

Breach of Trade Union Rule Applications

The Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) provides that a member of a trade union who claims that there has been a breach or threatened breach of the rules of a trade union relating to certain matters as set out in the 1992 Act, may apply to the Certification Officer for a declaration to that effect.

The statutory provisions

9.1 Individual trade union members have the right to apply to the Certification Officer if there has been a breach or threatened breach of a trade union’s rules relating to any of the matters set out in section 108A(2) of the 1992 Act. The matters are: –

- (a) *the appointment or election of a person to, or the removal of a person from, any office;*
- (b) *disciplinary proceedings by the union (including expulsion);*
- (c) *the balloting of members on any issue other than industrial action;*
- (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) *such other matters as may be specified in an order made by the Secretary of State.*

9.2 The claimant must be a member of the union or have been a member at the time of the alleged breach or threatened breach. The Certification Officer may not consider an application 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.

9.3 The Certification Officer may refuse to accept a complaint if he is not satisfied that the claimant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

9.4 If the Certification Officer accepts a complaint he is required to make such enquiries as he thinks fit and, before reaching a decision on the complaint, provide the claimant and the trade union with an opportunity to be heard. All hearings before the Certification Officer are held in public.

9.5 The Certification Officer must give written reasons for his decision and, where he makes the declaration sought, is required to make an enforcement order unless he

considers that to do so would be inappropriate. The enforcement order may impose on the union one or more of the following requirements –

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

Where an order imposes a requirement on the union as in (a) above, the order must specify the period within which the union must comply with the requirement of the order.

- 9.6 An enforcement order made by the Certification Officer may be enforced (by any person who is a member of the union and was a member at the time the enforcement order was made) in the same way as an order of the court.
- 9.7 An appeal on any question of law arising in proceedings before or arising from a determination by the Certification Officer, may be made to the Employment Appeal Tribunal (EAT). When the relevant provisions of the Trade Union Act 2016 take effect appeals will be possible on both points of fact and law.

Applications and decisions

- 9.8 In this reporting period, the Certification Officer determined the applications of breach of rule against seven unions that were described in last year's annual report as being outstanding from the previous reporting period.
- 9.9 The Certification Officer received eleven new applications against seven unions relating to alleged breaches of union rule in this reporting period. Three of these applications were determined in this reporting period.
- 9.10 As of 31 March 2016, eight applications of breach of rules remained to be determined.
- 9.11 The Certification Officer determined 38 complaints on 13 applications of breach of rule during the period 1 April 2015 to 31 March 2016. Eleven declarations were made that a union had breached or threatened to breach its rules and four enforcement orders were issued. In nine of the decisions, the Certification Officer used his power under section 256ZA of the 1992 Act to order the complaints to be struck out. Of the complaints determined, the following are noteworthy:-

- **Murray v Unite the Union (D/20/15-16)**
Mr Murray made a complaint alleging that the union had breached one of

its rules in relation to the election of the Scottish Regional representative to its Executive Council that took place in 2015. The Certification Officer upheld the complaint. He ordered that the incumbent should forthwith cease to hold office and that there be a further election.

- **Rowlandson v UNISON: The Public Service Union (D/30-35/15-16)**
Mr Rowlandson made five complaints alleging that the union had breached its rules in relation to branch elections and one complaint in relation to disciplinary procedures. The Certification Officer upheld four of the complaints and made an enforcement order requiring the union to hold an election for branch convenor in the United Utilities Section.
- **Radford v Equity (D/27-29/15-16)**
Mr Radford made three complaints alleging that the union had breached its rules in relation to disciplinary procedures. The Certification Officer upheld two of the complaints and made enforcement orders requiring the general secretary and the president of the union to report certain disciplinary matters to the union's Executive Council.
- **Henderson v GMB (D/39-43/15-16)**
Mr Henderson made five complaints relating to the union's election for the position of General Secretary. These included four alleged breaches of section 47(1) of the 1992 Act and an alleged breach of the rules of the union. The Certification Officer dismissed all five complaints. Mr Henderson has appealed this decision to the EAT.
- **Stevens v Union of Democratic Mineworkers (D/13-17/15-16)**
The claimant brought five complaints alleging breaches of rule relating to five matters. The Certification Officer upheld two of the complaints but did not make an enforcement order.
- **Beaumont and Mansell v Unite the Union (D/2-6/15-16)**
The claimants brought five complaints. One complaint related to eligibility to sit on its Executive Council and was upheld. The other four related to the Executive Council election in 2014. Two of these complaints were upheld and two were dismissed. The Certification Officer did not make any enforcement orders.
- **Sweeney v Union of Construction, Allied Trades and Technicians (No 2) (D/36-37/15-16)**
Mr Sweeney brought two complaints in which he alleged that UCATT had breached its rules in not paying travel expenses to attend an appeal hearing before the General Council of UCATT. The complaints were struck out under section 256ZA(1)(a) of the 1992 Act on the grounds that they had no reasonable prospect of success and/or were otherwise misconceived.

- 9.12 Copies of all decisions made by the Certification Officer are available on the Certification Officer's website: www.gov.uk/certificationofficer. Hard copies of decisions can be obtained free of charge upon request to the Certification Office.
- 9.13 In the period 1 April 2014 to 31 March 2015, a total of 552 enquiries were received. These fall under the following broad headings:
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| General advice on the role of the Certification Officer | 49 |
| Issues relating to the listing of trade unions and employers' associations | 62 |
| Enquiries about annual returns and financial issues | 157 |
| Certificates of independence | 19 |
| Appointment, election or dismissal from any office in the union | 26 |
| Disciplinary proceedings within the union | 17 |
| Balloting of union members (other than industrial action) | 9 |
| Political funds | 22 |
| Statutory elections | 12 |
| Inadequate representation of members by their union | 100 |
| Others | 79 |
| Total | 552 |
- 9.14 There was a slight increase of ten enquiries in the current reporting period compared to the figure reported in 2014-15.
- 9.15 Not all enquires made could result in applications to the Certification Officer. For example the Certification Officer has no jurisdiction regarding alleged inadequate representation of members by their union or in relation to the provision of union benefits or membership.