

**DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS
MADE UNDER SECTION 103 OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**IN THE MATTER OF A COMPLAINT AGAINST THE
BRITISH ASSOCIATION OF COLLIERY MANAGEMENT (BACM)**

Date of 1st Complaint	21 December 1993
Date of Decision	5 January 1994
Date reasons published	10 January 1994

DECISION

1. Between 21st and 23rd December 1993 I received a series of letters signed by a total of 48 members of BACM complaining about the conduct of the ballot which had approved the transfer of engagements from BACM to the Engineers' and Managers' Association. Subsequent correspondence confirmed that the letters constituted complaints under section 103(1)(b) and 103(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("The 1992 Act"), that the vote had not been taken in a manner which satisfied section 100(1)(b) of that Act nor, sections 99(2)(b) and (according to one complainant section 99(5)) of the Act. I decided to dismiss the complaints on 5 January 1994 and informed the interested parties of that decision on that day. I now set out my reasons for that decision.

Legislative Provision

2. For the reasons set out in paragraph 15 these complaints have to be considered against the provisions of the 1992 Act before it was amended by the Trade Union Reform and Employment Rights Act 1993 (“The 1993 Act”). On the facts of this case that makes no difference to my decision but I mention it for completeness.

3. Section 98 having provided for the approval by the Certification Officer of the instrument of amalgamation or transfer, section 99 contains the following relevant passages:

- “(1) The trade union shall take all reasonable steps to secure that, not less than seven days before voting begins on the resolution to approve the instrument of amalgamation or transfer, every member of the union is supplied with a notice in writing approved for the purpose by the Certification Officer.*
- (2) The notice shall be in writing and shall either -*
 - (a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or*
 - (b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer ...*
- (5) The notice proposed to be supplied to members of the union under this section shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this section”.*

4. Section 100(1)(b) states that one of the conditions to be satisfied in the vote approving the instrument of amalgamation or transfer is that:

“every member of the union must be allowed to vote without interference or constraint and must, so far as is reasonably possible, be given a fair opportunity of voting”.

5. Finally section 103 contains the following provisions:

“(I) A member of a trade union which passes or purports to pass a resolution approving an instrument of amalgamation or transfer may complain to the Certification Officer on one or more of the following grounds -

(a) that section 99 (notice to be given to members) was not complied with;

(b) that the manner in which the vote on the resolution was taken did not satisfy the conditions specified in section 100(1);

(c) where that vote was taken under arrangements made under section 100(2), that the manner in which it was taken was not in accordance with the arrangements ...

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn”.

The Complaints

6. All of the complaints, and seven facsimile letters received without a return address, focused on a letter sent by the President of BACM to members when they were balloted about the merger. The text of that letter reads :-

“Dear Member,

Merger with EMA (Engineers' and Managers' Association)

BACM Membership could reduce to levels which would render us less effective in negotiations and terms of political influence at a time when we need strength in these areas more than ever before.

The changes we will go through in the next 2 years have been experienced by the EMA in the privatisation of electricity over the last 3 years and we can learn from that.

This country needs an energy strategy. If management grades in all energy sectors work together we can influence energy policy in a positive and constructive way whilst maintaining our own identity as BACM within the EMA.

The combined resources of the merged Associations would be sufficient to enable us to defend our living standards for many years into the future and safeguard our interests both legally and politically in order to deal with potential problems in areas such as our pension scheme.

Without a merger there is a danger that we could be rendered ineffective or weak.

In my view we must keep our identity but the merger is a necessity.

The 1993 BACM Conference endorsed merger with the EMA, subject to membership ballot. Ballot papers and full documentation will be circulated shortly. The independent scrutineer for the ballot will be Electoral Reform Ballot Services”.

7. I have seen several versions of this letter; one version omits the final paragraph, one is hand dated 16 August 1993. one contains just the union's address whilst another includes the National President's address, all though have the same heading, the same first five substantive paragraphs and all are signed by Doug Bulmer, National President (of BACM).
8. The complainants all allege that this letter, which was sent to every member,
 - (a) went beyond the contents of the notice to members approved by the Certification Officer and was not therefore approved by him; and
 - (b) in recommending that members support the proposed merger it interfered with and constrained their voting and in so doing breached the requirements of section 100(1)(b).

One member additionally complained that the letter

- (c) failed to give views against the merger and therefore did not satisfy the requirement of section 99(2)(b) that members should be enabled to “form a reasonable judgement of the main effects of the proposed amalgamation or transfer”.

The Facts

9. Following six weeks of contact between my staff and both BACM and EMA, I approved the Instrument of Transfer of Engagements from BACM to EMA and notice to members submitted to me by the two unions. The notice to members included the fact that voting would start on 29 August 1993 and that votes had to be with the Scrutineer by first post on Monday 13 September 1993.
10. On 23 August Electoral Reform Ballot Services, who acted as scrutineers for the ballot, sent members of the union a ballot pack containing the ballot paper, the notice to members, the instrument of transfer, the rule book and a second class reply envelope.
11. After the ballot the scrutineer's report, dated 13 September, showed a total vote of 4.228 of which 95% favoured the merger on the terms set out in the instrument.
12. On 11 November I received a properly completed application from the two unions to formally register the transfer. On the same day I informed the two unions that the six week period (which I have to allow before registering the transfer go give time for any

complaints to be made) ran out on 23 December and that the transfer would be registered on 4 January 1994, ie. the first working day in the New Year.

13. Subsequently, and for reasons of no direct relevance to my consideration of those complaints, I postponed the registration to 10 January 1994. On 7 January BACM obtained leave to seek judicial review of the registration of the instrument of transfer on 10 January, at the same time they secured an interim injunction preventing me from registering the instrument on that date.
14. Those are the facts as they relate to the statutory procedures and documents. I turn now to the facts relating to the President's letter. This too was distributed by Electoral Reform Balloting Services who inform me that it was sent out under separate cover on 16 August, seven days before the ballot pack. They say it was not dated (but 16 August is consistent with the hand written date on some versions of the letter) and that it did contain the final paragraph shown in the text I have quoted.

Reasons for dismissing the complaints

15. The complaints were properly made and made, just, within the statutory time limits. The majority of complainants produced proof of the membership of BACM. Voting started on 29 August 1993, the day before an enhanced set of statutory requirements affecting merger ballots came into force. The complaints therefore have to be judged against the requirement of the unamended 1992 Act.

16. As far as documentation is concerned that Act and the associated regulations [The Trade Unions and Employers' Associations (Amalgamations, etc.) Regulations 1975 (SI 1975 No. 536)] specify a number of documents which must be prepared and which must be submitted to me for approval. It also requires some of those documents to be sent to all members with voting papers seeking their approval of the merger. The Act and Regulations relevant to these complaints provide clear instructions on what must be included in those documents.

17. The two key documents are the instrument of transfer and the notice to members. The instrument of transfer must include (and I paraphrase the requirements) the fact that on its coming into force members of the union transferring engagements will become members of the union to which transfer takes place, details of contributions and benefits payable under the proposed arrangements, particulars of any allocation of members to particular branches or sections, the effect of any proposed rule changes, the date by which the instrument is to take effect and any special property arrangements. The instrument, which may contain other material, must be signed by specified office holders. The notice to members has to satisfy the requirements set out in para 3 above.

18. Apart from the requirements set out in para 17 there were (at the relevant date) no other constraints on the documents required by law to accompany the voting paper. Moreover the law was (and remains) silent on what material may be circulated separately from the voting paper.

19. From the facts set out above it is clear that the requirements relating to the documents involved in this transfer were completed to my satisfaction in accordance with the 1992 Act and 1975 Regulations. The letter from the President was entirely separate from these, circulated quite separately from the voting papers and thus subject to none of the statutory constraints in section 99 on which the complainants rely.
20. There remains the allegation that the President's letter infringed the requirement that "every member of the union must be allowed to vote without interference or constraint ...". The complainants allege that the President's letter, presenting a one-sided case, constituted "interference or constraint".
21. The question of what constitutes "interference or constraint" has been the subject of a number of cases decided by me or my predecessors. Our interpretation is set out most clearly in my predecessor's decision in *Paul v the National Association of Local Government Officers* (D/14/86)/[1987] IRLR 43 where he stated:

"The purpose of s2(6)(a) is to ensure that members are not subject to any pressure which would have the effect of preventing them from freely exercising their right to vote ... (the requirement) to allow a person to vote without interference or constraint is intended to exclude such conduct as would intimidate or put a member in fear of voting or amount to physical interference".

The section 2(6)(a) referred to is from the 1984 Trade Union Act relating to membership elections but exactly the same provision is incorporated on merger ballots in the 1992 Act.

22. I have had occasion to consider this view in several cases over the past year and remain of the opinion that it is the valid test. The allegation that the President's letter constituted

interference or constraint clearly does not stand up to this test. At most the letter was an attempt to exercise reasonable persuasion of voters; by no standards could it be read as intimidating or putting a member in fear of voting or as amounting to physical interference.

22. For these reasons I find that the President's letter at the heart of these complaints contravened none of the statutory provisions relating to voting on a transfer of engagements. The union satisfied the relevant statute and regulations. I therefore dismiss all the complaints.

A handwritten signature in black ink, appearing to read 'E G Whybrow', with a large, sweeping flourish at the end.

E G WHYBREW
Certification Officer
10 January 1994