

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER SECTION 55(1) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**MR A DARKEN**

**v**

**THE PRISON OFFICERS' ASSOCIATION**

**Date of Decision:**

**28 April 2006**

**DECISION**

Upon application by the Claimant under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992:

- (i) I declare that the Prison Officers' Association (the "POA" or "the Union") breached section 48(6) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") in relation to the election address submitted by the Claimant to the Union as a candidate in the election for the position of National Vice-Chair, the result of which was declared in January 2006.
- (ii) When I make a declaration I am required by section 55(5A) of the 1992 Act to make an enforcement order unless I consider that to do so is inappropriate. The Claimant did not seek an enforcement order and I consider it inappropriate to make one.

**REASONS**

1. By an application dated 5 December 2005 the Claimant made a complaint against his union, the Prison Officers' Association. The application alleged a breach of section 48(6) of the 1992 Act in relation to the election address he submitted to the Union on 16 November 2005 as a candidate in the election for the position of National Vice-Chair. Mr Darken confirmed his complaint as being -

*"that in the POA 2005 National Election for the post of Vice Chair Mr Darken was not notified of the timetable for the preparation of election addresses until after the other candidates had been informed and that the Union breached section 48(6) of the 1992 Act by failing to accord him the same facilities as the other candidates in that election"*

2. I investigated the alleged breach in correspondence. As required by section 55(2)(b) of the 1992 Act, the parties were offered the opportunity to be heard and a formal hearing took place on 6 April 2006. The Union was represented by its General Secretary, Mr Caton. Evidence for the Union was given by Mr Caton, Mr Colin Moses, the Union's National Chair, and Mr Steve Gillan, one of its National Vice-Chairs. Mr Moses and Mr Gillan provided written witness statements. Mr Darken acted in person. A bundle of documents was prepared for the hearing by my office which contained relevant exchanges of correspondence. At the hearing, a supplementary bundle, which had been submitted in advance by the Union, was admitted. Mr Darken submitted a written "summary of argument".

### **Findings of Fact**

3. Having considered the oral and documentary evidence and the representations made to me, I found the facts to be as follows:-
4. Mr Darken has been a member of the POA for some 17 years. Since 1993 he has held a number of branch positions and two national positions. He was National Chair from December 2001 to August 2002 and he is currently a member of the National Executive Committee ("the NEC"), having been elected in May 2003. Mr Darken has also stood unsuccessfully for National Office on a number of other occasions. Prior to the disputed election he has stood, successfully or unsuccessfully, in seven national elections in each of which he has submitted an election address.
5. The supplementary bundle of documents adduced by the Union included a number of election circulars. These demonstrated how the Union had dealt with the timetabling of election addresses in a number of national elections since 2001. They showed two different practices. Prior to 2004, the election circular seeking nominations included a copy of the ballot timetable and this timetable gave the final date for receipt of election addresses. From 2004, the circulars in evidence gave only the date on which nominations closed. As to the remainder of the ballot timetable they stated, "*Following receipt of nominations the NEC will inform the membership of arrangements appertaining to the ballot*". I was informed that the change in practice was introduced to save time and cost in the event of only one nomination being made and there being no need to hold an election.
6. In October 2005 the Union began preparations for a ballot for the position of one of the two Vice-Chairs of the Union. This position was to fall vacant in or about May 2006, as one of the existing Vice-Chairs, Mr Gillan, had been elected Treasurer and he was to take up that office following the Union's Annual Conference in May 2006. The decision as to when an election should take place and the timetable for that election were matters to be considered first by the administration. It would make proposals to the NEC for ratification or amendment. Mr Gillan gave evidence that such proposals from the administration were normally rubber-stamped by the NEC. The proposal to hold this particular election was put to the meeting of the NEC on Wednesday, 19 October 2005. However, the agenda for this meeting contained no

reference to the proposed Vice-Chair election. Mr Gillan gave evidence that NEC agendas are prepared about two weeks before the relevant meeting and the decision to seek approval for these ballot arrangements at the October NEC was made after the agenda had been circulated.

7. The NEC meeting of 19 October 2005 was held at the Union's head office, Cronin House, Edmonton, London. The General Secretary was on annual leave. The National Chair, Mr Moses, was on Union business on the Isle of Sheppey together with Mr Darken. The NEC meeting was chaired by Mr Gillan, one of the Vice-Chairs. Mr Gillan had been told by Mr Moses that he should raise the matter of the proposed election for a Vice-Chair and obtain the NEC's approval to the proposed timetable. The administration had arranged for copies of the proposed timetable to be available at the meeting. However, there was no set system for the distribution of any papers that were to be made available on the day of a meeting of the NEC. Mr Gillan had no reliable recollection of how the written timetable in question was distributed; whether it was part of a bundle placed on the table immediately in front of each chair, whether it was a loose document on top of such a bundle, whether it was put on each chair or whether it was made available in some other way. Members of the NEC did not have set places at which they were required or expected to sit. The written timetable which was allegedly considered by the NEC on that day was not put in evidence by the Union. However, Mr Gillan and Mr Moses gave evidence that the document gave not only the date on which nominations would close but also the final date for the receipt of election addresses.
8. At the outset of the morning session of the NEC, before commencing the formal agenda, the proposed ballot timetable was discussed and agreed. Mr Cox and Mr Adams, who both later stood as candidates in this election, were serving members of the NEC and present at the meeting that morning. They were accordingly alerted to the fact that the date for receipt of election addresses was 16 November 2005.
9. Mr Moses and Mr Darken finished their business on the Isle of Sheppey during the morning of 19 October 2005 and decided to return to London for the afternoon session of the NEC. They drove back in different cars. During the journey, Mr Moses telephoned Mr Darken and asked if he was standing in the Vice-Chair election. Mr Darken replied that he was thinking of doing so. They both arrived at Cronin House between 12 noon and 1 pm. Neither Mr Moses nor Mr Darken had been expected to attend any part of the NEC that day.
10. Upon returning to Cronin House, Mr Moses saw that the NEC was still in session and went to his office. Shortly afterwards, at about lunchtime, the NEC broke and Mr Gillan went to see Mr Moses, as did other members of the NEC. Mr Gillan reported on the events that morning, including the approval that had been given by the NEC to the ballot timetable.

11. When the NEC resumed for the afternoon session Mr Moses was in the Chair. He gave evidence that, at the outset of business, he advised the NEC that he wished to revisit the timetable for the election of Vice-Chair and that he did so. On the other hand, Mr Darken was adamant that at no time when he was present during the afternoon session was any mention made of the election. Mr Darken said that he and others left the boardroom from time to time to make coffee or use the toilet but, whilst he was present, no mention was made of the election of Vice-Chair nor did he see any document which set out the election timetable. Mr Darken described the boardroom table as being covered with the various documents that the NEC had been considering that day but that, as he was not expected to be present, there was no bundle of documents left specifically for him. The evidence of the Union on this matter was voluminous but not entirely accurate or consistent. Eleven members of the NEC submitted witness statements but only two, Mr Moses and Mr Gillan, gave oral evidence. The statements of seven of the NEC members were in identical terms, having been prepared by an employee of the Union, Glynn Travis, and each contained an identical error as to the date of the meeting. The error was not material to the issue in dispute but indicated a common lack of care in proof reading. Mr Moses and Mr Gillan also accepted that the reference in their statements to circular 111/2005 should have been a reference to circular 100/2005. The majority of the witness statements also state that the ballot timetable was debated and agreed in the afternoon session, whereas the oral evidence of the Union did not support the contention that there had been a debate and formal agreement. Mr Moses stated that he could not remember reading out the election timetable and that to do so would not be consistent with his usual style, which was to deal with such matters in general terms. He also qualified the use of the word 'debate' in his written statement by saying that he had used this word "in its widest sense". He conceded that there had been no discussion whilst maintaining that he had raised the matter from the chair. Mr Gillan also conceded that he could not recall any discussion of the timetable in the afternoon session, although he could remember some members of the NEC commenting that they had already been briefed on this matter.
  
12. On the evidence before me I am unable to reach a decision as to what occurred during the afternoon session of the NEC on the 19 October beyond all reasonable doubt. However, I find, on the balance of probabilities, that the issue of the final date for the submission of election addresses was not raised expressly in the presence of Mr Darken nor was he referred to a document containing that information. The picture that emerged from the evidence was that of a meeting which was conducted in a relatively informal manner, with papers scattered around the board table and with members of the NEC leaving the room from time to time. The election of the Vice-Chair was not an item on the agenda. I accept that Mr Moses sought to revisit the matter of the timetable in the afternoon session but I do not accept the collective but not entirely accurate recollection of the manner in which it was revisited. I make no findings as to the precise manner in which this issue was raised but I do find that it was not done in a manner that alerted Mr Darken to the closing date for submission of election addresses nor directed him to a document from which

that information could be obtained. I accept Mr Darken's evidence that he left the NEC that afternoon unaware of the closing date for the receipt of election addresses.

13. The minutes of the NEC meeting of 19 October 2005 do not contain any reference to the arrangements for the election of the Vice-Chair having been discussed and agreed. These minutes were accepted and agreed as accurate at the next meeting of the NEC on 16 November.
14. Following the NEC meeting on 19 October 2005, the administration prepared a document headed "*Action Points - NEC Meeting 19 October 2005*". Among the items to be actioned was the following, "*Send circulars regarding V/C Election today (19.10)*". The action was to be taken by the Deputy General Secretary and it is recorded that circulars were sent. In fact, only one circular was distributed by the Union on 19 October. This was circular 100/2005. It gave the date that nominations were to open as the 24 October and the date of closure as 11 November. It did not give a ballot timetable but stated, "*Following receipt of nominations the NEC will inform the membership of arrangements appertaining to the ballot*".
15. On 11 November 2005 one of the three NEC members who stood in the Vice-Chair election, Mr Cox submitted his election address. Mr Cox was to be on leave later that month.
16. The Union distributed a further two circulars in relation to the Vice-Chair elections, both on Monday 14 November 2005. Circular 110/2005 notified members of the names of the three candidates, Mr Darken, Mr Cox and Mr Adams, together with the names of the branches by which they had been nominated. Circular 111/2005 was headed "*Ballot Timetable and Election Addresses*". It gave a remarkably short deadline for receipt of election addresses. They were to be received just two days later, by 5 pm Wednesday, 16 November. I accept the Union's evidence that it genuinely believed that all three candidates had been informed of the closing date for receipt of election addresses at the meeting of the NEC on 19 October and that this short deadline would therefore cause no problems to the candidates.
17. Mr Darken did not receive his copy of circular 111/2005 until the morning of 16 November 2005 but he was told by a colleague on 15 November that the election addresses had to be submitted by the following day. Mr Darken immediately telephoned the Deputy General Secretary to complain about the short notice he had received. He was told that all the candidates had been made aware of the ballot timetable on the 19 October and that accordingly no extra time would be granted to him to prepare his election address. Mr Darken prepared an election address that day which he delivered by hand the following day. The third candidate, Mr Adams, also delivered his election address on 16 November. Mr Darken gave evidence that he liked to consider the drafting of his election address over a period of time. On the other hand, the Union referred to his seven previous election addresses in national elections and argued that the one he had submitted on this occasion was not materially different to the previous seven.

18. On Sunday 20 November 2005 Mr Darken wrote to the General Secretary setting out his grievance and his belief that there had been a breach of section 48(6) of the 1992 Act. He asked for the ballot to be suspended for four weeks. The General Secretary replied on 21 November stating that he had reviewed the timetable and was satisfied that “...no one individual has been disadvantaged or disenfranchised. All NEC members were aware of the timetable and indeed approved it on 19th October 2005”. The request for the ballot to be suspended was refused.
19. The result of the election was declared on 4 January 2006. Mr Cox received 2735 votes, Mr Adams 2003 and Mr Darken 1,449.

### **The Relevant Statutory Provisions**

20. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

**S.48 Election address**

(6) *The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates*

**S.55 Application to Certification Officer**

(1) *A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.*

(2) *On an application being made to him, the Certification Officer shall-*  
(a) *make such enquiries as he thinks fit, and*  
(b) *give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.*

(3) *If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.*

(5A) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements -*

- (a) *to secure the holding of an election in accordance with the order;*
- (b) *to take such other steps to remedy the declared failure as may be specified in the order;*
- (c) *to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.*

## The Submissions

21. Mr Darken described his argument as straightforward and simple. He maintained that Mr Cox and Mr Adams had 28 days to prepare their election addresses, between 19 October and 16 November 2005, whereas he only had two days to do so, between 15 and 16 November. He submitted that this amounted to a failure by the Union to secure that the same facilities and restrictions with respect to the preparation and submission of his election address had been provided or applied equally to each of the candidates. Mr Darken conceded that if I found that he had been given details of the ballot timetable on 19 October, his application must necessarily fail. He maintained, however, that his account of events was more probable, having particular regard to his uncontested evidence that he had complained to the Deputy General Secretary on 15 November and to the General Secretary on 20 November. He argued that his memory of the meeting of 19 October is more likely to be accurate as he had an interest in the Vice-Chair election and he set out that recollection in a nearly contemporaneous letter. He cast doubt on the various witness statements from those present at the NEC in question for the error or errors they contained and for the fact that they are all dated March 2006, some six months after the meeting, when their recollections were unlikely to be as good as his own.
22. For the Union, Mr Caton maintained that Mr Darken had been given details of the ballot timetable on 19 October and that his application should therefore be dismissed. Mr Caton did not concede that Mr Darken's complaint must necessarily succeed if I found that he had not been given the ballot timetable on 19 October. However, no cogent or convincing argument as to why this should be the case was advanced, other than to assert that the Union had behaved with equality and fairness so far as reasonably practicable. Mr Caton went on to submit that Mr Darken was very experienced in national elections and would have known the procedures in any event. He further submitted that in all probability Mr Darken had prepared his election address in advance of the 16 November.

## Conclusion

23. I have found above that, on the balance of probabilities, Mr Darken was not informed at the meeting of the NEC on 19 October 2005 that the closing date for submitting his election address was 16 November 2005, whereas the other members of the NEC present who became candidates in the election for Vice-Chair were so informed. I have also found that Mr Darken did not discover the closing date for submitting his election address until he was told by a colleague on 15 November.
24. In my judgment, the period of time allowed to a candidate to prepare his or her election address is a "*facility or restriction with respect to the preparation (or) submission...of an election address*", within the meaning of section 48(6) of the 1992 Act. Accordingly, a union is required to secure that this facility or restriction is provided or applied equally to each of the candidates, so far as is reasonably practicable.

25. On the facts of this case, I find that it was reasonably practicable for each of the candidates to be afforded the same period of time to prepare and submit their election addresses, but that Mr Darken was afforded a lesser period than the other candidates. Accordingly, the candidates were not treated equally.
26. Mr Darken does not allege that he was the victim of a conspiracy against him by the NEC and I accept that the Union genuinely believed that all three of the eventual candidates were given the ballot timetable on 19 October. In my judgment, the Union has been a victim of its own informality. It assumed that Mr Darken was aware of the closing date for election addresses on the basis that other members of the NEC were aware of it from the morning session and that the matter had been revisited albeit in a more perfunctory manner in the afternoon session. The mention of the Vice-Chair ballot in the afternoon session was either made in Mr Darken's absence or was otherwise so perfunctory as to not alert him, as a reasonably diligent member of the NEC, to the ballot timetable. This informality was compounded by the failure of the Union to agenda the ballot timetable as part of the business to be conducted at this meeting and by its failure to include this item in the minutes of the meeting.
27. I note that the obligation in section 48(6) of the 1992 Act with regard to election addresses applies only to candidates and that on the 19 October 2005 there were no formal candidates for this election. The nominations opened on 24 October and closed on 11 November. From the date of their candidature, however, Mr Cox and Mr Adams were aware of the date for submission of election addresses, whereas Mr Darken was only aware of the date for submission of his election address on 15 November. Accordingly, he was not afforded equal 'facilities and restrictions' as regard the 'preparation and submission' of his election address as the other candidates in the election.
28. For the above reasons, I find that the Union breached section 48(6) of the 1992 Act by not securing that the same facilities and restrictions with respect to the preparation or submission of election addresses were provided or applied equally to each of the candidates in the election for the position of Vice-Chair, the result of which was declared in January 2006.
29. When I make a declaration I am required by section 55(5A) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. The claimant did not seek an enforcement order and I consider it inappropriate to make one.

### **Observation**

30. I observe that the members of any NEC are likely to have earlier notice of the ballot timetable in any national elections than ordinary members of the union. It might therefore be argued that the members of the NEC who become candidates in such elections are not being treated equally with ordinary members of the union who become candidates. This is not an issue which arises on the facts of the present case, but it is a situation which Parliament

may have had in mind when including within section 48(6) the words, “*so far as reasonably practicable*”. Should a union rely on these words in its defence in such a situation, the reasonableness of the period afforded to the general membership to prepare and submit an election address is likely to be a relevant consideration.

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