

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CERTIFICATION OFFICER
(CO), THE ADVISORY CONCILIATION AND ARBITRATION SERVICE (ACAS) AND
THE DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY (BEIS)**

Effective from April 2022

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INTRODUCTION

This Memorandum of Understanding (MoU) has been drawn up by the Department for Business, Energy and Industrial Strategy (BEIS) in collaboration with the Certification Officer (CO) and the Advisory, Conciliation and Arbitration Service (Acas). Subject to the legislation noted below, this document sets out the broad framework within which the CO will operate. The document does not convey any legal powers or responsibilities. It is signed and dated by the CO, BEIS and Acas. Copies of this document shall be made available to the public on the CO's website.

1 Purpose of the CO

1.1 The CO is an independent statutory office holder appointed by the BEIS Secretary of State. The CO's functions are carried out on behalf of the Crown. However, the CO is free from Ministerial direction in how she performs her functions and also operates independently from Acas. The CO's functions centre on the regulation of trade unions and employer associations. The CO has responsibility for the following functions:

- maintaining lists of trade unions and employers' associations;
- determining complaints from union members against their unions relating to alleged breaches of statutory duties and some types of union rules;
- determining union independence;
- ensuring annual returns are made by unions and employers' associations;
- supervising mergers, political fund ballots and members' superannuation schemes;
- investigating financial irregularities and breaches of statute in trade unions and employers' associations;
- ensuring compliance with any orders made by her on trade unions and employers' associations;
- raising a levy from trade unions and employers' associations to cover her eligible expenses.

ACCOUNTABILITY

2 Legal basis for the CO's powers

- 2.1 The CO's powers and duties are set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).
- 2.2 Section 254 of the TULRCA requires that there shall continue to be a Certification Officer and that the CO will be appointed by the BEIS Secretary of State, after consultation with Acas. The CO may also appoint one or more Assistant Certification Officers (ACO) and must appoint an ACO for Scotland. The CO may delegate to an ACO such functions as she thinks appropriate, and may delegate to the ACO for Scotland such functions as she thinks appropriate in relation to trade unions and employer associations whose principal office is in Scotland.

3 Statutory relationship and responsibilities

- 3.1 The formal relationship between the CO, Acas and BEIS is set out in sections 254, 255 and 258 of TULRCA.
- 3.2 S 252 of TULRCA requires BEIS to fund Acas for its activities. BEIS does not fund the CO directly, as S 254 requires Acas to provide the CO with staffing, accommodation, equipment and other facilities. The staff provided to the CO remain Acas staff. S 255 of TULRCA requires Acas to pay to the CO and any ACOs such remuneration, travelling and other allowances as may be determined by the BEIS Secretary of State. Such remuneration, including provision for pensions and death benefits for the CO and ACOs, must be approved by HM Treasury.
- 3.3 The CO is responsible for determining the most effective means of delivery of its core business functions – its statutory duties and compliance with public sector management and administration policies – and the best use of resources to achieve this. Section 254 of the 1992 Act makes it clear that the Certification Officer is not subject to directions of any kind from any Minister of the Crown as to the manner in which she is to exercise her functions.
- 3.4 The CO is accountable to the Acas CEO (who acts as the CO's Accounting Officer) only in relation to the CO's governance and finances. The CO provides formal assurance to Acas on resource management to enable her to fulfil her functions as Accounting Officer. Acas in turn is required after the end of each financial year to make a report on any sums disbursed to or on behalf of the CO to the Secretary of State for Business, Energy and Industrial Strategy. This is provided in Acas' annual report to the Secretary of State. S 258 of TULRCA further requires that Acas' annual report and accounts must show separately the amount of funds Acas has allocated to the CO for the year.
- 3.5 Statute (s 258 of TULRCA) also requires the CO to provide an annual report of her activities to Acas and the BEIS Secretary of State as soon as practicable after the end of each financial year. The CO's annual report sets out her activities during the previous reporting period (1 April to 31 March). Under Parliamentary procedure, the Secretary of State is required to write to the Chair of the Business, Energy and Industrial Strategy Select Committee alerting them to the publication of the CO's annual report, or make a written statement to the House, before depositing the

reports in the House libraries. This is usually done in July, prior to summer recess.

4 Overall Aims

- 4.1 Although not stated in statute, the CO is responsible for the regulation of trade unions and employer associations.
- 4.2 The CO will determine her objectives and key targets to be included in her annual Operational plan and set out in the CO's annual report. These targets will be discussed between the CO and the Director, BEIS Labour Market Directorate, during the annual appraisals process.

5 Ministerial responsibility

- 5.1 The Secretary of State is accountable to Parliament for the activities of the CO, ensuring that the CO's report is deposited in the House libraries as set out in paragraph 3.5.
- 5.2 The Secretary of State is responsible for appointing the CO, following consultation with Acas. The Secretary of State will also approve the terms and conditions of the CO. The BEIS sponsorship team will liaise with the BEIS appointments team, the CO and Acas to aim to ensure – as far as is possible - that the appointment of the CO is made in good time, so that the CO's work is not disrupted.
- 5.3 The Department is not responsible for appointing ACOs, this responsibility falls to the CO. However, the remuneration, pension, allowances, death benefits of ACOs may be determined by the BEIS Secretary of State and must be approved by HM Treasury (S 255 of TULRCA).

6 The Accounting Officer responsibilities

- 6.1 The BEIS Permanent Secretary, as the Department's Principal Accounting Officer (PAO), is responsible for the organisation and overall management and staffing of the sponsor Department (BEIS) and its Partner Organisations, including the CO and Acas. The PAO has designated the Acas CEO as the Accounting Officer (AO) for the CO. The responsibility of the Accounting Officer is described in further detail in Chapter 3 of Managing Public Money.
- 6.2 The AO needs to ensure that they have an adequate level of awareness of the CO's activities as governed by Managing Public Money (MPM). This is because the AO is responsible for advising the PAO:
 - that the financial and other management controls applied by Acas to the CO are appropriate and sufficient to safeguard public funds and for ensuring that the CO's compliance with those controls is effectively monitored;
 - that the internal controls applied by the CO conform to the requirements of regularity, propriety and good financial management;

6.3 BEIS is also responsible for ensuring arrangements are in place to:

- set out an appropriate framework of objectives for the CO (objectives will be agreed between the CO and the Director, BEIS Labour Market Directorate);
- monitor the CO's activities on a continuing basis to establish how well the CO is achieving her aims and objectives and whether the CO is delivering value for money;
- address significant problems at the Certification Office in relation to performance and accountability issues eg, performance against objectives, conduct of the CO and ACOs, and shortfalls in funding due to either external developments impacting on the CO's resources or disagreements between Acas and the CO in relation to the CO's budget, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks to the CO's objectives and activities. In relation to finance and governance issues, specifically compliance with Acas' corporate governance framework, the CO will produce a Strategic Risk Statement on an annual basis which it will share with Acas.

6.4 The Labour Market Directorate Sponsorship Team is the primary contact for the CO in relation to performance and accountability issues. The Labour Market Director and the CO will meet as necessary throughout the year to discuss the CO's Strategic Risk Statement and performance issues. The Acas Director of Strategy also supports the AO on his or her responsibilities toward the CO. Acas will be responsible for addressing significant problems at the CO in relation to compliance with financial and management controls, as well as corporate governance and budgetary issues. In relation to the latter, BEIS should only intervene where Acas and the CO cannot arrive at a resolution.

6.5 Responsibilities of the CO and the ACO London

6.6 The CO is personally responsible for safeguarding the public funds for which she has charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds. The ACO London is responsible for the day-to-day operations and management of the Certification Office. In addition, the CO should ensure that the Certification Office as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in Box 3.1 to Managing Public Money.

6.7 The ACO London is responsible to the CO for:

- advising her on the discharge of the CO's responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the CO on performance compared with her aims and objectives;
- ensuring that key risks are identified and notified in a timely manner to Acas and the BEIS sponsorship team;
- ensuring that financial considerations are taken fully into account by the CO at all stages in reaching and executing her decisions, and that financial appraisal techniques are followed;

- taking action as set out in paragraph 3.8.5 of *Managing Public Money* if the CO is contemplating a course of action involving a transaction which the ACO London considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, questionable feasibility, or is unethical.

CORPORATE GOVERNANCE

7. Appointment of the CO

7.1 The CO is appointed for a period of 5 years by the responsible BEIS Minister, after consulting the Chair of Acas. Subject to satisfactory performance as assessed by the Director of Labour Market Directorate BEIS, the CO may be re-appointed once only for a further 5-year term. No CO can serve for more than 10 years in total. From 2016, appointment of the CO will comply with the Code of Practice of the Office of the Commissioner for Public Appointments and the Centre for Public Appointments Guidance to departments on Making and Managing Public Appointments.

8. Conduct of the CO

8.1 The CO must demonstrate a high standard of corporate and personal conduct as set out in her appointment letter and must therefore comply with the sSeven Nolan Principles of Public Life. She should particularly note the requirement to declare any conflict of interest that arises in the course of her duties and the need to declare any relevant business interests, positions of authority or other connections with commercial, public or voluntary bodies.

8.3 The Secretary of State may remove the CO from office if he is satisfied the CO:

- i. has been adjudged bankrupt or made an arrangement with her creditors (or, in Scotland, have had your estate sequestrated or have made a trust deed for your creditors or have made and had accepted a composition contract); or
- ii. is incapacitated by physical or mental illness; or
- iii. is otherwise unable or unfit to discharge the functions of her office.

8.4 The CO is remunerated by Acas as set out in her appointment terms. Details of the CO's remuneration is set out in her appointment terms.

9. Duties of the ACO London

9.1 The ACO London objectives are to:

- advise the CO on the discharge of her responsibilities as set out in this document, and in the founding legislation
- support the strategic and operational aims of the Certification Office by demonstrating leadership behaviours, sharing best practice and supporting colleagues across business areas. Directing the Certification Office business agenda through operational planning and monitoring
- monitor and advise on policy priorities and stakeholder interest, through contacts with key stakeholders and monitoring developments in employment law.
- ensure the delivery of operational work through management and support of case managers. To ensure cases are effectively managed within timescales outlined in the legislation. To advise the CO on operational policy and case

work.

- promote understanding of the CO's role and functions by providing briefings for stakeholders, delivering external training and liaising with ACAS.
- establish the Certification Office's aims and objectives, having obtained approval from the CO
- ensure that BEIS and Acas are kept informed of any changes / risks which are likely to impact on the Certification Office's aims and objectives or on the attainability of its targets, and determine the steps needed to deal with such changes;
- ensure that any statutory or administrative requirements for the use of public funds are complied with; that the CO operates within the limits of her statutory authority and any delegated authority agreed with Acas, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the CO takes into account guidance issued by Acas and BEIS;
- ensure that Acas receives and reviews regular financial information concerning the management of the Certification Office; is informed in a timely manner about any concerns about the activities of the CO; and provides positive assurance to Acas that appropriate action has been taken on such concerns;
- demonstrate high standards of corporate governance at all times to help the CO address key financial and other risks;

10. Personal responsibilities of the CO

10.1 The CO is responsible to the Secretary of State and has the following leadership responsibilities:

- To have overall responsibility for the Certification Office's work by ensuring that the Certification Office carries out its statutory duties under TULRCA.
- To set the strategic direction of the Certification Office. In particular, the CO will be responsible for implementing the requirements and reforms under the Trade Union Act 2016.
- Monitoring developments in employment law and reviewing the Certification Office's case work and the Certification Office's performance, and identifying risks and succession planning.
- Set procedures for the consideration of applications, complaints and investigations, and where necessary make changes to them.
- Account to Parliament by publishing the CO's annual report, setting out the CO's activities over the year and compliance with performance standards and Treasury requirements for the control and management of public expenditure.
- To represent her office effectively at meetings with key stakeholders, including senior Government officials and Ministers, and act impartially at all times to secure their confidence in her credibility.

11 Appraisal

- 11.1 The CO will agree her objectives at the beginning of the reporting year (1 April – 31 March) with the Director of Labour Market Directorate, BEIS. It will be for the CO and the Director to agree between them the appraisal process, eg the collation of feedback on performance from Acas and stakeholders, the holding of mid-year (if deemed necessary) and end-year reviews, etc. The Director must carry out an end of year review no later than the end of May following the reporting year to which the review relates. The BEIS sponsorship team will ensure that the appraisal process complies with the relevant BEIS guidance on Partner Organisation Chair and CEO appraisals. The CO will not be eligible for re-appointment unless an appraisal of her performance has been carried out.
- 11.2 The ACO London's appraisal will be carried out by the CO in line with the Acas appraisal process.

12 Report

- 12.1 The CO will send her annual report to BEIS and Acas and normally publish it by the end of July, once it has been deposited in the House Libraries. This report will set out the CO's activities for the reporting year (1 April to 31 March). The BEIS sponsorship team will ensure that the correct BEIS processes are followed, including Ministerial clearance, to enable the report to be deposited in the House Libraries. The sponsorship team will also ensure that the Minister notifies the Chair of the BEIS Select Committee at the time when the CO's report is published.

13 Administration of the CO

- 13.1 Acas and the CO will agree on the application of the Acas corporate governance framework to the CO. This will be the standard procedures applicable across Acas, unless any variations are agreed reflecting the distinct circumstances of the CO. CO yearly business plans will address all necessary actions to meet Acas' corporate governance requirements. In particular, the CO will provide a statement of assurance on corporate governance to the Acas CEO and will cooperate fully with Acas in the publication of transparency data.
- 13.2 In bidding for resources, the CO will provide Acas with the best information available on its resource needs. The BEIS sponsorship and finance teams will ensure that resourcing for the CO, including additional funding in respect of the reforms under the Trade Union Act, will be incorporated into the funding that is provided to Acas in its allocation letter.
- 13.3 Acas recognises the priority attached to the CO's statutory functions and will approach the allocation of resources accordingly. It will reflect in its bids for resources the needs of the CO and, unless constrained by budget decisions agreed by BEIS, will make resources available. Acas will cooperate with the CO to manage resource-related risks, including the maintenance of contingency arrangements to provide resources to meet additional needs of an urgent nature.
- 13.4 The CO will conduct her business as efficiently as possible in relation to the use of resources and cooperate with Acas to minimise difficulties in the allocation of resources to the CO.

- 13.5 The CO will aim to operate within the framework of Acas policies and systems for the planning allocation and management of resources, covering finance, human resources, training and development services, ICT services, accommodation, travel, health and safety, and security.
- 13.6 To address any business risks specific to the CO, the CO and Acas will seek agreement on measures which as far as possible minimise departures from Acas' resource management policies. The CO will produce a Strategic Risk Statement on an annual basis which it will share with Acas.
- 13.7 Further clarification is provided below on specific aspects of management policies. Specifically, the CO will:
- Provide a case to support any budget requirement. The CO and ACO London will be entitled to take part in annual and budget negotiations with BEIS, if either Acas or the CO consider this necessary. The CO will consult BEIS directly should Acas be unable to agree on the financial provision required by the CO to carry out its business.
 - Adhere to Acas' financial management systems, following the principles of Managing Public Money and other government-wide corporate guidance and instructions. The CO will also be subject to Acas' audit arrangements including six monthly compliance reviews which includes all aspects of finance and risk management.
 - Ensure the design and grading of posts to Acas' standards.
 - Consult in line with Acas / trade union arrangements. Acas will inform and consult the CO as appropriate on new or amended agreements.
 - Deal with staff grievances and disciplinary matters.
 - Be responsible for maintaining IIP accreditation in its own right, and for developing policies and actions to meet its diversity and equality obligations.
 - Promote the wider interests of Acas in the development and deployment of its employees.

13.8 Acas in turn will provide the CO with the following resources and corporate support, as follows:

- HR, training and development, equality and diversity advice.
- Promotion of CO vacancies as career development opportunities.
- Administrative and policy support for recruitment exercises.
- Inclusion of CO staff in all activities concerned with the management of Acas employees.
- Staff counselling and Fair Treatment Contacts (FTC).
- Accommodation, and
- Support for, and development of, the CO's ICT systems and telecommunications.
- Consider and support the needs of the CO to ensure it delivers its statutory

duties.

- Provide appeal avenues to decisions made by the CO in relation to staff discipline and grievances.
- Act as the Data Processor for the CO regarding processing of personal data on resources and corporate support systems provided to them.
- Provide the statutory Data Protection Officer (DPO) role for the CO as a shared resource.
- Support the process of collecting the levy on trade unions and employers' associations, by providing accounts receivable and debt management functions, and remitting funds received to HM Treasury.

14 BEIS Audit

- 14.1 The Department may carry out examinations into the accounts/finances, efficiency and effectiveness with which the CO has used her resources in discharging her functions.
- 14.2 The Department has the right of access to all of the CO's records and personnel for any purpose including, for example, sponsorship audits and operational investigations. However, such access will not include confidential trade union information and membership records, or information relating to the CO's decisions on complaints received from trade union members.

15 Budget

- 15.1 Upon request from Acas, the CO will submit within the agreed timescale its budget and profile for the next financial year.

16 Providing monitoring information to BEIS

- 16.1 The CO shall provide monthly reports on its activities to the BEIS sponsorship team, including information on its caseload. The CO will also provide their annual report by July of each year, as set out previously.
- 16.2 Acas will monitor the CO's governance, including finances. The CO will provide information to Acas as and when required.

REVIEWING THE ROLE OF THE CO

17. Review process

- 17.1 As the CO is an individual statutory office holder, the CO is not subject to the Tailored Review process. BEIS Ministers may however choose to review the CO and the functions of that office at any time.

18. Arrangements in the event that the office of the CO is wound up, merged or dissolved.

- 18.1 BEIS, in consultation with Acas, shall put in place arrangements to ensure the orderly winding up, merger or dissolution of the office of the CO. To this end, the Department shall:
- ensure that procedures are in place in the Certification Office to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residual body;
 - specify the basis for the valuation and accounting treatment of the CO's assets and liabilities;
- 18.2 The CO shall provide BEIS with full details of all agreements where the CO has a right to share in the financial gains of developers. The CO should also pass to the BEIS details of any other forms of claw back due to the CO.

19. ESCALATION ROUTES TO RESOLVE DISAGREEMENTS

- 19.1 The Acas CEO will consult with the ACO London where necessary to resolve disputes. A nominated deputy (on behalf of the Acas CEO) will manage day to day correspondence and other commitments between Acas and the CO. This individual will seek to resolve any arising issues. Should disputes remain unresolved, the CO in the first instance may appeal directly in writing to the Acas CEO. If the CO exercises her right to appeal and remains dissatisfied with the outcome, she can subsequently appeal to the nominated BEIS Director, whose decision will be final.
- 19.3 Should participants be unable to resolve a financial or budgetary dispute¹ that would affect the CO's delivery commitments, the matter should be referred in the first instance to both the Acas CEO (as the Accounting Officer) and nominated BEIS Deputy Director (as the Sponsoring Department). If the CO wishes to exercise her right to appeal, she must appeal in writing within the BEIS management chain, to the nominated BEIS Director General whose decision will be final.
- 19.4 In relation to disagreements between the CO and BEIS, the CO sponsor in the BEIS Sponsorship Team will be the first point of contact for the CO to seek to resolve any issues. Should resolution not be possible at this level, the CO will need to contact the nominated BEIS Director. If resolution is still not possible, then the CO will need to appeal further up the BEIS management chain. Where the matter in dispute relates to the appraisal of the CO, the CO can appeal to the nominated BEIS Director General, whose decision shall be final. Where the matter in dispute concerns public appointments, the CO can make formal representations to the BEIS Minister responsible, whose decision shall be final.
- 19.3 In relation to circumstances where the CO's duties or proposed approach conflict with Managing Public Money (MPM), the CO will have the right to raise this issue with the Acas CEO as the CO's Accounting Officer and if necessary the Acas Chair. The Acas Chair, if they agree, may ask the Acas Council to consider the issue, and issue a Direction to the Acas CEO should this be necessary.

¹ Appeals concerning financial disputes shall escalate to BEIS, given their ultimate accountability to the Public Accounts Committee.

Approved

Signatures



Sarah Bedwell
Certification Officer



Susan Clews
Chief Executive
Advisory, Conciliation and
Arbitration Service

Date 20 April 2022

Date 5 May 2022

Mike Warren
Director
Labour Market Directorate
Department for Business, Energy and Industrial Strategy



Date 09/05/22
