

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE  
UNDER SECTION 5 OF THE TRADE UNION ACT 1984**

**Applicant:** A PAUL  
**Trade Union:** NATIONAL AND LOCAL GOVERNMENT  
OFFICERS' ASSOCIATION

**DATE OF DECISIONS:** 30 September 1986

**INTRODUCTION**

Under section 5 of the Trade Union Act 1984 ("the Act") I am empowered 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. In making the declaration I am required to specify the provisions with which the trade union has failed to comply.

On 24 March 1986 Mr Alan Paul, then a member of the National and Local Government Officers' Association ("NALGO"), made fourteen applications to me for declarations under section 5 of the Act. Of these, I decided that four were premature at the time the application was made and that therefore I could not deal with them. Following correspondence and a hearing, my decisions on the other applications are given below.

## **DECISION ON APPLICATION (i)**

In this application Mr Paul sought a declaration from me to the effect that in allowing their Immediate Past President to retain a voting position on the Council of the Association without an election, NALGO had failed to comply with section 1 of the Act. For the reasons which follow, I am unable to make the declaration sought.

### **The Application**

1. The particular issue to which Mr Paul drew my attention in this application was the position of the Immediate Past President of NALGO in post at the time of his application (24 March 1986). Mr Paul said that the Immediate Past President had not been elected to that position. He argued that section 1 of the Act required such election because, by virtue of his office, the Immediate Past President was entitled to vote on the Council of NALGO.

### **The Facts**

2. The facts relevant to this application are not in dispute. The Immediate Past President of NALGO is, by definition, the person who has most recently vacated the office of President. Transition from the office of President to the office of Immediate Past President is automatic. The Immediate Past President is designated by NALGO's rule 66 as a member of the Council of NALGO which, for the purpose of this application, is acknowledged to be the principal executive committee of the Association. NALGO

confirmed that the Immediate Past President is by virtue of his office a voting member of the Council.

3. The President of NALGO, who is also designated a member of the Council, has hitherto been subject to an election procedure involving Branch block voting under NALGO rules 58, 59 and 60. I understand, however, that the post has normally been uncontested.

### **Reasons for not making a declaration**

4. I considered first whether the provisions of the Act apply ‘ to the post of Immediate Past President. The relevant statutory provisions are section 1(1)(a) and section 1(2). These provide:-

*“(I) ... it shall be the duty of every trade union (notwithstanding anything in its rules) to secure -*

*(a) that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 which sets out precise election requirements is satisfied;*

*(2) where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position.”*

5. In summary, the Act requires the voting members of a union’s principal executive committee to be properly elected, and also requires that people who are voting members by virtue of being office-holders’ should be properly elected to that office. NALGO queried whether section 1(2) applied in this case. They asked me to take into account that, as a matter of practice, the Immediate Past President would be likely also to be a member of the Council by virtue of direct election and, as an individual, would only vote once on

any matter. I do not think that this affects the issue that I have to consider. NALGO's rule 70 allows for the maintenance of ex-officio membership of the Council even where the person concerned has resigned their own directly elected membership (and indeed Mr Paul informed me that, unusual though it might have been, the person who was Immediate Past President at the time of his application was not at that time a directly elected member of the Council). It seems clear to me that the person who holds the title "Immediate Past President" has a right to vote on the business of the Council by virtue of his office. That right, in my view, exists whether or not the Immediate Past President happens also to be a directly elected member of the Council. I find nothing in any of the Association's rules which, in the case of a person who is a member of the Council in two capacities, restricts his entitlement to one vote only.

6. I concluded that the post of Immediate Past President was covered by section 1(2) of the Act. However, the post of Immediate Past President cannot be considered in isolation. By its very nature the post of Immediate Past President cannot be open to contest. The Immediate Past President must by definition be the person who was chosen as President the year before. The election of a President is in reality the election of a person to a two-year term of office, during the first of which the holder will be styled "President" and during the second of which he will be styled "Immediate Past President".
7. Mr Paul's complaint about the person who held the office of Immediate Past President at the time of his application (24 March 1986) is in effect about the person who was elected President in 1984. That election took place before the commencement of Part 1.

8. The Act has transitional provisions covering this situation. These are found in section 9(3):-

*“Where a voting member of the principal executive committee of a trade union was elected as such a member or as the case may be as the holder of a relevant position, at an election ending with the commencement of /Part I of the Act/ -*

*(a) section 1(1)(a) of this Act shall have effect as if it did not require section 2 of this Act to be satisfied in relation to that election.”*

9. In other words, if a person has been elected as a voting member of a principal executive committee before 1 October 1985 (when Part I came into effect), the election need not have complied with the conditions imposed by section 2 of the Act (which, sets out detailed requirements concerning elections by individual secret ballot).
10. Taking these transitional provisions into account, my conclusion is that, in the case of the person who held the Office of Immediate Past President on 24 March 1986, he held that office by virtue of the election which took place in 1984 and as a result of which he became President. In that election the requirements of the Act were satisfied simply by the fact that an election procedure of some kind was followed, albeit that it did not involve a ballot because the election was uncontested.

## **Observations**

11. Further to my remarks in paragraph 10 above I need only add that all of the requirements of Part I of the Act must be met in relation to any relevant election held after 1st October 1985.

**DECISION ON APPLICATION (ii)**

**DECLARATION**

For the reasons which follow I declare that, in relation to the 1986 election of a Junior Vice-President, NALGO, by the procedure they adopted for the purpose of obtaining nominations for election to that office, failed to comply with section 2(9) of the Act which requires that no member of a trade union should be unreasonably excluded from standing as a candidate for election.

**The Application**

1. The particular issue to which Mr Paul drew my attention in this application was the procedure for nominating candidates for the position of Junior Vice-President, one of the honorary officers of NALGO. The essence of Mr Paul's complaint was that the procedure operated so as effectively to exclude members of the Association unreasonably, contrary to section 2(9) of the Act.

**The Facts**

2. The basic facts relevant to this application are not in dispute. The Junior Vice-president is one of several honorary officers under NALGO's rule 58. The holder of the office is designated by NALGO's rule 66 as a member of the Council of NALGO which, for the purpose of this application, is acknowledged to be the principal executive committee of

the Association. NALGO confirmed that the Junior Vice-president is by virtue of his office a voting member of the Council.

3. The honorary officers are elected each year, to serve from one Annual Conference until the next. NALGO's rule 59 sets out the nomination procedure in respect of these officers. Nominations may only be submitted by the Council and by district councils. Nominations by the district councils in preparation for the 1986 elections were required to be submitted by 31 January 1986.
4. I understand that any member of NALGO is eligible to be nominated for honorary office, but NALGO have told me that it would none the less be exceptional for anyone not already sitting on the Council as a directly elected district representative to secure nomination. It seems (and the rules certainly do not contain anything to the contrary) that district councils are under no obligation to consult the branches within their district as to who to nominate. I was told that an ordinary member who wanted to seek nomination would have to persuade either a sitting member of the Council or his own branch's representative on his district council to propose him.
5. Mr Paul, for his part, admitted that he had not tried to seek nomination as an honorary officer and that he did not know of anyone else who had wished to do so but had been prevented from doing so by the procedure.



## Reasons for making the Declaration

6. I considered first whether the provisions of the Act apply to the post of Junior Vice-President. The relevant statutory provisions are section 1(1)(a) and section 1(2).

These provide:-

*“(1) ... it shall be the duty of every trade union (notwithstanding anything in its rules) to secure*

*(a) that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 [which sets out precise election requirements] is satisfied;*

*(2) Where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position.”*

7. In summary, the Act requires the voting members of a union’s principal executive committee to be properly elected, and also requires that people who are voting members by virtue of being office-holders should be properly elected to that office.
8. NALGO queried whether section 1(2) applied in this case. They asked me to take into account that, as a matter of practice, holders of the office of Junior Vice-President have invariably been sitting members of the Council in their own right and that as individuals would only vote once on any matter. I do not think that this affects the issue that I have to consider. NALGO’s rule 70 gives an ex-officio member the right to continued membership of the Council even when the person concerned has resigned their own directly elected position. NALGO also referred me to rule 62, which reads, “The election of a person as an honorary officer shall not create a vacancy on the membership of the

Council”, but I find nothing in that rule which, in the case of a person who is a member of the Council in two capacities, restricts his entitlement to one vote. It seems clear to me that the person who holds the title “Junior Vice-president” has a right to vote on the business of the Council by virtue of his office. That right, in my view, exists whether or not the Junior Vice-president happens also to be a directly elected member of the Council. I find nothing in any of the Association’s other rules which in the case of a person who is a member of the Council in two capacities, restricts his entitlement to one vote only. I therefore have no doubt that the office of Junior Vice-President of NALGO is such a position as section 1(2) refers to; and accordingly I am satisfied that the election of the Junior Vice-president of NALGO was required to be carried out in compliance with the Act.

9. The requirements of the Act include requirements concerning nomination procedure.

Section 2(9) of the Act says:-

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

I am therefore required to consider whether the procedure operated by NALGO amounted to unreasonable exclusion.

10. Even accepting that ordinary members of NALGO are not explicitly prohibited from seeking to stand for honorary office, I think it is fair to say that the procedure established by rule 59 and implemented by NALGO in the 1986 nominations for the post of Junior Vice-President weighed very heavily against the possibility of an ordinary member doing so. Neither the Council nor the district councils can be required to seek or consider

nominations from among the broad membership. There is no provision alerting the broad membership to an ordinary member's entitlement to put himself forward (in contrast to the provisions made in rule 74(a) for nominations to the directly elected places on the Council) let alone explaining how the individual member should go about it or when.

11. The provisions in the Act relating to candidature manifest a clear intention that the ordinary member should have the right to seek nomination for election, and that only reasonable limitations to the exercise of that right are acceptable. It is possible to envisage procedures which though not actually closed, may be such as effectively to preclude any real possibility that the ordinary member will put himself forward. The clear intention and efficacy of the Act cannot be allowed to be frustrated by the fact that such procedures by their very nature are unlikely to give rise, to a situation where a member wishes to seek nomination but is unable to do so. I am prepared to find against a procedure which is manifestly unreasonably exclusive even in the absence of specific evidence that it has actually excluded a would-be candidate. In this case it seems to me that the procedure for nomination to the office of Junior Vice-President is unreasonably exclusive and that NALGO, in operating the procedure earlier this year, failed to comply with section 2(9) of the Act.

**Steps to be taken to remedy the declared failure**

12. Section 6(1) of the Act requires me, when I make a declaration, to specify any steps which have been taken, or which a union has agreed to take, with a view to remedying the declared failure or to securing that a failure of the same, or any similar kind, does not arise. In this regard the Association assured me that administrative changes would be

made to widen the nomination procedure, and in particular to fully involve all of the branches. These changes would not require amendments to the rules, and could be made quite quickly.

### **Observations**

13. As already indicated, I found against the Association in this case because I considered that this particular nomination procedure was unreasonably exclusive. I note the intention to take practical administrative steps which will meet the shortcomings in the present system.

**DECISION ON APPLICATION (iii)**

**DECLARATION**

For the reasons which follow, I declare that NALGO has failed to comply with section 4(1)(a) of the Act in that they have failed to compile a register of the names and proper addresses of their members.

**The Application**

1. The particular issue to which Mr Paul drew my attention in this application was the duty of NALGO to compile a register of their members' names and proper addresses, as section 4(1)(a) of the Act requires. He argued that they had failed to do so.

**The Facts**

2. NALGO did not seek to dispute that they have no single centrally maintained register of their members' names and proper addresses. They did, however, ask me to have regard to the fact that they had on 5 February 1985 advised all their branches to establish a register of their members' names and home addresses.
3. At the hearing NALGO acknowledged that they could not say categorically that all their branches had implemented that advice. Indeed they went on to give an estimate that perhaps only 60% of branches had a record as complete as was reasonably practicable.

They said, however, that every branch would have some kind of record, however incomplete. They assured me that the head office of the Association would have, through rule 130, access as of right to such records as there were, and that the right was effective because of the sanctions which could be used against branches which failed to carry out the policy of the Association.

4. For his part, Mr Paul stressed the autonomous nature of NALGO branches and argued that the advice given by the Association to the branches fell well short of the requirement of section 4 of the Act.

#### **Reasons for making the Declaration**

5. Section 4(1)(a) requires, so far as is material to this application, that -

*“It shall be the duty of every trade union*

*(a) to compile, by the date appointed under section 22(3) of this Act ....  
a register of the names and proper addresses of its members;”*

The date appointed under section 22(3) for completion of registers was 1 October 1985.

6. For the purposes of this decision I do not need to determine the question whether the Act requires the keeping of a single centrally located register. During the course of my enquiries NALGO conceded that probably only about 60% of their branches could be said to have records as complete as the Act requires; and I agree with Mr Paul that their advice to branches in this respect falls far short of what is necessary. I have therefore no alternative but to find that the Union have failed to comply with section 4(1)(a) of the Act.

### **Steps to be taken to remedy the declared failure**

7. Section 6(1) of the Act requires me, when I make a declaration, to specify any steps which have been taken, or which a union has agreed to take, with a view to remedying the declared failure or to securing that a failure of the same, or any similar kind, does not arise. I discussed with the Association's officials the consequences of my declaration that they have failed to comply with the Act's requirement to keep a register of members' names and proper addresses. The Association assured me that plans were in train for the introduction of new computerised systems which would provide for a register of members' names and addresses as required by the Act. In addition, the Association's officials undertook to give stronger advice to branches about the necessity to keep records.

### **Observations**

8. This is the first declaration I have made concerning the establishment of a register of members' names and addresses. As I have said above, unions were required to establish such records by 1 October 1985. I appreciate that this requirement can involve a major task. Nevertheless, unions have had fair warning of the requirements and I am bound to say that the Association should have been in a position to comply with the law by now. They should therefore take steps to do so as a matter of urgency.

## **DECISION ON APPLICATIONS (iv) AND (v)**

In these applications Mr Paul sought declarations from me in respect of the Chairpersons of the National Service Conditions Committees of NALGO, and of certain other members of those committees, to the effect that the Association had failed to secure that they held their positions as voting members of the Council by having been elected in accordance with sections 1 and 2 of the Act. For the reasons which follow, I am unable to make the declarations sought.

### **The Applications**

1. The particular issues to which Mr Paul drew my attention in these two applications were the positions of the Chairpersons and certain other members of the National Service Conditions Committees of NALGO as ex-officio or co-opted members of the Council of the Association. Mr Paul said that these persons were voting members of the Council but that they had not been elected into those positions as section 1 of the Act required. Given the similarity of the issues raised in these two applications, I decided that it would be appropriate to deal with them together.

### **The Facts**

2. There are eight National Service Conditions Committees in NALGO. They are established by the Council under NALGO's rule 118 and cover eight membership groups by industry or service. The membership of each committee is selected annually and, as I understand



it, take up their appointments immediately following the Annual Conference. Under rule 1.18, each committee's first duty is to elect a Chairperson from among its members.

- 3 The Council of NALGO, which for the purpose of these applications is acknowledged to be the Association's principal executive committee, draws its members from several sources. Thus the Chairpersons of the National Service Conditions Committees, by virtue of holding those positions, become members of the Council. In certain circumstances, one or two members of a Committee may also be appointed to serve on the Council, to ensure adequate representation of all groups. NALGO told me that when necessary the arrangements for selecting members for co-option took place within the committee in question. Nominations were sought and in the event that more were received than the number of available appointments, the committee members voted, either by ballot or by show of hands. NALGO assured me that the process for selecting a Chairperson was materially the same. Mr Paul did not seek to dispute any of this.
  
4. The Association acknowledged that when Mr Paul made his applications (24 March 1986) there were on the Council 2 members who had been co-opted there from National Service Conditions Committees. These two members as well as the eight Chairpersons of the Committees holding office on 24 March 1986 were selected before 1 October 1985 when Part I of the Act came into operation.

## Reasons for not making a declaration

5. I have no doubt that the Act is intended to apply to ex-officio or co-opted members of a principal executive committee of a union if they are voting members of that committee.

Section 1(1) says so far as is material that -

*“it shall be the duty of every trade union ... to secure -*

- (a) that every person who is a voting member of the principal executive committee of the union holds that position by virtue of having been elected as such a member at an election in relation to which section 2 of this Act has been satisfied;”*

Section 1(2) says -

*“Where a person is a voting member of the principal executive committee of a trade union by virtue of holding some other position in that union, subsection (1) above shall apply as if references to a voting member of that committee were references to the holder of that other position.”*

It seems to me that the Chairpersons of the National Service Conditions Committees are covered by the definition in section 1(2) and are therefore subject to the requirements of section 1(1) in so far as their election as Chairpersons is concerned. The selection of other members of the Committees to sit on the principal executive committee is directly covered by section 1(1).

6. However, my decision on these two applications is determined by the transitional provisions of the Act. Section 9(3) says -

*“Where a voting member of the principal executive committee of a trade union was elected as such a member, or as the case may be as the holder of a relevant position [a reference to those persons to whom section 1(2) applies], at an election held within*

*the period of five years ending with the commencement of [Part I of the Act 7] -*

*(a) section 1(1)(a) of this Act shall have effect as if it did not require section 2 of this Act to be satisfied in relation to that election;”*

I take this to mean that the particular conditions set by section 2 in relation to elections under Part I of the Act need not be complied with as long as some form of election took place before Part I of the Act came into force on 1 October 1985 but within 5 years of that date.

7. As has been established, the Chairpersons and co-opted members of the National Service Conditions Committees sitting as members of the Council on the date that Mr Paul made his application had achieved their positions before 1 October 1985 but within 5 years of that date. Accordingly, the transitional provision applies if the processes by which they achieved those positions can properly be described as elections.
  
8. I take “election” in this context to mean a process involving choice by nomination and, where there is more than one nomination, by vote. Against this definition I would find it difficult to say that the processes described to me for the selection of Chairpersons and co-opted members from the National Service Conditions Committees did not constitute elections. These processes may well appear limited viewed in relation to the requirements of section 2 of the Act. But I am precluded from considering those requirements in these two cases by the transitional provision of section 9(3). I am therefore unable to make the declarations sought.

## **Observations**

9. These applications referred to persons who had taken up office before 1 October 1985 (the date when Part I of the Act came into operation). I think it important to add that the transitional provision of section 9(3) of the Act has no effect in relation to any Chairpersons and members of the National Service Conditions Committees currently on NALGO's Council.

## DECISION ON APPLICATION (vi)

In this application Mr Paul sought a declaration from me to the effect that in failing to secure that the members of the Association's National Service Conditions Committees had been properly elected, NALGO had not complied with section 1 of the Act. For the reasons which follow I am unable to make the declaration sought.

### **The Application**

1. The particular issue to which Mr Paul drew my attention in this application was the position of the members of the National Service Conditions Committees of NALGO. He argued that Part I of the Act required these members to be elected in accordance with sections 1 and 2, and that NALGO had failed to secure this.

### **The Facts**

2. Under NALGO rule 64 the Association places the management of its affairs in the hands of the Council and, by rule 65, the Council is vested with full power and authority to act on behalf of the Association, subject to NALGO's rules and policy. Among its specific functions the Council is required by rule 118 to establish National Service Conditions Committees for each membership group. Rule 119 is of particular importance as it sets out the scope, functions and powers of these Committees. It appears to me that under this rule it is for the Council to formulate regulations for the exercise of powers by these

committees, reserving to itself certain broad questions of policy, organisation and finance.

The rule then gives emergency powers to the Committees within their delegated remit.

### **Reasons for not making a declaration**

3. Part I of the Act does not apply across the board to all councils and committees of a trade union. It applies to the voting members of the principal executive committee which it defines in section 1(5) as follows:-

*“‘principal executive committee’, in relation to a trade union, means the principal committee of the trade union exercising executive functions, by whatever name it is known.”*

4. Mr Paul argued that the eight National Service Conditions Committees of NALGO exercise executive functions on behalf of the Association. That may be so, but it seems to me that such functions as they have are derived from and subordinate to another body which is undoubtedly carrying out substantial executive functions within NALGO. That body is the Council of NALGO. In such circumstances, I cannot accept that any of the National Service Conditions Committees can properly be considered to be the principal committee of NALGO exercising executive functions. Accordingly I am unable to make the declaration sought.

### **DECISION ON APPLICATIONS (vii) and (viii)**

These two applications contained complaints of failure on the part of NALGO to comply with the provisions of Part I of the Act as far as nomination procedures were concerned. For the purposes of this decision I decided to take these two complaints together. For the reasons which follow I am unable to make the declarations sought.

#### **The Applications**

Mr Paul argued that -

- (a) by restricting the right to make nominations of candidates for the 1986 elections to branches, NALGO failed to comply with section 2(9) of the Act which requires that no member should be unreasonably excluded from standing as a candidate; and
- (b) in requiring nominations to be certified by the Chairperson and secretary of the nominating branch before being sent forward, NALGO failed to comply with the same provision.

#### **The Facts**

1. The complaints contained in these applications relate to the 1986 elections of district representatives to the Council, which body is, for the purpose of these applications, accepted as being the principal executive committee of NALGO. The procedure for such

elections is set down in NALGO's rules 78 to 81 and supplemented by regulations approved by the Council.

2. As regards the nomination procedure for these elections, the facts on complaint (a) are not in dispute. The position is that, in accordance with Rule 74, it is open to any member of NALGO to seek nomination within his district but that to secure nomination he must persuade a branch (not necessarily the member's own branch) within that district to propose him. This process involves a vote of those attending a branch meeting. The essence of Mr Paul's complaint is that branches vary considerably in size and that therefore the nomination procedure becomes unfair.
  
3. As regards complaint (b), each nomination made by a branch is required to be submitted to the General Secretary on an official form. The nomination is required to be certified by the Chairperson and the secretary of the nominating branch. Mr Paul says that this part of the process can lead to delay and thereby to failure to register the nomination in due time. The Association claimed that there was no evidence that any member's nomination had been lost in this way nor did Mr Paul produce any evidence that any nominations had gone astray during the 1986 elections. NALGO also said that the rules do not prevent a nominee submitting his nomination himself, duly certified.

**Reasons for not making the declaration sought**

4. As I said in relation to application (ii), section 2(9) of the Act establishes a member's right to stand as a candidate in an election to which Part I applies, subject only to exclusions that are reasonable. Not all exclusions are unreasonable. I find nothing inherently wrong



(and nor, I should say, does Mr Paul) with the idea that a member should be required to obtain a certain level of support from his colleagues as a pre-condition of standing for election. Mr Paul's complaint about NALGO's system is, as I understand it, not that it requires such a level of support but that it is arbitrary as to what that level is because of the variations in the sizes of branches. He argued that while in one branch it is possible to gain nomination with the support of only a handful of people, in another it is possible to fail in spite of having the support of a much larger number.

5. In short, Mr Paul argued that the procedure was arbitrary and that what is arbitrary is unreasonable. I have taken account, however, of the fact that no member is actually excluded from seeking nomination and none is restricted to seeking nomination in his own branch. Indeed it is clear from Mr Paul's application (ix) that members can and do obtain nominations from a number of branches. Having carefully considered the arguments, I have to say that I am not persuaded that the disparity in the size of the branches within NALGO has had the effect of making the nomination procedure arbitrary and unreasonable. It is open to each candidate to choose his forum for seeking nomination. In the absence of any other evidence to persuade me that the system operated with unreasonable effect I am not satisfied that in the 1986 elections members were unreasonably excluded from standing.
6. As regards the certification of nomination forms, I find nothing in the requirement of certification that excludes members from candidature. In the absence of any evidence that during the 1986 elections a nomination was actually excluded by reason of undue delay in certification I am not persuaded that the requirement operated in practice as an

exclusion. I do not think it right to base a finding on an assumption that Chairpersons of branches or their secretaries might act maliciously or incompetently in carrying out their duties. I prefer to think it right to assume, unless and until the contrary is shown, that they will act with due diligence. I am therefore not satisfied that in requiring the certification of nomination forms NALGO failed to comply with section 2(9) of the Act, which requires that candidates should not be unreasonably excluded from standing for election.

## DECISION ON APPLICATION (ix)

### **The Application**

1. In this application Mr Paul sought a declaration from me to the effect that, in producing a voting paper which listed the branches supporting each candidate, NALGO failed to comply with section 2(6)(a) of the Act which requires that members must be allowed to vote without interference from or constraint imposed by the union or any of its members, officials or employees. For the reasons which follow, I am unable to make the declaration sought.

### **The Facts**

2. Mr Paul's complaint concerned the material sent to voters with their voting papers for the 1986 elections. The Association did not dispute that this consisted of a list of the candidates and their branches and (the substance of Mr Paul's complaint), for each candidate a list of all the branches that had nominated him. Mr Paul asked me to conclude that the inclusion of this material constituted a failure by the Association to comply with section 2(6)(a) of the Act.

### **Reasons for not making a declaration**

3. I am required to consider whether these facts constitute a breach of section 2(6)(a) which says -

*“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;”*

As I have said in a previous decision relating to this provision “The purpose of section 2(6)(a) is to ensure that members are not subject to any pressure which would have the effect of preventing them from freely exercising their right to vote. In the past my predecessors as Certification Officer have decided, and I agree, that the right to allow a person to vote without interference or constraint is intended to exclude such conduct as would intimidate or put a member in fear of voting, or amount to physical interference.”

I am satisfied that the inclusion of the material brought to my attention by Mr Paul falls a long way short of such conduct.

**DECISION ON APPLICATION (x)**

**DECLARATION**

For the reasons which follow I declare that in relation to the election in 1986 of representatives to sit on the Council of NALGO, the Association failed to comply with section 2(6)(b) of the Act in that they failed to secure that every person who was entitled to vote at the election was so far as reasonably practicable enabled to do so without incurring any direct cost to himself.

**The Application**

1. In this application Mr Paul complained that he (and no doubt others) incurred the cost of postage in order to return his voting paper to the District Organisation Officer.

**The Facts**

2. NALGO's rules, and the information which they supplied in the course of my enquiries, show that the Association puts the responsibility for returning a voting paper to the District Organisation Officer on the individual member. Any postage on return envelopes has to be paid by the voter. There is an alternative method of returning voting papers which involves collection at workplaces and forwarding in bulk by branch representatives to the District Officers. Mr Paul suggested that in outlying locations with only one member the only available option was direct postal return.

3. There was a difference of opinion as to the actual level of direct postal return by individuals, but the Association appeared to concede that about 10% of votes might be returned this way, the cost being borne by the individual concerned.

### **Reasons for making the Declaration**

4. It is clear, and I do not think the Association has sought to deny, that in the 1986 elections for Council members, Mr Paul and probably a number of other members of NALGO did incur the cost of posting their voting papers to their District Organisation Officers.

Section 2(6)(b) of the Act says -

*“Every person who is entitled to vote at the election must -*

*(b) so far as reasonably practicable be enabled to vote without incurring any direct cost to himself.”*

5. The Association argued, as I understand it, that section 2(6)(b) only requires there to be a means of returning a voting paper without cost. As long as a member has available to him one such possibility, the union will have discharged its duty and it becomes a matter of choice for the member whether he takes that possibility or opts for another means. The Association argued that they did all that was necessary by providing the possibility of bulk return through the branch.
6. I cannot accept the Association’s argument. Section 2(6)(b) provides that whatever the opportunity, or opportunities, to vote provided by a union, they have a duty in relation to each and every one to ensure, so far as is reasonably practicable, that a member is enabled to take that opportunity without incurring direct cost. I find that NALGO did present its

members with the opportunity to vote by post in the 1986 elections and that it did not do all that was reasonably practicable to ensure that when Mr Paul took that opportunity he incurred no direct cost to himself.

**Steps to be taken to remedy the declared failure**

7. Section 6(1) of the Act requires me, when I make a declaration to specify any steps which have been taken, or which a union has agreed to take, with a view to remedying the declared failure or to securing that a failure of the same, or any similar kind, does not arise. In this connection the Association have assured me that they will take administrative steps in time for next year's elections to ensure that whatever opportunities are given to members to vote, all members will be able to vote at no cost to themselves.