

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

(1) Mr Singh

(2) Mr Baker

v

National Federation of Subpostmasters

Date of Decision:

19 December 2011

DECISION

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

Mr Baker

- 1 I refuse Mr Baker's application for a declaration that the National Federation of Subpostmasters ("the NFSP") breached Standing Order 11.3 on or about 14 February 2011 by allegedly exercising its discretion to suspend him from the Executive Council perversely.
- 2 Upon withdrawal by Mr Baker, I dismiss his complaint that the NFSP breached Standing Order 11.3 on or about 14 February 2011 by its National President allegedly not having made the decision to suspend him.
- 3 I refuse Mr Baker's application for a declaration that the NFSP breached a term to be implied into Standing Order 11.4 on the grounds that the disciplinary action that it instituted against him between 11 February and 11 May 2011 was allegedly not compliant with the rules of natural justice.

Mr Singh

1. I refuse Mr Singh's application for a declaration that the National Federation of Subpostmasters ("the NFSP") breached rule IX (a) (i) of its rules on or about 14 February 2011 by its General Secretary allegedly appointing Ms Kym Ledger as acting National President.
2. I refuse Mr Singh's application for a declaration that the NFSP breached rule IX (a)(ii) of its rules on or about 11 February 2011 by allegedly

removing Mr Singh from his post as National Vice President other than at a Special Conference called for that purpose.

3. I refuse Mr Singh's application for a declaration that the NFSP breached Standing Order 11.3 on or about 14 February 2011 by allegedly exercising its discretion to suspend him from the Executive Council perversely.
4. Upon withdrawal by Mr Singh, I dismiss his complaint that the NFSP breached Standing Order 11.3 on or about 14 February 2011 by its National President allegedly not having made the decision to suspend him.
5. I refuse Mr Singh's application for a declaration that the NFSP breached a term to be implied into Standing Order 11.4 on the grounds that the disciplinary action that it instituted against him between 11 February and 11 May 2011 was allegedly not compliant with the rules of natural justice.
6. I refuse Mr Singh's application for a declaration that, on or about 11 February 2011, the NFSP breached a term to be implied into Standing Order 11 by allegedly not specifying sufficiently the charges against him and how his actions allegedly constituted a breach of the Code of Conduct.

REASONS

Mr Baker

1. Mr Baker brought his application as a member of the National Federation of Subpostmasters ("the NFSP" or "the Union"). He did so by a registration of complaint form which was received by email at my office on 21 March 2011. Mr Baker alleged breaches of the rules of the NFSP which were within my jurisdiction under section 108(A) of the 1992 Act.
2. Following correspondence with Mr Baker, his complaints were confirmed by him in writing in the following terms:

Complaint 1

On or around 14 February 2011 the Union breached Standing Order 11.3, by its National President exercising his discretion perversely in suspending Mr Baker without affording Mr Baker adequate time to respond to any allegation of a breach of the Code of Conduct before suspending him, and also giving inadequate consideration to the response that Mr Baker did make before taking this decision.

Complaint 2

On or around 14 February 2011 the Union breached Standing Order 11.3 by the decision to suspend Mr Baker from the Executive Council having not been made by the National President.

Complaint 3

On or around 11 February 2011 the union breached a term to be implied into SO 11.4 that any disciplinary action to be taken pursuant to that rule should be compliant with the rules of natural justice. It is alleged that the actions of the Executive Council in implementing this disciplinary action were not compliant with the rules of natural justice in the following respects:

a) The members of the Executive Council were biased against Mr Baker in appearance or reality, in that the Executive Council meetings which considered this matter were contaminated by

i) the presence of Mr George Thomson who had previously publicly criticised the actions of Mr Baker, whose presence at these meetings must therefore be regarded as highly prejudicial; and

ii) the presence of Mr Stephen Harper, the chair of all relevant meetings of the EC, who had suspended Mr Baker from the Council on his own initiative and was therefore an interested and predetermined party in the matter: and

b) the procedures undertaken by the Executive council pursuant to SO 11.4 were defective by failing to meet the requirements of natural justice in the following respect:

i) No attempt was made to carry out the investigation by an independent person or body, which therefore meant that the investigation and adjudication were carried out by the same body viz the Executive Council; and

ii) Minutes of the relevant meetings of the Executive Council were not provided to the officers subject to disciplinary action thereby preventing the specified officers (Messrs Singh and Baker) from properly preparing either a defence or a plea in mitigation; and

iii) At no point during the investigation was any effort made to interview either of the officers subject to suspension;

iv) At no point during the investigations were either of the officers under suspension afforded the opportunity to ask questions in order to elucidate the nature of the complaint.

3. At the hearing, I allowed Mr Baker's third complaint to be amended to refer to the period of breach as being between 11 February and 11 May 2011.
4. Also at the hearing, Mr Baker withdrew both his second complaint and the complaint about Mr Harper in paragraph (a)(ii) of his third complaint.

Mr Singh

5. Mr Singh brought his application as a member of the National Federation of Submasters ("the NFSP" or "the Union"). He did so by a registration of complaint form which was received at my office on 21 March 2011. Mr

Singh alleged breaches of the rules of the Union which were within my jurisdiction under section 108(A) of the 1992 Act.

6. Following correspondence with Mr Singh, the complaints were confirmed by him in writing in the following terms:

Complaint 1

On or around 14 February 2011, the union breached rule IX (a) (i) when the General Secretary appointed Kym Ledger as acting National President. There are no provisions in the rules for appointing an acting National President and therefore the union acted ultra vires.

Complaint 2

The Union breached its National Rule IX (a)(ii) on or around 11th February 2011, when the General Secretary, or in the alternative the National President, rather than a Special Conference removed Mr Singh from his post as National Vice President.

Complaint 3

On or around 14 February 2011 the Union breached Standing Order 11.3 by its National President exercising his discretion perversely in suspending Mr Singh from the Executive Council without affording Mr Singh adequate time to respond to any allegation of a breach of the Code of Conduct before suspending him, and also giving inadequate consideration to the response that Mr Singh did make before taking this decision.

Complaint 4

On or around 14 February 2011 the Union breached Standing Order 11.3 by the decision to suspend Mr Singh from the Executive Council having not been made by the National President

Complaint 5

On or around 11 February 2011 the union breached a term to be implied into SO 11.4 that any disciplinary action to be taken pursuant to that rule should be compliant with the rules of natural justice. It is alleged that the actions of the Executive Council in implementing this disciplinary action were not compliant with the rules of natural justice in the following respects:

- a) *The members of the Executive Council were biased against Mr Singh in appearance or reality, in that the Executive Council meetings which considered this matter were contaminated by*
- (i) the presence of Mr George Thomson who had previously publicly criticised the actions of Mr Singh, whose presence at these meetings must therefore be regarded as highly prejudicial; and*
 - (ii) the presence of Mr Stephen Harper, the chair of all relevant meetings of the EC, who had suspended Mr Singh from the Council on his own initiative and was therefore an interested and predetermined party in the matter: and*

b) the procedures undertaken by the Executive council pursuant to SO 11.4 were defective by failing to meet the requirements of natural justice in the following respect:

- i) No attempt was made to carry out the investigation by an independent person or body, which therefore meant that the investigation and adjudication were carried out by the same body viz the Executive Council; and*
- ii) Minutes of the relevant meetings of the Executive Council were not provided to the officers subject to disciplinary action thereby preventing the specified officers (Messrs Singh and Baker) from properly preparing either a defence or a plea in mitigation; and*
- iii) At no point during the investigation was any effort made to interview either of the officers subject to suspension;*
- iv) At no point during the investigations were either of the officers under suspension afforded the opportunity to ask questions in order to elucidate the nature of the complaint.*

Complaint 6

When the union initiated the disciplinary process against Mr Singh on or about 11 February 2011, the charges specified in the disciplinary process merely itemised actions taken and therefore the union breached a term to be implied into SO 11 that any disciplinary action to be taken pursuant to that rule must specify how such actions breach the Code of Conduct.

7. At the hearing I allowed Mr Singh's fifth complaint to be amended to refer to the period of breach being between 11 February and 11 May 2011.
8. Also at the hearing, Mr Singh withdrew both his fourth complaint and the complaint about Mr Harper in paragraph (a)(ii) of his fifth complaint.
9. I investigated the alleged breaches in correspondence. A hearing took place on 1 and 2 December 2011. At the hearing, Mr Baker represented both himself and Mr Singh. Both claimants gave evidence in accordance with their written witness statements. The Union was represented by Mr Jacques Algazy of counsel instructed by Mr Cioffi of Fitzhugh Gates solicitors. Evidence for the Union was given by Mr Thomson, General Secretary, Mr Harper, National President (at the time the complaints were made), Kym Ledger, Executive Officer at the time of the complaints (now the National President) and David Milner, an Executive Officer. They each supplied a written witness statement. All the witnesses were cross examined. There was in evidence a 557 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. The rules and Standing Orders of the Union were also in evidence. Two additional documents were added to the bundle at the hearing. The claimants and the Union each provided skeleton arguments. Each of the parties agreed to a single decision being issued dealing with both applications.

Findings of Fact

10. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follow:
11. Mr Baker is a sub postmaster in Larkhill, Salisbury, where he has lived and worked for about 24 years, having previously worked for the Post Office for about 10 years. He has also been a member of the NFSP for about 24 years. He has held various positions within the NFSP, including that of Member of the Executive Council ("EC") for the South West Region for the last 12 years. He has also been a County Councillor in Wiltshire and held senior positions on that council. There is an issue as to whether Mr Baker is currently a member of the Union. The NFSP maintains that he has resigned. Mr Baker maintains that he is still a member. This issue is not relevant to the proceedings before me.
12. Mr Singh has been a sub postmaster in Crondall, Farnham, for about 21 years, having previously worked for the Post Office. He has been a member of the NFSP for about 23 years. He served on the Regional Committee of the South East Region of the Union for 10 years and has been a member of the National EC, representing the South East Region, since 2006. In May 2010 Mr Singh was elected as the National Vice President at the Annual Conference for a period of one year. Mr Singh was expelled from the Union on 3 November 2011.
13. The NFSP has about 6,400 members. It has an EC of 13 members and is administered in 10 regions. Members elected to the EC are known as Executive Officers. The General Secretary, Mr Thomson, described sub postmasters as business people who contract with Post Office Limited to run sub post offices and stated that sub post offices make up about 97% of the Post Office network.
14. The essential background to this case is the so called privatisation of the Post Office. It was common ground that this is an issue which is as sensitive as it is complex. At the relevant time, the Postal Services Bill was going through Parliament. The three main background issues which concern these applications are the passage of the Bill, the future structure of the Post Office network and its funding. On the issue of restructuring, there was discussion about the introduction of Post Office Locals, in which subpostmasters would be remunerated by commission only and would not be eligible for a monthly Core Tier Payment, an agreed regular payment viewed by some as being equivalent to a salary. On the issue of funding, the NFSP was proud of the part it had played in securing an announcement from the government in the autumn of 2010 that a further £1.34 billion would be committed to the Post Office but was concerned that events might destabilise this funding commitment.
15. At a meeting of the EC of the NFSP in October 2010, a motion was approved in the following terms:

“Subject to the funding being made available and subject to the scheme remaining voluntary, the EC adopt the Post Office Local model as a concept.”

16. Mr Baker had proposed a motion that gave more unqualified support to Post Office Locals but the EC added the words “as a concept” to give the Union “more wriggle room”.
17. At a special meeting of the EC on 22 November 2010 it was decided that the NFSP would support the Postal Services Bill. The resolution that was approved was in the following terms:

“That this federation publicly announce that we support the Government’s Postal Services Bill at the All Party Post Office Group on Wednesday, 24 November 2010 at 5pm in the House of Commons. Furthermore we announce at the same meeting that with immediate effect we are affiliating to the Employees Ownership Association (EOA) as we continue on the path to turn Post Office Limited (POL) into a mutually owned company with the interests of subpostmasters at the heart of the new POL.”

To some, this was a controversial decision. The Postal Services Bill was not supported by all the unions in the industry.

18. The concept of cabinet or collective responsibility applies to the decisions of the EC of the NFSP by virtue of paragraph 11.2 of the Standing Orders for the EC, which is in the following terms:

11.2 It is incumbent upon the Executive Council and each individual member of it to at all times promote the agreed aims and aspirations of the Executive Council which shall not conflict with the Rules and objectives of the National Federation of SubPostmasters. To this end once any matter has been debated by the members of the Executive Council and a decision reached, that decision shall be deemed to have been agreed by all members of the Executive Council and shall be the only one promulgated or communicated by any member of the Executive Council or Secretariat.

19. On 8 January 2011 the Postal Services Bill had its first reading in the House of Lords, having been through the House of Commons. The second reading was scheduled for 16 February.
20. At a meeting of the EC held between 10-12 January 2011 there was a discussion of the progress of negotiations on restructuring and mutualisation of the Post Office, amongst other matters. Mr Baker gave evidence that arising out of these discussions he became concerned about the direction in which the Post Office was heading.
21. After the EC meeting in January 2010, Mr Baker and Mr Singh returned to their respective regions and reported back on the position. They

considered that the restructuring that had been discussed was adverse to the interests of the members of the NFSP. Mr Baker and Mr Singh discussed their concerns on the telephone and organised a joint meeting of members of the two regions. At this meeting it was agreed that a letter would be prepared for distribution to all members seeking their approval to an amendment of the Postal Services Bill to the effect that "*Sub Postmaster should have an equal say in the running of the Post Office, with a casting vote*". This proposal was taken back to the Regional Committees in the South West and South East and approved. Mr Baker and Mr Singh gave evidence that they then regarded themselves as bound to carry out what had been agreed in their regions. The draft letter that was prepared was given to three people from each region for proof reading and approval. A draft of this letter was also sent to selected members elsewhere in the country.

22. In the week beginning Monday 7 February 2010, Mr Thomson, the General Secretary, began to get feedback that Mr Baker and Mr Singh were about to write to all members.
23. On Tuesday 8 February 2011, Mr Singh drafted a letter that was to be sent to all peers in the House of Lords. The letter states that he is writing in a personal capacity and as the Vice President of the NFSP. He signs the letter as Vice President. The letter expresses concern that the current version of the Bill did not adequately secure the future of an easily accessible national network of branch officers and proposed "a simple amendment". He attached a short note and a longer briefing note. This letter was not posted to the peers until 11 February.
24. Ms Ledger, a member of the EC, gave hearsay evidence about a meeting that had taken place on 8 February in Nottingham which sought to raise two resolutions for debate at the meeting of her regional committee on 11 February. One resolution was to support the proposal being advanced by the South West and South East Regions. The other proposal was to register a lack of confidence in the leadership of the Union. Ms Ledger was told that Mr Singh had addressed this meeting but Mr Singh denied that he had done so.
25. On Wednesday 9 February 2011, Mr Baker and Mr Singh sent an email to all members of the EC expressing their concern about the proposed new structure of Post Offices and asking EC members to reconsider their position on the Postal Services Bill. This email sought a revision of the Union's stance and an amendment which would secure control of the Post Office for the NFSP in the new structure. It asks for a response by 5pm that day by email or text, but requested no telephone contact. Members of the EC received text messages that day asking them to read this email. No members of the EC responded to Mr Baker or Mr Singh.
26. On Thursday 10 February 2011 Mr Harper, the then President of the NFSP, spoke with Mr Thomson on the telephone. Mr Harper was at his place of work in Northern Ireland and Mr Thomson was at the Union's

head offices in Shoreham-by-Sea, West Sussex. They both expressed concern at the email from Mr Baker and Mr Singh. After discussion, Mr Harper agreed the text of a letter to be sent to Mr Baker and Mr Singh from the President. The letter was to be generated from the Union's head offices and Mr Harper's signature added in electronic form. The letter informs Mr Baker and Mr Singh that they were bringing the organisation into disrepute by openly challenging the agreed strategy and that this would not be allowed to continue. They were told that if they felt unable to fulfil their obligations as members of the EC, they should resign forthwith.

27. On the evening of Thursday 10 February 2011, Ms Ledger attended a branch meeting in her region in the Midlands. She was told that there would be a call for a vote of no confidence in the leadership but the members of that branch reacted strongly against such a call.
28. In the early morning of Friday 11 February 2011, Ms Ledger met with a few colleagues to drive them to the regional council meeting that day. She was handed a copy of a letter dated 11 February 2011 signed by Mr Baker and Mr Singh. She was told by her colleagues that they had been given this letter on the night of Wednesday 9 February. Upon reading the letter, Ms Ledger realised its importance and faxed a copy of it to Mr Thomson at 9.17am, the earliest opportunity. The letter was on NFSP letterhead and signed by Mr Baker and Mr Singh, together with their respective regional presidents and secretaries. It is a lengthy two page letter which states that the Southern Regions had decided to take control of their destiny and wanted to propose an amendment to the Postal Services Bill which would give postmasters control of the Post Office, not "a mere seat as is being pursued by those in charge". It stated that some very prominent peers had already been lobbied and that they were in the process of lobbying all peers by sending them a briefing document. The letter called on members to lobby any peer living in their area and to sign in at the website address provided.
29. By or about Friday 11 February 2011, Mr Baker and Mr Singh had established a website on which they posted information to keep members informed of the progress of their proposals. This was an open website, without encryption, open to any member of the public.
30. Also on Friday 11 February 2011, Mr Baker and Mr Singh arranged for the commercial bulk mailing of their letter of 11 February, together with Mr Singh's letter to "all peers". This mailing was despatched to all Post Offices, whether or not the recipients were members of the NFSP.
31. As noted above, Mr Thomson received from Ms Ledger the faxed copy of the joint letter from Mr Baker and Mr Singh on 11 February 2011. He immediately arranged for a copy of that letter to be sent electronically to each member of the EC. Soon afterwards, Mr Harper spoke with Mr Thomson on the telephone. They were both very concerned about the effect this letter might have upon the negotiations in which the Union

was engaged with the Government and Post Office Limited, which they described as being very sensitive. Mr Harper asked Mr Thomson to speak to every member of the EC and take their views. This process took some time but Mr Thomson reported back to Mr Harper in the late afternoon that all the members of the EC were shocked and outraged and wanted some immediate action to be taken to stop the serious harm that was being done. Mr Harper decided to suspend Mr Baker and Mr Singh from the EC as a precautionary measure and instructed Mr Thomson to write to them in Mr Harper's name to this effect. Such a letter was prepared that day but it was not sent out until 14 February. It was sent out as an email attachment. Mr Thomson gave evidence that the draft was prepared by around 5pm on Friday but it was decided not to send it out until the next working day, Monday 14 February. No satisfactory explanation was given for the delay in transmitting this letter.

32. Having decided upon the suspension of Mr Baker and Mr Singh, Mr Harper was concerned about what might happen over the next two weeks as he was about to go on holiday abroad. In particular, he was concerned about the mechanics of calling a Special EC, should one be needed. Such a meeting may be called by the President or by six ordinary members in writing. As Mr Harper thought that it may be necessary to call a special EC at very short notice, he decided to appoint Ms Ledger as Acting President for this two week period. He considered that this was within the broad powers contained in rule VIII (j). Mr Thomson telephoned Ms Ledger that day to inform her of Mr Harper's decision.
33. On Saturday 12 February 2011, Mr Harper went to New Zealand for two weeks to attend his daughter's wedding.
34. Also on 12 February 2011, Mr Singh wrote a six page response to Mr Harper's letter to him of 10 February. Mr Singh acknowledged that Mr Harper's concern was based on Standing Order 11.2, which he paraphrased as prohibiting public dissent from an agreed decision, but he denied that he was in public dissent and denied that he was challenging the agreed strategy of the NFSP. He stated that if Mr Harper considered that he was in breach of Standing Orders, he should refer the matter to the EC.
35. On Sunday 13 February 2011 Mr Baker sent a similarly long response to Mr Harper's letter of 10 February. Indeed, Mr Baker's letter to Mr Harper is in identical terms to that sent the previous day by Mr Singh.
36. On Monday 14 February 2011 Mr Baker and Mr Singh received their letters from Mr Harper dated 11 February suspending them from the EC. These letters state that the suspensions were on the grounds of (a) breaking the code of conduct of the Standing Orders for the EC; (b) breaching cabinet responsibility; (c) bringing the organisation into disrepute.

37. On Tuesday 15 February 2011 Mr Thomson circulated a letter to all Branch Secretaries informing them of the suspension of Mr Baker and Mr Singh. He explained that this was in essence for a breach of cabinet responsibility in relation to the policy decision of the EC to support the Postal Services Bill.
38. On Wednesday 16 February 2011, Mr Singh wrote a seven page letter to Mr Thomson in response to his letter of suspension. Mr Singh commented that his suspension had been carried out contrary to Standing Orders and was ipso facto void.
39. On Thursday 17 February 2011, Mr Singh wrote to Mr Harper stating that, as his suspension was illegal and unconstitutional, he would be continuing with his duties as he was elected to do.
40. On 23 February 2011, Mr Singh together with his Regional President and Secretary, distributed a further letter to colleagues by mailshot. This letter was also posted on the new website set up for this purpose. It stated that as Mr Singh's suspension was null and void, they would refuse to accept it. It concluded by making a national call for the removal of the General Secretary and the remaining EC on the grounds, inter alia, of gross misconduct and of not following national rules. It asked those who supported this proposal to log on the website and register a vote.
41. Upon his return from holiday on 28 February 2011, Mr Harper wrote to Mr Baker and Mr Singh in similar terms. He stated that they had been suspended under Standing Order 11.3, the EC having determined that their letter of 11 February 2011 was serious enough to merit suspension. He went on to state that the matter would be referred back to the EC pursuant to Standing Order 11.4 and that it would be considered at a Special Meeting on 11 March. He listed the issues to be considered by the EC. In the case of Mr Baker, these were as follows:

"1. Letter to Post Offices dated 11 February 2011 – distributed to all Post Offices (whether NFSP members or not) using NFSP letter promoting actions in conflict with agreed Executive Council positions; signed by Pritpal (Nippy) Singh, Mahesh Patel, Sajj Hussain, Mark Baker, John Bowman and Stephen Pile.

2. Website www.actionchange.org.uk – established in furtherance of above and the publication thereon of various materials on publicly accessible pages, including:

- the letter in 1 above;*
- a letter dated 8 February from Mr Pritpal Singh to members of the House of Lords;*
- an undated letter headed 'South East Regional Council NFSP', signed by Nippy Singh, Mahesh Patel and Sajj Hussain;*

- *an online voting mechanism registering votes in favour of the removal of the General Secretary and remaining Executive Officers.*

3. *Courting or attracting (whether deliberately or otherwise) media interest resulting in further misinformation and distortion and not in accordance with the agreed Executive Council position."*

In the case of Mr Singh there are an additional two issues for consideration:

"4. The letter dated 8 February from Mr Pritpal Singh addressed to members of the House of Lords, seeking action not in accordance with Executive Council policy and, by purporting to act on behalf of the NFSP, misrepresenting the NFSP position.

5. The undated letter headed 'South East Regional Council NFSP', signed by Nippy Singh, Mahesh Patel and Sajj Hussain calling for the removal of the General Secretary and the remaining Executive Council."

Mr Harper went on to confirm that the letters previously sent by Mr Baker and Mr Singh had been circulated to the EC. He stated that if they wished to submit any further responses, they should do so no later than 10 March.

42. On 4 March 2011, Mr Harper wrote to Mr Baker and Mr Singh reminding them that the Special Meeting on 11 March was to allow a full review of the paperwork and other evidence. He stated that any determination of their cases would be made at the planned EC meeting on 21 March 2011 and gave them timeslots to attend that meeting, should they wish.
43. On 11 March 2011, the EC met and reviewed the material that was available to it. A 14 page minute of that meeting was in the hearing bundle.
44. On 18 March 2011, Mr Baker and Mr Singh signed their Registration of Complaint forms to me, which were received on 21 March.
45. On 21 March 2011 the EC met. Mr Baker and Mr Singh did not attend. No decision was made on their cases other than to set up an investigation panel which was to seek a meeting with Mr Baker and Mr Singh. The investigation sub group was to consist of Mr Harper, Mr Thomson and Mr Milner, a member of the EC and the Chair of its General Purposes Committee.
46. On 28 March 2011, Mr Harper wrote to Mr Baker and Mr Singh inviting them to a meeting of the sub group on 6 April. Mr Harper enclosed with that letter a bundle of the documents that the EC had considered to date.

47. On 4 April 2011, Mr Harper wrote to Mr Baker and Mr Singh refusing to accede to their requests to change the arrangements for 6 April and informing them that, after meeting with the sub-group on 6 April, the matters would be referred back to a full EC meeting on 27 April which they were invited to attend.
48. Mr Baker and Mr Singh attended meetings with the investigating sub group on 6 April but both meetings ended prematurely. Mr Baker and Mr Singh stated their intention to tape record their meetings. The sub-group refused permission for them to do so and they left the meeting. In the case of Mr Singh, he asked if he was still the National Vice President. Mr Milner responded by stating that he had not been suspended as National Vice President, but from the position as Executive Officer. He continued by saying: "*The National Vice President's position de facto comes from that role*" and that there are different views on whether Mr Singh was automatically suspended from that post as well. The General Secretary intervened to say that Mr Singh had not been suspended as Vice President but that, as he was suspended as an Executive Councillor, he could not fulfil the role of Vice President at an EC meeting where most of the role of Vice President takes place.
49. On 27 April 2011, Mr Harper wrote to Mr Baker and Mr Singh confirming that the Special Meeting of the EC on 27 April was to go ahead and was to reach a final determination of their cases. They were given timeslots for their attendance and told they could make further written submissions.
50. The hearing of Mr Singh's case was postponed from 27 April to 10 May 2011 but the hearing of Mr Baker's case went ahead on 27 April. Mr Baker did not attend. The EC found that Mr Baker had acted in breach of Standing Order 11.2 with regard to cabinet responsibility and that his actions had brought the NFSP into disrepute. It decided to debar Mr Baker from office for 3 years. Mr Harper wrote to Mr Baker on 28 April informing him of the decision of the EC.
51. The EC met again on 10 May 2011 to consider Mr Singh's case. Mr Singh attended the meeting and presented a 10 page written submission. Mr Singh again indicated his intention to tape record the meeting. When this request was refused, Mr Singh left the meeting. The EC went on to read his submission and consider his case. It found that Mr Singh had acted in breach of Standing Order 11.2 with regard to cabinet responsibility and that his actions had brought the NFSP into dispute. It debarred him from office for 3 years.
52. The Annual Conference of the NFSP was to take place in May 2011. An issue arose as to the attendance of Mr Singh and his status at Conference. By an email of 19 May, the Union informed Mr Singh that, if he were to attend the Annual Conference, he would be attending as National Vice President and a delegate. Mr Singh did not in fact attend the Conference.

53. On 3 November 2011, Mr Singh was expelled from the NFSP.

The Relevant Statutory Provisions

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

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are –

(a) the appointment or election of a person to, or the removal of a person from, any office

(b) Disciplinary proceedings by the union (including expulsion)

(c-d)

The Relevant Rules

55. The rules and standing orders of the NFSP which are relevant for the purposes of these applications are as follows:-

NATIONAL RULES

VIII - Executive Council

(j) If any matter arises calling for urgent attention the President, Vice-President and General Secretary may deal with it and report to the next meeting of the Executive Council, or a statement and resolution may be sent to every member of the Executive Council and a vote obtained on any specific resolution, such vote being reported at the next meeting.

(m) The Executive Council may be removed at any time during their term of office at a Special Conference called for that purpose. On such removal a new Executive Council shall be elected in accordance with the provisions of this Rule and the current regulations governing the election of the Executive Council.

IX - Officers

(a) National President and National Vice-President

(i) The National President and National Vice-President shall be appointed by delegates at Annual Conference from the Executive Council.

(ii) The National President and National Vice-President may be removed from their respective offices at any time during their term of office at a Special Conference called for the purpose. Any vacancy so created shall be filled by the members assembled at the Special Conference from the members of the Executive Council unless the Executive Council shall themselves have been removed.

(d) General Secretary

(iii) He shall deal with all general matters on behalf of the NFSP including the appointment and management of all the staff.

(iv) He shall make arrangements for any National Conference of members, Executive Council meetings and shall arrange minutes of the matters dealt with.

(v) He shall advise the Executive Council on pertinent matters, correspond as necessary on their behalf and act generally under the direction of the Executive Council

XIV Special Conferences

(a) A Special Conference of delegates shall be convened by signature on a simple petition and/or signed letter of not less than 700 members of the NFSP, or by a resolution of the Executive Council, not less than 14 days clear notice being given, with a statement of the business to be considered. Such Conference shall be held as soon as may be reasonably practicable.

STANDING ORDERS FOR THE EXECUTIVE COUNCIL

2. Notice of Meetings

2.2 A special meeting of the Executive Council shall be called by the General Secretary if asked to do so by the President or by six members of the Executive Council, signifying in writing to the General Secretary the business to be discussed.

6. Voting

6.2 Matters requiring a decision prior to a meeting of the Executive Council may be decided by a postal or telephone ballot of members of the Executive Council. A record shall be kept and all members of the Executive Council informed of the result of such a ballot.

7. Committees

7.11 Emergency Committee: The National President, National Vice-President and the General Secretary shall have authority to deal with any important emergency arising between meetings of the members of the Executive Council.

9. General

9.2 The President of the Federation shall preside at all meetings of the Executive Council. When absent, the Vice-President shall preside. In the absence of both, a Chairman shall be elected from the members present at a particular meeting.

9.3 The General Secretary shall keep a register of the attendance of the members of the Council at all meetings. The register of attendance of the members of the Executive Council at all meetings of the Executive Council shall be printed in the journal of the Federation or on the Conference Agenda each year.

9.4 Meetings of the Executive Council and all Committees or Sub-Committees shall be confined to members of the Executive Council or Committees thereof, together with the necessary secretarial staff and professional advisers.

11. Code of Conduct

11.1 *Unless directed otherwise by the National President, the dress for all meetings of the Executive Council will be smart business attire.*

11.2 *It is incumbent upon the Executive Council and each individual member of it to at all times promote the agreed aims and aspirations of the Executive Council which shall not conflict with the Rules and objectives of the National Federation of SubPostmasters. To this end once any matter has been debated by the members of the Executive Council and a decision reached, that decision shall be deemed to have been agreed by all members of the Executive Council and shall be the only one promulgated or communicated by any member of the Executive Council or Secretariat.*

11.3 *Any breach of these Standings Orders, deemed serious enough by the Executive Council, may at the option of the National President (acting in their absolute discretion) lead to the suspension of the member from the Executive Council whilst such breach is fully investigated.*

11.4 *The National President should refer any such breach back to the Executive Council at the earliest opportunity. A suitable period of debarment of the member shall then be determined by the Executive Council.*

Consideration and Disposal

Mr Baker Complaint One

56. Mr Baker first complaint is as follows:

"On or around 14 February 2011 the Union breached Standing Order 11.3, by its National President exercising his discretion perversely in suspending Mr Baker without affording Mr Baker adequate time to respond to any allegation of a breach of the Code of Conduct before suspending him, and also giving inadequate consideration to the response that Mr Baker did make before taking this decision."

57. Paragraph 11.3 of the Standing Orders for the EC provides as follows:

"11.3 Any breach of these Standings Orders, deemed serious enough by the Executive Council, may at the option of the National President (acting in their absolute discretion) lead to the suspension of the member from the Executive Council whilst such breach is fully investigated."

Summary of Submissions

58. Mr Baker requested that his submissions in this complaint be treated as also being the submissions in Mr Singh's third complaint, which is in

identical terms. He submitted that Mr Harper had acted unreasonably in two respects in suspending both himself and Mr Singh. First, he alleged that Mr Harper had not allowed either of them adequate time to prepare a response to Mr Harper's letter of 10 February 2011, in which they were asked to cease challenging the agreed strategy of the Union or resign. Secondly, Mr Baker alleged that Mr Harper did not consider his letter of 13 February or Mr Singh's letter 12 February (both written in response to Mr Harper's letter of 10 February) before deciding on their suspensions on 11 February and transmitting their letter of suspension on 14 February. Further, Mr Baker submitted that the Union had not responded to the claimants' requests for further details relating to the time line of events over the period 10-14 February 2011, which had prevented them from properly considering whether their suspensions had been effected lawfully. In his oral submissions, Mr Baker argued that the claimants did not believe that Standing Order 11.2 carried the meaning of cabinet responsibility and that, in accordance with Standing Order 11.2, both claimants had properly promulgated and communicated support for the Postal Services Bill. In the claimants' view, their proposed amendment of the Bill would have led to its improvement. Mr Baker also argued that if the Union had really wanted to stop the activities of the claimants it could have sought an injunction.

59. Mr Algazy, for the Union, submitted that there was no room for an allegation of perversity as the Union had complied fully with Standing Orders 11.2 and 11.3. He argued that the EC had deemed the alleged breach in question "serious enough" and that the President had lawfully exercised his discretion to suspend. Mr Algazy pointed out that Mr Harper's discretion is expressly described in Standing Order 11.3 as being "absolute" and that on the undisputed facts of this case, the exercise by Mr Harper of this absolute discretion cannot be said to have been perverse. Mr Algazy further submitted that the procedure to suspend did not include any obligation to consult. He argued that the test of perversity requires the claimants to overcome a high hurdle and that they had manifestly failed to do so.

Conclusions

60. If, and in as much as, the Union failed to supply the claimants with a timeline of the relevant events between 10-14 February 2011, I have some sympathy with their difficulty in framing this complaint. It would appear that, prior to the hearing, the claimants were unaware that the Union had a copy of their circular letter to colleagues of 11 February before the decision to suspend them was made on 11 February. After this fact emerged at the hearing, however, Mr Algazy put it to both Mr Baker and Mr Singh that the sequence of events was as follows: on 9 February, the claimants' emails to members of the EC; on 10 February, Mr Harper's warning letter to the claimants, on the morning of 11 February, receipt by the Union of the claimants' letter of 11 February; its distribution and consideration by the EC, the EC forming a view that the claimants' letter of 11 February was serious enough to merit suspension and Mr Harper exercising his absolute discretion in Standing Order 11.3

to suspend. It was further put to both Mr Baker and Mr Singh that, if those were the facts, their suspension was not perverse. In their evidence, both Mr Baker and Mr Singh agreed that, if those were the facts, their suspension was not perverse.

61. As I have found, the facts are indeed as Mr Algazy outlined to the claimants. In my judgement, on those facts, the claimants correctly conceded that their suspension was not the result of Mr Harper exercising his 'absolute' discretion perversely. Nevertheless, Mr Baker did not concede these complaints or resile from them. He rather reverted to his arguments about inadequate notice and inadequate consideration of the claimants' responses.
62. In my judgement, on the facts of this case, the claimants' submissions regarding inadequate notice and inadequate consultation of their responses are misconceived. The suspension procedure comprehended by Standing Order 11.3 is one which was clearly intended to be capable of being operated peremptorily in an emergency situation in which a serious breach has allegedly occurred. It has been said that the procedure envisages a precautionary suspension. I agree. I find that there is nothing within Standing Order 11.3 which prevents the adoption of such a procedure and that the Union operated Standing Order 11.3 lawfully when doing so. I accept Mr Algazy's submission that there is nothing in Standing Order 11.3 or 11.4 which requires any consultation before the imposition of a precautionary suspension.
63. For the above reasons I refuse to make the declaration sought by Mr Baker that the NFSP breached Standing Order 11.3 on or about 14 February 2011 by allegedly exercising its discretion to suspend him from the Executive Council perversely.

Mr Baker – Complaint Two

64. Mr Baker's second complaint is as follows:

"On or around 14 February 2011 the Union breached Standing Order 11.3 by the decision to suspend Mr Baker from the Executive Council having not been made by the National President."

65. Paragraph 11.3 of the Standing Orders of the EC is as set out in the previous complaint.
66. Mr Baker withdrew this complaint at the hearing and I accordingly dismiss this complaint on withdrawal by the claimant.

Mr Baker - Complaint Three

67. Mr Baker's third complaint is as follows

Between 11 February and 11 May 2011 the union breached a term to be implied into SO 11.4 that any disciplinary action to be taken pursuant to that rule should be compliant with the rules of natural

justice. It is alleged that the actions of the Executive Council in implementing this disciplinary action were not compliant with the rules of natural justice in the following respects:

(a) The members of the Executive Council were biased against Mr Baker in appearance or reality, in that the Executive Council meetings which considered this matter were contaminated by

(i) the presence of Mr George Thomson who had previously publicly criticised the actions of Mr Baker, whose presence at these meetings must therefore be regarded as highly prejudicial; and

(ii) the presence of Mr Stephen Harper, the chair of all relevant meetings of the EC, who had suspended Mr Baker from the Council on his own initiative and was therefore an interested and predetermined party in the matter: and

b) the procedures undertaken by the Executive council pursuant to SO 11.4 were defective by failing to meet the requirements of natural justice in the following respect:

i) No attempt was made to carry out the investigation by an independent person or body, which therefore meant that the investigation and adjudication were carried out by the same body viz the Executive Council; and

ii) Minutes of the relevant meetings of the Executive Council were not provided to the officers subject to disciplinary action thereby preventing the specified officers (Messrs Singh and Baker) from properly preparing either a defence or a plea in mitigation; and

iii) At no point during the investigation was any effort made to interview either of the officers subject to suspension;

iv) At no point during the investigations were either of the officers under suspension afforded the opportunity to ask questions in order to elucidate the nature of the complaint.

68. Paragraph 11.4 of the Standing Orders of the EC provides as follows:

"11.4. The National President should refer any such breach back to the Executive Council at the earliest opportunity. A suitable period of debarment of the member shall then be determined by the Executive Council ."

69. As noted above, I permitted an amendment of this complaint to refer to the alleged breach as having occurred between 11 February and 11 May 2011, rather than on or about 11 February 2011 as stated in the complaint as put to the Union.

70. As also noted above, Mr Baker withdrew the allegation in both his complaint and that of Mr Singh which concerned Mr Harper and which is found in paragraph (a)(ii) of their respective complaints.

Summary of submissions

71. Mr Baker's third complaint is identical to Mr Singh's fifth complaint. Similarly, the skeleton arguments submitted by the claimants regarding this complaint are identical. The skeleton arguments only address paragraph (a)(i) of the complaint, namely the presence of Mr Thomson at the meetings of the EC which led to the claimants' suspensions and later debarment. They argued that the outcome of any disciplinary hearing should be neither pre-determined nor have the appearance of prejudice or predetermination. In Mr Baker's submission the circular sent by the General Secretary to all Branch Secretaries on 15 February 2011 displayed a predetermined attitude to the claimants. In particular, Mr Baker criticised those passages in the circular which referred to the Union being gravely undermined by the claimants' actions when the negotiating team was discussing with Government and Mr Thomson not knowing why the Claimants had chosen such a public platform. He argued that any subsequent Tribunal which contained Mr Thomson as a member of its deliberation panel must be regarded as tainted and its conclusions void by reason of prejudice. Mr Baker maintained that it was contrary to the rules of natural justice for Mr Thomson to be present at any significant meetings of the EC which considered their cases.
72. As regards the particulars given at paragraph (b) of his complaint three and Mr Singh's complaint five, Mr Baker made oral submissions that there was an implied term in Standing Order 11.3 and 11.4 that, prior to any suspension, there should be an investigation into the alleged breach of Standing Orders, that the investigation should be conducted by an external body, independent of the EC, that the investigating body should decide whether there has been a breach and that the matter is only then returned to the EC to set the length of debarment. He submitted that it was a breach of this procedure for the EC to establish a sub-group to investigate the alleged breach at its meeting on 11 March 2011 and for the sub-group to consist of the President, General Secretary and Mr Milner. He went on to submit that it was a further breach of this procedure for the EC to decide that there was a breach of standing orders, having regard to their previous involvement in the matter on 11 February, 11 March and 21 March. Mr Baker also complained that it was a breach of natural justice that neither he nor Mr Singh had been given a copy of the minutes of the Executive Committee of 11 or 21 March. Mr Baker did not develop, either in his skeleton argument or at the hearing, the points at paragraph (b)(iii) and (iv) of the claimants' complaints. These relate to the Union's alleged failure to make any effort to interview the Claimants and the Union's alleged failure to give the claimants an opportunity to ask questions to elucidate the nature of the complaint. However, in his oral submissions, Mr Baker raised further particulars of an alleged failure of natural justice; namely the Union's failure to allow tape recordings on 6 April and 10 May and its failure to offer the Claimants a right of appeal.
73. Mr Algazy, for the Union, submitted various authorities on the appropriate meaning to be given to the term 'natural justice' in the

circumstances of Trade Union disciplinary procedures. His skeleton argument refers to the cases of **White v. Kuzych (1951) AC 585** and to **Khanum v. Mid Glamorgan Area Health Authority (1979) ICR 140**. Mr Algazy cites a particular passage in the Khanum case which itself cites the words of Harman J. in the case of **Byrne v. Kinematograph Renters Society Limited (1958) 1 WLR 762**. Counsel commented that the formulation of Harman J. was approved by the Privy Council in **University of Ceylon v. Fernando (1960) 1 WLR 223**. The formulation of Harman J. to which he refers is as follows:

“What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case: and thirdly, of course, that the Tribunal should act in good faith. I do not myself think there really is anything more.”

74. On the facts of this case, Mr Algazy submitted that although Mr Thomson was present at all relevant meetings of the EC, he was not part of the decision making process nor was he entitled to make any proposals or vote. He further argued that all the written submissions prepared by Mr Baker and Mr Singh were circulated to members of the EC and were considered by them. He also noted that Mr Baker and Mr Singh were given a number of opportunities to attend meetings to make representations, but they had failed to do so. He further pointed out that copies of all the documentation under consideration by the EC were forwarded to the Claimants. In Mr Algazy's submission, both claimants had a clear understanding of the charges they faced, as was apparent from the written responses they subsequently made. He argued that the claimants not only knew the nature of the accusations against them but that they had been given an opportunity to state their case and that the Tribunal had acted in good faith. Mr Algazy submitted that this complaint was in reality an after-thought by the claimants, as evidenced by the fact that they had made no such complaint at the time and the many different ways in which the complaint was now being put. He noted that much of the claimants' case, as finally put in Mr Baker's submissions, had not been put to his client's witnesses and that the complaints about the tape recording and failure to offer an appeal did not even appear in the complaint that had been put to the Union.

Conclusion

75. The term 'natural justice' is used in many contexts and is capable of more than one meaning, depending upon its context. In the context of trade union disciplinary procedures, the term has been subject to judicial consideration on a number of occasions and its ambit has been described in different terms. Whilst a universally accepted and authoritative definition remains illusory, it is clear that natural justice in this context does not extend to whatever an aggrieved party might feel is fair and reasonable. In this case I direct myself principally in accordance with the approach as approved in the case of Fernando as to what constitutes the basic right of an accused person in a case involving trade union discipline.

76. In applying that approach to natural justice to the facts of this case, I find that both Mr Baker and Mr Singh knew the nature of the accusations made against them. I find that this is clear from the letters that were sent to them by the Union from 10 February onwards, in particular the Union's letters of 11 and 28 February 2011. I also find that it is clear from the various submissions made by the claimants to the Union which engage with the accusations against them. Indeed, it defies common sense in the context of the events as they unfolded and from the correspondence between the parties for the claimants to assert that they were unaware that they were being accused of breaching Standing Order 11.2 by not having complied with what has been called collective or cabinet responsibility.
77. I further find that the claimants were given an adequate opportunity to state their cases, both in writing and in person. In these circumstances, the Union's refusal to allow any hearing to be tape recorded did not breach any right of the claimants either under the express rules of the Union or any rule to be implied on whatever basis.
78. As to whether the Executive Committee acted in good faith, I have considered whether the Union's good faith can properly be impugned by the presence of Mr Thomson at the relevant meetings of the EC and/or by the Executive carrying out its own investigation into the events in question, without any external input. First, I find that there was insufficient evidence before me to establish that Mr Thomson was motivated by bad faith towards the claimants. He was not cross-examined on this basis. The most that the claimants can allege is that the General Secretary was present as the events in question unfolded and also at the relevant EC meetings. There is no evidence of his participation in any of the relevant discussions. In my judgement, the mere presence of the General Secretary during the deliberations of an EC falls a long way short of establishing bad faith by that body. Nor do I find that his presence amounted to a breach of natural justice in any other respect. As to the involvement of the EC in the investigative process, I find that there is no principle of natural justice that, in the circumstances of this case, requires the EC to outsource the investigation of the claimants' conduct to an external independent body. Having regard to the Standing Orders of the Union, I find that the EC were entitled to both form a prima facie view for the purposes of the claimants' initial suspension and then look into the matter more closely to see if there had indeed been a breach of Standing Order 11.2, before any consideration of a possible sanction.
79. I further find that the claimants were given copies of all the materials that were before the EC in its consideration of these matters. I do not find that the Union's failure to give the claimants' copies of the minutes of the EC meeting of the 11 March (when it reviewed the evidence) or its further discussion on the 21 March (when the claimants failed to attend and a

sub group was appointed) materially impeded the claimants in the preparation or presentation of their defence.

80. Although not pursued by the claimants in either their skeleton arguments or at the hearing, I also reject their complaints that no effort was made to interview either of them whilst suspended and that they were not afforded the opportunity to ask questions to elucidate the complaint. These complaints cannot be maintained on the facts. The Union offered the claimants opportunities to state their case to the EC on at least two occasions. The failure of the claimants to do so is not the fault of the Union. On the facts of this case, the claimants had no right to require that their hearings be tape recorded and accordingly their departure from the meetings when permission to tape record was refused was at their own volition and not enforced upon them by the Union. Further, the claimants had no right to a separate investigation hearing and, as I have found above, they were well aware of the nature of the accusations to which they were required to respond.
81. For the above reasons I refuse Mr Baker's application for a declaration that the NFSP breached a term to be implied into Standing Order 11.4 on the grounds that the disciplinary action that it instituted against him between 11 February and 11 May 2011 was allegedly not compliant with the rules of natural justice.

Mr Singh – Complaint One

82. Mr Singh's first complaint is as follows:

On or around 14 February 2011, the union breached rule IX (a) (i) when the General Secretary appointed Kym Ledger as acting National President. There are no provisions in the rules for appointing an acting National President and therefore the union acted ultra vires

83. Rule IX(a)(i) of the Rules of the NFSP provides as follows:

IX - Officers

(a) National President and National Vice-President

(i) The National President and National Vice-President shall be appointed by delegates at Annual Conference from the Executive Council.

Summary of Submissions

84. Mr Baker, for Mr Singh, submitted that there are no provisions in the rules for any such position as 'Acting National President' and that accordingly Mr Thomson's purported appointment of Ms Ledger was ineffective. In the alternative, Mr Baker argued that any act carried out by Ms Ledger as Acting President would have been ineffective. He further submitted that although the Union argued that its intention in making this appointment was just to provide for the situation in which it might be necessary to call an urgent EC in the absence of Mr Harper, Ms Ledger was potentially given much broader powers, being theoretically able to exercise any of the powers of President. In any

event, Mr Baker observed that by Standing Order 2.2 an emergency EC could be called by six members of the EC, doing so in writing.

85. Mr Algazy, for the Union, submitted that Mr Harper appointed Ms Ledger to act as National President as he was going to be absent abroad on holiday for two weeks and as Mr Singh was suspended from the EC. He argued that Mr Harper appointed Ms Ledger under the power delegated to him in accordance with rule VIII(j), which provides as follows:

VIII - Executive Council

(j) If any matter arises calling for urgent attention the President, Vice-President and General Secretary may deal with it and report to the next meeting of the Executive Council, or a statement and resolution may be sent to every member of the Executive Council and a vote obtained on any specific resolution, such vote being reported at the next meeting.

Mr Algazy argued that Mr Harper's appointment of Ms Ledger was deemed essential as the Union was facing a potential emergency arising out of the activities of the claimants and that it might have become necessary to call a Special EC meeting. He observed that in fact Ms Ledger took no actions pursuant to her appointment, which therefore had no practical consequences. He further submitted that Mr Harper did not purport to make a permanent appointment as President under Rule IX(a)(i) and that accordingly Rule IX(a)(i) was simply not engaged. Accordingly, Mr Algazy submitted that Mr Singh's complaint did not get off the ground on the facts.

Conclusion

86. I accept that the NFSP was faced with a problem when Mr Harper went on a two week holiday at a potentially very difficult time and when the Vice President was suspended from his position on the EC. The Union resorted to what might be regarded as sensible contingency planning by appointing an Acting President but I am asked to determine whether, in so doing, the Union breached Rule IX(a)(i).
87. In my judgement, it is questionable whether the powers given to the President, Vice President and General Secretary in Rule VIII(j) were properly exercised. First, it appears from the evidence that the power was exercised by the President acting alone, although the consent of the General Secretary might reasonably be implied. It also appears that there was no matter which required urgent attention, in the sense of immediate attention, as borne out by the fact that Ms Ledger was not called upon in her role as Acting President. It seems that the President made this appointment out of an abundance of caution rather than to deal with a matter which required urgent attention. Should this be the correct analysis, about which I make no finding, Ms Ledger's purported appointment would have been ineffective.
88. The issue I am called upon to decide, however, is whether there was a breach of rule IX(a)(i). The relevant part of this rule provides for there to

be a National President appointed at Annual Conference. There is no doubt that Mr Harper was appointed as the National President at the Annual Conference in May 2010 and that he continued to be the National President throughout the events in question until the Annual Conference in May 2011. It is not alleged that Mr Harper was removed from office or that he was stripped of any of his powers as National President. In these circumstances, it is difficult to construct an argument that there was any breach of rule IX(a)(i). As submitted by Mr Algazy, it would appear that this rule was simply not engaged on the facts. The appointment of Ms Ledger may or may not have been effective under rule XIII(j) and any action she may have taken in the so-called position of Acting President may or may not have been lawful under the rules. However, this does not assist the claimants. I find that there may have been legal consequences to the purported appointment of Ms Ledger as Acting President but that these do not involve a breach of rule IX(a)(i) as alleged by the claimants. On the facts of this case, rule IX(a)(i) was not engaged.

89. For the above reasons I refuse Mr Singh's application for a declaration that the Union breached rule IX (a) (i) of its rules on or about 14 February 2011 by its General Secretary allegedly appointing Ms Kym Ledger as acting National President.

Mr Singh – Complaint Two

90. Mr Singh's second complaint is as follows:

The Union breached its National Rule IX (a)(ii) on or around 11th February 2011, when the General Secretary, or in the alternative the National President, rather than a Special Conference removed Mr Singh from his post as National Vice President.

91. Rule IX (a) (ii) of the Rules of the Union provides as follows:

(ii) The National President and National Vice-President may be removed from their respective offices at any time during their term of office at a Special Conference called for the purpose. Any vacancy so created shall be filled by the members assembled at the Special Conference from the members of the Executive Council unless the Executive Council shall themselves have been removed.

Summary of submissions

92. Mr Baker, for Mr Singh, submitted that the Union had removed Mr Singh from his position as Vice President other than by the calling of a Special Conference for this purpose, in accordance with rule IX(a)(ii). Mr Baker asserted that the evidence which supported Mr Singh's argument that he had been removed from his position as Vice President was twofold. First, in all the minutes of the EC since 11 February 2011 Mr Singh's name had not been accompanied by the description of Vice President but by a comment that he was absent by reason of suspension. Secondly, at Mr Singh's meeting with the EC on 6 April 2011, Mr Milner had stated that there were different views on whether Mr Singh had been

suspended from the post of Vice President and that the position of Vice President de facto comes from the role of Executive Officer, from which Mr Singh was suspended. Mr Baker also submitted that as the role of Vice President was exclusively concerned with attendances at the EC, Mr Singh's suspension from the EC effectively removed him from his post as Vice President.

93. Mr Algazy, for the Union, submitted that Mr Singh's position as Vice President was never under consideration at any stage and that he continued to occupy that position until the end of the Annual Conference in May 2011. He argued that the suspension of Mr Singh was under Standing Order 11.3, which applies only to suspension from the EC. He further argued that the General Secretary had clarified the position at the meeting of 6 April 2011 by stating that Mr Singh had not been suspended as the Vice President. Mr Algazy also referred to an email exchange between Mr Singh and the Union in May 2011 which confirmed that if Mr Singh attended the Annual Conference that year he would be attending as National Vice President and delegate. He further observed that a consequence of Mr Singh's argument, were it correct, is that the Vice President could never be suspended from the EC under Standing Order 11.3, no matter how badly he had conducted himself. Mr Algazy submitted that an interpretation which gave rise to that result was unlikely to be correct.

Conclusion

94. I find that there is clear evidence that Mr Singh was suspended from the EC under Standing Order 11.3 but there is no similar evidence that he was removed as the Vice President in breach of rule IX(a)(ii). I am not persuaded that the factors to which Mr Singh refers establish that he was removed from the office of Vice President. In my judgement, Mr Singh retained the status of Vice President throughout the events in question. Although Mr Singh may not have been able to carry out the majority of his functions as Vice President whilst suspended from the EC, he was nevertheless held out by the Union as its Vice President, he held himself out as its Vice President and there are functions under rule VIII(j) and Standing Order 7.11 which are not dependant upon attendance at an EC. A person suspended from the EC may also be disqualified from participating in decisions under rules VIII(j) and Standing Order 7.11 but that would depend on the facts of the particular case. In my judgement, Mr Singh was not removed from his post as National Vice President in breach of rule IX(a) (ii) by the fact of his suspension from the EC on or about 11 February 2011. Indeed, on the facts of this case, I find that rule IX(a)(ii) was not engaged.
95. For the above reasons I refuse Mr Singh's application for a declaration that the Union breached rule IX (a)(ii) of its rules on or about 11 February 2011 by allegedly removing him from his post as National Vice President.

Mr Singh – Complaint Three

96. Mr Singh's third complaint is as follows:

"On or around 14 February 2011 the Union breached Standing Order 11.3 by its National President exercising his discretion perversely in suspending Mr Singh from the Executive Council without affording Mr Singh adequate time to respond to any allegation of a breach of the Code of Conduct before suspending him, and also giving inadequate consideration to the response that Mr Singh did make before taking this decision."

97. This complaint is in identical terms to Mr Baker's first complaint. It was accepted by the parties that the same submissions and considerations apply to both complaints and that the outcome of Mr Baker's first complaint would determine the outcome of this complaint. I found against Mr Baker's first complaint and I now find against Mr Singh's third complaint.

98. For the reasons given in respect of Mr Baker's first complaint, I refuse Mr Singh's application for a declaration that the Union breached Standing Order 11.3 on or about 14 February 2011 by allegedly exercising its discretion to suspend him from the Executive Council perversely.

Mr Singh – Complaint Four

99. Mr Singh's fourth complaint is as follows:

"On or around 14 February 2011 the Union breached Standing Order 11.3 by the decision to suspend Mr Singh from the Executive Council having not been made by the National President"

100. Mr Singh withdrew this complaint at the hearing and I accordingly dismiss this complaint upon withdrawal by the Claimant.

Mr Singh – Complaint Five

101. Mr Singh's fifth complaint is as follows:

"On or around 11 February 2011 the union breached a term to be implied into SO 11.4 that any disciplinary action to be taken pursuant to that rule should be compliant with the rules of natural justice. It is alleged that the actions of the Executive Council in implementing this disciplinary action were not compliant with the rules of natural justice in the following respects:

- a) The members of the Executive Council were biased against Mr Singh in appearance or reality, in that the Executive Council meetings which considered this matter were contaminated by*
- (iii) the presence of Mr George Thomson who had previously publicly criticised the actions of Mr Singh, whose presence at these meetings must therefore be regarded as highly prejudicial; and*

- (iv) *.the presence of Mr Stephen Harper, the chair of all relevant meetings of the EC, who had suspended Mr Singh from the Council on his own initiative and was therefore an interested and predetermined party in the matter: and*
- b) *the procedures undertaken by the Executive council pursuant to SO 11.4 were defective by failing to meet the requirements of natural justice in the following respect:*
- i) *No attempt was made to carry out the investigation by an independent person or body, which therefore meant that the investigation and adjudication were carried out by the same body viz the Executive Council; and*
 - ii) *Minutes of the relevant meetings of the Executive Council were not provided to the officers subject to disciplinary action thereby preventing the specified officers (Messrs Singh and Baker) from properly preparing either a defence or a plea in mitigation; and*
 - iii) *At no point during the investigation was any effort made to interview either of the officers subject to suspension;*
 - iv) *At no point during the investigations were either of the officers under suspension afforded the opportunity to ask questions in order to elucidate the nature of the complaint”.*

102. This complaint is in identical terms to Mr Baker's third complaint. It was accepted by the parties that the same submissions and considerations applied to both complaints and that the outcome of Mr Baker's third complaint would determine the outcome of this complaint. I found against Mr Baker's first complaint and I now find against Mr Singh's fifth complaint.

103. For the reasons given in respect of Mr Baker's third complaint, I refuse Mr Singh's application for a declaration that the Union breached a term to be implied into Standing Order 11.4 on the grounds that the disciplinary action that it instituted against him between 11 February and 11 May 2011 was allegedly not compliant with the rules of natural justice.

Mr Singh – Complaint Six

104. Mr Singh's sixth complaint is as follows:

“When the union initiated the disciplinary process against Mr Singh on or about 11 February 2011, the charges specified in the disciplinary process merely itemised actions taken and therefore the union breached a term to be implied into SO 11 that any disciplinary action to be taken pursuant to that rule must specify how such actions breach the Code of Conduct.”

105. Standing Order 11 contains four sub-paragraphs and is reproduced in paragraph 55 above.

Summary of Submissions

106. Mr Baker, for Mr Singh, submitted that at no point did the Union explain to Mr Singh why it was considered that any particular thing he had done

had constituted a breach of the Code of Conduct, despite repeated requests by Mr Singh to be so informed. He argued that the failure of the Union to provide this information made it impossible for Mr Singh to properly prepare his defence as he did not know the accusations that he faced. Mr Baker submitted that Mr Singh was not aware that the accusation of failing to comply with Standing Order 11.2 related to the decision of the EC at its meeting in November 2010 to support the Postal Services Bill.

107. Mr Algazy, for the Union, submitted that it was of the utmost artificiality for Mr Singh to claim that he did not know the charges he had to face. Mr Algazy considered it relevant that no similar complaint had been brought by Mr Baker. He went on to assert that the correspondence from the Union to Mr Singh supplied him with all the information that was necessary in relation to the alleged breach of Standing Order 11.2 and that Mr Singh's letters of 12 and 16 February 2011 demonstrated that he fully understood the nature of the breach of Standing Order 11.2 that he was alleged to have committed. He further argued that the series of meetings that were offered to Mr Singh would have presented further opportunities for any clarification or any representations that Mr Singh wished to make.

Conclusion

108. Mr Singh was suspended from the EC by a letter dated 11 February 2011 which, amongst other things, alleges a breach of the Code of Conduct and a breach of cabinet responsibility. In context and on the evidence, I find that Mr Singh understood that he was suspended from the EC for an alleged breach of Standing Order 11.2. Indeed, this is clear from Mr Singh's correspondence with the Union. Whilst I accept that Mr Singh was at all times seeking to act in the best interests of NFSP members, as he saw it, I also find that he was aware that by seeking an amendment of such a fundamental nature to the Postal Services Bill, he was acting contrary to the decision of the EC meeting in November 2010 to support the Bill as it was then drafted. I find that Mr Singh's protestations to the contrary to be disingenuous for a person of such obvious intelligence and experience in the affairs of the Union. The issues that were to be considered by the EC as evidence of Mr Singh's alleged breach of Standing Orders were made plain to him by the Union's letter of 28 February in which it listed the issues to be considered at the EC meeting of 11 March. The Union's letter to Mr Singh of 28 March also supplied him with copies of all the documents that were before the EC and it is noteworthy that these were supplied to him before his meetings with the Union on 6 April and 10 May. These documents included the decisions of the EC at its meetings in October and November 2010.
109. On the above facts, I find that the Union had sufficiently informed Mr Singh of the Standing Order allegedly breached and the facts upon which it was to rely in making good its allegation. I find that there is no implied rule that the Union was required to spell out the basis of its

argument linking the alleged acts of Mr Singh to the Standing Order allegedly breached. In my judgement, it is not necessary to imply a rule which imposes such an obligation for the accused to be able to prepare and present his or her defence. Should there be no connection between the alleged acts and the rule allegedly breached, the accused is well placed to make that argument, either in written form or at a hearing. On the facts of this case, I find that Mr Singh was not disadvantaged by the Union not stating expressly the link between the rule allegedly breached and his actions which allegedly breached that rule.

110. For the above reasons I refuse Mr Singh's application for a declaration that on or about the 11 February 2011 the NFSP breached a term to be implied into Standing Order 11 by allegedly not specifying sufficiently the charges against him and how his actions allegedly constituted a breach of the Code of Conduct.



DAVID COCKBURN

The Certification Officer