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DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 103 AND SECTION 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

MRS P LYNCH

-v-

UNIFI

Date of Decision: **7 October 2004**

DECISION

Upon application by the Applicant under sections 103 and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

(1) I dismiss the complaint that UNIFI ("the Union") breached section 100B of the 1992 Act by allegedly not ensuring that the entitlement to vote in the ballot for the transfer of engagements of UNIFI to Amicus in April/May 2004 ("the merger ballot") was accorded equally to all members of the Union.

(2) I dismiss the complaint that UNIFI breached section 100C(3)(a) of the 1992 Act by allegedly failing to ensure that every person entitled to vote in the merger ballot was allowed to vote without interference or constraint.

(3) I dismiss the complaint that UNIFI breached section 24 of the 1992 Act by allegedly failing to secure, so far as is reasonably practicable, that the entries in the register of the names and addresses of its members were accurate and kept up-to-date.

(4) I dismiss the complaint that UNIFI breached rule 12.11 of the rules of the Union by its General Secretary allegedly breaching his duty to be *"responsible to the National Executive Committee for the administration of the Union including the maintenance of the record of members …"*.

(5) I dismiss the complaint that UNIFI breached section 100C(3)(b) of the 1992 Act by failing to secure that, so far as is reasonably practicable, every person who was entitled to vote in the merger ballot was enabled to do so without incurring any direct cost to himself.

(6) I dismiss the complaint that UNIFI breached section 100C(4)(a) of the 1992 Act by allegedly failing to secure that, so far as is reasonably practicable, every person who was entitled to vote in the merger ballot had a voting paper sent to him by post at his home address or another address which he had requested the Union in writing to treat as his postal address.

(7) I dismiss the complaint that UNIFI breached section 100C(4)(b) of the 1992 Act by allegedly failing to secure that, so far as reasonably practicable, every person who was entitled to vote in the merger ballot was given a convenient opportunity to vote by post.

REASONS

1. By an application received in the Certification Office on 16 August 2004, the Applicant made a number of complaints against her trade union, UNIFI ("the Union"). The complaints, as agreed with the Applicant, were put to the Union in the following terms:

   1.1 *"In breach of section 100B of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that entitlement to vote in the UNIFI-Amicus merger ballot was accorded equally to all members of UNIFI."*

   1.2 *"In breach of section 100C(3)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that every person entitled to vote in the UNIFI-Amicus merger ballot was allowed to vote without interference or constraint."*

   1.3 *"In breach of rule 12.11 of the rules of UNIFI and of section 24(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, the General Secretary failed to maintain an accurate record of members."*

   The last of these complaints is comprised of an allegation of breach of Union rule and a breach of statute. I have treated these as two separate complaints.

2. On the first day of the hearing, 10 September 2004, I gave the Applicant leave to amend her complaints to include a further three allegations of breach of statute. Each of these was within the relevant limitation period and was within the scope of the events which had been called into question by the Applicant's initial complaints. Accordingly, there were a total of seven complaints to be determined by me. These were as follows:-

   2.1 *"In breach of section 100B of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that entitlement to vote in the UNIFI-Amicus merger ballot was accorded equally to all members of UNIFI".*

2.2 *"In breach of section 100C(3)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that every person entitled to vote in the UNIFI-Amicus merger ballot was allowed to vote without interference or constraint".*

2.3 *"In breach of section 24(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, the General Secretary failed to maintain an accurate register of members".*

2.4 *"In breach of rule 12.11 of the rules of UNIFI, the General Secretary failed to maintain an accurate record of members".*

2.5 *"In breach of section 100C(3)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Union failed to secure that every person who was entitled to vote in the UNIFI-Amicus merger ballot in April/May 2004 was, so far as is reasonably practicable, enabled to do so without incurring any direct cost to himself".*

2.6 *"In breach of section 100C(4)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Union failed to secure that, so far as is reasonably practicable, every person who was entitled to vote in the UNIFI-Amicus merger ballot in April/May 2004 had a voting paper sent to him at his home address or another address which he had requested the Union in writing to treat as his postal address".*

2.7 *"In breach of section 100C(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Union failed to secure that, so far as is reasonably practicable, every person who was entitled to vote in the UNIFI-Amicus merger ballot in April/May 2004 had been given a convenient opportunity to vote by post".*

3. The hearing of these matters took place over two days, 10 and 24 September 2004. The Union was represented by Ms J McNeil QC, instructed by Mr A Hows of Messrs. Simpson Millar. Evidence for the Union was given by Mr E Sweeney, General Secretary, Mr T Ayres, Head of Resources, Ms K Downes, Head of Membership, and Ms A Hock, Managing Director of Popularis Limited. Written statements were provided by Mr Sweeney, Mr Ayres and Ms Hock. The Applicant represented herself but was ably assisted by Mr Beaumont, a lay person with experience of complaints to the Certification Officer. Mrs Lynch gave evidence on her own behalf. A bundle of documents was prepared for the hearing by my office. On the first day of the hearing I gave leave to the Applicant to adduce additional documents, pages 258-264 of the bundle, and on the second day of the hearing I gave leave to the Union to adduce additional documents, pages 265-289 of the bundle. Ms McNeil submitted a skeleton argument on the first day of the hearing and a written closing submission on the second day of the hearing.

Application for an Adjournment

4. At the outset of the hearing on 10 September 2004 the Applicant made an application for an adjournment on the grounds that she had been unable to prepare her case properly. When asked, the Applicant stated that she was seeking an adjournment of two weeks. In considering this application I observed that this case had been listed for an expedited hearing because of its unusual nature. Section 101(1) of the 1992 Act provides that, after a successful ballot on a transfer of engagements between trade unions, the transfer does not become effective until the instrument of transfer has been registered by me. However, section 101(2) provides that the instrument *"... shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer"*. Further, by section 103(2), I shall not register the instrument if a relevant complaint has been made *"... before the complaint is finally determined or is withdrawn"*. In this case, the instrument of transfer was sent to me on Tuesday 6 July 2004 and the Applicant's complaint was delivered by hand to the Certification Office on Monday 16 August, the last day of the limitation period. Having regard to the impact of this complaint on the Union's plans to transfer its engagements, I considered that this case should be given an expedited hearing. On 24 August the parties were asked for their availability on certain dates and on 31 August the parties were informed that the hearing would take place on 10 September.

5. The fact that I considered this case appropriate for an expedited hearing was no more than relevant background in determining this application for an adjournment. My predominant consideration was whether a fair hearing could take place on 10 September. In this connection, I noted that the Applicant had warned the Union that she might make just such a complaint at the meeting of the National Executive Committee ("the NEC") on 27 or 28 April 2004 and that she had been aware of the ballot result from 11 May. On 18 August the Applicant had sought information from the Union about the number of ballot papers that had been returned to it as undeliverable, which information the Union provided on 3 September. Although further documents were supplied by the Union on 6 September these were not documents which were new to the Applicant, being documents available to her in her capacity as a member of the NEC. Accordingly, prior to the hearing, there was no outstanding request that the Applicant had made to the Union for relevant information. The Union opposed Mrs Lynch's application both on the grounds that it was important to its members that this matter be determined as quickly as possible, and on the grounds that there was no prejudice to Mrs Lynch.

6. After a short recess, I refused Mrs Lynch's application for an adjournment. I concluded that the requirement of a fair hearing did not necessitate an adjournment. In my judgment the Applicant had had sufficient time to prepare her case, even though she was not legally represented. I had regard to the nature of the alleged breaches, the period she had had them under consideration and the absence of any outstanding requests for further

information. Indeed, Mrs Lynch was unable to advance any positive case of significant prejudice to her, other than a general assertion of an inability to prepare properly. As the hearing progressed Mrs Lynch presented to me a careful argument which she read from a prepared document and cross-examined the first three of the Union's witnesses on the basis of a similarly prepared document. It was apparent that the Applicant had been able to give considerable thought to her argument and its presentation.

Findings of Fact

7. Having considered the documents before me, the evidence of the witnesses and the representations of the parties, I find the following facts:

The Ballot on the Transfer of Engagements

8. UNIFI was formed in 1999 by the amalgamation of three finance sector unions, the Banking Insurance and Finance Union (BIFU), the NatWest Staff Association and UNiFI (a union which organised mainly in Barclays Bank). The newly formed union adopted the name UNIFI. Mr Sweeney has been the General Secretary of the newly formed UNIFI at all relevant times.

9. Mrs. Lynch is a member of the NEC of UNIFI for the London and South East Region. Should the transfer of engagement to Amicus take place Mrs Lynch would be ineligible under the rules of Amicus to sit on the executive committee of that union as she is a retired person.

10. In 2000 Mr Sweeney recommended to the NEC of UNIFI that talks be opened with other unions with a view to a possible merger. In 2001 and 2002 approaches were made to USDAW, CWU and the predecessors to Amicus (MSF and AEEU). By January 2003 the NEC had agreed to hold exclusive talks with Amicus. At the Union's Annual Conference in May 2003 two relevant motions were carried. Motion 43 resolved, inter alia, that *"... the interests of our members must come before all others in any merger talks with other Unions."* Motion 44 resolved, inter alia, to "… *warmly congratulate the National Executive Committee for its decision to hold exclusive talks with AMICUS on the possibility of merger ... but urges the National Executive Committee…to keep all units of organisation fully informed of developments".*

11. Both before and after this Conference the Union did keep the various units of organisation within its structure informed of developments with regard to any proposed merger. By November 2003 the negotiations with Amicus had been successfully concluded and a Special Meeting of the NEC was called for 6 January 2004.

12. On 27 November 2003, as part of its communication exercise, the Union distributed a 12 page *"*Aide Memoire*"* to, amongst others, members of the NEC and all UNIFI committees. On 15 December, a further document ("the Q&A document") was similarly circulated. This document was headed "Proposed Merger with Amicus - Some Questions and Answers*"*. "Question

and Answer 2" concerned the issue of retired members and addressed at some length the proposition that their role in the future structure would be 'very minor'. In its Answer the Union described the proposed Retired Members Forums but stated candidly that *"The biggest difference for ourselves is that retired members in Amicus cannot get involved in the policy making structures that determine the terms and conditions of working members"*. This document went on to report that the Union was losing an average of 900 paying members a month, that subscription income was projected to be down by £360,000 at the year end and that the Union faced an operating deficit at the year end of £44,000 after cost savings of £270,000. The covering letter to the Q&A document acknowledged that there could be other relevant questions and that the answers might not be as fulsome as some would wish but went on to invite further views and queries.

13. The Special NEC met on 6 January 2004 and decided to hold a Special Conference on 13 March. The NEC recommended that there be a ballot of members on the merger *"... with a recommendation to accept the terms negotiated"*. In the period between the Special NEC and the Special Conference, Mr Sweeney visited nine National Company Committees (representing members in particular banks and financial institutions) and Regions, as well as holding meetings with all Officers and Seconded (lay) Representatives of the Union. He explained and supported the terms of the proposed merger. The Special Conference on 13 March voted by more than 4:1 *"... to conduct a ballot of the whole of the Union's membership with a recommendation to accept the terms negotiated between UNIFI and Amicus for a transfer of engagements to Amicus"*. The Union does not contest that it campaigned for a *"Yes"* vote in the ballot. Mr Sweeney established a Merger Vote Team, consisting of officials and staff covering all major units of organisation, together with representatives of the Membership Department and the Press and Communications Department. This met on five occasions between the Special Conference and the close of ballot. The bundle prepared for this hearing contained numerous examples of circulars and newsletters advocating a *"Yes"* vote. The Union's journal, Fusion, was part of the campaign.

14. The ballot papers on the transfer of engagements were distributed to members on 13 April 2004 and the ballot closed on 11 May. The scrutineer appointed for the ballot was Popularis Limited, the Managing Director of which is Ms A Hock. In her scrutineer's report, giving the ballot result, Ms. Hock recorded that 138,007 ballot papers had been distributed and, on a turnout of 30%, 37,975 members (91% of those voting) had voted for the transfer of engagement to Amicus and 3,544 (9% of those voting) had voted against, with 90 spoilt ballot papers.

15. As stated earlier, the Union delivered its application to register the instrument of transfer to my office on 6 July 2004 and Mrs. Lynch delivered her present complaint to my office on 16 August, the day before the instrument became eligible for registration.

The Union's Membership Register and the Distribution of Voting Papers

16. The Union has a computerised register of members. The relevant database was developed and modified for the Union professionally and is maintained under contract. It also has a Membership and Subscriptions Department which is comprised of seven full and part-time staff, equivalent to six full-time staff. Its role includes recording the details of new members and keeping those details up-to-date. Data is entered on the system as soon as is reasonably practicable. The head of the Department is Ms K Downes.

17. Those applying to become a member of the Union must provide details of their home and workplace address on an application form. Thereafter it is the duty of the member to inform the Membership and Subscription Department of any change of address. The membership card contains a slip to be used to notify changes of address. About 90% of union subscriptions are paid by direct debit and the remainder are almost all paid by employer deduction, the so called check-off system. Accordingly, membership subscriptions would ordinarily continue to be paid when a member moved home or even, in some cases, moved jobs.

18. When members resign from the Union, cancel their direct debits or otherwise fall more than three months in arrears with their subscription, their details are removed from the register of members. In the period 1 January to 31 August 2004 there were 447 such deletions.

19. Whilst the Union relies primarily on members notifying it of any changes to their home or workplace addresses, it takes a number of steps to ensure that its membership register is kept up-to-date with changes of address. These are:-

    19.1 All membership cards that are sent to new members carry a change of address slip.

    19.2 Any application form received without a workplace address is returned to the Applicant, asking for this information.

    19.3 Any application form received without a home address, but with a workplace address, is registered on the database and a standard form letter is sent to the workplace asking for the home address. The Union recognises that some members do not wish to reveal their home addresses.

    19.4 Where any communication to individual members, including ballot papers and the Union's journal, Fusion, is returned because of a wrong home address, the Union will remove that address from its database and send a standard form letter to the member at his or her workplace to find out the new home address.

    19.5 The Union journal, Fusion, is normally sent to members' home addresses. When the Union does not hold a member's home address the journal is sent to that member's work address. Periodically, those

copies of Fusion which are sent to work addresses have included with them an insert in the form of a standard form letter requesting that members complete a slip giving their home details which they are invited to return by freepost. Ms Downes gave evidence that such inserts were included in four or five of the six editions of Fusion published in 2003.

19.6 When any communication to a member at his or her workplace (known as an organisation mailing) is returned, or if there is no known workplace address, the database is amended to show *"unknown work location"*. If such a member pays by direct debit the Union sends a standard form letter to the member's bank with a request that an enclosed letter is forwarded to the member's home address. The letter to the member itself encloses a *"data communication form"* to be returned by freepost.

19.7 Where there is no known address, attempts are made to contact the member's colleagues or lay representative to find out where the person is living or working.

19.8 Periodically company teams within the Union carry out specific exercises across the membership of that particular bank or financial institution to review and amend address details. These occur annually on average.

19.9 Some editions of the Union's journal, Fusion, carry a page giving contact details. There was such a page in the April/May 2004 edition. This referred expressly to *"Membership enquiries /amendments"* and gave the Union's telephone number and the email address of the membership department.

20. The Union acknowledges that there were difficulties bringing together the different membership recording systems when UNIFI was formed by amalgamation in 1999. At the Union's Annual Conference in 2003 a motion was passed, Composite Motion L, which called for improvements in the *"... provision of accurate and timely membership information to units of organisation ..."* Shortly prior to this Conference, however, the Union had appointed Mr Freezor of BZK Systems to carry out the work called for in the Motion. Mr Freezor is still doing work on the Union's computer systems. Further, Ms Downes gave undisputed evidence that the required membership information was, even at that time, available on the Union's intranet. Mr Sweeney gave evidence that he was opposed to hard copies of membership statistics being circulated regularly as he considered that the volume of material would be excessive and largely unused. An improvement of the accuracy of the membership register did take place over time. Ms Downes gave evidence that about 200 copies of the last edition of Fusion were returned as being undeliverable compared to about 3,000 copies that were returned for the same reason some two years previously. Ms Downes attributed this improvement to the work of her department on the membership register.

21. Notwithstanding these improvements, the Union did not have home addresses for 2,083 members at the date the membership list for this ballot was frozen, 30 March 2004. For administrative purposes, those members were allocated, with others, to *"Unknown Region"*. This is a residual heading which is used for members who cannot be allocated to a specific branch or region. It also includes the overseas branch, the Northern Ireland branch and the Gibraltar branch. As at 30 March 2004, there were 3,250 members in the *"Unknown Region*". However, the Union did have home addresses for 1,167 of these members. It did not have home addresses for the remaining 2083. I note that the Union's evidence on this point conflicts with its 2003 Annual Return to my office (the AR21) in which it made a nil return for members for whom no home or authorised address is held. The inaccuracy of the Annual Return is a matter I will take up separately with the Union.

22. Ms Hock, the scrutineer, gave evidence that 1,145 ballot papers were returned to her as being undeliverable, which normally indicates that the member has moved or the address was otherwise inaccurate. Ms Hock stated that there was nothing unusual in this and that, after being recorded in her office, the envelopes were returned to UNIFI so that the membership system could be updated. Ms Hock further gave evidence that she issued 71 supplementary ballot papers to members who had telephoned to state that they had not received a ballot paper and that she issued 1302 ballot papers to members who had joined during the course of the ballot but who had not been members at the chosen cut-off date, 30 March. Arrangements existed to prevent members using their original ballot paper and then telephoning for a supplementary ballot paper to vote a second time.

23. In the documents before me, the Union has put its total membership at different numbers. The AR21 for 2003 submitted to my office put the figure as at 31 December 2003 at 142,441. In a membership report dated 6 January 2004, the figure *"as at December 2003"* was put at 142,547. A similar membership report dated 2 March 2004 put the figure *"as at 31 January 2004"* at 141,536, and the membership report dated 15 June 2004 put the figure *"as at 31 May 2004"* at 139,256. These figures contrast with the probable number of members as at the date of the ballot of 140,090. I calculate this figure by adding together the number of ballot papers distributed of 138,007 and the number of members who could not be balloted as the Union did not hold a relevant address of 2,083.

24. Mr Sweeney, gave evidence that the Union had a high turnover of members. This is supported by the membership reports referred to above. The January 2004 report notes a gain of 16,697 members and a loss of 25,581. The March 2004 report notes a gain of 2,239 members and a loss of 3,820. The June 2004 report notes a gain of 7,433 members and a loss of 11,019. These figures not only demonstrate a downward trend but also the difficulty of maintaining a completely accurate membership record with so many members both joining and leaving.

25. The scrutineer's report on this ballot by Ms Hock stated that she had inspected the register of names and addresses of members of the Union at her own instance and that there were no matters which she considered should be drawn to the attention of the Union in order to assist it in securing that the register is accurate and up-to-date. In her evidence, Ms Hock stated that she had checked the membership database provided to her for duplicates and postcodes and was unable to find any obvious gaps or omissions. She had also checked whether there was any significant backlog in entering new or amended data on the system and found no problems in these areas. Ms Hock commented in her witness statement that *"I was quite satisfied that the membership list used was of a high standard of accuracy. In my experience Unifi's records are amongst the best in the trade union movement"*. She also gave evidence that she received no complaints from members regarding the membership register or requests to inspect the register.

The Relevant Statutory Provisions

S.24 *(1) "A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonable practicable, that the entries in the register are accurate and are kept up-to-date."*

S.25 *(1) "A member of a trade union who claims that the union has failed to comply with any of the requirements of section 24 or 24A (duties with respect to register of members' names and addresses) may apply to the Certification Officer for a declaration to that effect."*

S.100B *"Entitlement to vote in the ballot shall be accorded equally to all members of the trade union."*

S.100C *(1) "The method of voting must be by the marking of a voting paper by the person voting.*

(2) Each voting paper must –
- *(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned, and*
- *(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and*
- *(c) be marked with its number.*

(3) Every person who is entitled to vote in the ballot must –
- *(a) be allowed to vote without interference or constraint, and*
- *(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.*

(4) So far as is reasonably practicable, every person who is entitled to vote in the ballot must –
- *(a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address, and*
- *(b) be given a convenient opportunity to vote by post.*

(5) No voting paper which is sent to a person for voting shall have enclosed with it any other document except

(a) the notice which, under section 99(1), is to accompany the voting paper,
(b) an addressed envelope, and
(c) a document containing instructions for the return of the voting paper, without any other statement.

(6) The ballot shall be conducted so as to secure that –
(a) so far as is reasonably practicable, those voting do so in secret, and
(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot."

S.101 *(1) An instrument of amalgamation or transfer shall not take effect before it has been registered by the Certification Officer under this Chapter.*

(2) It shall not be so registered before the end of the period of six weeks beginning with the date on which an application for its registration is sent to the Certification Officer.

(3) -

S.103 *(1) "A member of a trade union who claims that the union -*
(a) has failed to comply with any of the requirements of sections 99 to 100E, or
(b) has, in connection with a resolution approving an instrument of amalgamation or transfer, failed to comply with any rule of the union relating to the passing of the resolution

may complain to the Certification Officer.

(2) Any complaint must be made before the end of the period of six weeks beginning with the date on which an application for registration of the instrument of amalgamation or transfer is sent to the Certification Officer.

Where a complaint is made, the Certification Officer shall not register the instrument before the complaint is finally determined or is withdrawn.

(2A) On a complaint being made to him the Certification Officer shall make such enquiries as he thinks fit.

(3) If the Certification Officer, after giving the complainant and the trade union an opportunity of being heard, finds the compliant to be justified -
(a) he shall make a declaration to that effect, and
(b) he may make an order specifying the steps which must be taken before he will entertain any application to register the instrument of amalgamation or transfer;

and where he makes such an order, he shall not entertain any application to register the instrument unless he is satisfied that the steps specified in the order have been taken.

An order under this subsection may be varied by the Certification Officer by a further order."

S.108A *(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 Union Rules

Rule 12.11: *"The General Secretary shall be the principal Full-Time Official of the Union and shall be responsible to the National Executive Committee for the administration of the Union including the maintenance of the record of members and for the appointment, activities, control and discipline of the Union's Officials and Staff. The General Secretary will be responsible for the implementation of the policy of the Union as determined by the Annual Conference, Special Conference, and the National Executive Committee. The General Secretary shall also carry out other such duties as the National Executive Committee shall direct and any relevant statutory duties."*

COMPLAINT 1:

"In breach of section 100B of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that entitlement to vote in the UNIFI-Amicus merger ballot was accorded equally to all members of UNIFI".

Submissions

26. The Applicant submitted that there were at least 5,680 members (4% of the membership) who had been unable to vote because they had not been sent a ballot paper. She had calculated the figure of 5,680 by adding together the 1,145 ballot papers that had been returned to the scrutineer as undeliverable and the 4,540 members for whom she argued the Union held no address. The Applicant calculated the figure of 4,540 by noting the claimed membership as at December 2003 of 142,547 and deducting from this figure the number of ballot papers distributed, namely 138,007. The Applicant argued that these 5,680 members had by definition been deprived of their entitlement to vote. Put another way, their entitlement to vote had been negated. It was argued that an entitlement or right has no meaning if members are physically unable to vote. The Applicant further argued that those not sent a ballot paper did not have an equal entitlement to vote as those who received one and that the failure to provide such members with a ballot paper was not inadvertent.

27. For the Union, Ms McNeil submitted that this complaint was misconceived. She noted that the Applicant did not identify any member or group of members who were not entitled to vote, other than those for whom no appropriate address was held. Counsel argued that those members remained entitled to vote and would have had a voting paper sent to them if they had contacted Popularis or the Union and asked for one. The Union relied upon the case of **BRB v NUR (1989) ICR 678**, as establishing that a distinction should

be drawn between having an entitlement to vote and being given an opportunity to vote. The Union also relied on the case of **P v National Union of School Masters/Union of Women Teachers, (2003) 2AC 663** as establishing that being given an equal entitlement involves no members being given special voting privileges or the votes of no members being accorded a different value to the votes of other members.

Conclusion - Complaint 1

28. The Applicant alleges a breach of section 100B of the 1992 Act. This provides as follows:-

S.100B *"Entitlement to vote in the ballot shall be accorded equally to all members of the trade union."*

29. The structure of section 100B and section 100C supports the distinction between an entitlement to vote and an opportunity to vote made by the Court of Appeal in **BRB v NUR**, albeit in the context of different statutory provisions**.** Section 100B deals with an entitlement to vote whilst section 100C(4) deals with the opportunity to vote. In this connection it is significant that the failure to grant entitlement to even a single member is a breach of section 100B, whereas the duty in section 100C(4) must be complied with *"so far as is reasonably practicable"*. In any large membership organisation it is virtually inevitable that some members will not notify the organisation of a change of address and it is difficult to conclude that Parliament intended, in these circumstances, that a lawful ballot could not be concluded without a 100% accurate list of members' current addresses.

30. In my judgment, the Union, if asked, would not have told any of the members for whom it did not hold an appropriate address that they were not entitled to vote. They would have been sent a voting paper. Such members were not denied their entitlement to vote. Rather, their failure to inform the Union of their up-to-date addresses disabled the Union from affording them the opportunity of including them in the general distribution of ballot papers.
Further, there was no evidence that any members of the Union were given any greater or lesser voting privileges or that their votes had a greater or lesser worth than any other members.

31. For the above reasons I dismiss the complaint that the Union breached section 100B of the 1992 Act by allegedly not ensuring that the entitlement to vote in the ballot for a transfer of engagements of UNIFI to Amicus in April/May 2004 was accorded equally to all members of the Union.

COMPLAINT 2:

> *"In breach of section 100C(3)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Union did not ensure that every person entitled to vote in the UNIFI-Amicus merger ballot was allowed to vote without interference or constraint."*

Submissions

32. The Applicant submitted that the Union had engaged in an extensive campaign to persuade its members to vote in favour of the transfer of engagements. She maintained that this campaign began long before the Special Conference in March 2004 and that the information it conveyed was one-sided, biased and misleading. The Applicant maintained that the Union's journal refused to publish any views opposed to the transfer and that branches were not allowed to circulate material opposing it. She argued that members had not been allowed to vote without interference as they had been misled by the information they had been given and that the full facts of the merger had been withheld from them. In particular, the Applicant argued that the way the position of retired members had been dealt with in the Question and Answers document understated the disadvantages that retired members would suffer by not making clear that they could not hold any office. It was submitted that the facts of this case fell within the extended meaning of *"interference or constraint"* suggested by the then Certification Officer in **Re NUM (Yorkshire Area) (CO/1964/13),** decided in 1994. It was further submitted that even within the more limited meaning of these words, the failure to provide ballot papers to those members for whom there was no appropriate address was a physical constraint on their right to vote.

33. For the Union, Ms McNeil submitted that the meaning of the words *"interference or constraint"* had been examined in a number of cases and had consistently been interpreted as applying only to conduct which *"would intimidate or put a member in fear of voting, or amount to physical interference"* . She referred to the cases of **Paul v NALGO (D/8-15/86)** and **Alexander v Professional Association of Teachers (D/92-93/01)**. Counsel accepted that the Union had conducted a campaign to persuade its members to vote in favour of the transfer but argued that this was Union policy as decided at a Special NEC and Special Conference. Nevertheless, Ms McNeil submitted that this campaign did not deprive any members of the freedom to vote as they chose, as evidenced by the 9% of those voting who chose to vote against. As to the Applicant's submission that the Union's campaign was misleading, Ms McNeil denied that any misleading statements were made by the Union. She specifically denied that 'Question and Answer 2' of the Q&A document was misleading and referred to the terms of the covering letter setting out the intended purpose of the document. Finally, Counsel rejected the contention that the omission to send a ballot paper to a particular member amounted to *"physical constraint"*. Ms McNeil submitted that those who did not receive a ballot paper are, subject to argument on what is reasonably practicable, potentially encompassed within the provisions of section 100C(4) and not 100C(3).

Conclusion - Complaint 2

34. The Applicant alleges a breach of section 100C(3)(a). This provides as follows:-

> S.100C(3) *"Every person who is entitled to vote must –*
> *(a) be allowed to vote without interference or constraint, and*
> *(b) …."*

35. The Applicant advanced three arguments in support of this complaint. First, it was alleged that the Union's intensive campaign to secure a Yes vote in itself amounted to *"interference or constraint"*. However, no serious argument was advanced to persuade me that I should not follow, or that I should distinguish, the interpretation of these words in **Paul v NALGO** and subsequent cases. The position, therefore, remains as I expressed it to be in **Alexander v Professional Association of Teachers**. In that case I concluded:-

> *"The proper interpretation of what constitutes "interference" for the purposes of section 51(3)(a) of the 1992 Act (and its predecessor sections) has been the subject of many previous decisions by the Certification Officer. It has not only been considered by my immediate predecessor, but also by his predecessor. The view that has prevailed hitherto is most conveniently and succinctly set out in Paul v NALGO D/14/86). In that case the Certification Officer stated that the purpose of the prohibition on interference or constraint "...*is to ensure that members are not subject to any pressure which would have the effect of preventing them from freely exercising their right to vote*" and that "...*the right to allow a person to vote without interference or constraint is intended to exclude such contact as would intimidate or put a member in fear of voting, or amount to physical interference". I am not persuaded that I should dissent from that interpretation."

Applying that interpretation of the expression *"interference or constraint"*, I find that the Union's campaign in favour of the transfer of engagements did not in itself constitute a breach of section 100C(3)(a) of the 1992 Act.

36. The Applicant went on to argue that it was the misleading nature of the campaign that brought it within the description *"interference or constraint"*. In making this submission the Applicant would appear to have been relying upon the words of the then Certification Officer, Mr Burridge in **Clare v The Eagle Star Staff Association (CO/1964/3)** decided on 21 October 1981 which also involved a merger. In that case, the Certification Officer stated:-

> *"A statement made to persuade members to vote one way rather than another does not, in my view, amount to an "interference or constraint" merely because it is exaggerated, misleading or inaccurate. I do not rule out the possibility that, in some circumstances, a blatant untruth or a seriously misleading statement could amount to an "interference or constraint" under the Act …"*

In a later merger case, **Re NUM (Yorkshire Area)**, my immediate predecessor as Certification Officer, Mr Whybrew, commented upon this observation. He stated:-

> *"It would take a most blatant lie or seriously misleading statement to constitute interference or constraint with voting".*

I agree with Mr Whybrew's comment. In the circumstances of a contested ballot strongly held views are likely to be expressed on all sides. Parliament has not expressly excluded unions from campaigning for their views and I am not persuaded that Parliament intended to give the Certification Officer jurisdiction to dissect the nature of a union's campaign in the detailed manner the Applicant contends. On the facts of this case, the Applicant has not established that the Union told any blatant lies or made any seriously misleading statements. The Applicant's criticism of 'Question and Answer 2'of the Q&A document does not stand up to scrutiny. In my judgment, that particular Question and Answer shows the Union facing up to a difficult issue and informing members that it will continue to fight to ensure that its pensioner members have a role in any new union. The Applicant did not point to any other campaign document as being misleading. As to the allegation that the Union did not permit opponents of the merger access to Union facilities to advance their case, I find that there was no evidence of this beyond the Applicant's assertion. In any event, there is no requirement on the Union to permit members access to its facilities to advance arguments contrary to a policy decided upon by the Union's democratic processes, in this case by a Special NEC and a Special Conference. In my judgment the denial of such facilities in the circumstances of this case does not come within the expression *"interference or constraint"* in section 100C(3)(a).

37. Finally, the Applicant argued that there was a physical constraint when members did not receive a ballot paper. In my judgment, however, section 100C(3)(a) does not engage with the situation in which a member does not receive a ballot paper. That situation has been expressly provided for elsewhere, in section 100C(4). To the extent described above, section 100C(3)(a) concerns the unlawful influence that a union may seek to exercise on a member in deciding whether to cast his or her vote and/or how to cast that vote. This conclusion is supported by the omission from section 100C(3)(a) of any provision on reasonable practicablity. If the Applicant were correct, there would be a breach of this section if a single member failed to receive a ballot paper. Given the nature of large membership organisations this would in turn mean that section 100C(3)(a) would be breached in virtually all ballots. This cannot have been the intention of Parliament.

38. For the above reasons I dismiss the complaint that UNIFI breached section 100C(3)(a) of the 1992 Act by allegedly failing to ensure that every person entitled to vote in the ballot for a transfer of engagements of UNIFI to Amicus in April/May 2004 was allowed to vote without interference or constraint.

COMPLAINT 3:

"In breach of section 24(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, the General Secretary failed to maintain an accurate register of members".

Submissions

39. The Applicant submitted that the Union had not secured, so far as is reasonably practicable, that the entries of members' addresses in the membership register were accurate and kept up-to-date. She asserted that the

register was clearly not up-to-date as there were at least 5,680 members (or 4% of the membership) that had not been sent a voting paper. In addition, the Applicant asserted that there were many more ballot papers that had been sent to wrong addresses but which the recipients had not bothered to return. The Applicant further asserted that the Membership Department was widely criticised by members, that membership forms were not processed quickly enough, that address amendments were not activated in a timely fashion and that not enough was done to tell members to notify any change of address. She stated that there is no national leaflet conveying such a message, there is almost never a newsletter to that effect, and there is no reminder or 'address up-date' form in Fusion. The Applicant referred to a memo relating to membership statistics of April 2001 and to Composite Motion L at the 2003 Annual Conference as evidence that the problem with the membership register was long-standing. She also referred to the inaccurate Annual Return to the Certification Officer as being further evidence that the register was not being kept properly.

40. For the Union, Ms McNeil submitted that the Union had secured that the register had been kept accurate and up-to-date, so far as is reasonably practicable. She referred to the evidence of Mr Ayres and Ms Downes as to the way in which the Membership Department is staffed and equipped and the routine steps that are taken to both delete the names of members who had left and amend the addresses of members who had moved. Ms McNeil commented that, in a Union with such a high turnover, some inaccuracy in the register is not surprising but that, properly calculated, the number of members for whom the Union held no or no correct address was only about 3,228 or 2.3% of the total membership. Counsel submitted that considerable weight should be given to the evidence of the General Secretary that in about ten instances of potential industrial action ballots over the last few years no employers had sought to injunct on the basis that the membership register was flawed. She also submitted that special weight should be given to the evidence of Ms Hock that in her experience the Union's records are amongst the best in the trade union movement.

Conclusion - Complaint 3

41. The Applicant alleges a breach of section 24(1) of the 1992 Act. This provides as follows:-

> S.24(1): *"A trade union shall compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and are kept up-to-date."*

42. The duty of a union to secure that the entries in its membership register are accurate and kept up-to-date is subject to the proviso that this must be achieved *"so far as is reasonably practicable"*. Parliament clearly appreciated the virtual impossibility of ensuring that the register of a large membership organisation with a significant turnover is always 100% accurate. Whether a union has secured that the entries in the register are accurate and up-to-date, so far as is reasonably practicable, is a matter of fact and degree to be decided in the circumstances of each particular case. I observe that section 24 does not

require the union to take all possible measures to keep its membership register up-to-date. I must rather look at the situation as a whole and determine whether, having regard to all the circumstances, the Union has, so far as is reasonably practicable, secured that the register has been kept up-to-date. The primary responsibility for informing a union of a change of address must be that of the member. However, it is to be expected that a union will have procedures to follow up any information it may receive that an address is no longer current, by way of returned mailings or otherwise. It is also to be expected that a union will take steps to prompt members to notify changes of address by whatever means is appropriate for that union, be it through the union's journal, the branch network, workplace circulars or other means. The time, effort and finance to be devoted to this exercise will depend upon the degree of inaccuracy of the register and the size and administrative resources of the union. The greater the inaccuracy the more effort to remedy that inaccuracy would be expected.

43. In considering this application, I have had regard both to the administrative steps taken by the Union to secure compliance with its statutory duty and the degree of inaccuracy in the register. I have set out the administrative steps taken by the Union to secure compliance with its duty in paragraph 19 of these reasons. I have also had regard to the sort of steps that my predecessor as Certification Officer considered relevant in the case of **Re CPSA (D/10-13/96)** dated September 1996. I observe that the Union has procedures to obtain members' home addresses at the application stage, to amend those addresses when notified of any change, and to delete names and addresses when members leave the Union. I also note that the Union has procedures to prompt members to notify it of any change of address. The Union has a well-staffed and equipped membership department which, at the time of this application, did not have a backlog of un-entered data. I accept Ms McNeil's calculation that the membership of the Union at the relevant time was about 140,090. This figure is arrived at by adding the number of members for whom no address was held, 2,083, to the number of ballot papers distributed, 138,007. I also find that the membership register had no or no accurate address for about 3,228 members. This figure is made up of the number of members for whom no address was held, 2,083, and the number of returned ballot papers, 1,145. Accordingly, I find that, at the relevant time, the addresses of 2.3% of members held on the membership register were inaccurate or not up-to-date. In my judgment, having regard to the changing nature of the finance industry and the high turnover of members, this degree of shortfall does not demonstrate a systemic failure of the membership register. Although other steps to secure even greater accuracy could always be taken, I find that, viewed overall, the steps taken by the Union in this case were sufficient to meet its duty to secure that so far as is reasonably practicable the entries in the membership register were accurate and kept up-to-date.

44. For the above reasons I dismiss the complaint that the Union breached section 24 of the 1992 Act by allegedly failing to secure so far as is reasonably practicable that the entries in the register of the names and addresses of its members were accurate and kept up-to-date.

COMPLAINT 4:

"In breach of rule 12.11 of the rules of UNIFI, the General Secretary failed to maintain an accurate record of members".

Submissions

45. The Applicant submitted that this complaint of breach of rule was within my jurisdiction as it came within section 108A(2)(c) being a matter *"relating to ... the balloting of members"*. She further contended that rule 12.11 had been breached as the membership register kept by the General Secretary was not fit for the purpose for which it was intended and, in particular, it was not a fit register upon which to hold a membership ballot. As to the alleged deficiencies in the register, the Applicant relied upon the same arguments that she had advanced in her section 24 complaint above.

46. For the Union, Ms McNeil submitted that this complaint was not within my jurisdiction under section 108A of the 1992 Act. She argued that it was not a complaint that related to any of the matters set out in section 108A(2). If this submission were to be rejected, Ms McNeil argued that the complaint should not be accepted under section 108B as the Applicant had not taken reasonable steps to pursue the complaint by the use of any internal union complaints procedures. Should this submission be rejected, Ms McNeil argued that the complaint should be rejected on its facts as there had been no breach of rule.

Conclusion - Complaint 4

47. The Applicant alleges a breach of rule 12.11 of the rules of the Union. This provides that:

> Rule 12.11: *"The General Secretary shall be the principal Full-Time Official of the Union and shall be responsible to the National Executive Committee for the administration of the Union including the maintenance of the record of members and for the appointment, activities, control and discipline of the Union's Officials and Staff. The General Secretary will be responsible for the implementation of the policy of the Union as determined by the Annual Conference, Special Conference, and the National Executive Committee. The General Secretary shall also carry out other such duties as the National Executive Committee shall direct and any relevant statutory duties."*

48. The Certification Officer had no jurisdiction to determine potential breaches of trade union rules prior to the Employment Relations Act 1999. By that Act, section 108A was inserted into the 1992 Act. This section gives the Certification Officer a limited jurisdiction over a restricted category of union rules. It also gives the Secretary of State power to extend the jurisdiction to breaches of other types of rule. In my judgment, the history and structure of section 108A demonstrates an intention by Parliament that my jurisdiction under this section should be viewed restrictively.

49. This is a complaint about the breach of a union rule which ostensibly concerns the responsibilities of the general secretary. As such, it is not on its face a complaint about any of the four matters referred to in section 108A(2)(a)-(d)

of the 1992 Act. Nevertheless, the Applicant points out that section 108(A)(1) gives the Certification Officer jurisdiction over rules relating to any of the matters set out in section 108A(2)(a)-(d). She submits that a rule conferring responsibility for the maintenance of the membership register is one which relates to *"the balloting of members on any issue other than industrial action"*, as there cannot be such a ballot without an accurate register. In my judgment, however, the use of the word *"relate"* does not have the effect of extending my jurisdiction to all those rules which touch upon, no matter how obliquely, the matters set out in section 108A(2). I find that the connection between the rule allegedly breached and the matters set out in section 108A(2) must be clear and direct. Whether a rule is one relating to a matter listed in section 108A(2) is a matter of fact and degree to be determined in the circumstances of the particular case. On the facts of this case I find that the connection between the rule setting out the responsibilities of the General Secretary, including his responsibility for the maintenance of the record of members, and the balloting of members on a merger is not sufficiently clear and direct so as to render rule 12.11 a rule relating to the balloting of members. There may be many rules which contribute to the factual matrix against which a ballot takes place but, in my judgment, this does not in itself bring them within section 108A of the 1992 Act. Such rules may or may not be part of the ballot process dependant on the facts of the particular case. On the facts of this case, however, I find that I do not have jurisdiction under section 108A to determine whether the Union has breached rule 12.11 of its rules.

50. Should I be wrong about my jurisdiction, I find that, by agreeing to hold a hearing of the Applicant's complaint, I exercised my discretion under section 108B(1) of the 1992 Act to accept her complaint, regardless of the steps taken or not taken by the Applicant to resolve her claim by the use of any internal complaints procedure.

51. As to the merits of the complaint, should I be wrong about my jurisdiction, I find that the Union did not breach rule 12.11. The purpose of this rule is to fix the General Secretary with responsibility for the maintenance of the record of members. It is not disputed that he undertook this responsibility and that he did maintain a record of members. The Applicant argued that the record was so defective so as to not be such a record but, on my findings of fact on the Applicant's third complaint, this argument cannot be sustained.

52. For the above reasons I dismiss the complaint that UNIFI breached rule 12.11 of the rules of the Union by its General Secretary allegedly breaching his duty to be *"responsible to the NEC for the administration of the Union including the maintenance of the record of members ..."*

COMPLAINT 5:

> *"In breach of section 100C(3)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Union failed to secure that every person who was entitled to vote in the UNIFI - Amicus merger ballot in April/May 2004 was, so far as is reasonably practicable, enabled to do so without incurring any direct cost to himself".*

Submissions

53. The Applicant submitted that the 5,000 or so members who had no or no current address could only vote if they contacted the Union and provided an appropriate address. She observed that the means by which the Union invited such members to contact it was by telephone and that by doing so these members would incur a direct cost as the Union did not make a free phone number available for this purpose. The Applicant submitted that it would have been reasonably practicable for the Union to have made a free phone number available.

54. Ms McNeil for the Union submitted that section 100C(3) is concerned with the voting process and the alleged cost about which the Applicant complains was not an expense incurred in the casting of a ballot. It was, she argued, the cost of a member correcting his or her details in the register. Ms McNeil further argued that the duty to enable members to vote without incurring any direct cost is subject to the proviso of reasonable practicability and that this standard should not be confused with *"reasonable possibility"*. It may be possible, she argued, for the Union to have had a free phone but was it reasonably practicable? In this regard, Ms McNeil submitted that the issue of cost was a factor. She also argued that given the nature of the Union's membership register any finding against the Union was tantamount to imposing an obligation in all such ballots for there to be a free phone number whereas there is no such obligation in the legislation.

Conclusion - Complaint 5

55. The Applicant complains of a breach of section 100C(3)(b) of the 1992 Act. This provides as follows:-

> S.100C(3) *"Every person who is entitled to vote in the ballot must –*
> *(a) …*
> *(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself."*

56. In my judgment, section 100C(3)(b) is not directed at the cost a member may incur in securing the opportunity to vote, as the Applicant alleges, but at the cost a member may incur in the physical process of casting his or her vote. This analysis is supported by the structure of section 100C and by the correct interpretation of the word "enabled".

57. The duty to inform a union of a change of address must logically fall on the member himself or herself and the Applicant did not suggest that the union must ordinarily bear the cost of discharging that duty. The question raised by

this complaint is whether the union must bear such a cost at the time of a statutory ballot; be this a merger ballot under section 100 of the 1992 Act, a general secretary or similar ballot under section 46 or an industrial action ballot under section 226. As I have found above, section 100C(4) is the provision which deals with the process for securing that each member who is entitled to vote is given the opportunity of voting by being sent a voting paper. Section 100C(3) is concerned with the actual process of voting and is ordinarily only engaged after the member receives the voting paper. I do not find that, properly interpreted, the word "enabled" in section 100C(3)(b) has the effect of requiring there to be a re-examination of the opportunity to vote on the basis of cost. Such an approach is consistent with the interpretation that has hitherto been given to both sub-sections of section 100C(3). In the context of an alleged "interference or constraint", sub-section (3)(a) has been interpreted as applying to such conduct "as would intimidate or put a member in fear of voting, or amount to physical interference". As to whether a "blatant lie or seriously misleading statement" can constitute "interference or constraint", it is the effect of such representations at the time of voting that would constitute the wrong. In practice, a similar approach has been taken to sub-section (3)(b). Since similar words were first enacted in 1984, in a different context, unions have recognised that, for the purpose of casting his or her postal vote, sub-section (3)(b), or its equivalent provision, requires a member to be provided with a pre-paid envelope. A finding that section 100C(3)(b) extends to the act of updating the membership register at the time of a statutory election would in effect be to impose a requirement that a free phone number be provided in almost all such elections; it being unlikely that most unions could argue successfully that it was not reasonably practicably so to do. I do not find that such an overlap of the statutory provisions was intended. On the facts of this case, it is argued that members incurred a direct cost to themselves in telephoning the Union to secure that their correct addresses were entered in the membership register, so enabling them to be sent a voting paper. In my judgement, such a cost, albeit a direct cost to the member, is only indirectly linked to the physical process of casting ones vote and is not within the contemplation of section 100C(3)(b).

58. For the above reasons I dismiss the complaint that the Union breached section 100C(3)(b) of the 1992 Act by failing to secure that, so far as is reasonably practicable, every person who was entitled to vote in the ballot for a transfer of engagements of UNIFI to Amicus in April/May 2004 was enabled to do so without incurring any direct cost to himself.

59. Had I found for the Applicant on this complaint, I would have been required to make a declaration under section 103(3)(a) of the 1992 Act and I would have had a discretion to make an Order under section 103(3)(b), specifying the steps which the union would have had to have taken before I entertained any application to register the instrument of transfer. I have considered whether I would have made such an Order in these circumstances. In so doing I have taken into account the fact that 71 members telephoned the Union to report that they had not received a ballot paper, out of the 3,228 who had not received one. I have also taken into account the fact that 37,975 members voted for the transfer and only 3,544 voted against. Even had all those who

had not received a ballot paper voted against the merger the result would have been the same. In these circumstances I would not have considered it appropriate to have made any Order under section 103(3)(b) had I found for the Applicant.

COMPLAINT 6:

"In breach of section 100C(4)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Union failed to secure that, so far as is reasonably practicable, every person who was entitled to vote in the UNIFI-Amicus merger ballot in April/May 2004 had a voting paper sent to him at his home address or another address which he had requested the Union in writing to treat as his postal address".

Submissions

60. The Applicant submitted that the Union had not, so far as is reasonably practicable, sent every person entitled to vote a voting paper by post at his home address. She argued that there were about 5,000 members to whom the Union had been unable to send a ballot paper as no or no accurate address was held. The Applicant submitted that the deficiencies in the membership register were of long-standing and that there were obvious additional steps that it was reasonably practicable for the Union to have taken to ensure that its register was more up-to-date. In this connection she relied upon the submission she had already made about the deficiencies in the membership register in her previous complaints.

61. For the Union, Ms McNeil submitted that the Union had done what was reasonably practicable to send voting papers to its members. She argued that the Union had maintained an accurate and up-to-date register of members, so far as is reasonably practicable, and that all members on that register had been sent a ballot paper to the appropriate address. Ms McNeil also relied upon the submission she had made about the alleged deficiencies in the membership system in the Applicant's earlier complaints.

Conclusion - Complaint 6

62. The Applicant alleges a breach of section 100C(4)(a) of the 1992 Act. This provides as follows:-

S.100C(4) *"So far as is reasonably practicable, every person who is entitled to vote in the ballot must –*

(a) have a voting paper sent to him by post at his home address or another address which he has requested the trade union in writing to treat as his postal address; and
(b) ....."

63. I find that, on the facts of this case, the present complaint succeeds or fails on the question of whether the Union maintained an accurate and up-to-date register of member's addresses, so far as is reasonably practicable. The sending of a voting paper to a member's home or other nominated address requires in practice that the Union has a database of member's addresses. There is no allegation that the Union made a selective use of, or otherwise abused, its membership database and so the issue to be decided turns upon

whether that database was adequate to enable the Union to comply with its section 100C(4)(a) duty. In my judgment, a membership register/database which complies with the requirements of section 24(1) of the 1992 Act is ordinarily one which will enable a union to comply with section 100C(4)(a) duty. I have already found that the Union's membership register complies with the requirements of section 24(1) and I accordingly find that by sending voting papers to all members with appropriate addresses on that register the Union complied with its duty under section 100C(4)(a). It was not reasonably practicable for the Union to send voting papers to the homes or nominated addresses of those members for whom it did not have relevant addresses. However, such members were given the opportunity of submitting a relevant address by virtue of the considerable publicity given to the ballot and the notification of contact details. Should they have so wished to do so, such members could have obtained a ballot paper

64. For the above reasons I dismiss the complaint that the Union breached section 100C(4)(a) of the 1992 Act by allegedly failing to secure that, so far as is reasonably practicable, every person who was entitled to vote in the ballot for a transfer of engagements of UNIFI to Amicus in April/May 2004 had a voting paper sent to him at his home address or another address which he had requested the Union to treat as his postal address.

COMPLAINT 7:

"In breach of section 100C(4)(b) of the Trade Union and Labour Relations (Consolidation) Act1992, the Union failed to secure that, so far as is reasonably practicable, every person who was entitled to vote in the UNIFI-Amicus merger ballot in April/May 2004 had been given a convenient opportunity to vote by post".

Submissions

65. The Applicant submitted that a person who did not receive a ballot paper had not, so far as is reasonably practicable, been given a convenient opportunity to vote by post. She argued that the Union's failure was compounded by its failure to provide a free phone number and its failure to encourage its members to update their addresses.

66. For the Union, Ms McNeil considered that the complaint under sub-sections (a) and (b) of section 100C(4) to be effectively the same complaint and relied upon her earlier submissions.

Conclusion - Complaint 7

67. The Applicant alleged a breach of section 100C(4)(b) of the 1992 Act. This provides as follows:-

S.100C(4): *"So far as is reasonably practicable, every person who is entitled to vote in the ballot must-*
(a) …, and
(b) be given a convenient opportunity to vote by post".

68. The Union's obligation in section 100C(4)(b) is logically directed to the position after a member has been sent a voting paper and been given the opportunity of voting in accordance with sub-section (4)(a). It cannot have been the intention of Parliament to impose the same obligation in both sub-sections. In my judgment sub-section (4)(b) is concerned not with the union sending its members a voting paper but with the opportunity the member has to return that paper, which must be a convenient opportunity to do so by post. In my judgment, therefore, section 100C(4)(b) is not engaged on the facts of this case. If I am wrong on this, I find that the Union did, so far as is reasonably practicable, give every person entitled to vote in the ballot a convenient opportunity to vote by post for the reasons set out in relation to the previous complaint.

69. For the above reasons I dismiss the complaint that UNIFI breached section 100C(4)(b) of the 1992 Act by allegedly failing to secure that so far as is reasonably practicable that every person who was entitled to vote in the ballot for a transfer of engagements of UNIFI to Amicus in April/May 2004 was given a convenient opportunity to vote by post.

DAVID COCKBURN
The Certification Officer