

**HEARINGS HELD BY THE CERTIFICATION OFFICER
UNDER
THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

GUIDANCE ON PROCEDURE

It is the Certification Officer's intention to conduct all hearings in a way which is consistent with clarity and justice. The procedure at the hearing will usually follow that given below.

1. The issues to be determined by the Certification Officer will have been identified in correspondence with the parties before the hearing. Any dispute as to the correct identification of those issues must be raised at the start of the hearing. It is essential that there is no misunderstanding at the hearing about the nature of the allegations that are being made (ie precisely which statutory provisions and/or union rules are alleged to have been breached) and the grounds upon which those allegations are being made.

Documentary/the Bundle

2. Prior to the hearing the Certification Office will prepare a bundle of documents for use at the hearing. The bundle will consist of the relevant documentation already submitted by both parties. Each page of the bundle will be numbered in the bottom right hand corner. References to any document at the hearing should be made to that number.
3. The parties are required to submit to the Certification Officer all relevant documents for inclusion in the bundle by the date specified in correspondence from the Certification Office (“the specified date”). Any document not submitted in time may be excluded from the hearing.
4. Should a party wish to submit a document which has not been provided by the specified date the party is required to seek the permission of the Certification Officer who will decide whether the document will be admitted.
5. Prior to the date of the hearing, any application for the late inclusion of documents in the bundle must be made in writing to the Certification Officer as soon as possible after the specified date. The application must include three copies of the documents in question and explain why the documents were not submitted by the specified date. A

further copy of the documents and the application must be supplied to the other party at the time the application is made to the Certification Officer.

6. An application for the admission of documents at the hearing must be made orally to the Certification Officer at the commencement of the hearing. The party making such an application must bring three copies of the additional documents to the hearing and present argument to the Certification Officer on why the documents were not supplied in accordance with paragraphs 3(a) or (c).
7. The Certification Officer has no powers to order the production of any document by either party.

Skeleton Arguments

8. Parties are encouraged to produce an outline summary of their argument (a “skeleton argument”) for circulation preferably before the hearing. This often makes for a more focussed consideration of the issues. Where the parties supply skeleton arguments to the Certification Officer prior to the hearing these are copied to each party.

Witnesses

9. Both the claimant and the trade union may call witnesses. The Certification Officer has no powers to order the attendance of a witness. Witnesses may be asked questions by the other party (see paragraph 6 below). If a party submits a written witness statement but the witness does not attend the hearing to be cross-examined on the statement, less weight will be given to the witness statement than otherwise. The names of any witnesses must be notified to the Certification Officer in advance of the hearing.
10. Parties are encouraged to produce written witness statements and, where appropriate, to exchange such statements with the other party at least two days before the hearing. Copies of any such statements should also be sent to the Certification Officer.

Procedure at the Hearing

11. The procedure will normally be as follows:-

(a) The issues to be determined by the Certification Officer will be confirmed, and the Certification Officer will endeavour to agree the outline facts with the parties in an effort to narrow the differences between the parties and to ensure a more focused hearing.

(b) **The Claimant's Case.**

(i) The claimant or his/her representative will be invited to present their case and to call any witnesses. This is not an opportunity for general criticism of the union. Argument must be addressed to the issues that have been identified and the witnesses must give evidence relevant to those issues.

(ii) The representative of the trade union will be given the opportunity to ask questions of the claimant and, where appropriate, his/her witnesses.

(c) **The Union's Case.**

(i) The representative of the trade union will be invited to respond to the claimant and to call any witnesses. This is the union's opportunity to advance arguments and evidence to counter the case made by the claimant.

(ii) The claimant or his/her representative will be given the opportunity to ask questions of those giving evidence on the union's behalf.

N.B. Where either party is legally represented it is not permitted to cross-examine the legal representative. Cross-examination is restricted to those who have given evidence.

(d) **Summing Up**

(i) The representative of the trade union will be invited to summarise its argument in response to the application. If appropriate, the representative should be prepared to make representations on the terms of any declaration or enforcement order that the claimant is seeking.

- (ii) The claimant or his/her representative will be invited to summarise their case, addressing the issues to be determined by the Certification Officer and the terms of any declaration or enforcement order that the claimant is seeking.

- 12. At any stage in the proceedings questions may be asked by the Certification Officer.
- 13. The Certification Officer can strike out the whole or part of 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. An application or response may be struck out or amended on the Certification Officer's own initiative or on the application of the claimant or the union concerned.

Costs etc.

- 14. Under the 1992 Act the Certification Officer has no power to award costs or to order the attendance of witnesses or the production of documents.

Expenses

- 15. Expenses for reasonable travel costs and for certain other costs incurred by the claimant and his/her necessary witnesses in attending a hearing may be reimbursed by the Certification Officer. The Certification Officer has discretion to allow or refuse all claims. The rates of reimbursement are set by the Secretary of State and may only be varied by his order

Special Needs

- 16. If you or anyone attending the hearing with you has a disability or particular need, you should contact the case manager as soon as possible before the hearing to discuss the matter.

The Decision

17. The Certification Officer will not give his decision at the hearing. The Certification Officer will issue his written decision, with full written reasons, as soon as possible after the hearing. At the end of the hearing he will, in most cases, give an indication of when he expects his decision to be given.
18. If the Certification Officer considers that there has been a breach of the statutory provisions or of union rule he may make a declaration to that effect in his decision.
19. Should the Certification Officer makes a declaration he will also consider whether it is appropriate to make an enforcement order. The parties may make representations on whether an enforcement order should be made and, if it is to be made, the terms of any such enforcement order.

Right of Appeal

20. There is a right of appeal to the Employment Appeal Tribunal (EAT) on a point of law arising from a decision of the Certification Officer. Any such appeal must be made to the EAT within 42 days from the date the written record of the decision was issued. 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 at www.employmentappeals.gov.uk.

Further Questions

21. Any questions relating to these procedures should be raised in the first instance with the person who sent this leaflet to you.

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