

Introduction

This is the fortieth Annual Report to be published since the post of Certification Officer was established in 1975. It deals with my activities during the period 1 April 2015 to 31 March 2016.

This is also my last Annual Report as I will retire on 30 June 2016. It has been both an honour and a pleasure to have served as the Certification Officer since 1 August 2001.

The functions of the Certification Officer 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”). They include responsibility:

under Part I, Chapter I – for maintaining a list of trade unions and for determining the independence of trade unions;

under Part I, Chapter III – for dealing with complaints by members that a trade union has failed to maintain an accurate register of members or failed to permit access to its accounting records; for seeing that trade unions keep proper accounting records, have their accounts properly audited and submit annual returns; for the investigation of the financial affairs of trade unions; for ensuring that the statutory requirements concerning the actuarial examination of members’ superannuation schemes are observed; and for dealing with complaints that a trade union has failed in its duty to secure that positions in the union are not held by certain offenders;

under Part I, Chapter IV – for dealing with complaints by members that a trade union has failed to comply with one or more of the provisions of the Act which require a trade union to secure that its president, general secretary and members of its executive are elected to those positions in accordance with the Act;

under Part I, Chapter VI – for ensuring observance by trade unions of the statutory procedures governing the setting up, operation and review of political funds; and for dealing with complaints about breaches of political fund rules or about the conduct of political fund ballots or the application of general funds for political objects;

under Part I, Chapter VII – for seeing that the statutory procedures for amalgamations, transfers of engagements and changes of name are complied with, and for dealing with complaints by members about the conduct of merger ballots;

under Part I, Chapter VIIA – for dealing with complaints by members that there has been a breach, or threatened breach of the rules of a trade union relating to the appointment, election or removal of an office holder; disciplinary proceedings;

ballots of members other than in respect of industrial action; or relating to the constitution or proceedings of an executive committee or decision making meeting;

under Part II – for maintaining a list of employers’ associations; for ensuring compliance with the statutory requirements concerning accounting records, annual returns, financial affairs and political funds; and for ensuring that the statutory procedures applying to amalgamations and transfers of engagements in respect of employers’ associations are followed.

The Trade Union Act 2016 received royal assent on 4 May 2016, having been introduced into the House of Commons in July 2015. The Act, when fully implemented, will significantly impact on the role and work of the Certification Office. Amongst the more significant changes are:

- The Certification Officer will have new powers to investigate and determine breaches of certain statutory provisions without the need for a complaint from a member.
- The Certification Officer will have new powers to impose financial penalties up to £20,000 where an enforcement order is made or where there exists the power to make an enforcement order but one is not made.
- The Certification Officer will have new powers to enforce his or her own orders.
- Appeals from the Certification Officer to the Employment Appeals Tribunal will generally be on a point of fact or law. Presently all such appeals are only on a point of law.
- Trade unions will be under a duty to include significantly more information in their annual returns to the Certification Officer. In particular, trade unions will have to report on:
 - all industrial action undertaken by that trade union and all ballots relating to industrial action
 - all payments made by that trade union on political purposes and any other payment from its political fund if not made for a political purpose.
- The Certification Officer will have new powers to enforce these reporting requirements by way of declarations, orders and financial penalties.
- The law relating to the way members of trade unions contribute to the political funds of their unions is to be amended to favour a system of opting in rather than requiring members to opt out of making an otherwise automatic contribution. The changes that this will require to the political fund rules of trade unions will need to be approved by the Certification Officer.
- The majority of the costs of running the Certification Office are to be recouped by way of a levy on trade unions and employers’ associations. The scheme under which this levy is to operate will be the responsibility of the Certification Officer, subject to further consultation and regulations.

The purpose of these additional powers is said to be to enhance transparency and accountability. I was not, however, consulted on whether I had evidence of an unmet demand for further powers prior to the introduction of the Bill.

The regulation of the internal affairs of trade unions has hitherto been based on the premise that they are voluntary associations. Historically, the law has intervened to protect and support

the position of members. Thus it is the members who have the right to complain to the Certification Officer about an alleged breach of their rights under the rules of the union or an alleged breach of statute. The Trade Union Act is based on a different premise, namely that the public has an interest in the internal affairs of trade unions given the impact of some industrial action on the public. Accordingly, the right of the Certification Officer to investigate and initiate formal complaints against trade unions has been extended. The role of the Certification Officer will change from being mainly the adjudicator of members' complaints to become one with more general policing and enforcing responsibilities. This is not the role to which I was appointed in 2001.

This changed role is likely to have two main consequences. First, alleged breaches can be raised with the Certification Officer by anyone, not just members. If there appears to be anything in the issue raised, the Certification Officer has a discretion to take the matter further. My concern is that trade unions may find themselves subjected to a myriad of references to the Certification Officer by persons and/or organisations seeking to pursue them for industrial, political or other purposes and who have the motivation and money to put any given situation under a microscope. Each case will, of course, be dealt with on its merits by the Certification Officer but, at the very least, trade unions will have to bear the financial burden of contesting such cases and the levy imposed by the Certification Officer may be increased as a result.

My second concern is that, in the above circumstances, the Certification Officer will in effect be the investigator, prosecutor and adjudicator. This raises immediate issues of a fair trial, as required by Article 6 of the European Convention on Human Rights and the Human Rights Act 1998. The extended powers of the EAT to hear appeals on both law and fact is one answer to this problem but it is a cumbersome and expensive solution. A system of Chinese walls to separate the quasi-judicial role from all that goes before is something that I have begun to examine but it is a problem that my successor will wish to address.

I did not comment publicly on the Bill during its passage through Parliament other than to give evidence to a Select Committee of the House of Lords. I did not consider it appropriate to do so. However, upon the occasion of my retirement, I do consider that it is appropriate to raise some of my concerns in the hope that they may be overcome and the deserved reputation of the Certification Office for providing an independent, efficient, and proportionate service will be maintained. I wish my office and my successor well in their implementation of the new powers.

As in each Annual Report, I give details of the membership of trade unions as reported to me in the relevant period. The number of trade union members recorded in the annual returns received in 2015-2016 is 6,948,725. This represents a decrease of 61,802 members or 0.88% over the membership recorded in my last Annual Report. Within these figures, the number of non-contributing members as a percentage of the total members has increased to 8.2% from 7.9% in the previous year.

At the end of the previous reporting period there were 163 trade unions. At the end of this reporting period there were 158 trade unions. Whilst nine trade unions were removed from the list and schedule, four more were added. Of the nine which were removed, two ceased to exist due to a transfer of engagements and seven were dissolved or considered no longer to meet the statutory definition of a trade union.

The number of employers' associations also continues to decrease. At the end of this reporting period there were 92 employers' associations, a net reduction of one from the previous period. One ceased to exist but a new association carrying out similar functions was added to the schedule. Another ceased to exist altogether.

The general downward trend in the number of trade unions and employers' associations continues from the position in 1983 when there were 502 trade unions (now 158) and 375 employers' associations (now 92).

Over the past reporting year I determined 44 complaints. Of these, 38 complaints alleged that a union had breached its own rules. The other six related to alleged breaches of statute. A summary of these decisions can be found in Chapters 3, 4, 8 and 9 of this report. I determined a case which challenged the election of the general secretary of the GMB and a case challenging the election of the general secretary of Unison is pending. I also made enforcement orders against three unions. In one case, I required a member of the union's Executive Council to stand down and for there to be a further election. In another, I required a union to hold an election for the position of branch convenor. In the third, I required the president of a union to report certain disciplinary matters to the union's Executive Council.

Since the website of the Certification Office was absorbed into the government website GOV.UK it has continued to be the primary source for those interested in obtaining information about the work of the Certification Office. Along with each of my decisions and the decisions of my predecessors since 1975, it contains all the annual returns from trade unions and employers' associations since 2003. Those between 2003 and 2012 are available through a link to the National Archives. It also contains guidance on various aspects of my functions, copies or links to my Annual Reports back to 2001-2002 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.

This Annual Report relates to those annual returns received from trade unions and employers' associations between 1 April 2015 and 31 March 2016. 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 2015 and the oldest annual returns are in respect of a reporting period ending in October 2014 (see paragraph 4.1).

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, Innovation and Skills. On 31 March 2016 there were seven staff in post in the Certification Office. The net cost of the Office for the year ending 31 March 2015 was £557,682. This represents a 0.5% decrease in the cost of running the office compared to the previous reporting period and a decrease of 16.9% since the period 2007-2008. My salary as Certification Officer at 31 March 2015 was £74,501 for a three-day week. This sum is pensionable at an additional cost to the public purse of £18,103. It is taxed under PAYE.

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 30% of the Office's resources were allocated to work connected with the maintenance of the lists of trade unions and employers' associations, 42% to work relating to complaints and trade union finances, 21% to ensuring receipt of annual returns and their processing and the remainder to other matters including political funds, 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 applications for listing as a trade union.

In my last report I mentioned that my office had to leave its premises in Euston Tower in March 2015 due to the premises having been found to be structurally unsafe. The temporary relocation to the Department for Business, Innovation and Skills in Victoria Street, London came to an end in January 2016. I remain grateful to my staff for the resilience they have shown in working to their usual high standard in what were challenging circumstances including two moves.

Where it is necessary to hold a hearing to determine a complaint I can make payment towards the expenses incurred by the complainant and their witnesses in attending the hearing. During the period under review such payments amounted to £1,616.28. Assistance with legal costs is not available.

Mr Gerard Walker and Ms Christine Stuart continued to hold their appointments as Assistant Certification Officer and Assistant Certification Officer for Scotland respectively.

Advice and contacts for information

The Office 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 is for example inappropriate, unless the law requires it, to give guidance on, or prior approval to, a specific course of action in those areas where complaints can be made to me by an individual member. It would also be clearly inappropriate for my Office to comment on the merits of a possible complaint. Where a complaint is made, I have to investigate it and decide it impartially on the facts of the case and in the light of the representations made by the parties concerned. I and my staff must avoid giving advice which might seem in any way to prejudice that impartiality. That said, the Office is happy to assist where it can and guidance booklets covering different aspects of the Certification Officer's responsibilities are available on the Certification Officer's website www.gov.uk/certificationofficer or in hard copy format free of charge. They are listed in Appendix 11 and requests for further information on any aspect of the Certification Officer's duties should be made to the Certification Office, 22nd Floor, Euston Tower, 286 Euston Road, London, NW1 3JJ, tel: 020 7210 3734, e-mail: info@certoffice.org.

Finally, I wish to express my thanks to all my staff, both past and present, who have worked so diligently to maintain the high standing and high standards of the Certification Office. I particularly wish to thank Gerard Walker, my Assistant Certification Officer since 2002, whose knowledge and guidance has been invaluable. The support and friendship of my staff has contributed in no small way to the pleasure I have had in serving as the Certification Officer.

