

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER
SECTION 55(1) and 108A(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr Keith Henderson

v

GMB

Date of Decision

22 March 2016

DECISION

Upon application by Mr Keith Henderson (“the claimant”) under sections 55(1) and 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse the claimant’s application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that its by-law 13 relating to the election of General Secretary and Treasurer 2015 allegedly prevented Mr Henderson, and other lay members of the Union, from contacting branches to advise them of their intention to stand as a candidate in the election for the post of General Secretary and Treasurer.
2. I refuse the claimant’s application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the nomination period of 8 weeks was allegedly insufficient for intended nominees to gain the required nominations from 30 branches and was allegedly insufficient for branches to arrange and hold meetings to decide upon whether to support a given individual’s nomination.
3. I refuse the claimant’s application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that its London Central General X58 branch was not provided with the necessary papers/information for the election of General Secretary and Treasurer, including the nomination form, until 3 weeks into the nomination period.
4. I refuse the claimant’s application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union allegedly did not provide sufficient information that the election of General Secretary and Treasurer was being held and, in particular, most members allegedly did not know of the 22 June to 17 August 2015 nomination period as no written notification to the membership was allowed and there was no notification on the Union’s website.

5. I refuse the claimant's application for a declaration that on or around 30 June 2015 GMB breached its by-law 13 in that Regional Secretaries Tim Roache, Paul McCarthy and Paul Maloney and National Secretary Gary Smith allegedly contacted directly or indirectly the Morning Star newspaper which published an article stating that these Union officials were seeking nominations from GMB branches for the election of General Secretary and Treasurer.

REASONS

1. Mr Henderson brought this application as a member of the GMB ("the Union"). He did so by a registration of complaint form which was received at the Certification Office on 16 October 2015.
2. Following correspondence with my office, Mr Henderson confirmed his complaints in the following terms:

Complaint 1

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's by-law 13 relating to the Election of General Secretary and Treasurer 2015 prevented Mr Henderson, and other lay members of the Union, from contacting branches to advise them of their intention to stand as a candidate in the election for the post of General Secretary and Treasurer.

Complaint 2

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the nomination period of 8 weeks was insufficient for intended nominees to gain the required nominations from 30 branches and was insufficient for branches to arrange and hold meetings to decide upon whether to support a given individual's nomination.

Complaint 3

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's London Central X58 branch was not provided with the necessary papers/information for the election of General Secretary and Treasurer, including the nomination form, until 3 weeks into the nomination period which curtailed the 8 week nomination period thereby leaving insufficient time to write to branch members, arrange a suitable date for a nomination meeting, arrange a venue and give reasonable notice to members of such a meeting.

Complaint 4

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union did not provide sufficient information that the election of General Secretary and Treasurer was being held and, in particular, most members did not know of the 22 June to 17 August 2015 nomination period as no written notification to the membership was allowed and there was no notification on the Union's website.

Complaint 5

On or around 30 June 2015 GMB breached the Union's by-law 13 in that Regional Secretaries Tim Roache, Paul McCarthy and Paul Maloney and National Secretary Gary Smith contacted the Morning Star newspaper directly or indirectly which published an article stating that these Union officials were seeking nominations from GMB branches for the election of General Secretary and Treasurer. This article constituted the issuing, on behalf of candidates in the election, of a text, circular or other material (whether written, typed or printed and whether communicated electronically or otherwise), other than an election address according with by-laws 6 to 12 inclusive, and so was prohibited under by-law 13.

3. At the hearing before me, Mr Henderson was represented by Mr Thomas Oxtton of counsel. Mr Henderson provided a written witness statement and gave oral evidence. The Union was represented by Mr Oliver Segal QC, instructed by Mr Edward Cooper, solicitor of Slater and Gordon. Oral evidence for the Union was given by Mr Allan Wylie, Finance Director of the GMB, who also provided a written witness statement. There were also in evidence the rules of the Union and a 187 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the conclusion of the hearing, after the close of evidence and in the course of his reply to Mr Segal's closing submissions, Mr Oxtton made an application to amend Complaint 1 by adding the words "*or by-law 13 as interpreted by the Union*", so that Complaint 1 would read as follows:

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's by-law 13, *or by-law 13 as interpreted by the Union*, relating to the Election of General Secretary and Treasurer 2015 prevented Mr Henderson, and other lay members of the Union, from contacting branches to advise them of their intention to stand as a candidate in the election for the post of General Secretary and Treasurer.

Having heard submissions on this application, I refused to allow the amendment on the grounds of its lateness and the absence of evidence which the Union may have wished to introduce if the case had been pleaded in this way in a timely manner.

Findings of Fact

4. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
5. Mr Keith Henderson joined the GMB in July 2004. He held numerous positions at local level, including those of Health & Safety Representative, Shop Steward and Branch Secretary as well as being a delegate to regional and national meetings. He was and remains a member of the London Central General Branch – X58. In November 2009 he became a full time Regional Officer but was dismissed as an employee of the Union in December 2012. He commenced Employment Tribunal proceedings claiming unfair dismissal and discrimination/harassment on the grounds of his philosophical (political) beliefs. An Employment Tribunal dismissed his unfair dismissal claim but upheld his discrimination/harassment claim. There was an appeal and cross-appeal to the Employment Appeal Tribunal at which the Union was totally successful. At the date of this hearing an appeal from the decision of the EAT was waiting to be heard by the Court of Appeal. Mr Henderson is also a member of two groups of political activists; the Labour Representation Committee and Grass Roots Left.
6. At the relevant time, the GMB had about 635,000 members who were divided between nine regions and about 967 branches. Members are also divided into three national sections; public services, manufacturing and commercial services. Each of these holds meetings and conferences for its members and their representatives.
7. The posts of General Secretary and Treasurer within the GMB are combined and held by the same person. I shall hereafter refer to the combined role as being that

of General Secretary. Mr Paul Kenny was first elected General Secretary in 2005. He was re-elected in 2010 and his five year period of office was due to expire at the end of 2015. Mr Kenny was knighted in 2015.

8. The principal committee within the GMB is the Central Executive Council (“CEC”). At the meeting of the CEC in October 2014 Mr Kenny advised that there would a General Secretary election before the end of 2015. At that time he had not ruled himself out as a candidate. On the 7 October 2014, Mr Kenny issued a circular to all staff. I was informed at the hearing that the purpose of this circular was to prevent full time officials and other employees convening meetings which might ostensibly be for routine business but were in reality to be used for campaigning prior to the announcement of the election timetable. This circular included the following passage;

“It is important that every Employee fully understands that any interference in the GMB election process will be deemed a serious matter of the highest level. Irrespective of when the nominations period opens any behaviour including canvassing, promoting or campaigning on the suitability or candidature of any person is not allowed from this date onward. Any suggestion that the rules don’t start until the nomination period begins holds no validity whatsoever. It is inevitable that much speculation will abound both inside and outside the Union. Potential Candidates will of course be asked the pressing question and as individuals they are of course completely free to declare their intention at any time. It needs to be clear however that any unusual activity of visits to membership groups will be monitored at both National and Regional level. It is very likely that certain individuals who have attacked our Union in the past will seek to involve themselves in our internal Democracy. I strongly advise all colleagues to avoid becoming entangled with such behaviour.”

9. In early 2015 Mr Henderson let it be known that he intended to stand in the General Secretary election that year. I was shown the following evidence of the steps that he had taken in this regard prior to the announcement of the election timetable.
- 9.1 Grass Roots Left posted a website blog on 23 February 2015 which states, *“Keith Henderson has announced that he will be seeking nomination for the General Secretary election of the GMB.”* The blog also made available Mr Henderson’s election address and referred to his draft manifesto.
- 9.2 On or about 24 February 2015 a similar posting appeared as a blog on the website of Socialistfight.com.
- 9.3 On 18 March 2015 a blog on the website of the Labour Representation Committee followed up on the statement it had made on 23 February 2015 announcing that Mr Henderson would be seeking nomination in the forthcoming General Secretary election in the GMB. It reports him as saying that if elected, he would call a new election within six months to facilitate a further election which would be “free and fair”.

- 9.4 On 20 May 2015 Mr Henderson attended a meeting in Birmingham organised by Grass Roots Left. A flyer advertising this meeting stated that its purpose was to “*Meet Keith Henderson, the contender to be General Secretary of the GMB*”. It went on, “*This is an opportunity for trade unionists to meet Keith and put their questions to him on all aspects of his policies for the future of the union ... this meeting is open to members of the GMB, their friends and relatives plus supporters of the GRL Initiative.*” At the hearing, Mr Henderson stated that whilst the meeting was adequately attended, there was only one other member of the GMB present and he was the person chairing the meeting.
10. On 6 June 2015 the CEC adopted a timetable and by-laws for the General Secretary election. Rule 15 of the rules of the GMB provides that such an election will be organised and carried out in line with by-laws issued by the CEC. The election timetable provided for nominations to be received by the 28 August, for the Finance & General Purposes Committee to determine which of the nominees qualified as candidates under the rules by 7 September, for the balloting period to be between 14 October and 4 November and for the result to be declared on 6 November.
11. At the bi-annual congress of the Union, held between 7 and 11 June 2015 in Dublin, Mr Kenny announced that he would not be seeking re-election. The election timetable was also announced.
12. On 19 June 2015 the National Returning Officer, Mr Steve Short, issued a circular to all branches inviting nominations in the General Secretary election. There was enclosed with this circular a copy of the timetable, the election by-laws and a branch nomination form. The circular also reminded Branch Secretaries that the by-laws provide that a nominee who receives fewer than 30 valid branch nominations shall not qualify for candidature. This requirement appears in by-law 2 in the election by-laws.
13. The issue of the Morning Star newspaper of 30 June 2015 carried an article concerning the General Secretary election in the GMB. The article was written by Conrad Landin and Peter Lazenby. It reported that the previous evening the GMB election had heated up by Tim Roache, Yorkshire & North Derbyshire Regional Secretary, becoming the first candidate to make a public declaration. It continued that other candidates “*said to be seeking nomination*” were Paul Maloney, Southern Regional Secretary, Paul McCarthy, Irish Regional Secretary and Gary Smith, National Secretary for Energy. Mr Maloney was described as a “*Kennyesque*” character whilst Mr Roache was described as “*probably to the left of Mr Kenny*”.
14. Mr Henderson stated in evidence that he contacted his branch on learning that nominations were being invited. His Branch President was Mr Steve Forrest and his Branch Secretary was Ms Maria Franco. He found out by late June 2015 that his branch had not yet received the branch nomination pack from Steve Short. Accordingly, on 1 July, Mr Forrest sent an email to Steve Short asking for a further copy of the circular and its enclosures to be sent to him or Ms Franco. He informed Mr Short that his branch was attempting to organise a branch meeting to seek nominations. Mr Short responded by an email of 3 July, agreeing to forward the

necessary papers. Mr Forrest's reply stated that he would certainly now organise the branch meeting. The nomination papers were eventually received by Branch X58 approximately three weeks after the date they were first distributed by Mr Short. However, it was still possible to organise a branch meeting for 27 July at which nominations were invited. There is some dispute about the circumstances which gave rise to the delay in the branch receiving the nomination papers, which it is not necessary for me to resolve. I was told that the circulation had been sent out nationally and the address of the X58 branch on the database of the National Administration Unit appears to have been "C/O" the London Regional Office, which forwarded the circular to an incorrect address for Ms Franco. This explanation is not accepted by Mr Henderson.

15. In organising the meeting of branch X58 to consider its nominations, Mr Forrest and Ms Franco issued an undated branch newsletter to its members notifying them of the meeting on 27 July and stating that Mr Henderson, a branch member, would be seeking nomination as he had announced his intention to stand for the post of General Secretary. The branch circular came to the attention of the Regional Returning Officer, Mr Tony Warr, who emailed Mr Forrest on 24 July to inform him that by sending out that newsletter by-law 13 had been breached. Both Mr Warr and the Regional Secretary, Mr Hayes, required that the newsletter be recalled.
16. On 27 July 2015 there was a branch meeting of the X58 branch at which Mr Henderson received the nomination of the branch to become a candidate in the General Secretary election. Mr Henderson stated in evidence that this meeting was attended by about seven or eight members compared to the usual 10 or 15 members.
17. In the meantime, on 1 July 2015, Mr Henderson had emailed Mr Short to make a formal complaint under the rules of the Union in relation to the election procedure. He stated that he considered the by-laws drawn up by the CEC effectively debarred him and any other lay member of the Union from standing in the election. The outcome sought by Mr Henderson was the deletion of by-laws 13 to 17 which he said prevented potential nominees from contacting branches to inform them that they were seeking nomination and explaining why. He referred to the article in the Morning Star and the Union's failure to deliver the nomination pack to his branch at the correct time. Mr Henderson gave further details of his complaint to the Union on 22 July and his complaint was considered by the Finance & General Purposes Committee ("F&GP") of the CEC on 28 July. Mr Wylie wrote to Mr Henderson on 30 July to inform him that his complaint had been dismissed. Mr Wylie explained that, since the by-laws were agreed at a recalled Congress in 2005, they had been considered by legal advisers and the F&GP was satisfied that they did not breach section 47 of the 1992 Act. On 31 July Mr Henderson submitted an appeal against that decision to the Appeals Committee of the CEC.
18. On 3 August 2015, Mr Hayes, the Regional Secretary, wrote to all London Central General branch members to inform them that he had suspended their Branch President and Branch Secretary pending a hearing in front of the London Regional Committee. This suspension was for having allegedly breached by-law 13 and not complying with an instruction of the Regional Secretary to withdraw the offending newsletter.

19. On 17 August 2015 nominations in the General Secretary election closed.
20. On 7 September 2015 the F&GP of the CEC met to consider the validity of the nominations that had been submitted. There had been nine nominations from 423 branches. The Union had about 967 branches at that time. Only four of the nominees had the support of 30 or more branches to qualify as a candidate. The outcome of this process was as follows:

Mr K Henderson	lay member	1 nomination	did not qualify
Ms K Walker-Shaw	the Brussels Officer	1 nomination	did not qualify
Mr M Smith	a National Organiser	1 nomination	did not qualify
Mr B. Scrutton	a National Secretary	1 nomination	did not qualify
Mr P Kenny	former General Secretary	13 nominations	had stated he was not standing
Mr P Maloney	a Regional Secretary	62 nominations	qualified
Mr G Smith	a National Secretary	64 nominations	qualified
Mr T. Roache	a Regional Secretary	121 nominations	qualified
Mr P McCarthy	a Regional Secretary	159 nominations	qualified

21. On 8 September 2015 Mr Short wrote to Mr Henderson, further to the hearing of his appeal on 3 September. The Appeals Committee of the CEC was satisfied that the by-laws were fit for purpose and complied with the law. Mr Henderson's appeal was dismissed.
22. On 16 October 2015 Mr Henderson commenced his current complaint before me.
23. On 11 November 2015 the London Regional Committee heard the complaint against Mr Forrest and Ms Franco. By that date, Ms Franco had obtained a counsel's opinion to the effect that by-law 13 could not be invoked in the circumstances of their case as it applied only to material used on behalf of a candidate and, at the time of the newsletter, Mr Henderson was not even a nominee. Nevertheless, by a letter dated 17 November, Mr Forrest and Ms Franco were informed that they had been found in breach of by-law 13. Mr Forrest was removed from office as Branch President and declared ineligible to stand for posts in the GMB or attend Congress for three years. Ms Franco was similarly removed as Branch Secretary and declared ineligible for a period of two years. They both appealed these decisions.
24. On 12 November 2015 the election results were announced. Mr Tim Roache received 15,034 votes and Mr Paul McCarthy received 11,454 votes. The other two nominees who qualified as candidates had dropped out. Mr Roache was declared elected as the General Secretary.

25. On 17 December 2015 the Union's solicitors submitted to my office the Union's formal response to Mr Henderson's complaint. In it, the solicitors appeared to accept that by-law 13 applied to someone in Mr Henderson's position at the relevant time to prevent any text, circular or other written material being issued on his behalf but that it did not prevent him from contacting branches by telephone or attending branch meetings. However, by a further letter of 5 February 2016 the Union's solicitors wished to amend its previous response to state that by-law 13 only applies to those who are candidates and did not therefore apply to Mr Henderson to prevent him contacting branches to seek their nominations by any means that he wished.
26. Also on 5 February 2016, the Union wrote to Mr Forrest and Ms Franco with the outcome of their appeal hearing, which had taken place on 2 February. Their appeals were allowed, consistent with the Union's changed interpretation of by-law 13.

The Relevant Statutory Provisions

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

47. Candidates

- (1) *No member of the trade union shall be unreasonably excluded from standing as a candidate.*
- (2) *No candidate shall be required, directly or indirectly, to be a member of a political party.*
- (3) *A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union. But a rule which provides for such a class to be determined by reference to who the union chooses to exclude shall be disregarded*

55 Application to Certification Officer

- (1) *A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.*

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 Rules and By-Laws of the Union

28. The rules of the Union which are relevant for the purposes of this application are:

Rule 15 Electing a general secretary and treasurer

1 This rule will apply to how the general secretary and treasurer is elected. They will hold office for five years.

2 The Central Executive Council will ask branches for their nominations six months before the existing official's term of office runs out (or, if there is a vacancy, as soon as possible after taking account of any relevant matters). Branches should send their nominations to a returning officer appointed by the Central Executive Council.

3 No member will be eligible to stand as a candidate in an election under this rule unless the Central Executive Council is satisfied that:

- a) he or she is eligible under these rules to be elected to office; and*
- b) he or she meets the conditions set out in by-laws for people who are nominated as candidates.*

Only candidates who meet the above conditions will be validly nominated.

4 Elections under this rule will be organised and carried out in line with by-laws issued by the Central Executive Council, which may in particular:

- set a threshold for the number of branch nominations required, and set other conditions which possible candidates will need to meet;*
- ban or allow and control canvassing (campaigning for votes) and spending by or on behalf of candidates; and*
- decide how (including the format, layout and typeface) copies of candidates' election addresses will be produced and given out to voters.*

By-laws made under this rule may set out whether failing to keep to any by-laws would disqualify a candidate or possible candidate from standing for election. The Central Executive Council may amend or withdraw any by-law if it thinks it is necessary.

5 An election will not need to take place if the holder of the office:

- a) having been elected to that office under this or the previous rule; and*
- b) having been a full-time employee of the union for at least 10 years; would otherwise reach retirement age within five years of their current term of office ending.*

6 Elections under this rule will be held by secret ballot.

Rule 35 Branches

Rule 35.20

Meetings of branch members must only include the members of the branch concerned. Members of any branches will not be entitled or allowed to take part in another branch's meetings unless this has been approved by the regional secretary. Any member who fails to keep to this condition will be dealt with by the regional committee in line with the powers set out in these rules.

29. The relevant by-laws are:

GMB

Election of General Secretary and Treasurer 2015

By-laws

In exercise of its powers under Rule, the Central Executive Council adopts and issues the following By-laws.

Nominations

1. Nominations shall be sent by branches, using the form provided, to the National Returning Officer to arrive not later than Monday 17 August 2015. Each branch may submit one nomination.
2. A nominee who receives fewer than 30 valid nominations shall not qualify for candidature.

Canvassing and hustings

13. No text, circular or other material (whether written, typed or printed and whether communicated electronically or otherwise) shall be issued on behalf of any candidate in the election other than an election address that accords with by-laws 6 to 12 inclusive.

14. No nominee or candidate shall invite or accept any donation or contribution in money or kind from any other person and in particular from any provider of goods or services to the Union or any employer. Candidates may recover standard expenses and subsistence for attending hustings arranged under by-law 18 and may incur additional expenditure not exceeding £100 in the election. Each candidate shall, not later than one week from the close of voting, submit a financial return on the form provided to the National Director of Finance, showing all expenses and subsistence claimed in connection with hustings and accounting for any additional expenditure incurred by him/he in connection with the election.

15. No officer, official or employee of the Union shall request, instruct or pressure any person over whom he/she has authority to take any step to support a nominee or candidate. Save where he/she takes leave to which he/she is entitled, no officer, official or employee of the Union shall be released from their duties as such for the purpose of assisting a candidate, whether by canvassing or otherwise.

16. No candidate and no officer, official or employee of the Union shall for the purposes of supporting a candidate access or use any information contained on the Union's membership or other databases, records or lists, including the names and/or addresses or other contact details of members or officials of the Union.

17. In the event that a nominee or candidate becomes aware of any breach or apparent breach of by-law 13, 14, 15 or 16 by another person acting or purporting the act on his/her behalf, he/she shall as soon as reasonably practicable dissociate himself/herself from any breach, take all reasonable steps to prevent a recurrence of any breach, withdraw any material that has been issued in support of him/her and notify the National Returning Officer that he/she has done so.

18. Each Region of the Union may hold up to two hustings and any branch of the Union may hold one hustings, to which the Regional or Branch Secretary as appropriate (Regional or Branch President in the event that the Secretary is a candidate) shall invite all those nominees who are confirmed as candidates by the Central Executive Council Finance & General Purposes Committee. Invitations shall be issued and the hustings conducted so as to treat candidates equally and with proper dignity and respect. Subject to by-law 5, a failure of a relevant Region or a Branch officer to invite all candidates shall be treated as a conduct contrary to the rules of the Union for the purposes of rule 5.

19. Save for hustings arranged in accordance with by-law 18, no candidate may address any meeting of any Branch (including a meeting of his/her own Branch) or Region or Section of the Union or any meeting of any kind whether held in a workplace or elsewhere, on the subject of the election.

20. A breach of any the following by-laws may lead to disqualification of a nominee or candidate from standing in the election:

- (i) breach by the nominee or candidate of by-law 13, 14, 15, 16 or 19
- (ii) failure by a nominee or candidate to take all steps required by by-law 17.

Other matters

22. Exercising its power under Rule 10.4, the Central Executive Council delegates its functions under Rule 15.3 to its Finance and General Purposes Committee, the decisions of which will not be subject to approval by the Central Executive Council. The Finance & General Purposes Committee must satisfy itself a nominee can fulfil the range of duties of the General Secretary & Treasurer Job description. Upon the Finance & General Purposes Committee confirming a nominee as a candidate, the National Returning Officer

shall send regions the candidate's contact details provided under by-law 5 (ii) and the Regional Secretary shall thereupon ensure they are passed to all Branches without delay.

CONSIDERATIONS AND CONCLUSIONS

Complaint One

30. Mr Henderson's first complaint is as follows:

Complaint 1

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's by-law 13 relating to the Election of General Secretary and Treasurer 2015 prevented Mr Henderson, and other lay members of the Union, from contacting branches to advise them of their intention to stand as a candidate in the election for the post of General Secretary and Treasurer.

31. Section 47 of the 1992 Act provides as follows:

Candidates

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to who the union chooses to exclude shall be disregarded

32. By-law 13 provides as follows:

Canvassing and hustings

13. No text, circular or other material (whether written, typed or printed and whether communicated electronically or otherwise) shall be issued on behalf of any candidate in the election other than an election address that accords with by-laws 6 to 12 inclusive.

Summary of Submissions

33. Mr Oxtan, for Mr Henderson submitted that the way the Union had organised the General Secretary election precluded any real possibility that Mr Henderson could stand as a candidate by effectively frustrating any attempt to secure the requisite 30 or more nominations. He argued that, by the way the Union had (wrongly) interpreted by-law 13, a potential nominee was precluded from publishing any address in any form, whether in writing or "otherwise", to secure the support of 30 branches. He stated that the disciplinary action against the Branch President and Branch Secretary which was undertaken by the Union in July 2015 and maintained until February 2016, as well as the initial response to this complaint by the Union's solicitors of 17 December 2015 are evidence of the Union's incorrect interpretation of by-law 13. Mr Oxtan further submitted that Mr Henderson was prohibited from even making phone calls or attending at branch meetings (as the Union had contended) by virtue of rule 35.20 of the main GMB rules which prohibits members from taking part in the meetings of another branch when read together with by-laws 13, 16 and 17 (which allegedly forbid phone calls) and Mr Kenny's admonition in his

circular to all staff of 7 October 2014. Mr Oxton also argued that Mr Henderson's frustration at not being able to contact other branches is evidenced by the formal complaint he made to Mr Short on 1 July 2015, which he maintained to the conclusion of his appeal on 8 September 2015. In Mr Oxton's submission there are two main questions. First, whether Mr Henderson was effectively excluded as a candidate in the General Secretary election and, secondly, whether the exclusion was reasonable. Mr Oxton maintained that Mr Henderson was excluded and that his exclusion was unreasonable.

34. Mr Segal QC for the Union, submitted that the General Secretary of the GMB is effectively the CEO of a huge organisation with responsibility for substantial funds. He argued that in these circumstances it was appropriate, if not essential, that any candidate had a significant profile and popularity within the Union. He accepted that the requirement of securing the nomination of 30 branches was a formidable hurdle to an ordinary member with no significant profile within the Union and that such a person had little prospect of building that level of profile in the eight weeks nomination period. However, he argued that the need to secure 30 nominations was no basis for holding that members who did not secure them had been unreasonably excluded. In this he relied upon **Re Broadcasting and Entertainment Trades Alliance (D/5/90, 21 December 1990 – CO)**. In his submission, Mr Henderson's complaints are, in reality, no more than an expression of his frustration at the requirement for 30 branch nominations and that it is the requirement itself which frustrated his intended candidacy, not the matters about which he complains. In relation to this specific complaint, Mr Segal submitted that Mr Henderson had throughout maintained that by-law 13 does not apply to those seeking nomination and that his public announcements of an intention to stand between February and May 2015 were consistent with that understanding. Mr Segal confirmed that the Union's construction of the by-laws was that they did not apply to potential nominees in the position of Mr Henderson before and during the nomination period. Nevertheless, he went on to argue that not even by-law 13 prevented candidates from contacting branches. In his submission, by-law 13 only prevents written material of a campaigning nature being issued on behalf of a candidate and does not prevent potential nominees from stating (whether in writing or orally) that they are seeking nomination or from orally pressing their case for nomination either by phone or at meetings.

Conclusion – Complaint One

35. Section 47(1) of the 1992 Act provides that no member of a trade union shall be unreasonably excluded from standing as a candidate. There is no doubt that Mr Henderson was excluded from standing as a candidate in the General Secretary election 2015. However, this was as a result of him failing to secure the nomination of 30 branches, as required by by-law 2. The present complaint does not seek to argue that the unreasonableness of his exclusion lies in the requirement to secure the nomination of 30 branches but rather in by-law 13 which, it is alleged, prevented Mr Henderson and other lay members from contacting branches to advise them of their intention to stand as a candidate.
36. The correct construction of by-law 13 has been in dispute but both parties now agree that it impacts only on material issued on behalf of any candidate. By-law 13, correctly construed, does not operate so as to prevent potential nominees

contacting branches so as to hopefully secure branch nominations. Accordingly, complaint one is misconceived. By-law 13 cannot be a basis upon which to hold that the Union is in breach of section 47(1) of the 1992 Act for having unreasonably excluded Mr Henderson from standing as a candidate.

37. The case now advanced in support of Mr Henderson addresses a different point to the one made in this complaint. Mr Henderson is seeking to argue that his failure to secure 30 nominations is the direct result of his fear that by approaching branches he would be considered to be in breach of by-law 13. I do not accept that proposition. He had no fear or hesitation in publicly announcing his proposed candidacy in early 2015, notwithstanding the likelihood of the adoption of similar by-laws as in previous elections and the General Secretary's circular of 7 October 2014. He has held many lay positions within the Union and been a full time officer. He is a member of at least two activist organisations, which assisted him in announcing his intention to stand. Accordingly, Mr Henderson was not an ordinary lay member without contacts. Nevertheless, it seems from the evidence before me, that he took no steps to secure nominations beyond that of his own branch. He argued that he could not attend other branch meetings because of rule 35.20 but that rule only prohibits members attending another's branch meeting without the approval of the Regional Secretary. Mr Henderson did not seek such permission from any Regional Secretary. Mr Henderson stated that he had the contact details of some branches but he made no attempt to contact them, regardless of the correct interpretation of by-law 13. When asked by Mr Segal for his strategy for seeking nominations, he stated that he wanted to email something to all branches and thought that the Union would provide the relevant email addresses to all members interested in standing, or at least to those who had secured the nomination of their own branches. When asked if he had a plan B in case the email addresses were not forthcoming, Mr Henderson said that once he had got the nomination of his own branch he would contact those other branches for whom he had contact details. He argued that he could not do this because of the way the Union had by then applied by-law 13 to Mr Forrest and Ms Franco. When asked why he had not approached the branches for which he had contact details before any action was taken against Mr Forrest and Ms Franco, he replied that he was waiting for his complaint to Mr Short of 1 July 2015 to be heard, namely the complaint in which he was seeking the deletion of by-laws 13 to 17. I find Mr Henderson's approach to his task of securing 30 nominations to be disingenuous. It is as if, knowing he could not obtain 30 nominations, he was looking for a course of action. He was known as a Regional Officer who had been dismissed and who had taken his Union to an Employment Tribunal. His case had been rejected at the EAT. No members of the Union had attended the meeting in Birmingham on 20 May 2015 (other than its chair) which had been billed as an opportunity to meet "*the contender to be General Secretary of the GMB*". His plan for the Union to give him the email addresses of all the branches in the Union was unrealistic, as was his alternative plan of only contacting branches after he had secured the nomination of his own branch. It is a matter of common sense that by then some or most of the branches would have already held their meetings and nominated the one person they wished to put forward. Accordingly, I find that the case put forward by Mr Henderson in support of this complaint is not only misconceived as a matter of law but is also without merit in the broader way that it has been put.

38. For the above reasons I refuse Mr Henderson's application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's by-law 13 allegedly prevented Mr Henderson, and other lay members of the Union, from contacting branches to advise them of their intention to stand as a candidate in the election for the post of General Secretary.

Complaint Two

39. The claimants' second complaint is as follows:

Complaint 2

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the nomination period of 8 weeks was insufficient for intended nominees to gain the required nominations from 30 branches and was insufficient for branches to arrange and hold meetings to decide upon whether to support a given individual's nomination.

40. Section 47 of the 1992 Act is set out above.

Summary of Submissions

41. Mr Oxtan, for Mr Henderson, made no legal submissions on this complaint at the hearing but referred me to paragraphs 30 to 32 of Mr Henderson's witness statement. At these paragraphs Mr Henderson asserts that eight weeks was insufficient time to secure 30 nominations as the nomination period fell within the holiday season and many branches would not have met within this period. In correspondence, Mr Henderson had suggested that an appropriate period would have been 10 weeks. He further compared the turnout in this election of 4.4% with the turnout in the elections for General Secretary in other unions which varied from 12.8% to 24.1%. He stated that this demonstrated that the overwhelming majority of GMB members were unaware of the election or were otherwise unable to participate.
42. Mr Segal QC, for the Union, submitted that this complaint was hopeless on the facts as there was no evidence that any potential nominee had run out of time to secure sufficient nominations or that any branch was unable to meet. He also pointed out that Mr Henderson's branch had in fact met in the eight week period and nominated him, despite getting the nomination pack from head office some three weeks late. He further noted that four candidates did get more than 30 nominations and a total of about 430 branches (out of a total 967 branches) did make a nomination.

Conclusions – Complaint Two

43. Section 47(1) of the 1992 Act provides that no member of a trade union shall be unreasonably excluded from standing as a candidate in an election for General Secretary. Mr Henderson seeks to persuade me that a nomination period of eight weeks in the circumstances of this election amounted to an unreasonable exclusion of him.
44. There is no evidence of any person being excluded from this election on the basis of his or her branch being unable to hold a meeting in the eight week nomination period. The existence of an eight week nomination period did not lead to the failure of Mr Henderson to be nominated by his own branch, as he was nominated at a

branch meeting on 27 July 2015. Neither did it lead to the failure of some 423 branches to nominate a total of nine nominees. Further, in my experience, a nomination period of eight weeks is not unusual for similar elections in other unions.

45. Whilst Mr Henderson failed to secure 30 nominations in the eight weeks nomination period, it is unlikely that he would have been able to do so if the nomination period had been 10 weeks, as he has proposed. The requirement of securing 30 nominations pre-supposes that nominees will be persons with an existing profile and basis of support within the Union. Such a criterion may not be inappropriate in an election for the most important position in the Union. No doubt Mr Henderson was well known within the Union and he commenced his campaign for nomination in February 2015. In these circumstances I find that his inability to secure 30 nominations was not caused by the nomination period being one of eight weeks.
46. For the above reasons I refuse Mr Henderson's application for a declaration that on or about 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the nomination period of 8 weeks was allegedly insufficient for intended nominees to gain the required nominations from 30 branches and was allegedly insufficient for branches to arrange and hold meetings to decide upon whether to support a given individual's nomination.

Complaint Three

47. The claimants' third complaint is as follows:

Complaint 3

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union's London Central X58 branch was not provided with the necessary papers/information for the election of General Secretary and Treasurer, including the nomination form, until 3 weeks into the nomination period which curtailed the 8 week nomination period thereby leaving insufficient time to write to branch members, arrange a suitable date for a nomination meeting, arrange a venue and give reasonable notice to members of such a meeting.

48. Section 47 of the 1992 Act is set out above.

Summary of Submissions

49. Mr Oxtan, for Mr Henderson, made no legal submissions on this complaint at the hearing but referred to paragraphs 33 to 46 of Mr Henderson's witness statement. At those paragraphs, Mr Henderson refers to the failure of the Union to supply his branch with the nomination pack for some 3 weeks after 19 June 2015, when the packs were dispatched generally. He asserts that this left him with an unequal chance to secure the necessary 30 nominations to become a candidate. He states that he was given 3 weeks less time than the 'leadership-favoured' nominees and asserts his believe that this was a deliberate attempt to prevent him from becoming a candidate.
50. Mr Segal QC for the Union, submitted that this complaint must be viewed as vexatious as Mr Henderson's branch did hold a nomination meeting and did nominate him. He referred to the case of **Re Iron & Steel Trades Confederation (D/4/90 20 December 1990 – CO)**. Mr Segal invited me to accept the Union's

evidence concerning the reason for the delay in receipt of the nomination pack by branch X58, which showed that the Union was not culpable.

Conclusions – Complaint Three

51. Section 47(1) of the 1992 Act provides that no member of a trade union shall be unreasonably excluded from standing as a candidate for the position of General Secretary. The delay of about three weeks in the nomination pack being received by Mr Henderson's branch did not prevent his branch from calling a branch meeting and nominating him. I further find that Mr Henderson was aware of the election timetable shortly after it was agreed by the CEC on 6 June 2015 and that, had he been inclined, he could have used his contacts within the Union from that time to attempt to secure the nomination of other branches. He was aware that the election had to be concluded before the end of 2015 and had anticipated that the process would be initiated at the CEC in April that year. When no such decision had been taken by the CEC in April, it must have been common knowledge that the decision could not be delayed much beyond the CEC in June. Indeed, this is a requirement of rule 15.2. On this basis, I find that the delay in the nomination pack being received by Mr Henderson's branch of some three weeks did not cause him to be unreasonably excluded from being a candidate in the General Secretary election. I make no findings on the reasons for the delay.
52. For the above reasons I refuse Mr Henderson's application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that his branch was not provided with the necessary papers/information for the election of General Secretary, including the nomination form, until 3 weeks into the nomination period.

Complaint Four

53. The claimants' fourth complaint is as follows:

Complaint 4

On or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union did not provide sufficient information that the election of General Secretary and Treasure was being held and, in particular, most members did not know of the 22 June to 17 August 2015 nomination period as no written notification to the membership was allowed and there was no notification on the Union's website.

54. Section 47 of the 1992 Act is set out above.

Summary of Submissions

55. Mr Oxtan, for Mr Henderson, made no legal submissions on this complaint at the hearing but referred to paragraphs 47 to 54 of his witness statement. At those paragraphs Mr Henderson asserts that due to the lack of information published by the Union, most members did not know that the nomination period was between 22 June and 17 August 2015. He argued that the sending of nomination packs to Branch Secretaries was an inefficient and ineffective way of informing members of the election, having regard to the inability of lay officials to react sufficiently quickly in such circumstances. Mr Henderson further noted the absence of any information about the nomination period in the Union's magazine or on any of the Union's websites.

56. Mr Segal QC, for the Union, commented that he was unclear how a complaint against the Union for allegedly not having provided sufficient information of the nomination process could be regarded as a complaint of unreasonable exclusion of a member who had indeed secured the nomination of his own branch. Mr Segal considered that the complaint confused these two different propositions. Nevertheless, he pointed out that no other member had complained that he/she considered that they had been excluded or potentially excluded on this basis and that the normal method for the GMB to communicate matters of importance to its members is through the branch structure, which method is well known to the membership. Mr Segal commented that this method of communication is also the method used by many other unions.

Conclusion – Complaint Four

57. Section 47(1) of the 1992 Act provides that no member of a trade union shall be unreasonably excluded from standing as a candidate in an election for the position of General Secretary. The information of the nomination process provided by the Union was sufficient for 423 branches to hold meetings and make a nomination, including Mr Henderson's own branch. Nine members secured nomination. Mr Henderson supposes that there were members who would have wished to seek nomination but who were prevented from doing so by reason of the lack of information about the nomination process. However, there is no evidence of any individual member who comes within this category. There is no factual basis for this complaint and it must be dismissed.
58. For the above reasons I refuse Mr Henderson's application for a declaration that on or around 1 July 2015 GMB breached section 47(1) of the 1992 Act in that the Union allegedly did not provide sufficient information that the election of General Secretary and Treasurer was being held and, in particular, most members allegedly did not know of the 22 June to 17 August 2015 nomination period as no written notification to the membership was allowed and there was no notification on the Union's website.

Complaint Five

59. The claimants' fifth complaint is as follows:

Complaint 5

On or around 30 June 2015 GMB breached the Union's by-law 13 in that Regional Secretaries Tim Roache, Paul McCarthy and Paul Maloney and National Secretary Gary Smith contacted the Morning Star newspaper directly or indirectly which published an article stating that these Union officials were seeking nominations from GMB branches for the election of General Secretary and Treasurer. This article constituted the issuing, on behalf of candidates in the election, of a text, circular or other material (whether written, typed or printed and whether communicated electronically or otherwise), other than an election address according with by-laws 6 to 12 inclusive, and so was prohibited under by-law 13.

60. The relevant by-laws are:

6. The National Returning Officer shall invite each nominee to supply an election address of up to 300 words using the form provided. The National Returning Office shall invite each nominee to supply a head and shoulders only photograph. A nominee may

supply an election address in electronic form, in which event the format shall be Microsoft Word.

7. An election address shall not be obligatory but, if supplied, must reach the National Returning Officer by Friday 28 August 2015, otherwise it shall not be accepted. A photograph of the nominee shall not be obligatory but, if supplied, must reach the National Returning Officer by Friday 28 August 2015, otherwise it shall not be accepted. An election address and photograph may be sent to the National Returning Officer by hand, post or email but not by fax or any other method of delivery.

8. Election addresses should not contain anything that is obscene, discriminatory, defamatory or otherwise unlawful.

9. The National Returning Officer shall delete all words which follow the first 300 words of the election address and so are in excess of the maximum number of words permitted under paragraph (6) above.

10. Numbers expressed as figures will count as words e.g. "2015", "2015/16" count as one word; "2015/2016", "2015-2016" count as two words; "two thousand and fifteen" counts as four words.

11. "GMB" counts as one word, as do acronyms and abbreviations such as "CEC", "TUC", "UK".

12. The method to be adopted for producing copies of candidates' election addresses for distribution to voters shall be as follows:

(i) plain typeface in monochrome Arial font, single line spacing, double line spacing between paragraphs

(ii) standard use of lower and upper case i.e. lower case save capitals at start of sentences, names and acronyms (e.g. "GMB", "TUC")

(iii) graphic and other special non-verbal effects, text or content will not be reproduced e.g. inappropriate capitalisation, bold, italics, underlining, bullet points, colours, boxes around text, graphs, tables, sketches, symbols, cartoons, photographic images (other than a photograph supplied under by-laws 6 and 7)

13. No text, circular or other material (whether written, typed or printed and whether communicated electronically or otherwise) shall be issued on behalf of any candidate in the election other than an election address that accords with by-laws 6 to 12 inclusive.

Summary of Submissions

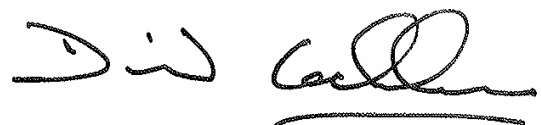
61. Mr Oxtan, for Mr Henderson, made no legal submissions on this complaint at the hearing but referred to paragraphs 55 to 60 of his witness statement. At those paragraphs, Mr Henderson asserts that the Union's press department provided information to the Morning Star that it was promoting the candidature of certain officials over competitors like himself, even though it knew that in doing so it was acting in breach of by-law 13. He also argued that the article in the Morning Star amounted to unequal treatment as it contained no reference to himself or other potential contenders who may have declared an interest. Mr Henderson stated that the Union chose the Morning Star as it is a newspaper the Union helped to fund, nearly every Branch Secretary reads it and copies are found in every Union office. He supposed that the Union's objective was to favour the leadership-sponsored candidates and reduce the chance of competing nominees securing the 30 or more nominations required.
62. Mr Segal QC, for the Union, submitted that this complaint is based on an incorrect construction of by-law 13 which applies only to material issued on behalf of a candidate. He observed that the named individuals only became candidates on 7 September 2015 and that accordingly it was not possible for a breach of this by-law to have occurred on 30 June. Even if by-law 13 applied, Mr Segal argued that what appeared in the Morning Star was a newspaper article, not a "text, circular or other material ... issued on behalf of any candidate in the election".

Conclusions – Complaint Five

63. I have already found that by-law 13, correctly construed, has no application in relation to material issued by or on behalf of potential nominees. It applies only to material issued on behalf of any candidate in the election (see paragraph 34 above). On 30 June 2014 when the article was published, the individuals named in the article were potential nominees, not candidates. Accordingly, this alleged breach of by-law 13 is misconceived.
64. I also find that there is no evidence that the information in the newspaper was supplied by the Union’s press office or came from any other official Union source. The nomination period for the General Secretary election had begun on 22 June. I can well imagine that the two journalists whose names appear as the authors of this article had a genuine interest in finding out who were being considered to be the serious contenders. In the absence of any persuasive evidence to the contrary, I reject Mr Henderson’s assertion that the Union “planted” this story to disadvantage him and any other lay member who might have wished to seek nomination.
65. For the above reasons, I refuse Mr Henderson’s application for a declaration that on or around 30 June 2015 GMB breached by-law 13 in that Regional Secretaries Tim Roache, Paul McCarthy and Paul Maloney and National Secretary Gary Smith allegedly contacted, directly or indirectly, the Morning Star newspaper which published an article stating that they were seeking nominations from GMB branches for the election of General Secretary.

Observation

66. It emerged in evidence that, during the nomination period, the election timetable was not published on any of the Union’s websites, so far as the witnesses were aware, and that there was no reference to the General Secretary election in the Union’s magazine that was published electronically in July 2015. Unusually, this edition of the magazine was not published in hard copy format and sent to the home address of each member. When these factors are taken together with the Union’s changed interpretation of by-law 13 and the low turn out of 4.4%, it is easy to understand why Mr Henderson is concerned about the lack of information concerning the General Secretary election that was made available to members. Be this as it may, the Union did send to each member at his/her home address the ballot paper, together with a hard copy of the next edition of the Union magazine in September 2015. Whilst Mr Henderson’s wider concerns are not directly relevant to his complaint of a breach of section 47(1) of the 1992 Act, the Union may wish to consider why more information about this election was not made available to members through the Union’s various websites and in the edition of its magazine published in the nomination period.



David Cockburn
The Certification Officer