

Institution: City, University of London		
Unit of Assessment: Business & Management		
Title of case study: The Trade Union Act 2016 and trade union facility time in the public sector		
Period when the underpinning research was undertaken: 2012 - ongoing		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Prof Nick Bacon	Professor of Human Resource Management	2012 – current
Period when the claimed impact occurred: 2012 - ongoing		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact</p> <p>Clause 13 of the Trade Union Bill 2015-6 originally provided Ministers of State with powers to specify maximum levels of facility time (the paid time off for union representatives to fulfil their duties such as negotiating with employers and advising members) in the public sector. This would have significantly reduced the ability of public sector union representatives to support their members. However, this Clause was significantly watered down and delayed in the Trade Union Act 2016, in part as a result of research conducted jointly by Professor Nick Bacon (Cass Business School) and Professor Kim Hoque (Warwick Business School). This research, which identified the considerable value of facility time to both employers and employees, was widely cited by MPs and Peers in Parliamentary debates on the Trade Union Bill 2015-16. This led to the removal of the Clause by the House of Lords and a weaker and delayed clause reinserted in the House of Commons. As a result, levels of facility time and workplace union representation, affecting 5.44m public sector workers, have remained relatively unchanged for five years.</p>		
<p>2. Underpinning research</p> <p>There are three main underpinning elements to the research:</p> <p>i) Research drawing on the 2011 Workplace Employment Relations Study (WERS 2011) explores the presence, activities and effects of workplace union representatives in the public sector in Britain [3.1] [3.2]. The findings show a positive association between workplace union representation and levels of trust between managers and representatives, suggesting managers regard representatives as making a positive contribution to industrial relations and do not use facility time to engage in political activity or foment dissent (as several government ministers suggested as motivation for the Trade Union Bill). The research suggests that enforcing the Clause 13 reserve powers in the Trade Union Bill would compromise partnership working and the positive effects of union representatives on public sector industrial relations.</p> <p>ii) Analysis of data from the Unite trade union evaluated the relationship between the presence of workplace union representatives and employee perceptions of collective voice and job quality [3.3]. This research showed a positive association between workplace union representatives and employee perceptions of collective voice. It also showed enhanced job quality in workplaces with union representatives, a finding explained by the positive effect of representatives acting as an effective collective voice. This research thus further underlined the positive effects of workplace union representatives.</p> <p>iii) Further research conducted with the Royal College of Nursing (RCN) analysed WERS 2011 data to explore the relationship between workplace union representative presence and workplace outcomes in public healthcare services, including: staff turnover and absence rates; the number of tribunal cases; productivity; quality of service and financial performance [3.4]. The results demonstrated a positive relationship between these outcomes and the presence of workplace union representatives. Building on [3.5] and their prior surveys exploring the relationship between facility time and the effectiveness of workplace union representatives [3.6], Bacon and Hoque designed a new survey instrument administered to the population of RCN union representatives during October and November 2015 [3.5]. Analysis of these data indicated that any reductions in</p>		

workplace union representative numbers, or in facility time, would likely harm rather than improve a range of outcomes, from employee wellbeing to patient care, that successive governments have prioritised for the NHS.

3. References to the research

- [3.1] Hoque, K. and Bacon, N. (2014) Unions, joint regulation and workplace equality policy and practice in Britain: evidence from the 2004 workplace employment relations survey. *Work, Employment & Society*, 28(2): 265-284.
- [3.2] Hoque, K. and Bacon, N. (2015) [Workplace union representation in the British public sector: evidence from the 2011 Workplace Employment Relations Survey](https://openaccess.city.ac.uk/id/eprint/12319/). Cass Business School Working Paper <https://openaccess.city.ac.uk/id/eprint/12319/>. Warwick Papers in Industrial Relations No.101.
- [3.3] Hoque, K., Earls, J., Conway, N. and Bacon, N. (2017) Union representation, collective voice and job quality: an analysis of a survey of union members in the UK finance sector. *Economic and Industrial Democracy*, 38(1): 27-50.
- [3.4] Hoque, K. and Bacon, N. (2015) *Workplace union representatives in the British healthcare sector: evidence from the 2011 Workplace Employment Relations Survey*. Research report for Royal College of Nursing (RCN). Available at: <https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/rep/rcn-reps-and-facility-time-survey-report.pdf>. Also synthesised and published as an RCN policy briefing at: <https://www.rcn.org.uk/about-us/policy-briefings/rcn-wers-briefing>.
- [3.5] Bacon, N. and Hoque, K. (2015) RCN representatives and facility time in the healthcare sector. Available at: <https://rcn.org.uk/-/media/royal-college-of-nursing/documents/rep/rcn-reps-and-facility-time-survey-report.pdf>
- [3.6] Bacon, N. and Hoque, K. (2011) Union representation and training: the impact of Union Learning Representatives and the factors influencing their effectiveness. *Human Relations*, 64(3): 387-413

Research was published in highly respect cross-disciplinary journals that apply a stringent peer-review process prior to accepting articles for publication such as Human Relations (IF 3.600, Cat: Management and Social Sciences, Interdisciplinary) and Work, Employment and Society (IF 3.171, Cat: Economics, Industrial Relations & Labour, Sociology)

4. Details of the impact

The Trade Union Bill 2015-16 emerged following the financial crash of 2008 and downward pressure on public sector expenditure. Several prominent government ministers sought to reduce facility time and prevent employers from funding individual union representatives to spend all of their time at work on union duties. Clause 13 of the Trade Union Bill 2015-16 would have provided immediate reserve powers for Ministers of State to specify maximum levels of facility time for union representatives in the public sector. This would have negatively affected the ability of trade unions and their representatives to support their members and executing their duties. Bacon and Hoque's research contributed towards major changes in the Trade Union Bill 2015-16 before it was brought into law by (i) the removal of Clause 13 (providing reserve powers for Ministers of State to specify maximum levels of facility time for union representatives in the public sector) in the House of Lords, (ii) significant alterations of Clause 13 when a revised version was subsequently submitted by the government in the House of Commons (with the reserve powers delayed subject to a three year period of data collection in which public sector employers would be required to publish facility time arrangements), (iii) helping postpone the date (five years on) ministers could exercise reserve powers to limit facility time in the public sector and (iv) require ministers to collect appropriate data to justify such actions.

Bacon and Hoque's concern that Clause 13 of the Trade Union Bill was based only on the costs of facility time and did not account for the benefits of facility time led them to calculate the value added by facility time [2], and disseminate the findings to trade union general secretaries, and selected opposition peers and MPs (front and back bench). They also met with the civil service team responsible for the Trade Union Bill to discuss these findings in detail. Baroness Hayter, leading Labour's response in the House of Lords, was particularly appreciative of the research, using it and referencing City, University of London in the House of Lords debate: "*Research at City*

University London shows that facilities for union reps in the public sector are very similar to those in the private sector, and from neither have we heard, nor have the Government demonstrated, calls for change. Indeed, evidence points the other way, with facility time being beneficial to the safety of work environments, staff welfare and, consequently, particularly in the case of the health service, patients " [5.1]

Bacon and Hoque's research [3.1-3.3; 3.6] was cited in numerous submissions to the Department for Business, Innovation and Skills consultation on aspects of the Trade Union Bill [5.2] and attracted the attention of the Royal College of Nursing (RCN) - the largest professional union of nursing staff in the world, promoting patient interests and representing 435,000 registered nurses and related professions. RCN commissioned Bacon and Hoque to conduct further analysis [3.4-3.5] which uncovered positive associations between workplace union representatives and staff turnover in healthcare. Estimations suggested that, inter alia, the presence of representatives saves the NHS over £100 million annually in recruitment costs [4]. The RCN disseminated multiple research briefs based on these findings to MPs and Peers [5.3], and within the health services community [5.3]. This information enabled the RCN to gain support from Trust Chief Executives (e.g. South Tees Hospitals NHS Foundation Trust, University College London Hospitals, Nottingham University Hospitals NHS Foundation Trust, West Suffolk NHS Foundation Trust) and the Chartered Institute for Personnel and Professional Development [5.4]. Sixteen Directors of Nursing directly linked facility time to delivering high quality and cost-effective patient care, stating *"there is no need for primary or secondary legislation to interfere with these arrangements"* [5.5]. Focussed parliamentary briefings disseminated at each stage of the Bill further ensured the research [3.2,3.4,3.5] was widely cited in the Lords to support Amendment 20 to omit Clause 13 of the Bill, proposed by Lord Kerslake, Baroness Watkins, Baroness Hayter and Lord Stoneham. This amendment was supported by the House. Bacon and Hoque's research [3.2,3.4,3.5] was central to this, being repeatedly cited in House of Lords debates by Peers supporting the amendment including Lord Foulkes, Lord Beecham, Lord Hunt, Lord Monks, and Baroness Neville-Rolfe [5.6].

Bacon and Hoque's research was therefore central in the removal of Clause 13 from the Bill in the House of Lords. A revised version of the clause subsequently reinserted in the House of Commons postponed implementation and imposed data collection requirements to justify such action (as outlined above). Bacon and Hoque's research [3.2,3.4,3.5] was again central in this watering down and the postponement of powers to implement these changes, being cited in Commons' debates by Liz McInnes MP, Dr Lisa Cameron MP, Stephen Doughty MP, Jo Stevens MP, Dennis Skinner MP, and Chris Stephens MP. [5.6]

Bacon and Hoque's research therefore provided the necessary evidence to support the removal of Clause 13 from the Bill in the House of Lords and its replacement with amended, diluted provisions in the House of Commons. Regarding this, Lord Monks' testimonial [5.7] states Bacon and Hoque's research: *"provided an excellent and timely assessment of the role and impact of trade union representatives with regard to clauses 12 and 13 of the Trade Union Bill 2015" and 'ultimately played a critical role in enabling MPs and Peers to argue, first, for the removal of Clause 13 from the Bill, and second, for the postponement of the introduction of reserve powers for Ministers of State to specify maximum levels of facility time for union representatives in the public sector"*.

In response to the reinstatement of Clause 13, albeit in diluted form, the House of Lords Secondary Legislation Scrutiny Committee criticised the Cabinet Office for not paying greater heed to Bacon and Hoque's research for the RCN, describing the Cabinet Office's response as *'broad brush'* and that it *"fails to deal with the substance of the RCN's concern which, in our eyes, warrants careful consideration"*. [5.8] These comments make clear how strong the impact of the research has been in shaping the debate surrounding the subject of facility time and the act itself.

Despite reinstating Clause 13, the government conceded not to take any action on facility time for at least three years until further evidence on costs and benefits has been gathered, with The Trade Union (Facility Time Publication Requirements) Regulations 2017 statutory instrument requiring all relevant public sector employers to publish annually a specified list of facility time data.

Given its centrality in the watering down of Clause 13, Bacon and Hoque's research has therefore resulted in the introduction of facility time reporting (at a 'one-off familiarisation cost of £2.2m and £2.4m recurring annual reporting cost' = £9.4m to date), and the requirement for ministers to provide a more evidence-based approach to policymaking with regard to facility time. [5.9] This has involved 1545 public sector organisations reporting facility time data in 2017-18, 1291 organisations in 2018-19, and 1131 in 2019-20. This has delivered the government's objective to improve transparency and accountability of facility time expenditure and has set a high threshold before ministers may exercise reserve powers.

Ultimately, the government did not return to the facility time issue in 2019 as planned, suggesting the threshold to provide data justifying the use of reserve powers served as a deterrent, further highlighting the enduring impact the research has achieved. Clause 13 powers have now remained unused for five years (and will likely remain unused indefinitely). During this period, official facility time returns by public sector employers to government [5.10] show increases over three years in the average number of union representatives per employer (17% increase from 15.82 in 2017-18 to 19.15 in 2019-20) and the percentage of representatives that spent 100% of their working hours on facility time (10% increase from 0.71 in 2017-18 to 0.79 in 2019-20). The average wage costs of facility time per public sector employer increased by 16% from £55,661 in 2017-18 to £66,014 in 2019-20. This indicates that the impact of Bacon and Hoque's research on the Trade Union Act had an enduring and ongoing effect, halting and effectively reversing a ten-year campaign to reduce facility time in the public sector and contributing towards a revitalisation of workplace representation. According to Lord Monks, their research "*has proved to be extremely important in enabling public sector union representatives to continue to provide effective representation to their member*". [5.7] Facility time underpins the positive effects of unions on a range of outcomes for employees and organisations [3.1-3.6]. These include positive effects on: partnership working; job quality; staff turnover and absence rates; the number of tribunal cases; productivity; quality of service; and financial performance. Lord Monks reasonably infers these effects would have been significantly reduced if Clause 13 had survived and been implemented.

These outcomes reflect the impact of Bacon and Hoque's research on employers and unions at national and local levels. Regarding employers, this research has become further embedded into management practice over time, as public sector employers who backed campaigns to change the Trade Union Bill have recognised and restated the importance of facility time for organisational functioning. For example, the NHS Social Partnership Forum (SPF) cites Bacon and Hoque's research in stating "*o be effective, union representatives need to have reasonable paid time off from their normal job to enable them to undertake the role. The SPF urges all organisations to agree appropriate time-off and facilities arrangements so that the trade union representatives are able to participate in local partnership activities*". [5.11] Similarly, NHS Scotland's Staff Governance Standard embeds union participation as a central requirement for partnership working. These examples illustrate the cascading impact the changes in policy and delay of the bill have had by securing additional facility time and enhancing industrial relations arrangements for over 5 years and counting.

Unions at national and local levels have also drawn on this research to place a renewed emphasis on workplace representatives. Approximately a third of the TUC's position paper on facility time was based on Bacon and Hoque's research [5.12]. The RCN has embedded evidence on the positive effects of facility time and facilities agreements in the RCN Representatives Joint Handbook. It has also drawn on this research to devote more resources to workplace representatives. The RCN Stewards Committee developed a vision for 2020 to increase the visibility and contribution of RCN representatives, increasing the conversion rate from expressions of interest into newly accredited representatives from 34% in 2016 to 64% at the end of 2017[5.12].

At regional and local levels, Bacon and Hoque's research has also been used to remind employers of the value of facility time. For example: "*The RCN is urging reps to remind employers of the benefits of facility time. This isn't union time, it's actually time spent supporting staff and employers through employment, safety and learning issues in their workplaces. The RCN will continue to challenge any attempt to arbitrarily reduce facility time in the workplace*". [5.12]

Similarly, it has been used by regional/local union branches in the education sector, for example, to develop new facility time arrangements after Lancashire County Council withdrew the Combined Facilities Agreement for the schools forum in 2018 [5.12], and by Coventry National Union of Teachers (NUT) to force Coventry City Council to withdraw a planned 70% reduction in facility time for teaching union representatives [5.12].

5. Sources to corroborate the impact

[5.1] Baroness Hayden - Trade Union Bill Debate - House of Lords - Tuesday 23 February 2016 – Columns 170 & 171 - Hansard - UK Parliament.

[5.2] Unison Brief - Trade Union Bill (14th October 2015)

<https://publications.parliament.uk/pa/cm201516/cmpublic/tradeunion/memo/tub14.htm>

[5.3] Royal College of Nursing - The value of trade union workplace representatives in health care (July 2016). Accompanied by Hoque, K. (2015) Strong unions are good for employers as well as staff. Healthcare Manager, (26): 9. Available at:

http://issuu.com/healthcare_manager/docs/hcm26_text_pages_issuu?e=1596587/13713825

[5.4] Briefing ahead of Report Stage and Third Reading of the Trade Union Bill

<https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/policies-and-briefings/uk-wide/parliamentary-briefings/2015/briefing-ahead-of-report-stage-and-third-reading-of-the-trade-union-bill.pdf>

[5.5] Royal College of Nursing - Policy Brief - Trade Union bill clauses 12 and 13 on facility time

<https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/policies-and-briefings/uk-wide/parliamentary-briefings/2016/trade-union-bill-clauses-12-and-13-on-facility-time.pdf>

[5.6] Trade Union Bill Debates

- House of Lords - Monday 11 January 2016 & Tuesday 23 February 2016 - Hansard - UK Parliament

- House of Commons - Monday 14 September 2015 - Hansard - UK Parliament. Accompanied by Public Bill Committee - Trade Union Bill - Eighth Sitting

[5.7] Email testimonial - Lord Monks, House of Lords, 08 May 2020

[5.8] House of Lords Secondary Legislation Scrutiny Committee. 29th Report of Session 2016–17. Available at: <https://publications.parliament.uk/pa/ld201617/ldselect/ldsecleg/145/145.pdf>

[5.9] Impact Assessment BIS/16/71

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493638/BIS-16-71-trade-union-bill-impact-assessment-reporting-of-facility-time-in-the-public-sector.pdf

[5.10] Statistical data set: Public-sector trade union facility time data

<https://www.gov.uk/government/statistical-data-sets/public-sector-trade-union-facility-time-data>

[5.11] Social Partnership Forum – How We do Partnership – Facilities Time

<https://www.socialpartnershipforum.org/about-spf/how-we-do-partnership/facilities-time/>

[5.12] Examples of Trade Unions using and/or referencing the research on national, regional and local levels including the TUC (2016), RCN (2017 & 2018), Regional Lancashire County Council – Consultations & Coventry City Unison message to members.