

**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 Roy Abrahams & Others**

**v**

**United Road Transport Union**

**Date of Decision**

**16 November 2016**

**DECISION**

Upon application by Mr Roy Abrahams, Mr Trevor Bray and Mr John Bowen (“the claimants”) under sections 55(1) and 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I make a declaration sought by the claimant that on or around 1 March 2016 United Road Transport Union breached the Union’s rule 24.1 which sets out that the General Secretary shall retire at the end of the fifth year of office. Bob Monks’ five year term of office expired on or around 1 March 2016.

2. I make the declaration sought by the claimant that on or around 12 December 2015 United Road Transport Union breached section 47(1) of the 1992 Act by unreasonably excluding Shaun Keating as a candidate in the planned ballot for the position of General Secretary. The breach occurred in that the Union rejected Shaun Keating’s nomination for the election on the basis that, because he was a Full Time Officer, he belonged to a class of which all the members were excluded from standing as a candidate by the rules of the union in accordance with section 47(3) of the 1992 Act. There is no rule of the Union thus excluding such a class of members.

3. I make the declaration sought by the claimant that on or around 1 March 2016 United Road Transport Union breached section 46(1) of the 1992 Act in that the incumbent General Secretary, Mr Bob Monks, was allowed to remain in office for more than five years without being re-elected.

4. I consider that it would be appropriate to make an enforcement order. I order that:-

4.1 The election for the position of General Secretary of the Union, the result of which was confirmed by the Union on 18 December 2015, shall be treated as void and of no effect. The person elected in that election, Mr Robert Monks, shall cease forthwith to hold office as General Secretary.

4.2 The Union shall conduct a further election for the position of General Secretary, such election to be conducted so as to be in accordance with the rules of the Union and Chapter IV of Part 1 of the 1992 Act.

4.3 The election to be held to allow for a result to be declared no later than Monday 31 July 2017.

4.4 The Union is given liberty to apply in the event of it being unable to comply with the requirement to declare the result of the election by the specified date.

## **REASONS**

1. Mr Abrahams, Mr Bray and Mr Bowen brought this application as members of United Road Transport Union ("URTU" or "the Union"). They did so by registration of complaint forms which were received at my office on 11 January 2016 (Mr Bray), 30 January 2016 (Mr Abrahams) and 30 July 2016 (Mr Bowen).
2. Following correspondence with my office, Mr Abrahams confirmed his complaints in the following terms:

### **Complaint 1**

On or around 1 March 2016 URTU breached the Union's rule 24.1 which sets out that the General Secretary shall retire at the end of the fifth year of office. Bob Monks' five year term of office expired on or around 1 March 2016.

### **Complaint 2**

On or around 12 December 2015 URTU breached section 47(1) of the 1992 Act by unreasonably excluding Shaun Keating as a candidate in the planned ballot for the position of General Secretary. The breach occurred in that the Union rejected Shaun Keating's nomination for the election on the basis that, because he was a Full Time Officer, he belonged to a class of which all the members were excluded from standing as a candidate by the rules of the union in accordance with section 47(3) of the 1992 Act. There is no rule of the Union thus excluding such a class of members.

### **Complaint 3**

On or around 1 March 2016 URTU breached section 46(1) of the 1992 Act in that the incumbent General Secretary, Mr Bob Monks, was allowed to remain in office for more than five years without being re-elected.

By a letter dated 19 February 2016 Mr Bray confirmed his wish that his complaints be joined with those of Mr Abrahams and that Mr Abrahams should represent him for the complaints. Mr Bowen confirmed the same by an e-mail of 12 August 2016.

My office investigated the alleged breaches in correspondence and a hearing was listed for 14 June 2016 which was to be heard by my predecessor as Certification Officer, Mr David Cockburn. The applicants applied for postponement of the hearing. It was explained by a letter from this office dated 21 June 2016 that, as Mr Cockburn was to retire on 30 June 2016 and no replacement had, at that time, been appointed there was likely to be some delay in the listing of pending cases. I was appointed as Certification Officer on 1 July 2016. A new date for the hearing was set for 15 August 2016. The Union made an application to postpone the hearing and a new date was set for 7 September 2016. A further application to postpone was made by the Union and a further new date was set. The relisted hearing took place on 2 November 2016.

3. At the hearing before me Mr Abrahams represented himself and the other applicants. Oral evidence for the applicants was given by Mr Abrahams, Mr Michael Billingham former URTU President and retired Regional Officer, and Malcolm Williams, URTU Regional Officer and shop steward for the Full Time Officers' Branch of the Union. All three of these witnesses produced written witness statements. The Union was represented by Mr Stuart Brittenden of counsel, instructed by Mr Binder Bansel of Pattinson & Brewer. Evidence for the Union was given by Mr Robert Monks, General Secretary of the Union who produced a written witness statement. Mr Abrahams and Mr Brittenden both provided skeleton arguments. There was also in evidence the rules of the Union and a 594 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing.

### 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. The United Road Transport Union (URTU) represents the interests of workers in road haulage, distribution and logistics. As at 31 December 2015 it had 10,615 members. Robert Monks is the General Secretary having first been elected on 1 March 2001 and subsequently re-elected in 2006, 2011 and 2016. His election in 2016 is the subject of the complaints before me. Phillip Brown was the President at the material time.
6. In 2006 URTU had an election for General Secretary. Issues surrounding the election resulted in two complaints being brought to the Certification Officer by Mr Higginbottom (*Higginbottom v United Road Transport Union D/42-43/06*). One complaint related to an alleged breach of section 51(3)(a) of the 1992 Act the other to an alleged breach of an implied rule. The Certification Officer refused to make a declaration in both complaints. The candidates in the election were the sitting General Secretary, Robert Monks and Mr David Higginbottom. At the time of the election Mr Higginbottom was not a full time officer of the union. Neither of the complaints related to a candidate being excluded.
7. The General Secretary Election 2006 was also the background to a number of member complaints brought to the Union under its rule 32. These complaints and subsequent appeals were not finally dealt with by the Union until December 2008.
8. On 28 March 2009, the URTU National Executive Committee met on the eve of the 2009 Triennial Delegate Meeting. The minutes of that meeting record that Mr Monks (referred to in the minutes as RFM) *'outlined in detail to the NEC the 'address' he would be giving to the Conference on behalf of the Executive Committee'*. The minutes also record that Mr Monks *'believed that in outlining his 'address' to the Executive Committee members and Trustees, this would present them with an opportunity to object to anything which RFM intended to say on their behalf'*. The minutes go on to record that *'Following a discussion concerning the contents of RFM's 'address', it was agreed by all Executive Committee members and Trustees present that there was nothing contained in the address, on behalf of the Executive Committee, that Executive Committee members and Trustees wished to be*

*removed*'. The minutes contain no details of what elements of the content of RFM's 'address' were the subject of discussion.

9. On 29 March 2009 Mr Monks addressed the Triennial Delegate Meeting. I had a verbatim report of Mr Monks address in evidence before me, I reproduce the relevant extract below which is preceded by Mr Monks' explanation of the 1984 Trade Union Act<sup>1</sup>.

*'shockingly, comrades, it was this very piece of legislation about which our then President was so concerned , that was utilised to hide behind, by paying members of our Union, whilst they perfidiously planned to use its provisions in an attempt, to wait for it, to get even with other members of the Union they disliked. Comrades, I am of course referring to the unholy mess in which our union found itself from February 2006, as so called Trade Unionists set about trying to destroy our union. Having unsuccessfully attempted to utilise the 2006 General Secretary Election to launch an attack on their intended victims, these so called Trade Unionists refused to accept that rank and file members of our union had seen through their thinly disguised veil and resoundingly rejected their vindictive campaign. Incredibly, they then sought to seek a further attack on our Union by taking our Union to Court, accusing the Unions Executive Committee of being in breach of our own unions Rule Book. I am pleased to report that of course it was a futile gesture from the outset. The Executive Committee of our union, having been branded as liars and even receiving coded threats of violence, were forced to defend our Union against such scurrilous accusations. I am further pleased to report that subsequently the actions of your Executive Committee were totally vindicated by the Court. Rightly, having concluded the litigation, your Executive Committee sought that these so called Trade Unionists provide answers for their shocking behaviour. Were they willing to be held to account? Were they willing to answer for their actions? Of course not. Reliable, solid, dependable Trade Unionists. When the going gets tough, when it often does Comrades, did they stand shoulder to shoulder, not on your life. They just scurried away. Comrades, whilst I am General Secretary there will be no room in our Union for these undemocratic bullyboys, not today, not tomorrow or at any time in the future.'*

10. I find that there was no discussion of Mr Monks' address, there was no vote on it or any of its contents.
11. Following the 2009 Triennial Delegate Meeting the process of electing a new Executive Committee began. In Region 7 of the Union Mr Abrahams was nominated as a candidate to represent that region. Region 7 had a sitting Executive Member who was also nominated. In response to this development Mr Phil Brown, the then President of the union wrote a letter to members in that region on 26 May 2009. The letter was headed 'Executive Committee Election – Region 7.' Within the letter he states

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<sup>1</sup> The Trade Union Act 1984 was repealed on 16 October 1992. The provisions relevant to this complaint were consolidated into the Trade Union and Labour Relations (Consolidation) Act 1992, specifically sections 46 and 47.

*'Your union does not support the 'ousting' of sitting Executive Committee members, utilising anti trade union legislation. Your union is affiliated to the 'United Campaign to Repeal the Anti-Trade Union Laws'. The use of anti-trade union legislation to seek to unseat a sitting Executive Committee member is, in the opinion of your Executive, both morally wrong and against the Union's ethos'.*

12. On 1 June 2009 Phil Brown sent a similar letter to members in the Union's region 8 headed '*Executive Committee Election – Region 8*'. The letter contained a paragraph in the same terms as the letter of 26 May 2009.
13. In 2011 the union held a further election for General Secretary. This election was uncontested and resulted in Robert Monks being elected unopposed. I was provided with no evidence that full time officers of the union had been told that they could not stand in this election.
14. The position of General Secretary came up for election again in 2016. The timetable for this election was;
  - Nominations to be received at Head Office by 22 October 2015,
  - Acceptance of nomination to be confirmed and election address provided to Head Office by 19 November 2015
  - The election was to be held between 4 January 2016 and 28 January 2016.
  - The term of office commenced on 1 March 2016.
15. Three nominations were received; Robert F Monks, the incumbent General Secretary, Shaun Keating, Regional Officer and Malcolm Williams, Regional Officer. Mr Williams declined his nomination for personal reasons.
16. On 13 October 2015 Robert Monks, General Secretary wrote a letter to Shaun Keating headed '*Nomination – General Secretary's Position*'. In that letter Mr Monks says

*'I thought it would assist you, when considering your nomination, if I were to make you aware that, were you to accept your nomination, you would be in direct 'conflict' with our Union's National Policy position, re-ratified only recently by our National Executive Committee (minute 5.2 of the National Executive Committee meeting held on 28 February 2015 refers), in that you would be triggering an election that could only be achieved by utilising anti-Trade Union legislation, namely the Trade Union Act 1984, which our union is actively campaigning, together with all other 'TUC' affiliated Trade Unions, to have repealed.'*<sup>2</sup>
17. On 16 October 2015 Mr Shaun Keating sent an email to Malcolm Williams (shop steward of the Full Time Officers' Branch of URTU). He copied his email to the following members of that branch – Chris Dubber, Michael Billingham, Alexander Harris and Lee Pimbley. In that email he asked '*Also how many of you are aware that a Regional Officer of our Union is not allowed to run as "General Secretary"?*'

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<sup>2</sup> The minutes of the 28 February 2015 Executive Committee Meeting were not in evidence before me.

18. Four replies to that email were in evidence and the responses to the question were as follows;

Mike Billingham – *‘I am not aware of any rule or contractual condition preventing any RO seeking election as GS indeed I believe D Higginbottom was a RO when he ran for election as I believe was I when I ran against N Rodgers for GS which is when Bob was first elected and returned to employment with the union’.*

Alexander Harris – *‘I’m also not aware that a serving officer cannot run for GS’.*

Lee Pimbley – *‘I was not aware that we couldn’t run though all in time members were eligible’.*

Malcolm Williams – *‘There has never been any agreement with officers not to run as GS. History shows that to be the case.  
From a sitting GS position I can see why reasonable efforts would be made to try and avoid an election unless absolutely necessary.  
I am also unaware of any exec minutes that specify officers cannot assert their statutory entitlement to run if they so chose.’*

19. The Union sought legal advice on a number of issues relating to the 2016 General Secretary Election. On 6 November 2015 the union received written advice from Binder Bansel of Pattinson and Brewer. In that advice Mr Bansel says

*‘I understand that the officers of the union are also members. In those circumstances, if there is a policy that existing officers do not stand for election against an incumbent General Secretary, this would be a class provided for by S47(3) above provided that this class has been determined by the rules of the union, which is evidently the case in this matter.’*

In his conclusions Mr Bansel goes on to say;

*‘The officer should be advised of the Union’s policy under Rule 13 (that anti-trade union legislation is not utilised) in that current officers do not challenge an incumbent General Secretary by way of enforcing a contested election. I understand the nomination process has closed with nominations being received only from the class of S47(3). Therefore, should the current General Secretary accept their nomination they should be re-appointed following an uncontested election’*

20. On 12 December 2015 EC Meeting The following motion was proposed and seconded;

*‘The NEC accept the legal advice given by Binder Bansel of Pattinson & Brewer and therefore resolve that they cannot accept the nomination for Shaun Keating’*

21. Six NEC Members and two trustees voted with 5 votes in favour, 0 votes against and 3 abstentions.

22. On 14 December 2015 Mr Brown, President, sent a letter to Mr Keating. The letter contained the following paragraph *'The NEC considered the policy and legal advice the Union has received. Pursuant to that policy, the NEC decided that the union would not accept another nomination where the incumbent General Secretary seeks re-election. As a consequence, I can confirm that your nomination for election as General Secretary has not been accepted.'*
23. Mr Brown subsequently sent a letter on 15 December 2015 to Mr Monks confirming that he had been elected unopposed as General Secretary. He also sent a letter on 18 December 2015 to the Union's Trustees, NEC Members, Officers, Staff and Union Learning Fund Project Manager/Worker confirming that there was no need for a ballot and that Bro R.F Monks had been returned unopposed as General Secretary.

### **The Relevant Statutory Provisions**

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

#### **46 Duty to hold elections for certain positions**

(1) A trade union shall secure –

- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

#### **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.*

**108B Declarations and orders.**

*(1) – (2) ...*

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements–*

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

**The Relevant Rules of the Union**

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

***Rule 13 – Triennial Delegates Meeting***

1. *(a) For the supreme government of the Union there shall be a Triennial Delegate Meeting (TDM). The meeting shall be presided over by the President of the Union and consist of the General Secretary and delegates elected by the members of the Union.*  
*(b) Delegates to the TDM shall be been members of the Union for not less than one year at the time of their nomination.*  
*(c) One delegate shall be allocated for every 400 members of the Union in each geographical grouping and no more than one delegate may be elected for each group of 400 members.*  
*(d) The order of motion at the TDM will be first, changes to rule or new rules in chronological order, followed by motions on matters of policy.*
2. *A substitute delegate can be nominated from each Branch/Area and will attend the TDM only if the nominated delegate is unable to attend. Substitute delegates shall have been members of the Union for not less than one year at the time of their nomination.*
3. *In the event of any emergency arising, the National Executive Committee shall have the power to summon a Special Delegate Meeting (SDM) of those delegates who attended the last TDM.*
4. *Delegates to the TDM shall be nominated and elected from within the groups to which they are allocated. Nominations and ballots, where necessary, will be conducted from Head Office.*
5. *The TDM and SDM shall have the power to alter, rescind or make new rules; to determine policy, to hear all appeals under rule by members against a decision of the National Executive Committee, to consider and decide upon*



*any question submitted to it by the National Executive Committee and will elect delegates to the National Appeals Committee.*

- 6. All branches will be invited, through their representatives, to submit up to two motions to Head Office. All motions will be put in the relevant order as in Rule 13(1)(d) and circulated to the representatives.*
- 7. All branches will be invited, through their representatives, to propose amendments up to a maximum of two motions, which should be submitted to Head Office.*
- 8. The completed list of motions will be circulated to the membership through their representatives by the General Secretary not less than two weeks before Rule 13(9).*
- 9. Following election of delegates according to Rule 13(1)(c) group meetings will be called to consider the list of motions and amendments, where a delegate has been elected to a TDM or SDM. These group meetings will be so arranged geographically to afford all members reasonable opportunity to attend. All in benefit members of the appropriate group will be entitled to attend and receive prior notice of such meetings through their representatives.*
- 10. Every delegate attending the TDM and SDM must remain at such meetings until the business thereof is concluded, unless a satisfactory reason is assigned for the member leaving.*
- 11. The TDM and SDM shall be held on such date, time and place as the National Executive Committee shall determine.*
- 12. Union agreed Travelling Expenses of each delegate, attending a TDM, SDM or NAC meeting, convened by the National Executive Committee of the Union, shall be met from the General Fund.*
- 13. The President of the Union shall preside at the TDM or SDM. In the absence of the President, the Vice President shall preside. In the absence of both, the National Executive Committee shall appoint a Chairperson from their number.*
- 14. The Chairperson shall preside over the TDM or SDM and ensure that the Minutes of the previous TDM or SDM are confirmed and signed. The Chairperson shall ensure that only elected delegates and such Officials determined by the National Executive Committee are present at the Conference. Elected delegates only shall have a vote.*

***Rule 14. – Standing Order to be Observed at the TDM or SDM***

*The following rules shall guide all discussions:-*

- 1. The roll shall be called at the appointed time of the meeting.*
- 2. That in the event of a duly elected delegate not being able to attend a TDM or SDM for a genuine reason, having informed the Union prior to commencement of the TDM or SDM, motions from that delegate's section/area can be formally proposed by another delegate attending the TDM or SDM.*

3. *In the event that the delegate for the relevant section/area does not propose the motion the President shall invite any other delegate so to do.*
4. *No discussion shall be allowed on any motion until it has been seconded.*
5. *The proposer of a motion shall be allowed ten minutes, seconder five minutes, and subsequent speakers three minutes each.*
6. *The proposer of a motion, having the right to reply, may close the discussion and the Chairperson shall then proceed to take vote.*
7. *The voting upon all questions before the TDM or SDM shall be by show of hands. If such is challenged, a note shall be taken by card. All absent or abstaining votes shall be counted and added to the total card votes to ensure a correct count of votes.*
8. *If it is proposed "that the question be now put" all discussions shall cease and the Chairperson shall at once take the feeling of the TDD or SDM to see if it is general acceptable or, if necessary, may take a vote by card and act accordingly.*
9. *Any delegate to the TDM may be proposed and seconded by other delegates to the TDM, to stand as a member of the National Appeals Committee until the next TDM.*

#### **Rule 15 – National Executive Committee**

1. *(a) For the general management of the Union there shall be a committee termed the National Executive Committee, consisting of the President, General Secretary and not more than one representative from each region. Three representatives in addition to the President, shall form a quorum with power to act.*

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#### **Rule 24. – General Secretary**

1. *The General Secretary shall be a full benefit member of 5 years standing and must possess a full practical knowledge of the Union and be fully competent in conjunction with the President to give interpretation upon any particular rule and he/she shall be elected by postal ballot by the members of the Union, such ballot shall be conducted from the Head Office of the Union and independent scrutineers appointed by the National Executive Committee. The candidate who receives the highest number of votes shall be declared elected.*

*The General Secretary shall retire at the end of the fifth year of office and he/she shall, if he/she wishes, be eligible for re-election subject to his/her retirement age and his/her contract of employment.*

2. *(a) The General Secretary shall be paid such salary and allowances as the National Executive Committee may negotiate. They shall give three months' notice before resigning and receive three months' notice before being dismissed from office.  
(b) Disciplinary procedure that may lead to suspension or dismissal and age for retirement shall be governed by the terms and conditions as set out in the*

*Agreement negotiated between the paid Officials of the Union and the National Executive Committee as part of their Contract of Employment.*

3. *The General Secretary should attend all TDM or SDM's and will attend the National Executive Committee Meetings and act under the orders of the National Executive Committee. The General Secretary shall have the right to speak on any business at a TDM, SDM, National Executive Committee meeting or any other meeting.*
4. *The General Secretary shall perform all the duties laid down by the National Executive Committee and shall generally supervise the work of the Union in all departments, having full power to deal with all cases of emergency.*
5. *The General Secretary shall keep the current banking accounts of the Union and shall transmit all monies received from the membership to the current accounts within seven days. The General Secretary is hereby authorised to sign cheques upon the current account for such amounts as may be necessary for the carrying out of the business of the Union. In addition to the duties herein stated, he/she shall perform the office of Treasurer to the Union.*
6. *The General Secretary shall ensure that all surplus funds shall be transferred to the Investment Account standing in the name of the Union for future investment as per Rule 17.*

## **Considerations and Conclusions**

26. At the start of the hearing I asked the union to clarify what they said were the terms of the express rule or the implied rule they said had been adopted by way of custom and practice prevailing over a long period of time. Mr Brittenden submitted that the rule express or implied was in the following terms  
  
*'a policy of excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against the incumbent General Secretary'.*
27. In his submissions Mr Abrahams accepted that key to his case was the allegation contained in complaint 2 that Mr Keating had been unreasonably excluded from taking part in the 2016 General Secretary Election. He accepted that if I was against him on Complaint 2 I would have to find against him on Complaints 1 and 2 as I would have found there to have been a valid election, if uncontested, that legitimised Mr Monks further term of office commencing on 1 March 2016. If I were to find for him on complaint 2 I would find for him on Complaints 1 and 3 also. Mr Brittenden for the union accepted this approach.
28. Given the acceptance of the parties of the impact of my finding in complaint 2 on the other two complaints I intend to deal with that complaint first in this decision.

## Complaint Two

*On or around 12 December 2015 URTU breached section 47(1) of the 1992 Act by unreasonably excluding Shaun Keating as a candidate in the planned ballot for the position of General Secretary. The breach occurred in that the Union rejected Shaun Keating's nomination for the election on the basis that, because he was a Full Time Officer, he belonged to a class of which all the members were excluded from standing as a candidate by the rules of the union in accordance with section 47(3) of the 1992 Act. There is no rule of the Union thus excluding such a class of members.*

## Summary of Submissions

### The Union's submissions

29. Mr Brittenden acknowledged that this case hinged on what were the rules of the union and that it would be for me to interpret and make findings on this. In so doing he said I should be guided by what Lord Wilberforce had said in *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1972] 3 All ER 101. The text of this authority was not provided at the hearing nor had it been referred to in the bundle or the respondent's skeleton argument, Mr Abrahams did not have the benefit of sight of the authority. However, I do accept that it is well recognised by the Courts and the Certification Officer that Union rules are not to be subjected to the rules of grammatical construction. The Courts have confirmed that union rules are to be interpreted in the light of custom and practice. In that case Lord Wilberforce (quoting, with approval, a section of a TUC handbook on the 1971 Industrial Relations Act) said:  
*"Trade Union government does not however rely solely on what is written down in the rule book. It also depends on custom and practice, by procedures which are developed over the years and which, although well understood by those who operate them, are not formally set out in the rules. Custom and practice may operate either by modifying a union's rules as they operate in practice, or by compensating for the absence of formal rules. Furthermore the procedures which custom and practice lay down very often vary from workplace to workplace within the same industry and even within different branches of the same union."*
30. Mr Brittenden submitted that URTU is able to point to a long-standing (and permissible) policy of excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against an incumbent General Secretary. He submitted that this policy is evidenced in documents from 2009 onwards, and supported by the fact that the 2011 General Secretary election was not in fact contested.
31. He submitted that the policy necessarily creates an excluded class of members for the purposes of s. 47(3) of the 1992 Act. He said that this was not a situation of the application of a rule/policy where 'such a class is to be determined by reference to whom the union chooses to exclude...' It is inflexible in its application.

32. He summarised URTU's position as that there is an express rule to this effect. Alternatively, such a rule is to be implied by way of custom and practice prevailing over a prolonged period of time.
33. In relation to the existence of such a policy he submitted that on 28 March 2009, on the eve of the 2009 Triennial Delegate Meeting ("TDM"), Mr Monks (RFM) outlined his address to the EC members which '*... would present them with an opportunity to object to anything which RFM intended saying on their behalf. RFM wanted to ensure that all Executive Committee members and Trustees were in full agreement with the content of the 'address' that would be given on their behalf. Following a discussion concerning the content of RFM's 'address', it was agreed by all Executive Committee members and Trustees present that there was nothing contained in the 'address', on behalf of the Executive Committee, that Executive Committee members and Trustees wished to be removed...*'.
34. The address was then delivered to the TDM on 29 March 2009. Mr Brittenden submitted that the address voices trenchant criticism of the Trade Union Act 1984. Referring to the '*unholy mess*' which URTU found itself in February 2006 concerning the General Secretary election where the legislative provisions were used by members in an attempt to '*get even with other members of the Union they disliked...*' Mr Brittenden submitted that URTU decided from that point onwards not to allow members to use this legislation to oust an incumbent officer. That policy/stance was approved by the NEC. And no dissent was expressed at the TDM.
35. He went on to submit that this policy was clearly implemented from that point onwards, as evidenced by correspondence from the President dated 26 May 2009 in connection with Executive Committee elections for Region 7. Mr Brittenden referred to the following paragraph from that letter.
- 'Your Union does not support the 'ousting' of sitting Executive Committee members, utilising anti-trade union legislation. Your Union is affiliated to the 'United Campaign to Repeal the Anti-Trade Union Laws'. The use of anti-trade union legislation to seek to unseat a sitting Executive Committee member, is in the opinion of your Executive Committee, both morally wrong and against the Union's ethos...'*
36. Mr Brittenden referred me to a similar letter which was sent by the President on 1 June 2009 in relation to the EC elections for Region 8. It contained a similar paragraph to that set out in paragraph 35.
37. He submitted that there was ample evidence that URTU's policy was known – he referred me to an email from Mike Billingham dated 3 June 2009 to Mel Thornton, National Officer, URTU. In that email Mr Billingham expresses his concerns about the implications of the contents of Phillip Brown's letter of 26 May 2009 referred to above. He also referred me to a letter from Phillip Brown to a Mr Swan dated 5 June 2009. In that letter Mr Brown refers to the use of anti-union legislation to unseat a sitting EC member which was '*... both morally wrong and against the Union's principles and ethos. The Executive Committee believed it to be extremely important that members within Region 7 were made aware of the Union's position...*'. Mr Brittenden said that this letter was copied to various individuals, including all NEC members and Mr Abrahams.

38. In relation to the application of this policy Mr Brittenden referred me to correspondence that he said showed that the Mr Abrahams had acknowledged that URTU's outward policy was that a defined class of member would not be eligible to accept nomination for an election in prescribed circumstances The correspondence referred to was –
- A letter from Mr Abrahams to Mr Brown dated 11 June 2009 in which Mr Abrahams said:  
  
*... Once again you assert that it is current anti-trade union legislation which, in this particular case, has provided the “vehicle” for me to challenge a sitting EC member. This is just not true. Your argument if I understand it correctly might have a modicum of validity if this was an election for General Secretary. Historically, URTU General Secretaries were not required to submit themselves for re-election but remained in post up until their normal retirement date unless challenged under rule...*
  - An (undated) letter from Mr Abrahams (that both parties accepted would have been sent around June 2009) in which he says:  
  
*... What exactly do you think this discourse is saying to members[?]. You can put yourselves forward only when a sitting member of the EC decides he wants to resign, or misbehaves in some way and we want him gone...*
39. Mr Brittenden submitted that the obvious inference from the fact that Mr Abrahams did not proceed with a complaint to the CO about the 2009 NEC elections is that he acknowledged URTU's policy, even though he might have disagreed with it.
40. He submitted that the existence of a well-known policy is supported by the reference in minutes of the NEC meeting dated 11 December 2010 referring to the 2006 election and that the stance adopted by the NEC subsequently had been vindicated.
41. Mr Brittenden submitted that the fact that the 2011 General Secretary election was uncontested was clear evidence that this policy was both well known and acknowledged. He did not accept that the fact that the election was uncontested could be regarded as mere coincidence.
42. Mr Brittenden further submitted that the letter sent to Mr Keating by Mr Monks on 13 October 2015 (referred to and quoted from in the findings of fact in paragraph 16) in relation to his nomination re-affirms the existence of this long-standing policy that had been observed since 2009.
43. It was the existence of this policy that featured materially in the legal advice dated 6 November 2015 from Binder Bansel of Pattinson and Brewer (referred to and quoted from in paragraph 19). This advice was repeated at the NEC meeting of 12 December 2015. Members of the NEC were afforded the opportunity to raise any questions in relation to the same. The fact that no one voted to oppose the motion, Mr Brittenden submitted, again served to demonstrate that this policy in fact existed.

44. In summing up the effect of the NEC discussions on the eve of the 2009 TDM, Mr Monks' address to that TDM and the practice subsequent to the TDM in 2009 Mr Brittenden said that the ethos of the union in relation to certain elections had changed. He submitted that I should consider that ethos to mean the rules of the union as well as its practice and principles.
45. At the hearing Mr Brittenden referred me to URTU's rule 15 and specifically to Rule 15.1(a) which states
- 'For the general management of the Union there shall be a committee termed the National Executive Committee, consisting of the President, General Secretary and not more than one representative from each region. Three representatives in addition to the President, shall form a quorum with power to act'.*
46. Mr Brittenden submitted that this rule gave the NEC a broad power to run the union. He said it was clear that at its meeting on 12 December 2015 the NEC had clearly defined a category of person in relation to Section 47(3) of the 1992 Act. The NEC had done this by accepting the advice of Binder Bansel that the union had a "*policy under Rule 13 (that anti-trade union legislation is not utilised) in that current officers do not challenge an incumbent General Secretary by way of forcing a contested election*". Mr Brittenden submitted that this decision by the NEC could either be seen as confirmation of an existing policy or a clear decision defining full time officers as a class in relation to section 47(3) of the 1992 act.
47. The Union's reliance on Rule 15.1(a) had not been raised prior to the hearing.

#### **The Complainant's submissions**

48. Mr Abrahams submitted that the written advice of Binder Bansel dated 6 November 2015 refers to 'implied rules' and 'policies' of the Union alleging that FTO's shouldn't stand against an incumbent and, for the first time, raises the term 'excluded class', as defined in S47(3) of The Act. Mr Abrahams submitted that there was no legitimate foundation for either of those claims.
49. Mr Abrahams submitted that there is a specific and rigid process that must be followed to determine URTU rules and policy. This involves putting a motion before the delegates at the Union's TDM; following which the motion must be debated and voted upon. A rule or policy only comes into force if the majority of the delegates vote in favour of its acceptance.
50. Despite having had opportunities in 2009, 2012 and 2015, no such motions or policies had been put before the TDM. Mr Abrahams submitted that the advice of Mr Bansel appears to rely upon an extract from Mr Monks' opening address to the delegates at the 2009 TDM during which he makes critical comments about being challenged for the post in 2005/6 and then having to defend the Union's handling of the election before the Certification Officer in 2006. Mr Abrahams submitted that it was inconceivable that delegates at the 2009 TDM could have concluded that they had adopted a new policy or rule based on Mr Monks address. He further submitted that the reliance on the content of letters from Mr Monks and Mr Brown in 2009 as showing the policy in action is incorrect. He submitted that these letters give their

own personal opinions, whilst trying to represent them as the opinion of the NEC and make no reference to an agreed policy or rule of the Union.

51. Mr Abrahams submitted that the decision taken by the NEC at their meeting on 12 December 2015 was misguided, in that it was based on the acceptance of the advice before it.
52. Mr Abrahams submitted that he was surprised by the Union's suggestion that rule 15 in some way gave the NEC power to make policy or rules of the union. He submitted that it was accepted in the union that the TDM is the only body with the right to make rules or policy.
53. In summary Mr Abrahams submitted that there is no properly agreed national policy as described by the Union for the following reasons:
  - that the union failed to apply its own rules for establishing policy and/or rules;
  - the union has never described this as a policy only described it as 'the view of the executive';
  - the membership has never been informed of this 'policy', let alone had the opportunity to debate or approve it, and
  - the NEC or TDM has never properly debated the 'policy' or voted upon its introduction.
54. Mr Abrahams said that if a national policy did exist, it was only ever intended to dissuade members from standing against an incumbent, never to prevent them from doing so.

### **Conclusions Complaint Two.**

55. As a starting point for my consideration of the submissions I am aided by what David Cockburn, the then Certification, Officer, said in the case of *Dooley v UCATT (D/7-8/12-13)*. At para 42 of that decision he said;  
*"the right of a trade union member to stand for election is an important right of membership, as in any democratic membership organisation, and should not be taken away unless the members have so decided in a clearly expressed rule to that effect. I remain of the view that this is the correct starting point in any consideration of a case of this type."*  
  
I fully agree with this.
56. I am also mindful that Parliament clearly intended that trade unions could limit the right to stand for election. Specifically section 47(3) of the 1992 Act says –  
*(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 whom the union chooses to exclude shall be disregarded.*



57. It is this section of the 1992 Act that the Union relies on when denying that Shaun Keating was unreasonably excluded from standing in the 2016 URTU General Secretary Election.
58. The union have submitted that a rule to the effect of a policy of excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against the incumbent General Secretary' was made by the 2009 TDM and that its existence is evidenced by its implementation from that point on.
59. They point to evidence they say shows that the policy was known by people within the union including Mr Abrahams.
60. They cite the fact that the 2011 General Secretary election was uncontested as evidence that union members were aware of the policy.
61. Finally the union submitted that the NEC's decision at its meeting on 12 December 2015 can be seen as evidence of the NEC's acceptance of the existence of the policy or the NEC exercising its power under rule 15.1 to clearly define full time officers as a class excluded from standing in an election in which there is a sitting EC member or General Secretary.
62. On the facts of this case and the submissions of the parties it is clear that the start point of my analysis to determine whether there is a rule of URTU that establishes a class of member that could be excluded from the 2016 General Secretary election on the bases of section 47(3) of the 1992 Act, has to be the 2009 TDM.
63. There are two elements to consider in relation to the 2009 TDM; the NEC meeting on the eve of the TDM and Mr Monks' address to the TDM on 29 March 2009. It is clear that the NEC were made aware of the contents of Mr Monks address and that *'Following a discussion concerning the contents of RFM's 'address', it was agreed by all Executive Committee members and Trustees present that there was nothing contained in the address, on behalf of the Executive Committee, that Executive Committee members and Trustees wished to be removed'*.
64. It is also clear that Mr Monks went on to deliver his address to the TDM. The evidence is that there was no discussion of its content and certainly no objections raised by delegates.
65. It is accepted by both parties that Mr Monks' address was not discussed by the TDM nor was it voted upon. It is also clear that, whilst the TDM heard, discussed and voted upon a number of motions relating to the rules of URTU, no motion either proposing a new rule, an amendment to an existing rule or establishing a new policy, in relation to the exclusion of members from standing for election, was presented to the TDM. In those circumstances I am left to analyse what Mr Monks said. I reproduced in full the section of Mr Monks address that the union agreed was the relevant section in terms of establishing a rule or policy in paragraph 9.
66. It is very clear that Mr Monks expresses his union's opposition to the Trade Union Act 1984. He goes on to refer to this legislation as having been *'utilised to hide behind, by paying members of our Union, whilst they perfidiously planned to use its*

*provisions in an attempt , to wait for it, to get even with other members of the union they disliked'.*

67. However, what is absent from this address is any reference to a suggested policy or rule that would have the effect of *'excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against the incumbent General Secretary'*.
68. In those circumstances I am inclined to agree with Mr Abrahams when he says that it was inconceivable that delegates at the 2009 TDM could have concluded that they had adopted a new policy or rule based on Mr Monks' address. It is my view that delegates will have been left in no doubt about Mr Monks' opposition to the Trade Union Act 1984 and his disapproval of the use of some of its provisions by some members of the union. I also accept that Mr Monks may have had in his mind, when making his address, the undesirability of full time officers of the union standing against an incumbent General Secretary. However, I conclude that his address did not contain in terms a suggestion that the union adopt a policy or rule that would have the effect of *'excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against the incumbent General Secretary'*.
69. It follows from my conclusion above that the 2009 TDM did not establish a rule or policy that established fulltime officers as being excluded from being candidates in a contested election against an incumbent General Secretary.
70. I now go on to address the union's submission that the existence of a rule was evidenced by the practice of the union after 2009. In considering this I am mindful of Lord Wilberforce's words in *Heatons Transport (St Helens) Ltd v Transport and General Workers' Union* [1972] 3 All ER 101 -  
*'Trade Union government does not however rely solely on what is written down in the rule book. It also depends on custom and practice, by procedures which are developed over the years and which, although well understood by those who operate them, are not formally set out in the rules. Custom and practice may operate either by modifying a union's rules as they operate in practice, or by compensating for the absence of formal rules'*.
71. In considering the existence or otherwise of a rule or policy I am also mindful of the test associated with establishing such a rule by way of custom and practice. This was set out in *(Sagar v H Ridehalgh and Sons Ltd (1931)1Ch 310 CA)* as *"reasonable, certain and notorious"*.
72. The first thing to say is that I was shown no evidence that any Full Time Officer, prior to Shaun Keating in 2015, had been excluded from standing against a sitting EC member or incumbent General Secretary. Secondly there appears to have been no attempt to codify the alleged rule either in the union's rule book or any guidance/regulations relating to General Secretary or Executive Committee elections. Thirdly I do not accept that the letters sent by Phillip Brown on 26 May 2009 and 1 June 2009, regarding the Executive Committee Elections in Regions 7 and 8 respectively, are evidence of a union practice that full time officers cannot stand against sitting EC members or incumbent an incumbent General Secretary. The following section of those letters,

*'Your union does not support the 'ousting' of sitting Executive Committee members, utilising anti trade union legislation. Your union is affiliated to the 'United Campaign to Repeal the Anti-Trade Union Laws'. The use of anti-trade union legislation to seek to unseat a sitting Executive Committee member is, in the opinion of your Executive, both morally wrong and against the union ethos'.*

on which the union rely appears to be at best an exhortation not to stand against a sitting EC member. Crucially it does not refer to any rule and makes no suggestion of the union's ability to exclude full time officers.

73. The other correspondence the union refers to in which various members challenge the content of the above letters and the union's responses cannot be seen as evidence of an established practice. Again crucially at no point does the union assert a policy that full time officers cannot stand against an incumbent General Secretary or a power under rule or policy to exclude a full time officer from standing.
74. I do not accept the Union's submission that the fact that the 2011 General Secretary election was uncontested is evidence that full time officers were aware that they were excluded from standing. In evidence Mr Monks expressed his belief that knowledge of this policy, on the part of full time officers, was the reason no-one stood against him in 2011. Against that I was given evidence of 4 full time officers in 2015, including Mr Malcolm Williams who has been the shop steward of the full time officers' branch for over 15 years, professing no knowledge of such a policy.
75. In 2015 when faced with Shaun Keating's nomination to stand as General Secretary the initial response of Mr Monks in his letter to Mr Keating of 13 October 2015 contains the following;  
*'I thought it would assist you, when considering your nomination, if I were to make you aware that, were you to accept your nomination, you would be in direct 'conflict' with our Union's National Policy position, re-ratified only recently by our National Executive Committee (minute 5.2 of the National Executive Committee meeting held on 28 February 2015 refers), in that you would be triggering an election that could only be achieved by utilising anti-Trade Union legislation, namely the Trade Union Act 1984, which our union is actively campaigning, together with all other 'TUC' affiliated Trade Unions, to have repealed.'*
76. Again this appears to be an exhortation not to accept the nomination. At no point is it suggested that accepting the nomination would be futile given the union's rule or policy that full time officers could not stand in such an election.
77. For the reasons set out above I do not find that the union can demonstrate that there existed the sort of custom and practice, *"by procedures which are developed over the years and which, although well understood by those who operate them, are not formally set out in the rules"* to which Lord Wilberforce referred. In addition I do not find that there exists the *'certainty'* or *'notoriety'* required to establish custom and practice as set out in *Sagar v H Ridehalgh and Sons Ltd*.
78. I now move on to the National Executive Committee meeting on 12 December 2015 and the effect of its decision that

*'The NEC accepts the legal advice given by Binder Bansel of Pattinson & Brewer and therefore resolve that they cannot accept the nomination of Shaun Keating'.*

79. The Union have submitted that the NEC's decision at its meeting on 12 December 2015 can be seen as evidence of the NEC's acceptance of the existence of the policy or the NEC exercising its power under rule 15.1 to clearly define full time officers as a class excluded from standing in an election in which there is a sitting EC member or General Secretary.
80. I find that the relevant part of Binder Bansel's advice can be found in his letter to Phillip Brown, dated 6 November 2015. In that he says *I understand that the officers of the union are also members. In those circumstances, if there is a policy that existing officers do not stand for election against an incumbent General Secretary, this would be a class provided for by S47(3) above provided that this class has been determined by the rules of the union, which is evidently the case in this matter.*
81. I have concluded that the union had no such policy or class determined by the rules of the union. It follows that the above advice must be incorrect. It also follows that the NEC were not in a position to accept the existence of such a policy.
82. Turning to the EC's powers under rule 15.1(a) which states
- For the general management of the Union there shall be a committee termed the National Executive Committee, consisting of the President, General Secretary and not more than one representative from each region. Three representatives in addition to the President, shall form a quorum with power to act.*
83. The union submitted that the effect of the resolution of the EC was to clearly define a class of member that was excluded from the election. I do not find that the powers given to the EC by rule 15.1(a) extend to the making of or amending rules. Rather they are powers for the general management of the union within the rules and policies set by the TDM.
84. The URTU Rules before me set out very clearly the TDM's powers to *'alter, rescind or make new rules, to determine policy....'* They also contain a power for the NEC to call a Special Delegate Meeting 'in an emergency' (rule 13.3). I was not referred to any rules that would give the NEC power to make or alter rules between TDMs. I was referred to rule 16.1 that referred to the President being *'...fully competent in conjunction with the General Secretary, to give interpretation upon any particular rule'*. I have found on the facts of this case that there was no particular relevant rule that could be interpreted.
85. For the above reasons I reject the union's submissions that the NEC had the power to clearly define a class of member that was to be excluded from the election.
86. The above reasoning deals with the union's submissions that Mr Keating was excluded from the 2016 General Secretary Election on the basis that he belonged to a class of which all members are excluded by the rules of the union. I therefore

conclude that the union cannot rely on section 47(3) to establish that Mr Keating was not unreasonably excluded from standing as a candidate.

87. The union did not make any submissions to establish the reasonableness of Mr Keating's exclusion other than by virtue of relying on section 47(3). However, I consider that I am required to determine whether Mr Keating was unreasonably excluded as a candidate other than by virtue of relying on section 47(3). I find taking into account all the circumstances of this case that the union breached Section 47(1) of the 1992 Act in unreasonably excluding Shaun Keating from the 2016 URTU General Secretary Election.

### **Complaint One**

88. Mr Abraham's first complaint is as follows:

*"On or around 1 March 2016 URTU breached the Union's rule 24.1 which sets out that the General Secretary shall retire at the end of the fifth year of office. Bob Monks' five year term of office expired on or around 1 March 2016."*

89. Rule 24.1 of the rules of the Union provides as follows:

*The General Secretary shall be a full benefit member of 5 years standing and must possess a full practical knowledge of the Union and be fully competent in conjunction with the President to give interpretation upon any particular rule and he/she shall be elected by postal ballot by the members of the Union, such ballot shall be conducted from the Head Office of the Union and independent scrutineers appointed by the National Executive Committee. The candidate who receives the highest number of votes shall be declared elected.*

### **Summary of Submissions**

90. The parties accepted that should I find against the union on Complaint Two that it would be the case that Robert Monks' term of office expired on 1 March 2016. I therefore find that the union breached rule 24.1 in that Robert Monks did not retire at the end of the fifth year of office on or around 1 March 2016.

### **Complaint Three**

91. Mr Abrahams' third complaint is as follows:

*"On or around 1 March 2016 URTU breached section 46(1) of the 1992 Act in that the incumbent General Secretary, Mr Bob Monks, was allowed to remain in office for more than five years without being re-elected."*

92. Section 46(1) of the 1992 Act provides as follows:

#### ***Duty to hold elections for certain positions.***

*(1)A trade union shall secure—*

- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and*
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.*

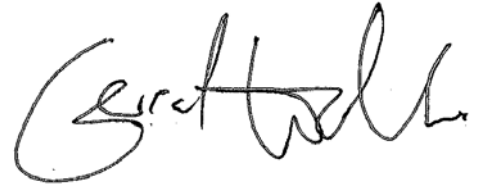
### **Summary of Submissions**

93. The parties accepted that should I find against the union on Complaint Two that it would be the case that Robert Monks continued to hold office for more than five years without being elected to it in an election satisfying the requirements of this chapter. I therefore find that the union breached section 46(1) of the 1992 Act in that Robert Monks continued to hold office for more than five years without being elected to it in an election satisfying the requirements of this Chapter IV of the 1992 Act.

### **Enforcement Order**

94. Where I make declaration, I am required by section 55(5A), and section 108B(3) to make an enforcement Order unless I consider to do so would be inappropriate. At the hearing the complainants indicated a wish for an order in relation to the breach of section 47(1), but not in relation to the breach of rule 24.1. On the facts of this case I consider it appropriate to make an Enforcement Order. I have found that the Union excluded Mr Keating from the 2016 General Secretary Election on the basis of a non-existent rule or policy. The effect of this was to deny Mr Keating a very important right of membership that is enshrined in statute, that of not being unreasonably excluded from standing as a candidate. The members of URTU were also denied the right to determine who should be their General Secretary. In my judgment the only appropriate order to remedy the declared breach is one which nullifies the flawed election, requires that the person elected as General Secretary in the flawed election stands down forthwith and requires the holding of a further election in accordance with Chapter IV of Part I of the 1992 Act. In carrying out that election the Union should take account of the fact that I have found that their rules do not contain a *'a policy of excluding full time officers (employees of the union) but not ordinary members from standing in a contested election against the incumbent General Secretary'*.

95. At the hearing the Union explained that currently four members of its NEC were expelled and appealing against their expulsion. The Union said that it would require some time to deal with these appeals and any subsequent elections, if required. The Union suggested at the hearing that all of the required procedures could be gone through and any necessary elections held by July 2017, Mr Abrahams did not object to this. I accept that this puts the union in a difficult position and have therefore made an order that fully takes account of the time they have said is required to deal with the issues raised. Notwithstanding, I give liberty to apply in the event of it being unable to comply with the requirement to declare the result of the election by the specified date.

A handwritten signature in black ink, appearing to read 'Gerard Walker', with a large, stylized 'G' and 'W'.

**Gerard Walker**  
**The Certification Officer**