Committee on the Application of Standards

Date: 25 May 2023

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 22 May 2023.

▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

United Kingdom of Great Britain and Northern Ireland (ratification: 1949)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Government has provided the following written information.

1**.** ***The Committee expects that the Oh will be concluded in the very near future and requests the Government to provide information on any conclusions arrived at in relation to the above-mentioned allegations.***

The Undercover Policing Inquiry's investigations are ongoing and it would therefore not be appropriate for the Government to comment further at this time. The Inquiry will publish its interim report for Tranche 1, the first three sets of evidence hearings, on 29 June 2023. The full details of the Inquiry's approach and plans, including summaries of evidence hearings and a timetable of its milestones, can be found on its website.

2. *Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes.* ***The Committee trusts that this work will be finalized without further delay and that the Government will provide information thereon in its next report.***

The Government is now finalizing its consideration of Sir Ken Knight's recommendations on electronic balloting for trade union industrial action ballots and will respond in due course. We are unable to provide more details to the Committee at this stage, before our consideration and our response is complete.

3. ***The Committee urges the Government to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 per cent of all workers is not required for a strike ballot in the education and transport services.***

The Government intends to commence the review of the Trade Union Act shortly. This will include reviewing the ballot thresholds. The review of the Act will consider the views of social partners. We anticipate that this review will conclude in time for the next UK report to the ILO.

4. ***The Committee once again requests the Government to provide information on the application of this notification in practice, including any complaints made in relation to the handling of this information or its impact on lawful industrial action, and any information on the blacklisting of individuals engaged in lawful picketing. It also requests the Government to provide information on the additional restrictions planned, if any.***

The Government reiterates the response it provided last year. The Government intends to commence the review on the Trade Union Act shortly which we anticipate will conclude in time for the next UK report to the ILO. The review of the Act will consider the views of the social partners. The questions asked by the Committee will be considered as part of that review. The Government would like to stress that blacklisting is completely unacceptable and has no place in modern employment relations in the UK. The Employment Relations Act 1999 (Blacklists) Regulations 2010 made it unlawful for an individual or organization to compile, sell or make use of a blacklist of trade union members or those who have taken part in trade union activities.

5. ***The Committee requests the Government to provide its comments on the Trades Union Congress (TUC) observations, as well as detailed information on the reform implemented with regard to the Certification Officer's new investigatory powers, financial penalties that may be imposed, the amount of any penalties that have been imposed since April 2022, and the ceiling on the levy introduced.***

Certification Officer reforms: The Government implemented the Certification Officer reforms in April 2022. There were three aspects to these reforms, as follows:

Enhanced investigatory powers: Until April 2022, the Certification Officer (CO) could only make enquiries following a complaint from a trade union member. Since April 2022, the CO has been given further investigatory powers in relation to political funds, union mergers, internal leadership elections, and appointing or failing to remove from a union office a person who has been convicted of certain financial offences. The CO now has the power to appoint an inspector, and request documents and information. The CO is also able to investigate without a formal complaint being made, including in response to information and concerns raised by third parties.

There are important safeguards. Under the Trade Union Act, the CO will only be able to request the production of documents where there is a good reason to do so and will only be able to appoint an inspector where a higher test has been met – that is the CO must have reasonable grounds to suspect that a union has failed to comply with a statutory duty. As a public authority, the CO is required to act reasonably. Where representations from third parties are groundless or vexatious, the Government would not expect the CO to spend much time on these. The CO will also be required to give a union the opportunity to make representations before taking any enforcement action.

Though the Government would expect unions to cooperate as a matter of course with the CO's investigations, should a union believe that a request for documents is unreasonable or that the CO is acting unreasonably, they can challenge the investigatory process by seeking a judicial review. Alternatively, should the CO need to enforce a request for documents etc. then the CO will need to demonstrate to the Court that they have acted reasonably.

Financial penalties: Where the CO has the power to issue enforcement orders, she is now able to impose financial penalties and conditional financial penalties. Details of the financial penalty amounts are set in regulations within the maximum (£20,000) and a minimum (£200) limits set out on the face of the Act.

The regulations divide the statutory obligations placed on unions into three broad groups, according to importance of obligation, and set the maximum financial penalty that may be imposed for each group. The minimum financial penalty for all groups is £200. The CO is able to set the penalty anywhere within these ranges depending on the circumstances.

"Level 1" financial penalties relate to obligations regarding political funding, the management of political funds, the proper conduct of union elections, and personal propriety considerations (for example, making sure no one who has a criminal record serves in a senior union position). The maximum financial penalty for Level 1 is set at £20,000.

"Level 2" financial penalties relate to the obligation to keep a union's membership register up to date. The maximum financial penalty for Level 2 is set at £10,000.

"Level 3" financial penalties relate to obligations for unions to comply with a member's request for access to accounting records, to provide the requisite details in their annual return to the CO, or to comply with investigatory requirements. The maximum financial penalty for Level 3 is set at £5,000.

For each group, the regulations halve the maximum penalty for unions whose membership is less than 100,000. If a financial penalty is imposed on an individual (such as for failing to comply with investigatory requirements), the maximum penalty is set at £1,000.

An organization may appeal an enforcement decision by the CO to the Employment Appeal Tribunal. The Trade Union Act 2016 also provides greater judicial oversight of the CO's decisions, by allowing appeals on points of fact as well as law and crucially on the reasonableness of any financial penalty imposed.

The Certification Officer has confirmed that at the time of writing, no financial penalties have been issued under her new enforcement powers.

Levy: The introduction of a levy will bring the Certification Officer in line with a number of other regulators, such as the Pensions Regulator and the Groceries Code Adjudicator. The Government has taken steps to ensure the levy is fair and affordable. This includes provisions for exempting lower income organizations from the levy entirely, and ensuring no organization pays more than 2.5 per cent of their income. In implementing the levy, the Government decided that it will also continue to fund variable costs of the CO, ensuring that the levy is stable. This will help trade unions when budgeting for the levy by preventing large unexpected increases.

The levy regulations provide that an organization has an obligation to pay the levy once they receive a notice from the Certification Officer. They provide for when each year's notice may be issued, from when a new organization may be considered in scope to be charged, and the information the CO needs to include in the notice.

They identify the expenses which the CO may recover for the levy. The cost of any external inspectors or external legal advice is excluded (so will continue to be funded by Government). Both anticipated and actual expenses may be considered when calculating the levy, provided they are in respect of the financial year to which the levy relates.

The regulations set the rules within which the CO must set the specific levy amounts. The regulations provide the following.

- The CO must aim to ensure the total amount levied over any three-year period does not exceed actual expenses.

- She must aim to ensure the total amount levied on a category of organization (federated trade union, non-federated trade union, federated employers' association, non-federated employers' association) broadly reflects the cost of those functions that each category uses. This is because the CO's functions are focused on different categories of organization (for example, investigations are currently only carried out on non-federated unions, while the administration of annual returns covers all organizations). In practice, the CO will be able to combine categories if they broadly use the same functions.
- For each category of organization, the regulations stipulate that the CO must aim to establish organizations that are exempt from the levy, and then two levels of levy. In this way, the CO will establish three income bands for each category (or combination of categories): lower income organizations that are exempt from the levy, organizations that will pay one level of levy, and higher income organizations that will pay a higher level of levy. There is a further income band for trade unions to take account of the additional services provided by the CO in their regulation. Details on how the levy should be calculated by the CO can be found in the Trade Union (Levy payable to the Certification Officer) Regulations 2022.
- No organization can pay more than 2.5 per cent of their income.

It is for the Certification Officer, the regulator of trade unions and employer associations, to set the levy amounts and income bands within the framework of the Certification Officer levy regulations.

The Certification Officer has recently issued a levy notice that relates to the first levy period, running from 1 April 2022 to 31 March 2023. In that period, the Certification Officer's eligible expenses were £656,672. The notice sets out the amounts payable as follows:

- All trade unions, federated trade unions and employers' associations with an annual income under £81,574 are exempt from paying the levy.
- Every organization with an income over £81,574 will be liable for the basic levy of £2,039.35.
- All trade unions (except the three federated trade unions) with an income exceeding £191,019 will also be liable for the additional levy of £2,736.13 per organization and this means that trade unions charged the basic and additional levies will pay a total of £4775.48.
- Employers' associations and federated trade unions with income over £151,657 and trade unions with an income exceeding £261,103 will also be liable for the enhanced levy of £1752.08. This means that trade unions paying the basic, additional and enhanced levies will be charged a total of £6,527.56. Employers' associations and federated trade unions paying the basic and enhanced levies will be charged a total of £3,791.43.