
POLITICAL FUND IN TRADE UNION

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ABSTRACT

A trade union wishing to spend money on party political activities must set up a separate political fund for financing any such expenditure. Trade unions must comply with certain statutory requirements in setting up and running such funds and union members have certain rights in relation to these requirements. In particular, no member is obliged to contribute to a union's political fund.

This paper is designed to give trade unions, their members and others a general understanding of the relevant statutory requirements, and rights given to members. It gives general guidance only and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.

The contents of this document apply equally to men and to women but, for simplicity, the masculine pronoun is used throughout.

CHAPTER 1: INTRODUCTION

By the Trade Union Act 1926, trade union political expenditure is subject to detailed legal control. A union may incur expenditure in furtherance of the statutory political objects, only if there is a resolution in force, passed by a majority of members voting, which approves the adoption of political objects as an object of the union concerned. Armed with this authority, the union may then have rules, to be approved by the Certification Officer, providing for the creation of a separate political fund. Every member of the union is entitled to claim exemption from the obligation to contribute to that fund, and may not be placed at any disability or disadvantage for so doing. Section 16 of the Trade Union act 1926 talk for the Constitution of a separate fund for political purpose. A trade union can have such civic and political objects as are not inconsistent with its primary object. To pursue such objects it can raise separate funds.

This section provides that a registered trade union may constitute a separate fund from contributions separately levied for or made to that fund. Out of this fund payments may be made for the promotion of the civic and political interests of its members in furtherance of any civic or political interests of its members in furtherance of any civic or political objects enumerated in section 16 of the Act. It is noteworthy that no expenditure for political purpose out of the general fund is permitted. The interests on investments, which constitute the Political fund will belong to that fund, and that fund may be lawfully swelled by donations, subscriptions and so forth.

A trade union needs a political fund only if it wants to use its funds for what the law defines as "political objects". "Political objects" cover what can broadly be described as electoral or other party political activities. They can be on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party on the provision of any service or property for use by or on behalf of any political party, in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by a union in connection with any election to a political office (that is the office of Member of Parliament, Member of the Parliament, Member of the Assembly, Member of the European Parliament, or member of a local authority, or any position within a political party), on the maintenance of any holder of a political office (as defined above), on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party (including any expenditure incurred in connection with the attendance of delegates or other participants)

or on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote or not to vote for a political party or candidate. Expenditure for any purpose not included on this list, but allowable under the union's own rules, may be made out of its general, or some other, fund.

The statutory controls on trade union political expenditure apply only to expenditure in furtherance of the political objects listed in section 16(3) of the 1926 Act. If the expenditure falls outside the scope of section it may be financed by general funds, and may be incurred by unions which have no political objects. The political objects now express include contributions to the funds of a political party, the payment of any expenses incurred directly or indirectly by a political party, and the provision of any service or property for use by or on behalf of any political party. A contribution is defined to include affiliation fees and loans, and would also cover payments to Labour's election fund.

CHAPTER 2: ASSETS AND LIABILITIES OF POLITICAL FUNDS

Section 14 introduces three important controls which relate to the financing of political funds and political activities. The first provides that at any time when there is a resolution in force, no property shall be added to a union's political fund other than contributions to the fund by members of the union or any other person, and property which accrues to the fund in the course of administering the assets of the fund.

The second restraint on the financing of the political fund is designed to ensure that unions do not continue to raise funds for political purposes after a resolution has ceased to have effect. So unions cannot require members to contribute to the fund, and no property may be added to the fund. This last restriction is subject to two qualifications. The first relates to property which accrues in the course of administering the assets of the fund, such as income that will come from the building society or wherever the funds are lodged. The other qualification relates to contributions paid before the expiry of the resolution but not yet deposited in the political fund. This would cover the situation where the employer has deducted contributions by way of the check-off but not yet handed them over, and also the practice whereby unions deposit all income into general funds before distributing the assets to the respective funds at the end of each quarter, or other period.

The third control on trade union political funding applies both where a resolution is in force and to cases where there is no resolution. Section 14(3) enacts that no liability of a political

fund shall be discharged out of any other fund of the union, regardless of whether an asset of that other fund has been charged in connection with the liability. Quite simply, this means that a creditor will not be able to secure payment of a political fund debt out of the general fund of a union, or out of the assets of that fund.

It is not altogether clear that this measure introduces any change to the law, though section 14(4) suggests that it does by enacting that it shall not have effect in relation to any liability incurred before the passing of the Act. But although section 16(4) has the virtue of clarity, it is nevertheless not free from controversy. The position could easily arise whereby a union with a low balance holds a ballot to renew political objects, the resolution is lost, and the union has a number of debts which exceed the balance in its funds, with no income to meet these debts. Concern on this count was raised in Standing Committee, particularly on behalf of small businesses.

CHAPTER 3: PURPOSE OF POLITICAL FUND

According to the Trade Union Act 1913, trade union political expenditure is subject to detailed legal control. A union may incur expenditure in furtherance of the statutory political objects, only if there is a resolution in force, passed by a majority of members voting, which approves the adoption of political objects as an object of the union concerned. Armed with this authority, the union may then have rules, to be approved by the Certification Officer, providing for the creation of a separate political fund. Every member of the union is entitled to claim exemption from the obligation to contribute to that fund, and may not be placed at any disability or disadvantage for so doing. Section 16(2) declares the following as civic and political objects. Firstly, the payments of any expenses incurred, either directly or indirectly by a candidate or prospective candidate for election as a member of any legislative body constituted under the constitution or of any local authority, before, during, or after elections in connection with his candidature in elections.

Secondly, the expenditure incurred in holding of the meetings, distribution of any literature or documents in support of any such candidate or prospective candidate. Thirdly, for the maintenance of the any person who is member of any legislative body constituted under the constitution of any local authority or expenses for the registration of electors or the election of a candidate or of any local authority. The expenses incurred on the holding of meetings of any kind, or the distribution of political or political documents of any kind.

These all refers mainly to election expenses and is so wide that it covers all expenses from stage of preparation to the incidental expenses incurred after elections. It permits expenditure for holding of any meeting or distribution of any literature or document in support of a candidate or the nature of literature or document is political or not. Therefore, any expenses incurred on journal or newspaper containing matter in support of such legislative bodies, and not to support the candidates.

It authorises expenses for housing, clothing, payment of allowances etc. to persons actually holding an office in legislative body. It further covers the expenditure on issues of notices, circulars and poster with a view to canvass registration of electors. So also expenditure on account of holding of selection committee for the purpose of selecting or securing the elections of a candidate is also authorised under this section. Further, and money spent on distribution of political literature whether the members of the union or the general public is also covered.

Other purposes:**a) The political levy and the check-off**

There are several points to note about this apparently innocuous measure. First, there will be trade union members who are liable to pay the levy but in respect of whom a union will be disabled from using the check-off. An example is the situation where an employee notifies his union more than one month from his date of admission that he objects to paying the levy. In that case the employee is liable under the 1913 Act and the political fund rules to pay until the end of the calendar year, but if he tells the employer that he has notified the union of his objection, the use of the check-off must be discontinued. Secondly, and more seriously, the new arrangements could have the effect indirectly of preventing unions in some cases from collecting the levy from any of their members by means of the check-off. If an employer is unable or unwilling to deal in differential contribution rates (and in this context it will be interesting to see how public sector employers respond) he will either have to terminate the check-off agreement or arrange for the deduction of a flat rate general contribution from all members, leaving the union to collect the levy by whatever alternative arrangements it can find. At this stage it is difficult to say how many unions will be in this position. But should this occur to any significant extent the administrative burdens of the unions will clearly outweigh the mischief to which section 18 was designed to respond.

b) Paying for the Ballots

The final issue of substance relating to Part III concerns the financing of the political fund ballots. Since the introduction of section 1 of the 1980 Act, it has been unclear whether the public subsidy for trade union ballots applied to political fund ballots. Nevertheless, this suggested approach does seem sensible.

If political funds are to be used for the periodic reviews, the anomaly would be created whereby general funds could be used initially to set up the fund, but ballots on subsequent resolutions would have to be financed from the political fund. The unions cannot pass on any of the cost of the ballots to their members, with the new section 4(1C) of the 1913 Act providing that every person who is entitled to vote must so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

CHAPTER 4: REVIEWING OF THE POLITICAL FUND

Where a majority of union members voting in a political fund review ballot decide that their union should no longer spend money on "political objects", the union must take such steps as are necessary to ensure that the collection of political contributions ceases as soon as is reasonably practicable, pay any political contributions collected in the meantime into a fund other than the union's political fund, refund any political contributions collected in the meantime to individual union members if requested by them to do so, stop all spending on political objects within six months of the date of the ballot (or immediately if the political fund is in deficit).

However, the law allows a union to transfer money from its political fund into other funds of the union if it chooses to do so. There are special provisions for complaints about failures to take steps to stop the collection of political contributions. In such circumstances a union member may apply to the court for a declaration that his union has failed to satisfy the statutory requirements.

The court can also make an order setting out action which the union must take to put right its infringement and a time limit will normally be set within which the union must take that action. Where approval is given for the trade union to continue spending money on political objects, the union must inform all its members: that each member has a right to "contract out" of paying the "political levy" and a form with which to claim this right is available (by personal

application or by post) from the union's branch or head office, or from the Certification Officer

Unlawful expenditure on political objects

A union member may complain if his union spends money from its general fund (or any fund other than a political fund) on "political objects". A member may also complain if his union spends money on "political objects" without a political fund resolution being in force, or without approved political fund rules.

Expenditure on "political objects" from the general fund will be a breach of the union's "political fund rules" and a member's right of complaint is the same as for any other breach of the political fund rules. The member may complain to the Certification Officer who, if he considers a breach has occurred, may make an order for remedying it which may then be enforced in the County Court (in Scotland the Sheriff Court).

CHAPTER 5: CONCLUSION AND SUGGESTION

A trade union needs a political fund only if it wants to use its funds for what the law defines as "political objects". "Political objects" cover what can broadly be described as electoral or other party political activities. They can be on any contribution to the funds of, or on the payment of any expenses incurred directly or indirectly by, a political party, on the provision of any service or property for use by or on behalf of any political party, in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by a union in connection with any election to a political office.

Section 16 introduces three important controls which relate to the financing of political funds and political activities. The first provides that at any time when there is a resolution in force, no property shall be added to a union's political fund other than contributions to the fund by members of the union or any other person, and property which accrues to the fund in the course of administering the assets of the fund.

The second restraint on the financing of the political fund is designed to ensure that unions do not continue to raise funds for political purposes after a resolution has ceased to have effect. So unions cannot require members to contribute to the fund, and no property may be added to the fund.

The third control on trade union political funding applies both where a resolution is in force

and to cases where there is no resolution. Section 14(3) enacts that no liability of a political fund shall be discharged out of any other fund of the union, regardless of whether an asset of that other fund has been charged in connection with the liability.