

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).

Applications and decisions

- 9.8 In this reporting period, the Certification Officer determined seven of the eight applications (against four unions) that were outstanding from the previous reporting period. The remaining application was relating to the election of the General Secretary of UNISON.
- 9.9 The Certification Officer received 18 new applications (against ten unions) relating to alleged breaches of union rule in this reporting period. Four of these applications were determined in this reporting period.
- 9.10 As of 31 March 2017, 15 applications remained to be determined.
- 9.11 The Certification Officer determined 33 complaints on 12 applications of breach of rule during the period 1 April 2016 to 31 March 2017. Fifteen declarations were made that a union had breached or threatened to breach its rules and one enforcement order was issued. In four 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 were noteworthy:-

- **Chapman v Community (D/1-5/16-17)**

Mr Chapman made five complaints relating to disciplinary proceedings by the Union. Mr Chapman alleged that the Union breached a number of its own rules during disciplinary proceedings against him and in handling a complaint by him against another Union member. The Certification Officer refused four of the claimant's applications but declared in the claimant's favour on the fifth complaint. The Certification Officer did not make an enforcement order.

- **Brough v UCATT) (No 3) (D/6/16-17)**
Mr Brough made two complaints alleging the union had breached its rules relating to disciplinary matters. Following correspondence, the Certification Officer struck out both complaints under section 256ZA(1) (a) of the Trade Union and Labour Relations (Consolidation) Act 1992 on the grounds that they had no reasonable prospect of success and/or were otherwise misconceived.
- **Beaumont v Unite the Union (No 5) (D/16-22/16-17)**
The claimant made seven complaints that the union had allegedly breached its rules in relation to eligibility to hold lay office on its Executive Council, and related issues. The Certification Officer dismissed all the complaints.
- **Abrahams & Ors v URTU (D/23-25/16-17)**
The applicants made three complaints relating to the 2016 Election for General Secretary of the Union. These included two alleged breaches of Chapter IV of the Trade Union and Labour Relations (Consolidation) Act 1992 and one alleged breach of one of the Union’s rules. The Certification Officer upheld all three complaints and made a single enforcement order in relation to the breach of Section 47(1) of the 1992 Act.
- **Fernandez Castillo & Ors v Unite (D/35-39/16-17)**
The claimants made four complaints of that the Union breached its rules on relation to branch officer elections in union’s LE/2000 Branch and one complaint of a breach of section 30 (2) of the 1992 Act in relation to the request for access to accounting records. The Certification Officer upheld one complaint of breach of rule and dismissed the other complaints. No enforcement order was made.

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 2016 to 31 March 2017, a total of 919 enquiries were received. These fall under the following broad headings:

General advice on the role of the Certification Officer	112
Issues relating to the listing of trade unions and employers’ associations	115
Enquiries about annual returns and financial issues	172
Certificates of independence	17
Appointment, election or dismissal from any office in the union	50
Disciplinary proceedings within the union	58

Balloting of union members (other than industrial action)	8
Political funds	52
Statutory elections	23
Inadequate representation of members by their union	130
Others	182
Total	919

9.14 There was a 40% increase of enquiries in the current reporting period compared to the figure reported in 2015-16. Some of the increase in enquiries has been as a result of callers wrongly assuming all the powers contained in the Trade Union Act 2016 had come into force.

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.