MAKING A COMPLAINT TO THE CERTIFICATION OFFICER AGAINST A TRADE UNION UNDER THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

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1. The Certification Officer is an independent statutory officer appointed by the Secretary of State for Business, Energy and Industrial Strategy whose functions include the power to determine complaints that trade unions have breached specific provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (referred to as “the 1992 Act”) or, in relation to certain matters, their own rules.

2. The purpose of this guidance is to set out for the benefit of any potential claimant, how to make an application to the Certification Officer and how the application will be treated.

What type of complaint can be made to the Certification Officer?

3. A complaint can be made to the Certification Officer that a trade union has

   (a) either itself or one of its sections or branches breached, or threatened to breach, the rules of the union in relation to certain matters (section 108A of the 1992 Act). The matters are:

   (i) the appointment or election of a person to, or the removal of a person from, any office;

   (ii) disciplinary proceedings by the union (including expulsion);

   (iii) the balloting of members on any issue other than industrial action;

   (iv) the constitution or proceedings of any executive committee or of any decision-making meetings (There are restrictions relating to size of the body concerned see sections 108A(10)-(12) of the 1992 Act.)

   (b) failed to ensure that the election of its senior officers and/or members of its executive satisfies the requirements of the 1992 Act (sections 46-54);

   (c) failed to compile and maintain an accurate register of members or has failed to secure the confidentiality of the register during certain ballots (section 24 and 24A of the 1992 Act);
(d) failed to meet a request from a member for access to its accounting records (section 30 of the 1992 Act);

(e) spent money on political objects without a political fund resolution in force or without approved political fund rules (section 71 of the 1992 Act);

(f) breached rules approved by the Certification Officer governing the holding of a political fund ballot or the administration of its political fund (sections 74 and 82 of the 1992 Act);

(g) held a political fund ballot where there are no rules approved for that purpose by the Certification Officer (section 74 of the 1992 Act);

(h) failed to ensure that a ballot on a proposed merger has been conducted in accordance with the requirements of the 1992 Act or that, in conducting a merger ballot it has failed to comply with any rule relating to the passing of the resolution to merge (section 100-100E of the 1992 Act);

(i) failed to ensure that its senior officers and/or members of its executive have not been previously convicted of an offence under section 45 within 5 or ten years (depending on the nature of the offence) (section 45B of the 1992 Act).

Financial Affairs of Trade Unions and Employers’ Associations

4. Allegations regarding financial irregularities in a trade union or employers’ association are dealt with differently under other powers (see section 37A to 37E of the 1992 Act). If someone has concerns about the financial affairs of a union, s/he should let the Certification Officer know of them as soon as possible.

Restrictions on Making a complaint

The types of complaints that cannot be made to the Certification Officer

5. The Certification Officer only has jurisdiction to hear complaints about the matters described in paragraph 3 above. The Certification Officer cannot deal with complaints about any other issue. The sort of matters over which the Certification Officer does not have jurisdiction includes complaints regarding a union’s failure to represent a member adequately, or at all. Similarly, complaints regarding the dismissal of, or disciplinary action against, an employee of the union are not within the Certification Officer’s jurisdiction.
Who may make a complaint

6. The right to make a complaint to the Certification Officer is in most cases limited to a person who is a member of the trade union concerned at the time of the issue giving rise to the complaint. Sometimes a person who is not a member may make a complaint, for example, someone who is or was a candidate in a national election may be able to make a complaint in relation to that election. A person who is not a member should explain why s/he thinks they are entitled to make a complaint.

Time Limits for Making a Complaint

7. The 1992 Act requires complaints to be made within specific time-limits. In the case of elections required by the 1992 Act the time-limit is one year from the date on which the union announced the results of the election.

8. In the case of a complaint alleging a breach of union rule the time-limit is six months starting from the day of the breach or threatened breach. However, if an internal complaints procedure of the union has been invoked within six months of the alleged breach, different time limits may apply (for a more detailed explanation, please see Appendix 1). Anyone who wishes to make a complaint to the Certification Officer should do so without delay. If there is any uncertainty about time-limits, the Certification Office may be able to assist in identifying the relevant time-limit.

The Use of Any Internal Complaints Procedure of a union

9. On complaints relating to breach of union rule, the Certification Officer may refuse to accept the complaint unless she is satisfied that the claimant has already tried to resolve the matter by using an internal complaints procedure of the union (section 108B(1) of the 1992 Act).

Claims to the Civil Courts

10. The Certification Officer may not consider a complaint if the claimant has applied to the Court in respect of the same matter. Similarly, once a complaint has been made to the Certification Officer the same matter may not be put to the Court even if the claimant withdraws his/her complaint to the Certification Officer.

Injunctions

11. It should be noted that only the Courts have power to grant interim injunctions. In urgent cases it is generally not possible for the Certification Officer to determine the complaint before any threatened breach has occurred.
How to make a complaint

12. A claimant should write without delay to the Certification Officer setting out the basis of the complaint and identifying which part of the 1992 Act or which union rule(s) has allegedly been breached. The minimum amount of information that the Certification Officer will need in the application is generally:-

   (i) The date of the alleged breach or approximate date.
   (ii) The precise rule or section of the 1992 Act allegedly breached.
   (iii) A brief description of the nature of the alleged breach.

13. A complaint registration form can be downloaded from the Certification Officer’s website, www.gov.uk/certificationofficer, or is available from the Certification Office. The form will help the claimant provide the essential information the Certification Officer will need to assess whether she can accept the complaint. If the form is not used, claimants should ensure that their application contains all the details required on the form. If a number of complaints are being made in the same application, the grounds for each complaint should be set out separately. Supporting documents and other evidence should be included. Evidence of union membership should be provided, for example a copy of a membership card or the membership number and the name of the appropriate branch should be submitted to establish membership of the union at the relevant date.

14. If claimants choose to send the application form and any supporting documentation by electronic means they should not assume the Certification Officer has received the documents until they receive confirmation. The Certification Officer may insist on documents being provided in hard copy form, particularly if the document is to be relied on at a hearing. It is the responsibility of the parties to provide documentation in the form requested by the Certification Officer.

15. Correspondence by e-mail will be treated in the same way as that received by any other form. Substantive replies from this office will normally be by post.

16. Anonymous complaints are not normally acted upon. In exceptional circumstances the Certification Officer may allow a claim to be presented anonymously but only if she considers there to be compelling grounds for doing so. In the vast majority of cases the union is entitled to know who is making the complaint and it will not be possible for the application to proceed without disclosing the claimant’s name.
How will the Certification Officer handle the complaint?

17. On receipt of an application it is usually necessary for some initial enquiries to be made of the applicant. Complaints will not normally be put to the union until all the complaints have been identified and the claimant has confirmed to this Office the precise wording of the complaints. The acceptance of a complaint by the Certification Officer does not indicate any view of the Certification Officer on the merits of the application.

18. It is the role of the Certification Officer to make such enquiries as she sees fit into the issues raised by the complaint. These enquiries will normally be made in correspondence between the Certification Office, the claimant and the union. Once the complaints have been confirmed, the application and copies of all correspondence from the claimant will normally be forwarded to the union to get its comment. When comments are received from the Union, the Certification Officer will normally copy these to the claimant for comment and observation. The Certification Officer may ask either party for information at any time. At the end of this stage, the Certification Officer is required to give the parties to the complaint an opportunity to present their case at a hearing. However, the parties can agree that the Certification Officer determines the case without a hearing, although the Certification Officer may still decide a hearing is necessary.

19. The Certification Officer can strike out in whole or in part an application or response at any stage of the proceedings, or order that the application or response be amended. The grounds on which such an order can be made are that the application or response, or any part of it, is scandalous (i.e. irrelevant and abusive of the other side); vexatious (i.e. a complaint made with no reasonable expectation of success to harass the other party or made out of some improper motive); has no reasonable prospect of success or is otherwise misconceived. The Certification Officer’s powers to strike out an application apply both to the actual complaint or response and the way in which the parties or their representatives conduct the proceedings. The Certification Officer can also order that an application be struck out for excessive delay in proceeding with it. An application or response may be struck out on the Certification Officer’s own initiative or on the application of the claimant or the union concerned. Before making an order using these powers, the party against whom it is proposed that the order should be made will be given an opportunity to show cause, either in writing or orally at a hearing, why the order should not be made.
Hearings

20. Any hearing will normally take place at the Certification Office on a set date. Both the claimant and the trade union will be invited to attend. Both parties will have an opportunity to put their case to the Certification Officer and to call witnesses. Any person who gives evidence may be asked questions by the other party. Parties can choose to conduct their own case or to be represented. The proceedings are held in public. In most cases the Certification Officer will not make a decision on the day of the hearing but will give an indication as to when the decision, with full written reasons, will be issued. The decision is always sent to the parties in writing and will appear on the Certification Officer’s website. Certain expenses may be payable to claimants and their witnesses in respect of their attendance at a hearing. No payments are made for legal fees incurred by either party at any stage of the proceedings. The Certification Officer has no power to order a witness to attend a hearing or to order the production of documents. A leaflet on the procedures at a hearing is available on the Certification Officer’s website or from the Certification Office. A copy of this leaflet is issued to the parties when a hearing is being arranged.

The Decision

21. When the Certification Officer has determined the complaint, she will issue a written decision with reasons. She may make or refuse a declaration, stating whether or not the complaint is upheld. She also has power to make an enforcement order to remedy any breach that has occurred. In certain circumstances she may also make written observations on matters arising from or connected with the proceedings. Any complaint that a union has not complied with an enforcement order must be made to the Courts, which can enforce the Certification Officer’s order as if it were an order of the Court. It should be noted that the Certification Officer does not have any powers to award compensation or costs. Copies of previous decisions of the Certification Officer are available on the Certification Officer’s website or on request from the Certification Office.

Appeals

22. There is a right of appeal from the decision of the Certification Officer to the Employment Appeal Tribunal (EAT) on any question of law arising from the decision or from the proceedings. Any such appeal must be lodged within 42 days of the date the Certification Officer’s written decision is sent to the parties. The EAT’s address is: 2nd Floor, Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8AE (020 7273 1041/1044). Further information about the EAT can be found on its website, www.gov.uk/appeal-employment-appeal-tribunal/overview.
Advice

23. The Certification Officer deals with complaints submitted under the 1992 Act and must do so impartially on the facts and in the light of the representations made to her by the parties. For this reason, Certification Office staff are unable to give advice on what claims to bring, the manner in which complaints are pursued and the likelihood of complaints being successful. Such advice could be seen as prejudicing the Certification Officer’s essential impartiality. Nevertheless, the Certification Officer’s staff are willing to assist where possible, particularly in the explanation of the requirements of the 1992 Act.

Further information

24. Further information and more detailed explanation about the contents of these notes can be obtained from the following address:

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Appendix One

Time Limit – Breach of Rule

Most complaints alleging a breach or threatened breach of trade union rules have to be made to the Certification Officer within six months of the day of the alleged breach or threatened breach.

However, a different time limit may apply if, within six months of the breach or threatened breach, an internal complaints procedure of the union has been invoked by the member with a view to resolving the claim. In such a case a complaint must have been made to the Certification Office either;

(a) Within six months of the date the internal complaints procedure was concluded, or

(b) If the internal procedure has not been concluded within a period of 12 months after being invoked, the six months to make a complaint to the Certification Officer will begin to run at the end of that 12 month period.

Examples

No internal complaints procedure invoked

Alleged breach happened on 6 January 2003, deadline for complaint to be received by the Certification Officer is 5 July 2003.

Internal complaints procedure invoked and concluded


Internal complaints procedure invoked but not concluded


It should be noted that in UNISON v BAKHSH (EAT/0375/08) the Employment Appeal Tribunal commented on what is meant by ‘invoking an internal complaints procedure’. The EAT stated that whilst the phrase can be given a fairly wide meaning “it is essential that some recognisable formal procedure should be being followed”.

Unlike an Employment Tribunal the Certification Officer has no discretion to vary the provisions relating to time limits on the grounds that to do so would be reasonable or just and equitable.

Although Certification Office staff are happy to explain the provisions, the responsibility for submitting a claim within the relevant time limits remains with the applicant.