

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

MRS R FRADLEY

v

THE TRANSPORT SALARIED STAFFS' ASSOCIATION

Date of Decision:

23 October 2003

PRELIMINARY HEARING

DECISION

Upon application by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):-

1. I dismiss the Applicant's complaint that the Transport Salaried Staffs' Association ("the Union") acted in breach of rule 5(b) of the rules of the Union by an alleged decision of its Executive Committee taken on or about 2/3 November 2000 to agree to a request from Merseyrail Electrics Limited for a senior official of the Union to appear as a witness against member Mr Fradley in his court action against the company.
2. I dismiss the Applicant's complaint that the Transport Salaried Staffs' Association acted in breach of rule 5(b) of the rules of the Union by not circulating to its membership the judgement of the Liverpool County Court in the action brought against Merseyrail Electrics Limited by Mr Fradley, which judgement was handed down on 14 September 2001.
3. I dismiss the Applicant's complaint that the Transport Salaried Staffs' Association breached and continues to breach rule 16(b) of the rules of the Union by the decision taken by Mr Dick, a Negotiating Officer of the Union, on or about 25 April 2000 to refuse legal assistance to Mr Fradley.

REASONS

1. By an application dated 13 January 2003, the Applicant made a number of allegations of breach of rule against her union, the Transport Salaried Staffs Association (“the Union”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992. Following correspondence with my Office the complaints were identified as applications potentially under section 108A(2)(d) of the 1992 Act (“the constitution or proceedings of any executive committee or of any decision-making meeting”), in the following terms:-
 - 1.1 *“That in breach of union rule 5(b) the union failed to protect the interests of its members by its Executive Committee decision taken on or about 2/3 November 2000 to agree a request from Merseyrail Electrics for a senior official of the union to appear as a witness for Merseyrail Electrics against member Mr Fradley in his court action against the company. Further that by withholding the Court judgment from the membership the union continues to be in breach of union rule 5(b)”*
 - 1.2 *“That by the decision taken by Mr Dick, the union’s Negotiating Officer, on or about 25 April 2000 to refuse legal assistance to Mr Fradley, which decision should properly have been taken by the union’s Executive Committee, the union breached and continues to breach its rule 16(b).”*
2. I directed that there be a preliminary hearing to determine whether these complaints had been brought in time and whether I had jurisdiction to hear them under section 108A(1) of the 1992 Act. The preliminary hearing took place on 25 September 2003.
3. The final sentence of the Applicant’s first complaint constitutes a separate cause of action. Accordingly, at the hearing, the parties dealt individually with the three complaints that had been made by the Applicant and I have decided each of the three complaints separately.
4. At the preliminary hearing, the Applicant was represented by her father, Mr Ledden. The Applicant was not present and no witnesses were called on her behalf. The Union was represented by Mr F Whitehead of Messrs Russell, Jones and Walker, Solicitors. There were no representatives of the Union present and no witnesses were called on its behalf. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties together with their enclosures. At the hearing, the Union presented a chronology and outline argument. Mr Ledden had sent to my office a summary of argument and his own witness

statement but he did not refer to these documents or rely on them at the hearing. This decision has been reached on the basis of the representations made by the parties, together with such documents as were provided by them.

5. At the outset of the hearing Mr Ledden made an application to amend Mrs Fradley's application. He wished to add a further complaint in the following terms:-

“that the breach of union rule 5(b) is continuous, arising from the failure of the Executive Committee to investigate the circumstances of the appearance of a senior union official at the trial on behalf of the company”.

Mr Ledden offered no explanation as to why this application to amend could not have been made earlier and stated that he had been remiss in not doing so. Mr Whitehead opposed the application on the basis that it had been made too late and that the Union was prejudiced as he had no adequate opportunity to take instructions to deal with it. I rejected the application to amend on the grounds that it could and should have been made prior to the hearing and that the Union was prejudiced by its lateness. By making the application at the hearing Mr Ledden had not only taken the Union by surprise but had made it impossible for Mr Whitehead to investigate the circumstances of the further complaint and, if appropriate, adduce evidence.

FINDINGS OF FACT

6. The background to this application has been the subject of extensive correspondence. It can, however, be summarised as follows. Since 1997 the Applicant's husband, Mr Fradley, had been in dispute with his employers, Merseyrail Electrics Limited (“MEL”), over his correct grading. This dispute turned on the correct interpretation of a 1977 minute of the Railway Staff's National Council. This minute was incorporated into the contract of employment of relevant employees, including Mr Fradley. Since 1977, the employers and the Union had been agreed on its interpretation. On this interpretation Mr Fradley was not entitled to be regraded. Mr Fradley, on the other hand, considered this interpretation to be wrong and that he was entitled to be regraded. Mr Fradley raised the matter through his employer's internal procedures. These procedures were exhausted in February 2000. He then sought the Union's assistance in taking legal action against his employer. The Union refused to grant legal assistance. Mr Fradley pursued his legal action in any event, being funded by his father-in-law, Mr Ledden. On 14 September 2001 the Liverpool County Court found

in his favour. The present application concerns criticisms of the Union's conduct arising out of these events.

7. This is a preliminary hearing and I therefore accept, for the purposes of this hearing only, the facts to be as alleged by the Applicant. Should the matter have proceeded to a full merits hearing, the Union would have been at liberty to challenge the Applicant's version of events and indicated that it would have done so.
8. On 9 February 2000 Mr Fradley's final internal appeal against his employer's refusal to regrade him was rejected. He made three written applications to the Union for legal assistance to take the matter further and Mr Ledden made representations to the Union's local officer, Mr Dick, and to Mr Dick's immediate superior, Mr King. Both Mr Dick and Mr King stated that Mr Fradley would not be given legal assistance by the Union. Mr Ledden then engaged a local solicitor to obtain an opinion from counsel and paid the solicitor £1,700 on account. Shortly thereafter, on 25 April 2000, Mr Dick wrote to Mr Fradley confirming the Union's interpretation of the relevant minute. Mr Dick's letter concluded:

"TSSA legal advice and assistance is entirely discretionary under our rules. If you wish to pursue a case in either the county court or the employment tribunal, that is your prerogative, but I cannot support the expenditure of the union's resources on your case, beyond the advice that I have given you".

9. Mr Ledden wrote to Mr King on 29 April 2000 condemning the Union's refusal to give legal assistance. By letter of 10 May, the Union informed Mr Fradley that if he made a written request for legal assistance his case would be put to the Executive Committee ("EC") for consideration. Mr Fradley rejected this invitation by letter dated 18 May on the basis that it had come too late. Nevertheless, the Union wrote to Mr Fradley on 27 June informing him that the offer to have his case considered by the EC remained open. Mr Fradley did not take up that offer. Since June 2000, all correspondence on this matter with the Union has been conducted with Mr Ledden.
10. In a letter of the 16 August 2000 to the Union's General Secretary, Mr Rosser, Mr Ledden raised the Union's refusal to grant Mr Fradley legal assistance. Mr Ledden put it to the General Secretary that rule 16(b) of the Union provides that it is the EC which decides whether to grant legal assistance, not individual officers. The General Secretary's response of 1 September was unsatisfactory to Mr Ledden. He pursued the matter with the then President of the Union, Mr Horton, by letter of 17 October. This

resulted in the EC discussing Mr Fradley's position at its meeting on 2/3 November. A briefing note was prepared for this meeting which stated:

“The company have asked TSSA to give evidence through an officer that the union accepts the company's interpretation of RSNC Minute No. 663. We have responded by saying that any evidence we give is that the company's interpretation to the best of our knowledge has been consistently applied across the board since the Agreement was established in 1977. Taking account of the company's assurance of their intention to contest the claim all the way, on the basis of their legal advice that their prospects of success are improved if a TSSA officer gives evidence along the lines indicated, a TSSA officer would attend as a witness for the company if requested to do so in writing by the company's legal adviser”.

The Applicant alleges that at this meeting the EC agreed to a request from MEL for a senior officer of the Union to appear as a witness for the company. For the purposes of this application I will presume this allegation is correct, whilst noting the Union's disagreement.

11. At this same meeting the EC considered whether legal assistance should be given to Mr Fradley, notwithstanding the absence of any request from him. The EC had before it a legal opinion from its own solicitors that any legal action by Mr Fradley was unlikely to succeed. The EC decided that legal assistance should not be given to Mr Fradley.
12. On 26 July 2001 Mr King signed a statement for use by MEL's solicitors and, having been served with a witness summons by MEL, Mr King appeared as a witness at the hearing on 11/12 September. Judgement was handed down by the Liverpool County Court on 14 September. Mr Fradley's claim was upheld. He was granted a declaration, damages and costs.
13. On 17 September 2001 Mr Ledden wrote to the newly elected President of the Union, Mr Porter, raising his concerns about Mr King having given evidence for the employer. Mr Ledden stated his understanding that Mr King's appearance was “countenanced by Mr Rosser”, the General Secretary. There followed an exchange of correspondence with the union during which Mr Ledden put forward claims for compensation. He claimed £25,000 for Mr Fradley for breach of contract and negligence and £40,000 for himself “... for the financial risk I took and the 20 months I have spent on this issue.” It was at or about this time that the Union instructed its solicitors to deal with the various issues that had been raised.

14. By two separate letters dated 26 March 2002, the Union's solicitors, Messrs Russell, Jones and Walker, set out the Union's position with regard to the refusal of legal assistance and the evidence given by Mr King. Mr Ledden replied on 17 April, also using the two letter format. He maintained, inter alia, that Mr King's attendance at the trial was a breach of rule 5(b) of the rules of the Union and that the refusal of legal assistance by Mr Dick and Mr King was a breach of rule 16(b). Continuing to use the two letter format, Messrs Russell, Jones and Walker responded on 22 May. In these letters the solicitors made it clear beyond doubt that their client rejected each of Mr Ledden's complaints. Mr Ledden nevertheless made further representations. These prompted the solicitors to advise him on the 26 June that there was no point in continuing with the correspondence. On 9 July the solicitors advised Mr Ledden about the complaints procedures that are available against solicitors and on 3 September informed Mr Ledden that they were seeking authority not to reply to further correspondence from him.
15. On 10 December 2002 the Applicant, Mrs Fradley, wrote to my office requesting an application form to make a complaint. A completed application form dated 13 January 2003 was received at my office on 15 January. At the hearing Mr Ledden explained that the application had to be in Mrs Fradley's name as he was no longer a member of the Union.

The Relevant Statutory Provisions

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

Section 108A (1) A person who claims 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.

- (6) An application must be made -
 - (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or
 - (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within a period of six months starting with the earlier of the days specified in subsection (7)
- (7) Those days are –
 - (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

Section 108B (1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

The Union Rules

17. The Union rules most relevant to the Applicant’s complaints are:-

OBJECTS

Rule 5 - The objects of the Association are:

- (a)...
- (b) To improve the conditions and protect the interests of its members
- (c)-(n)....

DUTIES AND POWERS OF THE EXECUTIVE COMMITTEE

Rule 16 - (a) The duties of the Executive Committee shall be to manage and superintend the affairs of the Association; to carry out and enforce observance of its Rules; to direct the actions of the Trustees; to be responsible for the right administration of the funds dealt with by the Chief Office; to suspend, dismiss or remove from office members obtaining benefits by false pretences or engaging in or prompting racist activity or racial discrimination, or for other actions, which, in the opinion of the Executive Committee are detrimental to the interests of the Association; to represent its members in the settlement of disputes with their employers by reason of excessive hours of work or inadequate salaries, or with any other dispute that may arise and be considered of sufficient importance and in doing so keep within the policy and decisions laid down by the Annual Delegate Conference.

(b) The Executive Committee shall, so far as it lawfully may, institute legal proceedings on behalf of members, and take legal proceedings against any officer of the Association who misappropriates any of its Funds. It shall facilitate direct provision of an initial consultation with a solicitor in cases where a member is charged by the Police in connection with the member’s employment. It shall provide further legal assistance on the merits appertaining to each case. It may provide legal assistance at its discretion to members in matters pertaining to their employment or to members and those in their immediate family in respect of any personal injury (See Rule 6(c)). The Executive Committee may also at its discretion provide legal assistance to former members with not less than two years’ membership or the family of such members in relation to claims for industrial injury or disease arising from or associated with employment qualifying them for Association membership.

- (c)...
- (d) ...

(e) The Executive Committee may take such action as it may deem necessary in the interests of the Association in relation to any of the matters aforesaid, but any member, Officer or Branch aggrieved thereby shall have the right to appeal to the next Annual Delegate Conference and shall have the right of reply to the Executive Committee representative who speaks on the appeal. All reasonable expenses incurred by a Member, Officer or Branch making an appeal shall be borne by the Association's Central Fund.

THE COMPLAINTS

COMPLAINT 1

“That in breach of union rule 5(b) the union failed to protect the interests of its members by its Executive Committee decision taken on or about 2/3 November 2000 to agree a request from Merseyrail Electrics for a senior official of the union to appear as a witness for Merseyrail Electrics against member Mr Fradley in his court action against the company”.

18. Rule 5(b) states as follows:-

OBJECTS

Rule 5 - The objects of the union are:

- (a)
- (b) To improve the conditions and protect the interests of its members.
- (c)-(n)

SUBMISSIONS

19. Mr Ledden conceded that this application was out of time if it is taken as being a complaint about the events of 2/3 November 2000. However, Mr Ledden submitted that what the Union had done was so obviously against the interest of its members that I should either extend time or treat the breach as being of a continuing nature. He argued this on the basis that the EC continues to refuse to investigate how a senior official was allowed to attend as a witness against a member of the Union. Mr Ledden submitted that I should have taken into account the fact that he had not seen the briefing note prepared for the meeting of the EC of 2/3 November 2000 until April 2002, following his application to the Information Commissioner under the Data Protection Act. As to my jurisdiction under section 108A(1) of the 1992 Act, Mr Ledden submitted that the Applicant's complaint was about a breach of rule 5(b) which is a rule of the Union relating to “the constitution or proceedings of any executive committee”. Mr Ledden argued that the Applicant's case came within the meaning of the word “proceedings” in section 108A(2)(d). He submitted that, correctly interpreted, “proceedings” had the effect of bringing within my jurisdiction

“everything the EC may do which is against the interests of its members or which is deliberately to the detriment of the majority of members”. He put this point a further way by saying that the union had a statutory duty of care to its members and that any breach of that duty was a breach of section 108A(2)(d).

20. For the Union, Mr Whitehead submitted that this complaint was clearly out of time. He submitted that the attendance of Mr King as a witness at the trial was a single event which was known to the Applicant shortly before the trial in early September 2001, and about which Mr Ledden had complained as early as 17 September 2001. Mr Whitehead submitted that the alleged consent to Mr King’s attendance as a witness was not a continuing act. He also argued that the saving provision in section 108A(6)(b) of the 1992 Act could not be relied upon as the Union’s internal complaints procedure contained in rule 16(e) of the rules of the Union had not been used. The rule 16(e) procedure enables an aggrieved member the right of appeal to the next Annual Delegate Conference. Mr Whitehead further submitted that if any internal complaints procedure had been used, the procedure had been concluded by June 2002 at the latest by the terms of the letters to Mr Ledden from Russell, Jones and Walker. With regard to my jurisdiction under section 108A(1) of the 1992 Act, Mr Whitehead submitted that for an alleged breach of rule to be within my jurisdiction by virtue of sub-section (2)(d) the rule must relate to the way in which the executive committee or decision making body is constituted or the procedures it adopts. Mr Whitehead argued that sub-section (2)(d) does not bring within my jurisdiction breaches of rule which relate to the constitution of the Union, only those which relate to the constitution and proceedings of the executive committee. He observed that rule 5 is the objects clause of the Union and argued that an object of the Union cannot be a rule which relates to the constitution and proceedings of the executive committee or a decision-making meeting.

CONCLUSION – COMPLAINT ONE

21. Complaints to the Certification Officer must be made, that is received, within the period prescribed by section 108A(6) of the 1992 Act. Section 108A(6)(a) provides that an application must be made “*within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place.*”

Section 108A(6)(b) is a saving provision which allows an application to be made at a later time in restricted circumstances. It provides that *“if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).”* Subsection (7) provides that those days are *“(a) the day on which the procedure is concluded, and (b) the last day of the period of one year beginning with the day on which the procedure is invoked.”*

22. In this complaint the act about which complaint is made occurred on 2/3 November 2000. The complaint about that act was received at my office on 15 January 2003. Taken on these facts alone the application was clearly out of time, which Mr Ledden concedes. Mr Ledden has nevertheless argued a number of points:

- 22.1 Mr Ledden wished to make an application for an extension of time. I explained to him at the hearing that I have no discretion to extend the time period set out in section 108A(6) of the 1992 Act. On the basis of this explanation, Mr Ledden did not proceed with his proposed application.
- 22.2 Mr Ledden argued that time only began to run from early September 2001 when he was first made aware that Mr King would be a witness. I find that even if time only began to run from this later date, the application was still out of time, as was also later conceded by Mr Ledden.
- 22.3 In the alternative, Mr Ledden argued that time only began to run from April 2002, when he first obtained a copy of the briefing note for the November 2000 EC meeting, following his application to the Information Commissioner. I reject this submission on the grounds that in his letter of 17 September 2001 Mr Ledden was already advancing the proposition that Mr King’s appearance as a witness had been countenanced by the General Secretary. I find that even on the premises advanced by Mr Ledden, the Applicant had sufficient knowledge of the alleged wrongful act by early September 2001 to start time running.

- 22.4 Prior to conceding that this complaint was out of time, Mr Ledden argued that the Applicant could take advantage of the saving provision in section 108A(6)(b) on the basis that time had only begun to run from the date of knowledge of the wrongful act, namely early September 2001. He had argued that within a period of six months from that date an internal complaints procedure of the Union had been invoked. This was a reference to his letter to the Union of 17 September 2001. He then argued that this procedure had not been concluded by September 2002, one year after it had been invoked, and that Mrs Fradley's application was made within six months of that date. In my judgement, however, Mr Ledden was correct in not pursuing this argument. I find that by the letters from its solicitors of 22 May and 26 June 2002, the Union effectively concluded any internal complaints procedure that Mr Ledden had arguably invoked. Mrs Fradley's application was made more than six months from either of those dates.
23. Although not necessary for the purpose of this decision, there are two other issues to which this application gives rise regarding the operation of section 108(6)(b) of the 1992 Act, the saving provision. Had Mr Ledden persisted with his argument based on this subsection he would have had to establish that "any internal complaints procedure" had been "invoked to resolve the claim". The issues are that:
- 23.1 Although I have previously accepted that "any internal complaints procedure" is not restricted to a written procedure, the requirement that there is a procedure does pre-suppose a mechanism for internal complaints resolution which is well known to members. The fact that a complaint is made does not mean that there is a complaints procedure. An applicant wishing to rely on section 108A(6)(b) of the 1992 Act must establish that the Union has such a procedure.
- 23.2 Any complaint pursuant to an internal complaints procedure must have been made "to resolve the claim". Letters which merely abuse the Union for having taken a particular decision or those which make general political points may not come within that provision if their purpose was not to "resolve the claim".

24. Turning to my jurisdiction under section 108A(1) of the 1992 Act, a complaint can only be brought to the Certification Officer for a breach of rule if that rule relates to any of the matters mentioned in section 108A(2). These 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.
25. Parliament has thus restricted the jurisdiction of the Certification Officer to those subject matters mentioned in sub-section (2). This does not mean that members have no legal recourse about alleged breaches of other types of rule. They retain the right to complain about them to a County Court or to the High Court, but not to the Certification Officer.
26. In my judgement, section 108A(2)(d) describes two types of rule. These are (i) rules which relate to the constitution of the executive committee or of any decision making body (“relevant committees”), such as rules about the membership or quorum of those committees or other such issues relating to their constitution, and (ii) rules which relate to the proceedings of relevant committees, such as the procedural rules as to the way business must be conducted. I accept Mr Whitehead’s submission that the reference to constitution does not give the Certification Officer jurisdiction over all rules relating to the constitution of the Union. Subsection (2)(d) refers expressly to the constitution of the executive committee or any other decision-making body. To decide otherwise would be to give the Certification Officer jurisdiction over a union’s entire rule book, which is manifestly not the intention of Parliament. I also reject the proposition that the word “proceedings” in subsection (2)(d) gives the Certification Officer jurisdiction over any decision made by a relevant committee. A decision may arise during the course of the proceedings of such a committee but rules relating to proceedings are those rules which guide the proceedings to a decision, not the decision itself. The Certification Officer does have jurisdiction over certain decisions made by relevant committees but they are only those decisions which relate to the matters set out in section 108A(2)(a)-(c); that is decisions about appointments/election to office, disciplinary proceedings and balloting. The Certification Officer does not normally have jurisdiction over decisions on other matters allegedly made in breach

of rule, such as decisions by a relevant committee exercising a discretion on the giving of legal assistance.

27. The Applicant contended that by virtue of section 108A(2)(d) of the 1992 Act I have jurisdiction to hear a complaint of an alleged breach of rule 5(b) of the rules of the Union. Rule 5 is the objects clause of the Union. Mr Ledden made this submission on the basis that the word “proceedings” comprehends anything the EC does against the interests of its members. I reject that construction. In my judgement rule 5(b) does not relate to any of the matters set out in section 108A(2) and accordingly this complaint is not within the jurisdiction of the Certification Officer.
28. If I had granted Mr Ledden’s application to amend Mrs Fradley’s application to include a complaint that there was a further breach of rule 5(b) by the EC having failed to investigate the circumstances of Mr King appearing as a witness on the company’s behalf, that application would have had similar difficulties in establishing that it came within my jurisdiction under section 108A(1) of the 1992 Act.
29. For the above reasons I find that this complaint has been brought out of time and is also outside the jurisdiction of the Certification Officer. Accordingly I dismiss the Applicant’s complaint that the Union acted in breach of rule 5(b) of the rules of the Union by an alleged decision of its Executive Committee taken on or about 2/3 November 2000 to agree to a request from Merseyrail Electrics Limited for a senior official of the Union to appear as a witness against member Mr Fradley in his court action against the company.

COMPLAINT 2

“That the Union continues to be in breach of union rule 5(b) by withholding the Court judgement from the membership of the Union”.

SUBMISSIONS

30. Mr Ledden submitted that the failure of the EC to circulate the judgement of the Liverpool County Court given on the 14 September 2001 constitutes a continuing

breach of rule 5(b) and that accordingly Mrs Fradley's application is in time. With regard to my jurisdiction under section 108A(1), Mr Ledden repeated the submissions he had made with respect to the first complaint.

31. For the Union, Mr Whitehead referred to a letter from Mr Ledden to Messrs Russell, Jones and Walker of 2 July 2002. In that letter Mr Ledden had enclosed a further letter he had sent to Mr Crow of the RMT. In the letter to Mr Crow, Mr Ledden made various criticisms of the TSSA and pointed out its failure to circulate the decision of the Liverpool County Court. Mr Whitehead argued that the limitation period for this complaint must have commenced no later than about the time that letter was written on 2 July 2002, and that the application was therefore out of time. He also referred to a letter from Mr Ledden to the then President of the Union, Mr Horton, dated 3 December 2000 in which reference was made to contacting the Commissioner for the Rights of Trade Union Members. Mr Whitehead submitted that this established that Mr Ledden was well aware of his legal rights by that date. In Mr Whitehead's submission the Applicant's complaint concerned a single act, not a continuing one, and it was out of time. With regard to section 108A(1), Mr Whitehead repeated the submission he had made with respect to the first complaint.

CONCLUSION – COMPLAINT 2

32. This complaint also alleges a breach of rule 5, the objects clause of the Union, but is expressed in terms of the Union being in continuing breach of the rule. The complaint is premised upon the Union being under a continuing duty to circulate the judgement of the Liverpool County Court to its members for so long as it remains of importance to them. As this is a preliminary hearing, it is not my role at this stage to decide substantive issues. For the purposes of this hearing, therefore, I have proceeded on the basis that the Union did have a duty to circulate the judgement and that the Union acted in breach of this duty, whilst noting that these are issues which the Union does not necessarily accept.
33. On the above basis, the complaint is one of a continuing breach of duty. The fact that Mr Ledden was aware of the Union's failure to circulate the judgement in July 2002 or was aware of his right to complain to the then abolished Commissioner for the

Rights of Trade Union members in December 2000 is, in my judgement, irrelevant.

34. As to the issue of jurisdiction under section 108A(1) of the 1992 Act, however, this complaint relies upon the wide interpretation given by Mr Ledden to the words “constitution or proceedings” in subsection (2)(d) of section 108A. I have found in the first complaint that this subsection cannot be construed as widely as Mr Ledden contends. Applying the correct construction, I find that the failure of the Union to circulate a document in alleged breach of a general duty of care is not an allegation of a breach of a rule relating to “the constitution or proceedings of any executive committee or of any decision-making meeting”. Accordingly, I find that this complaint is not within the jurisdiction of the Certification Officer.
35. For the above reasons I dismiss the application that the Union acted in breach of rule 5(b) of the rules of the Union by not circulating to its membership the judgement of the Liverpool County Court in the action brought against Merseyrail Electrics Limited by Mr Fradley, which judgement was handed down on 14 September 2001.

COMPLAINT 3

“That the Transport Salaried Staffs’ Association (“the Union”) breached and continues to breach rule 16 (b) of the rules of the Union by the decision taken by Mr Dick, a Negotiating Officer of the Union, on or about 25 April 2000 to refuse legal assistance to Mr Fradley”.

36. Rule 16 (b) provides as follows:-

The Executive Committee shall, so far as it lawfully may, institute legal proceedings on behalf of members, and take legal proceedings against any officer of the Association who misappropriates any of its Funds. It shall facilitate direct provision of an initial consultation with a solicitor in cases where a member is charged by the Police in connection with the member’s employment. It shall provide further legal assistance on the merits appertaining to each case. It may provide legal assistance at its discretion to members in matters pertaining to their employment or to members and those in their immediate family in respect of any personal injury (See Rule 6(c)). The Executive Committee may also at its discretion provide legal assistance to former members with not less than two years’ membership or the family of such members in relation to claims for industrial injury or disease arising from or associated with employment qualifying them for Association membership.

SUBMISSIONS

37. Mr Ledden conceded that this complaint was out of time, if it is taken as a complaint of what occurred on or about 25 April 2000. He accepted that he had made a number

of complaints to the Union about the rejection of Mr Fradley's request for legal assistance in or about April 2000 and that Mrs Fradley's application to the Certification Officer was received at my office in January 2003. He stated that he had intended making an application to me for an extension of time but having regard to the fact that the Certification Officer does not have discretion to extend the statutory time-limit, did not do so. Mr Ledden stated that the real substance of his complaint was that the Union was continuing to maintain that paid officials had the right to make decisions on legal assistance, whereas rule 16(b) states that it is the EC which must make such decisions. He submitted that this was a continuing breach. As to the Certification Officer's jurisdiction under section 108A(1), Mr Ledden stated that he was relying on the EC's failure to carry out its responsibilities under the rule relating to legal assistance and repeated his earlier submissions.

38. For the Union, Mr Whitehead submitted that this complaint was about a decision taken on a specific date, 25 April 2000, and was not a continuing act. He further submitted that the Applicant could not make use of the saving provision in section 108A(6)(b) of the 1992 Act, as any internal complaints procedure of the Union had been invoked by May 2000 and those complaints had been dealt with conclusively by the Union's solicitors in May 2002. As to the Certification Officer's jurisdiction under section 108A(1), Mr Whitehead submitted that the rule allegedly breached, rule 16(b), is not one which relates to the "constitution or proceedings of the executive committee or of any decision-making meeting".

CONCLUSIONS – COMPLAINT 3

39. In as much as this complaint relates to the decision to refuse legal assistance to Mr Fradley in April 2000 it is out of time, as Mr Ledden rightly concedes.
40. Mr Ledden's submission that the complaint is one of a continuing breach is a tenuous one which hangs upon the word "continues" in the complaint. Taken as a whole it is far from clear that the complaint, the wording of which was agreed by the Applicant, comprehends the continuing breach which was advanced at the hearing. However, having regard to my decision in relation to section 108A(1), I do not find it necessary to determine this issue.

41. Applying the correct construction of section 108A(2)(d) of the 1992 Act, I find that this complaint does not allege a breach of rule which relates to “the constitution or proceedings of any executive committee or of any decision- making meeting”. The decisions taken by an Executive Committee about the giving of legal assistance are not matters which ordinarily fall within section 108A(2)(d). Similarly, the failure of an Executive Committee to make such a decision does not ordinarily fall within subsection (2)(d). Should it be possible to stretch this complaint so as to read into it a complaint that the EC of the Union was in breach of its alleged duty of care by not investigating the role of officers in the giving of legal assistance, I would find that this also falls outside the jurisdiction of the Certification Officer as not being an allegation that the Union was in breach of a rule relating to “the constitution or proceedings of any executive committee or of any decision- making meeting”.
42. For the above reasons, I dismiss the Applicant’s complaint that the Transport Salaried Staffs’ Association breached and continues to breach rule 16(b) of the rules of the Union by the decision taken by Mr Dick, a Negotiating Officer of the Union, on or about 25 April 2000 to refuse legal assistance to Mr Fradley.

David Cockburn
The Certification Officer