

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

Ms K Lyons

V

UNISON

Date of Decisions

6 June 2012

DECISIONS

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

1. I refuse to make the declaration sought by Ms Lyons that on or around 20 April 2011 UNISON breached rule C7.4.1 of its rules, in that Ms Lyons was allegedly suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without authority from the National Executive Council.
2. I refuse to make the declaration sought by Ms Lyons that on or around 20 April 2011 UNISON breached rule C7.4.1 of its rules, in that Ms Lyons was allegedly suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without Ms Lyons facing disciplinary charges under Rule I.
3. I refuse to make the declaration sought by Ms Lyons that on or around 20 April 2011 the Union breached Derby City Branch Rules by allegedly acting ultra vires in purporting to remove from office Ms Lyons as Assistant Branch Secretary and Welfare Officer of the Derby City Branch of UNISON.

REASONS

1. Ms Lyons is a member of UNISON ("the Union"). By an application received at the Certification Office on 31 October 2011, the claimant made complaints of various breaches of the rules of the Union which she maintained were within my jurisdiction, being rules which related to the removal of a person from any office. Following correspondence with the claimant, three complaints were confirmed by her in the following terms:

Complaint 1

That on or around 20 April 2011 the Union breached rule C7.4.1 in that Ms Lyons was suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without authority from the National Executive Council.

Complaint 2

That on or around 20 April 2011 the Union breached rule C7.4.1 in that Ms Lyons was suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without Ms Lyons facing disciplinary charges under Rule 1.

Complaint 3

That on or around 20 April 2011 the Union breached Derby City UNISON Branch Rules by acting ultra vires in purporting to remove from office Kath Lyons as Assistant Branch Secretary and Welfare Officer of the Derby City Branch of UNISON.

2. I investigated the alleged breaches in correspondence and a hearing took place on 9 May 2012.
3. At the hearing on 9 May, Ms Lyons was represented by Mr Rob Davison, the former chair of her branch. Evidence for the claimant was given by herself, Mr Davison and Ms Gloria Glasby, her former branch secretary. The Union was represented by Mr Peter Edwards of counsel. Evidence for the union was given by Ms Nicole Berrisford, a former assistant branch secretary and now branch secretary, Mr Tony Belfield, UNISON Regional Officer and Mr Charlie Carruth, UNISON Regional Organiser. Each witness produced a written witness statement. There was in evidence a 243 page bundle of documents containing correspondence, the rules of the Union and the branch rules, together with other documentation as supplied by the parties for use at the hearing. I gave leave at the hearing for the claimant to adduce Ms Glasby's manuscript notes of the meeting of 20 April 2011. Both the Union and Ms Lyons provided skeleton arguments.

Findings of Fact

4. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
5. Ms Lyons entered the employment of Derby City Council and joined UNISON in about 1984. At all relevant times she was employed in Children's Services as an Assistant Unit Manager. Ms Lyons became a Workplace Representative for the Union in about 2003, the Convener in her department in about 2007, the Welfare Officer in about 2008 and an Assistant Branch Secretary in 2009. She performed the latter role as a job share with Ms Moz Greenfield. Since 2007 Ms Lyons has been on paid full-time release from her employer to carry out her Union responsibilities. Ms Lyons' elected positions were subject to annual elections that usually took place in October for a term of office that began on 1 January of the following year.
6. The Derby City Branch of UNISON has about 4,400 members. It has its own offices in Friargate Derby and employs three part time administrative assistants. Four branch officers have paid full-time release from Derby City Council. They are the Branch Secretary and three Assistant Branch Secretaries.

7. At the relevant time in 2010 and 2011 the Derby City Branch was facing a difficult industrial situation. The Council was introducing a strategy to restructure services and was looking for 500 compulsory redundancies together with reductions in terms and conditions of employment.
8. At the same time, the branch was experiencing internal difficulties. Mr Carruth, the relevant Regional Organiser, organised monthly leadership meetings from December 2010 and subsequently held a number of one to one meetings with officers. He became aware of worrying tensions between the officers and Ms Lyons and of a view amongst the officers that Ms Lyons did not appear to be dealing satisfactorily with the issues that needed to be faced. Mr Carruth discussed his concerns with the Branch Secretary, Ms G Glasby, and Ms Glasby responded by moving Ms Lyons from the transformation team to the casework team in early 2011.
9. No formal complaints were made about Ms Lyons at the branch meetings that were held between December 2010 and March 2011. Mr Davison resigned as Branch Chair in March 2011, upon taking voluntary redundancy. No one volunteered to replace him and so an acting chair was appointed when required.
10. Despite the absence of formal complaints, Mr Carruth perceived that personality clashes were arising more and more frequently between Ms Lyons and the officers. On two occasions, Ms Berrisford, Assistant Branch Secretary, raised these with Ms Glasby but did not feel that her concerns were adequately addressed.
11. On Monday 11 April 2011, Ms Glasby had a meeting with Ms Lyons to discuss a complaint about Ms Lyons' conduct towards Ms Maggie Fennell, the branch Equalities Officer, and also an allegation that Ms Lyons had spoken inappropriately to Ms Berrisford. The meeting concluded with Ms Fennell expressing dissatisfaction at the way it was conducted by Ms Glasby and walking out. In an email to Mr Carruth of 13 April, Ms Lyons asked for a full investigation so that she could clear her name. She also stated, *"I have been constantly undermined, excluded and ill informed whilst I have tried to be a part of that team. What happened that day was a snapshot of a bigger picture and now I'm facing complaints"*.
12. Towards the end of that week, following a request by some stewards and conveners, Ms Berrisford informed Mr Carruth that the officers were considering a vote of no confidence in both Ms Lyons and Ms Glasby at the meeting of the Branch Committee on Wednesday 20 April. Mr Carruth explained that a vote of no confidence would not remove either of them from office or force them to step down. Nevertheless Ms Berrisford said they wanted things out in the open and for things to change.
13. On Monday 17 April 2011, there were further discussions between the branch officers and the stewards and conveners at which it was agreed that a motion of no confidence would be put forward at the branch committee meeting. Ms Berrisford asked Mr Carruth to speak to Ms Glasby to inform her what was to happen and ask her to resign. Mr Carruth did so but Ms Glasby refused to resign. Mr Carruth did not speak to Ms Lyons, who asserts that she attended the branch meeting unaware that a motion of no confidence in her was to be moved. Prior to the meeting, Ms Glasby spoke with the then Head of Local Government in the East Midland Region of

UNISON, Mr Ravi Subramanian, and told him what was going to happen. He advised her that the issue should be discussed out of the meeting and that if complaints were to be pursued against them there should be an investigation.

14. The Branch Committee meeting of Wednesday 20 April 2011 started shortly after 10am. The Chair was taken by Ms Gwyneth Collins, who had little experience of chairing meetings. Mr Carruth was present as were a number of stewards and conveners and some administrative staff. There is no official minute of this meeting. The bundle contained the manuscript notes of Ms Berrisford and the typed notes of Ms Glasby. Mr Carruth and Ms Berrisford did not accept the accuracy of Ms Glasby's typed note and, upon request, she produced her manuscript notes at the hearing. Some passages that appear in Ms Glasby's typed notes do not appear in the manuscript version. To that extent I find that Ms Glasby's typed notes of this meeting are not wholly reliable. The meeting commenced with a discussion as to whether the motion of no confidence could be considered as the first item of business, as an emergency motion. It was agreed that it could. There was then a discussion of the issues. Ms Berrisford gave a general description of the type of conduct which she considered merited a vote of no confidence. However, she stated that it would be inappropriate to go into the detail of any alleged incident as that might prejudice the handling of any grievances that might arise. Ms Lyons wanted to go into specifics and there was a sharp exchange between herself and Ms Berrisford before the Chair agreed with Ms Berrisford's position. Thereafter Ms Lyons and Ms Glasby made few contributions to the meeting. The terms of the motion of no confidence were as follows,

'I reluctantly propose a motion of a vote of no confidence in Gloria Glasby, as Branch Secretary and Kath Lyons as Assistant Branch Secretary and Welfare Officer. Due to their continued poor conduct and performance issues. They have jointly created an atmosphere of suspicion and mistrust. This has resulted in divided team, and a workplace where conditions are now untenable. In order to bring back a respectful culture and re-establish the reputation and integrity of the Branch, they must go with immediate effect.'

The motion was moved by a Mr Baldwin and seconded by a Mr Pheasant. After a brief adjournment for the resolution to be copied, it was put to the vote and overwhelmingly approved. Ms Berrisford's note states 12 in favour, 3 abstentions, none against. Ms Glasby's manuscript note states 12 in favour, 2 against and 2 absent (sic). Ms Berrisford then asked Ms Lyons and Ms Glasby to resign. Mr Carruth intervened to say that they did not have to resign as a result of the vote and they did not do so. Mr Carruth went on to request a private meeting with the branch officers, excluding the conveners, stewards and administrative staff. At this private meeting, Mr Carruth made a plea for unity in the face of the cuts and for everyone to do what was best for the Union. It was then agreed that the rest of the business of the meeting would be adjourned to another date and that Mr Carruth would speak separately to the stewards and conveners, the officers, Ms Lyons and then Ms Glasby.

15. There is an issue as to whether Ms Lyons and Ms Glasby were promised at the meeting that there would be an investigation into their alleged misconduct. They both maintained that such a promise was given. This is denied by both Mr Carruth and Ms Berrisford. There is no mention of any investigation in Ms Berrisford's notes

whilst there are material differences between Ms Glasby's manuscript and typed notes on this issue. On balance, I accept the evidence of Mr Carruth and Ms Berrisford that no investigation was promised at the meeting. I find that this is consistent with Mr Carruth's intention not to escalate matters so as to create a long running sore which would distract the Branch at a vital time and with Ms Lyons' later request to the Region to investigate the matter. In as much as an investigation may have been raised, I find it is more likely that it was in the context that if Ms Lyons and Ms Glasby did not resign a disciplinary process may be initiated against them which would involve an investigation.

16. When Mr Carruth met with the stewards and conveners and with the officers he realised the strength of their feelings about Ms Lyons and Ms Glasby. He gave evidence that he knew then that their relationship could not be fixed. Mr Carruth next met with Ms Glasby, who was very upset. He told her the strength of the feelings against her and that if she wanted to stay they would have to find a way. He referred to her working at home for a period and that for the present she would have to be as 'ships passing in the night' with her colleagues. Ms Glasby was sceptical about continuing if colleagues would not work with her and talked about a dignified exit.
17. Mr Carruth was unable to find Ms Lyons to talk with her. He was told that she had gone home. However, Ms Lyons gave evidence that she worked as normal during that afternoon and had a meeting with a member at 3pm. Ms Lyons also stated that on that afternoon she explained matters to the administrative staff, obtained from them a Case Form to lodge a grievance and began writing an email of complaint to Ravi Subramanian before clearing her desk and going home at about 5pm. The Case Form later submitted by Ms Lyons is dated 20 April. It refers to the incident on 11 April at length and requests that it is fully investigated. It also goes on '*I would want a full and unbiased investigation to be conducted with regard to the vote of no confidence issued at Branch Committee on 20/4/11*'.
18. Mr Carruth spoke to Ms Lyons on the telephone during the afternoon of 20 April 2011. She told him that she was angry, would not be going anywhere and would be putting in a complaint. Nevertheless, by an email to Mr Carruth timed at 3.55pm that day she said she had considered her position. She requested him to obtain figures from her employers for VR/VER, voluntary early leaving schemes, and that she would like to apply for a position as a full time Union organiser should such a post arise.
19. Having regard to the substance of the meeting on 20 April and the subsequent events that day, I find that Ms Lyons appreciated that the vote of no confidence was no more than an expression of the feelings of those present at the meeting and had no constitutional significance, either by way of forcing her to resign or suspending her.
20. On Thursday 21 April 2011 Mr Carruth again spoke to Ms Lyons who confirmed that she wished to either take voluntary severance from the Council or go back to her substantive post. Mr Carruth attempted to speak with her Director but was unable to do so and sent an email to Ms Lyons confirming that he would try again the following week. In fact, Friday 22 April was Good Friday, Monday 25 April was Easter Monday, Friday 29 April was the Royal Wedding and Monday 2 May was a Bank Holiday. Further, the director of Children's Services took some leave over this period. By an email to Mr Carruth of 22 May, Ms Lyons confirmed that she would prefer to take

enhanced VR or VER and leave the Council rather than any further secondments to the Union.

21. Ms Lyons gave evidence that she telephoned her Union office on Thursday 21 May 2011 to discuss the appointments she had in her diary. She stated that the administrative assistant to whom she spoke told her that she had been instructed not to talk to her nor give her any administrative support. Ms Berrisford denied that any such instruction had been given to the administrative staff. Mr Belfield (Mr Ravi Subramanian's successor as Head of Local Government in UNISON East Midlands) commented in a letter dated 9 November 2011 that it appeared from his investigation that Ms Berrisford had told staff to pass any calls from or for Ms Lyons to her to deal with. Be this as it may, Ms Lyons made no attempt to escalate her alleged exclusion from the office at that stage, so as to secure the reversal of any such direction to the administrative staff.
22. On Thursday 28 April 2011, Ms Lyons emailed Mr Carruth to find out if he had made any progress on her behalf. She was concerned that, as she was no longer doing work for the Union, she would need to cover her position with her employer by taking annual leave. Ms Lyons in fact took annual leave on 26-28 April and 3-6 May before running into a period of pre-booked leave for the week commencing 9 May. Mr Carruth responded the same day stating that the Director had not responded to him and he would follow it up on Tuesday 3 May, after the Bank Holiday.
23. On Wednesday 4 May there was a further meeting of the Branch Committee at which there was a discussion of vacant positions within the branch. By this stage, Ms Lyons had not returned to work or protested about any alleged refusal to let her do so. Further, I find that the members of the branch committee were aware of Ms Lyons' requests to Mr Carruth for assistance and his continuing efforts to secure for her either a leaving package or a return to work for the Council. In these circumstances, the branch considered that Ms Lyons' role within the Branch had ended and arranged for her Union mobile phone to be cut off, which it was from about 5 May, and her email address to be removed, which it was from about 10 May. They also required her to return any property of the branch she held by 23 May.
24. On 6 May 2011 Ms Lyons telephoned her Regional Secretary, Ms Helen Black. Ms Lyons explained the position, stating that she was still waiting for the position to be somehow sorted out but that she had not stood down or resigned from her position. Ms Black asked for a report from Mr Belfield or Mr Carruth.
25. On 13 May 2011, Ms Lyons emailed Ms Black. Ms Lyons commented that, as Ms Black had not yet responded to her, she felt that she had no option but to lodge a grievance and that she hoped an independent investigator would be assigned to her case. Ms Lyons stated that Ms Black would be receiving a signed and completed Case Form setting out how badly and unfairly she had been treated as a branch officer. Ms Black responded on 16 May. She stated her understanding that Mr Carruth was attempting to negotiate either a return to work or some alternative exit strategy and that she would get Mr Carruth to contact her as a matter of urgency so that the appropriate steps might be taken. These steps were described as being either "*...your return to work or your return to your UNISON position – albeit potentially subject to disciplinary action*". On the same day, Ms Black emailed Ms

Berrisford and Mr Carruth to tell them that this matter needed sorting out, reporting that Moz Greenfield had informed her that if Ms Lyons and Ms Glasby did return *"the Branch would implode with complaints and grievances and counter complaints"*.

26. Mr Carruth's attempts at this time to contact Ms Lyons were all unsuccessful, giving him the impression that she was deliberately avoiding him.
27. At about this time, Ms Lyons submitted the Case Papers dated 20 April referred to in paragraph 17 above and a long letter to Ravi Subramanian, also dated 20 April. It is apparent, however, that the letter was not composed entirely on 20 April as it refers to incidents which occurred at a later date.
28. On Monday 16 May 2011 Ms Lyons returned to work for Derby City Council as an assistant manager at the Moorfield's Children's Home. She had arranged this with her director herself, without the assistance of Mr Carruth.
29. On 18 May 2011 Ms Black emailed Ms Lyons to wish her success in her new job and to state that if she wished to pursue the situation she should use the Union's complaints procedure, not its grievance procedure.
30. On 19 May 2011 Ms Lyons emailed Ms Black stating her intention to proceed with the matter in order to address both the original complaint that had been made against her and the vote of no confidence, both of which she said must be investigated. She stated that she had relinquished her position as Welfare Officer/Branch Secretary on the understanding that this investigation takes place.
31. Mr Belfield was given responsibility to deal with Ms Lyons' complaints. He described the documentation from Ms Lyons that he was originally given as being 'like a stream of consciousness' and attempted to identify specific complaints which he could look into. This process took until 7 July when he obtained Mr Carruth's comments on eight specific complaints which Ms Lyons had by then agreed. Mr Belfield arranged to meet with Ms Lyons and Mr Davison, her representative, on 2 September. In preparation for this meeting Ms Lyons emailed Mr Belfield on 26 August and stated, inter alia, that she *"had accepted the outcome of the April Committee meeting only on a temporary basis and that an investigation was to be conducted by the Region"*.
32. Mr Belfield met with Ms Lyons and Mr Davison on 2 September 2011. He later met with Mr Carruth and then with Ms Berrisford.
33. Ms Lyons commenced this complaint to me on 31 October 2011.
34. Mr Belfield concluded his investigation by a letter to Ms Lyons of 9 November 2011. He rejected most of her individual points of criticism, although he considered it inappropriate that Ms Lyons' email account had been closed unilaterally. He refused Ms Lyons' request to be reinstated in her role, commenting that it would be inappropriate in any event as the relevant electoral period had ended.
35. On 15 November 2011, Ms Lyons in effect appealed the decision of Mr Belfield by a letter to the Membership Liaison Unit of UNISON – a stage 3 review of complaint. In

this letter Ms Lyons again stated that the basis upon which she was prepared to stand down following the vote of no confidence was that Mr Carruth or another Regional Officer would look at all the complaints. By a letter dated 25 January 2012 Ms Lyons' application for a review was rejected.

The Relevant Statutory Provisions

36. 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.*

The Relevant Union Rules

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

Rule C7.4 Suspension

Rule C7.4.1 The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such a period is extended by agreement between the parties) if the member faces disciplinary charges under Rule 1 and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined.

Rule G2 The Branch Committee

Rule G2.2 The Branch Committee shall administer branch business in accordance with the branch rules and any guidelines issued by the National Executive Council, and in particular:

G2.2.7 shall ensure that the branch officers are properly exercising their functions.

38. The core branch rules of the Derby City Branch of UNISON which are relevant to this application are as follows:-

Rule 7.6.5 Objectives of the Branch Committee will be:

(vii) Ensure Branch Officers are properly exercising their functions.

Summary of Submissions

39. Mr Davison, for Ms Lyons, stated that he had little to add to his extensive written submissions. In this document, he argued that the Union's contention that Ms Lyons had suspended herself was unknown in the Union's rules or in law but that, even if it were a known concept, Union officials were required by rule G2.2, G2.2.7 and branch rule 7.6.5 to regularise the situation within the rules should it be necessary. He submitted that to achieve a suspension under the rules would require a disciplinary investigation under rule I and for the NEC to be then requested to suspend the member under rule C7.4.1. Mr Davison stated that as this process had not been followed Ms Lyons' suspension was in breach of rule C7.4.1. He further argued that Ms Lyons had been forced to treat herself as suspended in the aftermath of the meeting of 20 April having regard in particular to the refusal of the administrative assistants to work with her and the failure of the Union to hold an investigation. Mr Davison submitted that in any event the defence of 'self suspension' cannot be continued beyond 6 May 2011 when Ms Lyons had told her Regional Secretary that she had not resigned or stepped down. He added that, in any event, any self imposed suspension can be lifted at any time. He commented that the Union's attitude was one of 'deep pragmatism' in which Mr Carruth failed to take seven specific steps which were open to him but instead gave way to the threats that the stewards would resign. He was also critical of the failure of the Regional Secretary to regularise the position, commenting that there should have been no need for Ms Lyons to complain in the first place and that, in any event, there was inordinate delay in processing her complaint. In Mr Davison's submission, the failure of the Union to reinstate Ms Lyons meant that there was an enforced suspension until 31 December 2011 and that Ms Berrisford should not have styled herself as Branch Secretary as she did in a letter to Ms Lyons of 17 August. He argued that the Union was wrong to consider the problem resolved when Ms Lyons resumed employment on 16 May as she could have continued to operate as a Union official whilst in full time employment. Mr Davison submitted that in the absence of the Union putting forward a rule upon which it had acted to suspend/remove Ms Lyons from office, it had clearly acted in breach of rule C7.4.1 and/or ultra vires. In his view the actions of the Union were equivalent to a 'lockout'.
40. Mr Edwards, for the Union, commented that the case he was now meeting was different to the one he had come prepared to meet. He stated that he had come prepared to argue that the motion of no confidence was not in itself a suspension/removal of Ms Lyons. However, he noted the acceptance by Ms Lyons in evidence that she was aware that the notice of no confidence could not have the effect of suspending or removing her from office and that she had said that she had worked as normal for the rest of that day. Mr Edwards stated that the case he now had to meet was that Ms Lyons had allegedly been told on the telephone on 21 April that the administrative assistants had been instructed not to support her. On the basis of the way the case against the Union had evolved, Mr Edwards submitted that it could not now be seriously argued that Ms Lyons was suspended at the meeting of 20 April. He maintained that after the meeting Ms Lyons' had three choices. She could apply for VR/VER, she could return to work with the Council or she could continue as a full time Branch Officer. He commented that the choice she made is evidenced by the fact that she cleared her desk on 20 April, the fact that she wrote an email to Mr Carruth with a view to getting VR/VER on both 20 and

22 April and by her discussions with Mr Carruth. In Mr Edwards' submission it cannot be correct to assert that in the absence of an express resignation or removal from office Ms Lyons remained in her Union positions until 31 December 2011. He argued that Ms Lyons had resigned by her conduct by no later than 16 May when she resumed full time work with the Council; her Union roles being ones which were required to be performed on a full time basis. Mr Edwards submitted that Ms Lyons' alleged suspension was voluntary and was not conditional on any investigation, as no investigation was promised. He concluded that Ms Lyons' decision not to resume work for the Branch was both pragmatic and sensible but, essentially, it was a decision that she made.

Consideration and Conclusions

41. Ms Lyons' three complaints are as follows:

Complaint 1

That on or around 20 April 2011 the Union breached rule C7.4.1 in that Ms Lyons was suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without authority from the National Executive Council.

Complaint 2

That on or around 20 April 2011 the Union breached rule C7.4.1 in that Ms Lyons was suspended/removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON without Ms Lyons facing disciplinary charges under Rule 1.

Complaint 3

That on or around 20 April 2011 the Union breached Derby City UNISON Branch Rules by acting ultra vires in purporting to remove from office Kath Lyons as Assistant Branch Secretary and Welfare Officer of the Derby City Branch of UNISON.

Rule C7.4.1 of the rules of the Union provides as follows:

"The National Executive Council shall have the power in exceptional circumstances to suspend a member from office for a period of not more than 60 days (unless such a period is extended by agreement between the parties) if the member faces disciplinary charges under Rule 1 and the National Executive Council considers it appropriate in the interests of her or his branch or of the Union generally that she/he should be suspended until the charges are determined."

42. It is understandable that Ms Lyons has a strong sense of grievance about the events of 20 April 2011 and immediately thereafter. She had no notice that there would be a motion of no confidence against her that day and found herself in a difficult position with no adequate means of addressing the criticisms of her. That said, the Union also found itself in a difficult position. It was facing a challenging industrial situation and a major branch was in danger of collapsing into internecine warfare which would disadvantage a great number of members. In these circumstances, it is not my task to determine the merits of the general dispute between Ms Lyons and the Union but to determine the specific complaints brought by Ms Lyons.

43. In my judgment, all three complaints stand or fall upon a finding of fact; namely was Ms Lyons suspended/removed or purportedly removed from office as Assistant Branch Secretary and Welfare Officer by the Union on or about 20 April 2011. If she was so suspended/removed, the Union concedes that it did not do so in accordance with the rules.
44. It is clear that as a matter of law the motion of no confidence passed by the Branch Committee on 20 April 2011 did not have the effect of suspending/removing Ms Lyons from her positions within the Union and did not purport to remove her. I also find that Ms Lyons was aware of that and did not regard herself as having been suspended/removed from those positions by the motion of no confidence itself.
45. In my judgment, Ms Lyons actions demonstrated a realistic grasp of the situation in which she found herself on 20 April 2011. The colleagues with whom she worked had demonstrated their lack of confidence in her; going beyond both her earlier removal from the transformation team and the complaint against her the previous week. The industrial climate was bleak and would require a concerted effort by the Union. If she insisted upon her rights and returned to office she could not expect to be greeted warmly and there was a probability that her effectiveness at work would be diminished by continuing disputes with colleagues. I find that it was in the light of such considerations that Ms Lyons cleared her desk on the afternoon of 20 April and wrote an email to Mr Carruth seeking VR/VER. She had realised that the difficulties of continuing in her present roles were enormous. Nevertheless, Ms Lyons rejected the invitations to resign as she considered that to do so might be understood as accepting the criticisms of her conduct that had led to the motion of no confidence. She has consistently sought an investigation of those criticisms so that she might vindicate herself. However, I have already found that such an investigation was not offered or promised at the meeting on 20 April, albeit that there may have been some reference to an investigation should the disciplinary process be brought into play. In these circumstances, Ms Lyons was willing to leave her formal position in limbo hoping that Mr Carruth would soon be able to sort out a leaving package for her or a return to work for the Council. Unfortunately, a series of Bank Holidays and Council officials being on leave led to his efforts taking longer than expected. In the meantime, Ms Lyons spoke on the telephone with an administrative assistant at work and, according to Ms Lyons, that administrative assistant allegedly told her that she had been instructed not to work with or support her. Ms Lyons considered that this evidenced her suspension/removal from office and was the turning point for her. Whilst I do not discount that Ms Lyons had a conversation with an administrative assistant that day, I find that she makes too much of that conversation. I accept Ms Berrisford's evidence that she did not instruct the administrative staff to not work with or support Ms Lyons but rather to refer all issues regarding Ms Lyons to herself. Whilst making no findings as to the precise contents of that phone call, I consider it significant that Ms Lyons took no action upon it if the administrative assistant said what Ms Lyons now alleges. In my judgment, this is consistent with Ms Lyons' realistic appreciation of her position and her later comments that she had "*relinquished*" her position (email 19/5/11), that she had "*accepted the outcome of the April Committee meeting*" (email 26/8/11) and that she was "*prepared to stand down following the vote*" (letter 15/11/11). On each occasion this description was qualified by reference to a promised

investigation but I find these references to be disingenuous as no such investigation was promised.

46. Having regard to all the circumstance of this case, I find that Ms Lyons' absence from her duties as a Union Officer from 20 April 2011 was as a result of her decision not to attend at work, rather than as a result of a decision by the Union to suspend or remove her from office. In my judgment, the Union did not suspend or remove Ms Lyons from office or purport to do so. Ms Lyons' continued absence from her Union duties was covered by annual leave or Bank Holidays from Good Friday 22 April to her resumption of work for the Council on 16 May. During this period she retained her positions within the Union. From 16 May, Ms Lyons accepted work which was inimical with her full time duties for her Union and I find that by so doing she resigned from her Union positions by her conduct.
47. For the above reasons, I find as a fact that Ms Lyons was not suspended or removed or purportedly removed from office as Assistant Secretary and Welfare Officer of the Derby City Branch of UNISON on or about 20 April 2011. As each of the three complaints made by Ms Lyons is premised upon her being suspended / removed or purportedly removed from office by the Union, I dismiss each of those complaints.



David Cockburn
The Certification Officer