) were very unusual prior to the pandemic, but COVID-19 resulted in a spike of

Employment Tribunal claims, highlighting the need for clearer guidance on what constitutes ‘serious and imminent danger’ in a broader industrial context. It would therefore, be helpful to have more detailed guidance on this, with examples of an emergency situation as part of the government’s and/or HSE’s website. with examples of an emergency situation as part of the government’s and/or HSE’s website.

As it would not be feasible to prescribe for every emergency situation that represented serious and imminent danger, and each case has its own circumstances, a more helpful approach could be to develop a principles- or criteria-based approach that could be applied to such circumstances. For example, one factor for a legitimate concern is the reasonableness of the individual’s view about the danger, in the light of their knowledge and what they have been told about the situation.

**Question 32** - *Are there any risks to the proposed approach? For example, increased incidences of unofficial action or of official action which does not have the support of a ballot and is taken without the usual notice to employers?*

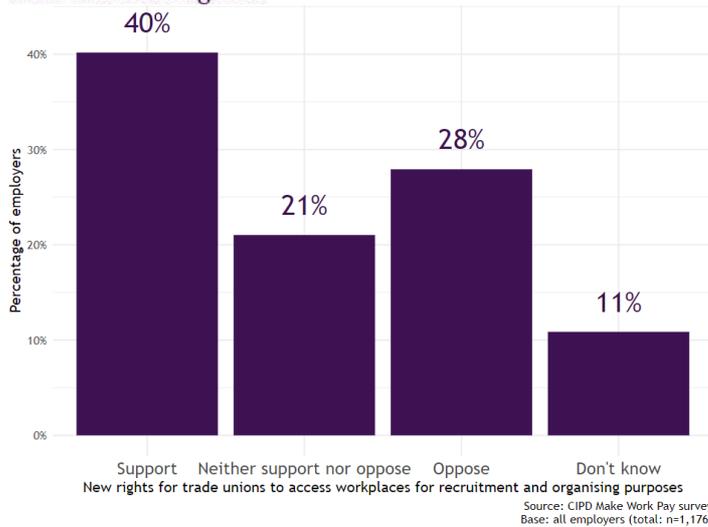
*Please explain your reasoning and provide any information to support your position.*

We agree that there is a risk of increased instances of unofficial action if there is not sufficient clarity on the definition of what constitutes an emergency situation. There could also be further potential claims to Employment Tribunals if there is a lack of clarity and understanding about the circumstances in which workers are protected from detriment and dismissal. Therefore, it’s important that as much clarity and supporting guidance is provided on this key issue to deter unofficial industrial action.

## Right of access

### General remarks:

Many employers appreciate the potential mutual gains that working with recognised trade unions can bring. [CIPD research](#) in July 2022 showed there is an openness on the part of many employers to working with trade unions, with 59% agreeing that ‘*working in partnership with trade unions can benefit the organisation*’. Further, the majority of employers believe that unions provide essential protection for employees from bad management (55% compared with 22% who disagree). Our 2024 employer data shows moderate support for a new right of access:



However, many organisations have no experience of working with trade unions and others may have experienced a negative relationship. Some employers' perceptions could be adversely impacted by the heightened levels of industrial action across public services in recent years.

Whilst there are many potential benefits of collective voice to employers, including trade union representation, implementing a new specific right to access workplaces to recruit and organise could have far-reaching implications for business operations and would also require resource on their part.

The proposals for access in Great Britain (and in Northern Ireland) already represent a potential seismic shift in employment relations for many businesses who are not used to dealing with trade unions. It needs to be managed carefully and gradually by governments with adequate time and guidance provided for companies to adjust and develop their confidence and competence to work productively with trade unions. Otherwise, there is a risk that new rights of access for unions could be counterproductive and not be a platform for more effective employee voice and productive partnership working.

The focus in relation to this new access right in the consultation is on enforcement. Effective enforcement across the breadth of employment rights is crucial, but in this case needs to be firmly balanced with a commitment to upskill employers and encourage effective partnership working between unions and employers.

Therefore, it's essential that information, advice and guidance are promoted to businesses to help them prepare for any new rights of access by unions. As the employment relations expert for Great Britain, Acas has a key advisory role to play here as a trusted independent third party, and needs adequate resources, for example to provide training and produce resources. The CIPD has released a guide on [working with trade unions](#) which provides practical advice for building productive working relationships with unions.

**Question 33** - Do you agree or disagree with the proposed approach for the CAC to enforce access agreements?

*Please explain your reasoning.*

In theory, yes. With the caveat outlined above, we believe that an enforcement framework for access agreements is necessary and the proposed CAC powers set out in the consultation paper strike the right balance between employer and trade union interests. However, in order for the CAC to carry out enforcement in this area, it would need to have adequate resources to enable it to discharge this significant additional responsibility effectively.

We would also like to raise the point, however, about what would happen in a situation whereby a union wants to arrange access to a workplace when another union already has recognition with that employer?

**Question 34** - Do you have any initial views on how the penalty fine system should work in practice?

*For example, do you have any views on how different levels of penalty fines could be set?*

**Question 35** - Do you think the proposal for a penalty fine system is proportionate or not, and would it be effective?

*Please explain why.*

We believe there should be a proportionate approach to enforcement, in line with one of the four espoused principles set out in this consultation. As a broad principle, there does need to be penalties for non-compliance. However, given that agreeing an access agreement could be very new employment relations territory for many employers, an enforcement approach based too strongly on deterrence and facing potential financial penalties should be balanced with a firm emphasis on encouraging compliance and good practice (for example, see above comments on expanding Acas resources to upskill employers to implement the new trade union rights and protections). It is essential that employers understand the need to adopt productive employment relations practices in preparation for the new access right and other trade union reforms, and Government - working with employment bodies and professional membership organisations such as the CIPD - has a key role to play in upskilling employers and trade unions to manage these reforms in practice. There will then hopefully be less need for the CAC to use its new powers and implement penalty fines.

We look forward to responding in more detail on the detail of how the penalty fine system should work in practice when the expected consultation on this is published.

**Question 36** - Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a CAC order requiring specific steps to be taken (Step 2 above) be able to be relied upon as if it were a court order?

*What other approaches would be suitable?*

In line with the above comments, enforcement needs to be balanced with investment in strategies to prepare employers for the new right of access and encourage compliance through robust information, advice and guidance to employers. This should include the provision of trusted and high-profile education, proactive promotion of the new right of access and why there is a business case to work with trade unions rather than oppose them.