

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR
RELATIONS (CONSOLIDATION) ACT 1992**

Ms A Hough

v

The Chartered Society of Physiotherapy

Date of Decision:

22 May 2009

DECISION

Upon application by Ms Hough (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

Pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, I strike out the Claimant’s complaint of a breach of the Society’s rules on the grounds that it has no reasonable prospect of success and/or is otherwise misconceived.

REASONS

1. The Claimant is a member of the Chartered Society of Physiotherapy (“The Society” or “the CSP”), which is a trade union listed as a ‘special register body’ under section 117 of the 1992 Act. The legal personality of the Society derives from its Royal Charter.
2. Ms Hough commenced her application by a registration of complaint form received at the Certification Office on 9 January 2006. A duplicate registration of complaint form was received on 11 September 2007. A revised version of this form was sent to this office on 24 January 2008 and a further revision was sent by Ms Hough by an email of 18 February 2008. Having found inaccuracies in this application, Ms Hough sent another revised version on 20 February 2008. Ms Hough provided a further revised application by an e-mail of 16 May 2008.
3. My office had difficulty in understanding the precise nature of Ms Hough’s complaint through its various incarnations but, after protracted correspondence my office put a suggested wording of her complaint to her which was in the following terms:-

That on or around 17 June 2008 the CSP conclusively rejected a complaint from Ms Hough in relation to (a) the CSP having provided her with inaccurate advice in relation to her treatment from Eastbourne

District General Hospital in 2002 and (b) the CSP's decision not to negotiate on her behalf in relation to her treatment by Torbay Hospital in 2003. The actions of the CSP were a breach of CSP Statute Industrial Relations Committee terms of reference No. 1 (ii) of November 2004."

4. In her response Ms Hough stated that she was happy with the wording but she went on to suggest an alternative wording. She doubted whether the suggested wording referred to the correct rule. After further correspondence, the Claimant eventually stated on 24 February 2009 that she was alleging there had been a breach of that part of the Society's Royal Charter which provides: '*...that an organisation was established to which members might apply for advice and help*'. (see paragraphs 23-29 below)
5. By a letter dated 6 March 2009, the Claimant was given notice pursuant to section 256ZA(4) of the 1992 Act that I proposed making an order striking out her claim on the grounds that it had no reasonable prospect of success or was otherwise misconceived and on the grounds, under section 256ZA(2), that there had been excessive delay in proceeding with it. The Claimant was given an opportunity to show cause why such an order should not be made. I set the date for her response to this letter as 20 March 2009. The Claimant has not replied to that letter.
6. There has been no hearing in this matter but the Claimant has set out her case in the various Registration of Complaint Forms and in the extensive correspondence, in which my office has attempted to identify a justiciable complaint. Ms Hough has also supplied a number of supporting documents.

The law

7. The power for me to strike out a complaint is contained in section 256ZA of the 1992 Act, which provides:
 - S. 256ZA (1) *At any stage of proceedings on an application or complaint made to the Certification Officer, he may-*
 - (a) *order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,*
 - (b) *order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or*
 - (c) *order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.*
 - (2) *The Certification Officer may order an application or complaint made to him to be struck out for excessive delay in proceeding with it.*
 - (3) *An order under this section may be made on the Certification Officer's own initiative and may also be made.....*
 - (4) *Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.*
8. The provisions which deal with my jurisdiction in complaints of alleged breach of rules is section 108A(1) and(2), which provide as follows:
 - (1) *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

- (2) *The matters are -*
- (a) *the appointment or election of a person to, or the removal of a person from, any office;*
 - (b) *disciplinary proceedings by the union (including expulsion);*
 - (c) *the balloting of members on any issue other than industrial action;*
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
 - (e) *such other matters as may be specified in an order made by the Secretary of State.*

9. The provision which deals with the time within which complaints must be brought is section 108A(6) and (7) of the 1992 Act, which provides as follows:

- (6) *An application must be made -*
- (a) *within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
 - (b) *if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*
- (7) *Those days are -*
- (a) *the day on which the procedure is concluded, and*
 - (b) *the last day of the period of one year beginning with the day on which the procedure is invoked.*

The Background

10. Ms Hough worked as a physiotherapist at Eastbourne District General Hospital. In or about 2002, the Claimant had a dispute with her employer concerning a matter of alleged bullying and harassment by her line manager which culminated in her resignation. She subsequently took up a post at Torbay Hospital in June 2003 but was dismissed from that post on 10 December 2003, according to the Claimant, “*without any form of procedure and without a hearing or an appeal.*”
11. Ms Hough sought the assistance of the Society in taking action against her employer but, according to the Claimant, the Society took no or no effective action and she eventually had to seek private legal assistance before settling the matter “out of court”.
12. The substance of the Claimant’s allegations against the Society is that it failed to represent her in her dispute with her employer in both the above matters. She states that she complained to the Society about this failure over a protracted period from about January 2003. However, in a letter dated 5 March 2008, the Society informed her that the final stage in addressing her complaint had been reached by its Council and the matter was at an end. The Claimant was advised not to contact Council again.

13. The administration of Ms Hough's complaint has been both difficult and lengthy. Whereas most claimants set out their complaints in a manner which enables it to be sent to the union shortly after receipt, this was not the case with Ms Hough. The chronology of her complaint is as follows:-
14. The Claimant's first Registration of Complaint Form was received at my office on 9 January 2006. The Form set out 17 separate numbered paragraphs listing what the Claimant termed her complaints. My office responded in a letter dated 17 January 2006, advising the Claimant that it appeared her complaints concerned her representation by her union and as such would probably be outside my jurisdiction under section 108A(2)(a) to (d) of the 1992 Act. The letter also informed the Claimant that it was unclear from her application which rules she alleged had been breached and that her application might not be within the prescribed time limits set out in section 108A(6) and (7) of the 1992 Act. The date set for a response to this letter was 3 February 2006. There was no response to this letter.
15. On 11 September 2007 my office received a second Registration of Complaint Form from the Claimant by email. However, upon investigation, this proved to be a copy of the original application of 9 January 2006. In letters of 21 and 24 September 2007 my office sought to clarify whether this was intended to revive her application of 9 January 2006 or to be a new application. The Claimant was informed that in either case the information required in the letter of 17 January 2006 from my office was required. A date was set of 8 October 2007 for the Claimant's response. In the absence of a reply, my office wrote again on 27 November 2007 asking for a response by 3 December. The Claimant's emailed reply of 4 December 2007 stated that she would appreciate this office's assistance in the matter of her dispute with the Society but that she would speak to them and telephone my office with the outcome the following Wednesday.
16. Not having heard further from Ms Hough by 16 January 2008, my office wrote to her again. The Claimant responded on 24 January with a third Registration of Complaint Form. This application listed 24 issues. Paragraphs numbered 1 to 17 were the same as on the original application, with paragraphs 18-24 being new. Further clarification was sought by my office's letter of 31 January 2008 as to which rules of the Society she alleged had been breached in relation to each of the numbered paragraphs. Ms Hough telephoned my office on 14 February 2008 and stated that she would provide clarification of the issues raised but no separate clarification was received.
17. Rather, a fourth Registration of Complaint Form was received on 18 February 2008 which enclosed extracts from publications of the Society which the Claimant asserted were the rules of the Society that had been breached.
18. Shortly thereafter, Ms Hough found some errors in this Form and submitted a further Registration of Complaint Form correcting these errors, which was received at my office on 20 February 2008. This was the fifth such Form received. The new Form set out 57 numbered paragraphs each describing an issue which the Claimant referred to as a complaint. My office responded by a

letter dated 28 February seeking clarification of various matters. In particular Ms Hough was asked to identify which rules of the Society she alleged had been breached and to explain the basis on which she asserted that the documents she had provided were rules of the Society. The statutory time limits for bringing a complaint were also explained and Ms Hough was asked to state how she considered her complaints were within time.

19. The Claimant responded by an email of 4 March 2008 referring to a 'breach of the CSP Statute of November 2004 (Industrial Relations Committee terms of reference no.1.ii: "The Committee shall...negotiate on behalf of employed physiotherapists")' and seeking guidance on other matters. My office replied on 13 March, once again explaining the importance of identifying which rule or rules she was alleging had been broken, the need to demonstrate that a breach of any rule is within the Certification Officer's jurisdiction and that the complaint has been brought in time. The date for a response was set at 24 March 2008.
20. The Claimant sent an email on 27 March 2008 in which she did not respond to any of the above substantive points but asked whether or not she was wasting her time in pursuing this application, given the time limits. My office replied by letter dated 15 April 2008, stating that the Certification Officer's staff could not give such advice and sought her substantive response to the above letter. On 2 May 2008 Ms Hough telephoned my office expressing her doubt as to whether her complaints were in time, as well as her difficulties in identifying a rule of the Society that had been breached and in understanding the significance of the provision on jurisdiction, section 108A(2)(a-d). These issues were again explained to her. The Claimant then raised a possible further complaint of breach of rules, namely an alleged failure by the Society to support her in 2007. My office advised that this might also raise questions both of time and jurisdiction.
21. On 16 May 2008 the Claimant submitted her sixth Registration of Complaint Form. As with the earlier Forms this was treated by my office and Ms Hough as being the latest iteration of what has essentially been her complaint from the beginning, each Form correcting or supplementing the previous one by providing further particulars. By a letter dated 16 June 2008 from my office Ms Hough was asked not only to explain the factual basis of her complaint more fully but also to deal with the questions of jurisdiction, time and whether the Society's internal complaints procedures had been used to try to resolve the matter internally. My office again pointed out that it been unable to identify the relevant statute (rule) of the Society that she alleged to have been breached and asked to be provided with a copy of the relevant statute.
22. By a letter dated 26 June 2008 Ms Hough expressed frustration in understanding what was required of her. Mr Walker, Assistant Certification Officer (ACO), replied substantively on 8 July clarifying what this office required. The Claimant emailed the Assistant Certification Officer on 28 July for further clarification and he replied on 8 August with further guidance.

23. The Claimant replied to the ACO's letter of 8 August 2008 on 24 August. She stated that the alleged breach was within jurisdiction as it related to '*the constitution or proceedings of any executive committee or decision making meeting*' within the meaning of section 108A(2)(d) of the 1992 Act and that it was within time having regard to the Society's letter of 17 June 2008, which she suggested was the date of the breach. On this basis, on 23 September, my office indicated to her that her complaint might be put in the following terms, "*that on or around (on a date to be supplied by Ms Hough) the CSP refused to negotiate on Ms Hough's behalf in relation to her complaints about her treatment by Eastbourne General Hospital Trust and Torbay Hospital and this was a breach of CSP Statute – Industrial Relations Committee terms of reference No. 1 (ii) of November 2004*". Ms Hough was required to state whether or not she agreed the above formulation of her complaint and to identify the date on which she alleged the breach took place.
24. By an email of 8 October 2008 the Claimant confirmed that the date of the alleged breach was 17 June 2008 but made no further comment on the issues of time and jurisdiction.
25. By a letter dated 14 October 2008 my office amended the proposed wording of the complaint to include reference to 17 June 2008 as being the date of the alleged breach. Ms Hough was also asked to state the dates on which the Society refused to negotiate on her behalf in relation to her treatment by Eastbourne District General Hospital in 2002 and Torbay Hospital in 2003. The Claimant's email response of 18 October amended the proposed wording of her complaint but was not specific as to the dates the Society allegedly refused to negotiate on her behalf.
26. In the light of that response, the proposed complaint was again put to Ms Hough, for her approval or otherwise, on 31 October 2008 in the following terms, "*that on or around 17 June 2008 the CSP conclusively rejected a complaint from Ms Hough in relation to (a) the CSP having provided her with inaccurate advice in relation to her treatment from Eastbourne District General Hospital in 2002 and (b) the CSP's decision not to negotiate on her behalf in relation to her treatment by Torbay Hospital in 2003. The actions of the CSP were a breach of CSP Statute Industrial Relations Committee terms of reference No.1 (ii) of November 2004*". The letter also asked her to confirm that she was relying on a breach of the same rule or statute of the Society in relation to the events of both 2002 and 2003. In reply the Claimant said "*I confirm acceptance of the revised wording. In relation to the second confirmation that you requested, I cannot find a No. 1 (ii) of 2004. I have been working from the July 2007 statutes*". The Claimant did not identify an alternative rule to be used in the complaint wording.
27. By a letter dated 24 November 2008, my office asked Ms Hough to identify the rule she believed had been breached in relation to her complaint. The date for response to that letter was set at 1 December 2008. Ms Hough telephoned my office on 4 December 2008 and said that she could not now recall how she had previously identified the quoted Statute. She agreed to revisit her files and provide the relevant rule "but not before next week".

28. On 6 January 2009, in the absence of a further response, my office wrote to the Claimant advising her that the Certification Officer could not proceed further with the matter until she had identified which rule she alleged to have been breached. A response date of 19 January 2009 was set. The Claimant replied by email on 21 January saying that she was still unable to trace a reference to a “No. 1(ii) (Statute) of 2004” but would try to identify the rule she alleged to have been breached. My office replied on 27 January stating that if the Claimant could not identify the rule allegedly breached my office would be unable to process her complaint further and that, in the absence of a reply by 11 February, the file would be passed to me to decide how to proceed.
29. The Claimant responded on 24 February 2009 by an email in which she stated *“I think the confusion about the rules is that it was statute (i) on p.4. I have the 2007 copy and I assume that we should be working from the latest edition. This states that ‘...that an organisation was established to which members might apply for advice and help”*. The quotation cited by Ms Hough was identified by my office as being part of clause (i) of the recital to the Royal Charter of the Society.
30. Having previously advised Ms Hough of my powers to strike out by a letter dated 16 January 2008, my office wrote to Ms Hough at her usual address on 6 March 2009 advising her that I was considering using my powers to strike out her complaint under section 256ZA(1)(a) of the 1992 Act on the grounds that it had no reasonable prospect of success and/or was misconceived and under section 256ZA(2) for excessive delay in proceeding with it. Ms Hough was invited to provide me with her views as to why I should not make such an order. The date for response to that letter was set at 20 March 2009. No reply was received.

Conclusions

31. Trade union members seeking to bring a complaint to me against their union of a breach of one or more of its relevant rules are asked to include with their applications certain basic information. This information is necessary for the union to know the case it must meet and for my office to check whether the claim obviously falls outside my jurisdiction and/or is out of time. The registration of complaint form is designed to assist in the presentation of this information. The basic information includes:
 - 31.1 the identity of the rule allegedly breached and, if appropriate, the particular sub-paragraph of that rule.
 - 31.2 the jurisdictional basis of the complaint. My jurisdiction does not extend to breaches of any union rule. It is restricted to certain categories of rule which are listed in section 108A(2) of the 1992 Act. These are rules which relate to one of four specified matters. Claimants must ensure that the rules allegedly breached relate to one or more of those categories. This may be apparent from the context but,

- if not, Claimants should explain why they consider the rule allegedly breached is within my jurisdiction.
- 31.3 the date upon which the alleged breach occurred. This is not only an important fact to be established in the case, but it is necessary to determine whether the claim has been presented in time.
- 31.4 the facts upon which it is reasonably arguable that a breach has occurred, giving all such information as is necessary to ‘tell the story’ in brief, such as relevant dates, locations and the names of persons allegedly involved.
32. On the facts of this case, my office sought clarification from Ms Hough over an extended period as to the precise rule(s) that had allegedly been breached. Only latterly did she identify a sentence within paragraph (i) of the Recital to the Royal Charter granted to the Society on 9 June 1920. She referred to the sentence, “... *that an organisation was established to which members might apply for advice and help*”. The difficulty that Miss Hough had in identifying the rule allegedly breached is an indication that she could find no more obvious rule upon which to rely.
33. The next hurdle for Ms Hough to overcome is to present a case with a reasonable prospect of success that the rule that has allegedly been breached is one which relates to one or more of the matters set out in section 108A(2) of the 1992 Act.
34. Paragraph (i) of the Recital to the Royal Charter of the Society provides as follows:
1. *That the Incorporated Society was founded in the year 1894 in order to raise the standard of Massage and to improve the professional position of women taking up that work; that in the year 1905 its advantages were extended to men; that Regulations were made for the training and for the examination of candidates, the granting of Certificates, and the keeping of a Register of Members; that arrangements were instituted for the delivering of lectures, the giving of demonstrations, and the providing of a reference library; that an organisation was established to which members might apply for advice and help; (my emphasis) and that the same society was incorporated in the year 1900 under the then Companies’ Act, and by licence of our Board of Trade without the addition of the word ‘Limited’.*
35. Ms Hough has asserted that the rule allegedly breached falls within section 108A(2)(d) namely that it relates to “the constitution or proceedings of any Executive Committee or of any decision making meeting”. I have previously considered the meaning of this phrase in the case of *Fradley v. Transport Salaried Staffs Association* (D/28-30/2003). In my judgment the word “constitution” refers to the constitution of the Executive Committee or the decision making meeting and not of the union. The fact that the words upon which Ms Hough relies are to be found in the Society’s Royal Charter and that the Royal Charter is in effect the Society’s constitution is not sufficient to bring these words within section 108A(2)(d). In my judgment Ms Hough’s

contention to the contrary is misconceived and has no reasonable prospect of success.

36. Further, the events which gave rise to this complaint occurred in 2002 and 2003 and Ms Hough has stated that she complained to the Society about its failure to support her appropriately over a protracted period from about January 2003. The question therefore arises as to whether this complaint was made in time.
37. By section 108(A)(6) of the 1992 Act, a complaint must be made within a period of 6 months from the date of the alleged breach. Ms Hough's various registration of complaint forms, from 9 January 2006 to 16 May 2008 all fall outside that period. However, an extension to the primary limitation period of up to 18 months is possible if any internal complaints procedure of the union has been invoked to resolve the claim within the primary limitation period. In this event, the limitation period expires six months after the conclusion of that procedure or, in effect, 18 months after the procedure was invoked if it was never concluded, whichever is the earlier. Therefore, on the facts of this case, which, for present purposes, I assume in the Claimant's favour, the limitation period expired at the latest 18 months after Ms Hough invoked the complaints process about her treatment that is around January 2004. Accordingly, Ms Hough's claim is out of time, even if she was entitled to the benefit of the extended limitation period. I find that any argument to the contrary has no reasonable prospect of success.
38. On 24 August 2008, subsequent to the sixth and final registration of complaint form of 16 May 2008, Ms Hough stated that the alleged breach of rule occurred on 17 June 2008 when the Society is said to have conclusively rejected her complaint. However, this final rejection of her complaint cannot be the breach about which Ms Hough's earlier application complains. That breach concerned the alleged failure of the Society to support her adequately in 2002 and 2003. It is more appropriately regarded as the end of the complaints process invoked by her in about January 2003. In my judgment therefore there is no reasonable prospect of the Claimant establishing that her application is in time by reference to the alleged final rejection of her complaint by the Society on 17 June 2008.
39. For the above reasons, I strike out Ms Hough's application of breach of the Society's rules on the grounds it has no reasonable prospect of success and/or is otherwise misconceived.

David Cockburn
The Certification Officer