

MAKING A COMPLAINT TO THE CERTIFICATION OFFICER AGAINST A TRADE UNION UNDER THE INDUSTRIAL RELATIONS (NORTHERN IRELAND) ORDER 1992 OR THE TRADE UNION AND LABOUR RELATIONS (NORTHERN IRELAND) ORDER 1995

1. The Certification Officer, who is appointed by the Department for Employment and Learning, is an independent statutory officer whose functions include the power to determine complaints that trade unions have breached specific provisions of the Industrial Relations (Northern Ireland) Order 1992 ("the 1992 Order") or the Trade Union and Labour Relations (Northern Ireland) Order 1995¹ ("the 1995 Order") or, in relation to certain matters, their own rules.
2. The purpose of these notes is to set out the way in which a complaint 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 to secure the confidentiality of the register during certain ballots (Article 3 and 4 of the 1995 Order);
 - (b) failed to ensure that its senior officers or members of its executive have not been previously convicted of an offence under Article 13 of the 1992 Order within 5 or 10 years (depending on the nature of the offence) (Article 13B of the 1992 Order);
 - (c) failed to ensure that the election of its senior officers or members of its executive satisfies the requirements of the Order (Articles 12-21 of the 1995 Order);
 - (d) breached rules approved by the Certification Officer governing the holding of a political fund ballot or the administration of its political fund (Articles 48 and 57 of the 1995 Order);
 - (e) held a political fund ballot where there are no rules approved for that purpose by the Certification Officer (Article 48 of the 1995 Order);

¹ As amended by the Employment Relations (Northern Ireland) Order 1999 and the Employment Relations (Northern Ireland) Order 2004.

- (f) failed to meet a request from a member for access to its accounting records (Article 37 of the 1992 Order);
- (g) failed to ensure that a ballot on a resolution to merge has been conducted in accordance with the requirements of the 1995 Order or failed to comply with any rule of its own relating to the passing of the resolution to merge (Articles 75 to 81 of the 1995 Order);
- (h) spent money on political objects without a political fund resolution in force or without approved political fund rules (Article 45 of the 1995 Order);
- (i) itself, or one of its sections or branches, breached or threatened to breach the union's rules in relation to certain matters (Article 90A of the 1995 Order). 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 Article 90A (10) - (12) of the 1995 Order).

Allegations regarding financial irregularities in a union are dealt with differently under other powers. Anyone who has concerns about the financial affairs of a union should let the Certification Officer know of them as soon as possible.

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

4. The short answer is: any complaint not described in paragraph 3. Complaints about a union's failure to represent a member adequately, or at all, are not normally within the Certification Officer's jurisdiction. Complaints about 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, a person who was a candidate in a national

level election (such as an election for General Secretary) and has a complaint relating to that election. Persons who are not members should explain why they think they are entitled to make a complaint.

6. The 1995 Order requires complaints to be made within specific time limits. In the case of complaints about elections required by the 1995 Order the time limit is one year from the date on which the union announced the result of the election. For complaints about breach of union rules 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 union 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 will be happy to assist in identifying the relevant time limit.
7. The Certification Officer may refuse to accept a complaint about breach of union rule if she is not satisfied that the person making the complaint ("the applicant") has endeavoured to resolve the matter by the use of any internal complaints procedure of the union (Article 90B(1) of the 1995 Order).
8. The Certification Officer cannot consider a complaint if the applicant has applied to the High Court in respect of the same matter. Similarly, once a complaint has been made to the Certification Officer the same matter cannot be put to the High Court even if the applicant withdraws the complaint to the Certification Officer.
9. It should be noted that only the Courts have power to grant interim injunctions. In urgent cases it may not be possible for the Certification Officer to determine the complaint before any threatened breach has occurred.

How to make a complaint

10. Applicants should write without delay to the Certification Officer setting out the basis of their complaint and identifying which part(s) of the 1992 or 1995 Order, or which union rule(s), have allegedly been breached. A notification of complaint form is available to help applicants provide the basic information the Certification Officer will need to make her enquiries; copies may be obtained from the Certification Office or downloaded from the Certification Officer's website at www.nicertoffice.org.uk. Where the notification of complaint form is not used applicants should ensure that their application contains all the details required on the form. If more than one complaint is being made, the grounds for each complaint should normally 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 the membership card, or the membership number and the name of the member's branch, will normally be sufficient). Applicants who choose to send the application and/or supporting documentation by electronic means should not assume that 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 form, particularly if the document is to be relied on at a hearing. It is the responsibility of the parties to provide documentation in the form requested by the Certification Officer.

11. Correspondence by e-mail will be treated in the same way as that received by any other method i.e. by letter or fax. All substantive replies from this Office will be by post.
12. Anonymous complaints are not normally acted upon. In exceptional circumstances only, the Certification Officer may make provision to preserve an applicant's anonymity if she considers that there are 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 be impossible for the application to proceed without disclosing the applicant's name.

How will the Certification Officer handle the complaint?

13. In the first instance it may be necessary for the Office to correspond with the applicant to confirm or establish the exact nature of the complaints being made. Complaints will not normally be put to the union until all matters being complained of have been identified and the applicant has confirmed the wording of the complaints, in writing, to this Office. The acceptance of a complaint by the Certification Officer does not indicate any view of the Certification Officer as to its merits.
14. The Certification Officer will make such enquiries into the issues raised by the complaint as she sees fit. These enquiries will normally be made through correspondence between the Certification Officer, the applicant and the union. Copies of all correspondence will normally be forwarded to the union for comment. Any comments received will normally be copied to the applicant for observation. The Certification Officer may ask either party for information at any time and correspondence between the Office and either party will normally be copied to the other party. The Certification Officer is required to give the parties an opportunity to present their case at a hearing. However the parties can agree to the Certification Officer determining the case without a hearing, although the Certification Officer may still decide that a hearing is necessary.
15. At any stage of the proceedings the Certification Officer can order an application or response to be struck out in whole or in part, or to 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 (i.e. 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 relate both to the nature of the complaint or response and to the way in

which the claimant or a representative conducts the 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 either of the parties. 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. Hearings (which are open to the public) normally take place at the offices of the Labour Relations Agency, 2-8 Gordon Street, Belfast BT1 2LG on an agreed date and both the applicant and the trade union are invited to attend. Both parties have an opportunity to put their case to the Certification Officer and to call witnesses. Any person who gives evidence on behalf of one party may be asked questions by the other. Parties can choose to conduct their own case or to be represented. 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. Applicants and their witnesses may claim certain expenses incurred in relation to 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 giving more information about the hearing procedure is available from the Certification Office and on the Certification Officer's web site, www.nicertoffice.org.uk. A copy is sent to the parties when a hearing is being arranged.

The Decision

17. When the Certification Officer has determined the complaint, her decision is issued in writing, giving full reasons. She may make a declaration upholding the complaint or refuse to do so. She also has power to make an enforcement order to remedy any breach that has occurred. In certain circumstances she 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 High 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 Office or on the Certification Officer's website www.nicertoffice.org.uk.
18. There is a right of appeal from a decision of the Certification Officer to the Northern Ireland Court of Appeal on any question of law arising from the decision

or from the proceedings. Appeals are governed by Order 59 of the Rules of the Supreme Court (Northern Ireland) 1980 and proceed by way of notice of appeal and rehearing. An appeal must be lodged within 42 days of the date on which the Certification Officer's written decision is sent to the parties.

Advice

19. The Certification Officer deals with complaints submitted under the 1992 and 1995 Orders 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 compromising the Certification Officer's impartiality. Nevertheless the Certification Officer's staff are willing to assist where possible within these constraints, particularly on the explanation of the statutory requirements of the 1992 and 1995 Orders.

Further information

20. Further information and more detailed explanations about the contents of these notes can be obtained from the following address:

NI Certification Officer for Trade Unions and Employers' Associations
10-16 Gordon Street
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Tele: 028 9023 7773
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Revised: April 2008