

In the Matter of

**The Removal from the List of Trade Unions
Of the
Door Supervisors Union**

APPENDIX

This appendix contains the reasons for the decision to remove the Door Supervisors Union for the list of trade unions as contained in a letter from the Certification Officer to the Door Supervisors Union dated 28 February 2013.

In the matter of

CO/L/5/12-13

**The Removal from the List of Trade Unions
of the
Door Supervisors Union**

Date of Decision/Removal

28 March 2013

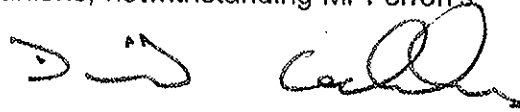
DECISION

Pursuant to section 4 of the Trade Union Labour Relations(Consolidation) Act 1992 ("the 1992 Act")

I remove the Door Supervisors Union from the list of trade unions on the grounds that it is not a trade union.

REASONS

1. By a letter dated 28 February 2013 I informed Mr M Ferron, of the Door Supervisors Union that I had concluded that the Door Supervisors Union (the "DSU") did not satisfy the definition of a trade union in section 1 of the 1992 Act and that I intended to remove the DSU from the list on 28 March 2013, pursuant to section 4 of that Act.
2. In accordance with section 4(2) of the 1992 Act, my letter of 28 February 2013 gave the DSU 28 days to make representations to me prior to the date on which I intended to remove it from the list. On 28 March 2013 I received a letter from Mr Ferron dated 26 March in which he makes representations as to why I should not remove the DSU from the list of trade unions. I have considered those representations but find that they add nothing of substance to the representations I had previously considered. Indeed, Mr Ferron confirms that "*Castle Associates is a private company....supplying trade union representatives to individuals.....*" and comments that in accompanying workers at internal grievance and disciplinary hearings "*unions have a real monopoly here*". In as much as Mr Ferron asserts that the DSU can change in the future, it is my duty to consider whether the DSU is currently a trade union, not at some point in the future.
3. In my letter to the DSU of 28 February 2013 I set out the reasons for my decision that the DSU no longer satisfies the definition of a trade union. I attach a copy of my letter of 28 February as an Appendix to this decision. The reasons set out in that letter remain the reasons for my decision to remove the DSU from the list of trade unions, notwithstanding Mr Ferron's letter of 26 March.



David Cockburn
The Certification Officer.



for Trade Unions
& Employers'
Associations

Mr Mark Ferron
Door Supervisors Union
PO Box 9578
Nottingham
NG2 9GT

Your
ref:
Our ref: CO/02/90-10
Date: 28 February 2013

By post and email

Dear Mr Ferron

The Door Supervisors Union

I refer to the meeting at my office on 1 February 2013 at which were present myself, my Assistant Certification Officer, Mr Walker, and the Case Officer, Ms Halai, together with yourself and Mr Ian Ferron, your brother.

The purpose of the meeting was to bring to a conclusion, if possible, the review of the status of the Door Supervisors Union ("the DSU") as a trade union which began in May 2011. Since that time there has been a considerable amount of correspondence between my office and the DSU and a meeting at these offices on 11 October 2011 at which were present Mr Walker and Ms Halai together with yourself, Mr Ian Ferron and Mr Kim Smith. At our recent meeting you were invited to explain the work and structure of the DSU and why I should not exercise my discretion to remove it from the list of trade unions that I keep pursuant to section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

As you are aware, in order to be listed as a trade union, an organisation must satisfy the definition in section 1 of the 1992 Act. This provides

1. Meaning of "Trade Union"

In this Act a "Trade Union" means an organisation (whether temporary or permanent) –

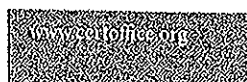
(a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or

(b) ..."

Having considered your written and oral representations, I have concluded, on all the

22nd Floor, Euston Tower,
286 Euston Road,
London NW1 3JJ

Tel: 020 7210 3734
Fax: 020 7210 3612



material presently before me, that the DSU does not satisfy the statutory definition of a trade union for the reasons set out below. Accordingly, pursuant to section 4 of the 1992 Act and subject to any further representations that you may make by 28 March 2013, it is my intention to remove the name of the DSU from the list of trade unions on 28 March.

Reasons

1. The DSU was formed on 1 June 2009 and, following a meeting between yourself and Mr Walker on 10 August, was entered on the list of trade unions on 20 August 2009. Mr Walker was aware at that time of the existence of Castle Associates as a commercial enterprise (see below) but accepted your assurance that the DSU was completely separate from that enterprise.
2. This review of the status of the DSU follows the receipt by my office of a letter from E.A.D solicitors dated 12 May 2011. These solicitors, upon the instructions of Unite the Union, queried whether Castle Associates was wrongly holding itself out as a trade union and invited me to review my decision to list the DSU as a union. My office wrote to you on 20 May asking various questions "*In order for the Certification Officer to determine whether the DSU is a Union within the definition of the 1992 Act*". There ensued a considerable exchange of correspondence and two meetings prior to this letter.
3. My enquiries sought, inter alia, to elicit the nature of the relationship between Castle Associates and the DSU and so inform my determination whether or not the principal purposes of the DSU included the regulation of relations between workers and employers. Following the listing of the DSU I became increasingly aware that representatives of the DSU were being used by Castle Associates to represent its fee paying clients in internal grievance and disciplinary hearings at their places of work.
4. To understand the relationship between the DSU and Castle Associates, it is necessary to examine the origins of both organisations. You informed me that you were from the beginning, and that you remain, the prime mover behind them both. It is therefore necessary to also examine your early involvement in them.
5. Between about 1992 and 2009 you worked as a fire fighter in Derbyshire and were active in the FBU, serving both as the brigade secretary and chair, amongst other positions. I understand that you were considered to be very good at representing your members. Furthering your interests, you studied at Nottingham Trent University between 2003 and 2007 and obtained a degree in law. Whilst employed as a fire fighter you took other part time work. You worked as a door supervisor (bouncer), a gardener and represented workers outside the Fire Service at internal grievance and disciplinary hearings. In representing workers outside the Fire Service, you sought to take advantage of

the statutory right of workers to be accompanied at internal grievance and disciplinary hearings contained in section 10 of the Employment Relations Act 1999 ("the 1999 Act"). To this end, you obtained a letter from a senior FBU colleague which you could use to certify that you were a suitably experienced and trained official of a trade union. With such a letter/certificate from the FBU, you considered that you had a statutory right to accompany non-FBU members in internal workplace disputes and you did so.

6. In about 2008, you set up, with your brother Leigh Ferron, a small business to pursue your representational activities outside the FBU. You called this business Castle Associates. Leigh Ferron works for an airline and is a lay official of Unite the Union. A website for Castle Associates was set up which stated that its "Team" was Leigh Ferron and Kim Smith. Mr Smith is a very experienced and respected former lay official of the FBU who retired from the Fire Service in about 2004. You explained that it was never intended that Mr Smith would do representational work for Castle Associates but you hoped that his inclusion in "the Team" would add weight to the enterprise. You chose not to have your photo on the website nor be included in "the Team" as there were at that time issues at work about your outside activities. The website of Castle Associates stated, amongst other things, *"We will provide you with a Trade Union Representative who will accompany and represent you directly at your place of work, giving you the support and help when it is most needed"*. It also stated *"All our Trade Union Representatives are professional, independent and impartial and you can talk to them in complete confidence"*. This service was provided for an hourly based fee, after an initial free telephone call.
7. In 2009 you left the Fire Service with a compromise agreement and then made your living for a time by a mixture of representational work with Castle Associates and door supervision. You told me that you obtained your licence to be a door supervisor in 2003 and continued doing this work on a part time basis until 2011. Your licence ran out in 2012. You further informed me of your strongly held views about the working conditions of door supervisors, who are normally casual staff contracted by people other than the owner of the venue. You stated that they often work alone in vulnerable situations and that local authority rules and guidance are often unsatisfactory. You informed me that it was against this background that you established the DSU on 1 June 2009 with Mr Dave Worster. Mr Worster had a business background and you stated that you involved him as a friend who would help steer the DSU as an organisation. You further stated that Mr Worster has no executive capacity within the DSU but attends meetings to give you the benefit of his experience and views.
8. The original rules of the DSU provided that there was to be an Executive Council ("EC") consisting of the two founding members for the first year. The rules, as amended in February 2012, provide for an EC of five members, elected

every 4 years, and meeting no less than three times a year. There were four meetings of the EC between June 2009 and March 2011 but you informed me that the organisation was so small that it was essentially run through informal telephone calls and meetings. At the minuted meetings in October 2009, June 2010 and November 2010, the members of the EC were yourself and Mr Worster. At the last of these meetings, Mr Kim Smith was appointed General Secretary and your other brother Mr Ian Ferron, was appointed to the EC. Mr Ian Ferron is employed in the security industry but not as a door supervisor. His role was to assist with the administration generally. He was not to represent members. During this period membership application forms were prepared, a website and Facebook presence was arranged, subscriptions were set at £10 per month and an insurance policy with the Abbey Life was put in place which provided members benefits. At this time the DSU shared a Post Office Box with Castle Associates.

9. The DSU submitted an annual return (AR21) to my office for the period June 2009 – December 2010. This showed that, as at 31 December 2010, the DSU had 16 members, a subscription income of £490 and expenditure of £1,472. The main expenditure was £1,050 for the insurance policy, which had been covered by donations of £1,000.
10. On 15 April 2011, Castle Associates Employment Law Limited was incorporated. You are its sole shareholder and director. You stated that the business of Castle Associates (the firm) was increasing and the company was formed as you wished to avoid personal liability.
11. In May 2011 my office received the letter from EAD Solicitors referred to in paragraph 2 above. I was invited to review my decision to list the DSU as a trade union. This was one of a number of queries that my office had received (and were to receive) about Castle Associates and the DSU. These included:
 - 11.1. In November 2009 my office received a query from an airline in relation to an employee who was being disciplined and who had contacted Castle Associates. You were put forward as the representative and it was said that you relied upon your FBU credentials to accompany the worker. The airline stated that it had contacted the FBU and was told that this was inappropriate. When you were told this you stated that you were also a representative of the DSU and produced a letter of accreditation signed by Mr Worster. My office informed the airline that the DSU was on the list of trade unions.
 - 11.2. In May 2010 an HR consultancy representing an employer queried the status of someone purported to be accredited by the DSU. When this person was asked for further identification he produced the business

card of a private consultancy.

- 11.3. In July 2011 a member of the public enquired about the DSU on the basis that she had been given its number by Castle Associates.
- 11.4. In August 2011 an NHS Trust informed my office that someone from the DSU was seeking to represent a nurse but, upon enquiry, it discovered that its PO box address was the same as Castle Associates which had previously attempted to represent a different nurse in their employment for a fee. The representative was David Hosking LLB (Hons) PG Dip BVC, who had emailed the employer from a Castle Associates email address.
- 11.5. In August 2011 a car dealer in Enfield enquired about a DSU rep who had presented both a letter of accreditation from the DSU and a business card from Castle Associates. The car dealer had attempted to phone the DSU for a few days but had not been able to get through.
- 11.6. In August 2011 a local authority telephoned my office to check if Castle Associates was a listed trade union as a potential representative had approached them asserting that Castle Associates was a "certified trade union".
- 11.7. In September 2011 an employer enquired about the status of Castle Associates. The employer stated that a Mr Trevor Knowles-Oluwu had represented one of its employees and, when asked which union he was from, had said Castle Associates. Mr Knowles-Oluwu has been named by the DSU as one of its representatives.
- 11.8. In September 2011 a health organisation queried the accreditation given by DSU to a Mr Patzer on the grounds that "all web addresses and further investigations we have done come back to Castle Associates". The email sent by Mr Patzer to this employer came from a Castle Associates email address.
- 11.9. In October 2011, a technical facilities management company queried the status of Mr Knowles-Oluwu on the basis that their initial contact from him was via a Castle Associates email address.
- 11.10. In July 2012 a consultant who was representing an employer, telephoned my office to report that an employee being disciplined had been represented by Mr Hosking, with DSU accreditation, but that it had become clear during the hearing that the employee not a union member but was paying a fee for being represented, which he had considered

well worth paying.

- 11.11. My office also received a number of other enquiries from employers asking whether the DSU was a trade union. Employees were seeking to be represented by someone with DSU credentials but the employers were unaware that the DSU was a trade union. Enquiries were received from Derbyshire County Council in January 2010; South Nottingham College in May 2010, the Metropolitan Police Service in May 2011, the British Red Cross in August 2011 and a clothing retailer in August 2011. My office confirmed that the DSU was on the list of trade unions.

I do not rely on any of these enquiries as the basis of my decision. They are rather background matters which contributed to or reinforced my decision to review the status of the DSU.

12. As part of this review, my office considered the website of Castle Associates, after its incorporation. This contained, and still contains the following statements:

"We can provide you with an expert trade union representative, even if you are not in a union"

"We will provide you with a professional Trade Union Representative, who will accompany and represent you directly at your own place of work ..."

"Castle Associates have a wide range of expert trade union representatives who will be able to give employment advice, accompany and represent you at your place of work, even if you are not in a union. We have based our business on providing professional trade union representation for our clients and commercial partners"

"All our trade union representatives have specialist skills, experts in their field ready to provide advice on a range of employment issues you may have, whether a grievance, discipline or redundancy problem."

"Our trade union representatives have a long track record of successfully representing employees at their place of work ..."

"We can provide you with a trade union representative who specialises in accompanying employees during the grievance process even if you are not in a union."

"Please contact us, with no obligation, to see how our expert trade union representatives might be able to support and accompany you at your place of work to try and resolve the problem."

"You are entitled to use our expert trade union officials"

"We will accompany you personally to your place of work and represent you during any disciplinary and grievance hearings."

"We charge an hourly rate, with the first 30 minute consultation being free of charge".

13. You emphasised that Castle Associates Ltd and the DSU are two completely separate organisations but accepted that you are the main person in them both. You stated that Castle Associates Ltd employs four people and is now your only source of income. Castle Associates Ltd is diversifying from just representing workers to providing more services aimed at employers, in particular training, with which Mr Kim Smith is especially qualified to assist. You further stated your hope that as the DSU becomes more established, you will be able to gradually withdraw from active involvement. You stated that one of the main problems facing the DSU is getting people to do the necessary work for it. You have sought to get volunteers, without much success. As a result, the DSU is effectively run by yourself with the assistance of your two brothers, Leigh and Ian, and occasional guidance from Mr Worster.
14. Mr Leigh Ferron joined the EC of the DSU at its meeting on 9 July 2011. He is described in the minutes of that meeting as a volunteer. At a meeting of the EC on 5 November 2011, Mr Kim Smith announced his intention to stand down as General Secretary due to his other commitments and Mr Leigh Ferron was appointed interim General Secretary at a general meeting on 18 February 2012, which position he still holds. The current members of the EC are yourself, Mr Ian Ferron and Mr Worster.
15. In its Annual Return (AR21) for the period ending 31 December 2011, the DSU declared that it had 24 members, subscription income of £1,140 and expenditure of £1,630. Its main expenditure was again in respect of its insurance policy, the premium of which was £1,060. The DSU was, however, able to declare a surplus of £310 as it had received donations from two members which totalled £800.
16. You stated that you thought the DSU currently has about 40 members but that it was difficult for you to ascertain if these were all paying members as they frequently complete a membership application form but omit to return the

standing order form to their bank. At our meeting on 2 February you stated that you would supply a copy of the membership forms of all current members, redacted as you considered appropriate, but no such forms have been received.

17. You stated that there is no local organisation of members and that the union operates mainly by informal contacts between the three brothers, with the occasional minuted meeting with Mr Worster. Nevertheless, I was shown a map of Great Britain divided into 11 regions with DSU reps being found in all but four regions. By a letter dated 20 July 2012 you informed me that there were 16 representatives, in addition to yourself and Mr Leigh Ferron, who could perform representational duties.
18. My office has repeatedly asked the DSU what collective bargaining or collective representations the union has conducted for its members. You frankly stated at our meeting that there has been none. In correspondence you have referred to approaches that you have made to six employers with a view to building a relationship with them but that each of your attempts has failed. You have also observed that the DSU is listed as a stakeholder by the Security Industries Association.
19. My office has similarly asked the DSU from time to time what it has done to support its individual members in the period of over 3½ years since June 2009. Until December 2012, the only acts of direct assistance that you notified to us were as follows:
 - 19.1. February 2010 – writing to the National Insurance Fund on behalf of a partner of a member whose employer had gone into liquidation.
 - 19.2. July 2010 – providing support to a member during redundancy consultation.
 - 19.3. November 2011 – providing support to a member in a disciplinary hearing.
 - 19.4. November 2011 – recovering money from a member stabbed at work.

By a letter dated 4 December 2012 you referred to providing the following further assistance:

- 19.5. 2011/2012 – supporting a member in Bristol who had been dismissed.
 - 19.6. 2012 – supporting a member in London at a disciplinary hearing.
 - 19.7. 2012 – supporting a member in Nottingham at a disciplinary and grievance hearing.
 - 19.8. 2012 – supporting a member in London during a redundancy process.
 - 19.9. Members used the Abbey Life helpline for advice.
20. You frankly accepted that DSU representatives are used by Castle Associates Ltd to represent its clients at grievance and disciplinary hearings on the basis of

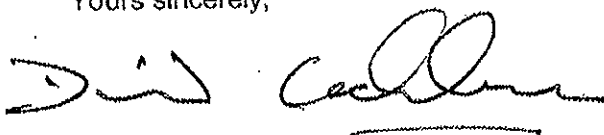
their DSU credentials. You stated that Castle Associates Ltd has about 35 representatives on its books who have accreditation from their respective unions such as UNISON, Unite, GMB and FBU, who can be called upon from time to time. In these cases, the individual representatives received payment directly from Castle Associates Ltd, with no benefit to the DSU. You stated that you have found the current DSU representatives partly through networking and partly through advertising on the Gumtree website.

21. On the above facts, I am satisfied that the DSU is an organisation which consists of workers. My concern is whether its principal purposes include the regulation of relations between workers and employers, as required by the statutory definition.
22. In considering this issue, I have had regard to the rules of the DSU as amended in February 2012. In particular I have had regard to rule 3 which provides the objectives of the union. By rule 3(1) it is an objective "To organise door supervisors in order to further better terms and conditions of employment". By rule 3(2) its an objective "To secure unity of action in order to improve the position and status of members". By rule 3(3) it is an objective "To help and support members with disputes and differences with their employers". Notwithstanding these express objectives, I must have regard to the reality of the situation, whilst acknowledging that the express "objectives" should not be overridden unless I find that the case to do so is compelling. I have also had regard to the activities of the DSU since its foundation in 2009.
23. You volunteered that you are the prime mover behind both the DSU and Castle Associates Ltd, both of which organisations provide representation to workers. Castle Associates Ltd does so for a fee but has no right to accredit representatives to accompany workers at grievance and disciplinary hearings under section 10 of the 1999 Act. The DSU has the benefit of section 10 to accompany workers at these meetings with employers through its employed officials and any other officials who have been correctly certified by the union. You accepted that DSU accredited representatives regularly accompany the clients of Castle Associates Ltd at meetings with their employers, from which arrangement you gain as the owner and managing director of Castle Associates Ltd. Given the common genesis of Castle Associates and the DSU, it is not surprising that they initially shared a Post Office Box and many of the same people have been involved in both organisations. Should you be approached by a person seeking representation at a grievance or disciplinary hearing, you would have to decide whether to channel that person in the direction of Castle Associates Ltd or the DSU. In this regard it would be naive to imagine that commercial considerations would be irrelevant. On the basis of all the facts before me, I find that the line between the two organisations is in reality so indistinct as to drive me to the conclusion that the principal purpose of the DSU

is to provide section 10 accreditation for the benefit of Castle Associates Ltd and that the regulation of relations between workers and employers, as expressed in the definition of a trade union, is not a principle purpose. I find support for this conclusion in the total absence of any collective bargaining since the formation of the DSU, the very limited support for members that has been given and the failure to hold elections in accordance with its rules.

24. Since the enactment of section 10 of the 1999 Act, there have been a number of attempts by commercial organisations to hold themselves out as trade unions in their own right or as having access to representatives accredited by a listed union. They do so in order to attract a new type of business that was not previously available to them. Section 10 enables workers to be accompanied by a trade union at certain meetings with management even though the worker may not be a member of the chosen trade union and the trade union may not be recognised by that employer. Section 10 may therefore assist trade unions indirectly in their attempts to gain members in a particular workplace and/or gain recognition from that employer. I do not take it that the purpose of section 10 is to enable the direct or indirect commercial representation of workers in the workplace, be it by solicitors or consultants or other forms of professional representation. In my judgement the establishment of a putative trade union in circumstances in which the rights afforded by section 10 are likely to be abused requires careful examination and if, upon examination, I am satisfied that a putative union has been created for the commercial benefit of others, I am as here, compelled to the conclusion, adopting a purposive interpretation of the definition of a trade union, that its principal purposes do not include the regulation of relations as provided for in that definition.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Cockburn', written over a horizontal line.

David Cockburn
The Certification Officer