

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 5 OF THE TRADE UNION ACT 1984**

**IN THE MATTER OF A COMPLAINT AGAINST THE UNION OF SHOP,
DISTRIBUTIVE AND ALLIED WORKERS**

DATE OF DECISION

17 August 1989

DECISION

Under section 5 of the Trade Union Act 1984 (“the Act”) I am empowered to make, or refuse to make, a declaration on the application of any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below, I decline to make a declaration in this case.

The application

1. On 19 April 1989 I received a letter and copies of correspondence from the applicant. His complaint concerned the ballot paper used in an election held earlier this year for the office of President of the Union of Shop, Distributive and Allied Workers. The ballot paper indicated the number of branches which had nominated each of the candidates, and the applicant contended that this was a breach of the provisions of Part I of the Act.

2. The applicant argued “that there should be nothing on the ballot paper which is likely to influence the judgement of the voter or to secure favour for any particular candidate”. He believes that the information given on the ballot paper “would most certainly affect the final voting figures”. He added that the information breached the Union's own rules, but as to that point I must make it clear that section 5 of the Act only provides for a right of complaint to me that the union has failed to comply with the provisions of Part I of the Act. If the applicant wishes to pursue any allegation of a breach of the union's rules he must do so separately in the ordinary courts.

The ballot paper

3. There were two candidates in the election, and the union has supplied me with a copy of the ballot paper. On it, immediately below the name of each candidate, was the name of the branch to which the candidate belonged. To the right was a column headed “Nominated by”. For one candidate the entry in that column read “Leicester Area Co-operative and 58 others”; for the other candidate it read “Newcastle and 6 others”. To the right of the column was the blank space in which the voter recorded his vote.

The legal requirements

4. Section 1(1) of the Act, so far as is relevant, provides:

“it shall be the duty of every trade union (notwithstanding anything in its rules) to secure that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied. ...”

It is not disputed that this was an election to which section 1(1) applied.

5. Section 2 of the Act lists a number of detailed requirements. At the time of this election the only requirements which related to matters appearing on the ballot paper were the requirement in sub-section (5) that the method of voting should be by marking a ballot paper, and sub-section (7)(a) which provides:

“So far as is reasonably practicable, every person who is entitled to vote at the election must -

(a) have sent to him ... a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates .”

6. More generally, sub-section 6(a) provides:

“Every person who is entitled to vote at the election must- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees .”

Reasons for the decision not to make a declaration

7. The first question to be considered is whether the requirement, in section 2(7)(a) of the Act, that a list of the candidates must either appear on the ballot paper or accompany it is to be interpreted as prohibiting the inclusion in the ballot paper of any information about candidates beyond their names and, perhaps, the branches to which they belong. My view is that the section is not concerned primarily with the format of the ballot paper. It seems to me that the main purpose of section 2(7)(a) is simply to ensure that, especially where there is a large number of candidates, the voter is aware at the moment of voting of all candidates for whom he may vote. Moreover, nomination is an integral part of the election process, and I do not think it can reasonably be held that nomination details are manifestly out of place in or alongside the required “list of candidates”. I have therefore concluded that there was no infringement of section 2(7)(a).

8. I turn now to section 2(6)(a). As I have said in previous decisions concerning this provision (for example, decision number D/14/86): “The purpose of section 2(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.” I am satisfied that the additional information that appeared on this ballot paper falls a long way short of being such interference or constraint.

9. The applicant put his point of view clearly, but I cannot agree that the information on the ballot paper infringed any requirement in Part I of the Act. It follows that I must decline to make a declaration in this case.