

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

MS E HEFFERNAN

V

UNISON

Date of Decisions

14 November 2011

DECISIONS

Upon application by Ms Heffernan ("the claimant") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I refuse the claimant's application for a declaration that UNISON breached rule 10.1 of the rules of the Newham Local Government Branch on or about 30 March 2009 by its alleged removal of the branch officers from office.
2. I refuse the claimant's application for a declaration that UNISON breached rule 9 of the rules of the Newham Local Government Branch on 30 March 2009 by the branch allegedly being prevented from having elected officers appointed.
3. I refuse the claimant's application for a declaration that UNISON breached rule G4.1.2 of its rules on 30 March 2009 by its alleged failure to appoint to office Officers elected in the 2009 elections at the Newham Local Government Branch elections.
4. I refuse the claimants application for a declaration that UNISON breached rule G3.4.2 of its rules on or around 30 March 2009 by its officials Mr Terry and Ms Easton allegedly preventing ratification of the election results and the appointment of elected candidates to office at the Newham Local Government Branch AGM.
5. Upon withdrawal by the claimant, I dismiss the claimant's application that on or around March 2009 the union breached rule 11.4 of the Code of Good Branch Practice in that Tina Dobbs (Shop Steward for her school) allegedly used facility time to attend other schools when Ms Heffernan was prevented from doing so and that this amounted to an unequal facility to canvass support.

6. I refuse the claimants application for a declaration that UNISON breached rule I 5.1 of its rules by having allegedly failed to investigate a complaint that a candidate had campaigned for herself and others outside of guidance which prohibited the use of words other than those in the election address and which prohibited the use of UNISON materials.
7. I refuse the claimant's application for a declaration that UNISON breached rule 11.4 of the Code of Good Branch Practice on or around February 2010 by allegedly allowing Tina Dobbs, Paula Lewis, Roy Reid, Matthew Dobbs, Tui Akoto and Kim Silver to publish a branch newsletter appeal to vote for them.

REASONS

1. Ms Heffernan is a member of UNISON ("the Union"). By two applications received at the Certification Office on 28 July 2010, the claimant made complaints of various breaches of the rules of the Union which she maintained were related to the appointment or election of persons to office within the Newham Local Government Branch of the Union. Following correspondence with the claimant, seven complaints were confirmed by her in the following terms and in the following order. In adjudicating upon these claims I have dealt with them in a different order (see paragraph 6):-

Complaint 1

That on or around 30 March 2009 the Union breached rule 10.1 of the Newham Local Government Branch rules as the branch officers were removed from office.

Complaint 2

That on 30 March 2009 the Union breached its rule G4.1.2 in that it failed to appoint to office Officers elected in the 2009 elections at the Newham Local Government Branch.

Complaint 3

That on or around 15 April 2010 the Union breached its rule I 5.1 in that the union failed to investigate a complaint, of campaigning outside of rule by use of words other than those on the election address, and of using official UNISON materials, when there was reasonable grounds to think that Ms Kim Silver, Roy Reid, Tui Akoto, Paula Lewis, Matthew Dobbs and Tina Dobbs may be guilty of a disciplinary offence.

Complaint 4

That on 30 March 2009 the Union breached rule 9 of the Newham Local Government Branch rules as the branch was prevented from having elected officers appointed.

Complaint 5

That on or around 30 March 2009, the Union breached its rule G3.4.3 by Mr Steve Terry, Regional Officer and Ms Vicky Easton, Regional Manager preventing ratification of the election results and the appointment of elected candidates to office at the Newham Local Government Branch AGM.

Complaint 6

That on or around February 2010 the Union breached rule 11.4 of its Code of Good Branch Practice in that Tina Dobbs, Paula Lewis, Roy Reid, Matthew Dobbs, Tui Akoto and Kim Silver published a branch newsletter appeal to vote for them. This amounted to unequal facility to canvass support. The Union acted in breach as at the time Newham Branch was under supervision of the London Regional Office, who had specifically taken responsibility for ALL branch publications and who did not have sufficient procedures in place to prevent such breaches and/or allowed the breach to take place.

Complaint 7

That on or around March 2009 the Union breached rule 11.4 of the Code of Good Branch Practice in that Tina Dobbs (Shop Steward for her School) used facility time to attend other schools when Ms Heffernan was prohibited from doing so. This amounted to an unequal facility to canvass support.

2. I investigated the alleged breaches in correspondence and a hearing took place on 19 October 2011. On the afternoon prior to the hearing Ms Heffernan informed my office that a long-standing problem with her right shoulder had again flared up and that she would not attend the hearing. Ms Heffernan authorised her witness, Mr Buxton, to represent her and wished the hearing to go ahead in her absence.
3. At the hearing on 19 October 2011, Mr Buxton represented the claimant and gave evidence in accordance with his written witness statement. Mr Buxton is the current Branch Secretary of the Newham Local Government Branch of UNISON. The Union was represented by Mr Segal QC, instructed by Thompsons solicitors. Evidence for the Union was given by Mr Chris Remington, Regional Manager, Greater London Region who also produced a witness statement. There was in evidence the rules of the Union and a 347 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. The Union provided a skeleton argument. Ms Heffernan did not provide a skeleton argument.
4. At the hearing, I granted the claimant leave to amend her complaint of breach of rule G3.4.3 (original complaint five) to allege instead a breach of rule G3.4.2. Mr Segal did not object to the application to amend.
5. Also at the hearing, Mr Buxton withdrew Ms Heffernan's complaint of a breach of paragraph 11.4 of the Code of Good Branch Practice in relation to Ms Dobbs (original complaint 7) and I dismissed that complaint upon withdrawal by the claimant.
6. Ms Heffernan's complaints concern elections held by the Union in 2009 and 2010 for the positions of branch officers in its Newham Local Government Branch. The complaints about the 2009 elections were made in time by virtue of section 108A(6) and (7) of the 1992 Act. In adjudicating upon the complaints I have re-ordered them so that I deal firstly with the complaints about the 2009 elections and then the 2010 elections. The complaints as re-ordered and amended are as follows:

Complaint 1

That on or around 30 March 2009 the Union breached rule 10.1 of the Newham Local Government Branch rules as the branch officers were removed from office.

Complaint 2

That on 30 March 2009 the Union breached rule 9 of the Newham Local Government Branch rules as the branch was prevented from having elected officers appointed (originally complaint 4)

Complaint3

That on 30 March 2009 the Union breached its rule G4.1.2 in that it failed to appoint to office Officers elected in the 2009 elections at the Newham Local Government Branch (originally complaint 2).

Complaint 4

That on or around 30 March 2009, the Union breached its rule G3.4.2 by Mr Steve Terry, Regional Officer and Ms Vicky Easton, Regional Manager preventing ratification of the election results and the appointment of elected candidates to office at the Newham Local Government Branch AGM (originally complaint 5).

Complaint 5

That on or around March 2009 the Union breached rule 11.4 of the Code of Good Branch Practice in that Tina Dobbs (Shop Steward for her School) used facility time to attend other schools when Ms Heffernan was prohibited from doing so. This amounted to an unequal facility to canvass support (originally complaint 7).

Complaint 6

That on or around 15 April 2010 the Union breached its rule I 5.1 in that the union failed to investigate a complaint, of campaigning outside of rule by use of words other than those on the election address, and of using official UNISON materials, when there was reasonable grounds to think that Ms Kim Silver, Roy Reid, Tui Akoto, Paula Lewis, Matthew Dobbs and Tina Dobbs may be guilty of a disciplinary offence (originally complaint 3).

Complaint 7

That on or around February 2010 the Union breached rule 11.4 of its Code of Good Branch Practice in that Tina Dobbs, Paula Lewis, Roy Reid, Matthew Dobbs, Tui Akoto and Kim Silver published a branch newsletter appeal to vote for them. This amounted to unequal facility to canvass support. The Union acted in breach as at the time Newham Branch was under supervision of the London Regional Office, who had specifically taken responsibility for ALL branch publications and who did not have sufficient procedures in place to prevent such breaches and/or allowed the breach to take place (originally complaint 6).

Findings of Fact

7. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
8. At the time of her applications, Ms Heffernan was employed as a Migrant Advisory Worker by the London Borough of Newham. She joined the union about 12 years ago and served as a shop steward before being elected as Branch Chair of the Newham Local Government Branch ("NLG Branch") of UNISON in about July 2008. She stood again as Branch Chair in 2009 but, following complaints by her and others about the conduct of these elections, the results were never declared. Ms Heffernan was defeated in the election to be Branch Chair in March 2010 but was successful in the equivalent election in March 2011. The position of Branch Chair attracts a full time facility allowance by the London Borough of Newham. Ms Heffernan was made redundant in May or June 2011 and ceased to be Branch Chair at about that time. The NLG Branch has about 3000 members.
9. In or about July 2008 there was a ballot of the membership of the NLG Branch which approved new branch rules. There is evidence that Ms Heffernan accepted that it was necessary to take some such action to ensure that the branch was brought back into rule, having regard to "some minor discrepancies with the National rules". Under the new rules there were to be annual elections of branch officers who were to take up office on 1 April.

10. In or about October 2008 the NLG Branch was taken into Regional Supervision, by which the affairs of the branch were in effect taken over by the Region with the object of ensuring the proper performance of its functions. By a letter dated 30 October 2008 the Regional Secretary of the Greater London Region of UNISON, Ms Linda Perks, wrote to Ms Heffernan stating that the Regional Supervision was decided upon by the NEC on the basis of representations that the branch was dysfunctional, that it had failed to cooperate over the introduction of the new branch rules, had failed generally to cooperate with the region and had failed to exercise its duty of care to its employed staff.
11. Under Regional Supervision, the returning officer of the NLG Branch elections in 2009 was to be Mr Chris Remington, one of the Regional Managers of the Greater London Region of the Union. In December 2008, Mr Remington produced a timetable for these elections, which provided for the close of voting to be 20 March 2009, for any complaints concerning the ballots to be registered by Friday 27 March and for the results to be declared at the branch AGM on Monday 30 March. The elections were to be conducted by the Electoral Reform Society ("ERS").
12. The ballot proceeded in accordance with the timetable. Mr Buxton stated that, in reality, the six branch positions were contested by two slates of six candidates. One slate included Ms Heffernan and Mr Buxton. It was a part of Ms Heffernan's case that the other slate of six candidates was favoured by the Regional administration.
13. On Friday 27 March 2009, Ms Heffernan sent an email to Mr Remington complaining about the conduct of the NLG Branch elections. She complained generally about interference in the internal democratic process of the election by regional organisers and about four specific matters. First, she complained about regional officers working with and favouring one candidate, secondly about a regional officer canvassing for candidates, thirdly about Mr Remington having been engaged in acts hostile to the elected officers and fourthly about the misuse of the facilities of the London Borough of Newham by opposing candidates. Ms Heffernan requested an independent enquiry to which she stated she would submit her supporting evidence.
14. On 30 March 2009 Ms Perks wrote to Ms Heffernan stating that she had received a series of complaints about the branch elections which she had discussed with others, including the Chair of the Development and Organisation Committee of the NEC, Mr Tansley. Ms Perks stated that it had been decided to hold the 2009 branch election results in abeyance whilst the election was reviewed, to see if UNISON's rules had been breached. The effect of this decision was that the Branch Officers elected in 2008 ceased to hold branch office but continued as local representatives or shop stewards. Ms Heffernan's facility time was reduced from 100% to 7 hours a week. The day to day functions of the Branch Secretary continued to be performed by Mr Terry, a Regional Organiser.
15. On 7 April 2009 Ms Heffernan and her five colleagues in the election were co-signatories on a letter to Ms Perks and on a separate letter to the General Secretary, Mr Prentice. They complained about the decision to withhold the results of the 2009 branch elections on the grounds of their previous complaints. They stated that they would accept the results of the 2009 election, even if they had lost, but wanted the former officers to remain in post until the results were declared.

16. It was later decided to hold an investigation into the 2009 NLG Branch election which was to be independent of the Greater London Region. The investigation was conducted by Mr Tony Jones, a Regional Manager of UNISON South East Region. His terms of reference required him to deal with the complaints submitted not only by Ms Heffernan but also by Mr Buxton.
17. On 26 May 2009, Ms Heffernan submitted a lengthy document to Mr Jones as evidence in support of her complaint. She was subsequently interviewed by Mr Jones on or about 17 July 2009. There was no evidence as to what further enquiries were made by Mr Jones. The report he compiled that was in the bundle before me is undated. In an email of 1 February 2010 Mr Jones informed Mr Buxton that his completed report was at head office and his recommendations were being considered by national officers. In that report Mr Jones rejects or sets aside each of the complaints of both Ms Heffernan and Mr Buxton on the grounds mainly of lack of evidence. He concluded that the complaints had been falsely made in an effort to disrupt the publication of the branch election results. He considered that the making of the complaints was without foundation and could lead the complainants to be considered unfit to hold office. He recommended that these matters be further investigated. They were not further investigated and no action was taken on Mr Jones's report. Surprisingly a copy of his report was not provided to either Ms Heffernan or Mr Buxton prior to disclosure in these proceedings. The results of the branch elections in 2009 were never declared. By the time Mr Jones' report was being considered by national officers the voting in the 2010 election was imminent or under way. Nevertheless, Mr Buxton discovered, by way of a request to ERS under the Data Protection Act, that he would have been elected as Branch Secretary in 2009.
18. In December 2009 an NLG Branch Newsletter set out the timetable for the 2010 branch election. Mr Remington was again to be the Returning Officer and ERS was again to conduct the ballot. The voting was to begin on 15 February and end on 12 March 2010, any complaints concerning the ballot were to be made no later than Friday 19 March and the results were to be announced at the AGM on 22 March. A subsequent newsletter of February 2010 repeated the date on which voting was to end.
19. On 12 February 2010, a candidate in the 2010 election to be Branch Secretary, Ms Kim Silver, issued a newsletter. Ms Silver had become the Convener for Disabled Members and this was to be her first newsletter by which she introduced herself to members. It was unclear if this newsletter was only issued electronically or if a hard copy version was also issued. In the newsletter, Ms Silver canvassed support for herself and the slate of candidates opposed to Ms Heffernan and Mr Buxton. She stated that she was doing so in a personal capacity. On 3 March 2010 Ms Silver sent an email to "colleagues" in which she again canvassed support for herself and her slate of candidates. Ms Heffernan later complained that these actions were in breach of the statement made by Mr Remington in the newsletter which announced the electoral timetable that "*Only your election address can be used to canvass support*". Ms Silver is a blind person.

20. Voting papers were sent to the home addresses of branch members on or about 15 February 2010. They stated that they must be received back by ERS by 5 March. This was contrary to the announcement in the Newham Newsletters that voting would close on 12 March. Mr Buxton took this issue up with Mr Remington, who consulted ERS. ERS emailed Mr Buxton on 4 March informing him that Mr Remington had decided that ERS should continue to receive returns until 12 March.
21. By the end of 19 March 2010, the last date for registering complaints about this election, no complaints had been registered.
22. The election results were declared at the branch AGM on or about 22 March 2010. Ms Heffernan lost the election to be Branch Chair by 227 votes to 226. Ms Silver won her election to be Branch Secretary, beating Mr Buxton, by 255 votes to 205. The so-called slate of six candidates to which Ms Heffernan belonged lost all but one of the elections. No complaints about the elections were raised at the AGM.
23. On 31 March 2010, Ms Heffernan, Mr Buxton and Angela Williams, made a lengthy complaint to Mr Remington and Mr Prentice about the branch officer elections of "2010 and 2009". The main grounds of their complaints were expressed to be "campaigning outside of rule, use of official union material to campaign, interference by regional officer, bias by the returning officer and withholding the results of the 2009 election". The complaint acknowledged that it was made outside the time permitted for making complaints but stated that this was necessary to prevent the Union withholding the result and, as it had done in 2009, on the grounds of a complaint that was made prior to the declaration of the result.
24. On 15 April 2010, Ms Easton, another Regional Manager of the Greater London Region, wrote to Ms Heffernan informing her that her complaints had been raised out of time. Ms Easton went on to comment that she regarded any issues raised as bordering on vexatious and malicious and that she was not prepared to waste any UNISON time and resources on them. She did not uphold the complaints and stated that she regarded the matter as closed. Ms Easton did, however, inform Ms Heffernan of her right to appeal by seeking a Stage Three Review. Such an appeal or review is provided for in the Union's formal Complaints Procedure.
25. Ms Heffernan appealed the decision of Ms Easton to the Union's Member Liaison Unit and wrote letters to this Unit on 18 April and 5 May 2010 seeking confirmation that her appeal had been received. On 12 May, the Unit wrote to Ms Heffernan confirming receipt of her letter of 5 May and informing her that she would be contacted again shortly. Ms Heffernan was not contacted again on this matter by the Member Liaison Unit. In his evidence, Mr Remington dealt with this by stating that it was "due to an oversight".
26. Ms Heffernan commenced this application by submitting two registration of complaint forms, both of which were received at the Certification Office on 28 July 2010.
27. The complaints that were submitted by Ms Heffernan required clarification by my staff. Ms Heffernan has a disability and found difficulty in responding to correspondence on time. She eventually confirmed the complaints which she wished to proceed and these were put to the Union on 13 January 2011.

28. On 18 February 2011 Mr Remington wrote to Ms Perks and to Mr Nelson, the Head of Democratic Affairs at Head Office, with regard to Kim Silver. His email is headed "Pre-Rule 1 Investigation into the allegation that Kim Silver breached UNISON election guidelines in the Newham Branch Officer elections 2010". Mr Remington recorded that he had discussed the matter with Ms Silver and comments that the complaints about her newsletter of 12 February 2010 and email of 3 March were all made out of time. He went on to note that none of the written material about how this election was to be conducted had been translated into braille and expressed the view that this increased the probability that there had been an error. He noted that Ms Silver now accepted that she had made "an erroneous interpretation" by considering that she was within rule by including a statement that the material had been circulated "in a personal capacity". Mr Remington recommended that Ms Silver be written to in braille informing her of her error and that her lack of awareness would not be a defence in any future incident. He further recommended that in all the circumstances this matter be dealt with through educational and organisational measures, rather than through the Union's disciplinary code. Ms Silver did not stand in the 2011 NLG Branch elections and no further action was taken against her over these matters.
29. In the 2011 NLG Branch elections Ms Heffernan was elected as Branch Chair and Mr Buxton was elected as Branch Secretary.

The Relevant Statutory Provisions

30. 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;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

(6) An application must be made –

- (a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*
- (b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7).*

- (7) Those days are-
- (a) the day on which the procedure is concluded, and
 - (b) the last day of the period of one year beginning with the day on which the procedure is invoked.

108B Declarations and orders

(1) The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.

- (1) If he accepts an application under section 108A the Certification Officer -
- (a) shall make such enquiries as he thinks fit,
 - (b) shall give the applicant and the union an opportunity to be heard,
 - (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (d) may make or refuse the declaration asked for, and
 - (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

The Relevant Union Rules

31. The National Rules of the Union which are relevant to this application are as follows:-

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

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

Rule G 4.1.2 The Branch Officers shall be elected annually.

Rule I 2 Disciplinary action may be taken against any member who:

2.1 disregards, disobeys or breaks any of the Rules or regulations of the Union applicable to her or him, or any instruction issued in accordance with the Rules;

Rule I 5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,

5.1.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;

5.1.2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.

32. That part of the Code of Good Branch Practice of the Union which is relevant to this application is:-

11.4 BRANCH ELECTIONS AND DEMOCRACY

UNISON, at all levels, is a representative democracy. Members elect other members to represent them both inside the union and outside to employers at local, regional and national level.

Branches must take practical steps to elect representatives in a fair and open way. In line with UNISON's policies on proportionality and fair representation particular attention must be given to ensure that groups of members who are often under-represented in UNISON structures (e.g. women, black members, disabled members and lesbian, gay, bisexual and transgender members) are encouraged to stand for elected positions. Similarly, encouragement must be given to young members to take up roles.

Contested elections in a branch are a sign of an active branch with a healthy democracy and should not be shied away from.

Elections for branch officers, stewards, health and safety representatives and learning representatives should be conducted by secret ballot with the outcome ratified by the branch annual meeting(s). In some cases where a very large proportion of members can and do attend a formal annual general meeting, such elections can be carried out at the meeting. However, to increase participation it may be possible to use a postal ballot, ballot boxes in the workplace or electronic voting, or a combination of these.

Branches may want to include the election of delegates to national delegate conference and service group conferences, together with representatives to other relevant bodies like regional bodies or the local trades council at the annual meeting.

Branches need to allow plenty of time for elections and the timetable and procedures for branch elections should be included in the branch rules. The process set out below begins about 12 weeks before the branch AGM.

Note *retired members can only vote for positions in the retired members organisation (and also in general secretary elections and political fund ballots). Rule C 2.6.2 (UNISON.org.uk/acrobat/15817.pdf).*

Branch officers must ensure:

- *that all branch posts are subject to annual election*
- *that all election materials, and any meetings arranged, are accessible*
- *that consideration is given to the most effective means of communicating and balloting - increasingly opportunities for emailing and e-balloting are becoming available*
- *that members are able to nominate for all positions knowing what duties may be required of the post*
- *that an independent scrutineer is appointed to oversee the ballot process*
- *that members have sufficient information about the candidates to enable them to make an informed choice*
- *that all candidates have equal facility to canvass support*
- *that the ballot is conducted in secret*
- *that all members are equally able to cast their vote*
- *that the election timetable is sufficient to allow all members equally to participate at all stages*
- *that the regional office is notified promptly of the elected officials.*

33. The rules of the Newham Local Government Branch which are relevant to this application are as follows:-

9 ELECTION OF OFFICERS

9.1 *The branch shall elect the following officers annually, by postal ballot to member's home addresses as listed in the regional records:*

- | | | | |
|-----|---------------------|-----|-------------------------|
| (a) | Branch Secretary | (d) | Health & Safety Officer |
| (b) | Branch Chair Person | (e) | Equality Officer |
| (c) | Treasurer | (f) | Education Co-ordinator |

10 ELECTION PROCESS

10.1 *Branch Officers as defined in paragraph 9.1 of the rules shall be elected from the working membership of the Branch. Elections will be held during the period January – March of each year and the elected branch officers will take up their posts with effect from 1st April following such elections.*

Conclusions

Complaint One

34. Ms Heffernan's first complaint is as follows:-

"That on or around 30 March 2009 the Union breached rule 10.1 of the Newham Local Government Branch rules as the branch officers were removed from office".

35. Rule 10.1 of the Newham Local Government Branch rules provides as follows:

Branch Officers as defined in paragraph 9.1 of the rules shall be elected from the working membership of the Branch. Elections will be held during the period January – March of each year and the elected branch officers will take up their posts with effect from 1st April following such elections.

The Submissions

36. Mr Buxton, for the claimant, submitted that the Union was in breach of the final clause of Rule 10.1, namely that *"the elected branch officers will take up their posts with effect from 1st April following such elections"*. He argued that the Union was in breach by not permitting the newly elected officers to take up their posts between April 2009 and April 2010. He maintained that it is an essential requirement of any election that those elected are allowed to take up their posts. In his evidence, Mr Buxton had accepted that the complaints made by Ms Heffernan about the 2009 election were serious and, in his submissions, he accepted that the decision to hold the results in abeyance pending an investigation was not a disproportionate response nor outside the range of reasonable responses open to the Union. Upon being asked further about this, Mr Buxton stated that the Union's original decision may have been lawful but it was not reasonable. He then developed an argument that the Union's unreasonable conduct lay in its delay in dealing with the complaint, especially in the context of an annual election. Mr Buxton argued that although Ms Heffernan's complaints were serious, they were not complex and there was no good reason for Mr Jones' investigation not having reported much earlier. He submitted that it was by design that the investigation had run into 2010 and that it was irrelevant that the 2009 AGM was inquorate. He further argued that, even if there were irregularities in the election, those elected should have been allowed to take up their positions as the branch was in regional supervision and their actions would not have been uncontrolled.

37. Mr Segal QC, for the Union, noted the concessions made by Mr Buxton that the Union's initial decision to hold the results of the election in abeyance pending an investigation was neither disproportionate nor outside the range of reasonable responses open to the Union. As to the alleged delay in conducting the investigation, Mr Segal argued that this was not a matter previously raised by Ms Heffernan as being the basis of her claim and accordingly the Union had not brought Mr Jones to the hearing to give evidence about the delay. He stated that the Union did not accept the assertions that Mr Buxton had made in the course of his submissions about the conduct of Mr Jones' investigation. Mr Segal argued that the alternative argument now advanced by Mr Buxton should be dismissed as being unsupported by evidence. He further argued that, on its true construction,

branch rule 10.1 does not require that the process ends with there being elected branch officers but merely requires that the Union holds an election for that purpose. He observed, for example, that there would be no breach of branch rule 10.1 if there were no candidates for certain positions. Mr Segal submitted that there was no breach of branch rule 10.1, as the Union had held an election. He further submitted that the Union had acted lawfully in holding the results of that election in abeyance pending the investigation of serious complaints of ballot irregularities and that there was no evidence that the Union had deliberately delayed that investigation.

Conclusion – Complaint One

38. Ms Heffernan's complaint is that the Union breached rule 10.1 of the NLG Branch rules on or around 30 March 2009 as the branch officers were removed from office.
39. In the period between July 2008 and 30 March 2009, Ms Heffernan was the Branch Chair. Under the branch rules introduced in 2008, her period of office ceased on 30 March 2009. The newly elected officers were to take up office on 1 April and hold office until the next annual election. Accordingly, I find that the branch officers elected for the 2008/2009 period were not removed from office by the Union but that they ceased to hold office in accordance with the branch rules because their period of office had expired.
40. The provisions of branch rule 10.1 require there to be an election from the working membership of the branch and for there to be an election held during the period January-March of each year. Mr Buxton accepted that these aspects of rule 10.1 were complied with but argued that the elected branch officers were not allowed to take up their posts with effect from 1 April following that election. This argument requires me to consider whether there were elected officers on April 1 and, if so, who they were. Mr Buxton clearly considered that the elected officers were those who had received the most votes immediately upon completion of the count by ERS. Whilst I was not addressed on any issues of electoral law, I do not accept that submission. In my judgement, a person cannot be considered as having been elected until there is a declaration of the election result. In most cases this will be a formality. However, in some cases, such as the present, where there are serious complaints of balloting irregularity, the postponement of the declaration will normally be both lawful, as conceded by Mr Buxton, and reasonable. In my judgement, Mr Buxton's concession was correctly made. A decision to postpone the declaration could be made lawfully by the NEC, or a body or person acting under delegated powers, in circumstances in which the result of the ballot might be unsafe. If this were not the case, a person who is not entitled to hold office may do so for a considerable period until any investigation is completed. As there was no declaration of the election result by 1 April, there were no elected officers to take up their posts by that date. Accordingly, there was no breach of that part of rule 10.1 which requires elected branch officers to take up their posts by 1 April following the election.
41. Mr Buxton went on to argue that the delay in completing the investigation by Mr Jones into this election was a breach of branch rule 10.1. I have some sympathy with Mr Buxton in putting his case this way. On the information before

me, Mr Jones had Ms Heffernan's written submissions and had interviewed her by 17 July 2009. It was not until 1 February 2010 that Mr Jones sent an email to Mr Buxton informing him that his completed report was at head office and that national officers were considering his recommendations. Neither Ms Heffernan nor Mr Buxton were ever sent a copy of Mr Jones's report. The Union's failure to communicate with the complainants about the conduct and outcome of their complaints does it no credit and has understandably fuelled Mr Buxton's sense of conspiracy. However, notwithstanding my sense of unease on the information before me, I accept Mr Segal's argument that the way in which this point has emerged at the hearing has deprived the Union of the opportunity to adduce evidence that the period between April 2009 and February 2010 was reasonable in all the circumstances of the case. Furthermore, Mr Buxton is seeking for me to reach a finding of extreme bad faith on the part of the Union on the basis of inference and assertion. In my judgement, to make such a finding, the evidence would need to be both cogent and compelling. The evidence before me on this point is neither. The lateness of this submission is illustrated by Ms Heffernan's complaint alleging that the breach took place on or about 30 March 2009. This could not be a reference to the date that a reasonably conducted investigation would have been completed. I therefore reject Mr Buxton's submission that there was a breach of branch rule 10.1 based on the delay in investigating Ms Heffernan's complaint of 27 March 2009.

42. For the above reasons, I refuse Ms Heffernan's application for a declaration that UNISON breached rule 10.1 of the rules of the Newham Local Government Branch on or about 30 March 2009 by its alleged removal of the branch officers from office.

Complaint Two (original complaint four)

43. Ms Heffernan's second complaint is as follows:-

"That on 30 March 2009 the Union breached rule 9 of the Newham Local Government Branch rules as the branch was prevented from having elected officers appointed".

44. Rule 9 of the Newham Local Government Branch rules provides as follows:

9 ELECTION OF OFFICERS

9.1 The branch shall elect the following officers annually, by postal ballot to member's home addresses as listed in the regional records:

- | | |
|-------------------------|-----------------------------|
| (a) Branch Secretary | (d) Health & Safety Officer |
| (b) Branch Chair Person | (e) Equality Officer |
| (c) Treasurer | (f) Education Co-ordinator |

The Submissions

45. Mr Buxton, for the claimant, effectively repeated the submissions he had made in relation to the alleged breach of branch rule 10.1. He stated that the key issue was whether the Union had prevented elected branch officers from taking up office. He supported his argument by reference to the objects of the Union and the Code of Good Branch Practice, which referred to the importance of UNISON being a member-led union.

46. Mr Segal QC, for the Union, also wished to rely upon the submissions he had made with regard to the alleged breach of branch rule 10.1. He argued that branch rule 9.1 required the Union to hold an annual election for six branch positions by postal ballot and this is just what the Union did in 2009.

Conclusions

47. I find that branch rule 9.1 does not require the Union to secure the outcome of there being six duly elected branch officers each year. This would clearly be impossible where, for example, less than six candidates offered themselves for election. In my judgement, the primary obligation imposed on the Union by branch rule 9.1 is that there should be annual elections for the specified positions by postal ballot. That this occurred in 2009 is not in dispute and I find that the Union was not in breach of that obligation with regard to the NLG Branch elections in 2009.
48. Mr Buxton accepted that it may be appropriate to hold the results of a branch ballot in abeyance pending an investigation in circumstances in which the validity of the ballot is put in doubt by one or more serious complaints. He also accepted that, having regard to the seriousness of the complaints made by Ms Heffernan, the Union was entitled to do so on the facts of this case. I have commented above upon Mr Buxton's submissions regarding the period of time taken by the investigation and reject them for the reasons already given. In my judgement, the Union did not breach rule 9.1 by causing there to be a postal ballot for the specified posts in the NLG Branch and by then suspending the declaration of the result pending an investigation into complaints of serious ballot irregularities.
49. For the above reasons I refuse to make the declaration sought by Ms Heffernan that UNISON breached rule 9 of the rules of the Newham Local Government Branch on 30 March 2009 by the branch allegedly being prevented from having elected officers appointed.

Complaint Three (original complaint two)

50. Ms Heffernan's third complaint is as follows:-

"That on 30 March 2009 the Union breached its rule G.4.1.2 in that it failed to appoint to office Officers elected in the 2009 election at the Newham Local Government Branch".

51. Rule G 4.1.2 of the rules of the Union provides as follows:

The Branch Officers shall be elected annually.

The Submissions

52. Mr Buxton, for the claimant, relied upon the submissions he had made with regard to the previous two complaints. He argued that the Union breached rule G4.1.2 as it had failed to appoint those who were elected and failed to investigate the complaints of electoral irregularities in a timely manner. He also argued that those with the most votes should have been appointed, notwithstanding the allegations of

electoral irregularity, as the branch was in Regional Supervision and their work would have been closely monitored.

53. Mr Segal QC also relied upon the submissions he had made with regard to the previous two complaints. He argued that, on the correct construction of rule G4.1.2, the Union is required to do no more than to organise annual elections, similar to the obligation in branch rule 9.1. He went on to argue that the obligation to complete each stage of the electoral process is subject to any appropriate conditions being satisfied, such as the nomination of an appropriate number of candidates and the outcome of any investigations in to electoral irregularities.

Conclusions

54. I find that this complaint falls to be considered together with the alleged breaches of branch rules 9.1 and 10.1. In the hierarchy of rules, an alleged breach of the rules of the Union itself falls to be scrutinised with particular care, but I find no further dimension in this alleged breach to those already considered and dismissed.
55. For the above reasons I refuse to make the declaration sought by Ms Heffernan that UNISON breached rule G4.1.2 of its rules on 30 March 2009 by its alleged failure to appoint to office Officers elected in the 2009 elections at the Newham Local Government Branch elections.

Complaint Four (original complaint five)

56. Ms Heffernan's fourth complaint is as follows:-

That on or around 30 March 2009, the Union breached its rule G3.4.2 by Mr Steve Terry, Regional Officer and Ms Vicky Easton, Regional Manager preventing ratification of the election results and the appointment of elected candidates to office at the Newham Local Government Branch AGM.

57. Rule G3.4.2 of the rules of the Union provides as follows:

Rule G3.4 At the annual meeting of the branch, the following business shall be transacted:

G3.4.3 the election or confirmation of election of Branch Officers for the coming year;

The Submissions

58. Mr Buxton, for the claimant, relied upon the submissions he had made with regard to the previous three complaints. He argued that the 2009 AGM of the NLG Branch did not, as a fact, confirm the election of branch officers for the coming year. When asked about the significance of the AGM in question being inquorate, he commented that no AGM of the NLG Branch that he had attended for the last 10 to 12 years had been quorate.
59. Mr Segal QC, for the Union, relied upon the submission he had made with regard to the previous three complaints. In particular, he noted the guidance in the Code of Good Branch Practice that certain decisions cannot be taken at an inquorate AGM.

He further re-stated his submission that a person is not elected to a position until the result of the voting is declared.

Conclusion

60. I reluctantly allowed Mr Buxton's application to amend this complaint to allege a breach of Rule G3.4.2 and not G3.4.3, as originally put by Ms Heffernan. I was reluctant to do so because Ms Heffernan had already amended this complaint from an alleged breach of rule G3.3.3 on the grounds of a "typo" and had subsequently confirmed the wording of each of her complaints. However, this further amendment added no new substantive matters and the Union did not seek to take any point on the pleadings in these circumstances.
61. Rule G3.4 concerns the business that shall be transacted at a branch AGM. However, a meeting is unable to lawfully conduct any business if it is not quorate. It is common ground that the AGM of the NGL Branch was inquorate in 2009. There cannot therefore have been any breach of the business to be transacted on that occasion.
62. If the 2009 AGM had been quorate, however, I would have found that the act of confirming the election of branch officers presupposes that branch officers had been elected. In this regard, I accept Mr Segal's submission that, where the results of an election have been properly held in abeyance pending an investigation into allegations of serious electoral irregularity, the candidates with the highest number of votes cannot consider themselves as having been elected without more. Accordingly, I find that at the time of the NLG Branch AGM in 2009 there were no elected branch officers pursuant to the 2009 elections.
63. For the above reasons I refuse the declaration sought by Ms Heffernan that UNISON breached rule G3.4.2 of the rules of the Union on or around 30 March 2009 by its officials Mr Terry and Ms Easton allegedly preventing ratification of the election results and the appointment of elected candidates to office at the Newham Local Government Branch AGM.

Complaint Five (original complaint seven)

64. Ms Heffernan's fifth complaint is as follows:-

"That on or around March 2009 the Union breached rule 11.4 of the Code of Good Branch Practice in that Tina Dobbs (Shop Steward for her School) used facility time to attend other schools when Ms Heffernan was prohibited from doing so. This amounted to an unequal facility to canvass support."

65. This complaint was withdrawn by Mr Buxton shortly after the commencement of the hearing.
66. Accordingly I dismiss this complaint upon withdrawal by the claimant.

Complaint six (original complaint three)

67. Ms Heffernan's sixth complaint is as follows:

"That on or around 15 April 2010 the Union breached its rule I 5.1 in that the union failed to investigate a complaint, of campaigning outside of rule by use of words other than those on the election address, and of using official UNISON materials, when there was reasonable grounds to think that Ms Kim Silver, Roy Reid, Tui Akoto, Paula Lewis, Matthew Dobbs and Tina Dobbs may be guilty of a disciplinary offence".

68. Rule I 5.1 of the rules of the Union provides as follows:

I 5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence

5.1.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;

5.1.2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.

The Submissions

69. Mr Buxton for the claimant, submitted that Ms Silver had canvassed support for herself and her slate of candidates by her newsletter of 12 February 2010 and her email of 3 March 2010 and had thereby breached the instructions set out in Mr Remington's announcement of the election that *"Only your election address can be used to canvass support"*. Mr Buxton argued that the Union had failed to investigate this breach and in failing to do so, had allowed Ms Silver to continue in the office of Branch Secretary, to which she was elected in 2010. He argued that the content of Mr Remington's announcement, whilst not a rule of the Union, was a well understood part of branch elections. Mr Buxton further observed that the Union was in Branch Supervision at the time and was therefore complicit in the circulation of Ms Silver's newsletter, which he asserted was circulated both electronically and in a hard copy format. With regard to Mr Remington's belated consideration of Ms Silver's conduct in February 2011, Mr Buxton commented that this was too late to have any impact on the 2010/11 elections and contributed to his belief that regional officers were favouring the slate of candidates to which Ms Silver belonged. He further noted that as a former member of the NEC and a branch officer, Ms Silver would have been aware of the rules regarding canvassing, whether or not she received a notice of them in braille.

70. Mr Segal QC, for the Union, observed that this complaint concerned the conduct of an individual candidate in the election. He submitted that the conduct or misconduct of Ms Silver could not amount to a breach of rule by the Union itself. Mr Segal also rejected claimant's assertion that the Union in some way sanctioned the circulation of the newsletter. He noted that there was no evidence to this effect and stated that those instructing him were even doubtful that a hard copy version of the newsletter had been produced. As to the investigation of Ms Heffernan's complaint against Ms Silver, Mr Segal observed that Ms Heffernan's complaint had been presented out of time and that the Union was therefore under no obligation to proceed with it. Mr Segal further observed that Mr Buxton had argued that the relevant part of rule I 5.1 that had been breached was that to be found in I 5.1.2;

namely, the part that concerned action to be taken by the NEC. He submitted that Rule I 5.1.2 gave the NEC a discretion to commence an investigation and that the NEC had plainly not acted so unreasonably as to have acted outside that discretion by not proceeding with a complaint that had been made out of time.

Conclusion

71. Rule I 5.1 operates "*Where there appears to be reasonable grounds to think that a member might be guilty of a disciplinary offence*". It appears that, in such circumstances, the Branch Committee or Service Group Executive of the member must investigate whether the charges are justified but that the NEC has a discretion and it "may" appoint someone to investigate. On its face, this provision is of an astonishing breadth and covers all situations where, objectively viewed, there are reasonable grounds to think that a member might be guilty of a disciplinary offence. I find that such a literal meaning of this rule could not have been intended and is not its true construction. The alleged disciplinary offence must have been notified to the Union as an alleged disciplinary offence or be otherwise apparent.
72. On the facts of this case, I find that the actions of Ms Silver as notified to the Union in Ms Heffernan's letter of complaint of 31 March 2010 were such that would cause it to appear that a member might be guilty of a disciplinary offence. Whilst the relevant passage in the Newham Newsletter of December 2009, in which Mr Remington set out the timetable for the 2010 branch elections, did not create a rule of the Union, I find that it was capable of constituting an instruction issued in accordance with the rules for the purposes of rule I 2.1 and that it could therefore be the basis of disciplinary action.
73. I note, however, that Ms Heffernan's complaint of 31 March 2010 did not put Ms Silver's conduct to the Union as a disciplinary matter. Her complaint was about the conduct of ballots in 2009 and 2010. When this complaint was rejected as having been made out of time, Ms Heffernan appealed, as she was advised was her right by Ms Easton. Ms Heffernan's Notice of Appeal was not in evidence but her reminder letters to the Union of 18 April and 5 May 2010 both refer to the conduct of Ms Silver. They do not specifically raise Ms Silver's conduct as a disciplinary matter, but as part of a wider complaint about the conduct of the ballot.
74. Ms Heffernan's appeal or review was never dealt with. Mr Remington's witness statement states simply that this was "due to an oversight". Such an explanation is unacceptable without more. Had Ms Heffernan's appeal been dealt with properly, this issue may not have surfaced in its present form. Alternatively, the review may also have been driven to decide that the complaint had been made out of time. Be this as it may, Ms Heffernan did not press her complaint against Ms Silver as an individual disciplinary matter and the issue did not emerge again in the evidence until Mr Remington's letter of 18 February 2011, which he describes as a "*Pre-rule I investigation*" and in which he recommends against the use of the Union's disciplinary code.
75. I find that rule I 5.1.2 gives the NEC a discretion to investigate whether disciplinary charges are justified. On the facts of this case, I find that Ms Easton exercised that delegated discretion when rejecting Ms Heffernan's complaint of 30 March 2010.

In so doing, I find that she was in effect deciding not to investigate Ms Silver's conduct as a disciplinary matter. I find that such a decision was within her discretion, having regard to the manner in which the complaint was advanced (i.e not as a disciplinary matter) and the fact that it had been made out of time. It was open to Ms Heffernan to raise this matter again as an individual disciplinary matter, separate from her challenge to the election, but she did not. Even so, after the commencement of these proceedings, Mr Remington, reconsidered the allegations against Ms Silver. It is implicit in his letter of 18 February 2011 that he considered that there were reasonable grounds to think that Ms Silver might be guilty of a disciplinary offence but his recommendation, should the NEC be minded to reconsider its position, was that it would be inappropriate to use the disciplinary process. There was no evidence before me that, in 2010, the issue of Ms Silver's conduct was subsequently presented to the NEC itself or to someone with delegated powers to make a formal decision whether or not to commence a Rule I 5.1.2 investigation. In my judgement, however, a decision under Rule I 5.1.2 had already been taken and there was no obligation for it to be reconsidered.

76. For the above reasons I refuse to make the declaration sought by Ms Heffernan that UNISON breached rule I 5.1 of its rules by having allegedly failed to investigate a complaint that a candidate had campaigned outside of guidance which prohibited the use of words other than those in the election address.

Complaint seven (original complaint six)

77. Ms Heffernan's seventh complaint is as follows:

That on or around February 2010 the Union breached rule 11.4 of its Code of Good Branch Practice in that Tina Dobbs, Paula Lewis, Roy Reid, Matthew Dobbs, Tui Akoto and Kim Silver published a branch newsletter appeal to vote for them. This amounted to unequal facility to canvass support. The Union acted in breach as at the time Newham Branch was under supervision of the London Regional Office, who had specifically taken responsibility for ALL branch publications and who did not have sufficient procedures in place to prevent such breaches and/or allowed the breach to take place.

78. Section 11.4 of the Union's Code of Good Branch Practice is lengthy. The relevant extract of Section 11.4 is as follows:

UNISON, at all levels, is a representative democracy. Members elect other members to represent them both inside the union and outside to employers at local, regional and national level.

Branches must take practical steps to elect representatives in a fair and open way. In line with UNISON's policies on proportionality and fair representation particular attention must be given to ensure that groups of members who are often under-represented in UNISON structures (e.g. women, black members, disabled members and lesbian, gay, bisexual and transgender members) are encouraged to stand for elected positions. Similarly, encouragement must be given to young members to take up roles.

Contested elections in a branch are a sign of an active branch with a healthy democracy and should not be shied away from.

Elections for branch officers, stewards, health and safety representatives and learning representatives should be conducted by secret ballot with the outcome ratified by the branch annual meeting(s). In some cases where a very large proportion of members can

and do attend a formal annual general meeting, such elections can be carried out at the meeting. However, to increase participation it may be possible to use a postal ballot, ballot boxes in the workplace or electronic voting, or a combination of these.

Branches may want to include the election of delegates to national delegate conference and service group conferences, together with representatives to other relevant bodies like regional bodies or the local trades council at the annual meeting.

Branches need to allow plenty of time for elections and the timetable and procedures for branch elections should be included in the branch rules. The process set out below begins about 12 weeks before the branch AGM.

Note *retired members can only vote for positions in the retired members organisation (and also in general secretary elections and political fund ballots). Rule C 2.6.2 (UNISON.org.uk/acrobat/15817.pdf).*

Branch officers must ensure:

- *that all branch posts are subject to annual election*
- *that all election materials, and any meetings arranged, are accessible*
- *that consideration is given to the most effective means of communicating and balloting - increasingly opportunities for emailing and e-balloting are becoming available*
- *that members are able to nominate for all positions knowing what duties may be required of the post*
- *that an independent scrutineer is appointed to oversee the ballot process*
- *that members have sufficient information about the candidates to enable them to make an informed choice*
- *that all candidates have equal facility to canvass support*
- *that the ballot is conducted in secret*
- *that all members are equally able to cast their vote*
- *that the election timetable is sufficient to allow all members equally to participate at all stages*
- *that the regional office is notified promptly of the elected officials.*

The Submissions

79. Mr Buxton, for the claimant, initially submitted that the Code of Good Branch Practice has effect as a rule and that the Union was in breach of that part which requires Branch Secretaries to ensure *“that all candidates have equal facility to canvass support”*. Upon reflection, Mr Buxton conceded that those words did not have the effect of a rule. He had regard to a later passage in part 11:4 of the Code which states that branch rules should give effect to similar guidance about branches not promoting one candidate over another. He noted that there was no provision in the branch rules regarding ‘equal facility to canvass support’. Nevertheless, Mr Buxton argued that, as the NLG Branch was in Regional Supervision, the Union was responsible for all formal communications, including Ms Silver’s newsletter of 12 February 2010, which she issued in an official capacity as the Convenor for Disabled Members.
80. Mr Segal, for the Union, submitted that the relevant passage in the Code of Good Branch Practice was not a rule of the Union, but a statement of how branches were expected to conduct elections. He also argued that a Union could only be in breach of rule if an official or a member acting on behalf of the Union did so. Mr Segal disputed that the Union could be responsible for an act of misconduct by an individual member acting on his or her own behalf. He argued that Ms Silver fitted

into this category and there was no evidence that she had acted on behalf of the Union in circulating material which canvassed for herself and her slate of candidates.

Conclusions

81. I find that the Code of Good Branch Practice does not form part of the rules of the Union. This appears not only from the Introduction of the Code, which describes its purposes as being to guide branches and branch officers, but also from its structure and content. The Code is mainly discursive in nature and much of its language is imprecise. It does not follow, however, that the contents of the Code can be disregarded with impunity. The rules refer in places to the Code of Good Branch Practice and, depending on the context and content, those parts of the Code to which reference is made may be apt for incorporation into the rules. In addition, the Code of Good Branch Practice contains passages which may be understood as "instructions issued in accordance with the rules" within the meaning of rule I 2.1 for the purposes of disciplinary action.
82. As to the passage upon which Mr Buxton relies in part 11.4 of the Code of Good Branch Practice, I specifically find that it does not form part of the rules of the Union. I find that it is guidance for the benefit of Branch Secretaries to assist them in the conduct of branch elections. The passage may also be an instruction for the purposes of rule I 2.1 but I make no finding on that. Accordingly, as my jurisdiction is limited by section 108A of the 1992 Act to the determination of breaches of rule, I have no jurisdiction to determine this complaint.
83. If I did have jurisdiction in this matter, I would have found that, where a member is in breach of rule, a union is not automatically liable for a breach of that same rule. Whilst each case must be considered on its own facts, a breach of rule by a member may give rise to disciplinary action against that member but would not necessarily give rise to a complaint to me of a breach of rule by the union. The situation would of course be different if the actions of the individual were carried out on the union's behalf under its rules or under any delegated authority.
84. For the above reasons, I refuse to make the declaration sought by Ms Heffernan that UNISON breached rule 11.4 of the Code of Good Branch Practice on or around February 2010 by allegedly allowing Tina Dobbs, Paula Lewis, Roy Reid, Matthew Dobbs, Tui Akoto and Kim Silver to publish a branch newsletter appeal to vote for them.



David Cockburn
The Certification Officer