

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

**IN THE MATTER OF A COMPLAINT  
AGAINST THE TRANSPORT AND GENERAL WORKERS UNION**

**Date of Decision: 19 June 1996**

**APPLICATION AND DECISION**

1. Under section 55 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I am empowered to make, or refuse to make, a declaration on the application of any person who claims that his or her trade union has failed to comply with one or more of the provisions of Chapter IV Part I of the 1992 Act concerning the need for, and the conduct of, elections to certain positions. In making a declaration I am required to specify the provisions with which the trade union has failed to comply.

2. On 18 December 1995 I received an application from a member of the Transport and General Workers Union ("TGWU" or "the union") concerning the conduct of the 1996 General Executive Council (GEC) ACTS Region 6 election. The complaint, which I shall call complaint 1, was that ~

the union had refused to permit the complainant, who was a candidate in the election, to include his photograph with his election address contrary to the provisions of section 48(3) of the 1992 Act.

3. In subsequent correspondence the complainant alleged that the union had breached two other statutory requirements in respect of the election. These allegations which I shall call complaints 2 and 3 were that ~

by disclosing the content of his election address at a meeting of the union's GEC (the GEC is the union's executive committee) prior to the election, some members of were not entitled to vote in the election, the provisions of section 48(1) of the 1992 Act had been breached;

by permitting another candidate in the election to see an advance copy of the complainant's election address, that candidate was given a facility or information without it also being provided to the other candidates which was in breach of section 48(5) of the 1992 Act.

4. I investigated these complaints in correspondence and eventually at a formal hearing where the union was represented by Mr Cockburn of Pattison & Brewer, Solicitors, supported by the union's Administrative Officer. The complainant represented himself and was supported by another member of the union who had been a candidate in a different section of the same election for the union's GEC.

5. For the reasons given below (paras 36-45, 56-59, 70-73) I decline to make the declaration asked for in respect of any of the three complaints.

### **Background**

6. The union, is required by law to elect the members of its GEC at least every five years. That election must be carried out in accordance with detailed arrangements specified in the 1992 Act.

7. The time-table for the 1996 GEC election included the following stages:

- (i) 2 October 1995. Branches were to nominate candidates. Subsequently they were sent a document called "Ballot Rules and Guidelines for the conduct of the ballot". This included a section giving instructions on how each candidate should complete the "biographical details" (the union's term for an election address) which would be circulated to each person entitled to vote. The biographical details form itself repeated and elaborated on these instructions.

In particular it set out that no more than 150 words were allowed, how dates and acronyms would be counted, that only one type-face would be used and that no special lay-outs would be allowed;

- (ii) 10 November. Closing date for nominations and biographical details to be received by the union's Central Office;
- (iii) Early January 1996 ballot papers despatched;
- (iv) 2 February. Close of ballot.

8. The complainant submitted his biographical details to the union by fax before noon on 10 November. To those details he added "Please embolden capital letters" and "Please attach photograph to biographical details".

9. On 27 November the union's General Secretary wrote to the complainant about his biographical details. This letter pointed out that the complainant's statement contained 152 words and asked which two words should be dropped. It also said the request to embolden certain words would not be followed as it was contrary to the guidance given on the biographical details form. On photographs it said "with regard to the specific request by you to print the photograph which you sent along with your statement, I would advise you that we do not publish photographs".

10. The complainant subsequently deleted two words from his biographical details but complained that as the rules did not forbid photographs the union would break the law if it did not print his. He also raised allegations about breaches of the rules and law in previous elections for the General Secretary.

11. There followed considerable correspondence and the complaint to me. When the ballot papers were sent out the complainant's 150 words were circulated, no photographs were included and no election addresses included emboldened words. The complainant was unsuccessful in the ballot.

12. There is one other event relevant to these complaints. On 5 January 1996 the General Secretary of the union wrote to all Branch Secretaries in the following terms:

"I am writing to you in connection with the election for the General Executive Council for which ballot materials are currently being distributed to members.

Unfortunately, the law requires that statements used to give the biographical details of all candidates for election to the General Executive Council must now be circulated without amendment, no matter how inaccurate or scurrilous these may be.

Whilst it is for members to judge the candidates from all the information before them, including the election statement it would be wrong if this judgement were made on inaccurate statements.

In the biographical details for the ACTS Trade Group one of the candidates has made a number of scurrilous attacks and false statements against the Union and myself as General Secretary. Among these is that I received a £14,000 pay increase in 1995. This is wrong. My pay increase in 1995 was the same as which was afforded to all officers which equalled 4.4% and decided by the Lay General Executive Council.

At its recent meeting, the Executive Council expressed deep concern at this attempt to undermine our organisation and requested that I take all possible steps to correct the position. Although we are still seeking legal advice, I felt the above information should be brought to the attention of your Branch members".

### **The requirements of the legislation**

13. All three complaints are essentially based on this factual background about which there is no dispute. They have to be judged against the specific statutory requirements set out below.

14. The 1992 Act provides that a trade union shall comply with certain requirements concerning the preparation of election addresses in respect of elections to positions in a

union's executive committee. Section 48 sets out the particular requirements for election addresses. The ones relevant to these complaints are:

"48(1) The trade union shall -

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

(2) The trade union may determine the time by which an election address must be submitted to it for distribution; but the time so determined must not be earlier than the latest time at which a person may become a candidate in the election.

(3) The trade union may provide that election addresses submitted to it for distribution -

- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and
- (b) may, as regards photographs and other matter not in words, incorporate only such matter as the union may determine.

(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -

- (a) at the request or with the consent of the candidate, or
- (b) where the modification is necessarily incidental to the method adopted for producing that copy.

(5) The trade union shall secure that the same method of producing copies is applied in the same way to every election address submitted and, so far as reasonably practicable, that no such facility or information as would enable a candidate to gain any benefit from -

- (a) the method by which copies of the election addresses are produced, or
- (b) the modifications which are necessarily incidental to that method

is provided to any candidate without being provided equally to all the others.

(6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matters not in words, are provided or applied equally to each of the candidates."

15. That then is the factual and legislative background. I turn now to the detailed complaints.

**COMPLAINT 1. (Complainant denied the opportunity to include his photograph with his election address).**

**The complainant's case**

16. The complainant alleged that the union by refusing to allow his photograph to be published with his election address, or in the union's terminology "biographical details", had breached the provisions of sub-section 48(3) of the 1992 Act. He pointed out that the union's own ballot rules, while specifying the length of an election address as no more than 150 words, made no mention of photographs or other material. As the union had made no provision restricting the addresses to words they had no power to refuse to publish the photograph of any candidate who requested it.

17. He argued that confirmation of this interpretation of the legislative position was provided by the guidance booklet published by the former Department of Employment. Under the heading "Election Addresses" "What does the law require a union to do" the booklet says:

"Where a union does not impose a limit on the number of words, or the incorporation of other material each candidate is free to determine such matters for himself" (my emphasis).

Photographs clearly fall into the category of other material which the union was not free to reject without having said so in its ballot rules.



18. The complainant argued, even if it applied them equally to all candidates the union was not free to make additional provisions after election addresses had been submitted.

19. He further argued that the conduct of recent ballots for the union's General Secretary lead members to the view, among other things, that photographs could accompany election addresses. In that election the candidates had their election addresses printed, along with their photographs in the June edition of the union's in-house official organ, "The Record".

20. The union had accepted that two other candidates had submitted photographs with their election address and that these too had been rejected for circulation. One of those two gave evidence at the hearing to the effect that he had also requested that his photograph be published and for certain letters in the text of his election address to be emboldened. This request had been rejected by the union to his disadvantage. He was well known in the region as an effective organiser but, for a variety of reasons, many who knew his appearance would not know his name. Had he been permitted to publish his photograph he would probably have gained votes which in his case may have affected the final result.

21. In summary the complainant considered that because the union's ballot rules did not include any mention of photographs, then it was for candidates, not the union, to determine whether or not they wished photographs to be included with their election address. It was not good enough for the union to say that it had been custom and practice over years not to publish photographs. The ballot rules specified limits on the written text of an election address but had not specified anything about photographs, therefore the union by refusing to publish his photograph with his election address was in breach of section 48(3) of the 1992 Act.

#### **The union's response**

22. There were essentially three stages or strands to the union's denial that in rejecting the complainant's request for his photograph to be published with his election address it had breached section 48(3) of the 1992 Act. First the law explicitly permitted it to make provisions excluding photographs but did not do so in a way that required such a provision to be made at any particular time. Secondly, the form of the ballot rules effectively excluded

photographs. Thirdly, custom and practice in the union had always excluded the addition of photographs to biographical details circulated with ballot papers.

23. In support of the first strand of their argument the union pointed to the provisions of sub-section 48(1) and 48(6), (see paragraph 14 above), which are both mandatory requirements on the union by requiring that it "shall" carry out the requirements. By contrast the requirements of sub-section 48(3), which was the subject of the complaint, were permissive ("may"). The requirements contained no mandatory requirements as to the processes for "determining" or "providing" that photographs be excluded from election addresses. The union argued that the expression in section 48(3) that "the trade union may provide that ..." cannot properly be interpreted as creating any obligation on the union to issue ballot rules containing any relevant determination by the union, or creating an obligation that the determination be communicated in any particular way. As the 1992 Act contains many examples of extremely precise directions as to how trade unions must conduct themselves, the union argued that it must be deliberate that the statute does not set out precisely how, by whom or when, the union must reach a determination as to the exclusion of photographs in election addresses or precisely how, by whom or when this decision is communicated to potential candidates.

24. The union maintained that there is no requirement in Part I of the 1992 Act for a trade union to prepare and publish ballot rules or regulations or any circular by which its compliance with its statutory obligations will be judged. Furthermore it is sufficient if the statutory obligations are in fact complied with, irrespective of whether the union does or does not publish ballot rules.

25. In the union's opinion the expression "may provide" as used in this context merely requires the union to have made provision for its response to the situations described in section 48(3); it does not require that its response is published in any particular manner.



26. The union maintained that the scheme envisaged by section 48 appeared to be:
- (a) all candidates should have an unqualified right to publish an election address in their own words;
  - (b) the union may restrict the length of this address and any non-verbal contents;
  - (c) any such restriction must be applied equally to all candidates.

27. Accordingly the union argued that the proper interpretation of section 48(3) must therefore take into account the scheme of section 48 as a whole and not in isolation. Furthermore, to require the union to foresee and list in advance all matters not in words that are to be excluded would require the union to have a degree of foresight greater than its members' ingenuity, with any omission being treated as fatal to the union's wish to exclude that material. The union pointed out that although this case concerns photographs, another candidate may for instance wish to publish a cartoon or personal logo or schedules or statistics. The union's view was that the statutory framework envisages that any such request can be denied as long as it is denied equally to all candidates.

28. In the union's view the law was quite clear and permitted it to rule out photographs at any stage before the election addresses were circulated. In this context the guidance contained in the ED booklet, on which the complainant so heavily relied, was irrelevant and in any case as the booklet itself explained it did not provide an authoritative interpretation of the law.

29. The ED booklet paraphrased certain of the statutory provisions, some parts (including the reference to "other material") merely put a gloss on the statutory provisions. Even so the union observed this gloss did not suggest that the imposition of limits, such as the publication of photographs, should be communicated in a particular manner or at any particular time.

30. The second strand of the union's argument was that its detailed rules on what will be circulated as biographical details were so presented as to make it quite clear that photographs or other material not in words would not be circulated. It pointed out that the instructions on the election address form ("biographical details") are extremely detailed as to how the words are counted and how election addresses are laid out. Considerable care had been taken by the union to try and ensure a level playing field. The union maintained that it was clear from the detailed requirements of the Ballot rules and Guidelines and from the requirements set out on the election address form that any other material (which includes photographs) would not be accepted.

31. In support of this view that it envisaged an election address as essentially a written document the union pointed to a previous decision (D2/94) by the Certification Officer in which he stated ~

"A candidate's election address in my opinion has the following minimum characteristics; (a) it is an address to the electors; and (b) the wording of the address is that chosen by the candidate".

32. Against this background the union thought it was legitimate for it to argue that the ballot rules, guidelines and detailed rules for submitting biographical details had the effect of ruling out the inclusion of photographs, or other materials, in candidates' election addresses.

33. The third strand of its argument was that it was a well-known and universally applied practice in the union not to circulate photographs with election addresses. It stated that this practice had been operated by previous General Secretaries since the requirement to hold secret postal ballots for certain union posts had been introduced. Prior to that where biographical details were circulated photographs were not included. In previous elections when candidates had asked about photographs they had been told that it was not policy to include them with biographical details. In this election all three candidates who had submitted photographs had been given the same negative answer.

34. The practice concerning photographs had applied for many years and it was not credible for the complainant to suggest he was unaware that photographs were not published with election addresses. The union observed that the complainant had twice been a successful candidate in earlier elections when photographs had also not been permitted.

35. In summary the union's case was that while it had to make a provision if it wished to exclude photographs there were no statutory requirements on the timing and nature of such a provision so ~

- (a) at any point before the circulation of election addresses it was free to determine that photographs were excluded so long as it treated all candidates equally; or if that argument was rejected;
- (b) the rules and guidance circulated during the nomination phase focused so clearly on the detail of how text was to be handled as to in fact exclude photographic or other non textual material; and/or
- (c) long standing custom and practice in the union excluded the inclusion of photographs in election addresses.

Each of these strands supported its case that it had made a provision to be implemented in response to a situation as it arose.

#### **Reasons for refusing a declaration**

36. There are essentially two decisions I have to make in determining this complaint. First, has a candidate the right to include a photograph in his election address if the union has made no provision in respect of this? That is a question of law. Secondly if the answer to the first question is 'yes' then the question arises did the union in this case make a provision excluding photographs from election addresses. That is a question of fact.

37. The question of law turns on the construction of section 48 of the 1992 Act (set out in paragraph 14 above). In my judgement section 48(3) places no duty on a trade union to

do anything about the content of election addresses. The union does not have to set a word limit or say what other material may be included in election addresses. Section 48(3) merely gives it an ability to restrict them to a number of words not less than 100, and/or to prohibit the inclusion of photographs or other material not in words. Furthermore I do not accept the argument that section 48 envisages that an election address will consist only of words unless the union otherwise determines. One hundred words is what the statute intends to be the irreducible minimum but clearly that is not all that it is envisaged may be included. That view is perfectly consistent with the quotation (see para 31) from an earlier decision of mine.

38. Against that background it is clear that unless the union has determined that photographs and/or other matter (not in words) are not to be included in election addresses the law permits a candidate to include them.

39. This means I must decide the second, factual, question. Did the union in this case make a provision restricting the contents of the election addresses to exclude the right of the candidate to include a photograph? It is clear from the evidence I have both heard and seen that the union at no point before the closure of nominations in this election had in writing expressly stated that photographs were not to be included in election addresses. But need the provision by the union be in writing? Section 48(3) makes no reference to writing. Neither does the statute expressly require the "provision" to be made by rule. If this had been intended I am sure the statute would have plainly said so. I am therefore satisfied that provided the union can establish that it has made a provision in a form which has some permanence and would consistently apply throughout an election to all candidates, this is capable of satisfying section 48(3).

40. In the evidence both oral and written I heard that the union had a policy that the "biographical details" of candidates at elections for the NEC were not permitted to contain photographs. Although this was never written down, I am satisfied that the union thought it had made a provision which had applied for many years. The evidence of the union's Administrative Officer was that had a candidate telephoned the union to ask what the position was with regard to the inclusion of photographs, he or she would have been told immediately that photographs were not permitted. It was clear that for photographs to be included would

have required (in the minds of union officials) a change in policy by the union.

41. I also have to consider the way the union had chosen to make "provision" in respect of other aspects of the election address and in particular the maximum number of words permitted to be included. This is set out in the Ballot Rules and Guidelines for the conduct of the ballot which were issued to every candidate. These "rules" were in writing. This raises the question as to why the "provision" as to photographs was not included there and whether any proper inference can be drawn from this. These rules were written against the background of the union's long-standing attempt to influence or control the nature and form of the candidate's election address. This attempt is clear, both from the practice of calling them "biographical details" and from the extreme detail of the ballot guidelines dating back to 1986. However no where in this is there any evidence that it was envisaged that photographs would form part of the election address. This could be an oversight or it could stem from the fact that the position on photographs was so firmly entrenched in the union's practice and culture that it was not thought necessary to deal with it. The evidence points to the latter interpretation.

42. Neither the union nor the complainant produced any evidence that the union had ever permitted a photograph to be used in any election addresses in the past. All that was brought to my attention was the publication in the union's journal of photographs of candidates in the 1995 general secretary election accompanied by the text of their election addresses. But this of course was not an election address for the purposes of section 48 of the 1992 Act.

43. I did ask whether the union could produce any documentary evidence establishing that previous general secretaries or other senior officials of the union had rejected photographs. None was produced, but the Administrative Officer of the union explained that in previous elections telephone enquirers had been told that photographs would not be acceptable. Similarly in this election all three candidates who had submitted photographs had been told they could not be included.



44. In my judgement the union has established that there was a policy of excluding photographs and that this was a well-known and long-established practice of the union. The union has established that it has not permitted photographs to be included with election addresses in practice and nobody has shown any contradiction in this practice throughout the period since election addresses were first introduced into the election process by the union.

45. For these reasons I find that the union had a long-established practice of not including photographs in election addresses and that this practice is sufficient (on the balance of the probabilities), and in the absence of any contrary indication, to establish that the union had made a provision in respect of photographs in respect of this election for the purposes of section 48. I therefore decline to make the declaration that the union was in breach of section 48(3) of the 1992 Act.

46. Before moving to the next complaint I should note that the finding of fact in my decision accepts points (b) and (c) in the union's case at paragraph 35 and that I have not therefore had to decide the question of law at point (a).

## **COMPLAINT 2. (Election address distributed to persons not entitled to vote)**

### **The complainant's case**

47. The complainant alleged that the General Secretary's letter of 5 January (produced at para 12 above) indicated that the complainant's election address had been available to members of the GEC at their meeting on 4 December 1995. In his view this put the union in breach of provisions of section 48(1) of the 1992 Act. These provisions include a requirement that an election address "be distributed to the persons accorded entitlement to vote in the election ...".

48. The complainant maintained that not all members of the GEC were entitled to vote in this particular trade group election. By discussing his election address the union breached its duty of confidentiality and went beyond receiving his election address "to be distributed to persons entitled to vote in the election" which was a breach of the statutory provisions.



### The union's response

49. The union's rebuttal of this complaint had two strands. First the complainant's election address was not physically distributed to members of the GEC. The union submitted that the word "distributed" must mean physically distributed, both in accordance with the natural meaning of the word and so that it is read consistently with its use in section 48(1)(b); secondly, even if it had been this would not have constituted a breach of confidentiality of section 48(1).

50. The union's Administrative Officer, who was present at the meeting in question, gave evidence in support of the first strand. He said that under "matters arising" a question was raised about the progress in drafting new written guidance to candidates in elections. This matter had originated at an earlier meeting when the focus had been on allegations of electioneering in the General Secretary and other elections. At the December meeting the General Secretary had commented in passing that the guidance may now have to deal with election addresses which included untruthful and possibly defamatory information. This concern had arisen from election addresses submitted for the 1996 election. The General Secretary did not refer to the complainant by name but it was the complainant's election address that in his opinion had included a wrongful claim that the General Secretary had received a £14,000 wage increase that year and which had given rise to his concern. The union's witness gave evidence that at no time were any election addresses distributed or discussed with members at the GEC meeting nor was the complainant referred to by name.

51. As the second strand of its argument the union further maintained that the wording of the provisions in section 48(1)(a), "to provide every candidate with an opportunity of submitting an election address to the union to be distributed to the persons accorded entitlement to vote in the election", did not give rise to the interpretation put upon them by the complainant.

52. In this connection the union pointed out that the obligation contained within section 48(1)(a) is that the trade union shall provide candidates with an opportunity of submitting an address. The union had provided such an opportunity in this case. Moreover it is significant that this provision does not feature the words "and to no others" after "persons entitled to

vote in the election". As such a formulation appears in the same Act (section 227(1)), it must be taken that its exclusion from section 48(1)(a) was deliberate.

53. In any case all members of the Executive are members of the union and are entitled to vote in GEC elections. To maintain that each of the different constituencies within the GEC election are separate elections unto themselves, is not sustainable in the union's view. If this were the case, there would be many absurd consequences including the necessity of appointing a scrutineer for each constituency.

54. The policy consideration behind sub-section 48(1)(a) is in the union's opinion clearly directed towards ensuring that an election address in the candidate's own words is distributed to everyone entitled to vote. This policy does not carry with it any necessary implication of confidentiality. Indeed, the normal purpose of an election address is that it should have the widest circulation possible. It cannot reasonably be expected that a candidate would not wish an election address to have wide circulation. There is accordingly no policy argument for giving a strained interpretation of the words of this provision.

55. In view of the above the union maintained that it was not in breach of the relevant statutory requirements.

#### **Reasons for refusing a declaration**

56. This complaint fails on grounds of both fact and law. I heard convincing evidence that the complainant's election address was not distributed to members of the GEC before the ballot. This evidence was consistent with the text of the letter giving rise to the complaint (see para 12 above) and was not contested by the complainant.

57. There is nothing in this part of the statute imposing a specific duty of confidentiality on the union in respect of the election addresses. Nor can I see any argument for imputing such a duty in an election which is clearly a public event.

58. In law section 48(1) makes clear that an election address must be sent to those entitled to vote but it leaves open, in my view deliberately so, the possibility of disclosing or sending

it to others.

59. For these reasons I decline to make the declaration that the union was in breach of section 48(1) of the 1992 Act.

**COMPLAINT 3. (The same facilities or information etc. not provided equally to all candidates in the election)**

**The complainant's case**

60. One member of the GEC was also a candidate in the same, ACTS, section of the election as the complainant. The complainant alleged that giving her an advance copy of the complainant's election address at the December 1995 GEC meeting, was providing her with a facility or information without it being equally provided to all the other candidates. This was in direct contravention of section 48(5) of the 1992 Act (see para 14 above).

61. This alleged breach was compounded by the fact that GEC members took away from the meeting "a position opposing my candidature before the members could even be allowed to make a decision for themselves". No other candidate was so disadvantaged. In the complainant's opinion election processes should be fair, open and transparent and this had not been the case in this election.

62. In addition the complainant alleged that two other candidates in the GEC election (including the one from ACTS already on the GEC) produced pre-election propaganda material which indicated that they knew how many candidates there were in the election, and by implication their names. He showed us this material.

63. All this he alleged was in breach of the requirement in section 48(5) to provide facilities and information equally to all candidates.

**The union's response**

64. The union repeated its denial that any member of the GEC had been given a copy of the complainant's election address at the meeting on December 4th. Nor could any

discussion of it at that meeting have influenced the content of anyone else's election address as the meeting took place 3 weeks after the final date for receipt of such addresses.

65. Aside from these factual points in the union's opinion the complainant had misinterpreted the provisions of sub-section 48(5). In its view the provisions are clear; the sub-section imposes an obligation of equality of treatment on the trade union in relation to the "method by which copies of the election addresses are produced and the modification which are necessarily incidental to that method". The union submitted that the obligations are exclusively in relation to these items.

66. The union did not accept that another candidate in the election had derived any benefit from being present at the GEC meeting when election addresses were discussed, it was clear that any such benefit was not gained by being able to influence the method by which copies of the election address were produced or the modifications necessarily incidental to that method.

67. The union recognised that the complainant put much emphasis on the word "information" and the requirement to provide it equally to all candidates, but the union submitted that it was clear from the context of sub-section 48(5) that this is a reference back to "facilities or information relating to the method of producing copies". In the view of the union the effect of this sub-section is that it is unlawful for a union to give facilities to some members but not others and it is unlawful for a union to give information about facilities to some members and not others. Accordingly, it argued, the complainant is not even assisted by the inclusion in this provision of the word "information".

68. In this context whether some but not all candidates were told who else was standing in the election is irrelevant as it is nothing to do with the method of producing copies or modifying election addresses. But the Union's Administrative Officer gave evidence that as a matter of fact given the system of branch nomination the names of candidates were usually widely known soon after nominations closed and he personally would give this information to anyone who asked for it.

69. In view of all this the union submitted that there was no basis for the complaint that it had breached section 48(5) of the 1992 Act.

### **Reasons for refusing a declaration**

70. Again this complaint fails on questions of law and of fact. I accept the union's argument that the requirement for equality of treatment in section 48(5) (see para 14) is confined to "facilities or information relating to the method of producing copies of election addresses". That in my judgement, is the proper interpretation of the section and the one that seems most consistent with the whole of section 48 which contains several, precisely defined and limited requirements to treat all candidates equally (eg. 48(1) and 48(6)).

71. The only evidence submitted is to the effect that the complainant's election address was not distributed to, seen by, or discussed with any other candidate or person at a time when it could have influenced the content or production of anyone else's address in that election. So no candidate received any information or facility not available to other candidates enabling them to benefit in any way in the production or modification of election addresses.

72. On this analysis the evidence suggesting that, after nominations closed and election addresses had to be submitted, some candidates knew the names of all other candidates in their section is, as the union argued, irrelevant.

73. For these reasons I decline to make a declaration that the union was in breach of section 48(5) of the 1992 Act.

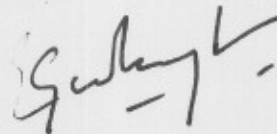
### **Observations**

74. I have declined to make a declaration on any of these three complaints and in fact find little merit in the second and third. During the hearing the complainant made many observations about union practice in respect of its ballot procedures and how union procedures and the law appeared to be deficient in providing a level playing field for election candidates. In my view those comments would be more appropriate to make in a political or union context.



75. Although the law does provide that the process of preparing and distributing election addresses shall be done in an essentially even handed way. The legislation does not prevent the union favouring one candidate rather than another. It is not for me to interpret the technical requirements of the election process in a way that seeks to impart a degree of "fairness" not inherent in the legislation.

76. On the first complaint I commend the complainant for raising the issue with the union and with me whilst there was still an opportunity for the union to take any corrective action it thought necessary and before the outcome of the ballot was known. Although I am confident that within the meaning of the Act the union had made a provision about the exclusion of photographs I have some sympathy with the complainant's concerns on this issue. If the union's ballot rules had been explicit about the treatment of "other material" these complaints may not have been brought. It seems to me that union's who do not make explicit the provisions governing such matters run the risk of candidates feeling they have been treated in an arbitrary fashion. I do not accept the union's argument that it could not provide ballot rules that covered every possible permutation in the content and make up of election addresses. A simple statement in its ballot rules of what would be accepted in an election address would be sufficient to exclude most other options a candidate may wish to pursue.



E G WHYBREW  
Certification Officer