D/9- 18/12-13

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

Mr M Dooley

v

Union of Construction, Allied Trades and Technicians (No 3)

Date of Decisions **9 July 2012**

DECISIONS

Upon application by Mr Dooley ("the claimant") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I refuse to make the declaration sought by Mr Dooley that on or around 15 February 2012, the Union of Construction, Allied Trades and Technicians (UCATT) breached rule 26.5 of its rules by allegedly failing without reasonable cause to adhere to the start time of 10.00 am contained within the summons sent to Mr. Dooley on the 20 December 2011 regarding the disciplinary proceedings against him.

2. I refuse to make the declaration sought by Mr Dooley that UCATT breached rule 26.8 of its rules by allegedly not giving Mr. Dooley a full and fair disciplinary hearing at the time and place stated in the notice of hearing, in that the Executive Committee took the decision to hear the charges against him in his absence and allegedly did not allow him the opportunity to take part in the proceedings.

3. I refuse to make the declaration sought by Mr Dooley that on 15 February 2012, UCATT breached rule 26.10 of its rules because the Executive Council, as the competent authority, proceeded with the disciplinary in his absence, rather than use its power to adjourn the disciplinary hearing in part or in whole.

4. I refuse to make the declaration sought by Mr Dooley that on 15 February UCATT breached rule 26.11 of its rules when it failed to use its discretion to adjourn the disciplinary hearing in whole or in part that day.

5. I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 UCATT breached rule 27.8 of its rules by its General Council allegedly failing to meet to consider Mr Dooley's appeal.

6. I refuse to make the declaration sought by Mr Dooley that on 20 March 2012 UCATT breached rule 27.2 of its rules when the General Council allegedly accepted new

evidence which was not before the body which made the original decision to expel him on 15 March 2012.

7. I refuse to make the declaration sought by Mr Dooley that on or around 20 March 2012 UCATT breached rule 27.3 of its rules because the General Council allegedly did not set out clear reasons for its decision not to accept Mr Dooley's appeal.

8. I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 and 20 March 2012 UCATT breached rule 25.1(i), 26.13 and 26.14 by finding the complaint against him proved, it being alleged that on the evidence before it, no reasonable tribunal would have upheld the charge that Mr Dooley had acted contrary to rule 25.1(i).

9. I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 and 20 March 2012 UCATT breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, it being alleged that no reasonable tribunal would have determined that it was proportionate to expel the Applicant for the conduct complained of.

10. I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 and 20 March 2012 UCATT breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, it being alleged that the tribunal hearing the charge against him was allegedly biased or had the appearance of bias.

REASONS

1. Mr Dooley was a member of the Union of Construction, Allied Trades and Technicians ("the Union" or "UCATT"). By an application received at the Certification Office on 28 March 2012, Mr Dooley alleged a breach of various rules of the Union relating to his expulsion from the Union. I later granted leave for further alleged breaches of rule to be added to his complaint. Following correspondence with the claimant, 10 complaints were confirmed by him in the following terms:

> **Complaint 1**
> On 15 February 2012, the union breached rule 26.5 of its rules by failing without reasonable cause to adhere to the start time of 10.00 am, as specified by rule, and contained within the summons sent to Mr. Dooley on the 20 December 2011 regarding the disciplinary proceedings against him.
>
> **Complaint 2**
> On 15 February 2012, the union breached rule 26.8 of its rules by not giving Mr. Dooley a full and fair disciplinary hearing in that the Executive Committee took the decision to hear the charges against him in his absence and did not allow him the opportunity to take part in the proceedings. Mr. Dooley attended the disciplinary hearing on time (10.00 am) but had to leave to return to work as the hearing did not start on the time determined in the summons issued under rule. No reasonable cause for the delay was given nor was there any indication given to Mr. Dooley when the disciplinary hearing would proceed after the summons time.
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> **Complaint 3**
> On 15 February 2012, the union breached rule 26.10 of its rules because the competent authority proceeded with the disciplinary in the absence of Mr. Dooley rather than use their power to adjourn the disciplinary hearing against him in part or in whole so as to allow Mr. Dooley to answer the charge against him as was his right under rule 26.8. The competent

authority proceeded to a full disciplinary hearing despite Mr. Dooley's valid reason for requesting an adjournment, namely that he had attended the hearing on time but had to leave to return to work because the hearing did not start as summons, nor was he informed when it was likely to start after the summons time of 10.00 am.

Complaint 4
On 15 February 2012 the union breached rule 26.11 when it failed to justifiably use its discretion to adjourn the disciplinary hearing in whole or in part that day, despite Mr. Dooley's reasonable reason for not being able to wait until the competent authority were prepared to allow him to attend the hearing after the scheduled time 10.00 am.

Complaint 5
The union breached rule 27.8 by its General Council failing to meet to consider Mr Dooley's appeal because it would not have had sufficient evidence to consider the EC decision without Mr Dooley's evidence from the disciplinary hearing on 15 February 2012.

Complaint 6
On the 20 March 2012 the union breached rule 27.2 when the General Council accepted new evidence which was not before the body which made the original decision to expel Michael Dooley on the 15 of March 2012. The General Secretary admitted new evidence to the General Council for its consideration. The new evidence was contained in a letter dated the 19th of March 2012 from the General Secretary to Mr. Dooley

Complaint 7
The union breached rule 27.3 on 20 March 2012 because the General Council dealing with Mr Dooley's appeal did not set out clear reasons on its decision to not accept Mr Dooley's appeal

Complaint 8
On 15 February 2012 and 20 March 2012 the union breached rule 25.1(i) and 26.13 and 26.14 by finding the complaint proved, notwithstanding the fact that on the evidence before it, no reasonable tribunal would have found a charge proved that Mr Dooley had acted contrary to rule 25.1(i).

Complaint 9
On 15 February 2012 and 20 March 2012 the union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, in that it is a principle of natural justice that the punishment for any charge, as determined in accordance with rule 26.14, should be proportionate to the crime, and it is contended that no reasonable tribunal would have determined that it was proportionate to expel the Applicant for the conduct complained of.

Complaint 10
On 15 February 2012 and 20 March 2012 the union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, in that it is a principle of natural justice the tribunal hearing a charge must be impartial and not be biased, or have the appearance of bias. The reasons for which Mr Dooley contends the Tribunal are biased, or appear to be biased, are set out in the Application Notice

2. I investigated the alleged breaches in correspondence and a hearing took place on Wednesday 23 May and Thursday 24 May 2012.

3. At the hearing, Mr Dooley was represented by Mr Jody Atkinson of counsel. Evidence for Mr Dooley was given by himself, Mr Cousins and Mr Bentham, who each provided a written witness statement. A further witness statement was tendered on Mr Dooley's behalf by Mr Brough. The Union was represented by Mr Oliver Segal QC instructed by OH Parsons and Partners. Evidence for the union was given by Mr

Steve Murphy (UCATT General Secretary), Mr Chris Murphy (Executive Council member) and Mr John Thompson (UCATT President) who each produced a written witness statement. A further witness statement on the Union's behalf was tendered by Mr James Wood. There was in evidence a 113 page bundle of documents as supplied by the parties for use at the hearing, together with the rules of the Union and a YouTube video clip. At a telephone Case Management Discussion on 19 April 2012, I directed that this application was to be heard together with the case of Dooley v UCATT (No 2) (see paragraph 4) for which a separate bundle was in evidence. There was a joint bundle of authorities for Dooley (No 2) and Dooley (No 3) and the witness statements related to both Dooley (No 2) and Dooley (No 3). I gave leave to Mr Dooley and to the Union at the hearing to add further documents to the bundle in Dooley (No2). Mr Atkinson and Mr Segal provided lengthy skeleton arguments covering both Dooley (No 2) and Dooley (No 3).

The Issues and Some Context

4. Mr Dooley was a member and Regional Officer of UCATT. He stood unsuccessfully for election as General Secretary in 2004 and 2009. Arising out of the 2009 election he commenced a complaint to me (**Dooley v UCATT (No.1) D/44-49/10-11**). On 20 January 2011, Mr Dooley was dismissed as a Regional Officer. On 11 March 2011, I gave my Decision in **Dooley (No.1)**. I found that the 2009 election had been conducted in breach of the 1992 Act and ordered that a further election be held. Mr Dooley and Mr Ritchie (the incumbent General Secretary) put themselves forward, with others, as candidates. At a meeting of the Selection Committee of the Union on 26 October 2011 both Mr Dooley and Mr Ritchie were excluded as candidates in that election. Mr Dooley commenced an action (**Dooley (No.2)**) to challenge the exclusion of himself and Mr Ritchie as being in breach of statute and the exclusion of himself as being in breach of the rules of the Union. Subsequently, on or about 27 February 2012, Mr Dooley was expelled as a member of the Union. He then made this complaint to me, namely that his expulsion was in breach of the rules. I refer to this case as **Dooley (No.3)**.

Findings of Fact

5. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows.

6. Mr Dooley has been a member of UCATT from time to time for over 35 years. He has studied at Ruskin College, Oxford and has a Law Degree from Brunel University. Most recently, Mr Dooley joined the Union in 1998. On 3 May 1999 he became an employee of the Union, as a Regional Officer based in London. Mr Dooley stood for election as General Secretary in 2004 and 2009. On both occasions he was defeated by Mr Ritchie. Mr Dooley was dismissed from his employment by the Union for gross misconduct by a letter dated 26 January 2011. On 4 November 2011 an Employment Tribunal found that dismissal to have been unfair but also found that Mr Dooley had contributed to his dismissal by 50%. That decision is now subject to an appeal and cross appeal to the Employment Appeal Tribunal, both of which are outstanding at the date of this decision. Mr Dooley was informed of his expulsion as a member of the Union by a letter dated 27 February 2012, following a hearing of the EC on 15 February.

7. In this application, Mr Dooley complains that he was unlawfully expelled as a member of UCATT on 15 February 2012. Mr Atkinson stated that Mr Dooley's principal complaint is that the decision to expel him was one to which no reasonable union could have come on the facts of this case. In addition, Mr Dooley complains of a breach of a number of rules of the Union regarding the procedure by which he was expelled.

8. It is a part of Mr Dooley's case that his expulsion as a member on 15 February 2012 cannot be viewed in isolation. He maintains that there was a hidden agenda, the essential background being that he had twice stood unsuccessfully for the position of General Secretary and that he is regarded as a threat by those with a vested interest in the continuation of the status quo within the Union. He maintains that his expulsion must be seen alongside (a) his dismissal as a Regional Official in January 2011, (b) his successful application to me in 2011, which caused there to be a re-run of the General Secretary election of 2009, (c) his exclusion from being a candidate in that re-run election in October 2011 and (d) his successful claim for unfair dismissal in November 2011.

9. The Union maintains that the circumstances set out above are irrelevant to this application and that Mr Dooley was expelled from the Union for his conduct on 2 November 2011 and that conduct alone.

10. The events of Wednesday 2 November 2011 are not in dispute. Mr Dooley attended a demonstration or protest of electricians at a building site in or near Cannon Street, London. After some disturbances in which the police were involved, Mr Dooley found himself in a group of about 60 protestors who reconvened in Cannon Street Station. The group was addressed by speakers using a megaphone. Behind the speakers was a banner which commemorated the Shrewsbury Pickets of 1972. Mr Dooley was called upon to address those present as the person who had been barred from standing in the UCATT 2011 General Secretary election. Present in the crowd were not only members of UCATT, but members of other unions, including Unite and the RMT. Unite also has members in the construction industry. Mr Dooley addressed the crowd through a megaphone. Unknown to Mr Dooley, a member of the crowd, Mr Cousins, filmed his speech and later posted it on You Tube. Mr Dooley's speech remained audible on this video clip for some 2 weeks during which time it attracted between 100 – 150 hits. Mr Dooley's statement in the present case contains the following transcript of what can be heard on the video clip.

> "I have a message for the selection panel who refused to accept my candidature, I have a message for the UCATT hierarchy ... go and fuck yourselves ... I tell you, you can go and fuck yourselves as far as I am concerned. I will continue to fight this and if it is necessary I will go for a High Court injunction, we will fight this, we will change UCATT, we will change the building industry, we will ensure that the building employers know building workers are out there, that there is a leadership that is going to take this union. We are going to win and we are going to change the building industry ... If it is not done today, it will be done next month, next year but it will be done, the message is quite clear we will not back down, we are not going away ... There is a movement, a movement of which I belong to, they are called socialists, they are called socialist and I am proud to be part of it, I would urge every building worker that is out there to start looking at the political situation they find themselves in .. the situation is, that a lot of unions and a lot of their leadership do not want this type of activity, they want a comfortable lifestyle, they have been having that too long in UCATT and that is going to change and I will do my best to

change that and I hope that every single one of you when that happens you will be there by my side and together we will change the building industry, thank you."

11. On 4 November 2011 an Employment Tribunal found that Mr Dooley had been unfairly dismissed as a Regional Official of the Union in January 2011.

12. On 19 November 2011, a Mr Renshaw made a written complaint to the Union about Mr Dooley's conduct on 2 November. Mr Renshaw is a Branch Secretary in Flint and was a person convicted as one of the Shrewsbury pickets. He wished to bring a formal charge against Mr Dooley under rule 25.1 of the rules of the Union on the grounds that he believed Mr Dooley had acted contrary to the interests of the Union. He stated that making such derogatory public statements about UCATT and its hierarchy in a public place in front of a Shrewsbury Picket banner (on which he believed his face was depicted) was clearly against the interests of the Union and could prejudice the case of the Shrewsbury pickets who were seeking to get their case to the Court of Appeal.

13. On 28 November 2011, Mr Guy wrote to Mr Dooley formally putting a charge to him. Mr Dooley was charged under rule 25.1(i), which provides that *"By his or her conduct, acts against the interest of the Union"*. Mr Guy was then the Acting General Secretary or General Secretary pro tem.

14. On 13 December 2011 the result of the General Secretary election was declared. Mr Steve Murphy was elected as General Secretary, to take up office from 1 January 2012.

15. On 20 December 2011 Mr Guy wrote to Mr Dooley informing him of the date and time of his disciplinary hearing. The letter had certain words in bold and underlined as follows:

> "... This is to advise you that the Executive Council will be hearing the charges made against you **on Wednesday 15th February, 2012 at General Office, commencing at 10am and you are required to attend. I must add that should you decide not to attend the hearing, the charges will be heard in your absence.**"

16. On 8 February 2012 Mr Murphy, as the newly elected General Secretary, wrote to Mr Dooley, in the absence of any response to Mr Guy's letter. He confirmed that the charges would be heard on 15 February 2012 at 10am and reiterated that if Mr Dooley decided not to attend, the charges would be heard in his absence.

17. On 15 February 2012 the Executive Council ("the EC") was convened. It normally meets for one day to transact its usual business. However, on this occasion, it had been convened for two days as it had to deal with Mr Dooley's case. Mr Dooley's case was to be heard on the first day. It was anticipated that the hearing would take between half a day and one day, having regard to the EC's previous experience of the conduct of Mr Dooley at hearings. Mr Chris Murphy, an EC member, observed in his evidence to me that Mr Dooley had previously been both articulate in expressing his views and evasive when answering questions. The Union had also been criticised by the Employment Tribunal for continuing the first day of Mr Dooley's dismissal hearing until 9.15pm. Mr Renshaw was summoned down from Flint for the

hearing. Mr Thompson, the Chair of the EC and two other EC members were unable to be present that day but I was informed that an EC comprised of the remaining six members was quorate. Mr Chris Murphy was elected to chair the meeting in Mr Thompson's absence. By the time the EC was due to start at 10am on 15 February, two of its members who had been expected to attend, Mr Chris Murphy and Mr Gamble had not yet arrived.

18. Mr Dooley had only recently got a start on a new job and was balancing his wish to attend the disciplinary hearing and the interests of his job. He went to the building site in Hammersmith where he was working at about 7.30am as usual. He gave evidence that he left work by car at around 9.30am and arrived at the Union's head offices in Clapham at about 9.50am in his working clothes. In his Particulars of Claim, Mr Dooley states that he had told his new employer that he would be back on site by 11am, or shortly thereafter. I find that to do so with any confidence at that time of day Mr Dooley would have had to leave the hearing at or shortly after 10.30am. Mr Dooley gave evidence that his intention that morning was to attempt to persuade Mr Renshaw to withdraw his charge but, if unsuccessful, to ask him a series of pre-prepared questions which, amongst other things, challenged Mr Renshaw's good faith in bringing the charge. The hearing was also to view the video clip (with at least a possibility of technical hitches), to hear from and question Mr Renshaw and hear Mr Dooley's explanation of his conduct and/or mitigation. I find that, as a person with some experience of disciplinary hearings, Mr Dooley could not realistically have anticipated that his hearing would have been finished by about 10.30am.

19. At about 10.10 or 10.15am Mr Steve Murphy went down from his office to tell Mr Dooley that two members of the EC had not turned up. As he had not received a phone call to say that they were ill, he assumed that they were stuck on the tube or in traffic. Mr Dooley told Mr Steve Murphy about his new job in Hammersmith and said that he could not hang around all day. Shortly afterwards, Mr Dooley telephoned his place of work and spoke to the son of the site manager who also worked there. He was told that the site manager had unexpectedly been on site since Mr Dooley had left and was "pissed off" that Mr Dooley was not there. Shortly afterwards, Mr Dooley left the Union office to return to work without telling Mr Steve Murphy what he was doing.

20. The members of the EC who had been delayed had both arrived by about 10.30am. At about 11am Mr Steve Murphy received a telephone call from Mr Dooley who said that he would try and get cover to enable him to come to the hearing later that day, after lunch. Mr Steve Murphy informed him that the hearing may go ahead without him if he did not attend. Mr Dooley did not then request a postponement of the hearing to another day. Mr Murphy reported this conversation to the EC which agreed to give Mr Dooley some more time. At about 12 noon Mr Dooley again telephoned the Union. There is a dispute as to whether he spoke directly to Mr Murphy, as Mr Dooley contends, or to a senior member of the general office staff, Ms Sheila Raithatha, as Mr Murphy maintains. I prefer Mr Murphy's firm recollection on this point. I find that Mr Dooley informed Ms Raithatha that he could not get cover that afternoon and that he would not therefore be attending the hearing. I find that Mr Dooley did not ask for his hearing to be postponed to another day in this telephone conversation. Having received this information, Mr Steve Murphy obtained

advice from the Union's solicitors about whether the hearing could proceed in Mr Dooley's absence. He was told that there was no impediment to so doing.

21. The EC then met to consider the case against Mr Dooley. They viewed the video clip, heard from Mr Renshaw and deliberated. They were unanimous that Mr Dooley's conduct amounted to "acts against the interests of the Union", within the meaning of rule 25.1 of the rules of the Union. Mr Chris Murphy gave evidence that the EC considered not only what Mr Dooley had said, but the context in which he made his remarks. He stated that the concerns of the EC related to the substance of Mr Dooley's remarks, not just the expletives used. He also stated that the EC was concerned that the remarks were made in the presence of members of the public and members of other unions, which also organised in the construction sector, and that Mr Dooley was standing in front of a banner of the Shrewsbury Pickets, who had been supported by the Union from the outset. However, the EC was divided on the appropriate sanction. For a long time, the EC was evenly split between expulsion and a ban from holding office of between 5 and 7 years. In the end, a majority voted for expulsion.

22. On 27 January 2012 Mr Steve Murphy wrote to Mr Dooley. He commented that Mr Dooley's decision to return to work at about 10.20am on 15 February appeared to be disingenuous. Mr Murphy went on to inform Mr Dooley that he was expelled forthwith, the EC having expressed the view that *"there was no justification for attacking the organisation in the public place and because of the seriousness of the situation"*. Mr Dooley was also advised of his right to appeal to the General Council ("the GC") under rule 27.

23. Mr Dooley appealed to the GC by a letter dated 2 March 2012. The Union responded on 6 March, informing him that a hearing would take place on 20 March. The letter also included a pro forma paragraph to the effect that by rule 27.2, no evidence other than that which was before the EC would be admitted.

24. By a letter dated 13 March 2012, Mr Dooley informed Mr Murphy that he would not be attending the GC, but asked for that letter to be placed before it and read out. Mr Dooley commented that this was not new evidence but an explanation of his absence from attending before the EC and now the GC. He explained that he would not be attending before the GC as he had been told that he could not present evidence. He further denied having unjustifiably criticised the organisation in a public place. He asserted that by proceeding in his absence, the EC had denied him a fair hearing.

25. Mr Murphy replied to Mr Dooley by a letter dated 19 March 2012 in which he recorded his recollection of the events of 15 February and noted that Mr Dooley had not made any written representations to the EC or presented any documentation.

26. The GC considered Mr Dooley's appeal on 20 March 2012 in his absence. It had before it both Mr Dooley's letter of 13 March and Mr Murphy's letter of 19 March. It unanimously decided to reject the appeal on the same grounds as were given by the EC for withdrawing Mr Dooley's membership. Mr Murphy informed Mr Dooley of the decision of the GC by a letter dated 28 March.

The Relevant Statutory Provisions

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

> ***108A Right to apply to Certification Officer***
> *(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*
>
> *(2) The matters are –*
>
> *(a) the appointment or election of a person to, or the removal of a person from, any office;*
> *(b) disciplinary proceedings by the union (including expulsion);*
> *(c) the balloting of members on any issue other than industrial action;*
> *(d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
> *(e) such other matters as may be specified in an order made by the Secretary of State.*

The Relevant Union Rules

28. The rules of the Union which are relevant to this application are as follows:-

> *RULE 25*
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> ***Disciplinary Powers***
>
> *1. The EC shall have power to impose a fine not exceeding £25, suspend from all or any benefits or from holding any office, or exclude from the Union, any member, in the opinion of the EC:*
>
> *(i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour.*
> *(ii) – (iv)*
>
> *RULE 26*
>
> ***Procedure for dealing with charges***
>
> *1 The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the Union.*
>
> *5. The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and the place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or changes. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice*
>
> *8. The Union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides.*

10. Alternatively the competent authority may, in the event specified in Clause 9 postpone or adjourn the hearing to a date when the complainant and the member charged can attend. The competent authority may also postpone or adjourn the hearing for any other valid reason, and especially if additional evidence is required.

In each case of postponement or adjournment the secretary of the competent authority shall notify the complainant and the member charged in writing of the date to which the hearing has been postponed or adjourned.

11. If the complainant fails without reasonable excuse to attend the hearing the charge may, in the discretion of the competent authority be dismissed, or the hearing may be adjourned to a subsequent date, to be notified in writing to the complainant. If the member charged fails without reasonable excuse to attend the hearing, the charge may, in the discretion of the competent authority, be proceeded with or the hearing may be adjourned to a subsequent date to be notified in writing to the member charged.

13. If the charge is not proved to the satisfaction of the competent authority, a minute to that effect shall be made, and the charge shall be dismissed.

14. If the charge is proved to the satisfaction of the competent authority, a minute to that effect shall be made, and the penalty shall be determined.

RULE 27
Appeals of Members, Branches and Regional Councils
2. In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.

3. Any council dealing with appeals shall have power to alter, amend or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.
A fine which has been quashed, and any amount by which a fine has been reduced on appeal shall be repaid forthwith. Except where in cases of emergency the authority of the Union making the decision rules to the contrary, a fine, a suspension or exclusion of a member and a suspension or removal from office shall not take effect until the appeal has been dismissed or the time for appeal has expired.

8. Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the GS and the Chair of the GC. In the case of any decision of the EC involving the expulsion of a member the GC shall meet within 20 working days of such a decision for consideration of the appeal.

Consideration and Conclusions

Complaint One

29. Mr Dooley's first complaint is as follows:

Complaint 1
"On 15 February 2012, the union breached rule 26.5 of its rules by failing without reasonable cause to adhere to the start time of 10.00 am, as specified by rule, and contained within the

summons sent to Mr. Dooley on the 20 December 2011 regarding the disciplinary proceedings against him."

30. Rule 26.5 of the Rules of the Union provides as follows:

> *5. The Secretary of the union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and the place of the hearing and of their right to address the Union authority and to produce evidence, including a witness, in order to support or rebut the charge or changes. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice*

31. Mr Atkinson's careful skeleton argument does not deal in detail with the first seven of Mr Dooley's complaints. In his oral submissions, Mr Atkinson argued that a plain reading of rule 26.5 imposed on the Union an obligation to start Mr Dooley's disciplinary hearing at 10am and that its failure to do so amounted to a breach of rule 26.5. Mr Segal QC argued that rule 26.5 contained no such obligation but that, even if it did, there must be an implied proviso that the hearing may not start at the given time for good reason and, in the temporary absence of two members of the EC, there was such a good reason.

32. I find that the Union notified Mr Dooley of the date and place of his hearing in accordance with rule 26.5 and that this notification constituted a summons to him to attend at the time and place stated in the notice. I reject Mr Atkinson's submission that rule 26.5 imposed an obligation on the Union to start Mr Dooley's disciplinary hearing precisely at the stated time. I further find, should it be necessary, that the Union acted reasonably in not starting the disciplinary hearing in the absence of the two members who arrived late. Indeed, I was told that an EC of four members would not have been quorate, a proposition that was not challenged.

33. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on or about 15 February 2012 the Union breached rule 26.5 of its rules by allegedly failing without reasonable cause to adhere to the start time of 10am as notified to Mr Dooley by the Union.

Complaint Two

34. Mr Dooley's second complaint is as follows:

> **Complaint 2**
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> "On 15 February 2012, the union breached rule 26.8 of its rules by not giving Mr. Dooley a full and fair disciplinary hearing in that the Executive Committee took the decision to hear the charges against him in his absence and did not allow him the opportunity to take part in the proceedings. Mr. Dooley attended the disciplinary hearing on time (10.00 am) but had to leave to return to work as the hearing did not start on the time determined in the summons issued under rule. No reasonable cause for the delay was given nor was there any indication given to Mr. Dooley when the disciplinary hearing would proceed after the summons time."

35. Rule 26.8 of the rules of the Union provide as follows:

26.8. The Union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides.

36. Mr Atkinson, for Mr Dooley, argued that Mr Dooley had not had a full and fair hearing of his case, as he had not been present at the hearing. Mr Segal QC submitted that Mr Dooley had been given an opportunity to be present but had absented himself from the Union's head office before the hearing had commenced and had not requested a postponement. Mr Segal also referred to the evidence of Mr Steve Murphy to the effect that if Mr Dooley had asked for a postponement one may have been granted as, in another disciplinary case in 2012, the EC had granted a postponement at the request of the person charged.

37. I find that the Union gave Mr Dooley an opportunity to be present at the hearing of his case but that Mr Dooley failed to avail himself of that opportunity, for reasons that were within his own control. I further find that Mr Dooley did not seek a postponement of his hearing to another day. In these circumstances I find that the EC were entitled to continue with the disciplinary proceedings against him and that, in all the circumstances, the Union did give Mr Dooley a full and fair hearing of his case within a reasonable time of that which was notified to him.

38. For the above reasons I refuse to make the declaration sought by Mr Dooley that the Union breached rule 26.8 of its rules by allegedly not giving him a full and fair disciplinary hearing at the time and place stated in the notice of hearing.

Complaint Three

39. Mr Dooley's third complaint is as follows:

> **Complaint 3**
>
> "On 15 February 2012, the union breached rule 26.10 of its rules because the competent authority proceeded with the disciplinary in the absence of Mr. Dooley rather than use their power to adjourn the disciplinary hearing against him in part or in whole so as to allow Mr. Dooley to answer the charge against him as was his right under rule 26.8. The competent authority proceeded to a full disciplinary hearing despite Mr. Dooley's valid reason for requesting an adjournment, namely that he had attended the hearing on time but had to leave to return to work because the hearing did not start as summons, nor was he informed when it was likely to start after the summons time of 10.00 am."

40. Rule 26.10 of the Rules of the Union provides as follows:

> *26.10. Alternatively the competent authority may, in the event specified in Clause 9 postpone or adjourn the hearing to a date when the complainant and the member charged can attend. The competent authority may also postpone or adjourn the hearing for any other valid reason, and especially if additional evidence is required.*
> *In each case of postponement or adjournment the secretary of the competent authority shall notify the complainant and the member charged in writing of the date to which the hearing has been postponed or adjourned.*

41. Mr Atkinson submitted that, whether or not Mr Dooley requested a postponement, the Union was too quick to absolve itself of its responsibilities and the EC should have postponed the hearing at its own initiative. He argued that it was clear from Mr Dooley's presence at 10am on 15 February 2012 that he wished to participate in

the hearing. Mr Segal QC submitted that rule 26.10 does not impose an obligation on the EC to postpone or adjourn a hearing, but merely gives it the power to do so. He argued that the EC considered how it should proceed in Mr Dooley's absence, obtained legal advice and then exercised its discretion to continue. Mr Segal also noted that Mr Dooley's conduct on 2 November 2012 did not appear to be in dispute.

42. I accept the submissions of Mr Segal QC. Rule 26.10 does not impose an obligation on the EC to adjourn or postpone a hearing in the absence of the person charged. Mr Dooley did not request a postponement. I find that the EC did not act in breach of rule or otherwise perversely in deciding to continue with the hearing in Mr Dooley's absence in the circumstances of this case.

43. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 the Union breached rule 26.10 of its rules because the competent authority allegedly proceeded with the disciplinary hearing in his absence, rather than use its power to adjourn the disciplinary hearing against him in part or in whole.

Complaint Four

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

> **Complaint 4**
> "On 15 February 2012 the union breached rule 26.11 when it failed to justifiably use its discretion to adjourn the disciplinary hearing in whole or in part that day, despite Mr. Dooley's reasonable reason for not being able to wait until the competent authority were prepared to allow him to attend the hearing after the scheduled time 10.00 am."

45. Rule 26.11 of the rules of the Union provides as follows:

> *26.11. If the complainant fails without reasonable excuse to attend the hearing the charge may, in the discretion of the competent authority be dismissed, or the hearing may be adjourned to a subsequent date, to be notified in writing to the complainant. If the member charged fails without reasonable excuse to attend the hearing, the charge may, in the discretion of the competent authority, be proceeded with or the hearing may be adjourned to a subsequent date to be notified in writing to the member charged.*

46. The parties effectively repeated the submissions they had made in relation to Mr Dooley's third complaint. Mr Atkinson added that the rule imposed no requirement for the person charged to request a postponement.

47. Rule 26.11 gives the EC a discretion to proceed with or adjourn a hearing in the absence of the person charged. I find that the EC was entitled to conclude on the information reported to it that Mr Dooley had failed to attend the hearing on 15 February 2012 without reasonable excuse. I further find that the decision of the EC to proceed with the hearing was a decision to which it was entitled to come within the proper exercise of its discretion under rule 26.11.

48. For the above reason, I refuse to make the declaration sought by Mr Dooley that on 15 February UCATT breached rule 26.11 of its rules when it failed to use its discretion to adjourn the disciplinary hearing in whole or in part that day.

Complaint Five

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

> **Complaint 5**
> "The union breached rule 27.8 by its General Council failing to meet to consider Mr Dooley's appeal because it would not have had sufficient evidence to consider the EC decision without Mr Dooley's evidence from the disciplinary hearing on 15 February 2012."

50. Rule 27.8 of the rules of the Union provides as follows:

> *27.8. Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the GS and the Chair of the GC. In the case of any decision of the EC involving the expulsion of a member the GC shall meet within 20 working days of such a decision for consideration of the appeal.*

51. Mr Atkinson submitted that the GC failed in its obligation to give "consideration of appeal". He argued that it failed to do so by reason of Mr Dooley's evidence not being before the EC and it not being possible for him to adduce new evidence before the GC. For the Union, Mr Segal QC confessed to not understanding this complaint. He submitted that the GC had complied with its obligations under the rules in the hearing of Mr Dooley's appeal.

52. I find that this complaint is misconceived and that Mr Dooley has not raised an arguable case of a breach of rule 27.8. In my judgment, the GC did give consideration to Mr Dooley's appeal.

53. For the above reasons I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 the Union breached rule 26.8 of its rules by its GC allegedly failing to meet to consider Mr Dooley's appeal.

Complaint Six

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

> **Complaint 6**
> "On the 20 March 2012 the union breached rule 27.2 when the General Council accepted new evidence which was not before the body which made the original decision to expel Michael Dooley on the 15 of March 2012. The General Secretary admitted new evidence to the General Council for its consideration. The new evidence was contained in a letter dated the 19th of March 2012 from the General Secretary to Mr. Dooley."

55. Rule 27.2 of the rules of the Union provides as follows:

> 27.2. In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. *No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal.* Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.

The words in italics are those which Mr Dooley alleges were breached by the Union.

56. Mr Atkinson submitted that, in breach of rule 27.2, the GC admitted new evidence; namely Mr Dooley's letter to Mr Murphy of 13 March 2012 and Mr Murphy's reply of 19 March. He also commented that as Mr Dooley was not present at the hearing before the EC, he could have no effective role if he had appeared before the GC because he was not able to present any new evidence. Mr Atkinson argued that the distinction between evidence and submissions was not one that Mr Dooley had understood. For the Union, Mr Segal QC submitted that it was disingenuous for Mr Dooley to suggest that he did not know the distinction between evidence and submissions, given his education and experience. Mr Segal further argued that there was in effect only one piece of evidence in this matter, the video clip, the contents of which were not in dispute. He maintained that it was clear from the contents of the disputed letters between Mr Dooley and Mr Murphy that they contained submissions not evidence and that, in any event, Mr Dooley's letter had requested that it be placed before the GC and read out. He noted that the letter itself states that it is not new evidence but an explanation of Mr Dooley's absence. Mr Segal further observed that Mr Murphy's response was merely his understanding of the events of 15 February, when Mr Dooley had failed to attend before the EC.

57. I find that the letters of which Mr Dooley complains were not new evidence regarding the events of 2 November 2011 when Mr Dooley addressed the meeting in Cannon Street Station. Both letters were effectively submissions for the GC to take into account when reaching its decision on the consequences of the agreed events of 2 November and the proprietary of the EC decision of 15 February 2012. In my judgment, the GC did not breach rule 27.2 by considering the contents of the disputed letters

58. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on 20 March 2012 the Union breached rule 27.2 of its rules when the GC allegedly accepted new evidence which was not before the body which made the original decision to expel him on 15 March 2012.

Complaint Seven

59. Mr Dooley's seventh complaint is as follows:

> **Complaint 7**
> "The union breached rule 27.3 on 20 March 2012 because the General Council dealing with Mr Dooley's appeal did not set out clear reasons on its decision to not accept Mr Dooley's appeal."

60. Rule 27.3 of the rules of the Union provides as follows:

> *27.3. Any council dealing with appeals shall have power to alter, amend or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.*
> *A fine which has been quashed and any amount by which a fine has been reduced on appeal shall be repaid forthwith. Except where in cases of emergency the authority of the Union making the decision rules to the contrary, a fine, a suspension or exclusion of a member and a suspension or removal from office shall not take effect until the appeal has been dismissed or the time for appeal has expired.*

61. Mr Atkinson argued that the reasons given by the GC for rejecting Mr Dooley's appeal in Mr Murphy's letter of 28 March 2012 were not sufficiently clear to satisfy the provisions of rule 27.3. For the Union, Mr Segal QC submitted that rule 27.3 only applies if the GC is altering, amending or modifying the decision appealed against but that, in any event, Mr Murphy's letter of 28 March did set out clearly the reasons upon which the decision of the GC was based.

62. The relevant part of Mr Murphy's letter of 28 March 2012 states as follows: *"The General Council fully concurred with the views expressed by the Executive Council that there was no justification for attacking this organisation in the public place and the situation was serious enough to warrant the withdrawal of your membership of the Union."* These words effectively replicate those in Mr Murphy's letter to Mr Dooley of 27 February, informing him of the outcome of the hearing before the EC. The above paragraph is brief and I have no doubt that fuller reasons could have been given. Nevertheless, the issue is not whether the reasons were set out optimally but whether they were set out clearly, in the sense that the appellant would know the reason why his appeal had been rejected. A breach of rule 27.3 only occurs if the reasons are not clear. I find that the reasons given for the decision of the GC in Mr Murphy's letter of 28 March address both the issue of liability and sanction. They describe the behaviour which was found to have been in breach. They find that there was no justification for that behaviour and consider whether the behaviour warranted the sanction imposed. In my judgment, the reasons were sufficiently clear to meet the requirements of rule 27.3.

63. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on or around 20 March 2012 the Union breached rule 27.3 of its rules because the GC allegedly did not set out clear reasons for its decision not to accept his appeal.

Complaint Eight

64. Mr Dooley's eighth complaint is as follows:

> **Complaint 8**
> "On 15 February 2012 and 20 March 2012 the union breached rule 25.1(i) and 26.13 and 26.14 by finding the complaint proved, notwithstanding the fact that on the evidence before it, no reasonable tribunal would have found a charge proved that Mr Dooley had acted contrary to rule 25.1(i)."

65. Rule 25.1(i), rule 26.13 and rule 26.14 of the rules of the Union provide as follows:

> *25.1. The EC shall have power to impose a fine not exceeding £25, suspend from all or any benefits or from holding any office, or exclude from the Union, any member, in the opinion of the EC:*
>
> *(i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour.*
>
> *26.13. If the charge is not proved to the satisfaction of the competent authority, a minute to that effect shall be made, and the charge shall be dismissed.*
>
> *26.14. If the charge is proved to the satisfaction of the competent authority, a minute to that effect shall be made and the penalty shall be determined.*

Summary of Submissions

66. Mr Atkinson submitted that on the evidence of the video clip, no reasonable EC could have found that Mr Dooley had acted contrary to the interests of the Union by merely speaking in forthright terms about the decision of the Selection Committee to exclude him from standing. He argued that the interests of the Union are to be found within those rules which set out its objects and are not to be made up by the EC as it goes along. Mr Atkinson submitted that a clause which imposes a penalty should be construed narrowly in favour of the members and that the interests of the Union should not be read as preventing any criticism by a member of the decision making bodies of the Union. He further argued that Mr Dooley's exclusion was at least partly attributable to his threat to go for a High Court injunction and that no reasonable EC could exclude a member from an election for having said that he or she would go to court. Mr Atkinson relied upon **Lee v. Showmen's Guild (1952) 2 QB 329 (CA)** (see paragraph 68 below) to establish that this alleged breach was within my jurisdiction.

67. Mr Segal QC for the Union, submitted that there was no breach of the rules cited in this complaint. He argued that the EC had not erred in its construction of the rules, nor had it come to a conclusion, in applying the facts to the rules, to which no reasonable EC could have come on the evidence. Mr Segal maintained that the interests of the Union are not to be found exclusively in the objects clause of the rules, but that, in any event, the particular 'object' of organising and recruiting members had been compromised by Mr Dooley's public pronouncements in front of members of the public and rival trade unions. He submitted that I have no jurisdiction to interfere with a determination of the EC which is made within its discretion and in good faith, as on the facts of this case.

Conclusion – Complaint Eight

68. In section 108A of the 1992 Act, Parliament has provided the Certification Officer with a limited jurisdiction over breaches of only certain types of trade union rules. The rules allegedly breached must relate to one or more of the matters listed in section 108A(2). By section 66 of the 1992 Act, Parliament has given Employment Tribunals the separate jurisdiction to determine whether members have been 'unjustifiably disciplined' by their union. My jurisdiction is therefore quite different to that of Employment Tribunals under section 66 or, indeed, under their unfair dismissal jurisdiction. I have not been given the role of determining the reasonableness of disciplinary of other similar decisions taken by trade unions. My jurisdiction is limited to determining whether those decisions were taken within the rules of the Union. Mr Atkinson has sought to persuade me that the decision of the EC in this case was so obviously wrong that it was in breach of the rules cited in this complaints, in the sense that it was a decision taken outwith the jurisdiction of the EC. He referred to the following passages in the judgment of Denning LJ in the case of **Lee v Showmen's Guild**:

> "p. 341. The jurisdiction of a domestic tribunal, such as the Committee of the Showmen's Guild must be founded on a contract, express or implied. Outside the regular courts of this country, no set of men can sit in judgement on their fellows except so far as Parliament authorises it or the parties agree to it. The jurisdiction of the Committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract."

> "p. 345. In most of the cases which come before such a domestic tribunal, the task of the Committee can be divided into two parts: firstly, they must construe the rules; secondly, they must apply the rules to the facts. The first is a question of law which they must answer correctly if they are to keep within their jurisdiction. The second is a question of fact which is essentially a matter for them. The whole point of giving jurisdiction to a committee is so that they can determine the facts and decide what is to be done about them. The two parts of the task are, however, often inextricably mixed together. The construction of the rules is so bound up with the application of the rules to the facts that no one can tell one from the other. When that happens, the question whether the Committee has acted within its jurisdiction depends, in my opinion, on whether the facts adduced before them were reasonably capable of being held to be a breach of the rules. If they were, then the proper inference is that the Committee correctly construed the rules and have acted within their jurisdiction. If, however, the facts were not reasonably capable of being held to be a breach, and yet the Committee held them to be a breach, then the only inference is that the Committee have misconstrued the rules and exceeded their jurisdiction. The proposition is sometimes stated in the form that the court can interfere if there was no evidence to support the findings of the Committee; but that only means that the facts were not reasonably capable of supporting the finding."

I respectfully agree that my jurisdiction under section 108A of the 1992 Act in respect of breaches of the rules of a trade union extends to circumstances in which a breach of a rule which relates to any of the matters set out in section 108A(2) has been found with no evidence to support that finding. On the other hand, my jurisdiction does not extend to weighing the evidence upon which a union has reached such a decision in the same way as an Employment Tribunal would in a case of unfair dismissal. I need only satisfy myself that there is evidence to support the decision reached. Exceptionally, I may find that the evidence is so obviously insubstantial or trivial that no decision making body acting reasonably could have relied upon it without being in breach of rule. The possibility of such a finding, however, does not open up an avenue for impugning those decisions which are based upon relevant and credible evidence and fall within the wide discretion given to such bodies under union rules.

69. On the facts of this case, Mr Atkinson invites me to find that the actions of Mr Dooley on 2 November 2011 were not capable of being found by a reasonable EC as being contrary to the interests of the Union as provided for in rule 25.1(i). I do not accept that submission. Mr Dooley chose to speak in a public place at which members of rival unions were present and in front of a banner which has a significant meaning for many Union supporters. He expressed his view of the Union hierarchy in an abusive manner and accused the leadership of wanting a comfortable lifestyle, thereby implying that they were not fighting for their members as they should. In my judgment, this constituted evidence upon which the EC could lawfully conclude that Mr Dooley had brought the Union into disrepute and thereby acted contrary to the interests of the Union. I find that the EC had a wide discretion in determining what is in the interests of the Union, which discretion is guided by but not restricted to, the objects of the Union. Accordingly, in finding that the actions of Mr Dooley were contrary to the interests of the Union, I find that the Union was not in breach of its rules as alleged.

70. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 and 20 March 2012 the Union breached rule 25.1(i), 26.13 and

26.14 by finding the complaint against him to be proved, as allegedly no reasonable Tribunal would have found.

Complaint Nine

71. Mr Dooley's ninth complaint is as follows:

> **Complaint 9**
> "On 15 February 2012 and 20 March 2012 the union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, in that it is a principle of natural justice that the punishment for any charge, as determined in accordance with rule 26.14, should be proportionate to the crime, and it is contended that no reasonable tribunal would have determined that it was proportionate to expel the Applicant for the conduct complained of."

Summary of Submissions

72. Mr Atkinson submitted that it is an implied term of the rules of the Union that any disciplinary body will act in a manner which is reasonable and proportionate when determining a penalty. He argued that the height of Mr Dooley's offence, if established, was that he had sworn about members of the Selection Committee in public and that expulsion from a trade union for swearing is manifestly disproportionate. Mr Atkinson referred to the cases of **Colgan v. The Kennel Club,** unreported in the High Court, 26/10/2001, and **Bradley v. The Jockey Club (2004) EWHC 2168.**

73. For the Union, Mr Segal QC submitted that this complaint was misconceived in that the Certification Officer does not have jurisdiction to re-determine a penalty properly imposed under the rules after a procedurally fair process. He went on to argue that in any event, the EC and GC had reasonably concluded that expulsion was an appropriate sanction. He observed that there had been an extensive discussion at the EC about whether the appropriate sanction was expulsion or a bar from holding office for a substantial period and that the eventual decision to expel was reached by a 5:1 majority. Mr Segal further observed that other members may have promulgated critical views of the Union but they had not been charged, as Mr Dooley had been charged by Mr Renshaw. He also stated that others had been charged for attacking the Union in public, including one Union official who had been dismissed for so doing.

Conclusion – Complaint Nine

74. My role in determining the appropriateness of a disciplinary sanction is to be considered against the same principles discussed in paragraph 68 above. Given the limited nature of my jurisdiction under section 108A of the 1992 Act, I have no role in determining the appropriateness of a disciplinary sanction in most circumstances. Exceptionally, I may find that the severity of a disciplinary sanction constitutes a breach of rule but that will be a rare case in which the decision making body has exceeded the discretion that it has been given by the rules.

75. On the facts of this case I find that the EC and GC did not exceed the discretion they had under the rules in deciding to expel Mr Dooley. The facts were not in dispute. In my judgment, the EC and GC were entitled to find that Mr Dooley's conduct was a very serious matter. It found that he had acted against the interests of the Union by bringing it into disrepute in a public place in the way that he had. The EC considered different sanctions and only after long debate decided upon expulsion. I find that

whilst expulsion was not the only permissible sanction for the offence committed by Mr Dooley, it was within the range of sanctions open to a reasonable EC and GC to impose under the rules.

76. For the above reasons I refuse to make the declaration sought by Mr Dooley that on 15 February 2012 and 20 March 2012 the Union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, it being alleged that no reasonable Tribunal could have determined that it was proportionate to expel the applicant for the conduct complained of.

Complaint Ten

77. Mr Dooley's tenth complaint is as follows:

> **Complaint 10**
> "On 15 February 2012 and 20 March 2012 the union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, in that it is a principle of natural justice the tribunal hearing a charge must be impartial and not be biased, or have the appearance of bias. The reasons for which Mr Dooley contends the Tribunal are biased, or appear to be biased, are set out in the Application Notice."

Summary of Submissions

78. Paragraph 4 of the Application Notice referred to the following allegations of bias:

> 78.1 The Employment Tribunal had found the decision of the EC to dismiss Mr Dooley as a regional official in January 2011 was unfair and that the EC was biased against Mr Dooley on that occasion.
>
> 78.2 The EC wanted to ensure that Mr Dooley did not participate in any further General Secretary election in the event of the Certification Officer deciding that he had been wrongfully excluded from the 2011 General Secretary election and requiring that the election be rerun. It was alleged that the EC had a hidden agenda to support Mr Murphy and was anxious to avoid the election of Mr Dooley who had said he would conduct a stringent scrutiny of the actions of the EC if elected.
>
> 78.3 The EC contained members who had sat on the Selection Committee which had been the subject of Mr Dooley's public criticisms on 2 November 2011 for which he was expelled."

79. Mr Atkinson referred to the case of **Flaherty v. National Greyhound Racing Club (2005) EWCA 117** as setting out the test of bias. He then developed the points in the Application Notice set out above. With regard to the decision of the Employment Tribunal, Mr Atkinson argued that a reasonable observer would be concerned that, having failed to give Mr Dooley justice on the occasion of his dismissal, the EC and GC were unlikely to do so on a second occasion. He submitted that there was a high risk that the EC and GC would still have in their minds that Mr Dooley's conduct as a Regional Official had been dishonest, a finding which had been rejected by the Employment Tribunal. Mr Atkinson also advanced the argument, not in the Application Notice, that Mr Steve Murphy should not have played any part in the expulsion procedure, but was allowed not only to address the EC but also to sit with it whilst it deliberated and then applied pressure on it to force it to reach a decision when evenly divided about the sanction to impose. Mr Atkinson also submitted that Mr Murphy had unduly influenced the GC by expressing his views on why Mr Dooley

had not attended before the EC and by imposing on Mr Dooley his view as to what constituted new evidence for the GC.

80. For the Union, Mr Segal QC submitted that this complaint was mischievous. He noted that Mr Dooley had not seen fit to complain about the composition of the EC or GC at the time, still less to request a specific alternative Tribunal. He noted that the Union has no power to appoint a non-union authority to deal with such a charge and that the rules do not give the EC a power to delegate its disciplinary responsibilities. Mr Segal commented that it was both untenable and impractical to suggest that a member who publicly and aggressively impugns the Union so as to bring it into disrepute can avoid being disciplined by the EC and GC because it is those same bodies which the member has impugned. He also submitted that it was ridiculous to argue that just because Mr Dooley may have been unfairly dismissed some 12 months earlier, the same body would also reach a flawed decision when considering his alleged misconduct as a member.

Conclusion – Complaint Ten

81. I deal firstly with the allegations regarding Mr Steve Murphy. I find that Mr Murphy was present quite properly at the relevant meetings of the EC and GC, that he did not intervene improperly and did not force the EC to come to a decision. I further find that he did not improperly impose on Mr Dooley his views on what constitutes new evidence. Accordingly, I reject all the allegations of bias based on the conduct of Mr Murphy.

82. As to Mr Dooley's allegations of a hidden agenda or conspiracy against him, I can well understand why he has formed this view, having regard to his dismissal as an employee, his exclusion from being a candidate and his expulsion as a member of the Union within a period of 13 months. However, it is one matter to assert such a conspiracy and another matter to prove it. I have heard insufficient evidence to substantiate such a claim in the face of outright and affronted denials by the Union and evidence of culpable conduct by Mr Dooley leading both to his dismissal and expulsion. Further, Mr Chris Murphy gave evidence that his branch did not support Mr Steve Murphy in his bid to become General Secretary and that Mr Guy appointed Mr Vernon to the Selection Committee knowing that he had previously voted against Mr Dooley's dismissal as an officer. I therefore proceed to deal with this complaint on the basis that there was no such conspiracy as has been alleged.

83. In the absence of actual bias, I have considered whether there was what has been described as ostensible bias. In **Porter v McGill (2001) UKHL 67**, such bias was described as occurring where *"the fair minded and informed observer, having considered the facts, would conclude there was a real possibility that the Tribunal was biased"*.

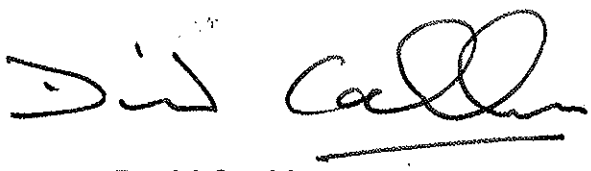
84. It was put to Mr Atkinson in argument that the logic of his position was that a person who brought the Union into disrepute by criticising the EC and/or GC, in no matter how egregious a manner, could not be disciplined as those who sat in judgment would be those who had been criticised and would therefore be biased. Mr Atkinson felt constrained to agree, suggesting that sometimes this is the necessary outcome of a fair procedure, giving by way of example the acquittal from time to time of those facing criminal charges upon the discovery of serious flaws in the prosecution

process. Mr Segal submitted that this scenario within a trade union was neither desirable as an outcome nor correct in law.

85. In my judgment, it does not follow from either the involvement of the EC or GC in Mr Dooley's dismissal or the involvement of three members from each of the EC and GC on the Selection Committee, that the members of those bodies were so compromised that their involvement in a latter allegation of misconduct by Mr Dooley is tainted by ostensible bias. Mr Dooley's dismissal was found to have been unfair and I have now found in Dooley (2) that his exclusion as a candidate was unreasonable, but the fact that decision-making bodies have erred in the past does not exclude them from a further consideration of issues involving the same parties, especially where, as here, there is no other forum in which the matters can be decided. In any event, there was evidence upon which each of those decisions was reached. Mr Dooley's dismissal was based on his submission to the Union of membership application forms from Hudsons with "demonstrably fictitious" names (see paragraph 27 of my decision in Dooley (No. 2)) and the Selection Committee had excluded Mr Dooley on the basis of the earlier decision of the EC to dismiss Mr Dooley, prior to the judgment of the Employment Tribunal.

86. It is of course undesirable that a body which has been criticised should be called upon to form a judgement as to whether that criticism has brought the organisation into disrepute. However, the test of bias is not whether any person might perceive a possibility that the Tribunal is biased. It is whether the fair minded and informed observer would perceive a real possibility of bias. This is the test to be implied into the rules and should be considered in context. On the facts of this case, an informed observer would be aware that the rules of the Union provide for no other forum to determine whether Mr Dooley had acted contrary to the interests of the Union, that the decisions to dismiss and to exclude Mr Dooley had not been unanimous and that the events of 2 November 2011 were not disputed by Mr Dooley. In my judgment, the observer who was both informed and fair minded, would have had regard to the whole of the circumstances faced by the Union upon receipt of the complaint from Mr Renshaw. If the Union had not processed Mr Renshaw's complaint, it may well have been accused of a breach of rule in not doing so. If it did process the complaint, it followed that the EC and GC, which had been criticised by Mr Dooley as the leadership of the Union, would have to determine the complaint. In my judgment, such an observer would conclude that Mr Renshaw's complaint was processed before the EC and GC without there being a real possibility of bias and thus a breach of an implied rule.

87. For the above reasons, I refuse to make the declaration sought by Mr Dooley that on 15 February and 20 March 2012, the Union breached the implied rule that it would conduct its disciplinary procedures in line with natural justice, it having been alleged that the Tribunals hearing the charge against him were biased or had the appearance of bias.



David Cockburn
The Certification Officer