

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**Captain T Loraine**

**v**

**Independent Pilots Association**

**Date of Decision**

**29 November 2012**

**DECISION**

Upon an application by Captain Tristan Loraine ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I refuse Captain Loraine's application for a declaration that on 20 February 2012 the Independent Pilots Association allegedly breached rule 30 of its rules by creating the post of Chief Operating Officer without altering its rules to create that post.

**REASONS**

1. Captain Loraine brought this complaint as a member of the Independent Pilots Association ("the Union"). His application was received at the Certification Office on 4 April 2012 and alleged breaches of various rules of the Union and unspecified sections of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. Following correspondence, Captain Loraine confirmed that the only complaint he sought to pursue was in the following terms:

*"On the 20th February 2012 at 14h42, Captain Richard Lotinga, Chairman of the IPA, sent an email out to all IPA employees and IPA directors with an attached word file which included the statement that: "The IPA is creating a new position of Chief Operating Officer (COO). Any staff member may apply for the post before the position is offered to external applicants. Salary will be circa £55,000 full-time, with pension and allowances where appropriate. The COO will manage both the IPA and it's Union." The position of COO was not at the time provided for within the rules of the IPA and the IPA did not alter its rules to create the post as required by rule 30. Claire Pickford was subsequently appointed to the position without contest".*

3. I investigated the alleged breach in correspondence and a hearing took place on 9 November 2012. At the hearing, the claimant represented himself. Captain Loraine produced a written witness statement and gave oral evidence. The Union was represented by Mr Mugni Islam-Choudhury of counsel, who was instructed by Sherrards solicitors. The Union submitted a written witness statement from Ms Claire Pickford, Chief Operating Officer, who also gave oral evidence. Captain Loraine and Mr Islam-Choudhury each provided skeleton arguments. There was in evidence a

104 page bundle of documents consisting of letters and other documentation supplied by the parties, which included the rules of the Union. A second, 98 page, bundle contained records of email correspondence between the claimant and officers and members of the Union. At the beginning of the hearing, a further nine pages of documents, submitted late by the Union, were added to the first bundle by consent. The claimant also applied to have four documents admitted at the hearing. I granted permission for the minutes of the meeting of the Union's Executive Council ("the EC") of 11 January 2012 to be admitted but refused permission for the others on the grounds of their lack of relevance and/or failure to have adduced them earlier.

### **Findings of Fact**

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. This case suffers from the confusion of two organisations which are both called the Independent Pilots Association but which are in law two separate entities.
6. An organisation called the Independent Pilots Association was set up in or about 1992. I was informed that it was initially set up as a job club to help unemployed pilots back into employment following the collapse of Air Europe and to support Dan Air pilots. I was further informed that the Independent Pilots Association continues as a jobs-locator for pilots and promulgates industrial news through its journal and e-bulletins when required. This Independent Pilots Association is a company limited by guarantee. It is also a membership organisation which, in addition to its Articles of Association, has membership rules. These rules provide, inter alia, that it will not involve itself in any direct industrial relation disputes or involve itself in any trade union activity. At the relevant time, this body had a staff of 3 or 4. There was a financial administrator, a membership administrator and a general administrator as well as the post currently in dispute, Chief Operating Officer ("COO").
7. In 2001 a union called the Independent Pilots Federation was formed. Its rules state that it is affiliated to a professional association called the Independent Pilots Association. Its rules also state that the Union will only engage in industrial and regulatory relations, leaving other benefits to be supplied by the professional association, if required. The Union rules provide for there to be an AGM, an Executive Council, a General Secretary and a Treasurer; both of whom are to be appointed by the EC. In January 2011, the Independent Pilots Federation changed its name to the Independent Pilots Association. In this decision therefore I will refer to the Independent Pilots Association as a professional association as "the Association" and to the Independent Pilots Association as a union as "the Union". The confusion is compounded by the Association and the Union sharing the same offices in Haywards Heath, the same telephone number, website and their respective committees of management being constituted of largely the same people. In particular, at the relevant times, the position of chairman of the EC of the Union and chairman of the Board of the Association was held by a Captain Loting and the Treasurer of both organisations was Mr Petitt.
8. An issue in this case is whether Captain Loraine was eligible for membership of the Union at the relevant time and therefore whether he was entitled to bring this complaint under section 108A(1) or the 1992 Act. Rule 6 of the rules of the

Association provides for five categories of membership. The first three types are known as FULL members and include those employed in the industry on a UK contract of employment. The fourth category is known as ASSOCIATE. It includes military personnel, those seeking employment, self-employed flying instructors and those employed by non UK domiciled operations. The fifth category is known as STUDENT/RETIRED. Rule 5 of the rules of the Union provides that any person shall be eligible for membership of the Union who is a Full member of the Association. It would appear that membership of the Association also confers membership of the Union for those who qualify. The current membership fees for those working as a captain in a company where the IPA (presumably the Union) is recognised is £50 a month, whereas the fees for the Student (and presumably the Retired) category of membership is £30 per annum.

9. Captain Loraine retired from employment as a pilot in 2006 on the grounds of ill health and his pilot's licence was appropriately suspended. The Union asserts that Captain Loraine's membership status was changed on 1 November 2008, at his instruction, from Full to Retired, a proposition from which Captain Loraine did not dissent.
10. In December 2010, Ms Claire Pickford commenced employment with the Union in a temporary capacity providing employment law advice to Union members. Ms Pickford had qualified as a solicitor in 2006. She became a full time employee of the Union shortly thereafter.
11. In June 2011, Mr Rod Bruce ceased to be the General Secretary of the Union and in July 2011 Captain Loraine was appointed as General Secretary. He was contracted to work two and a half days a week. Captain Loraine ran and continues to run his own separate business.
12. In November 2011, the respective management bodies decided to change the job titles of all staff in both the Union and the Association (excluding those of General Secretary and Treasurer of the Union, which positions are subject to its rules). Ms Pickford's job title changed to Head of Legal Services of the Union.
13. On Thursday 16 February 2012, Captain Lotinga circulated an email to all staff and office holders. It states that following a meeting in the boardroom that day, there was to be "a restructuring of the IPA". At that time, the Association employed a General Manager, Mike Baker, who managed the Association and was responsible for certain administrative tasks within the Union. Captain Lotinga announced that the post of General Manager was to be "dis-established" and all the functions of the General Manager would be spread between the COO (a new position to be created) and the remaining staff. The email continues "*The COO will report directly to the Board and will manage all aspects of the IPA. However, the position of General Secretary remains as is but for administrative purposes comes under the COO. Otherwise the General Secretary reports directly to the Board.*" Mr Baker left the employment of the Association that day under the terms of a compromise agreement. The job description for the role of COO was to be published on Monday 20 February and open only to internal candidates in the first place.

14. On 20 February 2012 Captain Lotinga circulated an advert for the position of COO to all current staff, with a copy to certain office holders. The advert was in the following form:

*"The IPA is creating a new position of Chief Operating Officer (COO). Any staff member may apply for the post before the position is offered to external applicants. Salary will be circa £55,000 full time, with pension and allowances where appropriate. The COO will manage both the IPA and its Union.*

*The core requirements of this role are to:*

- *Represent the IPA in conjunction with the Union General Secretary.*
- *Have full responsibility for the IPA.*
- *Report to the Board.*
- *Represent members' interests as required, including attendance at hearings and meetings.*
- *Manage the office on a day to day to basis, the position is office based.*
- *Oversee all office administration.*
- *Work a minimum of a 4 day week.*
- *Coordinate possible future expansion.*
- *Increase membership of the IPA.*

*The successful candidate should:*

- *Have a legal background/qualification or similar.*
- *Be able to work as part of a small team.*
- *Be pro-active to assist in achieving the aims of the IPA.*
- *Have a sense of humour and be a team player.*

*Applicants should forward their CVs to the Chairman for interviews to be carried out on the morning of the 9<sup>th</sup> March."*

Ms Pickford was the only member of staff with a legal or similar qualification.

15. Captain Loraine responded to Captain Lotinga the same day by email. He stated that he saw the restructuring as marginalising and devaluing his position, whether intentionally or not. He noted that the COO would have superior terms and conditions to his own, that the COO would be fully responsible for and head up the IPA, that the COO would be in overall charge and that he must even ask the COO if he wished to take any leave. He concluded by commenting that this was potentially done with the intention of pushing him to resign. There then followed a considerable number of emails between Captain Loraine, Captain Lotinga and other office holders. They attempted to persuade Captain Lotinga that his position was not in jeopardy.
16. On 4 March 2012 Captain Loraine sent an email to "All Directors of the IPA-Union" which is headed "IPA Union Rule Clarifications". In this email, Captain Loraine raised a number of potential breaches of the rules of the Union and the Association which he alleged were continuing. He stated that these might allow a potential complaint to be made to the Certification Officer against the IPA. Captain Loraine's email was the cause of a further exchange of emails between himself, Captain Lotinga and other office holders. On 9 March Captain Loraine also raised his concerns personally with Mr Petitt, indicating his view that it was a breach of the rules for the position of COO to be created without first obtaining majority membership approval. Captain Loraine

considered that any such proposal should have been put to the next AGM, which was due to take place on or around 23 May 2012.

17. On 12 March 2012 Ms Pickford's application to become the COO was successful. She entered into a contract of employment with the Association and her employment transferred from the Union to the Association. She is required to work a four and a half day week.
18. On 16 March 2012 there were meetings of both the Board of the Association and the EC of the Union. Captain Loraine stated that he again raised questions about the Union failing to abide by its rules. He further stated that he informed those present that he had been in discussion with the Certification Office about those alleged failures. Captain Loraine also gave evidence that he was suspended from duty as the General Secretary immediately after this meeting, referring to allegations made by Mr Petitt that he had bullied and harassed staff. Captain Loraine states that this suspension was confirmed by the Union on 21 March.
19. Captain Loraine was subsequently dismissed by the Union from his position of General Secretary. He states that Captain Lotinga wrote to him to this effect on 2 April 2012. The Union states that the dismissal took effect on 9 April.
20. On 4 April 2012 my office received the present complaint from Captain Loraine. Prior to the receipt of his application, Captain Loraine had telephoned my office on 12 March to ascertain my jurisdiction in respect of trade union elections. On the same day, my office sent an email to him to which were attached copies of sections 46-59 of the 1992 Act. Later that day Captain Loraine sent an email to my office stating that he was seeking "invaluable experience and input" on two situations; namely the appointment of the COO and the election of EC members. On 13 March, my office responded in a formal letter setting out my jurisdictions and advising Captain Loraine that, having regard to my role in determining complaints, it would be inappropriate for my office to advise any party to potential litigation on situations which might lead to a complaint being made. My office enclosed a Complaints Form and a copy of a Complaints Guidance Note.

### **The Relevant Statutory Provisions**

21. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

#### ***Section 108A Right to apply to Certification Officer***

*(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

*(2) 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 meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

(3) *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

### **The Relevant Rules of the Association**

22. The rules of the Association which are relevant for the purposes of this application are as follows:-

#### **Rule 4**

*The provisions of the Articles of Association of the Company are to apply.*

#### **Rule 5**

*The IPA will not involve itself in any direct industrial relations disputes or involve itself in any trade union activities, but will advise members where appropriate and act as a body of knowledge and experience for members' reference.*

### **TYPES OF AND QUALIFICATIONS FOR MEMBERSHIP**

#### **Rule 6**

*FULL – 1. Available to civilian pilots and flight engineers employed on a UK contract of employment in a company that does not yet have recognition with the IPA (Union).*

*FULL – 2. An individual employed on a UK contract of employment working as a Captain in a company that does have a recognition agreement with the IPA (Union).*

*FULL – 3. Flight crew employed on a UK contract of employment working other than as a Captain in a company that does have a recognition agreement with the IPA (Union).*

*ASSOCIATE. Available to military personnel, qualified professional pilots seeking employment, self employed flying instructors and those working for non-UK domiciled operators.*

*STUDENT/RETIRED. Available to persons without a professional licence and pilots/flight engineers retired from their aviation career.*

### **The Relevant Rules of the Union**

23. The rules of the Union which are relevant for the purposes of this application are as follows:-

#### **Rule 1 Name**

*(2) The Union is affiliated to a professional association also called the Independent Pilots Association but remains a separate entity.*

#### **Rule 3 Objectives**

*The objectives of the Union shall be:*

*(1) To provide the services of a Trade Union to Full members of the IPA (the Professional Association). The Union will only engage in industrial and regulatory relations leaving other benefits, if required, to be supplied by the IPA (the Professional Association).*

#### **Rule 4 Methods**

*(4) Take any other lawful action which may be deemed necessary.*

#### **Rule 5 Members**

*(1) Subject to the provisions in Rule 7 (Contributions) and Rule 8 (Discipline), any person shall be eligible for membership of the Union who is a Full member of the IPA (the Professional Association) and:*

- (i) *Is actively engaged in JAA/EU commercial flying and holds a current Commercial Pilots Licence, Airline Transport Licence or any equivalent JAA/EU Licence, or*
- (ii) *Is actively engaged in JAA/EU commercial flying and holds a current Flight Engineers Licence, Airline Transport Licence or any equivalent JAA/EU Licence, or*
- (iii) *Is employed by any JAA/EU company or organisation as Service Training or Contract Pilot, or is a pilot who is not required as a condition of employment to hold a current Commercial Pilots Licence or Airline Transport Pilots Licence or any equivalent JAA/EU licence.*

**Rule 7 Subscriptions**

(2) *The IPA (the Professional Association) will collect subscriptions and dues on behalf of the Union which should, wherever possible, be paid by direct debit.*

**Rule 10 Executive Council**

(1) *For the general administration of the Union's business and for the government of the Union in the periods between Annual General Meetings, there shall be an Executive Council which shall be composed in such manner and of such members as is provided for in the Rules.*

(2) *The general policy of the Union shall be as determined by the decisions of Annual General Meetings and Special General Meetings. In the absence of any such policy the Executive Council shall determine the same, subject to approval at the next Annual General Meeting.*

**Rule 12 Government and powers of the Executive Council**

(1) *The Executive Council shall be the principal Executive Council of the Union. Save where and to the extent that these Rules expressly or by necessary implication otherwise provide, it shall have absolute power of executive control and administration of the affairs and property of the Union. The following sub-Rules of this Rule are subject to the same qualifications as this sub-Rule and are without prejudice to the generality of this sub-Rule*

**Rule 23 The General Secretary**

(1) *The General Secretary (who may or may not be a member of the Union) shall be appointed by the Executive Council for a period to be decided by the Executive Council which shall not in any case exceed that stipulated in statute. The appointment must be approved by the membership at the next General Meeting.*

(2) *The duties of the General Secretary shall include the following powers and duties: to carry out the instructions of the Executive Council; to attend regularly at the office of the Union; to have charge of all correspondence connected with the affairs of the Union; to issue all notices as may be required to be given by statute or otherwise; to keep recorded minutes of the proceedings of any General or Executive Council meetings, and to prepare the agenda for such meetings; and to bring up for the consideration of the Executive Council any matters that should be considered and dealt with by it, and as shall be prescribed by the Executive Council; In conjunction with the Treasurer, the General Secretary will keep an accurate record and account of all monies received and disbursements made; keep a separate account of contributions paid and of any other fund from time to time authorised by the Executive Council; and he/she will be responsible for the books, documents, monies and such property of the Union as may be in his/her charge.*

(3) *The General Secretary shall be a member of the Executive Council but shall not be entitled to a vote.*

**Rule 24 The Treasurer**

(1) *The Executive Council shall appoint a Treasurer (who may or may not be a member of the Union) who shall hold office at the pleasure of the Executive Council.*

**Rule 30 Alterations to rules**

*(1) New rules may be made, or any current Rule may be amended or rescinded, but only in accordance with a resolution duly passed at the Annual General Meeting or Special General Meeting. All statutory requirements shall be complied with in respect of all new Rules, amendments and requirements, none of which shall take effect unless and until such requirements have been complied with and the necessary steps have been initiated to seek approval, consent or registration.*

**Consideration and Conclusions**

24. Captain Loraine's complaint is in the following terms;

*"On the 20th February 2012 at 14h42, Captain Richard Lotinga, Chairman of the IPA, sent an email out to all IPA employees and IPA directors with an attached word file which included the statement that: "The IPA is creating a new position of Chief Operating Officer (COO). Any staff member may apply for the post before the position is offered to external applicants. Salary will be circa £55,000 full-time, with pension and allowances where appropriate. The COO will manage both the IPA and it's Union." The position of COO was not at the time provided for within the rules of the IPA and the IPA did not alter its rules to create the post as required by rule 30. Claire Pickford was subsequently appointed to the position without contest."*

25. Rule 30 of the rules of the Union provides as follows;

**Rule 30 Alterations to rules**

*(1) New rules may be made, or any current Rule may be amended or rescinded, but only in accordance with a resolution duly passed at the Annual General Meeting or Special General Meeting. All statutory requirements shall be complied with in respect of all new Rules, amendments and requirements, none of which shall take effect unless and until such requirements have been complied with and the necessary steps have been initiated to seek approval, consent or registration.*

**Summary of Submissions**

26. Captain Loraine submitted that I had the jurisdiction to consider his complaint as he was a member of the Union at the time of the events about which he complained. He argued that this must be so as a matter of common sense as he was the General Secretary of the Union. He further argued that whilst he was General Secretary, the Board had agreed to his membership fee being waived as part of his employment and that at the meeting of the EC of the Union on 11 January 2012 it had been agreed unanimously, upon his request, that staff be given membership numbers so that they might be given access to those web offers available to members of the Association. Captain Loraine further argued that he still holds a pilots licence, even though it was presently suspended due his ill health. Finally, he submitted that the Union appears to be acting inconsistently as the minutes of the EC of 11 January 2012 record Mr Smith as being a voting member and yet he believed Mr Smith no longer qualified for full membership of the Association.

27. On the substance of his claim, Captain Loraine argued that the COO was to be the most important person in the Union, supplanting the General Secretary, and as such it was necessary for this new position to be recognised in the rules of the Union by an appropriate amendment under the procedures set out in rule 30. He supported his submission about the importance of the role of the COO by reference to the terms of the job advert (see paragraph 14), the fact that the COO would be paid more than the General Secretary and the terms of an email from Captain Lotinga to all Board members of 21 February 2012 in which he stated "The COO is in overall charge of



*the IPA and Union but the Gen Sec reports directly to the Board. The Gen Sec only comes under the COO for administrative purposes and only need Cc emails and copy to the COO any communication with external agencies. For reasonable reasons the COO and Board need to know what is being done in the name of the IPA".* Captain Loraine relies on the words I have underlined.

28. Mr Islam-Choudhury, for the Union, made three basic submissions. First, he argued that Captain Loraine did not have jurisdiction to bring this complaint as he was not a member of the Union at the relevant time. Secondly, he argued that the COO was an employee of the Association and his/her employment was therefore a matter outside my jurisdiction. Thirdly, he argued that even if the role of the COO was within my jurisdiction, there was no breach of any rule by the creation of such a role. On the issue of Captain Loraine's membership status, Mr Islam-Choudhury submitted that rule 5 of the rules of the Union determined eligibility for membership of the Union and excluded all those who were not both Full members of the Association and actively engaged in commercial flying or appropriately employed. He argued that as Captain Loraine satisfied neither of these eligibility criteria, he was not a member of the Union at the relevant time and was therefore unable to bring this complaint by reason of section 108A(3) of the 1992 Act.
29. On the substance of this complaint, Mr Islam-Choudhury submitted firstly that Ms Pickford was employed by the Association as the COO and not by the Union. He argued that this was an appointment outwith the rules of the Union and therefore an appointment about which a complaint could not be brought to the Certification Officer. Secondly, he argued that the role of the COO within the Union was not significantly different to that of the previous General Manager, Mr Baker. He noted that both the Association and the Union were small organisations and submitted that it made sense for most of the administrative work of the Union to be undertaken as part of the general administration of both entities. Mr Islam-Choudhury maintained that the EC of the Union acted well within its powers under rules 4(4), 10 and 12(1) of the rules of the Union in permitting such tasks to be done by the COO. He observed that the rules required there to be a General Secretary and Treasurer, but were silent about what other staff the EC might appoint in its discretion. In his submission, it would have been no breach of the rule if the COO had been employed by the Union but that the position was even more clear as the COO was in fact employed by the Association and only performed limited tasks for the Union.

### **Conclusions**

30. I must firstly determine if I have the jurisdiction to consider the merits of Captain Loraine's complaints as it is argued that he was not a member of the Union at the relevant time. My jurisdiction, as regards the eligibility of those seeking to make complaints of breach of rule, is to be found in section 108A of the 1992 Act. Section 108A(3) provides as follows:

*(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

31. Eligibility for membership of the Union is provided for in rule 5 of its rules, as set out above. This requires members to be both Full members of the Association and satisfy certain employment qualifications. I find that on or about 20 February 2012

Captain Loraine satisfied neither of these criteria and was therefore not eligible to be a member of the Union. I was not persuaded by any of Captain Loraine's arguments to the contrary. The fact that he was General Secretary is not a conclusive argument in his favour as rule 23 provides that the General Secretary may or may not be a member of the Union. The argument that he was excused payment of fees or subscriptions I find to be neutral, as it could apply equally to his fees as a retired member of the Association. The concession that staff would be given access to the benefits of membership of the Association I find to be irrelevant. In my judgment, giving membership numbers to staff for this restricted purposes as a perk of employment did not make them members of the relevant body, be it the Association or the Union (an aspect which remained unclear). I further find that the position of Mr Smith, which only emerged in argument at the hearing, is irrelevant as I must determine the position of Captain Loraine and it is a separate matter as to whether there is an irregularity in the election of Mr Smith to the EC of the Union, about which I express no opinion. Finally, I am not persuaded that the email from Captain Lotinga of 21 February 2012 has the legal significance which it has been given by Captain Loraine, especially when taken in context with the later emails attempting to give Captain Loraine comfort that his position was not under threat.

32. As Captain Loraine was not a member of the Union at the relevant time, I find that I do not have jurisdiction to determine his complaint. Accordingly I dismiss the complaint brought by Captain Loraine against the Union.
33. Should I be wrong about my jurisdiction to determine this complaint, I also consider it on its merits. On the evidence, I find that the position of COO was one created by the Association and that Ms Pickford became an employee of the Association, not the Union. I further find that the role the COO of the Association was asked to perform within the Union was, with the knowledge and approval of the EC, to be exclusively administrative. The COO was to provide administrative support for the EC, the General Secretary and Treasurer. In my judgement, the EC did not exceed its powers in approving this arrangement nor did it need an amendment of the rules pursuant to rule 30 in order to give effect to this arrangement. I find that the EC was in effect doing nothing more than approving a variation of the similar administrative practice that existed whilst Mr Baker was the General Manager. It was no doubt intended that Ms Pickford, as a solicitor, would have a higher profile generally and would continue to assist Union members with legal matters, but I find that these higher level functions were not such as to usurp the role of the General Secretary or to supplant him de facto. In my judgement, the Union did not require to make a rule change pursuant to rule 30 in order to introduce the changed arrangements which came about following the employment of Ms Pickford by the Association as its COO .
34. For the above reason, I would dismiss the substance of Captain Loraine's complaint that on 20 February 2012 the Union allegedly breached rule 30 of its rules by creating the post of Chief Operating Officer without altering its rules to create the post.



**David Cockburn**  
**The Certification Officer**