POA Briefing for TUC and Labour Conferences 2024

PRISON OFFICERS DEMAND:

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POA

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POA Westminster march and rally, March 2019

Three decades of disgrace

National Chair MARK FAIRHURST and General Secretary STEVE GILLAN urge support for the POA's fight for the right to strike

This year marks 30 years since prison officers in the UK were banned from taking any form of industrial action under Section 127 of the Criminal Justice Act 1994 – although the Scottish Government formally restored the right to strike in 2015 and the sky hasn't fallen in.

It's widely acknowledged, even across Parliament, that successive governments have unfairly used this draconian restriction to exploit hard-working brave prison officers, who have no effective way to fight back against their poor pay, punishing terms of service, and workplace conditions that should be completely unacceptable in a civilised society.

Section 127 also contributes directly to many of the crises currently plaguing the Prison Service, as this lack of any industrial muscle to protect pay, terms and conditions from sustained assault has led to rock-bottom morale and retention of prison officers, while experience plummets and violence soars.

With this new Labour Government elected on a promise to repeal Tory anti-trade-union laws, including the disgraceful Minimum Service Levels legislation, the POA insist that the much-hated Section 127 must also be included. The new Employment Rights Bill, although rightly welcomed across the labour movement, will be a betrayal of prison officers if it does not address this historic injustice, as promised by Tony Blair in 1994.

As General Secretary and National Chair of the POA, both of us have been threatened by Tory Government lawyers in the High Court with imprisonment simply for protecting our members from danger – or in the Court's view when handing down a six-figure fine to the union in 2019, for illegally inducing them to take industrial action. However, the European Court of Human Rights recently accepted our latest case against Section 127 and we expect proceedings to start shortly.

Steve Gillan (left) and Mark Fairhurst (above)

Now is the time for the new Labour Government to step in and end this injustice, and to start trusting the same loyal workers who they ask to put their lives on the line every day to protect the public from the most violent and dangerous people in the land – as the Scottish Government have done for almost a decade without any problems, just improved industrial relations.

Previous governments have used the Prison Act 1952, which gives acting prison officers the "powers, authority, protection and privileges" of police constables, as justification for restricting the right to strike, but this is the height of hypocrisy as prison officers are treated considerably worse than police in terms of pay, pensions and personal protective equipment.

The POA fully supports this Labour Government in its mission to repair and rebuild our broken Prison Service, so badly damaged by 14 years of austerity that saw billions robbed from staffing and maintenance budgets, but our lack of basic industrial rights will be a running sore in relations until this is resolved or pay, terms and conditions are raised to a level where strikes would never be needed.

In the meantime, we are calling for solidarity and support from across the labour movement to give prison officers back their basic industrial rights. Please use the information in this booklet to build support in trade union and Labour Party branches and executives, and help end this injustice and the problems it causes inside our prisons.

Shameful history of exploitation

Why both main parties share the blame for disempowering prison officers

Prison officers in England and Wales are explicitly banned from taking any form of industrial action – whether working to rule or full-blown strike action – by Section 127 of the Criminal Justice and Public Order Act 1994.

The previous year, in the case of Home Office v. Evans, the Court ruled that, since acting prison officers enjoy the "powers" and "authority" of police constables under Section 8 of Prison Act 1952, they share the same status as police officers and therefore can't take industrial action. However, the Act is also supposed to give prison officers the same "protection" and "privileges" as the police – something conveniently forgotten when it comes to parity of pay, pensions and personal protective equipment.

This appalling restriction of basic human rights lets the Government legally exploit these loyal and brave public servants, who have no way to protect their pay, terms or conditions except through costly court action. Whether it's real-terms cuts to wages, a cruel and unrealistic pension age of 68, or the normalised ultra-violence that our members are told to accept as "business as usual in a prison" – as one Government barrister described it in the High Court – prison officers, like all workers, are near-powerless to fight back without the right to withdraw their own labour.

Labour legend Dennis Skinner speaks at the 2019 Westminster rally

BROKEN PROMISE

In Opposition, Labour opposed the 1994 Act and wrote to the POA describing it as "a wholly unwarranted attack on the working rights of prison officers [and] the status of the Prison Officers Association", with leader Tony Blair pledging that "an incoming Labour Government will want to put this situation right and ensure, once again, that prison officers are treated in the same way and with the same working rights as other public servants".

However, this promise was broken in Government, with then Home Secretary Jack Straw telling the POA in 1998 that "industrial action can have no more place within the Prison Service than it can within a police service. For this reason whilst in Opposition I made no commitment whatever to changing the relevant provisions of the Criminal Justice and Public Order Act 1994, nor will we do so whilst in Government." Straw did raise the possibility of "an independent arbitration mechanism for specific national issues" – but this has never materialised.

EXCEPTIONAL CIRCUMSTANCES

As a compensation mechanism for this lack of industrial muscle, the Prison Service Pay Review Body was created in 2001. Although its recommendations aren't binding, the Government agreed to follow them apart from in "exceptional circumstances" after a complaint by the POA to the International Labour Organisation (ILO) in 2004. However, these recommendations have often been ignored, with governments claiming exceptional circumstances without proper justification.

Following negotiations with the POA, in 2005 the Government disapplied Section 127 for public-sector prison staff in England, Wales and Scotland – but reintroduced these provisions in 2008 after a deterioration in industrial relations and the union's first-ever national strike in 2007, which revolved around the staging of a pay award.

In 2011, the POA launched a complaint to the European Court of Human Rights arguing that Section 127 violated prison officers' freedom of association, but the application was ruled inadmissible in 2013 on the grounds that the ILO had already considered the matter. In 2024, the EHCR finally agreed to hear our case, and it will be up to the new Labour Government to defend their predecessor's poor excuses of "exceptional circumstances".

ENSURING SAFETY

Unsurprisingly, ministers have taken full advantage of this grossly unfair industrial power imbalance, especially since 2010, slashing pay, terms and conditions while knowing there's very little that prison officers can do about it. Also unsurprisingly, morale is now at rock-bottom, while resignations are at record highs – a recruitment and retention emergency at the heart of our crisis-ridden Prison Service.

On the rare occasions that prison officers have taken the courageous decision to "down tools" due to an imminent threat to their health and safety, the Government have not hesitated to drag their union POA into court and slap them with six-figure fines – even though officers have always stayed near-site throughout any action and ensured minimum safety staffing levels were in place. Obviously, there is no way these loyal and disciplined public servants would ever jeopardise the security and safety of their establishments and the people in their care – it's the Government's austerity agenda that has done this by starving prisons of vital resources for well over a decade.

POA honourary life president John McDonnell MP addresses last year's parliamentary reception on the theme of '68 is too late'

STIFF PUNISHMENT

In 2015, the Scottish Government legislated to give prison officers back the right to take industrial action officially, 10 years after the UK Government disapplied Section 127 and seven years after the Scottish Justice Secretary refused Jack Straw's offer to extend its reintroduction north of the border (see Kenny MacAskill, page 10). Yet since then, there have been no strikes – just fair collective bargaining over pay, terms and conditions, plus a significant improvement in industrial relations.

South of the border, we have been under a permanent injunction since 2017 when the High Court found we had breached Section 127 by inducing members not to work voluntary duties. The order stated "that the POA whether by any agent or committee, official or officer, including for the 'avoidance of doubt' any committee, official, officer or any meeting of any local branch or otherwise be restrained from inducing, authorising or supporting any form of industrial action by any Prison Officer", while "any person doing so may be sent to prison, fined or have his assets seized".

Stiff punishment for trade union activity! Indeed, the POA leadership were themselves threatened with imprisonment by Tory Government barristers at the High Court in 2018 after a mass health-and-safety walkout by prison officers amid spiking levels of violence against staff.

The argument is made that, if prison officers were able to strike, they would have the Government over a barrel due to the essential nature of their work and would demand allegedly unaffordable pay rises backed up by the threat of unacceptably disruptive industrial action. But the experience from Scotland – and the limited number of walkouts in England and Wales – shows this would not be the case.

A service lurching from crisis to crisis

New Labour Government inherits 'ticking time-bomb'

The prison overcrowding crisis has exploded into the news in recent months, and one of the first actions by the incoming Labour Government in July was to announce urgent changes to early release schemes.

Using secondary legislation powers on July 25th to reduce the time-served tariff from 50% to 40%, new Justice Secretary Shabana Mahmood (right) warned MPs that "our prisons are in crisis", adding: "The male prison estate has been running at around 99% capacity for 18 months. We now know that my predecessor warned 10 Downing Street of the perils of inaction, but rather than addressing the crisis, the former Prime Minister called an election and left us a time-bomb, ticking away."

The POA have long warned of dwindling capacity in the system, which obviously makes our members' jobs much more difficult for many reasons, but this is just the tip of the iceberg of prison crises. Savage austerity cuts to staffing from 2012 onwards saw over a quarter of prison officers taken out of service, triggering a vicious circle of violence – as experience dropped, assaults against staff and other prisoners soared, which led to more officers leaving, leading to more violence, and the circle continues.

Despite a brief respite during the pandemic lockdowns, violence against staff is now higher than ever. Ultimately, only a decisive break from past decisions to run prisons on the cheap can solve this – and central to this is giving prison officers back their industrial muscle to protect pay, terms and conditions.

STATE OF EMERGENCY

Mahmood is absolutely correct that, "when 80% of offenders are reoffenders, something is going horribly wrong within our prisons" – and "we are letting our public down if we do not get the rates of reoffending down". But the truth is that rehabilitation is simply impossible in overcrowded, violent and squalid prisons.

We welcome the seriousness shown by new ministers to tackling the state of emergency in our prisons, especially compared to the last Government's pathetic infighting and paralysis, but insist that Labour can only turn around this failing service by listening to and empowering the public servants who work on the front line.

Prison officers suffer directly from overlapping crises in morale, retention and experience – all of which are made worse by this lack of basic trade union rights – with official figures showing that over 100,000 years of cumulative prison officer experience have been lost since 2010.

DAMNING TESTIMONY

Recruitment, vetting and training are also in crisis, with numerous failings underlining the urgent need for a complete overhaul in policy. At the POA's annual conference this year in Eastbourne, delegates lined up to denounce the dire situation with damning testimony. One member, an Operational Support Grade (OSG) Band 2, revealed he had been mentoring fellow OSGs who had "failed their prison officers applications [and] did not go through the process of OSGs [but] received emails stating that, because you didn't pass the process to be a prison officer, we are offering you the opportunity to become an OSG. No application was needed."

And he added that the OSGs he mentored had told him: "Now we're in the service, within a period of time, we're going to get offered a job as a prison officer on the fast-track system." How can we possibly build a high-calibre workforce like this?

Delegates at this year's POA conference denounced the dire situation around recruitment and vetting

RECRUITMENT FAILINGS

Highlighting how governors have no say in who is hired as officers in their establishments, another delegate revealed: "With the recruits we've also had, we've seen recent incidents where staff have been seriously assaulted. We've had staff running away from their colleagues, refusing to support. We have staff that refuse to do any C&R [Control and Restraint] because it is against their beliefs – and these are frontline staff."

A POA National Executive speaker added: "We've had staff who have failed the OSG process, because they do at least still have an interview, who some months later have turned up as prison officers because they don't have to." It is obvious that the recruitment process is simply unfit for purpose.

NEW CHAPTER

All this is symptomatic of the last Tory Government's ruthless and reckless approach to the Prison Service, and we hope the new Labour Government will turn the page on this shameful chapter. We would like to place on record our agreement with the new Prisons Minister, Lord Timpson, that incarceration is overused as a punishment.

As we submitted as evidence in 2023 to the Justice Select Committee's inquiry on the future prison population and estate capacity: "We believe there are many prisoners who quite simply do not belong in prison and whose criminality would be better addressed in the community or specialised institutions. These prisoners are disproportionately represented in cohorts such as mentally ill prisoners, non-violent offenders and female offenders, especially those who have experienced trauma."

WORKFORCE STRATEGY

While the expansion of the probation workforce recently announced by the Justice Secretary is vitally important, it is clear that the prison workforce needs an urgent investment strategy too. At the heart of this must be a commitment to treating staff as the service's greatest asset.

For too long, prison officers and other workers have been made to feel like disposable commodities, something to be worked to the bone and then discarded, rather than a valuable resource that can turn people's lives around under extremely challenging circumstances.

As a trade union, we look forward to our members being treated as part of the solution, rather than part of the problem. Key to that is giving them back their basic industrial rights, and ending this cynical and counterproductive exploitation by shortsighted employers.

Morale crashes to crisis levels

From sky-high violence at work to an unrealistic and cruel pension age, prison officers are suffering more than ever

Morale is at rock bottom and prison officers are fed up with being treated like punch bags, especially in the under-18 estate where they are denied basic personal protective equipment such as PAVA irritant spray despite the ultra-violent cohort they are expected to care for. Police officers don't ask violent criminals in the street how old they are before incapacitating them with PAVA – or even Tasers – so why should prison officers face this irrational restriction on their right to protect themselves?

Unlike the adult public estate, where prison officers have batons, cuffs and PAVA pepper spray, our members in the under-18 estate have only the polo shirt on their backs, leading often to serious injuries and hospitalisations of both staff and prisoners. It's no wonder that the chronic retention problems seen across prisons are even more acute here. The POA are calling on the Government to extend the roll-out of PAVA to the under-18 estate as a matter of urgency, before an officer or prisoner is murdered.

The POA do not agree that the possession and potential use of PAVA spray in the under-18 estate will lead to greater divisions between staff and those in their care. If used as intended, it will instead lead to safer and more relaxed regimes, where real rehabilitation and education can take place without the constant threat of violence. Without proper protective equipment and the power to take industrial action to defend themselves, our members are at the mercy of violent criminals and indifferent politicians.

POWERS AND PROTECTIONS

There are other measures to improve morale that could be taken. Poor pay, especially compared to the police in terms of progression, is a key driver of the increasingly dire retention rate. But it is not the only factor – normalised violence, derisory recruitment, vetting and training processes and a culture of fear where whistleblowers are thrown to the wolves all contribute to an ultra-toxic workplace from which it's no surprise many wish to escape.

Section 8 of the Prison Act 1952 is clear that prison officers should "have all the powers, authority, protection and privileges of a constable" – yet personal protective equipment and pay progression aren't the only disparity with the police. Another source of huge resentment among prison officers is that, unlike the police, they weren't exempted from the Tories' rise in public-sector pension age to 68. This has also had a devastating impact on morale and led many new recruits not to consider a life-long career as a prison officer. How many 18 year-olds joining the service can last 50 years on the landings to claim a full pension?

The POA's position is simple – the law gives our members the same protection and privileges as the police, so we believe they should be allowed to claim a full pension at the age of 60 or after 30 years' service, as police officers rightly are able to. We know that, under the last Government, the Treasury blocked the Ministry of Justice's repeated requests to restart negotiations with the POA over pension age, and we urge the new Treasury team not to make the same mistake and unnecessarily poison industrial relations.

INSULTING COMPARISON

Most people are shocked to learn that prison officers must work until they are 68 years old – the state pension age for everyone born after 1977 – to receive a full pension. It's obvious that this is unfair, unrealistic and very dangerous, both for prison officers and for the prisoners they protect – and ultimately for the general public, too, because unsafe jails make rehabilitation impossible.

The last Government insultingly tried to justify this injustice by comparing prison officers to seamen on Royal Fleet Auxiliary ships – but as National Chair Mark Fairhurst told POA Conference in 2022: "I don't know of many merchant seafarers who go onto the deck of their vessel and have someone come along and throw a bucket of urine and faeces all over them."

IMMEDIATE ACTIONS

The POA is calling on the new Labour Government to take the following immediate actions to tackle rock-bottom morale:

POA members on the 2019 march

- Give prison officers back the right to take industrial action, as promised by Blair in 1994;
- Give prison officers the right to retire on a full pension at the age of 60 or after 30 years' service;
- Treat prison violence as a national emergency and develop a credible strategy to minimise assaults against prisoners and staff, including by issuing PAVA spray to the youth estate to tackle ultra-violence;
- Overhaul the recruitment, vetting and training processes of prison officers and OSGs, learning from best practice internationally and staff on the front line;
- Establish a Royal Commission on prisons and the wider Criminal Justice System, as called for by numerous experts and promised (but not delivered) by the last Conservative Government.

A fundamental democratic right

KENNY MacASKILL explains why banning prison officers from taking industrial action shows a complete lack of respect and recognition of their vital work

Former Scottish Justice Secretary Kenny MacAskill

Democracy isn't just the right to vote in an election every four or five years, though even that dubious pleasure diminished as obstructions were brought in to casting your ballot by the last Government. It is fundamentally about the ability to have control or at least some influence over your daily life. It's about being able to withhold your rent if your home or accommodation is damp or dangerous. It's also about being able to withhold your labour if your workplace is unsafe, or the terms or conditions of your employment are unjust or inadequate.

Restrict those actions and people are rendered powerless, and it can be little surprise that they fail to participate in a democratic vote and grow cynical of politicians. It's why the right to strike matters to our society collectively, not just to the workers affected by it.

That's always been a fundamental belief I've held. It was why, when I was Scottish Justice Secretary in 2008, I refused the offer by Jack Straw to extend legislation restricting prison officers' right to strike. I recall taking a phone call from him suggesting I take it when it was being put through for south of the border. But it was in my view neither needed nor appropriate. Indeed, I thought it heavy handed and positively inflammatory and so I declined. I also welcomed actions by my successor in 2015 to enshrine the right to strike in law. That is how it should be in a democracy, and for a democracy.

DIGNITY AND CARE

Indeed, during my period in office there was industrial action in the Scottish Prison Service when agreement couldn't be reached between staff and management. But it was carried out with dignity and with care. Officers coming out, as was their democratic right, ensured that arrangements were made for prisoners and that the action was limited in time.

I was extremely grateful for that. It was why I rejected the advice of civil servants and the request of the Chief Executive of the SPS to rush to court for an interdict, the Scottish version of an injunction. That would have seen legal efforts made to outlaw the action and perhaps even punish those involved, whether union or individuals.

I had been called in the early hours of the morning by the POA in Scotland, who advised what they were going to do and that it would end by early afternoon. I was grateful for the courtesy of the call and, whilst allowing for lawyers to be contacted, refused to allow any formal legal steps to be taken. As it was, staff went back. The point had been made – a resolution was soon achieved. It shows the benefit of a working relationship between a minister and the unions.

FORGED RELATIONSHIP

My phone was always on. Calls were made directly and not just on this occasion. It neither undermined the SPS nor went behind the back of Justice Department officials. They were always fully appraised of what had happened by me, but a relationship was forged and lines of communication open. It was never abused and staff representatives and I both benefitted from it. It's how it should be in every department and I'm gobsmacked at the distance and difficulty that some ministers put between themselves and union representatives.

For it's not just about fundamental rights but about respect. I've always held those who work in the prison sector in the highest regard. It's a job that's not just undervalued by governments but largely misunderstood by the public. Knowledge and understanding of the role are very limited, with opinions and views often forged by media presentations and frequently either wrong or based on the situation in the USA.

PARITY WITH POLICE

The thanks and kudos accorded to other roles, whether nursing, police or social work, aren't replicated here. Yet the work of prison officers straddles them all and is required to be carried out in working conditions that are cramped and unsuitable for the task. A recognition of that would go a long way but little effort has made by UK governments of all political hues.

Instead, it's been a constant undervaluing of the role, worsened by the absurdity of expecting officers to be on the hall until an age when others are in the garden, on the golf course or watching the grandkids.

I recall reading the history of the Scottish Prison Service, written by Professor Andrew Coyle, the former governor of both HMP Peterhead and Brixton. He narrated how historically police and prison officers' pay had been at par. That age is a long time passed now but the injustice lingers.

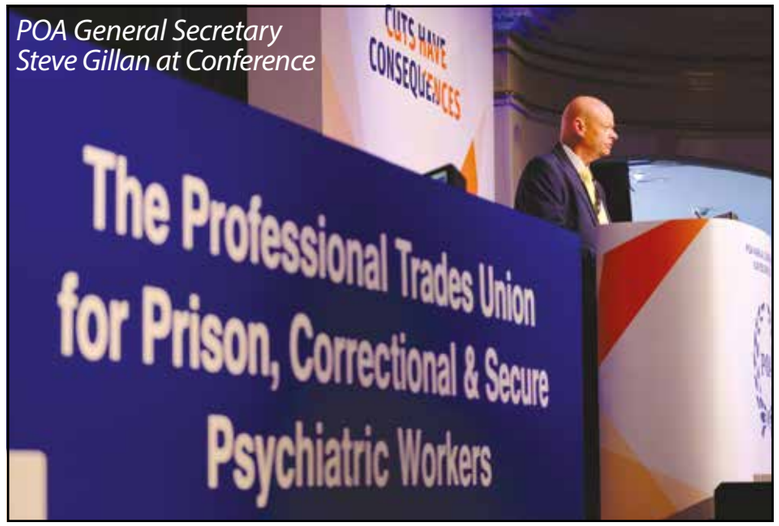
Some of those issues will take longer to address than others. But resolved they must be. In the interim though the right to strike must remain sacrosanct. It underpins the ability of staff and the union to negotiate and act on those wider issues.

It is a fundamental democratic right which must be preserved in Scotland and restored in England and Wales.

• ***Kenny MacAskill is a former MP, MSP and Scottish Secretary of State for Justice***

Our fight for basic rights

Why the POA will never stop fighting for our members' right to take action



POA General Secretary Steve Gillan at Conference

On 2 May 1933, Nazi stormtroopers raided trade union buildings throughout Germany. Union leaders were abducted, imprisoned and tortured. Union assets and properties were seized. Independent trade unions were replaced with a Nazi-controlled German Labour Front, which served as a propaganda tool for the regime. Trade unionists ended up in concentration camps with red triangles pinned to their chests which marked them out as political prisoners.

The Nazi ban on free trade unions not only deprived workers of collective bargaining and representation, it also removed a bulwark of democracy and freedom that stood in the way of the Nazis' total control over German society. It was an early step in their authoritarian rule of terror.

Martin Niemoeller summarised the lack of any effective push back when he famously wrote: "First they came for the socialists, and I did not speak out – because I was not a socialist. Then they came for the trade unionists, and I did not speak out – because I was not a trade unionist. Then they came for the Jews, and I did not speak out – because I was not a Jew. Then they came for me – and there was no one left to speak for me." In the wake of Germany's defeat, the allies believed that it was vital to set up a series of legal protections to prevent a repeat of those dark days, and so began the codification of human rights.

FREEDOM OF ASSEMBLY

The Universal Declaration of Human Rights started it off, and it formed the basis of the European Convention on Human Rights, which in turn was incorporated in UK law by the Human Rights Act 1998.

Article 11 protects the right to freedom of assembly and association, and it is within this framework that protections relating to trade unions have grown. These cover topics as varied as the right to form and join trade unions, blacklisting, collective consultation and the ability to take action collectively.

Some rights are absolute and can never be violated – such as the right to life. Other rights are subject to a balancing act whereby they can be breached but only in certain circumstances and subject to appropriate safeguards. Article 11 is one such right and it directly impacts on prison officers.

Within the human rights framework, the operation of prisons is considered to be an "essential service" – that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population – and this marks it out for special provisions. The Freedom of Association Committee of the governing body of the International Labour Organisation (ILO) accepts "that the right to strike can be restricted or even prohibited in the public service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees."

Of these is says: "As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented."

PROBLEMATIC SOLUTION

Prison officers had their right to strike removed by Section 127 of the Criminal Justice and Public Order Act 1994. The "compensatory guarantees" which we got in return came from the Prison Service Pay Review Body (PSPRB). This was brought in by the Prison Service (Pay Review Body) Regulations 2001 and was intended as an independent body that considers the evidence from stakeholders and makes recommendations to the Government about pay and conditions of service which it is expected to accept.

In reality however the PSPRB cannot be said to be genuinely independent: the Government chooses who is appointed to it; the Government funds its activities; it can only act when the Government tells it to provide a report; the Government sets out the parameters for the report; and there is no guidance about when the Government can reject a recommendation, which it has done on four out of 21 occasions. Perhaps most problematic of all is that there is no binding dispute resolution process in the event of any perceive abuse, despite it being required by Article 8 of the Labour Relations (Public Service) Convention 1978. Any challenge has to be through a legal system, which gives the Government very wide discretion as part of its executive function.

There are other practical problems with the PSPRB – it only covers England and Wales, and only covers public-sector prisons.

ILO CHALLENGE

In August 2004 we made a complaint to the ILO to challenge the removal of the right to take industrial action. In November 2004 the Government and the POA agreed a legally binding Joint Industrial Relations Procedural Agreement (JIRPA). Although it contained a no-strike clause, it also included a mechanism for legally binding arbitration.

In March 2005, the ILO made recommendations about making PSPRB recommendations binding except in exceptional circumstances, improving the independence of the PSPRB members, and asking to be kept informed. Because of JIRPA, the provisions in Section 127 were disapplied for prison officers on the mainland.

In August 2005, the UK Government updated the ILO to confirm that, while the recommendations of the pay review body could not be binding, the Government would only depart from them in exceptional circumstances, one of which would be on the grounds of affordability. It also said that it was in consultation about improving the process more widely. Part of this was a TUC-brokered process which started in summer 2006.

(continued on page 14)

A voting machine at POA Conference

(continued from page 13)
At this point, things started to break down. In March 2007, the Government failed to adopt the timetable of changes that the PSPRB had recommended, and in May 2007 we gave 12 months notice to end JIRPA. In June 2007, the Government reported to the ILO that we were not engaging with it and that we had sought to renegotiate an agreement that had been reached via the TUC.

BINDING RESOLUTION

It was also around this time, in August 2007, that the first injunction was obtained against us in respect of calling industrial action. Separately, in July 2007 Ed Sweeney had been tasked with undertaking a review of industrial relations in the prison service by TUC, jointly agreed with HMPS and POA. He published this in January 2008 and it included a legally binding Trade Union Dispute Resolution and Recognition Agreement (TUDRRA) with the ability to refer to legally binding arbitration. It did not cover pay and was never taken up.

In February 2008, the High Court extended the injunction despite our best efforts to show the flaws in the compensatory mechanism systems. The judge concluded that they operated, even if not as the union would like, and that JIRPA's binding arbitration was an important safeguard – even though it would expire just three months later. When it did, Section 127 was amended again to bring it back into force.

The ILO reviewed the position again in March 2011 and noted the large number of disputes that were holding back progress, but also noted that appointments to the PSPRB were now regulated by the Office of the Commissioner for Public Appointments (OCPA) – a body populated by Government and ex-Government officials. It concluded by imploring the Government to reinitiate consultations with a view of reaching an agreed solution, and bemoaned the fact that there was neither POA representation on the PSPRB nor a binding mechanism of independent arbitration for disputes.

In March 2011, a National Disputes Resolution Procedure for Changes to Specified Terms and Conditions was agreed and operated for a while, although in December 2018 the High Court concluded that it could not be enforced in any way at all against the Government – which undermines its usefulness and means it falls well short of the obligation to have a means of binding independent dispute resolution.

PERMANENT INJUNCTION

In 2013, we went to Europe to try to challenge the lack of progress but the claim was rejected as it was too similar to the one in 2004.

In July 2017, the permanent injunction was imposed on us, and this seems to have made the Tory Government feel that it could start taking liberties. In July 2018, the Government said that it was accepting "the spirit" of the PSPRB's 16th Report but in reality it rejected eight out of the 17 recommendations and ignored the PSPRB's request to explain itself. In January 2019, we approached HMPPS about agreeing a national disputes resolution procedure with a draft document based on Ed Sweeney's 2008 report. It was dismissed out of hand.

In December 2019, we agreed the Health and Safety Protocol, which was a small bit of progress in an otherwise bleak decade. Despite this, a few days later we were fined £210,000 for contempt of court for breaching the permanent injunction. The following July, the Government rejected Recommendation 3 of the PSPRB's 19th Report, and a further challenge that we lodged in the European Court of Human Rights was rejected in January 2021 without any explanation or ability to appeal.

POA NEC members at the 2019 march and rally

CHALLENGE ACCEPTED

In October 2021, an emboldened Government then rejected Recommendations 1 and 5 from the PSPRB's 20th Report. The ECHR rejected a further application by us in December 2021. Undeterred, we challenged the refusal to implement Recommendation 3 in the High Court. It denied us permission to judicially review it in September 2021, as did the Court of Appeal seven months later. We therefore applied to the European Court of Human Rights in June 2022, using it as a springboard to challenge the adequacy of the compensatory mechanism arrangements. The application was accepted by the ECHR in June this year and this gives a possible opportunity to make some progress on this. This stage is covered by strict confidentiality requirements but we will update our members as soon as we can.

Watch this space!

POA motion to TUC 2024

Motion 3: Repeal Section 127 Criminal Justice Public Order Act 1994

Congress welcomes the Labour government's New Deal for workers and is committed to ensuring that part of the manifesto is delivered in a timely manner. Congress welcomes the commitment from a Labour government to repeal the Trade Union Act 2016 and the Minimum Service Levels legislation, however Congress commits the General Council to campaign to also repeal Section 127 of the Criminal Justice Public Order Act 1994 which restricts prison officer grades in England, Wales and Northern Ireland from taking any form of industrial action and making it a criminal offence to do so or to induce that action.

Congress notes the right to strike is a fundamental human right under international law and that the POA have now been restricted for 30 years and finds itself under a permanent injunction and contempt of court. This pernicious piece of legislation should and must be repealed given that there are no adequate compensatory mechanisms in place for resolving local and national disputes or effective mechanisms for resolving pay. Further, Congress welcomes the fact that the ECHR has accepted an application from the POA on these restrictions and a period of negotiations should take place as a first step between government and union as part of that application.

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