

D/12/24-25

Decision of the Certification Officer made under Section 55 of the Trade Union
and Labour Relations (Consolidation) Act 1992

Certification Officer

v

Fire Brigades Union

Date of Decision

20 February 2025

Contents

Decision3

Background.....3

The Relevant Statutory Provisions.....4

Considerations and Conclusions.....7

Financial penalty 10

Observations..... 12

Decision

1. Upon request by Fire Brigades Union (“the Union”) to use my powers under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) I make the following declaration:

The election of the Union’s General Secretary, which was completed on 14 January 2025, was not conducted in accordance with the requirements of Chapter IV of Part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), because the Union did not issue ballot papers to 3,059 of its members.

2. I consider it would be appropriate to make an enforcement order. I order that:

The Union implements the agreement set out in its letter to me of 18 February and at paragraph 17 below, within 3 months of the date of this decision.

Background

3. The Union wrote to my office on 4 February 2025, telling me that an election for the position of General Secretary had recently been conducted.
4. The Union told me that, on 14 January 2025, following the declaration of the ballot results, it identified that 3,059 of the 33,044 members eligible to participate in the ballot were not sent ballot papers. The Union told me that this was an accidental omission following a misunderstanding which had arisen between the Union and the independent scrutineer.

5. The scrutineer's report stated that 29,889 ballot papers were dispatched in the initial mailout. I understand that a further 371 ballot papers were issued to members who contacted the Union to request a ballot paper. Of those 371 members 96, belonged to a group of 3,155 members who had not been included in the initial mailout. The turnout in the election was 29%, with Mr Wrack receiving 3,436 votes and Mr Wright receiving 5,188 votes. Mr Wright was, therefore, declared the new General Secretary with a margin of 1,752 votes.
6. The Union has told my office that no issues were identified with any other aspect of the election, such as the nomination process. I have not been contacted by any union member to raise any issues about the election. No complaint has been made to me.
7. In correspondence with my office, the Union explained that it believed the failure to send ballot papers to the members was a breach of the 1992 Act. It also told me that it did not believe that its Rules enabled it to remedy that breach without a declaration and/or enforcement order from me. The Union explained that this is because the independent scrutineer had already issued a statutory declaration in accordance with s 52(2) of the 1992 Act when the error was identified.

The Relevant Statutory Provisions

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

46 Duty to hold elections

- (1) A trade union shall secure –
 - (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it in an election satisfying the requirements of this Chapter, and

- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.
- (2) The positions to which this Chapter applies (subject as mentioned below) are –
 - ...
 - (d) general secretary;

...

50 Entitlement to vote

- (1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

...

51 Voting

- (4) So far as is reasonably practicable, every person who is entitled to vote at the election must –
 - (a) have sent to him by post, at his home address or another address which he has requested the trade union in writing to treat as his postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates; and
 - (b) be given a convenient opportunity to vote by post.

...

55 Powers of Certification Officer

- (1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of this Chapter, either –

...

- (a) On an application by a person having a sufficient interest, or
- (b) without any such application having been made,

the Officer may make a declaration to that effect.

- (2) Before deciding the matter the Certification Officer
 - (a) may make such enquiries as the Officer thinks fit,
 - (b) must give the union and the applicant (if any) an opportunity to make written representations, and
 - (c) may give the union and the applicant (if any) an opportunity to make oral representations.
- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
- (4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- (5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements
 - (a) to secure the holding of an election in accordance with the order;
 - (b) to take such other steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

- (5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.
- (5C) Where an enforcement order has been made –
 - (a) any person who is a member of the union and was a member at the time the order was made, or
 - (b) any person who is or was a candidate in the election in question, is entitled to enforce obedience to the order as if he had made an application under this section.
- (6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.
- ...
- (8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.
- (9) An enforcement order made by the Certification Officer under this section may be enforced (by the Certification Officer, the applicant or a person mentioned in subsection (5C)) in the same way as an order of the court.

Considerations and Conclusions

9. The Union has conceded a breach of sections 50(1) and 51(4) of the 1992 Act and has helpfully drawn my attention to a series of relevant authorities, setting out the arguments for and against an enforcement order requiring a re-run of the ballot.

10. In addition, the Union has shared with me the correspondence it received from the independent scrutineer, once the error had been identified. This sets out the scrutineer's view that the error did not affect the outcome of the election. The view of the scrutineer is based on its analysis of votes cast against voter turnout, ultimately leading it to the conclusion that it would be unreasonable to expect a different outcome, had the breach not occurred.
11. The Union has noted that 3,155 members were missed from the initial mailout of ballot papers. This is close to 10% of the members captured by section 50(1) of the 1992 Act. A small number (96) of those members contacted the Union and were provided with a ballot paper. It remains the case, however, that the error disenfranchised a significant proportion of the electorate. Since the difference between the candidates was 1,752, the Union accepts that, at least theoretically, the participation of the disenfranchised members could have made a difference to the outcome.
12. Since the Union has conceded that a breach has occurred, the question for me to consider is whether it is appropriate for me to make an enforcement order to remedy the breach.
13. In considering the facts of this case, I have been guided by the same principles as my predecessors. In simple terms, this means I have asked two questions of the facts as presented:
- i. Is it likely that the breach affected the outcome of the election, even if I considered the breach to be minor?
 - ii. Was the breach so significant that the election should be considered invalid, irrespective of whether I consider the breach to have affected the outcome?
14. Dealing first with question ii, it is clear to me that a significant proportion of union members were disenfranchised by the error. Nearly 10% of those eligible were not given the opportunity to vote as required by the Act. I am

satisfied that this is sufficient to render the result of the ballot invalid and to require the ballot to be re-run. I do not, therefore, need to consider whether the failure to issue the ballot papers had any impact on the outcome of the ballot.

15. Consequently, I find that the ballot was invalid and should be re-run. My office has informed the Union that I would normally expect a Union, having identified and acknowledged a breach, to take steps to rectify that breach itself. In this case, however, the Union has told me that its Rule book includes no specific and clear rule which would empower its Executive Council (EC) to cancel an election result which had already been declared. Because of this, it believes that if the EC attempts to remedy the breach by re-running the election, it risks complaints from Union members that it has acted in breach of its rules by doing so.

16. I have not reached a decision as to whether the Union is correct in its interpretation. I am satisfied, however, that the Union believes that there is a significant risk should it do so and that delaying the re-run of the election whilst that issue is resolved would also bring risk to the Union. On that basis I believe that I am entitled to make an enforcement order, and that doing so is a pragmatic solution to the current issues facing the Union.

17. In correspondence with my office the Union has agreed a number of steps which could be included in an enforcement order. On 18 February, the Union informed my office that it intended to take the following steps to remedy the breach:

- i. To seek confirmation from each candidate in the election (Mr Wright and Mr Wrack) as to whether they want to stand again in any re-run ballot.
- ii. If both candidates intend to stand again, to run a fresh ballot that complies with the provisions of Chapter IV of Part I of the 1992 Act.

- iii. In the event of a fresh ballot being run, to ask Mr Wright (the successful candidate in the election in question) to cease acting as General Secretary and begin acting as Acting General Secretary.
- iv. If either candidate decides not to stand in a re-run ballot, the Union would declare the other candidate as elected unopposed.
- v. The Union will ensure that the result of any re-run ballot, or an announcement that one candidate has decided not to stand should be declared within 3 months of the date of this decision.

18. I have considered whether the Union should launch the whole election procedure again but do not consider this necessary. In doing so I have taken into account that there were only two candidates, the ballot was declared on 14 January 2025, I have seen no evidence to suggest that there were any errors in the nomination process and undertaking a new nominations process risks a delay in having a General Secretary in place. I am satisfied, therefore, that the Union can rely on the nominations process which has already been conducted. If, however, both candidates decided not to stand again the Union would need, of course, to begin the election process, including nominations, again.

19. For these reasons, I am satisfied that it is appropriate for me to issue an enforcement order which requires the Union to implement the steps outlined at paragraph 17. Based on the correspondence between my office and the Union, I think it reasonable to require the Union to complete this process within three months.

Financial penalty

20. Having reached the decision that the Union has breached the requirements of the 1992 Act, I am required to consider whether I should impose a financial

penalty. I sought the Union's views on this in writing before reaching a decision.

21. The Union asked me not to impose a financial penalty for the following reasons:

- i. The error in the balloting process arose because of a genuine administrative error.
- ii. On becoming aware of the error, the Union acted quickly in referring itself to my office.
- iii. The Union has not previously breached the provisions in question.
- iv. The Union has apologised to both candidates and made all members aware of the error.
- v. The Union is taking steps to liaise with the independent scrutineer to ensure that an error of this nature cannot occur again.

22. The breach conceded by the Union was serious in nature and it is important that steps are taken to ensure that it is not repeated. I am, however, satisfied that the Union recognises this and has proposed steps to mitigate the breach and prevent it reoccurring. I do not, therefore, believe a financial penalty would be appropriate.

23. I have also considered whether a conditional penalty would be appropriate to ensure the breach is remedied within the necessary timescale. As the Union has agreed the steps set out a paragraph 17 above, I am satisfied that this is not necessary.

Observations

24. As stated above at paragraph 16, I have not reached a decision as to whether the Union's rules would have allowed the EC to take steps to remedy the breach.

25. In correspondence, my office told the Union that I believe it should be able to remedy such breaches itself and should ensure that its rules enable it to do so. I was pleased to read the Union's letter of 12 February 2025, which confirmed its intention to place before its next Conference a proposed rule change which will seek to amend the rules to ensure that the EC is permitted to remedy breaches of statute. It would be helpful if the Union could inform my office of the outcome of that meeting.

A handwritten signature in black ink, reading "Sarah Bedwell", is enclosed in a thin black rectangular border. The signature is written in a cursive style.

Sarah Bedwell

The Certification Officer