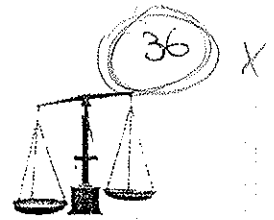


**An Application to be listed as a Trade Union  
by the General and Healthcare Workers Union**

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

The Certification Officer refused the application by the General and Healthcare Workers Union to be entered in the list of trade unions for the reasons contained in a letter from the Certification Officer to the General and Healthcare Workers Union dated 22 January 2013, appended hereto.



Mr A Akinoshun  
General and Healthcare Workers Union  
1 Anglesea Road  
Woolwich  
London  
SE18 6EG

Your  
ref:  
Our ref: CO/10/11-12  
Date: 22 January 2013

By email and post

Dear Mr Akinoshun,

**General and Healthcare Workers Union – Application to be listed**

I refer to your application for the General and Healthcare Workers Union ('the GAHWU' 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").

I have now considered the materials you have provided, some materials relating to Employment Rights Representation and Advisory Service Limited available on the Companies House website and the information provided at my meeting with Mr Adelaja and Mr Ajisafe at this office on 8 January. Mr Adelaja is described in your application as being the Union's communications and publicity secretary and Mr Ajisafe as its treasurer and financial secretary. This meeting was also attended by Mr Walker and Ms Halai of this office. You are described in the above application as the Union's general secretary

I regret to have to inform you that I have decided that the General and Healthcare Workers Union 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.

**Reasons**

1. The definition of a trade union in section 1(a) of the 1992 Act is as follows:

- "1. In this Act a "trade Union" means and 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) ... "

2. In deciding that the GAHWU does not satisfy this definition I have had regard to the following matters.
3. Your application states that GAHWU was formed on 2 July 2012 and had 10 members at the date of application, namely 28 August 2012. However, it emerged in the subsequent correspondence, and was confirmed at the meeting on 8 January, that the Union was not then formed and had no members. It is described in your correspondence as "the proposed Union" and I was informed at the above meeting that it was considered inappropriate to sign up members and receive subscriptions until after the Union was accepted onto the list of trade unions by me. I was shown a proposed membership application form which had not been completed by anyone and which did not, in any event, require the applicant to comply with the rules of the Union or pay subscriptions. Mr Adelaja had submitted a list of eight persons who he described as "associate names". I find that these are individuals who had expressed an interest in being members but were not then members.
4. In order to be listed as a trade union, the 1992 Act requires that an organisation must have members, in the sense that it must consist of workers. As at the date of our meeting, 8 January 2013, I find that GAHWU had no members and so failed to meet the statutory definition of a trade union. However, I accepted at the meeting that this would be a technical ground for rejecting your application as I had little doubt that you could quickly establish an organisation and procure members of it. By Mr Adelaja's subsequent emails of 11 and 14 January you informed my office that you had amended the application form to include a declaration that the applicant agreed to be bound by the rules and that 33 named individuals had become members based on the amended membership application form. I have therefore considered your application for listing on the basis that GAHWU exists as an organisation and has members.
5. I find that you are the driving force behind the proposed formation of GAHWU and that you enlisted the help of Mr Ajisafe and Mr Adelaja. Mr Ajisafe is a full time nurse and a longstanding fellow voluntary worker. He stated that he intended to step down as treasurer as soon as the Union was up and running, whilst continuing to assist as a volunteer. Mr Adelaja is a longstanding friend with experience in business and project management who has agreed to project manage the establishment of your plans. He told me that he envisages being paid a sum of about £300 per month, as and when this is possible, for his work but anticipates that his involvement will be relatively short term.

6. I was informed of the interest that yourself and Mr Ajisafe have in helping others with their employment problems and that this has its origins, at least in part, in your experience when dismissed by a contractor to London Underground in or about 1995. I was told that you successfully brought Employment Tribunal proceedings yourselves, having considered that you had been let down by your union. Since then, you have maintained a belief that there are many employees who are let down by their unions and need help elsewhere.
7. Both yourself and Mr Ajisafe became nurses. Mr Ajisafe now works at the South London & Maudsley NHS Trust. I was told that you are a psychiatric nurse who had progressed through promotions so that by 2011 you were a service manager within the South West London NHS Trust.
8. In July 2001 Mr Ajisafe and yourself set up and became directors of Employment Rights Representation and Advisory Services Limited, based in Battersea. You had attempted to set up a charity to assist workers with employment problems but your application to the Charity Commission was rejected. I was informed that the Charity Commission suggested that you might set up a limited company, which you did. This company was dissolved in 2003 as Mr Ajisafe said that it could not raise sufficient funds to support its office. I was further informed that, notwithstanding the dissolution of the company, yourself and Mr Ajisafe continued to give help to workers with employment problems on a voluntary basis.
9. In January 2006 Mr Ajisafe and yourself set up and became directors of another company called Employment Rights Representation and Advisory Services Limited, which had a different company number to the one which had been dissolved in 2003. This company was dissolved in June 2009. I was informed that its dissolution was necessary for technical reasons relating to the spelling of the name which had given rise to certain inconsistencies.
10. In September 2010 Mr Ajisafe and yourself set up and became directors of a third company; Employment Rights Representations and Advisory Service Limited ("ERRAS Limited"), which had a different company number to the two dissolved companies. This company continues in existence with its registered office being 1 Anglesea Road, Woolwich, London SE18.
11. I was informed that 1 Anglesea Road is a two storey building (plus basement) and is tenanted by a number of small businesses. ERRAS Limited has an office on the first floor and owns various items of office equipment such as a computer, printer and telephone. Mr Ajisafe stated that you and he are the main volunteers but with others helping out from time to time, including those who had previously been assisted by ERRAS Limited. I was informed that

ERRAS Limited had a turnover of about £1000, although the accounts filed at Companies House for the period to September 2011 give a nil return. Mr Adelaja stated that the £1000 came from donations made by grateful workers who had been assisted.

12. I was informed that by late 2011 the volume of work being done by ERRAS Limited was such that you decided to leave your full time job and devote yourself mainly to ERRAS Limited. However, I was also informed that you became a bank nurse working at Wandsworth Prison in order to retain an income for yourself and your family and to maintain your professional standing whilst giving you flexibility in deciding when you would work. I am told that you were "testing the waters" to see if you might develop ERRAS as a business. The work did increase, partly as a result of the many changes being implemented by the NHS. In mid 2012 ERRAS Limited applied to the Ministry of Justice to be authorised by the Claims Management Regulator so that it could charge fees to its clients for certain types of work.
13. It is against this background that GAHWU applied to be listed as a Union on 28 August 2012. I was informed that the Union would initially squat with ERRAS Limited for one or two months but would then hope to negotiate a lease with a rent free period for a different room in the same building. Mr Adelaja was confident of obtaining 100 members in the first month of the Union's existence. He stated that the Union proposed setting its subscriptions at between £12 to £18 a month, depending on the members pay band. He further stated that yourself and Mr Ajisafe would provide their services to the Union as volunteers.
14. I was informed that ERRAS Limited would continue to develop alongside GAHWU, but as a completely separate entity. Mr Ajisafe saw the Union developing mainly amongst those who were dissatisfied with their present unions, not only in the health service but also in colleges and other work places. He saw the time when GAHWU would be able to join with the other unions in the health service in collective bargaining. Mr Ajisafe saw ERRAS Limited as being the place where a worker might go for help if he or she was not a member of GAHWU.
15. You submitted a copy of the rules of the proposed Union with your application for listing. Following correspondence with my office an amended version of the rules was submitted. In the Objects clause of those rules there are provisions which enable the Union to regulate relations between its members and employers. Notwithstanding these provisions, I must have regard to the reality of the situation, whilst acknowledging that the express "object" should not be overridden unless I find that the case to do so is compelling.

16. 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 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.”*

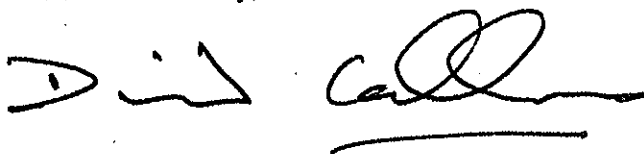
One of the generally understood purposes of this provision is to enable unions to represent members in workplaces in which they are not recognised and so potentially improve their position to obtain voluntary or compulsory recognition. Section 10 was not enacted so as to allow workers to be represented 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.

17. On the facts of this application, I find that you are the prime mover behind both ERRAS Limited and GAHWU, both of which are to provide representation for workers. ERRAS Limited now does so for a fee but has no right to accompany workers under section 10 of the 1999 Act. GAHWU (were it to be a Union) would have the benefit of section 10 to accompany workers at certain meetings with employers through its employed officials and any other official who had

been properly certified by the Union. I have had regard to the fact that the directors of ERRAS Limited would be the main actors in GAHWU, to the genesis of GAHWU and to its proposed shared premises. I also note that if you or Mr Ajisafe were to be asked to represent a worker in a disciplinary hearing it is not clear whether that worker would be channelled to ERRAS Limited or the proposed Union, and there may be confusion in at least some cases given the close connection between the two. In this regard it would be naive to imagine that commercial considerations would be irrelevant, let alone the fiduciary duties of directors. On the basis of all the facts before me, I find that the principal purposes for the proposed creation of GAHWU are to take advantage of section 10 accreditation, to directly or indirectly further the commercial interests of ERRAS Limited or its directors and do not include the regulation of relations between workers and employers, as required by the definition of a trade union.

18. For these reasons, I find that GAHWU does not satisfy the definition of a trade union in section 1(a) of the 1992 Act and I refuse the application for its name to be entered in the list of trade unions.
19. 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**