

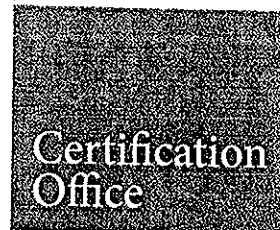
In the Matter

CO/L/1/12-13

**An Application to be listed as a Trade Union  
by LinkedUp-The Modern Union**

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

The Certification Officer refused the application by LinkedUp- The Modern Union to be entered in the list of trade unions for the reasons contained in a letter from the Certification Officer to LinkedUp dated 31 August 2012, appended hereto.



for Trade Unions  
& Employers'  
Associations

Mr S Ryan  
LinkedUp - The Modern Union  
23a Stow Road  
Spaldwich  
Cambridgeshire  
PE28 0TE

Your ref:  
Our ref: COT/10/11-12  
Date: 31 August 2012

Dear Mr Ryan

**Application for Listing  
LinkedUp – The Modern Union**

I refer to the meeting at my office on 17 August at which were present myself, my Assistant Certification Officer, Mr Walker and yourself. I wish to thank you for your openness and candour at our meeting.

The purpose of our meeting was for me to gain a better understanding of your application on behalf of 'LinkedUp – The Modern Union' ("LinkedUp") for it to be listed as a trade union under section 3 of 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 that 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) *..."*

Your application was made on 23 February 2012. Since then, my office has sought written clarification on a number of points. Mr Walker and Ms Halai met you in the Old Bridge Hotel, Huntingdon on 30 April, arising out of which there was further correspondence, culminating in your letter to Mr Walker of 19 July.

Having now considered your application in the light of the material before me, I have concluded that LinkedUp does not satisfy the statutory definition of a trade union for the reasons set out below. Accordingly, your application for LinkedUp to be listed as a trade union is rejected.

**Reasons**

1. The genesis of LinkedUp is unusual for an organisation which seeks to be listed as a trade union and it is relevant to my determination of its status.

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2. I find that you have been the leading figure in the formation of LinkedUp, aided to a lesser extent by Mr Keith Spurr, and accordingly it is relevant to consider your background and how you came to make this application on behalf of LinkedUp.
3. I note that between 1993 and 2005 you were a trade union officer with the GMB and the Furniture Trades & Allied Trade Union. Upon leaving that employment in 2005, you naturally sought to use your undoubted expertise in industrial and employment relations to earn a living.
4. You informed me that in 2005 you set up Employment Law Advisory Services Limited ("ELAS") the name of which you changed in 2006 to Employment Relations Advisory Services ("ERAS") and which business you continued under the name of Employment Relations Advice & Solutions Limited ("ERAS Limited") after it was registered at Companies House on 16 January 2010. You stated that since 2005 the majority of your income has been generated through these businesses, however described.
5. You informed me that in the last seven years you have tried a number of business models which sought to exploit your expertise and your contacts in the Huntingdon/Peterborough area. You initially attempted to secure subscriptions from the local branches of unions which were dissatisfied with the level of services being provided by their own head offices. This idea did not take off. You developed a relationship with a company with a national presence and assisted it and its employees comply with the consultation requirements for collective redundancies. You developed relationships with two trade unions, the Independent Democratic Union ("IDU") and Community, whereby you would assist them with recruitment and individual representation. Your representational activities made use of the statutory right for workers to be accompanied by a trade union in certain meetings with their employer that was created by section 10 of the Employment Relations Act 1999, ("the 1999 Act"). In most cases you would invoice the relevant union at an agreed hourly rate. In some cases you would be paid half an annual subscription per member recruited. At one time you said you were recruiting about 800 members a year for a particular union client. In this way, you continued to develop your contacts and your reputation and, as a result, individuals and businesses also contacted you directly. You also entered into arrangements with local solicitors whereby they would refer individuals to you, for whom you would act for a 33% contingency, where appropriate. This business continues to be run by you from your home as ERAS Ltd and is promoted by its own website. You stated that 50% of its income is derived from retained companies, 20% from companies that approach you on an ad hoc basis and the remainder from individuals.
6. In the process of developing Employment Relations Advisory Services Ltd

you entered into a business arrangement with a partner, primarily with a view to extending its representational activities, and in so doing, ceded 50% of its equity to your commercial partner. This association did not succeed and you were required once again to rebuild your business. By about mid 2009 you were considering that you might roll out the work you were doing for the IDU and Community to other unions and individuals, being paid on a daily or half day rate. You worked with Mr Spurr in the development of Employment Relations Union Support Services Limited ("ERUSS"), which you registered as a company on 9 November 2009. This had its own relatively sophisticated website, albeit with spelling errors, which promoted a business called "Accompaniment4u.com". The website states that it is part of the Offinis Group of Companies. The website of Offinis states "*We are the only organisation in the UK who can actually accompany employees into disciplinary, grievance or redundancy meetings*". Relatively quickly, you had a difference of opinion with Offinis as to the way forward and you informed me that the business never 'went live'. It is nevertheless clear from the website that the main thrust of the services to be offered was representation in discipline, grievance and redundancy situations. The website sets out at length the rights available to workers to be accompanied at grievance and disciplinary hearings under section 10 of the 1999 Act.

7. You registered ERAS Limited as a company on 16 January 2010 and informed me that since 2010 almost all your income has come through ERAS Limited.
8. During the following 18 months your arrangements with first the IDU and then with Community came to an end. Whilst representing the members of these unions, you stated that you were "accredited" by them to represent their members. No such "accreditation" was possible after these arrangements ended. I observe in passing that such accreditation would not appear to satisfy the requirements of section 10(3) of the 1999 Act.
9. It was also during this period that you stated that you discussed setting up a new union with Mr Spurr. By 29 September 2011, you had made an application for ERUSS Limited to be voluntarily struck off the register at Companies House and it was formally dissolved on 31 January 2012. Coincidentally you were approached to facilitate a TUPE transfer of a cosmetic surgery business associated with Braintree Hospital. After a period of preparatory work, the transfer was effected in November 2011. You stated that a number of individual workers involved in this transfer suggested that you set up a union and you have provided my office with ten forms which purport to be application forms to join ERUSS. You stated that at that time there was no rule book and no person paid any contributions.
10. Over December 2011 and January 2012 you stated that you had periodic meetings with Mr Spurr to plan setting up a union and contacted as many people as you thought might be interested with an invitation to an inaugural

meeting.

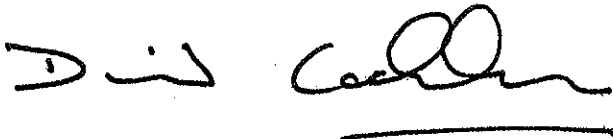
11. The inaugural meeting took place at The Old Bridge Hotel, Huntingdon on 21 February 2012. There were 13 attendees, including yourself, your wife, your two daughters and Mr Spurr. My office has been provided with 11 forms which purport to be membership application forms signed by those present to join ERUSS. No contributions were collected but five or six of those present each gave £12 to help fund the application fee required by my office to be listed as trade union. There were a number of votes taken. It was agreed to accept the rules that you had produced. It was agreed to change the name from ERUSS (the name you originally envisaged for the proposed union) to LinkedUp - The Modern Union. There was an election of officers. You were elected General Secretary, your daughter was elected Deputy General Secretary and Mr Spurr was elected President.
12. Your application to my office for LinkedUp to be listed as a union is dated 23 February 2012. It gives the date of formation as being 21 February and the number of members as being 13.
13. You have stated that LinkedUp currently has 36 members, with 11 others having already left. You also state that LinkedUp has about £40 in a temporary bank account. You further state that any representations carried out for the members of LinkedUp since 21 February 2012 have been on an individual basis and carried out by yourself or Mr Spurr. This office has received enquiries from two employers who had been approached by LinkedUp seeking to exercise a worker's right to be accompanied under section 10 of the 1999 Act. You have informed us that you have been in contact with 12 companies in order *"to support and assist their industrial relations, employment relations and to represent our members"*. About five employers have allowed a LinkedUp representative to accompany a worker at a meeting with management.
14. In your letter to Mr Walker of 19 July 2012 you state that four individuals had signed application forms to join LinkedUp in June or July 2012. These had also signed the part of the form which authorises a standing order mandate of £10 a month (amended to £5 a month on two forms). You informed me that none of these standing orders had been activated.
15. On the above facts, I am satisfied that LinkedUp is an organisation which consists of workers. My concern is whether its principal purposes include the regulations of relations between workers of that description and employers or employers associations, as required by the statutory definition.
16. In considering this issue, I have had regard to the rules of LinkedUp as supplied by you on 12 March 2012. In particular, I have had regard to rule 3(b) which states in terms that the aims of LinkedUp include *"to regulate*

relations between employees and employers and between employees themselves". Notwithstanding this express "aim", I must have regard to the reality of the situation, whilst acknowledging that the express "aim" should not be overridden unless I find that the case to do so is compelling.

17. On the facts of this case, I find that you are the prime mover behind both LinkedUp and ERAS Limited, both of which organisations provide for the representation of workers. ERAS Limited does so through you for a fee but has no right to accompany workers under section 10 of the 1999 Act. LinkedUp (were it to be a union) would have the benefit of section 10 to accompany workers at certain meetings with employers through its employed officials and any other officials who had been properly certified by the union. I note that you once benefited from the accreditation of the IDU and Community when performing representational duties on behalf of ERAS Limited, whilst apparently not qualifying to do so under section 10(3) of the 1999 Act. Your home is the office of both ERAS Limited and LinkedUp. The telephone number for ERAS Ltd and LinkedUp is the same. Should a person telephone your home to seek representation you would have to decide whether you channeled them in the direction of ERAS Limited or LinkedUp. 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 your different roles is so indistinct as to drive me to the conclusion that the principal purpose of LinkedUp is to provide section 10 accreditation for the benefit of ERAS Limited and not to regulate relations between workers and employers, as expressed in the definition of a trade union.
18. 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 either trade unions in their own right or as being accredited by a listed union in order to attract a new type of business that was not previously available to them. I take it that the purpose of section 10 is to assist workers being 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 thereby 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 judgment, 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 the 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.

19. You have the right to appeal against this decision to the Employment Appeal Tribunal ("the EAT") on a question of law. Any such appeal must be lodged within 42 days of the date of this letter. The EAT's address is: 2<sup>nd</sup> Floor, Fleetbank House, 2-6 Salisbury Square, London EC4 8JX (telephone: 020 7273 1041/1044). Further information about the EAT can be found on its website: [www.justice.gov.uk/tribunals/employment-appeals](http://www.justice.gov.uk/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