



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. M Rolfe

**Respondent:** Prison Governors' Association

**Heard at:** London South, by video

**On:** 26 and 27 February 2024  
18 March 2024 – panel only

**Before:** Employment Judge G Cawthray  
Ms. Jerram  
Ms. Alford

## Representation

**Claimant:** In person, not legally qualified  
**Respondent:** Mr. Brittenden, Counsel

# RESERVED JUDGMENT

The unanimous decision of the Employment Tribunal is that the Claimant's claim for exclusion from trade union membership (section 174 Trade Union & Labour Relations (Consolidation) Act 1992) is not upheld.

# REASONS

## Introduction, Evidence and Procedure

1. This claim had not been case managed. At the start of the hearing a number of matters were discussed.
2. I explained that panel members had not been assigned to the hearing, and although the parties agreed to me hearing the claim alone, it was possible for panel members to be allocated on the first morning of the hearing.
3. Shortly before the hearing the Respondent had made an application to postpone this final hearing. At the outset of the hearing Mr. Brittenden confirmed that the application was no longer pursued and that both parties were ready and able to undertake the final hearing. The Claimant agreed.

4. I discussed the issues with the parties. These are set out below. The Claimant confirmed that he was ready and able to deal with each issues. The parties submitted that a staged approach was appropriate and that if we decided in favour of the Respondent for issue 1, that the claim was out of time, that it would not be necessary to make hypothetical conclusions and similarly if we decided in favour of the Respondent regarding issue 2 it was not necessary to make hypothetical conclusions regarding issue 3.
5. We were provided with a Bundle, a Supplementary Bundle and a Pleadings Bundle. The Claimant had provided a written witness statement and gave oral evidence. Ms. Albutt had provided a written witness statement and also gave oral evidence.
6. The Respondent provided written skeleton submissions and made oral submissions. The Claimant made oral submissions.
7. I explained the process of giving and challenging evidence and the difference between submissions.
8. No attendees required any adjustments to the hearing.

## **Issues**

9. Was the claim presented out of time for the purposes of section 175 Trade Union and Labour Relations (Consolidation) Act 1992 (**TULRCA**)? If not, was the Tribunal satisfied that it was not reasonably practicable to bring the complaint before the end of the time limit, and if not, was it brought within such further period as the tribunal considers reasonable?
10. Alternatively, was the Claimant refused admission to membership for conduct reasons falling within section 174(2)(d) TULRCA?
11. Further or alternatively, pursuant to the interpretative obligation under section 3 Human Rights Act 1998, section 174 must be read in harmony with Article 11 of the European Convention on Human Rights. In particular, whether it must be construed and applied in a manner consistent with the ruling in *ASLEF v United Kingdom* [2007] IRLR 361.

## **Facts**

12. The Claimant engaged in ACAS early conciliation between 21 July and 31 August 2023. He submitted his claim to the Employment Tribunal on 19 October 2023.
13. The Claimant is currently an operational band 7 governor grade, and he started this current role on 30 October 2022. He has worked for His Majesty's Prison and Probation Service (HMPPS) since 10<sup>th</sup> May 2004.
14. He was previously a member of the Prison Officer's Association trade union and between August 2013 and May 2017 he was an elected representative and was the National Chair for a period. The Prison

Officer's Association represents prison officers of all grades and is recognised by His Majesty's Prison and Probation Service (**HMPPS**). The Claimant's relationship with the Prison Officer's Association became difficult and he was involved in complaints with the Prison Officer's Association. The Claimant was expelled from the Prison Officer's Association in early 2020.

15. In April 2020, the Claimant and other former members of the Prison Officer's Association set up a new trade union – Criminal Justice Workers Union (**CJWU**). As a founding member and committee member the Claimant considered the purpose of the CJWU was to compete with the Prison Officer's Association. It was common knowledge in the prison sector that the Claimant was involved in setting up the CJWU.
16. Page 1 of the Supplementary Bundle sets out the purpose and founding principles of the CJWU. We have not repeated all the principles but note that it seeks to negotiate collective agreements, persuade non-members to join and recruit members. This includes all workers in the criminal justice sentence and therefore includes prison governors. As at 22 February 2024 the CJWU website references itself as being *“the representative body for all employees working in HM Prison Service and Private Sector Establishments...”* It is not clear when this content was added to the CJWU website.
17. The Respondent is a trade union recognised by HMPPS. It is recognised for collective bargaining in relation to senior roles, bands 7 – 12, namely governors. The Respondent's Rules & Constitution set out its objectives.
18. On 19 October 2021 the Claimant passed the Head of Function Assessment.
19. The Claimant exchanged emails with James Bryant of the Respondent on 20 and 21 October 2021. The Claimant asked about eligibility and James Bryant stated:

*“Many thanks for your email and hope all is well.*

*As long as you have passed your assessments and are eligible to hold an operational manager post, you are eligible to join the PGA.*

*Any questions etc. by all means ask. FYI, subscription fees are £47 per quarter.”*
20. On 22 October 2021 the Claimant applied to join the Respondent. The Respondent considered the application. The application form sets out eligibility requirements and asks for minimal personal information: name, date of birth, work grade, job title, workplace and contact numbers. There is no specified place to provide further information on the form.
21. The Respondent took legal advice following the Claimant's application. There were no documents in the bundle relating to the decision to refuse the Claimant's application.

22. The Respondent wrote to the Claimant explaining why his application to join the Respondent was not successful on 9 December 2021. The initial email response simply said:

*“Thank you for your application to join the Prison Governors’ Association. After discussions with the PGA National Executive Committee, your application to join has been declined.”*

23. The Claimant asked for the reasons and on 10 December 2021, in an email, he was told:

*“In response to your specific question, your application to join the Prison Governor’s Association (PGA) has not been accepted, as we believe that it would not be in the best interests of the PGA to do so. We believe that you are the founder of the Criminal Justice Workers’ Union (CJWU) and that you hold an elected position in the CJWU, holding the position of Executive Officer.*

*Whilst we respect your position, we do not believe this to be compatible with membership of the PGA, and this helped informed our decision to reject your application to join the PGA.*

*We continue to wish you well for the future.”*

24. Around the same time the Claimant was told by colleagues that he was not eligible to join the Respondent as he had not passed the Incident Manager Silver Commander’s Course. Following this information the Claimant chose not to appeal the decision, although he disagreed with the reason provided by the Respondent.

25. On 12 April 2022 the Claimant was told he had passed the Operational Managers JSAC, also known as the Incident Manager Silver Commander’s Course.

26. The Claimant became an employee of CJWU on 12 May 2022. It is not entirely clear what his role as an employee is/was.

27. The Claimant sent a resignation letter to CJWU, resigning as a committee member, on 1 January 2023. He carried on undertaking some activities relating to legal and finance matters but it is not clear in what capacity.

28. On 19 June 2023 the Claimant sent, by email, a further application to join the Respondent. The Claimant replied to the email chain from 10 December 2021 for ease. The email is headed *“Application to join the PGA”*. All that he changed on the application form was the date. However, within the cover email he said:

*“I applied to join the PGA in 2021 having become eligible under your criteria for membership, however my application was rejected, please see below email correspondence to that affect. I am therefore resubmitting my application, whilst I did not challenge the decision to exclude me when I last applied, although I was minded to, I do wish to point out with this new application that the decision to exclude me I believe would be an illegal*

*act. I draw your attention to the below legislation when determining my latest application to be considered for membership...”*

29. He also provided an extract of text referencing section 174 TULRCA.
30. However, nowhere on the application form or in the cover email did the Claimant set out that he had resigned from the CJWU’s executive committee.
31. The Respondent replied by email on 27 June 2023:

*“Thank you for your recent email relating to your application to join the Prison Governors’ Association.*

*We take note of the contents of your email, and we will give full consideration to the points you have made; it is likely that we may have to seek advice on the matters you have raised and will aim to respond to you fully shortly after our next NEC meeting, which is scheduled to take place on the 12th of July.*

*If for any reason we are not able to provide a response by then, we will update you accordingly.”*

32. The Respondent’s National Executive Committee discussed the merits of the Claimant’s application at a meeting on 12 July 2023. There are no notes of the meeting in the Bundle.
33. On 12 July 2023 the President of the Respondent, Ms Albutt wrote to the Respondent and said:

*“Thank you for your email of 19 June 2023.*

*You rely on a commentary to section 174 of the Trade Unions and Labour Relations (Consolidation) Act 1992 to argue that the PGA unlawfully excluded you from membership when you made an application in 2021.*

*However, the exclusion is entirely attributable to your conduct in founding the Criminal Justice Workers Union (CJWU) and acting as its Executive Officer, which is conduct incompatible with the objectives of the PGA.*

*The exclusion falls within the meaning of section 174 (2) (d) of the Act and is lawful. The PGA’s position remains unchanged.”*

34. Ms. Albutt had not been involved in the refusal of the application in October 2021 but was aware of it. Ms. Albutt was involved in the meeting on 12 July 2023. Her evidence was that she considered the application on 19 June 2023 to be part of an ongoing application.
35. Ms. Albutt’s evidence, in cross examination, was that it was common knowledge that the Claimant had founded the CJWU. She also said that the Claimant’s previous work with the Prison Officer’s Association was of no concern and was not part of the decision making. This accords with her witness statement.

36. The Claimant replied to the letter by way to two emails on 12 July 2023. The Claimant asked for clarification of which objectives his conduct was incompatible with. The Claimant also sent a further email shortly after.

*“I neglected to mention this when I replied earlier, mainly due to being the Duty Governor today and having distractions running the prison, however I would Governor today and having distractions running the prison, however I would like to make it clear to the PGA NEC that I have applied to become a member on the 19th June 2023, my reference to the employment rights act is solely on the basis of my current application and not associated to my 2021 application having pointed out an area of the law I believe you need to account for when considering my current application in 2023.*

*Having re-read the response from Andrea Albutt President of the PGA, she refers that I am accusing the PGA NEC of breaking the law in 2021, this maybe the case, however, I want to make it clear that any reference to the law is in relation to my current application and not any previous applications.”*

37. The Claimant did not mention that he had resigned from the elected committee of the CJWU in either email, and this only became known to the Respondent when witness statements were exchanged.

38. James Bryant sent a short email reply on 21 July 2021 stating:

*“Thank you for your emails of 12 July. The PGA’s position remains the same. We will not be engaging in any further correspondence.”*

39. Following the Claimant’s application the Respondent amended its rules and constitution and Rule 4(d) states:

*“Membership will not be open to any elected official of a trade union which could be seen to act against the interests of the Association or its members.”*

40. This applies to elected officials, not just members of other trade unions.

41. The Claimant considers the Respondent to be the only recognised trade union for his operational grade and post. Ms. Albutt’s evidence was that she thought two other unions are recognised for the Claimant’s band and post. We do not have any other evidence to enable a clear finding of fact, but do find the Claimant wished to join the Respondent because he considered it to be the recognised trade union for persons in his post.

## **Law**

### **174 Right not to be excluded or expelled from union.**

(1) An individual shall not be excluded or expelled from a trade union unless the exclusion or expulsion is permitted by this section.

(2) The exclusion or expulsion of an individual from a trade union is permitted by this section if (and only if)—

- (a) he does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union,
  - (b) he does not qualify, or no longer qualifies, for membership of the union by reason of the union operating only in a particular part or particular parts of Great Britain,
  - (c) in the case of a union whose purpose is the regulation of relations between its members and one particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or
  - (d) the exclusion or expulsion is entirely attributable to conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct.
- (3) A requirement in relation to membership of a union is “enforceable” for the purposes of subsection (2)(a) if it restricts membership solely by reference to one or more of the following criteria—
- (a) employment in a specified trade, industry or profession,
  - (b) occupational description (including grade, level or category of appointment), and
  - (c) possession of specified trade, industrial or professional qualifications or work experience.
- (4) For the purposes of subsection (2)(d) “excluded conduct”, in relation to an individual, means—
- (a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,
  - (b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or
  - (c) conduct to which section 65 (conduct for which an individual may not be disciplined by a union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.
- (4A) For the purposes of subsection (2)(d) “protected conduct” is conduct which consists in the individual’s being or ceasing to be, or having been or ceased to be, a member of a political party.
- (4B) Conduct which consists of activities undertaken by an individual as a member of a political party is not conduct falling within subsection (4A).

(4C) Conduct which consists in an individual's being or having been a member of a political party is not conduct falling within subsection (4A) if membership of that political party is contrary to—

- (a) a rule of the trade union, or
- (b) an objective of the trade union.

(4D) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's being a member of a political party, an objective is to be disregarded—

- (a) in relation to an exclusion, if it is not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
- (b) in relation to an expulsion, if it is not reasonably practicable for the objective to be ascertained by a member of the union.

(4E) For the purposes of subsection (4C)(b) in the case of conduct consisting in an individual's having been a member of a political party, an objective is to be disregarded—

- (a) in relation to an exclusion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a person working in the same trade, industry or profession as the individual;
- (b) in relation to an expulsion, if at the time of the conduct it was not reasonably practicable for the objective to be ascertained by a member of the union.

(4F) Where the exclusion or expulsion of an individual from a trade union is wholly or mainly attributable to conduct which consists of an individual's being or having been a member of a political party but which by virtue of subsection (4C) is not conduct falling within subsection (4A), the exclusion or expulsion is not permitted by virtue of subsection (2)(d) if any one or more of the conditions in subsection (4G) apply.

(4G) Those conditions are—

- (a) the decision to exclude or expel is taken otherwise than in accordance with the union's rules;
- (b) the decision to exclude or expel is taken unfairly;
- (c) the individual would lose his livelihood or suffer other exceptional hardship by reason of not being, or ceasing to be, a member of the union.

(4H) For the purposes of subsection (4G)(b) a decision to exclude or expel an individual is taken unfairly if (and only if)—

- (a) before the decision is taken the individual is not given—



- (i) notice of the proposal to exclude or expel him and the reasons for that proposal, and
  - (ii) a fair opportunity to make representations in respect of that proposal, or
- (b) representations made by the individual in respect of that proposal are not considered fairly.
- (5) An individual who claims that he has been excluded or expelled from a trade union in contravention of this section may present a complaint to an employment tribunal.

**175 Time limit for proceedings.**

- (1) An employment tribunal shall not entertain a complaint under section 174 unless it is presented—
- (a) before the end of the period of six months beginning with the date of the exclusion or expulsion, or
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as the tribunal considers reasonable.
- (2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).

**176 Remedies.**

- (1) Where the employment tribunal finds a complaint under section 174 is well-founded, it shall make a declaration to that effect.
- (1A) If a tribunal makes a declaration under subsection (1) and it appears to the tribunal that the exclusion or expulsion was mainly attributable to conduct falling within section 174(4A) it shall make a declaration to that effect.
- (1B) If a tribunal makes a declaration under subsection (1A) and it appears to the tribunal that the other conduct to which the exclusion or expulsion was attributable consisted wholly or mainly of conduct of the complainant which was contrary to—
- (a) a rule of the union, or
  - (b) an objective of the union,
- it shall make a declaration to that effect.
- (1C) For the purposes of subsection (1B), it is immaterial whether the complainant was a member of the union at the time of the conduct contrary to the rule or objective.

(1D) A declaration by virtue of subsection (1B)(b) shall not be made unless the union shows that, at the time of the conduct of the complainant which was contrary to the objective in question, it was reasonably practicable for that objective to be ascertained—

(a) if the complainant was not at that time a member of the union, by a person working in the same trade, industry or profession as the complainant, and

(b) if he was at that time a member of the union, by a member of the union.

(2) An individual whose complaint has been declared to be well-founded may make an application to an employment tribunal for an award of compensation to be paid to him by the union.

(3) The application shall not be entertained if made—

(a) before the end of the period of four weeks beginning with the date of the declaration under subsection (1), or

(b) after the end of the period of six months beginning with that date.

(4) The amount of compensation awarded shall, subject to the following provisions, be such as the employment tribunal considers just and equitable in all the circumstances.

(5) Where the employment tribunal finds that the exclusion or expulsion complained of was to any extent caused or contributed to by the action of the applicant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(6) The amount of compensation calculated in accordance with subsections (4) and (5) shall not exceed the aggregate of—

(a) an amount equal to thirty times the limit for the time being imposed by section 227(1)(a) of the Employment Rights Act 1996] (maximum amount of a week's pay for basic award in unfair dismissal cases), and

(b) an amount equal to the limit for the time being imposed by section 124(1)] of that Act (maximum compensatory award in such cases).

(6A) If on the date on which the application was made the applicant had not been admitted or re-admitted to the union, the award shall not be less than £11,967.

(6B) Subsection (6A) does not apply in a case where the tribunal which made the declaration under subsection (1) also made declarations under subsections (1A) and (1B).

### **177 Interpretation and other supplementary provisions.**

(1) For the purposes of section 174—

- (a) “trade union” does not include an organisation falling within paragraph (b) of section 1,
- (b) “conduct” includes statements, acts and omissions, and
- (c) “employment” includes any relationship whereby an individual personally does work or performs services for another person (related expressions being construed accordingly).
- (2) For the purposes of sections 174 to 176—
- (a) if an individual’s application for membership of a trade union is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted, he shall be treated as having been excluded from the union on the last day of that period, and
- (b) an individual who under the rules of a trade union ceases to be a member of the union on the happening of an event specified in the rules shall be treated as having been expelled from the union.
- (3) The remedy of an individual for infringement of the rights conferred by section 174 is by way of a complaint to an employment tribunal in accordance with that section, sections 175 and 176 and this section, and not otherwise.
- (4) Where a complaint relating to an expulsion which is presented under section 174 is declared to be well-founded, no complaint in respect of the expulsion shall be presented or proceeded with under section 66 (complaint of infringement of right not to be unjustifiably disciplined).
- (5) The rights conferred by section 174 are in addition to, and not in substitution for, any right which exists apart from that section; and, subject to subsection (4), nothing in that section, section 175 or 176 or this section affects any remedy for infringement of any such right.

42. We considered the chapters in Harveys and IDS Handbook.

43. In relation to time limits, the Respondent referred us to *Sougrin v Haringey Health Authority [1992] IRLR 416 CA* and *Cast v Croydon College [1998] IRLR 318 CA*.

## **Conclusions**

### Issue 1

44. Has the Claimant brought his complaint of exclusion from trade union membership in time under section 175 of TULRCA? If not, was the tribunal satisfied that it was not reasonably practicable to bring the complaint before end of time limit, and if not was it brought within such further period as the tribunal considers reasonable?

45. Section 175(1)(a) states:

*(1) An employment tribunal shall not entertain a complaint under section 174 unless it is presented—*

*(a) before the end of the period of six months beginning with the date of the exclusion or expulsion, or...*

46. The first question to determine is if the complaint was brought within six months of the date of the exclusion.

47. In short, the Respondent submits that there had been a decision to refuse the application in December 2021, and that this was a one off act with continuing purposes. It says the time start to run from the original decision, in this case 9 December 2021 (*Sougrin*).

48. It further submits, with reference to *Cast v Croydon College* that this is case in which there has been no reconsideration of the matter, and that there was merely reference back to the original decision, and therefore the claim is out of time.

49. The Claimant submits that there was evidence that the NEC meeting in July 2023 declined his application and that it was clear from his communications that there was a second application.

50. The Claimant's email dated 19 June 2023 references both "resubmitted" and "new" in the context of the application. We also consider it important to note the specific language used in the email, and the text in bold is our emphasis:

*" I am therefore **resubmitting** my application, whilst I did not challenge the decision to exclude me when I **last applied**, although I was minded to, I do wish to point out with this **new application** that the **decision to exclude me I believe would be an illegal act**. I draw your attention to the below legislation **when determining my latest application to be considered for membership.**"*

51. On balance, noting the emphasized text, we consider the Claimant intended to submit a new application and was talking about any further decision to exclude him, this is supported by his email dated 12 July 2023.

52. The Respondent took legal advice in advance of making the decision in July 2023.

53. As set out above, there was a meeting on 12 July 2023 at which the NEC considered the Claimant's email dated 19 June 2023. The Respondent's Executive Committee discussed the merits of the application dated 19

June 2023. We do not know the detail of what was discussed at the meeting.

54. The application form sent by the Claimant was no different to that in October 2021, save for the date.
55. The interpretation of the letter of 12 July 2023 is key. The Respondent says the letter merely referred the Claimant back to the reasons it gave on 10 December 2023. The Claimant says it contains a different and said that objectives of the Respondent had not been mentioned previously.
56. However, the December 2021 reasons do reference compatibility, and overall we consider this is substantially the same reasoning as provided to the Claimant in December 2021.
57. We note that the letter was drafted following receipt of legal advice. There is no clear reference or comment in relation to his second application.
58. We have kept in mind the Claimant's own witness statement at paragraph 50 states:
- "I made an application to join the PGA in June 2023 after resigning from my role on the Executive Committee of the CJWU in January 2023. This application should have been treated independently and separately from any previous application, but it has not been".*
59. The Claimant, at the point of writing his witness statement, appears to believe there had not been independent treatment of a new application. The ET3 response makes no reference to consideration of the application at the meeting on 12 July 2023, indeed Ms. Albutt's own witness statement does not detail the discussion. It was only in response to a question from Employment Judge Cawthray asking for clarification on her involvement that Ms. Albutt said there was an NEC meeting which discussed the merits of the application.
60. We do not consider that the contents of the Claimant's witness statement undermine any conclusion that the Respondent made a separate and second application that was considered by the Respondent. In our mind, all that paragraph 50 does is set out that he thought that the Respondent did not consider his new application separately.
61. The Claimant had not told the Respondent of any change in circumstances. The Respondent was not aware of the Claimant's position changing and that he was no longer an elected representative.
62. We have concluded that the Claimant did make a separate and second application on 19 June 2023. We note that it was not helpful that the Claimant did not set out that he was no longer an elected representative,

either in the application form or in a cover email, but that does not change our view that this was a second and new application following a change in the Claimant's position.

63. We have concluded that, following legal advice, the Respondent wrote a very short letter only specifically referring to the application in December 2021, but it does state: *"The PGA's position remains unchanged"*.

Although there is no specific reference to the June 2023 application, we consider that a reasonable interpretation of *"The PGA's position remains unchanged"*, in view of the fact that the merits of the second application were discussed, is that this second application was in reality considered and also refused and a decision was made that the Claimant was excluded from membership for the same reasons as the PGA gave previously.

64. We have considered carefully the time limit provisions in section 175. The legislation makes no reference to repeat applications or situations where there are more than one application. It simply references the date of exclusion or expulsion and states:

*(1) An employment tribunal shall not entertain a complaint under section 174 unless it is presented—*

*(a) before the end of the period of six months beginning with the date of the exclusion or expulsion,*

65. We consider there to have been two dates of exclusion, the first on 9 December 2021 in relation to the first application made on 22 October 2021 and the second exclusion on 12 July 2023, after the application on 19 June 2023. Setting out the position remains unchanged, does not in our view, mean there was not an exclusion. We do not consider this, on the facts, to be a case where there was a one-off act with continuing consequences in line with *Sougrin*. The Claimant made a second application. The Respondent sought advice, discussed the matter and made a decision not to permit the Claimant to join. Following which it wrote a very short letter which referred back to its earlier decision and reasoning. The second application was considered by the Respondent.

66. The Respondent references *Cast v Croydon College* (a discrimination claim), and cites paragraphs 34 and 43 of the judgment. As set out above, the letter dated 12 July 2023 does refer back to the earlier reasons for exclusion, but the second application was discussed and considered. It is unusual that the minutes of the meeting are not within the Bundle, but it is clear from Ms. Albutt's evidence the second application was discussed at the meeting on 12 July 2023.

67. On the facts, we do not consider this to be a case falling within paragraph 43 of *Cast*. In the present case there was plainly consideration of the second application at a meeting, and a short letter has been drafted referring to its earlier position not changing does not, in our view mean that time should not run from what we consider to be a second exclusion. We conclude that time begins to run again from the exclusion on 12 July 2023.
68. The Claimant submitted his ET1 on 19 October 2023, some four months after his application on 19 June 2023 and approximately 3 months after the exclusion on 12 July 2023. Accordingly, we consider that he has presented his claim in time.

## Issue 2

69. As we have determined the claim was brought in time, the next issue for determination was whether the Claimant was refused admission to membership of the Respondent for conduct reasons falling within section 174(2)(d) of TULRCA.

70. In determining this issue we kept in mind the submissions of the parties.

71. Section 174 TULRCA stipulates that a person shall not be excluded from joining a trade union unless the exclusion is permitted by the section.

72. Section 174(2)(d) states:

*(2) The exclusion or expulsion of an individual from a trade union is permitted by this section if (and only if)—*

...

*(d) the exclusion or expulsion is entirely attributable to conduct of his (other than excluded conduct) and the conduct to which it is wholly or mainly attributable is not protected conduct.*

73. In considering this issue, we have kept in mind that we must not approach the matter as a band of reasonable responses approach. We are required to look at whether the reason for exclusion was attributable to conduct.

74. Section 177(b) defines conduct as including statements, acts and omissions.

75. The reason given by the Respondent for the non-admission (the exclusion) in July 2023 (and December 2021) is set out in writing. The Respondent did not permit the Claimant to join it because:

*“... the exclusion is entirely attributable to your conduct in founding the Criminal Justice Workers Union (CJWU) and acting as its Executive Officer, which is conduct incompatible with the objectives of the PGA.”*

76. We acknowledge that the Respondent, in July 2023, was not aware that the Claimant had resigned as an elected representative and it made the decision based on the belief at the time that the Claimant was an elected representative.

77. As set out above, the CJWU seeks to represent all workers, regardless of grade, in the criminal justice sector, which includes the prison service. This includes governors. The CJWU is seeking to be recognised and is competing with the Respondent for membership in relation to prison governor grade roles. The Claimant accepted that as an elected official of CJWU he would need to act in its best interests, noting its aim was to recruit members and represent them.

78. We understand the Claimant's desire to be a member of the Respondent as a body recognised for collective bargaining for prison governors, but the Claimant's wish does not form part of the decision we must make, which is whether or not he was excluded due to conduct which was not excluded or protected conduct.

79. The Respondent's assessment of the Claimant's conduct is a matter for its own judgment. It is not for us to impugn the Respondent's decision.

80. We consider the reason for the exclusion, namely not being allowed to join, was the Claimant's conduct being a founder and an elected member of CJWU upon which the Respondent formed the reasonable view that his holding such positions amounted to conduct that was incompatible with the aims of the Respondent.

81. Any previous activity by the Claimant as a member of the Prison Officers' Association was not conduct relied upon by the Respondent when excluding the Claimant.

82. Section 174(4(a) defines excluded conduct:

*“(4) For the purposes of subsection (2)(d) “excluded conduct”, in relation to an individual, means—*

*(a) conduct which consists in his being or ceasing to be, or having been or ceased to be, a member of another trade union,*

*(b) conduct which consists in his being or ceasing to be, or having been or ceased to be, employed by a particular employer or at a particular place, or*



*(c) conduct to which section 65 (conduct for which an individual may not be disciplined by a union) applies or would apply if the references in that section to the trade union which is relevant for the purposes of that section were references to any trade union.”*

83. The fact that the Claimant was a member of CJWU, or any other union previously, was of no relevance. There is no evidence membership of another trade union formed part of the Respondent’s decision. He was not excluded from joining because he was a member, and so 174(4)(a) does not apply, neither do 174(4)(b) or (c).

84. We have gone on to consider whether the conduct for which the Claimant was excluded was protected conduct. Protected conduct is defined at section 174(4A) as:

*“(4A) For the purposes of subsection (2)(d) “protected conduct” is conduct which consists in the individual’s being or ceasing to be, or having been or ceased to be, a member of a political party.”*

85. As set out above, the fact that the Claimant was a member of the CJWU did not form part of the reason not to permit him to join.

86. The Respondent refused the Claimant joining it due to the particular positions he held within the CJWU and the consequences of those positions, not simply the fact he was a member.

87. For completeness, we note that the Claimant made submissions in relation to the Respondent’s disciplinary rules. The Claimant was never admitted as a member and therefore we do not consider the Respondent’s disciplinary rules applied to the Claimant.

#### Overall conclusion

88. We conclude that the Claimant was refused admission to the Respondent for conduct reasons falling within section 174(2)(d). The exclusion was lawful.

89. As we have decided reached this conclusion, it was not necessary to consider the third issue.

90. The Claimant’s claim of unlawful exclusion from the Respondent fails.

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Employment Judge Cawthray

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Date **19 March 2024**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
**22 March 2024**

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FOR EMPLOYMENT TRIBUNALS

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