D/34-48 /11-12

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

Mr M Weatherhead

v

Association of Professional Ambulance Personnel

Date of Decisions **13 July 2011**

DECISIONS

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

1. Upon withdrawal by the claimant, I dismiss his complaint that on 15 November 2009 the Association of Professional Ambulance Personnel ("the Association") breached its rule 13.3.1 by failing to appoint a member of its National Governing Council to carry out an initial investigation into charges against the claimant.

2. I refuse to make the declaration sought by the claimant that on 15 November 2009 and 23 January 2010 the Association breached its rule 13.3.2, because it did not instigate an investigation with expediency, nor was a written report sent to the Administrative Officer and one other member of the National Governing Council, within 14 days or at all, as alleged.

3. I refuse to make the declaration sought by the claimant that on 15 November 2009 and 23 January 2010 the Association breached its rule 13.3.3 because it enacted stage 2 of its disciplinary procedure without the Administrative Officer and one other member of the National Governing Council agreeing there were sufficient grounds, as alleged.

4. I refuse to make the declaration sought by the claimant that on 15 November 2009 and 23 January 2010 the Association breached its rule 13.4.1 because it failed to inform the claimant in writing of the charge against him within seven days of the date it agreed to enact stage two of its disciplinary procedures, as alleged.

5. I make the declaration sought by the claimant that on 28 April 2010 the Association breached its rule 13.4.2 by the Disciplinary Panel it appointed not being properly constituted.

6. I refuse to make the declaration sought by the claimant that on 28 April 2010 the Association breached its rule 13.4.3 by allegedly failing to provide a suitable and practical venue at which to carry out the claimant's disciplinary hearing.

7. I make the declaration sought by the claimant that on 28 April 2010 the Association breached its rule 18 by its National Governing Council not being quorate when it purported to suspend Mr O'Friel and Mr Boothman.

8. Upon withdrawal by the claimant, I dismiss his complaint that on 28 April 2010 the Association breached its rule 17.1 by failing to instigate a full postal ballot for the position of General Secretary upon his expulsion as a member of the Association, as alleged.

9. I refuse to make the declaration sought by the claimant that from 23 January 2010 the Association breached its rule 6.2.1 by having an unelected person in the position of acting chairman and trustee, as alleged.

10. I refuse to make the declaration sought by the claimant that from 23 January 2010 the Association breached its rule 6.2.2 by having an unelected person in the position of acting general secretary and trustee, as alleged.

11. I refuse to make the declaration sought by the claimant that from 23 January 2010 the Association breached its rule 6.2.3 by having an unelected person in the position of acting general secretary and trustee, as alleged .

12. I refuse to make the declaration sought by the claimant that from 23 January 2010 the Association breached its rule 6.2.4 by having an unelected person in the position of Finance Officer, as alleged.

13. I refuse to make the declaration sought by the claimant that from April 2009 the Association breached its rules 6.2 and 9.2 by allegedly having a person not constitutionally entitled to be a member acting as Finance Officer and trustee. The complaint was made out of time.

14. Upon withdrawal by the claimant, I dismiss his complaint that on 23 January 2010 and 28 April 2010 the Association breached its rule 8.1 and 8.4 by holding Management Board meetings which were not properly constituted, as alleged.

15. I make the declaration sought by the claimant that the Association breached its rule 12.5 by not holding an Annual Delegate Conference in the period between February 2008 and October 2010.

REASONS

1. Mr Weatherhead was a member of the Association of Professional Ambulance Personnel ("the Association" or "APAP"). By an application received at the Certification Office on 26 May 2010, Mr Weatherhead alleged a number of breaches of the rules of the Association in relation to its disciplinary procedures, its appointment of officers and the constitution or proceedings of its executive

committee or other decision making meeting, relating to events which occurred between March 2009 and the date of his application.

2. Following correspondence with Mr Weatherhead, the complaints were confirmed by him in the following terms:

Complaint 1
That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, the union breached its rule 13.3.1 when it failed to appoint one of the National Governing Council to carry out an initial investigation.

Complaint 2
That on or around the 15th November 2009, the original date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the union breached its rule 13.3.2, because it did not instigate an investigation with expediency, nor was a written report sent to the Administrative Officer David Lake and one other member of the National Governing Council, within 14 days or at all.

Complaint 3
That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the Union breached its rule 13.3.3 by not enacting Stage 2 of the Disciplinary Procedure on the basis that the Administrative Officer and one other member of the Association had not agreed there was sufficient grounds for complaint.

Complaint 4
That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the union breached its rule 13.4.1 because the union failed to inform Mr Weatherhead in writing that a charge of misconduct has been brought against him within 7 days of the date it was agreed to enact Stage 2 of the procedure in accordance with rule 13.3.3.

Complaint 5
That on 28th April 2010 the union breached its rule 13.4.2 by not appointing a Disciplinary Panel consisting of a Trustee to chair the panel and one other member of the National Governing Council not known to Mr Weatherhead or the parties being investigated.

Complaint 6
That on 28th April 2010, the union breached its rule 13.4.3, by failing to provide a suitable and practical venue at which to carry out the disciplinary hearing into the charges against Mr Weatherhead.

Complaint 7
That on 23rd January 2010 the union breached its rule 18 by its NGC purporting to take a decision when it was not quorate; namely, its purported decision to continue the suspension of the elected General Secretary and implement the additional suspensions of Mr O'Friel and Mr Boothman.

Complaint 8
That on or around the 28th April 2010 the union breached its rule 17.1, by failing to initiate a full postal ballot of its membership for the position of General Secretary when this was required as a result of the union's expulsion of the General Secretary, Mr Weatherhead.

Complaint 9
That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.1, by having an unelected person in the position of acting chairman and trustee.

Complaint 10
That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.2, by having an unelected person in the position of acting general secretary and trustee.

Complaint 11
That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.3, by having an unelected person in the position of acting general secretary and trustee.

Complaint 12
That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.4, by having an unelected person in the position of Finance Officer.

Complaint 13
From April 2009, the union has been and continues to be in breach of rules 6.2 and 9.2 by Mr Martin Cavalier-Jones, a person not constitutionally entitled to be a member of the union by virtue of rule 4, acting as Finance Officer and Trustee.

Complaint 14
That on the 23rd January & 28th April 2010, the union breached its rules 8.1 & 8.4 by holding Management Board meetings which did not consist of officers elected in accordance with the rules in the following capacities, Chairman, General Secretary and Finance Officer.

Complaint 15
That on or around March 2009, one year & one month from the anniversary of the last Annual Delegate Conference in February 2008, and ongoing, the union breached its rule 12.5, by not holding an Annual Delegate Conference.

3. By agreement between the parties this case was heard together with a similar case brought against the Association of Professional Ambulance Personnel by a Mr O'Friel. It was further agreed that the evidence in one case was to be considered as evidence in the other as were the submissions, where relevant. The findings of fact in this case are reproduced in the decision in **O'Friel v Association of Professional Ambulance Personnel (D/20-33/11-12)**.

4. I investigated the alleged breaches in correspondence. A hearing took place on 20 and 21 June 2011. At the hearing, the claimant represented himself. He produced a witness statement and gave oral evidence. He also produced a witness statement from Mr Carl Ledbury, a former officer of the Association. Mr Ledbury did not give oral evidence. Mr Weatherhead also relied upon the witness statements produced by Mr O'Friel, namely those of Mr O'Friel and Mr David Lake, also a former officer of APAP. Of these only Mr O'Friel gave oral evidence. The Association was represented by Mr Simon Cavalier-Jones, of Populus Group Ltd. The Association submitted written witness statements from Mr Martin Cavalier-Jones, of Populus Group Ltd, Mr Ian Boothman, Chairman of APAP, and Mr Jonathan Fox, the Press Officer of APAP. These witnesses each gave oral evidence. Mr Weatherhead, Mr O'Friel and the Association each provided skeleton arguments. There was in evidence a 314 page bundle of documents consisting of

letters and other documentation supplied by the parties. The bundle also contained two sets of rules of the Association (the "1997 Rules" and the "2008 Rules").

Findings of Fact

5. Having considered the oral and documentary evidence and the representations of the parties in this case and the case brought by Mr O'Friel, I find the facts to be as follows:

6. Mr Weatherhead has been a paramedic since 1995, when he also joined the Association. He lives in Southampton and is currently employed as an operations manager by the South Central Ambulance Service. In about 1997 Mr Weatherhead was elected as a Regional Officer of the Association. In 1998 he was elected to the National Governing Council ("NGC"). In 1999 he was elected as Assistant General Secretary and in 2001 he was elected as General Secretary. Mr Weatherhead resigned as General Secretary on 23 January 2010 and was expelled as a member of the Association by a decision taken on 28 April 2010.

7. APAP was established in 1981. It has about 1,600 members and an annual turnover of about £250,000. Its offices were until recently in Shepton Mallet, Somerset where two administrative staff were employed. The only officer employed by the Association was its Finance Officer, Mr Sleight, who lived in Bury, Lancashire. Mr Sleight visited the offices in Shepton Mallet for a few days each month. There were no other employees. The remainder of the officers were lay members who were employed by various ambulance services.

8. The Association began to experience financial difficulties in 2007, which difficulties became worse in 2008. By May 2008, its auditors, Old Mill Accountancy, reported that the situation was very serious and that they may not be able to sign off the accounts for the year ending December 2007. This problem was overcome but the financial difficulties persisted. In the autumn of 2008, the Association considered a joint venture on training with Populus Group Ltd ("Populus"). The CEO of Populus is Mr Simon Cavalier-Jones. He worked on the business of APAP together with his father, Mr Martin Cavalier-Jones, a consultant to Populus. Populus examined the publicly available accounts of the Association and required reassurance on its financial position before proceeding with the proposed joint venture. A preliminary investigation indicated that payments of £7,000 had been made to Mr Sleight to which he was not entitled. These concerns were discussed at a meeting of the NGC on 12 January 2009. It was decided that Populus would be contracted to look into the financial systems of the Association, as its expertise included business recovery and support. It was further decided that an investigatory team of Mr O'Friel and Ray Lloyd would look into the concerns regarding Mr Sleight, who was by then thought to have been paid £21,000 to which he was not entitled. It was subsequently decided that Populus would take over the investigation of Mr Sleight from the investigating team.

9. By March 2009, Mr Sleight had been suspended. Further enquiries had indicated that the amount wrongly received by him had increased to £34,500. A meeting was arranged with Mr Sleight at a hotel in Bury in which Mr Weatherhead, the General Secretary and Mr Boothman, the Chairman, had intended to give him a letter of

dismissal. Instead, Mr Sleight resigned and it is said that he gave an oral promise to refund the Association.

10. It was said that at this time the Association was in a state of near crisis. Mr Weatherhead visited the offices in Shepton Mallet and found the records to be in chaos. As the annual return to my office was due on 1 June 2009, it was decided to use the services of Populus to help prepare the accounts for submission to the auditors. An issue arises as to whether Martin Cavalier-Jones was appointed at this time to the position of Acting Finance Officer, as Mr Sleight's replacement, to perform this task or whether he was merely given this task to perform, without being given the position of Acting Finance Officer. Mr Weatherhead dealt with this matter in evidence and I accept that he gave Mr Martin Cavalier-Jones this task to perform but did not appoint him as Acting Finance Officer. I further find, however, that this was a time of considerable confusion within the Association and that there was ample scope for misunderstanding the position. In any event, in June 2009, Mr Ray Norton was appointed to the position of Acting Finance Officer.

11. In attempting to sort itself out, the Association sought advice from three firms of solicitors. It was advised by Martineau, solicitors, on the recovery of its funds from Mr Sleight. It was advised by Bridge McFarland on issues relating to the role of union trustees. Mr Boothman gave evidence that he had found it very difficult to contact Mr Weatherhead over this period and that it appeared to him that Mr Weatherhead was withdrawing from the affairs of the association. As urgent decisions needed to be taken, Mr Boothman obtained advice that he might make decisions unilaterally which could be later ratified by the NGC. Advice was also obtained from Andrew Jay & Co., solicitors.

12. On 29 May 2009, the Association informed my office of the missing funds and shortly afterwards reported the matter to the police. The police investigations continued until December 2009.

13. In his interview by the police, Mr Sleight asserted that he had not had any dishonest intent in taking the money that he had been paid, that the payments were known to others within the Association and were not unusual. Mr Sleight named six others whose actions he claimed supported his defence. They included Mr Weatherhead, Mr Boothman and the Administrative Officer, Mr Lake. Mr Boothman wanted these allegations investigated forthwith but received legal advice from Andrew Jay & Co that he should not do so whilst the police were investigating. This legal advice was also said to recommend the immediate suspension of Mr Weatherhead.

14. On 10 November 2009 Mr Boothman wrote to Mr Weatherhead suspending him from his position as General Secretary pending further investigations.

15. On 15 November 2009 Mr Boothman wrote to Mr O'Friel informing him that, as he was the Assistant General Secretary, the rules provided that he would take over as General Secretary until the internal and police investigations were completed.

16. On 1 December 2009 the police wrote to Mr Weatherhead to inform him that the Crown Prosecution Service ("CPS") had decided not to prosecute Mr Sleight. The CPS considered that, whilst there was no doubt that Mr Sleight did owe money to

the Association, there was insufficient evidence of dishonest intent to permanently deprive. The police also stated that there would be no criminal charges against any other member of the NGC. The police further commented on the Association's failure to monitor Mr Sleight, the lack of receipts, the inconsistency of the accounts, the absence of minutes and unsigned contracts. In a letter of 15 December to Populus, the police commented on the slow responses they had received from Mr Weatherhead.

17. In the above circumstances, the Annual Delegate Conference ("ADC") planned for 6/7 November 2009 was cancelled but Mr Boothman sought a meeting of the NGC on those dates to brief the NGC on recent events, to ratify his actions and to decide on a way forward. It was not possible to convene such a meeting so Mr Boothman arranged to meet with as many members of the NGC as were available on 5 December 2009 in order to brief them. Mr O'Friel and others were unable to attend this meeting and so a second meeting was arranged for 12 December 2009.This meeting was cancelled as only Mr O'Friel and one other could make it.

18. On 16 December 2009 Mr O'Friel wrote to Mr Boothman stating, *"Acting as the functional Manager (Interim General Secretary of the Association), I have made the decision to revoke the suspension of Mark Weatherhead and I have informed Mark accordingly."* He stated that he had done so as the police case had now been closed. Despite the clear language used by Mr O'Friel in this letter, he did not inform Mr Weatherhead that his suspension had been revoked and gave evidence that what he had meant to say was that he would seek the revocation of Mr Weatherhead's suspension at the next meeting of the NGC.

19. Mr O'Friel and Mr Boothman jointly called a meeting of the NGC on 23 January 2010 in a hotel in Walsall. Although it was usual for the Management Board to meet in the evening preceding an NGC, there was no Management Board preceding this NGC. Mr Simon Cavalier-Jones attended the meeting. Mr Weatherhead was present in the hotel, together with his representative Mr Ledbury, ready to be called into the meeting if required. The meeting was called to order by Mr Boothman, as Chairman, and he gave his Chairman's report. Mr O'Friel then made a presentation in which it was his intention to call for Mr Weatherhead's reinstatement. During the course of this presentation, the members of the NGC asked Mr Boothman and Mr O'Friel to leave so that they might have a discussion in the absence of anyone implicated by Mr Sleight's statement to the police. After a short while, Mr O'Friel was called back into the meeting and told that he was suspended, pending an internal investigation. Mr Boothman was then called into the meeting and similarly suspended. The meeting continued. It decided to commission an independent report on the Association's position in the light of the decision of the CPS not to prosecute. The report was to be prepared by Ms Julia Burnside, a lecturer in law at Lincoln University. The meeting also appointed Mr Matt Whitticombe as the Acting General Secretary and Mr John Gettens as Acting Chairman. The position of Assistant General Secretary was not filled on a temporary basis. The Claimants allege, and the Association accepts, that this meeting was not quorate in accordance with rule 18 of the rules of the Association.

20. Mr O'Friel and Mr Weatherhead had both taken with them to this meeting letters of resignation from their positions as officers of the Association. Mr Weatherhead's letter was dated 21 January and signed on 22 January. Mr O'Friel's letter was dated 22 January. Both letters were handed to the Association on the afternoon of 23 January.

21. The Burnside report was completed on 1 April 2010. It was prepared on the basis of the available documentation, without those concerned being interviewed. It concluded that those implicated by Mr Sleight should be called to disciplinary hearings at which they could defend their position. It also made other recommendations about the constitution and conduct of the Association.

22. Mr O'Friel wrote to my office on 9 April 2010, making various complaints against the Association.

23. On 17 April 2010 Mr Whitticombe wrote to both Mr Weatherhead and Mr O'Friel calling them to a disciplinary hearing on 28 April at a hotel in Leeds. Mr Weatherhead was to face six charges and Mr O'Friel two charges.

24. Mr Weatherhead did not receive the letter intended for him until the disciplinary hearing had taken place on 28 April 2010. He had gone on holiday abroad before the letter was delivered and returned from holiday on 4 May.

25. Mr O'Friel wrote to Mr Whitticombe on 22 April seeking a postponement of his disciplinary hearing. He stated that the date and location were not acceptable to him for reasons beyond his control. When a postponement was not granted, Mr O'Friel wrote again to Mr Whitticombe on 25 April, repeating that the date and location were not acceptable for reasons outwith his control. He added that it would not be unreasonable for his employer to refuse him time off rostered duties at such short notice and it was unlikely that he would be given special leave. He also stated that he did not have the financial capability of financing such a trip as a result of the Association not having previously paid his expenses.

26. The disciplinary hearings both took place on 28 April 2010, in the absence of both Mr Weatherhead and Mr O'Friel. The panel consisted of Mr Whitticombe, together with two members of the NGC, Mr Bernard Peacher and Mr Barry Brown. The panel upheld both of the charges against Mr O'Friel and all but one aspect of the charges against Mr Weatherhead.

27. On 1 May 2010, the NGC accepted the recommendation of the disciplinary panel that both Mr Weatherhead and Mr O'Friel should be expelled. On 3 May Mr Whitticombe wrote letters to both members informing them of their expulsion from the Association.

28. On 26 May 2010 Mr Weatherhead wrote to my office making various complaints against the Association.

29. There is a dispute as to whether Mr O'Friel and Mr Weatherhead appealed against the decision to expel them from the Association. Mr O'Friel and Mr Weatherhead maintained that they did appeal but the Association maintains that it received no

notification of any such appeal. There was no complaint before me which required me to adjudicate on this point.

30. In October 2010 the Association held an ADC at which Mr Whitticombe was elected as the General Secretary and Mr Norton was elected as Finance Officer. No candidate came forward for the position of Assistant General Secretary. No other positions were due for election at that time.

The Relevant Statutory Provisions

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

> ***Section 108A Right to apply to Certification Officer***
> *(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*
>
> *(2) The matters are -*
> *(a) the appointment or election of a person to, or the removal from, any office;*
> *(b) ...*
> *(c) disciplinary proceedings by the union (including expulsion)*
> *(d) the constitution or proceedings of any executive committee or of any decision-making meeting*
> *(e) ...*
>
> *(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).*

The Relevant Rules

32. The rules of the Association which are relevant for the purposes of this application are as follows:-

> ***Section 6: National Governing Council***
> *The National Governing Council (NGC) shall be the principle executive committee of the Association.*
>
> *6.1 The primary objectives of the NGC shall be:-*
>
> *6.1.2 to appoint and transfer Officers, and to dismiss any Officer found guilty of fraud, gross neglect of duty or other such serious charge.*
>
> *6.2 The nationally elected Officers of the NGC must have served at least six months on the NGC prior to their election and shall be the:-*
> *Chairman (3 years)*
> *General Secretary (5 years)*
> *Assistant General Secretary (3 years)*
> *Finance Officer (5 years) and*

Administrative Officer (3 years)

6.2.1 Chairman who shall:-
(a) act as a trustee of the Association.
...

6.2.2 General Secretary who shall:-
(a) act as a trustee of the Association.
...

6.2.3 Assistant General Secretary who shall:-
...
(d) at the discretion of the NGC, shall act-up for the General Secretary only for long periods of absence.
(e) in the event of having to act-up for the General Secretary, will become a temporary trustee of the Association for that specific period.

6.2.4 Finance Officer who shall:-
(a) act as a trustee of the Association.
(f) prepare and transmit to the Certification Officer all Returns required by Acts of Parliament or the Regulations.

6.2.5 Administrative Officer who shall:-
...

6.3 The other elected members of the NGC for a two year tenure shall be:-
(a) 11 Regional Representatives from England (see App 1).
(b 3 Regional Representatives from Scotland.
(c 2 Regional Representatives from Wales.
(d) 1 Regional Representative from Northern Ireland.
(f) 2 Officer Representatives.
(g) 2 Control Room Assistant Representatives.
(h) 2 Patient Care Services Representatives.
(i) 1 Other to represent any administrative or technical grades.

6.4 Other Officers may be required to attend the NGC from time to time, either in a consultative capacity or to give reports, and may include:-
(a) Ambulance Negotiating Body Staff Side Secretary.
(b) Publication editors.
(c) Chairman, Health & Safety Sub-committee.
(d) Industrial Relations consultant.
(e) Press Officer.
(f) Welfare consultant.
(g Lay Field Officers.

Section 8: Management Board
8.1 The Management Board of the Association shall consist of the:
Chairman,
General Secretary,
Finance Officer,
Administrative Officer in a non-voting capacity and,
2 members from the NGC, elected every 2 years by the NGC.

8.4 It shall meet at least three times per year at which at least two trustees shall be present.
...

Section 12: Annual Delegate Conference

The Annual Delegate Conference (ADC) shall be the supreme policy making body of the Association.

...

12.5 The date of the ADC shall be chosen by the NGC, but it shall not be more than one year and one month from the last ADC.

Section 13: Disciplinary Procedure

13.1 Any member of the Association can be subject to a charge brought against them either by an individual, Chapter, Region or the National Governing Council. The alleged charge must be in the written form, addressed to the Management Board and, may include:-

Acting outside the remit or authority of their position
Discredit
Financial jeopardy
Libel/Slander
Theft
Misrepresentation
Incompetence
Failure to follow directions
Deliberate racist or sexist act towards a third party.
This list is not complete and may be added to or amended.

13.2 Upon receipt of such a charge, the following Disciplinary Procedure shall be enacted:-

13.3 Stage 1 – Investigation

13.3.1 One of the National Governing Council of the Association shall be appointed to carry out an initial investigation of the charge.

13.3.2 The investigation should be carried out with expediency and a written report submitted to the Administrative Officer plus one other member of the Association within 14 days.

13.3.3 If they agree there are sufficient grounds of complaint, then Stage 2 shall then be enacted by the Administrative Officer.

13.4 Stage 2 – Hearing

13.4.1 The member concerned shall then be informed within 7 days in writing, that a charge of misconduct has been brought against them.

13.4.2 A disciplinary panel shall be appointed consisting of: a trustee, who will Chair the panel, a member of the National Governing Council, and an officer of the Association who is not known to the member being investigated.

13.4.3 A suitable venue shall be selected at which to carry out the Disciplinary Hearing and should be within practical travelling distance for all parties involved.

13.4.4 The member under investigation shall have the right to be represented by another member of the Association at the Hearing.

13.4.5 The Hearing shall be held within 14 days from the Administrative Officer's decision to proceed with the Hearing unless an extension is mutually agreed by both parties.

13.4.6 If the member fails to attend the Disciplinary Hearing, the panel may proceed to deal with the matter in the members absence.

13.4.7 The member shall be notified in writing within 7 days of the Disciplinary Panels' decision.

13.5 Stage 3 – Appeal

13.5.1 Any member against whom formal disciplinary action has been taken shall have the right of appeal, which must be submitted in writing to the Management Board within 10 days from the Hearing.

...
13.10 At all times, the disciplinary procedure will operate within the guidelines as set out above and, in line with the interests of natural justice.

Section 17: Ballots
Full postal ballots of the membership shall be undertaken when:-
17.1 the election of nationally elected officers is required.

Section 18: Quorum
In all matters, this Association recognises a quorum as being one more than half of those in post and entitled to vote.

Consideration and Conclusions

Preliminary matter

33. There is a dispute between the parties as to what are the correct rules to be applied in this case. The Claimants asserted that the correct rules are those that were adopted in 1997. The Association asserted that the 1997 rules had been amended at an ADC in 2008 and that the 2008 version had been held out as being the rules of the Association since then.

34. The Association argued that Mr Weatherhead and Mr O'Friel had given the 2008 version of the rules to various people and had attached them to the Annual Returns to my office in 2008 and 2009. Mr Weatherhead and Mr O'Friel strongly denied having held out to anyone that the 2008 version was ever in force and gave evidence that they were unaware that the wrong rules had been attached to the Association's annual returns in 2008 and 2009. They maintained that a variation of the 1997 rules had been discussed at the meeting of the Management Board prior to the ADC in 2008 but that no agreed position was reached which could be put to the ADC the following day for adoption. They stated that no variation was agreed at the ADC held in 2008.

35. Rule 21 of the rules of the Association provides that the rules can only be altered or added to by resolution of the ADC.

36. The only evidence that the rules were amended in 2008 came from Mr Boothman. However, he was unable to state categorically that he remembered them being amended at the ADC in 2008. He stated only that he "believed" they had been amended then, commenting that he had only just been elected as Chairman and everything was "a bit hazy". On the other hand, Mr Weatherhead and Mr O'Friel

gave firm and credible evidence that no such resolution was approved at the 2008 ADC, especially having regard to the failure to reach an agreed position at the Management Board the previous evening. I also consider it relevant that the Association did not produce in evidence any documentary record of the resolutions approved at the ADC in 2008. Curiously, the Association stated that it did not keep minutes of any ADC. However, I accept Mr Weatherhead's evidence that the Administrative Officer had the practice of keeping a note of the resolutions approved, that a briefing paper was sent to members informing them of any resolutions approved and that similar information appeared in the Association's journal, Ambulance Assessment, and on its website. The Association produced none of this material in support of its assertion that the rules of the Association were amended at the ADC in February 2008.

37. On the above evidence, I find, on the balance of probabilities, that there were no amendments to the 1997 rules of the Association made at the ADC in 2008 and that accordingly the rules according to which these complaints are to be decided are the 1997 rules.

38. I now turn to deal individually with each of Mr Weatherhead's complaints.

The Individual Complaints

Complaint One

39. Mr Weatherhead's first complaint is as follows:

> *"That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, the union breached its rule 13.3.1 when it failed to appoint one of the National Governing Council to carry out an initial investigation."*

40. Mr Weatherhead conceded that this claim was out of time as it related only to the events of 15 November 2009 and his complaint was made to me on 26 May 2010. Mr Weatherhead further conceded that his suspension was not a disciplinary measure taken against him by the Association but, as he put it, a safety measure. Accordingly, Mr Weatherhead withdrew this complaint.

41. Upon withdrawal by Mr Weatherhead, I dismiss this complaint.

Complaint Two, Three and Four

42. The relevant complaints are as follows:

> Complaint 2
>
> *"That on or around the 15th November 2009, the original date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the union breached its rule 13.3.2, because it did not instigate an investigation with expediency, nor was a written report sent to the Administrative Officer David Lake and one other member of the National Governing Council, within 14 days or at all."*
>
> Complaint 3

"That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the Union breached its rule 13.3.3 by not enacting Stage 2 of the Disciplinary Procedure on the basis that the Administrative Officer and one other member of the Association had not agreed there was sufficient grounds for complaint."

Complaint 4

"That on or around the 15th November 2009, the date of Mr Weatherhead's suspension as the elected General Secretary, and on the 23rd January 2010, the date on which his suspension was continued, the union breached its rule 13.4.1 because the union failed to inform Mr Weatherhead in writing that a charge of misconduct has been brought against him within 7 days of the date it was agreed to enact Stage 2 of the procedure in accordance with rule 13.3.3."

43. The relevant rules of the Association provide as follows:

"13.3.2 The investigation should be carried out with expediency and a written report submitted to the Administrative Officer plus one other member of the Association within 14 days. "

"13.3.3 If they agree there are sufficient grounds of complaint, then Stage 2 shall then be enacted by the Administrative Officer."

"13.4.1 The member concerned shall then be informed within 7 days in writing, that a charge of misconduct has been brought against them."

44. Mr Weatherhead conceded that any complaint based on 15 November 2009 was out of time. He further conceded that no additional action was taken against him at the NGC on 23 January 2010. He accepted that his previous suspension had merely continued without being revoked. Nevertheless, Mr Weatherhead argued that on 23 January a disciplinary process was to be started against him following receipt of the decision of the Crown Prosecution Service not to prosecute Mr Sleight and that the procedures in sub-paragraphs (2) and (3) of rule 13.3 should have been implemented. He further stated that he was not informed of any action to be taken against him, contrary to rule 13.4.1, and that the Administrative Officer, Mr Lake, had not been advised of what was going on.

45. Mr Simon Cavalier-Jones, for the Association, submitted that during the period up to and including 23 January 2010 no disciplinary measures had been taken against Mr Weatherhead and that accordingly rule 13 was not engaged. Nevertheless, he accepted that, if rule 13 was engaged, the Association had not operated any of the provisions of rule 13.3 in the period up to 23 January.

46. In my judgement, the Association took no action against Mr Weatherhead during the period about which Mr Weatherhead can timeously complain. Mr Weatherhead made his application to me on 26 May 2010 and accordingly he cannot complain to me of events which took place before 26 November 2009. I find that in the period between 26 November 2009 and 23 January 2010, the Association took no action against Mr Weatherhead that can be construed as having been disciplinary in nature. Indeed, Mr Weatherhead conceded that his suspension on 15 November 2009 (or the date his letter of suspension was written, 10 November) was not a disciplinary suspension. Accordingly, I find that rule 13 was not engaged in any treatment of Mr Weatherhead by the Association during the relevant period and that there was therefore no breaches of rules 13.3.2, 13.3.3 or 13.4.1.

47. For the above reasons I refuse to make the declarations sought by Mr Weatherhead in his second, third and fourth complaints.

Complaint Five

48. Mr Weatherhead's fifth complaint is as follows:

> *"That on 28th April 2010 the union breached its rule 13.4.2 by not appointing a Disciplinary Panel consisting of a Trustee to chair the panel and one other member of the National Governing Council not known to Mr Weatherhead or the parties being investigated."*

49. Rule 13.4.2 of the rules of the Association provides as follows:

> *"A disciplinary panel shall be appointed consisting of: a trustee, who will Chair the panel, a member of the National Governing Council, and an officer of the Association who is not known to the member being investigated."*

50. Mr Weatherhead submitted that the disciplinary panel who heard the charges against him was composed of Mr Whitticombe, the Acting General Secretary and two members of the NGC who were known to him. He argued that this composition was in breach of rule 13.4.2 in two respects. First, he submitted that as Mr Whitticombe was only the Acting General Secretary, he could not become an actual trustee of the Association and so there was no trustee present on his disciplinary panel. Secondly, he submitted that both Mr Peacher and Mr Brown were known to him and so were disqualified from taking the third place on the panel. He maintained that the Association had other officers, outside the NGC, who could have been called upon to take this third position. In his evidence, Mr Weatherhead referred to a Ms Susan May, a lay officer in the South Central Region, who was certainly unknown to Mr O'Friel. Mr Weatherhead further relied on rule 6.4 as indicating that there were officers other than those on the NGC, specifically Lay Field Officers.

51. Mr Simon Cavalier-Jones, for the Association, submitted that Mr Whitticombe was qualified to chair the disciplinary panel as, upon being appointed as Assistant General Secretary, he also became an actual trustee of the Association. He stated that the Association had received legal advice to this effect. Mr Cavalier-Jones further submitted that there were no officers of the Association other than those defined in rule 6.2 or on the NGC and that Mr Weatherhead knew each such person. He concluded that in these circumstances it would not be possible to constitute a disciplinary panel in a case against a member of the NGC and that this could not be the intended effect of the rule. Mr Cavalier-Jones submitted that the persons chosen to sit on the disciplinary panel were those with no prior engagement with the investigation and that the Association had therefore done all it could to abide by the spirit of the rule. The Association had made what he said was a practical adjustment.

52. The issue as to whether someone other than a person described in the trust instrument can be an actual or constructive trustee is a matter of trust law. No legal arguments based on trust law were advanced to me. However, having regard to the legal advice obtained by the Association and the need for the Association to

have trustees, I am persuaded that Mr Whitticombe became an actual trustee of the Association upon the suspension and later resignation of Mr Weatherhead and his appointment as Acting General Secretary. I make this finding with reservations and subject to legal argument should this issue come before me in a later case.

53. I turn now to consider whether the disciplinary panel contained an officer of the Association not known to Mr Weatherhead. It plainly did not do so. Mr Weatherhead knew all three members of the panel. However, Mr Cavalier-Jones invited me not to adopt a literal approach to this rule as otherwise it would be impossible to discipline a member of the NGC. I reject his invitation as I am satisfied that there are Lay Field Officers of the Association who could have been called upon. Mr Cavalier-Jones stated that he was unaware of the existence of any such Field Officers and that the Association holds no such information. However, given Mr Cavalier-Jones' relatively recent involvement with the Association and the nature of his involvement, I place little weight on his knowledge or otherwise of the affairs of the Association at local level. On the other hand, Mr Weatherhead stated that, as General Secretary for nine years, he knew that there were Lay Field Officers representing members all around the country and he was still able to name one in his region. Having regard to rule 6.4 and the evidence of Mr Weatherhead, I accept that with diligence other Lay Officers could have been found to sit on the panel and do not accept the argument of "impossibility" advanced by Mr Cavalier-Jones.

54. For the above reasons I make the declaration sought by Mr Weatherhead that on the 28 April 2010 the Association breached its rule 13.4.2 by the disciplinary panel it appointed not being properly constituted.

Complaint Six

55. Mr Weatherhead's sixth complaint is as follows:
"That on 28th April 2010, the union breached its rule 13.4.3, by failing to provide a suitable and practical venue at which to carry out the disciplinary hearing into the charges against Mr Weatherhead."

56. Rule 13.4.3 of the rules of the Association provides as follows:
"A suitable venue shall be selected at which to carry out the Disciplinary Hearing and should be within practical travelling distance for all parties involved."

57. Mr Weatherhead submitted that the arrangements for his disciplinary hearing were unfair as he had left on holiday abroad before the letter informing him of the date and place of the hearing had been delivered to his address and that he did not return from holiday until after the disciplinary hearing had taken place. Mr Weatherhead further stated that Leeds was not a suitable venue as he lived in Southampton, although he later conceded that he had attended other meetings in Leeds for the Association and would have gone there if the Association had insisted.

58. Mr Simon Cavalier-Jones, for the Association, submitted that the Association had conducted itself strictly in accordance with its rules. He maintained that there had been proper service on Mr Weatherhead's home address of a hearing that had to

be held within 14 days of the decision to proceed with the hearing. Mr Cavalier-Jones argued that any problems caused by Mr Weatherhead having been on holiday could have been dealt with if Mr Weatherhead had appealed and the Association had no record of having received an appeal from him.

59. This is a complaint of a breach of rule 13.4.3. Accordingly I am required to consider whether the chosen venue for the disciplinary hearing in Leeds was a suitable venue and whether it was within practical travelling distance for all the parties involved. I have no evidence of the suitability of the chosen venue, other than that it was a hotel. I am aware that hotels are frequently used for such hearings and have no evidence upon which to find that this hotel was not suitable. As to whether Leeds was within practical travelling distance for all the parties involved, I would have had serious concerns if Mr Weatherhead was the only person being disciplined, as he lives in Southampton. However, Mr O'Friel was also being disciplined on similar facts and he lives in Glasgow. On that basis, Leeds is roughly equidistant from both Mr Weatherhead and Mr O'Friel. I further take into account in deciding this issue the size of the Association and its financial position. I also have regard to Mr Weatherhead's concession that he had previously travelled to Leeds on the business of the Association. Having regard to all the circumstances, I find that the chosen hotel in Leeds was both a suitable venue and one within practical travelling distance for all parties involved.

60. For the above reasons I refuse to make the declaration sought by Mr Weatherhead in his sixth complaint.

61. Notwithstanding my rejection of this complaint, I remain troubled by a disciplinary sanction being imposed on a member who was unaware of the charges and unaware that a disciplinary hearing was to take place. The Association maintained that this situation could have been remedied by an appeal but none was made. I disagree. The rules provide that a member is entitled to a disciplinary hearing and an appeal. The Association's proposed remedy deprives the member of a level of adjudication. Furthermore, Mr Weatherhead maintained that he did appeal and his emails to the Acting Chair and Acting General Secretary were included in the bundle before me. Be this as it may, there is no separate issue before me for adjudication on the alleged appeal and I will not comment further. The Association will no doubt be careful to avoid a repetition of any similar situation.

Complaint Seven

62. Mr Weatherhead's seventh complaint is as follows:

> *"That on 23rd January 2010 the union breached its rule 18 by its NGC purporting to take a decision when it was not quorate; namely, its purported decision to continue the suspension of the elected General Secretary and implement the additional suspensions of Mr O'Friel and Mr Boothman."*

63. Rule 18 of the rules of the Association provides as follows:

> *"In all matters, this Association recognises a quorum as being one more than half of those in post and entitled to vote.."*

64. It was accepted by the Association that the NGC which purported to suspend Mr Boothman and Mr O'Friel on 23 January 2010 was not quorate. However I do

not find that the NGC made a separate decision on 23 January to continue the suspension of Mr Weatherhead.

65. Accordingly, I make the declaration sought by Mr Weatherhead but limited to the suspension of Mr O'Friel and Mr Boothman.

Complaint Eight

66. Mr Weatherhead's eighth complaint is as follows:

"That on or around the 28th April 2010 the union breached its rule 17.1, by failing to initiate a full postal ballot of its membership for the position of General Secretary when this was required as a result of the union's expulsion of the General Secretary, Mr Weatherhead."

67. Mr Weatherhead withdrew this complaint.

68. Accordingly, I dismiss Mr Weatherhead's eighth complaint upon withdrawal by him.

Complaints Nine, Ten, Eleven and Twelve

69. The relevant complaints are as follows:

Complaint 9

"That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.1, by having an unelected person in the position of acting chairman and trustee."

Complaint 10

"That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.2, by having an unelected person in the position of acting general secretary and trustee."

Complaint 11

"That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.3, by having an unelected person in the position of assistant general secretary and trustee."

Complaint 12

"That from the 23rd January 2010, and ongoing, the union has been and continues to be in breach of its rule 6.2.4, by having an unelected person in the position of finance officer."

70. The relevant rules of the Association provide as follows:

"6.2 The nationally elected Officers of the NGC must have served at least six months on the NGC prior to their election and shall be the:-

Chairman (3 years)
General Secretary (5 years)
Assistant General Secretary (3 years)
Finance Officer (5 years) and
Administrative Officer (3 years)"

Rule 6.2.1 provides that the Chairman shall amongst other things act as a trustee of the Association. Rule 6.2.2 provides similarly for the General

Secretary. Rule 6.2.3 provides similarly for the AGS. Rule 6.2.4 provides similarly for the Finance Officer.

71. Mr Weatherhead submitted that the positions of Chairman, General Secretary, Assistant General Secretary and Finance Officer had not been filled since 23 January 2010 and that this caused there to be a breach in the relevant rule. He argued that to appoint people in an "acting" capacity was not sufficient as such persons could not become trustees of the Association. He observed that by rule 6.2.3(e) only the Assistant General Secretary became a trustee when called upon to "act-up" for the General Secretary.

72. Mr Simon Cavalier-Jones, for the Association, submitted that elections for the position of General Secretary, Assistant General Secretary and Finance Officer had been held in October 2010 and that accordingly the Association had moved with reasonable speed in holding elections. He further submitted that it would have been inappropriate to hold an election for the position of Chairman as the incumbent had only been suspended on 23 January 2010 and that his suspension was revoked in August 2010.

73. I have found above, in Mr Weatherhead's fifth complaint, that on the proper construction of the Association's rules a person appointed to act in the position of a nationally elected officer for a temporary period to cover an unexpected emergency assumes all the attributes of that position, including that of trustee. I further find that the rules, and in particular rule 17.1, do not require the immediate election of an officer in the case of the unexpected resignation or, indeed, death of the incumbent. Rule 17.1 must be read as allowing a reasonable period for such an election to be held. On the facts of this case, I find that the Association did call elections for the position of General Secretary and Assistant General Secretary within a reasonable period, even if no candidates came forward for the position of Assistant General Secretary. As to the position of Finance Officer, this remained unfilled by an elected officer from March 2009 to October 2010. I find that this is an unusually long period but that it was not unreasonably long in the circumstances of this case, having regard in particular to the difficulties being experienced by the Association in holding an ADC over this period. The position of Chairman did not become vacant during the suspension of Mr Boothman and it would therefore have been improper to hold an election for that position during his suspension.

74. For the above reasons, I refuse to make the declaration sought by Mr Weatherhead in his ninth, tenth, eleventh and twelfth complaints.

Complaint Thirteen

75. Mr Weatherhead's thirteenth complaint is as follows:

> *"From April 2009, the union has been and continues to be in breach of rules 6.2 and 9.2 by Mr Martin Cavalier-Jones, a person not constitutionally entitled to be a member of the union by virtue of rule 4, acting as Finance Officer and Trustee."*

76. Rule 6.2 of the rules of the Association provides that the Finance Officer shall be a nationally elected officer. Rule 9.2 relates to the election of Regional Council representatives to the NGC.

77. Mr Weatherhead accepted that this complaint was out of time as it was brought on 26 May 2010 alleging a breach of rule between March and June 2009, when Mr Martin Cavalier-Jones allegedly held the appointed position of Acting Finance Officer.

78. I refuse to make the declaration sought by Mr Weatherhead in his thirteenth complaint on the grounds that it was presented out of time.

Complaint Fourteen

79. Mr Weatherhead's fourteenth complaint is as follows:

> *"That on the 23rd January & 28th April 2010, the union breached its rules 8.1 & 8.4 by holding Management Board meetings which did not consist of officers elected in accordance with the rules in the following capacities, Chairman, General Secretary and Finance Officer."*

80. Mr Weatherhead withdrew this complaint.

81. Accordingly, I dismiss Mr Weatherhead's fourteenth complaint on withdrawal by him.

Complaint Fifteen

82. Mr Weatherhead's fifteenth complaint is as follows:

> *"That on or around March 2009, one year & one month from the anniversary of the last Annual Delegate Conference in February 2008, and ongoing, the union breached its rule 12.5, by not holding an Annual Delegate Conference."*

83. Rule 12.5 of the rules of the Association provides as follows:

> *"The date of the ADC shall be chosen by the NGC but it shall not be more than one year and one month from the last ADC."*

84. It was established in evidence that an ADC was held in Guernsey in November 2006. I was also informed that the ADC planned for November 2007 was postponed to February 2008, at which it had been anticipated that the 1997 rules would have been considered for amendment. I was told that this issue was adjourned to the next ADC, which was planned for February 2009. That ADC did not take place on the grounds of lack of participants and finance. A further ADC was planned for 6/7 November 2009, whilst the police were investigating Mr Sleight, but was cancelled. The next ADC was held in October 2010. Accordingly, it was common ground that there was no ADC held between February 2008 and October 2010, a period of 2 years and 8 months.

85. Accordingly, I find that the Association was in breach of rule 12.5 by failing to hold an ADC within one year and one month from the date of the last ADC.

86. For the above reasons, I make the declaration sought by Mr Weatherhead in his fifteenth complaint.

Enforcement Order

87. Mr Weatherhead did not request an Enforcement Order and I do not find it appropriate to make one.

David Cockburn
The Certification Officer