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## **Reviewing the law on industrial disputes**

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**Employment analysis: What has led to the government's new review into the law governing industrial disputes? Nicholas Lakeland, head of the employment and pensions team at Silverman Sherliker LLP, considers the difficulties with the existing legal framework.**

### **Original new**

Press Release: Government review into the law governing industrial disputes, LNB News 07/04/2014 72

*The government has launched an independent review into the legal implication of alleged intimidation tactics in industrial disputes. The review will examine the 'leverage' tactics used by trade unions as well as the role of employers in disputes. It will be led by Bruce Carr QC, a leading industrial relations lawyer, and will make proposals and recommendations for change.*

### **What are the government's concerns surrounding industrial disputes?**

The government is concerned with seeking better industrial relations to improve the functioning of the economy generally but is specifically concerned with the use by the unions of 'leverage' tactics. These are non-traditional forms of protest which do not involve taking strike action but rather are a form of direct campaigning to bring pressure on an employer by targeting shareholders other stakeholders and any other interested third parties in effectively a form of naming and shaming of the employer where its treatment of employees is claimed to be inappropriate.

### **How does the existing legal framework prevent inappropriate or intimidatory actions in trade disputes?**

There are already strict laws against secondary picketing and strong regime of balloting required in order for a union to organise a strike. There are of course long standing public offence laws so those sorts of more 'traditional' union activities are already properly enforced. This new form of 'leverage' campaigning is not regulated in the same way. It could be said to be a form of harassment if it was persistent and intimidatory and these could be caught by the provisions of the Protection of Harassment Act 1997 which provides a string framework of protection for individuals being harassed.

Unions, however, are likely to point out that it is everyone's democratic right to campaign and all they are doing is informing interested parties about what is actually going on. For example, if an employer was trying to cut employees' wages the union would inform those stakeholders it considers might be able to bring pressure to bear on the employer to put a stop to the proposal. If the union was in some way divulging confidential information then that would be actionable and a restraining order or a claim in damages could be pursued for the breach of confidence. The union could find itself pursued for damages if it was said to be defaming the employer although commercial defamation actions need to prove actual economic loss not just loss of reputation so as a legal remedy they are limited. Of course unions will say they are simply engaging

in a form of PR and one effective method of an employer comparing this would be for them to also engage in the PR battle.

### **Would the 'extreme tactics' of concern be open to criminal charges?**

Extreme tactics would already be caught by the Protection of Harassment Act 1997 and other criminal public order offences.

### **Are there any generally recognised deficits in the law surrounding industrial disputes?**

There are concerns relating to the laws surrounding the balloting for strike action. At present the requirement is for a majority of members to vote for strike action and that results in the strike taking place. The concern is that often only a small minority of members actually vote for the strike action but that this results in the vast silent majority also having to strike. There are suggestions being made that to go out in strike a union should ensure 50% of all members support the strike action not just 50% of those voting in a ballot.

### **What should lawyers do next?**

Lawyers should keep abreast of these developments if they act for employers where there are trade unions representing the workforce and should consider what use they can make of the existing laws to help their clients in dealing with these new forms of 'leverage' campaigning.

*Interviewed by Diana Bentley.*

*The views expressed by our legal analysis interviewees are not necessarily those of the proprietor.*