

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

RICHARD CRIBB

v

THE PROFESSIONAL ASSOCIATION OF TEACHERS

**Date of Decision:
2001**

21 December

DECISION

1. The application made by the applicant for a declaration that the Professional Association of Teachers breached section 48(4)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”), is refused.

REASONS

2. By an application dated 22 May 2001, Mr Cribb made various complaints against his union, the Professional Association of Teachers (“the Association”). The complaint being pursued is that in breach of Section 48(4)(a) of the 1992 Act, the Association failed to secure that no modification was made to his election address in the Association’s election for the position of General Secretary in 2001 without his consent.
3. I investigated this matter in correspondence and a hearing took place on 7 December 2001. The union was represented at the hearing by Mr David Brierley (the Association’s Solicitor). Mrs S Cornish (the Association’s Acting Returning Officer in the election in question) and Mr A Thompson (the Association’s former Acting Returning Officer), gave evidence. Mr Cribb acted in person and called no witnesses. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. This decision has been reached on the basis of the representations made by the Applicant and the Association, together with such documents as were provided by them.

Findings of Fact

4. Having considered the representations made to me and the relevant documents I make the following findings of fact:-

5. On the 10 February 2001 the Council of the Association decided to hold an election for the position of General Secretary. The Association's accounts officer, Mrs Cornish, was appointed the Acting Returning Officer. This was the first election in which Mrs Cornish had carried out that responsibility, the role having previously been undertaken by Mr Thompson since 1993. Mr Thompson was due to retire in August 2001 and was available to give Mrs Cornish whatever help and assistance she requested in the conduct of the election. This was also to be the first election in which material was to be communicated between the candidates, and the Association and with scrutineers by e-mail.
6. The Association has a system whereby potential candidates can apply for selection by its Council as the Association's "Preferred Candidate". On the 23 April 2001 Mrs Gemmell was selected as the Preferred Candidate. Nominations for election closed on 2 May 2001 and the subsequent ballot closed on 13 June 2001. There were two candidates in the election; Richard Cribb and Jean Gemmell. Mr Cribb did not put his name forward for selection as the Preferred Candidate.
7. The deadline for election addresses to be received by Mrs Cornish was noon, on Wednesday 9 May 2001. On the morning of 9 May, Mr Cribb submitted, by e-mail, two election addresses to Mrs Cornish, the second containing minor changes to the first. Both were within the Association's one thousand word limit required of election addresses.
8. Upon reading the Applicant's election address Mrs Cornish became concerned that it contained a factual inaccuracy. The nature of this alleged inaccuracy is immaterial for the purposes of this decision but it was contained in a short paragraph relating to Mrs Gemmell's age and the appropriate retirement age for the person holding the position of General Secretary. For convenience, I shall refer to this as "the Gemmell Paragraph". Being unsure how to deal with such a situation Mrs Cornish consulted both Mr Thompson and Mr Brierley. They advised that she should contact the Applicant to discuss the alleged inaccuracy with a view to agreeing a different and more accurate form of words. Accordingly, during the morning of the 9 May Mrs Cornish attempted to telephone the Applicant on a number of occasions but she was unable to make contact as he was undergoing physiotherapy. The noon deadline passed.
9. At approximately 2.40pm on 9 May Mrs Cornish was eventually able to speak with the Applicant by telephone. She explained her concerns about the accuracy of the passage in question but the Applicant was unconvinced. They agreed to differ. However, the applicant went on to suggest other amendments to his election address. These were amendments that the Applicant had wished to make independently of the discussion of the Gemmell Paragraph. He had begun his conversation with Mrs Cornish by saying that he was about to telephone her in any event to suggest these amendments. Mrs Cornish noted the amendments that were dictated by the Applicant but did not say whether they would be accepted. The Applicant, however, understood from Mrs Cornish's failure to expressly reject his proposed amendments that they had been accepted and would be made. These amendments would have reduced the word count of the Applicant's election address by about 10 words. Mr Thompson was in the same room as Mrs Cornish during this telephone conversation, which was conducted on a speaker-phone by Mrs Cornish.
10. At this stage Mrs Cornish had two concerns. There remained the difficulty with the Gemmell Paragraph but there was now an issue as to whether the Applicant's amendments should be permitted, having regard to the fact that they had been proposed after the noon

deadline for the receipt of election addresses. Mr Thompson suggested that she sought the advice of the Association's independent scrutineers, Election Reform Ballot Services Ltd (ERBS), which she did. ERBS advised that an election address was the property of the candidate and amendments could only be made to the Gemmell Paragraph with the Applicant's consent. They further advised that the only other amendments that could be made after the noon deadline were grammatical or textual. There could be no substantive amendments. In accordance with these criteria all but one of the Applicant's proposed amendments would be rejected.

11. During the evening of 9 May Mr Cribb spoke to Caroline Wigmore, then National Chairman of the Association. Following their discussion, the Applicant redrafted the Gemmell paragraph to more accurately reflect the Association's retirement policy as set out in its Staff Handbook. The amended version was 19 words longer than the original but the Applicant's computer word count of the election address, with the amendments first proposed and with the new Gemmell Paragraph, was still within the 1,000 word limit. However, in carrying out this exercise, the Applicant did not include the words setting out his name and qualifications at the head of the election address or his name at the end. He understood from previous elections in which he had stood that these did not count. The revised election address was e-mailed that night to the Association.
12. On the morning of 10 May 2001 Mrs Cornish received the overnight e-mail from the Applicant, amending his election address. Mrs Cornish considered that the amended Gemmell paragraph was still not accurate. She immediately telephoned ERBS to ask for their assistance again. They suggested a revised form of words but warned Mrs Cornish that if the final version of the election address exceeded 1,000 words it was the practice of ERBS to impose an arbitrary cut-off after the 1,000th word. Mrs Cornish then sent an e-mail to the Applicant, timed at 8.52am, with an alternative form of words and made several attempts to speak to him on the telephone. Unfortunately the Applicant was again undergoing physiotherapy and Mrs Cornish was unable to make contact. She became increasingly concerned as she had been told by the scrutineers that the deadline for her to provide them with the database of members and the election addresses of both candidates was noon that day. During the course of the morning the scrutineers checked with Mrs Cornish that the deadline would be kept. Having not been able to speak to the Applicant during the morning, Mrs Cornish prepared an e-mail to be sent to the scrutineers to which she attached the election addresses of both candidates. The Applicant's election address contained the original Gemmell Paragraph. Before sending this e-mail, however, Mrs Cornish sent a further e-mail to the Applicant, timed at 2.16pm. This e-mail again explained her position with regard to the Gemmell Paragraph but continued as follows:-

"The scrutineers have advised me that your election address is your property and that I cannot make any amendments after the noon deadline (Wednesday). I can advise you if there are items which are factually inaccurate (see above) but cannot change them without your consent. Your original election address has therefore been submitted without any alterations."

13. Almost immediately after having sent that e-mail to the Applicant, Mrs Cornish received a telephone call from him. At that time he had not opened either of the e-mails that she had sent that day. The Applicant had telephoned to confirm that Mrs Cornish had received his overnight e-mail. She confirmed that she had received it and then read out to the Applicant her most recent e-mail. There was then a conversation which lasted some

15 minutes in which Mrs Cornish unsuccessfully attempted to persuade the Applicant to further amend the Gemmell Paragraph. The Applicant would not agree to do so and Mrs Cornish ended up accepting the amended Gemmell Paragraph, as contained in the overnight e-mail, even though she was not happy about it.

14. Immediately after this conversation Mrs Cornish carried out a further word count of the Applicant's election address and found that it was over 1,000 words. She immediately telephoned the Applicant back and told him this. She also told him that it was the practice of ERBS to only print the first 1,000 words of any election address. There was then a discussion of the word count. The Applicant had thought that his election address contained just under 1,000 words. It was only then, however, that Mrs Cornish told the Applicant that the majority of the miscellaneous amendments he had proposed on the 9 May had not been accepted and that the header (setting out the Applicant's name and qualifications) and the footer (in the Applicant's case, his name) were included in the word count. Mrs Cornish said that she had been told that this was the practice in all General Secretary elections and that it was the same for both candidates. As a consequence, the Applicant felt he was being surprised and put under great pressure. Nevertheless he and Mrs Cornish worked together on the preparation of a final version of the election address. Both were typing directly onto their computers. In order to bring the word count within the limit the Applicant amended his overnight Gemmell Paragraph. He did this in such a way as to leave it longer than the original version but not as long as his earlier amended version. Mrs Cornish did not suggest the words of this re-amended paragraph. Even then, however, further deletions were required. The Applicant chose to delete certain of his qualifications from the header and his name from the end of the election address. This deleted a further 5 words. These specific deletions were not made at Mrs Cornish's suggestion. Although the Applicant was not happy about having to make these deletions he considered this solution better than having only the first 1,000 words printed. He dictated the amendments to Mrs Cornish and she typed them straight onto her computer. For her part Mrs Cornish was not happy that the re-amended Gemmell paragraph was accurate but she needed to get the electoral material to the scrutineers without further delay and was mindful of her advice from ERBS that the election address was the property of the candidate. The conversation ended cordially with the Applicant thanking Mrs Cornish for her help.
15. Mrs Cornish immediately e-mailed the scrutineer sending as attachments the Association's database of members and the election addresses of both candidates.

The Law

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

In relation to a candidate's election address Section 48(4) provides:

"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) where the modification is necessarily incidental to the method adopted for producing that copy."*

17. Under section 55 of the 1992 Act, any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.
18. Section 55 of the Act empowers me to make such enquiries as I think fit and, after giving the applicant and the union an opportunity to be heard, to make or refuse to make the declaration asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing. Such decision may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

The Applicant's Submission

19. The Applicant argued that section 48(4)(a) of the 1992 Act was breached on 10 May 2001 by his election address having been modified by Mrs Cornish without his consent. The Applicant asserted that the amendments to his election address were only made because he had been pressured to do so. He accepted that he had dictated the amendments over the telephone to Mrs Cornish but argued that he had only done so because he had no alternative and that being required to make these amendments at such a late stage amounted to duress. He said that the duress was not deliberate and that Mrs Cornish was correct to advise him about the deadline but the way in which the final amendments were made had the result that he had not been able to consider them as carefully as he would have wished. The Applicant maintained that he had been disadvantaged by being pressured into making amendments with which, in hindsight, he was not content. He submitted that Mrs Cornish had pressured him to amend his election address without his consent in breach of section 48(4)(a) of the 1992 Act.
20. The Applicant further complained that the Association had issued no guidelines for candidates in respect of the procedures/requirements for election addresses in respect of the 2001 election for its General Secretary. He further stated that the headers and footers of an election address had not been included in the word count for the last General Secretary election in which he had been a candidate.

The Association's Response

21. Mr Thompson gave evidence that this election was carried out in accordance with the usual procedures for General Secretary elections, although he accepted that these were not set out in any specific document. He said that the General Secretary election was different to other national elections as only members could stand in other national elections, whilst anyone could stand for election to be General Secretary. He explained that this was the reason why specific personal details were required of candidates in other national elections and why those personal details were not included in the word count. The General Secretary election was different. The union did not require specific personal details in this election and accordingly the header and footer were included in the word count. Mr Thompson said that the Applicant's recollection of the last General Secretary election was wrong. Mr Thompson further confirmed that it was usual for all election addresses to be checked for factual accuracy and that any areas of doubt would be discussed with the Association's scrutineers. He also gave evidence that it was common

for election addresses to be very close to the maximum number of words permitted and that Mr Cribb's election addresses had been close to the word limit in the eight or so other elections he had fought unsuccessfully. Mr Thompson stated that the timing of Mr Cribb's submission of his election address left little time for amendments.

22. Mr Brierley submitted on behalf of the Association that the amendments made to the Applicant's election address had all been made at the Applicant's dictation and that no amendments had been made by the Association other than those dictated by the Applicant. Mr Brierley further submitted that whilst the amendments made by the Applicant were made under pressures of time they were not made under any duress imposed by Mrs Cornish or the Association.

Conclusion

23. Section 48 of the 1992 Act concerns the election addresses of candidates in elections to which the Act applies. Section 48(4) imposes two duties on trade unions. Section 48(4)(b) requires a union to secure that no modification is made to an election address "except where the modification is necessarily incidental to the method adopted for producing that copy". The Applicant does not complain of a breach of this requirement. Section 48(4)(a) provides as follows:-

"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"

24. Whilst I heard evidence going to wider issues, this case turns essentially on the evidence relating to the second telephone conversation between the Applicant and Mrs Cornish of Thursday 10 May 2001. The background to this conversation is relevant but only for the light that it throws on the likely contributions made by the Applicant and Mrs Cornish during that conversation.
25. As to Mrs Cornish, I find that she approached her responsibilities in the General Secretary election with great caution, it being the first in which she was the Acting Returning Officer. She sought advice as appropriate from Mr Brierley, Mr Thompson and ERBS and was aware that a candidate's election address is his or her own property which cannot be modified without the candidate's consent. She was aware of the approach that would be taken by ERBS if a candidate exceeded the word limit. Mrs Cornish's awareness of the Applicant's legal right to say whatever he wished in his election address is demonstrated most significantly by her e-mail to the Applicant timed at 2.16 pm on Thursday 10 May (see Para 12). I find that it is highly improbable that she would adopt an entirely different approach in a conversation which took place only minutes later. I accept the evidence of Mrs Cornish that she did not bully or coerce the Applicant in the relevant telephone conversation, although she did express her very real concern about the need to submit the election addresses to the scrutineers as soon as possible.
26. As to the Applicant, I accept that he felt under pressure when making the amendments that he dictated to Mrs Cornish in the final telephone conversation on the 10 May. However, I find that he was aware that Mrs Cornish accepted the principle that the election address was the property of the candidate and he could insist on the original

version of the Gemmell Paragraph being published if he wanted. To a large extent the Applicant's problems arose because of his decision to submit his election address so close to the closing time for doing so. This left very little time for any problems arising out of the election address to be resolved. Accordingly when problems emerged, firstly with the Gemmell Paragraph and then with the word count, it was inevitable that both the Applicant and Mrs Cornish would be working under tight time constraints to ensure the Applicant's election address was submitted to the scrutineers on time. The Applicant was clearly surprised by the practise adopted by the union in this election of including the header and the footer in the word count and it would have been preferable if written guidelines had been available to both candidates. Nevertheless, the Association was entitled to have a word limit and the word limit was applied equally to both candidates. As to the precise words used in the crucial telephone conversation, there is little in dispute between the Applicant and Mrs Cornish. The Applicant was aware that Mrs Cornish was doing her job and that she needed to submit the election addresses as soon as possible. The Applicant agrees that he dictated the final amendments to Mrs Cornish which she typed onto the computer as he spoke. The fact that the Applicant understood Mrs Cornish's concern about the deadline and the lack of any real acrimony in the conversation is evidenced by the Applicant having thanked Mrs Cornish at its conclusion. This does not give the appearance of a conversation in which pressure which might be described as legal duress was applied.

27. I accordingly find that the modifications that were made to the Applicant's election address in the course of the second telephone conversation of the afternoon of 10 May were made with the consent of the Applicant. The pressure of time to submit the election address as communicated to the Applicant by Mrs Cornish did not amount to legal duress, such as would vitiate the Applicant's consent. There was therefore no breach of S48(4)(a) of the 1992 Act and I refuse to make the declaration sought.

D COCKBURN
Certification Officer