CIPD

Make Work Pay: Consultation from detriments for taking industrial action

Submission to the Department for Business and Trade

Chartered Institute of Personnel and Development (CIPD)
April 2026

About the CIPD

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our members.

CIPD

Response

Section 2 – Options for Secondary Legislation

Option A – Prohibit All Detriments for Taking Industrial Action (Government's Lead Option)

Q1. Do you support prohibiting all detriments for taking industrial action?

No.

Q2. What benefits might come from prohibiting all detriments for taking industrial action?

From an employee perspective, we appreciate some of the perceived potential advantages of prohibiting all detriments for taking industrial action, such as the government's view that individuals would feel protected against any form of perceived unfair treatment when exercising their legitimate right to strike.

However, these would be outweighed by the potential adverse disadvantages that could arise for businesses (see our response to Q3 below). Also, as the consultation paper points out, imposing detriments on workers for taking industrial action is not commonplace. Having consulted with our members who lead on industrial relations across the economy, we confirm this view. Even in the minority of cases where applying detriments short of dismissal have been a possibility, these are generally avoided in the longer-term interest of fostering good industrial relations with the workforce. Further, even if there was a blanket ban to prohibit all detriments for taking industrial action, this approach would not necessarily avoid spurious claims that an employer's action in certain circumstances was connected to the industrial action.

Q3. What concerns or challenges do you see from prohibiting all detriments for taking industrial action?

We recognise the need for the law to provide proper protections for workers in this area if they take lawful industrial action. The Supreme Court judgment in Mercer made this clear in that section 146 of TULRCA does not provide protection against detriments short of dismissal for taking part in or organising industrial action. However, as the consultation document makes clear, while some protection is necessary for compatibility with Article 11 of the ECHR, universal protection from all detriments is not required.

The consensus from our members is that prohibiting all detriments could lead to a situation where managers become fearful of implementing genuine management decisions as potentially any action could be construed as a detriment, even if there is no connection to industrial action. For example, employers have a legitimate right to manage the operational consequences of industrial action, such as reallocating work or adjusting shift patterns. The industrial action could have had a serious financial impact on the organisation which dictates a course of action that is different from the one intended before the industrial action. For example, a pay offer made before the action could no longer be financially viable, leading to it being withdrawn or reduced. The burden of proof in this scenario and others would fall on the employer to demonstrate that its actions were unrelated to industrial action. Introducing a blanket ban could expose employers to more opportunistic

claims, particularly where the industrial relations climate is strained following industrial action.

Q4. How might prohibiting all detriments for taking industrial action influence employers' ability to manage workplace disputes and industrial action?

We believe that such an approach could hamper employers' ability to manage workplace disputes and industrial action. We appreciate that some measures such as proactive negotiation, contingency planning, and workforce management would remain available. However, it would be overly restrictive to legislate for a blanket ban which would tilt the balance of power too heavily against employers in a strategic and operational sense. Industrial action could have a considerable financial impact on an organisation and a blanket ban could foster a more risk-averse culture where managers fear that reasonable operational decisions could risk being challenged.

Q5. Would this option have an impact on industrial relations?

It would depend on the industrial relations climate and situation within a specific organisation. However, as the Government's consultation on creating a modern framework for industrial relations makes clear, one of the core principles for effective partnership is to balance the interests of employers and workers. As we say under Q4 above, a blanket ban would tilt the balance of power too heavily against employers in a strategic and operational sense. This specific reform should also be considered within the wider context of the other far reaching reforms affecting trade union rights and the statutory framework relating to industrial action that will be implemented under the ERA 2025. The combination of these reforms will already shift the pendulum of power quite heavily in organisations, making it easier for unions to gain a mandate for industrial action and streamlining their obligations for taking industrial action.

Option B – Create a List of Prohibited Detriments

Q6. Do you support creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

Yes. We believe that a targeted list of prohibited detriments would address the gap in the law identified in the *Mercer* case, and would strike a fairer balance between protecting employees from detriment and preserving the legitimate interests of employers in managing the operational consequences of industrial action.

Q7. What benefits might come from creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

The benefits could include providing greater clarity for employers, workers and unions on what constitutes a genuine detriment. A list as opposed to a blanket prohibition would reflect the arguments made in the Mercer case, and also help to avoid vexatious claims.

However, the view from some of our senior industrial relations professionals is that it could be more helpful to provide greater clarity on what constitutes a detriment in very comprehensive and practical guidance, including examples of what specific

conduct is prohibited as well as examples of legitimate management actions in managing the consequences of industrial action.

Q8. What concerns or challenges do you see from creating a specific list of detriments that employers would be prohibited from imposing on workers for taking industrial action?

A list may not capture all egregious detriments and could become outdated as workplace practices evolve, as the consultation paper points out. It would still leave room for a minority of employers to not act fairly and create detriments that fall outside the list. This is why guidance, based on principles and underpinned by good industrial relations, would be helpful for employers to comply with these new requirements. It would also be helpful to draw up a list with categories or types of detriment rather than itemising a very long list of detriments that could quickly become outdated. Any list would need regular and careful review.

Q9. Which types of detriments do you believe should be included in the prohibited list? Please explain why.

Categories that reflect the types of serious sanctions that the Strasbourg Court has consistently found to have an impermissible "chilling effect" on the exercise of Article 11 rights, ie:

- Suspension without pay as a disciplinary measure for participation in industrial action (which the Court of Appeal specifically identified as a potential Article 11 breach)
- Disciplinary action (including formal warnings and dismissal-related processes) imposed solely or mainly to penalise or deter participation in lawful industrial action
- Demotion or reduction in grade
- Complete withdrawal of existing contractual benefits
- Harassment, bullying, or victimisation
- Blacklisting or adverse references related to participation in industrial action.

Q10. Which types of detriments do you believe should not be included in the prohibited list? Please explain why.

Legitimate management decisions that are not connected to industrial action but are deemed necessary to run business operations should not be included in the prohibited list. It would be helpful to provide examples in different business contexts to demonstrate how the law should be applied. This could include genuine management decisions that are made to manage the impact of industrial action on business operations and finances, such as changes to shift patterns, allocation of duties and downward revision of previous pay offers.

Q11. Would this option have an impact on workers' willingness to participate in industrial action?

It’s hard to predict whether or not there will be a direct impact on workers’ willingness to participate in industrial action. Much will depend on the individual dispute and trade unions’ approach, as well as other factors such as awareness of the legislative framework in relation to protection from detriment. Hypothetically,

if workers in a specific industrial relations situation were aware of the law, it could inspire more confidence to take industrial action if there was less fear about potential consequences.

Q12. Would this option impact employers' ability to manage disputes and industrial action?

A list-based approach would provide employers with clarity and maintain some level of flexibility for them to make operational decisions to manage the impact of industrial action on their organisation.

Section 3 – Awards for Failing to Comply with Acas Code of Practice

Q13. Should claims made under Section 236A of TULRCA be added to Schedule A2, meaning that an employment tribunal can adjust an award by up to 25% where the employer or employee unreasonably failed to follow the Acas Code of Practice on Disciplinary and Grievance Procedures?

Yes; this approach would be consistent with the existing one for claims under section 146 of TULRCA. It would hopefully encourage all parties to follow good practice in disciplinary and grievance matters arising in the context of industrial action. As the adjustment applies to the employer or employee if any party unreasonably failed to follow the Acas Code of Practice, this would support a balanced approach to industrial relations.

Q14. Is there anything else on this subject that the government should consider?

As highlighted above, it would be very helpful to produce clear practical guidance on this area of law for employers and employees, including on the practical application of the "sole or main purpose" test, with examples of conduct that is and is not likely to fall within the prohibition. The consultation paper already provides some helpful examples, such as disciplinary action for misconduct during industrial action, including bringing the company into disrepute, breaching confidentiality, or violating codes of conduct, but more detailed statutory guidance would hopefully support better industrial relations and help prevent vexatious claims further burdening an already overburdened tribunal system.