

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

**MR D ROBERTS**

v

**UNISON  
(No 3)**

**Date of Decisions:**

**21 January 2009**

**DECISIONS**

Upon application by Mr Roberts (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

- (i) I refuse to make the declaration sought by the Claimant that on or around 7 July 2008 UNISON breached paragraph 2.3 of Appendix 2 of its rules by its decision to move to a disciplinary hearing against Mr Roberts without allegedly providing a policy statement defining harassment.
- (ii) I refuse to make the declaration sought by the Claimant that on or around 11 February 2008 UNISON breached paragraph 3.7 of Appendix 2 of its rules by allegedly failing to allow Mr Roberts to present evidence or submit argument in respect of allegations made against him.
- (iii) I refuse to make the declaration sought by the Claimant that on or around 7 July 2008 UNISON breached paragraph 4.3 of Appendix 2 of its rules by charging Mr Roberts under its disciplinary procedure with an act of harassment without allegedly having produced a policy statement on harassment.
- (iv) I refuse to make the declaration sought by the Claimant that on or around 7 July 2008 UNISON breached paragraph 4.3 of Appendix 2 of its rules by charging Mr Roberts under its disciplinary procedure with alleged offences allegedly outwith the remit of its rule I.2.3(i).
- (v) I dismiss upon withdrawal by the Claimant his complaint that on or around 7 July 2008 UNISON breached paragraph 4.8 of Appendix 2 of its rules by the National Executive Council allegedly failing to issue guidance as to both the conduct of the procedures of the Union’s Disciplinary Panel and the exercise of its discretion.

## REASONS

1. Mr Roberts is a member of his trade union UNISON (“the Union”). By an application dated 14 February 2008 and received in the Certification Office on 15 February, Mr Roberts made allegations against his Union arising from disciplinary action being taken against him by the Union. Following correspondence with Mr Roberts, five complaints were identified which were confirmed by him and put to the Union in the following terms:-

### **Complaint 1**

*“that on or around 7 July 2008, UNISON breached Appendix 2 (2.3) of its rules by its decision to move to a disciplinary hearing against Mr Roberts without providing a policy statement defining harassment”*

### **Complaint 2**

*“that on or around 11 February 2008 UNISON breached Appendix 2 (3.7) of its rules by concluding an investigative process which failed to adequately allow Mr Roberts to present evidence or submit argument in respect of allegations made against him”*

### **Complaint 3**

*“that on or around 7 July 2008 UNISON breached Appendix 2 (4.3) of its rules by charging Mr Roberts under its disciplinary procedure with an alleged act of harassment without having produced a policy statement on harassment”*

### **Complaint 4**

*“that on or around 7 July 2008 UNISON breached Appendix 2 (4.3) of its rules by charging Mr Roberts under its disciplinary procedure with alleged offences which were outwith the remit of rule I.2.3(i)”*

### **Complaint 5**

*“that on or around 7 July 2008 UNISON breached Appendix 2 (4.8) of its rules by the National Executive Council failing to issue guidance as to both the conduct of the procedure of the Disciplinary Panel and the exercise of its discretion”*

2. By a letter dated 15 November 2008, Mr Roberts formally withdrew Complaint 5, which I dismiss upon withdrawal.
3. I investigated the alleged breaches in correspondence. A hearing took place on 22 December 2008. At the hearing, Mr Roberts represented himself. Ms H Jenner gave evidence on the Claimant’s behalf. The Union was represented by Mr Segal of counsel instructed by Mr J O’Hara of Thompsons solicitors. Mr K Nelson, Head of Democratic Services gave evidence on the Union’s behalf. A 312 page bundle of documents was prepared for the hearing by my office containing documents submitted by the parties. Also in evidence were the rules of the Union and its Staff Handbook on Conditions of Service. Ms Jenner and Mr Nelson provided witness statements. Mr Roberts provided a written skeleton argument.

## **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. The Union has brought disciplinary action against Mr Roberts for allegedly harassing one of its full time officers who had dealings with his branch. Mr Roberts alleges that

the Union has breached various of its rules in relation to that disciplinary action. The rules that have allegedly been breached are to be found in Appendix 2 to the Union's rule book. That Appendix is headed "UNISON policy and procedure for dealing with harassment at work of UNISON employees" and deals with the harassment of Union employees by Union members.

6. Mr Roberts joined a predecessor of UNISON in 1983 and is an experienced lay official. He currently serves as an assistant branch secretary in the Leeds Local Government Branch. He works as a senior policy and information officer for Leeds City Council. The Leeds Local Government Branch is said to be under special measures, its normal administrative structure having been suspended for reasons which are not directly relevant to this application.
7. Appendix 2 to the rules of the Union, which deals with the harassment of Union employees by Union members, was introduced in 1997. Unusually, it was introduced as a regulation under Rule D 2.9.2 by the National Executive Council ("NEC") subject to approval by Annual Conference, which was obtained later that year.
8. Paragraph 2.3 of Appendix 2 provides that:

*"The National Executive Council shall issue a policy Statement, which, for the purpose of this regulation, shall define harassment."*

It is the Union's case that such a Policy Statement was issued in 1998 and updated in 2003 in the form of a chapter within the Staff Handbook on the conditions of service of employees. It is Mr Roberts' case that the Union simply overlooked issuing any such policy statement and that its reference now to the Staff Handbook is an attempt, in effect, to rewrite history.

9. The Staff Handbook on Conditions of Service contains those terms and conditions that have been agreed between the unions recognised by UNISON for its employees and the Staffing Committee of the NEC, under its delegated powers. The minutes of the Staffing Committee are not normally circulated to the NEC but summary reports are provided to the NEC on major staffing issues.
10. The Staff Handbook deals with harassment in chapter 4, which is headed "Equal Opportunities". Paragraph 4.1 is headed "Equal Opportunities Policy" and paragraph 4.1.2.1 sets out a definition of harassment under that heading. It states:

*"Harassment is a form of discrimination and can be defined as unwanted, unsolicited, unwelcome, offensive and humiliating behaviour, practices or conduct, which may threaten a person's job security, create an intimidating, unwelcoming and stressful work environment or cause personal offence or injury. It should be recognised that anyone can be harassed because of their race, age, gender, sexuality, creed, physical or mental ability/disability, HIV status or for any other reason."*

Paragraph 4.4 of the Staff Handbook is headed "Combating Harassment" and is divided into three sections. Section 4.4.A is headed "*Policy on Combating Harassment and Bullying*". Section 4.4.B is headed "*The Harassment and Bullying Complaints Procedure*". Section 4.4.C is headed "*Disciplinary Procedures in Cases where Harassment is Alleged*". Each of these provisions is intended for the protection of Union employees. Paragraph 4.4.A contains a general policy statement before setting

out a slightly different definition of harassment, with examples. The definition of harassment in paragraph 4.4.A is as follows:

*“In this Handbook, “Harassment” means unwanted conduct affecting the dignity of men and women in the workplace. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient. It may be a persistent or an isolated act. It may be on account of a person’s sex, race, nationality, disability, sexuality, religious or political conviction, age, physical appearance, HIV status, mental health, status as an ex-offender, willingness or ability to challenge harassment or anything else. Often it will be unlawful discrimination.”*

11. Against this background, on 27 November 2007, a full time officer of the Union made a written complaint that she had been the subject of harassment by way of bullying/intimidation by Mr Roberts in incidents which occurred on 11 June and 12 September 2007. These allegations were put to Mr Roberts in a letter dated 30 November 2007 from Mr King, the Union’s Head of HR. Mr Roberts was told that an Investigating Team or Panel had been appointed by the General Secretary under the procedure contained in Appendix 2 of the Rules.
12. By a letter dated 5 December 2007 Mr Roberts asked Mr King for a copy of various documents, including the NEC’s Policy Statement referred to in paragraphs 2.3 and 4.3 of Appendix 2. He also objected to his exclusion from attending meetings at which his accuser would be present as, he said, he needed “...*the ability to seek possible witnesses who may be able to provide information on my behalf*”.
13. Mr King responded to Mr Roberts by a letter dated 11 December 2007. Mr King attached a copy of the definition of harassment to be found at paragraph. 4.1.2.1 in the Staff Handbook and stated that the Investigation Panel would respond on the question of his ability to contact potential witnesses.
14. The Investigating Panel was originally constituted by three people but was later reduced to two people, Mr Chris Tansley, a member of the NEC who sat on its Staffing Committee, and Ms Glyn Hawker, a senior regional official in Scotland. By a letter dated 13 December 2007, the Investigating Panel informed Mr Roberts that:

*“It is for us as the Investigating Panel to decide on the witnesses to interview during the course of the investigation. We will be aware of relevant witnesses through the Investigation process and you will have an opportunity to inform the panel of the individuals who were present at the time of the alleged incidents. We will then decide whether they should be interviewed if we have not done so already. If the matter proceeds to a disciplinary hearing you could then indicate who you wish to call as witnesses”.*
15. The procedure in Appendix 2 provides that the Investigation Team is to report to the General Secretary on its view as to whether there are reasonable grounds for believing that the member is guilty of harassing the employee. If there are such reasonable grounds, paragraph 4 of Appendix 2 provides for a disciplinary panel to be established and a hearing convened. Paragraph 5 of Appendix 2 provides for any subsequent appeal.
16. By paragraph 3.6 of Appendix 2, the Investigating Team have only 28 days to complete its work. However, that period can be extended by the General Secretary for a further period of 28 days. The Investigating Team in question had to be reconstituted

in December 2007 and it was common ground that, following an extension granted by the General Secretary, the final date for completing its work was Sunday 10 February 2008.

17. On 20 January 2008 Mr Roberts wrote to Mr King asking to be provided with the agreed procedure contained in paragraph 4.4 of the Staff Handbook on Conditions of Service. Mr Roberts explained at the hearing that he wanted to see this procedure to find out if it contained any informal stages prior to the appointment of the Investigation Panel which the Union had not applied in his case. This request was rejected by Mr King in a letter dated 24 January. Mr King informed Mr Roberts that the paragraph 4.4 procedure applied to UNISON staff only and was not part of the Appendix 2 procedure. Mr Roberts repeated his request to be given the paragraph 4.4. procedure in a letter dated 27 January and this request was rejected by Mr King in a letter dated 7 February.
18. On 25 January 2008 the Investigation Panel wrote to Mr Roberts inviting him to an investigation meeting in Leeds on 7 February. This letter set out six 'alleged incidents' about which the Investigation Panel stated it would be making enquiries.
19. On 6 February 2008 the Investigation Panel had meetings with the alleged victim, two officials of the Leeds Local Government Branch and a Regional Official.
20. On 7 February 2008 the Investigation Panel met with Mr Roberts, who was accompanied by Ms Jenner. Mr Roberts relies on this meeting for two matters. First, he gave evidence that the Chair of the Panel, Chris Tansley, had said he could not recall any Policy Statement defining harassment for the purposes of Appendix 2 having been presented to the NEC. Ms Jenner, also an NEC member, gave similar evidence at the hearing before me. However, the Union did not seek to argue that such a Policy Statement had been presented at the NEC itself. Further, the notes of the meeting record the other member of the Panel, Ms Hawker, as having asserted that there was such a Statement. Secondly, it is not disputed that Mr Roberts gave the Investigation Panel the names of three branch members whose evidence he wished the Panel to obtain. The Investigation Panel stated that there was no time to interview anyone else at that stage but those witnesses could be called if the matter went to a disciplinary hearing.
21. The Investigation Panel completed its report to the General Secretary on Thursday 7 February 2008.
22. On 14 February 2008, Mr Nelson, the Head of Democratic Services for the Union, wrote to Mr Roberts informing him that the Investigation Team had concluded that there were reasonable grounds to believe he was guilty of harassing the employee and that, accordingly, a disciplinary panel would be established in accordance with paragraph 4.1 of Appendix 2.
23. Also on 14 February 2008 Mr Roberts submitted a registration of complaint form to the Certification Office.
24. On 7 July 2008 Mr Nelson wrote to Mr Roberts informing him that the disciplinary hearing would take place in Leeds between 29 and 31 July. The letter set out two

specific charges which were headed “Charges under Appendix 2, Section 4.3”. The charges were:

*“1. On 12 September 2007 your behaviour towards (the employee) was objectionable, unreasonable and intimidatory. You were disrespectful to her and reacted angrily to her, and in doing so committed an act of harassment in breach of UNISON rule I.2.3(i) and also rules A3, B2.4, B2.6, I.2.1 and I.2.2.*

*2. On 11 July 2007 you were aggressive towards (the employee) during a meeting at the Leeds branch office, and in doing so committed an act of harassment in breach of UNISON rule I.2.3(i) and also rules A3, B2.4, B2.6, I.2.1 and I.2.2.*

*It is alleged that your behaviour towards (the employee) on these occasions was intimidating, aggressive and of a bullying nature, such that this undermined her confidence and ability to perform her job as well as she would wish, and that this behaviour was affected by the fact that she is a female in a position of authority and responsibility.”*

25. On 11 July 2008 the Secretary to the Disciplinary Panel, Maggi Ferncombe, wrote to Mr Roberts. With regard to the Policy Statement on the definition of harassment, Ms Ferncombe incorporated into her letter the definition contained at paragraph 4.1.2.1 of the Staff Handbook on Conditions of Service. However, Ms Ferncombe also stated, “*I have enclosed the appropriate documentation which details the introduction of the NEC policy statement referred to in section 2.3 of Appendix 2 of the UNISON rules*”. The documents included an extract from paragraph 4.4.A of the Staff Handbook, headed “The statement in the Harassment policy” together with examples of harassment. The other documents included were a 1998 minute of the staff negotiations committee (recording the harmonisation of staff terms and conditions as set out in the Handbook) and a 2003 report of the Staffing Committee, confirming agreement of the harassment policy, its implementation date of 1 July 2003 and the consequential training arrangements.
26. The disciplinary hearing set for July 2008 was postponed to October 2008. It sat for two days on 28 and 29 October but was then adjourned. No date for the resumption of the disciplinary hearing had been set at the time of this hearing before me.

### **The Relevant Statutory Provisions**

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

***Section 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) -*
- (b) disciplinary proceedings by the union (including expulsion)*
- (c) -*
- (d) -*
- (e) -*

## **The Relevant Union Rules**

28. The Rules of the Union which are relevant for the purpose of this application are as follows:-

### ***Rule I Disciplinary Action***

2 *Disciplinary action may be taken against any member who:*

2.1 *disregards, disobeys or breaks any of the Rules or regulations of the Union applicable to her or him, or any instruction issued in accordance with the Rules;*

2.2 *acts in a manner prejudicial or detrimental to the Union, her/his branch, Region or Service Group;*

2.3 *commits*

(i) *any act of discrimination or harassment on grounds of race, gender, marital status, sexuality, gender identity, age, creed or social class;*

(ii) *any other discriminatory conduct which is prejudiced to the Aims and Objects set out rule B.1,B2 and B3.*

### ***Appendix 2:***

***UNISON policy and procedure for dealing with harassment at work of UNISON employees***

#### ***2.0 PURPOSE OF THE REGULATION***

2.1 *This regulation establishes the procedure to be used for investigating allegations of harassment of a UNISON employee by a UNISON member, for determining whether a UNISON member is guilty of such harassment, whether the harassment constitutes a breach of rule, and if so, gives the National Executive Council Disciplinary Panel power to decide what penalty or penalties to impose.*

2.2 *This procedure is to be adopted when such allegations are made because the National Executive Council is of the view that the Disciplinary Action Rule I, and the Disciplinary Procedures (schedule D), which govern the behaviour of members to each other and to the union, are not appropriate when its obligations as an employer have to be considered.*

2.3 *UNISON employees have the right not to be harassed by UNISON members. The National Executive Council shall issue a policy Statement, which, for the purposes of this regulation shall define harassment.*

2.4 *A member who commits an act of harassment will be guilty of an offence as defined by Rule I.2.3. The member will also be in breach of Rules A.3, B.2.4 and B.2.6, which are also offences as defined by Rule I.2.1 and I.2.2.*

#### ***3.0 INVESTIGATION PROCEDURE***

3.4 *The Investigation Team shall be able to conduct its investigation in whatever way it considers appropriate, given the nature of the allegation(s)*

3.7 *Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged harassment, then the investigation Team shall request an interview with that member or person. The member or person will be invited to produce any document, printed material, recording or photographic image that he/she or the Investigation Team considers might be relevant with a view to assisting the inquiries of the Team. A friend or colleague may be present at the interview. The Investigation Team shall give an undertaking to the member or person that the information received by the Team will be received in confidence.*

#### 4.0 DISCIPLINARY PROCEDURE

4.1 *In the event that their conclusion is that there are reasonable grounds to believe that the member is guilty of harassing the employee, a Disciplinary Panel shall be established.*

4.3 *The member shall be charged with committing an act (or acts) of harassment in respect of one or more named employees of the union, contrary to rule I.2.3(i), and the policy of the union as set out in the National Executive Council statement Harassment of UNISON Employees by UNISON Members. The member shall also be notified of the nature of the harassment, how and when it was allegedly committed.*

### **Jurisdiction**

29. Mr Segal, for the Union, submitted that complaints 1 and 2 related to alleged breaches of rules which fall outside the jurisdiction of the Certification Officer under section 108A of the 1992 Act. He argued that paragraphs 2 and 3 of Appendix 2 were not rules which relate to disciplinary proceedings within the meaning of section 108A(2)(b). In his submission, the disciplinary aspect of Appendix 2 is only engaged after the Investigation Panel has concluded its work, found that there are reasonable grounds to believe in the member's guilt and the matter has moved forward for consideration by a disciplinary panel under paragraph 4. Mr Roberts, on the other hand, argued that the whole of Appendix 2 deals with disciplinary proceedings by the Union of members who are accused of having harassed Union employees.
30. In the case of *Irving v GMB (D/6-9/07)* in 2007 I observed that, "*In my judgment a rule which relates to disciplinary proceedings is ordinarily one which is part of a process, the implementation of which may result in the imposition of a disciplinary sanction*". I am not persuaded that this observation is incorrect. As is clear from paragraph 2.2 of Appendix 2, the Appendix was created as a means of dealing with members accused of harassing employees through a disciplinary process, as the disciplinary rules elsewhere in the rule book were considered to be inappropriate. I find that paragraphs 2 and 3 and Appendix 2 are part of that disciplinary process, the implementation of which process may result in the imposition of disciplinary sanction under paragraph 4. In my judgment, complaint 1, which relates to paragraph 2.3 of Appendix 2 and complaint 2, which relates to paragraph 3.7 of Appendix 2, are complaints of alleged breaches of rule which relate to disciplinary proceedings by the Union and are within the jurisdiction of the Certification Officer.

### **Complaint One**

31. Mr Roberts' complaint is in the following terms:

*"that on or around 7 July 2008, UNISON breached Appendix 2 (2.3) of its rules by its decision to move to a disciplinary hearing against Mr Roberts without providing a policy statement defining harassment"*

32. Paragraph 2.3 of Appendix 2 of the Rules of the Union is in the following terms:

*2.3 UNISON employees have the right not to be harassed by UNISON members. The National Executive Council shall issue a policy Statement, which, for the purposes of this regulation shall define harassment.*



## **Brief Summary of the Submissions**

33. Mr Roberts submitted that there was no Policy Statement issued by the NEC for the purposes of Appendix 2. In his view, this omission was an oversight by the administration which was now attempting to cover its mistake by asserting that the Policy Statement is that contained in chapter 4.4.A of the Staff Handbook on Conditions of Service. He argued that there was no evidence that this Policy Statement had ever been expressly approved (or even considered) by the NEC itself. He further stated that it would have been inappropriate for such a statement to have been agreed by the Staffing Committee under its delegated powers as any disciplinary action would impact on members as well as employees. Mr Roberts submitted that the Policy Statement required by paragraph 2.3 of Appendix 2 had to be issued “*for the purposes of this regulation*” and that the Policy Statement in the Staff Handbook had been issued for the purpose of dealing with the alleged harassment of employees by other employees. He also argued that the Policy Statement for which the Union sought to rely was never made generally available to members as it should have been if it defined conduct which was to be the subject of disciplinary action. He argued that this is further evidence that the Policy Statement in the Staff Handbook was never intended to be the Policy Statement referred to in paragraph 2.3 of Appendix 2. Mr Roberts submitted that, in the absence of a Policy Statement as required by paragraph 2.3, the disciplinary procedure contained in Appendix 2 could not be continued against him.
34. Mr Segal, for the Union, submitted that the Policy Statement required by paragraph 2.3 of Appendix 2 was that to be found at chapter 4.4.A of the Staff Handbook on Conditions of Service. He accepted that Mr King and Ms Ferncombe had referred in correspondence to the Policy Statement at chapter 4.1.2.1 but asserted that this had been an error and that the actual Policy Statement had been sent to Mr Roberts by Ms Ferncombe as an enclosure with her letter of 11 July 2008. Mr Segal argued that paragraph 2.3 did not require the Policy Statement to have been issued for the purposes of Appendix 2 but merely that it be issued. In his submission, once such a statement was issued, its definition of harassment had effect for the purposes of paragraph 2.3 of Appendix 2. Mr Segal argued that the adoption of the Policy Statement at chapter 4.4.A of the Staff Handbook by the Staffing Committee and the publication of that Handbook was sufficient to comply with the requirement that the NEC issue a Policy Statement. He argued that the Staffing Committee had delegated powers from the NEC for this purpose and that it was appropriate that they should have such powers in order to achieve consistency in the definition of harassment across the Union. Mr Segal accepted that the Policy Statement had not been circulated generally to members but stated that there was no obligation that it should be so circulated. He observed that lay members of the NEC and staff had been trained in its procedures and that it had been used on a few occasions since its introduction. He further observed that Mr Roberts had been sent a copy of what was thought to be the Policy Statement on 5 December 2007 and the correct version on 11 July 2008.

## **Complaint One – Conclusion**

35. The heading of paragraph 2 of Appendix 2 of the rules is “Purpose of the Regulation”. Paragraph 2.3 establishes that “*UNISON employees have the right not to be harassed by UNISON members*”. It then goes on to state where the definition of harassment “*for the purposes of this regulation*” is to be found. It states that the NEC shall issue a Policy Statement which will contain that definition.

36. Paragraph 2.8 of rule D provides that the NEC may delegate to its committees any of its functions as it considers appropriate. There is no dispute that the Staffing Committee had the delegated authority to agree and issue the policy statement on the definition of harassment which appears in the Staff Handbook on Conditions of Service for the purpose of dealing with the harassment of employees of the Union by other employees. I find it noteworthy, however, that Appendix 2 became a rule of the Union in 1997, by having been approved by the NEC in February that year and endorsed by the Annual Conference that June. It was in 1998, only one year later, that the Staffing Committee agreed, under its delegated powers, the terms of the Staff Handbook with the relevant unions, including the policy statement and definition of harassment which now appears in chapter 4.4.A. This definition was subsequently amended in 2003 to take into account the newer forms of discrimination then recognised in legislation. Accordingly, in 1997 the NEC knew that a definition of harassment was necessary for the purposes of Appendix 2. In my judgment the NEC also knew in 1997/1998 that the Staffing Committee were about to agree a policy statement on harassment for the purposes of the Staff Handbook which would have to address the types of conduct to be labelled as being harassment of employees. It would have made little sense for there to be different definitions of harassment of employees if carried out by colleagues or by members. In these circumstances, I find that the delegated powers of the Staffing Committee to agree and issue a policy statement incorporating a definition of harassment of employees for the purposes of the Staff Handbook in 1998 included a power to agree and issue a policy statement incorporating a definition of harassment of employees for the purposes of Appendix 2.
37. In my judgment, the Policy Statement on harassment contained in chapter 4.4.A of the Staff Handbook on Conditions of Service, which defines harassment, is the Policy Statement issued by the NEC in accordance with paragraph 2.3 of Appendix 2, by virtue of the NEC'S ability to delegate any of its functions. I accordingly find that the Union's decision to move to a disciplinary hearing against Mr Roberts was not taken in the absence of such a Policy Statement.
38. For the above reasons I refuse to make the declaration sought by the Claimant that on or around 7 July 2008 UNISON breached paragraph 2.3 of Appendix 2 of its rules by its decision to move to a disciplinary hearing against Mr Roberts without allegedly providing a policy statement defining harassment.

## **Complaint Two**

39. Complaint Two is in the following terms:

*“that on or around 11 February 2008 UNISON breached Appendix 2 (3.7) of its rules by concluding an investigative process which failed to adequately allow Mr Roberts to present evidence or submit argument in respect of allegations made against him”*

40. Paragraph 3.7 of Appendix 2 to the rules of the Union is in the following terms:

*“3.7 Where there appear to be reasonable grounds to believe that a member of UNISON or any other person can give relevant evidence, or has witnessed the alleged harassment, then the Investigation Team shall request an interview with that member or person. The member or person will be invited to produce any document, printed material, recording or photographic image that he/she or the Investigation Team considers might be relevant with*

*a view to assisting the inquiries of the Team. A friend or colleague may be present at the interview. The Investigation Team shall give an undertaking to the member or person that the information received by the Team will be received in confidence.”*

41. Mr Roberts submitted that paragraph 3.7 of Appendix 2 was breached on two counts. First, he argued that it had been breached by the Investigation Panel failing to interview the three witnesses he had named at the investigation meeting on 7 February 2008. Mr Roberts argued that paragraph 3.7 is in mandatory terms, requiring that the Investigation Panel shall request an interview whenever there appears to be reasonable grounds to believe that someone can give relevant evidence. He argued that the three witnesses he proposed were present at the meetings at which the alleged harassment was alleged to have occurred and so must have been able to give relevant evidence. Secondly, Mr Roberts submitted that the Union had breached paragraph 3.7 by not acceding to his request to provide him with a copy of the procedure to be found at chapter 4.4.B of the Staff Handbook on Conditions of Service. He argued that he had a right to bring to the investigation meeting any document that he considered might be relevant, that he considered the chapter 4.4.B procedure to be a relevant document and that, by refusing to provide him with a copy of that procedure, the Union had frustrated his rights under paragraph 3.7 of Appendix 2.
42. Mr Segal, for the Union, submitted that paragraph 3.7 of Appendix 2 could not be a basis for the complaints that Mr Roberts had advanced. He argued that paragraph 3.7 gave the Investigation Panel a power to invite potential witnesses to attend and produce documents and all that had occurred in this case was that the Investigation Panel had not exercised this power. Mr Segal contended that the effect of paragraph 3.7, properly interpreted, was not mandatory, requiring the Investigation Panel to interview all possible witnesses. He argued that the Panel must have discretion about how many potential witnesses are interviewed. He further argued that Mr Roberts had had ample opportunity to notify the names of potential witnesses to the Investigation Panel before 7 February, but he had not done so in the knowledge that the Panel had to conclude its work by 10 February at the latest. Mr Segal submitted that paragraph 3.7 was not breached by the Union’s refusal to provide Mr Roberts with the procedure agreement contained in chapter 4.4.B of the Staff Handbook as there was no obligation in paragraph 3.7 that the Union must produce documents to anyone.

### **Complaint Two – Conclusion**

43. Paragraph 3.7 of Appendix 2, if read literally, appears to impose an obligation on the Investigation Panel to request an interview of everyone for whom it can be said there are reasonable grounds to believe they can give relevant evidence. Mr Roberts accepted that this literal interpretation could not be correct as, on the facts of this case, it would have been necessary to interview all 60 or so members present on the two occasions when the alleged harassment occurred. Mr Nelson put the extreme case of harassment observed at a mass meeting in Trafalgar Square. In my judgment, it could not have been the intention of those drafting this rule that it should have such an effect. I find that the first sentence of paragraph 3.7 should be read subject to the implied term that the Investigation Panel has discretion not to invite to interview all those who could give relevant evidence if it is reasonable not to do so in all the circumstances.
44. There can be no doubt that there were reasonable grounds to believe that the three persons named by Mr Roberts on 7 February 2008 could give relevant evidence.

However, Mr Roberts had been aware of the appointment of an Investigation Panel from the time of Mr King's letter of 30 November 2007 but did not name his three potential witnesses until 7 February. Further, Mr Roberts was aware that the Investigation Panel only had until 10 February to submit its report. Mr Roberts states that he did not do so because he had been informed in a letter from the Investigation Panel dated 13 December 2007 that it was for them to decide on the witnesses to interview. However, examined more closely, this letter cannot be read as preventing Mr Roberts from providing the Investigation Panel with the names of potential witnesses at an earlier stage. The Investigation Panel's comments were a response to Mr Roberts' arguments for greater access to the branch network to seek out possible witnesses who could provide information on his behalf, not a request to name witnesses already known by him. Further, the Investigation Panel's letter states in terms: "...you will have an opportunity to inform the Panel of the individuals who were present at the time of the alleged incidents". In my judgment, there was nothing to prevent Mr Roberts informing the Panel of any witnesses he wished them to interview in sufficient time for the interviews to be conducted and the report prepared by 10 February.

45. In the above circumstances, the Investigation Panel found itself, on Thursday 7 February 2008, in a position that Mr Roberts had provided it with the names of a further three potential witnesses but it only had until Sunday 10 February to interview those witnesses and submit its report. I find that the members of the Investigation Panel, who came from outside the Region, could legitimately have regard to the fact that they had set aside two days for their investigation and that Mr Roberts had not notified them earlier of any witnesses he wished them to interview, even though he had had ample time to do so. In my judgment, the Investigation Panel were entitled to conclude that there were reasonable grounds for not inviting the witnesses named by Mr Roberts on 7 February to be interviewed. I observe in passing that the purpose of the Investigation Panel is not to determine guilt, but merely to determine if a disciplinary panel should be established, which disciplinary panel would hear all relevant witnesses in due course. I find that the Investigation Panel was not in breach of paragraph 3.7 of Appendix 2 by not requesting interviews with the three persons named by Mr Roberts at the investigation meeting on 7 February.
46. As to the Union's refusal to provide Mr Roberts with a copy of the procedure in chapter 4.4.B of the Staff Handbook on Conditions of Service, I find that Mr Roberts' complaint is misconceived. There is no requirement in paragraph 3.7 of Appendix 2 that the Union should supply any documents to a potential witness. By using the word "*produce*" the clear meaning of the relevant sentence in paragraph 3.7 is that the potential witness will be invited to put before the Investigation Team any document etc which he or she considers might be relevant and which is in possession of the witness. As there is no requirement placed on the Union by paragraph 3.7 to provide Mr Roberts with the chapter 4.4.B procedure, the Union cannot be in breach of that paragraph by not providing it to him.
47. For the above reasons, I refuse to make the declaration sought by the Claimant that on or around 11 February 2008 UNISON breached paragraph 3.7 of Appendix 2 of its rules by allegedly failing to allow Mr Roberts to present evidence or submit argument in respect of allegations made against him.

### **Complaint Three**

48. Mr Roberts' third complaint is in the following terms:

*“that on or around 7 July 2008 UNISON breached Appendix 2 (4.3) of its rules by charging Mr Roberts under its disciplinary procedure with an alleged act of harassment without having produced a policy statement on harassment”*

49. Paragraph 4.3 of Appendix 2 of the Union's Rules is in the following terms:

*The member shall be charged with committing an act (or acts) of harassment in respect of one or more named employees of the union, contrary to rule I.2.3(i), and the policy of the union as set out in the National Executive Council statement Harassment of UNISON Employees by UNISON Members. The member shall also be notified of the nature of the harassment, how and when it was allegedly committed.*

### **Brief Summary of Submissions**

50. Mr Roberts submitted that this complaint is in similar terms to Complaint One and that his submissions in Complaint One apply equally to this complaint. He argued that he could only be charged under paragraph 4.3 of Appendix 2 if there was a policy of the Union as provided for in paragraph 4.3. In Mr Roberts' submission, there was no such policy and accordingly he could not be charged under paragraph 4.3.

51. Mr Segal, for the Union, stated that his submissions on Complaint One also applied to this complaint. He further submitted that the Union clearly had a policy which dealt with the harassment of UNISON employees by members.

### **Complaint Three - Conclusion**

52. For the reasons set out in the conclusions to Complaint One, I find that the Union does have a policy which deals with the alleged harassment of Union employees by members and that accordingly Mr Roberts was properly charged under paragraph 4.3 of Appendix 2 with allegedly committing an act of harassment.

53. For the above reasons I refuse to make the declaration sought by the Claimant that on or around 7 July 2008 UNISON breached paragraph 4.3 of Appendix 2 of its rules by charging Mr Roberts under its disciplinary procedure with an act of harassment without allegedly having produced a policy statement on harassment.

### **Complaint Four**

54. Complaint Four is in the following terms:

*“that on or around 7 July 2008 UNISON breached Appendix 2 (4.3) of its rules by charging Mr Roberts under its disciplinary procedure with alleged offences which were outwith the remit of rule I.2.3(i)”*

55. Paragraph 4.3 of Appendix 2 is in the following terms:

*“The member shall be charged with committing an act (or acts) of harassment in respect of one or more named employees of the union, contrary to rule I.2.3(i), and the policy of the union as set out in the National Executive Council statement Harassment of UNISON*

*Employees by UNISON Members. The member shall also be notified of the nature of the harassment, how and when it was allegedly committed”.*

56. Paragraph 2.4 of Appendix 2 is in the following terms:

*“A member who commits an act of harassment will be guilty of an offence as defined by Rule I.2.3. The member will also be in breach of Rules A.3, B.2.4 and B.2.6, which are also offences as defined by Rule I.2.1 and I.2.2”.*

### **Brief Summary of Submissions**

57. Mr Roberts submitted that paragraph 4.3 of Appendix 2 clearly states that any charge of harassment must be framed as a breach of “*rule I.2.3(i) and the policy of the union*” – and only of those provisions. He complained that the charge he is being required to answer, as set out in paragraph 24 above, also refers to breaches of rules A.3, B.2.4, B.2.6, I.2.1 and I.2.2. In Mr Roberts’ submission, I should order the Union to delete those additional charges as being in breach of paragraph 4.3. When asked to comment upon the effect of paragraph 2.4, Mr Roberts observed that the correct approach may be for the charges to have been put only as a breach of “*rule I.2.3(i) and the policy of the union*” but, if he is found to have been in breach of those provisions, for the disciplinary panel to also find a breach of rules I.2.1, I.2.2, A.3, B.2.4 and B.2.6.
58. Mr Segal, for the Union, submitted that it was perverse to read paragraph 4.3 as providing that only breaches of “*rule I.2.3(i) and the policy of the union*” can be charged under Appendix 2, when paragraph 2.4 provides for wider charges. Mr Segal argued that paragraph 4.3 and 2.4 should be read consistently and that, as a matter of principle, a person should be charged with all those breaches of which he or she is at risk of being found guilty. Accordingly, if Mr Roberts was at risk of being found guilty of breaches I.2.1, I.2.2, A.3, B.2.4 and B.2.6, it was correct that he should be charged with those offences.

### **Complaint Four - Conclusion**

59. The rules of trade unions are not normally drafted with the precision that might be expected in a commercial contract or legislation. Such a lack of precision is evident in the drafting of paragraphs 4.3 and 2.4 of Appendix 2. In considering the interpretation of these provisions, I have in mind the principle that a code, such as that contained in Appendix 2, should be construed as a whole so far as practicable. Individual paragraphs should not be considered in isolation. I also have in mind the classic statement of Warner J in *Jacques v. AUEW (1986) ICR 683*. He stated:

*“The effect of the authorities may I think be summarised by saying that the rules of a Trade Union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court’s view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed.”*

60. It is apparent from paragraph 2.4 of Appendix 2 that members found guilty of harassing employees of the Union are, at the very least, at risk of being found in breach of the rules listed in that paragraph. In that event, it would be contrary to principle for a person to be unable to specifically address each alleged breach of rule of which he or she might be found guilty. This principle is so fundamental that it must be presumed

that those drafting Appendix 2 intended paragraph 4.3 to be read alongside paragraph 2.4 in such a way that a person who is alleged to have committed an act of harassment is charged with breaches of each of the rules of which he or she might be found guilty and thereby given an opportunity to answer those charges. In my judgment, therefore, the Union did not breach paragraph 4.3 of Appendix 2 by including in the charges against Mr Roberts those potential breaches of rule listed in paragraph 2.4.

61. The corollary of my interpretation of paragraph 4.3 of Appendix 2 is that paragraph 2.4 is not to be read as meaning that any act of harassment within the meaning of paragraph 2.4 is automatically to be treated as a breach of each of the rules listed therein. Paragraph 2.4 is rather to be read as containing a list of those rules which may be breached by an alleged act of harassment, subject to the accused being able to present argument on the applicability of each alleged breach to the facts of the case. It may, for example, be argued that individual members are not capable of breaching any of the provisions in section A (which is headed “Introductory”) or section B (which is headed “Aims and objectives”) of the rules of the Union. These types of rule do not normally create individual obligations, which are capable of being the subject of disciplinary proceedings against members, unless there is an express provision creating an appropriate disciplinary offence, similar to that in rule I.2.3(ii).
62. For the above reason I refuse to make the declaration sought by Mr Roberts that on or around 7 July 2008 UNISON allegedly breached paragraph 4.3 of Appendix 2 of its rules by charging Mr Roberts under its disciplinary procedure with alleged offences outwith the remit of its rule I.2.3(i).

### **Observation**

63. The detailed examination of Appendix 2 which has been required by this case has demonstrated that the literal interpretation of certain of its provisions gives rise to difficulties. A clearer understanding of these provisions may be possible if they were amended, taking into account the problems that have emerged in the present case.

**David Cockburn**  
**The Certification Officer**