Victimisation of labour union activists in Britain: suppression of the means for union voice

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Introduction

One of the sharpest and most overt manifestations of conflict between capital and organised labour in the workplace has always been the victimisation of workers who are union lay representatives and workplace union activists by their employers for their workplace union activities. And the sharpest forms of victimisation have comprised dismissal (sacking or redundancy) and suspension (which can lead to dismissal). Historically, some of the most famous *cause celebres* of the labour movement have concerned such cases of victimisation. The recent case of Manchester-based mental health nurse and Unison lay official, Karen Reissmann, is such an instance which attained national prominence (see *Guardian* 5 December 2007, 12 March 2008, for example). The rationale for employers acting in this way has been that victimisation of union representatives for being union representatives and workers for being workplace union activists represents a key tool in employers' armoury of trying to erode, kill or control independent union workplace organisation because it represents an obstacle to realising the unfettered right to manage. And while not all employers[1] contemplate or take such action, victimisation works by having both physical and psychological dimensions whereby it deals with what is perceived to be a threat or obstacle represented by the rep or activists concerned to the employer as well as sending out a message that others who may consider carrying out such representational roles will be on the receiving end of similarly punitive action.

Although a high risk strategy for employers – given the possibility of coalescing together a collective and combative backlash from the affected workers and being seen as an act of overt and political warfare – the rewards to be gained from victimisation include decapitation and pacification of workplace opposition and reinforcement of the managerial prerogative. The tactic of victimisation tactic falls within the category of union suppression, forceful opposition and the 'iron fist' *contra* union substitution, peaceful competition and the 'velvet glove'. However in an era where HRM is now dominant, and where the 'hearts and minds' of workers have supposedly been won by employers through enlightened practices in employment, the frequency of victimisation of union reps and activists should be negligible because it has become unnecessary. Indeed, as union membership has fallen and union workplace organisation has atrophied, this should be all the more so for employers are far less likely to meet workplace union presence and effective workplace unionism. Although this paper is unable to attest to whether this has been this case by comparing the pre- and post-HRM eras of employment relations in Britain, the paper does suggest that the frequency of instances of victimisation is greater than would ordinarily be expected as a result of both these two factors (of the ascendancy of HRM and union decline) and, thus, casts new light on the issues of employer behaviour and union presence. For example, victimisation may be part of the practice of HRM as a necessary means of making workers

[1] Many employers will not face or contemplate such actions because they are either not faced with the presence of workplace unionism or are of a more liberal and pluralist mindset (and thus more inclined to strategies of incorporation and institutionalisation). However, this situation can change as employers deal with the *realpolitik* of employment relations.

susceptible ('softening them up') to HRM practices once they have been disavowed of the protection of, and access to, independent workplace unionism.

For the purposes of this paper, victimisation is defined as comprised of either sackings, dismissals and redundancies, on the one hand, or of suspensions for serious disciplinary offences, on the other hand, of those who are either union reps like shop stewards and branch secretaries or are union activists who hold no formal union position. These victimisations are necessarily selective and targeted, rather than mass or blanket, actions. There are other forms of salient victimisation such as being passed over for promotion, refused other jobs in the employing organisation, being transferred to other work, given unsocial shifts and so on. Such victimisation is sometimes referred to as harassment. However, in terms of detecting cases of victimisation, those concerning termination of, or suspension in, employment are the more serious and tangible, and consequently, more noteworthy and thus more likely to become information which is part of the public domain. This makes them more of open to the process of identification. By contrast, those instances of victimisation by way of harassment are more inclined to remain internal within an organisation, be more difficult to prove and thus less likely to make it into the public domain.

Although blacklisting is a form of victimisation which has been used against union representatives, activists and members, it is not one which is surveyed in this paper for no other reason than methodological difficulties. Because blacklisting primarily concerns preventing the commencement of employment by interfering with a meritocratic selection policy, workers are not sacked in the process. Rather, they are denied employment. Consequently, the act of blacklisting does not generate the evidence of victimisation in the public domain that is identifiable (see below). This means that the extent of victimisation established in this paper is, in this regard, an underestimate because such blacklisting has occurred in the construction and offshore oil and gas industries since the 1970s[2] in an organised and conscious way throughout those employing organisations in those sectors (see *BBC News Online* 25 February 2009, *Guardian* 6 March 2009, *Socialist Worker* 8 April 2006). It is safe to say that such victimisation here has concerned several hundred workers and possibly several thousand workers.

The rationale for the paper examining the last twelve years is several-fold. First, the *Employment Relations Bill* of 1998 which became the *Employment Relations Act 1999* contained not only a provision on the outlawing of blacklisting (which was not implemented due to alleged insufficient 'hard' evidence) but it abolished the Special Award for dismissal for trade union activities with the effect that this reduced the amount of financial compensation that was payable by employers in cases of dismissal for union activities. Second, the widespread availability of electronically stored data on the worldwide web begins around this point, facilitating identification of cases of victimisation. It is worth noting, though, that before and after the change in law in 1999, the proportion of Employment Tribunals determining that orders of re-engagement or reinstatement be made after proven cases of unfair dismissal (for all reasons and including union activities) has been much less than 1% (Renton 2008). With the inability to enforce such decisions, employers choose to pay off the litigants. Consequently, the issue of financial compensation remains an important one in cases of victimisation.

[2] In the case of the construction industry, since the widespread unofficial strikes of the early 1970s, and in the case of offshore oil and gas industry, the mid-1970s when the industry in the British sector was established and at this point deployed the expertise of American companies (see Woolfson *et al.* 1996).

The paper will begin by reviewing the methodological issues in researching the frequency of incidences of victimisation (and as defined above) before laying out the research findings and analysing them.

Methodological issues

Instances of victimisation of workers by employers are by their very nature contentious and controversial, and all the more so where victimisation for union activities or membership is alleged to have taken place. The contention and controversy – as well as the victimisations themselves - reflect the underlying aspects of conflict of interests between capital and labour in the capitalist employment relationship, and this then has ramifications for the research methods for this paper. Given that the canvass upon which to measure union victimisation is the entire economy of England, Wales, Scotland and Northern Ireland from 1998 to 2009, it was unfeasible to conduct survey work through interviews or questionnaires with employers and unions to try to capture incidences of victimisation – assuming that respondents were willing to be frank as well as that they could accurately recall all such instances. Consequently, the approach of identifying 'documented' cases through secondary sources was deployed. This came to mean cases where unions identified victimisation for reason of union activity (as opposed to just membership). Thus, a number of issues emerge when deciding to deploy such a secondary source.

First, the burden of proof squarely rests upon the shoulders of the aggrieved party where there is no compulsion (legal or otherwise) on the accused to provide a detailed and substantiated denial. Second, what constitutes an instance of victimisation when the employer denies it, the worker or union allege it and there is no independent third-party to verify and attest to the allegation? Third, there is a difficulty in establishing attribution and motivation for the most likely form of victimisation is the use of *prima facie* evidence of misconduct (rather than trumped-up charges) in an opportunistic manner – which testifies to the old adage that it is especially important for union reps and activists to 'keep their noses clean' by being good time keepers and so on in order to prevent management from gaining an opportunity to act against them.

Quite apart from many alleged cases of victimisation never reaching the obvious source of independent verification, namely, Employment Tribunals and others never being adjudicated upon there for the reason of pre-emptive 'out-of-court' settlements with confidentiality clauses, the documentation and evidence supporting allegations of instances of victimisation are often extremely difficult to come by for the aggrieved party. Secrecy and confidentiality are the watchwords of employers in these matters and, moreover, proving intention, motivation and cause and effect means that the bar of proof is very high.

Given this situation, it would erroneous to judge the number of cases of proven victimisation through relying solely upon such cases found at Employment Tribunal. Something similar can be said about using the caseload of individual conciliations conducted by ACAS. Therefore, and without being entirely beyond reproach, the measure used in this paper is where *unions* allege that victimisation has happened. Of course, the standard of proof here is a lesser one than that of independent third-party verification but it is believed that, on balance, where a union is prepared to publicly allege that victimisation for union activities has taken place, this is a good measure of the existence of victimisation because the union will demand hard evidence of this from the aggrieved member before it is prepared to put its reputation and resources at the disposal of a such a case and its resolution. Thus, using the *union* as the method of quality control means that not all punitive action against union

representatives or activists is necessarily seen as victimisation as such. Here, the leftwing conspiracy notions can thus be kept in check for some employer actions that look like victimisation to some may have a strong basis of justifiable evidence for others. However, there are two senses in which the union threshold or bar is too high for there are cases which the union believes exist but cannot be proved beyond reasonable doubt so that the union is not prepared to pursue the case, or where the union is prepared to collude with the employer to get rid of an 'irritant' to both parties.

The reason why the media cannot be adequately relied upon as a party of independent verification is two-fold. First, media organisations (national, regional, local) are now not, compared to periods before, particularly interested in issue of unions and so will not necessarily report on cases of victimisations. Second, and following from this, these media organisations are not prepared to expend the resources which are necessary to independently substantiate allegations of victimisation through investigative journalism because this is an expensive activity where there is intense pressure upon costs (albeit this is true of their rationale for not expending resources of investigative journalism *per se*). Consequently, if they cover stories of alleged victimisation, they are most likely to do so as a result of deciding to use union press releases or stories fed to them by unions. The most they do in these situations is couch the story as an allegation rather than a fact and ask the employer for a comment. In other words, media stories are replications of union information and it is, thus, more useful to use the original source of material from the unions concerned. There are two caveats to this rational for not using the mainstream media. First, the union orientated and leftwing media (like labourstart/labournet and *Morning Star*/*Socialist Worker* respectively) are more predisposed to reporting on alleged instances of victimisation. Second, there are cases of victimisation which, for whatever reason such as collusion with management against (internal) opponents, a union is not prepared to publicise. Here, such forms of non mainstream media reporting can play a useful role.

The import of this discussion of the salient methodological issues is that it is believed that the data in the paper is robust by virtue of its ability to capture the vast majority (but not all) of victimisations of lay union representatives by employers.

The Extent and Nature of Victimisation

From Table 1 (below), it can be deduced that the preferred method of employers is sacking or dismissal, rather than suspension (although suspension can then lead to dismissal). This suggests, on balance, that employers prefer to be able to act quickly in order to not only remove a rep or activist from their workplace (as can be done with suspension) but also expedite the matter but severing their employment contract rather than having to deal with the consequences through an internal process. The number of victimisations through sacking or dismissal has shown a broadly upward trend since 1998. Some of this can be attributed to the battles in the workplace over implementing and resisting government policy in the public sector while factors such as the nature of industrial relations in a small number of specific sectors (see below) would also seem to have a significant bearing here. The year 2008 stands out for not only a higher number of individual cases of victimisation but also the inclusion of a number of cases where small numbers of activists were victimised together and simultaneously. This raises the number of victimisations by nearly twenty cases over and above previous years where such clustering of small collective victimisation was uncommon. One possible explanation for the higher frequency in 2008 relates to the reporting of employers using cover of redundancies in recession to get rid of union 'troublemakers' (*Guardian* 16 February 2009). Another is that it relates to particular instances of attempts to gain union recognition at a small number of non union employers. These particular

interpretations reflect that the optimum period for conducting victimisation is often one of slack labour markets. This arises not just because of the perceived employer financial need in times of a recession or contraction in the economy (where union resistance or opposition can be calculated as a cost) but also because it is believed that a robust response from the union and workers concerned is less likely in these times of lessened bargaining leverage.

The number of victimisations is believed to be significant in itself for a number of reasons. First, there is little more dramatic action an employer can take against a union rep or activist than termination of employment given that this brings into jeopardy their livelihood and future employment. Second, and compared to the US, there is still a dominant political culture that terminating employment for such reasons is unacceptable. The import of these factors is all the more forceful given that where 48% of all victimisation have taken place within the public sector where there has been a tradition of a more supportive environment for labour unionism (see below). Third, and given the paucity of union activists, there is a clear issue for unions of the destruction of their most valued resource, namely, lay activists. Over and above these points, any number of victimisations has a deleterious demonstrative effect upon others, that is, the union members and activists which the victimised workers represented. Thus, one can venture the more victimisations, the more the purchase of this demonstrative effect of the punitive action for being a union activist. In a period when unions are now expending significant resources and energies to attempt to take control of their own destinies through union organising (of green and brown field sites), this should be all the more alarming.

Table 1: Victimisation by year

Year	Sacking	Suspension	Totals
1998	10	2	**12**
1999	10	2	**12**
2000	18	1	**19**
2001	12	1	**13**
2002	17	4	**21**
2003	13	6	**19**
2004	16	1	**17**
2005	24	5	**29**
2006	27	2	**29**
2007	18	2	**20**
2008	55	7	**62**
2009 to April	8	4	**12**
Total	228	37	265

Note: Suspension is differentiated from sacking where suspension did not lead to sacking.

Union representatives and activists faced victimisation in the context of both attempting to gain and attempting to operate within existing union recognition (see Table 2 below). The relative balance between the two is indicative of the relatively low number of campaigns run by unions for gaining union recognition and the upward trend amongst employers to try to undermine existing union recognition (see also Gall 2004, Gall and McKay 2001). Alongside this, it can be ventured that there are other potential and possibly better means by which to deter union recognition campaigns such as threats to all workers' employment and union substitution. However, dealing with existing union recognition and workplace unionism

provides less leeway as they are already in existence and represent a manifest obstacle so that victimisation in this context is more preponderant.

Table 2: Victimisation by context

Year	No union recognition	Existing union recognition	Total
1998	6	6	**12**
1999	7	5	**12**
2000	7	12	**19**
2001	7	6	**13**
2002	7	14	**21**
2003	4	15	**19**
2004	3	14	**17**
2005	4	25	**29**
2006	10	19	**29**
2007	8	12	**20**
2008	15	47	**62**
2009 to April	1	11	**12**
Totals	79	186	265

From Table 3 below, there is a somewhat surprising overall preponderance of victimisation in parts of the public sector/services (NHS, local and central government, education). Although the locus of much strong workplace unionism is to be found in the public sector by comparison to the private sector, it is evident that the notion of the 'model employer' with regard to the encouragement of unionism and collective bargaining no longer holds such sway in the public sector as it used to do. The cases of victimisation here overwhelmingly concern union reps and activists campaigning against employer policy of marketisation (and it associated effects). Thus, it is clear that the 'modernisation' of the public sector as a result of government policy under 'new' Labour has resulted in conflict at the level of the workplace.

Elsewhere, the other areas within other sectors which stand out with significant clusters are those of rail (overground, underground) with transport, Royal Mail (within media and communications), manufacturing, construction and cleaning (within private sector services). The RMT union pursues an assertive form of collectivism on rail transport and associated work like infrastructure and cleaning which employers have responded to with equally robust actions. Something similar could be said in regard of the CWU and the Royal Mail. However, the difference between the two is that the RMT's actions are more nationally led whereas the CWU's stem from the workplaces themselves. In construction, the prevalence of unofficial action suggests that the situation here it is akin to the situation in Royal Mail *vis-à-vis* workplace unionism (see *Financial Times* 7 February 2009).

Table 3: Sectoral distribution of victimisation

Year /Sector	NHS	Local govt.	Trans.	Civil service	Media & comms.	Manufact.	Construc-tion	Private sector services	Educa-tion	Other public sector	Total
1998		2	1		2	3	2	1			**12**

1999		2	2		3	3	1			1	**12**
2000	1	3	3	2	2	2	2	1	2	1	**19**
2001	1	4	1	1	3	2	1				**13**
2002		3	2	1	3	2	2	5	2	1	**21**
2003	1	3	4	2	4	1	1	1	1	1	**19**
2004	1	2	4	3				1	5	1	**17**
2005	2	10	3	1	3	2	2	3		2	**29**
2006	1	3	3	3	2	3	3	8	1	1	**29**
2007		3	1	1	3	7	1	3			**20**
2008	2	6	4	7	9	3	7	18	6	2	**62**
2009 to A pril		1	3	1	1	1	1	2	2		**12**
Totals	**9**	**40**	**29**	**21**	**35**	**29**	**22**	**41**	**19**	**8**	**265**

Consequently, and with an increasingly *de facto* one union, one sector unionism, the unions most affected are very much in line with the sectors and areas outlined above (see Table 4):

Table 4: Victimisation by union (n=265)

Year/Union	%
Aslef	1
MSF/GPMU/Amicus	7
NATFHE/UCU/	4
BECTU	1
CWU	13
FBU	2
GMB	12
NUJ	4
NUT	4
PCS	8
RMT	8
TGWU	8
UCATT	3
Unison	23
Unite	4
Others	2

Union Responses and Employer Behaviour

While there will no doubt have been cases where the member's union is not prepared to support the member in their allegation of victimisation for union activities, there will have also been some instances of allegations of collusion between union and employer by the aggrieved member. Equally well, unions have supported their members in the majority of cases where the members allege victimisation and these fall into two basic categories of victimisation. First, where there is *prima facie* evidence of misconduct by the member but where this is used in an opportunistic and malicious manner by the employer. Second, where there are trumped up charges of misconduct. In either of these categories, the response of unions has been to publicise the cases and support them members in internal

and external grievance procedures as well as in a minority of cases (some 20%) organise strikes in support of their victimised members. Given the existence of a common opponent (i.e., the employer) between member and union normally has the effect of solidifying their alliance, and where tension has sometimes existed between members and their unions this has been over the nature of representation and prosecution of their cases. Specifically, this has concerned the willingness of the union to back extra-procedural measures to create leverage over the employer, namely, industrial action. The utility of industrial action is that it can force the employer to recalculate its costs of victimisation.

Clearly, employer victimisation of union reps and activists is, from the data generated for this paper, a minority trend given the number of extant employers and employing organisations in Britain. That said, there are still significant numbers of employers who employ significant numbers of workers prepared to countenance such action, and this suggests that some employers prefer the 'iron fist' approach, even if it is sometimes cloaked within a 'velvet glove'. In this sense, the equation for these employers suggests that overcoming union opposition is a price worth paying in order to plough ahead with change. As alluded to earlier, in the public sector this often concerns resistance to the effects of neo-liberalism such as marketisation.

Conclusion

The evidence for the period 1998-2009 suggests that victimisation of union reps and activists is a significant and, potentially, growing problem for unions in Britain. This should concern unions because it is one form of grievous attack on a key human resource at the foundation of unionism itself. It is not possible to tell how the level for 1998-2009 compares with the decades before, although it would seem not to be contentious to say that it was probably greater before given the greater levels of open conflict between unions and employers. But no matter how bad the situation of victimisation is in Britain, it palls into relative insignificance by comparison wit the 'wildwest' of the US, where (on average) a worker is fired every seventeen minutes of everyday, ever year for union activities (American Rights at Work fact sheet. And whilst, the size of the labour force in the US is over five times greater than that of Britain, it still suggests that the difference in political culture and regulatory environment makes a significant difference in making victimisation less politically acceptable and economically less worthwhile in Britain. Nonetheless, one way to deal with the current problem as it exists in Britain would be to re-instate the specific penalty of a Special Award for employers terminating the employment of workers for reasons of union activity. This could be coupled with much higher fines than existed previously when the Special Award was in force. Moreover, the right to reinstatement or re-engagement could be made an actual, enforceable right. Such actions would not only help reconfigure the balance of power in the workplace but remove an incentive for employers to engage in victimisation.

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