

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 she 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 she is required to make such enquiries as she 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 her decision and, where she makes the declaration sought, is required to make an enforcement order unless she

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 any decision of 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 eleven of the fifteen applications (against eight unions) that were outstanding from the previous reporting period. Four applications were not progressed by the applicants.
- 9.9 The Certification Officer received 14 new applications (against nine unions) relating to alleged breaches of union rule in this reporting period. Two of these applications were determined in this reporting period.
- 9.10 As of 31 March 2018, 12 applications remained to be determined.
- 9.11 The Certification Officer determined 52 complaints on 11 applications of breach of rule during the period 1 April 2017 to 31 March 2018. This includes four applications which were outstanding from the previous reporting period that were combined as two applications on determination. Eleven declarations were made that a union had breached or threatened to breach its rules and five enforcement orders were issued. Seven of the complaints were dismissed by the Certification Officer on withdrawal by the applicant. Of the complaints determined, the following are noteworthy:-

- **Mr M Rolfe v POA D/53-55/17-18**

Mr Rolfe made three complaints of breach of union rules in relation to a disqualification from holding NEC posts until 2016. Two complaints were dismissed upon withdrawal by Mr Rolfe. The Certification Officer upheld one complaint in relation to a breach of union rule 10.9. The Certification Officer ordered that:-

The NEC remove the disqualification of Mr Rolfe from holding any National Executive post which was imposed on him under rule 10.9 following his resignation as a Prison Officer on 3 May 2017. This order will take effect from the date of this decision. This decision has been appealed by the union to the Employment Appeal Tribunal.

- **Boswell and Ors v URTU D/30-32/17-18**

The claimants made three complaints alleging that URTU had breached its rules relating to disciplinary proceedings. The then Certification Officer, Gerard Walker appointed Jeffrey Burke QC as an Assistant Certification Officer (ACO) to hear this. The ACO upheld one complaint that the union had breached its rules relating to its appeals process and dismissed the other two complaints.

The ACO made one enforcement order requiring the appeal to be held by the National Appeals Committee which had to be formed of members of the Triennial Delegate Meeting held on 23 October 2015.

- **Barron v University College Union D/40-48/17-18**

Prof Barron made nine complaints of breaches of rule of the LSE branch of the UCU pursuant to s.108A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992. Mary Stacy, the ACO appointed to hear this case, made a declaration that breaches had occurred in relation to two of the complaints which concerned branch elections. The other complaints were dismissed. The ACO did not make any enforcement orders. This decision has been appealed by Prof Barron to the Employment Appeal Tribunal.

- **Dr Elliott & Dr Borbora v British Medical Association D/33-39/17-18**

Dr Elliott made four complaints and Dr Borbora made three complaints alleging breaches of union rule relating to disciplinary procedures under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Certification Officer refused all of Dr Elliott and Dr Borbora's applications.

- **Mr Alec McFadden v Unite the Union D/28-29/17-18**

The applicant made two complaints under section 108A(1) of the Trade Union Labour Relations (Consolidation) Act 1992 that Unite the Union had breached its rules relating to disciplinary proceedings. Following submissions from the parties on two preliminary issues Jeffrey Burke QC the ACO, appointed by the Certification Officer to hear the complaints, decided to uphold the applicant's complaints of breach of rules.

The ACO ordered that:

1. Unite take all reasonable steps to ensure that the Claimant is, within 14 days of this order, restored, for the remainder of the respective terms of each office, to each of the posts and positions within Unite from which he was removed by reason of the penalties imposed in those disciplinary proceedings.
2. Unite should forthwith communicate to each of its branches in its North-West region his decision in this case.

- **Mr Tully v National Crime Officers Association D/23-27/17-18**

The applicant made five complaints under section 108A(1) of the Trade Union Labour Relations (Consolidation) Act 1992 that the National Crime Officers Association had breached its rules relating to disciplinary proceedings. The Certification Officer made five declarations that the union had breached its rules. The following enforcement orders were made:

1. The National Executive Committee's decision at its meeting on 7 to 8 September 2016 to expel Mr Tully from membership of the NCOA is null and void.
2. The Union make arrangement to restore Mr Tully to membership of the NCOA by 19 November 2017.

- **Penkethman & Walker v Communication Workers Union D/21-22/17-18**

Ms Penkethman and Mr Walker made one complaint alleging a breach of rule relating to canvassing during the 2017 elections in the Midland No 7 branch of the CWU under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992. Mr Walker made a further separate complaint relating to the receiving of a voting paper during the same election.

The Certification Officer refused both of the claimants' applications. Mr Walker has appealed this decision to the Employment Appeal Tribunal.

- **Burgess and Ors, Wakefield, Bannister and Rogers v UNISON D/5-20/17-18**

The applicants made 16 complaints that UNISON had breached its rules in relation to its 2015 General Secretary election. Many of the complaints contained multiple allegations of breaches. In addition it was alleged that the Union breached section 49(4) and 49(6) of the 1992 Act also in relation to the 2015 UNISON General Secretary election. HHJ Mary Stacey, the ACO appointed to hear the case, made decisions relating to all of the above complaints. She made one declaration that the union had breached its rules relating to the use of union resources being used to support

candidates. No enforcement order was made, on the basis that it would be disproportionately punitive, in response to the breach found, to order the General Secretary election to be run again. An appeal by the applicants to the Employment Appeal Tribunal was dismissed on 8 February 2018.

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 2017 to 31 March 2018, a total of 924 enquiries were received. These fall under the following broad headings:

| | |
|--|-----|
| General advice on the role of the Certification Officer | 81 |
| Issues relating to the listing of trade unions and employers' associations | 145 |
| Enquiries about annual returns and financial issues | 106 |
| Certificates of independence | 21 |
| Appointment, election or dismissal from any office in the union | 22 |
| Disciplinary proceedings within the union | 35 |
| Balloting of union members (other than industrial action) | 3 |
| Political funds | 78 |
| Statutory elections | 10 |
| Inadequate representation of members by their union | 293 |
| Others | 130 |
| Total | 924 |

9.14 There was a slight increase of five enquiries in the current reporting period compared to the figure reported in 2016-17.

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.

