

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

Mr R Bentham

V

Union of Construction, Allied Trades and Technicians

Date of Decisions

10 August 2012

DECISIONS

Upon application by Mr Bentham ("the claimant") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I make the declaration sought by Mr Bentham that the Union of Construction, Allied Trades and Technicians ("the Union) breached rule 26 of its rules on or around 1 November 2011 by not accepting and processing Mr Bentham's charge that Mr Thompson breached rule 28(9) when he allegedly used his official position to further the candidature of Mr Murphy for the position of General Secretary on or about 25 August 2011.
2. Upon withdrawal by the claimant, I dismiss his complaint that the Union of Construction, Allied Trades and Technicians breached rule 27 of its rules on or around 12 December 2011 by not putting forward to the General Council Mr Bentham's appeal against the decision of the Executive Council not to consider the substance of his charge against Mr Thompson.

Enforcement Order

3. I order that the Union of Construction, Allied Trades and Technicians shall process the charge brought by Mr Bentham against Mr Thompson in his email dated 21 September 2011 in accordance with rule 26 of the rules of the Union, which process shall be initiated pursuant to rule 26(5) by no later than 10 September 2012.

REASONS

1. Mr Bentham is a member of the Union of Construction, Allied Trades and Technicians ("UCATT" or "the Union"). By an application received at the Certification Office on 6 January 2012, the claimant made complaints of various breaches of the rules of the Union which he maintained were within my jurisdiction

under section 108A of the 1992 Act as they related to disciplinary proceedings by the Union. Following correspondence with the claimant, two complaints were confirmed by him in the following terms.

Complaint 1

On or around 1 November 2011, the union breached rule 26 by not accepting and processing Mr Bentham's charge that Mr Thompson breached rule 28(9) when he allegedly used his official position on 25 August 2011, to further the candidature of Mr Murphy for the position of General Secretary.

Complaint 2

On or around 12 December 2011, the union breached rule 27 by not putting forward Mr Bentham's appeal to the General Council against the union for not accepting Mr Bentham's charge of Mr Thompson.

2. I investigated the alleged breaches in correspondence and a hearing took place on 23 July 2012.
3. At the hearing on 23 July, Mr Bentham represented himself and gave evidence. The Union was represented by Mr D Panesar of counsel, instructed by Mr Cottingham of O H Parsons and Partners. Evidence for the union was given by Mr George Guy former acting General Secretary and current Regional Secretary of the North West Region of the Union. Both witnesses produced written witness statements. There was in evidence a 133 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the hearing I refused permission for Mr Bentham to adduce a further bundle of 16 documents on the grounds of their late production and relevance. The rules of the Union were also in evidence. Both the Union and Mr Bentham provided skeleton arguments.

The Issues

4. Mr Bentham asserts that he sent an email to the Union on 21 September 2011 in which he charged Mr John Thompson, the President of the Union, under rule 26 of breaking the rules of the Union on 25 August 2011. By rule 26(4), such a charge must be brought within 28 days of the discovery of the relevant facts. The 28 day period in question expired on the 22 September. The Union asserts that it did not receive Mr Bentham's email until 11 October, outside the limitation period, and it was therefore not in breach of rule 26 in refusing to process the charge. Mr Bentham asserts that his email of 21 September was received in time and that the Union was therefore in breach. In the alternative, Mr Bentham asserts that, even if the email of 21 September was not received in time, an undated letter he sent to the Union, which was received by it as a letter on 20 September and as an email and fax on 21 September, was sufficient to constitute a charge and should have been acted upon by the Union. The Union denies that, properly construed, that letter amounts to a charge within the meaning of rule 26.

Findings of Fact

5. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
6. Mr Bentham works as a joiner in the building industry. He has been a member of UCATT since 1990 and is a member of its Everton UD 088 branch in its North West region. For a brief period in 1995 Mr Bentham was a shop steward and for a similarly brief period in 2010 he was a health & safety representative. He has described himself as being very much active in the trade union movement. He has stated that, as a lay activist, he has campaigned against casualisation in the construction industry, assisted electricians in London in unofficial picketing, been a prominent member of the Blacklist Support Group and regularly attended meetings of the Liverpool Trades Council.
7. In 2011, UCATT conducted an election for the position of General Secretary, following a challenge that had been made to me regarding the conduct of the General Secretary election in 2009. I ordered that the 2009 election result should be declared void and a further election held. The then General Secretary stood down, as ordered, and Mr Guy was appointed as acting General Secretary (referred to by the Union as the General Secretary pro tem) pending the further election. Mr Guy then handed over his duties as the North West regional secretary and performed the role of acting General Secretary from the Union's General Office in London. He resumed his duties in the North West in or about January 2012 upon the election of Mr Steve Murphy as General Secretary.
8. Mr Bentham states that he was dismissed from his employment on 25 August 2011 and attended a meeting of Union members at the Warrington Irish Club that evening in order to elicit support for himself following his dismissal. He stated that it was only when he got there that he found out that it was a meeting of the Broad Left within the Union. Before being asked to leave the meeting, Mr Bentham alleges that Mr John Thompson, the President of the Union, made a speech recommending that a particular candidate, Mr Steve Murphy, be elected as General Secretary.
9. On 31 August 2011, Mr Bentham sent an email to a number of regional secretaries of the Union and to its political officer, Mr Kennedy. In this email Mr Bentham refers to himself as being an accredited safety representative and describes the events he says he witnessed in the Warrington Irish Club on 25 August. He comments that he had familiarised himself with the UCATT rule book and that Mr Thompson should have known better than to have put his views forward as he did. Mr Bentham sets out rule 28(9), which provides that no member shall use his official position "to further the candidate of any person" and rule 26(1) which provides that any member 'and some Union bodies' may charge any other member with a breach of the rules. Towards the end of the email Mr Bentham states: "I do not wish to take this matter any further but merely wish to consider your august comment". Mr Bentham sent further copies of this email to two other prominent officials of the Union on 1 September. Mr Guy gave evidence that he was not shown a copy of this email until 22 September.

10. On 17 September 2011, Mr Bentham posted three items to the Union's General Office and obtained a proof of posting receipt from the Post Office. One item was a copy of his credentials as a shop steward in 1995. Another item was a notification from the Manchester Employment Tribunal that his claim against Garriff Construction would be heard on 27 January 2012. The third item was a letter addressed to "George and Eileen". George is George Guy and Eileen is his PA, Eileen Keates. The letter is headed "Untitled" and is in the following terms:

"Untitled

Hi George and Eileen,

As you may both be aware now, A meeting conducted in Warrington Cheshire on the 25 August may have serious implications for the Integrity of our Union.

I was prepared to leave it initially as an Internal Disciplinary Issue as i'd mentioned before in my earlier correspondence.

With the recent Election Issue somewhat shrouding our credibility, I feel that the President being in that room influencing the endorsement of a candidate is worthy of a Formal Investigation.

Let us not forget, This was a meeting that a man in an esteemed position had no jurisdiction over, as it was totally unrepresentative and unconstitutional and as an extension of that, very much unethical.

It was an "Invite only" meeting to endorse and nominate the next General Secretary of our Union as my expulsion from it suggests.

Elitesm and Cherry Picked comes to mind.

Therefore,

I believe that under rule 26 and rule 28 that the charges should now be invoked by the provisions contained in rule 25.

I'm prepared to give evidence if an investigation is opened up to uphold the Transparency and Values of our Great Union.

I am clear in my conscience that this is the only course of action that the EC can take in this most stark of issues.

Only then, I believe, can we have closure on what may come to pass as a very sorry episode.

Yours fraternally

Roy Bentham."

11. Mr Bentham submitted that he intended the above letter to constitute a charge against Mr Thompson under rule 26 of the rules of the Union. He gave evidence that he understood the last day for him to make such a charge was 21 September. In fact, by rule 26(4) such charges must be "made and received by the appropriate council within 28 days of the discovery of the relevant facts", by which provision the final day for making a charge relating to events witnessed on 25 August was 22 September. Be this as it may, Mr Bentham thought it appropriate to resend the above letter to the Union by email and fax on 21 September. The only version of this letter in the trial bundle was the faxed version, which was sent at 12.19pm on 21 September.
12. Mr Bentham gave evidence that he was sent a rule book by a member on 20 September and read the relevant rules on the afternoon of 21 September. He stated that he then decided that the letter he had sent by post on 17 August was not clearly expressed as a charge and that he should send another email to the Union in which he set out his charge against Mr Thompson more clearly. The versions of this email dated 21 September that are within the trial bundle, are not consistent but it was accepted by the Union that it would have constituted a valid charge if it had been received in time.

13. The email which appears in the trial bundle at page 32 was provided by Mr Bentham. It is dated Wednesday September 21, 2011 and timed at 10.28pm. It contains no words of valediction or name at the end.
14. The version of this email which is reproduced in Mr Bentham's complaint form appears to have been 'copied and pasted' into position. However, it is timed at 9.28pm and ends "Kind Regards Roy Bentham". When this was put to Mr Bentham at the hearing, he stated for the first time that he had sent the email to the Union at both 9.28 and 10.28pm.
15. The versions of the email at pages 38 and 39 of the trial bundle were supplied by the Union. The version at page 38 is dated Wednesday September 21 2011 and is timed at 10.28pm. It also includes "Kind Regards Roy Bentham". In addition, however, there appears in the bottom left hand corner of the page the date 11/10/2011. The Union asserts that this is the date the email was received and that accordingly it was the date the email was sent. The Union felt constrained to argue that the date at the top of the email must have been the result of it being "doctored" by Mr Bentham in a manner which the Union could not explain.
16. During the course of his evidence, Mr Guy pointed out that the email of 21 September 2011 was addressed to him at gguy@ucatt.org. He explained that this was his email address as the North West Regional Secretary but that he did not have remote access to it whilst working as the General Secretary pro tem in London. He stated that his email address as the General Secretary pro tem was george.guy@ucatt.org. Mr Guy further explained that all emails sent to gguy@ucatt.org were opened by his very experienced and efficient PA in Liverpool, Ms Hayes, and all significant emails were forwarded by her to him in London. Mr Guy was certain that if his PA had received Mr Bentham's email of 21 September on or about that time she would have forwarded it to him forthwith. On that basis, Mr Guy considered that Mr Bentham had sent his email on or about 11 October, albeit with a date that made it appear that it had been sent on 21 September.
17. Mr Bentham's email dated 21 September 2011 was copied to Mr Chris Murphy, a member of the Executive Council ("EC") of the Union. Neither the Union nor Mr Bentham adduced evidence from Mr Murphy as to the date he received his copy of the email, if indeed Mr Murphy's address was correctly stated.
18. On 26 September 2011 Mr Guy wrote to Mr Bentham stating that he had received some undated correspondence from him on 20 September 2011. Mr Guy commented that this correspondence contained three items, two of which he was not sure why they had been sent. Mr Guy responded to the item headed "Untitled", as set out in paragraph 10. By this stage, Mr Guy had been shown a copy of Mr Bentham's email of 31 August. He concluded that he could not accept Mr Bentham's communication as a formal charge and gave three reasons for not doing so. He commented that if Mr Bentham was in possession of information that a member was in breach of rule, it was up to him to bring formal charges. Secondly, he commented that the charge must be made to "the appropriate council", whilst Mr Bentham's correspondence was addressed to 'George/Eileen'.

Thirdly, he stated that a charge must set out clearly the nature of the charge and specific rules and clauses.

19. Upon receipt of Mr Guy's letter of 26 September 2011, Mr Bentham did not immediately respond to inform Mr Guy that the faults he had found in the undated and untitled correspondence had been remedied by the email he had allegedly sent twice on the evening of 21 September.
20. On 11 October 2011 Mr Bentham sent an email, ostensibly to himself, but which began "Hello George/Chris". It was an email to George Guy and Chris Murphy. It would appear that their email addresses must have been inserted in the "BC" (blind copy) box. This email states that it was in response to Mr Guy's letter of 30 September. However, Mr Bentham gave evidence that this must have been an error and he had meant to refer to Mr Guy's letter of 26 September. Mr Bentham gave evidence that the point of this short email was to get the EC to hear his charge and to maintain a dialogue with the Union, to demonstrate that he was exhausting the domestic process. I find Mr Bentham's explanation of this email to be unsatisfactory, having regard to the terms of Mr Guy's letter of 26 September.
21. Also on 11 October 2011, Mr Guy read Mr Bentham's email dated 21 September 2011 which had been printed off by the Union that day. As noted above, Mr Guy asserted that this was the date that the Union had received this email.
22. The EC of the Union met in October 2011 and considered the correspondence received from Mr Bentham, including his email of 21 September. It concluded that the charge that he wished to bring was received well out of the time allowed by rule 26(4) and that the substance of the charge would not be considered by the EC.
23. On 1 November 2011 Mr Guy wrote to Mr Bentham informing him of the decision of the EC.
24. On 14 November 2011 Mr Bentham attended a meeting of his branch at which he handed to his Branch Secretary, Mr Winstanley, a written appeal to the General Council ("GC") against the decision of the EC not to process his charge against Mr Thompson. By rule 27(2) such appeals are to be made in writing through the Branch Secretary. On 21 November, Mr Bentham wrote to his Branch Secretary asking him to confirm that his appeal had been forwarded to the GC.
25. On 12 December 2012 Mr Bentham again attended a meeting of his branch. He gave evidence that Mr Winstanley had read out a letter from the General Office relating to his appeal. By rule 27(6) all correspondence received by the branch in connection with members' appeals must be read to the branch. Mr Bentham stated that the letter was read out very quickly but he understood that the Union had refused to process his appeal. Subsequently Mr Bentham made a number of unsuccessful attempts to obtain a copy of this letter, including a written request to Mr Guy on 14 December.
26. By this stage the relationship between Mr Bentham and the Union had deteriorated considerably. A number of charges and appeals were lodged; namely:

- 26.1 On 3 November 2011 the Union charged Mr Bentham with misconduct arising out of his allegedly unauthorised attendance at the TUC on 13/14 September 2011. This charge was due to be heard on 15 February 2012 but was adjourned at Mr Bentham's request.
- 26.2 On 7 December 2011 Mr Bentham charged the members of the North West Regional Committee in respect of his alleged exclusion from Branch Officer and Shop Steward (BOSS) meetings.
- 26.3 On 12 December 2011 Mr Bentham wrote to Mr Guy seeking to appeal to the GC against the decision to charge him in relation to his attendance at the TUC.
- 26.4 On 18 January 2012 Mr Bentham wrote to his region seeking to raise a charge against Mr Winstanley for refusing to disclose the letter that he had read out at the branch meeting on 12 December relating to his appeal.
27. On 6 January 2012 Mr Bentham commenced this complaint to me.
28. On 15 February 2012 my office put Mr Bentham's complaints to the Union, having clarified various aspects of the case with him.
29. On 28 February 2012 Mr Steve Murphy, now elected as the General Secretary, wrote to Mr Bentham to inform him that the GC would hear his appeal against the decision of the EC not to charge Mr Thompson on 20 March. The Union states that this was to be the first meeting of the GC since the events complained about by Mr Bentham.
30. The GC considered Mr Bentham's appeal on 20 March 2012 and dismissed it. The GC concurred with the EC's decision that the charge had been brought out of time. By a letter dated 28 March, Mr Steve Murphy informed Mr Bentham of the decision of the GC.

The Relevant Statutory Provisions

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

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) disciplinary proceedings by the union (including expulsion);*
- (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) such other matters as may be specified in an order made by the Secretary of State.*

108B Declarations and orders

- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements -
- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
 - (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement

The Relevant Union Rules

32. The rules of the Union which are relevant to this application are as follows:-

Rule 22 Election Duties and Powers of General Council

6. The GC [General Council] shall meet at the GO [General Office] at least once each year to consider appeals, and all appeals should be heard within 6 months of receipt of the appeal to GO, except as Rule 27 Clause 5. They shall be also meet whenever they are summoned by the GS in accordance with Rule 24 Clause 9, Rule 27 Clause 5

Rule 25 Disciplinary Powers

1. The EC shall have power to impose a fine not exceeding £25, suspend from all or any benefits or from holding any office, or exclude for the Union, any member, who, in the opinion of the EC:

- i. by his or her conduct acts against the interest of the Union; such conduct to include racist or sexist behaviour
- ii. refuses to carry out any decision or any governing body of the Union made in virtue of the Rules, or disregards such decision, or acts against it
- iii.- v.

...

Rule 26 Procedure for dealing with Charges

1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.
2. The EC shall be competent to deal with all charges made under the Rules of the Union.
3. Any Regional Council or Branch shall be competent to deal with such charges made under the Rules of the Union as come within its local jurisdiction.
4. Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts.
5. The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the Union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and place of the

hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice.

.....

Rule 27 Appeals of Members, Branches and Regional Councils

1. Any member or members, excepting regional full-time officials or national organisers aggrieved at a decision of the Branch, Regional Council, or Executive Council shall have a right of appeal against any such decision as set out hereafter. Such right of appeal in the first instance shall be dealt with by the Regional Council. Any other appeals shall be directed to the Executive Council. Any appeal against the decision of the EC shall be to the GC whose decision shall be final and binding, subject to any power vested in any court or tribunal.

2. In all cases appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.

Rule 28 Miscellaneous Obligations

9. No member shall use his/her official position to further the candidature of any person, contrary to the spirit contained in our rules. S/he shall not act against the express wish of the local governing body of the Union, nor against any candidate nominated from this Union by an affiliated body for any public office or to anybody with whom we are federated. Any member violating this rule shall be dealt with under the provisions contained in Rule 25.

Consideration and Conclusions

Complaint One

33. Mr Bentham's first complaint is as follows:-

"On or around 1 November 2011, the union breached rule 26 by not accepting and processing Mr Bentham's charge that Mr Thompson breached rule 28(9) when he allegedly used his official position on 25 August 2011, to further the candidature of Mr Murphy for the position of General Secretary."

34. Rule 26 of the rules of the Union provides as follows:

Rule 26 Procedure for dealing with Charges

1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.

4. Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts.

Summary of Submissions

35. Mr Bentham submitted that he had sent the emails in which he made a charge against Mr Thompson to the Union at 9.28 and 10.28pm on 21 September 2011. He maintained that they must have been received later that day and were therefore in time. He denied that he had sent them at a later date and had 'doctored' the date on the email to make it appear as if it his complaint had been made in time. He asserted that he did not have the technical ability to change the date of an email in the hands of the recipient. Mr Bentham went on to submit that if I were to find against him on his email of 21 September, his undated letter headed 'Untitled' had certainly been received by the Union on 21 September and that it was sufficient to constitute a charge against Mr Thompson. Although Mr Bentham accepted that this letter was ambiguous, he noted that it referred to rules 25, 26 and 28 and considered that there was "sufficient meat on the bone". Mr Bentham noted that Mr Thompson was the President of the Union and had been a prominent member in the North West for many years. He asserted that the Union did not want this charge to be heard, as a number of individuals had too much to lose and the only defence available to the Union was that the charge had been brought out of time. He questioned whether the Union's failure to open his email until 11 October 2011 was human error or deliberate.
36. In a skilled and careful submission, Mr Panesar, for the Union, submitted that the issue as to whether Mr Bentham's email dated 21 September 2011 had been received in time had to be determined on the balance of probabilities, having regard to the oral, written and circumstantial evidence. In his submission, the date of 21 September on that email was fictitious and the email had in fact been received on 11 October. As to the oral evidence, Mr Panesar referred to the evidence of Mr Guy that the email in question was not received until 11 October, that his PA in Liverpool routinely forwarded all emails that had been sent to him at gguy@ucatt.org and that he was not aware of any problems with this arrangement or with the Union's email system around that time. As to the written evidence, Mr Panesar referred to the telling absence of any complaints by Mr Bentham about the content of Mr Guy's letter to him of 26 September. He argued that if Mr Bentham had in fact sent his email dated 21 September by then, he would surely have pointed out to Mr Guy that his grounds for rejecting the charge were inappropriate. Mr Panesar commented that Mr Bentham's failure to object to Mr Guy's letter of 26 September is particularly significant given his readiness to raise complaints on other matters. With regard to the email of 21 September 2011, Mr Panesar pointed out that it existed in different forms in different places in the trial bundle. He noted that the version within the Complaints Form purports to have been sent at 9.28pm as compared to the versions at pages 32 and 38 which are timed at 10.28pm. Mr Panesar submitted that when this was put to Mr Bentham at the hearing, he had hurriedly come up with the explanation that he had sent two emails, which he had never previously volunteered. Mr Panesar further noted that the versions at pages 16, 38 and 39 ends "Kind Regards Roy Bentham" while the version at page 32 contains no such ending. He submitted that at the very least, such differences were suspicious. Noting that Mr Bentham considered his undated letter/fax/email headed 'Untitled' would be a sufficient charge in itself, he commented that it was strange that Mr Bentham thought it necessary to submit a further charge by email only 10 hours after sending the fax at 12.19pm the same

day. Mr Panesar did not accept Mr Bentham's explanation for this, namely that he had only acquainted himself with the rules during the course of the afternoon of 21 September. Mr Panesar pointed out that Mr Bentham had stated in his letter of 31 August that he had 'familiarised' himself with the rules and that he had included the text of rule 26(1) and 28(9) in that letter. On credibility, Mr Panesar noted that Mr Bentham had stated in a letter to my office on 24 April 2012 that he had never received any correspondence from the Union concerning his appeal and yet he now accepted that he had received letters from the Union regarding his appeal dated 28 February and 28 March 2012. As to the circumstantial evidence, Mr Panesar submitted that the format of Mr Bentham's email dated 21 September was revealing. He noted that Mr Guy's letter of 26 September had rejected Mr Bentham's appeal on three main grounds: that it was up to Mr Bentham if he wanted to make a charge, that the charge must be to the 'appropriate council' and that the charge must set out the nature of the charge together with the specific rules or clauses. Mr Panesar commented that it was more than a coincidence that Mr Bentham's email dated 21 September began by addressing these three points. It states "*Dear Brother Guy, Please put this forward to the EC. I am charging Brother Thompson EC member for the NW region and President for UCATT under rule 25. I am using the procedure contained in rule 26. My charge is that Brother Thompson has breached rule 28 clause 9. ...*" Mr Panesar suggested that this was circumstantial evidence that Mr Bentham's email was written after receipt of the Union's letter of 26 September and not on 21 September. Mr Panesar further argued that Mr Bentham had a clear motive for fabricating the date on his email as otherwise his charge was out of time. He also submitted that Mr Bentham had the opportunity of writing this email on 11 October as he was on his computer that day, as seen from the email he sent to 'George/Chris' on 11 October.

37. Mr Panesar also addressed the issue as to whether the undated letter/email/fax headed "Untitled" constituted a charge in itself. He submitted that from its terms it clearly did not do so. He referred in particular to Mr Bentham's comments in that correspondence that the alleged events were "worthy of a formal investigation", that "charges should now be invoked", and that Mr Bentham would be prepared to give evidence "if an investigation is opened". Mr Panesar submitted that the text of that correspondence, read as a whole, was not consistent with it constituting a charge being made against Mr Thompson by Mr Bentham.

Consideration and conclusion – Complaint One

38. The main issue for me to determine in this complaint is whether Mr Bentham's email of 21 September 2011, charging Mr Thompson with a breach of the rules, was received by the Union in time. The event which gave rise to the complaint allegedly occurred on 25 August 2011. By rule 26(4) any such charge must be made and received by the appropriate council within 28 days of the discovery of the relevant facts. Accordingly, any charge arising out of any event on 25 August had to be received by 22 September.
39. There is no dispute that Mr Bentham raised the events of 25 August 2011 as a possible breach of rule with various regional secretaries (but not the then acting General Secretary) by his email of 31 August. In that email, he stated that he did not wish to take the matter any further. It is also undisputed that Mr Bentham raised

the events of 25 August with Mr Guy by his undated letter/email/fax headed "Untitled" which was received as a letter on 20 September and as an email and fax on 21 September. I deal with its construction at paragraph 43 below. It is further undisputed that if Mr Bentham's email dated 21 September was received by the Union on or before 22 September then a valid complaint had been lodged in time and Mr Bentham's first complaint must succeed.

40. Both Mr Bentham and Mr Guy gave evidence about the date of receipt by the Union of Mr Bentham's email dated 21 September 2011. I accept Mr Guy's evidence that the first time he saw this email was on 11 October but I do not find that this is conclusive evidence of the date it was received by the Union. On the balance of probabilities, I find that the date of 11 October 2011 printed on the bottom left hand corner in the version of the email at page 38 of the bundle is merely the date that the document was printed out, just as the version of the same email at page 39 of the bundle carries the date 27/10/11 in the same position. Given that Mr Bentham sent his email to gguy@ucatt/org, as the then acting General Secretary and as Mr Guy gave evidence that emails sent to that address could not be opened by him remotely from the Union's London office, it is possible that the email was sent by Mr Bentham on 21 September but that it did not navigate through the Union's system to Mr Guy until 11 October. Mr Guy gave evidence that this was unthinkable having regard to the efficiency of his PA in Liverpool. However, his PA did not give evidence and Mr Guy's evidence on this point amounted to no more than a confident assertion that an error or oversight of this nature could not happen. Furthermore, the Union did not submit any supporting evidence from Mr Chris Murphy, who was named in the email as a recipient of a copy of it, nor any expert evidence as to the date of receipt of the email.
41. Turning to the evidence of Mr Bentham. Having made allowances for the fact that Mr Bentham is not legally trained, I found much of his oral and written evidence to be unsatisfactory. His written statement dealt only very briefly with whether his charge was presented in time. His oral evidence failed to explain satisfactorily the circumstances which led to him sending his undated letter/email/fax headed "Untitled". Having gone to the trouble of obtaining proof of posting, he was even unsure if he had emailed it or faxed it to the Union. He failed to satisfactorily explain why, having faxed the letter at 12.19pm on 21 September, he then sent the email in question at 9.28 and then again at 10.28pm the same day. I do not accept his explanation that it was only during the course of that afternoon that he became sufficiently aware of the relevant rules. In my judgement he was sufficiently aware of those rules from at least the time of his email of 31 August. I further find Mr Bentham's lack of an immediate and strong riposte to Mr Guy's letter of 26 September to be very curious on the basis that his email of 21 September provided all the information Mr Guy stated was lacking in his earlier correspondence. Further, Mr Panesar made telling submissions regarding the reliability of certain assertions made by Mr Bentham which I find reflect adversely on his credibility on those issues for which a satisfactory explanation has not been offered.
42. On the other hand, the Union does not dispute that it received an email from Mr Bentham which was dated 21 September 2011. Its version of that email is timed at 10.28pm. In my judgement, this is strong prima facie evidence that an email was

received by the Union at or about that time. I heard no technical evidence about the progress of this email through the various systems through which emails pass or about whether it is technically possible for a sender to “doctor” the date of transmission of an email. Whilst I am prepared to accept that most electronic systems are capable of manipulation in the hands of a skilled person, I accept Mr Bentham’s evidence that he is not skilled in computer technology. In attempting to rebut the presumption that the date on the email was the date it was both sent and received, Mr Panesar has made a number of strong points against Mr Bentham but, in my judgement, none of them individually or collectively, are sufficient to rebut that presumption. The Union could have adduced expert evidence as to the progress of the email through its various processes. It could have adduced the evidence of Mr Chris Murphy and it could have adduced the evidence of Mr Guy’s PA as to what she knew about this email and the general process of forwarding emails that had been sent to gguy@ucatt.org. In the absence of such evidence, I find, on the balance of probabilities, that Mr Bentham did send the email in question on 21 September 2011 and that it was received by the Union in the normal timeframe for the receipt of emails and, in any event, before the end of 22 September 2011. I need make no finding as to the reason why that email was not then seen by Mr Guy until 11 October but the possibility of human error cannot be eliminated.

43. On the basis of my above finding, it is not necessary for me to consider whether Mr Bentham’s undated letter/email/fax headed “Untitled” was in itself sufficient to constitute a charge against Mr Thompson. However, in case I am wrong in my above finding, I have considered this matter and find that it is not in itself sufficient to constitute a charge for the reasons advanced by Mr Panesar. Indeed, Mr Bentham himself described it at the hearing as being ambiguous. I find that the terms of the correspondence are more consistent with a request that an investigation is opened by others, which reading is also consistent with Mr Bentham’s email of 31 August.
44. Mr Panesar accepted that Mr Bentham’s first complaint would succeed if I found that his email dated 21 September 2011 was received by the Union on or before 22 September and I have so found. Accordingly, I uphold Mr Bentham’s complaint that the Union breached rule 26 of its rules by not accepting and processing his charge against Mr Thompson contained in that email.
45. When I make a declaration, I am required by section 108B(3) of the 1992 Act to also make an enforcement order unless I consider that to do so would be inappropriate. In the circumstances of this complaint, I consider that it would be appropriate to make an enforcement order. Mr Panesar accepted that if I found against the Union on liability he would be unable to resist an enforcement order limited to a requirement that Mr Bentham’s charge is processed in accordance with the rules. The enforcement order I make is that UCATT processes the charge brought by Mr Bentham against Mr Thompson in his email dated 21 September 2011 in accordance with rule 26 of the rules of the Union. By section 108B(4) of the 1992 Act, I am to specify the period within which the union is to comply with any requirement I impose under section 108B(3)(a). I order that the said charge be initiated pursuant to rule 26(5) by no later than 10 September 2012.

Complaint Two

46. Mr Bentham's second complaint is as follows:-

"On or around 12 December 2011, the union breached rule 27 by not putting forward Mr Bentham's appeal to the General Council against the union for not accepting Mr Bentham's charge of Mr Thompson."

47. Rule 27(1) of the rules of the Union provides as follows:

Rule 27 Appeals of Members, Branches and Regional Councils

1. Any member or members, excepting regional full-time officials or national organisers aggrieved at a decision of the Branch, Regional Council, or Executive Council shall have a right of appeal against any such decision as set out hereafter. Such right of appeal in the first instance shall be dealt with by the Regional Council. Any other appeals shall be directed to the Executive Council. Any appeal against the decision of the EC shall be to the GC whose decision shall be final and binding, subject to any power vested in any court or tribunal.

48. At the time Mr Bentham made this complaint to me on 6 January 2012, he had heard nothing from the Union further to the appeal he had lodged with his branch on 14 November 2011. However, he was subsequently informed that his appeal would take place on 20 March 2012 and it did so. In these circumstances Mr Bentham withdrew this complaint at the hearing.

49. Accordingly, I dismiss this complaint upon withdrawal by Mr Bentham.



David Cockburn
The Certification Officer