

**MAKING A COMPLAINT TO THE CERTIFICATION OFFICER
AGAINST A TRADE UNION
UNDER
THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION)
ACT 1992**

1. The Certification Officer is an independent statutory officer appointed by the Secretary of State for Business, Enterprise and Regulatory Reform whose functions include the power to determine complaints that trade unions have breached specific provisions of the Trade Union and Labour Relations (Consolidation) Act 1992¹ (“the 1992 Act”) or, in relation to certain matters, their own rules.

2. The purpose of these notes is to set out for the benefit of any potential claimant, the way in which an application may be made to the Certification Officer and how it will be treated.

What type of complaint can be made to the Certification Officer?

3. A complaint can be made to the Certification Officer that a trade union has
- (a) failed to compile and maintain an accurate register of members or has failed to secure the confidentiality of the register during certain ballots (section 24 and 24A of the 1992 Act);
 - (b) failed to ensure that its senior officers and/or members of its executive have not been previously convicted of an offence under section 45 within 5 or 10 years (depending on the nature of the offence) (section 45B of the 1992 Act);
 - (c) failed to ensure that the election of its senior officers and/or members of its executive satisfies the requirements of the Act (sections 46-54 of the 1992 Act);
 - (d) breached rules approved by the Certification Officer governing the holding of a political fund ballot or the administration of its political fund (sections 74 and 82 of the 1992 Act);
 - (e) held a political fund ballot where there are no rules approved for that purpose by the Certification Officer (section 74 of the 1992 Act);

¹ As amended by Trade Union Reform and Employment Rights Act 1993; Employment Relations Act 1999 and the Employment Relations Act 2004.

- (f) failed to meet a request from a member for access to its accounting records (section 30 of the 1992 Act);
- (g) failed to ensure that a ballot on a proposed merger has been conducted in accordance with the requirements of the 1992 Act or that, in conducting a merger ballot it has failed to comply with any rule relating to the passing of the resolution to merge (section 100-100E of the 1992 Act);
- (h) spent money on political objects without a political fund resolution in force or without approved political fund rules (section 71 of the 1992 Act);
- (i) either itself or one of its sections or branches has breached, or threatened to breach, the rules of the union in relation to certain matters (section 108A 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 meetings. (Note - There are restrictions relating to the size of the body concerned – see s108A (10)-(12) of the 1992 Act)

Allegations regarding financial irregularities in a union are dealt with differently under other powers. If someone has concerns about the financial affairs of a union, he/she should let the Certification Officer know of them as soon as possible.

What types of complaint cannot be made to the Certification Officer?

4. Any complaint not described in paragraph 3. Complaints regarding a union’s failure to represent a member adequately, or at all, are not normally within the Certification Officer’s jurisdiction. Similarly, complaints regarding the dismissal of, or disciplinary action against, an employee of the union are not within the Certification Officer’s jurisdiction.

Who may make a complaint and when?

5. The right to make a complaint to the Certification Officer is in most cases limited to a person who is a member of the trade union concerned at the time of the issue giving rise to the complaint. Sometimes a person who is not a member may make a complaint, for example, if he/she was a candidate in a National election and the complaint relates to that election. A person who is not a member should explain why he/she thinks they are entitled to make a complaint.
6. The 1992 Act requires complaints to be made within specific time-limits. In the case of elections required by the 1992 Act the time-limit is one year from the date on which the union announced the result of the election. In breach of union rule complaints the time-limit is six months starting from the day the breach is alleged to have taken place. However, if an internal complaints procedure of the union² has been invoked within six months of the alleged breach, different time limits may apply. Anyone who wishes to make a complaint to the Certification Officer should do so without delay. If there is any uncertainty about time-limits, the Certification Office may assist in identifying the relevant time-limit.
7. On complaints relating to breach of union rule, the Certification Officer may refuse to accept a complaint unless he is satisfied that the claimant has endeavored to resolve the matter by the use of any internal complaints procedure of the union (section 108B(1) of the 1992 Act).
8. The Certification Officer may not consider a complaint 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 even if the claimant withdraws his/her complaint to the Certification Officer.
9. It should be noted that only the Courts have power to grant interim injunctions. In urgent cases it is generally not possible for the Certification Officer to determine the complaint before any threatened breach has occurred.

² In *Unison v Bakhsh* (EAT/0375/08) the Employment Appeal Tribunal said in relation to extending the time-limit for submitting a claim that it is essential that some recognisable formal procedure should be being followed.

How to make a complaint

10. A claimant should write without delay to the Certification Officer setting out the basis of the complaint and identifying which part of the 1992 Act or which union rule(s) has allegedly been breached. A complaint registration form is available from the Certification Office, or can be downloaded from the Certification Officer's website, www.certoffice.org, to help the claimant provide the basic information the Certification Officer will need to make his enquiries. Where the complaint registration form is not used claimants should ensure that their application contains all the details required on the form. If a number of complaints are being made, the grounds for each complaint should be set out separately. Supporting documents and other evidence should be included together with details, where appropriate, establishing membership of the union. A copy of a membership card or the membership number and name of the appropriate branch will normally be sufficient. If claimants choose to send the application and/or supporting documentation by electronic means they should not assume the Certification Officer has received the documents until they receive confirmation. The Certification Officer reserves the right to ask for any document in hard copy format, particularly if the document is to be relied on at any hearing. It is the responsibility of the parties to provide documentation in the format requested by the Certification Officer.
11. Correspondence by e-mail will be treated in the same way as that received by any other form i.e. by letter or fax. Substantive replies from this Office will normally be by post.
12. Anonymous complaints are not normally acted upon. In exceptional circumstances only, the Certification Officer may make provision to preserve a claimant's anonymity if he considers there to be compelling grounds for doing so. In the vast majority of cases, however, the union concerned will be entitled to know who is making the complaint and it will not be possible for the application to proceed without disclosing the claimant's name.

How will the Certification Officer handle the complaint?

13. In the first instance it may be necessary for the Certification Office to correspond with the claimant to confirm, establish or seek further information on the exact nature of the complaint being made. Complaints will not normally be put to the union until all complaints being alleged have been identified and the claimant has confirmed the complaint wording, in writing, to this Office. The acceptance of a complaint by the Certification Officer does not indicate any view of the Certification Officer on the merits of the application.
14. It is the role of the Certification Officer to make such enquiries as he sees fit into the issues

raised by the complaint. These enquiries will normally be made by correspondence between the Certification Officer, the claimant and the union. Copies of all correspondence will normally be forwarded to the union for comment. When comments are received from the Union, the Certification Officer will normally copy these to the claimant for comment and observation. The Certification Officer may ask either party for information at any time. Correspondence between the Office and either party will normally be copied to the other party. The Certification Officer is required to give the parties to the complaint an opportunity to present their case at a hearing. However, the parties can agree that the Certification Officer determines the case without a hearing, although the Certification Officer may still decide a hearing is necessary.

15. The Certification Officer can strike out in whole or in part an application or response at any stage of the proceedings, or order that the application or response be amended. The grounds on which such an order can be made are that the application or response, or any part of it, is scandalous (ie irrelevant and abusive of the other side); vexatious (ie a complaint made with no expectation of success but made to harass the other party, or made out of some improper motive); has no reasonable prospect of success or is otherwise misconceived. The Certification Officer's powers to strike out an application relate both to the nature of the complaint or response or the way in which the claimant or a representative conducts proceedings. The Certification Officer can also order that an application be struck out for excessive delay in proceeding with it. An application or response may be struck out on the Certification Officer's own initiative or on the application of the claimant or the union concerned. Before making an order using these powers, the party against whom it is proposed that the order should be made will be given an opportunity to show cause, either in writing or orally at a hearing, why the order should not be made.

Hearings

16. Any hearing will normally take place at the Certification Office on a set date and both the claimant and the trade union will be invited to attend. Both parties will have an opportunity to put their case to the Certification Officer and to call witnesses. Any person who gives evidence may be asked questions by the other party. Parties can choose to conduct their own case or to be represented. The proceedings are held in public. In most cases the Certification Officer will not make a decision on the day of the hearing but will give an indication as to when the decision, with full written reasons, will be issued. The decision is always sent to the parties in writing and will appear on the Certification Officer's website. Certain expenses may be payable to claimants and their witnesses in respect of their attendance at a hearing.

No payments are made for legal fees incurred by either party at any stage of the proceedings. The Certification Officer has no power to order a witness to attend a hearing or to order the production of documents. A leaflet on the procedures at a hearing is available from the Certification Office and on the Certification Officer's website. A copy of this leaflet is issued to the parties when a hearing is being arranged.

The Decision

17. When the Certification Officer has determined the complaint, his decision will be issued, in writing, giving full written reasons. He may make or refuse a declaration, stating whether or not the complaint is upheld. He also has power to make an enforcement order to remedy any breach that has occurred. In certain circumstances he may also make written observations on matters arising from or connected with the proceedings. Any complaint that a union has not complied with an enforcement order must be made to the Courts, which can enforce the Certification Officer's order as if it were an order of the Court. It should be noted that the Certification Officer does not have any powers to award compensation or costs. Copies of previous decisions of the Certification Officer are available on request from the address below or on the Certification Officer's website.

18. There is a right of appeal from a decision of the Certification Officer to the Employment Appeal Tribunal (EAT) on any question of law arising from the decision or from the proceedings. Any such appeal must be lodged within 42 days of the date the written record of the Certification Officer's decision is sent to the parties. The EAT's address is: Audit House, 58 Victoria Embankment EC4Y 0DS (020 7273 1041/1044). Further information about the EAT can be found on its web site, www.employmentappeals.gov.uk.

Advice

19. The Certification Officer deals with complaints submitted under the 1992 Act and must do so impartially on the facts and in the light of representations made to him by the parties. For this reason, the staff of the Certification Office are unable to give advice on the formulation, conduct or likely success of complaints as such advice could be seen as prejudicing the Certification Officer's essential impartiality. Nevertheless, the Certification Officer's staff are willing to assist where possible, particularly in the explanation of the statutory requirements of the 1992 Act.

Further information

20. Further information and more detailed explanations about the contents of these notes can be

obtained from the following address:

Certification Office for Trade Unions and Employers' Associations
22nd Floor
Euston Tower
286 Euston Tower
London
NW1 3JJ

Tel: 020 7210 3667/3627/3719

Fax: 020 7210 3612

e-mail: info@certoffice.org

website: www.certoffice.org

**IMPORTANT NOTICE REGARDING DELIVERY OF MAIL TO THE
CERTIFICATION OFFICE**

The Certification Office is currently experiencing difficulties with the delivery of Royal Mail post. Royal Mail are aware of the problem and are working to rectify it.

In order to guarantee that your complaint application reaches the office quickly you are strongly advised to deliver by hand, fax it or send by e-mail. This is particularly important when submitting complaints that have to be submitted within strict time limits. The Certification Officer has no discretion to vary these time limits.

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