

**DECISION OF THE ASSISTANT CERTIFICATION OFFICER ON APPLICATIONS
MADE UNDER SECTION SECTIONS 55(1) and 108A OF THE TRADE UNION
AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

**Mr John Burgess and Ors
Ms Heather Wakefield
Mr Roger Bannister
Mr Jon Rogers**

V

UNISON: the Public Service Union

Date of Decision

22 May 2017

DECISION

Upon applications by Mr John Burgess, Ms Helen Davies, Mr Patrick Hunter, Ms Hannah O'Reilly, Ms Margaret Myland, Ms Claire Dixon, Mr Adam Tipple, Ms Elizabeth James, Mr Hugh Jordan, Mr Alan Wylie and Mr John Harris ("Burgess and Ors") Ms Heather Wakefield, Mr Roger Bannister and Mr Jon Rogers ("collectively the Applicants") under sections 55(1) and 108A(1) of the Trade Union & Labour Relations (Consolidation) Act 1992 ("the Act"):

1. Pursuant to s.55(2)(b) of the Act, I refuse the Applicants', Mr Burgess and others', request for a declaration that the Union breached s.49(6) of the Act by failing to ensure that the Independent Scrutineer, Electoral Reform Services Ltd (ERS) duly carried out its functions and that there was no interference with its carrying out of those functions which would make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question (Burgess complaint 3),

2. Pursuant to s.55(2)(b) of the Act, I refuse the Applicant, Mr Rogers', request for a declaration that the Union breached s.49(4) of the Act by failing to ensure that nothing in terms of the Independent Scrutineer's appointment (including any additional functions specified in the appointment of ERS) was such as to make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question (Rogers complaint 3);
3. Pursuant to s.108B(2)(d) of the Act, I declare that the Union breached paragraph 51 of the General Secretary 2015 Election Procedures ("the Election Procedures") in that the Union's funds, property and resources were impermissibly used to campaign for a particular candidate (Mr Dave Prentis) by reason of the following matters:

- (1) At a conference of all Greater London Regional Staff held at the University of London Union during working time on the morning of 16 September 2015, which was called for and chaired by the Regional Secretary of the London Region (Linda Perks), the Regional Secretary used the platform to inform her staff that Dave Prentis was the only credible candidate for General Secretary, but not otherwise (Burgess complaint 4 partially upheld);
- (2) At a meeting of all Greater London Regional Staff held at Congress House at 2pm 21 October 2015, during work time the Regional Secretary of the London Region openly campaigned for Mr Prentis re-election for General Secretary and directed her staff to campaign for Mr Prentis during working time, and was assisted and supported by her Regional Management Team (Burgess complaint 1, Bannister complaint 1, Rogers complaint 1 and Wakefield complaint 6);
- (3) In 19 of the 20 communications identified by Mr Rogers sent via email, Facebook and tweets by various UNISON branches and nominating bodies on various dates between 9 September and 30 November 2015, allegations 15(2)-(20) are upheld and allegation 15(1) is rejected (Rogers complaint 2)
- (4) In 5 of the 6 communications identified by Ms Wakefield sent via email, facebook and tweets by various UNISON branches and nominating bodies on various dates between 5 and 20 November 2015. Allegations

21 (1)-(5) are upheld and the allegation at paragraph 15(6) is rejected
(Wakefield complaint 2)

4. Pursuant to s.108B(2)(d) of the Act, I refuse the Applicants' application for a declaration that the Union breached paragraph 51 of the Election Procedures in that the Union's funds, property and resources were impermissibly used to campaign for a particular candidate, Dave Prentis by reason of the following matters:

- (1) That at the conference of all Greater London Regional Staff held at the University of London Union on the morning of 16 September 2015, the Regional Secretary sought to influence her staff to secure nominations for Mr Prentis General Secretary, since beyond asserting her opinion of the candidates, there was insufficient evidence to prove that the Regional Secretary had acted in the manner complained of (one aspect of Burgess complaint 4);
- (2) By the 7 Team Dave emails sent on various dates between 29 August and 24 November 2015, since the emails were sent outside the working time of the sender (pursuant to the Union's flexible working policy) and the content of the emails did not constitute breach of paragraph 51 of the Election Procedures (Burgess complaint 2);
- (3) The contents of the email from the Union President, Wendy Nichols to Clare Williams and others of 10 November 2015, since it is not established that the branches referred to were using Union funds in order to campaign (one aspect of Wakefield complaint 2, paragraph 21(6))
- (4) By the emails to individual members of the Yorkshire and Humberside region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 3);
- (5) By the emails to current and retired individual members of the Greater London Region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 4);

- (6) By the emails to individual members of the Northern Ireland region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 5);
 - (7) By the emails of 23 October 2015 from Cliff Williams (Assistant General Secretary and Campaign Manager for Mr Prentis) and 30 October 2015 from Liz Snape (Assistant General Secretary) to members of Team Dave – a loose association of various individuals supporting the re-election of Mr Prentis - since it is not established either that the emails constituted prohibited campaigning in breach of paragraph 51 of the Election Procedures nor that the emails constituted incitement to campaign in breach of paragraph 51 of the Election Procedures. (Wakefield complaint 7);
- 5. Pursuant to s.108B(2)(d), I refuse the Applicants' Mr Bannister and Ms Wakefield's application for a declaration that the Union breached rule D7, E3.3 or paragraph 7 of Schedule C of the Union's rules:
 - (1) By reason of its issuing guidance (the "Revised Guidance") to nominating bodies about the General Secretary election which was not agreed by the National Executive Council of the Union since the Revised Guidance did not constitute a formal or determinative determination of the issue and in any event would not have amounted to a breach; was approved and authorised by the elected Union President and, furthermore was subsequently endorsed and ratified by the NEC (Bannister complaint 2, Wakefield complaint 1)
- 6. Pursuant to s.108B(3) I refuse the Applicants' request for an Enforcement Order that the Election result be set aside or declared void and the National Executive Council be required to agree a timetable for a fresh election for a General Secretary, since it would be inappropriate to do so for the reasons set out below.
- 7. Pursuant to s.55(5A) I refuse the Applicants' request for an Enforcement Order by way of prohibition on the appointment of the same person or organisation as Independent Scrutineer and Returning Officer, since no breach of Part IV of the Act has been established.

8. The Applicants' request for an Enforcement Order prohibiting paid officials of the Union from any campaigning on behalf of any candidate in future General Secretary Elections was withdrawn during the course of the hearing, so that the Union (not the ACO in the first instance) may decide in accordance with its democratic procedures and subject its rules and to the provisions of the Act, the extent to which paid officials of the Union may campaign on behalf of candidates and the extent to which Union resources may be permitted to be used in General Secretary and other elections.

REASONS

9. As members of UNISON ("the Union" or "UNISON"), Mr John Burgess and Ors, Ms Heather Wakefield, Mr Roger Bannister and Mr Jon Rogers applied to the Certification Officer pursuant to ss.55(1) and 108A of the Act in individual applications brought between 23 December 2015 and 7 July 2016.
10. Whilst each Applicant submitted individual and separate Registration of Complaint Forms, each complaint raised similar issues, relied on the same evidence and all the complaints made allegations of breach of Union rules in relation to the 2015 election of the Union's General Secretary (the Election and Election Procedures). The applications by Mr Rogers and Mr Burgess also alleged breaches of Section 49 (4) and (6) of the Act in relation to the Election. With the parties' agreement, the claims were consolidated.
11. The applications contained specific and detailed allegations, but in broad terms concerned the alleged activities of paid Union officials, impermissible use of Union resources and prohibited campaigning activities, in support of the incumbent candidate seeking re-election, for Dave Prentis, during the course of the Election, in breach of the Union's rules and the Act. It also concerned the Union's relationship with the Electoral Reform Society Limited (ERS) which had been appointed as both Independent Scrutineer and Returning Officer, and the extent to which the Union enabled ERS to fulfil its functions in relation to the Election.
12. Following correspondence and a number of iterations, each of the complaints found final form as set out at Appendix 1. The Certification Office investigated the alleged breaches in correspondence. A preliminary hearing and case management

discussion took place on 6 October 2016 with the appointed Assistant Certification Officer (ACO) and, in accordance with the procedure adopted by the Certification Officer,¹ the issues for determination and principal factual disputes were identified and agreed as are set out at Appendix 2 to this decision.

13. A hearing took place on 19-21 December 2016 to hear witness evidence and a further date set for submissions on 22 February 2017. At the hearing, the Union was represented by Mr Antony White QC and Andrew Smith, instructed by Mr Richard Arthur of Thompsons Solicitors; Mr Burgess and others were represented by Mr Yunus Bakhsh; Ms Wakefield was represented by Ms Ijeoma Omambala; Mr Bannister was represented by Mr Glenn Kelly; and Mr Rogers was represented by Mr George Binette.
14. I am grateful to all of the representatives for their assistance with the evidence and the law, their answers to my many questions and for the evident hard work and preparation that had gone into their work, which has assisted me in my task.
15. It was not reasonably practicable to determine the applications within six months of their being made, pursuant to s.108B(2)(c), because of the time sought by all sides to prepare appropriately and identify suitable dates, given the limited availability of representatives for the hearing, and, subsequently, the time necessary to consider and draft this decision.

The evidence

Witnesses

16. The Union submitted written witness statements from Unison Assistant General Secretaries Mr Cliff Williams; Mr Roger McKenzie and Ms Bronwyn McKenna; Ms Liane Venner, Director of the Executive Office and Mr Simon Hearn, Deputy Chief Executive of ERS. All the respondents' witnesses also gave oral evidence.
17. Each of the lead Applicants – Mr Burgess, Mr Rogers, Mr Bannister and Ms Wakefield provided witness statements and gave oral evidence and statements were also submitted by Ms Claire Dixon, Ms Helen Davis, Mr John Harris, Mr James Godfrey and Ms Hannah O'Reilly, on behalf of Mr Burgess and Ors; Mr

¹ Revised Guidance on Procedure issued April 2016, paragraph 4

Mike Barker, Ms Paula Barker, Mr Eddy Coulson, Mr Mike Jackson and Mr Glen Williams on behalf of Ms Wakefield.

18. The hearing had been carefully timetabled and the length of cross examination agreed with the parties at the case management discussion. The Applicants were restricted to lead advocates to avoid repetitious questioning and it was agreed that all parties would restrict their cross-examination to the matters that they each considered most relevant to the agreed issues. Whilst not accepting all their evidence, and disputing some aspects, UNISON did not cross examine any of the Applicants' witnesses beyond the individual lead Applicants themselves. Similarly, the Applicants did not cross-examine the Union's witnesses on every matter which they disputed. It was understood that it did not follow that matters which had not been challenged in cross examination had been accepted, no specious technical point would be allowed. The factual dispute between the parties was clear.

Documentary evidence

19. The agreed bundle of documents comprised 8 lever arch files totalling approximately 2,500 numbered pages. I wish formally to record my thanks, and that of the Applicants and the Certification Office, to UNISON's solicitors who took on the task of preparing and photocopying the bundles and undertook it so accurately and efficiently. Not a single page was out of place or chronological order, nor incorrectly paginated or indexed.

Findings of Fact

20. It is for the Applicants to prove their case to the civil standard. I make the following findings of fact on the balance of probabilities from the evidence before me. I have sought to restrict my findings to those necessary for the determination of the identified complaints and issues. A number of matters were put before which did not relate directly to the issues, but were put by way of background and context and for the purposes of inference drawing. Where I have been able to make relevant primary findings of fact from direct evidence I have done so. In general terms where evidence appeared to be of no, or negligible, assistance to the matters in dispute, because, for example, of their dissimilarity in time, election type, or complaint, I do not always refer to them in the narrative set out below. If they are

not mentioned the parties can take it that I have not found them to be of sufficient evidential value to be worth mentioning in what is already a lengthy decision. Where there has been an absence of direct evidence and I have drawn inferences I have first found facts on the balance of probabilities, and then considered if further facts can be safely found notwithstanding the lack of direct evidence and included in my decision making consideration of why direct evidence is lacking, such as the reluctance of witnesses to come forward to provide evidence or the absence of evidence to be given.

Background

21. The Applicants are members of the trade union UNISON – The Public Service Union (“the Union”). The Union was founded in 1993 on the merger of NALGO, NUPE and COHSE. It is the second largest union in the United Kingdom and represents members across the public sector. It currently has 1,364,941 members and in approximate terms has an annual subscription income of £166 million and general reserves of £105 million (including its buildings and land) of which £40 million is held in branches. Of the approximately £111 million available for expenditure each year, its outgoings account for approximately 95% of annual income.

22. Roger Bannister joined NALGO in 1976 and has been a lay official of the Union as a continuous member of the Union’s National Executive Council (NEC) since the formation of UNISON, and has also held the position of Branch Secretary of the Knowsley Branch continuously since 1993. He has stood unsuccessfully for the position of General Secretary in every election since the Union’s formation.

23. John Burgess is also a lay official as elected Branch Secretary of the Barnet UNISON local government Branch and is seconded to this post five days a week.

24. Jon Rogers too is a branch secretary, of the Lambeth Branch, and an NEC member. He has been a UNISON and before that, NALGO, branch officer continuously since 1990, has served on the UNISON Greater London Regional Committee since 1996 and was elected to the NEC in 2003 and been elected in every subsequent election. He was an unsuccessful candidate for the post of General Secretary in the 2005 election.

25. Heather Wakefield is a paid employee of the Union, holding the very senior position of National Secretary (Head) of the Local Government, Police and Justice Section, which covers over half of the Union's members. She has been employed by UNISON and its previous partner union, NUPE, for 27 years and had been an activist in previous partner unions NALGO and NUPE between 1977 and 1986. She represented the TUC on the Low Pay Commission for 9 years and is Vice Chair of the EPSE Local/Regional Government and Social Services Committees and various other local government, NGOs and charitable organisations in the field of local government and equality issues, on which subjects she is also a frequent speaker and writer.
26. In summary, all the Applicants are long standing members of the Union, and, with the exception of Mr Rogers, all the lead Applicants were candidates for General Secretary in the Election held in 2015.
27. Ultimate governance of the Union is vested in the National Delegate Conference (NDC) which meets annually. The general management and control of the Union outside the NDC is vested in the NEC, which has full power and authority to act on behalf of the Union in every respect and for every purpose falling within the objects of the Union. The Union's chief paid official is its General Secretary who is elected by the membership from time to time at intervals of no more than five years (in accordance with Part I of Chapter IV the Act). The General Secretary is vested with the power to act on behalf of the NEC and its committees between meetings, where appropriate in consultation with the President or Chairperson of the relevant committee, and shall seek the endorsement of the NEC or committee union any exercise of that power. (Rule D2.12.1, p 14 Union Rule book).
28. The tier of management immediately below the General Secretary is Assistant General Secretary (AGS), of whom there are currently four: Roger McKenzie (who has national responsibility for organising and recruiting), Bronwyn McKenna (with national responsibility for organisation and resource development), Cliff Williams (who oversees management of the regions) and Liz Snape.
29. There are 953 functioning branches in the Union divided into 12 geographic regions. Each region has a Regional Council and elected membership structures with branch and regional lay officials, such as Messrs Burgess, Bannister and

Rogers. Each region has a Regional Secretary who is the most senior paid employee of the Union in each region at level 1 within the hierarchy of the bureaucracy, the same grade as a National Secretary and one grade lower than an AGS. The Regional Secretary reports to and is line managed by Mr Cliff Williams, AGS. Each Regional Secretary has a Regional Management Team (RMT). In the Greater London region at the material time the Regional Secretary was Linda Perks. The RMT included Chris Remington (Ms Perks' partner), Vicky Easton, Karen Westwood and (as of 2 November 2015), Helen Reynolds. There were 87 employees in the Greater London Region managed by Ms Perks at the material time categorised as either organising staff or administrative/clerical staff. 59 of the 87 were organising staff. There were 15 branches in the Greater London Region comprising over 130,000 members. The organising roles were Regional Officers (ROs), Area Organisers (AOs) and Fighting Fund Liaison Organisers (FFLOs).

30. The Union provides support through its seven Service Group Executives (SGEs) organised along service lines, also comprising a network of elected lay officials to the SGE and supported by paid officials of which the National Secretaries, such as Ms Wakefield, are the most senior below the level of AGS.
31. The current General Secretary, Mr Dave Prentis was first elected as general secretary in 2000 and then again in 2005 and 2010. In 2005 he received 75.6% of the votes cast on a turnout of 16.6% of the membership. The two other candidates in that election, Mr Bannister and Mr Rogers, received respectively, 16.9% and 7.5% of the votes cast. In 2010 the turnout was 14.6% when Mr Prentis received 67.25% percent of the votes cast. The other candidates in that election were Mr Bannister and a Paul Holmes, who received 19.75% and 13% respectively. In the 2005 and 2010 elections no paid official stood against Mr Prentis as the incumbent General Secretary and a senior national official had never previously stood against an incumbent general secretary in the history of the Union.
32. The Union holds elections at all levels for lay positions and committee membership throughout the Union and is well-versed and experienced in holding elections as required by law and its rulebook.

33. The rulebook provides as follows:

D Structure of the union at national level

...

7 ELECTIONS

All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council.

E Principal Officers

GENERAL SECRETARY

3.3 The ballot for the post of General Secretary shall be a secret postal ballot of the membership, which shall include retired members, conducted by a Returning Officer independent of the Union. The electoral rules in Rule D.7 and Schedule C shall apply to such elections.

Schedule C: elections

7 The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election, including the power to determine the method of voting (whether to be by simple majority; by single transferable vote; by multitransferable vote; or by some other system) provided that the person(s) securing the greatest number(s) of votes according to the system employed shall be the person(s) declared elected, so long as they are and remain eligible for election.

Previous General Secretary and other elections

34. The relevant wording of the Election Procedures in past General Secretary elections permitted nominating bodies "to advise their members of nominations they have made through their usual channels of communications with members eg branch newsletters." As will be seen later, although the wording in the procedure changed from "of" nominations to "about" nominations in the 2015 General Secretary election procedures, no-one suggested that the change of word changed the meaning of the rule – had that been the intention it would have been heralded and explained.

35. Unlike many other unions, the Union allows full time paid officials (also sometimes referred to as staff members) to campaign and actively participate in general secretary elections, provided they do so within the rules set out and laid down by the NEC. The overarching principle is that staff members may only take part in

campaigning activities in their own time and without using UNISON's resources, as discussed further below. Most paid officials will also be members of the Union and therefore entitled to vote in an Election.

36. There is some dispute between the parties as to the extent to which past practice in previous General Secretary and other elections is relevant in determination of the issues before me. However, it is common ground that it is relevant on the question of whether branches were permitted within the rules to inform their members of the reasons for their nomination of a candidate for General Secretary, and, to a lesser extent, to whom the communications were made and the method of distribution. All sides relied on past practice to support their view of their respective interpretations.

Past practice of nominating bodies' informing their members of the reasons for their choice of nomination in previous elections.

37. Mr Williams, Ms Venner and Ms McKenna's general impression was that nominating bodies were permitted to provide the reasons for their choice of nomination for the post of General Secretary to their members. Ms Venner described herself as being fairly sure that it was "not unusual", and Mr Williams that it was "beyond doubt". The Applicants were equally clear that nominating bodies were only permitted to give the fact of the name of their chosen nomination, since the provision of reasons would amount to campaigning, and thus using branch resources for campaigning in breach of the general prohibition. Furthermore their evidence was that it was a long standing and well understood position. Mr Rogers in particular was known as an extremely well-informed expert and erudite scholar of the Union's rules², whose judgments in this field were highly respected throughout the Union. Ms Thompson who, within the Union's cadre of employed officials, had most experience of managing elections on a day to day basis, as will be set out further below, was absolutely clear that Union resources were not to be used to provide reasons for a nomination, as was Alex Lonie the ERS employee with most day to day involvement in UNISON elections from the ERS.

² With the nickname of "Rule Book Rogers"

38. I found that views of all those listed in the above paragraph were genuinely held.

But both views cannot be right. To go beyond the mere assertions and views of the witnesses I was taken to evidence of past practice in General Secretary elections. There was evidence that Mr Prentis' campaign team in previous elections since 2005 had informed its supporters that reasons could be provided (see, for example "Inform your Branch members of the decision to nominate Dave and the reasons in support of that decision" p594³) and that some branches and other nominating bodies had indeed provided reasons for supporting whichever candidate they had nominated (see for example p639 East Midlands region). The Union drew particular attention to the Shetland Local government branch newsletter of 2005⁴ which had included a quote from the branch chair praising Mr Rogers in the same paragraph in which members are informed that Mr Rogers had received the branch nomination, thereby setting out the branch's reasons for its nomination (p.599). Mr Rogers was unaware of it at the time.

39. Interestingly one undated campaign guide for branches from the "Campaign to elect Dave Prentis" (p607) was relied on by both sides to support their opposing positions. In Q & A format branches are told that they can publicise the fact of their decision to support Mr Prentis through the normal methods of communication. In a separate question "Should we get our decision more widely known i.e. in the local press etc?" the answer is "Yes, you can press release your decision and the reasons for it." And in a further question: "What else can we do to gain support for Dave" the answer provided is "You could also ask key opinion formers such as branch officers or stewards to write personally to members that they represent, saying why they support Dave Prentis." In some ways the Q & A begs more Qs than the As it provides, but it is clearly not advice that branches can inform their members through their normal channels of communication of the reasons for the branch's choice, merely the fact of the choice. It therefore accords more with the Applicants' understanding of the rule.

40. Other examples given went both ways. I find that overall, as a proportion of the volume of election material put out by nominating bodies, there were remarkably

³ The page is interesting in that it also contains the clause: "Dave sends his personal thanks and congratulations" which is informative in understanding the meaning of a very similarly worded expression at the 21 October 2015 meeting discussed further below.

⁴ with the clever punning title of Yarns

few examples of reasons for a nomination having been provided, and generally speaking it would seem that considerable care was taken to avoid doing so. To take one example, when the Northern Ireland Regional Secretary informed all members of her region that the Regional Council had nominated Mr Prentis in 2010, it was followed only by the sentence "We need strong leadership now" (p666). If it had been thought that reasons could be given, the region would doubtless have said more. No doubt all the candidates promised to be strong leaders. On the few occasions where reasons were provided, they were given shortly and in bland terms.

41. In previous General Secretary elections there had been no challenges to the few branch newsletters etc that had given reasons for a particular nomination.

Established method of communication of nominating bodies to their members and what constituted the membership of the nominating body.

42. Ms Wakefield's Complaints 3, 4 and 5 explored issues of whether email and facebook postings constituted an established method of communication for the nominating bodies of the Yorkshire and Humberside, Greater London and the Northern Ireland Regional Councils and also who constituted their members. Accurate information as to previous practice was therefore directly relevant to what constituted an "established method". Ms Wakefield explained that given her work commitments, she had not interested herself in campaign literature and its distribution in previous elections: she had not been a candidate previously and would therefore have had no reason to do so. She considered however that as a matter of construction the members of a Regional Council are the elected members of that council, not the entire Union membership of the region concerned who had elected their Regional Council members. None of the other Applicants adduced evidence on the points. Simon Hearn of ERS's evidence was that past practice in previous UNISON General Secretary elections had been for Regional Councils to inform all their members in the region of their nominated choice of candidate and not just the Regional Council members. The documentary evidence supported his assertion – see for example in 2010 both the West Midlands (p644) and Northern Ireland (p.666) Regional Secretaries informed all their members in the Region of their respective Regional Council's decision to nominate Dave Prentis and there

had been no complaint about the practice in previous elections. ERS understood that under the Union's election rules informing the nominating body's members of the nominated candidate entitled the nominating body to inform its ultimate members, not just, for example the Regional Council members only.

43. During the course of cross examination Ms Wakefield accepted Mr Williams' evidence that Yorkshire and Humberside Region had established email as a method of communication since sometime before 2010, and that the practice continued after John Cafferty was appointed Regional Secretary. The evidence was also that Greater London Region Council used email as an established method of communication from 2012 onwards. There was no direct historical information concerning Northern Ireland, but Mr Williams' hearsay evidence that the NI Regional Secretary had informed him that they have been using email as a normal and well established method of communication for some considerable time before 2015 was unsurprising, highly plausible and I accepted it.

Mike Jackson's evidence

44. Ms Wakefield relied on a statement submitted by Mr Mike Jackson to demonstrate previous General Secretary election malpractice by paid officials campaigning for Dave Prentis using Union resources in the Greater London Region, and more widely, in order to draw an inference of systemic and entrenched patterns of paid officials breaking election rules in support of a particular candidate, leading to the factual conclusion that the same pattern was being followed in 2015.
45. Mr Jackson had been an employee of the Union from 1978-2011 as a Regional Organiser in the Greater London Region until 2004 and then as Deputy Head of Health at the Union's head office. He described involvement by Greater London Regional paid officials in the general secretary elections of 2000, including paid officials being asked to persuade branches to nominate Mr Prentis. He said he had secured 13 branch nominations and was informed by the Regional Management Team (RMT)⁵ that Mr Prentis was "very pleased" with his efforts⁶. A meeting had

⁵ His statement did not say who within the RMT had said this and there was no evidence in the bundle that I could identify to say whether Ms Perks had been either the Regional Secretary or part of the Greater London RMT at this time.

⁶ The phraseology has echoes of the words said to have been used in the 21 October 2015 meeting, and see also footnote 3.

been called by the RMT at 5pm, outside work time and not on staff premises, at which attendance was voluntary. The then RMT had encouraged paid staff to take an active part in the election in support of Mr Prentis. Paid officials had distributed campaign literature – leaflets and posters to UNISON members' workplaces and branches during working time.

46. He suspected that similar activity in the subsequent General Secretary elections had taken place in Greater London and other regions and also the Head office of the Union and that his experience in 2000 demonstrated a wider pattern of behaviour. He was concerned to find that he had been disenfranchised in the 2015 election after having made known his support for Ms Wakefield. He stated that he had also been subjected to online abuse and trolling after publicising his support of Ms Wakefield and considered that the information used to abuse him can only have come from the Greater London Regional office. Mr Jackson had been a UNISON employee for over 30 years and had served in a number of significant positions.
47. The Union objected to my placing any reliance on the statement as it addressed matters outside the agreed issues and they had not prepared to meet such allegations. Furthermore the Union considered that the allegations were imprecise generalisations and too stale to be relied upon.
48. Mr Jackson's evidence spanned a number of matters. Whether or not Mr Jackson was wrongly denied a vote in 2015 is completely outside the scope of this hearing: there is no allegation of voter registration irregularity in the agreed issues or any of the Applicants' claim forms.
49. Mr Jackson had no direct evidence in relation to the General Secretary elections of 2005 and 2010, nor of activities in other regions and quite fairly and properly explained in his statement that his fears and concerns are based on hearsay and rumour, rather than his direct evidence.
50. Turning to the evidence of the Greater London Region paid officials' activities, the evidence is on point in terms of subject matter, and the extent to which it assists with the complaints before me is considered further in the conclusions below.

General evidence of past practice

51. In so far as other evidence was before me which related to previous elections it is clear that the rules concerning the permitted use of Union resources in General Secretary elections are known, verbatim, to all: it is embedded in the cultural DNA of the Union and is the frequent source of complaint, from all sides, in all type of Union elections. For example Mr Rogers cited examples of breaches being reported both by him, and against him, when he was a General Secretary candidate in 2010, and there was evidence of concerns being raised in NEC elections by Mr Bannister dating back to 2007. Candidates for election and their campaign teams seek to police and monitor their opponents and call out any perceived or actual infringements of the rule. Where the candidate acknowledges an infringement or the Returning Officer finds there to have been a breach, there is generally a swift retraction and correction.
52. Mr Bannister relied on a decision of the CO (*Bedale v UNISON* (D/7/10) pp614a-m, D/7/10) concerning Caroline Bedale. At an NEC election for 2009/11 it was found that the branch office of the Manchester branch had been used to support campaigning for prospective candidates in that election in breach of the election procedures. The applicable election procedures in that election were in materially identical terms to those applicable to the Election under consideration by me. Ms Bedale had complained to the Returning Officer, ERS, prior to lodging her CO complaint, as she was required to do, and ERS had rejected her complaint which the CO then upheld. On the same information as was before ERS, the CO had no doubt that (minimal) resources of the Union were used in breach of the rules in a number of respects (see paragraphs 31 and 32 of the CO decision).
53. I do not, however, draw the inference sought by Mr Bannister to conclude that this decision demonstrates a systemic and deep rooted culture of electoral malpractice. It is one decision on a narrow point concerning a different election five years earlier and I decline to make that leap of speculation.

Procedure for General Secretary elections

54. Responsibility for organising General Secretary elections in accordance with the Union's rules and the statutory regime lay with Liane Venner, at that time, Director of the Executive Office. She had been appointed to that role in 2013 having served in a number of other senior and head office capacities. It formed just part of her role as Ms Venner was also responsible for conferences and events, industrial action and constitutional matters. Her line manager was the General Secretary. By 2015 she had had experience of one SGE and one NEC election.
55. The member liaison unit (MLU) has responsibility for internal administration work associated with Union elections. The Union elects its NEC and SGE from amongst its membership bi-annually in alternate years. The Head of the MLU is Liz Thompson, who had had over 10 years' experience in post and by 2015 had had experience of two previous General Secretary elections as well as at least a total of 10 SGE and NEC elections.
56. The Union's aims and objectives include the aim of increasing union democracy. Aim and objective 2.2 is "to promote and establish a member led union and to carry out and fulfil decisions made by members in a spirit of unity and accountability" and 2.5 "To promote and safeguard the rights of members to have an adequate opportunity to participate in the initiation and development of policy-making, through meetings, conferences, delegations or ballots, and to encourage the maximum democratic debate, together with the right to campaign to change policy, while at all times acting within the rules and agreed policy."
57. Decreasing participation in trade union elections has been a concern of the Union for some time. A survey was commissioned in 2001 to better understand the causes and by 2004 (see e.g. pp1/399-1/401) a number of measures were identified at both regional and national level to increase voting levels, such as reminding and encouraging members to vote.

UNISON and ERS

58. There has been a very long standing contractual relationship between the Union and Electoral Reform Services Limited (ERS) for the provision of Independent Scrutineer and Returning Officer functions. ERS has performed both functions

since the Union was formed in 1993 for all its elections (both statutory and otherwise). ERS is one of the organisations specified in regulation 7 of the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 for the purposes of the “relevant provisions” of the Act. ERS has performed both functions in relation to General Secretary, NEC and SGE elections. It is a requirement of the Act for an Independent Scrutineer to be appointed and a requirement of the Rule book (Schedule C) for a Returning Officer to be appointed. The rule book requires the Returning Officer to be independent of the Union and its role, amongst other things is to determine the validity of any complaint about the fairness of the election:

C 6 “The Returning Officer shall determine the validity of any complaint made to her/him about the conduct or fairness of the election, and shall have the right to require an election to be held again in whole or in part if not satisfied that the election complies with the requirements of law and these Rules, and if the Returning Officer considers it reasonable to exercise the right.” (rule book p69)

59. ERS are appointed following a competitive tendering exercise and appointed for a three year term. The three-year agreement for ERS to perform both services for the period in question (from 1st January 2013) appears at p.1/506–539 and for the period 1st January 2016 at p.540-568⁷. ERS is contractually obliged to comply with the relevant legislation in the performance of its statutory functions, and the agreements contain the usual expected clauses requiring the duties to be performed with due care and diligence and to a reasonably high standard. As well as Union election ballots they also provide services in relation to industrial action ballots.

60. The specific Independent Scrutineer and Returning Officer functions are set out (pp.525-30) and there is no criticism of the contractual terms as listed, per se. As Independent Scrutineer, ERS is required to carry out its functions so as to minimise the risk of any illegality, unfairness or malpractice; asserts their independence from

⁷ The relevant period in this case straddles the 2 contracts. I note that the contract for 2016-19 was agreed between UNISON & ERS on 17 November 2015.

the Union and freedom to carry out their functions without interference and UNISON is required to comply with all ERS's reasonable requests.

61. The Act specifically provides for the qualified Independent Scrutineer to be appointed not only for the functions required under the Act, but also such additional functions in relation to the election as may be specified in his or her appointment (s 49(1)). There was no evidence before me to suggest that any of the additional functions specified in the terms of appointment of ERS as both Independent Scrutineer and Returning Officer gave rise for concern. I accept that it is entirely rational and can avoid duplication of labour and cost for the same organisation to be appointed to both roles, provided firstly that it carries out its functions in accordance with the Act and the requirements of the rule book and is independent, and secondly that a union ensures, pursuant to s.49(6) that the scrutineer carries out its functions and, thirdly that there is no interference with his or her doing so. Whether in this case UNISON failed in its duty under s.49(6) will turn not on the underlying contractual documents, but the facts in relation to the handling of the relationship, exchange of information and co-operation during and after the Election in question.

62. The terms of ERS' appointment did not expressly preclude ERS from issuing guidance on the scope of and interpretation of the Election Procedures.

63. Over the years both organisations have built up a close working relationship. It would be impossible for ERS to fulfil its functions without the close co-operation and a considerable degree of mutual trust with UNISON. Under the Election Procedures MLU is the point of contact for questions and information, and ERS for complaints. A senior employee of ERS, Alex Lonie had approximately 20 years of experience working on the Union's elections and had a built up considerable knowledge and understanding of the Union's rules and procedures relating to elections. He reported to Simon Hearn, deputy chief executive of ERS, who was responsible for overseeing the 2015 Union General Secretary Election.

64. Mr Bannister referred to a letter from 22 March 2007 from ERS to Ms Bedale (P608 B). It appears to be a draft letter shared between ERS and Unison, which Mr Bannister argues demonstrates inappropriate collusion between the two bodies

compromising the independence of the ERS as it has effectively delegated its responsibilities as Returning Officer to the Union.

65. I find that there is insufficient evidence about this letter to draw such a factual conclusion. There are a number of possible explanations, most of which are entirely innocent – it is self-evident that in investigating any complaint ERS has to ask the Union for information, and to check for factual accuracy. But even if it did look suspicious, it is not included as an issue for determination, it predates central events in this case by some eight years and is therefore something of a distraction rather than an illumination of the matters of determination and of such limited evidential value now, as to be ignored. I mention it merely to explain why I cannot reliably place weight on it.
66. On another occasion, in the 2013 NEC elections, the RO upheld a complaint of Mr Bannister's (see pp698A-F). The significance of this and other CO decisions is discussed later in the conclusions section. Reference has already been made to the CO decision in *Bedale v UNISON* – I do not make any inferences beyond the specific findings of the case in relation to ERS' relationship with the Union, since it would be unsafe to do so without further evidence of other errors.
67. In the run up to the announcement of the 2015 election there is an email chain between UNISON and ERS illustrative of the working relationship (see pp 799-812). There are a host of details to be finalised concerning matters such as whether the schedule allows sufficient time for photographs to be included in the candidates' election addresses, reviewing complaints from the previous election to see if lessons could be learnt and so on. They demonstrate the need for the close working relationship and a degree of trust between the two organisations.
68. Elections are run on a tight timetable which allows for little slippage and it is a complex process – Ms Venner described the Gant chart relating to the election with 210 rows of tasks and the breakdown of the process, stage by stage. Co-operation and effective joint working with the Returning Officer and Independent Scrutineer is essential for the process to work.

UNISON Preparations for 2015 General Secretary Election.

69. In 2015 the General Secretary Election had to be concluded by 31 December 2015.

Preparations commenced in summer of that year to set a timetable and agree the procedures. At the request of the then President of the Union, Wendy Nicholls, Ms Venner, in conjunction with Ms Thompson and in consultation with ERS, drafted the Election Procedures for discussion and approval by the NEC at its meeting on 29 July 2015, in accordance with the rules of the Union.

70. The timetable was agreed by the NEC and provided for a nomination period from 2 September to 9 October, so that the deadline for all nomination forms, candidate forms and election addresses had to be received by the MLU by 9 October 2015. There was a period for prospective candidates to be told if they had secured sufficient nominations (and a route of appeal with a tight timetable) so that voters could be told of the details of the elections and the full list of candidates on 2 November, with voting papers to be sent on 9 November and the voting period ending on 4 December.

71. 11 December was the deadline for written complaints and supporting evidence to be sent to the Returning Officer. The deadline for the Returning Officer to investigate and respond to complaints was 16 December so that the election result could be published on 17 December. (p812)

72. The Election Procedures contained minor amendments to the ones used in the previous General Secretary election, but were broadly similar to those adopted for NEC and SGE elections and were approved without further amendment by the NEC (1/489–505). Two relevant amendments were the inclusion of social media resources, as well as branch newsletters in paragraph 51(a) and in both appendices, given the increasing prevalence of social media in branch communications, and to make it clear that working hours for staff meant working hours within the meaning of UNISON's flexible working arrangements.

73. To be eligible for election a candidate must obtain nominations from either the NEC; or at least two of the national SGEs; or at least two Regional Councils; or at least 25 branches (collectively the nominating bodies). At the time there were 953 functioning branches, although not all branches exercise their right to nominate a candidate. There were therefore a total number of 973 potential nominating bodies.

74. Prospective candidates would aim to secure nomination from as many nominating bodies as possible, both to acquire the minimum threshold requirement and to demonstrate strong support across the Union, in anticipation of the campaign to win the election itself, which is on the basis of a simple majority with one member one vote. Members include retired members.

75. The following provisions of the 2015 General secretary Election Procedures are relevant:

“44. UNISON recognises that campaigning, in whatever form, is a vital part of any election process. The following sections of this document include guidance for those branches and candidates who are involved in the elections. The aim is to make sure that everyone is clearly aware of their responsibilities and the limits set to allow fair elections to take place.” (1/494)

The provision goes on to explain that prospective candidates are entitled to contact details of all nominating bodies, but that branches are prohibited from allowing candidates or their supporters to see the electoral roll.

Central to the complaints for adjudication is the following paragraph:

“Campaign procedures for branches and candidates

51 Our funds, property or resources cannot be used to support campaigning for any particular candidate, except in the following circumstances

- a) If a nominating body wants to tell their members about the nominations through their established methods of communication (for example, branch newsletters and social media resources)
- b) To hold meetings (as explained in these procedures)
- c) To provide candidates with a copy of the contact details for all nominating bodies (as explained in these procedures).

“Funds, property or resources’ include (but are not limited to):

- funds
- secretarial, administrative and office facilities
- electronic information

- UNISON social media
- union stationery
- phone calls and text messages at the union's expense
- the paid time of branch staff, and
- expenses for travel and subsistence (food and drink).

76. Appendix 1A (p1/497) provided procedures for any member of the Union's staff seeking nomination as a candidate for the position of General Secretary – which would apply equally to an incumbent General Secretary seeking re-election and a contender from the cadre of paid officials. Appendix 1B (p1/498) set out guidance for Union staff members regarding campaigning activities relating to the election of general secretary.

“Guidance for UNISON staff members regarding campaigning activities relating to the election of general secretary (P1/498).

“This guidance applies to all UNISON staff members including branch employed staff.

1. Staff whose duties include functions relating to this election, shall exercise those duties in a fair and even handed manner. Staff can only assist any candidate as outlined in these procedures.
2. During their working time (within the meaning of the flexible working arrangements); or in the course of carrying out their contractual duties, staff should not carry out any activities intended or likely to promote adversely or affect⁸ the election or candidature of any person.
3. In their own time i.e. outside their working time (within the meaning of the flexible working arrangements), staff are free to carry out campaigning activities as are permitted to all members of the Union. In doing so, they should not take advantage of their position as employees of UNISON. For example by disseminating information that they may have acquired in the course of their employment and is not generally available to the membership.

⁸ I paused over the word order – was it perhaps was intended to read “promote or adversely affect”?

4. Staff may not, save as the election procedures permit for all other members of UNISON, make use of union resources, funds or property to campaign for support or to seek to advance the cause of any person or candidate.
5. [defines UNISON resources in identical terms to clause 51 set out above.]

Flexible Working Arrangements

77. The flexible working scheme in force at the material time is at pp584–7.

78. The principles provide that staff on spinal points U36 and above do not have fixed hours of work. The aim is for them to work a 35 hour week, but the document acknowledges that it may not be possible to achieve on a week by week basis.

79. The principles provide as follows:

"flexible working enables individual employees to manage their own time, combining the needs of their job with UNISON's commitment to the principles contained in the EU Directive on working time and its wish to combat an organisational culture of long working hours."

80. The scheme provides for time off in lieu where it is necessary for staff to work long hours and/or during weekends. It is acknowledged that "this method is based upon a considerable degree of mutual trust between staff and their managers, who are expected to reach agreement on flexible working patterns which ensures satisfactory individual and team performance while respecting employees' needs. Abuse of trust by either side could leave to disciplinary action."

81. Staff on grades E - B receive hour for hour time off in lieu for weekend work, and can exercise discretion for time off resulting from long hours during the working week.

82. Staff on grade A and above have a discretion for time off for both weekend work and weekdays late working. While some weekend working is reflected in the salary levels for the staff, the amount of work done at the weekends should be taken into account within their overall work patterns.

83. The provisions concerning the scheme's operation were as follows:

"all staff working flexible hours must maintain an accurate diary of their whereabouts and work appointments. Diaries should be completed in advance of absences from the office and must be accessible to other appropriate staff such as secretaries or assistants and diary managers. The diary should contain sufficient detail as to enable others to carry out their jobs effectively and for the post-holder to be contacted on urgent matters."

84. It was acknowledged and recognised that there would be "occasions when it is most efficient to undertake some work at home rather than make a long journey for a brief period of time at office facilities. When work is undertaken at home this should clearly be recorded in diaries and made known to others as appropriate."

85. In May 2013 flexible working guidelines for managers were produced (pp587 E – Z). It provides for meticulous recording by managers in agreement with staff of work patterns and service cover.

86. AGS's such as Mr Williams did not consider themselves bound by the detail of the scheme – he was unaware of the current applicable scheme and accepted in cross-examination that he had quoted from an out of date scheme. He considered that at his level within the organisation he had considerable flexibility to determine when was work and non-work time. His job involved considerable travel and he did not have a fixed lunch hour. Nor would he want to spend time authorising in advance the working time patterns of each of the 12 Regional Secretaries whom he managed.

87. There was considerable blurring of the distinction between work and non-work time for all the senior officials who appeared before me. Working for a trade union is often seen as a commitment and vocation and many meetings have to be held outside working time to facilitate attendance by lay members and staff have a wide geographical spread and considerable travel is involved. As with any responsible job, employees do not switch off or stop thinking about their work at the strike of 5pm until the next day. Work emails and documents are sometimes worked on late at night and weekends, and personal and non-work matters attended to during the working day.

88. There was no suggestion that an employee at the level of AGS, or National Secretary, considered it necessary to comply with the letter of the flexible working

arrangement and complete the paperwork required of more junior staff and that in accordance with their senior positions the system worked on a considerable degree of trust.

89. Mr Williams acknowledged that it is perfectly acceptable and normal for personal calls to be made in work time and on work equipment.

90. Mr Williams' position was that if during an election, he sent campaign emails or made phone calls during normal business hours, it would follow that he was not using working time to do so, and would be utilising the flexible working arrangements if he did. As Ms Wakefield observed this was somewhat circular and contrasted with the very close monitoring and surveillance that she experienced in this regard. Ms Wakefield's secretary, Indira Patel, hand delivered an envelope, which unbeknownst to Ms Patel contained Ms Wakefield's election address, taking it from the fourth floor to the third floor of the Union's headquarters. Ms Wakefield had been unable to deliver it herself as she was attending a work conference – the UNISON annual Police and Justice conference in Brighton as part of her duties. Ms Wakefield received an immediate rebuke from the MLU (p991) which threatened to report her to the RO, required a response within three days and stated that: "failure to respond to this letter may deem a candidate ineligible to stand in the election".

91. It was a trivial complaint that Ms Wakefield responded to appropriately, reassuring the MLU that she was not using Union resources and that she had been assiduous in instructions to her staff not to do so either.

92. I have looked in the bundle for examples of the timing of Ms Wakefield's emails to see if they provided insight in understanding the Union's approach to working time and the flexible work arrangements – she has sent emails about the campaign at 9.17am (p1524), Mr Rogers has sent election related emails at 4.04pm (p1527).

93. Even allowing for the relaxed approach to working time, very few of the campaign emails in the bundle were in fact sent during normal office hours. From the information before me, on the whole, Unison staff avoided sending campaigning emails during the standard working day, whichever candidate they supported.

Candidates' preparations

94. All those considering standing for General Secretary would have been aware of the requirement for an election to be completed by 31 December 2015 and would have been preparing: taking soundings, anticipating who their opponents might be and assessing their chances. Once having decided to stand, the process of gathering support, planning their election pitch, campaign strategies and tactics, seeking alliances and so on would continue in earnest. All candidates would be embarking on the same exercise. It was, after all, an election – where the aim is to develop attractive policies, to garner as much support as possible, have as many activists as possible campaigning for you and opinion-formers supporting you. All prospective candidates want to make a positive impact on the electorate, or, perhaps and/or, seek to undermine the opposition, in order to persuade the voters to vote for you rather than another candidate, or not bother to vote at all. It is an adversarial process and one person's success is another's failure and only the winner is elected: there are no prizes for coming second. There are deeply held views and loyalties and the result matters.
95. As Ms McKenna described "It was clear from the outset that the 2015 election was going to be the most hotly contested General Secretary since UNISON's formation." In previous election results Mr Prentis had been very comfortably elected by a considerable margin on a respectable turnout, but there had been a downward trend and he would now be standing for a fourth consecutive term. There was also the backcloth of the concern about declining participation in all trade union elections. A low turnout is thought to lead to unpredictability of results and seen to disadvantage an incumbent candidate.
96. Immediately after the NEC approved the election procedure, Ms Wakefield announced her candidacy and for the first time a very senior national officer with a national profile was running against the incumbent candidate. It would also seem that it was the first time, at least since 2000, that a woman had stood as a candidate in a union two thirds of whose members are female.
97. The wider political context in the Labour Party and labour movement generally had also changed since previous General Secretary election. To recap - the May 2015 UK general election surprised bookies and pundits with an overall Conservative

party majority and a poor performance by the Labour Party. The Labour leadership contest following the resignation of Ed Milliband on 8 May 2015 was underway at the time with voting taking place in August to September.

98. As so aptly articulated by Mr Binette the atmosphere was febrile at the time within the Union and the wider labour movement.

Establishment of Team Dave

99. As in the previous 2 General Secretary elections, Mr Prentis appointed Mr Williams as his campaign manager. He has 35 years' election experience with Unison and its predecessor union, NALGO, and is a very seasoned campaigner. In June 2015 at the Glasgow BDC meeting Mr Williams convened a meeting of Prentis supporters to plan the campaign. He had gathered a number of personal email addresses and after the BDC emailed key supporters and reiterated the six actions discussed in Glasgow urging supporters to move the campaign "up a few gears". The strategy was to continue to identify staff who would support Mr Prentis and be prepared to work for him; collect alternative email addresses and mobile phone numbers; "sound out" appropriate activists to assess their potential support and willingness to become involved; think about potential fundraising ideas; identify potential branches that will nominate at an early opportunity.

100. So far so uncontroversial and other candidates would have been operating on similar lines. What the Applicants object to however was the following: to "identify "official" meetings that we can use to piggyback and integrate with a campaign meeting (outside of the UNISON day)". (p790). The email was sent to a number of very senior paid officials who were part of the team to campaign for Mr Prentis' re-election including a number of Regional Secretaries such as Ms Perks of the Greater London Region (with its 130,000 members as the largest region in the Union) and Ms Venner who had overall responsibility for ensuring a fair election. All those in receipt would have known of the restrictions on the use of UNISON resources and the limits to a campaigning by employees of the Union. The email expressly referred to it: "Sorry to press the point, but please emphasise to colleagues (staff and activists) that they must not use any UNISON resources for this campaign, that includes email network and all meetings/ discussions must be held in our "personal" time."

101. Although this email does not form one of the central issues as agreed between the parties it was the source of much debate during the course of the hearing and is a leitmotif of a concern of the Applicants. I understand Mr Williams to be encouraging Team Dave activists to identify meetings that are taking place anyway and which are taking place outside the normal working day (as already mentioned meetings often need to be convened outside the Union members' working day) and then organise a campaign meeting to drum up support for Mr Prentis immediately before or after the official meeting dealing with other Union business. I do not accept the Applicants' submission on the meaning of the word "piggyback" which they sought to interpret as "hijack."
102. The Union submits that this is perfectly acceptable campaigning by paid officials within the letter and spirit of the Election Procedures. If, for example, there is a meeting about, say, what was then the Trade Union Bill from 6pm-7pm one evening, Mr Williams is suggesting a Vote Dave campaign activity be scheduled for 7pm.
103. The Applicants' second argument is that it is only qua office that they are able to identify the suitable meeting and organise the campaign meeting and that in doing so the Team Dave UNISON employee activist will inevitably have used UNISON resources to identify the meeting and "taken advantage of their position as employees of UNISON (as prohibited in the guidance at p498).
104. I shall explore the theme further and set out my conclusions after all the findings of fact.
105. Next in chronology is the 1st of the Team Dave emails of 29 August 2015 (Burgess complaint 1 sub paragraph (1)). However I shall deal with the Team Dave emails together below and return to them later.

16 September 2015 London Regional Staff meeting (Burgess complaint 4)

106. The Greater London Regional Secretary, Ms Perks, convened a staff conference on 16 September 2015 for all regional staff (ie paid employees of the Union) at the University of London in work time to discuss various work related matters. During that conference she outlined the procedure for the forthcoming Election and told her members of staff that "Quite frankly Dave Prentis is the only

credible candidate". She also informed all staff that the NEC had nominated Dave Prentis and explained the Election Procedures and timetable at that meeting.

107. It was an inappropriate expression of her personal opinion and she should not have taken that opportunity to express it. She used the meeting as a platform to express her view in such trenchant terms. She must have known it was contrary to the Election Procedures and it demonstrates both an arrogance and dismissiveness of any contrary views. By saying that only one candidate is "credible" undermines anyone who thinks otherwise. It sets a partisan tone in the workplace, although a throwaway remark, is a telling illustration.

108. There were no other allegations of inappropriate behaviour by Ms Perks at that meeting. I do not find that that comment of itself amounts to Ms Perks seeking to persuade or direct or order staff to procure nominations from branches for Mr Prentis. But it has the effect of suppressing dissent and implies that anyone who supports a different candidate is both stupid and wrong.

109. I find that it constitutes the impermissible use of UNISON resources by Ms Perks by using a workplace meeting during work time to promote Mr Prentis as a candidate and belittle all the others, and constitutes campaigning. Whether UNISON is vicariously liable for her action is considered below.

110. I remind myself of the wording of the Election Procedure guidance for all UNISON staff members paragraph 2. During the course of carrying out her contractual duties the Regional Secretary carried out an activity – the forthright expression of her opinion of the candidates - intended both to promote the candidature of Mr Prentis and adversely affect that of all the other candidates.

111. I pause to note that next in chronology are the 2nd to 4th of the Team Dave emails (Burgess complaint 1 sub paragraphs (2)-(4)) which are dealt with collectively below.

Nominating bodies giving reasons to their members for their nomination decision.

112. I have set out above my findings on the evidence from previous elections and background to what emerged as deeply and genuinely held, but different views

within UNISON of whether nominating bodies were permitted by the Election Procedures to inform their members of their reasons for their nomination.

113. It is a perplexing aspect of this case that it had not featured as an issue in previous elections. Be that as it may, Mr Rogers noticed that the Prentis campaign team were interpreting the rule as permitting nominating bodies to give reasons for their choice of candidate to their membership through the usual channels, in addition to merely informing them of the name. Team Dave was advising nominating bodies to give reasons for nominating Mr Prentis. Mr Rogers' view was that the liberal interpretation offended the "no Union resources" rule, which, since it was an exception, he considered as a matter of construction should be interpreted restrictively. However he had no principled objection, rather the opposite, since it added transparency and he believed it was more democratic. But he was concerned about consistency and equality of application in the rules and on 16 October 2015 sought a "request for guidance" of rule 51(a), so that all nominating bodies could adopt the same practice, once the correct one was established. He did not seek to challenge the practice. He asked both the Union and ERS for confirmation that it was in order to give reasons, and concluded by saying "In the absence of any other guidance, and taking into account that the candidate who published the liberal interpretation of paragraph 51(a) of the procedure is also the principal officer of the Union, I shall be guided by this liberal interpretation." (p.1033).

114. When the matter was first dealt with by Elizabeth Thompson of MLU and Alex Lonie of ERS, they were quite clear that the Election Procedures did not permit branches or other nominating bodies to give reasons. In their view it was neither controversial nor complicated, did not require discussion or involvement of their bosses, and within exactly 3 hours (2 working hours assuming a lunch hour) it would appear that⁹ the Returning Officer advised the Prentis campaign that:

"The rule [51(a)] specifically restricts the communication to advising members of the name of the nominee, and therefore any additional information or detail

⁹ I say it would appear that, as the email at p.1036 seems to have been sent at 15:52. However the picture is not entirely clear since at 16:38 the identical email appears as a draft from Mr Lonie to Ms Thompson and she replies, without comment, with the Prentis campaign team email address, together with a draft email from Mr Lonie to Mr Rogers repeating the restrictive interpretation view of the RO. (pp1038-9) It is however, the difference only of 90 minutes. In any event there was not dispute that the replies, as drafted, was sent in the afternoon of 16 October.

that might be communicated using UNISON resources would be in breach of this rule. It is the view of the Returning Officer that the suggestion that such a communication might include “details of why you did so” amounts to a breach of the procedures.” (p1036) (this came to be referred to as the Original Guidance)

115. Shortly after 7pm that night, Mr Williams on behalf of the Dave Prentis election team replied to ERS, copied to Ms Thompson, to say that they would comply with the ruling but would be appealing it. Ms Thompson and Mr Lonie were unflustered enough to exchange jokey emails, since there was no appeal procedure¹⁰, mocking Mr Williams’ attempt to change the outcome. The exchange is an interesting vignette, demonstrating Mr Lonie of ERS and Ms Thompson of MLU working constructively together and applying the rules in an even handed and fearless manner. They were not cowed by the knowledge that it was the incumbent General Secretary’s campaign team that had, in their view, misunderstood the rule, and that his campaign manager, an Assistant General Secretary, was trying to throw his weight around. Mr Williams readily accepted in cross examination that he was a powerful and influential figure in the Union.
116. Ms Thompson was going on holiday the next day and she reported to Ms Venner in a telephone handover that evening that she and Mr Lonie had dealt with a query from Mr Rogers and explained what they had done.
117. By next morning Mr Rogers had posted the ERS response on his influential blog, which, Ms Thompson noted had “set some hares running”. (p1045) Mr Rogers had made political capital out of it, using it to criticise the Prentis campaign. I could not find the blog in the bundle, but it led to a private exchange of emails between Mr Rogers and Mr Prentis which I understand led to Mr Rogers removing or modifying his postings. Both Mr Rogers and Mr Williams were hares in Ms Thompson’s metaphor.
118. It is clear from the email exchange that both Ms Thompson and Mr Lonie had no doubt that nominating bodies were precluded from explaining the reason for their nomination and that this had always been the case. The rationale was that explaining the reasons for a candidate’s nomination in communications to

¹⁰ “Appeal to who? LOL”, “#onoyoucant” “#iveneverseenthelike” p 1044

members using Union resources would constitute campaigning and fall foul of the prohibition on the use of Union resources for campaigning. I conclude that if the issue had been at all borderline in her mind she would have first consulted her manager Ms Venner before replying to Mr Lonie and Mr Rogers, and demonstrated more anxiety when a complaint about the advice is received from Mr Williams, which instead she felt able to ridicule.

119. Further evidence to support the view that it was considered within the Union to be prohibited to publish the reason for the nomination to members is provided by the rare occasions when it was done – see above findings relating to previous elections. Had it been generally understood that it was permissible then every nominating body would have done it. Instead it was a mere handful.

120. Mr Williams explained in his evidence that he understood perfectly well that there was no appeal provided for in the rules, but he was not willing to let the matter lie. He telephoned Ms Venner and expressed his unhappiness, sent a detailed email to Mr Lonie headed “Challenge to your ruling” listing all the reasons why he considered it wrong: both procedural and substantive (p1047). The letter is extraordinarily aggressive and high-handed, in fact its tone is bullying, and verges on personal criticism. He demanded various actions and answers to be provided the same day. He complained that “More importantly you have enabled him [Mr Rogers] to make derogatory, malicious and libellous comments against Dave [Prentis] on a website which we believe to have seriously undermined Dave’s reputation as a candidate.”

121. Mr Lonie forwarded the email to Ms Thompson who forwarded it to Ms Venner.

122. Ms Venner spent several hours that Saturday morning googling in search of examples of nominating bodies giving their members reasons for their choice of nomination as well as speaking to Ms Thompson, Mr Williams, Bronwyn McKenna of UNISON and Mr Lonie of ERS. By 4pm that day Ms Venner, in an emollient and placatory email to Mr Lonie (p.1062) – in very stark contrast to the tone of Mr Williams’ earlier that day - informed him that brief explanation had been given for a nominating body’s choice of nomination to their members in previous elections and that “It would be appropriate for ERS to allow branches to give a couple of lines of explanation via their normal communication channels” and politely asked

"on the basis of this could you kindly consider some revised advice?" which she requested be emailed to her. (p.1062)

123. Mr Lonie had by now sensibly involved his boss, Simon Hearn. On Monday morning he and Mr Hearn changed their earlier position and decided that the meaning of rule 51(a) was uncertain on the point and that different individuals in UNISON held different views, the issue was not at all clear cut and quite properly suggested it was up to the UNISON NEC to clarify the position under the Union's rules in revised guidance.

124. In a careful and measured email sent by Mr Lonie with Mr Hearn's approval on 19th October 2015 at 15:15(p.1064-5) he explained "It has always been our belief, and this is how the rules/procedure have been consistently applied, that the intention is to restrict the administrative functions of the Union at any level to the provision of factual information and not subjective comment on the merits of the candidates." He went on to point out that the restrictive interpretation had been applied in dealing with complaints in previous elections¹¹ and concluded that "We do not feel that it is the Returning Officer's role to define specifically what is allowable in terms of the rule. The UNISON rule book provides that the NEC has the power to determine" such matters, and "it would seem appropriate that any guidance as to the interpretation of the rule is a matter for them to clarify" so that once the Union had decided what their rules meant, the Returning Officer could determine whether there had been a breach.

125. It should also be noted that the rules are drafted with the presumption being that any use of UNISON resources is prohibited unless it falls into one of the exceptions.

126. It was a careful and sensible letter and demonstrated the ability of ERS to withstand considerable pressure from senior Union officials and carefully re-state and explain their earlier decision. But since there genuinely appeared to be two equally persuasive schools of thought on the interpretation of the rule within the

¹¹ In Mr Hearn's evidence, he recanted a little from the email. I have read the previous complaints referred to at pp751-4 and 758-9 referred to in his statement. I agree with Mr Hearn's evidence to the ACO that they are not precisely and exactly on point, however, he had to concede that they support the general restrictive interpretation and illustrate the point Mr Lonie was making in the email.

Union it was an appropriate response to suggest that the Union should decide which should be the chosen interpretation.

127. The NEC was not due to meet until December, which was far too late for the matter to be resolved. There were a number of options – the most obvious being to adhere to the initial view of ERS and the Returning Officer and ensure that the level playing field required for a fair election adopted the restrictive interpretation. Another would have been to convene an emergency NEC which on a practical level would have been expensive and time consuming – there are 65 members who all have busy diaries – the idea was not countenanced by Ms Venner primarily for practical and logistical reasons. Under the rule book the General Secretary is tasked with decision making between NEC meetings. The Rulebook provides that The General Secretary shall have the power to act on behalf of the National Executive Council and its committees between meetings, where appropriate in consultation with the President or Chairperson of the relevant committee, and shall seek the endorsement of the NEC or committee upon any exercise of that power.” (2.11.1 p. 14)

128. Clearly it would be presentationally difficult for Mr Prentis to make the decision to issue fresh guidance using his powers under rule 2.11.1 in support of his campaign team’s stance, which contradicted the ERS’ view, especially as it was by now well known within the Union, or at least amongst the interested activists and had been the subject of adverse comment. Ms Venner consulted the Union President, Wendy Nicholls who was also a Team Dave member. She, like Mr Williams, considered that the liberal interpretation was correct.

129. Ms Venner and Mr Hearn spoke on the telephone that afternoon. No details were provided of the conversation. I do not know what made him change his mind about ERS providing the clarification – his statement (para 65) simply states “having carefully considered the information relevant to this issue, I concluded that it would be appropriate to issue advice to UNISON that they could use in their guidance to nominating bodies.” It is perplexing since Mr Hearn would have known the logistical complications of convening an NEC when the 19 October email was sent and there is no evidence of any further material relevant to the decision being provided thereafter. Another perplexing sentence in his statement was that Ms Venner had told him that there was a procedure which enabled approval to be

sought from the President of UNISON between NEC meetings. Ms Venner's statement did not set out what that procedure was - she merely states (paragraphs 63 & 4) that she explained why it would not be feasible for the NEC to approve and distribute revised guidance.

130. However he did change his mind, and, as the Returning Officer, after further consultation with UNISON that Ms Venner had had approved by the President, provided further guidance on 21 October 2015 (referred to as the Revised Guidance) explaining that they had been asked to reconsider their initial guidance on the basis of further evidence provided and their own investigations. It was the opinion of the Returning Officer that without further clarification, the interpretation of rule 51(a) will vary considerably within the Union, and that "at this time, we do not feel it is appropriate for the Returning Officer to seek to limit the scope of paragraph 51(a) when it is unclear the extent the NEC intended its application". It continued:

"We recognise that at this juncture in the union electoral cycle it is not possible for the NEC to provide a retrospective clarification of this [51(a)] paragraph. Therefore we would advise the union to issue the guidance that enables the nominating bodies to "tell their members about the nominations" without restricting them to only stating the name of their nominated candidate. We would advise that this information for members issued by nominating bodies should be limited to 100 words and should not include campaigning links to social media or candidates' election websites." (p. 1083)

131. Mr Hearn's evidence was that on further and more detailed consideration it was apparent that views across the Union varied as to the interpretation of rule 51(a) and it is impossible to state which was the "correct" or "accurate" view. It was also the forthright view of "Team Dave" that the liberal interpretation was to be preferred. I find that it was pressure from Team Dave and Ms Venner that persuaded him that ERS should promulgate which interpretation should be followed in Revised Guidance and to go with the liberal interpretation and recant from ERS' Original Guidance.

132. All nominating bodies had nearly 3 weeks to act on the Revised Guidance before voting began. The Revised Guidance was sent to all nominating bodies and

published on the Union's website, so that all candidates could take advantage of the liberal interpretation.

133. The NEC has since met and approved the guidance issued by ERS on 21 October and have provided clearer rules for subsequent elections, such as the SGE elections in 2016.

21 October Greater London Region meeting (Burgess Complaint 1)

134. On 21 October 2015 Ms Perks arranged a meeting, described to staff as an Organisers' Briefing for UNISON Greater London Regional Staff at 2pm during work time. No agenda had been circulated in advance of the meeting.
135. It was only for paid officials. All staff had been summonsed by the electronic work calendar on the UNISON computer intranet system and were required to attend. The day before the meeting they each received a confirmation reminder and all organisers (i.e. staff other than admin staff) were told that they were expected to attend and to advise their regional manager if they were unable to attend.
136. The meeting was held in the Lecture Theatre at Congress House – the national TUC head office where the headquarters of UNISON Greater London Region is also based. The Lecture Theatre is part of the TUC which can be hired by UNISON and other Congress House tenants or third parties. It is in the style of a traditional university lecture hall with a long table in the middle at the front with raked rows of seating radiating in an arc up and away from the head table. Approximately 50 people were in attendance and Ms Perks and members of her RMT all sat together with her, either on the head table with her, or just adjacent in the front row Chris Remington, Vicky Easton and Helen Reynolds.
137. James Godfrey, who by October 2015 had been working for the Union employed as a Fighting Fund Organiser for under 2 months, was one of those present and the only witness before me who had been at the meeting. I found him a compelling and convincing witness and his evidence was not disputed by the Union. It was helpful to have a first-hand account as well as a tape recording of part of the meeting, the transcript of which has now helpfully been agreed by the parties as accurate and is at pp.1791-1796.

138. In summary, the meeting was used by the Regional Secretary, openly during work time and with the support of her RMT to campaign for Mr Prentis' re-election. She instructed her staff also to campaign for Mr Prentis in defiance of the election Procedures and directed them to report to their line manager within her RMT.
139. It is apparent from the transcript that Ms Perks knew that she was breaching UNISON rules in the meeting and seeking to enlist the collusion of her staff. She explains that she has obtained the list of Greater London nominations that she was not entitled to see ("This piece of paper you have got handed out um you haven't seen so it is not for distribution elsewhere... Because this has been obtained unofficially. You have not seen it or [sic] you don't hand it out anywhere."). Later on in the meeting she ironically asserts that "This is a lay member briefing" – which was clearly inaccurate – everyone present was a paid official - and correctly described as a deliberate lie by the Applicants. Her use of the phrase acknowledges her understanding that she is acting in breach of the rules quite flagrantly, and serves to implicate her staff members present, forcing them to collude with her and using the cloak of humour to deter dissent.
140. The Regional Secretary praises her staff for "getting the nominations they have got" – in other words attributing the nomination of Mr Prentis by branches in her region to the work of her staff. She continues "We have done very well, we have got almost 50 nominations here so that is excellent and thank you very much."¹² She goes on to say that "Dave is very, very pleased and has relayed that to me personally."
141. What is he very, very pleased about that he has taken the trouble to relay personally to the Regional Secretary? There was no direct evidence from Mr Prentis and as discussed further below, the subsequent investigation into the meeting did not approach Mr Prentis. I take it to mean that it was because he had been nominated by a significant number of branches in that region and the paid staff had been helpful in that enterprise, which is why he personally spoke to Ms

¹² It emerged during the course of the evidence that a number of branches in the Greater London Region had been suspended and were run by the London regional office and paid officials. Apart from the CVO London branch (Rogers complaint 2 para 15(4)), I did not hear evidence and do not know if any of those branches being administered by the regional headquarters had nominated candidates, and if so which ones, and how full time officials navigated their way through paragraph 51(a) in branches which had been suspended, so it falls outside the scope of this decision.

Perks about it, and that by doing so, he acknowledges the assistance they have given. It does not however amount to an admission that he knew that paid officials had been breaking the rules to achieve the nominations.

142. The meeting continued with the Regional Secretary campaigning for Mr Prentis directly to her staff (who are also UNISON members) by sharing her view, as she had also expressed in 16 September meeting, that none of the other candidates were capable of running the Union, and additionally criticising Ms Wakefield for “playing the woman’s card”. She told her staff that it was “Very important that Dave is delivered” and that this is “one of the toughest elections he has had to fight.....This is an absolutely critical election.”

143. It is clear that leaflets in support of Mr Prentis were to be covertly stored at the Greater London Regional office in breach of the Election Procedures. Ms Perks repeatedly tells her staff not to leave an email trail about using the Greater London Regional office as a distribution hub for the leaflets: “Karen will get word around the region that they are in her office even though she will not say what they are.” Ms Easton of the RMT then reiterates the message “Just a quick one on emailing that also includes you don’t email Karen to say you want more of those leaflets its any email and no emails at all on this. Don’t email the branches you want to see”. A code term for the leaflets was set up of “special chocolate biscuits” to be used when more Vote Dave leaflets were being requested, presumably to avoid detection for breaching Election Procedures.

144. Ms Perks instructs her staff to distribute as many Vote Dave leaflets as possible through the branch structures to branches which have nominated Mr Prentis who are therefore viewed as sympathetic, and to individual Prentis supporters in branches which have not.

145. In response to a question Ms Perks tells her staff that they should tell the members to lie about having received campaign material in support of Mr Prentis from full time officers and instead: “They got them from the regional convener is all you need to tell them, they got them from the regional convener or the regional convener team is perfectly fine” she said. It would have been a lie as the Greater London Regional staff are not regional conveners (who are lay officials who are not

subject to quite the same limitations in their campaigning, as the regional paid officials).

146. Throughout the meeting Ms Perks uses the term “we” referring to all her paid staff and emphasising the collective endeavour to secure Mr Prentis’ re-election – for example “So it is important that we get stuff out...getting the Dave Prentis leaflets out are (sic) the most important thing.”

147. At one point she is prompted by Mr Remington, one of her RMT members who is also her husband, “One more point, sorry, Chris has just prompted me, your role in all of this you are entitled to brief branches on what their rights are and what their role is in this election, you clearly cannot be caught out saying vote Dave, but we do expect you to talk to branches, the [Mr Prentis] nominating ones certainly about that. I would want you to do it, just be careful what is put into the public domain. You should not be using official UNISON email to this, just be careful about witnesses to conversations, make sure friendly witnesses. Only reason for saying that, two reasons, one is if we are caught out the opposition may raise a complaint so it is important, opposition [doesn’t] gets evidence that people [are] using union resources which includes staff unison resources there could be complaints so you just need to be careful and use your discretion and do not use emails as these can be traced, so carefully.”

148. The Regional Secretary is not telling her staff to be careful to ensure they comply with the Union’s rules about campaigning by officers, but giving a management order to campaign in breach of the rules and to be careful not to be caught doing so. For example the elaborate procedure of one of her RMT members, Karen Westwood storing pro-Dave Prentis leaflets in her office whilst refusing to say what they are and the leaflets being given the code name of “special chocolate biscuits” to get the word out that the leaflets had arrived for paid officials to distribute, was knowingly done because they were knowingly breaching the Election Procedures, paragraph 51(a), and hoping to avoid detection.

149. The tone of the meeting is utterly partisan – branches that have chosen to support candidates other than Mr Prentis are described as “unfriendly” and all other candidates are referred to as the opposition. At one point she praised the initiative

shown by one of her staff members for suggesting the lobby of parliament about the trade union bill be used “to tie up the branches to vote the wrong way”.

150. There is even a delicious irony when the Regional Secretary refers to the complaints process for registering breaches by rival candidates.

151. Staff were told to set 3-4 days aside in early November to speak to all the branches that had nominated Mr Prentis, and known Prentis supporters in branches that had not, to provide them with campaigning materials, provide wording for newsletters and various communications, and staff were urged to be extremely active in strident terms – they were told it was their “job”. There is no suggestion that they use annual leave to do so and I infer that it is referring to work time. One wonders what happened to the work they were supposed to be doing in support of the union’s members during those 3-4 days.

152. No decisions as such were made at the meeting – they had already been made – the staff were simply being briefed and told what to do, consistent with it being a briefing meeting.

153. After some 23 minutes, the meeting turned to other business such as the impending lobby of parliament in opposition to the Trade Union Bill (as it then was).

154. No matter how many times one re-reads the transcript, the shock does not diminish. It is flagrant: Ms Perks’ tone is not just confident and swaggering in so openly breaking the rules, but chilling in its brazenness and demonstration of unchecked power. I appreciate that many of the staff present were seasoned union officials, used to dealing with difficult situations and being assertive, but even so, it is deeply shocking.

155. In passing, and apropos of an earlier issue, I note that during the meeting in explaining all the matters she is directing her staff to perform, the Regional Secretary does not suggest that branches are entitled to give reasons for their nomination when informing their members, merely the fact of and name of their nominated candidate¹³.

¹³ “The branches that have made nominations can legitimately and democratically should notify their members that they have nominated Dave and that they have made their nominations so they can send out an email to their members telling them that the ballot is going to open on 9th November and that their branch nominated Dave Prentis”.

Team Dave and Ms Snape email communications (Burgess Complaint 2, paragraphs 3-4)

156. The following emails to the group of officials supporting Mr Prentis' re-election which came to be self-styled as "Team Dave" are challenged as being in breach of paragraph 51 of the Election Procedures due to the timing of their being sent and the following content ("the Team Dave emails").

(1) Email from Liz Snape (Assistant General Secretary) dated 29 August 2015, stating:
"The Health SGE (service group executive) chairs have done a letter to all health branches – this will be sent on Tuesday for the opening of nominations on Wednesday." (p829)

(2) Team Dave: Update No.14 dated Sunday 27 September 2015, stating:
"Please use your contacts in the branches to push for more nominations". "If you have any contacts that you can lobby, in any of the Regions involved please do what you can to support Dave". (p.893)

(3) Team Dave: Update No15 sent at 13.19 on Friday 2 October 2015, stating:
"Use your network to contact any branch that hasn't nominated and try to get them to do so and support Dave". (p.935)

(4) Team Dave: Update No 16 sent at 21.04 on Sunday 4 October 2015, stating:
"Please don't leave anything to chance and make sure that contact is maintained with our reps on the Execs. The results particularly from Scotland and the NW will mean that there will be lots of pressure on our people to change their votes. Try and speak to them before the meeting starts." (p942)

(5) Team Dave: Update No 20 sent at 09.44 on Friday 23 October 2015, by Mr Williams stating:
"It may be that in some circumstances you may be able to 'circumvent' hostile branches by covertly working with sympathetic employer contacts. I acknowledge that some colleagues may feel that this is ethically inappropriate but it doesn't breach campaign rules; it will however need to be done with caution."¹⁴ The email also stated *"Your job is to ensure that materials are dispatched; telephone contact networks and voting events are planned and delivered across all categories of nominating and non nominating branches. Sorry to burden you but we are fighting for the existence of our union. You all did a great job in bringing in the nominations we now need to translate that into votes"* (pp1111-2)

(6) Team Dave: Update No 22 sent at 18.00 on Friday 30 October 2015, stating:
"3. The 12th of November will be Vote Dave Day. We will aim to ramp up our social media campaign but if you can arrange work site events then do so and send details through to me and Liz." (pp1163-4)

(7) Team Dave Update No 27 sent at 10.47 on Tuesday 24 November, stating:
"It's not enough to win, we need a strong margin between Dave and the contenders as we anticipate that there will be attempts to challenge the result. A wide margin minimises that possibility?" (p1454)

¹⁴ Wakefield complaint 7 para 31(1) and (2)

157. It is clear from a close reading of the full emails that Team Dave was doing its utmost to secure the maximum nominations from branches for Mr Prentis and then to get the pro-Prentis vote out in order to obtain his re-election. The emails convey a sense of urgency and anxiety with no room for complacency. They had planned ahead in advance of the start of the Election, making the most of their extensive contacts and networks. They appear from the emails to be well organised and numerous and many held senior positions in the Union. Every other candidate would of course have had the same aims.

158. In the emails Mr Williams drew attention to the restrictions on paid officials campaigning in work time and using UNISON resources. He demonstrates great awareness of the rules and an understanding of the importance of being seen to comply with them. There are, however, two possible and contradictory interpretations respectively contended for: either that Mr Williams is cynically conveying to guide Team Dave supporters how to break the rules but not be seen to be doing so and covering his back in case the emails ever came to light, or that he is helping police his own side and enforce compliance by re-iterating the rules and the importance of adhering to them.

159. One aspect of Mr Williams' emails which was subject to particular scrutiny during the hearing is his idiosyncratic use of quotation marks. For example, the Team Dave email of 23 October 2015 has several – "In addition we need to work with "friendly" but non-nominating branches", "We will leave the organisation of local voting "events" to your discretion" and "in some circumstances you may be able to "circumvent" hostile branches".¹⁵ The issue was whether this is merely a linguistic tic used for emphasis, or use as irony to convey the opposite of the ostensible meaning. I find that Mr Williams was not a man prone to the use of irony or subtlety, nor did he see anything less than serious, let alone humorous, about the election campaign, and that the former interpretation is the correct one. His style is very different to that of Ms Perks in that regard.

160. There are two criticisms in relation to these emails – whether they were sent in work time, in breach of the rules and whether their content amounted to

¹⁵ P.1111-2

impermissible use of Union resources. As to the former, given the latitude of senior officials to dictate and control which hours of the day were deemed to be working, a breach has not been established. I paused before reaching this conclusion given the double standards applied to Ms Wakefield by UNISON when an election related phone call was received from her during working hours to the UNISON head office, and when her secretary carried an envelope from one floor to another during the working day. Whilst the UNISON's immediate and forthright reaction to both events appears petty and intimidating, and I can understand Ms Wakefield's anxiety on receipt of the letter suggesting that she risked being disbarred as a candidate, there is a disconnect between that and the emails sent by Team Dave. They are not equivalent and in any event the emails were largely sent outside what one might consider to be normal working time.

161. As to the content, having read each of the emails in full both in isolation and in the context of all the other emails and election communications contained in the bundle, I find that the emails do not of themselves breach paragraph 51(a). It is clear that the emails are sent by Mr Williams and Ms Snape in their "Team Dave" capacity, not their managerial capacity and when Team Dave supporters are told it is "their job" to do something, it is not meant in the sense of their paid employment and nor would it have been understood in that sense. The emails do not encourage or incite Team Dave members to campaign in breach of the Election Procedures for Mr Prentis.

Complaints of nominating body communications to their members (Wakefield complaints 3 -5)

162. The 55,000 Yorkshire and Humberside region members received an email informing them that the Regional Council had nominated Mr Prentis on or before 10 November (p.1295). It was the established method of communication of the region. I could not find the email in the bundle, only a reference to it, and there is therefore no evidence that it either gave the members of that region reasons for the nomination, or whether, if it did, it breached the Revised Guidance of 21 October 2015. (para 23 & 24 issues, Wakefield Complaint 3)

163. The complaint concerning the communication of the Northern Ireland Regional Council decision to nominate Mr Prentis concerns their use of Facebook, as an electronic membership system. A message was posted on 11 November which would have been available to all its members in the region who use Facebook¹⁶. The only evidence before me was from Mr Williams who reported that the Northern Ireland Regional Secretary, Patricia McKeown, had told him that the Northern Ireland UNISON Facebook page was an established method of communication used by the region to all its members. Ms Wakefield did not adduce any evidence, hearsay or direct. On the basis of the information before me, it seems probable, I accept that Facebook was an established method used by the Region to communicate with its members.

164. Greater London Region informed both its current and retired members of the regional council's nomination of Mr Prentis by email on 10 November 2015. It was an established method of communication for that region and retired members were part of the voting constituency in the election. A retired member and former long serving Regional Officer of UNISON, Eddy Coulson had provided a statement expressing his concern, as a retired member receiving two other emails or electronic newsletter/communications in quick succession which all gave prominent attention to Mr Prentis. It is now accepted that the two documents did not breach the electoral rules and that although Mr Coulson may not have previously noticed copies of Udigital and emails from the Careers Service in his email inbox, it had either been overlooked by him, or the distribution list had been updated. In any event the Careers Members email made no reference to the election, but it did feature Mr Prentis prominently.

165. There will always be occasional misunderstandings and over-exuberance in election campaigning with all sides wishing to campaign to the maximum permissible. It is to be expected, all sides did it, and the real issue is the scale or degree, mitigation of damage by any offending campaign teams and whether there is systemic and deliberate abuse and rule breaking. It was established that news

¹⁶ Although not an issue identified in the case, the Facebook posting exceeded the 100 word limit in the revised guidance in giving reasons for the nomination of Mr Prentis. I accept that it had been an error and an inadvertent infringement when two documents had been conflated. When the mistake was discovered 2 days later it was taken down on the source page (p.1398) and the Returning Officer considered that no further action was necessary.

items about the incumbent General Secretary going about his work in Union publications did not breach the Election Procedures.

Rogers' complaint 2

166. In Mr Rogers' complaint 2, he has identified 20 alleged breaches of the rules in a number of communications such as emails, website postings and twitter feeds. 19 of the communications were from a number of different branches around the country, either geographical, or sector based and one communication had been an email sent to UNISON branch secretaries in the Local Government Service Group. They have been collectively referred to as "the Rogers' Communications", which is misleading when he was very much not the author, but it is convenient shorthand for "The Communications in support of the Dave Prentis Campaign that Mr Rogers Identified and Reported as being in Breach of the Union Rules."

167. Dealing with the first (paragraph 15(1)), Mr Rogers, received an email from the Campaign to Elect Dave Prentis team, which said that it was being sent to him as a branch secretary in the Local Government Service Group and that the email addresses of all branch secretaries were provided to all candidates in the Election. The email signed by Mr Prentis and headed in 18 pitch font letters "Vote for Dave Prentis 2015" stated "As your general secretary I will continue to lead a visible and vocal campaign for better funding for local government, and fair pay for everyone working within it. We must demand more recognition for the vital work that you do – re-elect me as your General Secretary, and that's what I'll continue to fight for." It went on: "I would be grateful if you could pass this message on to members in your branch – and thank you for all of the work you do to keep our union strong." (pp1402-3).

168. Mr Rogers' concern was that the use of a list of branch officers' email addresses breached election procedures since rule 45 permitted the contact details "for the purposes of looking for nominations" and not for any subsequent campaigning once nominations had closed. He reported it as a formal complaint to ERS on 20 November 2015. ERS informed Mr Rogers that they would decide the complaint after the election, before certifying the final result.

169. His complaint was not upheld as ERS interpreted rule 45 when read in conjunction with rule 51 and in particular 51(c) as entitling the branch secretary details as being used throughout the election process, not limited only to the nomination period which concurred with the Prentis campaign team interpretation (see pp 2144-5 and pp1449-50). I agree with this interpretation. All candidates had access to this facility and it would have enabled a route for non-establishment candidates to reach the branches and is consistent with transparency and open democracy within the Union. Complaint 2(1) at paragraph 15 of the issues is therefore not upheld.
170. On or around 8 December 2015 Mr Rogers identified 19 potential breaches of Election Procedures concerning use of Union resources to campaign for a particular candidate by the Prentis team and drew these to the attention of the Returning Officer. He saw this as part of a pattern and considered it to be widespread misbehaviour. I have considered each of the complaints, Cliff Williams' explanation and the Returning Officer's conclusion in relation to each.
171. I find that London Ambulance Service breached the guidance, and thus rule 51 when it provided its reasons for nominating Mr Prentis to its members in 143 words on their branch website in a story promoting Mr Prentis. Once the branch was notified by Mr Lonie of the complaint, they apologised and asked if there were further remedial steps required. (Complaint 2, para 15(2))
172. ON 8 November 2015 Torbay UNISON branch website posted a link to the www.votedaveprentis.org.uk website, which I, like the Returning Officer, find to have been in breach of the rule. Once notified by ERS, the branch apologised and removed the link. (Complaint 2, para 15(3))
173. On 9 November the CVO branch website, which had been suspended and was being administered by the Greater London Region at the time under regional supervision, notified their members of nominations by other nominating bodies. The Returning Officer upheld the complaint. The Union does not accept the Returning Officer's conclusion, choosing to interpret the phrase "inform their members about the nominations" in paragraph 51 (a) as permitting a nominating body to tell its members about the nomination decision of other nominating bodies. I find, as did the Returning Officer, that to inform the members of your nominating

body about the nomination decisions of other nominating bodies constitutes impermissible use of Union resources for campaigning and is in breach of rule 51. The rationale for the exception to the rule is to enable the branch or other nominating body what has been done on their behalf as part of the internal democratic process within that nominating body and in the interests of transparency. It does not however extend to telling your members of what other nominating bodies have done. (Complaint 2, para 15(4))

174. On or about 9 November the North Devon branch of UNISON published a story on its website that referred to "Vote Dave Day" which had been part of the Prentis re-election campaign team drive to encourage voters to vote for Mr Prentis on a particular day, as part of their effort to increase the turnout of Prentis supporters. The website post was removed on 10 December when ERS raised the matter with the branch. It constituted a breach of the rule. (Complaint 2, para 15(5))

175. On 9 November 2015 the University of Cumbria used its branch website to impermissibly to encourage their members to vote for Mr Prentis by the alignment of their information about the branch support for his nomination with the voting details and urging their members to "use your votes and make your voice heard". On 30 November the University of Cumbria branch of UNISON encouraged their members to vote for Mr Prentis in a tweet published on their branch twitter feed on "Vote Dave Day". On being alerted to both matters, the branch secretary apologised profusely to the Returning Officer explaining that there had been no wish to break the rules and she offered her immediate resignation as both branch secretary and as a steward. I find that the website posting on 9 November and the tweet of 30 November both constituted a breach of the rule. (Complaint 2, para 15(6) and (7))

176. On 11 November the Monmouthshire branch used its website to urge members to vote for Mr Prentis and included a link to a video used by Mr Prentis and which exceeded 100 words. It was an impermissible use of Union resources in support of a particular candidate. (Complaint 2, para 15(8))

177. On 19 November the NRHCB branch of UNISON used their branch website to report the nomination of Mr Prentis by another nominating body. On being informed of the complaint, the branch secretary explained that she was not aware that it had

breached the rules as she was merely keeping members informed and apologised if someone believed that it did. I agree with the Returning Officer that it breaches the rule as it goes beyond informing members of the branch's nomination choice and in effect constitutes campaigning by publicising another nominating body, the Northern Region's, decision to nominate Mr Prentis and thereby promoting his candidature. (Complaint 2, para 15(9). The reasoning is similar to Mr Rogers' complaint 2, paragraph 15(4) above.

178. On 20 September North West Gas Branch published a story on its website. The details of the story were not in the bundle or the witness evidence before me, but no-one has disputed the accuracy of the Returning Officer's finding that the website posting went beyond the permitted 100 words to explain the reason for the branch's nomination and as such, constituted a breach. (Complaint 2, para 15(10))

179. On 1 October 2015, the Blackburn and Darwen branch of UNISON published a story reporting that Mr Prentis had been nominated by the NEC. The returning officer considered it to fall foul of the exception to the no use of Union resources for campaigning rule, as do I for the same reasons as discussed in complaint 2 para 15(4) and (9) above. (Complaint 2, para 15(11))

180. On 20 November 2015 the Gateshead Health Branch of the Union used its official branch website to include a link to a video produced by the Prentis campaign team, and used an image from the Prentis campaign as the branch's profile page on Facebook. The returning officer found, as I do too, that both constituted a breach of the Union's rules. (Complaint 2, para 15(12))

181. On 12 November the QEHL (Queen Elizabeth Hospital King's Lynn) branch posted two stories on its website – one headlined Vote for Dave Prentis and another promoting Vote Dave Day. The Returning officer quite rightly concluded that the postings breached the election rules, as I do too. The branch secretary accepted the mistakes and explained that the branch officers who maintain the website had both been on sick leave and she had overlooked it and had taken down both posts on being alerted to the issue. (Complaint 2, para 15(13))

182. The branch website of Aberdeen published stories in support of Mr Prentis on 9 September 2015. The stories did not appear to be in the bundle, but whatever

they were, the Returning Officer found that they were in breach and UNISON agrees, as I therefore do too. (Complaint 2, para 15(14))

183. On 20 November 2015 the UNISON North West Gas Branch used its twitter feed to promote Mr Prentis' campaign, by asking members to give a retweet if they voted for Mr Prentis. The Returning Officer agreed with Mr Rogers' view that it clearly contravened the election procedures, as does UNISON and as do I and I uphold the complaint. (Complaint 2, para 15(15))

184. On 12 November the North Wales Health Branch used their official twitter feed in support of Mr Prentis in three tweets. Mr Rogers' complaint was upheld by The Returning Officer. If, as stated by Mr Williams in his statement the offending tweet is at p 1326¹⁷ it is not the same tweet as used by the North West Gas branch. I, like the Returning Officer, UNISON and Mr Rogers consider the tweet which urged the branch members to vote for Mr Prentis, breached the rules. If I have understood the document correctly the tweet received 1 like, no dislikes and no re-tweets. The number of followers is not evident from p.1326. (Complaint 2, para 15(16))

185. ON 27 November the Wakefield branch used its twitter feed to urge members to vote, and that the branch recommended Mr Prentis – the Returning Officer unsurprisingly decided that it amounted to a breach of the Union's election procedure as I do too. On being alerted to the complaint shortly after 9 December the branch amended the tweet to state merely that the branch had nominated Mr Prentis. (Complaint 2, para 15(17))

186. UNISON Humber Police branch also used their twitter feed impermissibly in support of Mr Prentis when they tweeted "Our branch nominated Dave Prentis for re-election as our General Secretary – make your vote count @electdaveprentis" with a picture of Mr Prentis on 9 November 2015. On being notified of the complaint the branch secretary apologised explaining he had inadvertently sent the tweet from the branch, rather than his personal twitter account. I find the tweet broke the election procedure rules. (Complaint 2, para 15(18))

¹⁷ And I am not entirely certain, as the tweet would appear to have been sent by UNISON NW Health, which I had assumed referred to the North West of England, rather than Wales. The significance of the tweet being worded differently is that it does not point to wording or materials or instructions in breach of Election Procedures being distributed and delivered to branches from the Prentis team centrally.

187. On 9 November 2015 UNISON Lancashire Police Branch used their official Facebook page to support Mr Prentis re-election campaign. I have not seen the Facebook postings but the complaint by Mr Rogers, which was upheld, is that the branch has used a campaign photograph as their facebook profile and link directly to a video on the Prentis campaign site. The branch apologised when it was raised with them, the branch secretary informing Mr Lonie that he had mistakenly believed that it was permissible since the branch had nominated Mr Prentis. That was an incorrect belief and I find, as did the Returning Officer and as accepted by UNISON, that the rule had been breached by the Facebook postings. (Complaint 2, para 15(19))
188. On 5 November, or thereabouts, the Nottinghamshire Police Branch made similar use of their Facebook page as the Lancashire Police Branch had done. Once again, the complaint by Mr Rogers was well-founded. The branch secretary apologised to the ERS, removed the offending posting, and explained that she had only recently taken over and was inexperienced in election procedures. (Complaint 2, para 15(20))

Ms Wakefield communications complaints (complaint 2, paragraphs 21-23 issues)

189. Ms Wakefield brings 6 specific complaints of postings on official branch websites and Union email communications using Union resources in breach of rule 51(a) between the period 5 – 20 November 2015, referred to collectively as The Wakefield Communications, on the same principle as the Rogers Communications.
190. A story on the North Yorkshire branch website on 5 November 2015 gave reasons for its decision to nominate Mr Prentis for General Secretary which exceeded the 100 word count provided in the Revised Guidance, thereby breaching the guidance. The Returning Officer found the complaint valid as I do. (Wakefield Complaint 2, para 21(1))
191. The complaint at paragraph 21 (2) is the same as Mr Rogers' complaint at paragraph 15 (12); the complaint at paragraph 21 (3) is the same as Mr Rogers' complaint at paragraph 15 (8); the complaint at paragraph 21 (4) is the same as Mr Rogers' complaint at paragraph 15 (8); and the complaint at paragraph 21 (5)

is the same as Mr Rogers' complaint at paragraph 15 (2). In respect of which I refer to my findings above,

192. The final Wakefield Communication complaint concerns an email from the then Union President, Wendy Nicholls, a prominent Team Dave member, sent to a number of people entitled, Team Dave Update on 10 November 2015, the day after voting opened (p.1295). The email stated:

"Email has gone to 55,000 members in Yorkshire & Humberside telling them that Dave was nominated by Regional Committee.

"Branches are distributing posters etc and are also using email.

"Where Branches haven't nominated or nominated other candidates we are working with individuals who are with us"

193. The email was in response to a request for updates on the campaigning from regional reps. The issue is whether the reference to branches distributing posters and using email refers to the use by branches of Union resources to do so (contended for by Ms Wakefield), or if it is a reference to branches using their own time and own resources (Mr Williams' interpretation). Ms Wakefield did not address why the sentence bore the interpretation she sought in her evidence. Since the email is in the context of distribution of materials, In the absence of a contrary explanation, Mr Williams' interpretation is the more likely: just because there has been a reference to a branch it does not follow that Union resources would be used in distributing posters or sending emails (beyond as was permissible under paragraph 51(a). I assume that on the whole the branch officials would support their branch nomination, as they would be influential in the nomination process, and so it would follow that they would be likely to be willing to do some campaigning in their own time for the branch's chosen candidate. It then becomes convenient shorthand to refer to branches distributing posters etc. It would be for that reason that Team Dave would want to identify supporters outside the branch officials where the branch had nominated one of the other candidates. I do not draw the inference sought that the email implies that branch resources are being used outside the permitted scope of the rules.

Communications breaches by other candidates

194. Mr Williams has set out a number of similar breaches of rule 51(a) made by other candidates – for example Derby City Branch had nominated Ms Wakefield and had used social media that was not an established method of communication with its members; Stockport Local Government Branch exceeded the 100 word limit in explaining its reasons for supporting Ms Wakefield; and Bolton Branch had included a link to a campaign poster for Mr Burgess on its website. These complaints were upheld by the Returning Officer. On the evidence before me, there were however, far, far fewer breaches on the part of the other candidates' campaigns. This is partly explained by the greater number of branches nominating Mr Prentis and the greater activity in the Prentis campaign and a tactical decision taken by the Prentis team to report only infringements by branches that it considered to be serious and significant.

Conclusions re communications breaches

195. In summary the breaches – 20 found in all (given the overlap between some of the Wakefield and Rogers' complaints) covered a 3 month period, more than 17 nominating bodies, across at least 9 regions and 6 service groups. It is to be remembered that this is out of a possible 973 nominating bodies of which 380 nominated a candidate in the Election.

196. I have looked for patterns and consistency in examining, in detail, each of the complaints insofar as they are in the bundle, to see if there is evidence of a guiding hand behind the breaches. They are not identical, and I do not draw the conclusion that they are being orchestrated. The email responses from branch secretaries express genuine concern at having breached the rule, each accepted the Returning Officer's view without quibble. They expressed contrition, apologised and each response appeared individually crafted. It demonstrates that the meaning of the rules was not entirely clear or well understood by grass roots lay officials and I do not find them to amount to systematic abuse. They represent a tiny proportion of the campaigning activities overall in a small number of branches and other nominating bodies.

Tape of the 21 October meeting comes to light and McKenzie investigation report.

197. On 1 December 2015 an audio file of the 21 October Greater London Region meeting was posted on the internet on a blog called "Union democracy blog". Who taped the meeting and put it on the web has not come to light. News of the tape recording quickly spread. Mr Rogers heard it and having satisfied himself that it appeared to be genuine, he lodged a complaint to the President of the Union, headed "Electoral Malpractice in the Greater London Regional Office", and explained that his complaint concerned "the conduct of the Greater London Regional Secretary and Regional Management Team" (pp1547-8). He also lodged a complaint to ERS as Returning Officer (pp1549) entitled "Complaint of breach of UNISON General Secretary election procedure in the Greater London Region" referring to the Regional Secretary and the "discussion between UNISON paid officials" at a meeting where the Regional Secretary had done most of the speaking. He also reported the matter to Mr Williams in his AGS capacity with responsibility for the regions of the Union, and asked him to investigate potential gross misconduct "on the part of members of the Regional Management Team in UNISON's Greater London Region as employees (rather than as Union members which is the matter dealt with in my correspondence with the President)." He suggested the Regional Management Team should be suspended. (p1558-9). There is no doubt that from the outset his complaint was about the whole of the Regional Management Team of the Greater London Region, and not just the Regional Secretary. That remained his position throughout, as he repeatedly made clear.

198. Bronwyn McKenna was the most senior officer in UNISON head office on 1 December 2015 and she took responsibility for dealing with the complaints. She involved the President and took legal and HR advice. She acted promptly and efficiently in recommending the immediate suspension of the Greater London Regional Secretary. With hindsight it was a correct and appropriate response to suspend the Regional Secretary, but at the time and on the day it was a brave decision. Someone with less integrity might have been tempted to delay and prevaricate. She considered it inappropriate to have any contact with or involve her fellow Assistant General Secretaries Ms Snape or Mr Williams, or the General

Secretary, or be in touch with any of the campaigns or their candidates and was somewhat exposed. Because of Mr Williams' role as campaign manager of Mr Prentis, even though he was Ms Perks' line manager she correctly considered he should not conduct the normal line management function in disciplinary suspension.

199. It was decided that Ms Perks should be suspended by the President, as the highest ranking lay official, given that it would be inappropriate to involve either Mr Williams or Mr Prentis given the subject matter of the complaint. The matter was correctly treated as a staff (rather than member) disciplinary matter – the criticism being that Ms Perks had abused her position as a manager and employee of the Union - and an internal investigation be conducted. Under the staff disciplinary procedure the investigation had to be conducted by an official in the Union of at least one grade higher than that of Regional Secretary – i.e. AGS or GS. Of all those 5 officials, Roger McKenzie was the least closely connected to events. The General Secretary, Mr Prentis, was the candidate in question; Ms Snape was Mr Prentis partner; Mr Williams was Mr Prentis campaign manager; and Ms McKenna had been involved in the suspension decision and her partner was a London Regional Officer and could well have been at the 21 October meeting and been a material witness.

200. That only left Mr McKenzie. Unbeknownst to Mr Rogers and the Applicants, Mr McKenzie was a member of Team Dave which did not emerge until the Team Dave emails came into the public domain some time later. It was decided that Mr McKenzie should conduct the investigation.

201. Ms Perks was summonsed to the UNISON head office the next day and suspended by the President. The President and Ms McKenna then went to the London Regional Office and met the RMT (Chris Remington, Karen Westwood, Vicky Easton and Helen Reynolds) and explained that an investigation would commence into serious allegations and that Ms Perks would not be carrying out her responsibilities for the time being. She pointed out that whoever had made the allegations had the full protection of whistleblowing legislation. All the staff were then told by Ms McKenna with the RMT in attendance. The staff were told that Mr McKenzie would be conducting an internal investigation and that any one of them could speak to him in confidence. It was conducted entirely appropriately.

202. None of the Applicants suggested to Ms McKenna in cross examination that she should have suspended the entire London RMT. When it is Ms Perks who is so clearly identified as the prime mover and main speaker at the meeting and the role of the other RMT members is not immediately clear on a first listen to the tape, it was correct for the suspension to be limited to the Regional Secretary at that stage.
203. Mr McKenzie received the terms of reference of his investigation on 2 December (p.1610) from Ms Nicholls. They were limited to an investigation into the allegations against Linda Perks. It is interestingly worded – one might have thought it would refer to the allegation in terms of the meeting of 21 October, and possibly an earlier meeting of 7 September, but instead the emphasis is on the person who had made the allegation – namely Mr Rogers – which does not sit easily with the assertion that people were encouraged to come forward as witnesses and reminded of the whistleblowing protection: surely the maker of the complaint is less relevant than whether the complaint has merit?¹⁸ It demonized and exposed Mr Rogers. It was also inaccurate as two other NEC members had by then made identical complaints and Mr Rogers was not therefore a lone voice.
204. The day after he had been appointed to investigate, Mr McKenzie tweeted his support for Mr Prentis (p2225). He did not declare to Mr Rogers that he was a member of Team Dave. Mr McKenzie saw no connection between his role in the investigation as an Assistant General Secretary and his tweet in support of Mr Prentis as a Union member. We have seen already that the Election Procedures stated that “Staff who duties include functions relating to this election, shall exercise their duties in a fair and even handed manner” (Appendix 1B) which would arguably apply to Mr McKenzie in his capacity as investigator of a complaint concerning the Election, but it was an ill-considered (at best) tweet.
205. There has been no satisfactory explanation of why the terms of Mr McKenzie’s reference were limited to Ms Perks’ conduct. It is clear from the transcript and audio recording that all her RMT contributed to the meeting, were involved in one way or another and colluded with the deliberate breach of Union rules.

¹⁸ unless it is to praise the bravery of the person coming forward, which was certainly not the case here.

206. Mr McKenzie repeatedly asserted in his evidence that if he had considered that others in the London Region were involved then he would have asked for his terms of reference to be widened. It was not a credible answer that he found no evidence of others' involvement since it is immediately apparent from a first reading of the transcript. I can only conclude that consciously or subconsciously he chose to ignore it.
207. He also chose not to interview Mr Prentis and ask if he was aware of the activities in the Greater London Region, and simply assumed that he did not. He was repeatedly pressed during the hearing and maintained his position to the obvious consternation of the applicants. Mr McKenzie was investigating employee misconduct, and Ms Perks was not relying on the defence of acting on instructions from above, it was perhaps not an essential line of enquiry. But since there would be no separate investigation from the electioneering perspective, he could have interviewed both Mr Williams and Mr Prentis to find out what they knew of the activities in the Greater London Region, since as he eventually conceded in the course of his evidence: "I don't know what Dave Prentis knew – you'd have to ask him". But he chose to take a narrow, possibly blinkered, approach and from the evidence that he did have, there was none that demonstrated that Mr Prentis knew of the meeting or that his nominations in the Greater London Region had been achieved in breach of the Election Procedures. It would however have been better if Mr McKenzie had delved a little further.
208. Mr McKenzie interviewed all the members of the RMT and a number of others, including Ms Perks and Mr Rogers. People were encouraged to come forward to be interviewed or provide written evidence, but no-one came forward with further incriminating evidence. I have not seen the statements taken from the RMT members or other witnesses, but rely on the extracts and findings of the McKenzie report. Two aspects are extremely troubling. Firstly that no witnesses other than those supportive of Ms Perks were willing to come forward, which demonstrates at worst a culture of fear and at best cynicism and lack of confidence in the investigation. Secondly, the RMT in particular have covered up for Ms Perks. It is preposterous to assert, as they each do in mantra fashion, that the meeting took place in non-work time. To his credit, Mr McKenzie soon saw through the disingenuity. He does not however draw the obvious and natural inference or

conclusion from this fact – that the RMT were also directly involved in the breach of the rules and have sought to collude with Ms Perks in the cover up in their apparent dissembling to him in their interviews.

209. Ms Perks maintained to Mr McKenzie that the meeting had occurred in non-work time and she became embroiled in a farcical attempt to pay for the room hire from her own bank account, retrospectively after the tape had been released. It was a blatant and ineffective attempt to cover up the truth of the meeting. Mr McKenzie explained in his evidence that the behaviour of Ms Perks at the 21 October meeting had shocked him and that there was a really serious case to answer – she had run a Dave Prentis campaign meeting during working time at a meeting all her staff had been required to attend and then tried to pretend it had been conducted in non-working time.

210. Mr McKenzie reported on the progress of his investigation to ERS as set out below.

211. Mr McKenzie's investigation concluded on 29 February 2016 that there had been a prima facie case of gross misconduct and, amongst other things, recommended formal disciplinary proceedings be instituted against Ms Perks (pp2181-2206). They were and she remained suspended on the full pay of Regional Secretary, the third highest level of officer in the Union until shortly before the hearing before the ACO in December 2016 – nearly 1 year.

212. At her disciplinary hearing, in contradiction of her stance at the investigation, Ms Perks admitted gross misconduct which she sought to mitigate on the basis of it having been an uncharacteristic lapse of judgment after exemplary long service. None of the other Greater London RMT members have been subject to any disciplinary proceedings.

213. On the conclusion of the internal disciplinary process she was given a final written warning and received a disciplinary transfer away from the Greater London Region. At the time of the hearing the Applicants had assumed that having been compulsorily moved away from the Greater London Region she would now be based in another part of the country. It emerged during the hearing that she had moved to the Union's newly refurbished head office approximately ½ mile from the London Regional Office retaining her grade and status. There was no evidence as

to her job title or job description at the hearing. After the hearing both sides supplied further information. Normally evidence submitted after the hearing would not be admitted, but since all sides seemed keen for the ACO to have a complete picture and the evidence is not disputed, I record that Ms Perks now has the title of National Secretary and is engaged on "strategic projects."

Election result

214. On 17 December 2015 ERS declared the election result (p2044). The total number of eligible voters was 1,372,827, the number of votes cast was 134,515 on a turnout of 9.8% of which 501 votes were invalid. Mr Prentis received 66,155 votes, Ms Wakefield 35,433, Mr Bannister 16,853 and Mr Burgess 15,573.

215. Of the 12 regions, the percentage vote for Mr Prentis in the Greater London region was the second lowest percentage votes he received by region.

216. 10.2% of the votes cast (13,629) were in the Greater London region. Mr Prentis obtained 46.3% of the Greater London region votes compared to 21.4% for Ms Wakefield, 21.3% for Mr Burgess and 11% for Mr Bannister. If every vote cast for Mr Prentis in the Greater London region was either discounted or transferred to the second place candidate, Ms Wakefield, Mr Prentis would still have won the election by a considerable margin. So that if one deducts the 6,309 votes cast for Mr Prentis in the Greater London Region from his overall total of 66,155 the figure is 59,846. If those 6,309 votes are added to Ms Wakefield's total votes, she would have received 41,742, which is still some 18,104 short of victory and only just over 2/3 of the votes cast for Mr Prentis.

217. ERS issued a statement as Returning Officer that due to their number of ongoing investigations they could not make their report on all matters relating to the election (but intended to do so in the week of 11 January 2016) but that as Independent Scrutineer regarding the legislative requirements pertaining to the election, they had been able to conclude their role and report on the outcome of the election (pp2041). The reason for their being able to conclude the Independent Scrutineer's report but not the Returning Officer report was because of the more limited role of the Independent Scrutineer concerned only with the matters laid

down in the Act, as compared to the more extensive responsibilities as Returning Officer laid down in the Union's rule book.

218. On the same day the Union's President and Vice President issued an email with a wide distribution to the NEC, Senior and National Managers, Regional Secretaries, Regional Convenors, Service Group Chairs and RMT – Greater London Region.

"Dear Colleague,

As you know a number of serious allegations have been made against our union in London.

The complaints are being investigated.

Whilst it is not our practice to comment on an ongoing investigation on this occasion we believe there is one aspect that warrants public disclosure. This can be done without compromising the rights of those involved in this matter.

The complaint presented by Jon Rogers relies heavily on an anonymous recording. Given the seriousness of this tape the union commissioned an independent forensic expert report of the full recording. The Presidential team and the Trustees of the union now have the full report from the Audio Forensic Service.

The forensic analysis was undertaken by an accredited audio specialist and the company is used by the High Court for audio evidence.

The report clearly states that "the probability of tampering is exceptionally high".

On a scale of 1(low) to 5 (high), the Independent Expert rates the tape as 5/5.

The results have been passed to the Investigating Officer and the ERS and as the Presidential Team and Trustees we are also asking for a formal investigation of the providence (sic) of the recording.

Please share as appropriate." (p.2039B)

219. This is quite an extraordinary email, especially given that UNISON accept the legitimacy of the tape. In his evidence Mr McKenzie said he did not know about the forensic analysis. If it indeed exists¹⁹ it was not passed to the Investigating Officer, contrary to the assertion in the email. It begs so many questions: Does this report exist? If so, where is it? Why wasn't it given to Mr McKenzie if it so conclusively

¹⁹ It was not in the bundle before me and none of the Union's witnesses addressed it in evidence other than Mr McKenzie in cross-examination.

demonstrated that the tape was some kind of fake? Why didn't Mr McKenzie mention it in his report or ask to see it when he must have known about it and received the President's email? Why send the email? Mr McKenzie was clear in his evidence that he had always found the tape persuasive and the Union has conceded its accuracy and authenticity.

220. The President's email is thus a classic example of an attempt by the victors to write the history (regardless of accuracy) and denigrate those whom they see as their vanquished adversaries.

221. It is unsurprising that no witnesses came forward to Mr McKenzie's investigation after this email had been sent. The final sentence of the email encourages the email to be forwarded as widely as possible. Just the day before Mr Rogers had been assisting the investigation and encouraging people with relevant evidence to come forward to Mr McKenzie.

222. The naming of Mr Rogers is startling – as mentioned above he was not the only person to make a complaint about the recording. As Mr Rogers quite mildly expressed it in his statement: "I would consider it reasonable to assume that the email's authors meant to imply that my own credibility should be called into question as the lone individual named in connection with the complaint." That was certainly how at least one person saw it. A branch secretary from a UNISON Branch sent an abusive email within hours (00.35 on 18 December 2015) to Mr Rogers accusing him of sinking to such "low level trickery" and undermining the union and being "quite simply beyond contempt." It is disingenuous for the President's email to assert that the comment would not compromise the rights of those involved. Whilst it might not infringe free standing legal rights it had the no doubt desired effect of undermining Mr Rogers.

223. Also on 17 December, immediately after the announcement of the election results, Mr Rogers received a threat of libel proceedings issued by Collyer Bristow solicitors in Bedford Row who had been instructed by Mr Prentis in a personal capacity under the civil litigation pre-action protocol. Mr Rogers provided the apology requested (p.2054) which he has stood by.

Rumours during the campaign

224. In their witness statements all the Applicants said they had heard many rumours of bullying of non Prentis supporters, such as being pressurised into photo shoots holding pro-Prentis posters, being told their branch would be starved of funds and assistance if they nominated any other candidate. They also received many reports of Union resources being used to support the re-election of Mr Prentis contrary to the rules and of Prentis campaign materials being stored in regional offices around the country, especially the Northern Region and in Mr Williams and Mr Cafferty's geographical area of influence. Some of the documents in the bundle refer to other generalised, non-specific allegations in the same vein.
225. We have already mentioned the wider contemporaneous political events and Labour party leadership election, which would have brought the issues more sharply into focus and intensified campaigning on all sides.
226. But beyond the facts set out in this decision, there was no specific evidence to find that abuses such as occurred in the Greater London Region were occurring in other parts of the country. Witnesses and evidence has not been presented to me to make such primary findings.
227. There were rumours of skulduggery by all candidates against the others. The Applicants argue that since the rumours were coming from so many sources, chime with the Team Dave emails, and what we now know about what was happening in the Greater London Region, there must be some truth in them. But more tangible evidence would be required to draw such an inference, and to do so would amount to impermissible speculation.
228. Mr Jackson's evidence set out above does not assist, it is either too vague and the information he provided about the Greater London Region paid officials' activities, even if I were to accept it, is too historic: it concerns evidence from 2000, which is 3 General Secretary elections, and 15 years, earlier than the Election that I am considering. I cannot reliably draw inferences from time travel over such a period.

What did Dave Prentis know about?

229. Although not listed as an issue for determination it was of great importance to all parties to have a finding on the extent of Mr Prentis's knowledge of the activities that I have found were in breach of the Union's rules and the statute, and it also has a bearing on remedy. If I am to find the activities were undertaken with the knowledge of the ultimately successful candidate it would be a relevant factor in the assessment of appropriateness of any proposed enforcement order.

230. All parties are agreed that there is no direct evidence fixing Mr Prentis with knowledge of the 21 October meeting. It is possible, but without more evidence or leads, there is insufficient to infer that he knew that his support in London, such as it was, had been obtained by breaches of the rules. The mantra of how pleased he is for all the hard work and achievements of his supporters has been used consistently in all previous elections for his campaign workers, and does not imply knowledge of election irregularity.

231. On balance of probabilities, I therefore do not find that Mr Prentis knew of the breaches committed by his supporters, or of the Greater London Regional Secretary's meeting of 21 October or 16 September.

Team Dave emails are reported to the Returning Officer

232. On 7 January 2016 Ms Wakefield forwarded the Team Dave emails that she had recently received to the Returning Officer (p.2065-6). She was well aware that she had received them too late for them to be considered as freestanding complaints under the Election timetable. She noted that the Greater London Regional Secretary, Ms Perks, was a recipient of the Team Dave emails and asked for them to be considered with the existing complaint of the tape of the 21 October Greater London Regional meeting, and suggested that they demonstrated that the 21 October meeting was an example of exactly the type of activity that Mr Williams urged Team Dave members to undertake, thereby demonstrating the genuineness of the tape.

Private Eye article

233. On 10 February 2016 Mr Hearn was telephoned by a journalist from Private Eye asking if ERS was investigating the complaints in relation to the Election. He understood it to be a reference to the tape of the 21 October Greater London Regional meeting and accurately told the journalist that UNISON was carrying out an investigation and that ERS expected to receive a report in due course. He was not asked about any Team Dave emails, and neither he, nor as far as he is aware did any other employees of ERS, provide any further information to Private Eye journalists.

234. Private Eye subsequently ran a story (p.2074) stating that "Leaked emails reach the Eye providing more evidence that full-time staff of Unison mobilised to get General Secretary Dave Prentis re-elected in December, making the union's claim to be "member-led" look increasingly questionable." As an adjunct, the article observed that the appointment of a member of Team Dave, Mr McKenzie, to conduct the investigation of the taped meeting, appeared to show that Team Dave was effectively left to investigate itself. The article followed 3 previous articles in Private Eye about the taped London Regional meeting. There is no doubt that the fact of and tape of the London Regional Meeting and all the publicity and coverage it received was extremely damaging for the Union which prides itself on its integrity and high moral probity, and the reputational tarnish was considerable.

Returning Officer's Report

235. On 18 February 2016 the Returning Officer's report was published (pp2142-2156), over a month later than had been anticipated at the time of the announcement of the Election result. It recorded that 157 complaints had been received by the relevant deadline and that issues raised thereafter had been noted, but would not be specifically referred to. Complaints about the Revised Guidance were deemed invalid on the basis that the matter had been fully considered prior to providing the Revised Guidance and there was nothing further to say on the issue. But all the complaints where branches had been found to have breached the Revised Guidance were declared valid – some of which include the allegations in these proceedings. Other directly relevant findings to these proceedings were the

complaints by Ms Wakefield about the communication of the nominating body's decision to its members through established methods of communication, all of which were deemed invalid.

236. 83 complaints about staff in the Greater London Region campaigning during working time had been received, all based on the tape recording of the 21 October meeting. At that time Mr McKenzie had confirmed to the Returning Officer that the meeting had taken place and the tape was largely accurate, that no further complaints had been presented to him and that he had not received any evidence that Mr Prentis knew of the alleged activities. Given the ongoing staff disciplinary investigation it was reasonable for the Returning Officer not to have conducted his own independent investigation but to focus on the impact of any potential breach on the Election result. Having crunched the numbers, and noting that Mr Prentis fared poorly in the Greater London Region – receiving less than 10% of the valid votes cast and the second lowest percentage votes by region – the conclusion was there was minimal evidence to suggest that the reported breaches influenced voting intentions or that they influenced the overall ballot result. Even combined with the valid determined complaints, whilst the Returning Officer noted that some matters in relation to the Election were unsatisfactory, he did not consider it reasonable to ask for all or part of the Election to be held again.

237. The report highlighted the Returning Officer's concern at the high number of complaints, and the low voter turnout as well as the significant misunderstanding as to the meaning and application of the rules for campaigning, all of which required consideration by the Union.

238. The Report was fair and accurate and I accept his decision not to conduct a parallel investigation into the Greater London Region given that Mr Prentis would still have won the election, even if all the votes he received from that Region had been discounted and instead added to the votes for the second most popular candidate, Ms Wakefield.

Remedial steps and plans since the Election

239. UNISON has acknowledged and recognised that paragraph 51(a) is ambiguous and has drafted proposed wording to enshrine the liberal interpretation, limiting the

information the nominating body may provide to its members to providing 100 words about the nominating body's nomination above and beyond the name of the nominated candidate.

240. A working party has been set up to review election procedures in light of the Returning Officer's report and is due to complete its report by the end of June 2017. Pertinent to the issues in this case the terms of reference of the working party include a review of UNISON procedures and campaigning guidance for members, activists and staff generally, taking account of the role played by social media, and to consider the role and responsibilities of the Independent Scrutineer and the Returning Officer and whether the roles should be separated.
241. The various recommendations made by the Returning Officer in his report for more clarity and explanation of the Election Procedures, such as in Q & A format and examples of do's and don'ts is being considered and likely to be recommended for approval by the appropriate decision making body within the Union.
242. The Union does not have a policy on whistleblowing, but is considering whether to adopt one, and if so, what form it should take, in conjunction with its recognition and consultation procedures.

Cost and practical implications of re-running the Election.

243. It takes in the region of five months to complete the procedures for a General Secretary election once the NEC has signed off the rules and sufficient time has been given to enable candidates to put themselves forward, obtain nominations and the processes to be gone through. It is an expensive as well as lengthy process costing in the region of £1 million, taking account of the production of election literature, the advertising required to publicise the election and ensure maximum participation in the ballot, the cost of the Returning Officer and Independent Scrutineer. It is also a time-consuming and complex task for the MLU to administer, involving approximately 64 staff days, plus those of the manager.

The Relevant Statutory Provisions

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

Section 49 Appointment of independent scrutineer

(4) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question

(6) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

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.

(2) On an application being made to him, the Certification Officer shall—

(a) make such enquiries as he thinks fit, and

(b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(5A) 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 more of the following requirements—

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

(5C) Where an enforcement order has been made—

(a) any person who is a member of the union and was a member at the time the order was made, or

(b) any person who is or was a candidate in the election in question,

is entitled to enforce obedience to the order as if he had made the application on which the order was made.]

(6) In exercising his functions under this section the Certification Officer shall ensure that, so far as is reasonably practicable, an application made to him is determined within six months of being made.

(7) Where he requests a person to furnish information to him in connection with enquiries made by him under this section, he shall specify the date by which that information is to be furnished and, unless he considers that it would be inappropriate to do so, shall proceed with his determination of the application notwithstanding that the information has not been furnished to him by the specified date.

(8) A declaration made by the Certification Officer under this section may be relied on as if it were a declaration made by the court.

(9) An enforcement order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

(10) The following paragraphs have effect if a person applies under section 56 in relation to an alleged failure—

(a) that person may not apply under this section in relation to that failure;

(b) on an application by a different person under this section in relation to that failure, the

Certification Officer shall have due regard to any declaration, order, observations or

reasons made or given by the court regarding that failure and brought to the Certification

Officer's notice.

Section 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.

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

(6) An application must be made –

(a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

(b) if with that period any internal complaints procedure of the union is invoked to resolve

the claim, within the period of six months starting with the earlier of the days specified in subsection (7)

(7) Those days are –

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked.

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.

Interpretation of Union Rules and Election Procedures

245. The principles of interpretation of trade union rules were helpfully set out by Ms Omambala in her closing submissions on behalf of Ms Wakefield and were accepted by all parties. The rules are a contract and the ACO, and any court,

should strive to give effect to the parties' intentions as expressed in their contract and adopt the interpretation which appears most reasonable in the circumstances. The rules of a trade union "are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what, in the court's view, they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed." (*Jacques v AUEW (Engineering Section)*) [1986] ICR 683. It was suggested by Ms Omambala, perhaps more controversially²⁰ that in cases of ambiguity the preferred interpretation is that which is the more democratic in the sense of giving the greatest say to ordinary members.

Vicarious liability

246. UNISON, whilst accepting and acknowledging the Greater London Regional Secretary's misconduct, did not consider it was vicariously liable for it. As set out above, I do not consider the 21 October meeting to be an isolated incident of breach of the Election Procedures within the Greater London Region and the law must be applied to the facts as they have been found.

247. The parties did not agree on the applicable law – UNISON relied on *Heatons Transport (St Helens) Ltd v TGWU* [1972] IRLR 25 (HL), and the Applicants, *Mohamud v WM Morrison Supermarkets Plc* [2016] UKSC 11, neither of which are exactly analogous. *Heatons* concerned trade union liability for industrial action and unfair industrial practices from the actions of elected trade union shop stewards under the 1971 Industrial Relations Act. The injured parties were the transport and haulage companies whose vehicles had not been loaded or unloaded at the Liverpool dockside because of the decision of a committee of shop stewards which constituted an unfair labour practice and breached a court injunction in place against what was then the TGWU.

248. In *Heatons* the court explored, to some extent, the distinction between the authority of an agent, such as a shop steward, and an employee. It was held that the same test is to be applied: was the servant or agent acting on behalf of, and within the scope of the authority conferred by, the master or principal? But an employee (or servant as they were then described) "usually....has a wider authority

²⁰ No authority was cited, but in any event nothing turns on it, so it is not a point necessary to decide.

because his employment is more permanent and he has a larger range of duties and he may have to exercise discretion in dealing with a series of situations as they arise. The agent in an ordinary case is engaged to perform a particular task on a particular occasion and authority to do whatever is required for that purpose but has no general authority.” (paragraph 16) The Court concluded that “If authority to take a particular type of action is not excluded by the rules, and if such authority is reasonably to be implied from custom and practice, such authority will continue to exist until unequivocally withdrawn.”

249. The court then helpfully summarised its opinion as follows: “In accordance with the policy of devolution followed by the TGWU, and consistently with its rules and practice, shop stewards of the Union have a general implied authority to act in the interests of the members they represent and in particular to defend and improve their rates of pay and working conditions. They may do so by negotiation or by industrial action at the relevant place of work. They are not authorised to do any act outside the Union rules or policy.” (para 66.1) Mr White places particular emphasis on the last sentence. On the facts of the case, the shop stewards were authorised to call for a boycotting of the road haulage companies and so the union was liable for the fines and compensation due.

250. Mr White therefore argued that since there was no dispute that the Union rules and Election Procedures did not authorise the use of Union resources during working time for election campaigning by employees of the Union, the Union was not liable for the Greater London Regional Secretary’s actions.

251. *Mohamud* is the latest word from the Supreme Court on the scope of an employer’s vicarious liability for the actions of its employees in the assault of a customer and an analysis of the position in the law of tort. The facts of the case were extraordinary – when Mr Mohamud asked at a petrol station kiosk if they had printing facilities, in an unprovoked attack he was verbally and then physically abused by an employee, who continued to kick and punch Mr Mohamud on the forecourt floor in spite of the remonstrations and intervention of the employee’s supervisor. The Supreme Court reviewed a considerable number of the authorities, but not *Heatons*, and reiterated the *Lister v Hall* test of whether the torts are so closely connected with the employee’s employment that it would be just to hold the employer responsible. The test was broken down into two stages – in other words,

what functions or “field of activities” have been entrusted by the employer to the employee - what is the nature of the job, and secondly was there a sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice. The Supreme Court referred as far back as 1691 *Boson v Sandford* for the principle that “whoever employs another is answerable for him, and undertakes for his care to all that make use of him.”

252. A further case relied on by the Applicants was *Unite the Union v Nailard* [2016] IRLR 906 (EAT) which considered a union’s liability under Equality Act 2010 (EqA 2010) for the actions of its paid employees and elected officials. Although superficially attractive, since it concerns a trade union, it is not of more relevance since the scope of an employer or principal’s authority is governed by statutory provisions in EqA 2010, whereas the common law applies here.

Discussion

253. Clearly, none of the authorities cited had exactly analogous facts – the injured party or parties in this case is neither a road haulage company nor a customer of Morrisons, or an Atkinian neighbour of a tortfeasor, but are the members of UNISON who have not had an election conducted fully in accordance with the Union’s Rule book and Election Procedures, by the behaviour of an employee of their Union. The cause of action principally arises from the breach of the Union’s Election Procedures and the statutory requirements of the Act concerning union elections.

254. I am wary of placing too much reliance on *Heatons* for a number of reasons. Although the case concerned the liability of a trade union and an area which is now contained in the Act, a union’s liability for the actions of its lay stewards in calling industrial action is so very far removed from a case of a union’s responsibility for the actions of an extremely senior employee in relation to internal election procedures: they are entirely different activities with different considerations. The status and responsibilities of a Regional Secretary with all the accountability that comes with that employment are both substantively and substantially different to those of a shop steward. Mr Williams himself repeatedly made the point: in

defending individual branches which had breached the Election Procedures in their communications he relied on the difficulties for hard pressed Union officials acting in a lay capacity and their elected and unpaid positions within the Union.

255. Secondly *Heatons* is now an old case and the law has moved on considerably in the last 45 years to a more inclusive scope of the vicarious liability doctrine, both as regards principals and employers. It is many decades since an express prohibition contained in a contract of employment provided protection from vicarious liability – see for example *Jones v Tower Boot* [1997] IRLR 168.

256. It is also interesting to note that it is only in relation to the 21 October meeting that the Union seeks to distance itself from the acts complained of. If the reasoning was correct, surely it would apply to every breach found on the same principle? Yet the Union did not assert, for example, that it had no responsibility for a Branch Secretary who had miscounted and exceeded the number of words used to tell the members why the branch had nominated Mr Prentis for General Secretary, thereby being in breach of the Election Procedures. Yet if their reasoning on *Heatons* was correct, it would perhaps have been stronger for a struggling lay official²¹ than a senior paid official.

257. Finally, the disciplinary sanction applied to the Greater London Regional Secretary for her actions which have done such immeasurable damage to the Union's reputation, attracting national unfavourable publicity including *Private Eye* articles is revealing. She has remained an employee at the same pay, seniority and level, moving to an office approximately half a mile from her previous office. Although she has received a final written warning, to both internal and external observers she remains a very senior employee enjoying all the fruits of high office and long service based in the Union's prestigious Head Office working on undefined "strategic" projects. Remarkable clemency and lenience in the circumstances and perhaps not a deterrent penalty to discourager les autres.

258. In conclusion, the Union is responsible for all the actions of its Regional Secretary that I have found were in breach of the Election Procedures and the Rules. The Regional Secretary was a very senior employee of Union with considerable authority and autonomy to organise meetings, and manage and direct

²¹ Whether as an agent or an employee

her staff. She and her RMT engaged in deliberate breaches, as set out above. The nature of her job was to manage and direct her staff and she misused the position entrusted to her, which has injured the members of UNISON in that there has been unfairness in the General Secretary election as well as undermining the standing of the Union in the eyes of the public. There was a very close connection between her lawful activities and her improper campaigning activities by directing her staff to campaign in breach of the Election Procedures. She was acting qua employee when she called the staff meeting and gave them campaigning directions in breach of the Rules. In consideration of all the circumstances, it is right for her employer, UNISON, to be held liable for the misuse of her position, since it was UNISON that selected and employed and managed, or purported to manage her.

Role and appointment of ERS (s49 of the Act – Rogers complaint 3 and Burgess complaint 3).

259. Two of the issues (Burgess complaint 3 and Rogers 3) concerned the role of the Independent Scrutineer, appointed pursuant to s.49 of the Act. Mr Rogers' complaint addressed the terms of the scrutineer's appointment and any additional functions specified in the appointment and the obligation on the Union, pursuant to s.49(4), to ensure that nothing in the scrutineer's appointment is such as to make it reasonable for any person to call the scrutineer's independence in relation to the Union into question. There were two aspects to the complaint – the appointment of ERS as both Independent Scrutineer and Returning Officer, and the additional functions specified in the appointment, which (it was alleged) did not preclude ERS from taking on responsibility for the interpretation of the Election Procedures from the Union's NEC – a reference to the Revised Guidance on 21 October.

260. Mr Burgess' complaint 3 relied on 49(6) and raised 5 specific issues on a range of matters said to show that the Union had failed to ensure that the scrutineer carried out his functions and that there was no interference with his carrying out of those functions which would make it reasonable for any person to call his independence in relation to the Union into question.

General observations

261. Both sets of allegations involve an assessment of whether the act or omission complained of, if made out, would make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question.

262. UNISON submitted that the line of authorities on recusal and judicial independence provided useful analogous guidance and none of the Applicant's challenged the submission. In general terms I agree and I adopt it. A reasonable, objective person considering whether ERS independence is called into question would be both fair minded, and well-informed, meaning that s/he would be in possession of all the relevant facts, be neither unduly suspicious nor overly complacent, and be able to both grasp the detail without losing sight of the wood amongst all the trees.

263. The relevant circumstances are the facts relating to ERS set out above.

Rogers complaint 3

264. It is clearly anticipated by the Act that an Independent Scrutineer may be appointed to perform other functions in addition to the performance of the statutory scrutiny obligations in relation to certain elections. There is nothing inherently objectionable about the appointment to a dual role of Returning Officer and Scrutineer. The contractual terms of the appointment as Returning Officer impose the same standards of impartiality and independence as do the statutory obligations on a Scrutineer. It is not comparable, for example, to the risk of conflict of interest for a firm of accountants to be undertaking both statutory auditing functions and other management consultancy services in respect of the same client.

265. The dual role avoids duplication of effort, resources and knowledge of the organisation and would not make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question because of the dual IS and RO role. I conclude that there is nothing inherently and structurally wrong with the dual appointment – indeed it could be argued that it is ERS that has the whip hand and enhanced power and authority by dint of both functions. Rogers complaint 3(i) is dismissed. Whether there is a more subtle point, beyond the terms

of appointment per se, is explored in Burgess complaint 3: namely whether on the facts of the case the dual role allowed for the development of an over-cosy relationship resulting in unlawful interference.

266. Mr White objects to Mr Rogers' second allegation that the additional functions specified in ERS' appointment did not preclude it from taking on responsibility for the interpretation of the Union's Election Procedures on two grounds. Firstly that it is legally misconceived, and secondly on its factual premise. I agree that the Act is concerned with the terms of appointment which positively require the scrutineer to do something, whereas Mr Rogers' complaint is more of mission creep and ERS assuming responsibility for something not provided for in its terms of appointment. The allegation therefore falls outwith the section and is dismissed. If I am wrong about that, then the complaint is in any event not made out on its facts, since I have not found that the Revised Guidance, or indeed the Original Guidance on Mr Rogers' enquiry, amounted to a formal or definitive determination – it was providing pro-tem clarity and consistency authorised by the Union's President pending consideration by the NEC. The matter is considered in more detail in Mr Burgess' complaint 3 and Mr Bannister complaint 2.

267. The second part of Mr Rogers' complaint 3 is therefore also dismissed.

Burgess complaint 3

268. To understand and assess the allegations of a failure by UNISON to ensure that the Independent Scrutineer carried out its functions and that there was no interference in its doing so, it is necessary to be clear of the scope of the Independent Scrutineer's functions. They are contained in s49(3) of the Act, to be read in conjunction with s52 which sets out the matters to be contained in the Independent Scrutineer's report. The additional functions as Returning Officer are as set out in the contract agreed between the parties above. Next to be considered is if any interference has been established, and then to consider what view a reasonable person would take of its impact on the scrutineer's independence – would it call his independence into question?

269. I shall firstly consider the Revised Guidance and the Union's duties towards the Independent Scrutineer (Burgess complaint 3(2)). The matter started with a

request for clarification, rather than a formal complaint, from Mr Rogers, and ERS provided the clarification in accordance with Mr Lonie's and Ms Thompson's understanding in the Original Guidance. When faced with a considerable backlash, ERS first sought to bat the matter back to UNISON, but following further discussions with Ms Venner and UNISON agreed to provide the Revised Guidance which differed from its earlier view. Was that because of UNISON interference casting doubt on their independence? Or because, on further investigation it was the pragmatic, appropriate and impartial reconsideration of its earlier guidance which it now considered had been not quite accurate; with UNISON taking the view that ERS had created the problem by its hasty and incorrect response to Mr Rogers and rebuke of the Prentis campaign, so it was ERS role to solve the problem of its own making?

270. Considerable pressure was applied to Mr Lonie and Mr Hearn – Mr Williams' email of 17 October (p.1046) is discussed above. I have accepted that on further reflection and investigation Mr Hearn genuinely believed that there was not the clear cut view of the restrictive interpretation of rule 51(a) as portrayed in the Original Guidance, which is perhaps self-evident since a number of senior Union officials told him so. But to do such a volte face and retreat from the measured letter of 19 October? From the tone of Mr Williams email and the intense pressure Mr Hearn and Mr Lonie were subjected to over the weekend, and the beginning of the following week I find that ERS had been lent on to change its guidance against its better judgment. Mr Williams cheerily admitted in evidence that he knew perfectly well there was no route of appeal against Original Guidance, so he simply used it as a method of pressurising them to change their mind.

271. Throughout there was the nagging question – why did ERS not simply modify its guidance to the effect that it now understood that there were differing views within the Union as to the interpretation of paragraph 51(a) which would need to be resolved by the NEC in due course, meanwhile, ERS had provided its initial guidance adopting the restrictive interpretation in good faith, which it maintained for the sake of clarity and consistency and which it would continue to apply for the remainder of the Election for all candidates and their campaigners. Or easier still, just stick to its original considered response to the Union in Mr Lonie's email of 19 October (p1064). The embarrassment to the Prentis campaign team of the

Original Guidance and the political capital being made of it by Mr Rogers and others led Mr Williams to apply pressure outside any procedures and ERS succumbed.

272. I find that it constitutes interference. The next question is what our well informed observer would make of it. The Revised Guidance provided no special advantage to Mr Prentis campaign team, beyond not having the finding recorded against it. In Mr Rogers' view it may even favour the other candidates. Mr Williams was extremely exorcised by Mr Rogers' blog comments, but it was an ephemeral issue, and it is doubtful if Mr Prentis' opponents would have been able to make long term political capital out of it. As already stated, it did not really matter which view prevailed, as long as it was made clear what the rule allowed, so that a uniform approach could be adopted.

273. The well informed observer would see that what was required was consistency in interpretation and that ERS initial view was subsequently changed. It was changed because Mr Hearn was persuaded by senior members of the Union with long experience in Union elections, that ERS had misstated the meaning of paragraph 51, and been procedurally inept in failing to consult the Prentis campaign team before responding to Mr Rogers' complaint. Mr Prentis's opponents had then made immediate political capital out of the initial ERS response, prompting an exchange of email between Mr Prentis and Mr Rogers resulting in Mr Rogers apologising.

274. Time was of the essence as the election was underway and all parties needed clarity, certainty and a quick decision so that there could be consistency in this aspect of the campaigning. It was also not a matter of great importance in the scheme of things. It is possible that many Union members do not pay a great deal of attention to a branch communication. It would have been impracticable and disproportionate to convene an emergency NEC meeting on the matter

275. It is the only instance of interference by the Union that I have found and of limited significance. In all other respects ERS demonstrated considerable resilience throughout this period, and this isolated example of submission to pressure is not sufficient for a reasonable person to question ERS independence in relation to the Union. By the use of the phrase "in relation to" the Union the Act envisages something more generic, or sustained. When considered in the context

of the whole of ERS dealings with UNISON, it is an exception. The complaint is not upheld.

276. As to the procedural challenge - the assertion that ERS has subverted the role of the NEC - it is wide of the mark. It was not a formal or definitive determination and it was not a determination of any matter or procedure, organisation or administration of or relating to the Election.

Other s.49(6) complaints

277. Mr Burgess' complaint under s.49(6) of the Act concerning the way in which ERS dealt with the complaint of the 21 October meeting does not amount to a breach of the Act. As set out above, since UNISON had decided to deal with the matter as an employment disciplinary matter it would have been inappropriate for ERS to conduct a separate investigation which would inevitably overlap with the McKenzie report and risk conflicting findings on the same evidence. Given that there were few established breaches from all the very many allegations, and the lack of evidence of the Greater London Region problems being repeated in other parts of the country, Mr Hearn was correct to focus on a consideration of the potential impact on the Election result. By analysing the results, he could see that even if every vote in favour of Mr Prentis from the Greater London Region was discounted, Mr Prentis would still have won the Election by a substantial margin. In any event it is not clear precisely what function, statutory or additional, had been subject to interference by the Union. Certainly all statutory functions were complied with and the Election properly declared (Burgess complaint 3(1)).

278. In Burgess complaint 3(3) he criticises the Returning Officer's failure to consider the Team Dave emails sent to him in January 2016 in his Returning Officer's report of 18 February 2016. The emails were sent after the deadline for complaints on 7 December 2016 had passed and Ms Wakefield's letter submitting them asked for them to be considered as relevant to the formal complaints that had been lodged within the prescribed time limits. The Returning Officer noted their receipt in his report but did not specifically refer to them. Mr Burgess' submissions do not address how the allegation constitutes a breach of s49(6) and in any event, there is no evidence of interference by the Union in the Returning Officer's failure

to specifically address matters received out of time and not described as formal complaints. The allegation is dismissed.

279. Burgess Complaint 3(4) concerns the article which appeared in Private Eye. As set out in my findings of fact, Mr Hearn was contacted by a Private Eye journalist on 16 February who asked if ERS was investigating the complaints in relation to the Election. He understood the question to refer to the Greater London Regional Meeting of 21 October, and was accurate when he replied that UNISON was carrying out an investigation which ERS would expect to receive in due course. To the extent that the Private Eye article provides information beyond this, its source was not ERS. Furthermore it is not clear what in this allegation would constitute interference or which of the functions of ERS is being interfered with by an article in a magazine. To the extent it is a repetition of complaint 3(1), the conclusions in relation to that allegation are repeated. The complaint is rejected. Similarly it is unclear to what extent Burgess complaint 3(5) adds to complaint 3(1). It was UNISON's decision to appoint Mr McKenzie to investigate the Greater London Regional Secretary's behaviour as a staff disciplinary matter and Mr Hearn took the precaution of presuming the worst in that region and crunched the numbers accordingly, before declaring the Election result. He also considered the evidence and complaints, but did not find similar problems in other regions of the Union. The complaint is not well founded.

Bannister Complaint 2 and Wakefield complaint 1

280. It is convenient to consider Mr Bannister's second complaint, which is in materially similar terms as Ms Wakefield's first complaint here since it also relates to the Revised Guidance. However, its challenge comes from a different angle - not the s49 perspective - but as a breach of rule by the Union, on the premise that it was the Union that had issued the Revised Guidance, whereas the focus of criticism by Messrs Burgess and Rogers was that the Union had pressured ERS to be the provenance of the document. The apparent contradiction did not appear to concern the Applicants or the Union and perhaps it should not trouble me either, since both ERS and the Union were involved in its formulation and the Union responsible for its distribution.

281. The thrust of Ms Wakefield and Mr Bannister's concern was that the Revised Guidance had not been agreed by the NEC in advance of its publication which they submitted was a breach of the Rule book and Election Procedure – D7, E3.3 and paragraph 7 of schedule C. I agree with the Union's submission – the Revised Guidance did not amount to either a formal or definitive determination, but if it had, its authorisation by the elected President was sufficiently in compliance with the spirit of Rule D2.12.1 to come within the rule. Clarity was needed so that all candidates could adopt and apply the same interpretation to paragraph 51(a). Given the differing views of the meaning of paragraph 51(a) on Mr Bannister's argument, whichever one was adopted would have subverted the role of the NEC, yet no-one is suggesting that individual candidates could choose whether they apply the liberal or restrictive interpretation, as it would result in inequality and an uneven playing field. I note that the NEC when it did later debate and consider the meaning of paragraph 51(a), it endorsed the Revised, rather than Original Guidance. It does however illustrate the difficulties and complications caused by ERS agreeing to provide the Revised Guidance in order to save the face of Mr Williams and the Prentis campaign team.

282. I therefore reject the complaint.

Inferences to be drawn from the proven breaches of the Election Procedures.

283. I am invited to draw an inference from the proven breaches of the Election Procedures in the Greater London Region that electoral malpractice was widespread throughout the country. There is evidence of extensive campaigning, that many senior paid officials supported Mr Prentis' re-election, some more actively than others, and that his campaign manager Mr Williams, was working hard to rally the troops and had a blunt, bordering on bullying, tone to his exhortations. But in all the evidence before me, there is no clear evidence outside Greater London, of the use of Union resources in breach of paragraph 51 beyond the occasional overstepping of the mark by some of the branches, in for example, the area of providing reasons for their nomination. Overall, outside London, the evidence demonstrates a commitment to observing the sometimes ambiguously drafted Election Procedures and a desire to correct and remedy where breaches were identified. The election was fairly effectively self-policed with all sides using

the procedure to report perceived breaches by rival candidates to the ERS, and ERS diligently investigating and, largely, their findings being respected and acted upon.

284. Ms Wakefield raised the question of whether the activities of the Greater London Region were the consequence of the Team Dave emails, so that one could infer that other Regional Secretaries in receipt of the Team Dave emails were doing the same. The link is not established however as Mr Williams' emails remind the recipient to abide by the Election Procedures. They do not show a guiding or controlling hand orchestrating breaches of the Election Procedures on a widespread basis. In the absence of any direct evidence of similar examples of irregularities outside London, or any witnesses agreeing to come forward I do not find on the balance of probabilities that they were occurring.

285. In my deliberations I visualised it as the iceberg versus li-lo theory – from the visible ice or inflatable plastic, what could reliably be gleaned of what lay beneath the murky water? The ice/plastic being the activities of the Greater London Region and the sea being the other regions and SGEs and nominating bodies of the Union. Without any examples of the type of activity undertaken by the London Region officials elsewhere, it is a li-lo not an iceberg and there is insufficient evidence to infer that there were breaches of the Election Procedures on a national scale.

Declarations

Accordingly:

1. Pursuant to s.55(2)(b) of the Act, I refuse the Applicants', Mr Burgess and others', request for a declaration that the Union breached s.49(6) of the Act by failing to ensure that the Independent Scrutineer, Electoral Reform Services Ltd (ERS) duly carried out its functions and that there was no interference with its carrying out of those functions which would make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question (Burgess complaint 3),
2. Pursuant to s.55(2)(b) of the Act, I refuse the Applicant, Mr Rogers', request for a declaration that the Union breached s.49(4) of the Act by failing to ensure that nothing in terms of the Independent Scrutineer's appointment (including any additional functions specified in the appointment of ERS) was such as to make it reasonable for any person to call the Scrutineer's independence in relation to the Union into question (Rogers complaint 3);

3. Pursuant to s.108B(2)(d) of the Act, I declare that the Union breached paragraph 51 of the General Secretary 2015 Election Procedures ("the Election Procedures") in that the Union's funds, property and resources were impermissibly used to campaign for a particular candidate (Mr Dave Prentis) by reason of the following matters:

- (1) At a conference of all Greater London Regional Staff held at the University of London Union during working time on the morning of 16 September 2015, which was called for and chaired by the Regional Secretary of the London Region (Linda Perks), the Regional Secretary used the platform to inform her staff that Dave Prentis was the only credible candidate for General Secretary, but not otherwise (Burgess complaint 4 partially upheld);
- (2) At a meeting of all Greater London Regional Staff held at Congress House at 2pm 21 October 2015, during work time the Regional Secretary of the London Region openly campaigned for Mr Prentis re-election for General Secretary and directed her staff to campaign for Mr Prentis during working time, and was assisted and supported by her Regional Management Team (Burgess complaint 1, Bannister complaint 1, Rogers complaint 1 and Wakefield complaint 6);
- (3) In 19 of the 20 communications identified by Mr Rogers sent via email, Facebook and tweets by various UNISON branches and nominating bodies on various dates between 9 September and 30 November 2015, allegations 15(2)-(20) are upheld and allegation 15(1) is rejected (Rogers complaint 2)
- (4) In 5 of the 6 communications identified by Ms Wakefield sent via email, facebook and tweets by various UNISON branches and nominating bodies on various dates between 5 and 20 November 2015. Allegations 21 (1)-(5) are upheld and the allegation at paragraph 15(6) is rejected (Wakefield complaint 2)

4. Pursuant to s.108B(2)(d) of the Act, I refuse the Applicants' application for a declaration that the Union breached paragraph 51 of the Election Procedures in that the Union's funds, property and resources were impermissibly used to campaign for a particular candidate, Dave Prentis by reason of the following matters:

- (1) That at the conference of all Greater London Regional Staff held at the University of London Union on the morning of 16 September 2015, the Regional Secretary sought to influence her staff to secure nominations for Mr Prentis General Secretary, since beyond asserting her opinion of the candidates, since there was insufficient evidence to prove that the Regional Secretary had acted in the manner complained of (one aspect of Burgess complaint 4);
- (2) By the 7 Team Dave emails sent on various dates between 29 August and 24 November 2015, since the emails were sent outside the working time of the sender (pursuant to the Union's flexible working policy) and the content of the emails did not constitute breach of paragraph 51 of the Election Procedures (Burgess complaint 2);
- (3) The contents of the email from the Union President, Wendy Nichols to Clare Williams and others of 10 November 2015, since it is not

established that the branches referred to were using Union funds in order to campaign (one aspect of Wakefield complaint 2, paragraph 21(6))

- (4) By the emails to individual members of the Yorkshire and Humberside region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 3);
- (5) By the emails to current and retired individual members of the Greater London Region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 4);
- (6) By the emails to individual members of the Northern Ireland region providing reasons for the Region's nomination of Mr Prentis as candidate for the position of General Secretary, since the content of the emails constituted permitted information to members (Wakefield complaint 5);
- (7) By the emails of 23 October 2015 from Cliff Williams (Assistant General Secretary and Campaign Manager for Mr Prentis) and 30 October 2015 from Liz Snape (Assistant General Secretary) to members of Team Dave – a loose association of various individuals supporting the re-election of Mr Prentis - since it is not established either that the emails constituted prohibited campaigning in breach of paragraph 51 of the Election Procedures nor that the emails constituted incitement to campaign in breach of paragraph 51 of the Election Procedures. (Wakefield complaint 7);

5. Pursuant to s.108B(2)(d), I refuse the Applicants' Mr Bannister and Ms Wakefield's application for a declaration that the Union breached rule D7, E3.3 or paragraph 7 of Schedule C of the Union's rules:

- (1) By reason of its issuing guidance (the "Revised Guidance") to nominating bodies about the General Secretary election which was not agreed by the National Executive Council of the Union since the Revised Guidance did not constitute a formal or determinative determination of the issue and in any event would not have amounted to a breach, and was approved and authorised by the elected Union President and subsequently endorsed and ratified by the NEC (Bannister complaint 2, Wakefield complaint 1)

Enforcement Orders

286. The provisions of s.108B of the Act are set out above and there are two key issues: what steps would remedy the breaches found and why would it not be appropriate to order the Union to take them? The Applicants submit that a declaration that the Election is null and void and a re-run of the Election is required, a position strongly resisted by the Union. The Union asserts that there is no

evidence that the breaches that have been established had any significant impact on voter intentions, and when viewed in the context of the size of Mr Prentis's vote any effect can only have been of very marginal impact and not affected the overall result. When looked at in the context of the swift steps taken by Ms McKenna and the President to suspend the Greater London Regional Secretary, and to correct or remove the various communications and website and Facebook postings as and when they were alerted to them, and all the other remedial steps taken, it would be wholly disproportionate to require the Election to be re-run. They also referred to the high costs and deployment of Union resources involved in running a General Secretary Election.

287. The Applicants argued that the breaches were endemic, represented systemic failings, authorised from the highest echelons of the Union and the puny sanction applied to the Greater London Regional Secretary demonstrated the Union's casual approach to electoral malpractice. It was impossibly hypothetical to gauge what the result would have been if the playing field had been level, which is why the statutory presumption should apply in favour of a re-run. The costs of re-running of the Election was a necessary price for the achievement of democracy, even with its high price tag as explained by Ms McKenna.

288. The Certification Officer has considered the nature of the discretion conferred by s.108B and s.55(5A) in relation to Enforcement Orders in a number of previous decisions. In this case, since I have not upheld the Applicants' complaints under s.55, the issue of Enforcement Orders only arises in relation to s.108B, but the material wording is identical in both sections, and the s.55(5A) case law is equally applicable to s.108B, and conveniently set out in paragraph 26 of *Bakhsh & UNISON* (D/39/05, 22.12.05):

"Section 55(5A) of the 1992 Act is structured so as to require me to make an enforcement order should I make a declaration, unless I consider that to do so would be inappropriate. This formulation grants me a wide discretion but one which must not be exercised perversely. In the case of *Simms v Amicus* (supra) I had express regard to whether the breach of s 48(4) had an affect on the outcome of the election having regard also to the steps the Union proposed to take in future statutory elections, These are clearly important factors in deciding whether to exercise my discretion to make an enforcement order but each case

must be determined on its own facts. I must not fetter my own discretion and I must have regard to the entirety of the evidence before me. In my approach to s 55 (5A) I am assisted, by analogy if not directly, by the following passage in Halsbury's Laws, under the heading of "Validity of and Irregularities at Elections" it is suggested that such elections are not to be declared invalid by reason of any act or omission of the Returning Officer "if it appears to the tribunal having cognisance of the question that the election was so conducted to be substantially in accordance with the law as to elections that the act or omission did not affect its result." The quotation continues "Where breaches of the election rules, although trivial, have affected the result, that by itself is enough to compel the court to declare that election void even though it has been conducted substantially in accordance with the law as to elections. Conversely, if the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not."

289. Mr White drew on a number of local and national government election cases and text books, to argue that the ACO should be generous in disregarding irregularities at least when it is clear that the result of the poll is not affected. The difficulty here however is that we may not be comparing like with like – the Certification Officer, or even the Assistant Certification Officer, is not fettered by ss 23 and 48(1) of the Representation of the Peoples Act 1983, which militate against the voiding and re-running of an election unless the election was not conducted substantially in accordance with the law as to elections and the act in breach did not affect the result – seemingly the reverse statutory presumption to the provisions of the Act. However Mr White observed that a significant departure from general principles of election law risked imperilling union democracy and brought Article 11 ECHR issues into play, and none of the Applicants challenged Mr White's interpretation. This case is not the vehicle to explore the point in detail.

290. It is an important principle that the Certification Officer's discretion should not be fettered and that every case be considered on its facts and the particular circumstances of the case. In any case, as noted by the Employment Appeal Tribunal in *GMB v Stokes* (UKEAT/769/03) by Rimer J "the making of an enforcement order is essentially a matter of judgment for the [Certification] Officer"

in a judgment which refused to overturn a decision to order a re-run of a deputy general secretary union election.

291. Election law and cases from other types of elections, are of some assistance in general terms, but it remains at the forefront of my mind that the statutory provisions of s.108B are different to those under RPA 1983 and as ACO I am bound by the wording of the TULCRA Act 1992.

Conclusion re Enforcement Orders

292. In summary, on the evidence before me, the Team Dave emails did not breach the Election Procedures, although they represented more vigorous campaigning by the Prentis team than in previous elections and demonstrated a partisan edge and cynicism that has understandably shocked many UNISON members and activists – the anguish of the witnesses, such as retired Regional Officer Eddy Coulson was poignant and heartfelt. But although he did not approve of the campaigning, nor did it chime with his view of how his Union should behave and the spirit of UNISON, it did not amount to contravention of the Election Procedures.
293. The behaviour of the Greater London Regional Secretary was accurately described by Mr McKenzie as “extremely shocking”, and evidenced widespread malpractice throughout the Greater London Region so as to throw doubt on the votes of the entire region: paid staff were being ordered to set aside several days of work time to campaign for Mr Prentis. The collusion of the Greater London Regional Management Team and other staff members was deeply concerning. The brazenness of the Regional Secretary’s behaviour was distasteful. It is not hard to see how distressing it would be for activists to learn that a rally of parliament against the Trade Union Bill would be used as a device to distract them from the Election campaign. But the evidence of similar activity outside the Greater London Region was lacking. It consisted of rumour and speculation, but more than the smoke of suspicion is needed to draw an inference of fire breaking out in multiple areas²². Not a single witness had come forward in these proceedings with verifiable specifics of similar behaviour in other regions to that which occurred in London.

²² Moving from a watery to a fiery image.

294. The initial suspension of the London Regional Secretary was entirely correct and carried out efficiently and impartially by Ms McKenna and she impressed with her professionalism under tremendous pressure.
295. The subsequent leisurely disciplinary proceedings of Ms Perks and outcome do not inspire confidence or serve as a deterrent to future over zealous paid officials. Some might think the move to National Secretary in Head Office on unspecified strategic projects retaining all pay and benefits represents reward rather than punishment, although she has also endured the imposition of a final written warning.
296. The failure to address the involvement of the whole of the London RMT which was explicit and apparent from the tape of the 21 October meeting is very troubling. The collusion of the Greater London RMT was deliberately ignored by the Union and no explanation for the failure to address it has been given.
297. The demonization of Ms Wakefield and the double standards in the Union's attitude to flexible working time and rule 51 where she was concerned in comparison to the lax approach by Team Dave that effectively defined non-working time as any time that they were working on the Prentis re-election campaign, whatever time of day it was, was disappointing. So too was the attempted humiliation of Mr Rogers and the denouncement of him for having brought the tape of the 21 October meeting to the attention of ERS and the extraordinary email from the President on 17 December on the day of the Election result. No apology has been given to Mr Rogers or acknowledgement of the important role he has played in bringing electoral malpractice into the light.
298. The Union's Election Procedures paragraph 51 bristled with ambiguity in a number of ways – as Mrs Merton might ask if interviewing a lay branch official: "What was it about the powerful Assistant General Secretary in charge of all the Union's regions that persuaded you to nominate Mr Prentis for General Secretary when he suggested it to you?" What is meant by "Not taking advantage of your position as employee of UNISON (Appendix 1B paragraph 3) How does one define what is "information that may have been acquired in the course of employment and is not generally available to the membership"?

299. The differing views of what was permitted in terms of providing reasons for a nominating body's nomination stemmed from a lack of clarity in the rule and led to such expenditure of energy and misunderstanding in what was not really such an important point – as long as all candidates and the bodies that nominated them adopted the same interpretation it was of lesser importance whether it was the liberal or restrictive view that prevailed: consistency was what mattered. As explained above, although disappointing both that Mr Williams behaved as he did to ERS and that ERS agreed to recant and provide the Revised Guidance, it was not so significant. Had ERS stuck to its guns the other candidates may have made a little more mileage for a couple of days about the behaviour of Team Dave, but it was hardly political dynamite. When Mr Rogers was thought by Mr Prentis to have overstepped the mark on his blog, he quickly retracted when asked to do so. The source of the problem was the lack of clarity in the Election Procedures.
300. The flexible working policy too enabled the Team Dave paid official activists to interpret their working time extremely liberally, and it was unclear how it was to apply to senior paid officials.
301. The individual communications that have been established as breaches of the revised guidance on use of Union resources for communicating to their members are less troubling – they were not widespread relative to the number of nominating bodies, the breaches were inadvertent and unlikely to have had much effect on voters' intentions. It was common ground that all official UNISON publications could carry stories and photographs about the activities of its current General Secretary going about his work without infringing the rule and that throughout the Election campaign there were many such stories. In that context it would be naïve to think that a piece about why a branch had nominated Mr Prentis that extended to 150 rather than 100 words would have had a significant impact.
302. The cost and practicalities of re-running the Election are considerable, but at most, of marginal consideration to the question. If, in other respects an Enforcement Order were appropriate, the Union would have to bear the cost and inconvenience – it would be too easy to evade the logical consequences of electoral malpractice for a union to assert it would be prohibitively expensive to re-run an election: it would undermine the Act. Whereas the risk of having to re-run a costly election, such as for a general secretary, should help ensure compliance

with the Act by a union, rather than for a union to use the cost as a reason for not re-running an election where it has been found to have been in breach of the Act.

303. The future steps planned to revisit the rules and other remedial actions identified by Ms McKenna and Ms Venner may be useful, depending on their outcome. It is now over 18 months since the Election and there has been little progress made towards such things as the adoption of a whistleblowing policy so far. But the fact that areas for improvement have been acknowledged demonstrates a degree of reflection and insight, but is in stark contrast to the extraordinary lack of insight to the extent of the problems within the Greater London Region that were hiding in plain sight. The Union failed to acknowledge its responsibility for the Regional Secretary's actions, afforded her excessively lenient treatment, and refused to see that the problem was widespread within the region.

304. What weighs heavily in the Union's favour is that the problems have not been shown to have extended beyond London, no controlling hand has been established or orchestrated pattern, and from the evidence before me, the problem was localised to London. I also note that there is no evidence to prove that Mr Prentis knew of the activities in the Greater London Region. Had he been aware or personally implicated it would have been a very significant factor in the consideration of Enforcement Orders.

305. The Election result is significant. Even if every vote in the Greater London Region cast for Mr Prentis was treated as a vote for Ms Wakefield, she would not have come close to defeating Mr Prentis. The other breaches found by me would have had at best, minimal effect. I conclude therefore that the overall result was not affected by the breaches that occurred.

306. But the Election result itself is not determinative, nor a complete answer to whether an election should be re-run. It is no part of the ACO's role to trivialise unlawful conduct, regardless of impact. The question is whether the behaviour in the Greater London Region was of itself so egregious; whether it was compounded by the failure of the Union to deal with the London RMT and other staff members who colluded with the Regional Secretary, its treatment of Mr Rogers for raising the issue and the 17 December email from the President, and the canard of the report said to undermine the accuracy of the tape of the 21 October meeting,

together with the surprisingly lenient disciplinary penalty applied to the Greater London Regional Secretary, mean that the Election is so flawed and the Union's response to the breaches so inadequate as to be required to be re-run, no matter that it had no effect on the overall result?

307. It is a question of judgment, and ultimately, when set against the Election result, and the measures that were taken in response and have been promised in mitigation, on balance I find that it would be disproportionately punitive to make the Enforcement Order sought. Whilst it is no part of the ACO's role to trivialise unlawful conduct, it must be balanced against the impact of such conduct and the actions taken in mitigation and planned, by a Union which in this case is led by a General Secretary who has not been found to have been personally implicated in the wrong doing. A new President will by now also be in post. On the facts before me, the presumption is rebutted and it would not be appropriate to declare the Election null and void and order a re-run. I decline to make such an Enforcement Order.

Other recommendations and orders.

308. During the course of submissions the parties agreed that it would not be appropriate to invite the ACO to re-write the Union rule book and Election Procedures.

309. The Union did not seek and I make no formal declaration pursuant to s.55(4), To the extent that measures have been taken and are anticipated, they are addressed in the body of this decision and considered as part of the factual narrative and mitigation.

310. All sides said they would welcome non-legally binding recommendations or observations. I shall limit them to those matters directly relevant to the issues raised in this case, and not to the wider issues of, for example, how to increase engagement and voting in General Secretary and other elections, issues around the introduction of electronic voting, timescales for elections.

311. In the spirit of the request by the parties I recommend that the Union has a thorough internal discussion and debate to consider what level of paid officer activity in internal General Secretary election campaigning it wishes to have, consistent with its aims and objectives, and draft clear, unambiguous and uniformly understood rules, to reflect the decisions it reaches.

312. It should also conduct a thorough consideration of how similar future problems such as occurred in the London Region can be avoided in that, and other regions. Work is also required to restore trust amongst its Greater London members following the activities of the Regional Secretary and the RMT which have done such damage to the Union's reputation both internally and externally.
313. There are lessons to be learnt from the saga of the Original and Revised Guidance and how such issues can be better dealt with between ERS and the Union in the future.
314. A whistleblowing policy should be considered and agreed through the Union's collective procedures without further delay.



Mary Stacey
Assistant Certification Officer

Appendix 1

Mr Burgess and others:

Complaint 1

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

Complaint 2

On or about 2 August 2015 to on or about 24 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches took the form of a sustained and prolonged misuse of union resources as evidenced by the email correspondence from Mr Cliff Williams on behalf of 'Team Dave' the campaign to elect Mr David Prentis. Given that a number of these emails were sent during the time when Mr Williams was being paid to carry out UNISON business the circulation of the emails amounted to a misuse of union resources, funds and property. Further the emails reveal that UNISON resources, funds and property were used to promote and campaign for Mr David Prentis. Examples of these emails are set out in the Annexe to this complaint.

Annexe to complaint 2

4. Email from Liz Snape (assistant General Secretary) dated Saturday 29 August 2015
'The Health SGE (service group executive) chairs have done a letter to all health branches –this will be sent on Tuesday for the opening of nominations on Wednesday.'
Health SGE Chairs have no means of sending any communications out other than via the official channels of the union, the use of these means of communication is a union resource.
5. **Team Dave; Update No 14** dated Sunday 27 September 2015 states
'Please use your contacts in the branches to push for more nominations'
'If you have any contacts that you can lobby, in any of the Regions involved please do what you can to support Dave'
6. **Team Dave ; Update No 15** sent at 13.19 on Friday 2 October 2015
'Use your network to contact any branch that hasn't nominated and try to get them to do so and support Dave'
It should be noted that none of the recipients of this instruction are members of any branch and as such could only contact a branch in the capacity as a full time official.
7. **Team Dave; Update No 16** sent at 21.04 on Sunday 4 October 2015
'Please don't leave anything to chance and make sure that contact is maintained with our reps on the Execs. The results particularly from Scotland and the NW will mean that there will be lots of pressure on our people to change their votes. Try and speak to them before the meeting starts'
It should be noted that the recipients of this instruction could only attend the Executive meetings mentioned, in their capacity as employees which would be in work time, hence they would be using union resources to conduct this campaigning.
8. **Team Dave ; Update No 20** sent at 09.44 on Friday 23 October 2015
States ***'It may be that in some circumstances you may be able to "circumvent" hostile branches by covertly working with sympathetic employer contacts. I acknowledge that some colleagues may feel that this is ethically inappropriate but it doesn't breach campaign rules; it will however need to be done with caution'***

We note here that the email refers to 'covertly working with sympathetic employer contacts' we submit that by definition the full time officers recipients are employed by UNISON and the only means they have to acquire 'sympathetic employer contacts' is in their role as employees of the union which have members employed by the employer contacts. Thus the relationship to the 'sympathetic employer contacts' can only be one that arises from the recipient's position as an employee of the union not as an individual.

9. **Team Dave; Update 22** sent at 18.00 on Friday 30 October 2015

States '**3. The 12th of November will be Vote Dave Day**'. **We will aim to ramp up our social media campaign but if you can arrange work site events then do so and send details through to me and Liz**'.

The reference to 'work site events' can only refer to those premises at which UNISON is recognised. We submit that the full time officers who received this email could only organise such events in their capacity as employees of the union, as such this is another use of UNISON resources in breach of rule.

Point 7. States 'Include Dave in any press releases'

We submit that this is clearly directed at full time officers misusing the press release facilities of the union in an official capacity to promote the candidacy of Dave Prentis.

10. **Team Dave ; Update No 27** sent at 10.47 on Tuesday 24 November 2015

States '**It's not enough to win, we need a strong margin between Dave and the contenders as we anticipate that there will be attempts to challenge the result. A wide margin minimises that possibility**'

Complaint 3

On or about 21 October 2015 to on or about 18 February 2016, UNISON breached section 49(6) of the Trade Union and Labour Relations (Consolidation) Act 1992 in that it failed to ensure that the Scrutineer duly carried out his functions and that there was no interference with his carrying out of those functions which would make it reasonable for any person to call the Scrutineer's independence in relation to the union into question. This is evidenced by the following:-

1. The Scrutineer/ Electoral Reform Society did not independently investigate and respond to the complaints that were made to it in relation to the General Secretary 2015 Election in accordance with the terms of reference of the election timetable and procedure. Specifically with reference to the complaints arising from the disclosure of the audio tape of the meeting held on 21 October in the UNISON Greater London Regional Office.
2. The ERS issued guidance on 21 October that informed branches and nominating bodies they could now inform their members why they had chosen to make a particular nomination. This guidance was issued after an email from Team Dave, dated 15 October 2015, which informed UNISON branches that they could publish the fact of their nomination together with the reason why. Prior to the issuing of the guidance by the ERS it was established procedure and known throughout the union that branches could only inform their members who the branch had nominated and not why. In any event the new guidance was not endorsed by the NEC as required by rule.
3. The Returning Officer, Alex Lonie, was sent Team Dave emails in January 2016. Mr Lonie neglected to refer to them in his official Returning Officer report published on 18 February.
4. The ERS was asked by Private Eye magazine about the Team Dave emails and their investigation at a time before the report was published and at a time when the ERS should have been conducting an independent investigation. In its response, the ERS informed Private Eye - "UNISON is preparing a report for Mr Lonie which would enable him to decide if the election was properly conducted. UNISON would then in turn report his decision back to its members."

Complaint 4

During a meeting which took place on 16 September 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. This meeting took place between 0900 and 1200 at the University of London Union. This meeting was a conference for all Regional Staff and was called for and chaired by Linda Perks, the Regional Secretary of London Region. The UNISON General Secretary election was discussed at this meeting. Linda Perks allegedly stated at this meeting that Dave Prentis was the only credible candidate for General Secretary and allegedly sought to influence her staff to secure nominations for Dave Prentis. Both this meeting itself, and the discussion/statement made by Linda Perks, amount to the use of UNISON funds, resources and property to campaign for Dave Prentis.

Ms Wakefield

Complaint 1

On or about 21 October 2015, UNISON breached paragraph 7 of Schedule C to the UNISON rules by issuing guidance to nominating bodies about the General Secretary election which was not determined by a meeting of the National Executive Council of UNISON. The guidance had the effect of making a material change to the terms of paragraph 51 of General Secretary 2015 Election Procedures.

Complaint 2

During the UNISON General Secretary 2015 elections, on multiple occasions, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches occurred on the occasions set out in the Annex to this complaint.

Annexe to complaint 2

1. On or about 5 November 2015 when the North Yorkshire Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
2. On or about 20 November 2015 when the Gateshead Health Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
3. On or about 19 November 2015 when the UNISON Northern Region Health Commissioning Branch published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
4. On or about 11 November 2015 when the Monmouthshire Branch of UNISON published a story on their branch website giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
5. On or about 9 November 2015 when the London Ambulance Service Branch published, on their branch website, a story giving their reasons for supporting Dave Prentis, a candidate in the General Secretary election.
6. In her email to Clare Williams et al of 10 November 2015, Wendy Nichols – using the email address of her employer/the UNISON branch – says that 'Branches are distributing posters etc and are also using email'.

Complaint 3

On or about 10 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Yorkshire and Humberside Region sent a communication by email to at least 55,000 members in its Region, rather than just the members of the Regional Council, in which it set out: (i) the fact of its nomination of Dave Prentis for General Secretary; and (ii) the reasons for this nomination. This communication was not through an established method of communication of the Yorkshire and Humberside Region.

Complaint 4

On or about 10 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Greater London Region sent a communication by email to current members and retired members, rather than just the members of the Regional Council, in which it set out the fact of its nomination of Dave Prentis for General Secretary. This communication was not through an established method of communication of the Greater London Region.

Complaint 5

On or about 11 November 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). This breach occurred when the Northern Ireland Regional Committee sent a communication through UNISON's electronic membership system to all members in its Region, rather

than just the members of the Regional Council, in which it set out: (i) the fact of its nomination of Dave Prentis for General Secretary; and (ii) the reasons for this nomination. This communication was not through an established method of communication of the Northern Ireland Regional Committee.

Complaint 6

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

Complaint 7

On or about 21 October 2015 to on or about 30 October 2015, UNISON breached and/or threatened to breach paragraph 51 of the General Secretary 2015 Election Procedures which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book (in so doing UNISON also breached rule D.7 and paragraph 7 of Schedule C to the UNISON rule book). Examples of these breaches are set out in the Annexe to this complaint.

Annexe to complaint 7

1. By his email of 23 October 2015, Cliff Williams, Assistant General Secretary, encouraged paid officials across the Union to liaise with employers where the branch might be unsympathetic towards Dave Prentis, to work towards distributing literature in support of Dave Prentis. This was a threatened and (if implemented) actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.
2. By his email of 23 October 2015, Cliff Williams, Assistant General Secretary, encouraged paid officials across the Union to send list of potential recipients for literature in support of Dave Prentis to an internal UNISON resource for distribution (Laraine Senior). This was a threatened and (if implemented, by sending the lists and/or by the literature being distributed by UNISON) an actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.
3. On 30 October 2015 paid officials of UNISON were told by Liz Snape, Assistant General Secretary: "*Your job is to ensure that all nominating branches [for Dave Prentis] deliver on the action points*". This was a threatened and (if implemented, by any of those officials taking steps that nominating branches deliver on the action points) an actual breach of paragraph 51a of the UNISON General Secretary 2015 Election Procedures.

Mr Bannister

Complaint 1

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

Complaint 2

On or about 21 October 2015, UNISON breached paragraph 7 of Schedule C to the UNISON rules by issuing guidance to nominating bodies about the General Secretary election which was not agreed by a meeting of the National Executive Council of UNISON. In so doing UNISON also breached rules D.7 and E3.3, which require elections to be conducted in accordance with Schedule C to the UNISON Rulebook and regulations made by the National Executive Council

Mr Rogers

Complaint 1

On or about 21 October 2015, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. The breach occurred at a meeting organised and attended by UNISON officials in the Greater London Region which took place at the UNISON premises known as Congress House and where UNISON staff received a briefing on how to campaign for the re-election of David Prentis. Given that this meeting took place at UNISON premises, was attended by paid UNISON officials during their working hours, and discussions took place on how UNISON resources had already been used to campaign for David Prentis and how UNISON staff should subsequently be used to distribute campaign material for David Prentis, both the meeting itself and the decisions reached at it amounted to the use of UNISON funds, resources and property to campaign for David Prentis.

Complaint 2

During the UNISON General Secretary 2015 elections, on multiple occasions, UNISON breached paragraph 51 of the General Secretary 2015 Election Procedures, which are made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book. These breaches occurred on the occasions set out in the Annex to this complaint

Annex to complaint 2

1. On or about 19 November 2015 when an email was sent to Branch Secretaries of UNISON branches in the Local Government Service Group from the campaign to elect Dave Prentis. The email encouraged Branch Secretaries to pass the campaigning message on without advising them that they ought not to use UNISON resources in so doing.
2. On or about 9 November 2015 when the London Ambulance Service Branch published, on their branch website, a story promoting support for Dave Prentis as a candidate in the election.
3. On or about 8 November 2015 when the Torbay branch of UNISON published on their branch website a story including a link to the campaign website of Dave Prentis as a candidate in the General Secretary election.
4. On or about 9 November 2015 when the CVO branch of UNISON published on their branch website a story reporting that the Greater London Regional Council and National Executive Council had nominated Dave Prentis as a candidate in the General Secretary election. They also published a story reporting on the work of Dave Prentis in relation to the members of their branch on the same date.
5. On or about 9 November 2015 when the North Devon branch of UNISON published on their branch website a story encouraging members to vote for Dave Prentis as a candidate in the General Secretary election.
6. On or about 30 November 2015 when the University of Cumbria branch of UNISON published on their branch twitter feed a tweet encouraging members to vote for Dave Prentis as a candidate in the General Secretary election.
7. On or about 9 November 2015 when the University of Cumbria branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
8. On or about 11 November 2015 when the Monmouthshire branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
9. On or about 19 November 2015 when the NRHCB branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.
10. On or about 20 September 2015 when the North West Gas branch of UNISON published a story on their branch website urging members to vote for Dave Prentis, a candidate in the General Secretary election.

11. On or about 1 October 2015 when the Blackburn with Darwen branch of UNISON published a story on their branch website reporting the nomination of the National Executive Council for Dave Prentis, a candidate in the General Secretary election.
12. On or about 20 November 2015 when the Gateshead health branch of UNISON published a story on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
13. On or about 12 November 2015 when the UNISON QEHLK branch published stories on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
14. On or about 9 September 2015 when the UNISON Aberdeen branch published stories on their branch website campaigning in support of Dave Prentis, a candidate in the General Secretary election.
15. On or about 20 November 2015 when the North West Gas Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
16. On or about 12 November 2015 when the UNISON North Wales Health Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
17. On or about 27 November 2015 when the UNISON Wakefield Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
18. On or about 9 November 2015 when the UNISON Humber Police Branch used their official twitter feed in support of Dave Prentis, a candidate in the General Secretary election.
19. On or about 9 November 2015 when the UNISON Lancashire Police Branch used their official Facebook Page in support of Dave Prentis, a candidate in the General Secretary election.
20. On or about 5 November 2015 when the UNISON Nottinghamshire Police Branch used their official Facebook Page in support of Dave Prentis, a candidate in the General Secretary election.

Complaint 3

On a date before the commencement of the General Secretary election, UNISON appointed Electoral Reform Services (ERS) as independent scrutineer in accordance with section 49 of the Trade Union and Labour Relations (Consolidation) Act 1992. UNISON appointed ERS as both scrutineer and Returning Officer. The additional functions specified in the appointment of ERS did not preclude ERS taking on responsibility for the interpretation of the election procedures from the UNISON NEC. Therefore the inclusion within the terms of appointment of ERS of these additional functions are such as to make it reasonable for a person to call the scrutineer's independence in relation to the union into question in breach of section 49(4).

Appendix 2

AGREED LIST OF ISSUES

Burgess and others:

Complaint 1

1. Did UNISON ("the Union") breach paragraph 51 of the General Secretary 2015 Election Procedures ("the Election Procedures") in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of:

(a) the meeting on 21 October 2015 in the Greater London Region (at Congress House); and/or

(b) the decisions taken at that meeting?

[See also: issue 9 under Complaint 1 for Bannister/issue 13 under Complaint 1 for Rogers/issue 29 under Complaint 6 for Wakefield, all of which are in the same terms].

2. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 1:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

[See also: issue 10 under Complaint 1 for Bannister/issue 14 under Complaint 1 for Rogers/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms].

Complaint 2

3. Did the Union breach: paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a

particular candidate (Dave Prentis) by reason of (a) the time of sending and/or (b) the content of the following emails (or any of them):

(8) Email from Liz Snape (assistant General Secretary) dated 29 August 2015, stating:

"The Health SGE (service group executive) chairs have done a letter to all health branches – this will be sent on Tuesday for the opening of nominations on Wednesday."

(9) Team Dave: Update No.14 dated Sunday 27 September 2015, stating:

"Please use your contacts in the branches to push for more nominations".

"If you have any contacts that you can lobby, in any of the Regions involved please do what you can to support Dave".

(10) Team Dave: Update No15 sent at 13.19 on Friday 2 October 2015, stating:

"Use your network to contact any branch that hasn't nominated and try to get them to do so and support Dave".

(11) Team Dave: Update No 16 sent at 21.04 on Sunday 4 October 2015, stating:

"Please don't leave anything to chance and make sure that contact is maintained with our reps on the Execs. The results particularly from Scotland and the NW will mean that there will be lots of pressure on our people to change their votes. Try and speak to them before the meeting starts."

(12) Team Dave: Update No 20 sent at 09.44 on Friday 23 October 2015, stating:

"It may be that in some circumstances you may be able to 'circumvent' hostile branches by covertly working with sympathetic employer contacts. I acknowledge that some colleagues may feel that this is ethically inappropriate but it doesn't breach campaign rules; it will however need to be done with caution."

(13) Team Dave: Update No 22 sent at 18.00 on Friday 30 October 2015, stating:

"3. The 12th of November will be Vote Dave Day. We will aim to ramp up our social media campaign but if you can arrange work site events then do so and send details through to me and Liz."

(14) Team Dave Update No 27 sent at 10.47 on Tuesday 24 November, stating:

"It's not enough to win, we need a strong margin between Dave and the contenders as we anticipate that there will be attempts to challenge the result. A wide margin minimises that possibility"?

4. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 3:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 3 (as substituted by the Complainants on 14 June 2016)

5. Did the Union breach section 49(6) of the 1992 Act in that it failed to ensure that the Independent Scrutineer, Electoral Reform Services (“ERS”), duly carried out its functions and that there was no interference with its carrying out of those functions which would make it reasonable for any person to call the Scrutineer’s independence in relation to the Union into question, as evidenced by the following claims made by the Complainants:

- (1) ERS did not independently investigate and respond to complaints made to it in accordance with the terms of reference of the election timetable and procedure – specifically, with reference to complaints arising from the disclosure of the audio tape of the meeting in the Greater London Region on 21 October 2015 (at Congress House);
- (2) ERS issued guidance on 21 October 2015, not endorsed by the NEC, informing branches and nominating bodies that they could inform members why they had chosen to make a particular nomination, such guidance being issued after an email from ‘Team Dave’ dated 15 October 2015 informing branches that they could publish the fact of their nomination together with the reason why (with the previous established procedure known throughout the Union being that branches could only inform members who the branch had nominated and not the reasons);
- (3) the Returning Officer, Mr Alex Lonie of ERS, was sent ‘Team Dave’ emails in January 2016 but did not refer to them in his Returning Officer’s report published on 18 February 2016;
- (4) ERS was asked by Private Eye magazine about the ‘Team Dave’ emails and their investigation before the Returning Officer’s report was published and at time when it should have been conducting an independent investigation and, in its reply, ERS informed Private Eye “UNISON is preparing a report for Mr Lonie which would enable him to decide if the election was properly conducted. UNISON would then in turn report his decision back to its members”; and
- (5) the report referred to at (4) was compiled by a staff member who was a prominent member of the ‘Team Dave’ campaign?

6. If the Union did breach section 49(6) of the 1992 Act by reason of the matters claimed at (1) to (5) of paragraph 5:

- a. Should the Certification Officer make a declaration under section 55(2) of the 1992 Act?
- b. If so, what should be the terms of any declaration for the purpose of section 55(3)?
- c. If the Certification Officer does make a declaration:
 - (i) is the Certification Officer satisfied that steps have been taken by the Union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in the future, or that the Union has agreed to take such steps and, if so, what they are; and
 - (ii) should an enforcement order be made under section 55 (5A) imposing on the Union one or more of the following requirements:
 - (a) to secure the holding of an election in accordance with the order;
 - (b) to take such steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in the future?

Complaint 4 (as added by the Complainants on 24 May 2016)

7. Did the Union breach paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claim made by the Complainants:

At a conference for all Regional Staff held at the University of London Union on the morning of 16 September 2015, which was called for and chaired by Linda Perks (the Regional Secretary of London Region), Ms Perks allegedly stated that Dave Prentis was the only credible candidate for General Secretary and allegedly sought to influence her staff to secure nominations for Dave Prentis?

(The Complainants accepted on 29 July 2016 that the reference to a separate alleged meeting on 7 September 2015 in their original complaint number 4 discloses no breach of rule and should be dismissed as a ground of complaint for the purpose of these proceedings).

8. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 7:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Bannister

Complaint 1

9. See issue 1 under Complaint 1 for Burgess and others/issue 13 under Complaint 1 for Rogers/ issue 29 under Complaint 6 for Wakefield, all of which are in the same terms.

10. See issue 2 under Complaint 1 for Burgess and others/issue 14 under Complaint 1 for Rogers/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms.

Complaint 2

11. Did the Union breach:

- (i) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..." ; and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) rule E3.3 of the Union's rules which provides that "The ballot for the post of General Secretary shall be a secret postal ballot of the membership.....The electoral rules in Rule D.7 and Schedule C shall apply to such elections"

by reason, as claimed by the Complainant, of its issuing guidance to nominating bodies about the General Secretary election which was not agreed by the National Executive Council of the Union?

12. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 11:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

(Complaints 3, 4 and 5 of Mr Bannister were struck out by the Certification Officer in a Decision dated 30 August 2016, on the basis that they had no reasonable prospect of success and/or were otherwise misconceived).

Rogers

Complaint 1

13. See issue 1 under Complaint 1 for Burgess and others/issue 9 under Complaint 1 for Bannister/issue 29 under Complaint 6 for Wakefield, all of which are in the same terms.

14. See issue 2 under Complaint 1 for Burgess and others/issue 10 under Complaint 1 for Bannister/issue 30 under Complaint 6 for Wakefield, all of which are in the same terms.

Complaint 2

15. Did the Union breach paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claims made by the Complainant:

- (1) an email sent on or around 19 November 2015 to UNISON branch secretaries in the Local Government Service Group from the campaign to elect Dave Prentis, such email encouraging Branch Secretaries to pass the campaigning message on without advising them that they ought not to use union resources in so doing;

- (2) a publication on or about 9 November 2015 by the London Ambulance Service branch on its website of a story supporting Dave Prentis;
- (3) a publication on or about 8 November 2015 by the Torbay branch on its website of a story including a link to the campaign website for the election of Dave Prentis;
- (4) a publication on or about 9 November 2015 by the CVO branch on its website of a story reporting that the Greater London Regional Council and National Executive Council had nominated Dave Prentis as a candidate, and a further publication on the same date by the branch of a story reporting on the work of Dave Prentis in relation to members of the branch;
- (5) a publication on or about 9 November 2015 by the North Devon branch on its website of a story encouraging members to vote for Dave Prentis;
- (6) a publication on or about 30 November 2015 by the University of Cumbria branch on its branch twitter feed of a tweet encouraging members to vote for Dave Prentis;
- (7) a publication on or about 9 November 2015 by the University of Cumbria branch on its website of a story encouraging members to vote for Dave Prentis;
- (8) a publication on or about 11 November 2015 by the Monmouthshire branch on its website urging members to vote for Dave Prentis;
- (9) a publication on or about 19 November 2015 by the NRHCB branch on its website of a story urging members to vote for Dave Prentis;
- (10) a publication on or about 20 September 2015 by the North West Gas branch on its website of a story urging members to vote for Dave Prentis;
- (11) a publication on or about 1 October 2015 by the Blackburn with Darwen branch on its website of a story reporting the nomination of the National Executive Council for Dave Prentis;
- (12) a publication on or about 20 November 2015 by the Gateshead health branch on its website of a story campaigning in support of Dave Prentis;

(13) a publication on or about 12 November 2015 by the UNISON QEHKL branch on its website of stories campaigning in support of Dave Prentis;

(14) a publication on or about 9 September 2015 by the Aberdeen branch on its website of stories campaigning in support of Dave Prentis;

(15) use by the North West Gas branch on or about 20 November 2015 of its official twitter feed in support of Dave Prentis;

(16) use by the North Wales Health branch on or about 12 November 2015 of its official twitter feed in support of Dave Prentis;

(17) use by the Wakefield branch on or about 27 November 2015 of its official twitter feed in support of Dave Prentis;

(18) use by the Humber Police branch on or about 9 November 2015 of its official twitter feed in support of Dave Prentis;

(19) use by the Lancashire Police branch on or about 9 November 2015 of its official Facebook Page in support of Dave Prentis; and

(20) use by the Nottinghamshire Police Branch on or about 5 November 2015 of its official Facebook Page in support of Dave Prentis?

16. If the Union did breach paragraph 51 of the Election Procedures by reason of the matters referred to in paragraph 15(1) – (20):

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 3

17. Did the Union breach section 49(4) of the 1992 Act in that it failed to ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment of ERS) was such as to make it reasonable for any person to call the scrutineer's independence in relation to the Union into question by:

(i) the Union appointing ERS as both Returning Officer and Scrutineer; and

- (ii) the additional functions specified in the appointment of ERS not precluding ERS taking on responsibility for the interpretation of the election procedures from the Union's National Executive Council?

18. If the Union did breach section 49(4) of the 1992 Act by reason of the matters referred to in paragraph 17:

- a. Should the Certification Officer make a declaration under section 55(2) of the 1992 Act?
- b. If so, what should be the terms of any declaration for the purpose of section 55(3)?
- c. If the Certification Officer does make a declaration:
 - (i) is the Certification Officer satisfied that steps have been taken by the Union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in the future, or that the Union has agreed to take such steps and, if so, what they are; and
 - (ii) should an enforcement order be made under section 55 (5A), imposing on the Union one or more of the following requirements:
 - (a) to secure the holding of an election in accordance with the order;
 - (b) to take such steps to remedy the declared failure as may be specified in the order;
 - (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in the future?

Wakefield

Complaint 1

19. Did the Union breach paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..." by reason of, as claimed by the Complainant, issuing guidance to nominating bodies about the General Secretary election which was not determined by a meeting of the National Executive Council of the Union and which had the effect of making a material change to the terms of paragraph 51 of the Election Procedures?

20. If the Union did breach paragraph 7 of schedule C to the Union's rules, by reason of the matters referred to in paragraph 19:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 2 (as amended by agreement of the parties at the preliminary hearing)

21. Did the Union breach paragraph 51 of the Election Procedures made under rules D7 and E3.3 and paragraph 7 of Schedule C to the UNISON rule book" in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis) by reason of the following claims made by the Complainant:

- (1) a publication on or about 5 November 2016 by the North Yorkshire branch on its website of a story encouraging members to vote for Dave Prentis;
- (2) a publication on or about 20 November 2016 by the Gateshead Health branch on its website of a story giving its reasons for supporting Dave Prentis;
- (3) a publication on or about 19 November 2016 by the Northern Region Health Commissioning branch on its website of a story giving its reasons for supporting Dave Prentis;
- (4) a publication on or about 11 November 2016 by the Monmouthshire branch on its website of a story giving its reasons for supporting Dave Prentis;
- (5) a publication on or about 9 November 2016 by the London Ambulance Service branch on its website of a story giving its reasons for supporting Dave Prentis;
- (6) Wendy Nichols, in an email of 10 November 2015 to Clare Williams and others, sent using the email address of her employer/the UNISON branch, saying that "Branches are distributing posters etc and are also using email"?

22. If the Union did breach paragraph 51 of the Election Procedures, by reason of the matters referred to in paragraph 21:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 3

23. Did the Union breach:

- (i) paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or
- (ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or
- (iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the Yorkshire and Humberside Region sending an email in which it set out the fact of its nomination of Dave Prentis for General Secretary and the reasons for this nomination:

- (a) to at least 55,000 members in the Region, rather than just members of the Regional Council; and
- (b) otherwise than by an established method of communication of the Yorkshire and Humberside Region?

24. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 23:

- a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?
- b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 4

25. Did the Union breach:

(i) paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to support campaigning for a particular candidate (Dave Prentis); and/or

(ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or

(iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the Greater London Region sending a communication in which it set out the fact of its nomination of Dave Prentis for General Secretary:

(a) to current and retired members, rather than just members of the Regional Council; and

(b) otherwise than by an established method of communication of the Greater London Region?

26. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 25:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 5

27. Did the Union breach:

(i) paragraph 51 of the Election Procedures in that the Union's funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or

(ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance

with Schedule C and any regulations made by the National Executive Council”; and/or

(iii) paragraph 7 of schedule C to the Union’s rules which provides that “The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election...”

by reason, as claimed by the Complainant, of the Northern Ireland Regional Committee sending a communication through the Union’s electronic membership system, in which it set out the fact of its nomination for Dave Prentis and the reasons for this nomination:

(a) to all members in its Region rather than just to the members of the Regional Council; and

(b) otherwise than by an established method of communication of the Region?

28. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 27:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?

Complaint 6

29. See issue 1 under Complaint 1 for Burgess and others/issue 9 under Complaint 1 for Bannister/issue 13 under Complaint 1 for Rogers, all of which are in the same terms.

30. See issue 2 under Complaint 1 for Burgess and others/issue 10 under Complaint 1 for Bannister/issue 14 under Complaint 1 for Rogers, all of which are in the same terms.

Complaint 7

31. Did the Union breach, or threaten to breach:

(i) paragraph 51a of the Election Procedures in that the Union’s funds, property or resources were impermissibly used to campaign for a particular candidate (Dave Prentis); and/or

(ii) rule D7 of the Union's rules which provides that "All elections required to be held under these rules shall be conducted in accordance with Schedule C and any regulations made by the National Executive Council"; and/or

(iii) paragraph 7 of schedule C to the Union's rules which provides that "The National Executive Council shall have the power to determine any matter of procedure or organisation or administration of or relating to the election..."

by reason, as claimed by the Complainant, of the following matters:

(1) an email of 23 October 2015 from Cliff Williams (Assistant General Secretary), in which he encouraged paid officials across the Union to liaise with employers where the branch might be unsympathetic towards Dave Prentis, to work towards distributing literature in support of Dave Prentis;

(2) in the same email, Mr Williams encouraging paid officials across the Union to send a list of potential recipients for literature in support of Dave Prentis to an internal Union resource (Laraine Senior) for distribution ;

(3) sending the aforesaid lists and/or distributing the aforesaid literature;

(4) On 30 October 2015, paid officials of the Union being told by Liz Snape (Assistant General Secretary) that "...*Your job is to ensure that all nominating branches [for Dave Prentis] deliver on the action points*"; and

(5) Paid officials taking steps as described in (4) above?

32. If the Union did breach any of the provisions listed above, by reason of the matters referred to in paragraph 31:

a. Should the Certification Officer make a declaration pursuant to s. 108B(2)(d) of the 1992 Act?

b. If a declaration is made, should the Certification Officer also make an enforcement order under section 108B(3) of the 1992 Act? If so, what should the terms of any enforcement order be?