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Sir Edward Leigh MP
Chair - Trade Union Bill Public Bill Committee
House of Commons
London SW1A 0AA

9 November 2015

Dear Sir Edward,

THE CERTIFICATION OFFICER

In the Committee session on Tuesday 27th October members raised the issue of the enforcement of the Certification Officer's orders and, in particular, whether third parties could enforce such orders. Members also discussed appointment practices in relation to the Certification Officer, whether federated employer associations are subject to the levy and whether the Government's proposals in relation to check-off would apply to organisations in receipt of public grants.

Enforcement of the Certification Officer's orders by union members

The Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") explains that the Certification Officer's enforcement orders can be enforced as if they were an order of the Court. The legislation specifically allows union members who are not the applicant or complainant to enforce these orders so that they are able to ensure that their union complies with the statutory requirements and rules.

In Clause 16, subsection (4), we are making a number of amendments to the 1992 Act to make it clear who can apply to the court to enforce the Certification Officer's orders following the changes being made in this Bill to allow for more proactive investigation. This includes the Certification Officer but we have also re-iterated what can currently happen; which is that applicants and trade union members are also able to apply to the court to enforce an order of Certification Officer if they wish to do so.

For example, I draw attention to section 80(5C) of the 1992 Act which states that:

Where an enforcement order has been made, any person who is a member of the union and was a member at the time the order was made is entitled to enforce obedience to the order as if he had made the application on which the order was made.

This is a long standing provision and the amendments in the Bill simply make reference to this, and other sections of this nature, already in the 1992 Act.

As a result of the our proposed widening of the Certification Officer's powers of investigation into new areas, the Certification Officer will now be able to act proactively in relation a number of potential breaches of statutory requirements without waiting for a complaint from a union member. Third parties may therefore wish to raise concerns with the Certification Officer who may consider what they say in deciding whether to launch an investigation.

As I set out during Committee, third parties that raise concerns will not have the right to seek to enforce the Certification Officer's orders through the courts.

Appointment of the Certification Officer

In the context of today's discussions on the Certification Officer's appointment, I set out the way in which a number of similar Ministerial appointments within the Department of Business, Innovation and Skills have typically been made. I would like to clarify that such appointments can involve a panel agreed by the appointing Minister and consisting of a Departmental representative, an independent panel member and key stakeholders most relevant to that recruitment campaign (for example, the CBI or TUC). The Department for Business, Innovation and Skills deals with a high number of appointments and always aims to follow OCPA and Government best practice on these matters.

Cost of additional inspectors

The Certification Officer will be responsible for managing the Certification Office and the resources at his disposal. We envisage that most inspections will be carried out by the Certification Officer's staff. Our proposed investigatory powers will allow the Certification Officer to bring in additional resources or specialist knowledge should an investigation prove complex and technical. This will give the Certification Officer flexibility in choosing an appropriate inspector, including a third party, to deal with such investigations and resolve them swiftly and effectively. It is therefore not possible to estimate precise costs or numbers of inspectors that might be required. This will depend on how many times the Certification Officer will need to investigate, which in turn will be subject to a number of factors.

When appointing an inspector, the Certification Officer will consider the nature of the case and the appropriate skills, experience and competence required to investigate it properly. Inspectors, whether they are members of the Certification Officer's staff or third parties appointed by him, will have to comply with data protection and confidentiality requirements when carrying out investigations.

Federated employer associations

I also said I would write further in relation to federated employer associations and the statutory definitions used in the 1992 Act and how they apply in practice.

The definition of employer associations is contained in section 122 of the 1992 Act and that definition encompasses federated employer associations (please see section 135 in conjunction with section 122(1)(b)). The Certification Officer keeps a list of those employer associations that have applied to be listed, as well as a schedule of those that have not applied to be listed but which the Certification Officer considers meet the statutory definition. Organisations that meet the statutory definitions in the 1992 Act will be covered by the levy.

Not all organisations that are generally considered to represent employers therefore fit the statutory definition and would therefore not be considered an “employer association” (or “federated employer association”) for the purposes of the 1992 Act. For example if an employers’ organisation does not have “*the regulation of relations between workers and employers*” as one of their principle purposes they would not be considered to be an employer association; in essence because they are not concerned with industrial relations. For example a number of organisations that represent employers would more likely be considered to be trade associations. As such they are not regulated by the Certification Officer.

The application of the Government’s proposals in relation to check-off to organisations in receipt of public grants

Relevant public sector employers are employers that are public authorities, or are to be treated as public authorities, under provision made by regulations (subsections (2) and (3) of New Clause 11). This would include central government bodies such as Civil Service departments, local government bodies such as councils, NHS bodies (including trusts), state-funded schools (including academies and free schools) and public corporations such as the BBC. A public authority may be a body or may be an office holder. This is not intended to capture private sector providers of contracted-out services, or organisations in receipt of public grants whose business is not of a public nature.

I hope this serves as useful additional clarification upon the points raised during debate.

I am copying this letter to the members of the Public Bill Committee.

A handwritten signature in black ink, appearing to read 'Nick Boles', written in a cursive style.

NICK BOLES MP