



## HEARINGS BY THE CERTIFICATION OFFICER UNDER THE INDUSTRIAL RELATIONS (NI) ORDER 1992 (AS AMENDED) AND THE TRADE UNION AND LABOUR RELATIONS (NI) ORDER 1995 (AS AMENDED)

### HEARINGS: GUIDANCE ON PROCEDURE

#### Introduction

1. The Certification Officer (CO) holds hearings to determine complaints made by trade union members against their union. A complaint may be that the union has breached one or more of certain statutory provisions (e.g. regarding elections), or that it has breached, or threatens to breach, its own rules on certain matters (e.g. disciplinary proceedings). The member making the complaint is “the applicant”, and the union is “the respondent”. Collectively, they are “the parties”.
2. The CO has power under Article 70(1) of the Industrial Relations (Northern Ireland) Order 1992 to regulate the procedure to be followed in any application or complaint made. The CO aims to conduct hearings in a manner which avoids excessive formality while enabling the business to be dealt with fairly, clearly and expeditiously. The CO looks to the parties to co-operate to ensure that these aims are achieved.
3. The issues to be determined by the CO will have been identified in correspondence with the parties before the hearing. If there is any dispute about whether the issues have been correctly identified, this 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 exactly which statutory provisions and/or union rules are alleged to have been breached) and the grounds on which they are being made.

4. Hearings, which are open to the public, are normally held in the premises housing the Certification Office. Separate consulting rooms are available to the parties throughout.
5. Hearings are not recorded.

### Documents/the Bundles

6. The Certification Office will assist in preparation of document bundles for use at the hearing. This will consist of relevant documentation already submitted by both parties. The bundles will be paginated at the right hand bottom corner of the page. **At the hearing, this number should be used to identify any document that is referred to.** The office will normally send the bundles to the parties at least one week before the hearing is scheduled to begin.
7. The CO will set the date (“the specified date”) by which documents for inclusion in the bundle must be submitted. Any document not submitted in time may be excluded from the hearing.
8. If a party wishes to introduce a document that has not been submitted by the specified date, it must apply in writing to the CO for permission. It should do this as soon as possible after the specified date. The application should include three copies of the document and explain why it was not submitted before the specified date. A copy of the document and the application must be sent to the other party at the same time as they are sent to the CO.
9. If a party wishes to introduce a new document at the hearing itself, it must apply orally to the CO at the start of the hearing. It must bring three copies of the document and explain to the CO why it did not submit the document in accordance with paragraphs 7 or 8 above.
10. The CO has no power to order the production of any document by either party.

### Skeleton Arguments

11. Although it is not compulsory each party is encouraged to produce an outline summary of its case (a skeleton argument) for circulation before the hearing. This can be helpful at hearing to focus more clearly and closely on the issues to be determined. The Certification Office will send a copy of each party’s skeleton argument to the other party. If only one party submits a skeleton argument, it will not be passed to the other party until the day of the hearing.

## Witnesses

12. Both parties may call witnesses, whose names must be notified to the CO in advance. The CO has no power to order the attendance of any witness. One party's witnesses may be questioned by the other party.
13. Each party is encouraged to produce written witness statements and exchange these with the other party before the hearing (with a copy also to the CO). Witness statements should be set out in numbered paragraphs for ease of reference. They should record only the facts that the witness intends to give in evidence. They should not deal with issues of law (either case law or statute). More weight will be given to a written witness statement if the witness attends the hearing to be questioned on it. Witnesses will be asked to confirm that their written witness statements are true and accurate. They will not normally be asked to read out their statements at the hearing: the CO will have read them in advance, and they can be "taken as read".
14. On travel and other expenses for witnesses, see paragraph 19 below.

## Procedure at the Hearing

15. The procedure will normally be as follows:
  - (a) The CO will confirm the issues to be determined and will set out the basic facts in an effort to focus the hearing as clearly as possible.
  - (b) The applicant (i.e. the trade union member) or his/her representative will be invited to present his/her case, call any witnesses, and make his/her arguments. This is not an opportunity for general criticism of the union. Argument must be focused on the issues that are to be determined, and the evidence given by the applicant and any witnesses must be relevant to those issues. The union's representative will be given the opportunity to question the applicant and his/her witnesses.
  - (c) The union's representative will be invited to make the union's response and to call any witnesses. This is not an opportunity for general criticism of the applicant. It is the union's chance to counter the evidence and the arguments put forward by the applicant and show why his/her case should not succeed.

The applicant or his/her representative will be given the opportunity to question those giving evidence on the union's behalf.

*Note. Where a party is legally represented at a hearing, the legal representative may not be questioned by the other side. Only those who have given evidence may be questioned by the other side.*

- (d) The union's representative will be invited to summarise its response to the application.
  - (e) The applicant or his/her representative will be given the last word, by way of a reply to the union's arguments. The applicant or his/her representative should not use this to repeat the arguments he/she has already made, but to show why the union's arguments should not be accepted.
16. The CO will usually ask the applicant whether, if successful if they wish an enforcement order to be made and, if so, to state the terms of the order sought. The order sought must be within the powers of the Certification Officer as set out in e.g. Article 37 (7B) of the 1992 Order or 90B (3) of the 1995 Order. The union will be invited to comment on the terms of the order sought by the applicant.

**The Certification Officer may ask questions of any of the participants at any stage of the proceedings.**

17. The CO has power at any stage of the proceedings to strike out the whole or part of an applicant's complaint or a union's response, or to order that the application or response be amended. The grounds on which this may be done so are that the application or response, or any part of it is: scandalous (ie irrelevant and abusive of the other party); is vexatious (ie made without expectation of success but in order to harass the other party) or out of some improper motive; or has no reasonable prospect of success; or is otherwise misconceived. An application or response may be struck out on the CO's own initiative or at the request of the applicant or the union.

**Costs**

18. The Certification Officer has no power to award costs.

## Expenses

19. Expenses for reasonable travel costs and certain other costs incurred by the applicant and his/her necessary witnesses in a hearing may be reimbursed by the CO. The CO has discretion to allow or refuse all claims.

## Reasonable adjustments

20. Parties should contact the Certification Office as soon as possible if they, or anyone attending a hearing with them, require adjustments in place to ensure access to the hearing.

## The Decision

21. The CO will issue the written decision, with full reasons, as soon as possible after the hearing. At the end of a hearing the CO will normally give an indication of when the parties can expect the decision to be given.
22. If the CO considers that there has been a breach of a statutory provision or union rule a declaration will be made to that effect. The CO will also consider whether it is appropriate to make an enforcement order (see paragraph 16) above).
23. The CO may, if considered appropriate, make observations arising from or connected with the hearing.

## Right of Appeal

24. There is a right of appeal to the Court of Appeal on a point of law arising from the written decision of the Certification Officer or from the proceedings themselves. There is no right of appeal on a matter of fact. Appeals are governed by Order 59 of the Rules of the Supreme Court (Northern Ireland) 1980 and are conducted by way of notice of appeal and rehearing. Appeals must be lodged with the Court of Appeal within 42 days from the date the written decision was sent.

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