

D/5/24-25

Decision of the Certification Officer on an application made under Section 108A of
the Trade Union and Labour Relations (Consolidation) Act 1992

Bhogal

V

National Education Union

Date of Decision

18 June 2024

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Decision

1. Upon application by Mr Paramjeet Bhogal (“the applicant”) under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant’s application on the grounds that the complaint, as advanced by Mr Bhogal, has no reasonable prospect of success.

Background

2. Mr Bhogal submitted an application to make a complaint, on 31 January 2024, as a member of the National Education Union (“the Union” or “NEU”).
3. Following correspondence with my office, Mr Bhogal, confirmed his complaint as follows:

Complaint

That on 7 November 2023, the NEU breached Rule Appendix A Rule 3.1(b). NEU Officers do not have a remit to bring a complaint under Rule Appendix A 1.1 (a) and 1.1 (g) for acts contrary to the Code of Professional Conduct of the Union which finally resulted in Mr Bhogal’s suspension under Rule Appendix A 3.3.

The Relevant Statutory Provisions

4. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

108A Right to apply to Certification Officer

- (1) A person who claims that there has been a breach or threatened breach of the Rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).
- (2) 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.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, she may—

- (a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,
- (b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or
- (c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

5. The Rules of the Union which are relevant for the purposes of this application are:

Appendix A

1 Disciplinary Offences

- 1.1 A member of the Union commits a disciplinary offence if that member:
- (a) acts contrary to the Code of Professional Conduct of the Union;
 - (b) acts contrary to the Rules of the Union;
 - (c) refuses to comply with a lawful instruction of the Union;
 - (d) is knowingly involved in any fraud on the Union or misappropriation of Union funds or property;
 - (e) misuses protected data contrary to the Data Protection Act Licence of the Union;
 - (f) frustrates any decision or penalty of the National Disciplinary Committee or National Appeals Committee; or
 - (g) in any other way engages in conduct which brings injury or discredit to the Union

3 National Disciplinary Committee

- 3.1 (a) A complaint made by a member of the Union against a member of the Union, which may consist of one or more alleged disciplinary offences, will be heard by a National Disciplinary Committee consisting of five members drawn from the Panel for the National Disciplinary Committee and the National Appeals Committee.
- 3.1 (b) A complaint may be formulated by the Officers of the Union under 1.1 (b), (c), (d), (e), (f), to be pursued by an employee of the Union. In such case, the procedure to be followed shall be as set out in paragraph 3.3(a).
- 3.2 A National Disciplinary Committee shall choose its own Chairperson.
- 3.3 A complaint under these proceedings may be made by a member of the Union or by an Officer of the Union acting on behalf of the Officers of the Union. If the complaint is formulated by an Officer of the Union then the Officers of the Union may suspend that member or members from membership of the Union pending the hearing of the disciplinary proceedings. The General Secretary of the Union shall notify the relevant Local District and Branch of any such suspension.

3.3(a) This paragraph applies where the Officers of the Union become aware of a matter within the scope of paragraph 3.1(b) which in the opinion of the Officers requires further investigation in order that the proper functioning of the Union and standards of behaviour are maintained. In these circumstances the Officers shall request the General Secretary to appoint an investigating officer who shall investigate the circumstances of the case. If in the opinion of the Officers it is appropriate, the Officers of the Union may suspend the relevant member. The investigating officer's report shall be presented to the Officers of the Union who shall determine whether a complaint should proceed.

Where it appears to the Officers of the Union that the matter can be resolved by training or other process outside the scope of the disciplinary procedure, that route shall be pursued with the member. The time limits for pursuit of a complaint shall not run whilst such alternative process is in train. Should the member refuse such resolution or if it is unsuccessful, the complaint may be pursued further. For the avoidance of doubt the Officers of the Union may instead determine that the matter should proceed immediately to a disciplinary panel

Considerations and Conclusions

6. Mr Bhogal's complaint is that the Union breached Appendix A Rule 3.1(b) of the NEU rules when the Officers of the union raised a complaint against him under Appendix A Rule 1.1(a) and 1.1(g). Mr Bhogal's complaint arises because he believes that Appendix A Rule 3.1(b) restricts the circumstances in which the Officers of the Union can bring a complaint and/or suspend a member of the Union pending a disciplinary hearing. His view is that the reference to "these proceedings" in Appendix A Rule 3.3 refers to Appendix A Rule 3.1(b) and is, therefore, limited to disciplinary offences listed under Appendix A Rule 1.1 (b) – (f).
7. I do not agree that this is a reasonable interpretation of the Rules. Appendix A Rule 3.1(b) enables the Officers of the Union to suspend a member, pending a disciplinary hearing, where they have formulated a complaint to be pursued by an employee of the Union. The procedure for such complaints is set out at Rule 3.3(a)

and includes a power to suspend a member pending the disciplinary hearing. The powers under Appendix A 3.1(b) and 3.3(a) are limited to disciplinary offences under Appendix A 1.1(b)-(f).

8. Mr Bhogal was not, however, suspended under Appendix A Rule 3.1(b). He was suspended under Appendix A Rule 3.3. This is clear from the letters sent to Mr Bhogal, by the National Disciplinary Committee Secretary on 15 December 2023 and the National President on 20 December 2023. Appendix A Rule 3.3 enables the Officers to formulate a complaint and to suspend the member ahead of a disciplinary hearing. There is nothing in this Rule which prevents the Officers from dealing with complaints about disciplinary offences under Appendix A 1.1(a) and (g). Similarly, the Rule does not prevent officers from suspending a member pending a disciplinary hearing.
9. Mr Bhogal has not provided any evidence that the Union suspended him under Appendix A Rule 3.1(b). Nor has he provided any evidence that the Officers should have pursued the matter under Appendix A Rule 3.1(b).
10. Section 256ZA of the Act 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving them an opportunity to show cause why the order should not be made. My office wrote to Mr Bhogal on 29 April 2024. This letter stated that, having considered the application and further correspondence, I was minded to exercise my powers under section 256ZA of the 1992 Act to strike out his complaint on the grounds that it had no reasonable prospect of success. The letter invited Mr Bhogal to provide written representations as to why I should not strike out the complaint.
11. In Mr Bhogal's response dated 13 May 2024, he restated that the Officers had mis-used union rules and he provided copies of a report of the Officer's meeting held on 28 September 2023 and minutes of the Member Defense Review Group held on 21 September 2023. Having considered these additional documents, I am satisfied that they do not support Mr Bhogal's interpretation of the operation of

Appendix A Rule 3.1(b). Nor do they provide any evidence that the Officers should not have relied on the powers in Appendix A Rule 3.3.

12. Consequently, I am satisfied that the complaint to me has no reasonable prospect of success.

A handwritten signature in black ink, appearing to read "Sarah Bedwell", with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer