

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Three: Rights of Trade Union Members, Workers and Employees

Exclusion and expulsion from trade unions

The previous position

243. Section 174 of the 1992 Act provides rights for individuals not to be excluded or expelled from a trade union. In particular, subsection (2)(d) of section 174 provides that a union may exclude or expel someone for their conduct provided the exclusion or expulsion is “entirely attributable” to that “conduct”. However, subsection (4) of that section provides that certain conduct does not count as “conduct” for the purpose of subsection (2)(d). This conduct is:
- current or former membership of a trade union;
 - current or former employment by a particular employer or at a particular place;
 - current or former membership of a political party; or
 - conduct for which disciplinary action taken by a union would be regarded as unjustifiable (section 65 of the 1992 Act).
244. It follows that if an exclusion or expulsion is partly attributable to conduct in this list it is contrary to section 174.
245. These provisions have caused difficulties for unions when tackling the problem of political activists from extremist political parties infiltrating their ranks; recent relevant cases¹ have illustrated the problems faced by unions.
246. Section 176 of the 1992 Act provides the remedies for an unlawful exclusion or expulsion. Under its provisions, an individual whom an employment tribunal holds to have been unlawfully excluded or expelled may apply later for compensation. Where the individual has been admitted or re-admitted to the union, the application must be made to an employment tribunal. However, where the individual has not been admitted or re-admitted, the application must be made to the Employment Appeal Tribunal (EAT). In these latter cases, a minimum compensatory award (set at £5,900 from February 2004) applies.

¹ *Mr. J. Lee v Aslef* (ET case no. 1301889/02) and *Mr. C. Potter v UNISON* (ET case no. 19000120/2003).