

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTIONS 55(1) AND 108A(1) OF THE TRADE UNION AND
LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

MR C COOK

v

NATIONAL UNION OF RAIL, MARITIME AND TRANSPORT WORKERS

Date of Decision:

21 December 2004

DECISION

Upon application by the Applicant under sections 55(1) and 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 Applicant that the National Union of Rail, Maritime and Transport Workers (“the Union”) acted in breach of rule 4 clause 4 of the rules of the Union by the Council of Executives failing to convene a meeting between 28 October and 30 November 2003 to consider the letter of 27 October 2003 from its Wolverton branch.
- (2) I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 4 clause 7(a) of the rules of the Union by the Council of Executives failing to authorise the issue of the General Secretary’s undated message which accompanied ballot papers issued in the ballot for the election to the post of President of the Union during the balloting period 20 October - 5 December 2003.
- (3) I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 4 clause 7(b) of the rules of the Union by the Council of Executives failing to consider and interpret the Union’s rules in respect of Mr Cook’s election address in the ballot held 20 October - 5 December 2003 for the election to the post of President of the Union.
- (4) I have not determined the application to the effect that the Union acted in breach of rule 4 clause 7(d) of the rules of the Union by the Council of Executives failing to administer the affairs of the Union or oversee the work of the General Secretary by not convening a meeting to consider the letter of 27 October 2003 from its Wolverton branch, as I consider it falls outwith my jurisdiction.

- (5) I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 4 clause 7(h) of the rules of the Union by the Council of Executives failing to cause the General Secretary to place before it the letter of 27 October 2003 from its Wolverton branch.
- (6) I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 13 clause 9 of the rules of the Union in that the General Secretary's message which accompanied ballot papers in the balloting period 20 October - 5 December 2003 in the union's election to the post of President of the Union was allegedly libellous and impugned the good name of the Union.
- (7) I refuse to make the declaration sought by the Applicant that the Union acted in breach of rule 13 clause 10 of the rules of the Union by the General Secretary failing to decline to issue Mr Cook's election address or give Mr Cook the right to amend his election address thereby also failing to allow Mr Cook the opportunity to appeal the General Secretary's decision to the Council of Executives.
- (8) I refuse to make the declaration sought by the Applicant that on or about the 20 October 2003, by the inclusion of a statement from the General Secretary headed "MESSAGE FROM THE GENERAL SECRETARY" in the same envelope as the ballot paper for the Union's election for the post of President of the Union, the Union interfered with its members' entitlement to vote without interference or constraint in breach of section 51(3)(a) of the 1992 Act.

REASONS

1. By an application dated 22 December 2003 the Applicant made 30 complaints against the National Union of Rail, Maritime and Transport Workers ("the Union", "the RMT"). The application alleged 29 breaches of Union rule and a breach of the 1992 Act relating to the election of its President in 2003. The alleged breaches of the Union's rules were matters potentially within the jurisdiction of the Certification Officer by virtue of sections 108A(2)(a),(c) and (d) of the 1992 Act. After correspondence with the Applicant eight complaints were agreed by the Applicant and were put to the Union in the following terms:-

Complaint 1

"that in breach of rule 4 clause 4 of the rules of the union the Council of Executives failed to convene a meeting between 28 October and 30 November 2003 to consider the letter of 27 October 2003 from its Wolverton branch."

Complaint 2

"that in breach of rule 4 clause 7(a) of the rules of the union the Council of Executives failed to authorise the issue of the General Secretary's undated letter which accompanied ballot papers issued in the ballot for the election to the post of President of the union during the balloting period 20 October 2003 - 5 December 2003."

Complaint 3

“that in breach of rule 4 clause 7(b) of the rules of the union the Council of Executives failed to consider and interpret the union’s rules in respect of Mr Cook’s election address in the ballot held 20 October 2003 - 5 December 2003 for the election to the post of President of the union.”

Complaint 4

“that in breach of rule 4 clause 7(d) of the rules of the union the Council of Executives failed to administer the affairs of the union or oversee the work of the General Secretary by not convening a meeting to consider the letter of 27 October 2003 from its Wolverton branch.”

Complaint 5

“that in breach of rule 4 clause 7(h) of the rules of the union the Council of Executives failed to cause the General Secretary to place before it the letter of 27 October 2003 from its Wolverton branch.”

Complaint 6

“that in breach of rule 13 clause 9 of the rules of the union the General Secretary’s letter which accompanied ballot papers in the balloting period 20 October 2003 - 5 December 2003 in the union’s election to the post of President of the union was libellous and impugned the good name of the union.”

Complaint 7

“that in breach of rule 13 clause 10 of the rules of the union the General Secretary failed to decline to issue Mr Cook’s election address or give Mr Cook the right to amend his election address thereby also failing to allow Mr Cook the opportunity to appeal the General Secretary’s decision to the Council of Executives.”

Complaint 8

“that on or about the 20 October 2003, by the inclusion of a letter from the General Secretary headed “Message From the General Secretary” in the same envelope as the ballot paper for the union’s election for the post of National President of the union, the union interfered with the members entitlement to vote without interference from or constraint imposed by the union in breach of section 51(3)(a) of the 1992 Act”

2. These matters were investigated by correspondence. As required by sections 55(2)(b) and 108B(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 22 November 2004. The Union was represented by Mr J Hendy of Counsel instructed by Mr R Arthur of Thompsons Solicitors. Mr Crow, General Secretary of the RMT, and Mr Hall, Executive Council member, were in attendance and gave evidence. The Applicant acted in person and gave evidence on his own behalf. Mr W Proudfoot acted as note-taker for the Applicant. A bundle of documents was prepared for the hearing by my office. This bundle contained relevant exchanges of correspondence. The rules of the Union were also in evidence.
3. During my enquiries the Union asked me to exercise my discretion, under section 108B(1) of the 1992 Act, not to hear the complaints of alleged breaches of the Union’s rules as the Applicant had not exhausted the Union’s internal procedures. I refused this request, particularly as the Union had advised the Applicant to pursue his complaints with the Certification Officer. The Union also raised questions about my jurisdiction over several of the Union’s rules cited in the complaints. I deal with these under the individual complaints.

Findings of Fact

4. Having considered the representations made to me and the relevant documents I make the following findings of fact:-
5. The President of the Union is a post covered by the requirements of Chapter IV of the 1992 Act. The then incumbent, Mr John Cogger, died in May 2003. In July the Union called for nominations for a successor to serve for 3 years. Those nominated were invited to submit an election address, which under the Union rules was limited to 300 words. The Applicant submitted his address on the closing date, 8 October 2003. Election Addresses were also submitted by the three other candidates.
6. Included prominently in the Applicant's address was a passage reading:

"This election gives you a choice: Either a union that puts its members' interests first, Or a union that spends its resources on campaigns for Cuba, Colombia, North Korea and Iraq, and affiliates to Nationalist and political fringe parties whilst rejecting the Labour Party.

Our Union has assets of £14,375,000. Last year we donated £19,973 to the Fire Brigade Union to assist their dispute, yet our members had to beg for £17,000 from our hardship fund to assist in their disputes! This year we will see a membership contribution increase of at least 14p a week.

*The RMT is not a political party but we need a political voice in Parliament to represent the interests of our members. The Labour Government is the only party that can secure investment for our industry. **We need to retain our influence within the Labour Party**" (Emphasis as in original)*

7. The General Secretary, having received legal advice that the legislation required him to circulate the Applicant's election address in the Applicant's own words, wrote a letter or statement headed "MESSAGE FROM THE GENERAL SECRETARY" which contained the following passage:

"Following advice from our lawyers, I am making a statement to you refuting the parts of Mr Cook's election address that I consider to be not truths and/or bring the union into disrepute.

*1. Your Union has been in existence for 137 years. At all times throughout those years there has been an international dimension to the organisation. The members have on occasions assisted the building of sister unions in other countries or fought against torture and oppression endured by our fellow trade unionists overseas. In Colombia, four thousand trade unionists belonging to unions affiliated to the main trade union centre alone have been murdered. The level of support as always is determined by the membership through its parliament the Annual General Meeting and the Council of Executives. At **no time** has this small but important part of our work meant not putting "the members' interests first". The membership of RMT is proud of any assistance it can provide to others.*

2. The figure for RMT assets is wildly off the mark. The union's accounts are open to the scrutiny of any member and are placed before the Annual General Meeting each year and registered with the government appointed Trade Union Certification Officer.

3. There is no planned increase in membership contributions for the current year. Our Annual General Meeting has found it necessary to increase contributions for next year which will bring increased benefits to individual members such as 3 pence per week increase to our Orphan Fund. As an example this fund has paid out £7.5 million to orphaned children of our members since its creation. From time to time it is necessary to increase the all-in

contribution in order to carry out the wishes of the membership in their desire to assist each other. The decision to do this is as always decided by the members through the Annual General Meeting.

*4. The RMT did not donate £19,973 to the Fire Brigades Union. However, your Council of Executives were pleased to donate £2,000 to support the FBU and were proud to offer any further help should the FBU require it. At **no time** whatsoever was this at a cost to RMT members in dispute. Indeed when our own members were on strike at Arriva Trains Northern the Fire Brigades Union donated £5,000 to their dispute fund. The concept of 'solidarity' has always been a proud part of trade Union activity. The statement that our members in dispute "had to beg for £17,000 from our hardship" fund is completely false. Over recent times over £500,000 has been paid from our hardship fund to assist members that include workers on strike in First North West, C2C, Arriva Trains Northern, Infrastructure, The Royal Fleet Auxiliary and Stagecoach Devon. The hardship fund is there to give; nobody has "to beg".*

5. The RMT is an affiliate of the Labour Party and will remain so until the members decide through their democratic forums to do otherwise. The union has reduced the amount of money we pay to the Labour Party because the Annual General Meeting decided that the New Labour government's policies are against the policies of the union and act against the interests of its members.

*6. The RMT is **not** affiliated to any "Nationalist" parties.*

7. The RMT has eleven Labour Members of Parliament in its Parliamentary Group who are our "political voice in parliament" (Emphasis as in original)

This statement was included in the envelope sent to members with the ballot papers and the election addresses of all four candidates. The ballot was held between 20 October and 5 December 2003.

8. On 27 October 2003 the Applicant wrote to the General Secretary in the following terms:

"Re Election of National President 2004/2006

With reference the above I have been asked by members of Wolverton and other branches to write concerning the circular issued by you along with the ballot paper for this election.

I note that I am accused of bringing the union into dispute? this I reject. The figures I have used are taken from the accounts submitted to the 2003 Annual General meeting and decisions taken at that same AGM.

Wolverton branch have asked that you place this correspondence before the Council of Executives at the earliest possible opportunity as we feel the issuing of this circular is in breach of the rules governing the election procedure.

Our branch also request the opportunity for myself to seek legal advice at the union's expense to contest this scurrilous circular with the view to having the election declared null and void as I do not have the opportunity to respond to your circular.

Our branch would also like to see by return post a copy of the legal advice referred to on the first line of the third paragraph of your circular."

9. The letter was formally acknowledged on 28 October 2003. On 2 November the Union's London Transport Regional Council sent the General Secretary a resolution condemning the "... scurrilous Presidential election address written by Bro Colin Cook ..." and demanding "... that this matter is placed before the

next Council of Executives for examination". A resolution supporting the General Secretary's action was received from Wishaw and Motherwell branch of the Union on the 25 November.

10. In a letter to the Applicant on 7 November 2003 the General Secretary, referring back to the Applicant's letter of 27 October, said he would be "... *placing the matter before the Council of Executives along with complaints about your [the Applicant's] election address ...* " that he had received.
11. On 2 December 2003 at a scheduled statutory meeting, the Council of Executives considered an item "Election of National President". It did so on the basis of a note by the General Secretary reporting what he had done about the Applicant's election address and referring to the two resolutions mentioned above. The note did not mention the Applicant's letter of 27 October. However, the Applicant had sent a copy of his letter to every member of the Council of Executives at the time he sent it to the General Secretary. I also heard in evidence that in line with usual practice, the file containing all the papers about this item was available to all members of the Council in the room where it met.
12. The Council of Executives remitted the matter to its Organisation, Training and Education Sub-Committee. That Committee recommended that the legal advice obtained by the General Secretary (which had been confirmed in writing in an undated letter) be issued to the Applicant and circulated within the Union, that Bro Cook should go to the Certification Officer if he felt Union rules had not been upheld and that the election of the National President should continue as scheduled. The report with the recommendations of the Sub-Committee was carried unanimously by the Council of Executives. The motion to do so was put by the Applicant's Regional Representative on the Council. This Representative had been briefed by the Applicant on the issues to which he took exception both in the General Secretary's message and in the handling of the Wolverton branch's letter.
13. The Council took that decision on 2 December 2003. The Applicant was informed by letter dated 3 December, and the election continued until its scheduled close at noon on 5 December. The result announced the same day was that, under the Alternative Vote procedure adopted by the Union, the Applicant came third with 2,394 votes whilst the successful candidate received 6,776.
14. There followed a prolonged correspondence between the Applicant and the General Secretary, which can be summarised as the Applicant asking for answers to the questions he raised in his letter of 27 October 2003 and the General Secretary saying the matter had been dealt with by the Council of Executives. Mr Cook appealed to the Annual Delegate Conference about the Council of Executives referring the matter to the Organisation, Training and Education Sub-Committee. After a substantial debate the appeal was rejected by 61 votes to 2.

The Relevant Statutory Provisions

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

48 Election addresses

- (4) *The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -*
- (a) *at the request or with the consent of the candidate, or*
 - (b) *-*

51 Voting

- (3) *Every person who is entitled to vote at the election must –*
- (a) *be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and*
 - (b) *-*

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.*

(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.*

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) *the appointment or election of a person to, or the removal of a person from, any office;*
 - (b) *-;*
 - (c) *the balloting of members on any issue other than industrial action;*
 - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting.*
- (e) *-*

108B Declarations and orders

- (1) *The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.*
- (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.

The Union rules

16. Rule 3: Government of the Union

Annual and Special General Meetings

- (5) “.....Appeals against all Council of Executives decisions reached during the period from the third Monday in March to the opening of the AGM every year and received up to the opening of the AGM business will be placed in front of the AGM for consideration.

The AGM will decide by majority vote whether or not the resolution constitutes a bona fide appeal.”

- (10) “The Annual General Meeting shall have the power:-
 - (a)-(d) -
 - (e) to decide all appeals against decisions of the Council of Executives which raise issues of general policy....
 - (f) To elect an Appeals Court.....who will convene as required to hear all appeals against decisions of the Council of Executives which do not raise issues of general policy.....”

Rule 4: Council of Executives and General and Shipping Committees

- (4) “The Council shall meet four times a year. The President or General Secretary may summons a special meeting of the Council should this be considered necessary. A special meeting of the Council may also be convened at the request of either at least two thirds of the members of the General Committee or two-thirds of the members of the Shipping Committee.

The Council of Executives and all its committees will have the right to determine the dates of all its meetings by simple majority vote if the matter is contested.

The Council of Executives and all its committees will at all times have the right to determine their own agendas, by simple majority vote of the meeting if the matter is contested, and the power to have placed before it all matters relating to such items.”

- (7) “The Council shall:-
 - (a) in the intervals between Annual General Meetings decide on matters pertinent to the Union’s members as a whole, and shall have complete policy and decision making powers;
 - (b) interpret the Rules and determine all questions on which these Rules are silent;
 - (c) -
 - (d) administer the business and affairs of the Union; oversee the work of the General Secretary and the work of other officials and employees of the Union through the General Secretary;
 - (e)-(g) -
 - (h) cause the General Secretary to place before it for consideration and decision all appeals from members, Branches, and Regional Councils, and the decisions of Grades Conferences and have power to suspend its decisions pending appeal;
 - (i)-(m) -”
- (13) “Every decision and instruction issued by or on behalf of the Council shall be binding on members, Branches, Regional Councils, Grade Conferences, and any

such decision or instruction shall be of full force and effect in respect of every present and future member. It shall form the essential basis of the contract between the Union and its members. Council decisions or instructions shall be amended, rescinded or suspended only by way of appeal to an Annual General Meeting or Appeals Court as provided for in Rule 3, Clause 5 and Rule 3, Clause 10(e) and 10(f).”

Rule 13: Ballot and Election Procedures

(1)-(8) -

(9) “A member, candidate or Branch responsible for the composition of any election circulars shall ensure that, while it may raise debate on policy for the Union, this being wholly correct in the conduct of free and democratic elections:

- (a) it does not advocate fascist or racist views or in any way contravenes this Union’s policies against discrimination on the grounds of sex, race, ethnic origin, religion or sexual orientation;*
- (b) it is neither libellous nor impugns the good name of the Union or its members;*
- (c) it is circulated solely within the Union for use of members only and is regarded as private and confidential and is not published or otherwise disclosed outside the Union.”*

(10) “Should the General Secretary decline, on behalf of the Union, to authorise the publication of any circular, or any part thereof, on the basis of the criteria set out in Clause 9, the decision shall be conveyed to the Branch, or member concerned. The Branch or member shall have the right to amend the circular. In the event that the Branch or member remains dissatisfied with the General Secretary’s decision they shall have the right of complaint to the Council of Executives. In the event that the Council of Executives uphold the complaint then the full rights of the branch or member in the election process will be duly upheld whether by extending the timetable of the election or by being re-run. Should the Council of Executives uphold the General Secretary’s decision, a full written explanation for the refusal shall be given to the Branch or member concerned.”

(11) “Candidates in any election for the President, the General Secretary, the Assistant General Secretaries, National Secretary, Regional Organiser or membership of the Council of Executives may prepare an election address in their own words containing not more than 300 words for distribution to those entitled to vote in the election concerned. An election address must reach Head Office not later than 12 weeks after the despatch of the circular inviting Branches to submit nominations to be included with the ballot paper sent to voters in the election, otherwise it will not be distributed.”

(12) “An election address or an election circular will not be issued unless the nomination of the candidate to which it refers has been received at Head Office and found to comply with the Union’s Rules.”

Complaint 1

“that in breach of rule 4 clause 4 of the rules of the union the Council of Executives failed to convene a meeting between 28 October and 30 November 2003 to consider the letter of 27 October 2003 from its Wolverton branch.”

Applicant’s submissions

17. In the Applicant’s letter of 27 October 2003 Wolverton branch asked that the letter be placed before the Council of Executives at the earliest possible opportunity, as it felt the General Secretary’s circular breached rules governing the election procedure. The General Secretary should have called a special meeting of the Council of Executives to consider the Applicant’s letter.

Union's submissions

18. Although the letter of 27 October 2003 was about electoral issues that did not automatically mean that I had jurisdiction over rule 4.4 which on its face made no reference to elections, ballots or appointments. The only possible way of seeing this complaint as being within my jurisdiction was if rule 4.4 was held to relate to the "constitution or proceedings" of an executive committee. In the Union's view this rule did not so relate.
19. Alternatively the Union argued that 4.4 empowered the calling of a Special Meeting of the Council of Executives but, save in circumstances specified in the rule (which were not pertinent to this complaint), it did not require a meeting to be called. So, as the General Secretary did not consider a special meeting was required, he did not break rule 4.4 in not calling one prior to the statutory meeting arranged for 2 December 2003.

Conclusion – Complaint 1

20. I find that I do have jurisdiction to determine the complaint. Rule 4.4 is about the circumstances in which meetings of the Council of Executives will be held. A rule which does that clearly relates to the constitution or proceedings of an executive body.
21. I must however dismiss the complaint on the grounds cited by the Union. There is no requirement in rule 4.4 for the General Secretary to call a special meeting of the Council of Executives except in specific circumstances. Such circumstances did not apply in this case.

Complaint 2

"that in breach of rule 4 clause 7(a) of the rules of the union the Council of Executives failed to authorise the issue of the General Secretary's undated letter which accompanied ballot papers issued in the ballot for the election to the post of President of the union during the balloting period 20 October 2003 - 5 December 2003."

Applicant's submissions

22. The Applicant believed this alleged breach to be covered by section 108A(2) clauses (a),(c) and (d) of the Act because the action was part of the Union's election and balloting process and the Union's constitutional proceedings. The General Secretary decided to issue his message with the ballot paper without referring the issue to the Council of Executives which is empowered to make that decision.

Union's submissions

23. The Union did not accept that this rule had been breached. The General Secretary stated that he would normally have consulted with the President, but due to Mr Cogger's death in office, he could not do so, and he thought it would be wrong to place the matter before the Council of Executives as it may have given an unfair advantage to other candidates in the election – who might

have sought to amend their own election addresses. In any case, on December 3 before the election was completed, the Council unanimously authorised the circulation,

24. The Union again argued this was a general rule which empowered the Council of Executives to do certain things; but it did not require it to do so.

Conclusion – Complaint 2

25. The rule says that the “...*Council shall:- (a) in the intervals between Annual General Meetings decide on matters pertinent to the Union’s members as a whole, and shall have complete policy and decision making powers;*”. On the face of it this could imply that it has an obligation to decide on all such matters when the AGM is not meeting. I do not think that this means that each and every act of the General Secretary needs the prior authorisation of the Council. A better interpretation of the intention and meaning of this rule is that the Council is the body that has the power to take such decisions. In that sense there was, in this case, no obligation on the Council to authorise the General Secretary’s message nor on the General Secretary to seek such authorisation before he circulated it. The complaint must therefore fail.

Complaint 3

“that in breach of rule 4 clause 7(b) of the rules of the union the Council of Executives failed to consider and interpret the union’s rules in respect of Mr Cook’s election address in the ballot held 20 October 2003 - 5 December 2003 for the election to the post of President of the union.”

Applicant’s submissions

26. This alleged breach of rule relates to Section 108A(2)(a),(c) and (d) of the Act because the action was part of the Union’s election and balloting process and the Union’s constitutional proceedings. By not placing the Applicant’s election address before the Council of Executives prior to the election, the General Secretary used his own interpretation of the rules, not the interpretation of the Council of Executives, even though the rule is not silent as it is covered under rule 13.

The Union’s submissions

27. The General Secretary was entitled to exercise powers conferred on him under Union rules, including in relation to general correspondence of the Union and signature of documents pertaining to the Office of General Secretary. The General Secretary explained in his report to the Council of Executives on 2 December 2003 that he considered it would have been inappropriate to submit the Applicant’s election address to the Council before that address was circulated. The Council of Executives unanimously endorsed that action.
28. In the Union’s view, rule 4.7(b) is a residual power vested in the Council of Executives, which entitles it to interpret the rules and determine questions on

which the rules are silent. That entitlement only relates to matters specifically placed before it for interpretation. In this case the Council was not required to interpret the rules – no formal interpretation was sought.

Conclusion – Complaint 3

29. To succeed in this complaint the Applicant would need to show that this rule placed an obligation on the Council of Executives to interpret the rules. In my view no such general obligation exists. The meaning and purpose of this rule is that the Council is the body empowered to determine disputes over the interpretation of the rules, or over what to do when the rules are silent. It can only act when issues are placed before it. It determines differences. No issue was put to it, other than for the discussion on 2 December 2003 when it had before it both the Applicant's election address and the General Secretary's message. Its decision to endorse the General Secretary's action could be seen as implicitly determining that the rules had been correctly interpreted. This complaint must therefore fail.

Complaint 4

“that in breach of rule 4 clause 7(d) of the rules of the union the Council of Executives failed to administer the affairs of the union or oversee the work of the General Secretary by not convening a meeting to consider the letter of 27 October 2003 from its Wolverton branch.”

Applicant's submissions

30. This alleged breach of rule relates to section 108A(2)(a),(c) and (d) of the Act because the action was part of the Union's election and balloting process and the Union's constitutional proceedings. The Council of Executives failed to oversee the work of the General Secretary and administer the affairs of the Union. Having received a copy of the letter from Wolverton branch dated 27 October 2003 and being in receipt of the General Secretary's letter that accompanied the ballot paper, the Council of Executives were aware that this issue had not been placed before it prior to the ballot taking place. It should have acted on this and called a meeting to consider the letter of 27 October.

Union's submissions

31. The Union challenged my jurisdiction to determine this complaint as the rule which it was alleged had been breached does not relate to any of the matters specified in Section 108A(2) of the 1992 Act, but is a rule of general application. In any event, rule 4.7(d) did not require the Council of Executives to convene a meeting to consider the letter of 27 October 2003 from the Wolverton branch. If rule 4.4 – the subject of Complaint 1 – did not require such a meeting to be called, rule 4.7(d) certainly did not. Moreover this rule does not require the Council to be looking over the General Secretary's shoulder in relation to everything he does or does not do.
32. The Union also contended that the Council of Executives did consider the Wolverton branch letter at its meeting on 2 December 2003.

Conclusion – Complaint 4

33. I do not believe I have jurisdiction to determine this complaint. Rule 4.7(d) is a general rule and is not about balloting, appointments or elections. As far as “*constitution and proceedings*” of the Executive are concerned, I have considered and adopted the approach set out by the Certification Officer in **Fenton v GMB (D/16-20/04)**. In that case the Certification Officer concluded that section 108A, in context, required the jurisdiction set out there to be interpreted restrictively. He went on to say that “*proceedings*” relate more to the process of decision making rather than to its outcomes. In my view the fact that an executive body did or did not take a decision on a particular matter, or that the complainant did not agree with that outcome only comes into the Certification Officer’s jurisdiction if the executive may have been required, under rules, to take that decision, or if the process followed broke some such rule. Any other interpretation would open the way to complaints about any matter a member wished to raise. Clearly that was not the intention of Parliament.
34. In the circumstances of the present case the rule allegedly broken does not relate to the process to be followed nor does it require the Council of the Executives to follow any particular course of action. In my judgement therefore this complaint falls outwith my jurisdiction.
35. In any event, there is nothing in the rule cited to require the Executive to call a meeting of itself. Therefore, were I to be wrong on the jurisdiction issue the complaint would still fail.

Complaint 5

“that in breach of rule 4 clause 7(h) of the rules of the union the Council of Executives failed to cause the General Secretary to place before it the letter of 27 October 2003 from its Wolverton branch.”

Applicant’s submissions

36. This alleged breach of rule relates to section 108A(2)(a),(c) and (d) of the Act because the action was part of the Union’s election and balloting process and the Union’s constitutional proceedings. Each member of the Council, having received a copy of the letter from the Wolverton branch dated 27 October 2003 asking for the matter to be placed before the Council of Executives, should have ensured that the General Secretary placed the correspondence before them. This would have allowed the Council of Executives to clarify whether it would be appropriate to suspend the decision to hold the election. In his report back, Wolverton’s regional representative had said the letter was not placed before the Council of Executives.

Union’s submissions

37. Rule 4.7(h) does not relate to matters specified in subsections (a),(c) or (d) of section 108A(2) of the 1992 Act. It is a rule of general application.

Accordingly, the Certification Officer has no jurisdiction in relation to this complaint.

38. In any event, the matters raised in the letter of 27 October 2003 were referred to the statutory meeting of the Council of Executives when it met in December 2003. Every member of the Executive had the letter and it was on the file available to the Council of Executives and the Organisation, Training and Education Sub-Committee. Any individual member of the Executive could have asked for the letter to be put on the agenda; none did, but the letter was available at the discussion on 2 December 2003 and its subject matter was covered in the discussion.
39. Moreover, the rule in question refers to ‘appeals’ but there was nothing in the Wolverton branch letter which constituted an appeal.

Conclusion – Complaint 5

40. I regard this complaint as falling within my jurisdiction. In my view the rule that is the subject of this complaint relates to the processes to be followed by the Executive Council and, in line with my conclusions on complaint 4, it is covered by the term “proceedings” specified in subsection (2)(d) of section 108A of the 1992 Act.
41. On the substantive issue, I fail to understand the lack of any mention of the letter of 27 October 2003 in the General Secretary’s note introducing the item at the meeting on 2 December. This is particularly strange as the General Secretary said in evidence that the letter was the reason the item was discussed at all. But I have no doubt that every member of the Council had seen a copy of the letter and that a copy was available at the meeting if any member of the Executive wished to refer to it. So, whether or not the letter of 27 October was an appeal, the letter was, in practise, before the meeting of the Council on 2 December. Therefore, this complaint fails.

Complaint 6

“that in breach of rule 13 clause 9 of the rules of the union the General Secretary’s letter which accompanied ballot papers in the balloting period 20 October 2003 - 5 December 2003 in the union’s election to the post of President of the union was libellous and impugned the good name of the union.”

Applicant’s submissions

42. The address issued by the General Secretary with the ballot papers was not wholly correct; it was libellous and impugned the good name of the Union. The address accused the Applicant of lying and bringing the Union into disrepute in his election address. The Applicant considered this to be libellous. The figures and statements to which the General Secretary took exception had been drawn from the Union’s accounts for year ended 31 December 2002 and/or reflected policy decisions and rule changes effected at the Union’s General Meetings. In particular the terms ‘election address’ and ‘election circular’ were used interchangeably in the Union.

Union's submissions

43. The Union's rules draw a clear distinction between election circulars which are issued by branches on behalf of candidates and which have to be approved by the General Secretary and election addresses, which are prepared by candidates themselves. Historically, the rules only referred to circulars but 'addresses' was added in a new clause, now 11, and referred to in clauses 12 and 13 to satisfy the statutory requirements when elections to certain union offices were made compulsory. Clause 9 of rule 13 is about election circulars and the General Secretary's message was not a circular (nor was it an address) so it was not covered by the provisions of rule 13. In any case the Applicant had failed to point to any lies in the General Secretary's message or to any way in which it impugned the good name of the Union.

Conclusion – Complaint 6

44. There is a clear distinction in the Union's rules between election addresses and election circulars. Rule 13.9 clearly relates to election circulars and rule 13.11 relates to election addresses which are governed by statutory provisions. It is significant that rule 13.11 refers specifically to those posts which, in the opinion of the Union, are covered by the statutory requirements governing elections. In my view, rule 13.9 relates to election circulars such as those prepared for non-statutory elections. As neither the Applicant's election address nor the General Secretary's message constituted such a circular the Union cannot be held to have breached a rule which does not apply to the instrument complained of and the complaint must therefore fail.

Complaint 7

“that in breach of rule 13 clause 10 of the rules of the union the General Secretary failed to decline to issue Mr Cook's election address or give Mr Cook the right to amend his election address thereby also failing to allow Mr Cook the opportunity to appeal the General Secretary's decision to the Council of Executives.”

Applicant's submissions

45. His election address was not freely issued to the membership. If the General Secretary had any cause to find the Applicant in breach of rule 13.9(b) because the address was libellous or impugned the good name of the Union, he should have declined to issue the address, so giving the Applicant the right (under rule) to amend his address or to appeal to the Council of Executives about the General Secretary's decision.

Union's submissions

46. As explained under complaint 6, the Union's rules distinguish an election address from an election circular. This complaint relates to Rule 13.10 but rule 13.10 applies only to election circulars so this rule was not relevant to the treatment of the Applicant's election address. In any event, a branch member's right to amend any circular as set out in rule 13.10 is only triggered when the General Secretary declines to authorise the publication of the circular. Even if

the Applicant's election address had amounted to a circular, the General Secretary did not decline to authorise the publication of it. Indeed the General Secretary was not entitled to do so because of the Statutory requirements. So a right to amend did not arise.

Conclusion – Complaint 7

47. For the reasons given in relation to complaint 6, I accept the distinction between election addresses and election circulars. As far as election addresses are concerned, the statutory provisions do allow a candidate to amend his election address, but there is no requirement for him to be given the opportunity to do so. Rule 13.10 which is the subject of this complaint gives candidates the right to amend election circulars in particular circumstances, however, this was an election address not an election circular and in any event the circumstances of rule 13.10 did not arise. This complaint must therefore fail.

Complaint 8

“that on or about the 20 October 2003, by the inclusion of a letter from the General Secretary headed “Message From the General Secretary” in the same envelope as the ballot paper for the union’s election for the post of National President of the union, the union interfered with the members entitlement to vote without interference from or constraint imposed by the union in breach of section 51(3)(a) of the 1992 Act”

Applicant’s submissions

48. The message from the General Secretary which was sent in the same envelope as the ballot paper impugned his good name as a member and breached the members’ right to vote *“without interference from, or constraint imposed by, the Union or any of its members, officials or employees”*. The message was many times longer than the 300 words allowed to candidates; attacked the address he had submitted and so supported his opponents; was not wholly correct and was libellous and brought the name of the Union into disrepute. It amounted to interference by, in effect, bullying members not to vote for him.

Union’s submissions

49. The Union denied that the inclusion of the General Secretary’s message in the same envelope as the ballot paper for the Union’s election for the post of President amounted to an interference with members’ entitlement to vote without interference from, or constraint imposed by, the Union. The message was simply correcting what the General Secretary perceived to be inaccuracies in the Applicant’s election address.
50. Previous decisions of the Certification Officer in *Paul v NALGO (D/14/86)* and repeated on numerous occasions since, have established that the right to vote without interference or constraint *“is intended to exclude such conduct as would intimidate or put a member in fear of voting, or amount to physical interference.”*

51. Far from the General Secretary's message amounting to physical interference, he was not even interfering or constraining in the sense of seeking to persuade the electorate to vote for any particular candidate.

Conclusion – Complaint 8

52. The interpretation of interference and/or constraint set out in *Paul v. NALGO* has been adopted by all Certification Officers both before and since that decision. There has been one clarification and two modifications in other decisions. The clarification is that in leadership elections, unlike with mergers, there is no bar on the inclusion of extraneous material with ballot papers and election addresses in leadership elections (*Re Civil and Public Services Association (D/1/95)*). The modifications are that physical interference with ballot papers by the Union can constitute interference with a member's right to vote without interference or constraint (*Re Prison Officers Association (D/4-9/96)*). Also, following a comment in *Clare v The Eagle Star Staff Association (CO 1964/3)* in Oct 1981, I commented in a merger case *NUM Yorkshire Area (CO/1964/13)* in May 1994 “It would take a most blatant lie, or seriously misleading statement to constitute interference or constraint with voting”.
53. I can understand the Applicant's sense of grievance at the General Secretary's action in sending out with the ballot papers, without prior consultation with candidates or the Council of Executives, a statement rebutting the Applicant's election address in whole or in part. The General Secretary could have sought the Applicant's agreement to changes in his election address, and if as seems likely in this case, no such agreement was forthcoming, the General Secretary could have published his rebuttal in another way, for example in the Union's journal. However, the General Secretary was not obliged to do any of these things and certainly the message he put in with ballot papers did not constitute interference as applied in all decisions of the Certification Officer to date.
54. There remains the question of whether the General Secretary's letter meets the criteria of being a blatant lie or seriously misleading statement which has been held as a hypothetical source of interference since the *Clare* case in 1981. On that, it seems to me that both the Applicant's election address and the General Secretary's message sent with the ballot papers were tendentious. Both were somewhat cavalier in their treatment of the accounts and accepting or ignoring the direction in which policy changes were going. But the Applicant, while able to explain where he got some, but not all, of the information in his election address, was unable to point to any lies in the General Secretary's message. While I do find the General Secretary's carefully worded message to be disingenuous in parts, I do not find it to be so seriously misleading as to constitute interference with a member's right to vote freely. In all the circumstances this complaint fails.

E G Whybrew
Assistant Certification Officer