

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

Mr I Tyrrell

v

National Association of Schoolmasters Union of Women Teachers

Date of Decision:

5 October 2006

DECISION

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

- (i) I refuse the Claimant’s application for a declaration that the National Association of Schoolmasters Union of Women Teachers (“the NASUWT” or “the Union”) breached Rule 5(a) of the Rules of the Islington Local Association at the Annual General Meeting (“AGM”) of the Local Association on 25 May 2005 by the AGM allegedly having elected Officers of the Local Association whose nominations had not been submitted in writing to the President of the Local Association no later than 21 days before the date of the AGM.
- (ii) I refuse the Claimant’s application for a declaration that the NASUWT breached Rule 5(c) of the Rules of the Islington Local Association at the AGM of the Local Association on 25 May 2005 by the AGM having failed to declare as elected unopposed Ms Lee, Mr Downes and Ms Burrell-Joseph as Officers of the Local Association.
- (iii) I refuse the Claimant’s application for a declaration that the NASUWT breached Rule 6(a) of the Rules of the Islington Local Association at the AGM of the Local Association on 25 May 2005 by allegedly failing to allow the outgoing Vice-President of the Local Association to assume the office of President and by allegedly failing to allow the outgoing President of the Local Association to assume the office of Ex-President.

- (iv) I refuse the Claimant's application for a declaration that the NASUWT breached Rule 8(b) of its National Rules by allegedly holding elections for Officer positions within the Islington Local Association which did not conform to the model rules.
- (v) The Claimant's application for a declaration that the Islington Local Association breached Rule 9(a) of the rules of the Local Association by not holding its AGM in February 2005 is not within the jurisdiction of the Certification Officer and I refuse the Claimant's application for a declaration.
- (vi) The Claimant's application for a declaration that the Secretary of the Islington Local Association breached Rule 9(b) of the Rules of the Local Association by not giving sufficient notice of the agenda for the AGM on 25 May 2005 is not within the jurisdiction of the Certification Officer and I refuse the Claimant's application for a declaration.
- (vii) The Claimant's application for a declaration that the AGM of the Islington Local Association held on 25 May 2005 was inquorate is not within the jurisdiction of the Certification Officer and I refuse the Claimant's application for a declaration.

REASONS

1. By an application dated 4 October 2005 Mr Tyrrell ("the Claimant") made a complaint against his Union, the NASUWT. Mr Tyrrell alleged breaches of the Union's rules relating to the holding of the AGM of its Islington Local Association in 2005 and, in particular, to the election of Officers of the Local Association that year. This is a matter potentially within the jurisdiction of the Certification Officer by virtue of section 108A(2)(a) and section 108A(2)(d) of the 1992 Act. The alleged breaches were that:-

Complaint 1

"On or around 25 May 2005 in breach of Islington Local Association Rule 5(a), at the Annual General Meeting of the Islington Local Association, Officers of the Local Association were elected whose nominations had not been submitted in writing to the President no later than 21 days before the date of the Annual General Meeting."

Complaint 2

"On or around 25 May 2005, in breach of Islington Local Association Rule 5(c), at the Annual General Meeting of the Islington Local Association, Milena Lee, Steve Downes and Beverly B Joseph, whose nominations had been received by the President according to rule 5(a), for the positions of Health & Safety Officer and Treasurer, Vice-President and Press Officer, the meeting failed to declare them elected unopposed or allow these members to assume office."

Complaint 3

"On or around 25 May 2005 in breach of Islington Local Association rule 6(a) at the Annual General Meeting of the Islington Local Association, the meeting failed to allow Mr A King the outgoing Vice-President to assume the office of President and to allow Mr I Tyrrell the outgoing President to assume the office of Ex-President of the Islington Local Association."

Complaint 4

'On or around 25 May 2005, in breach of National rule 8(b) of the rules of the NASUWT, at the Annual General Meeting of the Islington Local Association, elections were held for Officer positions in the Local Association which elections did not conform to the model rules, published by the National Executive of the NASUWT and adopted by the Islington Local Association, for the conduct of Local Association business.'

Complaint 5

'In breach of Islington Local Association rule 9(a) the Islington Local Association failed to hold its Annual General Meeting in February 2005.'

Complaint 6

'In breach of Islington Local Association rule 9(b) the Secretary of the Islington Local Association failed to send notice of and the agenda for the Annual General Meeting to all members of the Local Association and the National Executive Member(s) for the Local Association's area not less than fourteen days before the date of the Annual General Meeting held on or around the 25 May 2005.'

Complaint 7

'In breach of Islington Local Association rule 9(d) the Annual General Meeting of the Islington Local Association held on or around 25 May 2005 failed to achieve the quorum of 8 members or 1% of the total membership of the Local Association whichever is greater.'

2. I investigated these alleged breaches in correspondence. As required by section 108B(2)(b) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 7 September 2006. The Union was represented by Mr M Ford of counsel, who was accompanied by his instructing solicitor, Mr E Cooper of Russell Jones and Walker. Evidence for the Union was given by Mr R Darke (Senior Assistant Secretary–Administration and Resources) and Mr G Robbins (Secretary of the Islington Local Association). The Claimant was represented by Ms F Lee. Evidence for the Claimant was given by Mr S Downes. The Claimant was not present at the hearing. A 219 page bundle of documents was prepared for the hearing by my office to which two further documents were added at the hearing. The Union's witnesses each provided written witness statements and Mr Ford provided a written closing submission. The rules of the Union were also in evidence.

Findings of Fact

3. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows.
4. At the time relevant to this application, the Islington Local Association of the NASUWT had less than 400 members and was in a state of some disarray. Few of its General Meetings or indeed its Officers Meetings were quorate and there appeared to be two competing factions amongst the Officers. One faction consisted of Mr Robbins, its Secretary, with others. The other faction consisted of Mr Tyrrell, its then President, together with Ms Lee and others, most of whom worked at the same school, the Central Foundation School.

5. National Rule 8(b) provides that *“The National Executive shall publish model rules for the conduct of Local Association business which rules shall be adopted by each Local Association save that the National Executive may approve any such local variation requested by a Local Association as it sees fit.”* The Islington Local Association adopted these model rules with certain minor variations and it was thought by the Claimant and Ms Lee that these were the relevant rules to which the Local Association was working. It later emerged, probably as a result of this litigation, that the model rules adopted by the Islington Local Association had never been formally approved by the National Executive. It also emerged that the Secretary of the Local Association, Mr Robbins, had worked to rules in virtually identical terms but which required the AGM to be held in the summer of each year, not in the month of February, as stated in the rules before me. Be this as it may, both parties agreed that for the purposes of this litigation, the rules of the Islington Local Association as adopted by it and contained in the hearing bundle should be the rules upon which this matter is adjudicated. The Union reserved its position as to what are the rules of the Islington Local Association for any other purpose.
6. In 2001 the Union decided to split its membership in London into separate Local Associations. In 2002, Islington became a separate Local Association and since then the AGM of the Islington Local Association has been held in or around May of each year, with its Officers taking up their positions from the beginning of the autumn term.
7. In 2005, Mr Robbins gave notice that the AGM that year would take place on Wednesday, 25 May. He gave notice of the calling of the AGM in various forms from about 22 April, including circular letter, email and newsletter. However, it was not until a letter to members dated Friday, 13 May that he gave notice of the agenda for the AGM. Rule 9(b) of the Local Association Rules (“LA Rules”) provides that *“The Secretary shall send notice of and the agenda for the Annual General Meeting to all members ... not less than fourteen days before the date of the Annual General Meeting”*. The Union conceded that Mr Robbins did not send the agenda of the AGM within this timetable.
8. There was a dispute between the parties about the nomination process. Rule 5(a) of the LA Rules provides that *“Nominations for the Officers of the Local Association to which this Rule refers shall be proposed by one and seconded by another member of the Local Association and shall be submitted in writing to the President to be received by him/her no later than 21 days before the date of the Annual General Meeting.”* Each of the notices sent out by Mr Robbins calling the AGM informed members that nominations should be sent to Mr Tyrrell in his capacity as President at his place of work, the Central Foundation School, to arrive by Wednesday, 4 May. Mr Robbins gave evidence that on 2 or 3 May he faxed to Mr Tyrrell the nominations of himself and Margarita Taylor. Subsequently, he also received a nomination for Sue Bush. On 4 May, he

personally delivered a letter addressed to Mr Tyrrell to the school office at the Central Foundation School. The letter enclosed nomination forms for himself, Margarita Taylor and Sue Bush. Also on 4 May, shortly after the end of the school day at about 3.25pm, Mr Robbins received a nomination for Mr Jason Stephenson which he also delivered by hand that afternoon to the Central Foundation School. He thought he may have posted this nomination form, in an envelope addressed to Mr Tyrrell, through the school's letter box. At that time Mr Robbins was unaware that Mr Tyrrell was absent on a school trip to France between 3 and 11 May. Ignorant of Mr Tyrrell's absence, Mr Robbins wrote to him on 5 May asking if there were any contested elections. The National Association wrote to Mr Tyrrell similarly. It was necessary for Mr Robbins and the National Office to know if there were to be any contested elections as these would have been conducted by National Office. Understandably, no immediate response was received from Mr Tyrrell but he did write to Mr Robbins on 18 May. The letter begins by accusing Mr Robbins of breaking a number of Local Association Rules but goes on to state that there were to be no contested elections. He informed Mr Robbins that he had received six nominations, for the positions of Secretary, Vice-President, Health & Safety Representative, Treasurer, Life Long Learning Officer and "Other" Officer. The persons who had been nominated were not named. The hearing bundle also contains a copy of a letter from Mr Tyrrell to Mr Robbins dated 20 May in which he gave the names of seven persons from whom he said he had received nominations. This letter refers to the same six elected positions as were listed in his letter of the 18 May with the addition of Press Officer. I find that Mr Robbins did not receive this letter. The only nomination forms in the hearing bundle were the two submitted by Ms Lee (for the positions of Treasurer and Health & Safety Officer) together with those of Ms Burrell-Joseph (for the position of Press Officer) and Steve Downes (for the position of Vice-President).

9. The AGM of the Islington Local Association was held on Wednesday, 25 May 2005. There were only five members present. Mr Tyrrell was not present nor were any of the nominees named in his letter of the 20 May, apart from Mr Robbins. The Union conceded that the AGM was inquorate. Nevertheless, the meeting proceeded with its agenda. When it came to the election of Officers, the meeting decided that Margarita Taylor could not stand as she was not a member of the Islington Local Association. The other three individuals whose nominations had been hand-delivered by Mr Robbins were declared as elected unopposed; namely Mr Robbins as Secretary, Sue Bush as Life Long Learning Officer and Jason Stephenson as Treasurer. Of these, Mr Robbins and Mr Stephenson were in attendance. Sue Bush was also named as a nominee in Mr Tyrrell's letter of 20 May. The AGM agreed to accept a late nomination from Justin Wilson and purported to elect him unopposed as Health & Safety Officer. The Union conceded that the election of Mr Wilson was in breach of the rule requiring candidates to be properly nominated.

10. Rule 6(a) of the LA Rules provides that *"At the Annual General Meeting the outgoing Vice-President shall assume the office of President and the outgoing President shall assume the office of Ex-President."* At the time of the AGM, Mr Tyrrell was the President and Mr Ajay King was understood to be the Vice-President. The minutes of the AGM do not record the meeting as having discussed or noted their new positions, having regard to Rule 6(a). Ms Lee referred to a newsletter circulated by Mr Robbins on 29 September 2005 in which the names of Mr Tyrrell and Mr King are omitted from the list of "new Islington Officers". The Union accepts that Mr Tyrrell became the "Ex-President" at the AGM but there was some confusion about the position of Mr King. Mr Robbins gave evidence that, by the time of the AGM, it was his understanding that Mr King was no longer eligible to be an Officer of the Local Association as he was more than three months in arrears with his subscriptions by 1 April 2005. Mr Robbins went on to state that, as there was no Vice-President at the time of the AGM, the AGM decided that Mr Simpkins should act as "Acting President". Mr Robbins also gave evidence that he sent a circular dated 18 April to all Islington Officers and upon the copy he sent to Mr King he wrote the following as a manuscript postscript, *"Ajay - are you aware that as you have not paid your subs you are no longer an officer and in a few more months will not be entitled to protection. Membership say they've written at least four times. Ring me. Greg"*. This circular was in the bundle of documents before me but, Ms Lee argued that Mr King did not receive any such letter and that the postscript was fabricated after the event. Mr King was not present at the hearing. On the balance of probabilities, I accept Mr Robbins' evidence that the letter was sent to Mr King with the handwritten postscript. However, it is curious that Mr Robbins did not explain his understanding of Mr King's position to Mr Darke at the time that he, Mr Darke, was conducting an enquiry into the Islington Local Association. Mr Darke's report of 6 February 2006 states that he believed the President of the Local Association at the time to be Mr King. He explained this inconsistency by saying that he had not been asked to enquire into the status of Mr King and he had made a mistaken assumption. By the time of this hearing, the Union had investigated Mr King's membership position. It established that by 12 May 2005 Mr King was more than 3 months in arrears with his subscriptions. By National Rule 5(a) subscriptions are payable in advance by direct debit or lump sum payment. Mr King made irregular periodical lump sum payments. He made no payments in 2003 but paid £241 in February 2004, bringing his subscription up to date to December 2005. On 1 January 2005 Mr King should have paid £130 in advance for his subscriptions in 2005. He did not do so, despite regular reminders from the National Association. He in fact paid £30 on 12 May and £100 on 31 October. Accordingly, by 1 April 2005, Mr King was no longer eligible to hold office in the Union, in accordance with National Rule 5(d)(i). The payment of £30 by Mr King was equivalent to a payment of 12 weeks subscription which would have put him in benefit to 26 March. Mr King did not attend the AGM on 25 May 2005.
11. Mr Tyrrell's Registration of Complaint Form is dated 4 October 2005 and was received at the Certification Office on 6 October 2005.

The Relevant Statutory Provisions

12. The provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (“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) the appointment or election of a person to, or the removal of a person from, any office;*
- (b)-(c) ...*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) ...*

(10) For the purposes of subsection (2)(d) a committee is an executive committee if—

- (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,*
- (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or*
- (c) it is a sub-committee of a committee falling within paragraph (a) or (b).*

(11) For the purposes of subsection (2)(d) a decision-making meeting is –

- (a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regard the union or which, under the rules of the union or a constituent body, is final as regards that body, or*
- (b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.*

(12) For the purposes of subsections (10) and (11) in relation to the trade union concerned -

- (a) a constituent body is any body which forms part of the union, including a branch, group, section or region;*
- (b) a major constituent body is such a body which has more than 1,000 members.*

The Relevant Union Rules

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

5. **SUBSCRIPTIONS**

(a) The subscription rates for all classes of membership shall be determined by Conference and shall be payable in advance either:

- (i) by direct debit payment, annually, quarterly, or monthly; or*
- (ii) by lump sum payment annually in advance; or*
- (iii) in such other manner as the National Executive shall provide.*

(b)

- (i) The Full Member subscription rate may include provision for a reduced rate of subscription for such Full Members as are employed part time.*
- (ii) "Part time" for the purposes of this Rule shall apply to any person entitled to Full Membership whose contract of employment requires him/her to work for not more than that percentage of the school year or pro rata equivalent thereof from time to time determined by the National Executive.*

(d)

- (i) Any member who allows his/her subscription to fall more than three calendar months in arrears shall forfeit all rights and title to the funds and properties of the Association, shall be ineligible for assistance and benefits under Rules 22, 23 and 24, shall forfeit the right to vote in any election or ballot and shall not be eligible to hold office in the Association.*

8. **LOCAL ASSOCIATIONS**

- (b) The National Executive shall publish model rules for the conduct of Local Association business which rules shall be adopted by each Local Association save that the National Executive may approve any such local variations requested by a Local Association as it sees fit.*

14. The rules of the Islington Local Association relevant to this application are as follows:

4. **OFFICERS**

The Officers of the Local Association shall be:

*President
Vice-President
Secretary
Treasurer
Ex-President*

Who shall hold office for the period of one year commencing on the date of the Annual General Meeting referred to in Rule 5 below.

5. ELECTION OF VICE-PRESIDENT, SECRETARY AND TREASURER

- (a) *Nominations for the Offices of the Local Association to which this Rule refers shall be proposed by one and seconded by another member of the Local Association and shall be submitted in writing to the President to be received by him/her no later than 21 days before the date of the Annual General Meeting.*
- (c) *In the event of an uncontested election, the candidate(s) for Office(s) concerned shall be declared elected unopposed at the Annual General Meeting.*

6. PRESIDENT AND EX-PRESIDENT

- (a) *At the Annual General Meeting the outgoing Vice-President shall assume the office of President and the outgoing President shall assume the office of Ex-President.*

9. ANNUAL GENERAL MEETING

- (a) *The Annual General Meeting shall be held in the month of February each year*
- (b) *The Secretary shall send notice of and the agenda for the Annual General Meeting to all members of the Local Association and the National Executive Member(s) for the Local Association's area not less than fourteen days before the date of the Annual General Meeting.*
- (d) *The quorum shall be 8 members or 1% of the total membership of the Local Association whichever is the greater*

Complaint One

15. Complaint One is in the following terms:

"On or around 25 May 2005 in breach of Islington Local Association Rule 5(a), at the Annual General Meeting of the Islington Local Association, Officers of the Local Association were elected whose nominations had not been submitted in writing to the President no later than 21 days before the date of the Annual General Meeting."

16. Rule 5(a) of the LA Rules provides as follows:

"Nominations for the Officers of the Local Association to which this Rule refers shall be proposed by one and seconded by another member of the local association and shall be submitted in writing to the President to be received by him/her no later than 21 days before the date of the Annual General Meeting."

17. For Mr Tyrrell, Ms Lee submitted that the AGM of the Islington Local Association had declared Jason Stephenson and Justin Wilson as having been elected unopposed but that neither of them had submitted nominations in writing to the President, Mr Tyrrell, 21 days before the AGM, as required by the rules.

Ms Lee accepted that Mr Tyrrell had received the nominations of Greg Robbins and Sue Bush within the prescribed timetable.

18. For the Union, Mr Ford conceded that the nomination of Justin Wilson had not been submitted to the President in time. However, he went on to argue that the position of Health & Safety Officer is not a position to which Rule 4 of the LA Rules requires an election and that there was accordingly no breach of LA Rule 5(a). As to the election of Jason Stephenson, Mr Ford submitted that I should accept the evidence of Mr Robbins that Mr Tyrrell had requested correspondence to be sent to him at his school address and that he had delivered Mr Stephenson's nomination to Mr Tyrrell's school in time. Mr Ford also floated the submission that Complaints 1 to 4 were not within my jurisdiction as the posts to which they relate did not fall within the expression "any office" in Section 108A(2)(a) of the 1992 Act. He developed this point briefly by reference to the definitions of "officer" and "official" in Section 119 of the 1992 Act. However, following discussion at the hearing, Mr Ford stated that this was not an argument upon which he sought to have these complaints decided.
19. As to jurisdiction, I was not persuaded by Mr Ford's argument that the expression "any office" in Section 108A(2)(a) of the 1992 Act should be given the restricted meaning for which he contended. In my judgment, the expression should bear its ordinary literal meaning, which would normally include branch officers, who had been elected to hold a particular office.
20. With regard to the election of Jason Stephenson, I accept the evidence of Mr Robbins that he delivered Mr Stephenson's nomination to Mr Tyrrell's school by hand on 4 May, the final date for so doing and that Mr Tyrrell had requested that all union correspondence be delivered to him at his work address. Accordingly, I find that the nomination of Jason Stephenson was properly made in compliance with Rule 5(a).
21. With regard to the election of Justin Wilson, it is conceded that his nomination was not delivered to Mr Tyrrell. However, I observe that Rule 4 of the LA Rules provides that the Officers of the Local Association shall be the President, Vice-President, Secretary, Treasurer and Ex-President. The rules do not refer to the position of Health & Safety Officer, to which Mr Wilson was purportedly elected. In my judgment, the procedural requirements for elections in the LA Rules apply only to those positions named in those Rules. Accordingly, the complaint regarding the purported election of Mr Wilson as Health and Safety Officer was misconceived. Rule 5 was not engaged. In these circumstances there could be no breach of Rule 5.
22. I note in passing the apparent confusion of the Local Association about the Officers which it is entitled to elect. As I observed at the hearing, the LA Rules appear to contemplate a way in which a Local Association can have additional Officers. Rule 4(f) expressly permits the appointment of such additional officers

as the Executive Committee sees fit. The only restriction is that such additional officers must be appointed from amongst the members of a properly elected Executive Committee. The other alternative would be to extend the list of Officers by amending Rule 4, using the procedure set out in Rule 14.

23. For the above reasons, I refuse the Claimant's application for a declaration that the Union breached Rule 5(a) of the Rules of the Islington Local Association at its AGM on 25 May 2005, by the AGM having allegedly elected Officers whose nominations had not been submitted in writing to the President of the Local Association no later than 21 days before the date of the AGM.

Complaint Two

24. Complaint Two is in the following terms:

"On or around 25 May 2005, in breach of Islington Local Association Rule 5(c), at the Annual General Meeting of the Islington Local Association, Milena Lee, Steve Downes and Beverly B Joseph, whose nominations had been received by the President according to rule 5(a), for the positions of Health & Safety Officer and Treasurer, Vice-President and Press Officer, the meeting failed to declare them elected unopposed or allow these members to assume office."

25. Rule 5(c) of the LA Rules provides as follows:

"In the event of an uncontested election, the candidate(s) for Office(s) concerned shall be declared elected unopposed at the Annual General Meeting".

26. Ms Lee, for Mr Tyrrell, submitted that her two nominations and the nominations of Ms Burrell-Joseph and Mr Downes had been received by Mr Tyrrell, as indicated by the copies of their nominations included in the bundle. She further submitted that Mr Robbins had been informed of these nominations by Mr Tyrrell's letter of the 20 May, but their names were not put to the AGM in order that they could be declared as having been elected unopposed.
27. Mr Ford, for the Union, submitted that I should accept Mr Robbins's evidence that he did not receive Mr Tyrrell's letter of 20 May 2005 and that accordingly he was not in a position to put the names of Ms Lee, Ms Burrell-Joseph and Mr Downes to the AGM. In addition, and in the alternative, he submitted that the Union had debarred Ms Lee from holding office within the NASUWT between 29 April and 1 September 2005 and that she was therefore not eligible for election at the AGM on 25 May. He further submitted that the positions of Health & Safety Officer and Press Officer are not positions listed in Rule 4 of the LA Rules and that they are therefore not positions governed by the Rules relating to the election of Officers of the Local Association.
28. I accept Mr Robbins' evidence that he did not receive Mr Tyrrell's letter of the 20 May 2005. I further note that Mr Tyrrell did not attend the AGM on 25 May and neither did Ms Lee, Ms Burrell-Joseph or Mr Downes. In these

circumstances, the AGM was not aware of whatever nominations Mr Tyrrell may have received and it was physically impossible for the alleged nominees to be declared elected unopposed. In my judgment, Rule 5(c) of the LA Rules cannot sensibly be interpreted as meaning that the AGM is deemed to have elected nominees whose names were not brought to its attention.

29. I further accept Mr Ford's submission that at the date of this election Ms Lee was ineligible to be elected for office. I also find that two of the nominations were for positions which are not listed in Rule 4 of the LA Rules and that the election of a person to a position which does not exist in the Rules does not engage Rule 5.
30. For the above reasons, I refuse the Claimant's application for a declaration that the Union breached Rule 5(c) of the Rules of the Islington Local Association at its AGM on 25 May 2005, by the AGM having failed to declare as elected unopposed Ms Lee, Mr Downes and Ms Burrell-Joseph as Officers of the Islington Local Association.

Complaint Three

31. Complaint Three is in the following terms:

"On or around 25 May 2005 in breach of Islington Local Association rule 6(a) at the Annual General Meeting of the Islington Local Association, the meeting failed to allow Mr A King the outgoing Vice-President to assume the office of President and to allow Mr I Tyrrell the outgoing President to assume the office of Ex-President of the Islington Local Association."

32. Rule 6(a) of the LA Rules provides as follows:

"At the Annual General Meeting the out-going Vice-President shall assume the office of President and the outgoing President shall assume the office of Ex-President."

33. Ms Lee, for Mr Tyrrell, submitted that by Rule 6(a) Mr Tyrrell and Mr King automatically took up their new offices at the AGM on 25 May 2005 but that the Union failed to allow them to do so. Ms Lee argued that this failure was demonstrated by the omission of their names from the minutes of the AGM and from the list of new Officers in the newsletter of September 2005.
34. Mr Ford, for the Union, submitted that an allegation that the AGM had "failed to allow" Mr Tyrrell and Mr King to assume their new offices is misconceived as the assumption of their new roles happens automatically at the AGM. Mr Ford accepted that Mr Tyrrell had automatically become the Ex-President and so denied that in his case there had been a breach of Rule 6(a), as alleged. As to Mr King, Mr Ford submitted that he had fallen more than three months in arrears with his subscriptions by 1 April 2005 and had therefore ceased to be the Vice-President. Mr Ford contended that the effect of Mr King falling so far in arrears with his subscriptions was not merely to suspend him from office pending the payment of his overdue subscriptions, but to remove him from that elected office.

Thus removed from office, it was argued that Mr King's payment of £30 on 12 May did not restore him to the Office of Vice-President, even though it may have saved his Union membership. Accordingly, Mr Ford argued that at the time of the AGM on 25 May, Mr King was no longer the Vice-President and did not automatically become the President.

35. According to the minutes of the AGM, there was no discussion of the future roles of Mr Tyrrell and Mr King at the AGM. It is noted, however, that Mr Tyrrell was "the outgoing President" and to those familiar with Rule 6(a) that would indicate that he was to hold the office of "Ex-President" for the next year. In these circumstances I find that there was no breach of Rule 6(a) of the LA Rules by the AGM on the 25 May in respect of Mr Tyrrell.
36. As to Mr King, the crucial issue is whether he was in law the Vice-President of the Islington Local Association at the time of the AGM on 25 May 2005. If he was, I find that the acts of appointing Mr Simpkins as "*Acting President*" and the repetition of this representation in the newsletter of September 2005 were inconsistent with the automatic operation of Rule 6(a) and a breach of that rule. The importance of a member keeping his or her subscription up to date is self-evident. Unions depend for their existence on the payment of subscriptions. The consequences of members not keeping their subscriptions up to date is a matter for each union to determine in its Rules. The NASUWT rules provide that a member who allows his/her subscriptions to fall more than three calendar months in arrears shall not be eligible to hold office in the Union. On the facts of this case, I find that Mr King ceased to hold the Office of Vice-President when his subscriptions fell more than three months in arrears and that he did not resume that Office upon the payment by him of £30 on 12 May 2005. Accordingly, at the AGM on 25 May, Mr King was no longer the Vice-President of the Islington Local Association and did not automatically assume the Office of President.
37. For the above reasons I refuse the Claimant's application for a declaration that the NASUWT breached Rule 6(a) of the Rules of the Islington Local Association at its AGM on 25 May 2005, by allegedly failing to allow the outgoing Vice-President of the Local Association to assume the office of President and by allegedly failing to allow the outgoing President of the Local Association to assume the office of Ex-President.

Complaint Four

38. Complaint Four is in the following terms:

"On or around 25 May 2005, in breach of National rule 8(b) of the rules of the NASUWT, at the Annual General Meeting of the Islington Local Association, elections were held for Officer positions in the Local Association which elections did not conform to the model rules, published by the National Executive of the NASUWT and adopted by the Islington Local Association, for the conduct of Local Association business."

39. National Rule 8(b) provides as follows:

“The National Executive shall publish model rules for the conduct of Local Association business which rules shall be adopted by each Local Association save that the National Executive may approve any such local variations requested by a Local Association as it sees fit.”

40. Ms Lee, for Mr Tyrrell, argued that this Rule is the foundation of the Rules of the Islington Local Association and that as there had been breaches of the LA Rules, there must have been a breach of Rule 8(b) of the National Rules.

41. Mr Ford, for the Union, was not clear what this complaint added to Mr Tyrrell’s other complaints and so repeated his earlier submissions.

42. In my judgment, this application is misconceived. National Rule 8(b) provides that two steps “shall” be taken. The National Executive “shall” publish model rules and those rules “shall” be adopted by each Local Association. Ms Lee did not contest either that the National Executive had published model rules or that model rules had been adopted by her Local Association. Examined in this way, Ms Lee was unable to demonstrate that there had been any breach of National Rule 8(b).

43. For the above reasons I refuse the Claimant’s application for a declaration that the NASUWT breached Rule 8(b) of its National Rules, by allegedly holding elections for officer positions within the Islington Local Association which did not conform to the model rules.

Complaints Five, Six and Seven

44. Complaints Five, Six and Seven are in the following terms:

Complaint 5

“In breach of Islington Local Association rule 9(a) the Islington Local Association failed to hold its Annual General Meeting in February 2005.”

Complaint 6

“In breach of Islington Local Association rule 9(b) the Secretary of the Islington Local Association failed to send notice of and the agenda for the Annual General Meeting to all members of the Local Association and the National Executive Member(s) for the Local Association’s area not less than fourteen days before the date of the Annual General Meeting held on or around the 25 May 2005.”

Complaint 7

“In breach of Islington Local Association rule 9(d) the Annual General Meeting of the Islington Local Association held on or around 25 May 2005 failed to achieve the quorum of 8 members or 1% of the total membership of the Local Association whichever is greater.”

45. Mr Ford, for the Union, conceded that in 2005 the AGM of the Islington Local Association was not held in the month of February, that the agenda for the AGM was not sent to members 14 days before the date of the AGM and that the AGM held on 25 May was not quorate. However, he submitted that none of these issues fell within the jurisdiction of the Certification Officer. Mr Ford argued that whilst these complaints may appear to be within jurisdiction by virtue of section 108A(2)(d) of the 1992 Act, as being alleged breaches of rules relating to “*the constitution or proceedings of any executive committee or decision-making meeting*”, they are excluded by the statutory definitions of “*any executive committee or decision-making meeting*”. Mr Ford argued that these definitions restrict the application of Section 108A(2)(d) to those executive committees or decision-making meetings of either the Union as a whole or “*major constituent bodies with 1,000 or more members*”. He submitted that the Islington Local Association fell into neither of these categories as it had less than 400 members. With regard to complaint five, Mr Ford also raised an argument on limitation but, following discussion at the hearing, indicated that he was not seeking to have this application decided on that basis.
46. Ms Lee, for Mr Tyrrell, stated that Local Associations are part of the Union. She also emphasised the importance of Local Associations to the democratic processes of the Union and argued that Parliament must have intended that complaints relating to the constitution or proceedings of the AGM of a Local Association were to be within the jurisdiction of the Certification Officer.
47. In order to understand Section 108A(2)(d) of the 1992 Act it is necessary to consider Section 108A(10),(11),(12). These sub-sections define the expression “executive committee” and “decision-making meeting”. While these definitions are not drafted with obvious clarity, I respectfully adopt the interpretation of them by my predecessor, Mr Whybrew, in *Giles v GMB* (D/59-60/2001). On the facts of this case, the issue is whether the AGM of the Islington Local Association was a decision-making meeting within the meaning of Section 108A(2)(d) as defined in sub-section (11). Was the AGM a meeting of members of the Union, in the sense of a meeting of the members of the Union as a whole, or was it a meeting of members of a major constituent body, as defined in sub-section (12). In my judgment, it is plain that the AGM of the Islington Local Association is not a meeting of members of the Union as a whole. It is equally plain that it is not a meeting of a body which has more than 1,000 members, it being common ground that the Islington Local Association had fewer than 400 members. Accordingly, I find that the AGM of the Islington Local Association is not a body over which I have jurisdiction to consider alleged breaches of rule which would otherwise fall within section 108A(2)(d) of the 1992 Act.

48. For the above reasons I refuse the Claimant's applications for declarations in respect of complaints five, six and seven on the grounds that they fall outside the jurisdiction of the Certification Officer.

David Cockburn
The Certification Officer