

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

Mr Richard Knights

v

National Union of Teachers

Date of Decision

23 May 2014

DECISION

Upon application by Mr Richard Knights (“the claimant”) under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse to make the declaration sought by the claimant that on or about 17 January 2014 the National Union of Teachers breached rule 12(c) of its rules in accepting a nomination from Mr Ritson to stand for election to the Executive.

REASONS

1. Mr Knights brought this application as a member of the National Union of Teachers (“the NUT” or “the Union”). He did so by a registration of complaint form which was received at my office on 13 December 2013.
2. Following correspondence with my office, Mr Knights confirmed his complaint in the following terms:

“On or about 17 January 2014, in breach of rule 12(c), the NUT accepted a nomination from Eddie Ritson to stand for election to the Executive of the NUT when it should not have done so given that Eddie Ritson was not a member of the teaching profession.”
3. At the hearing on 8 May 2014, Mr Knights represented himself. He did not present a written witness statement or give oral evidence. The NUT was represented by its in-house senior solicitor, Mr Clive Romain. Oral evidence for the NUT was given by Ms Lucy Anderson, Assistant Secretary for Resource Management, in accordance with her written witness statement. There was also evidence in a 98 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing, together with the rules of the NUT. Both Mr Knights and the Union provided skeleton arguments.

Findings of Fact

4. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
5. Mr Knights has been a member of the NUT since 1996. He has served on the Executive Committee of the Knowsley NUT Constituency Association and, more recently, of the Sefton NUT Constituency Association for a total of about 13 years. He has also served as the President of the relevant Constituency Association for two terms of office. He has worked as a supply teacher in Sefton for the last three or four years.
6. Mr Knights complains about the nomination of Mr Eddie Ritson for election to a position on the national Executive of the Union in 2014. Mr Ritson has been a teacher for many years. Mr Knights believes that Mr Ritson ceased full time teaching in a school in November 2009. Indeed, it is established that Mr Ritson registered as a supply teacher with Sefton Supply Services on 6 November 2009. In 2010, Mr Ritson was elected for a two year term on the national Executive of the Union and was re-elected for a second two year term in 2012. In addition, in 2014 Mr Ritson was serving his second term as the joint secretary of the Sefton NUT, in which capacity he conducted case work for the members of that Constituency Association.
7. In October 2013, the nomination process for the election of members of the NUT Executive began. Nominations were to close on 13 January 2014 and voting was to take place between 19 March and 9 April 2014. The Executive has 40 members of which 37 come from geographical constituencies. Mr Ritson was seeking nomination for District 9 which is part of the Union's North West region. It includes the Cheshire, Liverpool, Sefton, Warrington and other areas.
8. The issue of Mr Ritson's eligibility for nomination to the Executive was raised within the Sefton NUT Committee in October 2013 and Mr Knights made enquiries at the Union's head office about to whom he should write to complain. He was told to complain to Christine Hurley, the head of personnel. On 31 October 2013 Mr Knights wrote to Ms Hurley stating he would like to challenge "*The eligibility of Eddie Ritson to stand in the forthcoming executive elections for the Merseyside seat (N West)*". Mr Knights commented that he had asked Mr Ritson to provide proof that he was a supply teacher (eg by producing his ID badge, CRB (Criminal Records Bureau) form, monthly payslips, P60 or record of teaching) but that Mr Ritson had refused to do so. Mr Knights asserts that Mr Ritson has not worked in a school as a supply teacher since February 2010 at the latest.
9. Ms Hurley informed Mr Knights that she was investigating his complaint and on four occasions Mr Knights asked her to write to Sefton Council to ask for Mr Ritson's records as a supply teacher since 2009. He made these requests in emails of 6, 13 and 28 November 2013 and of 9 January 2014.
10. Mr Ritson contacted Sefton Council for documentary support of his position as a supply teacher and on 25 November 2013 Mr Cunningham, the Human Resources

Manager at Sefton Council, produced a letter addressed 'To whom it may concern'. The letter states, "*I write to confirm that Mr Edward Ritson has been registered with Sefton Supply Services since 6th November 2009*".

11. At about the same time, Mr Ritson produced for Ms Hurley his ID badge with Sefton Supply Services, which Ms Hurley photocopied for her files.
12. On 28 November 2013 Mr Knights sent two emails to Ms Hurley in which he made the point that to be on the Sefton supply register, a teacher must have worked at least one session a term, in default of which their DBS (Disclosure and Barring Service check) (formerly the CRB check) is no longer valid and they cannot teach.
13. Mr Knights commenced this complaint to me by a registration of complaint form received at my office on 13 December 2013.
14. In the week commencing 16 December 2013 the NUT received a nomination for Mr Ritson for election to the NUT Executive from the Cheshire East Constituency Association.
15. On 7 January 2014 Mr Barbrooke of the Administrative Section of the Union wrote to Sefton Council asking if Mr Ritson was now available to do teacher supply work for the council. Mr Barbrooke asked for a reply by 10 January.
16. On 13 January 2014, nominations closed in the Executive elections.
17. On 17 January 2014 Mr Cunningham of Sefton Council responded to Mr Barbrooke. He commented that on 6 November 2009 CRB, medical and reference checks were undertaken on Mr Ritson and he was found eligible to undertake supply teaching. However, the email continues "*One of the local requirements is that CRB clearance only remains valid for a period of 3 months unless the teacher undertakes supply work within that 3 month period. Consequently Eddie is not currently available to undertake teacher supply work for Sefton. In order to do so we would need DBS clearance and a further medical check. However, typically these checks can be undertaken within a 2 or 3 week period. Eddie is currently remedying the situation by completing the relevant paperwork. He will then be eligible again to undertake supply work in Sefton, probably in 3 to 4 weeks time.*"
18. On 20 January 2014 Ms Hurley emailed Mr Ritson to inform him of the content of Mr Cunningham's letter of 17 January. Ms Hurley's letter continues, "*The General Secretary has therefore agreed that subject to you providing this evidence (which will need to be sent to her before ballot papers for the election go to print in early March) then your name will appear amongst the list of nominations received by the closing date last Friday*".
19. Also on 20 January 2014 Ms Hurley wrote to Mr Knights. She stated, "*As I have advised you from time to time, we have been undertaking an investigation into your complaint and I confirm that on Friday we received a letter from Paul Cunningham of Sefton HR Services confirming Eddie's eligibility to work for Sefton Supply Service. The General Secretary has taken this evidence into account and has also considered your comments and has agreed that Eddie Ritson does meet the*

eligibility requirements of the Rules and that his name will therefore be included in the list of nominations received by the closing date last Friday”.

20. Mr Knights responded to Ms Hurley on 20 January 2014 indicating his concern was not whether Mr Ritson was eligible to work as a supply teacher but whether he was actually doing so.
21. On 6 February 2014, Sefton Council wrote to Mr Ritson informing him that they had now received a satisfactory DBS disclosure on him dated 4 February. On 28 February 2014 Mr Cunningham emailed Mr Barbrooke stating, *“I can confirm that Eddie Ritson has now successfully completed the necessary checks and is therefore eligible to work on the Sefton Supply Register”.*
22. Voting in the Executive elections took place between 19 March and 9 April 2014. The election was conducted by Electoral Reform Services under the Single Transferable Vote system. There were five candidates for two seats on the Executive for District 9. On 9 April ERS declared that Mr Glover and Ms Purnell were elected. Mr Ritson had been excluded at the second stage of the count.

The Relevant Statutory Provisions

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

47 Candidates

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7)

(2) The matters are -

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) disciplinary proceedings by the union (including expulsion);

(c) the balloting of members on any issue other than industrial action;

(d) the constitution or proceedings of any executive committee or of any decision-making meeting;

(e) such other matters as may be specified in an order made by the Secretary of State.

The Relevant Rules of the Union

24. The rules of the Union which are relevant for the purposes of this application are:

Constituent Associations

5(d) Subject to the provisions of Rule 37(a), a Constituent Association shall admit to full membership all applicants holding qualified teacher status and serving in educational establishments and those following an employment based training route to qualified teacher status. For the purpose of this rule, the expression "qualified teacher status" shall be taken to refer to

- (i) all teachers possessing qualifications recognised in accordance with statutory regulations as conferring the right to teach in maintained schools in England and Wales;
- (ii) persons holding any of the teaching qualifications listed in part A of Appendix VII to these rules which list shall be subject to amendment from time to time by decision of Conference provided, however, that there shall not be eligible for membership persons holding qualified teaching status in accordance with statutory regulations but whose qualifications are of a category disapproved by Conference and as a result included in the list of such categories set out in part B of Appendix VII.

Officers and Executive

12(c) All members of the Union other than student members and those who have retired or otherwise left the profession shall be eligible for nomination for or election to the Executive. Any member of the Executive who retires from teaching service shall relinquish his or her membership of the Executive on the last day of the Annual Conference next following such retirement except the Senior Vice-President who shall relinquish his or her membership of the Executive on the last day of the Annual Conference at which he or she relinquishes the office of President.

Nominations and Elections (General)

13(c) Teachers who have retired or who have left the profession shall be disqualified from election.

Conduct of Elections

Officers, Executive [and others]

20(a) Eligibility to Vote

All those, other than students, who are in membership of the Union at the date voting commences shall be entitled to vote in the election except in the case of elections where voting commences after 31 May, when those whose membership has lapsed as determined by Rule 42(b) shall also not be entitled to vote.

Subscriptions

41e)(i) Members who have left the Education Service, but who have not retired shall be entitled to Left Professional Membership on payment of an annual subscription together with any local fee provided for in the rules of the Constituent Association.

Appendix VIII

9. Validation of Nominations

9.1 Nominations will be checked and validated on receipt at HQ.

9.2 In the event of any doubt arising as to the validity of any nomination, the question shall be referred to the General Secretary, or in the case of General Secretary or Deputy General Secretary elections to the President or other most senior officer not involved in the election as a candidate or person seeking nominations. The General Secretary, the President or other senior Officer as the case may be will make appropriate enquiries concerning the validity of the nomination and then declare its validity or otherwise. This decision shall be final.

9.3 Any complaint concerning the validity of a nomination should be addressed in writing to the General Secretary (or President or other senior officer responsible as appropriate).

MEMBERSHIP REGULATIONS 2014

12. Left Profession Members

A member leaving the education service but not retiring shall be entitled to left profession membership upon payment of an annual subscription to be determined annually plus any local association fee, and shall be entitled to those services and benefits not excluded within the rules of the Union.

£17.00 plus local fee (if applicable).

Consideration and Conclusions

25. Mr Knights' complaint is as follows

"On or about 17 January 2014, in breach of rule 12(c), the NUT accepted a nomination from Eddie Ritson to stand for election to the Executive of the NUT when it should not have done so given that Eddie Ritson was not a member of the teaching profession."

26. Rule 12(c) of the rules of the Union provides as follows:

12(c) All members of the Union other than student members and those who have retired or otherwise left the profession shall be eligible for nomination for or election to the Executive. Any member of the Executive who retires from teaching service shall relinquish his or her membership of the Executive on the last day of the Annual Conference next following such retirement except the Senior Vice-President who shall relinquish his or her membership of the Executive on the last day of the Annual Conference at which he or she relinquishes the office of President.

Summary of submissions

27. Mr Knights argued that the Union had breached rule 12(c) of its rules by permitting the nomination of Mr Ritson for election to the Executive as, in Mr Knights's submission, Mr Ritson had left the profession at the date of close of nomination, 13 January 2014. He maintained that the spirit and intention of rule 12(c) are quite clear; only those members actively engaged and employed in the teaching profession are eligible to stand. He noted that the Membership Regulations, which provide for the levels of subscription for the different categories of membership, refer to members being 'employed' and/or 'contracts'. Mr Knights considered that to be employed a person must receive remuneration from an employer and that a member who ceased employment could join or transfer to the category of membership known as 'Left the Profession' but could not then stand for election to the Executive. He submitted that Mr Ritson had been given ample opportunity to prove that he was still an active supply teacher by producing a wage slip, his P60, record of teaching, DBS form or other documents but that he had failed to do so. Mr Knights asserted that Mr Ritson had not taught as a supply teacher since February 2010 at the latest on the basis that his eligibility to teach had expired when his DBS became invalid after not having taught for three consecutive months. Mr Knights considered the Sefton Supply Services ID badge produced by Mr Ritson did not qualify him to teach, noting that it contained none of the same details that his own current ID badge contained. He further considered that the eligibility of Mr Ritson to teach, recognised by Sefton Council on 28 February 2014, did not assist him as this confirmation occurred after the close of nominations and, in any event, in Mr Knights's submission, the issue is not whether Mr Ritson was eligible to work as a supply teacher but whether he was actually working as one at the relevant time. Mr Knights argued that by allowing his DBS form to lapse, Mr Ritson had demonstrated that he had no intention of working as a teacher. At the hearing, Mr Knights argued that a member has left the profession if he or she has not taught for a long period of time. He accepted that there could be some grey areas such as the precise length of time a person has not taught and regarding those doing Union

work on facility time or self employed consultants, but he argued that such people remained employed by a school or local authority or otherwise had a contract with an educational establishment. Mr Knights would not be drawn on what constituted 'a long period of time' for the purposes of the test he proposed. He stated that this might be a matter that the General Secretary would have to determine under paragraph 9(2) of Appendix VIII of the Rules. In conclusion, Mr Knights submitted that Mr Ritson had 'left the profession' on the basis that he had not worked at a school since 2009 or 2010, had not been paid as a teacher since then, had not had a contract as a teacher since then and had not had a valid DBS form since 2010. In his submission, the common sense view of someone who has left the profession is someone who is not working in a school.

28. Mr Romain, for the Union, submitted that Mr Ritson had not left the profession and that he was therefore eligible to stand for election to the Executive as an ordinary member of the Union. He argued that the expression 'left the profession' looks more broadly than whether someone is currently a classroom teacher. He noted that Mr Ritson had been a very active member of the NUT Executive, serving on many committees, as well as doing case work in his local association and that he was accordingly involved in the profession. Mr Romain considered that the broad intention of the rule was that candidates for the Executive should have some current awareness of issues as they face teachers in the classroom and that Mr Ritson was in touch with the problems facing teachers and the work of the NUT to support teachers. He noted that experienced members of the NUT who wished to stand for the Executive may be primarily acting as NUT representatives, some on facility time provided by their employer, and not actively engaged as a classroom teacher. At the hearing, Mr Romain commented that a distinction should be made between two quite different aspects; the general rules of membership and the provisions of rule 12(c) about who may not be nominated for election to the Executive. He maintained that Mr Ritson was an ordinary member of the Union, being neither a retired member nor in the category of 'Left the Profession' but that the focus of this case should be whether he was excluded from being a candidate by rule 12(c). Mr Romain noted that there was no definition of the rules of when someone had 'otherwise left the profession' but that there was a procedure in paragraph 9 of Appendix VIII to the rules by which the General Secretary could make a determination on whether a nomination was valid or not. He argued that the General Secretary had taken into account what she knew of Mr Ritson's involvement in the affairs of the National Union and his local association, the fact that he had retained his registration with Sefton Supply Services and had latterly renewed his DBS certification. He submitted that the General Secretary had carried out appropriate enquiries, as required by the rule, and reached a decision which was open to her on the facts; a decision which is described in the rules as being final. Mr Romain further commented that there is no rule which provides that eligibility for nomination is to be tested as at the final date for receipt of nominations and the General Secretary was entitled to have regard to all the facts at the time she reached her decision. He stated that he was unaware of any previous disputes arising out of rule 12(c) and the question as to whether someone had left the profession. Mr Romain also raised the significance of section 47 of the 1992 Act. He commented that rule 12(c) was intended to take advantage of the provision that permitted members to be excluded from being a candidate in Executive elections if they belonged to a class of which all the members are excluded by the rules of the

Union. In his submission, rule 12(c) excluded candidates who belonged to the three classes set out in that rule but considered that Mr Ritson would have had a good case against the Union, if he had been excluded from the election, as he was not a member of any of those three classes.

Conclusions

29. The exclusion of members from the right to be a candidate in elections for the Executive of a union is a serious matter. Section 47(1) of the 1992 Act provides that no member shall be unreasonably excluded from standing as a candidate but sub-section (3) provides as follows: *“A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union. But a rule which provides for such a class to be determined by a reference to whom the union chooses to exclude shall be disregarded.”* Accordingly, in as much as rule 12(c) purports to exclude certain members from standing as a candidate in Executive elections, its effectiveness depends upon its compliance with section 47(3). Should an exclusion not be able to take advantage of section 47(3), its lawfulness would be determined by the application of the more general and uncertain test of reasonableness in section 47(1). I accept Mr Romain’s submission that rule 12(c) was intended to take advantage of section 47(3), to exclude certain members from standing as candidates.
30. The words of rule 12(c) exclude from standing as a candidate (a) student members; (b) those who have retired and (c) [those who have] otherwise left the profession. I have asked myself if these categories satisfy the requirement in section 47(3) of the 1992 Act of creating a class of members all of whom are excluded from standing as a candidate. There has been academic discussion of what constitutes a ‘class’ for these purposes. The narrow view is that it is intended to refer only to a ‘class of membership’ as defined by the rules, such as members belonging to a section or sections of the Union defined by their location or trade or to members defined by their age or who are, for example, apprentices. The broader view is that a ‘class’ need not be a category of membership within the rules but can include other groupings or descriptions of members as provided for by the rules. On this view, however, in order for the grouping or description to constitute a ‘class’ it is suggested that membership of the grouping or description must be readily ascertainable by members, so that any potential candidate for election might know objectively whether he or she qualifies as a candidate without submitting himself or herself to the judgement of a third party.
31. Against this statutory background, I consider the meaning of the words ‘left the profession’ in rule 12(c). I do so having regard to the usual principles of interpretation, including the following. First, where there are two different possible interpretations, one which is consistent with the general law and the other one inconsistent, it is more likely than not that the one consistent with the general law is the correct interpretation. Secondly, the rules of a trade union are not to be interpreted like a commercial contract or a tax statute. In the words of Warner J in **Jacques v. AUEW (1986) ICR 683**

“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 purposes and the readership to which they were addressed."

32. I find that the only meaning of rule 12(c) which is consistent with section 47(3) of the 1992 Act is that the three description of members to be excluded as possible candidates in rule 12(c) are read consistently with the appropriate categories of membership defined elsewhere in the rules and Membership Regulations. Student members are defined in rule 37(g). Retired members and Left Profession Members are provided for as separate categories of membership in the Membership Regulations. Construed in this way, these three descriptions of members come within the narrow interpretation of what is a 'class' for the purposes of section 47(3). They clearly delineate who is excluded from standing as a candidate and who is not. Any potential candidate will know where he or she stands.
33. I have considered whether Mr Knights' interpretation of the words 'left the profession' in rule 12(c) would attract the protection of section 47 of the 1992 Act if the word 'class' was to be interpreted more broadly. I heard discussion of the types of person who may or may not be described as persons who had 'left the profession'. Mr Knights accepted that there were grey areas. I was told of many trained teachers who work within the education sector but who are not classroom teachers. Some are employed in a non teaching capacity, some are self employed consultants, some devote their working time on behalf of Union members at a local level or to the Union at a national level and some act as advisers to educational authorities at a local or national level. Given the evolving nature in which educational services are provided, it is more likely than not that such atypical working arrangements for professional teachers will increase rather decrease. Is it to be said that any trained teacher working in the educational sector under such an arrangement has left the profession because they are no longer classroom teachers? Many such people would find themselves in a grey area not knowing whether they fell in an excluded category or not, leaving the final decision to the General Secretary in the event of a dispute. I find that an interpretation that may leave members uncertain whether they fall within an excluded class of members and that leaves the final decision to the General Secretary is one which does not lend itself to the definition of a 'class' in section 47(3) of the 1992 Act and/or renders that rule one which must be disregarded.
34. Accordingly I find that the words 'left the profession' in rule 12(c) relate only to those members who are in the category of membership known as 'Left the Profession' as provided in the Membership Regulations. Mr Ritson was not in that category of membership. He was an ordinary member. He was not therefore excluded from standing as a candidate in the Executive elections in 2014. For the above reasons, I refuse to make the declaration sought by the claimant that on or about 17 January 2014 the NUT breached rule 12(c) in accepting Mr Ritson's nomination to stand for election to the Executive.
35. Should I be wrong about the correct meaning of the words 'left the profession' and should a broader meaning be given to that expression, I would nevertheless reject Mr Knights' submission that a person has left the profession if he or she is no longer actively involved in classroom teaching. I find that the profession of teaching is broader than the act of teaching and that Mr Ritson's considerable involvement in

the affairs of the Union at both national and local level clearly establishes him as a person who had not left the profession at the date of close of nominations. Mr Ritson may not then have been immediately eligible to resume classroom teaching but there is, in my judgment, no requirement that he should have been. Mr Ritson had retained his registration with Sefton Supply Services and he was able to obtain a DBS form at relatively short notice. I find that possession of a DBS check is a helpful but not a necessary factor in establishing whether that person has left the profession for the purposes of this alternative finding. Accordingly, if my primary finding as to the meaning of 'left the profession' is wrong, I would have nevertheless rejected Mr Knights' application.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath the name.

David Cockburn
The Certification Officer