

**DECISION OF THE CERTIFICATION OFFICER ON AN
APPLICATION TO BE ENTERED ON THE LIST OF TRADE
UNIONS MADE UNDER SECTION 3 OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

RE: EQUAL JUSTICE

Date of decision

3 September 2015

DECISION

I reject the application for Equal Justice to be entered on the list of trade unions which I keep pursuant to section 2 of the Trade Union Labour Relations (Consolidation) Act 1992.

REASONS

1. By an application form received at my office on 6 March 2015, Ms Marcia Lawrence-Russell applied to have Equal Justice entered on the list of trade unions that I keep pursuant to section 2 of the Trade Union Labour Relations (Consolidation) Act 1992 ("the 1992 Act").
2. Upon receipt of the application form, my office entered into correspondence with Ms Lawrence-Russell to find out more about Equal Justice. Having regard to the unusual nature of Equal Justice (see paragraph 7 below), I asked two members of my staff to meet with Ms Lawrence-Russell to better understand this application. The meeting took place in Birmingham on 12 May 2015. After further exchanges of correspondence I decided that I should meet with Ms Lawrence-Russell before making a determination of this matter. I did so in Fleetbank House, London on 23 July, at which meeting Ms Lawrence-Russell agreed to supply my office forthwith with further documentation. She did so by emails of 17 and 18 August.

The law

3. An application to be entered on the list of trade unions is made under section 3 of the 1992 Act, which provides as follows:

"Application to have name entered in list

(1) An organisation of workers, whenever formed, whose name is not entered in the list of trade unions may apply to the Certification Officer to have its name entered in the list.

(2) *The application shall be made in such form and manner as the Certification Officer may require and shall be accompanied by –*

- (a) a copy of the rules of the organisation,*
- (b) a list of its officers,*
- (c) the address of its head or main office, and*
- (d) the name under which it is or is to be known, and by the prescribed fee.*

(3) *If the Certification Officer is satisfied -*

- (a) that the organisation is a trade union,*
 - (b) that subsection (2) has been complied with, and*
 - (c) that entry of the name in the list is not prohibited by subsection (4),*
- he shall enter the name of the organisation in the list of trade unions.*

(4) *The Certification Officer shall not enter the name of an organisation in the list of trade unions if the name is the same as that under which another organisation -*

- (a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,*
 - (b) was at any time registered as a trade union or employers' association under the Industrial Relations Act 1971, or*
 - (c) is for the time being entered in the list of trade unions or in the list of employers' associations kept under Part II of this Act,*
- or if the name is one so nearly resembling any such name as to be likely to deceive the public."*

4. By section 3(3) of the 1992 Act I shall enter the name of the putative trade union on the list of trade unions that I keep if I am satisfied on three counts: firstly, that the organisation is a trade union, secondly, that sub-section (2) has been complied with and, thirdly, that entry of the name is not prohibited by sub-section (4). I am satisfied that section 3(2) has been complied with and that the entry of Equal Justice is not prohibited by section 3(4). However, I required detailed representations on whether Equal Justice is a trade union.
5. The definition of a trade union is found in section 1 of the 1992 Act. It provides, insofar as is relevant for present purposes as follows:

"1 Meaning of "trade union"

In this Act a "trade union" means an organisation (whether temporary or permanent)

- (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations"*

6. Guidance to the meaning of section 1 of the 1992 Act was given by Mr Justice Langstaff, sitting alone as President of the Employment Appeal Tribunal ("EAT") in the case of **Mr A. Akinosun (on behalf of General & Health Workers Union) v. the Certification Officer (EAT/0180/13)**. The following propositions emerge from the judgment of the EAT.

- 6.1 The question whether an organisation which seeks to be listed fits within the statutory definition of a trade union is a question of fact (para 4).
- 6.2 The rules of an organisation are not conclusive as to its principal purposes, which are to be determined by me as a matter of reality and fact (para 4).
- 6.3 Under section 3(3) of the 1992 Act, the burden of proof in establishing that an applicant organisation is a trade union falls upon the organisation which desires to be certified (para 4).
- 6.4 The definition of a trade union looks to the collective work done by the association rather than the work of a body or particular individuals within it. The judgment states, at paragraph 5, *“The regulation of relations is between groups, workers on the one hand and employers or employers associations on the other. Therefore an organisation which did not include such a purpose but which did exist to provide representation at hearings internal to the employer would not, purely by reason of that alone, be a trade union. There would be nothing of the collective about it. Thus it is to be expected that any organisation seeking certification will, the burden being on it, have to produce sufficient evidence to show that a purpose which is a principal purpose of the organisation is collective in nature, whatever other individual purposes it may be established to service.”*
- 6.5 The requirement in section 3(3)(a) of the 1992 Act that I must determine whether the organisation is a trade union is framed in the present tense and does not look to what will be at some future date. I must consider whether the organisation as it stands at the time of my decision meets the definition in section 1 (para 6). Langstaff P commented that, whilst this construction is clear from the tense that is used in the sub-section, it is supported by the structure and purpose of the Act, noting that certification is a serious act. The same point is put differently at paragraph 26 of the judgment where the learned judge states *“The question of whether a trade union is a trade union cannot be answered by answering a different question – whether it will or it might be reasonable to think it will become a trade union”*.

General Considerations

7. Most trade unions are formed by a group of workers who are dissatisfied how they are being treated by their employer. Equal Justice is not such a body. It was created by Ms Lawrence-Russell. It is her brain child, as she put it. Further, most trade unions are formed to represent workers at a particular work place or at a defined set of work places. Equal Justice is not such a body. Ms Lawrence-Russell states that the constituency from which she seeks members is *“All employees from discriminated groups as described in the Equality Act 2010 in any setting”*. She further states that *“Equal Justice is not concerned with a member’s function/role/or job. It is people focussed. Equal Justice will provide protection for ... workers who come under the auspices of the Equality Act 2010.”* As such, she describes Equal Justice as a pioneering union. She states that its uniqueness is its strength. These unusual characteristics are a

long way from being fatal to the present application but have caused me to consider it with particular care.

8. A further general consideration is the impact that section 10 of the Employment Relations Act 1999 has had on applications to be listed as a trade union. Prior to the commencement of this provision, workers had no right to be accompanied at internal disciplinary and grievance hearings before their employers. Although many employers agreed to their staff being represented by a colleague or by a trade union representative, section 10 of the 1999 Act gives workers a right to be accompanied at such hearings by a colleague, or by an employee of a trade union or by an official of a trade union certified by that union as competent in such matters. Under this regime, workers still have no right to be represented at such hearings by friends (other than colleagues), by solicitors or by consultants etc. I have found that the prospect of securing a right to represent workers at internal disciplinary and/or grievance hearings has caused some organisations to seek being listed as a trade union even though their principal purpose has been to secure this right of accompaniment, frequently with a view to commercial gain (see my annual reports of 2010/11, 2011/12 and 2012/13).

Findings of Fact

9. In reaching this decision I have considered all the information before me and the representations that have been made. In making the following findings of fact, I do not propose to reproduce all the material that I have considered.
10. Ms Lawrence-Russell trained as a social worker. She subsequently worked in the Probation Service for seven years and joined the National Association of Probation Officers, in which she served as a lay officer. Upon leaving the Probation Service she made a successful Employment Tribunal claim against her former employer for unlawful discrimination.
11. Ms Lawrence-Russell next worked for Sandwell Council for about four years in a training role with social workers. Upon leaving this employment she made an Employment Tribunal claim for unlawful discrimination, which was settled.
12. Ms Lawrence-Russell next worked for the British Association of Social Workers ("BASW") for about seven years. She started as an Advice & Representation Officer but was later promoted to become the head of that department. BASW decided to set up a trade union, which it called the Social Workers Union ("SWU"). She was one of the three people who developed the SWU and devised its rules. Ms Lawrence-Russell became an Assistant General Secretary whilst at the same time remaining the head of the Advice & Representation department. She explained that both roles involved the provision of individual representations but that some members of BASW chose not to join the SWU and so their representation was conducted through the Association, not the union. Even as Assistant General Secretary of the SWU, Ms Lawrence-Russell remained employed and paid by BASW. She was suspended by BASW in August 2012 and dismissed in May 2013. She made a

further Employment Tribunal application, claiming unfair dismissal and unlawful discrimination. After some interlocutory hearings, the case settled.

13. In March 2012, prior to her suspension and subsequent dismissal by BASW, Ms Lawrence-Russell formed Emmanuel Consultancy Limited. She is a director of that company and describes herself as its Chief Executive. After her dismissal by BASW, this company became her main source of income. It is promoted as providing training on human resources for employers and describes itself as a “champion of equal opportunities, diversity and anti-discrimination practice”. She continued to train social workers and has recently been a tutor on one such course at Gloucester University. Ms Lawrence-Russell operated this consultancy as a sole practitioner based at home and channelled her various strands of income through the consultancy.
14. I find that Ms Lawrence-Russell is genuinely passionate about fighting all forms of unlawful discrimination and that she both enjoys and is good at individual representation. Against this background and with her relevant professional and personal experience, she set up a company called Different But Equal (“DBE”). As she commented in an article in The Voice newspaper “The overall objective is to eliminate all forms of discrimination in the work place and deal with it holistically”. DBE was first incorporated as a company limited by guarantee on 19 August 2013. It was effectively re-registered as a community interest company limited by shares on 5 December 2014. Its board met for the first time on 7 January 2015. Ms Lawrence-Russell states that she established DBE as a community interest company to emphasise that it was created to do good for the community. The guidance of the Office of the Regulator of Community Interest Companies provides that a director’s remuneration should be “reasonable” and that 65% of profits should be reinvested in the company. Ms Lawrence-Russell is the sole shareholder of the company and describes herself as its founder and executive director. The board of the company is composed of her supporters and its chair is Mr Desmond Jaddoo. Mr Jaddoo is a community activist whose skills as a lobbyist Ms Lawrence-Russell was keen to enrol. DBE is to engage in commercial activities as well as providing membership benefits such as representation and mentoring. It is to provide HR training for employers, with an emphasis on equality and diversity. It is also to offer assistance to employers on such matters as workplace investigations, chairing of disciplinary and grievance panels and mediation. It is hoped to have a DBE business directory which organisations will pay to be included within. It is further hoped to attract commission from promoting exclusive services to members, e.g. insurance, travel and household products. However, its only or main source of current income is the £65p.a. that members pay for a standard annual subscription. DBE is established as a membership organisation and currently has about 25 members, although some are unemployed and others are students. They pay at the reduced rate of £32.50 p.a. At its outset, DBE was funded by loans from Ms Lawrence-Russell.
15. In developing DBE, Ms Lawrence-Russell considered that there should be an associated trade union, just as the SWU was an associated trade union of BASW. She thought it inappropriate just to establish a trade union as that

could not carry out the wider role that she saw as being appropriate for DBE. I was told that the rules of Equal Justice follow the rules of the SWU to a significant extent. Its Objects Clause includes the object to “*provide a means of regulating relations between members and their employers and between members and any regulatory councils*”. The other objects look to the elimination of racism and all other forms of discrimination and to providing members with advice, assistance and representation etc. The rules contain certain overlaps with DBE. There are four categories of membership. The first three categories require the applicant to already be a member of DBE. The fourth category gives eligibility to “any other person who is, or is normally, or seeks to be in employment”, although such an applicant is specifically required to be approved by the Executive Committee. The rules further provide for an admission fee if the applicant is not already a member of DBE and for annual subscriptions (if any). Upon formation, the Executive Council of Equal Justice is to be composed of the board members of DBE together with its Executive Director, who shall also be the General Secretary, but elections are to be conducted for these positions after the first AGM. The Executive Committee must hold at least two meetings a year, including one within 28 days of the formation of the union and following an AGM after an election. A member may be disciplined by Equal Justice if expelled or suspended by DBE in certain circumstances. Further, the person elected as President of Equal Justice must be a member in DBE, unless no such person is willing to be appointed.

16. There is no separate application form to join Equal Justice. The only extant application form is one for membership of DBE, although this contains the logos of both organisations. Question 5 of this form is headed “Equal Justice The Union”. It asks two questions; firstly, “Would you like to join the union at no extra cost?” and, secondly, “Would you be a workplace champion/recruiter and abide by the rules of the union?”. Applicants are able to tick ‘Yes’ and ‘No’ boxes to both questions. In an e-mail of 21 August 2015 Ms Lawrence-Russell states that she had put in an order to amend the application form “as highlighted by the Certification Officer to ensure members commit to the union rules.” Ms Lawrence-Russell informs me that the union currently has about 25 members. Some of these are supporters and members of the DBE board. The others are mainly individuals who have sought the assistance of Ms Lawrence-Russell and Equal Justice in dealing with a grievance or disciplinary issue. Ms Lawrence-Russell explained that, in future, members will have to have been a member of DBE or Equal Justice for three months prior to seeking representation. This requirement had been waived until recently to encourage new members. When asked to describe the constituency that Equal Justice seeks to attract into membership, Ms Lawrence-Russell stated that it is a union specifically for employees from discriminated groups as described in the Equality Act 2010 in any work setting.
17. Ms Lawrence-Russell accepts that Equal Justice has been relatively inactive since its formation on 5 March 2015. She attributes this to the fact that I have not yet listed it as a trade union. Equal Justice has no website. It has no bank account. It has no membership cards. It has no headed stationary or business cards. It has no separate premises. At the date of my meeting with Ms

Lawrence-Russell on 23 July it had held no Executive Committee meetings (despite the requirement to hold such a meeting within 28 days of formation) and no meetings of members. It has since held one Executive Committee meeting on 14 August. The minutes of that meeting record that it was convened as a result of my meeting with Ms Lawrence-Russell on 23 July. Equal Justice is named in a service level agreement concluded between Ms Lawrence-Russell, as Executive Director of DBE, and Saffron Solicitors. This agreement provides that the solicitors will represent potential clients referred from DBE at a discounted rate. Ms Lawrence-Russell stated that it is not intended that Equal Justice provides representation at Employment Tribunals. In her application for Equal Justice to be listed as a trade union dated 6 March 2015, Ms Lawrence-Russell gave the date of its formation as 5 March 2015. In the minutes of the Executive Council meeting of 14 August 2015, the date it was established is given as 17 March 2015, which is after the present application was made to me.

18. Ms Lawrence-Russell explained that any person performing paid services for Equal Justice will be paid by DBE. All subscriptions will be paid to DBE and payments will be made by DBE to Equal Justice as and when appropriate. The minutes of the recent meeting of the Executive Committee of Equal Justice state, *'EJ will receive [from DBE] an annual affiliation fee agreed at the annual Budget meeting with a percentage of total membership income as payment for trade union services for DBE members who have opted in to EJ membership.....All of this money is to be spent on paying for services funded by DBE and any balance will be returned to DBE at the end of the financial year'*.
19. Ms Lawrence-Russell further explained that she has represented a number of members of DBE/Equal Justice at internal grievance and disciplinary hearings. On one occasion, however, she says she was denied access when the employer in question, Ofsted, found out that Equal Justice was not on the list of trade unions. On the other hand, Ms Lawrence-Russell has obtained the agreement of Birmingham City Council that Equal Justice can represent its members at all internal grievance and disciplinary hearings. It was explained that in time Ms Lawrence-Russell hoped to withdraw from day to day representation to concentrate on the broader work of DBE. Self-employed representatives would then be brought in on a sessional basis to provide that representation for an appropriate payment.
20. On a collective level, Equal Justice has concluded no collective agreements and such contact as there has been with employers has been at a superficial level. Ms Lawrence-Russell has requested that Birmingham City Council notify her of any matter that might affect her members and seek her opinion but the council had not responded to that request at the time of our meeting. The fact that only three of the members identified by Ms Lawrence-Russell in her letter to my office of 16 June 2015 share the same employer (Birmingham City Council), supports the notion that individuals have joined DBE/Equal Justice for individual not collective representation. When asked what group of workers

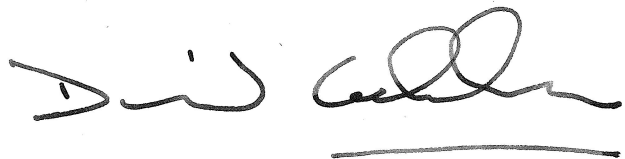
Equal Justice intends to represent for collective bargaining, Ms Lawrence-Russell replied “*The criterion was anyone that felt discriminated against. The bargaining unit was not determined by occupation. It was based on ‘who you are’ rather than ‘what you do’.*”

Conclusions

21. On the information before me, I must determine as a fact whether Equal Justice is a trade union within the definition of section 1 of the 1992 Act. In so deciding I must have regard to Equal Justice as it is now, not what it may become in the future.
22. In my judgement, Equal Justice is not currently an organisation. It may have rules and an Executive Committee but it has been inactive and, by not convening a meeting of its Executive Committee within 28 days of its formation, it has not operated in accordance with those rules. Further, as noted above, it has no separate membership application form, no bank account, no website, no membership cards, no headed stationery or business cards, no separate premises, has held no meetings of its members, and has concluded no collective agreements. The only meeting of its Executive Committee was on 14 August after I had raised this matter with Ms Lawrence-Russell at our meeting on 23 July. Whilst none of these individual factors are conclusive of its status, they are indicative and considered together they do not, in my judgment, paint a picture of an organisation. I find that in reality Equal Justice is the name under which DBE provides individual representation.
23. I further find that Equal Justice is not composed of workers. Individuals purport to join Equal Justice by ticking a box on an application form to join DBE. Membership of a trade union is founded on a contract of membership, the terms of which are normally found in its rules. Being a contract of membership, there must be consideration. This is typically the payment of subscriptions or an agreement to be bound by the rules of the union. In the case of Equal Justice, there being no separate Equal Justice application form, the subscription is paid to DBE, not Equal Justice, and the agreement to be bound by the rules applies only to workplace champions/recruiters. I accept that these could be viewed as organisational technicalities that could be soon remedied but they are also indicative of the relationship between DBE and Equal Justice and the status of Equal Justice. I also note from Ms Lawrence-Russell’s e-mail of 21 August 2015 that she has now put in an order to amend the application form “as highlighted by the Certification Officer to ensure members commit to the union rules.” However, as directed by the Employment Appeal Tribunal, I must base my decision on the facts as they stand not as they may be in the future.
24. Additionally, notwithstanding the objects in the rules of Equal Justice, I find that Ms Lawrence-Russell has not provided sufficient evidence to establish that its principal purposes include “*the regulation of relations between workers of that description ... and employers ...*” as required by section 1 of the 1992 Act.

Unlike the SWU, which had an established membership source from within a specific industry and pre-existing links to employers, Equal Justice has none of these characteristics. Ms Lawrence-Russell has strong values and seeks to assist workers who may be the victim of unlawful discrimination, but this purpose is as consistent with representational activity as it is with collective activity. Having considered the nature of Equal Justice in context and as a whole, I find that it is conceived as an adjunct to Ms Lawrence-Russell's main brainchild, DBE, and that its purpose is to provide work place advice and representation to members of DBE.

25. For the above reasons I reject the application for Equal Justice to be entered on the list of trade unions which I keep pursuant to section 2 of the 1992 Act.
26. Whilst it is my duty to apply the facts that I have found to the statutory provisions, I would not wish it to be thought that I am unsympathetic to the aims and ambitions of DBE. Ms Lawrence-Russell is undoubtedly a woman of great energy and ability who wishes to apply herself to the eradication of unlawful discrimination whilst, understandably, earning a living sufficient for her circumstances. She has devised a business model which has the potential of achieving her objectives but the present role of Equal Justice within that business plan is not that of a trade union as defined in section 1 of the 1992 Act.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath.

David Cockburn
The Certification Officer