D/24-26/06

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

MR S BRADY

v

ASLEF

Date of Decision: **2 June 2006**

PRELIMINARY HEARING

DECISION

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

(i) I dismiss, for having been brought out of time, the Claimant's application that on or around 30 November 2004, in breach of its rule 17.3(d), ASLEF failed to afford Mr Brady a full and fair hearing before its Executive Committee of disciplinary charges brought against him.

(ii) Upon withdrawal by the Claimant, I dismiss the Claimant's application that on or around 20 January 2005, in breach of its rule 8.1(c), ASLEF failed to allow Mr Brady to appeal against the Union's decisions taken pursuant to the disciplinary hearing on 30 November 2004.

(iii) Upon withdrawal by the Claimant, I dismiss the Claimant's application that on or around 20 January 2005, in breach of rule 8.1(e), ASLEF failed to afford Mr Brady a full and fair hearing of his appeal against the Union's decisions taken pursuant to the disciplinary hearing on 30 November 2004.

REASONS

1. By an application dated 23 December 2005, which was received at the Certification Office on 29 December, the Claimant made a complaint against his union, ASLEF ("the Union"). The application alleged breaches of the Union's rules relating to disciplinary proceedings by the Union. These are matters potentially within the jurisdiction of the Certification Officer by virtue of section 108A(2)(b) of the 1992 Act. Following correspondence with my office the complaints were identified as follows:-

> Complaint 1
> *"'That on or around 30 November 2004, in breach of its rule 17.3(d) ASLEF failed to afford Mr Brady a full and fair hearing before its Executive Committee to answer the disciplinary charges brought against him as notified by ASLEF's letter to Mr Brady of 28 October 2004."*
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> Complaint 2
> *"That on or around 20 January 2005, in breach of its rule 8.1(c) ASLEF failed to allow Mr Brady to appeal against the union's decisions, notified to Mr Brady by letter dated 2 December 2004 to expel Mr Brady from membership of ASLEF and to suspend him from holding any office in ASLEF for five years."*
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> Complaint 3
> *"That on or around 20 January 2005, in breach of its rule 8.1(e), ASLEF failed to afford Mr Brady a full and fair hearing of his appeal against the union's decisions, notified to Mr Brady by the union's letter dated 2 December 2004 to expel Mr Brady from membership of ASLEF and to suspend him from holding any office in ASLEF for five years"'*

2. I directed that there be a preliminary hearing to determine whether these complaints had been brought in time and, if so, whether the complaints should be rejected under section 108B(1) of the 1992 Act on the ground that the Claimant had allegedly not taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the Union. The preliminary hearing took place on 24 May 2006.

3. By a letter dated 19 May 2006 the Claimant's solicitors withdrew complaints two and three. It was explained at the hearing that they had done so on the basis that the Claimant now accepted that these claims had been made out of time.

4. At the preliminary hearing, the Union was represented by Ms V Phillips who was assisted by Mr J O'Hara, both of Thompsons Solicitors. The Claimant was represented by Mr A Hows who was assisted by Mr D Brown, both of Simpson Millar Solicitors. A 166 page bundle of documents was prepared for the hearing by my office which contained relevant exchanges of correspondence. The rules of the Union were also in evidence. No witnesses were called. The Claimant and the Union each presented a skeleton argument.

FINDINGS OF FACT

5. Having considered the documents to which I was referred and the representations of the parties I find the facts to be as follows:-

6. Mr Brady had been a member of ASLEF for over twenty years. On 17 July 2003 he was elected as its General Secretary and he took up office on 18 October 2003. He was dismissed as its General Secretary with effect from 25 November 2004. That dismissal was found to have been unfair by an Employment Tribunal on 4 November 2005 and the decision of the Employment Tribunal was upheld by the Employment Appeal Tribunal ("EAT") on 31 March 2006. The Employment Tribunal has listed Mr Brady's case for a remedies hearing on 18 and 19 July 2006.

7. The complaints that Mr Brady brought before me relate to disciplinary action that was taken against him by the Union in his capacity as a member of the Union. Disciplinary charges were put to Mr Brady by a letter of 28 October 2004. These were described by the Union at the hearing as being of a hybrid nature, in that the letter of 28 October states that they may result in Mr Brady's "*dismissal and expulsion"*. This is curious as Mr Brady had already been dismissed by 28 October, although his appeal against that dismissal was not to be heard until 21 November. It appears likely that the Union was keeping its options open as to further disciplinary action against Mr Brady in his capacity as General Secretary, depending upon the outcome of his appeal. As it happens, his appeal was unsuccessful and the charges in the letter of 28 October were pursued against him exclusively in his capacity as a member of the Union. A disciplinary hearing took place at which it appears there were 24 charges. By a letter dated 2 December the Union informed Mr Brady that on four of the counts he was to be expelled from the Union and on a further ten counts he was to be suspended from holding office in the Union for five years. This letter is date stamped as having been received on 6 December.

8. For the purposes of this preliminary hearing it is necessary to go through the subsequent correspondence relating to the appeal which Mr Brady sought to bring against that determination.

9. On 6 December 2004 Mr Brady's solicitors, Simpson Millar, wrote to the Union stating, "*Mr Brady intends to appeal the EC's findings of the 2 December and grounds of his appeal will follow shortly"*. They wrote to the Union again on 13 December stating, *"To allow Mr Brady to prepare his appeal against your decision of 2 December, we request a full transcript of the hearing of the 30 November 2004. We also request a transcript of the appeal hearing of 24 November"*.

10. Mr Brady had been represented throughout the internal dismissal procedure by Mr Worboys, a former full time officer of the Union. Mr Worboys emailed the Union on 5 January 2005 stating that he assumed the Union had been informed that Mr Brady was to appeal against his expulsion. Mr Worboys indicated that, at least for the time being, he would be Mr Brady's representative but he would be on holiday between 28 January and 16 February.

11. On 6 January 2005 the Union sent Mr Brady a copy of the transcript of the appeal hearing on 24 November (his appeal against dismissal as General Secretary) and a copy of the note of his disciplinary hearing of 30 November (his expulsion hearing). Only notes were taken of the expulsion hearing. There was no transcript.

12. On 13 January 2005 Simpson Millar wrote to the Union in the following terms:-

> *"We write to inform you that our client wishes to appeal against the charges that were found to be proven as per your letter of 12* ***[sic-2]*** *December 2004.*
>
> *We wish to rely on the grounds that were previously put forward by Mr Warboys(sic). We reserve the right to amend these grounds once we have had the opportunity of reading and taking instructions on the transcript of the hearing which were received in these offices on Tuesday 11th January".*

13. The Union responded by a letter dated 20 January which states:-

> *"The rule book clearly states (17.3(g)) that the desire to appeal and the reasons for appeal must be notified to the General Secretary in writing, within six weeks of the notification of the decision.*
>
> *Without prejudice to the argument that the attempt to lodge an appeal is fatally flawed, please send us a copy of the "grounds that were previously put forward by Mr Warboys [sic]".*

14. On 7 February 2005 Simpson Millar stated that they were trying to contact Mr Worboys for his submissions but that he was currently on holiday. Mr Hows explained at the hearing that Simpson Millar were, at that time, under the mistaken impression that Mr Worboys had a written submission of the case that he had presented for Mr Brady at the expulsion hearing.

15. On 22 February 2005 Mr Brady submitted his application to the Employment Tribunal alleging that he had been unfairly dismissed.

16. On 16 March 2005 the Union wrote to Simpson Millar in the following terms:-

> *"Again without prejudice to our contention that the attempt to lodge an appeal is fatally flawed, but also in the absence of any further correspondence we must assume that Mr Brady does not intend to pursue an appeal"*

Without reference to or engaging with the above letter from the Union, Simpson Millar wrote to the Union on the 21 March stating:-

> *"In order that our client can appeal against the decision of the hearing of the 30 November, we would ask that you now forward a full transcript of the notes of that hearing and look forward to receiving the same"*

17. On 24 March 2005 the Union submitted its response (ET3) to Mr Brady's unfair dismissal claim. This included the following passages:-

> *"The Respondent awaits details of the grounds of appeal and have been so waiting since 6 December 2004."* and
> *"The claimant has a further appeal against the decision of the disciplinary hearing on 30 November 2004. We therefore request that this instant case is not listed for hearing until the outcome of that appeal process, to avoid duplication and to ensure all issues can be dealt with by the parties and the tribunal."*

18. On the 14 April 2005 the Union wrote to Simpson Millar explaining, inter alia, the absence of a transcript of the expulsion hearing and the fact that there were only notes. It went on:-

> *"- You have not sought to deal with the substantive issue in our letter of 20 February* **[sic-January]***(i.e. that the attempt to appeal was fatally flawed).*
> *- Your client has not provided any grounds on which he would have relied in connection with an appeal.*
>
> *You have not acknowledged our letter of 15* **[sic-16]** *March which confirms we had assumed Mr Brady does not intend to pursue an appeal."*

19. There was no further correspondence between the parties regarding Mr Brady's wish to appeal. The Employment Tribunal considered Mr Brady's unfair dismissal application between 24 and 31 October 2005 and, as stated above, gave its decision on 4 November 2005.

20. The Union argued before the Employment Tribunal that the issues considered at the expulsion hearing on 30 November 2004 were relevant to Mr Brady's earlier dismissal for two principal reasons. First, it was argued that Mr Brady could have been dismissed for the offences considered at the expulsion hearing whatever view may be taken of the earlier charges. Secondly, it was argued that Mr Brady's subsequently determined misconduct was relevant to the issue of remedy. Accordingly, the Employment Tribunal considered the expulsion proceedings, including Mr Brady's attempted appeal. In relation to Mr Brady's appeal the tribunal stated:-

> *"17. On 13 January 2005, Mr Brady's solicitors wrote to the Union indicating the claimant's wish to appeal against the further disciplinary findings (page 946). The rules state that any appeal must be notified to the General Secretary in writing within six weeks of the decision being " … communicated in writing to them and of the reasons for doing so". The letter of the 2 December is date stamped as*

received on 6 December and in our view was "communicated in writing" to the Respondent on that date, meaning that any appeal would have to be submitted by Monday 17 January 2005. Even if time runs from the 2 December, the appeal letter, which was faxed on 13 January, would have been received by the Respondent in time. However, ASLEF refused to accept the appeal on the grounds that it was out of time but, "without prejudice" to their argument that the attempt to bring this appeal was fatally flawed, they requested a copy of the grounds that were previously put by Mr Warboys, Mr Brady's representative, for this appeal.

18. The Respondent denied knowing what these grounds were and requested a copy. It appears that the claimant's solicitor subsequently abandoned hope of pursuing this appeal against expulsion. However, in our opinion, the Respondent had already refused to entertain an appeal on the untenable ground that it had been presented out of time."

21. Mr Brady commenced these proceedings by a Registration of Complaint Form dated 23 December 2005, which was received at the Certification Office on 29 December.

The Relevant Statutory Provisions

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

108A (6) An application must be made –

(a) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or

(b) if within that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7),

(7) Those days are -

(a) the day on which the procedure is concluded, and

(b) the last day of the period of one year beginning with the day on which the procedure is invoked.

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

The Relevant Union Rules

23. The rules of the union relevant to this application are as follows:-

Rule 8.1 Appeals Committee Duties and Power

(c) *The Appeals Committee shall hear appeals from members against any expulsion or other disciplinary decision by the Executive Committee or from persons not admitted to membership of the union by the Executive Committee. The Appeals Committee shall have the power to endorse, to set aside, or vary the decisions of the Executive Committee, and to admit a person into membership in accordance with the Rules of the union. Any variation made by the Appeals Committee to any penalty imposed by the Executive Committee must comply with the provisions of Rule 17.*

(f) *The applicant and the Executive Committee shall be allowed to submit further written evidence or testimony to the Appeals Committee in support of their respective cases not later than 21 days before the hearing by the Appeals Committee. Such evidence will be forwarded to the applicant or the Executive Committee as appropriate at least 14 days before the hearing by the Appeals Committee. The applicant will be able orally to supplement any written evidence or testimony submitted, to call other members of ASLEF as witnesses, to hear the evidence against them and to have an opportunity of answering it, and to question his/her own and the union's witnesses.*

Rule 17. Disciplinary

17.3(f) *The decision of the Executive Committee shall be communicated to the member in writing within one week of the hearing and, in those cases where one or more of the penalties set out in 17.1 above have been imposed on the member, the procedure for appeals to the Appeals Committee under Rule 8.1(c) against the decision of the Executive Committee.*

(g) *Any member must notify the General Secretary in writing of their wish to appeal to the Appeals Committee under Rule 8.1(d). against a decision of the Executive Committee within 6 weeks of the decision being communicated in writing to them and of the reasons for so doing. In the case of any penalty imposed by the Executive Committee, this penalty will not take effect until the expiry of the time in which the member can submit an appeal, nor should he/she submit an appeal, until such time as the appeal has been heard.*

CONCLUSIONS

24. I directed that there should be a preliminary hearing in this matter to determine whether Mr Brady's application had been submitted in time. Subsequently, upon application by the Union, I further directed that the preliminary hearing should also deal with its section 108B(1) argument that I should not accept Mr Brady's application as he had not taken all reasonable steps to resolve his claim by the use of any internal complaints procedure of the Union.

25. It was agreed by the parties that the appeal mechanism provided by rules 8 and 17 of the Union's rules constituted an "internal complaints procedure of the union" for the purposes of sections 108A and 108B of the 1992 Act.

26. Applications to the Certification Officer must be made, that is received, within the period prescribed by section 108A(6) of the 1992 Act. Section 108A(6)(a) provides that an application must be made *"within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place"*. Section 108A(6)(b) is a saving provision which allows an application to be made at a later time in restricted circumstances. It provides that *"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 day specified in subsection (7)"*. Subsection (7) provides that those days are *"(a) the day on which the procedure is concluded, and (b) the last day of the period of one year beginning with the day on which the procedure is invoked"*.

27. Following the withdrawal of complaints two and three, Mr Brady's remaining complaint alleged a breach of rule on 30 November 2004. In order to fall within the primary limitation period, Mr Brady's application would have had to be made within six months of that date, i.e. by 29 May 2005. It was in fact made on 29 December 2005 and was outside the primary limitation period.

28. Mr Hows, for Mr Brady, submitted that this case had been brought in time by virtue of the saving provision in section 108A(6)(b). Mr Hows argued that Mr Brady had invoked the appeals procedure and that this procedure had not been concluded at the time Mr Brady made his application to me in December 2005. Mr Hows accepted the proposition that for such a procedure to be validly invoked any procedural steps which were required by the procedure must have been taken. On the facts of this case, he agreed that rule 17.3(g) required the notification of the appeal to be in writing and to state *"the reasons for so doing"*. Mr Hows argued that the notification of the appeal was the letter from Simpson Millar of 13 January 2005, that this was in writing and that it did contain *"the reasons for so doing"*. In his submission, the requirement to state *"the reasons for so doing"* was met by the statement in the letter that *"We wish to rely on the grounds that were previously put forward by Mr Warboys"*. He argued that the combined effect of rules 8 and 17 was that any appeal had to be by way of a re-hearing and that the letter of 13 January 2005 notified the Union that Mr Brady would be arguing all the points that had been made on his behalf by Mr Worboys at the expulsion hearing. Mr Hows went on to submit that the appeals procedure, validly invoked by Mr Brady, had never been concluded. In his submission such a procedure could only be concluded if it had run its course to a determination in accordance with the terms of the procedure. As there had been no such determination, Mr Hows argued that the procedure had not been concluded. As to the section 108B(1) point regarding the acceptance of the application by me, Mr Hows repeated his earlier submissions. He argued that Mr Brady had taken all reasonable steps to appeal and that his subsequent inaction was the result of the way in which the appeal had been treated by the Union. He further argued that in all the circumstances of the case I should not exercise my discretion to refuse to accept Mr Brady's application. In respect of each of his submissions, Mr Hows

argued that, in as much as the Employment Tribunal had reached findings of fact on any relevant event, I should be bound by those findings by way of res judicata, issue estoppel or judicial comity.

29. Ms Phillips, for the Union, reserved the Union's position as regards the binding effect of the findings of the Employment Tribunal but, for the purposes of this hearing, was prepared to proceed on the basis of those findings. Ms Phillips argued that Mr Brady had not validly invoked the appeals procedure. However, she did not accept that the so-called "fatal flaw" in the appeal (referred to in the Union's three letters to Simpson Millar of 20 January, 16 March and 14 April) was the date of its submission, as found by the Employment Tribunal. Ms Phillips argued that the appeals procedure had not been validly invoked as the notification did not state *"the reasons"* for appealing. She pointed out that the Union had subsequently asked to be provided with grounds for the appeal but none had been forthcoming. Ms Phillips rejected the argument that the requirement for the appeal to contain reasons was satisfied by the reference to "*the grounds that were previously put forward by Mr Warboys"*. She submitted that numerous matters are raised at disciplinary hearings which are not pursued on appeal. If, contrary to her primary submission, the appeals procedure had been validly invoked, Ms Phillips argued that it had been concluded by the end of April 2005 at the latest; this being a reasonable period following the Union's letter of 14 April in which it restated its assumption that Mr Brady no longer intended to pursue his appeal. As for the section 108B(1) point concerning my acceptance of the application, Ms Philips noted that Mr Brady is an experienced Union member who was at the time instructing solicitors. She further noted that Mr Brady had properly pursued his earlier appeal against dismissal as General Secretary. Against this background, Ms Phillips argued that Mr Brady's failure to respond to the Union's letters of 16 March and 14 April and his failure to take any action on his appeal, in the face of these letters, between 14 April and 23 December 2005 constituted a failure to take all reasonable steps to resolve his claim using the Union's internal complaints procedure and that I should exercise my discretion not to accept the complaint.

30. At the hearing in these preliminary points I had the assistance of expert and experienced trade union solicitors on both sides but I did not hear any evidence. The Employment Tribunal, on the other hand, whilst not focused on this precise issue, did hear cross-examined evidence over a number of days and detailed submissions by counsel. It is virtually inevitable that a different complexion will emerge on facts which are subjected to a particular spotlight and this case is no exception. Nevertheless, I find that I should accept as binding on me the findings of fact in paragraphs 17 and 18 of the Employment Tribunal's decision of 4 November 2005.

31. The Employment Tribunal found that the Union wrongly refused to accept Mr Brady's appeal on the grounds that it had been made out of time. It also appeared to the Tribunal that Mr Brady's solicitors had subsequently abandoned hope of pursuing his appeal against expulsion. This finding is consistent with the

way in which Mr Brady put his second and third complaints to me. These alleged that the Union had failed to allow him to appeal against his expulsion and had failed to allow him a full and fair appeal. In both allegations Mr Brady asserted that the date of the alleged breach was *"on or around 20 January 2005"*. 20 January 2005 was the date of the Union's letter responding to Mr Brady's appeal in which he was first informed that his appeal was *"fatally flawed"*. Although the Employment Tribunal did not state the date upon which they found that the Union refused to accept Mr Brady's appeal, it is implicit from its reasons that the rejection was contained in the Union's letter of 20 January.

32. Based on the findings of the Employment Tribunal, I have considered whether Mr Brady did invoke the Union's internal complaints procedure, in this case its appeals procedure. In my judgment, the rejection of his appeal by the Union is of no consequence to this issue. The question I have to determine is whether Mr Brady invoked the procedure and, in my judgment, the act of invoking a procedure is a unilateral act. Accordingly, it is necessary for me to consider whether Mr Brady's appeal satisfied the procedural requirements in rule 17.3(g). It is clear that his appeal was made in writing and the Employment Tribunal has found that it was made in time, a fact which is now unchallenged. This leaves the question as to whether Mr Brady gave the Union notification of *"the reasons"* for his appeal. The internal complaints procedures of trade unions are seldom, if ever, drafted with legislative precision and in this case the use of the word *"reasons"* is further evidence of such lack of precision. In my judgment, however, such procedural constraints on a right of internal appeal are to be construed purposefully. They are not to be construed strictly, as a means of rejecting borderline applications, but having regard to what is reasonably necessary to conduct the appeals process fairly and efficiently. On the facts of this case, I reject Mr Hows' submission that the rules require the appeals process to be by way of a re-hearing but I accept that any such appeal may be by way of a re-hearing. In my judgment, the notification given to the Union that the appeal would be *"on the grounds that were previously put forward by Mr Warboys"* was sufficient, if only just sufficient, to communicate that Mr Brady wished to re-litigate, by way of a re-hearing, the whole of the issues that had been decided against him at the expulsion hearing, on the same grounds as had previously been advanced on his behalf. I find that the letter from Simpson Millar of 13 January 2005 did notify the Union of the scope of that appeal sufficiently to satisfy the test of supplying *"reasons"*. Accordingly, I find that Mr Brady did invoke the relevant internal complaints procedure of the Union.

33. I now turn to consider whether the procedure was concluded, within the meaning of section 108A(7)(a) of the 1992 Act. The Act contains no definition of the word *"concluded"* and it must accordingly be given its ordinary literal meaning, as it would be understood by the intended readership of the rules, unless there is some good reason not to do so. In my judgment, an internal complaints procedure is concluded when, for whatever reason, it is terminated. This may be as a result of withdrawal by the member or the refusal by the Union to accept the complaint or

to process it further. Such an interpretation is consistent with the principle of finality, that legal proceedings should be commenced promptly and heard as close to the time of the alleged breach as possible within the relevant rules. When a Claimant is aware, or should reasonably have been aware, that an appeal has not been accepted or has been brought to an end, the limitation period begins to run. I reject Mr Hows' submission that Mr Brady's appeal, once invoked, could only be considered as concluded once it had been finally determined in accordance with the rules of the Union. Therefore, in my judgment and in accordance with the decision of the Employment Tribunal, Mr Brady's appeal was concluded on or about 20 January 2005, on receipt by him or his solicitors of the Union's letter of that date. This finding has the consequence that any application to me would need to have been made by the equivalent date in July 2005. Mr Brady's application was made on 29 December 2005 and was therefore out of time.

34. Had I not been constrained by the decision of the Employment Tribunal, I would have found that the Union remained prepared to entertain an appeal from Mr Brady, as demonstrated by its correspondence of 20 January, 16 March and 15 April and by its notice of response to the Employment Tribunal application. However, I would also have found that the Union gave notice to Mr Brady by its letter of 14 April that it was bringing the appeal process to an end on the grounds that Mr Brady had shown no intent to pursue his appeal. The reality of the matter is demonstrated by the fact that, notwithstanding the Union's letters and its ET3, neither Mr Brady nor his solicitors corresponded with the Union with regard to his appeal between 21 March 2005 and his application to me on 29 December 2005, a period of over nine months. Whether or not the Union was entitled lawfully to conclude the procedure in such a way is immaterial for the purposes of determining whether the procedure was in fact concluded. Unconstrained by the decision of the Employment Tribunal, I would have found that the procedure was concluded within a reasonable period after 14 April 2005 and certainly by the end of April 2005. I would therefore have found that Mr Brady's application to me was out of time.

35. As I have found that Mr Brady's application to me was made out of time, there is no need for me to consider the section 108B(1) point. Had it been necessary, and consistently with the decision of the Employment Tribunal, I would have found that Mr Brady did invoke the Union's internal complaints procedure by appealing and that his appeal was rejected by the Union on untenable grounds. Mr Brady's solicitors may well be criticised for not responding substantively to the Union's three letters of 20 January, 16 March and 14 April but this failure must be seen in the context of the whole dispute between Mr Brady and the Union. In particular, it must be seen against Mr Brady's perception (substantially upheld by the Employment Tribunal) that he had been the subject of a politically motivated campaign to remove him, orchestrated by the majority of the Executive Committee, and his perception that his appeal had been rejected on untenable grounds. In these circumstances, Mr Brady may not have taken all reasonable

steps to resolve his claim by the use of the internal complaints procedure but I would not have exercised my discretion to refuse to accept his application.

36. For the above reasons, I dismiss the Claimant's first application on the grounds that it was brought out of time.

37. I dismiss the Claimant's second and third applications upon withdrawal by the Claimant.

David Cockburn
The Certification Officer