PROVISION

Made Pursuant to section 256(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 relating to the disclosure of the identity of individuals making applications and complaints to the Certification Officer

1. Statutory Background

The Trade Union and Labour Relations (Consolidation) Act 1992

Under section 256(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") the Certification Officer is required to make provision about the disclosure, and restriction of disclosure, of the identity of an individual who has made, or is proposing to make, any application or complaint to him.

Under section 256(2A) of the 1992 Act, the provision that is made must be such that if the application or complaint relates to a trade union –

(a) the individual's identity is disclosed to the union unless the Certification Officer thinks the circumstances are such that it should not be so disclosed; and

(b) the individual's identity is disclosed to such other persons, (if any) as the Certification Officer thinks fit.

The Human Rights Act 1998

The Human Rights Act 1998 ("the 1998 Act") places a duty on the Certification Officer to act in a way which is compatible with the European Convention of Human Rights. Article 6 of the European Convention is of particular importance in the discharge of the duties of the Certification Officer. This confers a right to a fair and public hearing in all cases where a public authority determines the legal position of a private party.

2. The Provision under Section 256 of the 1992 Act

Pursuant to section 256(2) of the 1992 Act and having regard to the 1998 Act, the Certification Officer makes the following provision :-

2.1 Preamble

The Certification Officer favours openness in dealing with applications and complaints. It is generally in the interests of fairness that a Respondent is made aware of the identity of the person bringing a legal complaint against the Respondent. However, there may be exceptional cases where anonymity is needed to protect the complainant. This may arise where there is a possibility of a complaint not being made or pursued because the complainant has a reasonable fear of reprisals.

2.2 Individuals who proposes to make an application or complaint

The Certification Officer will not disclose the identity of individuals who propose to

make an application or complaint, prior to the application or complaint, unless he believes it is appropriate to do so in the discharge of his statutory duties.

2.3 Individuals who have made an application or complaint

(a) Disclosure to a trade union. Where an individual has made an application or complaint which relates to a trade union, the Certification Officer will disclose the individual's identity to the union unless he decides that the circumstances are such that it should not be so disclosed. The Certification Officer will make such decisions on a case-by-case basis. However, in general, where the individual fears that disclosure is likely to result in violence or physical danger and the Certification Officer believes that fear is reasonably based, the Certification Officer may decide that the individual's identity should not be disclosed. Conversely, the Certification Officer is unlikely to consider that the likelihood of denigration would, in itself, justify non-disclosure.

(b) Disclosure to others. The Certification Officer may disclose the individual's identity to such other persons as he thinks fit. Such other persons may include in particular any person who makes or who has made an application or complaint which is substantially the same as that made by the individual.