

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE
UNDER SECTION 25 OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992 (AS AMENDED)**

**IN THE MATTER OF COMPLAINTS AGAINST THE
COMMUNICATION WORKERS UNION**

**APPLICANTS MR S A SINCLAIR
MR E T KING**

Date of Decisions:

21 December 2000

DECISIONS

- 1.1 Under section 25 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") a member of a trade union who claims that his or her trade union has failed to comply with any of the provisions of section 24 of the 1992 Act may apply to me for a declaration to that effect. Section 24 places a duty on trade unions to compile and maintain a register of names and addresses of its members and to ensure, as far as is reasonably practicable, that it is accurate and kept up-to-date. Whether or not I make the declaration asked for I am required to give reasons for my decision in writing.
- 1.2 In making any declaration I am required to specify the provisions with which the trade union has failed to comply.

- 1.3 On 21 February 2000 I received a complaint from Mr King, a member of the Communication Workers Union, that he had not received voting papers in two consultative ballots the union had carried out. They were called the 'Way Ahead' and 'Pay' ballots. He subsequently elaborated on the complaint and alleged that the union failed to maintain an accurate register of members.
- 1.4 In subsequent correspondence on 6 April 2000 Mr King was joined in the complaint by a further member of the union, Mr S A Sinclair, who made a similar complaint under section 25 of the Act of a breach of section 24(1).
- 1.5 I investigated the complaints in correspondence and held a formal hearing on 23 October 2000 to hear argument on the complaints. Mr Alistair Denham of Simpson Millar, Solicitors, represented the union and the complainants represented themselves. I found the contributions from all concerned clear and essentially to the point.

Decisions

- 1.6 For the reasons that follow I decline to make declarations on the complaints before me.

The Complaints

- 1.7 The complaints relate to the "Way Ahead" and "Pay" ballots which were sent out together in January 2000 and in which the complainants claim they were entitled to vote and for

which, it was alleged Mr King did not receive voting papers. It was also alleged that over 40 other members including Mr Sinclair named in subsequent correspondence to me did not receive voting papers for these ballots. It is alleged that these failures stemmed from the Union failing to maintain an accurate and up-to-date register of its members.

Requirements of the legislation

- 1.8 The relevant statutory requirements of the Act about the maintenance of the register of member's names and addresses are contained in section 24 of the 1992 Act which states:

"24.-(1) A trade union shall compile and maintain a register of names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are kept up-to-date"

The Complainants' Case

- 2.1 The complainants stressed that they had long years of union membership and a history of loyalty to the union, and it was with regret that these complaints had been made.
- 2.2 The complainants argued that the register of members was not up-to-date and maintained in good order and that this criticism applied both to the names and addresses and to members' other details. They noted the union had argued in correspondence that the statutory duty only related to members' names and addresses. However, they further argued that the word 'maintain' in the Act implied an extended duty as to the accuracy of other details of members

e.g. grade, location, part or full-time status. This was important as these matters impacted on balloting constituencies.

- 2.3 They questioned the union's claim that the register was always accurate to 98% or more. They argued that the figure of a 2% national inaccuracy was misleading in so far as it was only an average measurement of the records.
- 2.4 The complainants informed me that in spite of what the union claimed in its replies to me, members had complained at local level about the inadequacies of union record keeping but to no avail.
- 2.5 The union claimed that its system for ensuring accuracy was, in its words, 'robust' but the complainants quoted records as much as 16 months out of date in at least one case. The complainants maintained that checks ought to be carried out at least every 3 months to ensure an accurate record of members' details.
- 2.6 In support of the claim of members' dissatisfaction with union records, the complainants cited Conference Motion 53 from the General Conference Report, which stated that:

"This motion was concerned with the deterioration of information from the records department and the anomalies arising in members' details and membership numbers. A review was required and to seek improvements with the use of new technology"

the motion was carried.

2.7 The complainants also cited Conference Motion 11 from the same paper, which noted 'with dismay' the apparent lack of response and absence of concern from both the General Secretary's Department and the Unity Security Balloting in respect of ballot papers found unopened in Yorks(sic) "At Wolverhampton Mail Centre on the 'Way Forward Agreement'." The motion was carried.

2.8 These examples indicated, in the complainants' view, a 'nation-wide concern' over the 'chaotic nature of union record-keeping' and the unacceptable delay in the receipt of ballot papers. It also pointed up the need for union headquarters to manage branch records effectively. The complainants said these were equally as important a part of the process of recording membership details as national records and carried the same legal liability under the Act.

2.9 Between them Mr King and Mr Sinclair mentioned 45 people who, to their knowledge, did not receive voting papers in the two ballots about which they were concerned. These included various examples of members who, it is alleged, 'suffered' as a result of the union's alleged failure to keep adequate and 'robust' records:

- Mr D Hill, who was suspended for no apparent reason by the union and therefore received no ballot paper;

- Mr G Bishop, whose house move 16 months previously had not been recorded at Branch level;

- Mr E Robinson, whose membership was accidentally lapsed, consequent on a move from one depot to another;

- Mr S Brownbill, whose correct address had been recorded on 22 October 1999 and had had to wait 3 months for the system to catch up with him;

- Mr D Greening, recorded as Mr D Greenwing, an unacceptable error;

- Mr S Barnett, an incorrect address;

- Messrs: Gerrard, Raw, Weavers, Kelly, Tubman and Bremner who had been members for a number of years. Because of a transfer into Parcelforce, they were deleted from the record and erroneously treated as new members on transfer back into Royal Mail. Earlier more systematic checks at branch level would have revealed this discrepancy in the records;

- Mr Kelly's pay slips, which deleted him from the record for 1 'rogue' week and then unaccountably, restored him to membership.

These were only examples local to the complainants but if duplicated nationwide, were indicative in the complainants' view, of a very serious record-keeping problem.

- 2.10 Confusion was caused by the memberships' lack of understanding of what information could, or could not, be passed on about members under the Data Protection Act by the employer. Some Royal Mail managers seemed to believe that no information on members could be supplied by Royal Mail to the union. If it was the case that details could be supplied about members' names, addresses etc but not about non-members, there was ignorance of this at management level in Royal Mail, which the union should address. This only served to compound the problem of inaccurate record keeping.
- 2.11 The status of nine or ten members named by Mr King as not receiving ballot papers was in question. The union claimed they were Cashco employees and as such not eligible to receive voting papers for the "Way Ahead" and "Pay" ballots. This was refuted by the applicants who asserted that these members were never employed by Cashco but were 'Processing' employees, entitled to vote but who had not been able to do so because the union had incorrectly coded them to Cashco.
- 2.12 The applicants stressed that the union relied too much on 'employer supplied' information and in order to maintain a genuinely robust recording system should:
- Institute a training package for records input clerks;
 - Strengthen the quality check system with more rigorous checks on membership movements;

- Produce annual membership record cards and do an annual audit of membership records to avoid problems arising owing to dated union records.

2.13 Overall, the applicants claimed, the examples of discrepancies quoted above highlighted the inadequacies both of headquarters and branch level record-keeping and the failure of the union to adequately monitor branch membership data-collection. They argued that the branch was as fundamental to maintaining the register as headquarters. This amounted to the union's failure to maintain an accurate and up-to-date register of members' names and addresses as required in section 24 of the Act.

2.14 The complainant's immediate objective had been to highlight individual discrepancies in the register disqualifying those members from the right to vote in an election. The overall objective was to bring about improvements in union efficiency, especially at branch level in recording members' details and ensuring that those entitled to vote by virtue of that record, could do so.

The Union's Response

3.1 The Union acknowledged its duty under section 24(1) of the Act to maintain a register of names and addresses and its obligation to ensure that, 'as far as is reasonably practical' the register should be kept accurate and up-to-date.

- 3.2 In accordance with section 24(2) the register of names and addresses was maintained on a centrally located computer database. The data was gathered initially from information supplied to the union in writing by the member and constituted the data which the union must use to send voting papers to its members for statutory ballots.
- 3.3 The register, the union argued, could be a single centrally located register or be divided into parts as the Certification Officer had previously decided.
- 3.4 The Act imposed no legal requirement to keep branch records. To that extent, the accuracy of branch records was not in the scope of this complaint. The union's central register was the electoral database for the purposes of satisfying the Act in respect of compiling and maintaining a register of the names and addresses of its members. Thus, it was argued, the complainants could not rely on discrepancies at branch level in support of their contention that the records were not accurate and up-to-date.
- 3.5 The union argued that its obligation under the Act was limited to names and addresses only and it referred to my decision in the complaint against the Public and Commercial Services Union, D/8-12/98 of 6 November 1998. The word 'maintained' in the Act, in their view, did not extend the union's obligation to include anything more than names and addresses.
- 3.6 In instances where the union did not have a properly registered address for a member, it argued that it would be entitled to withhold ballot papers from what it called 'addressless' members. In contentious ballots (as in the 'Way Forward' and 'Pay' ballots) the union would

be entitled, they said, not to send out a second ballot paper where the first one had not been received at the address on record. They referred to my decision in the Civil and Public Services Association, D/10-13/96 of 4 September 1996.

- 3.7 The Act imposed "a reasonably practicable test" in keeping accurate and up-to-date records. This was emphasised in the Certification Officer's decisions in: Cooper and Amalgamated Engineering Union reference D/4/87 of 31 March 1987; Confederation of Health Service Employees D/2/90 of 17 August 1990 and, Civil and Public Services Association reference D/10-13/96 of 4 September 1996. The Confederation of Health Service Employees case (reference D/2/90 paragraph 16) draws attention to the difficulties of the Confederation in instituting a new computerised data-base, in spite of which a success rate of 78.6 % was achieved in recording members' names and addresses. In that case, the Certification Officer refused to make a declaration. His view was that though it was necessary to ensure as far as was practicable that every person entitled to vote in an election was sent a voting paper, he followed Lord Donaldson in *British Railways Board -v- NUR* (1989) ICR 678. His Lordship said at page 684:

"The question which then arises is: is there sufficient evidence to justify us... in holding... that there was a failure "so far as is reasonably practicable" to provide all members entitled to vote with an opportunity of voting. ? I am bound to say I do not think there is. It seems inevitable that there will be a few people whose names ought to be on a list but which are not on a list, perhaps because they have changed jobs; there will be a few people who have not notified change of address or whose

voting papers, if sent by post, may go astray; there will be a number of things which inevitably will go wrong". The court of appeal approved efforts made by the union in that case to deliver voting papers and rejected the alleged irregularity as being 'de minimis'."

- 3.8 The union argued that the Certification Officer, in D/2/90 paragraph 3.5 above, also drew attention favourably to that union's 77% success rate in recording member's names and address (paragraph 27). This union, the CWU, had achieved a 98% success in recording member's names and addresses. Moreover, in paragraph 29 of that 1990 decision, the Certification Officer drew attention to a factor of 'disproportionate time, trouble or expense in view of the benefit likely to be gained' in pursuing accuracy to the ultimate degree, especially where a very large membership is concerned.
- 3.9 Mr Sinclair's complaints relate to 29 members who he states did not receive ballot papers for voting. This was a consultative ballot not a statutory one. The Union submit that in all these cases the members' names and addresses were as far as they were aware up to date as at the time of balloting according to their records. There will always be reasons why a member might not receive ballot papers i.e. postal problems etc.
- 3.10 Mr Dodd, the union's senior clerk in the Organising department at the Communication Workers (CWU) Headquarters ("HQ") gave detailed evidence as to the process of recording new member's details and checking the recording system for accuracy.

- 3.11 There were some 17 staff including Mr Dodd, engaged in maintaining the national register on a computer, from details supplied by new members, approved by the branch secretary and forwarded to headquarters for computer processing. This would take an average of 4-6 weeks. Members' records would be held in a pending file and entitlement to be mailed would not be achieved until subscriptions were received at HQ. The branch would also hold its own record card. The record card could be updated at headquarters by receiving new information from the branch or direct from an individual member, when new cards would be raised and returned to branches. Headquarters also carried out a monthly report to branches to check out invalid addresses where mailings were returned undelivered (approximately 500 per month). Branches would check these addresses and attempt to reconcile discrepancies but where this failed, the record at HQ would be marked 'invalid address' and the member would not be sent mailings or voting papers.
- 3.12 In the context of the union's task, in maintaining the register of members, it was stated that there were approximately 300,000 members nationally and 450,000 including retired and past members. Some 3,000 new applications were processed each month together with 4,000 changes of members' details.
- 3.13 Other sources of information regarding members' details (e.g. staff movements, change of status from full to part-time working) would come from the employer. Also, a monthly report would be received from the pay centres of employees' details and if there was no change no action would be taken by HQ. Otherwise amendments would be made to the record and new cards issued showing changes, for example, in pay rates, status, location

which would be remitted to branches for their records and input on the central computer. Regional Officers discussed record keeping with branches from time to time.

- 3.14 The union acknowledged that some employer's information was often unreliable: for example, they were currently trying to implement new arrangements with Parcel Force. Under current arrangements, staff transferring out had their record card marked -CC- contributions ceased, as if they had left Post Office employ altogether whereas it probably only represented a transfer to a different part of the Postal Group. This had been rectified by adding a column entry on the card to give the reason for the change leading to the CC classification. Additionally, headquarters had approached all sections of the Post Office for electronic print-outs showing fully coded movements of staff both in and out on the same database rather than getting separate printouts from different pay centres. This would clarify 'CC' situations, improve both data flow and efficiency in collecting contributions.
- 3.15 Turning to Conference Motions E11 and E53, Mr Dodd explained that in the case of E11, the fault lay at the door of Royal Mail and the mailing house concerned, for which the union could take no responsibility. The Composite Motion 53 which noted with concern the 'deterioration of information from the records department' could be attributed to a lobby within the union who had been used to its own record system before its members, who had previously belonged to the National Communication Union (NCU) had merged to form the Communication Workers Union. Mr Dodd said that there was nothing in this Conference debate about accuracy and therefore the motion was not at all representative of mainstream opinion.

- 3.16 Inaccuracies leading to incorrect information at HQ which affected a member's ability to ballot were obviously of concern to the union. However, delays, which could occur at branch level increasing the average 4-6 week time to get new members onto the register, could be caused by delays at the branch or the employer's end. These delays were therefore not HQ's fault and thus had nothing to do with the complaint of register inaccuracies.
- 3.17 The Union felt it had answered the queries raised about 29 members by Mr Sinclair. Eleven were new members, nine members with incorrect addresses on the record at the time, one a member with a known invalid address on record, three members whose addresses were correct, two had transferred into the balloting constituency but their records hadn't caught up with them and two were subject to an administrative error incorrectly recording that their subscriptions has stopped. A lot depended on information received from the branch and on co-operation from individuals in the timely notification of change of address or details of employment. Failure at this level would result in an inaccurate record going from the branch to headquarters. Of the 14 members quoted by Mr King as not receiving ballot papers, ten were members incorrectly shown as employees of Cashco as opposed to Royal Mail. The problem raised in Mr Robinson's case (para 2.8) where he had dropped off the record as result of a transfer would in future be dealt with by a new recording system of member's movements which would also answer the problem in the cases of Messrs: Davies, Foden, Kelly, Sheehan and Weavers. Mr Greening's incorrect naming was a straight clerical error at HQ which was not duplicated in the records anywhere else. Put into perspective, however, these complaints formed a very small proportion in relation to total union membership and should be seen against the union's record of 98% accuracy in its overall register keeping. It

would be pure hypothesis on the complainant's part to assume that their complaints could be extrapolated to form a national picture. The figures simply did not bear this out.

3.18 Of the other matters raised by the complainants, Mr Dodd observed that the suggestion to reissue membership details annually would do nothing to amend members details and the only change on the card would be recorded when the name of the General Secretary changed. The union was satisfied with the quality of its training for data input clerks and also with the speed and quality of input data, though the union would not be complacent in this respect. The Cashco situation had raised the matter of members inexplicably being deleted from the register and the union had since then taken steps to monitor, specifically, changes and transfers and were confident that this had not occurred again.

3.19 The complainants had highlighted the cases of Mr Lewis, Mr Probert and Mr Hill whose records had been put in the 'suspended file' pending a check on their records. The union conceded that confusion had been caused by the use of the word 'suspended', which had been interpreted as 'suspended from duty or membership under disciplinary proceedings'. The problem had been rectified by the adoption of other terminology to cover the situation where only record enquiries were being made about the member. They would look into Mr Lewis' situation separately as he was a longstanding union member and it was not all clear why his details should have been incorrect. Mr King's details had now been accurately recorded on the register and there should no longer be problems in mailing to him.

- 3.20 As to membership of the union, only those whose subscriptions were not received for two months would become lapsed members. Queries raised on individual membership for any other reason would not disqualify that member from the right to receive mailings.
- 3.21 The union was confident of its estimate of a 2% shortfall in keeping an accurate register because it counted the number of items returned undelivered, made a monthly check of the register and cross-referenced with branch records. The figure of invalid information often varied month by month, but was never worse than 2% and often better than that. Headquarters staff took their task very seriously, Mr Dodd said, and worked hard to ensure an accurate, up-to-date record.
- 3.22 In summary, the union asserted that it had in place a system for checking and attempting to ensure 'as far as is reasonably practicable' that names and addresses of members are kept up-to-date. This involved mailing to members, regular information sent to branches for checking, in particular where mail was being returned by the Post Office. Information was also received from employers and members themselves. The Branch had a responsibility for checking at local level and corresponding with the membership. Individuals also had the responsibility of informing the branch of any changes in their circumstances and it was often there that problems arose. The union felt it very largely followed the test set out in previous decisions by the Certification Officer and in its view the union therefore thought that it had achieved a good record in compiling and maintaining its register of members and in securing, as far as was reasonably practicable, that the register was accurate and up-to-date. It would, though, welcome constructive suggestions for improving its efficiency in record keeping.

Reasons for my Decision

- 4.1 The complaint before me is that the union failed to maintain an accurate and up-to-date register of its members' names and addresses and other details. The evidence produced to support this was that a number of the union's members did not receive voting papers in two important and close-run consultative ballots. The Union's response was that it had achieved a high degree of accuracy in maintaining its register and that any errors occurring were within the bounds of "reasonable practicability" required by section 24(1) of the Act. The union argued that its liability under the Act was limited to compiling a register of names and addresses only and the question of the accuracy of its other details e.g. employee status was not relevant to the complaint I have to determine.
- 4.2 Mr King and Mr Sinclair were clearly of the view that the outcome of the two ballots might have been different had voting papers been sent to all of those entitled to receive them. However, they accepted that I was not empowered to decide this and that whatever my decision on the accuracy of the register, it would not be taken as a ruling on the validity of those two ballots.
- 4.3 I can fully understand the concerns of Mr King and Mr Sinclair at the fact that so many of their working colleagues had not received ballot papers. In complaints of this kind it is not unusual for the complainants to find a handful of people not getting voting papers. The two applicants, though, found 45 in their working areas. I therefore considered the facts relating to the disenfranchised in some detail to see how far they reflected on the union's register of

members. The facts seem to be that the papers for five of the named members were apparently lost in the post; a dozen were listed sometimes wrongly, as new members and not entitled to vote; ten were wrongly and worryingly classified as being employed outside the balloting area; five were recorded again sometimes wrongly as being behind with their subscriptions; and for seventeen the union has the wrong address. (These figures add to more than 45 because some fell into two categories).

- 4.4 What is the significance of these findings in relation to the union's duty in respect of maintaining an accurate and up-to-date register of members? I agree with the union that the test of accuracy relates to names and addresses only (in line with the PCSU decision D/8-12/98 quoted above) and that the records in question concern the centralized computer records at the Union's HQ, not branch records. On that basis the records in something under half of the 45 cases referred to by Mr King and Mr Sinclair probably relate to faults in the record of members names and addresses that the union is statutorily bound to maintain.
- 4.5 It is perfectly correct that, as Lord Donaldson pointed out in *British Railways Board-v-NUR* (1989) IRC 678 that it is inevitable that there will be a few people whose names ought to be on the list but are not, perhaps because they have changed their jobs. It was for that reason he further pointed out that Parliament qualified certain obligations by the same phrase, "so far as is reasonably practicable." That is the test I have to apply.
- 4.6 In evidence, the union quoted decisions of my predecessors in which they accepted errors in the accuracy of the register in excess of 20%. Those decisions were made soon after the

obligation to maintain a register was first placed on the unions in 1984. I would now need a great deal of convincing that the circumstances of any union could today justify such a high percentage of errors. In this case, the union has demonstrated national accuracy levels showing only a 2% cent discrepancy rate in keeping an accurate register of its members names and addresses. This is in the context of a membership of 300,000 (450,000 including retired and past members), 3,000 new applications and 4,500 staff movements per month. I regard this level of error in the circumstances of this union as acceptable.

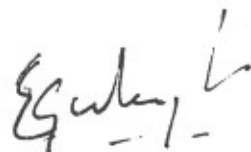
4.7 I am reinforced in this view by the fact that the systems and staff the union had in place to maintain its register were in general sufficient for the task. In the CPSA case D/10-13/96, I referred to the following steps as 'very much the sort of actions unions have to take in my judgement' to satisfy the requirement "so far as reasonably practicable" that the register of members is accurate and up-to-date. These steps included:

- The membership application form contained a specially designated box for "the ballot address";
- the union followed up applications for membership where no appropriate address was given;
- the union had regular membership verification exercises;

- any mail returned undelivered was used to remove inappropriate addresses and to activate enquiries for the up-to-date address;
- a number of other measures including advertising in the union journal and reminding branch secretaries of the need for members to have up-to-date balloting addresses.'

4.8 The practices adopted by the CWU could perhaps be supplemented by notices in the journal reminding branches and members of the need to keep addresses up to date. In addition while quite naturally the union concentrates on reporting and checking details where a change is believed to have occurred occasionally it might consider asking branches to confirm a full list of their members as recorded at the centre. However, the use of material from membership application forms, from returned mail, from check off records and through visits by Regional Officers to remind branch secretaries of the importance of good records and communications with the union's headquarters are all commendable. In this case, I feel that the union has largely undertaken the necessary measures.

4.9 I have therefore concluded that the union has met its obligation to compile and maintain a register of its members names and addresses which, so far as is reasonably practicable, is accurate and up to date. For these reasons I dismiss these complaints.



E G WHYBREW

Certification Officer