CBI response to BIS consultation on ballot thresholds in important public services

1. The CBI welcomes the opportunity to respond to the BIS consultation on ballot thresholds in important public services. As the UK’s leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce, the CBI believes that our industrial relations framework is outdated and requires reform. Industrial action should only ever be the result of a clear, positive decision by the workforce. It should never be the result of apathy among union members. This response set out the reasons why:

- Introducing strike ballot thresholds is an important step in modernising our industrial relations framework;
- The employee voice should be at the fore of our industrial relations framework;
- A single threshold for strike ballots should be introduced to deliver clarity for employers, employees and trade unions;
- Ancillary workers should always be covered by the 40% threshold.

Introducing strike ballot thresholds is an important step in modernising industrial relations framework

2. Our industrial relations framework is outdated and unfit for purpose in the context of modern workplaces and today’s employment relationship. The dynamics of the workplace have changed dramatically in 30 years since the bulk of our current industrial relations framework was passed into law. The adversarial nature of industrial relations that typified many employer-employee relations in the 1980s has now been replaced by a more constructive discourse, which in many workplaces is conducted directly with the workforce rather than through a trade union representative.

3. Advances in technology, for example, have transformed the workplace and the way that trade unions organise industrial action. The reliance business once placed on the postal system for basic communication has been almost entirely replaced by web-based technology and telecommunications. Internal communication within businesses and communication between businesses is almost instantaneous with today’s technology. Similarly the recent advent of social media now allows for instant and widely accessible communication platforms. The current legal framework for industrial disputes does not reflect the changes in communication technology that unions and businesses have readily adopted.

4. As working practices and workplaces have evolved over the decades, union membership has gradually declined. In 2014 the total number of employees who were trade union members was 6.4m, far below the peak of 13m in 1979. In those workplaces where employees have chosen to be represented by trade union, employers and union representatives have worked hard to establish a constructive dialogue. Businesses widely recognise the economic benefits of having good employment relations and engaged employees. In our latest survey, 80% of businesses reported improvements in productivity and performance as the main benefit of high levels of employee engagement.

---

1 BIS, *Trade Union Statistics*, 2015
5. Industrial disputes are best resolved within the workplace and we need strong frameworks for dispute resolution to ensure that industrial action is only ever the last resort. However in situations when dispute resolution within the workplace does not achieve a positive outcome and strike action is considered, it is important that the workforce plays an active role in bringing forward action. Too often we see strikes go ahead on the low turnouts at a significant cost to the economy. Strike action hit London last year on a mandate from only 30% of union members and the cost to the capital was estimated to be between £10m and £50m. Similarly, action across the public sector last summer closed thousands of schools following a ballot that was held in 2012 and only achieved a turnout of 27%. This cannot be right. Reform is necessary to rebalance the rights employers, employees and members of the public with the rights of trade unions. The CBI has long been calling for the legal framework to be updated and introducing strike ballot thresholds is one part of this.

The employee voice should be at the fore of our industrial relations framework

6. The challenge for government is ensuring that the regulatory framework keeps pace with developments in the workplace. Policies should push both employers and employee’s representatives to make decisions that are good for the long-term health of the firm and the economy. When that balance is struck, for example with the recent flexible working and family-friendly regulations, legislation is welcomed by employees and supported by business.

7. That balance has not yet been reached in our industrial relations framework. While employment law has been transformed in recent years, union laws have not moved on at the same speed. Indeed, the current rules are largely unchanged and were crafted for a very different landscape – too often they empower union leaders at the expense of individual employees. The employee voice must be at the fore at times of industrial disputes, strike action should only ever follow a clear and positive decision by the workforce. The CBI, therefore, strongly supports the introduction of the 50% participatiom threshold for all strike ballots.

8. People at work should always be empowered to decide for themselves how they want to be represented. In workplaces where unions are present it is important that the recognition follows the positive support of employees. It is for this reason the CBI believes there should never be automatic recognition of a trade union in a workplace – ballots should always be held to enable employees to actively choose whether or not they want to be represented by a specific trade union. The CBI also believes that the existing test for statutory recognition of a trade union by the Central Arbitration Committee (CAC) – 40% of balloted employees to support trade union recognition as well as a majority of those voting – should be used as the test for a legitimate strike ballot. This would ensure that strike action was only ever brought above follow a clear and positive decision by the workforce.

A single threshold for strike ballots should be introduced to deliver clarity for employers, employees and trade unions

9. The CBI supports the government’s proposals to introduce a 50% participation threshold for all ballots as a way of ensuring that industrial action is never called following apathy of union members. The CBI also supports the introduction of the further test in important public services that will require the support of at least 40% of all those entitled to vote. We would however encourage the government to consider a broader application of this test – combining a participation threshold and a voter threshold is the best way to ensure a union’s mandate for industrial action is tied to a clear and positive decision by the majority of the workforce. This also mirrors the existing test for statutory recognition of a trade union that both employers and trade unions are familiar with and support.

10. The public services sector is a significant industry in the UK economy, accounting for 7.2% of GDP and employing 5.4 million people. Strike action in any sector is very disruptive, however public

---

3 CEBR, London Tube Strikes, February 2014,
4 House of Commons, 9 July 2014, vol 584, col 292
5 CBI, The economic footprint of the public services industry, 2014
sector strikes have a wider impact on those not involved in the dispute, including businesses and the general public. It is important that we have a framework in place that minimises this disruption. The CBI support the proposed 40% voter threshold alongside the 50% participation threshold for the six sectors identified in the consultation document. We would however encourage the government to consider applying the 40% threshold to the utilities industries. Essential public services rely on the provision of gas, water and electricity to run and to deliver critical services to the general public – and the impact of disruption to the operations of utility companies on households, businesses and the economy is significant. The impact of recent industrial action by Norther Ireland Water workers is evidence of this, with tens of thousands of properties losing essential water supplies for over 24 hours. The Utilities Regulator has estimated the total cost of the dispute at around £1.7 million. The 40% threshold should therefore be extend to cover workers in those industries that are critical in enabling the public services to deliver core services.

11. It is important that the government delivers a framework that is workable for both employers and employee representatives. Employers, employees and trade unions will require clarity over which threshold applies to whom within each workplace. To deliver this clarity the government should not seek to identify occupations or functions within the highlighted sectors, but apply the 40% threshold to all workers engaged in that sector. We are concerned that drawing up a list of specific occupations would not deliver the clarity that is required, particularly given the complexity of outsourced public sector contracts. The Government spends a total of £187bn each year to deliver the goods and services on which the UK public depend and 200,000 private and third sector organisations are part of the extensive supply chains. Within these supply chains there will not be a common list of occupations that is easily identified – these will all depend upon the individual business framework and how they organise their job families. Identifying a list of common occupations would be a particularly onerous task for the government and would, more importantly, require the mutual agreement of both trade unions and employers to make it a practical list to work from.

12. There are similar concerns if the government attempts to define a set of job functions. Any function-based list would fail to deliver the clarity business and trade unions require to ensure both parties are in agreement about which individuals in a workplace are subject to which threshold. For example, the consultation suggests that staff performing “certain security functions at airports” would be subject to the 40% threshold. Further clarification is required to determine which staff would fall into this category that would not easily be found by a simple comparison as there is not a single definition of a security role across the whole aviation sector. Furthermore, the CBI would suggest that security roles in all of the six identified sectors are critical to the safe delivery of public services and should therefore be covered by the 40% threshold.

**Ancillary workers should always be covered by the 40% threshold**

13. In both the public and the private sectors front line staff rely on the work carried out by support staff in ancillary roles. For this reason the CBI also does not believe the government should seek to determine which support staff working in ancillary roles are critical to the delivery of the service and should apply the threshold across the entire sector. Attempting to segregate ancillary workers would also have a detrimental impact on employment relations. Employers widely recognise the economic benefits of having good employment relations and engaged employees. Our latest survey shows over three quarters of businesses have seen a co-operative or very co-operative employee relations climate over the past 12 months and a similar proportion (73%) anticipate this co-operative relationship to remain in 2015. We must ensure that this positive climate on employment relations is maintained in workplaces as we strive to boost productivity and drive growth in all parts of the UK economy.

---

7 CBI, *The economic footprint of the public services industry*, 2014
14. The CBI supports the government’s approach to maintain consistent employment and trade union law across the public and private sectors. Applying the 40% threshold to all workers across the identified sectors would deliver consistency where workers are engaged in the delivery of important public services but are employed by private sector companies. Similarly, applying the 40% threshold rule to all workers in the sector would remove the need for both trade unions and employers to make complicated calculations about the proportion of individuals involved in a ballot that were subject to the 40% threshold. While the onus will be on the trade union to provide evidence of compliance with the new ballot thresholds it is likely employers will want to validate the numbers their union presents. In situations where a ballot is held across multiple workplaces, or if there are coordinated ballots by multiple unions, the administration involved in determining which workers fall in scope of the 40% threshold and if there is a majority will be significant. The simplest application of this threshold would be to apply it to all workers across the identified sectors.