

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 5 OF THE TRADE UNION ACT 1984**

**IN THE MATTER OF A COMPLAINT AGAINST THE NATIONAL ASSOCIATION
OF TEACHERS IN FURTHER AND HIGHER EDUCATION**

DATE OF DECISION

12 August 1988

DECISION

Under section 5 of the Trade Union Act 1984 I am empowered to make, or to refuse to make, a declaration applied for by any person who claims that their trade union has failed to comply with one or more of the provisions of Part I of the Act. For the reasons set out below, I am unable to make the declaration sought in this case.

The Application

1. This decision concerns an application under section 5 of the Trade Union Act 1984 (the Act) made on 12 January 1988 by a member of the National Association of Teachers in Further and Higher Education (NATFHE). It relates to elections to NATFHE's National Executive Committee held during the period December 1987 to January 1988. The representations made in the application amounted to a complaint that, by not providing adequate notice that nominations were being sought, NATFHE failed to comply with section 2(9) of the Act which requires that no member should be unreasonably excluded from standing as a candidate at an election.

2. Following a previous complaint from the same applicant, on 30 June 1987 I issued three declarations against the Association (Decision D/5/87). These three declarations included one to the effect that, in relation to the 1986 election for certain members of the Association's National Executive Committee, the Association failed to comply with section 2(9) of the Act in that ordinary members were unreasonably excluded from standing as candidates at elections for National Executive Committee membership.

3. The decision noted that following my enquiries the Association had given undertakings to set in train the necessary arrangements for new elections in accordance with the requirements of the Act. The elections, which were the subject of this present complaint, arose from those undertakings.

The Facts

4. The facts were established through correspondence and a hearing. Following my decision on 30 June 1987 and the undertakings recorded in that decision, in September 1987 NATFHE sent to all branches draft amendments to rules with the purpose of altering their NEC election arrangements. A Special Rules Revision Conference was scheduled for 21 November 1987. The applicant was aware of the plans to hold this conference. The proposed new arrangements included provision for the National Executive Committee to be directly elected by the ordinary membership, and for branches to invite nominations. The proposed arrangements were duly agreed at the Conference on 21 November 1987 and, following the Conference, a circular dated 25 November 1987 and stamped URGENT was issued to all branches. The circular asked branch officials to publicise the arrangements for the election, to elect two branch returning officers, to

check membership lists for accuracy, and to invite nominations for receipt at Head Office by 9 December 1987.

5. The applicant stated that he was a long-time member of NATFHE. He said that he was currently unemployed but that from time to time he attended meetings at the Avery Hill College Branch in NATFHE's Inner London Region. At the time of the election in question this Branch was in a state of flux, owing to amalgamations and closures of certain further education colleges and polytechnics in the area. There were no elected branch officers at Avery Hill, but day-to-day business was conducted by a small Co-ordinating Group, amongst whom one member - who I shall refer to as the local representative - was responsible for liaison with NATFHE's Head Office. The local representative frankly admitted that she had no specific recollection of receiving the NATFHE circular dated 25 November 1987, but she did recall checking the membership lists and making the election arrangements as requested in the circular. She said that branch circulars for the attention of members were normally posted promptly on the union notice board in the Senior Common Room at the Avery Hill campus. She inferred that she must have seen the circular dated 25 November 1987 and, following her usual practice, would have acted upon it as soon as possible.
6. The applicant, on the other hand, stated that he knew nothing of the nomination arrangements and did not become aware of the election until January 1988, when he received a voting paper through the post. He had received copies of the NATFHE Journal during 1987 but they had given no information about the election arrangements. He had

seen no notice about nominations on the notice board in the Senior Common Room at Avery Hill.

7. In the event 79 nominations were received at NATFHE's Head Office for 35 available seats on the NEC. Voting took place between 8 and 22 January 1988.

Reasons for this decision

8. The election to which this application related was an election to which Part I of the Act applied. Section 2(9) of the Act provides:-

“No member of the trade union in question shall be unreasonably excluded from standing as a candidate at the election”.

NATFHE's revised rules were quite clear that any ordinary member would be eligible to stand in the elections, and the circular of 25 November 1987 reflected this accurately.

9. I heard submissions from both the applicant and the Association as to the facts. In the absence of any direct evidence to the contrary I think it reasonable to assume that the local representative carried out her duties conscientiously and that the relevant notice was therefore posted in the Senior Common Room at Avery Hill in accordance with her normal practice. I must conclude either that the applicant did not visit the Senior Common Room at the College during the period when the nomination notice was up (there is no reason why he should have done) or that if he did visit he failed to spot the notice. I must also take account of the fact that in issuing a branch circular to bring the nomination process to the notice of members, the Association was apparently following its normal practice; and that in the event some 79 nominations were received at the

Association's Head Office from branches up and down the country. I can therefore find nothing covert in the Association's behaviour either generally or at the Avery Hill Branch. I have found no evidence of anything that could amount to an unreasonable impediment to a member's ability to find out about the nomination process if he was so minded.

10. The applicant submitted that, regardless of what did or did not happen at the Avery Hill Branch, the nomination timetable was in any case unreasonably tight. That timetable, it should be said, was at least partly dictated by the undertakings which the Association had given in response to my earlier decision. Of course the longer the period allowed for nomination, the more likely that the applicant would have become aware of what was going on, but I must have regard to the terms of the Association's statutory duty. It is not enough to say that the Association might have done more. The question is whether what they did amounted to unreasonable exclusion. Again, the fact is that the nomination period proved sufficient to produce 79 nominations for 35 available seats. Clearly the timetable was not impossibly tight, and on the evidence I am unable to conclude that it was unreasonably so.
11. Given these findings, I do not think it is necessary for me to deal with the alternative submissions as to culpability and accidental exclusion from candidature which were cogently argued by the Association's legal adviser.
12. In the light of the evidence I am bound to conclude that insofar as the complainant in this case found himself excluded from standing as a candidate in the election for NATFHE's National Executive Committee, the exclusion was not due to any default on the part of

the Association. I am therefore unable to make the declaration which the complainant sought.