

Introduction

I was appointed as Certification Officer on 1 January 2018. Gerard Walker held the position on an interim basis until 31 December 2017. I have appointed Mr Walker as Assistant Certification Officer and I am grateful for the support he has already given me in this role. We have prepared this report together.

My statutory functions are contained in the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) (referred to in this report as “the 1992 Act” or “the Act”). These are set out in Appendix 12.

Trade Union Act 2016 Implementation

The Trade Union Act 2016 received royal assent on 4 May 2016. Three sections of the Act that relate to the work of the Certification Officer and apply to mainly to trade unions, were implemented on 1 March 2017:

Section 7: Information to Certification Officer about industrial action etc

Section 11: Opting in by union members to contribute to political funds

Section 12: Union’s annual return to include details of political expenditure

I am pleased to report that Mr Walker and myself have now approved the rule changes required by section 11 of the Act for all trade unions wishing to retain a political fund. This has involved a significant amount of work by those unions and by my team. I am very grateful to the relevant trade unions for their cooperation with my office in bringing about this significant change which means that trade union members joining after 1 March 2018 have to opt-in rather than opt out of contributing to a trade union political fund.

The duties to report on political fund expenditure and to provide information about industrial action apply to the reporting periods which begin after 1 March 2017. For the majority of trade unions this will mean that they will provide this information, for the first time, in their annual returns to me for the period ending 31 December 2018 which should be provided to me before 1 June 2019. In preparation for this my team have amended the template which trade unions use to report to this office so that unions can provide the additional information required.

Those provisions of the Act which give me the power to investigate and determine breaches of statutory provisions without receiving a complaint from a trade union member and enable me to impose financial penalties have not yet been implemented. Nor have those which require trade unions and employers’ associations to pay a levy as a contribution to the costs of my office.

Trade Unions, and Employers' Associations

The number of trade union members recorded in the Annual Returns received in 2017-2018 is 6,875,231. This represents an increase of 10,175 members or 0.15% over the membership recorded in my last Annual Report. However, UNISON have told me that they have not included their retired members (147,330) in previous annual returns. These members are now included in the overall total. Without this figure the total figure would have been 6,727,901 or a decrease of 2%.

On 31 March 2018 there were 146 trade unions which is a fall of four from the previous year. Seven trade unions were removed from the list and schedule, three were added. Of the seven which were removed, one ceased to exist due to a transfer of engagements, two amalgamated to form a new trade union and four were dissolved or deemed no longer to meet the statutory definition of a trade union.

At the end of this reporting period there were 91 employers' associations, the same number as at the end of the previous reporting period.

Complaints from Union Members

Over the past reporting year 55 complaints were determined by Mr Walker, myself and our Assistant Certification Officers (ACOs). Of these, 52 complaints alleged that a union had breached its own rules. The other 3 related to alleged breaches of statute. A summary of these decisions can be found in Chapters 3, 4, 8 and 9 of this report.

The issue that attracted the most interest was the decision made by HHJ Mary Stacey in her role as Assistant Certification Officer to hear the complaints of Burgess and Ors against UNISON. The complaints related to the General Secretary election in 2015. There were multiple applicants and 16 complaints that required a preliminary hearing and three full days of evidence and submissions. Following this, the ACO made a single declaration that the union had breached its own rules relating to the election; she considered it inappropriate to make an enforcement order on the basis that it would be disproportionately punitive, in response to the breach found, to order the General Secretary election to be run again. The ACO's decision was upheld by the Employment Appeal Tribunal on appeal by the applicants.

The Website

Our website has continued to be the primary source for those interested in obtaining information about the work of the Certification Office. It contains all decisions made by myself, my predecessors and ACOs as well as the annual returns from trade unions and employers' associations since 2012, with links to The National Archives website for returns from between 2003 and 2012. It also contains guidance on various aspects of my functions, copies or links to our Annual Reports back to 1999-2000 and a list of trade unions and employers' associations known to me. In addition it is possible to sign up on the website for e-mail updates of forthcoming hearings, my decisions and the work of the Certification Office.

Annual Returns

This Annual Report relates to those annual returns received from trade unions and employers' associations between 1 April 2017 and 31 March 2018. Such annual returns must be lodged with me within five months of the end of their respective reporting period. Accordingly, the

most recent annual returns are in respect of a reporting period ending in September 2017 and the oldest annual returns are in respect of a reporting period ending in October 2016 (see paragraph 4.1).

The Certification Office

The Advisory, Conciliation and Arbitration Service (Acas) is required to provide me with the finance and support services necessary for the performance of my statutory duties. This in no way affects my independence from both Acas and the Secretary of State for Business, Energy and Industrial Strategy.

I am fortunate to be supported by a strong team within the Certification Office. On 31 March 2018 there were nine staff in post in the Certification Office. The net cost of the office for the year ending 31 March 2018 was £651,370 which represents an increase of £124,854 or 23.7% over the figure for year ending 31 March 2017 (£526,516) and £115,749 or 21.6% over the figure for year ending 31 March 2016 (£535,621.) The main reasons for the increase are the requirements to pay for legal advice from the Government Legal Department, payment for hearing venues as a consequence of our move from Euston Tower, and an increase in staff to deal with the new responsibilities around trade union membership registers and some aspects of the Trade Union Act 2016. In addition, the post of Certification Officer is now full time.

The above figures do not include costs for some of the services provided by Acas for my office, for instance the provision of IT equipment, its maintenance and HR services. It is estimated that such costs were £232,000 for year ending 31 March 2018. My salary as Certification Officer at 31 March 2018 was £125,695. This sum is pensionable and is taxed under PAYE.

Where I hold a hearing to determine a complaint I can make payments towards the expenses incurred by the complainant and their witnesses in attending the hearing. Such payments amounted to £1,262.85 during this period. Assistance with legal costs is not available.

Accounts

Accounts relating to the activities of the Certification Office, prepared under section 258 of the 1992 Act, are published separately by Order of the House of Commons. In broad terms it is estimated that about 22% of the Office's resources were allocated to work connected with the maintenance of the lists of trade unions and employers' associations, 47% to work relating to complaints and trade union finances, 19% to ensuring receipt of annual returns and their processing, 9% to political funds and the remainder to other matters including certification of independence and mergers. The growth in resources devoted to the maintenance of my lists is a reflection of the increased work associated with the more recent applications for listing as a trade union.

Assistant Certification Officers

I appointed Mr Gerard Walker to act as an Assistant Certification Officer to assist me whilst I hold the position of Certification Officer. Ms Christine Stuart continues to hold her appointment as Assistant Certification Officer for Scotland. During his appointment as Certification Officer, Mr Walker also appointed HHJ Mary Stacey and His Honour Jeffrey Burke QC to hear complaints. Jeffrey Burke QC continues to hold his position as Assistant Certification Officer to hear complaints brought by Mr Coyne and Mr Brooks against Unite the Union arising out

of the General Secretary election in 2017. We are grateful for the support given by Ms Stacey and Mr Burke during their appointments.

Protected Disclosures and the Certification Officer

The Certification Officer is a designated a 'prescribed person' under the Public Interest Disclosure Regulations 2014 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 2014 Regulations, employees or workers of a trade union or employers' association may be protected if they make a relevant disclosure to me. A relevant disclosure to the Certification Officer is defined in the 2014 Regulations as being one related to fraud, and other irregularities relating to the financial affairs of trade unions and employers' associations.

During this reporting period I received no relevant disclosures.

Advice and contacts for information

My team receives many enquiries and requests for guidance from trade unions, employers' associations and their members. Often we can help but there are constraints on the advice that can be given. It may, for instance, be inappropriate for us to give guidance on, or prior approval to, a specific course of action in areas where complaints can be made to me by an individual member. It would also be inappropriate for us to comment on the merits of a possible complaint. That said my team is, of course, happy to assist where we can and guidance covering different aspects of my responsibilities is available on our website www.gov.uk/certificationofficer. Our guidance is listed in Appendix 11; requests for further information on any aspect of my duties should be made to the Certification Office, Lower Ground, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX, tel: 0330 109 3602, e-mail: info@certoffice.org.

Finally, I am very grateful for the support which has been given to me by my team since my appointment was announced. They are a strong team who are keen to deliver a good service to those we work with.