

In the Matter

CO/L/4/12-13

**An Application to be listed as a Trade Union  
by Artisans Professionals and Executive – APEX**

Under section 3 (3) of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Certification Officer refused the application by Artisans Professionals and Executive - APEX to be entered in the list of trade unions for the reasons contained in a letter from the Certification Officer to APEX dated 4 March 2013, appended hereto.

**Certification  
Office**



for Trade Unions  
& Employers'  
Associations

Mr G Bratby  
Artisans Professional and Executive-APEX  
c/o LAGAT, 1<sup>st</sup> Floor, Acorn House  
Lindum Business Park, Station Road  
Lincoln  
LN6 3QX

Your ref:  
Our ref: CO/03/12-13  
Date: 4 March 2013

By email and post

Dear Mr Bratby

**Artisan Professionals and Executives - Application to be listed**

I refer to your application for the Artisan Professionals and Executives ('the APEX' or 'the Union') to be entered in the list of trade unions kept in accordance with the section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('the 1992 Act').

In order to be entered in the list of trade unions an organisation must satisfy the definition of trade union in section 1 of the 1992 Act, namely:

- "1. In this Act a "trade union" means an organisation (whether temporary or permanent) –
- (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
  - (b) ..."

My office has corresponded with you to ascertain whether APEX falls within this definition. By a letter dated 1 October 2012, my office asked you a number of detailed questions. You provided a partial response in a letter dated 12 October. My office then wrote to you on 17 October with a copy of my decision in a similar application for listing by an organisation known as 'Advocate', in the hope that it would assist you in giving a more complete response to our letter of 1 October. On 5 November, 28 November and 21 December my office again asked for your response to our letters of 1 and 17 October. No response to these letters has been received from you. In these circumstances I must determine your application on the material before me, namely the correspondence and documentation you have supplied and information available on the internet in relation to LAGAT Ltd.

I regret to inform you that I have decided that APEX is not a trade union as defined in section 1 of the 1992 Act and therefore does not meet the requirement for listing which is set out in section 3 (3) (a) of that Act.

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## Reasons

1. An unusual aspect of this application is that the address that you give for APEX in your application is 'c/o LAGAT, 1<sup>ST</sup> floor, Acorn House, Lindum Business Park, Station Road, North Hykeham, Lincoln. This caused my office to make some enquiries about Lagat and found, from its website, that it is a limited company that you set up in 1987 which is involved in HR and Employment. A search at Companies House revealed that the above address was the registered office of LAGAT Ltd.

2. The website of LAGAT Ltd also shows that you are one of its directors, together with Hannah Spencer and Martin Hodgekinson. Ms Spencer is described as having been appointed managing director in 1998. Your application for APEX to be listed describes you as being its General Secretary and Hannah Spencer as its chair.

3. By a letter dated 10 August 2012 my office asked you certain questions, including questions about the relationship between APEX and LAGAT Ltd and about how APEX would satisfy the requirement that one of its principal purposes must be the regulations of relations between workers and employers. In your response of 16 September you stated the APEX is already recognised by LAGAT Ltd *'for the purposes of consultation and negotiation on employee terms and conditions and in particular in relation to disciplinary/grievance and redundancy matters'*. You stated that APEX was similarly recognised by Osiris Educational. You also stated that APEX was set up as a result of being approached by a number of workers for advice and advocacy in employment law issues, particularly dismissal, and that you are *'in discussions with a number of local legal practices'* for your services. By a letter dated 1 October, my office sought more information from you on these matters. Further information was also sought on the nature of the assistance you stated that APEX had already given to six persons, the financial position of APEX, the precise status of those you describe as members and your above discussions with local solicitors. No response to these enquiries has been provided, despite three reminders.

4. Your application states that APEX was formed on 1 June 2012 and, at that time, had 8 members, including yourself and Ms Spencer. The application also included the rules of APEX. You later stated that you intend to recruit in the education, training and job agency sector and are targeting local legal practices. You also informed us that, in your acceptedly limited trade union experience, a significant number of workers wish to have professional representation at the work place, without belonging to a long established more traditional politically aligned trade union. You provided us with a draft membership application form.

5. In order to be listed, the 1992 Act requires that the applicant body must be an organisation which consists of workers. On the information before me I am not satisfied that APEX is an organisation nor that it consists of workers. The drafting of rules does not in itself establish an organisation. Without more information about how APEX in fact operates I am not persuaded, on the balance of probabilities that it is more than a proposed organisation. Further, the only evidence of membership before

me is your assertion that yourself and Ms Spencer, both directors of LAGAT Ltd, are members. You have not provided documentary evidence of any membership. Further the membership application form you have supplied does not provide the basis for a contract of membership. The proposed member does not agree to pay a subscription or abide by the rules of the union. On the balance of probabilities, I conclude that APEX does not currently "consist of members" and therefore does not satisfy the definition of a trade union. However, I accept that the above might be considered technical grounds for rejecting your application and ones that could be easily remedied. I have therefore gone on to consider whether the organisation would fall with the definition of a trade union if it was an organisation and if it did have members.

6. The rules of APEX that you submitted with your application contain an objects clause. Rule 3.1 includes the following as an object, *'to regulate the relations between workers employed in general trade and commerce and such other industries as the Executive Committee may from time to time determine appropriate'*. Other paragraphs within rule 3 also provide for objects which are consistent with the regulations of relations between workers and employers. Notwithstanding these provisions I must have regard to the reality of the situation, whilst acknowledging that any express "object" should not be overridden unless I find that the case to do so is compelling.

7. The practical reality of trade union status has been affected by the enactment of section 10 of the Employment Rights Act 1999. Previously, employers had the right to exclude any representative of a worker at an internal discipline or grievance hearing. By section 10 of the 1992 Act an employer must permit a worker to be accompanied at an internal disciplinary or grievance hearing if the companion is:

- "(a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the 1992 Act;*
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a workers' companion at disciplinary or grievance hearings, or*
- (c) another of the employer's workers."*

One of the generally understood purposes of this provision is to enable unions to represent members in workplaces in which they are not recognised and so potentially improve their position to obtain voluntary or compulsory recognition. Section 10 was not enacted so as to allow workers to be represented at internal disciplinary or grievance hearings by solicitors or consultants; such outside representation being opposed by most employers and employers' associations. It is my experience that, since the enactment of section 10, there have been a number of attempts by actual or potential commercial organisations to hold themselves out as trade unions or as having access to representatives accredited by a listed union in order to attract business which was not previously been available to them; namely representation at internal disciplinary and grievance hearings. I take it that the purpose of section 10 is not to enable direct or indirect commercial representation of workers in the workplace, be it by solicitors, consultants or other professionals. In my judgment the establishment of a putative trade union in circumstances in which the rights afforded

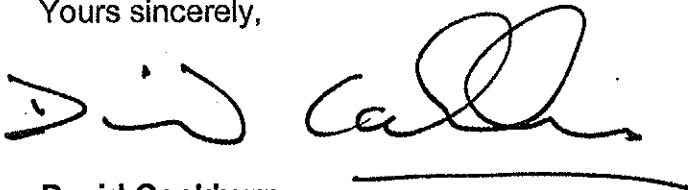
by section 10 may be abused requires careful examination and if, upon examination I am satisfied that the 'union' has been created for the commercial benefit of another person or entity I may be compelled to the conclusion, adopting a purposive interpretation of the definition of a trade union, that its principal purposes do not include the regulation of relations as provided for in the definition in the 1992 Act.

8. On the basis of the facts before me, I had concerns that APEX was created by the directors of LAGAT Ltd for the benefit of LAGAT Ltd and/or its directors. I was not satisfied with the initial responses to my enquiries about this matter and so caused further enquiries to be made. No significant additional information has been forthcoming, which is potentially relevant in itself. I must now reach a determination on this application. On the information before me I am not satisfied that the relationship between APEX and LAGAT Ltd is as armslength as you assert. On the balance of probabilities, I find that that the principle purpose for the creation of APEX is to further the commercial interests of LAGAT Limited and/or its directors by providing its 'HR and Employment' business with a direct link to an organisation which has a legal right to accompany potential clients at internal grievance and disciplinary hearings. Considering the material before me as a whole, I find that the principal purposes of APEX do not include the regulations of relations between workers and employers.

9. Accordingly, had APEX been an organisation with current members, I would have found that it did not satisfy the definition of a trade union in section 1(a) of the 1992 Act and I would have refused to have listed it under section 1(3).

10. You have the right to appeal against this decision to the Employment Appeal Tribunal ("the EAT") on a question of law. Any such appeal must be lodged within 42 days of the date of this letter. The EAT's address is: 2<sup>nd</sup> Floor, Fleetbank House, 2-6 Salisbury Square, London EC4 8JX (telephone: 0207 273 1041/1044). Further information about the EAT can be found on its website: [www.justice.gov.uk/tribunals/employment-appeals](http://www.justice.gov.uk/tribunals/employment-appeals).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Cockburn', written over a horizontal line.

**David Cockburn**  
**The Certification Officer**