

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

MR W HARDMAN

v

COMMUNITY

Date of Decision:

20 December 2006

DECISIONS

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

- (i) I refuse to make the declaration sought by the Claimant that Community acted in breach of section 49(1) of the 1992 Act in the conduct of its 2006 National Executive Council elections.
- (ii) I refuse to make the declaration sought by the Claimant that Community acted in breach of section 49(5) of the 1992 Act in the conduct of its 2006 National Executive Council elections.

REASONS

1. Mr Hardman is a member of the trade union, Community (“the Union”). By an application dated 11 May 2006 he made complaints against his Union arising out of the elections to the Union’s National Executive Council (“NEC”) in 2006. Following correspondence with Mr Hardman, the complaints which Mr Hardman wished to pursue were identified in the following terms:-

Complaint 1

“In breach of section 49(1) of the 1992 Act the union failed to appoint an independent scrutineer for the union’s election for members of its National Executive Council before the election commenced on 7 March 2006.”

Complaint 2.

“In breach of section 49(5) of the 1992 Act the union failed to notify the membership of the name of the scrutineer by either of the methods set out in subsections (a) or (b) of section 49(5) of the 1992 Act before the scrutineer began to carry out his functions in respect of the union’s National Executive Council elections 2006.”

2. I investigated the alleged breaches in correspondence and a hearing took place on 23 November 2006. At the hearing, the Union was represented by Mr Gavin Millar QC, instructed by Mr Fraser Whitehead of Russell Jones and Walker, Solicitors. Mr M Walsh, the Union’s Head of Research, submitted a witness statement and was available for cross-examination. The Claimant represented himself and called no other witnesses. A bundle of documents was prepared for the hearing by my office. The rules of the Union were also in evidence. Mr Millar QC submitted a detailed skeleton argument and two authorities.

Findings of Fact

3. Having considered the representations of the parties, Mr Walsh’s witness statement and the documentary evidence, I find the facts to be as follows.
4. The Union came into existence on 1 July 2004 as a result of the amalgamation of the Iron and Steel Trades Confederation (“ISTC”) and the National Union of Knitwear, Footwear and Apparel Trades (“KFAT”). Upon formation, the Union had what were known as interim rules and an interim NEC. The intention was to have new rules in place by early 2006 and for the new NEC to be elected immediately thereafter, under the new rules, prior to the holding of a delegate conference in June 2006.
5. A ballot of the whole membership on the proposed new rules was held between 13 February and 6 March 2006, a little later than originally planned. The new rules were adopted by a large majority and took effect from 6 March. The scrutineer used by the Union for that ballot was Popularis, the same scrutineer that the Union had used on a number of earlier ballots. Mr Walsh, the Union’s Head of Research, with responsibility for holding ballots, assumed that Popularis would also be the scrutineer in the forthcoming NEC ballot.
6. By February 2006, a proposed timetable for the NEC elections had been agreed, on the assumption that there would have been a favorable vote on the new rules by 6 March. This was a relatively tight timetable. Nominations would open immediately on 6 March and close on 3 April. Voting would take place between 24 April and 19 May. The first meeting of the new NEC would take place on 5 June and a delegate conference would be held on 20 June.
7. Nominations for the NEC elections in fact opened on 6 March 2006, by which date no scrutineer had been appointed by the Union.

8. At some time in March 2006, Mr Hardman became concerned that improper canvassing was taking place and wished to make an official complaint to the Union. He telephoned the Union to find out the name of the scrutineer but was told that no scrutineer had yet been appointed. Mr Hardman went to his local Citizens Advice Bureau and was told that the only way to take his complaint further was to make an application to the Certification Officer.
9. The last meeting of the interim NEC took place on 21 March 2006. At this meeting, a question arose about the appropriateness of using Popularis as the scrutineer in the NEC election. Popularis was a tenant of the Union at its premises in Leicester. The NEC decided to appoint a different scrutineer and it was agreed to make an approach to the Involvement and Participation Association (the “IPA”) with a view to appointing it as the scrutineer in this election.
10. Mr Walsh spoke to the IPA during the course of the following day, 22 March 2006. There was a subsequent exchange of e-mails in which the Union outlined its requirements and the IPA outlined its terms. Following brief negotiations, the IPA was appointed as the scrutineer for the NEC elections on 4 April.
11. On 5 April 2006, Mr Walsh e-mailed the IPA to inform it that the Union was still verifying information about nominees but would provide it with a complete membership list and list of candidates by 6 April.
12. On 6 April 2006, the General Secretary of the Union, Mr Leahy, wrote to all Branch Secretaries informing them of the identity of the appointed scrutineer. The Branch Secretaries were asked to take all practicable measures to inform their members of this. Mr Walsh gave uncontested evidence that when matters of general interest are to be brought to the attention of members it is the practice of the Union to provide that information to Branch Secretaries for them to cascade down to their members as appropriate.
13. Mr Hardman’s first letter to the Certification Officer complaining about this election was received on 10 April 2006 and, following correspondence, his registration of complaint form dated 11 May was received on 15 May.
14. The NEC ballot proceeded. Voting took place between 24 April and 19 May 2006 and the results were declared on 22 May.

The Relevant Statutory Provisions

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

s.49 **Appointment of independent scrutineer**

(1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out –

- (a) *the functions in relation to the election which are required under this section to be contained in his appointment; and*
- (b) *such additional functions in relation to the election as may be specified in his appointment.*

(3) *The scrutineer's appointment shall require him –*

(a) to be the person who supervised the production of the voting papers and (unless he is appointed under section 51A to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;

aa) to-

- (i) inspect the register of names and addresses of the members of the trade union, or*
 - (ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (5A)(a), whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (3A) are satisfied;*
- (b) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 52);*
- (c) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and*
- (d) to retain custody of all voting papers returned for the purposes of the election and the copy of the register supplied to him in accordance with subsection (5A)(a)*
- (i) until the end of the period of one year beginning with the announcement by the union of the result of the election; and*
 - (ii) if within that period an application is made under section 54 (complaint of failure to comply with election requirements), until the Certification Officer or the court authorises him to dispose of the papers or copy.*

(3A) *The conditions referred to in subsection (3)(aa) are –*

- (a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union or candidate who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and*
- (b) that the scrutineer does not consider that the suspicion of the member or candidate is ill-founded.*

(3B) *In subsection (3A) “the appropriate period” means the period*

- (a) beginning with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed, and*
- (b) ending with the day before the day on which the scrutineer makes his report to the trade union.*

- (5) *The trade union shall, before the scrutineer begins to carry out his functions, either –*
- (a) *send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or*
 - (b) *take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.*

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.*

S.61 Other supplementary provisions

- (1) *For the purposes of this Chapter the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to be the last of those days.*
- (2) *Nothing in this Chapter affects the validity of anything done by a person holding a position to which this Chapter applies.*

Complaint 1

16. Mr Hardman’s first complaint is in the following terms:

“In breach of section 49(1) of the 1992 Act the union failed to appoint an independent scrutineer for the union’s election for members of its National Executive Council before the election commenced on 7 March 2006.”

Section 49(1) of the 1992 Act is in the following terms:

“Appointment of independent scrutineer

Section 49(1) The trade union shall, before the election is held, appoint a qualified independent person (“the scrutineer”) to carry out –

- (a).....
- (b).....”

Summary of Submissions

17. Mr Hardman's submissions were brief. He did not attempt any analysis of the relevant statutory provisions but argued by reference to what he considered to be common sense. In Mr Hardman's view the requirement that the Union must appoint a scrutineer "*before the election is held*" requires the scrutineer to be appointed as soon as the decision is taken to hold a relevant election or, at the latest, by the time nominations are first called for. On the facts of this case, Mr Hardman noted that nominations were first called for on 6 March 2006 but that the scrutineer was not appointed until 4 April. He submitted that this was a breach of section 49(1) of the 1992 Act and left him in the position that he had no one with whom he could raise a complaint during the nomination period.
18. Mr Millar QC, for the Union, made detailed legal submissions. He argued that it was clear from section 49(3B) of the 1992 Act that the scrutineer could be appointed after the commencement of the nomination period, this being the first day on which a person may become a candidate for the purposes of that subsection. He observed that this had been the view of the then Certification Officer in the case of *The Offshore Industry Liaison Committee (D/7/94-1994)* ("OILC"). Mr Millar prefaced his submissions by stating that it is difficult to attribute a single omnibus definition to the word "*election*" as it is used in either the 1992 Act or the Representation of the People's Act 1983 and related regulations. In his submission, the meaning of the word "*election*" must depend to a greater or lesser extent on its context and that, whilst one should strive to give it the same meaning wherever it appears in a particular section, it may not be possible to give it the same meaning wherever it appears in a particular Chapter of an Act. Mr Millar analysed the expression "*before the election is held*" through a critical examination of the OILC case, which he argued was wrongly decided. The OILC case concerned an uncontested election. It held that there is a requirement to appoint a scrutineer even when an election is uncontested. The conclusion of Mr Millar's analysis was that, for the purposes of section 49(1) of the 1992 Act, an election begins to be held when the scrutineer begins to carry out his or her statutory functions under section 49(3). On the facts of this case, he submitted that the scrutineer had been appointed on 4 April 2006 and that the election had begun to be held on 6 April at the earliest. He therefore argued that there had been no breach of section 49(1) of the 1992 Act, as alleged.

Conclusion - Complaint 1

19. Mr Hardman's complaint turns upon the meaning of the expression "*before the election is held*" in section 49(1) of the 1992 Act. The scrutineer in this case, the IPA, was appointed on 4 April 2006. The precise question I must therefore ask myself is whether the appointment of the IPA as the scrutineer on 4 April 2006 was "*before the election (was) held*", within the meaning of that expression in section 49(1) of the 1992 Act.

20. With due respect to Mr Hardman’s submission of what is common sense, I find that the answer to this question does require an analysis of the relevant legislation, tempered as always by the application of common sense. Adopting this approach, neither of Mr Hardman’s definitions withstands scrutiny. First, if an election is being held from the moment that the NEC determined that one should be held, a scrutineer for that election could never be appointed in time. A decision to hold an election must logically precede the appointment of a scrutineer of that election. Secondly, whilst the commencement of the nomination period might sensibly be considered as part of the election process, it would seem that Parliament did not intend this to be the case. Section 49(3) of the 1992 Act requires the scrutineer to carry out various functions. Amongst these, he or she is required to inspect a union’s membership register if requested to do so by a member within “*the appropriate period*”. The appropriate period is defined in section 49(3B) as beginning “*with the first day on which a person may become a candidate in the election or, if later, the day on which the scrutineer is appointed*”. In my judgment, this subsection puts it beyond doubt that Parliament envisaged that a scrutineer may be appointed after the opening of the period for nominations. Accordingly Mr Hardman’s alternative submission cannot be upheld.
21. Despite the detailed and cogent submissions of Mr Millar QC in the context of uncontested elections, I do not find his conclusion to be convincing. The proposition that an election is being held from the time the scrutineer begins to carry out his or her statutory functions is not only circular but replicates the formula used later in the same section, in section 49(5), to determine before when members must be informed of the scrutineer’s appointment. In my judgment, it is unlikely that Parliament would have described the same concept in different language in two places in the same section.
22. During the course of the hearing I queried the significance of section 61(1) to this question. Section 61(1) contains a definition of the date on which a contested election is held. It provides:

s.61(1) “For the purposes of this Chapter the date on which a contested election is held shall be taken, in the case of an election in which votes may be cast on more than one day, to be the last of those days”.

The most similar expression in Chapter IV to the section 61(1) expression “*the date on which a contested election is held*” is to be found in section 49(1), namely “*before the election is held*”. This would suggest that Parliament intended the definition in section 61(1) to apply to section 49(1) and that the date before which a scrutineer must be appointed is the last day upon which votes can be cast. However, such an interpretation is not without difficulty. Should a scrutineer be appointed on or shortly before the last day on which votes can be cast, it would not be possible for the scrutineer to fulfill all the duties required by section 49(3). In particular, it would not be possible for the scrutineer to supervise the production of voting papers (section 49(3)(a)) and it would not be possible for the name of an appointed scrutineer to appear on the voting paper (section 51(2)(a)).

Although such an interpretation might offend Mr Hardman’s view of common sense, it could have been the one to which I was driven should there have been no other provision within the Chapter to which section 61(1) could apply. There is, however, section 58(2)(f). It relates to the exemption from election of certain persons nearing retirement and defines the start and end dates for determining whether “*the period between the day on which the election referred to in paragraph (a) took place and the day immediately preceding that in which paragraph (c) is first satisfied*” has exceeded five years. Section 61(1) defines the start date for the purposes of this calculation. Further, I observe that similar definitions to “*the date on which the election is held*” appear in both section 96, in relation to political fund ballots, and in section 246, in relation to industrial action ballots. However, the section 96 definition has an obvious application in section 73(4), to ascertain the date when a political resolution ceases to have effect. Similarly, section 246 has an obvious application in section 234, to ascertain the date after which the industrial action ballot ceases to have effect. These provisions contrast with the manner of calculating the five year period for which a person can hold elected office under section 46. This period is not calculated by reference to the date of a ballot but by reference to the period for which an elected person continues to hold office. The only equivalent provision to sections 73(4) and 234 in Chapter IV is section 58(2)(f), which supports my analysis that it is to this subsection that section 61(1) applies. Accordingly, I have concluded, albeit with some diffidence, that the definition in section 61(1) of “*the date on which a contested election is held*” was not intended to define the date *before which* the election is held for the purposes of section 49(1).

23. A more general examination of the word “election” as it appears in Chapter IV suggests that the meaning Parliament meant it to bear is the process of voting. Where the word “election” appears to refer to a period outside the period of voting one generally finds the expressions “*with respect to elections*” (in the heading to s 47-53) or “*in relation to elections*” (s 49(2), 51A(2) and 52(2)). The main problem with attributing this meaning to the word “election” is, once again, that if a scrutineer is not appointed until shortly before voting begins it would not be possible for that scrutineer to fulfill certain of the duties required by section 49(3).
24. Having regard to the arguments for and against the different meanings to be attributed to the expression “*before the election is held*” in section 49(1), I find none of them to be compelling. I have therefore sought to give a meaning to that expression which accords with the intention of Parliament as indicated by its general and specific context; that is by reference to Chapter IV of the 1992 Act and to the other provisions of section 49.
25. The arrangement of the sections within Chapter IV may be instructive. It suggests that Parliament has adopted a chronological approach to the regulation of the relevant election. Section 47 deals with candidates. Section 48 deals with election addresses. Section 49 deals with the appointment of a scrutineer. Sections 50 and

- 51 deal with voting and section 52 deals with the scrutineer's report and the declaration of the result. This is an indication, but no more, that the appointment of a scrutineer is only required after the procedure for identifying candidates and after election addresses.
26. Turning to the specific context of section 49, I observe that section 49(3B) envisages that a scrutineer may be appointed after the first date that a person may become a candidate. Section 49(5) requires that the appointment of a scrutineer must be notified to members before he or she begins to carry out his or her functions and section 49(8) envisages, by reference to the definition of "*relevant date*" for the purposes of section 49(5A), that a scrutineer has been appointed by the last date on which voting papers are distributed.
 27. In the above circumstances I conclude that the expression "*before the election is held*" in section 49(1) of the 1992 Act must be given a meaning which accords with the context and enables the scrutineer to carry out the statutory functions which Parliament has specified shall be contained in its appointment. In my judgment, the holding of a contested election for the purposes of section 49(1) commences with the production of the voting papers. This not only accords with the structure of Chapter IV and is consistent with the other provisions of section 49 but gives a practical guide to unions as to the time a scrutineer must be appointed. To comply with section 49(1) a union must not begin the production of ballot papers without having first appointed a scrutineer. It is also consistent with section 51(2)(a), which requires the ballot paper to contain the name of the scrutineer. Further, it would not leave an aggrieved member, such as Mr Hardman, without recourse if he suspected untoward events during the nomination period. A member could raise a complaint immediately with the balloting officer or General Secretary. He could pursue the matter with the scrutineer upon its appointment and he could, if appropriate, raise it with the Certification Office. I also note, in passing, that the effect of this construction is almost identical to the construction for which Mr Millar contended, although expressed differently.
 28. As this case concerns a contested election, I have not taken up Mr Millar's invitation to reconsider whether the OLIC case was correctly decided. It is, however, appropriate that I test my approach to the application of section 49(1) in the context of uncontested election on the basis that the OILC case was correctly decided. Parliament might reasonably have considered that, in an uncontested election, it is especially important that the scrutineer should consider whether persons have been unreasonably excluded from standing as a candidate.
 29. In relation to a contested election, I have found that section 49(1) requires a union to appoint a scrutineer before the ballot papers are produced. This construction cannot apply to a situation in which no ballot papers are produced. A more purposive approach is therefore required. In my judgment the difficulty in construing section 49(1) in this context arises from the artificiality of the

expression “uncontested election” in a Chapter which generally takes the word ‘election’ to mean the process of holding a ballot. Section 53 deals expressly with uncontested elections but only to the extent of stating that there is no obligation to hold a ballot in such circumstances. Interestingly, section 32(2) of the Employment Act 1988 provided that “*an uncontested election is deemed to be held on the day on which it would have been held if it had been contested*”. This formulation did not find its way into the 1992 Consolidation Act but its application, if any, in the 1992 Act is likely to be limited to the definition of the start date for the purposes of the calculation required by what is now section 58(2)(f) (see para 22 above). These matters apart, it would appear that an uncontested election must be made to fit within the remaining provisions of Chapter IV. This is not an easy matter. However, consistent with my finding that the chronology of the scrutineer’s appointment is that it can take place after the opening of the nomination process but that it must take place before the scrutineer is required to carry out any of its duties, I find that a scrutineer of an uncontested election must be appointed before the result of the election is announced. I reach this conclusion having regard to the following matters. By section 52(3) the result of the election shall not be announced until after the union has received the scrutineer’s report. However, the scrutineer’s report must be preceded by at least three events. First, the scrutineer must be appointed in accordance with section 49(1). Secondly, the union must inform members of that appointment ‘*before the scrutineer begins to carry out his functions*’, in accordance with section 49(5), and thirdly, the scrutineer must be permitted to ‘*take such steps as appear to him to be appropriate for the purpose of enabling him to make his report*’, in accordance with section 49(3)(c). A union which fails to permit the scrutineer to do so risks breaching section 49(6) by failing to ensure that the scrutineer carries out its duties or by interfering with the carrying out by the scrutineer of its functions in a way which would make it reasonable for any person to call the scrutineer’s independence in relation to the union into question. The scrutineer must therefore be put in a position such that it can report in accordance with section 52(2)(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election. This includes the requirement in section 47 which prohibits unreasonable exclusion from standing as a candidate. Accordingly, in an uncontested election, a union must devise a timetable which takes into account the process that must be followed before the result can be announced. Having appointed the scrutineer, a union must notify members of the name of that scrutineer, the scrutineer must make such enquiries as are required to discharge the terms of its appointment and the scrutineer must issue a report which is later published to members. In this way, members have an opportunity to raise issues with the scrutineer, the scrutineer can look into those issues and incorporate them into its report (or not, as appropriate), and the union can decide whether it is appropriate to announce the result, having regard to the scrutineer’s report.

30. Returning to the facts of this case, I find that the IPA was appointed as the scrutineer of the NEC elections on 4 April 2006. These were contested elections.

The Union sent an e-mail to the IPA on 5 April stating that the information necessary to prepare the ballot papers would be delivered the following day. In these circumstances, I find by inference that the Union appointed the IPA as the scrutineer before the production of the voting papers began and therefore, in the words of section 49(1), “*before the election (was) held*”.

31. For the above reasons I refuse to make the declaration sought by Mr Hardman that the Union acted in breach of section 49(1) of the 1992 Act in its conduct of the 2006 NEC elections.

Complaint 2

32. Mr Hardman’s second complaint is in the following terms:

“In breach of section 49(5) of the 1992 Act the union failed to notify the membership of the name of the scrutineer by either of the methods set out in subsections (a) or (b) of section 49(5) of the 1992 Act before the scrutineer began to carry out his functions in respect of the union’s National Executive Council elections 2006.”

Section 49(5) of the 1992 Act is in the following terms:

49(5) The trade union shall, before the scrutineer begins to carry out his functions, either –
(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

Summary of Submissions

33. Mr Hardman submitted this claim, and developed it in correspondence, on the basis that the Union had breached section 49(5) of the 1992 Act by having used a defective means of notifying members of the name of the scrutineer. The Union prepared its defence on this basis. It had come to the hearing prepared to argue that it had notified members of the name of the scrutineer in the manner that it was the practice of the Union to use when matters of general interest to all members needed to be brought to their attention, namely by sending a circular to Branch Secretaries with a request that the notification be cascaded to members. A witness statement was submitted to this effect and the witness was present at the hearing. When asked to address his complaint at the hearing, Mr Hardman conceded immediately that it was the practice of the Union to use Branch Secretary circulars to bring matters of general interest to the attention of members. He stated that he had no issue with the way in which members were informed of the name of the scrutineer. He rather maintained that his complaints were about the timing of the scrutineer’s appointment and about the timing of the notification of this to members. He stated that he had wished to complain about

certain events which had occurred during the nomination period but was told that no scrutineer had been appointed at that time to whom he could complain. Mr Hardman maintained that this must be a breach of the legislation. He stated that he had received the Union's notification of the name of the scrutineer, contained in a letter dated 6 April, on or about 9 April, a few days after he had first written to the Certification Office.

34. Mr Millar QC, for the Union, was taken by surprise by the way the complaint was put by Mr Hardman at the hearing. He reserved his position, should it become necessary to call further evidence to deal with the complaint as now advanced. Nevertheless, Mr Millar noted that section 49(5) of the 1992 Act required a union to "*send*" a notice to every member or to "*take all such other steps*" for notifying members as is the Union's practice. He submitted that what must occur before the scrutineer begins to carry out his or her functions is that the union takes one or other of the specified steps. He submitted that the provision specifically did not state that the notification must be received by a member before the scrutineer begins to carry out his or her functions. On the facts of this case Mr Millar submitted that the Union's letter of 6 April 2006 was the taking of "*all other such steps*" by the Union for the purposes of section 49(5)(b) and that this had occurred before the scrutineer began to carry out its functions.

Conclusion - Complaint 2

35. The complaint advanced by Mr Hardman at the hearing related exclusively to the timing of the notification to members of the name of the scrutineer.
36. I accept Mr Millar's submission that section 49(5) is directed at the time the union "*sends a notice*" or "*takes all such other steps for notifying members*" of the name of the scrutineer. It is not directed at the date of receipt of any such communication.
37. On the facts of this case, I find that the Union sent a circular to its branch secretaries containing the required information on 6 April 2006, by which date the scrutineer had not begun to carry out its functions. As stated in paragraph 30, I make this latter finding by inference from the fact that the Union sent an e-mail to the scrutineer on 5 April stating that it would not have compiled all the necessary information for the scrutineer until the end of 6 April, when that information would be delivered to the scrutineer. Accordingly, I find that the Union had notified its members of the name of the scrutineer as required by section 49(5) of the 1992 Act. It had taken "*all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention*" before the scrutineer began to carry out its functions.

38. For the above reasons I refuse to make the declaration sought by the claimant that Community acted in breach of section 49(5) of the 1992 Act in the conduct of its 2006 NEC elections.

David Cockburn
The Certification Officer