

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER
SECTION 55(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr M Dooley

V

Union of Construction, Allied Trades and Technicians

Date of Decisions

11 March 2011

DECISIONS

Upon application by Mr Dooley ("the claimant") under section 55(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I grant the declaration sought by the claimant that the Union of Construction, Allied Trades and Technicians ("the Union") breached section 50 (1) of the 1992 Act between 15 May and the 15 June 2009 by not according equally to all members of the Union the entitlement to vote in the 2009 General Secretary election.
2. I refuse to make the declaration sought by the claimant that the Union breached section 49 (5) of the 1992 Act by allegedly not notifying members of the appointment of the scrutineer before the scrutineer began to carry out his functions in relation to the 2009 General Secretary election.
3. I refuse the declaration sought by the claimant that the Union breached section 52 (4) of the 1992 Act by either not sending a copy of the scrutineer's report relating to the 2009 General Secretary election to all members Nor taking all such other steps for notifying the contents of the report to the members of the Union (whether by publishing the report or otherwise) as it is the practice of the Union to take when matters of general interest to all its members need to be brought to its attention.
4. I grant the declaration sought by the claimant that the Union breached section 52(5) of the 1992 Act by not issuing a statement with the notification or copy of the scrutineer's report that the Union will, on request, supply any member of the Union with a copy of the report.

5. I grant the declaration sought by the claimant that the Union breached section 49(5A) (a) of the 1992 Act by not supplying the scrutineer with a copy of the register of names and addresses of its members for the purposes of the General Secretary election 2009.
6. I refuse the declaration sought by the claimant that the Union breached section 51(3) of the 1992 Act in relation to the 2009 General Secretary election by allegedly not allowing members to vote in the General Secretary election of 2009 without interference or constraint.
7. I consider that it would be appropriate to make an enforcement order. I order that:-
 - 7.1 the election to the position of General Secretary of the Union, the result of which was reported to the Union by its scrutineer on 15 June 2009, shall be treated as void and of no effect. The person elected in that election, Mr Ritchie, shall cease forthwith to hold office as General Secretary.
 - 7.2 the Union shall conduct a further election for the position of General Secretary, such election to be conducted so as to be in accordance with the rules of the Union and Chapter IV of Part I of the 1992 Act. Any provision of the rules relating to when a step in the election is to be taken may be abridged to ensure compliance with this order.
 - 7.3 in the event of there being only two candidates in the further election, it shall be conducted so that its result is declared no later than Friday 29 July 2011.
 - 7.4 in the event of the further election being contested by more than two candidates and there is a requirement for a run-off election in accordance with rule 23.5, that run-off election shall be conducted so that its result is declared no later than Friday 30 September 2011.
 - 7.5 the Union is given liberty to apply in the event of it being unable to comply with the requirement to declare the result of the election by the relevant specified date.

REASONS

1. Mr Dooley is a member of the Union of Construction, Allied Trades and Technicians ("the Union" or "UCATT"). By an application to me dated 15 December 2009 the claimant alleged five breaches of the rules of the Union and six breaches of the 1992 Act by his Union in relation to the 2009 General Secretary election.
2. At a preliminary hearing before me on 6 December 2010, I struck out the alleged breach of rule complaints on the grounds that they had been made out of time. The following six complaints of breach of statute were pursued by Mr Dooley:

Complaint 1

The union breached section 50 (1) of the 1992 Act between 15 May and the 15 June 2009 by sending ballot papers to only 43% of the union's total membership therefore not ensuring that entitlement to vote be accorded equally to all members of the trade union

Complaint 2

The union breached section 49 (5) of the 1992 Act on 15 May 2009 by not notifying members of the appointment of the scrutineer, before the scrutineer began to carry out his function, in relation to the 2009 General Secretary Election

Complaint 3

The union breached section 52 (4) of the 1992 Act on 16 September 2009 by not either sending a copy of the scrutineer's report relating to the 2009 General Secretary Election to all members or taking all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to its attention

Complaint 4

The union breached section 52(5) of the 1992 Act on 16 September 2009 by not issuing a statement, with the notification or copy of the scrutineer's report, that the union will, on request, supply any member of the union with a copy of the report

Complaint 5

In breach of section 49(5A) (a) of the 1992 Act the union did not supply the scrutineer with a copy of the register of names and addresses of its members for the purposes of the General Secretary election 2009. The register provided contained less than 50% of the names and addresses of which the union had members

Complaint 6

The union breached section 51(3) of the 1992 Act in relation to the 2009 General Secretary Election in that not all members entitled to vote were allowed to do so without interference or constraint. In not sending ballot papers to a large number of members those members entitlement to vote was both interfered with and constrained.

3. I investigated the alleged breaches in correspondence. A hearing took place on 22 February 2011. At the hearing, the claimant was represented by Mr Jody Atkinson of counsel. Mr Dooley provided a written witness statement and further witness statements were submitted on his behalf by Mr John Gould, Mr Jack Henry, Mr John Cahill, Mr Noel Kelly and Mr John Flavin. Messrs Dooley and Gould were called as witnesses and cross examined. UCATT was represented by Mr Andrew Hogarth QC instructed by OH Parsons and Partners. The Union called Mr John Thompson (UCATT President) and Mr Edward Ingleton (UCATT General Office Manager) as witnesses. Both gave evidence in accordance with their written witness statements and were cross examined. There was in evidence a 524 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing to which one additional document was added at the hearing by the Union. Mr Atkinson and Mr Hogarth each provided a written skeleton argument.

Findings of Fact

4. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:-
5. Mr Dooley has periodically been a member of UCATT since the age of 16. He studied at Ruskin College Oxford and obtained a law degree from Brunel University. Most recently, Mr Dooley joined the Union in about 1998. At about the same time he became a regional official of the Union based at its premises in London SW4, which serves as both its Regional Office and Head Office. Mr Dooley stood for election as General Secretary in 2004 and 2009 and, on both occasions, was defeated by the present General Secretary, Mr Alan Ritchie. Mr Dooley was dismissed from his employment by the Union for gross misconduct by a letter dated 26 January 2011. There are outstanding Employment Tribunal proceedings brought by Mr Dooley against the Union.

Arrears of contribution

6. Mr Dooley's complaints concern the conduct of the General Secretary election in 2009. A key aspect of certain of these complaints is the entitlement of members who were more than 26 weeks in arrears with their contributions to be sent ballot papers. Whilst this question is essentially one of law, I heard much evidence which was intended to put the legal issue in context.
7. UCATT was formed by the amalgamation of four craft unions in 1971. The rule which is relied upon to remove the entitlement to vote from members who are more than 26 weeks in arrears with their contributions has survived in its current form from the rule book of 1972. It is currently rule 7.12 in the rule book of 2000, as amended by the Rules Revision Conference in 2006. Rule 7.12 provides as follows:

7.12 Members in arrears shall be suspended from benefit in accordance with the following table:

<u>Weeks in Arrears</u>	<u>Weeks of Suspension</u>
12 Suspension from all benefits except trade privileges	8
26 To be excluded from the Union	

Suspension as above shall commence at the time the member's arrears amount to 12 weeks' contributions, and s/he shall continue to be suspended from benefit until eight weeks have elapsed after his or her arrears have been reduced below 12 weeks, in accordance with the above table. A member under suspension shall not be liable to further suspension unless at the end of the term, his or her arrears exceed the limit specified by rule.

8. The position of members in arrears is also dealt with in rule 15 under the heading "Duties of Branch Secretaries". Rule 15.4 provides that a branch secretary shall each quarter send a notice to members whose arrears will on that date amount to 12 weeks contributions. Rule 15.5 provides that each quarter a branch secretary shall, where practicable, send a list of members in arrears to the regional secretary, regional organisers and shop stewards to be dealt with. Rule 15.6 provides that the branch secretary shall announce at two successive meeting nights the names of all members whose arrears exceed 20 weeks and, where practicable, give 4 weeks notice to members before they are excluded. The names of the members who have been excluded are also to be announced. Rule 15.7 provides that if someone who has been excluded applies for re-admission, the branch secretary shall make

enquiries as to why the member was excluded. Rule 15.19 provides that a branch secretary will not enter the arrears of any members at the end of the quarter if they exceed 26 weeks. A similar provision appears in Rule 7.14, which states that the arrears of members are not to be reported quarterly when they exceed 26 weeks. Rule 7.14 goes on to state that no member shall be excluded for arrears of contributions until the expiration of 6 months from the date of his or her entrance.

9. There is no rule or practice to the effect that members are automatically excluded from the Union when their arrears of contribution exceed 26 weeks. Exclusion for arrears must be in accordance with the above procedures, except that rule 21.2 gives the Executive Council ("EC") the power to administer rule 15.6 so as to exclude members whose arrears exceed 20 weeks.
10. On the evidence before me, however, I find that members are rarely excluded by branch secretaries or the EC for arrears in their contributions under the above procedures. A number of reasons for this were given in evidence, including:
 - 10.1 Branch secretaries are reluctant to exclude members from benefits in the hope that they will return to the Union and start paying contributions again.
 - 10.2 Branch secretaries are construction workers, not administrators, and do not have the time or resources to go through their membership lists and exclude members who have not paid contribution for more than 26 weeks. Branch secretaries receive a list of members quarterly from Head Office which contains the date on which each member has last paid a contribution according to the Union's records. They are required to tick a box to state whether a member who has not paid has resigned, been found to be a duplicate, died or been excluded. Such forms are usually not completed and returned to Head Office.
 - 10.3 Very few members attend branch meetings.
 - 10.4 The nature of the construction industry is such that many members move from contract to contract, sometimes with a gap in between. Some members who join for one contract, may cease to pay contributions when not working and may rejoin at a later date when employed on a further contract, perhaps in a different location. Such persons may then appear more than once on the membership register and are known as duplicate members. The first membership of such persons may well have fallen into arrears.
 - 10.5 Another aspect of the construction industry which impacts on the timely collection of Union contributions is the manner in which the check off system is operated by some employers. The check off system is a method of paying Union contributions through an employer's payroll system. A periodical amount in respect of Union contributions is deducted from the members' wages by consent, usually on a weekly basis, and remitted to the Union at an agreed time. UCATT normally invoices such employers every 13 weeks. However, many employers delay payment to the Union beyond 26 weeks. There were in evidence quarterly schedules of check off arrears by region. These showed the number of weeks, beyond the 13 week invoicing period, that payments from specific employers were overdue. The majority were overdue by a further 13

weeks and many were overdue by much greater periods, often over 52 weeks and up to 214 weeks. Members who worked for these employers would consider that they were paid-up members of the Union, as their contributions were shown on their wage slips as a deduction. On the other hand, the Union's last recorded receipt of a contribution from such members could be more than 26 weeks previously, in some cases considerably more than 26 weeks.

11. Arising from the Union's failure to exercise its discretion to exclude members who are more than 26 weeks in arrears with their contributions, there has developed a considerable difference between the number of members on the Union's register of members and those for whom there is a recorded payment of a contribution within the last 26 weeks. As at 30 April 2009, the number of members on the register of members was 129,121. The number of members not more than 26 weeks in arrears was 56,867. I further observe that in its annual return to my office for the year ending 31 December 2008 the Union had 12,116 members for whom no home or authorised address was held.

Elections prior to 2009

12. Both parties adduced evidence of what had occurred in elections prior to 2009 as a guide to the proper interpretation of rule 7.12.
13. From the documentary evidence it appeared that the full membership was balloted for the EC elections in 1991 and for the General Secretary election in 1996.
14. On the day of the hearing, however, the Union produced a minute of a meeting of the EC of 8 and 9 January 1991 which it submitted explained why the full membership was balloted in 1991 and 1996. I gave leave for the minute to be put in evidence but was critical of the Union for not having provided Mr Dooley with a copy of the minute during the previous week when it appears that the document had come to light. It appears from the document that in late 1990 or early 1991 there was a case in the High Court involving a UCATT election. I was not provided with a copy of the judgment. However, a report of the proceedings was made to the EC meeting in January 1991. It was reported that the judge had been very unhappy with the way the Union kept members who were in arrears for more than 26 weeks on its membership register. The minute goes on to state: *"The judge was quite rigid of his interpretation of the rule and instructed the Union to exclude anyone over 26 weeks in arrears from receiving the ballot forms"*. However, the minute further records that *"The stringent exclusion of members for arrears would also have adverse effect on UCATT representations on outside organisations such as the Labour Party and TUC."* Following this meeting, it appears that the Union sent an instruction to branch secretaries requiring them to give 4 weeks notice of exclusion to all members 22 weeks or more in arrears and to subsequently exclude those who were or became 26 weeks or more in arrears. "Exclusion schedules" were to be sent to the Union by branch secretaries by 5 March 1991. The oral evidence relating to these events was inconclusive. Mr Ingleton could not give any evidence about the 1991 election. With regard to the 2006 election, he stated that a slip was sent out with the ballot paper which the member had to sign to confirm he or she was a fully paid up member. Mr Thompson remembered that he had to sign a separate slip when voting in 1996 but could not remember what was said on the slip. He thought it was something to do with multiple voting papers being sent to the same person, as a means of

ensuring only one voting paper was returned per member. Mr Gould stated that he had never heard about a slip being included with the ballot papers before this hearing. On the evidence before me, I am not much assisted by the EC minute of January 1991, apart from it showing that the Union then felt constrained to apply the rules which permitted the exclusion of members more than 26 weeks in arrears. I observe that the Union has since demonstrably failed to continue with the practice which it purported to put in place in 1991. I do not extract from the minute in question, as suggested by the Union, that the High Court came to a decision binding upon me that the Union has a rule which excludes anyone more than 26 weeks in arrears from receiving a ballot paper.

15. The skeleton argument for the Union contained a schedule of elections since 2000 in which it was said the Union only sent ballot papers to those who were not more than 26 weeks in arrears with their contributions. This schedule referred to the General Secretary election in 2004, the 10 yearly political fund re-ballot in 2006 and five other elections for various regional seats on the EC in 2000, 2003, 2005, 2007 and 2008. Mr Atkinson commented that the evidence appeared to demonstrate that in relevant elections prior to 2000 everyone on the register of members was sent a ballot paper but from the year 2000 onwards, those more than 26 weeks in arrears were not sent a ballot paper in national elections.

The 2009 General Secretary Election

16. At its meeting in January 2009, the EC of the Union agreed to call for nominations for the position of General Secretary and set out the procedure to be followed. Close of nominations was to be 23 March. Election statements were to be received by 24 April. Rule 28 provides that all postal ballots shall be conducted by the Electoral Reform Society ("the ERS").
17. On 23 February 2009, the Union's President, Mr Thompson, sent a circular to all branch secretaries in which he advised them of the General Secretary election and included a nomination paper. The circular concluded: *"The election will take the form of a postal ballot of the membership and will be conducted by Electoral Reform Ballot Services who will act as the independent scrutineer for the elections"*.
18. On 27 March 2009, Mr Thompson sent a further circular to all branch secretaries. With this circular, he attached separate sheets for those who had been nominated, showing the nominating branches. Only Mr Ritchie and Mr Dooley had sufficient nominations to proceed. The circular required the branch secretary to notify nominated members of the fact that they had been nominated and the need to submit an election statement by 24 April. Notice was given that the ballot would open on 15 May and close on 15 June.
19. At some unspecified date, Mr Ingleton met with a representative of ERS to run through the balloting procedure and timetable. The balloting method was to be the one that had been used in the recent past. Only members for whom there was a recorded contribution in the last 26 weeks would be sent a ballot paper. The reference date for calculating the 26 week period was agreed as 30 April 2009. At that date the Union had a total membership of 129,121. Of these, only 60,529 were eligible to vote having regard to their arrears. However, 3,662 of these had an invalid

address flag on their membership record and so could not be sent a ballot paper. Accordingly, 56,867 ballot papers were distributed by ERS.

20. Following the close of ballot, ERS wrote to Mr Thompson at the Union on 15 June 2009 reporting on the ballot result. The ERS reported that there were 56,867 eligible voters. Mr Ritchie had received 6,706 votes and Mr Dooley 4,431.
21. On 16 June 2009 Mr Thompson wrote to Mr Dooley informing him that he had lost the election and the voting figures for each candidate. However, Mr Thompson did not state the number of ballot papers that had been distributed. Mr Dooley was aware that the Union had about 130,000 members at that time. The annual return that the Union had made to my office for the year ending 31 December 2008 reported 130,859 members.
22. On 27 August 2009 the EC met and endorsed the scrutineer's report. The minute in question ended with the following passage: *"As an aside, Mr A Ritchie, General Secretary, stated that to comply with the Industrial Relations Legislation ballot forms were sent out only to those members who were in compliance with the Rule Book at a specific date."*
23. Also on 27 August 2009, Mr Thompson sent a further circular to branch and regional secretaries in which the letter from the ERS to Mr Thompson of 15 June, setting out its report on the election result, was reproduced in full.
24. On or about 9 September 2009 the results of the election were posted on the Union's website. Mr Dooley gave evidence that the website gave the voting figures for himself and Mr Ritchie together with various percentages but did not give the number of ballot papers distributed. He maintained that he did not discover this information until some time later.
25. The Union has a journal, the Building Worker, which it distributes quarterly to every member with a known valid address who has paid a contribution in the 12 month period prior to a particular distribution. The journals are ordinarily distributed around 20 January, 12 April, 12 July and 20 October each year. In the autumn edition of the Building Worker, in October 2009, there was an announcement of the number of votes cast for each candidate. In the winter edition of the journal, in January 2010, the whole of the letter from the ERS to Mr Thompson of 15 June 2009 was reproduced, including the number of voting papers distributed to eligible candidates.
26. From June to November 2009, a number of letters were sent to the Union which raised issues concerning the number of ballot papers that had been distributed. These came from Mr Dooley, Mr Wilkinson, Mr Flanagan, the Woolston (UG 369) branch, the Brixton (UG 032) branch and the Bristol (UG 198) branch. Mr Ritchie responded to a number of these letters in a similar vein. He stated that it was the representative of ERS who had advised the Union to provide him with the names and addresses of those members who were up to date with their subscriptions so that ballot papers could be issued to them. He further stated that this had been the practice adopted in national elections for years and had been used in the 2004 General Secretary election. The Woolston branch had requested that a resolution be put to the EC which, amongst other things, expressed concern that there was no rule

restricting the entitlement to vote to members up to date with their subscriptions. This resolution was considered by the EC on 17 December 2009. By a letter dated 21 December 2009 Mr Ritchie informed the Woolston branch of the views of the EC. On the issue of the rule book, Mr Ritchie stated, *"It is probably correct for you to say that the rule book does not specifically deal with this point."* The letter goes on to state that it had been the Union's practice to exclude those more than 26 weeks in arrears in previous elections and, because of the nature of the industry this practice *"appears to be the fairest way of ensuring that the election result reflects the views of the active membership"*. Mr Ritchie also referred to rule 21.14 as entitling the EC to determine anything on which the rules are silent. He commented that, whilst the ERS did not make the decision in question, they did approve the procedures. He concluded by informing the branch that its resolution that the election be declared null and void was not accepted by the EC.

27. On 15 December 2009 Mr Dooley presented his registration of complaint form to the Certification Office. This raised a considerable number of issues which were the subject of extensive correspondence between my office and Mr Dooley.
28. By a letter dated 26 May 2010 my office put eleven complaints to the Union for its formal response. Mr Ritchie responded on the Union's behalf by a letter dated 15 June 2010. As the precise nature of the Union's case was not clear from this letter, my office sought clarification. It transpired that such clarification had to be sought on five occasions. Mr Ritchie referred to Rule 7.12 as establishing that members in arrears by 12 weeks will be suspended from benefit for 8 weeks but then stated that members in arrears are not entitled to vote in accordance with Rule 7.14. Upon being asked if it was the Union's case that voting was "a benefit" within the meaning of rule 7.12, Mr Ritchie's letter of 7 July 2010 stated that the Union had not sent ballot papers to those more than 26 weeks in arrears. He further stated that his references to rule 7.14 were typing errors and should have referred to rule 7.12. Nevertheless, by a letter dated 2 August 2010, Mr Ritchie again asserted that voting in elections was subject to rule 7.14. O.H. Parsons, solicitors, were then instructed. In a letter dated 13 September 2010, O.H. Parsons stated *"My clients are concerned that a great deal of attention has been applied to Rule 7.12. In fact the correct rule to apply is Rule 7.14."* This letter helpfully made clear that members more than 12 weeks in arrears but less than 26 weeks in arrears had not been excluded from voting. On 6 December 2010 there was a preliminary hearing in which I determined that Mr Dooley's complaints of breach of rule had been made out of time. At that hearing, Mr Dooley expressed concern that the Union had changed its position so much that he was unsure of its case and was concerned that he might be taken by surprise at the hearing with a point he had not been able to investigate. Accordingly, I directed that, in the interests of clarity, the Union should restate its case. It did so by a letter from O.H. Parsons dated 22 December in which the Union stated its reliance upon section 50(2) of the 1992 Act but did not specify the rule upon which it relied in that connection. This letter referred to rule 7.12, 7.14, 15.5 and 15.6 and then stated *"It is the Union's general practice to ballot only those members who are less than 26 weeks in arrears. Although the Union could exclude members who were 12 weeks in arrears and under 26 weeks in arrears, as well, they have usually balloted them out of an abundance of caution."* This letter also referred to it having been the practice of the Union for many years and that it was the practice followed in the 2004 General Secretary election when Mr Dooley had been a candidate. The

Union commented that the absence of previous complaints confirmed that the Union's policy on this issue was very fair and effective. My office asked the Union to be precise about the rule upon which it was relying to establish its section 50(2) defence and asked if the Union was relying upon the implication of a rule by custom and practice, following a concern raised by Mr Dooley. By a letter dated 3 February 2011, the Union's solicitors stated that the rule it was relying upon was rule 7.12. It stated that *"The Union's interpretation of Rule 7.12 was that all persons with more than 26 weeks in arrears are excluded from all rights of membership but remain members. As indicated, our secondary position is that the only alternative interpretation is that they cease to be members and are not entitled to vote in any event."* As to the significance of custom and practice, the Union's solicitors responded *"This is not as we see it a question of implication of a rule, but an assertion that the rule has always been understood by the contracting parties to mean that the right to vote ceases when arrears are more than 26 weeks."*

The Relevant Statutory Provisions

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

Section 49 Appointment of independent scrutineer

(5) The trade union shall, before the scrutineer begins to carry out his functions, either -

- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
- (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(5A) The trade union shall -

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) comply with any request made by the scrutineer to inspect the register.

Section 50 Entitlement to vote

(1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union.

(2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following -

- (a) members who are not in employment;
- (b) members who are in arrears in respect of any subscription or contribution due to the union;
- (c) members who are apprentices, trainees or students or new members of the union.

Section 51 Voting

- (3) Every person who is entitled to vote at the election must -
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
 - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

Section 52 Scrutineer's report

- (4) The trade union shall within the period of three months after it has received the scrutineer's report either -
- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
 - (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

- (5) Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

Section 55 Application to Certification Officer

- (1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

5 (A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements -

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

The Relevant Rules

30. The rules of the Union which are relevant for the purposes of this application are as follows:-

Rule 7 Contributions

- 12 Members in arrears shall be suspended from benefit in accordance with the following table:

<u>Weeks in Arrears</u>	<u>Weeks of Suspension</u>
12 Suspension from all benefits	8

except trade privileges

26 To be excluded from the Union

Suspension as above shall commence at the time the member's arrears amount to 12 weeks' contributions, and s/he shall continue to be suspended from benefit until eight weeks have elapsed after his or her arrears have been reduced below 12 weeks, in accordance with the above table. A member under suspension shall not be liable to further suspension unless at the end of the term, his or her arrears exceed the limit specified by rule.

14. The arrears of members are not to be reported quarterly when they exceed 26 weeks; and no member shall be excluded for arrears of contributions until the expiration of six months from the date of his or her entrance.

Rule 15 Duties of the Branch Secretary

4. S/he shall issue or cause to be issued all summonses, keep all documents, books (except those of the BT), accounts forms and papers belonging to his/her branch in such place as the branch may appoint. S/he shall also one week prior to quarter night send a notice to members whose arrears will on that date amount to 12 weeks contributions.

5. Once each quarter s/he shall send on, where applicable, a list of members in arrears to the RS, Organisers, or Shop Stewards to be dealt with.

6 S/he shall announce on two successive meeting nights preceding the last in each quarter the names of all members whose arrears exceed 20 weeks, and give four weeks' notice, where practicable, to members before they are excluded. S/he shall give the names of members who have been excluded during the quarter.

7. In the event of any person who has been excluded from this or any other Union applying for admission, the BS shall, if his/her proposition be accepted, immediately write to the Branch, Regional Council or Union s/he was excluded from inquiring why s/he was excluded, and whether they have any objection to his/her admission

19. S/he shall not enter the arrears of any members at the end of the quarter if they exceed 26 weeks

Rule 21 Duties and Powers of the EC

2. Notwithstanding anything in these rules, the EC may, by giving six weeks notice in writing, terminate the membership of any member if necessary in order to comply with a decision of the Disputes Committee of the Trades Union Congress or Irish Congress of Trades Unions.

The EC shall have the power to administer Rule 15 Clause 6 to ensure the exclusion of members whose arrears exceed 20 weeks. The Executive Council is empowered to exclude members in arrears and to act to ensure that the membership records are up to date.

Rule 23 Election of General Secretary

2. The nomination of GS to take place every five years at the quarterly meetings in March and the election in June immediately following. The Executive Council will have discretion as to the timing of GS elections in the event of the post

becoming vacant because of, eg death or voluntary early retirement of the officer holder. The EC will determine the length of running in period.

The GS shall be elected by a ballot of all members in Great Britain and Ireland voting at their home addresses. So far as is reasonably practicable every member who is entitled to vote shall be sent a ballot paper by post and be given a convenient opportunity to vote by post.

5. The finally selected candidates, not exceeding six in number to be submitted to the votes of the members, according to the rule for election of GS. The two candidates obtaining the highest number of votes shall be again submitted to the members for final selection, unless one of the candidates had an absolute majority of the votes cast. The Selection Committee shall be composed of three member of GC, three members of EC. Any candidate elected as GS shall be subject to six months' probationary period, after which period the Selection Committee may, if s/he be deemed unsuitable for the office, a new election shall be called.

Rule 24 Duties of the General Secretary

5. S/he shall issue a publication which shall be a medium of communication between the EC and the members, so that matters of topical interest and subjects important to securing the interests of the members can be adequately dealt with.

S/he shall issue lists of nominations and results of voting on separate sheets whenever necessary.

Consideration and Conclusions

Complaint One

31. The complainant's first complaint is as follows:

"The union breached section 50 (1) of the 1992 Act between 15 May and the 15 June 2009 by sending ballot papers to only 43% of the union's total membership therefore not ensuring that entitlement to vote be accorded equally to all members of the trade union."

32. Section 50(1) and (2) of the 1992 Act are as follows:

Section 50 Entitlement to vote

- (1) Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the trade union
- (2) The rules of the union may exclude entitlement to vote in the case of all members belonging to one of the following classes, or to a class falling within one of the following -
 - (a) members who are not in employment;
 - (b) members who are in arrears in respect of any subscription or contribution due to the union;
 - (c) members who are apprentices, trainees or students or new members of the union.

Summary of Submissions

33. Mr Atkinson, for the claimant, submitted that section 50(1) of the 1992 Act required the Union to ballot all members at the time of the ballot, which was about 130,000 members, and that the Union had breached that obligation by balloting only 56,867 members. He accepted that section 50(2)(b) provides that a union may exclude entitlement to vote in the case of members in arrears with their contributions but noted that such members could only be excluded if this was provided for in the rules of the union. Mr Atkinson submitted that the rules of UCATT contain no such provision. In his skeleton argument Mr Atkinson analysed why rule 7.12 could not be interpreted so as to exclude members more than 26 weeks in arrears from the entitlement to vote, as the Union argued. He submitted that the word "excluded" from the Union in rule 7.12 could only mean "expelled" from the Union, as demonstrated by rules 15.5 and 15.7. He further noted that rule 7.12 states that members with 26 weeks arrears are "to be" excluded, which required some action by the Union to carry out the exclusion. He submitted that the steps to be taken by the Union are those provided for in rule 15. Mr Atkinson observed that these steps involved warning the member of his or her arrears and that it was important that such steps were followed as expulsion is the most extreme penalty that the Union could apply. He submitted that rule 7.12 clearly did not provide for automatic expulsion from the Union and noted that Mr Thompson's witness statement accepted that proposition. Mr Atkinson went on to argue that although rule 7.12 enabled the Union to expel members more than 26 weeks in arrears, the evidence established that this did not happen in practice or only rarely happened. He suggested that branch secretaries did not apply rule 15 because either it was administratively cumbersome to do so or because it would unfairly exclude many whose contributions had been deducted at source by their employer but had not yet been transferred by their employer to the Union. Counsel further argued that not only was there no rule that permitted the exclusion of members from voting in a General Secretary election, but rule 23.2 provides expressly that "all members" in Great Britain and Ireland must be balloted. Mr Atkinson observed that members who were more than 26 weeks in arrears had been given voting rights in the elections in 1991 and 1996, that they were balloted in the event of industrial action at any particular site and that they could vote at branch meetings. He also observed that the Union included those more than 26 weeks in arrears as members in its annual return to the Certification Officer and in the number of members it affiliated to the TUC and the Labour Party. He also noted that the Building Worker magazine was sent to all members. Commenting on the Union's position, Mr Atkinson observed that it was suspect as it had shifted over time. In his submission, the Union was claiming the benefit of about 130,000 members when it suited it to do so and must therefore take the burden of balloting them in relevant elections.
34. For the Union, Mr Hogarth QC submitted that rule 7.12, on its correct construction, provided for members more than 26 weeks in arrears with their contributions to be excluded from entitlement to vote in a General Secretary election. In the alternative, he submitted that those members who became more than 26 weeks in arrears were automatically excluded from membership. In making good these submissions, Mr Hogarth noted that the rules of the Union are remarkably difficult and distinctly out of date. He nevertheless sought assistance in the interpretation of rule 7.12 from rules 7.14 and 15.6. Whilst conceding that rule 15.9 seems to recognise that a person can

be more than 26 weeks in arrears and remain a member, Mr Hogarth argued that the word "excluded" in rule 7.12 means that a member cannot vote in a Union election. He stated that before postal balloting, people more than 26 weeks in arrears were physically excluded from a branch meeting at which voting was to take place and that the word "exclusion" should be understood in that context. He further stated that the purpose of the legislation was to ensure that Unions are run democratically and that it would be strange if persons who do not pay their dues for an extended period retained a right to control its affairs. Mr Hogarth submitted that rule 7.12 must be interpreted as at the date it was agreed as a rule of the Union, namely 1972, and that having regard to the EC minute accepted into evidence at this hearing, there was material to show that the Union's interpretation of rule 7.12 had been applied since at least 1991. Mr Hogarth also argued that the expression "to be excluded" should be read as an instruction. He finally observed that the Claimant's interpretation resulted in a number of oddities; namely that those who walked away from the Union (intending to leave but not having actually resigned) would continue to get a vote, that Mr Dooley had not complained when he lost the General Secretary election in 2004 which had been similar organised and that no one else had complained about the exclusion from voting of those more than 26 weeks in arrears over the last 19 years.

Conclusion – Complaint One

35. It was common ground that at the time of the General Secretary election in 2009 the membership register of the Union recorded about 130,000 members and that the independent scrutineer for that election, ERS, was given the names and addresses of only 56,867 members to whom ballot papers were to be sent.
36. Section 50(1) of the 1992 Act provides that, "*Subject to the provisions of this section, entitlement to vote shall be accorded equally to all members of the Trade Union*". Accordingly, without more, the Union would be in clear breach of this provision.
37. Section 50(2) of the 1992 Act provides that the rules of a union may exclude entitlement to vote in the case of all members belonging to one of the following classes. Sub-section (b) provides for a class which is comprised of "*Members who are in arrears in respect of any subscription or contribution due to the Union*". UCATT seek to take advantage of section 50(2) to explain its decision not to ballot the about 73,000 members who appeared on its books on 30 April 2009 as being more than 26 weeks in arrears with their contributions.
38. In order to take advantage of section 50(2)(b) of the 1992 Act, a union must have a rule which provides for the exclusion from entitlement. The right to participate in an election for a union's General Secretary or for its Executive Committee is a matter of considerable importance to the individual member and to the union. It can be presumed that it is because of the importance of these elections that Parliament has seen fit to intervene in the internal procedures of trade unions by enacting Chapter IV of the 1992 Act, imposing certain procedural requirements in such elections. In this context, I find that a rule which establishes a class of members who are to be denied the right to vote should be clearly expressed. Parliament intended that members must be able to find out from the rules of their union if they are or are not entitled to vote in relevant elections. Unions have the ability to make clear their intentions by

revising their rules in accordance with their rules revision procedures. Accordingly, in my judgement, such rules are to be construed restrictively.

39. The Union asserted that the rule which excludes members who are more than 26 weeks in arrears from voting is rule 7.12. This provides as follows:

7.12 Members in arrears shall be suspended from benefit in accordance with the following table:

<u>Weeks in Arrears</u>	<u>Weeks of Suspension</u>
12	8
Suspension from all benefits except trade privileges	

27 To be excluded from the Union

Suspension as above shall commence at the time the member's arrears amount to 12 weeks' contributions, and s/he shall continue to be suspended from benefit until eight weeks have elapsed after his or her arrears have been reduced below 12 weeks, in accordance with the above table. A member under suspension shall not be liable to further suspension unless at the end of the term, his or her arrears exceed the limit specified by rule.

40. In construing this rule, I accept Mr Hogarth's submission that it must be given the meaning that it bore at the time it was agreed in 1972. I have also applied the principles of interpretation set out in the cases referred to in Mr Hogarth's skeleton argument (principally **BCCI v Ali (2001) UKHL 8** and **Mannai Investments Ltd v. Eagle Star Assurance Co Ltd (1997) AC 749**). Whilst those cases concern commercial contracts, the principles described by Lord Hoffman and Lord Bingham do not materially differ from the principles set out by Lord Wilberforce in **Heatons Transport v. TGWU (1972) IRLR 22** in the context of trade union rules. The approach to the interpretation of trade unions rules which is most frequently quoted, and which has been approved in subsequent cases, is that of Warner J in **Jacques v. AUEW (1983) ICR 683**. He stated at 692:

"The effect of the authorities may, I think, be summarised by saying that the rules of a trade union are to be given a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed."

41. In my judgement, the meaning of the relevant words of rule 7.12 is clear. It is that members more than 26 weeks in arrears with their contributions are to be excluded from the Union in accordance with the procedures found elsewhere in the rules, principally in rule 15. I find that this meaning not only accords both with the ordinary literal meaning of the words of the rule but also with what I find those words must have been intended to mean, bearing in mind their authorship, their purpose and the readership to whom they were addressed.
42. On the basis of my interpretation of rule 7.12, I reject the Union's primary submission that rule 7.12 provides for members more than 26 weeks in arrears with their contributions to be excluded from entitlement to vote in elections for the General Secretary. I find that this is neither the ordinary literal meaning of the words nor even a strained interpretation which the words are capable of bearing. In my judgement, the correct position was expressed by the EC at its meeting on 17 December 2008 at which it accepted the proposition of the Woolston Branch that it was probably correct to say that the rule book does not specifically deal with this point. I find that the exclusion from voting of members more than 26 weeks in arrears was applied as a matter of practice or policy and not pursuant to any rule. Such a practice or policy

might be readily understandable, having regard to the Union's collective failure to implement the exclusion of members under rule 15. On the other hand, there is a balancing policy consideration, as such a practice or policy would inevitably remove the entitlement vote from many members who have paid their contributions by check off but whose employers have failed to pay the money over to the Union. Such matters are quintessentially matters to be decided by the Union according to its democratic processes and to be clearly expressed in its rules, as required by the 1992 Act.

43. In accordance with my interpretation of rule 7.12, I also reject the Union's alternative submission that the roughly 70,000 persons who were excluded from entitlement to vote in the 2009 General Secretary election were not members of the Union. Such an interpretation would sit uneasily with the Union's statement in its statutory annual return to my office for the period ending December 2008 that it then had 130,859 members or its affiliation to the TUC of 115,000 members in 2008.
44. It is not necessary for me to decide whether rule 7.12 merely gives the Union a discretion to exclude a member who is more than 26 weeks in arrears or imposes a requirement on the Union to put its exclusion procedures into operation. In either event, exclusion only occurs when those procedures have been exhausted.
45. I make no findings as to what occurred in 1991 (see paragraph 13 above). The Union's evidence in this regard was introduced on the day of the hearing. It was incomplete, unsatisfactory and took the claimant by surprise. In my judgement, the only reliable inference to be drawn from that evidence is that branch secretaries had generally not been excluding members for non-payment of contributions before 1991, which is a state of affairs I find also existed at the time of the 2009 General Secretary election. The steps taken by the Union to deal with that situation in 1991 do not assist me in determining the meaning of a rule that was introduced in 1972.
46. As the Union has not established that there was a rule of the Union which excluded entitlement to vote from members in arrears with their contributions, the Union is unable to take advantage of the defence potentially available to it in section 50(2) of the 1992 Act and section 50(1) applies to the 2009 General Secretary election without qualification. As stated above, the Union accorded entitlement to vote in this election to only 56,867 members out of its total membership of about 130,000. Accordingly I find that the Union denied the entitlement to vote equally to all members of the Union and so breached section 50(1).
47. For the above reasons I grant the declaration sought by the claimant that the Union breached section 50 (1) of the 1992 Act between 15 May and the 15 June 2009 by not according equally to all members of the Union the entitlement to vote in the 2009 General Secretary election.

Complaint Two

48. The claimant's second complaint is as follows:

"The union breached section 49 (5) of the 1992 Act on 15 May 2009 by not notifying members of the appointment of the scrutineer, before the scrutineer

began to carry out his function, in relation to the 2009 General Secretary Election”

49. Section 49(5) of the 1992 Act provides as follows:

Section 49 Appointment of independent scrutineer

(5) The trade union shall, before the scrutineer begins to carry out his functions, either -

- (a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or
- (b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

Summary of Submissions

50. Mr Atkinson, for the claimant, submitted that by rule 24.5 the Union had committed itself to sending individual notifications of the name of the scrutineer to every member. Alternatively, he submitted that if the Union was entitled to rely upon section 49(5)(b) of the 1992 Act, the only permissible way for the Union to do so was by placing an appropriate notice in the *Building Worker*, as he argued the Union was obliged to do by rule 24.5 and as the Union had previously in fact done. In the further alternative, Mr Atkinson submitted that, if the Union was to establish that its usual practice for notifying members of matters of general interest was by circular to its branch secretaries, it still fell short of what was required. He argued that the statutory requirement was for the Union to “*take all such other steps*” and that this required the Union to not only notify branch secretaries but also put a notice in *Building Worker*.
51. Mr Hogarth QC, for the Union, submitted that Mr Thompson had notified branch secretaries of the name of the scrutineer by his circular letter of 23 February 2009, which was before the scrutineer had begun to carry out his functions. He went on to invite me to accept the Union’s evidence that the longstanding and normal practice where matters of general interest to all members need to be brought to their attention is to send circulars to branch secretaries, who then disseminate the information at branch meetings and otherwise as appropriate. Mr Hogarth submitted that Mr Thompson’s letter of 23 February met the requirements of section 49(5)(b) of the 1992 Act.

Conclusion – Complaint Two

52. Mr Atkinson’s submission contains sensible suggestions as to how the Union might best communicate information of general interest to as many members as possible. However, I find that submissions as to best practice and the correct meaning of rule 24.5 do not address the issue I have to determine in this complaint. The Union relies upon section 49(5)(b) of the 1992 Act. To test its position, I must ask myself if the Union took all such other steps (i.e other than individual notification of members) as it is the practice of the Union to take when matters of general interest to all members need to be brought to their attention. In my judgement this does not necessarily require me to examine best practice or to construe the rules of the Union. It requires me to make a finding as to what is the practice of the Union when matters of general

interest to all its members need to be brought to their attention and to then consider whether the Union took all the steps that are required by that practice to bring the matter in question to the attention of its members.

53. Many unions, especially the older craft unions, operate on a formal level through their branch structures. Many also have a journal or magazine. A growing number communicate with members by email or through their websites. Some even communicate by Facebook or Twitter. The manner of general communication is a matter for the union to decide. However, section 45(5)(b) of the 1992 Act addresses a particular type of communication. It is a communication of matters of general interest to all members that need to be brought to their attention. One of the occasions upon which a matter “needs” to be brought to members’ attention is when there is a statutory requirement, as in this case. Another occasion is where there is a requirement in the rules of the union. It is less certain when other types of information “need” to be brought to members’ attention. The difficulty is highlighted when considering what a union may choose to publish in its journal or magazine. This may typically contain both necessary and non-necessary information for members, but its publication cycle may not be consistent with the timetable necessary in the case of a statutory ballot. To avoid this difficulty, unions may choose the practice of notifying members through their established branch structure, so ensuring compliance within the prescribed period. A union might supplement this official notification by including the information elsewhere, including in the next edition of its journal. The question may then be asked whether publication in its journal has become a constituent part of its notification practice for statutory purposes. Each case will necessarily turn on its own facts.
54. On the facts of this case, I accept the evidence of Mr Thompson that the practice of the Union when matters of general interest to all members need to be brought to their attention is by circular to branch secretaries and that he took all the steps required by that practice when sending his circular to branch secretaries of 23 February 2009. By that circular the Union notified members of the name of the scrutineer for the General Secretary election before he began to carry out his functions. I find that the later publication of the same material in the Building Worker was not a part of the practice of the Union for these purposes.
55. For the above reasons, I refuse to make the declaration sought by the claimant that the Union breached section 49 (5) of the 1992 Act by allegedly not notifying members of the appointment of the scrutineer before the scrutineer began to carry out his functions in relation to the 2009 General Secretary election.

Complaint Three

56. Mr Dooley’s third complaint is as follows:

“The union breached section 52 (4) of the 1992 Act on 16 September 2009 by not either sending a copy of the scrutineer’s report relating to the 2009 General Secretary Election to all members or taking all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to its attention”.

57. Section 52(4) of the 1992 Act provides as follows:

Section 52 Scrutineer's report

(4) The trade union shall within the period of three months after it has received the scrutineer's report either -

- (a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy; or
- (b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

58. Both parties agreed that this complaint turned upon the same issues as Mr Dooley's second complaint and relied upon the same submissions.

59. Mr Atkinson argued that the Union had neither sent a copy of the scrutineer's report to all members, nor taken all such other steps for notifying the content of the report to members as it was the practice of the Union to take when matters of general interest to all its members need to be brought to their attention. He pointed out that few members attend branch meetings and the only effective way to inform members was through the Building Worker. He noted that the Union could have published the results of the election in the July 2009 edition of its journal but failed to do so. He noted that some information was published in the October 2009 edition but commented that this contained incomplete information and was outside the 3 month period. He further noted that the full scrutineer's report was contained in the January 2010 edition but that this was outside the 3 month period.

60. Mr Hogarth QC, for the Union, submitted that the Union's practice when matters of general interest need to be brought to the attention of members is to send a circular to branch secretaries for them to disseminate as they sit fit having regard to the local situation which they know best. He noted that Mr Thompson had sent such a circular to branch secretaries on 27 August 2009, within the 3 month period, and that this contained the full scrutineer's report.

61. It was agreed by both parties that section 52(4) of the 1992 Act is to be considered in a like manner to section 49(5) and accordingly I adopt the reasoning set out in my decision on the second complaint. I accept the evidence of Mr Thompson that the practice of the Union when matters of general interest to all members need to be brought to their attention is by circular to branch secretaries and that he took all the steps required by that practice when sending his circular to branch secretaries of 27 August 2009.

62. For the above reasons I refuse to make the declaration sought by the claimant that the Union breached section 52 (4) of the 1992 Act by not either sending a copy of the scrutineer's report relating to the 2009 General Secretary election to all members or taking all such other steps for notifying the contents of the report to the members of the Union (whether by publishing the report or otherwise) as it is the practice of the Union to take when matters of general interest to all its members need to be brought to their attention.

Complaint Four

63. Mr Dooley's fourth complaint is as follows:

"The union breached section 52(5) of the 1992 Act on 16 September 2009 by not issuing a statement, with the notification or copy of the scrutineer's report, that the union will, on request, supply any member of the union with a copy of the report".

64. Section 52(5) of the 1992 Act provides as follows:

Section 52 Scrutineer's report

(5). Any such copy or notification shall be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

65. Mr Atkinson, for the claimant, repeated the submission that he had made in relation to Mr Dooley's second and third complaints but added that, even if Mr Thompson's letter of 27 August 2009 satisfied section 52(4) of the 1992 Act, it did not tell members that the Union "*will, on request, supply any member of the Union with a copy of the scrutineer's report either free of charge or on payment of such reasonable fee as may be specified in the notification*". He submitted that the precise form of words is necessary because section 52(4) provides that the notification "*shall be accompanied by*" such a statement.

66. Mr Hogarth QC, for the Union, referred to Mr Thompson's letter to all branch and regional secretaries of 27 August 2009 which sets out the scrutineer's report in full. He referred in particular to the final paragraph of the letter from the ERS to the Union of 15 June 2009, which is as follows:

"We would draw your attention to sections 52(4), 52(5) and 52(6). Section 52(4) requires that a copy of this report be published and made available to all members of the Union within a 3 month period from today. This does not, however, mean that every member has to be notified individually."

Mr Hogarth submitted that the inclusion of the above quotation in Mr Thompson's letter complied with section 52(5) of the 1992 Act.

67. In **Re Civil & Public Services Association (D/8/94 – para 66)**, the then Certification Officer, Mr Whybrew, observed that it is somewhat odd that Parliament requires unions, when sending a copy of the scrutineer's report to members, to tell them that a copy is available on request. It is perhaps less odd where, on the facts of this case, the scrutineer's report is not sent to individual members but to branch and regional secretaries. Be this as it may, the words of section 52(5) are clear. The copy of the scrutineer's report or the notification "*shall be accompanied*" by an appropriate statement. Mr Thompson's letter of 27 August 2009 was not accompanied by such a statement. The Union submitted that it was sufficient that the scrutineer's report, which was reproduced in Mr Thompson's letter, referred expressly to section 52(5). I disagree. The reproduction of this paragraph complies with neither the letter nor

spirit of that sub-section. Mr Hogarth's submission fails to take into account the nature of ERS's letter to Mr Thompson of 15 June. That letter begins by setting out the ERS' report regarding the election in question but then, in its final paragraph, draws certain matters to the attention of the Union as a reminder of the steps the Union might need to take consequent upon its report. One of the steps that the Union is reminded to take is to have regard to section 52(4). In this case, the Union failed to act upon the reminder that it was given by the ERS, failed to ensure that an appropriately worded statement accompanied its notification and thereby acted in breach of section 52(5) of the 1992 Act.

68. For the above reasons I make the declaration sought by the claimant that the Union breached section 52(5) of the 1992 Act by not issuing a statement with the notification or copy of the scrutineer's report that the Union will, on request, supply any member of the Union with a copy of the report.

Complaint Five

69. Mr Dooley's fifth complaint is as follows:

"In breach of section 49(5A) (a) of the 1992 Act the union did not supply the scrutineer with a copy of the register of names and addresses of its members for the purposes of the General Secretary election 2009. The register provided contained less than 50% of the names and addresses of which the union had members".

70. Section 49(5A) of the 1992 Act provides as follows:

(5A) The trade union shall -

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) comply with any request made by the scrutineer to inspect the register.

71. Mr Atkinson, for the claimant, submitted that on the Union's own evidence the only names and addresses supplied to the ERS were of the 56,867 members to whom ballot papers were to be sent. He argued that this was a breach of section 49(5A) of the 1992 Act which required the Union's entire register of names and addresses of its members to be supplied to the scrutineer. He observed that at the relevant time the register of members contained approximately 130,000 names.
72. Mr Hogarth QC, for the Union, submitted that the Union had complied with section 49(5A) of the 1992 Act as the 73,000 members who were not balloted were not entitled to vote. Alternatively, the Union were not in breach as they were no longer members of the Union. He relied upon his earlier submission with regard to both these arguments.
73. In my decision on Mr Dooley's first complaint, I found that the Union breached section 50(1) of the 1992 Act by denying entitlement to vote to about 73,000 members whose names and addresses were not sent to the scrutineer. I also found that those who were on the membership register but recorded as being more than 26

weeks in arrears were not automatically excluded from the Union. Accordingly I reject Mr Hogarth's submissions on this complaint.

74. In my judgement, section 49(5A) requires the whole membership register to be supplied to the scrutineer whether or not certain members may legitimately be excluded from the entitlement to vote. I find that by supplying the scrutineer with a copy of only part of its membership register, the Union breached section 49(5A). I have had regard to the statement in the report of the ERS of 15 June 2009 which reads, *"A copy of the register of voters (as at the relevant date) was examined in accordance with Section 49(3). The examination took place at our own instance and did not reveal any matter that should be brought to the attention of the Trade Union"*. However, I observe that this statement refers to "the register of voters", not the register of names and addresses of the members of the trade union as should be inspected or supplied in accordance with section 49(3) and 49(5A)(a) respectively. As demonstrated by this case, the voters may not be the same as the members.
75. For the above reasons I make the declaration sought by the claimant that the Union breached section 49(5A)(a) of the 1992 Act by not supplying the scrutineer with a copy of the register of names and addresses of its members for the purposes of the General Secretary election 2009.

Complaint six

76. Mr Dooley's sixth complaint is as follows:

"The union breached section 51(3) of the 1992 Act in relation to the 2009 General Secretary Election in that not all members entitled to vote were allowed to do so without interference or constraint. In not sending ballot papers to a large number of members those members entitlement to vote was both interfered with and constrained".

77. Section 51(3) of the 1992 Act provides as follows:

Section 51 Voting

- (3) Every person who is entitled to vote at the election must -
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
 - (b) so far as is reasonably practicable, be enabled to do so without
 - (c) incurring any direct cost to himself.

78. Mr Atkinson, for the claimant, submitted that by denying the entitlement to vote in the 2009 General Secretary election to those who were more than 26 weeks in arrears with their subscriptions, the Union breached section 51(3) of the 1992 Act by not allowing them to vote without interference or constraint.
79. Mr Hogarth QC, for the Union, submitted that entitlement to vote is dealt with in section 50(1) of the 1992 Act and that it was unlikely that Parliament intended to create a second breach for the same wrong in a different section of the same Act. He argued that section 50(3) was intended to deal with a quite separate mischief, as

is apparent from previous decisions of the Certification Officer on the application of this sub-section.

80. I accept the submission of Mr Hogarth. I find that section 51(3) of the 1992 Act is not engaged on the facts of this case. Where members are wrongfully excluded from entitlement to vote, the relevant statutory obligation that has been breached is section 50(1). I find that this complaint is misconceived.
81. For the above reasons I refuse to make the declaration sought by the claimant that the Union breached section 51(3) of the 1992 Act in relation to the 2009 General Secretary election by allegedly not allowing members to vote in the General Secretary election of 2009 without interference or constraint.

Enforcement Order

82. Where I make a declaration, I am required by section 55(5A) of the 1992 Act to make an Enforcement Order unless I consider that to do so would be inappropriate. On the facts of this case, I consider that it is appropriate to make an Enforcement Order. I have found that approximately 73,000 members out of a total membership of about 130,000 were denied entitlement to vote in the 2009 General Secretary election. In my judgement, the only appropriate order to remedy the declared failure is one which nullifies the flawed election, requires that the person elected as General Secretary in the flawed election stands down forthwith and requires the holding of a further election, to be conducted in accordance with Chapter IV of Part I of the 1992 Act. I have had regard to Mr Hogarth's submission that such an order is unduly harsh on Mr Ritchie, as it will deprive him of his employment as a result of circumstances for which he was not responsible. Mr Hogarth further argued that Mr Ritchie should remain in position until the further election is held, so that the Union is not leaderless during this period. In my judgement, however, the election was so flawed as to be a nullity. Whether or not Mr Ritchie bears any responsibility for the breaches that I have upheld (a matter upon which Mr Dooley holds strong views), Mr Ritchie has no locus to continue as General Secretary under an election which is a nullity. Mr Ritchie's continued employment by the Union in a position other than General Secretary is of course a matter for the Union. As to the interregnum, the Union is in no different position to when a General Secretary resigns, retires or dies mid term, a position which is envisaged in rule 23.2.
83. At the conclusion of the hearing, Mr Hogarth indicated that the Union intended to amend its rules to make it clear beyond doubt that members who are more than 26 weeks in arrears with their contributions are not entitled to vote in elections required by section 46 of the 1992 Act. I was told that no arrangements have yet been made for such an amendment to the rules. The Union may of course make such amendment of its rules as it sees fit, so long as it abides by its rules relating to rules revision. In making this Enforcement Order, however, I must take account of the situation as it is now. I consider that a potential amendment of the rules of the Union at some time in the future is too speculative an event to cause any delay to the further election that I order must be held.
84. In ordering that the further General Secretary election be held so that its result is declared no later than Friday 29 July 2011, I have taken account of the timetable

used in the 2009 General Secretary election. In that election nominations were invited by Mr Thompson's letter of 23 February 2009 and the result was declared on 15 June 2009, a period of 16 weeks. I require the result of the further General Secretary election to be declared no later than Friday 29 July, a period of 20 weeks from the date of this decision. Should more than two candidates stand in the first election, rule 23.5 requires there to be a run-off election. I order that the result of any such run-off election be declared no later than Friday 30 September 2011. In this regard, I have taken into account the Union's timetable in the 2009 General Secretary election which allowed for a period of less than two months between the receipt of election addresses and the end of voting.

Observations

85. In deciding on the second and third of Mr Dooley's complaints, I held that it is the practice of the Union to send circulars to branch secretaries when matters of general interest to all members need to be brought to their attention. However, there was evidence that the Union also informed members of matters of general interest through its journal, the Building Worker, which is sent to all members for whom a valid address is held and for whom there is a recorded subscription within the last twelve months. The Union is aware how few members attend branch meetings and may wish to give specific consideration to the method of communication which is best suited for the intended purpose, having regard to the nature of its membership. Such consideration should include the ability to effect the communication within any statutory time period.

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

David Cockburn
The Certification Officer



Mr Steve Cottingham
OH Parsons and Partners
3rd Floor
Sovereign House
212-224 Shaftesbury Avenue
London
WC2H 8PR

Your
ref:
Our ref: CO/378T/7/2009
Date: 13 July 2011

By email and post

Dear Mr Cottingham

Dooley v UCATT

Thank you for your letter of 8 July, commenting upon the proposal of the Certification Officer to amend his order of 11 March 2011 in decision D/44-49/10-11.

I enclose herewith a copy of the comments made by Mr Dooley his letter of 8 July.

Having considered your comments and those of Mr Dooley, the Certification Officer hereby varies paragraph 7.3 and 7.4 of his order of 11 March 2011 as follows:

- "7.3 in the event of there being only two candidates in the further election, it shall be conducted so that its result is declared no later than Tuesday 13 December 2011.**
- 7.4 in the event of the further election being contested by more than two candidates and there is a requirement for a run-off election in accordance with rule 23.5, that run-off election shall be conducted so that its result is declared no later than Tuesday 7 February 2011."**

The effect of the variation is that the result of the further election, if there are only two candidates, is to be declared no later than **Tuesday 13 December 2011** and, if a run-off election is required, the result of the run-off election is to be declared no later than **Tuesday 7 February 2012**.

The Certification Officer does not consider that these are grounds for the period between the end of nominations (on 14 September 2011) and the close of the ballot to be any longer than the equivalent period in the general secretary election in 2009.

He further considers that a period of 8 weeks is sufficient to hold a run-off election in which the identify of the candidates will be ascertained by 13 December 2011, notwithstanding the Christmas period

A copy of this letter has today been sent to Mr Dooley and I also enclose a copy of the letter to Mr Dooley of today's date.

Yours sincerely



Shanta Halai
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