UCEA response to the UK Government consultation on creating a modern framework for industrial relations

Introduction

This is the response from the Universities and Colleges Employers Association (UCEA).

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers.[1] UCEA is a membership body funded by subscriptions from 169 HEIs in the UK. Our purpose is to support our member Higher Education (HE) employers in delivering excellent and world-leading higher education and research by representing their interests as employers, and facilitating their work in delivering effective employment and workforce strategies.

HEIs are independent employers and determine their own employment policies, usually in consultation with recognised trade unions; therefore, there are a variety of HR practices in place in the sector.

Our response is based on views provided by our member HE employers.

Consultation questions

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?

UCEA agrees that the four key principles (outlined in the Government's principles-based approach) should underpin a modern industrial relations framework and the importance of both employers and unions being realistic in their expectations and applying a pragmatic approach to the principles. The emphasis on collaboration, proportionality, accountability, and balancing interests aligns with best practices in creating a fair and effective industrial relations environment.

[1] The terms "HEI(s)" (Higher Education Institution(s)) and "university/universities" are used interchangeably throughout to describe UCEA's membership which consists of Higher Education providers which are active in teaching, research and scholarship including universities, colleges, and conservatoires, and associated organisations.

However, in their current form, it is difficult to see how the principles will be implemented in a way that will lead to any kind of culture shift in relation to industrial action; this may mean that employers could be less likely to engage with the principles. The modern industrial relations framework should be carefully drafted to balance the rights and interests of both employers and unions and to encourage full discussion and exploration of options before a dispute is declared and industrial action undertaken.

Additionally, in the design of this framework, UCEA requests that the Government considers these areas:

- Ensuring the framework is adaptable to changing work environments and diverse workforce needs.

- The importance of any framework or principles allowing both parties to seek a better balance of power.

- Developing the accompanying narrative to be more substantive. For example, the narrative suggests that engagement and communication between employers and unions will resolve issues prior to a dispute ('Industrial action should always be a last resort"). The current framework does not acknowledge that there may be situations where engagement and communication between both parties may not achieve resolution in advance of industrial action taking place.

- Recognising the importance of operational effectiveness in the framework, with the emphasis being on the balance of pragmatic decision making remaining ultimately with the employer. The current framework does not seem to reflect the importance of operational effectiveness, particularly in the challenging and competitive markets in which the HE sector is operating.

- On the points of proportionality and balancing interests in particular, it would be helpful to have a particular emphasis on unions understanding and respecting business interests (and limitations or pressures) to avoid unrealistic expectations (and thus risk of unnecessary conflict).

- Reflecting the nuance in relation to engagement between employers and unions at local and national level within the framework, particularly in the context of large employers or in multi-employer bargaining arrangements. For instance, frequently, discussions can be constructive between employers and unions at national level, yet this can be miscommunicated in local discussions between employers and unions.

- Drawing out (or as a separate principle) the need for employers and unions to be required to have a shared goal relating to the ongoing viability of the business and a realism about what can be achieved through negotiations.

- In relation to principle one (collaboration), mechanisms which allow for more diverse representation of the workforce's concerns should be available in order to be truly collaborative with staff.

- Principle two (proportionality) states that 'industrial action should always be a last resort', but other proposals by the government appear to make it easier for unions to take industrial action (such as, the abolition of the turnout threshold), so the framework needs to be robust to ensure genuine efforts by all parties have been made to avoid industrial action, including after the appropriate dispute resolution procedures have been followed.

- Employers are accountable to a range of stakeholders (workers are one of these): the draft principles do not recognise this. For example, regarding principle three (accountability), employers are also accountable to other stakeholders (such as governing bodies and the Office for Students).

- Regarding principle four (balancing the interests of workers, businesses and the wider public), the balance should not tip too far towards workers' interests, for example, guaranteeing in-work security and pay if the business is no longer financially viable. Office for Students modelling published on 14 November 2024 suggests that nearly three quarters (72 per cent) of higher education providers in England could be in deficit by 2025-26, and 40 per cent would have fewer than 30 days' liquidity. The financial situation is similar for HE Institutions in Northern Ireland, Scotland and Wales. See 'Bold and transformative action' needed to address financial sustainability. https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/bold-and-transformative-action-needed-to-address-financial-sustainability-ofs/

Clarification is required in relation to some points made within the principles; for example, within principle two (proportionality) what is considered 'a last resort' in the context of industrial action and how will this be managed.

Question 2

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

Ensuring that the new framework balances the interests of workers, businesses, and the public can be achieved through an adherence to inclusive dialogue and consultation processes that involve all stakeholders. This ensures that diverse perspectives are considered in decision-making. The framework should allow tailored solutions within it, which recognise that different industries and sectors have unique needs and challenges.

It will be essential that the framework recognises the nuances of different sectors and provides adequate flexibility to enable businesses to respond to their particular needs. It needs to be recognised that a level of agility is necessary within a workplace and that if this is properly implemented, it can benefit workers and provide them with opportunities that would not necessarily be, otherwise, available.

Seeking insight on the new framework from relevant stakeholders will help ensure that competing interests are balanced by having discussions and consultations with workers, businesses and the public and considering the responses. Where decisions are made which effect all three groups (workers, business and the public), appropriate representatives (which represent the interests of each group) should form part of any decision-making process. Greater consultation on the new framework should take place with businesses across all sectors to fully understand the implications and impact of these decisions on the financial sustainability and growth of organisations. It is important to ensure that all views are equally important and changes are based on addressing real issues. The framework should include the interests of customers, such as (within the HE sector) students.

The framework (which should be transparent and show equal balance of accountability between unions and employers) should require employers and unions to engage constructively to try to resolve disputes at the earliest opportunity through mediation, conciliation or other mechanisms. The employer's ability to make decisions which support their primary purpose should be emphasised.

Consideration should be given (perhaps by way of a Code of Practice) to the role of each party within the framework and their respective responsibilities.

Consideration should be given to how the new framework will interact with existing agreements (whether formalised or not) and provide for an understanding of sector-specific national/local frameworks, drawing a clear line where elements are superseded by the new framework. Impact at local level should be considered.

The Government should consider and recognise the cost implications for each stakeholder group of decisions on pay (such as the associated positive and negative impacts on costs for businesses and the public). Impact assessments relating to the business and public impact should be completed when employee-focussed legislative change is being considered/made; these should fully consider the financial implications within sectors.

A practical underpinning is vital. The new framework should be supported by helpful tools/resources/guidance for leaders/business owners to understand the benefit of positive engagement with collective and individual conversations.

It is important that each party is able to understand the dynamics and issues of the other side. Training for employers and trade unions and having clear principles to enable a true 'working together' approach would be beneficial. Training should be provided on effective negotiation and conflict resolution.

Awareness campaigns should be run to educate the public about the benefits of the new framework. The impact of technology on work practices and industrial relations should be considered.

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 Central Arbitration Committee (CAC) accepts the union's application for statutory recognition?

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

UCEA agrees with the Government's 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. Unfair practices (from either party) should not take place at any stage of this process.

Extending the Code would help ensure that both employers and unions adhere to fair practices throughout the entire recognition process, not just during ballots. This could lead to a more transparent and equitable process, reducing the likelihood of the outcome being influenced by unfair practices. Applying the same standards from the beginning of the recognition process would create consistency, making it easier for all parties to understand and comply with the rules. Workers would benefit from clear guidelines and protections from the outset of the process to help ensure they are well-informed and not subject to undue influence or pressure.

By ensuring protections are in place from the outset, the proposal aligns with best practice in industrial relations, fostering trust and cooperation between employers and unions. Additionally, this approach would prevent employers from gaining an unfair advantage during the early stages of the recognition process, thereby supporting a more equitable environment for collective bargaining.

However, the proposal refers to the potential for employers to use unfair practices; trade unions should also be bound by the same obligation to not apply pressure or undue influence to employees, whether or not they are members of the union and this should also be referred to in the proposal.

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 Central Arbitration Committee (CAC), the union must provide the employer with a copy of its application?

Please explain your reasoning.

UCEA agrees 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, with the reasoning below:

- It would ensure that both parties are fully informed of the scope of the union's application at the earliest opportunity. This could foster better communication and reduce misunderstandings or disputes later in the process.

- Early notification would provide transparency and would enable the employer to be fully informed to prepare and provide their response and gather any necessary information, which could streamline the overall process and potentially lead to quicker resolutions. Agreement could be more likely (without recourse to the CAC) if all parties are aware of the case put forward for recognition.

- Ensuring that both parties have access to the same information could help improve trust and employee relations as well as promoting a fairer process, for instance, by helping to prevent any party from being blindsided and by helping to maintain a level playing field.

- The union providing the employer with a copy of its application would be in accordance with principle one (collaboration) of the proposed industrial relations framework; an absence of transparency (on both sides) may result in practices that would not be in the best interest of workers and good relations.

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 Central Arbitration Committee (CAC) which could not then be increased for the purpose of the recognition process?

Please explain your reasoning.

UCEA agrees that the employer should 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. This proposal aligns with the principles of fair and transparent industrial relations processes. 10 working days appears to be a proportionate timescale.

The requirement for the employer to provide a clear and fixed number of workers in the proposed bargaining unit early in the process would reduce ambiguity and potential disputes later in the process. The employer's submission of the fixed number of workers should prevent any party from attempting to manipulate the size of the proposed bargaining unit to influence the outcome of the recognition process. A defined timeline and fixed number of workers could help streamline the recognition process, making it more efficient and predictable for both parties.

Although (for the absence of doubt) this is a practice that would not happen in the HE sector, this requirement would deter/prevent employers from seeking to manipulate the size of the bargaining unit through recruitment to dilute union membership, thereby maintaining the integrity of the recognition process and supporting a more balanced and fair negotiation environment.

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.

UCEA is not aware of any examples where there has been mass recruitment into a bargaining unit to thwart a trade union recognition claim.

Question 7

Are there any alternative mechanisms that you consider would prevent mass recruitment into a bargaining unit for the purpose of thwarting union recognition applications?

Please provide as much detail as you can.

- Clear and transparent policies could be established regarding recruitment and trade union recognition processes. This would help ensure that all parties understand the processes and could reduce the likelihood of manipulative practices.

  In examining this issue, it is important that legitimate recruitment should not be prevented during the course of a union recognition campaign. Rather, the reasons for any recruitment could be requested by the CAC.

- Employers could be permitted to increase the number of workers for recognition purposes, but if the increase were over a specific percentage then the employer would need to confirm (i) what the reason was; and (ii) that these employees would be part of the bargaining unit on an ongoing basis (i.e. not a temporary move).

- Some further consideration could be provided as to how employee numbers are evidenced/accounted for at ballot stage which could potentially help with the transparency around who is legitimately considered in the unit (and would have been) regardless of when the CAC application was submitted.

- Implement legal safeguards that prevent sudden and large-scale changes to the bargaining unit composition. This could include regulations that require a cooling-off period before changes take effect.

- Training and Awareness: Train management and employees about the legal and ethical implications of manipulating bargaining unit compositions. Providing awareness could deter such practices.

- Alternative mechanisms could include stricter monitoring and reporting requirements to prevent manipulation of bargaining unit compositions.

Question 8

Do you have any views on a possible alternative to place a new obligation on employers not to recruit into a proposed bargaining unit for the purpose of seeking to prevent a union from being recognised?

How would this alternative work in practice?

- Monitoring and enforcement: A regulatory body could be created or the role of existing bodies (such as the CAC) could be enhanced to monitor compliance. This body could have the authority to investigate complaints and impose penalties for violations.

- Transparency Requirements: Employers could be required to disclose any recruitment activities and changes in the workforce composition during the trade union recognition process. This transparency could help identify any attempts (on the part of the employer) to manipulate the bargaining unit.

- Employee Protections: Providing protections for employees (such as protections against unfair dismissal and discrimination) would help ensure that employees are protected from any retaliatory actions by employers attempting to influence the union recognition process.

- Third-Party Oversight: Providing third-party oversight (by the CAC or another independent body) to review and approve any changes to the proposed bargaining unit during the recognition process could help ensure impartiality.

- Appeal/Objection by Trade Unions: trade unions could be provided with a right of appeal or objection to the CAC if they have evidence that this practice has taken place.

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 Central Arbitration Committee (CAC) has notified the parties of its decision to hold a trade union recognition ballot?

UCEA agrees 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.

This timeframe provides a structured timeline for negotiations, which could reduce the potential for prolonged disputes and minimise the opportunity for unfair practices to occur during the negotiation period, as well as streamlining the process and reducing delays. Establishing a clear deadline encourages both parties to engage more constructively and efficiently, aligning with the principles of fair negotiation environments.

This 20-day working window would encourage both employers and unions to engage in timely and focused negotiations, potentially leading to quicker resolutions and less prolonged disputes. Providing a set period to reach a voluntary access agreement could help guarantee that unions have fair access to communicate with workers, which is important for a fair ballot process.

However, due to the multiple pressures on employers, there may be instances where a 20-working day window is too short and a longer period would be beneficial to provide more time for an informal or amicable resolution. UCEA requests that the Government consider making a provision to extend the window to longer than 20 working days where there are good reasons, for instance, in the HE sector, universities often close for extended periods at Christmas/New Year and during an extended summer vacation period, large cohorts of staff can take their annual leave (such as academic/teaching staff) which is not helpful for discussions to take place between employers and trade unions and their members.

UCEA requests that alternative parameters to a fixed number of working days are considered, such as a given number of meetings (possibly within a particular timeframe).

Guidance should be provided on the ACAS/CAC interface.

Question 10

If no agreement has been reached after 20 working days, should the Central Arbitration Committee (CAC) be required to adjudicate and set out access terms by Order?

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

UCEA agrees that, if no agreement has been reached after 20 working days, the CAC should be required to adjudicate and set out access terms by Order.

The CAC, as an independent body, can provide a fair and impartial resolution, which can help maintain trust in the process from both employers and unions. CAC intervention could improve clarity, ensure that the process continues without indefinite delays and help ensure that access terms are consistent and fair, preventing either party from imposing unreasonable conditions.

However, to balance the need for timely resolution with the CAC's capacity, a reasonable timeframe for the CAC to adjudicate could be 10 to 15 working days, to ensure a timely resolution whilst allowing sufficient time for consideration of the issues involved. There may be circumstances where the timeframe may need to be extended (such as by a further 10-day period) which should not be unreasonably refused.

Question 11

Once 20 working days have expired, should the Central Arbitration Committee (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?

It is UCEA's view that, once 20 working days have expired, the CAC should be allowed to delay its adjudication in instances where both parties agree to the delay. This approach balances the need for flexibility in negotiations with the necessity of maintaining a structured and timely process.

Permitting a delay could provide additional time for parties to reach a voluntary agreement, which could be preferable to an imposed decision. Additional time could help avoid rushed decisions that might not fully address the complexities of the situation, leading to more sustainable and agreeable outcomes. Agreement to the delay from both parties would indicate a willingness to continue negotiations in good faith, which could be beneficial for long-term industrial relations.

With mutual agreement to extend, it is suggested that the Government consider whether this would suggest possible potential to agree and thus not require CAC adjudication.

UCEA believes that this delay should be capped to a maximum of 10 working days, to provide the necessary flexibility whilst ensuring the process remains efficient. However, where both parties agree, longer than 10 working days could be agreed; the specified cap should be operationally achievable. Another option would be for the CAC to determine the length of the delay based on the complexity of individual cases.

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?

UCEA members can see merits in all three of the options provided (for different reasons) in terms of the tests set for making an unfair practice claim:

- Option 1 (Removing the second test from Schedule A1 to ensure that unfair practices are always addressed) regardless of their effect on voting behaviour. This approach aligns with the principle that unfair practices should not occur in any form, as they undermine the integrity of the recognition process. By eliminating the need to prove the influence on voting behaviour, this option simplifies the process and ensures that all unfair practices are addressed, promoting a fairer environment for union recognition. This option would be beneficial in order to deter organisations from using unfair practice.

- Option 2 (The second test would not be removed, but instead change how the CAC determines complaints in relation to it): the CAC is best placed to make these determinations. This option seems fairest, and more encompassing, in terms of addressing objectively unfair practices. This option would allow the CAC to take a reasonably informed view but ensure that any unfair practice had an actual impact on voting behaviour, which is the key issue.

- Option 3 ("This option would keep the second test in place but would allow the CAC to accept evidence from workers that is anonymised") is the most logical, fair and proportionate approach and the evidence can be collected from workers anonymously. It is important for all parties to have a right to participate and make their point.

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?

UCEA recognises that, should allegations of unfair practice be identified following the closure of a recognition ballot, current legislation does not allow a complaint to be made. However, in the interests of business stability and good industrial relations, it is important to ensure matters are settled as soon as possible. Allowing a three-month window in which complaints may be raised would result in the situation becoming protracted.

UCEA would welcome the Government's consideration of a shorter timeframe.

Political funds

Question 14

Do you agree or disagree with the proposal to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund?

Please provide your reasoning.

UCEA disagrees with the proposal to remove the 10-year requirement for unions to ballot their members on the maintenance of a political fund. For openness, transparency and union accountability, members should be reminded how their/the union's funds are being spent; it is important that union members have a say on the use of their subscriptions.

Circumstances and context may have changed in the 10 years since the last ballot so awareness may be low. There should still be a safeguard which allows members to opt out (they may need the reminder to opt out in order to increase their take home pay) and it should be clear to members how their subscriptions are being used. Individuals should be provided with the opportunity to have their voices heard; unions should act in the interest of their members (which may or may not align to a political viewpoint).

Question 15

Should trade union members continue to be reminded on a 10-year basis that they can opt out of the political fund?

Please provide your reasoning.

It is UCEA's view that trade union members should continue to be reminded on a 10-year basis that they can opt out of the political fund; this would ensure transparency and accountability within unions and ensuring that members are aware of their options and can make informed decisions about their participation in political funding. The reminders provide a stronger basis for informed consent from members regarding the use of their fees. A reminder to union members would ensure they continue to have the choice as to whether they want to opt in or opt out. An individual may still wish to remain a union member, but may not necessarily always agree with their union's position on all political matters.

Question 16

Regulations on political fund ballot requirements are applicable across Great Britain and offices in Northern Ireland belonging to trade unions with a head or main office in Great Britain. Do you foresee any implications of removing the 10-year requirement for unions to ballot their members on the maintenance of a political fund across this territorial extent?

Removing the 10-year requirement for unions to ballot their members on the maintenance of a political fund across Great Britain and Northern Ireland may have implications for member awareness and engagement. Without regular ballots, there is a risk that trade union members may become less informed about their rights and the existence of the political fund. However, if the proposal to provide reminders every 10 years is implemented effectively, it can mitigate these concerns by ensuring that members are still aware of their right to opt-out, thus maintaining a balance between administrative efficiency and member engagement.

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?

A modern approach should seek to gather a diverse range of views and elevate the voice of a diverse workforce. The introduction of e-balloting could increase accessibility and participation in industrial action ballots, potentially leading to higher turnout and more representative outcomes.

A meaningful mandate should demonstrate that the majority of members have voted and are in favour of action. Trade unions exist on the principle that they represent their members' interests; it feels democratic and proportionate for there to be a requirement that, for an industrial action ballot to be successful, that at least 50% of those eligible to vote must vote in the ballot.

The removal of the requirement for a 50% turnout threshold in a ballot for industrial action is a significant concern and could mean that industrial action is secured with a vote which is unrepresentative of the views of the majority of the trade union's membership: an industrial action mandate could be on the basis of very low actual support.

In 2023, the academic trade union, University and College Union (UCU), launched action short of strike in the form of a marking and assessment boycott. This was on the basis of a 56.4% turnout. Although the impact was low in most HEIs, for some students this had severe consequences including students not being able to graduate, graduating without classification and losing graduate job offers. Even where these consequences for students did not materialise, the risk that they would arise created significant alarm and anxiety.

In a statutory ballot for industrial action in November 2023 over the same areas of dispute the turnout fell to 42.59%. Abolishing the turnout threshold would have meant UCU would have secured a further mandate, exposing students to the consequences of the severest possible form of industrial action that could impact their university experience and outcomes.

This highlights a further concern. If the mandate period i.e. the time during which lawful industrial action could be taken was to increase from six months to twelve months (*see question 25 below, regarding the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months*), as illustrated in the above example, industrial action could have continued despite a loss of support among union members.

Trade unions and employers should be encouraged through legislation to consult meaningfully, and with the purpose of avoiding industrial action. The Government should encourage regular meaningful consultation, dialogue and transparency between employers, unions and employees to address issues early; offer training for effective negotiations and conflict resolution to both union representatives and management; and use joint committees and mediation services to help resolve disputes collaboratively.

The Government should strengthen the following provisions: industrial action being taken 'as a last resort' (given that this serves to make both sides more entrenched in their positions and makes constructive dialogue more difficult); partnership working that has organisational success at its core and commitment to fair treatment of employees; and ensuring that union negotiations reflect the views of the majority of staff, not a small minority.

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.

UCEA disagrees 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. The current

level of detail is required to plan for the level of industrial action; it is our view that it is not disproportionate to ask for this level of detail.

Under the Government's proposal, the reduced information that trade unions will be required to provide in the notice of ballot will have the effect of giving HE employers less time to mitigate the impact of industrial action on students; the employer needs this information to ascertain the potential impact of industrial action if it proceeds and plan and prepare accordingly.

Without detailed information about the number of workers in each category and at each workplace, employers will find it harder to plan for potential industrial action. Less specific information could lead to misunderstandings or disputes about which workers are involved, potentially complicating preparation and responses. In the HE sector, industrial action can disrupt classes, exams and other academic activities affecting students' learning experiences and outcomes. Students paying high tuition fees expect a certain level of service and continuity in their education. Disruptions can lead to dissatisfaction and potential financial claims against institutions. Ensuring that employers still receive sufficient information to plan effectively while minimising the industrial relations framework in the HE sector is crucial.

Although it is recognised that the purpose of industrial action is to apply pressure to employers, and, as such, a requirement to provide all information that will enable an employer to fully mitigate the impact of industrial action would be counterintuitive and not balanced, we consider it important that certain information is provided. For example, the form that industrial action will take e.g. whether it will be continuous or discontinuous action short of strike and if so, in what form e.g. a marking and assessment boycott, in addition to information on union membership by category and workplace which allow the HE employer to sufficiently identify the areas of the university that are likely to be particularly impacted. This is fundamental to ensuring HEIs can comply with their obligations to the Office for Students and, importantly, to lessen the damaging effects of industrial action on students e.g. not being able to graduate.

If union members do not pay subscriptions through the payroll the information provided by the union is the only opportunity to understand where and how union membership falls, in order to plan for business continuity. The opportunity to verify that information provided by the unions is correct would be removed.

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?

UCEA's view is that at least the current level of specificity on the categories of worker to be balloted should be maintained. Specificity needs to be sufficient to enable an employer to (a) plan and (b) to see if the data provided is sufficiently accurate in order to manage resourcing accordingly and make contingency plans. Without the detail currently provided employers, could go into periods of industrial action with little insight into how to services will be affected and, ultimately into their ability to protect their staff and students.

Unions should be required to provide clear and specific categories of workers being balloted to help employers plan effectively for potential industrial action. Clear categorisation helps

HEIs manage and mitigate the impact on students, ensuring minimal disruption to their education.

Section 226A requires unions to provide a list of the categories of employees to be balloted and the workplaces where they work. However, the term "categories" is not explicitly defined, which can lead to varying interpretations and potential disputes. Employers and unions could be encouraged to work together to define categories of worker to be used.

Greater specificity in defining categories of workers to be balloted can enhance clarity and fairness, it is important to balance this with the need for flexibility and manageable administrative requirements.

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'?

UCEA is supportive of 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' (instead specifying a specific timeframe for providing the results of the ballot).

'As soon as reasonably practicable' is subjective and open to interpretation; a specified timeframe would benefit employers and employees and create operational standards. Specifying a timeframe would provide both unions and employers with a clear understanding of the expectations, potentially minimising any disputes over the timeliness of notifications and what constitutes 'as soon as reasonably practicable'.

A defined timeframe would help ensure consistency in how and when results are communicated, which could help standardise practices across different unions and employers. Clear and timely communication of ballot results promotes transparency and trust between unions, their members, and employers.

However, the current 'as soon as reasonably practicable' requirement allows for flexibility to accommodate a range of circumstances that might impact on the timing of the communication of the ballot results. A more specific timeframe might not account for unforeseen delays or complexities.

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?

UCEA considers that between 24 hours and 3 calendar days is a reasonable time requirement for unions to inform members and their employers of the outcome of the ballot.

A time requirement of between 24 hours and 3 calendar days would provide a balance between the need to ensure timely communication whilst providing sufficient time for unions to verify the results with accuracy. UCEA feels that a period of between 24 hours and 3 calendar days should generally be manageable for unions to achieve (even those with limited resources), to process the results of the ballot and prepare the necessary communications.

A clear, defined timeframe would help set clear expectations for all parties involved, reducing uncertainty and potential disputes over delays. The prompt communication of the outcome of the ballot would help maintain transparency and trust between unions, their members and employers, fostering a positive relationship between all parties.

Question 22

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

Should a specific mechanism be specified?

UCEA considers that email is the most suitable method to inform employers and members of the ballot outcome; it is important that the communication should be from an official union email account and is sent to the correct employer email address.

An alternative method (such as by post) should be provided for members who are unable to rely on electronic communication methods, to ensure that all parties receive the information reliably and promptly.

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.

UCEA disagrees with the proposal to simplify the amount of information that unions must provide to employers in the industrial action notice. Ensuring that employers still receive enough detailed information to plan effectively is crucial for minimising disruptions, including ensuring the needs of students are met and funded learning outcomes are not impacted.

The information that is provided under the existing arrangements is important to be able to plan for the impact of industrial action; employers must be equipped to put contingency plans in place. Reducing the amount of information that unions must provide to employers in the industrial action notice would significantly impact on the HEI's ability to plan and mitigate the impact of the action on students. We consider it important that certain information is provided such as the form that industrial action will take e.g. whether it will be continuous or discontinuous action short of strike and if so, in what form e.g. a marking and assessment boycott, in addition to information on union membership by category and workplace which allow the HE employer to sufficiently identify the areas of the university

that are likely to be particularly impacted. This is fundamental to ensuring HEIs can comply with their obligations to the Office for Students and, importantly, to lessen the damaging effects of industrial action on students.

Simplifying the information could result in a lack of detail that could be important for employers to fully understand the scope and impact of the industrial action. Detailed information helps ensure transparency and accountability.

Question 24

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

UCEA believes that greater specificity in section 234A of the 1992 Act on the categories of worker to which the relevant affected workers belong would be helpful as part of the notice to employers of industrial action under section 234A.

Clearer guidance on what 'categories of worker' means would provide clarity for all parties and reduce the potential for legal challenge. A high level of specificity would also allow employers to plan accordingly and ascertain the possible impact. However, the level of specificity should be flexible enough to accommodate different contexts while ensuring that employers have enough information to prepare adequately.

The Act could require the unions to provide clear and specific categories of workers involved in industrial action which would help employers to plan effectively and manage the impact on students, ensuring minimal disruption to their education. However, some flexibility should also be allowed, to account for the diverse and dynamic nature of job roles within the HE sector.

Employers and unions could be encouraged to work together to define categories of worker to be used, to increase mutual understanding and cooperation.

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.

UCEA disagrees with the proposal to extend the expiration date of a trade union's legal mandate for industrial action from 6 to 12 months. UCEA believes that an extended mandate period could lead to a loss of intensity in dialogue to resolve a dispute, or protraction of a dispute where there is no prospect of it being resolved. UCEA places importance on the efforts of all sides working to resolve industrial disputes and notes there is already a provision under current legislation to extend the mandate period from six to nine months which we believe is sufficient.

Maintaining the 6-month mandate encourages timely resolution of disputes, minimising disruption and financial strain on the HE sector and on TU members. Extending the mandate to 12 months could prolong uncertainty for employers, staff and students, impacting on planning and stability. Ongoing disputes can disrupt activities, affecting students' learning experiences and outcomes. Students paying high tuition fees expect continuity in their education. The HE sector is already facing financial difficulties; prolonged industrial action could exacerbate these challenges, leading to increased costs and resources allocation issues. Industrial action should be a last resort; many months of negotiations/consultations should have taken place prior to any formal ballot taking place.

Extending the mandate for industrial action does not appear to align to the proposed principles for the modern framework for industrial relations which aims to ensure that disputes are resolved 'swiftly and effectively'; irrespective of the impact on businesses, long disputes are not in trade union members' interests. Extending the expiration date to 12 months could dilute the need to focus on obtaining agreement on the industrial action matter. If the aim is to collaborate, and for action to be proportionate, then having longer mandates for action does not seem to support those or encourage discussion for a quicker resolution. An extension to 12 months would not suggest an emphasis on expediting resolution, particularly where the dispute has reached a stage where industrial action is necessary: if it is necessary, it should be timely.

Six months seems proportionate and a lot can change within that time. In the HE sector, there is a clear route that is already followed for unions to extend the mandate period and there is nothing to suggest it is restrictive in any way. If industrial action takes place in relation to the annual pay negotiations (as is often the case in HE) then 12-month mandates effectively condemn many HEIs to permanent industrial action which is very disruptive and damaging for all. A 12-month window is a whole academic year, so potentially more disruptive to the student experience, due to the prolonged uncertainty.

A 12-month period would result in employers having, in practice, very little relief from uncertainty of the threat of discontinuous action. A 12-month mandate does not properly allow an employer to allocate resources or assess impact of any possible action. If unions were able to initiate industrial action at any point during a 12-month period, it is foreseen that industrial action could be initiated for disputes that have progressed further down the resolution path.

From an employee's point of view, agreeing to a ballot for industrial action that can take place at any point during a 12-month period will put pressure on those employees in relation to the action the unions are asking them to take and the potential loss of salary.

Votes from trade union members may be different in a re-ballot and many of the members may not have voted in the initial ballot. Trade unions may be disincentivised from engaging constructively if they have a long mandate of 12 months. There needs to be an effective check to ensure that members still wish to participate in action.

Consideration should be given to the potential damaging effects (on industrial relations) of prolonging periods of increased strain and tension and possible entrenchment on both sides.

Question 26

What time period for notice of industrial action is appropriate?

Please explain your reasoning.

UCEA believes that the existing 14-day time period for notice of industrial action is appropriate and should not be reduced. A 14-day notice period ensures that employers can implement necessary measures to mitigate disruptions while still respecting the union's right to organise timely industrial action.

The Office for Students expects registered HE providers to take reasonable steps to avoid or limit the impact of industrial action on students and to make up for teaching time or lost learning. Shortening the notice period provided before the first day of industrial action has two obvious effects: (1) it lessens the window during which employers and trade unions can engage in meaningful discussion to avert damaging industrial action (2) it lessens the time available for employers to plan and take steps to mitigate the impact of industrial action on students. We consider that 14 days of written notice before the first day of industrial action is a minimum requirement.

The current 14-day time period is as short as practicable for employers; it results in a very tight turnaround for employers to be ready for industrial action to commence: from a systems perspective (such as, recording industrial action taken); for internal communications to take place; and for the impact of such action to be mitigated in a way which allows business efficiency during periods of action. The current 14-day time period requires resource to immediately be reallocated from existing work, and a shorter period would make this even more difficult. It is important that the number of 'actual working days' is taken into account during any notice period.

7 days is too short from employer's perspective, in particular to manage the potential impact on customers/end-users (which should be the main concern and consideration during any period of industrial action).

Updating the law on repudiation of industrial action

Question 27

Which (if any) of the options provided do you agree with in terms of modifying the law on repudiation?

Please explain your reasoning.

UCEA agrees with option three ('the requirement to 'act without delay' could be changed to requiring the notice of repudiation to take place within a set time frame, say within 3 working days').

UCEA believes that a more specific timeframe should be provided within which the notice of repudiation should take place; this strikes a balance between ensuring prompt action and providing clear guidelines, which is important for managing industrial relations effectively in the HE sector. Setting a clear and measurable timeframe should ensure that the notice of

repudiation is issued promptly, providing clarity and reducing uncertainty for both employers and employees.

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?

UCEA believes that the notice by the union (prescribed by legislation) should remain unchanged.

Question 29

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

Please explain your reasoning.

UCEA agrees that the current legislation on repudiation should be left unchanged. It is clear and proportionate and ensures that trade unions take appropriate steps to ensure industrial action is official and to be accountable for their members' actions.

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.

UCEA agrees 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. The proposed approach seems to be proportionate, balancing the need to protect employees in emergency situations with the requirement for official, protected industrial action.

The proposed amendment recognises the legitimate concerns of workers who may need to act swiftly in response to genuine safety threats; the health and safety of workers/employees should be paramount.

However, the definition of "emergency situation" should be clear and unambiguous (potentially with examples of situations/categories), which could then be objectively assessed if/when a ballot is made for official protected action. The process should be fair and transparent, for employers and employees.

Question 31

What are your views on what should be meant by an "emergency situation"?

An "emergency situation" should be defined as a scenario where employees reasonably believe they are in serious or imminent danger. This definition should be clear and specific to prevent misuse, ensuring it is only applicable in genuine emergencies where immediate action is necessary to protect workers' safety. There should be clear and specific guidelines on what constitutes an emergency to prevent misuse, including criteria and examples.

Here are UCEA's views on what could be meant by an "emergency situation:"

- An immediate and serious risk of harm to the safety of employees. A real and present danger to health and safety. Genuine and immediate safety fears.
- Situations where there is an immediate threat to life.
- Examples of "emergency situations" could be:
    - Situations where there is an immediate and significant threat to the health and safety of workers or the public.
    - Health emergencies such as outbreaks of contagious disease or other health crises that require immediate action to protect employees, for example, exposure to hazardous materials, unsafe working conditions, or a sudden outbreak of a contagious disease.
    - Scenarios where the continuation of essential services is at risk, such as healthcare, emergency services, or critical infrastructure. This could include situations like a major power outage, water supply contamination, or a breakdown in emergency medical services.
    - Events such as fires, chemical spills, structural hazards or major industrial accidents that require urgent action to protect lives and property.
    - Circumstances where there is a significant threat to public order and safety, such as riots, terrorist attacks, or other forms of civil unrest.
    - Natural disasters like earthquakes, floods or severe weather conditions that pose significant risks to employees' safety.
    - Violence or threat or other security concerns that endanger employees.

Consideration needs to be given for clearly defined roles and responsibilities of employees whose duties involve managing or supporting emergency situations.

Consideration should be given to whether an "emergency situation" represents only physical safety or would be extended to psychological safety.

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.

UCEA believes there are several risks associated with the proposed approach:

- If the definition of an "emergency situation" is not clear and precise, it could lead to disputes over what qualifies as an emergency. This ambiguity might encourage unions to take unofficial action, believing their situation qualifies as an emergency. Disputes over what constitutes an emergency could potentially undermine the structured process of industrial action.

- A significant increase in incidences of unofficial action where there has not been an objective assessment of an emergency situation (with any resulting secondary litigation).

- There is a risk that official action could be taken without strong support from a ballot, especially if the emergency situation is used as justification without thorough scrutiny.

- It could also lead to industrial action being taken with minimal notice to employers, complicating their ability to prepare and respond effectively.

- Employers might face increased uncertainty and operational disruptions if industrial actions can be called with less notice and without the usual democratic processes. This could strain employer-employee relations and lead to more contentious negotiations.

- There is a risk that the emergency provisions could be overused, leading to more frequent industrial actions. This could disrupt business operations and public services more often than necessary.

- Employers might challenge the legitimacy of the emergency declaration, leading to legal disputes and further complicating the industrial relations landscape.

- This approach could be used to evade proper notification without good cause. This approach would need to be clearly set out (in sufficient detail) and sanctions in place if the provision were to be abused.

Suggested ways to mitigate these risks include:

- A clear definition of what constitutes an “emergency situation” with clear guidelines and criteria as to what constitutes an emergency.

- Encouraging unions to communicate effectively with employers in emergency situations.

- Verification Mechanisms: Implement a process for independent verification of emergency claims to ensure they are legitimate.

- Even in emergencies, strive to maintain some form of democratic process to ensure member support and legitimacy.

Right of access

Question 33

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

Please explain your reasoning.

UCEA agrees with the proposed approach for the CAC to enforce access agreements; this appears to be a fair and balanced process for where these situations arise. This framework would provide a structured and impartial mechanism for resolving disputes between unions and employers regarding workplace access. Through the involvement of the CAC, the process would benefit from an established body with expertise in arbitration and conciliation, which can help ensure fair and balanced outcomes. The ability to escalate issues to the Employment Appeal Tribunal (EAT), with clearly defined parameters, would also add a layer of legal oversight, ensuring that decisions would be grounded in law. Access to CAC should be as a matter of last resort and should be limited to considered reasonable and proportionate access.

The employer should have an opportunity to outline and explain to the CAC, before any decision is made, why that access has been refused. The employer should be able to explain potential impact, risk and rationale first, to enable the CAC to make a decision which is balanced and considerate of the position from both sides.

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?

UCEA believes that serious consideration should be given to other mechanisms earlier in the framework as damage (to good relations) would be done at the point that fines were being implemented.

Any penalty provisions should be fair and balanced by being applicable to both employers and Trade Unions who don't follow the rules; any penalty fine system should be designed to deter non-compliance while being fair and proportionate.

Different levels of penalty fines could be set based on the severity and frequency of the breach. For example, minor infractions might warrant smaller fines, while more serious breaches could incur larger penalties. Differing levels of fines could also be set through consideration of the impact of the breach on stakeholders and the system, for example, with

greater harm or disruption resulting in higher fines. Penalties could be escalated for repeat offenders to deter ongoing non-compliance. For instance, first-time breaches could incur a warning or a small fine, while subsequent violations could result in progressively larger fines.

Clear and transparent guidelines should be established for how fines are determined and applied.

Question 35

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

Please explain why.

UCEA feels that the proposal for a penalty fine system is likely to not be proportionate; we would have concerns about disproportionate negative impacts on industrial relations. The introduction of penalty fines could potentially encourage adversarial relations between the parties.

It is hard to comment more fully regarding the proportionality of the proposal for a penalty fine system without further details about the proposals.

Question 36

Do you consider there to be any alternative enforcement approaches the government should consider? For example, should a Central Arbitration Committee (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?

UCEA believes that the Government should consider a multi-faceted approach that combines legal authority, mediation, graduated penalties, compliance assistance, public accountability and technological solutions; this approach can create a robust and effective enforcement framework. Each element has its strengths and can be tailored to fit the specific needs and context of the regulatory environment.

An alternative enforcement approach could involve allowing a CAC order requiring specific steps to be taken to be relied upon as if it were a court order. This would streamline enforcement and reduce the need for additional legal proceedings, making the process more efficient. Other suitable approaches might include mediation services to facilitate agreement before escalation to penalties, ensuring that all avenues for resolution are explored before punitive measures are applied. Guidance on how to resolve dispute and tactics, cooling off periods should be shared for businesses to use.

Employers often meet with unions to seek to resolve issues internally and use the support of ACAS where they feel they are unable to do so. Although an enforcement order could be a suitable approach, there is a risk that an order (or similar notice) could force relationships

between employers and unions in the wrong way. The Government is requested to explore more informal conciliatory mechanisms ahead of this level of formality.

Going further and next steps

Question 37

Are there any wider modernising reforms relating to trade union legislation that you would like to see brought forward by the government?

If yes, please state these and why.

UCEA would welcome the Government's consideration of the following reforms to trade union legislation:

- Encouraging a partnership approach between employers and trade unions could help foster a more collaborative and less confrontational industrial relations environment.
- Promotion of employee engagement platforms and campaigns to help ensure that workers feel they have a voice in their workplace.
- It would be helpful if there were some restrictions in relation to the amount of time off taken by trade union representatives, for instance, in relation to the number of trade union representatives having time off (during the same period) and the distribution of trade union representatives taking time off in each area of the business.
- Reviewing the requirement for facility time reporting in the public sector, and if this should be removed.
- Provided that there is sufficient representation for the trade union in the bargaining unit, simplification of the process for trade union recognition to help ensure that workers can more easily form and join trade unions. This could involve reducing any bureaucratic hurdles and making the process more transparent.
- Introduction of electronic and workplace balloting to make it easier for workers to participate in trade union activities and decisions, increasing engagement and representation.
- Reviewing, and potentially repealing, minimum service levels legislation which could help ensure that workers' rights to strike are not unduly restricted.
- Modernisation of the Certification Officer role to include new enforcement powers and a levy mechanism which could help ensure high standards across the HE sector. Ensuring that the Certification Officer operates with transparency and accountability could build trust among trade union members and the public.
- Provision of guidance on how unions relate with employer staff councils / employee groups.

- Enhanced Mediation and Conciliation Services. Digital Transformation of Balloting Processes. Strengthening Protections Against Unfair Dismissal.

- Professional code of conduct for trade union representatives and accountability at regional level.

- Reform to S.188 of Trade Union and Labour Relations (Consolidation) Act 1992 so notification requirements reflect modern working practices (e.g. no longer reliant on post).

- Reform to S.178 of Trade Union and Labour Relations (Consolidation) Act 1992 to more precisely define matters for collective bargaining.

- A clear framework and regulation around time off for trade union representatives (paid and unpaid) and what and how much time off can truly be considered reasonable.

- Investment in the development of trade union representatives: to have positive and impactful relationships for good business success and individuals' employment, both trade union and business leaders need the skills and behaviours to work together in a dynamic environment.

The Government could consider how gig economy workers could be provided with access to trade unions, as a means of improving their working conditions.

These reforms could help modernise trade union legislation, making it more responsive to the needs of today's workforce and ensuring that workers' rights are protected in a fair and effective manner.

Respondent consultation questions

About you

1. Please indicate whether you are responding as:
- An academic
- An employer
- An employee/worker/individual
- A Legal representative
- **A Business representative organisation/trade body**
- A trade union or staff association
- Other (please specify)

2. What sector/industry do you operate in?
- Manufacturing
- Construction
- Wholesale, retail & repair of motor vehicles
- Transport & storage
- Accommodation & food services

- Information & communication
- Financial, insurance & real estate activities
- Professional, scientific & technical activities
- Administrative & support services
- Public admin & defence; social security
- **Education**
- Human health & social work activities
- Other services
- Do not know
- Prefer not to say

3. **If responding as an employer, business, business owner, business representative, what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?**

- Micro (fewer than 10 staff)
- Small (11 to 50 staff)
- Medium (51 to 250 staff)
- Large (250+ staff)
- Do not know
- **Not applicable**