

Employment



## EAT provides guidance on Certification Officer's jurisdiction

Posted on 25 September, 2024 by | [Jesse Crozier](#) | [John Platts-Mills](#)

### Summary

HHJ Tayler held that the Certification Officer did not err in law in striking out two complaints about an election for the position of secretary of the Lancashire branch of UNISON in February 2021. The Complainant's appeal against the Certification Officer's decision had no jurisdiction to consider a complaint concerning the cessation of the appellant's membership of UNISON, shortly before the branch secretary election in 2022, was conceded by the respondent and remitted to the Certification Officer to be determined.

### Relevant law

Pursuant to section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULR(C)A**") a person who claims that there has been a breach or threatened breach of the rules of a trade union relating to certain specified matters may apply to the Certification Officer for a declaration to that effect. Those matters include the appointment or election of a person to, or the removal of a person from, any office: see section 108A(2) TULR(C)A.

On any application or complaint, the Certification Officer has powers to manage proceedings, except in relation to matters as to which express provision is made by or under an enactment: see section 256 TULR(C)A. This includes a power to strike out at any stage of proceedings an application or complaint on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived: see section 256ZA.

In *Embery v Fire Brigades Union* [2023] EAT 134 Eady J held that a similar approach should be adopted to strike out by the Certification Officer as is adopted by an Employment Tribunal. HHJ Tayler held in *Morley* that the principles that apply to strike out in the Employment Tribunal are well settled and were concisely summarised by Linden J in *Twist DX Limited v Abbott (UK) Holdings Limited and others* UKEAT/0030/20/JOJ.

### Striking out complaints

The first appeal was against the Certification Officer's decision to strike out two complaints about an election for the position of secretary of the Lancashire branch of UNISON in February 2021. HHJ analysed in turn the complaint, the rule in issue and the Certification Officer's decision. He rejected an argument advanced by UNISON that an appeal was academic because there have been subsequent elections – because a complainant that established a breach is entitled to a declaration. In rejecting an argument that the Certification Officer failed to understand the complaint, HHJ Tayler took the Certification Officer's decision as a whole and interpreted its broadly. The EAT said that the Certification Officer concluded that the complaint was fanciful and had no real prospect of success. This was despite submissions that

aspects of the decision lacked clarity.

## **Jurisdiction**

Mr Morley raised a complaint that UNISON had wrongly removed his membership the day before a ballot in which he was nominated was due to close, depriving him of the opportunity of participating in an election. Mr Morley complained that in so doing Unison breached a rule relating to the appointment or election of a person to, or the removal of a person from, any office. The Certification Officer determined that she did not have jurisdiction because the specific rules identified by Mr Morley fell under the heading "Membership" in the copy of Unison's rule book provided.

UNISON conceded that this was an error having regard to what was said by the then Certification Officer in *Dawes v Royal College Of Nursing* D/42-43/10-11, including "*There is clearly a continuum of rules impacting on appointments and elections, some of which are rules relating to appointments, and some of which are not. The decision on where the line is to be drawn falls to be decided in the context of the union rule book as a whole and custom and practice of the union.*" HHJ Tayler held that the matter should be remitted to the Certification Officer to hear full argument on whether there was a breach of any of the rules relied on by the appellant and, if so, whether the appellant had made out a complaint of a breach of a rule relating to the appointment or election of a person to, or the removal of a person from, any office and/or disciplinary proceedings.