

**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 SEARLE

V

UNISON

Date of Decisions

23 July 2010

DECISIONS

Upon application by Mr Searle (“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 the claimant that UNISON breached rule I 5.1.1 of its rules in or around 24 March 2009 by failing to investigate an alleged disciplinary offence in respect of Mr Pokawa.
2. I declare that the UNISON breached rule G 5.1 of its rules in the first quarter of 2009 by failing to elect one or more stewards for the New Addington constituency of its Croydon branch. I do not consider it appropriate to make an enforcement order.
3. I refuse to make the declaration sought by the claimant that UNISON breached rule G 5.2 of its rules in the first quarter of 2009 by allegedly failing to report the election of Housing Department stewards to its Croydon branch.
4. I refuse to make the declaration sought by the claimant that UNISON breached paragraph 2(ii) of Appendix A to the rules of its Croydon branch in the first quarter of 2009 by allegedly failing to ensure that each member was allocated a steward.
5. I refuse to make the declaration sought by the claimant that UNISON breached paragraph 3(i) of Appendix A to the rules of its Croydon branch in the first quarter of 2009 by allegedly failing to nominate a Housing Department steward for election.
6. I declare that UNISON breached paragraph 5(i) of Appendix A to the rules of its Croydon branch in the first quarter of 2009 by failing to hold an annual election for a constituency steward of the New Addington constituency of its Croydon branch. I do not consider it appropriate to make an enforcement order.

REASONS

1. Mr Searle is a member of UNISON (“the Union”). By an application received at the Certification Office on 17 September 2009, the claimant made a complaint of various breaches of union rules which he maintained were related to disciplinary proceedings by the union or the election of a person to office within the union. Following correspondence with the claimant, six complaints were confirmed by him in the following terms:-

Complaint 1

That on or around 24 March 2009, UNISON breached rule I 5.1.1 of its rules by failing to investigate an alleged disciplinary offence in respect of Mr K Pokawa.

Complaint 2

That in the first quarter of 2009, UNISON breached rule G5.1 of its national rules by failing to elect one or more stewards for the Housing District of its Croydon Branch.

Complaint 3

That in the first quarter of 2009, UNISON breached rule G5.2 of its national rules by failing to report the election of Housing District stewards to its Croydon Branch.

Complaint 4

That in the first quarter of 2009, UNISON breached rule 2(ii) of Appendix A of its Croydon Branch rules by failing to ensure that each member was allocated to a steward.

Complaint 5

That in the first quarter of 2009, UNISON breached rule 3(i) of Appendix A of its Croydon Branch rules by failing to nominate a Housing District steward for election.

Complaint 6

That in the first quarter of 2009, UNISON breached rule 5(i) of Appendix A of its Croydon Branch by failing to hold an annual election of a Housing District constituency steward.

2. Mr Searle had originally complained that the alleged breaches in complaints 2 to 6 had been committed in both 2008 and 2009. By a letter dated 3 May 2010 I struck out those parts of complaints 2 to 6 which related to 2008 on the grounds that there was no reasonable prospect of them being found to have been brought in time.
3. I investigated the alleged breaches in correspondence. A hearing took place on 13 July 2010. At the hearing, the claimant represented himself and called no witnesses. The Union was represented by Mr Segal of Counsel. The Union called Ms Vicky Easton, Regional Manager, Greater London Region and Ms Jeanette Roe, Regional Organiser, Greater London Region as witnesses. Each witness produced a witness statement. There was in evidence the rules of the union as amended at the 2009 conference and a 245 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. Neither party provided a written skeleton argument.

Findings of Fact

4. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows.
5. Mr Searle was employed by the London Borough of Croydon (“LBC”) between about 1990 and his retirement on 31 March 2010. At the relevant time, he was employed as a

Neighbourhood Caretaking Manager based at offices in New Addington, Croydon. He joined the union in about 1990 and has been a member since then, apart from a 5 year period when he was a member of the GMB.

6. The Croydon branch of the union has about 2,000 members, the majority of whom are employed by the LBC. Within the LBC, there is a large housing estate in New Addington. This case concerns those who were employed by the Housing Department in or from the New Addington Office of the LBC. There were about 20 such members, of whom about 16 worked as caretakers or in a similar capacity on the estate and the remainder worked in the office.
7. In 2007, a Mr Pokawa commenced employment as a caretaker on the New Addington Estate. In November 2007, the branch administrator, Miss Eades, informed LBC that Mr Pokawa had been elected as a steward for Housing. However, it appears that there had not in fact been an election. In the absence of an elected steward, it appears that Mr Pokawa had agreed to put himself forward as a steward and that a notice had been exhibited for 17 days, giving notice of his willingness to stand and inviting objections. The LBC had been notified of Mr Pokawa's 'election' in the absence of any such objections.
8. The rules of the Croydon branch of the Union provide for the annual election of constituency stewards. UNISON rules do not use the term 'shop steward'. The stewards are to be elected in advance of the branch Annual General Meeting, which as far as is practicable, is to be held in January each year.
9. Prior to the branch AGMs in 2008 and 2009, there was no election for the position of steward of the New Addington constituency within the Housing Department. Nevertheless, Mr Pokawa remained as de facto steward and he continued to be named on the Union's relevant web page as the steward for the Addington Area Office. I also find that Mr Searle knew that Mr Pokawa was recognised as being the Union's steward for his office.
10. In February 2009, Mr Pokawa stood for election as the International Issues Officer of the branch and was elected unopposed. He thereby became a member of the Branch Committee but also continued to act as a de facto steward.
11. In late 2008, LBC commenced disciplinary action against Mr Searle and he was suspended. Mr Searle became aware that Mr Pokawa was to give evidence against him at the disciplinary hearing and so obtained representation from the Branch Chair, James Young. The disciplinary hearing took place on 25 February 2009 and resulted in Mr Searle receiving a formal warning. I find that before, during and after this disciplinary hearing a degree of animosity existed between Mr Searle and Mr Pokawa.
12. On 23 March and again on 24 March 2009, Mr Searle wrote to his then Branch Secretary, Mr Malcolm Campbell, complaining about Mr Pokawa's allegedly despicable conduct as a union representative and stating that he was not sure that Mr Pokawa had been elected. Mr Searle called for Mr Pokawa to be removed as a steward.
13. Unfortunately, Mr Campbell died in April 2009. He was not replaced as Branch Secretary until about September 2009. In the meantime, Ms Eleanor Tracey became the Acting Branch Secretary. She was unsure what to do about Mr Searle's complaint and little action was taken upon it, apart from her seeking a response from Mr Pokawa.

14. On 3 July 2009, Mr Searle wrote to the Head Office of the Union informing them that the branch had failed to deal with his complaints. He enclosed copies of his letters to the branch and stated that Mr Pokawa needed to be dealt with urgently as he was bringing the Union into disrepute.
15. On 9 July 2009 the Membership Liaison Unit at the Union's Head Office responded to Mr Searle. It enclosed a copy of the UNISON Complaints Procedure 'to clarify the Unit's role' and informed him that his correspondence had been referred to the Greater London Regional Secretary, Ms Linda Perks 'so that the matter might be looked into and the necessary action taken'.
16. On the same date, 9 July, Ms Perks wrote to Mr Searle informing him that she had referred his correspondence to the Regional Manager, Ms Vicky Easton, who was also the Head of Local Government in the Region. In turn, Ms Easton asked Ms Jeanette Roe, a Regional Organiser, to look into the complaints and to advise whether it would be appropriate to commence disciplinary proceedings against Mr Pokawa under rule I of the Union's rules.
17. In July 2009, Ms Tracey contacted Ms Roe to advise that she was still unclear how to proceed with Mr Searle's complaint. Ms Roe agreed to look into the complaint for her if she put her request in writing. Ms Tracey did so by a letter dated 17 July.
18. Ms Roe met with Mr Searle on 24 August to discuss his complaints and subsequently met with Mr Pokawa on 27 August. On 25 August, Mr Searle wrote to Ms Roe summarising his eight points of concern about Mr Pokawa and stating that in his opinion Mr Pokawa had breached at least two rules on disciplinary action; namely rules I 2.2 and I 2.3 (i).
19. Mr Searle commenced this application to me by a letter dated 11 September 2009, during the course of Ms Roe's investigations.
20. Ms Roe completed her report for Ms Easton on 30 October 2009. This report examines Mr Searle's allegations, comments upon them and concludes by stating, "*I do not recommend this matter is referred to a Rule I investigation*". Instead, Ms Roe recommended that the branch should consider with Regional Office measures to ensure good practice is followed in future and that a members' meeting is called in New Addington at which an interim election is held.
21. On 3 November 2009, Ms Perks wrote to Mr Searle. She apologised for the delay in dealing with his complaints and informed him that Ms Roe would ensure that a members' meeting would be held before the end of December 2009 to ensure an election process which would be clear and transparent. Ms Perks stated that Mr Searle's complaints had enabled the branch to address some issues of concern and that appropriate systems had now been put in place to ensure those issues would not be repeated.
22. On 10 November 2009, Mr Searle responded to Ms Perks stating that her letter had left him feeling disappointed and angry. He was particularly concerned about the allegedly superficial nature of Ms Roe's investigation and asked if there was an appeal process. Mr Searle did not receive a response to this letter. However, he did have in his possession a copy of the UNISON Complaints Procedure which provides for a review of any such regional decision upon written application to Head Office.

23. In November 2009, the Union removed Mr Pokawa from his role as an unaccredited steward in the New Addington constituency. He remained a Branch Officer by virtue of having been elected as the International Issues Officer.
24. On 3 December 2009, there was a special meeting of members of the New Addington Constituency. The meeting was chaired by Ms Roe and was conducted in the presence of the new Branch Secretary, Mr Pocock, who had been elected in about September 2009. The meeting was attended by about 16 members, including Mr Searle and Mr Pokawa. Two stewards were elected unopposed. Mr Pokawa was elected to represent the caretakers and Mr Chima to represent those who worked in the offices. However, the meeting was not without controversy. Mr Pokawa objected to the appointment of two stewards and became disruptive on two occasions. Some members left the meeting. Ms Roe and Mr Pocock remonstrated with Mr Pokawa and the meeting was able to continue.
25. Also on 3 December 2009, Mr Searle wrote to Mr Pocock complaining that Mr Pokawa's conduct at the meeting had been belligerent and confrontational. He alleged that the election had not been fair and that Mr Pokawa's behaviour had been in breach of the rules. Ms Easton responded to this complaint on 24 February 2010. She concluded that whilst there had been a breach of rule, the interests of all concerned would be best served by her recommending educational and organisational measures be taken as an alternative to a protracted disciplinary investigation under rule I.

The Relevant Statutory Provisions

26. 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

27. The National Rules of the Union which are relevant to this application are as follows:-

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|-------------------|--|
| <i>Rule I 5.1</i> | <i>Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,</i> |
| <i>I 5.1.1</i> | <i>the member's Branch Committee or Service Group Executive will investigate whether the charges are justified.</i> |
| <i>Rule G 5.1</i> | <i>One or more stewards shall be elected annually for each work group or workplace by the members in that work group or workplace.</i> |

Rule G 5.2 The election of each steward shall be reported to the branch for ratification and the issue of credentials.

28. The Croydon branch rules of the Union which are relevant to this application are contained in Appendix A of the branch rules and are as follows:-

*Para 2(ii) Each member shall be allocated to one steward and each steward must know who their members are.
In the event of problems arising an alternative steward may be nominated by the convenor or the stewards committee.*

Para 3(i) The members in a constituency will nominate proposed steward(s). In the event of more than one nomination an election shall be held in the constituency and a majority vote decide.

*Para 5(i) Each constituency steward shall be responsible for convening at least one constituency meeting per year for the purpose of holding an annual election of a constituency election.
This meeting shall be held no later than eight days before the date of the Departmental Annual General Meeting and the previous year's steward shall report the name of the elected steward for the forthcoming year to the convenor.*

Conclusions

Complaint One

29. Mr Searle's first complaint is as follows:-

"That on or around 24 March 2009, UNISON breached rule I 5.1.1 of its rules by failing to investigate an alleged disciplinary offence in respect of Mr K Pokawa".

30. Rule I 5.1.1 of the rules of the Union provides as follows:

*" I 5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,
I 5.1.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified."*

31. Mr Searle submitted that the information that he had supplied to his Branch Secretary by his letters of 23 and 24 March 2009 and to the Union Head Office by his letter of 3 July 2009 contained information which was sufficient to satisfy rule G 5.1.1. He argued that, on the basis of information, there appeared to be reasonable grounds to think that Mr Pokawa might be guilty of a disciplinary offence. Accordingly, Mr Searle submitted, the Branch Committee or Service Group Executive was under an obligation to investigate whether charges were justified and their failure to do so was a breach of rule I 5.1.1.

32. Mr Segal, for the Union, submitted that this complaint fell outside my jurisdiction under section 108A(1) and (2). He argued that, in reality, this complaint did not relate to disciplinary proceedings. He noted Mr Searle's frank statement that he had never asked for a disciplinary investigation and observed that the correspondence demonstrated that Mr Searle was in reality raising a grievance or a general complaint about the quality of Ms Roe's investigation. He submitted that a distinction should be made between a complaint of this nature and the implementation of a disciplinary procedure. In this regard

he referred to two cases that I had decided as Certification Officer, namely **Fenton v GMB D/16-20/04** and **Irving v GMB D/6-9/07**. Mr Segal further submitted that on the facts of this case, rule I 5.1.1 was not engaged as it did not appear to the union, acting in good faith and on the basis of Ms Roe's investigation, that there were reasonable grounds to think that Mr Pokawa might be guilty of a disciplinary offence.

33. As to the Union's submission on my jurisdiction, section 108A(1) of the 1992 Act provides 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.*

I find that this provision requires me to consider the nature of the rule which has allegedly been breached. I must consider whether it is a rule which relates to any of the matters mentioned in sub-section (2). One of those matter is "disciplinary proceedings by the union". On the facts of this case, rule I of the Union's rules is headed 'Disciplinary Action' and each of the 11 sub-rules under that heading deals with disciplinary proceedings. Mr Searle has claimed that there was a breach of rule I 5.1.1 and I find that this rule is one which, on its face, relates to disciplinary proceedings by the Union. Accordingly, I find that this complaint is within my jurisdiction. Mr Segal argued that such a literal approach to the interpretation at section 108A (1) could be open to abuse if claimants attempted to shoe-horn complaints on matters outside my jurisdiction into such rules. Notwithstanding this submission, I find that I should apply the ordinary literal meaning of the words of section 108A(1). Complaints in which the facts do not give rise to an arguable complaint of a breach of rule within my jurisdiction may be struck out under section 256ZA of the 1992 Act.

34. Where difficulties have arisen between members, the Union had developed a procedure that requires steps to be taken to attempt to resolve those difficulties by organisational and educational means before the initiation of formal disciplinary procedures. Such a procedure has obvious advantages. It can potentially achieve an early amicable resolution and it can avoid any stress to the individual who would otherwise be investigated. Unfortunately, however, this procedure is not reflected in the rules which I must apply in the present case.
35. On the facts of this case, I find that the branch delegated to Ms Roe the task of ascertaining whether there appeared to be reasonable grounds to think that Mr Pokawa might be guilty of a disciplinary offence. I also find that Ms Easton instructed Ms Roe to carry out a similar task having regard to the fact that Mr Pokawa was a member of the Branch Committee and, by reason of rule I 7.1, any disciplinary action against him would have to be taken by the National Executive Council, not the branch. Ms Roe's report of 30 November 2009 concluded that she did not recommend this matter be referred to a rule I investigation. This is not the same as concluding that there did not appear to be reasonable grounds to think that

Mr Pokawa might be guilty of a disciplinary offence. Nevertheless, upon examination of the terms of Ms Roe's report, it is apparent that this is the conclusion to which she in fact came. Ms Roe gave evidence that her investigation was not an investigation under rule I 5.1.1 but a preliminary enquiry as to whether rule I should be invoked at all. Under the rules, that required her to consider whether it appeared there were reasonable grounds to think that Mr Pokawa might be guilty of a disciplinary offence. In undertaking such an enquiry, she was entitled to take a wide range of factors into account, but I find that she addressed her mind to the strength of the case against Mr Pokawa and found that rule I 5.1 was not satisfied. Neither the branch nor the NEC instigated a formal rule I disciplinary procedure against Mr Pokawa and, in my judgement, they did so having accepted and implicitly adopted Ms Roe's report. Accordingly, I find that the Union's failure to instigate a rule I 5.1 investigation into Mr Pokawa was not a breach of rule. The precondition in rule I 5.1 was not satisfied.

36. For the above reasons, I refuse to make the declaration sought by Mr Searle that the Union breached rule I.5.1.1 of its rules in or around 24 March 2009 by failing to investigate an alleged disciplinary offence in respect of Mr Pokawa.

Complaint Two

37. Mr Searle's second complaint is as follows:-

"That in the first quarter of 2009, UNISON breached rule G 5.1 of its national rules by failing to elect one or more stewards for the Housing District of its Croydon Branch".

38. Rule G 5.1 of the rules of the Union provides as follows:

"One or more stewards shall be elected annually for each work group or workplace by the members in that work group or workplace".

39. UNISON accepted that no steward had been elected in the New Addington constituency of its Croydon branch in 2008 or in the first quarter of 2009. It accordingly accepted that there had been a breach of rule G 5.1 in the first quarter of 2009, as alleged. No evidence was adduced by Mr Searle that there had been similar breaches within other constituencies of the Croydon branch with members employed in the Housing Department of LBC.

40. For the above reasons, I declare that UNISON breached rule G 5.1 of its rules in the first quarter of 2009 by failing to elect one or more stewards for the New Addington Constituency of its Croydon branch.

41. I have considered whether it is appropriate that I make an enforcement order. In this regard I find that a meeting was held with the members of the New Addington Constituency of the Croydon branch on 3 December 2009 at which two stewards were elected. I also note that the 2009 electoral period has now ended. I further accept the evidence of the Union that the stewards of the New Addington Constituency currently in post were elected in accordance with rule G 5.1. For these reasons I do not consider that it is appropriate to make an enforcement order.

Complaint Three

42. Mr Searle's third complaint is as follows:-

"That in the first quarter of 2009, UNISON breached rule G5.2 of its national rules by failing to report the election of Housing District stewards to its Croydon Branch".

43. Rule G 5.2 of the rules of the Union provides as follows:

"The election of each steward shall be reported to the branch for ratification and the issue of credentials".

44. Mr Searle submitted that, as there had been no election for a steward for the New Addington Constituency in the first quarter of 2009, it followed that no election could have been reported to the branch for ratification and accordingly there was a breach of rule G 5.3. He further argued that even the absence of an election should have been reported to the branch as this would have alerted the branch to take action and fill the vacancy. Mr Searle maintained that it would in any event have prevented Mr Pokawa from continuing to hold himself out as a steward when he had not been elected.

45. Mr Segal, for the Union, submitted that rule G 5.2 was only engaged when there had been an election. The Union accepted that there had been no election for the position of steward in the New Addington Constituency in the first quarter of 2009. Accordingly, Mr Segal argued that rule G 5.2 could not have been and was not engaged. In these circumstances, he argued that there was no breach of rule G 5.2.

46. The obligation on the Union to hold annual elections for the position of steward is contained in rule G 5.1. The Union accepted that there had been no such election in the New Addington Constituency in the first quarter of 2009 and that accordingly there had been a breach of rule G 5.1. Rule G 5.2 creates a different obligation. It is an obligation on the branch to report the result of the election of each steward held under rule G 5.1. The purpose of reporting the election to the branch is also provided for in rule G 5.2. It is so that the branch can ratify the election and issue credentials. Having regard both to the structure of the rules and the literal meaning of rule G 5.2, I find that rule G 5.2 is only engaged when an election has been held. As no relevant election had been held in the first quarter of 2009, I find that rule G 5.2 was not breached in the manner alleged by Mr Searle. No evidence was adduced by Mr Searle that there had been similar breaches within other constituencies of the Croydon branch with members employed in the Housing Department of LBC.

47. For the above reasons, I refuse to make the declaration sought by Mr Searle that the Union breached rule G 5.2 of its rules in the first quarter of 2009 by allegedly failing to report the election of Housing Department stewards to its Croydon branch.

Complaint Four

48. Mr Searle's fourth complaint is as follows:-

"That in the first quarter of 2009, UNISON breached rule 2(ii) of Appendix A of its Croydon Branch rules by failing to ensure that each member was allocated to a steward".

49. Paragraph 2(ii) of Appendix A of the rules of the Croydon branch of the Union provides as follows:

"Each member shall be allocated to one steward and each steward must know who their members are.

In the event of problems arising an alternative steward may be nominated by the convenor or the stewards committee".

50. Mr Searle submitted that, properly interpreted, paragraph 2(ii) of Appendix A requires the Union to inform each member of the steward who has been allocated to her or him. He argued that the rule means *"every member must be informed who their Steward is"*. Mr Searle stated that there was a breach of this paragraph as he had never been told who his steward was or which constituency he was in. He further stated that he understood Mr Pokawa had been elected by just the caretakers, not by the office staff. Mr Searle maintained that this complaint was within my jurisdiction. He argued that paragraph 2(ii) of Appendix A was a rule which related to an election by the fact that it required members to be told who had been elected.
51. Mr Segal, for the Union, submitted that this complaint was not within my jurisdiction as paragraph 2(ii) of Appendix A does not relate to the appointment or election of any person. He argued that paragraph 2(ii) is a notification provision which applies after, and has nothing to do with, an election. He also observed that the Union's website contained a list of all branch officials and stewards in 2009 and included Mr Pokawa's name as the steward for the New Addington Area Office. Mr Segal commented that Mr Searle must have been aware of Mr Pokawa's position, as Mr Searle had referred to Mr Pokawa in a letter dated 23 March 2009 as being "my Shop Steward".
52. In my judgment, the issue of whether this complaint is within my jurisdiction depends upon the proper interpretation of paragraph 2(ii) of Appendix A. If it is a provision which deals with the publication of the results of an election, it is highly arguable that it is a rule which relates to the election of a person and is therefore within my jurisdiction. I find, however, that Mr Searle's interpretation of paragraph 2(ii) is unsustainable. The notification of the results of the election for stewards is dealt with expressly in paragraph 5 of Appendix A. In my judgement paragraph 2(ii) does no more than require the Union to ensure that each member has a steward and that each steward knows who has been allocated to her or him. I find that this rule does not require the Union to inform members of the result of an election for the position of steward. Accordingly, in my judgement, the relevant words of paragraph 2(ii) of Appendix A, properly interpreted, do not relate to the election of a person. They can more properly be said to relate to the responsibilities of a steward once elected. I therefore find that the alleged breach of paragraph 2(ii) of Appendix A is outside my jurisdiction under section 108A(1) and (2) of the 1992 Act. However, even if this claim had been within my jurisdiction, I would have found that, on its proper construction, no breach of paragraph 2(ii) of Appendix A has been established. In my judgement, this rule does not require individual members of the Union to be informed of the name of their steward and there was no evidence that the de facto steward, Mr Pokawa, did not know the names of the members for which he was responsible in the New Addington constituency.
53. For the above reasons, I refuse to make the declaration sought by Mr Searle that the Union breached paragraph 2(ii) of Appendix A to the rules of its Croydon branch in the first quarter of 2009 by allegedly failing to ensure that each member was allocated a steward.

Complaint Five

54. Mr Searle's fifth complaint is as follows:-

"That in the first quarter of 2009, UNISON breached rule 3(i) of Appendix A of its Croydon Branch rules by failing to nominate a Housing District steward for election".

55. Paragraph 3(i) of Appendix A of the rules of the Croydon branch of the Union provides as follows:

"The members in a constituency will nominate proposed steward(s). In the event of more than one nomination an election shall be held in the constituency and a majority vote decide".

56. Mr Searle submitted that as there was no election for the position of steward in the New Addington constituency of the Croydon branch in the first quarter of 2009, there was clearly no nomination process, as required by paragraph 3(i) of Appendix A and thus that rule had been breached.

57. Mr Segal, for the Union, submitted that this complaint was similar to Mr Searle's third complaint in that it presupposed a breach of all those rules dealing with an election procedure where no election had been held. Mr Segal accepted that no election had been held for the position of steward in the New Addington constituency in the first quarter of 2009 but argued that this was a breach of rule G 5.1 (as found above) and paragraph 5(i) of Appendix A of the branch rules (see complaint 6) but not a breach of the remaining procedural rules relating to that election. In Mr Segal's submission, paragraph 3(i) should be read subject to an implied limitation that it only applies where an election was being held. He argued that such an implication is appropriate having regard in particular to the wording of the first sentence of paragraph 3(i) which could not be read literally as requiring members to nominate proposed stewards. Mr Segal suggested that the proper construction of the rule was to impose an obligation on the Union not to ratify someone as an elected steward who had not been duly nominated by members in the constituency and that there was no breach of para 3(i), properly interpreted.

58. Having regard to the structure of Appendix A to the rules of the Croydon branch and the specific obligation in paragraph 5(i) to have an annual election for a constituency steward, I find that paragraph 3(i) of Appendix A is only engaged if the Union holds a relevant election pursuant to paragraph 5(i). In these circumstances, the members of the relevant constituency must be offered the opportunity of nominating 'a proposed steward'. Accordingly, on the facts of this case, as there was no election in the first quarter of 2009 for the position of steward for the New Addington constituency, paragraph 3(i) of Appendix A was not engaged. In my judgment, therefore, paragraph 3(i) was not breached, as alleged by Mr Searle in this complaint. No evidence was adduced by Mr Searle that there had been similar breaches within other constituencies of the Croydon branch with members employed in the Housing Department of LBC.

59. For the above reasons, I refuse to make the declaration sought by Mr Searle that the Union breached paragraph 3(i) of Appendix A to the rule of its Croydon branch in the first quarter of 2009 by allegedly failing to nominate a Housing Department steward for election.

Complaint Six

60. Mr Searle's sixth complaint is as follows:-

"That in the first quarter of 2009, UNISON breached rule 5(i) of Appendix A of its Croydon Branch by failing to hold an annual election of a Housing District constituency steward".

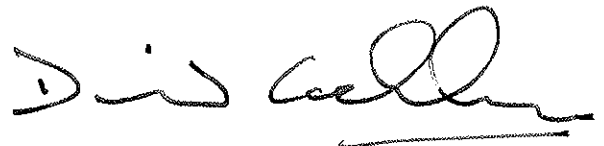
61. Paragraph 5(i) of Appendix A of the rules of the Croydon branch of the Union provides as follows:

"Each constituency steward shall be responsible for convening at least one constituency meeting per year for the purpose of holding an annual election of a constituency election. This meeting shall be held no later than eight days before the date of the Departmental Annual General Meeting and the previous year's steward shall report the name of the elected steward for the forthcoming year to the convenor"

62. UNISON accepted that no steward had been elected in the New Addington Constituency of its Croydon branch in 2008 or in the first quarter of 2009. It accordingly accepted that there had been a breach of paragraph 5(i) of Appendix A in the first quarter of 2009, as alleged. No evidence was adduced by Mr Searle that there had been similar breaches within other constituencies of the Croydon branch with members employed in the Housing Department of LBC.

63. For the above reasons, I declare that UNISON breached paragraph 5(i) of Appendix A to the rules of its Croydon branch in the first quarter of 2009 by failing to hold an annual election for the position of steward of the New Addington constituency of its Croydon branch.

64. I have considered whether it is appropriate that I make an enforcement order. In this regard I find that a meeting was held of the members of the New Addington constituency of the Croydon branch of the Union on 3 December 2009 at which two stewards were elected. I also note that the 2009 electoral period has now ended. I further accept the evidence of the Union that the stewards of the New Addington constituency currently in post were elected in accordance with the rules. For these reasons I do not consider that it is appropriate to make an enforcement order.



David Cockburn
The Certification Officer