

In the Certification Office:

**AN APPLICATION BY THE BOOTS PHARMACISTS
ASSOCIATION (BPA) UNDER SECTION 6(1) OF THE TRADE
UNION LABOUR RELATIONS (CONSOLIDATION) ACT 1992 TO
BE LISTED AS AN INDEPENDENT TRADE UNION**

DATE OF DECISION:

20 May 2013

DECISION

Upon an application under section 6(1) of the Trade Union Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

I refuse the application of the Boots Pharmacists Association (BPA) for a certificate of independence on the grounds that it is not independent within the meaning of section 5 of the Trade Union Labour Relations (Consolidation) Act 1992.

REASONS

1. By an application received at my office on 17 October 2012 the Boots Pharmacists Association (BPA) ("the BPA" or "the Union") applied for a certificate of independence.
2. The statutory test of independence is set out in section 5 of the 1992 Act. This provides:

Meaning of "independent trade union"

In this Act an "independent trade union" means a trade union which –

- (a) is not under the domination or control of an employer or group of employers or of one or more employers' associations, and*
 - (b) is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control;*
- and references to "independence", in relation to a trade union, shall be construed accordingly.*

This provides for a two stage test. First, I must ask myself whether the union is in fact under the domination or control of an employer. If not, secondly, I must ask myself whether the union is "liable to interference by an employer tending towards such control". In **Certification Officer v. Squibb UK Staff Association (1979) IRLR 78 CA** Lord Justice Shaw commented that what the Certification Officer has to decide in such cases is in essence a practical question of fact which may be more or less complex according to the circumstances.

3. An issue arose in the **Squibb** case as to the correct construction of the words "*liable to interference ... tending towards such control*" in section 5(b) of the 1992 Act. The Court of Appeal decided that the appropriate test is not whether 'interference tending towards control' is likely to occur, but whether there is a vulnerability to interference tending towards control by the employer. Lord Denning accepted the meaning of "liable to interference" as being "exposed to the risk of interference". Lord Justice Shaw commented at paragraph 28:

"The phrase 'liable to' when used otherwise than in relation to legal obligations has an ordinary and well understood meaning, namely, 'subject to the possibility of'".

He continued at paragraph 30:

"If the facts present a possibility of interference tending towards control, and it is a possibility which cannot be dismissed as trivial or fanciful or illusory, then it can properly be asserted that the union is at risk of and therefore liable to such interference. The risk need be no more than one which is recognisable and capable in the ordinary course of human affairs of becoming an actuality."

4. In 1976 the then Certification Officer set out in his annual report what he saw to be the principal criteria to be used in applying the statutory definition of independence to individual cases. These were the history, the membership base, the organisation and structure, finance, employer provided facilities and the collective bargaining record. These criteria were approved by the Employment Appeal Tribunal ("EAT") in **Blue Circle Staff Association v. Certification Officer (1977)IRLR 20**, where they were first raised. They were considered helpful by the EAT in **Monk & Co Staff Association v. Certification Officer (1980)IRLR 431** and can now be found in the guidance published by my office for the benefit of trade unions which are considering whether to make an application for a Certificate of Independence. The guidance develops the above headings, as follows:

History

Sometimes evidence is found that the union began with employer support and encouragement, or even as a creature of management. If that evidence relates to the recent past, it is a powerful argument against the granting of a certificate. But experience indicates that over time some unions can and do evolve from a dependant to an independent state; and the decision must, of course, be based on the facts as they are at the time of the investigation and not as they were several years ago.

Membership base

From the outset, the Certification Office has taken the view that a union whose membership is confined to the employees of one employer is, on the face of it, more vulnerable to employer interference than a broadly based union. This is less likely to be a critical factor for a large, well-established union backed by strong resources than for a small, weak, newly-founded trade union. In fact, certificates have been issued to a number of single company unions which appear on all the available evidence to be capable of withstanding any pressure which might be brought to bear on them by the employer. Experience has confirmed that a narrow membership base may make the union's task of proving its independence more difficult but that it does not make it impossible.

Organisation and structure

It is necessary to examine these both as they are set out in the union's rulebook as they work in practice. The main requirement is that the union should be organised in a way which enables the members to play a full part in the decision-making process and excludes any form of employer involvement or influence in the union's internal affairs. Particular attention is paid to whether employers or senior employees, especially those at or immediately below board level, are eligible to belong to the union and, if so, whether there are suitable restrictions on the part which they can play in its affairs.

Finance

Whilst it is exceptional to find evidence of a direct subsidy from employer sources, a union with weak finances and inadequate reserves is obviously more likely to be vulnerable to employer interference than one whose financial position is strong. Particular attention is therefore paid to such questions of the main source of the union's income, whether this matches its expenditure, the level of its subscription rate and the state of its reserves.

Employer-provided facilities

These may take the form of premises, time off and office or other services provided by the employer. In the case of single company unions, the normal practice is to cost these items in order to get a rough idea of the extent of the union's reliance on them in financial terms. But it is not just a question of finance. It is also necessary to look at the administrative convenience of having facilities provided by the employer, even if they are paid for, and how easy or difficult the union would find it to cope on its own if they were withdrawn. The greater the union's reliance on such facilities, the more vulnerable it must be to employer interference.

The provision of facilities is, of course, common practice amongst a number of employers, but in the context of independence, its significance may vary according to the circumstances. A distinction can properly be drawn between a broadly-based union which could continue to function even if an employer withdrew facilities from one or more of its branches and a single company union which might well find it difficult or even impossible to carry on at all if such action were taken by the company which employs its entire membership.

Negotiating record

This is almost always an important consideration. Whilst a weak record does not itself indicate dependence, a strong record in negotiation may outweigh other factors unfavourable to the union's case. In assessing the record, account must be taken of such factors as the particular environment in which the union operates – for example, the kind of employer with whom it negotiates and the traditions and attitudes of the employees whom it represents.

This is the point at which independence and effectiveness overlap. The two concepts are not of course identical. A union is not necessarily dependant just because it cannot supply its member with the full range of services which major unions normally provide. But it is equally clear that an effective union is more likely to be independent than an ineffective one."

5. The guidance goes on to state that the task of the Certification Officer in this regard is to decide the issue of independence without regard to its consequences on employment relations or on established or emerging negotiating machinery. It is only the issue of independence that is to be decided. The guidance emphasises that no single factor is decisive and that it is necessary to look at the whole nature and circumstances of the union before making a judgement.

The facts

6. Following receipt of an application for a Certificate of Independence I am required by section 6 of the 1992 Act to enter that fact on the record that I maintain for such purposes and to not reach any decision for one month. In practice, I not only enter the fact that an application has been made on my own record, but I also publish that fact on my website and in the London Gazette (and, where appropriate, the Edinburgh Gazette). I do so in order that any person with relevant information to the application might make a submission to me. In this case, I received a submission from the PDA Union ("the PDA"), sometimes known as the Pharmacists' Defence Association Union. This is a rival union which is seeking statutory recognition by Boots from the Central Arbitration Commission ("CAC").
7. On this application my office also corresponded with the Chief Executive Officer ("CEO") of the BPA, Mr Peter Walker, and obtained various documents from him. Representatives from my office (Mr Gerard Walker, Assistant Certification Officer and Ms Hirji, Case Officer) visited the Head Office of Boots in Nottingham on 25 January 2013 and met separately with the BPA and the employer. They met with Mr Walker and Ms Amanda Rae, the Chair of the BPA, and then separately with Mr Vallance, the HR Director of Boots (Stores). I met with Mr Peter Walker and Ms Rae on 14 May 2013 at my offices, together with Mr Gerard Walker and Ms Hirji.
8. On the basis of my meeting with the union and the material before me, I find the following facts which I set out under the headings used in my guidance.

History

9. The origins of the BPA go back to around 1973. At that time there were local associations such as the Strathclyde Boots Pharmacists and the Birmingham and District Boots Pharmacists, which came together as an association known as the Joint Boots Pharmacists Association ("JBPA"). They did so in order to present a united case against a proposal from the then European Common Market that individual pharmacists should own the equipment and medicines in their pharmacies. The JBPA was added to the list of trade unions in 1979. It changed its name to the Boots Pharmacists Association (BPA) in about 1997 to reflect that by that time it was an organisation of individual members, not local associations.
10. Between about 1986 and 2001 the General Secretary of what is now the BPA was Charles Smallwood. In 2001, Mr Walker was appointed as its CEO, a position recognised in the rules of the union in about 2004. Since then the address of the head office of the union has been the home address of Mr Walker.
11. Prior to 2006, the company was the Boots Group plc. It then merged with Alliance UniChem to form Alliance Boots GmbH, with its registered office in Switzerland and its operational head office in Nottingham. In 2007 its shares were purchased by a private equity company, KKR, and an Italian businessman. Its shares were de-listed from the stock exchange. In 2012 it entered into a strategic partnership with Walgreens, a US based pharmacy-led

retailer which bought a 45% stake in the company with an option to purchase the remainder in 2015. Since 2010 the staff of the company, which I shall refer to as 'Boots', were transferred under the Transfer of Undertakings Regulations to the employment of Boots Management Services Limited. I was informed that in recent years the company has become more focused on making economies wherever possible, as demonstrated by the closure of its final salary pension scheme in 2010.

Membership base

12. The BPA only organise within Boots in the UK. It is estimated that Boots have about 55,000 employees in the UK and that, amongst them, there are about 5,500 pharmacists.
13. In its latest annual return to my office, the BPA reported a total membership of 1,372 as at 31 December 2012, an increase from 1,145 as at 31 December 2011, a 19.8% increase.
14. Rule 3 of the rules of the Union provides that membership is open to all registered pharmacists employed within the Boots Group and those pharmacists and former pharmacists in receipt of a pension from Boots Pensions Limited. Pharmacy pre-registration graduates employed by Boots are automatically given free Associate Membership for the duration of any period of post graduate experience, without having to sign up, but have no voting rights. There are about 650 pre-registration graduates at any one time.
15. The subscription for BPA members is £72 p.a, having been increased from £48 p.a in July 2012. This followed a significant increase in the insurance premium that the Union was required to pay in order to give its members access to a legal helpline.
16. In 2007 the Union agreed with Boots that its members subscriptions could be collected under a check off arrangement. Currently 90% of its members pay by check off. Of the remainder, about 7% pay by standing order and 3% by cheque or cash. There is no provision for payment by direct debit. The Union does not pay a fee to Boots for the check off arrangement. The Union asserts that if Boots withdrew the check off arrangement it could revert to payment by standing order, cash or cheque and remain solvent by decreasing its administrative costs if necessary.
17. For the last 18 months or so the recruitment of members to the BPA has been assisted by Boots including in its offer letter to potential new employees a BPA application form and encouragement to join. Further, Boots holds divisional pharmacists conferences at which the BPA is allowed to have a stand and to address the attendees. The BPA maintain that its recruitment strategy is not dependent on Boots support but is achieved mainly through face to face contact, its publications and its website.

Organisation and structure

18. The BPA has no regional, branch or other local structure. All communication is conducted through the CEO at the CEO's home address.

19. The BPA replaced the title of General Secretary with that of CEO in or about 2001. By rule 5(a) the CEO is appointed by the Association on an annual basis. In practise, this occurs at the AGM each year. There are no postal elections in which members can vote for the position of CEO/General Secretary, as are ordinarily required by section 46 of the 1992 Act. The CEO is described in the rules as a consultant agent whose role is to provide professional and administrative services as agreed with the Executive Officers. Mr Walker is paid an honorarium of £13,000, which includes an element for office expenses. He nominally works 1.5 days a week but often works much more than that, depending upon the demands of his position. Prior to being appointed CEO, Mr Walker had been employed by Boots for 38 years. He retired in 2001 as a pharmacist store manager.
20. Rule 5 of the rules of the BPA provides for an EC of seven elected members, the immediate past chair and the CEO. The EC members are elected for a term of 2 years. Should the number of nominations exceed the number of vacancies, there would be a vote at the AGM. However, I was informed that, apart from in 2012, the number of nominees had never exceeded the number of positions vacant and so there has never been any need for an election of members for a position on the EC. In 2012, those who unsuccessfully sought election to the EC were co-opted to it.
21. The Union maintained that its Executive does not contain anyone whose position in Boots would create a conflict of interests with their union responsibilities. I was informed that Ms Rae, as the Remuneration Manager, Scotland, is not involved in matters which impact directly on members' terms and conditions. The current members of the EC, their positions within the Union and their position within Boots is set out as follows:

Name	Position on EC	Position in Boots
Peter Walker	CEO	Retired
Amanda Rae	Chair	Remuneration Manager, Scotland
Dave Greer	Vice-Chair - Professional Matters	Healthcare Development Manager, West Scotland
David Drayson	Vice-Chair - Remuneration	Relief pharmacist, South Yorkshire
Rhona Bennett	Treasurer	Part time store based pharmacist, Edinburgh
Lindsay Barnatt	Immediate past Chair	Part time relief pharmacist, Kent
Elaine Shardlow	Assistant Secretary	Relief pharmacist, Nottinghamshire/Derbyshire

Andrew Tickle	Website Communications	Healthcare Development Manager, Merseyside
Phillip Yelling	Executive Member	Part-time relief pharmacist, Cornwall

There are also five co-opted members of the EC. Their positions within the Union and their position within Boots are set out as follows:

Name	Position on EC	Position in Boots
Peter Woodward	Executive member – (London and South)	Pharmacists store manager
James Cookson	Communication - Pre-registration Pharmacists	Pharmacist, Lincolnshire
Mike Wallington	Executive member – (Wales)	Pharmacist Store Manager
Khuram Ahmad	Executive member – Support Offices (Nottingham & Feltham)	Pharmacy Services manager
Mary-Jane Biggart	Executive Member – (Northern Ireland)	Pharmacist Development and Deployment Manager

22. By rule 7 of the rules of the Union, the EC is to meet not less than four times a year. In the calendar year 2012 there were six EC meetings. Five of them were held at the premises of Boots in Nottingham or London at no cost to the Union. One meeting was held at the Royal Pharmaceutical Society, London, at a cost of about £675 to the Union. In practice, ordinary members may attend meetings of the EC if they request to do so but they cannot vote. Typically this might happen if the EC meets on the same day as the Union's Professional Standing Committee or the AGM.
23. By rule 9 there is to be an AGM. In the last five years, four AGMs have been held at the Royal Pharmaceutical Society and one on the premises of a Boots store, at no cost to the Union. Peter Walker explained that typically the AGM consists of a review of the year that he presents and, in alternate years, the election of EC members, usually unopposed. He had no recollection of a motion being submitted by a member and debated.
24. The BPA has a website which has become the Union's main means of communicating with members and non members. The website has been substantially improved in the last two years. There is open access to certain parts of the website whilst others are only open to members. According to the

May 2013 edition of Current Counsellor, the Union had only got about 30% of its members to register on the website.

25. The BPA has two publications, Professional Counsellor and Current Counsellor. Professional Counsellor is a glossy publication which is published twice a year and distributed to all Boots pharmacists, whether members or not. It is said to contain mainly professional information, although it also contains a message from the chair of the BPA, encouragement to join the BPA and a BPA application form. Boots provide £2,000 towards the cost of printing this publication and organises its distribution through the Boots internal mail system. The BPA provides the content for the publication and the envelopes. Current Counsellor is typically four or more sides of A4 and is published five times a year to members only. It contains, inter alia, information on work related issues and the minutes of EC and consultative meetings. Current Counsellor is funded entirely by the Union. About half are distributed by post to members' home addresses and half are sent through the Boots internal mail. Boots do not have any input on the content of either publication.
26. The BPA also communicates with members from time to time by Newsletters (mainly between editions of Current Counsellor) and conducts surveys of members as it considers appropriate. Newsletters normally provide information on a single subject about which it is felt members should be specifically informed. In 2012, the BPA conducted four surveys; on remuneration expectations, on post-remuneration feed back, on stress and a survey of the pre-registration graduate pharmacists. In 2013, a ballot of the members indicated that they would wish the Union to seek negotiation rights on terms and conditions of employment, including salaries and holidays, albeit on a low turnout.
27. The BPA has an insurance scheme through which members can receive free legal and tax advice on any subject, including employment. It is known as Legal Defence Costs Insurance ("LDCI") and is provided by DAS through NPA Insurance. A booklet prepared by the insurer describes the benefits. These include the giving of legal advice in relation to compromise agreements, the negotiation for the member's rights in a dispute relating to the contract of employment and representation before the General Pharmaceutical Council on an Internal Disciplinary matter. A confidential helpline also gives advice on employment matters. Mr Walker stated that a member would normally contact him first (or another member of the EC) and would be recommended to contact the LDCI if it involved a legal issue. The Union does not retain independent solicitors to advise members.
28. Members who wish to receive advice or support from the Union with regard to their employment are encouraged to contact Mr Walker or another member of the Executive direct. Mr Walker has direct access to senior management within the Boots' regions, its HR Director of Stores, its Chief Operating Officer ("COO") and its CEO. Typically, the member will be advised of the best way of progressing the matter through the Boots internal procedures. If appropriate a colleague or Union representative will accompany the member. Similarly, with disciplinary issues, the Union will advise members how best to present his or

her case at the Investigatory Meeting, Disciplinary Hearing and Appeal and will arrange for the member to be accompanied if appropriate. The Union have not represented or funded the representation of any member before an Employment Tribunal in recent years. If a member seeks legal advice, he or she is directed to the LDCI.

Finance

29. The Union's annual return to my office for the 12 months to 31 December 2012 records subscription income of £74,175. No other significant income is recorded. All 1372 members are recorded as having contributed to the general fund. As noted above, the subscription rate increased in July 2012 from £48 pa to £72 pa. The subscription income to 31 December 2011 was £49,791.
30. The expenditure recorded in the above annual return includes £13,000 in respect of the honorarium paid to the CEO, (£10,000 in 2011), insurance of £32,865 (£15,127 in 2011), recruitment and publicity £59 (£8,750 in 2011), stationery, printing, postage and telephone of £8,432 (£5,352 in 2011) and remuneration and expenses of staff of £18,310 (£8,645 in 2011). Total expenditure for 2012 was £82,694 (£49,739 in 2011). A summary of the Union's General Fund at the year ending 31 December 2012 is as follows:

1 January 2012 to 31 December 2012	
No: of contributing members	1372
Funds at beginning of year	£17,818
Income from members	£74,175
Expenditure	£82,964
Funds at end of year	£9,307

31. The funds held by the Union at 31 December 2012 were £9,307 (£17,818 in 2011). This represents 11% of the 2012 expenditure. On a crude measure, this level of reserves is only sufficient to enable the Union to remain solvent for about 6 weeks at its 2012 level of expenditure if its income were to cease or be seriously diminished by, for example, the withdrawal of its check-off facility by Boots. The Union maintained that it would be able to restructure its expenditure to take account of any reduction in income and that it would be able to restore the payment of subscriptions by other means.

Employer provided facilities

32. Without assistance from Boots, the BPA pays out of its own income for, amongst other things, the honorarium of the CEO, the publication and distribution of Current Counsellor, occasional newsletters and surveys, its website, travel and subsistence for members of the EC, its auditors and its insurance scheme for members. It does not have separate legal costs.
33. On the other hand Boots provides tangible support to the BPA in different ways, including:
- (1) Boots encourages newly recruited pharmacists to join the BPA in the letter offering them employment.

- (2) Boots provides the CEO with a laptop, enabling him to have access to the Boots intranet and, through that, to both members and non members. The CEO has a Boots email address.
- (3) Boots allows the BPA to use its internal mail system.
- (4) Boots has a social and information website known as PharmacyUnscripted. Boots provide a link on that site to the BPA website.
- (5) Boots provides free use of its premises for meetings of the BPA, including its AGM.
- (6) Boots provides free use of its audio conferencing facilities.
- (7) Boots provides free training in industrial relations and employment law for new members of the BPA Executive, provided by external trainers.
- (8) Boots allows members of the BPA to have paid time off to attend BPA meetings and meetings of BPA with the company.
- (9) Boots pays £2,000 a year to sponsor the production of the Professional Counsellor publication.
- (10) Boots deducts BPA subscriptions for the salaries of consenting members at no cost to the Union (check off).
- (11) Boots IT department assisted the BPA in developing its database.

Negotiating Record

34. The BPA maintains that it and its predecessors have had an agreement with Boots since 1976, which agreement has been reviewed on six occasions since 1989. I have seen a document, headed 'Agreement of Understanding' dated 2 August 2007 and the latest version, headed 'Partnership Agreement' dated 1 March 2012.
35. The 2007 Agreement provides for certain elements of the support given to the BPA by Boots and for there to be consultative meetings between Boots and the BPA. However, this Agreement expressly records that a request by the BPA for negotiation rights was declined.
36. The Partnership Agreement of 2012 is controversial. I deal with that controversy below. As with the 2007 Agreement, it provides for certain elements of the support given to the BPA by Boots and for there to be consultative meetings. It goes on to state that the BPA is recognised as having collective bargaining rights, albeit only for the purposes of negotiations relating to facilities for its officials and the machinery for consultation. The Agreement states expressly that it "*does not provide for collective bargaining rights on any other matters*" and later that "*any terms agreed with the BPA by virtue of this agreement are not intended to be incorporated into employee's contracts of employment*". Boots stated that they obtained legal advice before entering into this agreement.
37. Consultative meetings between the BPA and Boots are held at least five times a year, more often if required. By the Partnership Agreement, Boots has agreed to consult on such matters as changes to terms and conditions and significant changes to working practices. At any consultative meeting, the BPA is represented by the Executive Committee and CEO. Boots is represented by its CEO, COO, HR Director (Stores) a Divisional Director and Pharmacy

Superintendent. The BPA is to be advised of the reasons for the response to its input. The minutes of consultative meetings are published in Current Counsellor.

38. The subjects discussed at consultative meetings are mainly decided by the BPA. They have included pensions, payment of professional fees, professional indemnity insurance, CPD points, Sunday working and premium payments. The BPA carries out an annual review of salary expectations which feeds into a consultation on remuneration. The BPA has also conducted a survey on stress in the work place which was a subject of a consultation.
39. The BPA has never organised any industrial action.
40. In a Newsletter to its members in February 2013, the BPA described its achievements for its members. It asserts that it has delivered:
 - (1) continuing professional development (CPD) time in lieu
 - (2) the right of pharmacists to take time in lieu or pay for ED's worked
 - (3) the right of pharmacists to have Sunday working included in their contracts and so attract bonus/holiday/sick pay. Many managers wanted to pay as extra duties as it was less hassle to them to employ a locum at a cheaper rate
 - (4) professional indemnity insurance cover for all employed pharmacists when working for the company
 - (5) a company-wide review of Salary Model (SAM)
 - (6) the retention of the death in service provision and the 12x contribution by the company to pharmacists members of the new pension scheme
 - (7) the lunchtime working policy and lunchtime payments
 - (8) company cars for managers and senior pharmacists with car loans for all pharmacists
 - (9) availability of company work-wear for all pharmacists who want it.
 - (10) enhanced security in midnight pharmacies
 - (11) access to PharmacyUnscripted for all pre-registration trainees.
 - (12) the pharmacists conference
 - (13) the payment of professional fees
 - (14) the retention of staff discount cards with broken service
 - (15) the pre reg tutor honorarium
 - (16) an increase in emergency call out fees
 - (17) a career pathway for pharmacists who want to pursue a clinical career

The Partnership Agreement 2012

41. The rival union to the BPA within Boots is the PDA Union. It maintains that the BPA connived with Boots to prevent its recent application for statutory recognition being fully considered by the Central Arbitration Committee ("the CAC").
42. The PDA began the procedure for obtaining statutory recognition on 19 January 2012 by making a formal request to Boots for recognition. This request was

rejected by Boots. In February 2012, the PDA lodged an application to the CAC. Boots suggested talks and obtained the agreement of the PDA to stay its application to the CAC. In a subsequent decision of the CAC (**PDA v. Boots Management Services Limited – 29/1/13 – TUR1/823/2012**) it was found that Boots had had no intention of recognising the PDA and had used the time after it had suggested talks with the PDA to conclude the 'Partnership Agreement' with the BPA which was signed on 1 March 2012. Boots met with the PDA on 2 March 2012 and made no mention of this agreement. On 23 March 2012 Boots wrote to the PDA rejecting its request for recognition on the grounds that it had recognised the BPA for certain collective bargaining purposes. The CAC found that Boots had been disingenuous in deliberately misleading the PDA in order to buy time to conclude the agreement with the BPA.

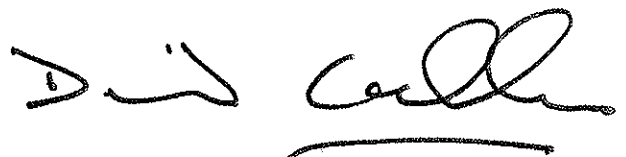
43. In the above case, the CAC considered whether the agreement made between Boots and the BPA was sufficient to achieve its objective of blocking the PDA's application for statutory recognition. It found that the agreement did not meet the requirements set out in the 1992 Act for this purpose, as it did not cover pay, hours or holidays. The application of the PDA was therefore allowed to proceed. Since then, however, Boots have sought a judicial review of the CAC's decision on this preliminary point.
44. The CAC decision records Boots as having stated that it did not currently recognise the BPA for the purposes of collective bargaining in relation to terms and conditions of employment or issues concerning pay, hours and holidays and had no intention of doing so in the future.

Conclusions

45. On the above facts, I find that the BPA is not under the domination or control of Boots within the meaning of section 5(a) of the 1992 Act.
46. The question whether the BPA is liable to interference by Boots (arising out of the provision of financial or material support or by any other means whatsoever) tending towards control within the meaning of section 5(b) of the 1992 Act requires a careful balancing of all the circumstances.
47. The starting point is that the BPA is a union with membership in a single company. It is clear that such unions may have more difficulty in establishing that they are not liable to interference by that single employer than would a general union that negotiates with multiple employers. It is, however, in the BPA's favour that its origins are not as a staff association set up by the employer.
48. Whilst the involvement of the BPA in the attempt by Boots to block the application for statutory recognition by the PDA may be the subject of critical comment by the PDA and others, I must consider what impact it has on the independence of the BPA. It would appear that the BPA cooperated with Boots to keep out a rival trade union but it does not follow that it did so to assist Boots. It is more likely that the actions of the BPA in this regard were to protect its own position. It could have reasoned that if the PDA obtained statutory recognition it might lose members and its own existence might be threatened.

Accordingly, I find that the circumstances in which the 2012 Partnership Agreement was arrived at is relevant background material but it is not conclusive evidence that the BPA is liable to interference by Boots.

49. I am persuaded that the BPA does much valuable work for its members at Boots, acting as a conduit for their views to the employer and representing their interests, both individually and collectively. On the other hand, I observe that the BPA has never collectively bargained for its members' terms and conditions and has never organised any industrial action. I further observe that the BPA is the recipient of both financial and material support from Boots. I have few doubts that the relationship between the BPA and Boots is a relatively cosy one, but the existence of good working relationships is not conclusive evidence of a vulnerability to interference tending towards domination or control.
50. It is rather by stepping back from the detail of the relationship between the BPA and Boots and looking at the picture as a whole that there emerges, in my judgement, a clear image of a union that has over the years been drawn into a situation in which it is indeed liable to interference by Boots. I find that such vulnerability is evidenced, inter alia, by the BPA's weak financial base, its dependence on the goodwill of Boots to continue the check off arrangement, its lack of any detailed contingency plans should Boots discontinue that arrangement, its promotion by Boots to new employees as well as its receipt of financial and other material support. Whether or not the BPA could survive the withdrawal of such support is not the issue. I must consider whether the threat of its withdrawal or serious curtailment places the Union in a position that it is liable to interference tending towards domination or control. For the above reasons, I find that the BPA is liable to such interference. In all the circumstances before me, I find that the BPA is not an independent trade union within the meaning of section 5 of the 1992 Act.



David Cockburn
The Certification Officer

