

**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: DISABLED WORKERS UNION**

**Date of decision**

**2 March 2017**

**DECISION**

I reject the application for the Disabled Workers Union 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 27 September 2016, Ms Rebecca Lamont Jiggins applied to have the Disabled Workers Union 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 Lamont Jiggins to find out more about the Disabled Workers Union. I asked two members of my staff to meet with the Disabled Workers Union to better understand this application. The meeting took place in Bath with Ms Lamont Jiggins (Employee Relations Officer, Disabled Workers Union) and Steven Frost (Chair, Disabled Workers Union) on 9 November 2016. After further exchanges of correspondence I decided that I should meet with Ms Lamont Jiggins and Ms Emma Patton (Treasurer, Disabled Workers Union) before making a determination of this matter. In a letter arranging this meeting sent on 10 January 2017 by my office it was stated that *‘The area that we were seeking to explore was in fact of an organisation seeking to regulate the relations of its members with an employer on a collective level, rather than on the representation of individual members in grievance, disciplinary hearings or representation of members in post-employment actions.’* The meeting was held at my office at Euston Tower, London on 31 January 2017. Ms Patton and Mr Frost joined the meeting by telephone. Following this meeting Ms Lamont Jiggins submitted a six page document that she described as *‘our final submission to the CO in respect of our listing application’*. I have taken account of this document in arriving at my decision.

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 in accordance with section 1, secondly, that sub-section (2) has been complied with and, thirdly, that entry of the name is not prohibited by subsection (4). I am satisfied that section 3(2) has been complied with and that the entry of the Disabled Workers Union (DWU) is not prohibited by section 3(4). However, I required detailed representations on whether DWU 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 GAHWU decision'. In considering this case I am aided by the then Certification Officer, David Cockburn, identifying the following propositions that emerged from the judgment of the EAT, that he set out in his decision in the listing application by Equal Justice CO/L/1/15-16;

*"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 subsection, 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”.*

## **Findings of Fact**

7. In reaching this decision I have considered all of the information before me and the representations that have been made. I do not propose to set out all of the material that I have considered.

8. I was told that the idea to form an organisation that became the Disabled Workers Union (DWU) came about as a result of difficulties relating to the employment of two of the founding members of the organisation. The intention was to support these two founding members in disability discrimination and victimisation complaints against the same employer. Specifically these issues related to the making of reasonable adjustment for one of the employees and subsequent action taken by the company against the other for failing to withdraw these adjustments as instructed by the company.

9. Ms Lamont Jiggins, who is a personal friend of one of the employees was asked by the employees to assist with the issue with the company. Ms Lamont Jiggins had previous experience of helping friends and family with employment problems, welfare rights and disability in the workplace. She attempted to accompany the employees at disciplinary hearings at the employer. The company refused to allow this. One of the reasons given for this was that Ms Lamont Jiggins was not a trade union representative. It was at this point that the four founding members of the Disabled Workers Union decided to form a trade union and seek trade union status from me.

10. The founding members and committee members of the DWU are:

Stephanie Harris, Secretary – Ms Harris is one of the people referred to in paragraph 8 above. She is currently seeking full time employment.

Steven Frost, Chair – Mr Frost is the other person referred to in paragraph 8 above. He currently does fee-charged consultancy work on disability awareness working with Ms Lamont Jiggins.

Rebecca Lamont Jiggins, Employee Relations Officer – Ms Lamont Jiggins is currently studying for the LLM Employment law Practice qualification. She is a management consultant and does fee charged consultancy work on a part- time basis. She said she has extensive experience of helping friends and family with employment problems, welfare rights and disability discrimination in the workplace.

Emma Patton, Treasurer – Ms Patton works as a Divisional Manager in a construction company.

11. At the time of formation, 12 September 2016, the DWU claimed to have 4 members. At that point the members had neither made applications to join, paid any subscription nor agreed to be bound by the rules of the organisation. This was quickly rectified with an application form requiring applicants to be bound by the rules of the union being made available on the organisation's website. The application form asks for a number of personal details and contact information. It does not seek any information about the applicant's employer or workplace. By the time of my meeting on 31 January 2017 22 people had joined the organisation via this route.

12. Membership of the DWU is open to "*all persons, companies and organisations which support the objects of the union and which comply with one of the classes of members*" (DWU Rule 6.2). The classes of members are set out in rule 7:

*7.1.1 Disabled Workers - Disabled people as defined by the Equality Act 2010, of working age.*

*7.1.2 Non-disabled supporters – Non-disabled people who can demonstrate they share the objects of the Union.*

*7.1.3 Organisational Membership – Organisations, incorporated or unincorporated, that can demonstrate they share the objects of the Union."*

13. As of 31 January 2017 the 22 members were made up of classes 7.1.1 and 7.1.2 above. All of the members were workers as defined by section 296 of the 1992 Act.

14. As established the DWU has a committee that is to manage the business of the union. The four founding members are established as the first members and committee of the union by rule 6.1. Its meetings to date have been conducted on the internet in a virtual format. The DWU had intended to hold an AGM in January 2017. One of the functions of the first AGM would have been to elect the "elected committee". The AGM has yet to be held as the founding committee has decided to postpone the first AGM until 28 days after I have made my decision regarding its listing application.

15. The rules of the DWU make no provision for any intermediate organisations such as branches, regional groupings or workplace organisation.

16. On the basis of the above I am satisfied that the DWU is an organisation that is made up wholly or mainly of workers of one or more description – that of Disabled Workers, Disabled people as defined by the Equality Act 2010, of working age and Non-disabled supporters – Non-disabled people who can demonstrate they share the objects of the Union.

17. Rule 2 of the DWU constitution sets out

*"2. Objects and Powers of the Disabled Workers Union*

*The objects of the Disabled Workers Union are:*

*2.1 To represent the interests of disabled workers and their supporters in the regulation and improvement of relations between disabled workers, their supporters and employers.*

*2.2 To promote effective compliance by employers with the Equality Act 2010 provisions relating to disabled people.*

*2.3 To support disabled people and their supporters in asserting their rights at work and within the workplace.”*

18. I do not find that DWU rule 2 is conclusive in establishing that its ‘principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers’ associations’. In arriving at this conclusion I am assisted by the Employment Appeal Tribunal’s words at paragraph 4 in the GAHWU decision referred to in paragraph 6 above. In that decision Mr Justice Langstaff said ‘*The principal purposes referred to are not the purposes as declared or set out in a rule book or statement of aims and objectives or similar document unless they are factually the principal purposes of that organisation*’. It is the factual position that this decision is largely based on.

19. Since its foundation the DWU has undertaken representative work for two of its members employed by the same company. This resulted in an agreed settlement to two employment tribunal claims. Additionally the DWU has engaged with at least three employers in relation to the sharing and use of their on line tool designed to encourage disabled workers to clarify their particular needs with a view to implementing reasonable adjustments where needed.

### **The regulation of relations**

20. Much of the enquiries made by my office and much of my meeting with the union on 31 January 2017 focused on the issue of the principal purposes of the DWU both as it currently stands and its future plans.

21. The DWU was very clear about its lack of involvement in the regulation of relations in a traditional manner in the workplace on matters of collective concerns such as pay and other terms and conditions. Further it was equally clear that it was unlikely to be carrying out this function in the immediate future. A major reason for this was that it did not feel that it was likely to be in a position where it had numbers of members working for a particular employer or in a particular workplace that would facilitate them approaching that employer to establish some formal or informal means to regulate the relations of those workers and their employers. DWU described itself as a ‘single issue union’ in that its concerns are in relation to workers disability rather than broader issues in the workplace.

22. I was told that immediate priorities included;

Build up a group of trained members who could do representative work for individual members in the workplace. ‘Badge’ these as trade union representatives to enable them to represent at discipline and grievance hearings in the workplace. These representatives would not be paid but there is the possibility of them doing follow up work with the employer on promoting good practice after the representation work.

to develop and share free to access online tools and e-learning modules to regulate compliance with employer’s duties to make reasonable adjustments for disabled workers.’

23. At the meeting on 31 January 2017 it became clear that Ms Lamont Jiggins was putting forward a version of the regulation of relations on a collective level that was very different to the sort I had previously considered. In essence she argued I should consider that the ‘workers

*of that description*' referred to in section 1 of the 1992 Act were the members of the DWU and other disabled workers and their supporters. Their stated intention was to work for all disabled workers and not just those who had joined the DWU. She argued that I should not be looking for a specific employer or employers' association that the DWU would seek to regulate relations with. Rather I should see its actions of individual representation with possible follow up good practice work with the employer, the provision of good practice and diagnostic tools to both employers and workers as examples of it seeking to regulate the relations between disabled workers and employers. In practice the DWU would seek to interact with employers in a number of ways including following a request for representation, an approach to an employer following the publication of an adverse employment tribunal decision or through the provision of good practice services such as on line tools, workshops and consultancy type services. The purpose of this work was to regulate relations between all disabled workers and their employers relating to disabilities. Summing this up at the meeting on 31 January 2017 Ms Lamont Jiggins said all of this was aimed at encouraging good practice and the proactive adoption of employment protection rights for disabled people particularly in the area of the consideration of reasonable adjustments.

24. In her final submissions Ms Lamont Jiggins said;

*'It is our hope that the collective voice of disabled workers through DWU will be trusted to facilitate fair and practical solutions to disability related issues at work, leaving a legacy of improved confidence in managing and understanding disabled workers among employers. Exactly how the Union will do this, what activities we will undertake, will be developed collaboratively by the membership, initially this is likely to be through recruiting and training volunteers to support those seeking such from the Union.'*

25. I have no reason to doubt the sincerity of the DWU's aims as expressed in paragraph 23 above. Neither do I doubt that such interventions could have beneficial effects for both disabled workers and employers. However, my task is to determine whether the DWU's principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations '.

26. Based on the current practices of the DWU I do not find that they have a principal purpose of the regulation of relations. In arriving at this conclusion I am guided by the EAT decision in GAHWU (referred to at paragraph 6 above) in which an emphasis was placed on the need for a collective element to such regulations. The DWU itself accepts that regulation of relations on a collective level with a specific employer or employers' association would be very difficult given that it is unlikely that they will have a number of members in a particular workplace or employed by a particular employer. I have considered the representation of two members employed by the same employer that was the catalyst for the formation of the DWU (see para 8 above). However, I see this as an example of individual representation flowing from grievance and discipline issues to employment tribunal claims and settlements rather than as an example of the regulation of relations with a collective element. Currently there is not a collective element to the DWU's regulation of relations between workers and employers. The fact that the DWU does not currently collect information on who their members are employed by would seem to support this view and suggest that there is not a strong intention to do so. In such circumstances I am not able to conclude that the DWU has a principal purpose of the type required by section 1 of the 1992 Act.

27. In arriving at this position I take the view that the relations referred to in section 1 of the 1992 Act should be seen to be referring to the mutual dealings or connections that arise when workers are in employment with or work for an employer. The relevance of a trade union here is that it seeks to regulate those relations for those workers with the employer or employers' association. My interpretation is that this refers to an existing and on-going relationship. Whilst I can see the intention behind the DWU's broader approach I do not think it fits within the

statutory definition within the 1992 Act. Ms Lamont Jiggins argued that I did not need to find that the DWU was involved in or had a strong intention to be involved in collective bargaining with an employer or employers in order to find its principal purposes included the regulation of relations. I accept that I do not need to find that the DWU is engaged in collective bargaining. However, I do take the view a principal purposes of regulating regulations does require some level of engagement on a collective level between workers and employers. As I have set out above I do not find this to be the case in relation to the DWU.

#### The Public Sector Equality Duty

28. Ms Lamont Jiggins asserted that the duty contained in section 149 of the Equality Act 2010 *'requires the CO to have due regard to improving equality of opportunity for disabled people. Accepting our collective self-determination, even if that means our collective action looks different to the traditional industrial relations of nondisabled people, improves the equality of opportunity for disabled people to join a Trade Union that reflects their interests at work'* I do not take the view that the Public Sector Equality Duty applies to me when exercising this particular function as Certification Officer. I am not specifically listed in Schedule 19 to that Act. In addition I take the view that in making a decision under section 3 of the 1992 Act I am exercising a judicial function conferred on a person other than a court or tribunal as set out in paragraph 3(2) of Schedule 18 of the Equality Act 2010 which deals with exceptions to the Public Sector Equality Duty. If I am wrong in my view, that I am not bound by the Public Sector Equality Duty in making this decision, I would not have felt, on the facts as presented to me, that making this decision based on the Statutory and case law position of the definition of a trade union can be seen to be in breach of that duty. In essence I do not take the view that my refusal of the DWU's application for listing will have a clear detrimental effect on the purposes set out in section 149 of the Equality Act 2010.

29. It is clear to me that the knowledge, experience and determination of the founders of the DWU have the potential to have a significant positive impact on the working lives of people with disabilities. However, I see its current purposes and activities as being more like those of an external group promoting good practice and representing members with problems relating to disability matters rather than those of a body such as trade union which would seek to maintain a significant and on-going presence in workplace relations. It appears to me that such functions can be carried out by an organisation other than a trade union and that the refusal to list will not hinder these functions.

**Gerard Walker**  
**The Certification Officer**