

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 55 AND SECTION 108A OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

MR Y BAKHSH

v

UNISON (No2)

Date of Decisions:

16 May 2008

DECISIONS

Upon application by Mr Bakhsh (“the Claimant”) under section 55(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse to make the declaration sought by the Claimant that on or around 18 September 2007 UNISON breached section 47(1) of the 1992 Act by allegedly excluding the Claimant unreasonably from being a candidate in an election as provided by Chapter IV of the 1992 Act.
2. I make the declaration sought by the Claimant that on or around 16 January 2007 UNISON breached rule C7.4.1 of the rules of the Union by suspending Mr Bakhsh from office. I do not consider it appropriate to make an enforcement order.
3. I make the declaration sought by the Claimant that on or around 12 March 2007 UNISON breached rule C7.4.2 of the rules of the Union by suspending Mr Bakhsh from holding office. I make an enforcement order that the Union forthwith withdraws the suspension imposed on the Claimant on 12 March 2007 pursuant to rule C7.4.2.
4. I refuse to make the declaration sought by the Claimant that on 18 September 2007 UNISON breached rule I.8.4 of the rules of the Union by suspending Mr Bakhsh from standing for office.
5. I refuse to make the declaration sought by the Claimant that on or around 16 January 2007 UNISON breached rule I.8.5 of the rules of the Union by allegedly suspending Mr Bakhsh from receiving certain benefits of membership of the Union.

REASONS

1. The Claimant is a member of the trade union UNISON (“the Union”). By an application dated 1 November 2007, received at the Certification Office on 9 November, the Claimant made complaints against his Union arising from his suspension from Union office during the course of a disciplinary investigation into his alleged misconduct. Following correspondence with the Claimant, he identified five complaints which were confirmed by him in the following terms:-

Complaint 1

“that on or around 18 September 2007 in breach of section 47(1) of the 1992 Act, Mr Bakhsh was unreasonably excluded from standing as a candidate in elections for positions covered by section 46 of the 1992 Act”

Complaint 2

“that on or around 16 January 2007 UNISON breached rule C7.4.1 by suspending Mr Bakhsh without ensuring the provisions of the rule had been met”

Complaint 3

“that on or around 12 March 2007 UNISON breached rule C7.4.2 by suspending Mr Bakhsh from holding office until the conclusion of a disciplinary investigation, hearing or appeal, despite that at the time of his suspension Mr Bakhsh was not subject to a disciplinary charge relating to alleged financial irregularity”

Complaint 4

“that on or around 18 September 2007 UNISON breached rule I.8.4 by suspending Mr Bakhsh from standing for office which had the effect of debaring him from office thereby imposing a disciplinary penalty without there having been a disciplinary charge against him proven in a disciplinary hearing as required under rule I.7.2”

Complaint 5

“that on or around 16 January 2007 UNISON breached rule I.8.5 by imposing a disciplinary penalty on Mr Bakhsh in suspending him from receiving certain benefits of membership without there having been a disciplinary charge proven against him as required under rule I.7.2”

2. I investigated the alleged breaches in correspondence. A hearing took place on 17 April 2008. At the hearing, the Claimant represented himself. He had three witnesses; Mr Watson, Mr McDermott and Mr Ladbrooke who each attended the hearing. Their witness statements were tendered but they were not cross-examined by the Union. The Union was represented by Mr Segal of counsel, instructed by Mr O’Hara of Thompsons solicitors. Mrs Highton, Chair of the Development and Organisation Committee and Mr Nelson, Head of Democratic Services, gave evidence and were cross-examined by the Claimant. A 290 page bundle of papers was prepared for the hearing by my office. Each of the witnesses produced a written witness statement. Both parties submitted skeleton arguments.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties I find the facts to be as follows:-

4. The Claimant is a nurse employed at Newcastle General Hospital by the Northumberland, Tyne & Wear Mental Health NHS Trust. He has been a member of UNISON and its predecessors for over 23 years and has held various offices within the Union for most of this period, including being a member of the National Executive Council (“NEC”) between 2002 and 2005. The two offices that he held in 2007, from which he was suspended, were those of Joint Branch Secretary (a position he had held since 1995) and member of the Health Services Group National Executive (a position he had held since 1999).
5. On 27 September 2006, the Claimant was suspended from work on full pay by his employers pending a disciplinary investigation by them of alleged harassment and bullying at the work place. At the time of the hearing of this complaint, the employer’s disciplinary procedures were ongoing, having been adjourned for a determination of the Claimant’s grievance that he had been discriminated against on the grounds of race and further adjourned to permit the determination of the Claimant’s complaint to an Employment Tribunal that action short of dismissal for his trade union activities had been taken against him. The Employment Tribunal case had been listed for five days to commence on 31 March 2008 but that hearing was vacated to a date to be fixed.
6. In 2006, UNISON was attempting to reorganise its NHS branches in the Newcastle area. The three relevant NHS branches were each employer-based, the members of each branch having a different employer. Following an NHS reorganisation, the members of all three branches had the same employer. An attempt was made to merge the branches but this encountered local opposition. There was a breakdown in relations between the three branches and some conflict developed between local UNISON representatives, resulting in a significant number of complaints by members about the quality of Union representation. On 17 October 2006 the Union authorised the creation of a shadow branch for these members, which branch would be under regional administration.
7. On 25 October 2006, the Regional Secretary of the Northern Region of UNISON, Ms Gill Hale, wrote to the Claimant informing him that she had appointed Ms Dorothy Tokat to investigate complaints relating to his conduct at Union (Staff Side) meetings. Ms Tokat was also to investigate complaints that the Claimant had made against other members of the Union. Ms Tokat met with the Claimant on or about 6 November 2006. On 22 December 2006 Ms Hale wrote to the Claimant informing him that there were additional complaints regarding his conduct and that Ms Tokat would be in contact with him to investigate these. Ms Tokat met with the Claimant for this purpose on 15 January 2007. The Claimant was accompanied at that meeting by a colleague, Mr Dave Watson. Following that meeting, Ms Tokat prepared a report which she sent that evening to Mr Kevan Nelson, the Union’s Head of Democratic Services, together with copies of the relevant statements and interview notes. Mr Nelson forwarded this report to Mrs Sue Highton, the Chair of the Development and Organisation Committee of the NEC. Ms Tokat’s report recommended that the Union initiate a rule 1 disciplinary

investigation into the Claimant's conduct and that consideration should be given to him being suspended from office.

8. Rule I of the Union's rulebook deals with disciplinary action. Rule I.5.1 provides that:-

"Where there appears to be reasonable grounds to think that a member might be guilty of a disciplinary offence ... the NEC may appoint any of its number, or the General Secretary, to investigate whether the charges are justified."

It was not disputed that the authority to determine whether to hold such an investigation had been delegated to the Chair of the Development and Organisation Committee of the NEC. The Chair of this Committee would take the decision whether or not to investigate and subsequently report upon her decision to the NEC where her actions would be effectively endorsed or rejected. As with all disciplinary matters, a report of the Claimant's case was before each subsequent meeting of the NEC.

9. Having considered Ms Tokat's report and recommendations, Mrs Highton was persuaded that a rule I disciplinary investigation was merited but was not immediately persuaded that a case had been made out for her to suspend Mr Bakhsh under rule C7.4.1. This rule is in the following terms:

"C7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined."

Mrs Highton was aware of the breakdown in relations between the three local branches and the difficulties that this had caused in servicing the local membership but was still not persuaded that Ms Tokat's report made out a sufficient case that there were exceptional circumstances or that suspension was appropriate in the interests of the branch or the Union generally. She therefore asked Mr Nelson to have Ms Tokat reconsider her report and address these issues. Ms Tokat did so and an amended version of her report was sent to Mrs Highton on 16 January with new paragraphs 9 and 10. These paragraphs explained that several of the complainants would not attend future meetings if Mr Bakhsh was present because of the distress and anxiety his behaviour towards them had caused at previous meetings. She reported that the complainants were seeking protection from the Union to enable them to continue to participate in Union business and to perform their functions as Union representatives. On the basis of this revised report, Mrs Highton authorised both an investigation into the Claimant's conduct under rule I and suspended him from office under rule C7.4.1. Mr Nelson's letter to the Claimant of 16 January states:-

"In accordance with Rule C.7.4.1 you are suspended from office with immediate effect for a period of not more than 60 days"

Mr Cafferty was appointed as the investigating officer.

10. By a letter to Mrs Highton dated 25 January 2007, Mr Bakhsh appealed against the decision to suspend him from office. Mrs Highton replied on 5 February informing him that his suspension was linked with a rule I disciplinary investigation and that it had therefore been referred to Mr Cafferty. Subsequently there was extensive correspondence between the Claimant and the Union in which the Claimant continued to question his suspension.
11. On 28 February 2007, Mr Cafferty presented an interim report of his investigations. He reported having found prima facie evidence that the Claimant had used his UNISON mobile phone for party political purposes in breach of Union rules and sought authority to extend the scope of his investigation to cover these and other similar matters, which related to financial irregularities and political fund breaches. Mr Cafferty went on to state that, if such authority was given, consideration may also be given to extending the Claimant's suspension as the investigation would then be looking into not only bullying and harassment but also serious financial irregularity. This would permit suspension under rule C7.4.2 which provides as follows:-

“7.4.2 In cases of alleged financial irregularities brought under Rule I and the member faces disciplinary charges related to such allegations arising from a Rule I investigation, the National Executive Council may suspend the members(s) from holding office until the conclusion of the disciplinary investigation, hearing or appeal.”

12. On 12 March 2007, Mr Nelson wrote to the Claimant informing him that the Chair of the Development and Organisation Committee had approved the recommendation in Mr Cafferty's interim report and that the scope of his investigation had been extended to include matters of alleged financial irregularities and alleged breaches of political fund rules. The letter continued,

“In accordance with Rule C7.4.2, your suspension from holding office will extend until the conclusion of the disciplinary investigation, hearing or appeal.”

At the time of this second suspension, Mr Bakhsh was unaware of the content of Mr Cafferty's interim report and the precise matters for which he had been further suspended. The Claimant's previous suspension under rule C7.4.1 would have expired on 17 March.

13. Mr Bakhsh continued to make representations about his position, either directly or through a colleague representative, Mark Ladbroke. In a letter to Mr Cafferty dated 3 April 2007, Mr Ladbroke asked to be told the specific charges against the Claimant, as rule C7.4.1 provided for suspension only *“if the member faces disciplinary charges under Rule I”*. Mr Cafferty responded on 12 April and the Claimant relies upon the following paragraph from that letter:-

“In respect of your further query again raising the issue of the notification of the charges against Yunus – I would again repeat that there are no charges against Yunus. Again I would reiterate that an investigation is taking place into complaints

and allegations made by other UNISON members against Yunus. The whole purpose of interviewing Yunus is to allow him to respond to the allegations and complaints and give his view of matters. Once the investigation is completed a report will be drafted and sent to the NEC who will then decide what to do."

14. On 5 June 2007, Mr Cafferty produced a second interim report in which he expressed his belief that the Claimant was "trying to delay and impede the process of the investigation" and states that he was obtaining legal advice on the race relations issues raised by the Claimant. The Claimant strongly refutes the suggestion that he was delaying or impeding the investigation.
15. On 20 July 2007, the Claimant wrote to Mr Cafferty raising again the question of whether or not he was facing charges for the purposes of rule C7.4.2. Mr Cafferty replied on 24 July and, in answer to that point, commented as follows:-

"In respect of issues raised regarding charges, I have consistently indicated to you, indeed you should be aware as a Senior National UNISON Representative, that charges are not formulated and put to individuals before investigation takes place. Charges are only put to individuals and disciplinary hearings are only convened if and when, after investigation, it has been decided by the NEC that there is a case to answer. As has been explained to you and your representative on numerous occasions, this is a Rule 1 investigation, therefore you are facing no charges at this stage."

Mr Cafferty went on to state:-

"In respect of your comments regarding suspension and Rule C7.4.1 and 2, this is not a matter for me to address. If it is of concern to you, I suggest that you raise this matter with Kevan Nelson, the Head of Democratic Services."

16. Mr Cafferty eventually met with the Claimant to interview him for the purposes of his investigation on 14, 15, 30 and 31 August 2007.
17. By an email to Mr Nelson dated 29 August 2007, the Claimant asked how he could be suspended under rule C7.4.2 if he was not 'facing charges'. Mr Nelson responded on 6 September and made a distinction between a member 'facing charges' and a member who must 'answer charges'. He went on:-

"A member 'faces disciplinary charges' once a complaint has been made, and continues to do so until the complaint is either dismissed, resolved or upheld at the conclusion of a disciplinary process."

18. By a further email to Mr Nelson on 5 September 2007, the Claimant asked a number of questions, one of which was whether his suspension meant he was prevented from standing in UNISON elections. Mr Nelson responded on 18 September stating that:-

"In response to your questions, you are not entitled to stand for or hold office whilst suspended, but you are entitled to all other benefits of Union membership including attendance, where appropriate, at UNISON meetings, as an individual member, e.g. Branch General Meetings."

19. The Claimant commenced this action by a Registration of Complaint Form dated 1 November 2007, which was received at the Certification Office on 9 November 2007.

The Relevant Statutory Provisions

20. The provisions of the 1992 Act which are relevant for the purpose of the alleged breach of section 47 are as follows:-

Section 46 Duty to hold elections for certain positions

- (2) *The positions to which this Chapter applies...are*
- (a) *member of the executive,*
 - (b) *any position by virtue of which a person is a member of the executive,*
 - (c) *president, and*
 - (d) *general secretary*

Section 47 Candidates

- (1) *No member of the trade union shall be unreasonably excluded from standing as a candidate.*
- (2) *No candidate shall be required, directly or indirectly, to be a member of a political party.*
- (3) *A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.*

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

Section 54 Remedy for failure to comply with requirements: general

- (1) *The remedy for a failure on the part of a trade union to comply with the requirements of this Chapter is by way of application under section 55 (to the Certification Officer) or section 56 (to the court)*
- (2) *An application under those sections may be made –*
- (a) *by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or*
 - (b) *by a person who is or was a candidate at the election;*

and the references in those sections to a person having a sufficient interest are to such a person

- (3) *Where an election has been held, no application under those sections with respect to that election may be made after the end of a period of one year beginning with the day on which the union announced the result of the election.*

Section 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.*

(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 Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order

21. The provisions of the 1992 Act which are relevant for the purposes of the alleged breaches of union rule are as follows:-

Section 108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

- (a) -*
- (b) disciplinary proceedings by the union (including expulsion)*
- (c) -*
- (d) -*
- (e) -*

(6) An application must be made -

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

(7) Those days are -

- (a) the day on which the procedure is concluded, and*
- (b) the last day of the period of one year beginning with the day on which the procedure is invoked.*

Section 108B Declarations and orders

(3) 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 both of the following requirements -

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

The Relevant Union Rules

22. The Rules of the Union which are relevant for the purpose of this application are as follows:-

C Membership

7.4. Suspension

7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined.

7.4.2 In cases of alleged financial irregularities brought under Rule I and the member faces disciplinary charges related to such allegations arising from a Rule I investigation, the National Executive Council may suspend the members(s) from holding office until the conclusion of the disciplinary investigation, hearing or appeal.

I Disciplinary action

5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,

5.1.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;

5.1.2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.

5.2 It shall be open to the General Secretary to delegate all or part of the investigation to such person or persons as she/he thinks fit.

5.3 In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.

6 Disciplinary charges may be brought against a member by the member's Branch, Service Group Executive or by the National Executive Council or the General Secretary acting on its behalf.

7 The following arrangements shall apply for the hearing of disciplinary charges:

7.1 a disciplinary charge brought by a branch shall first be heard by its Disciplinary Sub-Committee unless the member belongs to the Branch Committee in which Disciplinary action case it shall first be heard by a Disciplinary Sub-Committee of the National Executive Council;

7.2 a disciplinary charge brought by a Service Group Executive or the National Executive Council (or the General Secretary acting on its behalf) shall be heard first before a Disciplinary Sub-Committee of the National Executive Council; provided always that the Disciplinary Sub-Committees referred to at I.7.1 and I.7.2 above shall consist of no less than three members.

8 Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the Branch

(1) censure of the member;

- (2) *debaring the member from attending any branch meeting for a period not exceeding 24 months;*
- (3) *referral of the matter to the National Executive Council for consideration of a more serious penalty including suspension or expulsion;*

By the National Executive Council

- (4) *debaring the member from holding any Union office for whatever period seems to it to be appropriate;*
- (5) *suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate;*
- (6) *expulsion of the member from the Union.*

Conclusions

Complaint 1

23. The Claimant's complaint is as follows:

"that on or around 18 September 2007 in breach of section 47(1) of the 1992 Act, Mr Bakhsh was unreasonably excluded from standing as a candidate in elections for positions covered by section 46 of the 1992 Act"

24. Section 47 of the 1992 Act is in the following terms:

Section 47 Candidates

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

Summary of Submissions

25. Mr Bakhsh submitted that there is nothing in section 47 of the 1992 Act which requires that he must have sought nomination to a position as defined in section 46 before bringing a complaint that he has been unlawfully excluded from standing as a candidate. He argued that it was sufficient if the Union had informed him that he was not entitled to stand for office, which Mr Nelson had done by his letter of 18 September 2007. The Claimant further submitted that the Union could not rely on section 47(3) as deeming his exclusion to be reasonable as he was not a member of "a class" within the meaning of section 47(3). He argued that "a class" for these purposes must be restricted to a grouping defined by the rules of the Union for the purpose of voting entitlement. As examples, the Claimant referred to the different geographical classes of membership or classes based on occupation, gender or ethnicity. In his submission, a class of suspended members is not permissible for the purposes of section 47(3). He went on to argue that even if suspended members were to be "a class", rule C7.4.2 should be disregarded as

membership of that class was determined by whom the Union chose to exclude. Finally, the Claimant submitted that his exclusion was clearly unreasonable within the meaning of section 47(1). He argued that at the time of his suspension, not only were there no charges against him, but he was not even aware of the allegations. He further argued that the procedure which led to his suspension was defective. The Claimant submitted that the purpose of any suspension should be neutral or precautionary but that the effect of excluding him from standing as a candidate whilst suspended went far beyond that. He argued that, following an investigation, he might not even be charged or, if charged, he might not be found guilty. In these circumstances he submitted that it would be grossly unfair if, in the meantime, he had missed the opportunity of standing in a statutory election which might only come round every two or five years. He contended that there was no problem in him standing as a suspended member even if this meant that, if elected, he would be unable to hold that office whilst suspended. In the Claimant's view, that would have been the wish of the electorate.

26. Mr Segal, for the Union, submitted that an application which alleges a breach of section 47(1) of the 1992 Act can only be made if the Claimant has sought to be a candidate in an election for a position as defined by section 46 and excluded. Mr Segal argued that this is apparent from the description in section 54(2)(b) of a person who can seek a remedy under section 47(1) as being "*a person who is or was a candidate in the election*". He also prayed in aid the generous time-limits for bringing such a complaint, which is expressed as being one year beginning with the day on which the Union announced the result of the ballot. Should I be against him on this submission, Mr Segal argued that the Claimant's exclusion was deemed reasonable by virtue of section 47(3). He maintained that the Claimant belonged to a class of members all of whom were excluded by the rules of the Union. In his submission, the class of members was all those subject to suspension under rule C7.4 and that it is irrelevant that such members are not referred to expressly as a class within the published "*Election Procedures*". Mr Segal also submitted that membership of the class was determined by reference to an objective fact, namely those the Union had decided should be suspended as part of the disciplinary process, and not by reference to whom the Union chose to exclude. On the question of reasonableness under section 47(1) Mr Segal submitted that it was reasonable to exclude from standing for office those who are suspended from holding office on the self-evident basis that it is sensible to prevent someone from standing for a position that he or she will not be able to take up.

Conclusion – Complaint One

27. Mr Bakhsh claimed that he was unlawfully excluded from standing as a candidate in an election for a position to which Chapter IV of the 1992 Act applies (a "section 46 position") on or around 18 September 2007, contrary to section 47(1) of the 1992 Act. The reference to 18 September is to a letter from Mr Nelson of that date informing the Claimant that he was not entitled to stand for office by virtue of being suspended under rule C7.4.2. The Union considered that those suspended from office under rule C7.4 were also

excluded from standing for any office within the Union, not just section 46 positions. I find that the Claimant was unaware until he received Mr Nelson's letter that this was the Union's position but nothing of significance turns on that point.

28. The Union contends that an application under section 47(1) cannot be brought unless the Claimant had sought to stand in a relevant election and had been excluded from that election. It is common ground that Mr Bakhsh had not sought to be a candidate in a section 46 election between the date of his suspension and this application but he maintains that he is still entitled to bring a complaint of breach of section 47(1) as he is, as a matter of fact, excluded from standing in any section 46 election that might be held. Whilst Mr Bakhsh chose not to stand in the NEC elections in 2007, he argued that he may well wish to stand should there be a casual vacancy before the next round of NEC elections in 2009. There is little guidance on this issue to be found from section 47 itself other than the references to the word "*candidate*". It is arguable that these give rise to an inference that the section is focussed on a member's candidacy in a particular election but I find that this is by no means conclusive. Looking for guidance elsewhere in Part IV of the 1992 Act, Mr Segal directed me to section 54(2), which is the provision which determines who may make an application under Part IV. Mr Segal relied upon section 54(2)(b) which entitles a claim to be made "*by a person who is or was a candidate in the election*". However, this sub-section has a clear application to a non-member of a union who is entitled under the rules of that union to stand for election. For example, the rules may provide that a non-member may stand for election as General Secretary. Furthermore, sub-section (b) is expressed as an alternative to sub-section (a) which entitles a claim to be made "*by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time it was held)*". Of more assistance is the reference in both sub-sections to "*the elections*" which is an indication that Parliament had in mind that persons making an application under Chapter IV would be complaining about a particular election. Section 54(3) is also of assistance. It deals with the relevant limitation period and provides as follows,

"Where an election has been held, no application under those sections with respect to that election may be made after the end of the period of one year beginning with the day on which the union announced the result of the election."

This provision was amended by the Employment Relations Act 2004, before which the sub-section provided merely "*No such application may be made after the end of the period beginning with the day on which the union announced the result of the election*". It would therefore appear that in 2004 Parliament specifically envisaged applications under Chapter IV being brought both where an election has been held and where one has not, but the sub-section is silent on the limitation period where an election has not been held. As it is unusual for Parliament to create a civil duty the breach of which is not subject to a limitation period, I find this to be an indication that the whole of Chapter IV is premised upon the conduct of a particular election, with it being possible to make an application alleging a breach of Chapter IV both when an election is in prospect and when one has been held. There is of course no limitation issue to be addressed if the application is brought when an election

is still in prospect and section 54(3) deals with the situation of complaints brought after an election has been held. It also deals with a case in which, for example, the General Secretary has never been elected since the enactment of Chapter IV, as in **Hill v Bakers Union (D/31/02 – CO)**. I am also mindful of the structure of Part IV of the 1992 Act. The Chapter is entitled '*Elections for Certain Positions*'. The three major sub-headings are '*Duty to Hold Elections*', '*Requirements to be satisfied with respect to elections*' and '*Remedy for failure to comply with requirements*'. This structure suggests that the purpose of the Chapter is that the section 46 positions are to be filled by someone elected at an election satisfying the requirements of the Chapter. Section 46 creates the duty. Sections 47 to 53 create the requirements, the mechanics, by which such an election must be conducted, and sections 54 to 56 deal with the remedy for a failure to meet those requirements. In this way, the Chapter enables a legal challenge to be made to the right of someone to hold a section 46 position. The structure of the Chapter therefore supports the construction that claims of a breach of section 47, made under section 55, cannot be pursued hypothetically, outside the conduct of a particular election for a section 46 position. For the above reasons, I find that section 47 requires a person to have been excluded from a specific election in which he or she has sought to be a candidate.

29. The Claimant's complaint is not advanced on the grounds that he had been excluded from standing as a candidate for a particular section 46 position and accordingly I find that there was no breach by the Union of section 47 of the 1992 Act, as alleged.
30. For the above reasons I refuse to make the declaration sought by the Claimant that on or around 18 September 2007 UNISON breached section 47(1) of the 1992 Act by allegedly excluding the Claimant unreasonably from standing as a candidate in an election as provided by Chapter IV of the 1992 Act.

Complaint Two

31. The Claimant's second complaint is one of breach of rule and is as follows:-

"that on or around 16 January 2007 UNISON breached rule C7.4.1 by suspending Mr Bakhsh without ensuring the provisions of the rule had been met"

32. Rule C7.4.1 provides as follows:-

"The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such period is extended by agreement between the parties) if the member faces disciplinary charges under Rule I and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined."

Summary of Submissions

33. Mr Bakhsh argued that the Union had failed to ensure that the conditions which are attached to the use of suspensions under rule C7.4.1 had been met. In particular, he argued that there had been a breach of the requirement that

there must be exceptional circumstances, that he must face disciplinary charges under rule *I* and that it must be in the interests of his Branch or the Union generally that he be suspended. As to the requirements of exceptional circumstances and the interests of the branch/Union, the Claimant argued that the Union had failed to give reasons why those conditions had been satisfied to either himself or the NEC. As to the requirement that he must be facing charges, the Claimant relied upon the letters from Mr Cafferty of 12 April and 24 July 2007 in which Mr Cafferty stated “...*there are no charges against Yunus*” and “...*you are facing no charges at this stage.*”

34. Mr Segal, for the Union, submitted that this claim was out of time, having been made in respect of the suspension which was notified to him on 16 January 2007, more than six months earlier than the Claimant’s application was presented on 9 November 2007. On the substance of the complaint, Mr Segal made three submissions on the arguments regarding exceptional circumstances and the interests of the branch/Union. First, he argued that it would be improper for me to substitute my views on these matters for those of Mrs Highton, under her delegated powers. In Mr Segal’s submission, my power to intervene in the exercise of such a discretion is limited to whether the Union directed itself in accordance with the relevant criteria, whether it did so in bad faith and/or whether it did so irrationally. Secondly, he argued that, on the facts of this case, the Union had not acted outside the scope of discretion. Thirdly, he argued that there was no requirement in rule C7.4.1 for Mrs Highton to give an explanation to either the Claimant or the NEC for her decision that the requirements of the rule had been met. On the Claimant’s argument that he was not facing disciplinary charges under rule *I*, Mr Segal submitted that the Claimant was facing such disciplinary charges as a formal disciplinary investigation into his conduct had been commenced on the authority of the NEC under rule *I.5.1*. He argued that the word “*faces*” should be understood in context as meaning “*is faced with a significant risk of...*” and that “*charges*” should be understood as meaning “*complaints under investigation*”. He supported this submission by reference to rule *I.5.1* where he argued that the word “*charge*” was used to mean “*complaints*” and by reference to rule C7.4.2, which provides that suspension may continue “*until the conclusion of the disciplinary investigation*”.

Conclusion – Complaint Two

35. Mr Bakhsh complained that he was wrongly suspended by the Union on 16 January 2007 under rule C7.4.1. He made this application to me by a Registration of Complaint Form which was received at my office on 9 November 2007. The primary limitation period for such a complaint under section 108A(6)(a) of the 1992 Act is six months. Accordingly, the Claimant’s complaint fell outside the primary limitation period. However, section 108A(6)(b) provides for a longer limitation period if, within the initial six month period, “*any internal complaints procedure of the union is invoked to resolve the claim*”. In these circumstances, the limitation period is extended so as to expire six months after the internal procedure is concluded or one year after the internal procedure was commenced, whichever is the earlier. I have therefore considered whether the Claimant invoked any internal complaints

procedure of the Union within six months of his suspension on 16 January 2007. Neither party chose to address me on this point. I observe that on 25 January 2007 the Claimant wrote to Mrs Highton expressing his wish to appeal her decision to suspend him. Mrs Highton responded by a letter dated 5 February 2007 stating that she had referred the Claimant's letter to Mr Cafferty. Thereafter, the Claimant entered into extensive correspondence with Mr Cafferty in which he continued to press the points raised in his letter of appeal. The Union did not at any stage deal conclusively with all the issues raised by the Claimant. In these circumstances, the relevant limitation period expired one year after the Claimant's letter of appeal, namely in January 2008. On this basis I find that the Claimant's second complaint was made in time.

36. As to the substantive complaint, the Claimant alleged that the Union had not met the conditions required to suspend him under rule C7.4.1, which required there to be exceptional circumstances and that suspension was in the interests of his branch or the Union generally. I accept Mr Segal's submission that in considering these allegations it is not for me to substitute my discretion for that of Mrs Highton and that I should only find there to have been a breach if Mrs Highton had exercised her discretion irrationally, in bad faith or in breach of the rules. On the evidence before me, Mrs Highton expressly considered both whether there were exceptional circumstances and whether suspension was in the interests of his branch or the Union generally. She had reservations about whether the content of Ms Tokat's first report sufficiently supported its conclusions and asked Ms Tokat to reconsider that report. Ms Tokat did so and re-submitted her report on 16 January with additional paragraphs in which she set out the factual basis for her view that there were exceptional circumstances and that it was in the interests of the branch or the Union generally to suspend the Claimant. Mrs Highton was then satisfied that this was not a usual case of alleged bullying but one in which local lay representatives would probably withdraw from attending branch meetings and participating in Union activities. She feared that this would both disenfranchise local members and damage the Union's aim of reorganising the local branch structure in response to the employer's own reorganisation. On this basis, Mrs Highton considered that there were exceptional circumstances and that the Claimant's suspension was in the interests of the branch or the Union generally. I find that Mrs Highton's decision on these matters was within the range of discretion which she is afforded under her delegated powers and was not in breach of rule C7.4.1. I further find that there was no obligation under rule C7.4.1 for Mrs Highton to furnish an explanation for the basis upon which she exercised her discretion to either the Claimant or the NEC. I note, however, that the Union has a procedure whereby each meeting of the NEC has before it a written report on all outstanding cases of disciplinary action and that members of the NEC have the opportunity to submit written questions on the report prior to its consideration at the meeting. The disciplinary action against the Claimant has been the subject of such reports and it was possible for the NEC to seek an explanation of the basis upon which the Claimant was suspended if it had so wished.
37. Mr Bakhsh also complained that there had been a breach of that part of rule C7.4.1 which provides that a member must face disciplinary charges under

rule *I* before that member can be suspended. In the Claimant's submission he was not facing disciplinary charges under rule *I* when he was suspended on 16 January 2007. He argued that whatever charges he was arguably facing could not have been disciplinary charges under Rule *I* as the procedure whereby Ms Tokat's report had reached Mrs Highton was improper. I find that there is nothing in this submission as far as my consideration of a breach of rule C7.4.1 is concerned. Rule *I* is engaged whenever there appears to be reasonable grounds for the relevant person to think that a member might be guilty of a disciplinary offence. In this case, the reasonable grounds came to Mrs Highton in the form of a report from Ms Tokat. In my judgment the source of the information which causes the NEC to reach the view that there are reasonable grounds to think a member might be guilty of misconduct is immaterial and it would be wholly inappropriate for me to consider the constitutional position of Ms Tokat's report.

38. The issue as to whether the Claimant was '*facing disciplinary charges*' at the time of his suspension is not straightforward. There are, however, two clear facts. First, when the Claimant was suspended on 16 January 2007, he was facing a disciplinary process under Rule *I* which could result in charges being put to him. Secondly, at the time he was suspended, no charges had been formulated or put to him and no decision had been made that such charges would be formulated and put to him. It is this latter proposition which Mr Cafferty's letters of 12 April and 24 July 2007 confirmed. The more obvious meaning to be given to the expression "*faces disciplinary charges*" is that extant charges have been put to the person to be suspended. However, the whole of rule C7.4 must be considered in context to test if this is the actual meaning and it is well understood that the rules of a union are not to be construed as if they were a statute but are "*to be given a reasonable interpretation which accords with their intended meaning; bearing in mind their authorship, their purpose and the readership to which they are addressed*" (see **Jacques v AUEW (1986) ICR 683**). Approached in this way, I note that rule C7.4 was adopted in its current form in 2002, when rule C7.4.2 was added to what is now C7.4.1. I further note that since 2002 the Union has applied rule C7.4 so as to give the NEC a discretion to suspend members once it has been decided, under rule *I.5.1*, to investigate a potential disciplinary offence. I also note the differences between the two sub-rules. Rule C7.4.2 deals with a specific type of misconduct, namely financial irregularities, it is not restricted to a maximum period of suspension of 60 days and it is not subject to conditions of exceptional circumstances and the interests of the branch or the Union generally. Nevertheless, I find that where the same expression "*faces disciplinary charges*" appears in different paragraphs of the same sub-rule, it is to be given the same meaning. Examining rule C7.4.1 in isolation I note that the word "*charge*" appears not only in the expression "*faces disciplinary charges*" but also in the expression "*until the charges are determined*". This strongly suggests that what the member must face is actual charges, not potential charges. Examining rule C7.4.2, I note that there is no similar repetition of the word "*charge*" but that the charges in rule C7.4.2 must be "*related to such allegations arising from a rule I investigation*", namely allegations of financial irregularities. This formulation suggests that the allegation of financial irregularities is something different to the charges

arising from a Rule *I* investigation and is another indication that to be facing a charge is something different to facing an allegation. Looking for guidance outside rule C7.4, I was directed to rule *I.5*. I note that in rule *I.5.3* the word “charge” is used as meaning an actual charge, not a potential charge, whilst in rule *I.5.1* the word is used more ambiguously and could refer to the allegations or complaints under investigation. Construed purposefully, however, I find that rule *I.5.1* provides that there will or may be an investigation into whether any actual charges are justified. I find that such a construction is preferable to an interpretation of the word “charge” in Rule *I.5.1* as meaning a mere allegation of wrongdoing which is entirely inconsistent with its use in rule *I.5.3* and its use elsewhere in Rule *I*, where it unambiguously refers to an actual charge.

39. The major argument in favour of the Union’s construction of the expression “*faces disciplinary charges*” is the inclusion within rule C7.4.2 of the notion that the suspension will continue “*until the conclusion of the disciplinary investigation, hearing or appeal*”. This suggests that the suspension can be imposed whilst the investigation is still being carried out, i.e. before any disciplinary charges are formulated or put to the member. However, I find that the inclusion of the possibility of suspension during the period of investigation is not conclusive in the Union’s favour. There is no rule which prevents a disciplinary investigation continuing after a member is charged. Indeed this might be expected when new matters arise between the charge being put and the hearing. Furthermore, it is the practice of the Union to only put disciplinary charges to members about three weeks before the date of the disciplinary hearing, in accordance with paragraph 1 of schedule D of its rules. There is therefore a period between when a decision is made under rule *I.5.3* that a charge should be brought and the date upon which the actual charges are put. This is a period in which the disciplinary investigations may continue and the member be suspended under rule C7.4.2. Accordingly, the inclusion of the reference to “*the conclusion of the disciplinary investigation*” in rule C7.4.2 is not devoid of meaning on anything other than the Union’s construction of the expression “*faces disciplinary charges*”.
40. Having analysed the relevant rules, I find that on both a literal and contextual approach, the predominant meaning to be given to the expression “*faces disciplinary charges under rule I*” is that the person must face actual charges or that a decision has been taken, pursuant to rule *I.5.3* that a charge or charges should be brought. I have also had regard to the nature of the power given to the NEC by rule C7.4. A discretionary power to suspend a member from an office to which he or she has been elected is a very significant matter. This is recognised by the safeguards incorporated into rule C7.4.1 relating to exceptional circumstances and the interests of the branch or Union. Against this background it would not be surprising for the power to suspend to be exercisable only if there is sufficient evidence to charge a member. I find that for such a significant power to be exercised on a mere allegation, there would need to be a rule expressed with much greater clarity than is presently found in rule C7.4.

41. For the above reasons, I make the declaration sought by the Claimant that on or around 16 January 2007 UNISON breached rule C7.4.1 by suspending the Claimant from office.
42. When I make a declaration under section 108B(2) of the 1992 Act I must make an enforcement order under section 108B(3) unless I consider that to do so would be inappropriate. The Claimant's suspension under rule C7.4.1 expired by the effluxion of time on 17 March 2007. Mr Bakhsh is no longer suspended under rule C7.4.1. It is accordingly inappropriate that an enforcement order is made with regard to this breach of rule C7.4.1.

Complaint Three

43. The Claimant complained that:

“on or around 12 March 2007 UNISON breached rule C7.4.2 by suspending Mr Bakhsh from holding office until the conclusion of a disciplinary investigation, hearing or appeal, despite that at the time of his suspension Mr Bakhsh was not subject to a disciplinary charge relating to alleged financial irregularity.”

44. Rule C7.4.2 provides that:

“In cases of alleged financial irregularities brought under Rule 1 and the member faces disciplinary charges related to such allegations arising from a Rule 1 investigation, the National Executive Council may suspend the members(s) from holding office until the conclusion of the disciplinary investigation, hearing or appeal.”

Summary of Submissions

45. Both the Claimant and Mr Segal, on the Union's behalf, relied upon the same submissions that they had made in relation to the relevant part of the Claimant's second complaint.

Conclusions - Complaint Three

46. The Union submitted that the Claimant's third complaint was out of time on the same grounds that were advanced in relation to his second complaint. The Union argued that even though this complaint relates to the Claimant's second suspension beginning on 12 March 2007, the Claimant only made his application to my office on 9 November 2007, more than six months after the alleged breach. The issue to be determined therefore is whether the Claimant invoked any internal complaints procedure of the Union within the initial period of six months and, if so, whether his application was made within one year of the earlier of the conclusion of that procedure or the date on which the procedure was invoked. I note that the Claimant had previously sought to appeal from his suspension by Mrs Highton on 16 January 2007 but had been told by her that his appeal would be referred to Mr Cafferty. Against this background I note that the Claimant's representative, Mr Ladbrooke, wrote to Mr Cafferty on 3 April 2007 regarding his suspension on 16 March, raising a number of issues about the correctness of the Claimant's suspension. No submissions were made to me by either party on when or if these

representations were ever concluded. It is, however, clear from the correspondence that the Claimant and his representative continued to maintain that the Claimant's second suspension was procedurally flawed. The Union did not at any stage deal conclusively with all the issues raised by or on behalf of the Claimant. In these circumstances the relevant limitation period expired one year after Mr Ladbrooke's letter of 3 April 2007, namely in April 2008. On this basis I find that the Claimant's third complaint was made in time.

47. The Claimant's third complaint also concerns the correct construction of the expression "*faces disciplinary charges*". However, the formulation of this expression in rule C7.4.2 is slightly different from that in C7.4.1. The relevant expression is "*face disciplinary charges related to such allegations arising from a rule 1 investigation*". This formulation makes a clear distinction between "allegations" and "charges". Accordingly, for the same reasons that I gave in relation to the Claimant's second complaint and with this added reason, I find that in order for the Claimant to have been lawfully suspended from holding office under rule C7.4.2 he must have had either disciplinary charges put to him or a decision must have been made under rule I.5.3 that disciplinary charges be brought. As neither of these events had occurred at the time of the Claimant's suspension on 12 March 2007 I find that the Union acted in breach of rule C7.4.2.
48. For the above reasons I make the declaration sought by the Claimant that on or around 12 March 2007 UNISON breached rule C7.4.2 by suspending the Claimant from holding office.
49. Where I make a declaration under Section 108B(2) of the 1992 Act I must make an enforcement order under Section 108B(3) unless I consider that to do so would be inappropriate. The Claimant remains suspended under the decision taken by Mrs Highton, under her delegated powers, on 12 March 2007. No charges have as yet been put to the Claimant and no decision has been made under rule I.5.3 as to whether or not a charge or charges should be brought. In these circumstances, I order that UNISON forthwith revokes the suspension from holding office which was imposed upon Mr Bakhsh on 12 March 2007 in purported exercise of its powers under rule C7.4.2. Should the Union make a decision under rule I.5.3 to put charges to the Claimant or should charges be put to him, the Union may reconsider the exercise of its discretion under rule C7.4.2.

Complaint Four

50. The Claimant's complaint is as follows:
"that on or around 18 September 2007 UNISON breached rule I.8.4 by suspending Mr Bakhsh from standing for office which had the effect of debaring him from office thereby imposing a disciplinary penalty without there having been a disciplinary charge against him proven in a disciplinary hearing as required under rule I.7.2."
51. Rule I.8.4 of the Rules of the Union is as follows:-
"I.8 Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:..."

*By the National Executive Council
(4) debarring the member from holding any Union office for whatever period seems
to it to be appropriate;"*

Summary of Submissions

52. The Claimant submitted that Mr Nelson's letter of 18 September 2007 imposed on him what was in effect the disciplinary sanction of debarment from office, which could only be imposed lawfully following the completion of the Union's disciplinary procedures under rule *I*. The Claimant argued that there is no rule authorising the Union to treat a suspended member as being excluded from both holding office and standing for office, the equivalent of debarment under rule *I.8.4*, such a sanction being available only upon being found guilty of an offence.
53. Mr Segal, for the Union, submitted that this complaint made no sense on its facts and that rule *I* was simply not engaged. He accepted that the Claimant had been temporarily debarred from office by reason of his suspensions since 16 January 2007 but he maintained that these had been imposed lawfully within the terms of rule *C7.4*. Mr Segal contended that no disciplinary penalty was imposed on the Claimant by Mr Nelson's letter of 18 September 2007.

Conclusion – Complaint Four

54. Rule *I.8.4* of the rules of the Union gives the NEC the power to debar a member from holding any Union office for whatever period seems to it to be appropriate if a disciplinary charge has been proved against that member.
55. Mr Nelson's letter of 18 December 2007 did not impose any disciplinary penalty. Rather, Mr Nelson responded to a question from the Claimant about his eligibility to stand for office as a member who had been suspended under rule *C7.4*. Mr Nelson held a genuine belief that the legal effect of rule *C7.4* was that a person suspended from office was also excluded from standing for office. It was Mr Nelson's position that the Claimant had been excluded from standing for office since the time of his first suspension on 16 January 2007. Mr Nelson also gave evidence that his understanding of the scope of rule *C7.4* had been applied to all other suspended members and had not been questioned.
56. In my judgment, neither the intention nor effect of Mr Nelson's letter of 18 September 2007 was to impose a disciplinary penalty on the Claimant in breach of rule *I.8.4*. The Union was either in breach of rule *C7.4* by the scope of the suspension applied to the Claimant or it was not. The Claimant's remedy was to bring a complaint of a breach of rule *C7.4*, which he has done. I accept Mr Segal's arguments that on the facts of this case, rule *I.8.4* was simply not engaged and that the Claimant's complaint is misconceived.
57. For the above reasons I refuse to make the declaration sought by the Claimant that on 18 September 2007 UNISON breached rule *I.8.4* by suspending the Claimant from standing for office.

Complaint Five

58. The Claimant's complaint is in the following terms:

" that on or around 16 January 2007 UNISON breached rule I.8.5 by imposing a disciplinary penalty on Mr Bakhsh in suspending him from receiving certain benefits of membership without there having been a disciplinary charge proven against him as required under rule I.7.2."

59. Rule I.8.5 of the Rules of the Union is in the following terms:

*"I.8 Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:.....
By the National Executive Council....
(5) suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate;"*

Summary of Submissions

60. The Claimant submitted that the Union had taken disciplinary action against him in breach of rule I.8.5 when it stopped sending him the Union's magazine and other such publications, which he had previously received at his home address. The Claimant maintained that the Union magazine is a benefit of membership and that such a benefit can only be suspended as a disciplinary penalty imposed after a disciplinary hearing held in accordance with rule I.7.2. Rule I.8.5 provides that, following a disciplinary charge being proved at a disciplinary hearing, the NEC may suspend a member *"from all or any of the benefits of membership for whatever period seems to it to be appropriate"*.

61. Mr Segal, for the Union, did not admit that the Claimant had not received his Union magazine. Mr Nelson gave evidence that the Claimant did not raise this matter with the Union before including it in his complaints to me and that upon being notified of the problem, the Union caused enquiries to be made into the allegation. Mr Nelson stated that Union publications are sent to members on one of two databases; an activists' and a members' database. He understood that the address held on these databases for the Claimant was that of his place of work, Newcastle General Hospital, from which he had been suspended since 27 September 2006. Mr Nelson also discovered that, following the reorganisation of the relevant branches in October 2006, the mailing address of the Branch was changed to that of the Union's regional office in Newcastle and he assumed that the Claimant's magazine must then have been sent to that address. Be this as it may, Mr Nelson stated that, upon receipt of this complaint, he had taken steps to change the address of the Claimant on the Union's databases to his home address. On these facts Mr Segal submitted that the Union had not imposed a penalty on the Claimant, as alleged, but that his magazines were simply not passed onto him whilst he was suspended from employment. Mr Segal further argued that the benefits of membership to which reference is made in rule I.8.5 do not include the receipt of a Union magazine. In his submission, the benefits referred to in that rule are

restricted to the benefits to which members have a right, being those listed in Schedule B of the rules. The Union categorised this complaint as silly and vexatious.

Conclusion – Complaint Five

62. I accept Mr Nelson’s evidence that no decision was taken by the Union to discipline the Claimant by depriving him of his Union magazine or other similar publications. It may be that certain of these publications had previously been sent to his home address and others to his place of work and that in the confusion that followed the Claimant’s suspension from work and the reorganisation of the relevant branches, an error was made on the mailing databases. Such confusion was not assisted by the Claimant having failed to raise this matter in writing with the relevant Union employee or officer before bringing legal proceedings. As I am not persuaded that the Union took any disciplinary action against the Claimant as alleged, I find that rule *I.8.5* was not engaged on the facts of this case.
63. Had I found that Rule *I.8.5* was engaged, I would not have found that the receipt of the Union magazine is a benefit of membership for the purposes of that rule, having regard to the definition of benefits in rule C4.2 and rule L.1 and to the distinction made in rule C7.4 and C7.5 between the benefits and privileges of membership. I find that the term “benefit of membership” in rule *I.5* is given a narrow meaning which excludes receipt of the Union magazine.
64. For the above reasons I refuse to make the declaration sought by the Claimant that on or around 16 January 2007 UNISON breached rule *I.8.5* by allegedly suspending the Claimant from receiving certain benefits of membership of the Union.

David Cockburn
The Certification Officer