

**An Application to be listed as a Trade Union  
by Advocate**

Under section 3(3) of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Certification Officer refused the application by Advocate to be entered in the list of trade unions for the reasons contained in a letter from the Certification Officer to Advocate dated 22 March 2012, appended hereto.



Ms S Ellis  
Principal Counsel  
Advocate  
Ruskin Drive  
Dentons Garden  
St Helens  
WA10 6RP

Your ref:  
Our ref: COT/08/11-12  
Date: 22 March 2012

Dear Ms Ellis

**Advocate - Application to be listed as a Trade Union**

I refer to your application for Advocate to be entered in the list of trade unions kept in accordance with section 2 of the Trade Union & Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

I have now considered the materials you have provided, the materials on the Advocate and other websites and the information you provided at the meeting with Mr Walker and Ms Halai of this office on 17 February.

I regret to have to inform you that I have decided that Advocate is not a trade union as defined in section 1 of the 1992 Act and therefore does not meet the requirement for listing which is set out in section 3(3)(a) of that Act.

**Reasons**

1. The definition of a trade union in section 1(a) of the 1992 Act is as follows:

*"1. 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) ..."*

2. In deciding that Advocate does not satisfy this definition, I have had regard to the following matters:

3. The rule book that you presented to the Certification Officer on or about 17 October 2011 for a preliminary consideration did not appear compatible with Advocate being a trade union. For example, under the heading "Our Purposes" it stated that Advocate would not campaign or bargain over collective terms and conditions, that it would never call for strike action and referred to members as 'clients'. Under the heading "Aims", it stated an aim as being to "represent any employee, regardless of whether

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they are a member or not". Under the heading of "Registration with the Certification Office" it stated that it would not be applying for listing as it wanted to distance itself from the image/connotation of traditional unions.

4. From an examination of the Advocate website, my office observed that Advocate described itself as an "employment law membership service". It envisaged working for members and non-members and envisaged referrals from solicitors. It was also observed from your LinkedIn profile that you are an HR professional, being a Fellow of the Chartered Institute of Personnel & Development, and a director of Ellis Solutions Limited, a company established for interim HR work, amongst other things.
5. The above characteristics gave rise to a concern by my office that Advocate may not be a trade union within the statutory definition, but an organisation established with the intention of taking advantage of section 10 of the Employment Relations Act 1999 by purporting to be a trade union. By this provision, an employer must permit a worker to be accompanied at a disciplinary or grievance hearing if the companion is:
  - (a) employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the 1992 Act;
  - (b) an official of a trade union (within that meaning) whom the Union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or
  - (c) another of the employers' workers.

Before this provision was enacted, employers had a right to exclude any representative of a worker at a disciplinary or grievance hearing. The generally understood purpose for enacting this provision was to enable unions to represent members in workplaces in which they were not recognised and so potentially improve their position to obtain voluntary or compulsory recognition. Section 10 was not drafted so as to allow workers to be represented at internal disciplinary or grievance hearings by solicitors or consultants, such outside representations being opposed by most employers and employers' associations. The concerns of my office were expressed to Advocate in a letter dated 27 October 2011.

6. Notwithstanding these concerns, a formal application to be listed was received from Advocate on 30 November. The rules that accompanied this application had been amended from those previously submitted. The section headed "Our Purposes" had been removed and the section headed "Aims" had been amended to include the following aims:
  - to represent and act on behalf of our members according to their collective instructions;
  - to establish negotiations with employers to achieve the best possible terms and conditions for our members;
  - to recruit members through providing a service which is both excellent in its

individual and collective customer response, as well as providing excellent value for money.

The website of Advocate had also been amended. On the page headed "What We Can Do" there now appeared the following, "*Negotiating with an employer. We are happy to help negotiate with an employer on your behalf or on behalf of your work colleagues. We can also support you with employer disputes*".

7. On 8 December 2011 my office wrote to Advocate seeking, amongst other things, details of any negotiations that it had undertaken or intended to undertake with employers. You responded stating that you intended to approach two organisations in the New Year for voluntary recognition. This was followed up at our meeting on 17 February, but no substantive developments were reported.
8. You submitted further documents to my office on 17 January 2012 and a careful reconsideration of the whole of the available material was carried out.
9. From the membership application form, it appears that a person might apply for any of four different levels of "cover", with the annual cost being different if the application is for a single person, a couple or a family. The four different levels of cover and annual cost for a single person are as follows:
  - **Remote:** Unlimited telephone and email advice and case management: £40
  - **Represent:** Remote cover plus expert representation at your place of work: £60
  - **Relax:** Represent cover plus individual wellbeing assessment and stress management programme: £80
  - **Restore:** Our most comprehensive cover – relax, plus individual programme designed to get you back to your best after any formal proceedings (mediation, career coaching ...): £100.

The application form describes Advocate as being an "employment law membership service" and begins by explaining the right to be accompanied in disciplinary and grievance hearings "in line with the ACAS Code of Practice". It emphasises the helpfulness of independent expert legal advice and has tick-boxes enabling marketing information to be sent from 'approved Advocate providers and/or other relevant third parties'. The application form also states that Advocate "can help you to ask for a better salary or for flexible working or to tackle bullying".

10. From the Advocate website, the following features were observed:
  - 10.1 The strap line on most of the web pages states 'You do not need to be a member of a trade union to get help from us'.
  - 10.2 On its Home page it states 'You can become a member to ensure you have employment law advice and guidance throughout your working life. If you

don't choose the membership route, you can still access our services on a pay-as-you-go basis'.

- 10.3 On its Recruitment page, it states that Advocate is always looking for excellent freelance Employee Representatives. It does not require applicants to have any industrial relations experience or training. There is no reference to the person being or becoming an official of the 'union'. There is continued reference to 'clients', rather than members.
  - 10.4 On its Membership page, it offers an employment membership service 'from just £40 a year'. This page does, however, state 'You will have the opportunity to vote on subscription levels and all major service policies', which applies to all categories of members other than 'Remote'.
  - 10.5 On its "Why You Need Us" page, it concentrates on disciplinary and grievance hearings.
  - 10.6 On its "What We Can Do" page, it concentrates on the provision of "your own professional representative", although it also states that it "would be happy to help negotiate with an employer on your behalf ...".
  - 10.7 The "FAQ" page also deals mainly with issues of individual representation.
  - 10.8 The "Contact us" page provides for solicitor referrals.
11. A search of the status of Advocate on its Facebook pages reveals that it can "provide you with your own professional trade union representative, we will accompany and represent you directly at your place of work ...".
  12. In order to consider this matter further, I instructed that a visit be made to the offices of Advocate in Saint Helens. Such a visit took place on 17 February 2012. Those present at the meeting were Gerard Walker (Assistant Certification Officer), Shanta Halai (Operations Manager at the Certification Office), yourself and (in part) Louise Edwards.
  13. You explained that your catalyst for setting up Advocate was a combination of your experience in a job in which you said that you had been "pushed out" and a job advert for Castle Associates. You stated that you had seen a job advertisement on the Job Centre Plus website for a trade union representative to work for Castle Associates. Castle Associates is a consultancy, not a trade union. You said that you applied and had a telephone interview but did not take up the job. You stated that these events influenced you to set up an organisation which you see as being different from a traditional trade union and which will represent workers. You appeared to disapprove of Castle Associates being organised to give advice to workers as a commercial entity. You stated that you had decided to set up Advocate so that it was owned by its members and any money made is used to enhance the benefits for its membership. It was your intention to draw a salary from Advocate when it is financially feasible to do so. You believed that Advocate offers an alternative to traditional trade unions; not being politically affiliated and being a "non aggressive" organisation which will not take industrial action. Further, you informed my colleagues that you set up Advocate with four other members. They are Louise Edwards, Terry Burdaky, Mr P. Burdaky and Mr A Posser, who together form the

Executive Board. Mr Terry Burdaky is the Chair and you are the Principal Counsel. Mr Terry Burdaky is also the secretary of Ellis Solutions Limited. You stated that you would be the only member of the Executive Board who is qualified to represent members because of your HR background. You stated that by having pay-as-you-go clients, the fees or subscriptions for members can be kept low. You hoped that the pay-as-you-go clients will eventually convert to fee paying members. You envisaged from the outset that there would be a 50/50 split between pay-as-you-go clients and fee paying members, with a greater proportion of fee paying members over a period of time. As for the pay-as-you-go clients, you said that Advocate would provide a quotation and half the fee would be payable up front. The remainder would be paid when the work was completed. You said that Advocate would recruit representatives for pay-as-you-go clients and assign them work as necessary. These representatives would not normally be, nor need to be, members of Advocates. They would be paid a fee for their services, on an assignment by assignment basis. You said that at the time of the formation of Advocate in October 2011 it had 50 expressions of interest from potential members. By February 2012 it had 15 paying members and you are aware of 10 individuals who want to join as members of the counselling service. You said that by February 2012 Advocate had £224 in its bank. You also said that by February 2012 Advocate had handled two requests for representation; one being made through the Advocate website and the other through a solicitor referral. In one instance you said that Advocate was not allowed to represent at the workplace hearing because the employer took the view that it was not a trade union and in the other, you were allowed to do so without the employer having made any checks.

14. After this meeting you provided copies of materials that Advocate had circulated to CABx and solicitors. The circular to CABx states: 'We act like a trade union'. It emphasises that only trade union representatives can attend internal formal workplace meetings and offers to donate £20 to the CAB for each referral Advocate deals with. The pro forma letter to solicitors seeks reciprocal referral arrangements. Advocate offers to provide solicitors with 'cover at hearings' and states that it will 'signpost back to yourself' when a client requires further support, 'such as in a compromise or the start of tribunal proceedings'.
15. On the basis of the information before me, I find that Advocate fulfils some of the requirements of the definition of a trade union in the 1992 Act. I find that it is organisation by virtue of its rules and its nascent Executive Board and I find that it consists wholly or mainly of workers of one or more descriptions. However, I do not find that its principal purposes include the regulation of relations between workers of those descriptions and employers or employers associations.
16. In my judgement, Advocate correctly describes itself as an employment law membership service. I find that Advocate was conceived as such a service, as is seen from the original rules that were presented to the Certification Office and as is indicated by the HR background of yourself. I have had regard to the changes that were made to the rules by the time of the formal application for listing on 30 November 2011 but I find that these amendments were intended to deal with the

concerns that had been expressed by the Certification Office. I find that they do not evidence a fundamental change in the nature of the organisation. There was no evidence that the rule changes were made in accordance with the rules' revision mechanism of the previous rules. In my judgement, these amendments do not, in themselves, have the effect of making the regulations of relations one of the principal purposes of the organisation. This finding is confirmed by my examination of the materials available to me as a whole. The language of those materials is substantially more consistent with an employment law membership service, as are its attempts to seek referrals from solicitors and CABx.

17. For the above reasons, I refuse the application by Advocate to be entered in the list of trade unions.
18. You have a right to appeal against this decision to the Employment Appeal Tribunal (EAT) on a question of law. Any such appeal must be lodged within 42 days of the date the written record of the Certification Officer's decision is sent to the parties. The EAT's address is: Second Floor, Fleetbank House, 2-6 Salisbury Square, London, EC4Y (020 7273 1041/1044). Further information about the EAT can be found on its web site, [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/employment-appeals](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/employment-appeals)

Yours sincerely,

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

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