

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS MADE  
UNDER SECTION 55 OF THE TRADE UNION AND LABOUR RELATIONS  
(CONSOLIDATION) ACT 1992**

**IN THE MATTER OF COMPLAINTS AGAINST  
THE PUBLIC AND COMMERCIAL SERVICES UNION**

**Date of decisions**

**6 November 1998**

**DECISIONS**

- 1.1. Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of sections 46 to 53 of Chapter IV of Part 1 of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect.

1.2. Whether I make or refuse to make the declarations sought, I am required to give, in writing, the reasons for my decisions.

1.3. On 4 June 1998 I received a faxed letter from a member of the Public and Commercial Services Union (PCS) complaining about the election process in the union's elections for its National Executive Committee (NEC). Under Chapter IV of Part 1 of the 1992 Act elections to the unions principle executive committee have to satisfy certain specific requirements. The complainant alleged, in relation to the union's NEC elections, which were held between 5 June and 3 July and which were elections covered by the statutory requirements, that:

- although he had received nominations from four branches, PCS headquarters had rejected one as not being on the correct form and that the other three (nominations) had been lost. This complaint was treated as an application under section 55 of the Act that section 47 of the 1992 Act had been breached in that he had been unreasonably excluded as a candidate in the election (Complaint 1).

1.4. In subsequent correspondence a number of issues were clarified and four further complaints made. These were that:

- in breach of section 52 (1) of the 1992 Act, the scrutineer's report on the election failed to state, the number of voting papers distributed for the purposes of the election, the number of voting papers returned to the scrutineer, the

number of spoiled or otherwise invalid voting papers returned and the name of the person or persons responsible for the storage and distribution of the voting papers and the counting of the votes cast (complaint 2);

- in failing to distribute his submitted election address with the voting papers the union had breached section 48(1)(b) of the 1992 Act (complaint 3);
- a copy of the union's register of names and addresses of its members was not supplied to the scrutineer in breach of section 49(5A)(a) of the 1992 Act (complaint 4); and
- the union failed to ensure that the scrutineer duly carried out his functions in a manner which would make it unreasonable for any person to call the scrutineer's independence in relation to the union into question in breach of section 49(6) of the 1992 Act (complaint 5).

1.5. I investigated all the complaints in correspondence and, in that way, have reached decisions on complaints 2, 3 and 4. I eventually held a formal hearing on 5 October 1998 to hear argument on complaints 1 and 5. The union was represented by Mr David Cockburn of Pattinson and Brewer Solicitors. The complainant spoke for himself.

## **Declarations**

1.6. For the reasons which follow I decline to make declarations in the five complaints put to me.

## **Requirements of the Legislation**

1.7. The relevant statutory requirements in respect of the complaints are as follows:

Section 47 deals with the requirements to be satisfied with respect to candidates in elections. The relevant part of that section states:

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

(2) ...

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

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

Section 48 deals with candidates' election addresses. The relevant part of that section states:

“48.-(1) The trade union shall -

- (a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and
- (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.”

The appointment and functions of the independent scrutineer are set out in section 49 of the Act. The parts of the section relevant to the complaints, are as follows:

“(5A) The trade union shall -

- (a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and
- (b) ...

(5B) ...

(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."

Section 52 of the Act deals with the scrutineer's report on the election. The relevant part of that section states:

"52.-(1) The scrutineer's report on the election shall state -

- (a) the number of voting papers distributed for the purposes of the election,
- (b) the number of voting papers returned to the scrutineer,
- (c) the number of valid votes cast in the election for each candidate,
- (d) the number of spoiled or otherwise invalid voting papers returned.
- (e) ...

(2) The report shall also state whether the scrutineer is satisfied -

- (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the election,
- (b) that the arrangements made (whether by him or any other person) with respect to the production, storage, distribution, return or other handling of the voting papers used in the election, and the arrangements for the counting of the votes included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and
- (c) that he has been able to carry out his functions without such interference as would make it reasonable for any person to call his independence in relation to the union into question;

and if he is not satisfied as to any of those matters, the report shall give particulars of his reasons for not being satisfied as to that matter.

(2A) The report shall also state -

- (a) whether the scrutineer -

- (i) has inspected the register of names and addresses of the members of the trade union, or
  - (ii) has examined the copy of the register as at the relevant date which is supplied to him in accordance with section 49(5A)(a),
- (b) if he has, whether in the case of each inspection or examination he was acting on a request by a member of the trade union or candidate or at his own instance,
- (c) whether he declined to act on any such request, and
- (d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which he considers should be drawn to the attention of the union in order to assist it in securing that the register is accurate and up-to-date,

but shall not state the name of any member or candidate who has requested such an inspection or examination.



1.8. That then is the background and relevant legislation. I now set out the arguments put by the parties on each of the complaints in turn and the reasons for my decisions.

**Complaint 1 (that the union had unreasonably excluded the complainant from standing as a candidate in the election)**

**The Complainant's Case**

2.1. The complainant argued that branches had confirmed to him, the union and the independent scrutineer of the election, Unity Security Balloting Limited (USB), "...in writing that correctly completed correct forms were sent, in ample time, to the correct address," to secure his nomination.

2.2. In the course of correspondence with my Office he stated that five branches of the union had confirmed to him that they had nominated him. The five branches he named as:

Aberdeen Revenue Branch

East Yorkshire & North Lincolnshire Revenue Branch

Marston Vale Revenue Branch

Southampton Taxes Branch and

Wessex Collection Branch

2.3. The complainant produced written evidence (which had been obtained by USB) of nomination from four of these branches.

- 2.4. For Aberdeen Revenue Branch he supplied a faxed copy of the union's official nomination form which showed it to have been signed by the Branch Secretary and Branch Chairperson on 6 May 1998.
- 2.5. East Yorkshire and North Lincolnshire Revenue Branch had supplied, to Anne Hock General Manager of USB, a copy of their nomination letter and stated that they had nominated the complainant along with two other nominees. They added that as they had misplaced the nomination form they had sent a letter of nomination and that the letter was posted, by first class post, on Thursday (7 May 1998) to meet the deadline (3.00pm Friday 8 May 1998) and that the post was collected at 12 noon on Thursday.
- 2.6. A fax from Marston Vale Revenue Branch to Anne Hock of USB confirmed that a nomination form for the complainant had been sent to the union HQ on 5 May 1998.
- 2.7. Southampton Taxes had confirmed to Mrs Hock that the complainant was nominated, along with four other nominees, at the branches General Meeting on 7 May 1998 and that the nomination form was sent by first class post and posted at 6.40pm that evening to catch the last post that day at 7.15pm.
- 2.8. Before the hearing, Wessex Collection Branch confirmed to my Office that although the complainant had contacted the Branch for them to nominate him, which they in principle agreed to do at the Branch meeting, because the meeting was held very close to the filing date (closing date for receipt of nominations) that subsequently the election nomination form was not submitted. This information was copied, by my Office, to

the complainant who then asked that the matter (in relation to this branch) should not be pursued.

- 2.9. In conclusion the complaint argued that a valid nomination had been received by the union, from the East Yorkshire and North Lincolnshire Revenue Branch, and that three other valid nominations had apparently disappeared after being posted. He argued that the union's rules relating to nominations were unreasonable and were secondary to the laws of the land and that both the union and the scrutineer of the election recognised this, otherwise why would they have gone to the trouble of contacting branches, with the result that the scrutineer had obtained evidence of nominations.

### **The Union's Response**

- 2.10. The union provided me with a copy of its election briefing note 4/98 which was sent to all branches. It was a folded A3 sheet of bright yellow/orange paper with a series of sections each shown in a separate box.
- 2.11. The first box headed "About this form" started "This is a new style nomination form for use in the PCS national executive committee elections. No other nomination forms will be issued. This form is to be used by all branches."
- 2.12. The second box headed "What to do" included six instructions of which the following are relevant:
- ◆ Fill in valid nominations made by your branch in parts A, B and C of this form.

- ◆ Complete and sign the declaration below and send the form to the joint general secretaries, c/o PCS national elections' office to arrive no later than **3pm on Friday, 8 May 1998**. Faxes **cannot** be accepted.

- 2.13. The third box incorporated a declaration that the listed candidates had been nominated, in accordance with rules, at a branch meeting held in the place named, on the date stated. It was to be signed by the branch secretary and branch chairperson.
- 2.14. The union explained that only nominations satisfying these conditions could be accepted under its rules. While it recognized that its rules were subject to overriding statutory provision it did not believe that anything it had done in relation to the complainant's claim, to have been a candidate in the election, was contrary to statute.
- 2.15. The union stated that it first became aware of the complaint on Tuesday 12 May 1998 when the complainant telephoned the union's Head of Balloting and Membership Records, Mr J Hickey, seeking to obtain confirmation of his nomination. After checking, the complainant was telephoned and told by Mr Hickey that no nominations for him had been received. The complainant then faxed a letter to Mr Hickey the same day claiming he had received bona fide nominations from five branches.
- 2.16. Mr Hickey, the same day attempted to telephone each of the five branches but was unable to contact anyone at the Southampton Taxes Branch or at the Wessex Collection Branch. Aberdeen Revenue Branch informed him that the branch had nominated the complainant and had posted the nomination in the last post on 7 May. Mr Hickey

requested a copy of the nomination form be faxed to him and this was received the following day, Wednesday 13 May 1998.

7. Mr Hickey was informed by the Marston Revenue Branch that the branch had nominated the complaint and posted the nomination form. Again Mr Hickey requested a copy of the form to be faxed to him but, after checking, the branch was unsure if a copy was available. No copy of the nomination form was in fact received.
8. Mr Hickey did not telephone the East Yorkshire and North Lincolnshire Revenue Branch as he had discovered that the union had received a nomination from the branch, not on the official nomination form, but written on branch notepaper which he felt was not valid under the union's rules including the Election Regulations issued by the union.
9. The union also informed me that the independent scrutineer of the election had received and investigated the same complaint from the complainant, i.e. that he had been nominated by four branches of the union. The scrutineer investigated the complaint and wrote to the four branches concerned:

Aberdeen Revenue Branch

East Yorkshire & North Lincolnshire Revenue Branch

Marston Vale Revenue Branch and

Southampton Taxes Branch

2.20. The review and conclusions of the scrutineer's investigation were dated 2 June 1998 and submitted to the union on that date. She concluded that the responsibility for ensuring that the nominations were returned in accordance with the regulations, lay with the branches and that if a branch returns its form by post, and particularly by last post, on the day before the nominations close, it is taking a risk that the form will not be received on time and that it was reasonable to expect branches to take the precaution of using a guaranteed delivery service to ensure the form arrived in good time.

2.21. The scrutineer's investigation confirmed that only one nomination had been received on time for the complainant and that at the time of writing (2 June 1998) no other nomination forms had been received, for the complainant, by the union.

2.22. The one nomination received on time, from the East Yorkshire & North Lincolnshire Revenue Branch, had been made, not on the official nomination form, but instead had been made on headed branch note paper signed by the Branch Secretary and President and omitted any details about the place and date of the nomination meeting. She had been informed, by the union that, as this nomination was not on the correct form it had been ruled out. The scrutineer therefore concluded that in the view of USB the complainant had not received a valid nomination in accordance with the rules and regulations and was not therefore entitled to stand as a candidate in the election. On the basis of that conclusion the union went ahead with the elections.

2.23. At the hearing Mr Cockburn argued that it was a matter of fact that no nomination form satisfying the union's rules was received for the complainant. The exclusion by

the union of the complaint on this basis was not unreasonable and therefore did not fall foul of section 47(1) of the 1992 Act. He further submitted that if I took the view that either the union rule requiring the nomination to be on a prescribed form, or that nominations had to be received by the union by 3pm Friday 8th of May 1998 were potentially unreasonable that both were permitted by section 47(3) of the 1992 Act.

- 2.24. He concluded by stating that his submission was simply, that the union had not acted unreasonably (section 47(1)) or if it had acted potentially unreasonably (which was denied) section 47(3) of the Act applied as the union had in accordance with its rules excluded nominations not received on time or not on the official form.

### **Reasons for my Decision**

- 2.25. I find it was not unreasonable for the union to have rules that nominations had to be on official forms and that nomination forms had to be received on time. Indeed I am tempted to say that not to have a rule on timing would be unreasonable. The question was, did the union receive one or more valid nominations for the complainant by 3.00pm on Friday 8 May 1998. Or, more specifically, was it reasonable for the union to conclude on 2 June 1998 that the scrutineer was correct when she stated no valid nomination for the complainant had been received in accordance with the rules. I say 2 June because until then the union were still open to the possibility that correctly completed forms nominating the complainant had been received on time. Its request to him to provide an election address is evidence of that.

2.26. I made my own enquiries of all the five branches named by the complainant. Generally speaking the evidence I obtained coincided with that in the scrutineer's investigation (see para 2.20).

2.27. I can quickly dispose of the supposed nomination from the East Yorkshire and North Lincolnshire Branch. This nomination although received on time was not made in, or on, the correct form. The rules provided that a nomination must be made on an official nomination paper with a declaration signed by the branch chairperson and secretary and that the rule relating to the holding of a Branch General Meeting had been complied with. The form also had to give the date and place of the meeting. The letter from the East Yorkshire and North Lincolnshire Branch clearly did not satisfy these requirements. The rule requiring an official form to be used and evidence given of official procedures having been followed are not unreasonable. The union was right to reject this as a nomination on 8 May and on reconsideration on 2 June 1998.

2.28. Similarly the questions relating to the Wessex Collection branch require no further consideration. The branch secretary has confirmed that no nomination was posted.

2.29. As far as the other three branches are concerned, my enquiries, like those of the scrutineer, produced responses suggesting that signed nomination forms were despatched in time (just) to have reached the union by 3pm of 8 May. In no case is there proof of posting.



- 2.30. Only in the case of Aberdeen was the branch able to supply a copy of their nomination form (a copy which I believe to be authentic). In the case of Marston Vale, my enquiries suggest there may have been procedural errors in making the nomination but elicited the same answers about posting as did the scrutineer's enquiries.
- 2.31. This then is the apparent crux of the problem. Three branches say they posted nomination forms, none was able to produce proof of posting, and the union says it did not receive any of these forms by the deadline. Indeed none of them had turned up by the time of the hearing in early October 1998. This suggests that either something went wrong at the branch level and they were not in fact posted, or that they were lost in the post or that they were received at one of the union's headquarters buildings and then ignored or lost.
- 2.32. None of these options or combinations of them seem entirely credible. There was a degree of vagueness about what happened at branch level and one cannot rule out that the established slip up with Wessex was replicated elsewhere. But it is unlikely to have been the case with all three branches. Similarly letters do get lost in the post, but it is statistically unlikely (but not impossible) that three letters nominating one person posted within a space of two days all went astray.
- 2.33. Because of doubts about the other explanations I paid particular attention, during the hearing, to the arrangements the union made for receiving, recording, storing and checking nominations received. I first though sought the complainant's view on why the union might wish to exclude him from being a candidate. He thought this might

be because he was not a member of the faction supported by the joint general secretaries. I do not find this very convincing as many candidates who did stand were members of factions opposing the general secretaries and, as the complainant himself said, he was independent - not a member of any faction. No credible motive was given for the union ignoring nominations for him, if any were received.

2.34. The next question is were the three, or any one of the three, received and lost. I found the union's evidence of the systems in place and the measures taken to deal with incoming nominations, to be convincing. It would have been extremely difficult, in my opinion, for forms received to have been lost. I heard evidence of how the incoming post was received, who opened it, what happened to it, the security arrangements and the measures taken to deal with late nominations and any nominations possibly incorrectly addressed and sent to the union's other offices. On the basis of this direct evidence I believe it is as, or more, unlikely that the nominations were received and lost as it is that none of the three was posted, or that those which were posted were lost in the post.

2.35. That though is not the primary issue I have to decide. In my view the correct question is whether the decision of the union to the effect that it had received no valid nomination for the complainant was, in all the circumstances, reasonable at the time it was made. When the question of the complainant's nomination was first raised, the union launched an extensive series of checks of its own records, it also, along with the scrutineer, checked with the branches said to have made the nominations. The purpose of those checks was to secure evidence to help assess if a valid nomination had been

received for the complainant. It also invited the complainant to submit an election address in case a valid nomination was found to have been received on time.

5. The question of whether nominations were posted is significant only in so far as it may help trace them; it does not determine whether or not they were received and received on time. Proof of posting (if any were available) is not proof of receipt. I repeat, the test in this complaint was whether it was reasonable for the union to conclude that valid nominations were received on time by the union, not whether nominations were posted. After several weeks of checking whether the union had lost any forms or whether they had never arrived, the scrutineer and the union concluded, on 2 June 1998, that no valid nomination had been received for the complainant by 3pm on 8th May. In my view that was a reasonable conclusion in the light of the available evidence and for that reason I do not believe the complainant was unreasonably excluded from being a candidate in the election in question. Moreover if I had to reach a conclusion on the question of fact my view would be that on the balance of probabilities no valid nomination for the complainant had been received by the deadline.

6. It is for these reasons I dismiss this complaint.

**Complaint 2 (that the scrutineer's report failed to state all the information required by Section 52(1) of the Act.)**

**The Complainant's Case**

- 2.38. The complainant argued, in correspondence, that the scrutineer's report on the election was deficient because it did not contain information on the number of voting papers distributed for the purposes of the election, the number of voting papers returned or the number of invalid votes but was just a list of votes cast for each candidate without any mention of who had counted or stored the ballot papers.
- 2.39. In further correspondence he added that the publication of results, scrutineer's statement and scrutineer's report may be deficient in that the scrutineer's statement did not include details of his complaint and that the scrutineer's report on the union's register was not included with the results or sent to offices.
- 2.40. At the hearing to consider complaints 1 and 5. The complainant produced a copy of a union "briefing" BB/17/98 dated 7 July 1998 and a copy of the union magazine "PCS the magazine for PCS members" dated September 1998. He stated that the briefing note was deficient in respect of the scrutineer's report and that the magazine did not contain any reference to the scrutineer's report.

## **The Union's Response**

- 2.41. The union stated that it was their practise to inform members of the result of the elections as soon as possible after the election. This they did by way of the circular "Briefing BB/17/98" issued 7 July 1998, which they said was never intended to be the required statutory notice.
- 2.42. The statutory notice, the union stated, was issued as a separate booklet contained within the September edition of the union's magazine "PCS the magazine for PCS members" and that the circular of 7 July contained a sentence that "It should be noted that the report referred to above (*ie the scrutineer's report*) will be reprinted in full in the September edition of "PCS- The Magazine"." (my emphasis added). The magazine, the union stated, was published in the last few days of August and was available to members from September 1998.

## **Reason for my Decision**

- 2.43. Under the 1992 Act the trade union is required within a period of three months after it receives the scrutineer's report to send a copy of the report to every member or to take all such other steps for notifying the contents of the report to the members as it is the practice of the union to take. The relevant section where the full text can be found is at Section 52(4) of the 1992 Act.
- 2.44. The scrutineer's report on the election in question was dated 6 July 1998 and was received by the union the same day. Therefore, a copy of the report or notification of the contents had to be issued in one of the two ways shown above by 5 October 1998.

2.45. I have examined both the "PCS briefing BB/17/98" of 7 July 1998 and the September 1998 edition of the union's magazine "PCS the magazine for PCS members", which did include the booklet referred to by the union. The circular of 7 July 1998 clearly was a summary of the result of the election and was not the required notification of the full scrutineer's report as required by statute. The booklet issued with the September 1998 edition of the union's magazine was clearly headed:

"1998 national executive committee elections Scrutineer's reports as provided by Unity Security Balloting Services, 130 Minories, London EC3N 1NT"

And I am satisfied that this document was the required notification of the scrutineer's report issued by the union within the required timescale.

2.46. I have also read the booklet and I am satisfied that it did contain the result of the election and all the information set out in paragraphs 2.38 and 2.39 above about which the complainant complained.

2.47. It is for these reasons I dismiss this complaint.

**Complaint 3 ( that the union had failed to distribute the complainant's election address with the voting papers).**

### **The Complainant's Case**

2.48. The complainant argued that section 48(1)(b) (see para 1.7 above) required every election address submitted to the union had to be distributed. He added that "Nominations" were not mentioned and that he had submitted an election address on time, which was not distributed by the union.

### **The Union's response**

2.49. In response to this complaint the union stated that they had requested the complainant submit his election address to them. This arose as a result of the complainant contacting the union a few days after nominations closed regarding his not receiving any valid nominations (complaint 1).

2.50. The union informed me that the complainant contacted the union by telephone and fax on the 12 May 1998 regarding his nomination and, as a result of that contact, they initiated checks to ensure that no valid nomination had been received. Timing, they informed me, was critical and therefore the complainant was advised to submit his election address. This was in case a valid nomination for the complainant was subsequently found to have been received, in which case it would then have been necessary to print the complainant's election address. The complainant submitted his election address on 13 May 1998.

2.51. The union added that for the complainant “..to try to use this now as in some way suggesting that his nomination was considered valid at the time is simply preposterous.” It continued to the effect that in respect of Section 48(1)(b) of the Act every election address received on time which related to a valid nomination in the election was distributed with the voting papers.

### **Reasons for my Decision**

2.52. Section 48(1)(a) of the Act (see para 1.7 above) provides that the trade union shall ensure that every candidate in an election to which the Act refers be given an opportunity of preparing an election address. Section 48(1)(b) secures that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed.

2.53. It is common ground that the complainant was not recognised as a candidate and I have already decided (complaint 1) that the union did not unreasonably exclude the complainant from standing in the election. It therefore follows that on no interpretation of the law was the complainant a candidate in the election. The statute requires a candidate be provided with the opportunity to submit an election address and for the union to distribute it by post along with the voting papers. As the complainant was not a candidate in the election, the union were under no obligation to distribute his submitted election address. In fact for the union to have distributed his election address, or the election address for any non candidate, would have confused the electorate.

2.54. It is for these reasons I dismiss this complaint.



**Complaint 4 ( that a copy of the union's register of names and addresses of its members was not supplied to the scrutineer).**

### **The Complainant's case**

2.55. The complainant argued that the union could not have provided the scrutineer with a proper register of names and addresses as the general secretary, Mr Reamsbottom, had admitted, in a letter to the scrutineer, that Aberdeen was not "on system."

2.56. In further communication with my Office the complainant added that it was also clear that the general secretary was unaware of the existence of Wessex Collection (branch), that PCS headquarters would expect to communicate with branches on a weekly (if not daily) basis but would only correspond directly with members perhaps once a year when ballot papers are issued and it was therefore about a hundred times more likely that a branch register would be accurate than a members' register.

### **The Union's Response**

2.57. The union's short response was that a copy of the union's register was made available to the scrutineer.

### **Reasons for my Decision**

2.58. Under Section 24 of the Act a trade union has a duty to, and I quote, "...compile and maintain a register of the names and addresses of its members, and shall secure, so far as is reasonably practicable, that the entries in the register are accurate and kept up-to-date.". The Act (section 24(2)) also provides that the register may be kept by means

of a computer. The Act does not provide for any record to be kept of branch structures, branch addresses or membership of each branch. The reference to Aberdeen was clearly to a branch whereas the statute refers to members and their addresses.

- 2.59. Section 49(5A)(a), (see para 1.7 above) provides that the trade union “supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register...”.
- 2.60. The Scrutineer’s report on the election is also required to state whether the scrutineer has inspected the register, or has inspected a copy of the register supplied by the union. Whether, if she has inspected the register, she was acting on a request from a member or at her own instance, whether she declined such a request and finally whether the inspection revealed any matters which she considered should be drawn to the attention of the union (see para 1.7).
- 2.61. As I have stated in para 2.45 I have examined the copy of the scrutineer’s report issued with the September issue of the union’s magazine. I found that the scrutineer reported that she did have access to the register (and, in fact, inspected the register at her own request and again when requested to do so by three members) and that the report contains full details of her inspection and matters that were subsequently drawn to the attention of the union.
- 2.62. It is for these reasons that I dismiss this complaint.

**Complaint 5 (that the union failed to ensure the independence of the scrutineer)**

**The Complainant's Case**

2.63. In correspondence with my Office the complainant argued that the scrutineer's independence could reasonably be questioned by her actions and by, so he was told, PCS making a payment. He commented that:

“ a. I understand that she has or will receive a substantial payment from PCS Headquarters,

b. She wrote to branches and when all branches confirmed nominations in all respects appears to have ignored the evidence,

c. Appears to have ignored the evidence from Royal Mail and the overwhelming balance of probabilities,

d. Failed to establish the position regarding Wessex Collection,

e. Appears to accept what Headquarters says at face value,

f. Does not keep promises,

g. Loses temper on telephone although I accept she has apologised, and

h. Does not reply to reasonable questions contained in a succession of letters.”

- 2.64. In further correspondence he commented that he felt the scrutineer had not carried out her duties in an independent manner, rules had been applied selectively and she had condoned and applauded breaking of rule (in relation to the issue of duplicate nomination forms).
- 2.65. At the hearing of this complaint, the complainant developed his argument by stating this complaint was in two parts, the ensuring part and the interference part (section 49(6) - see para 1.7). Regarding the ensuring part, he added that he had seen no job description and argued that the scrutineer had not checked things in detail, for example the nomination she was shown by the union was from Wessex Taxes whereas he had been nominated by Wessex Collection (a different branch) and, moreover, the Wessex Taxes nomination was not completed properly. He also referred to the scrutineer's letter to the union commenting on the complainant's complaint, in which she stated "I am sure you have a proper recording system for receipt of nominations". These factors he contended did not create confidence that the scrutineer had carried out detailed checks or examined things carefully and that she was generally unfamiliar with the rules.
- 2.66. On the question of interference he stated his view that PCS Headquarters had interfered by making a payment to the scrutineer and by misleading her regarding a possible nomination from Wessex Collection. He added that he needed to draw his own conclusions from the fact that the scrutineer was initially helpful assuring him the ballot would be delayed and that there was subsequently a marked change in attitude. He questioned whether this indicated that there was interference from PCS.

## **The Union's Response**

- 2.67. The union's response was that it was satisfied that the scrutineer had carried out her duties fairly and adequately. They referred me to Section 49(6) of the Act and to the two parts of that section. The scrutineer's functions, they stated, were given in Section 49 of the Act and that it was incumbent on the complainant to demonstrate one of those functions that had not been carried out. The union maintained first that the onus of proof was on the complainant to show a breach and secondly that there had been no breach.
- 2.68. On the question of interference, the union stated that the scrutineer had stated in her report, that there had been no interference. The union added that the reference to Wessex Taxes made by the complainant was not in the scrutineer's report because this complaint was not before her at the time of her report.
- 2.69. On the question of whether the scrutineer had inspected the register, the union referred me to the scrutineers's report where two pages were devoted to her inspection.
- 2.70. Referring to the payment of a fee the union argued that this was irrelevant to either limb of section 49(6) and that there was no evidence of interference in this respect. They continued that the usual fee was paid and argued that it would have been wholly unusual if a fee was not paid.
- 2.71. Finally they informed me that UBS was a large organisation with many clients and that they had recently dealt with the Labour Party NEC elections and that they were not a

body who relied on one client and, they contended, I should disregard the payment of an ordinary fee as going in any way to undermine the independence of the scrutineer.

### **Reasons for my Decision**

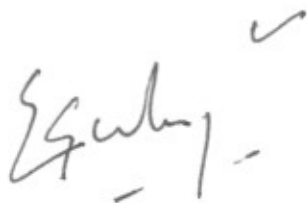
- 2.72. The allegations raised in the complainant's case, he states, point to a lack of independence of the scrutineer. The union's response was that none of the points raised by the complainant, were functions of the scrutineer as listed in the statute.
- 2.73. I agree with the union's view that none of the points raised by the complainant relate to the statutory functions of the independent scrutineer appointed by the union and no evidence was produced that the trade union had failed to ensure that the scrutineer had carried out her functions in an independent manner or that there was interference with the scrutineer, by the union, in the carrying out of those functions.
- 2.74. I do not find the fact that UBS were paid by the union for their services points to either interference by the union with the scrutineer or to a lack of independence. I agree with the union's submission that it would be extremely unusual if a professional organisation providing services to the union were not paid (in fact in my view, if this were to happen, it could suggest of a lack of independence).
- 2.75. The scrutineer's report on the election was dated 6 July 1998 and it is my view that the scrutineer's duties in relation to the election finished that day with the submission of her report. Many of the points made by the complainant relate to his dissatisfaction

with the way the scrutineer dealt with his complaint but, in my view, do not provide proof that there was a breach of the scrutineer's functions carried out under the statutory provisions or that the union interfered with the scrutineer in the performance of her duties, and it is for these reasons that I dismiss this complaint.

### **Observations**

- 3.1. I am empowered by section 55(5) of the Act to make observations on any matter arising from or connected with the proceedings. I do so in this case as there is one clear lesson for branches and their potential candidates and one point I would like to draw to the unions attention.
- 3.2. If the rules requires something to be delivered before a given deadline, it is incumbent on the person submitting it to ensure before the deadline expires that it has been so delivered. Proof of posting, though valuable in its own right, is not proof of delivery. Even if something is sent by recorded or guaranteed delivery if there is an important and absolute deadline the person sending it should check that it has been received.
- 3.3. While I have accepted that the requirements for nominations to be on a proper form and to be received on time are reasonable. I am less convinced that, given modern communication methods, the exclusion of faxed documents received on time is reasonable. It may be, as in this case, more convenient to have all nominations on a

particularly distinctive coloured paper, but that should not rule out a fax followed (perhaps shortly after the deadline) by hard copy on the proper form.



**E G WHYBREW**

**Certification Officer**