

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER SECTIONS 55(1) AND 108A(1) OF THE TRADE  
UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**Mrs M Jones**

**v**

**UNISON: The Public Service Union**

**Date of Decision:**

**12 March 2013**

**DECISION**

Upon application by Mrs Jones ("the Claimant") under section 108A(1) and 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

I strike out the Claimant's application pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation) Act 1992, on the grounds that the complaints as advanced by the Claimant have no reasonable prospect of success and/or are otherwise misconceived.

**REASONS**

**The Background**

1. Mrs Jones first contacted my office in February 2010. She sought to make a complaint to me about how UNISON had represented her. My office wrote to her explaining my jurisdiction in determining complaints including the applicable time limits for bringing a complaint and the matters which come within my jurisdiction. After some correspondence Mrs Jones appeared to accept that the matters she had written to my office about were not within my jurisdiction. She stated in a letter dated 7 April 2010, "*I hoped that Unison's letter to my local member of parliament Mark Tami dated 20th January 2010 could be taken as the last incident date when they said they do not accept liability for the matters I have complained about and have nothing further to add. I gave them opportunity to "put things right". But now as I understand it you still would not be able to investigate this matter as it is not within your jurisdiction*".
2. Mrs Jones brought the application which is the subject of this decision by a registration of complaint form which was received at my office by email on 16 November 2012.
3. On her registration of complaint form Mrs Jones again sought to bring a complaint against UNISON. The form requires claimants to state whether their complaints are about alleged breaches of union rule (brought under section 108A(1) of the 1992 Act), or breaches of the 1992 Act itself. In cases of breach of rule the claimant is

invited to state to which sub-section of section 108A(2) the allegedly breached rule relates. Mrs Jones highlighted the text of sub-section 108A(2)(b) which indicates that her complaint was of a breach of rule which related to "disciplinary proceedings by the Union (including expulsion)" and added "*UNISON WITHDREW THEIR SUPPORT*". She also highlighted the text "the balloting of members on any issue other than industrial action" and added "*By conspiring with members Alan Mills, John Sharkey and Nick Alexander together with management*". By way of responding to other parts of this section of the form, including the questions "Why do you allege that this rule has been broken?" and "When (on what date) do you allege the union breached or threatened to breach this rule?", Mrs Jones wrote "See attached".

4. In the section of the form dealing with breaches of the 1992 Act under the questions "Which section of the 1992 Act do you allege has been broken?" and "When (on what date) do you allege this section has been broken?" Mrs Jones also wrote "See attached".
5. The attachment to which Mrs Jones referred was in effect a chronology of events between 2 February 2004 and 27 January 2010. The events related mainly to Mrs Jones' contacts with UNISON during that period. The description of the event on 27 January 2010 reads "*Following threats by CCC bailiffs will enter my home Mark Tami member of parliament for Flintshire wrote to Dave Prentis at UNISON's head office on my behalf to ask if they would compensate me. They replied by letter dated 27 January 2010 UNISON does not accept that it has any liability for the matter*".
6. The events in the chronology appear to show that in February 2004 Mrs Jones raised concerns with her then employer, Cheshire County Council, about work practices among the Adult Learning Disability Team. Members or officers of UNISON were present at a meeting when these issues were raised. It appears that over a period between about August 2004 and February 2006 Mrs Jones took, or attempted to take, proceedings in the Employment Tribunal against Cheshire County Council under the Public Interest Disclosure Act ("PIDA") and for unfair dismissal. The chronology records Mrs Jones being in contact with UNISON in June and September 2005. Between May 2007 and April 2008 Mrs Jones records further contacts with UNISON or its solicitors. The entry for 10 August 2007 records "*Letter from UNISON they have not received my contributions*". It also appears that in October 2007 Mrs Jones issued legal proceedings in the Cheshire County Court against UNISON for breach of contract. The hearing of this claim appears to have taken place on 4 April 2008. Against this date Mrs Jones records, "*Before the hearing of my claim against UNISON they changed solicitors. The hearing was in Manchester before His Honour Judge Holman and upon the court's own motion made an order of its own initiative without hearing and on 29th April 2008 my claim was struck out*".
7. As regards the reference in the application to UNISON withdrawing its support, I note that the entry for 4 November 2004 reads "*Letter from Keith Bradley. UNISON are unable to represent me at the tribunal and if I do not agree they will withdraw their support*" and the entry for 24 June 2005 reads "*Telephoned Frank Hont and UNISON Manchester Regional Office. Asking why UNISON withdrew support*". However, the chronology does not refer to any rules of the Union nor to any provisions of the 1992 Act and does not allege that there had been breaches of the

rules of the Union or the 1992 Act.

8. Accordingly the only indication in the complaints form and the chronology to a breach of the rules of the Union is the allegation that UNISON had breached its rules relating to disciplinary procedures by withdrawing its support to her in the course of her application to the Employment Tribunal on or around November or December 2004. There was no clear indication what Mrs Jones sought to apply to me about.
9. By a letter dated 26 November 2012 my office informed Mrs Jones that her application did not set out her complaints with sufficient clarity. The letter also explained that if, as it appeared, Mrs Jones' complaint was about an event that occurred on or before 24 June 2005 it must be outside the statutory time-limit to bring a complaint. It was noted that Mrs Jones had previously been supplied with guidance which included reference to the statutory time limits. With regard to Mrs Jones' reference to a possible breach of the 1992 Act my office informed her that without a specific allegation stating which section of the Act was alleged to have been breached with details of when and how a breach was committed, no further action could be taken.
10. Mrs Jones responded by email on 28 November 2012. She did not identify any rule of the union or section of the 1992 Act that was allegedly breached. However, her email states, *"On 4<sup>th</sup> November Keith Bradley wrote to me if I go ahead with the tribunal UNISON are unable to represent me. I was therefore expelled by Keith Bradley for proceeding with the tribunal. Both John Feeney and Keith Bradley then appointed themselves to the position of Head of Member Liaison".* Mrs Jones went on to state *"Mark Tami contacted Dave Prentis regarding my complaint against UNISON and David Prentis replied UNISON has no liability. I then contacted your office in March 2010 with my complaint. Your reply it was not within your remit. Since then you say my complaint is over your two year limit as to whether you will consider a complaint...By denying liability Dave Prentis is condoning a UNISON convenor elect himself to the post of Regional Officer (without balloting of members being in breach of rule or breach of statute by trade unions provided in the 1992 Act). John Feeney elected himself from UNISON convenor to Regional Secretary by taking it upon himself to withhold information from me".*
11. By a letter dated 4 December 2012, my office again informed Mrs Jones that she would need to provide the information previously requested to pursue her complaints. She would need to identify which rules of the union or sections of the 1992 Act she alleged UNISON had breached and to state when and how the breaches occurred. My office further noted that Mrs Jones' complaint would be out of time if it related to an event in November 2004. It also pointed out if Mrs Jones was expelled from the Union in November 2004, as she had said, she could not bring a complaint about an event which occurred when she was not a member of the Union.
12. Mrs Jones responded by an email of 6 December 2012. In it she stated, *"I was expelled by UNISON 4<sup>th</sup> November 2004 and was paying membership subscriptions up to and including March 2005 (copy proof attached).....My complaint is UNISON was in breach of the terms under the Public Interest Disclosure Act 1998 (PIDA) in Part IVA of the Employment Rights Act 1996 by subjecting me to detrimental treatment, which enabled the Council to harass me".* This was the first

reference made by Mrs Jones to the Public Interest Disclosure Act. Reference was also made to the Human Rights Act 1998. Attached to the email was a hyperlink to a copy of what appeared to be Mrs Jones' salary payment slip from Cheshire County Council for the month of March 2005. The payment slip showed a deduction in respect of 'Unison'.

13. However, Mrs Jones' email of 6 December 2012 did not give any further detail of what her complaints were about or which precise rules or statutory provisions she was alleging the Union had breached. On the information she had provided it appeared that the events about which she sought to complain occurred outside the limitation period or occurred at a time after she had ceased to be a member of UNISON.
14. By a letter dated 14 December 2012 my office again informed Mrs Jones that on the information she had provided (namely that she had ceased to be a member of the Union after 4 November 2004 or at the latest 31 March 2005 ), it appeared that her complaint was out of time. Addressing Mrs Jones' reference to PIDA, my office explained briefly my role as a 'Prescribed Person' in the PIDA regulations and that, as she was not an employee of UNISON at the relevant time, my role appeared irrelevant to the facts of her case (see paragraphs 28 and 29). Finally, Mrs Jones was informed of my power to strike out an application or complaint if I consider that it has no reasonable prospect of success or is otherwise misconceived. She was further informed that I might have to consider using this power in respect of her application if she continued to correspond without identifying a complaint which I could determine.
15. Mrs Jones telephoned my office on 17 December 2012 and spoke to the case manager. She complained that the case manager was wrong to state in his letter of 14 December that she was not a member of UNISON after 31 March 2005. She stated that she had been a member up to 1 April 2005 "*if not later*". She did not, however, say when she ceased to be a member or provide any evidence of later membership. She requested that the case manager write to her recording what she had said about her membership of UNISON.
16. By a letter dated 17 December 2012, the case manager informed Mrs Jones, "*For the record, and as I said in our telephone conversation, I based my comment on your email of 6 December in which you stated that you were expelled from UNISON on 4 November 2004 and provided evidence that you paid contributions up to 31 March 2005. I have explained previously the legal time constraints within which the Certification Officer must operate and I mentioned these again during our conversation. I would add that if you wish to bring a complaint to the Certification Officer which he can determine, i.e. which is about events which occurred within the statutory time limits and when you were a member of UNISON you should provide the details*".
17. My office wrote again to Mrs Jones by letter dated 31 January 2013. This letter informed her that I had considered the correspondence to date in respect of her application, that I had noted that no complaint had been identified that was within my jurisdiction and that in the circumstances I was minded to invoke my powers under section 256ZA of the 1992 act to strike out her application. Mrs Jones was informed of the provisions of section 256ZA and specifically invited to provide any submissions on the matter. The deadline for sending submissions was set as no

later than 15 February, after which date, the letter stated, I would consider whether her application should be struck out. Mrs Jones replied by email to this letter on 3 February. Her email did not advance any grounds which gave me cause to think that her application contained complaints which I would be able to consider under the 1992 Act. Mrs Jones also commented that she "*would have expected that the Certification Officer could investigate UNISON under the Public Interest Disclosure Act. Although I was not employed by UNISON I was a member at the time I blew the whistle regarding poor social work practice. By being a member I assumed I would have been entitled to the protection of the union, which I was not*".

### **The relevant statutory provisions**

18. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows.

#### 108A. *Right to apply to Certification Officer*

(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.*

(3) *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

(4) *A person may not apply under subsection (1) in relation to a claim if he is entitled to apply under section 80 in relation to the claim.*

(5) *No application may be made regarding -*

- (a) *the dismissal of an employee of the union;*
- (b) *disciplinary proceedings against an employee of the union.*

(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.*

256ZA. *Striking out*

(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 complaint 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-*

- (a) *if the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or*
- (b) *if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1).*

(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.*

(5) *Subsection (4) shall not be taken to require the Certification Officer to send a notice under that subsection if the party against whom it is proposed that the order under this section should be made has been given an opportunity to show cause orally why the order should not be made.*

(6) *Nothing in this section prevents the Certification Officer from making further provision under section 256 (1) about the striking out of proceedings on any application or complaint made to him.*

(7) *An appeal lies to the Employment Appeal Tribunal on any question of law arising from a decision of the Certification Officer under this section.*

## **Conclusions**

19. It is axiomatic that any complaint which is to be determined judicially or quasi-judicially must be expressed in terms which enable the adjudicating body and the respondent to understand the case that has to be met sufficiently for the respondent to investigate the complaint and prepare arguments on the merits and, if appropriate, on whether the complaint is in jurisdiction and/or made in time.
20. I find that the complaints that Mrs Jones sought to bring by her registration of complaint form received on 16 November 2012 were not expressed in a way which would have enabled the Union to understand the case that it had to meet and to prepare its defence, including, if appropriate, arguments on jurisdiction and/or time.
21. In the above circumstances, it is my practice to seek further information from the claimant to clarify the issues and/or alleged breaches so that the complaints may be put to the Union and may proceed to an oral hearing in the usual way. Section 108(B)(2)(a) of the 1992 provides that, on an application being made, I shall make

such enquiries as I think fit. As the information required from a claimant is not unduly onerous or technical, it is extremely rare that this process does not result in a clear complaint being identified and for that complaint to proceed to a hearing. The information must merely be sufficient for the Union to know what rule or statutory provision has allegedly been breached, when that alleged breach occurred and some brief facts to describe the nature of the breach.

22. The requests for further information made to Mrs Jones by my office were reasonable and, indeed, necessary in order to establish the basis of her claim against the Union and whether it fell within my jurisdiction. Mrs Jones did not provide the requested information. I find that the complaints as advanced in the registration of complaint form and subsequent correspondence have no reasonable prospect of success and/or are misconceived.
23. Further, the 1992 Act sets a clear time constraint within which complaints of breach of rule must be made to me. The time limit is six months from the date of the breach. That period may be extended if a claimant has, before the end of the six months, used an identifiable procedure of the union to resolve, or attempt to resolve, the complaint. In such cases the maximum length of time permitted by the 1992 Act for a complaint to be accepted by the Certification Officer may be extended to 24 months from the date of the breach. The Act provides for no discretion in applying these time constraints.
24. Mrs Jones submitted her application to my office on 16 November 2012. The events to which Mrs Jones refers in her application, either as background or as events about which she wishes to complain, took place on or before 27 January 2010. In fact, the event that is alleged to have occurred on 27 January 2010 is her Union writing to her MP in response to an enquiry he had made on her behalf. It is far from clear that this is (or is intended to be) the subject of a complaint to me.
25. Moreover, the 1992 Act provides that the Certification Officer may only accept complaints from a person who is a member of the union concerned or was a member at the time the alleged breaches occurred. Mrs Jones has stated that she was expelled from the Union on 4 November 2004. Nevertheless she has also provided evidence of paying membership subscriptions to UNISON up to and including 31 March 2005. In a telephone call to my office, confirmed by a letter from my office, Mrs Jones stated that she was a member of UNISON up to 1 April 2005 if not later but has provided no evidence of when she ceased to be a member.
26. In order for Mrs Jones' complaint to have been submitted within the primary time limits she would have to have complained about events that occurred on or after 17 May 2012. She would also have had to have been a member of the Union at the time those events occurred. If Mrs Jones sought to take advantage of the extended limitation period, she would have had to establish that she had been pursuing a resolution of her complaints within the internal procedures of UNISON, that the events about which she complained occurred no earlier than 16 November 2010 (at the very latest) and that she was a member of the Union at the date of the alleged breaches. I find that none of the above circumstances exist on the information before me. Accordingly I find that the application that Mrs Jones seeks to bring has no reasonable prospect of success and/or is misconceived.
27. For the above reasons I strike out Mrs Jones' application. I do so on the grounds

that the complaints as advanced by the Claimant have no reasonable prospect of success and/or are misconceived.

**Public Interest Disclosure Act 1998**

28. The Certification Officer is a 'prescribed person' under the Public Interest Disclosure (Prescribed Persons) Regulations 1999 ("the 1999 Regulations) in relation to relevant disclosures by employees/workers of trade unions and employers associations. Under Part IVA of the Employment Rights Act 1996 and the 1999 Regulations, employees/workers of a trade union or employers' association may be protected if they make a relevant disclosure to the Certification Officer. A relevant disclosure to the Certification Officer is defined in the 1999 Regulations as being one related to *"fraud, and other irregularities relating to the financial affairs of trade unions and employers' associations"*.
29. Mrs Jones was not a worker or employee of UNISON at any time. Accordingly I do not have any jurisdiction to consider the issues she has raised under the Public Interest Disclosure Act or its related legislation.



David Cockburn  
The Certification Officer