

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

**Mr Michael Rolfe**

**v**

**POA**

**Date of Decision**

**19 March 2018**

**DECISION**

1. Upon application by Mr Rolfe ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):
2. I grant the claimant's application for a declaration that on or around 3 May 2017 the Union breached Rule 10.9 by disqualifying Mr Rolfe from holding a NEC position until May 2026 when he had not resigned from office during his elected term but ceased to be a member of the NEC after 3 May 2017 by virtue of resigning as a Prison Officer and not being eligible for membership of the POA until re-joining on 9 June 2017.
3. I consider that it would be appropriate to make an enforcement order. I order that:

The NEC remove the disqualification of Mr Rolfe from holding any National Executive post which was imposed on him under rule 10.9 following his resignation as a Prison Officer on 3 May 2017. This order will take effect from the date of this decision.

4. I dismiss complaints two and three upon withdrawal by Mr Rolfe on the day of the hearing.

**REASONS**

5. Mr Rolfe brought this application as a member of the POA ("the Union"). He did so by a registration of complaint which was received at the Certification Office on 6 July 2017. He made a further two complaints on 19 September 2017.
6. Following correspondence with my office, Mr Rolfe confirmed his complaints as follows:-

### **Complaint 1**

*That on or around 3 May 2017 the union breached Rule 10.9 by disqualifying Mr Michael Rolfe from holding a NEC position until May 2026 when he had not resigned from office during his elected term but ceased to be a member of the NEC after 3 May 2017 by virtue of resigning as a Prison Officer and not being eligible for membership of the POA until re-joining on 9 June 2017.*

### **Complaint 2**

*That on or around 3 May 2017, the union breached its rule 10.7 by disqualifying Mr Michael Rolfe from holding a NEC position until 9 June 2022 when he had not lapsed as a member of the POA.*

### **Complaint 3**

*That on or around 3 May 2017, the union breached its rule 8.8 by determining Mr Michael Rolfe was a lapsed member when he was not in arrears for at least 2 months.*

7. Immediately before the hearing Mr Rolfe withdrew complaints two and three. These complaints were not, therefore, considered at the hearing and consequently I have dismissed these.
8. At the hearing before me Mr Rolfe represented himself. A written witness statement and oral evidence was given by Mr Rolfe. The Union was represented by Mr Peter Edwards of Counsel. A written witness statement and oral evidence for the Union was given by Mr Steve Gillan. There was also in evidence a bundle of documents consisting of 441 pages containing correspondence and the rules of the Union. Both the Union and the claimant provided skeleton arguments.

### **Findings of Fact**

9. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
  - a. Mr Rolfe is a Prison Officer and a member of the POA. He was elected as National Chair of the Union in November 2015 with his term of office running until the end of the Union's Conference in 2021.
  - b. Mr Rolfe was a Parliamentary candidate in the General Election in June 2017. Once his candidature was accepted he was required to resign from his role as a Prison Officer.
  - c. On 3 May 2017 Mr Rolfe informed the Union's NEC of his candidature, his resignation from the Prison Service and the fact that he would no longer be a full member of the Union nor a Member of the NEC.
  - d. The Union treated this letter as Mr Rolfe's resignation as National Chair.
  - e. Mr Rolfe was unsuccessful in the General Election. He subsequently returned to the Prison Service and re-joined the Union.

- f. On 19 June 2017, Mr Rolfe queried the Union's use of the word "resignation" in the Circular to Members 59/2017 issued on 3 May 2017. He said that he did not resign from the Union nor from his role as National Chair.
- g. The Union considered his views at its NEC meeting on 28 June 2017. The NEC confirmed its view that Mr Rolfe had resigned as National Chair.
- h. The Union also told Mr Rolfe that, as he had resigned from his post as Chair, Rule 10.9 applied and Mr Rolfe was not eligible to stand for election to the NEC until 2026.

### **The Relevant Statutory Provisions**

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

#### **108A Right to apply to Certification Officer**

- (1) *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*
- (2) *The matters are –*
  - (a) *the appointment or election of a person to, or the removal of a person from, any office;*
  - (b) *disciplinary proceedings by the union (including expulsion);*
  - (c) *the balloting of members on any issue other than industrial action;*
  - (d) *the constitution or proceedings of any executive committee or of any decision-making meeting;*

### **The Relevant Rules of the Union**

11. The rules of the Union which are relevant for the purposes of this application are POA Rules:-

#### **RULE 2 OBJECTS AND POWERS**

- a. *Powers*
- b. *Rule 2.2 The Union may do anything incidental or conducive to any of the objects including (but not limited to):*
  - (a) *affiliate to relevant bodies;*
  - (b) *co-operate with other organisations as considered appropriate;*
  - (c) *employ full or part-time executive and other staff;*
  - (d) *publish an official journal of the Union, diary and other occasional texts and papers;*
  - (e) *subject to the approval of the Legal Aid Committee, provide initial legal advice in accordance with these Rules;*
  - (f) *subject to the approval of the Legal Aid Committee, provide legal assistance in relation to any legal, quasi-judicial or disciplinary proceedings related to a member's work in accordance with these Rules;*

- (g) *promote and support nationally and internationally steps to improve the conditions or administration of penal and secure establishments and Special Hospitals in England, Wales, Northern Ireland, Scotland and the Isle of Man;*

#### **RULE 4 FULL MEMBERS**

##### *Qualification*

*Rule 4.1 The qualification for full membership is employment:-*

- (a) Any penal or secure establishment, Special Hospital, associated training establishment, Prison Service establishment, secure units, Private Sector Escort or Custodial Services in England, Wales, Northern Ireland, Scotland or the Isle of Man; or*
- (b) as a paid Officer of the Union.*
- (c) As a worker within the Criminal Justice System, Home Office or for an organisation providing services to any of the establishments described in Rule 4.1(a).*

*Rule 4.2 If a full member's employment which qualifies under Rule 4.1 terminates:*

- (a) with the member's agreement;*
- (b) without the member's agreement and the member has not appealed against the termination within 3 months; or*
- (c) without the member's agreement and the member has exhausted all rights of appeal; full membership ceases automatically.*

##### *Entitlement*

*Rule 4.3 Full members are entitled to all the rights and benefits given by these Rules.*

#### **RULE 7.7 RESIGNATIONS**

*Rule 7.7 A member may resign by giving at least one month's prior written notice to the General Secretary.*

#### **RULE 8.8 LAPSE OF MEMBERSHIP**

*Rule 8.8 If the subscription payable by a member is unpaid for at least 2 months, membership lapses automatically. Lapsed members cannot re-join the Union unless they complete a direct debit for future payments.*

#### **RULE 9.3 OFFICERS**

*9.3 (a) The Officers of the Union comprise:*

- i the Chairman,*
- ii the General Secretary,*
- iii the Vice Chairmen,*
- iv the Deputy General Secretary,*

*in that order of authority (except where these Rules provide differently).*

#### **RULE 10 NATIONAL EXECUTIVE COMMITTEE**

##### *Eligibility*

*Rule 10.6*

*Candidates for election as National Executive Committee members must be:*

- (a) full members of the Union who are willing to stand; and*
- (b) nominated to the General Secretary in writing by Branches in accordance with duly convened Branch meetings.*

*Rule 10.7*

*Any member of the Union who lapses in, or is suspended or expelled from, membership cannot be elected as a National Executive Committee member until 5 years after rejoining full membership of the Union.*

*Rule 10.8*

*A National Executive Committee member:*

*(a) may retain office even if promoted or transferred to another rank and/or establishment (b) ceases to be a National Executive Committee member automatically on ceasing to be a full member of the Union.*

*Rule 10.9*

*(a) Any National Committee Member who resigns from office during their elected term or after the commencement of any national ballot that they are candidates in, will be disqualified from holding any National Executive post for a period of five years after the position would be due for re-election.*

*(b) It is incumbent upon any member of the Union, who is a successful candidate in any national election to take up office. Failure to do so will deem them to have resigned and will automatically de-bar them from holding any national office for a period of five years after the day when he/she would have been due for re-election.*

## **CONSIDERATIONS AND CONCLUSIONS**

### **Summary of Submissions**

12. Mr Rolfe and the POA have both presented this case to me as being a straightforward interpretation of the Rules. They both contend that the position is clear; Mr Rolfe told me that his membership of the Union ceased under Rule 4.2 as he no longer met the eligibility requirements for full membership under rule 4.1(a) and as a consequence he was no longer a member of the NEC or National Chair. His view is that he could not have resigned as he had already ceased to be a member of the NEC and National Chair of the Union. In his view, it is wrong to treat his letter of 3 May to the Union as a resignation letter as he was not in a position to resign from the NEC once his Union membership had ceased under Rule 4.2.
13. The Union is clear that Mr Rolfe's letter of 3 May could only have been a resignation letter and that, whatever the intent, it was reasonable for the NEC to have treated it as such. The Union also contend that Mr Rolfe's argument is highly technical and unmeritorious and that accepting his argument would undermine the purpose of Rule 10.9.

### **Mr Rolfe**

14. Mr Rolfe told me that Rule 10.9 does not apply to him. His position is that, having decided to stand for Parliament, he was required to resign from the civil service. As a consequence, he became ineligible for Union Membership under Rule 4.1(a) and automatically ceased to be a member of the Union under Rule 4.2 and, consequently, ceased to be a member of the NEC under Rule 10.8. He argues that these were

automatic consequences of his resignation from his role as a Prison Officer rather than voluntary actions on his behalf.

15. Under cross examination, Mr Rolfe explained that his letter of 3 May 2017 was not a letter of resignation from his post as National Chair or from the Union. It was a letter notifying the NEC of his decision to stand for Parliament and the requirement for him to resign from the civil service. He included expressions of regret in his letter because, once he resigned from the civil service, he would no longer be a member of the Union or National Chair.
16. During the hearing Mr Rolfe told me that he understood that he may have been able to remain a member of the Union under Rule 4.1(b) following the decision in *Prison Officers Association & Others v (1) Gough (2) [2009] EAT* that all paid Officers of the Union were also employees of the Union. Mr Rolfe did not rely on that Rule to maintain his membership of the Union as there had been a conference motion passed some time ago, but after 2009, which endorsed the Union's view that paid Officers were not employees of the Union. He also told me that it would have been open for the NEC to have offered him the opportunity to remain within the Union as he was an employee.
17. Mr Rolfe also told me that he challenged the Union's use of the word resignation at the earliest opportunity after his return to the Union on 16 June 2017. He told me that he was unable to open the attachment to Nicola Hubert's email of 3 May 2017 and, consequently, did not see Mr Gillan's letter of the same date at that time. During evidence, he explained that he had calls from NEC members to tell him that the NEC were offering him the opportunity to speak to the Union Conference and that all he needed to do was reply to the email to say that he would do so. He also spoke to Ms Hubert who confirmed this. Under cross-examination Mr Rolfe explained that he was extremely busy on 3 May 2017 and had little time available. This, combined with the advice given to him in telephone calls, meant that he did not correct what he saw to be the mistaken reference to resignation in the heading of Ms Hubert's email.
18. Mr Rolfe told me that he it was clear that the Union believed that he had ceased to be a member of the Union on his resignation from the civil service. He explained that had he resigned from Membership under Rule 7.7 he would have been required to give a month's notice and would have remained a member until 3 June 2017 and thus been able to attend conference as a Member. Instead, his Membership was cancelled immediately and he was not able to attend the Union Conference other than as an invited speaker to address the Union on the issues surrounding his candidature for Parliament. He submitted that the Union's action was consistent with him having ceased to be a full member, as he was no longer eligible for full membership under Rule 4.1(a), rather than him having resigned his membership under Rule 7.7.
19. Mr Rolfe told me that Rule 10.8 must be able to stand alone and not directly lead to rule 10.9. He contends that there is a real distinction between the word "cease" which is used in Rule 10.8 and "resign". He argues that "cease" means to "stop" or "end" something whilst "resign" includes a voluntary action on the part of an individual. In the context of these Rules this means that Rule 10.8 can apply to a situation without invoking Rule 10.9. He gave examples of the Rules regarding Branch Committees and a situation where an NEC member may lose employment because of actions which were supported by the Union.

20. Finally, Mr Rolfe argued that by applying Rule 10.9 to his situation the Union was unlawfully excluding a small class of Union Members from standing for election to the NEC. This class would be those NEC members who are members of the Union only by virtue of Rule 4.1(a) and who, during the course of their NEC term, decide to stand in a Parliamentary election.

## POA

21. Mr Edwards, for the Union, argued that Mr Rolfe's letter of 3 May could only have been a resignation letter and that it was reasonable, in all the circumstances, for the NEC to have accepted it as such. He submitted that the sentiments expressed in the letter and the acknowledgment of Rule 4.1(a) and 10.8 showed that Mr Rolfe understood the position he was in.

22. Mr Edwards referred to ***Gale v. Gilbert [1978] IRLR 453, Martin v. Yeoman [1983] IRLR 49 and J&T Stern v. Simpson [1983] IRLR 52*** and explained that you do not need to use the word resign for a resignation to be effective. He argued that it was reasonable, taking into account the context and Mr Rolfe's actions, for the NEC to have treated this as a resignation letter. He was also of the view that leaving the role was a direct consequence of Mr Rolfe's voluntary decision to stand as a Parliamentary candidate. He argued that Mr Rolfe did not have to accept the nomination as a Parliamentary candidate. He could have declined the nomination and remained as National Chair. Or he could have sought support or sponsorship from the Union before writing his letter of 3 May 2017 to the NEC.

23. When giving evidence Mr Gillan accepted that Mr Rolfe could have remained as a full member under Rule 4.1(b) after he had left the civil service. He told me that the NEC considered this as an option alongside the option of employing him in another capacity under Rule 2.2(c). When asked, Mr Gillan explained that it would have been difficult for Mr Rolfe to remain as National Chair whilst standing for Parliament because of the Union's politically neutral stance.

24. Mr Gillan told me that the NEC sought advice from their lawyer. The lawyer advised that Mr Rolfe's letter of 3 May could be accepted as a resignation. Having considered the advice and the options available the NEC took the unanimous decision to treat Mr Rolfe's letter as a resignation letter and accept it as such. Mr Gillan added that the NEC felt some frustration that the contents of the letter had been made public but no evidence was offered as to whether this affected their decision making.

25. Mr Gillan told me that previous cases where people had stood for election and retained their NEC positions were not relevant because both had been full time employees of the Union and had relied on Rule 4.1(b) to stay in office. He said that it would have been difficult for Mr Rolfe to remain because of the Union's neutral political position.

26. Mr Edwards argued that the purpose of the Rule is clear. He referred to the two previous occasions when the Rule had been considered by the Certification Office, ***Adams and POA***, and by Mr Justice Lloyd in ***Prison Officers Association v McLaren and Others Ch 1996 P. No 6188***. He also referred to the debates, on the predecessor to Rule 10.9, at the Union Conferences in 1999, 2002 and 2003. He argued that this debate made it clear that the purpose of the Rule is to avoid people

opting in and out of NEC positions causing additional costs to the Union and disruption to the business. He made the point that Mr Rolfe is now trying to opt back into Office after having resigned which is what Rule 10.9 is designed to avoid. He argued that Mr Rolfe should have been aware of Rule 10.9 and that the consequence of his choice to stand for Parliament, and his resignation as National Chair, was his ineligibility to stand for NEC until the expiry of the term following that which he had left.

27. Mr Edwards submitted that Mr Rolfe had voluntarily left his role as National Chair. It did not matter whether this was expressly by resigning from that role, his employment as a Prison Officer or the Union. In each of these cases, Mr Edwards submitted, the outcome would have been the same and that Rule 10.9 would preclude Mr Rolfe from standing for re-election for the relevant period. Any other outcome would wholly undermine the express provision of Rule 10.9(a).
28. Mr Edwards also submitted that the argument that Mr Rolfe could not have resigned because, having already left the Union, he was no longer a Member of the NEC and his role as National Chair was a technical point. He argued that this point was flawed because it would also undermine the purpose of Rule 10.9 by enabling anyone wishing to resign without invoking Rule 10.9 to circumvent the Rule by first resigning Union membership and thus automatically ceasing to be a member of NEC.
29. Finally, Mr Edwards submitted that by applying Rule 10.9 the Union was not creating a new class of Members who could not stand for election to the NEC. There was no new class of members; Mr Rolfe, like all other Members who had resigned their position on the NEC, was part of the class considered and accepted as being lawful by Mr Justice Lloyd in ***Prison Officers Association v McLaren and Others Ch 1996 P. No 6188***.

### **Conclusion**

30. I do not believe this case to be as straightforward as Mr Rolfe or the Union have submitted. That is because there is an element of doubt as to whether Mr Rolfe's leaving the Union was a direct consequence of his resignation from the civil service.
31. Both Mr Rolfe and the Union appear to agree that, following ***Prison Officers Association & Others v (1) Gough (2) [2009] EAT***, NEC members can be considered to be employees of the Union. That means that NEC Members are entitled to be members of the Union under Rule 4.1(b). Other members of the NEC, including the General Secretary Mr Gillan, fall within that Rule and consequently remain Members of the Union even though they are not employed elsewhere under Rule 4.1.
32. Mr Rolfe told me that he did not want to rely on Rule 4.1(b) to remain as a Member because a conference motion some time ago supported the view that lay Officers should not be full members of the Union without also holding a post qualifying elsewhere under Rule 4.1. This motion had followed the EAT case. Additionally, he knew that many Union Members shared the view that lay Officers should not qualify for full membership.
33. I was not, however, presented with any other evidence of the relevant conference motion. Of course a conference motion would not, in itself, be sufficient to determine the employment relationship of the Union's paid Officers. It is more significant that



neither party suggested, nor offered any evidence, that any changes had been made to the relationship between the Union and NEC Members which would result in them no longer being employees of the Union in a legal sense. I am also aware that the role of National Chair was specifically referenced in *Prison Officers Association & Others v (1) Gough (2) [2009] EAT*, as being one of those roles which was considered to be that of an employee (paragraph 6), and is identified as an Officer within the Union's Rules (Rule 9.3).

34. Consequently, I agree with both parties that, until 3 May 2017, Mr Rolfe was an employee of the Union, whether or not he believed it was appropriate or a status he wished to rely on, and could have remained a member of the Union, under Rule 4.1(b) after he had resigned from the Civil Service. That is important context for the NEC discussion which followed Mr Rolfe's letter of 3 May 2017.
35. Both parties accept that it would have been open to the NEC to enable Mr Rolfe to have remained a member of the Union under Rule 4.1(b). Mr Rolfe's letter was, however, written without any reference to this option. His view was that he did not wish to rely on this route but, from his submissions and evidence, I have to assume that he may have been open to this option had the NEC offered it to him.
36. Mr Rolfe's letter explains his decision to stand for Parliament and the consequent requirement for him to resign from the civil service. It then makes explicit reference to Rule 4.1(a) and to Rule 10.8. This supports the view that Mr Rolfe believed that, at the point at which he would resign from the civil service, he would cease to be a member of the Union and hence cease to be an NEC Member and National Chair. It is important to note that the letter does not reference Rule 4.1(b) and nor does it explain that Mr Rolfe had considered Rule 4.1(b) but chose not to rely on it.
37. The only reference to resignation in the letter of 3 May 2017 relates to resignation from the civil service. It does, however, contain a number of expressions of regret from Mr Rolfe reflecting, in his view, on his ineligibility to remain in post as National Chair. The NEC read these as expressions of regret around his resignation as National Chair.
38. The NEC, clearly considered that Mr Rolfe's membership need not automatically cease on his resignation from the civil service because they considered other options which would have enabled Mr Rolfe to remain a member under Rule 4.1(b) and Rule 2.2(c) either by remaining as National Chair or in another, employed role within the Union. I have, however, seen no evidence that these options were communicated with Mr Rolfe before the NEC took the decision to accept his letter as a resignation. Bearing in mind the clear statement from him, within the letter, that he was ceasing to be a member under Rule 4.1(a) and the fact that he would remain a member if he continued either as a member of NEC or in some other employed role, I would have expected the NEC to have made some effort to discuss Rule 4.1(b) and its impact. This is particularly significant because of the consequences of Rule 10.9 if Mr Rolfe was resigning as National Chair.
39. Once the NEC had reached the decision to accept the letter of 3 May 2017 as a resignation, from the Union and from Mr Rolfe's role as National Chair, they took steps to end his Union membership immediately and to inform members that Mr Rolfe had resigned. Mr Rolfe's view was that this action implied that the NEC accepted that he had automatically ceased to be a member of the Union under Rule 4.1(a); had the

NEC considered that he had resigned under Rule 7.7 then he would have needed to give a month's notice and would have remained a member of the Union until 3 June 2017. I have some sympathy with that argument. Although I accept that Rule 7.7 may not be a member's only route to resignation, the NEC's actions in taking immediate steps to end Mr Rolfe's membership suggest that they were treating him as having ceased to be a member of the Union.

40. There is a contrary view, that this was the NEC's response to an immediate resignation from the Union and from Mr Rolfe's position as National Chair rather than as resignation under Rule 7.7. As I have reflected above, however, Mr Rolfe's letter of 3 May 2017 refers only to his resignation from the civil service. As I see it, there must have been some doubt as to the meaning of the letter because the NEC took legal advice on its contents and discussed the options available including Mr Rolfe remaining within the Union. The NEC, did not however, take any steps to clarify Mr Rolfe's position with him. I find it hard to understand why they did not do so. I would add at this point that I have not seen the legal advice that was given to the NEC; I understand, from Mr Gillan's evidence, that it was given orally and indicated that the NEC was entitled to treat this letter as resignation.
41. Had the Union discussed with Mr Rolfe the possibility of him remaining in the Union at the time they considered his letter of 3 May, and had Mr Rolfe declined that offer then I would find in favour of the Union. This is because Mr Rolfe would have been seen to have made a clear decision to leave the Union and his post as National Chair. Similarly, had he clearly chosen to remain in the Union but relinquish his position as National Chair and take on another position as an employee then I would regard him to have resigned as National Chair.
42. But, the NEC did not take steps to clarify Mr Rolfe's position with him. In my view it is reasonable to have expected them to have done so because Mr Rolfe's letter referred only to the automatic consequences of a resignation from the civil service. The NEC were aware that other options were available but did not seek to clarify with Mr Rolfe whether he had considered those options. As the consequences of Mr Rolfe resigning his post as National Chair were significant and far-reaching I do not think that this was a reasonable approach by the NEC. Consequently, I agree with Mr Rolfe that he ceased to be a member of the Union under rule 4.2 having become ineligible for membership under Rule 4.1(a).
43. Once Mr Rolfe's membership of the Union had ceased I agree with him that he was not in a position to resign from being a member of the NEC or National Chair. Rule 10.8 is clear that his membership of the NEC ceased automatically on him ceasing to be a full member of the Union. Consequently, I find that his letter of 3 May could not have been a resignation letter as he would cease to be National Chair as soon as he ceased to be a Full Member. The NEC's actions after its meeting on 3 May support this as it immediately took steps to exclude him from Union Membership and his role as National Chair.
44. It is worth reflecting here that I understand why the NEC treated Mr Rolfe's letter as a resignation letter as the language used and, in particular, the expressions of regret, are similar to those used by someone who is reluctantly resigning a post. In this context, however, my view is that the NEC should have been alert to the fact that Mr Rolfe referenced specific rules which pointed to him leaving the Union immediately as

a direct consequence of his resignation from the civil service. The NEC was clearly aware that Rule 4.1(b) need not have led to Mr Rolfe's Union membership having ended and, in my view, it should have taken steps to clarify this with Mr Rolfe before reaching a decision as to the status of the letter. Consequently, I do not agree with Mr Edwards that it was reasonable, taking into account the context and Mr Rolfe's actions, for them to have accepted the letter as a resignation without first seeking to clarify the position with Mr Rolfe.

45. There is, of course, a contrary view that, whether or not Mr Rolfe was able to rely on Rule 4.1(b), a resignation as National Chair would lead to him losing his entitlement to Union membership under Rule 4.1(b) then ceasing to be a full member as he was no longer a paid Officer or employed under Rule 4.1(a). Mr Gillan's letter to Mr Rolfe could be read in this way as it refers to Mr Rolfe having resigned his post as National Chair. On balance, however, I am persuaded that this was not the case because Mr Rolfe did not seek to rely on Rule 4.1(b), his letter referenced only Rule 4.1(a) and Rule 10.8, and the NEC did not seek to clarify the position with Mr Rolfe before reaching and implementing their decision. For the avoidance of doubt, I do not think that Mr Rolfe's omission of the word "resignation" in respect of the Union or his role as National Chair is relevant here. I have instead placed weight on the references to Rule 4.1(a) and 10.8 and the fact that the NEC did not take any steps to clarify the uncertainty with Mr Rolfe himself.
46. Having decided that Mr Rolfe did not resign from the Union I now need to consider whether Rule 10.9 applies to him. I agree with Mr Rolfe that there is a distinction between Rule 10.8 and Rule 10.9. The Rules use different words, which have different meanings in common usage, and so I must assume that the class of NEC members caught by each Rule is different. The class of Members covered by Rule 10.8 seems to be much wider than that at Rule 10.9.
47. Rule 10.8 is directed at those NEC members who have ceased to be full members of the Union. I agree with Mr Rolfe that the use of the word "cease" here must mean those members whose full membership has ended. That includes those whose full membership has ended for a range of reasons; for instance, because they no longer qualify under Rule 4.1, have resigned from the Union under Rule 7.7 or otherwise, or their membership has lapsed under Rule 8.8.
48. Rule 10.9 is directed at those NEC Members who resign from office during their NEC term or before they take up that term. I consider that "office" in this context must mean their membership of the NEC. I agree with Mr Edwards and Mr Rolfe that "resign their office" must mean that they are voluntarily giving up that office. As I have already found that Mr Rolfe did not resign from his office as National Chair it follows that Rule 10.9 does not apply to him and that he is eligible to stand in future NEC elections.

## **Declaration**

49. I uphold Mr Rolfe's complaint that on or around 3 May 2017 the Union breached Rule 10.9 by disqualifying Mr Rolfe from holding a NEC position until May 2026 when he had not resigned from office during his elected term but ceased to be a member of the NEC after 3 May 2017 by virtue of resigning as a Prison Officer and not being eligible for membership of the POA until re-joining on 9 June 2017.

50. In upholding the complaint I need to deal with Mr Edwards's point that doing so would undermine Rule 10.9. He argues that this enables those members who wish to resign from their NEC position without invoking Rule 10.9 to simply resign their Union membership. This, of course, is not what Mr Rolfe did and so the comparison is not relevant to this case. In any event, I do not accept the inevitability which Mr Edwards describes as each case must be considered on its own merits, But, I can see that a resignation under Rule 7.7 might lead to a future discussion on the application of Rule 10.9. That could easily be avoided, if the Union wished, by ensuring that any NEC member, and those elected who have not yet taken office, who resigns their Union membership under Rule 7.7 is precluded from standing again for a defined period. A similar rule applies to those whose membership has lapsed and so would be consistent with the Union's overall approach. That is, of course, a matter for the Union rather than the Certification Officer.

51. I would add that, having read the debates at the Union conference in 1999, 2002 and 2003, it seems to me that the purpose of the Rule at that time was to prevent members from opting in and out of NEC posts whilst remaining in the Union. Mr Rolfe's position feels somewhat different and so I am persuaded that my decision is not inconsistent with the purpose of the Rule. It is, of course, open to the Union to amend Rule 10.9 to include all members who leave, and re-join, the Union if they believe that this is necessary.

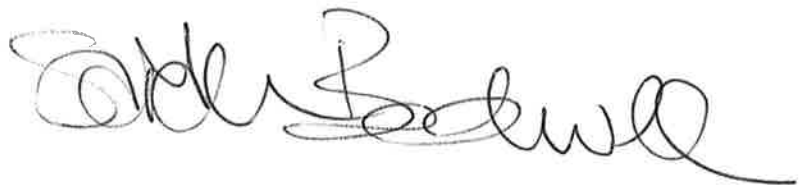
### **Enforcement Order**

52. Having made a declaration, I also have to consider whether making an enforcement order would be appropriate to remedy the breach. I consider that an enforcement order is appropriate.

53. I invited submissions at the hearing from Mr Rolfe and Mr Edwards as to whether an enforcement order should be made if I found for Mr Rolfe and, if so, on what terms. Mr Rolfe was clear that he was seeking to be able to stand in any future NEC elections. Mr Edwards agreed that, should I find in favour of Mr Rolfe, he should be eligible to stand in future elections but sought clarity about the position of elections which had already taken place. Mr Rolfe confirmed that he was not seeking any retrospective action.

54. I therefore order that the NEC remove the disqualification of Mr Rolfe from holding any National Executive post which was imposed on him under Rule 10.9 following his resignation as a Prison Officer on 3 May 2017. This order will take effect from the date of this decision.

55. For the avoidance of doubt, I have taken Mr Rolfe's assurance that he was not seeking retrospective action to include those elections for which nominations closed on Friday 2 March 2018.

A handwritten signature in black ink, appearing to read 'Mrs Sarah Bedwell', written in a cursive style.

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**Mrs Sarah Bedwell**  
**The Certification Officer**

