

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

Mr I Street & Mrs F Street

v

UNISON: The Public Service Union

(on remission from the Employment Appeal Tribunal)

Date of Decision

17 April 2015

DECISION

Upon an application by Mrs Frances Street and Mr Ian Street (“the claimants”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

I refuse Mr and Mrs Street’s application for a declaration that in or about December 2011 UNISON breached rule G.3.2 of its rules by failing to hold an Annual General Meeting of its Derbyshire County Branch in the January-March quarter of 2012.

REASONS

1. Mr and Mrs Street brought this complaint as members of UNISON: The Public Service Union (“UNISON” or “the Union”). Their application was first received at the Certification Office on 17 May 2012 and raised two complaints. Following correspondence, the claimants confirmed their two complaints in the following terms:

Complaint 1

That in or about December 2011 UNISON breached rule G.3.2 by failing to hold an annual general meeting of Derbyshire County Branch of the Union in the January-March quarter of 2012.

Complaint 2

That on or around early June 2011 the Union breached rule C.2.6.2 by denying the retired members of the Derbyshire County Branch the opportunity to stand as and/or vote for delegates to the National UNISON Retired Members Conference held in October 2011.”

2. I investigated the above alleged breaches in correspondence and a hearing took place on 17 January 2013. My written decision on the two complaints was issued on 8 February 2013 (D/28-29/12-13). I upheld the first complaint and dismissed the second. In respect of the first complaint, I did not consider it appropriate to issue an enforcement order.
3. The Union appealed my decision to uphold the first complaint to the Employment Appeal Tribunal (“the EAT”). There was no appeal against my decision with regard to the second complaint. The EAT heard the appeal on 28 November 2013. Its decision was issued on 4 December 2013 and the written judgement was issued on 11 February 2014 (UKEAT/0256/13). The EAT, presided over by Mr Justice Keith, upheld the Union’s appeal and remitted the first complaint to me to be reconsidered in the light of its judgement.
4. Following receipt of the transcript of the EAT judgement, I caused enquiries to be made of both parties about the form that remitted hearing should take, the issues to be determined and the terms of any order that would be appropriate if I found in favour of the claimants. The correspondence became protracted as the claimants were unable to attend to the matter as promptly as they would have wished for health reasons. Following two postponed hearing dates, the remitted complaint was eventually heard by me on 1 April 2015.
5. At the hearing on 1 April, Mrs Street represented the claimants. The claimants did not produce any witness statements and did not give oral evidence. The Union was represented by Mr Stuart Brittenden of counsel, instructed by Ms Jeanette Sainsbury, a Legal Officer of UNISON. The Union submitted written witness statements from Mr Kevan Nelson, Regional Secretary of UNISON North West Region and Ms Helen Black, Regional Secretary of UNISON East Midlands Region. At the relevant time Mr Nelson was employed at the Union’s Head Office and was responsible for constitutional matters. Mr Nelson and Ms Black gave oral evidence. There was also in evidence the two bundles of documents used at the first hearing before me in January 2013. The first bundle consisted of 627 pages and contained letters and other documentation supplied by the parties for the hearing in 2013. The second, similarly large, bundle consisted of the rules of the Union as at Vesting Day 1993, various internal guidance documents for officers of the Union and the rules of the Union current at the relevant time. This second bundle was augmented for this hearing by additional documents adduced by the Union relating to the rules and constitution of the Derbyshire County Branch at various dates and a copy of an emergency motion put to the Derbyshire County Branch in December 2010. A third bundle was produced for this hearing which contained my decision in this matter of February 2013, the transcript of the judgement of the EAT of February 2014 and copies of the correspondence between my office and the parties following the EAT judgement. At the hearing I admitted to Bundle 1, as page 628, a new document produced by the claimants, being a letter dated 29 March 2015 from Mr Graham Skinner, former Retired Members Secretary of the Derbyshire County branch. Mrs Street and Mr Brittenden provided skeleton arguments.

The Issues to be Determined

6. It is common ground that the Derbyshire County branch of the Union did not hold an AGM in 2012. It is also clear that rule G.3.2 states: “*Branches will hold an annual*

meeting in the January-March quarter". There is therefore a primary facie breach of rule G.3.2, unless other considerations compel a different outcome. The Union maintains that the fact of Regional Supervision is just such a compelling consideration.

7. In my decision of 8 February 2013, I found that the rules of the Union could not be interpreted so as to permit the Development and Organisation Committee ("DOC") to temporarily suspend or disapply rule G3.2 under the guise of regional supervision, an expression which is not found in the rule book. The EAT did not disagree with that analysis but found that there was a rule to be implied into the rules of the Union by custom and practice that permitted the suspension of certain rules during a period of regional supervision. At paragraph 16 of its decision, the EAT found that "*a term of the kind contended for by UNISON should be implied into its rules*". At paragraph 11 the EAT sets out the implied term for which UNISON contended, namely:

"...An implied term permitted UNISON to suspend the operation of those of its rules relating to the organisation and management of its branches if intervention in the form of regional supervision is required, provided that the suspension of those rules which it is proposed to suspend is both necessary and not a disproportionate way of achieving the aims which regional supervision is intended to achieve...."

On the basis of that finding, the EAT stated at paragraph 18 that:

"The critical question is whether in the light of the implied term which we think the rules are subject to, the suspension of the requirement to hold the AGM in 2012 was both necessary and a proportionate way of achieving the ends which regional supervision was intended to achieve, having regard to the assault which that would make on the right of rank and file members of the branch to participate in the democratic processes of the branch."

It then stated at paragraph 19 that it proposed to allow the appeal and

"to remit the case back to the Certification Officer to enable him to decide whether the suspension of the requirement to hold the AGM in 2012 was both necessary and a proportionate way of achieving the aims which regional supervision was intended to achieve."

8. In correspondence prior to this hearing before me, I advised the parties that it was not open me to re-examine the existence of such an implied term. I stated that I would need to be addressed on the aims which this Regional Supervision was intended to achieve and whether the suspension of the requirement for this branch to hold an AGM in 2012 (the effective suspension of rule G.3.2) was both necessary and a proportionate way of achieving those aims.

Findings of Fact

9. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
10. It was agreed that the facts as I found them to be in my decision of 8 February 2013 remained the basis upon which this remitted case falls to be decided and accordingly

I incorporate those facts in this decision. For ease of reference, however, I set out an abbreviated chronology of the relevant events having regard to my previous findings of fact and the evidence given at this hearing.

11. Ms Black became the Regional Secretary of the East Midland region of the Union in 2004. She became aware of difficulties at the Derbyshire County branch from about the time of her appointment and was aware of an internal report in 2007 that called for an urgent review of the structures of the branch. No action was taken on that report.
12. On 16 December 2010 the Branch Committee of the Derbyshire County branch passed a motion highlighting major concerns and proposing a new branch structure. However, at a subsequent meeting of the Branch Committee on 17 March 2011, the earlier motion was set aside.
13. On 30 March 2011 the branch held its AGM which turned out to be an acrimonious affair and was in effect aborted after angry exchanges.
14. Having regard to her personal knowledge of the longstanding difficulties at this branch and these recent events, Ms Black decided that there should be an investigation into what appeared to be an ongoing and serious dysfunction at the branch. She asked the relevant regional organiser, Scott Kingswood, to conduct that investigation and prepare a report.
15. Mr Kingswood's subsequent report is dated 5 April 2011. It is entitled "Branch Reform & Development: A Case for Regional Intervention" and is some 29 pages in length. Amongst the problems identified in its Executive Summary were:

"In fighting between many of the branch leadership', 'aggression and unacceptable behaviour between many of the leadership including racist remarks and attempts to instigate physical fights', 'lack of respect for leadership decisions by key officers', 'dysfunctional financial processes and dealings', 'lack of consultation mechanisms with membership', and 'no joined up strategy for recruitment, campaigning or engagement with membership'."

Mr Kingswood concluded that:

"The branch cannot effectively make decisions, cannot dynamically or flexibly respond to protecting the membership's best interests in an efficient or effective way and cannot guarantee the stability of organisation or finance between its elected leadership."

He considered that the way forward would be:

"best achieved through intervention which aims to break old and unacceptable cycles of behaviour and customs and aims to replace this with a culture of unity and community".

16. On 20 April 2011 Ms Black wrote to Mr Nelson in his capacity as the person responsible for constitutional matters. She enclosed a copy of the Kingswood report and summarised the issues raised in it under the following headings 'Bullying/aggressive behaviour; Finance; Structure and Organisation; and

Representation'. She commented on the inability of the branch to function properly at a time when 2,000 members were potentially facing redundancy. She concluded by stating:

"I do not believe wholesale regional supervision is necessary because key branch officers – the Branch Secretary, Assistant Secretary, Branch Chair, Vice Chair, along with some of the lead convenors have worked closely together and with the region to try and improve things and I am confident they will continue to do so. Rather I am asking for authority to suspend the current Branch Committee, the Finance Committee and all the various stewards committees that exist – for the reasons outlined in the report and summarised above. In the absence of these committees, the Branch would instead be run by the elected lay leadership, the Branch Secretary, Chair, Treasurer, Equalities Officer and Lead Convenors – who would form a Branch Management Committee. The Branch Management Committee would, with support from the Regional Organiser, Regional Head of Local Government and one of the joint Regional Convenors;

- manage the day to day running of the branch, representation of members and negotiations with the employer;*
- develop and implement a plan under the Joint Assessment process to improve branch organisation – including a review of the administration and financing of the branch;*
- develop a new branch structure – to put to members for their approval no later than the next AGM in March 2012."*

17. On 4 May 2011 the Chair of the DOC, Ms Sue Highton, agreed with the request for Regional Supervision, as appears from Mr Nelson's email to Ms Black of the same date. Ms Black appointed Mr Andy Belfield, Regional Head of Local Government, to oversee the day to day running of the branch and make regular progress reports to the DOC.
18. On 13 May 2011 Ms Black wrote to all branch officers and representatives. She stated that she has sought and received approval from the NEC to put the Derbyshire County branch under Regional Supervision until such time as she was satisfied that it was functioning once more. She went on to state that the branch would be run by a Leadership and Management Committee, made up of branch representatives and regional staff, which would be convened by Mr Belfield. She also stated that with immediate effect all current branch meetings are suspended, including the Branch Committee, the Finance Committee and Stewards Committees.
19. On 18 May 2011 the DOC met and considered a report on the Derbyshire County branch which was in virtually identical terms to Ms Black's letter of 20 April, together with a view from the Regional Convenor. He is a lay member of the Union who occupies a position equivalent to that of the chair of the regional committee and is considered to be representative of the lay membership. He considered that the branch was "in complete disarray and that there appeared to be little or no respect for the Branch Secretary or Chair".
20. On 19 August 2011 Miss Jeannette Lloyd, the Branch Secretary of the Derbyshire County branch, wrote to all branch members with an update on the Regional Supervision. She reported that there had been improvements but more work still needed to be done.

21. On 7 December 2011 the DOC met and considered a further report on the Regional Supervision of the Derbyshire County branch. It endorsed the recommendations in that report. The report noted that the branch was working to a set of rules which had not been agreed at a quorate AGM and was not compatible with the core branch rules (as agreed by the NEC in 2009 and now found in the UNISON Code of Good Branch Practice). The report commented that there were no plans at present to hold an AGM in 2012 and that *“there is some way to go to ensure that the bullying and intimidating atmosphere is permanently removed and that the branch can function independently of regional support”*.
22. In accordance with rule G.3.2, the branch should have held an AGM between January and March 2012. It did not do so as it was then in Regional Supervision and rule G.3.2 was effectively suspended or temporarily disapplied.
23. On 16 May 2012 the DOC met again and considered a further report on the Regional Supervision of the Derbyshire County branch. The report noted that the branch had agreed a new set of rules and that it was hoped the branch would be in a position to commence branch meetings later in 2012 and hold an AGM in 2013.
24. Mr and Mrs Street commenced this complaint to me on 17 May 2012.
25. On 19 September 2012 the DOC considered a further report on the Regional Supervision of the Derbyshire County branch. This report noted that HR Consultants had been called in to help break down communication barriers, that it was still the intention to recommence branch meetings later in 2012 and hold an AGM in 2013.
26. On 7 November 2012 the DOC again met and considered a report on the progress of the Regional Supervision of the Derbyshire County Branch. It noted that the new Branch rules had been endorsed by the region and implemented in May 2012 and it was proposed to hold a Branch Committee meeting in November and an AGM in March 2013.
27. In 2013, the branch AGM was held on 29 May.
28. The Branch was discharged from Regional Supervision on 1 October 2013 by virtue of a decision of the DOC on 18 September 2013.
29. In 2014, the branch AGM was held on 31 March.
30. In 2015, the branch AGM was held on 30 March.

The Relevant Statutory Provisions

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

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)-(c)

(d) the constitution or proceedings of any executive committee or of any decision-making meeting;

The Relevant Rules of the Union

32. The rules of the Union which are relevant for the purposes of this application are from the Union's 2012 rulebook and are as follows:-

Rule D

Structure of the Union at National Level

2 NATIONAL EXECUTIVE COUNCIL

2.1 FUNCTIONS AND AUTHORITY

The general management and control of the Union between National Delegate Conferences shall be vested in the National Executive Council, which shall comprise representatives elected from the Regions and Service Groups plus four national black members' seats and a young members' seat. It shall have 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. It shall not do anything that is inconsistent with these Rules or the policy of the Union as laid down by the National Delegate Conference.

2.8 COMMITTEES

The National Executive Council shall have the right to appoint such Committees from amongst its membership as it shall see fit, and shall have the power to delegate to such Committees any of its functions as it considers appropriate.

Rule G

Branches

1 BRANCH ORGANISATION

1.1 Every member, excluding employees of the Union, shall be in membership of a branch established under these Rules. Disputes concerning the branch to which it is appropriate for a member to belong will be determined by the National Executive Council.

1.2 Branches will be established in accordance with a scheme approved by the National Executive Council.

3 BRANCH MEETINGS

3.1 All members of the branch shall be entitled to attend branch meetings.

3.2 Branches will hold an annual meeting in the January - March quarter. Additional meetings shall be held in line with the agreed branch rules or when summoned by the Branch Committee to discuss any matter affecting the branch.

3.4 At the annual meeting of the branch, the following business shall be transacted:

1 the receiving of reports from the Branch Officers and the Branch Committee, including a report on the branch's finances and presentation of branch accounts;

2 the election or confirmation of election of Branch Officers for the coming year;

3 the election or confirmation of election of branch representatives to other levels of the Union and to external bodies;

4 such other business as may be required by the branch rules.

9 VISITS BY EMPLOYED OFFICIALS TO BRANCHES

9.1 An employed official of the Union may visit a branch at the request of either the branch or the official, provided that no such visit will be made without agreement of the Branch Committee or Branch Officers.

9.2 The National Executive Council or the General Secretary or other official acting with the authority of the National Executive Council is entitled to request an employed official to visit a branch where it is necessary to further the interests and policies of the Union.

9.3 An employed official is also entitled to visit a branch:

- 1 for the purpose of financial checks and inspection
- 2 in the event of industrial action
- 3 where it appears to the General Secretary or the Regional Secretary that a branch may no longer be functioning effectively.

Consideration and Conclusions

33. Mr and Mrs Street's remitted complaint is in the following terms;
"That in or about December 2011 UNISON breached rule G.3.2 by failing to hold an annual general meeting of Derbyshire County Branch of the Union in the January-March quarter of 2012."

34. Rule G.3.2 of the rules of the Union provides as follows:

Rule G Branches

3 Branch Meetings

3.2 Branches will hold an annual meeting in the January - March quarter. Additional meetings shall be held in line with the agreed branch rules or when summoned by the Branch Committee to discuss any matter affecting the branch.

Summary of Submissions

35. Mrs Street, for herself and her husband, submitted that the suspension of the requirement for the Derbyshire County branch to hold a branch AGM in 2012 was completely disproportionate. She argued that a more proportionate response to the difficulties faced by the branch would have been for the Union to have given relevant branch members appropriate advice, support and training with disciplinary action being taken against those considered to have committed serious disciplinary offences. She further considered that the Union could have used its powers under rule G.9 to have required the branch to accept a visit by an employed official. Alternatively, she considered that the NEC could have proposed a rule change under rule D.1.10.3 to change the rules of the Union to allow for Regional Supervision. Mrs Street contended that to place the branch in Regional Supervision was to effectively disenfranchise over 11,000 branch members who had done nothing wrong and, for a period of over 2 years, exclude them from branch committee meetings, branch AGMs, Area Meetings and meetings of self organised groups and to disqualify them from standing for election as branch officers. She further argued that the issues raised in the Kingswood report had not been established as fact as they had not been put to the individuals concerned and properly tested. To this extent, she referred to the report as being 'a dodgy dossier'. She regarded it as curious that no disciplinary action had been taken if the incidents were as serious as the Kingswood report alleged. She also regarded other issues raised in the Kingswood report as being trivial. Viewed overall, Mrs Street regarded the wholesale regional supervision of the branch to have been unnecessary. She also regarded the decision not to hold a branch AGM in 2012 as being draconian and stopped members taking part in discussion and decision making in an unaccountable manner.
36. Mr Brittenden, for the Union, submitted that the aim of Regional Supervision had been to address the significant managerial, behavioural and organisational problems that existed within the branch and bring it back to being organisationally effective and with good branch management structures, behaviour and practices in place so it could again effectively represent the interests of branch members. He

referred to the problems that were described in the Kingswood report and Ms Black's letter to Mr Nelson of 20 April 2011 and in particular to:

- a. the concerns about the leadership and management of the branch;
- b. the culture of antagonism and ill feeling (bordering on occasions on bullying and intimidation);
- c. the poor management of individual work-related complaints about which there had been numerous complaints and concerns from members about representation;
- d. the system and structures for communicating and consulting members on bargaining issues that affected them, which were inconsistent and in some places non-existent;
- e. the declining number of branch members;
- f. the problems with branch finances, including concerns that it had been facing bankruptcy;
- g. the poor management and deployment of branch employed staff;
- h. the confused and ineffective nature of branch structures;
- i. the general lack of respect demonstrated by a number of branch officers and representatives towards colleagues and in particular a lack of respect for decisions made by the leadership of the branch, resulting in a culture that is at best inappropriate and at worst bullying in some areas.

37. As to whether the decision not to hold a branch AGM in 2012 was necessary to achieve the aims that Regional Supervision was intended to achieve, Mr Brittenden argued that the extent of the managerial, behavioural and organisational problems outlined above was such as to make Regional Supervision necessary. He also argued that by the time the decision had been made not to have a branch AGM in 2012, it had been discovered that the branch rules under which such an AGM would have been conducted were invalid and that it would not have been possible to hold a lawful AGM, conducted within valid branch rules, in the period between January and March 2012. He further noted the chaotic nature of the branch AGM in 2011 and the report before the DOC in December 2011 that there was still some way to go before the bullying and intimidating atmosphere within the branch could be considered as having been permanently removed.

38. As to whether the decision not to hold a branch AGM in 2012 was a proportionate way of achieving the aims that Regional Supervision was intended to achieve, Mr Brittenden noted that the Derbyshire County branch was very large with over 11,000 members. He argued that the problems that existed there were considered to be serious and deep-rooted, involving behavioural, constitutional, financial, organisational and representational problems and that, taken together they had a profound impact on the branch's ability to properly and effectively represent its members. He submitted that it was not disproportionate for the Union to postpone the 2012 AGM to enable the branch to rebuild itself as an effective self-managing entity with valid rules enabling it to conduct a lawful AGM.

Conclusion

39. In my previous decision in this matter dated 8 February 2013 I outlined my sympathy for the dilemma faced by any Union with dysfunctional branches. At paragraph 56, I stated:

"I'm aware of the real practical difficulties that trade unions have in ensuring the proper functioning of their branches, especially large trade unions. UNISON has about 1,100 branches. Each is dependent on members giving their time and efforts voluntarily, often in stressful and sometimes in political circumstances. Internal disputes, personality conflicts, mismanagement and financial problems are inevitable in some branches some of the time. It is important that those with overall responsibility for a Union are able to manage those difficulties, especially where they impact significantly on the interests of the ordinary branch member."

40. On the other hand, I also observed in that decision that Regional Supervision can have a serious impact on the democratic right of union members. I commented at paragraph 61:

"Only by belonging to a branch can a member participate in some of the democratic processes of the Union, such as the election of branch delegates and the submission of branch resolutions. The branch is an important first building block in a Union's constitution. If a branch is closed, the member must be reallocated to another branch (or branches) and thus they retain their right of democratic participation. If a branch is put in Regional Supervision, the members of that branch lose those rights which derive from the rules that have been set aside. This can be for a substantial period. I heard evidence of one Regional Supervision lasting over four years and another over five years. In the present case, the Regional Supervision commenced in May 2011 and it is hoped it will end after March 2013, a period of nearly two years. These are substantial periods for members to be deprived of certain basic rights contained in the contract of membership for which they signed up."

41. It is with such competing considerations in mind that I have to determine the matter remitted to me by the EAT; namely whether the suspension of the requirement to hold the branch AGM in 2012 was both necessary and a proportionate way of achieving the aims which Regional Supervision was intended to achieve.
42. Regional Supervision is a term which does not appear in the express rules of the Union but it has been found by the EAT that it is of such longstanding that it constitutes an ingredient of a rule to be implied by custom and practice. However, a declaration of Regional Supervision does not have the same practical effect in all situations. The impact of Regional Supervision varies depending on the degree of dysfunction within the branch. In extreme cases the region may take over all aspects of the branch. In other cases, many aspects of branch activity may be allowed to continue as before whilst more targeted intervention is put into effect. In most circumstances the DOC will determine the appropriateness or otherwise of Regional Supervision whilst the Regional Secretary in question will determine the degree of intervention, subject always to the authority of the DOC. The decision to suspend or temporarily disapply certain rules relating to branch organisation depends on the degree of intervention considered appropriate to remedy the dysfunction which merited the decision to put the branch into Regional Supervision. It is at this stage that the Union must give serious consideration as to whether the situation merits the suspension of any rules and, if so, which rules. Should it decide that rules are to be suspended for the purpose of Regional Supervision, it must be prepared to defend that position on the basis that their suspension is both necessary and a proportionate way of achieving the aims of Regional Supervision. The rules of the Union are not to be set aside lightly.

43. Turning to the facts of this case, I note firstly that neither Mr nor Mrs Street gave evidence at this hearing. In contrast, both Mr Nelson and Ms Black gave evidence and were cross-examined. Ms Black in particular gave evidence of her personal experience of the Derbyshire County branch and of the genesis of the Kingswood report. I accept that evidence. I find that the Kingswood report was a document drafted in good faith to address the very real concerns felt by Ms Black that the interests of the members in the branch were not being properly looked after. I find that Mrs Street's characterisation of this report as being "a dodgy dossier" is inappropriate. In my judgement, the issues described in the report were such that it was entirely appropriate that they were addressed by the Union and the aims of Regional Supervision were clearly to remove the causes which had led the branch to be regarded by the DOC as being dysfunctional.
44. I also observe that Ms Black did not request what she described as "wholesale" supervision. She rather asked to suspend the current Branch Committee, Finance Committee and the various Shop Stewards Committees. She also felt able to retain the involvement of many of the existing branch officers and departmental convenors. Members remained able to process industrial issues through the Union machinery and could escalate internal Union matters through their shop steward, departmental convenors, branch officers and regional organisers in the usual way. In my judgement, Ms Black's approach to this Regional Supervision, supported as it was by the DOC, was proportionate. She had regard to the reversal of the motion of the Branch Committee of 16 December 2010 and the conduct of members at the branch AGM in 2011 as well as her personal experience and the Kingswood report. In my judgement, Ms Black was entitled to conclude that the culture of antagonism and ill feeling, bordering on bullying and intimidation, was such that a further AGM in 2012 would have been counter productive to the aims of the Regional Supervision. She was also entitled to take into account the fact that by December 2011 it had been discovered that the branch rules under which an AGM would be convened were not compliant with the Union's rules generally and thereby invalid.
45. Mrs Street argued that the suspension of the rule relating to the branch AGM in 2012 was not necessary as the Union could have taken alternative measures. She considered that the Union could have taken disciplinary action against those involved in alleged serious misconduct. The dysfunction of the branch could no doubt have been addressed in a number of ways. However, the clear aim of the DOC was to bring the branch back into effective operation as quickly as possible. This would require, in its judgement, a change of culture by many of those in a position of influence. In my judgement, the DOC was entitled to conclude, as Mr Nelson and Ms Black gave evidence, that the pursuit of individual disciplinary cases would have been counter productive in that such cases would risk causing even more division within the branch as different groups of members developed entrenched positions during the lengthy period that such disciplinary proceedings were likely to take. I find that the DOC could reasonably consider that disciplinary action would not have achieved its principal objective of restoring as quickly as possible the branch to being one which effectively promotes the best interests of its members.

46. Having regard to all the circumstances of the case, I find that the aim of Regional Supervision was to remove the dysfunctional aspects of the Derbyshire County branch as described in the Kingswood report and that the decision to suspend rule G.3.2 in 2012, removing the obligation to hold a branch AGM in that year, was both necessary and a proportionate way of achieving that aim.
47. In my decision of 8 December 2013 I reached the provisional conclusion that the NEC had effectively delegated its authority to set aside rules for the purposes of Regional Supervision to the DOC and that the DOC had effectively delegated its authority between meetings to its Chair. Mr Brittenden argued that this practice had now continued for over 20 years and that it had done so transparently, to the knowledge of the NEC and members generally, without disagreement or complaint. He submitted that the practice was thereby established in law by custom and practice and/or affirmation. Upon further consideration, I now find that the DOC had delegated authority to decide upon Regional Supervision and that the Chair of the DOC had delegated authority to do so between meetings of the DOC so long as that decision was placed before the next meeting of the DOC for endorsement or rejection.
48. For the above reasons, I refuse Mr and Mrs Street's application for a declaration that in or about December 2011 UNISON breached rule G.3.2 of its rules by failing to hold an Annual General Meeting of its Derbyshire County branch in the January-March quarter of 2012.



David Cockburn
The Certification Officer