

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

MR P QUIGLEY

V

THE EDUCATIONAL INSTITUTE OF SCOTLAND

Date of Decisions

20 May 2010

DECISIONS

Upon application by Mr Quigley (“the Claimant”) under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

1. I refuse to grant the declaration sought by the Claimant that the Educational Institute of Scotland breached rule II 10 (i) (i) of its rules and Stage One of its disciplinary procedure by its notification of the disciplinary hearing on 30 January 2009 allegedly not containing a copy of the allegations against him.
2. I refuse to grant the declaration sought by the Claimant that between 9 July 2008 and 30 January 2009 the Educational Institute of Scotland breached rule II 10 (i) of its rules and the second paragraph of its Disciplinary Procedure by not expediting the disciplinary procedures against him speedily.
3. I refuse to grant the declaration sought by the Claimant that the Educational Institute of Scotland breached rule II 10 (i) (i) of its rules and paragraph one of Stage Two of its Disciplinary Procedure by failing to provide him with allegations against him at least five working days prior to the disciplinary hearing on 30 January 2009.
4. I refuse to grant the declaration sought by the Claimant that, on or around July 2008 and September 2008, the Educational Institute of Scotland breached rule II 10 (i) (i) of its rules and paragraph one of Stage One of its Disciplinary Procedure by not informing him of the complaints made against him when they were received by the General Secretary.
5. I refuse to grant the declaration sought by the Claimant that the Educational Institute of Scotland breached rule II 10 (i) (iii) of its rules by its letter of 6 February 2009 having failed to provide a full and clear explanation of the decision of the Disciplinary Committee, following the disciplinary hearing on 30 January 2009.

REASONS

1. Mr Quigley is a member of the Educational Institute of Scotland (the "EIS" or the "Institute"). By an application received at the Certification Office by e-mail on 23 September 2009, the Claimant made a complaint of various breaches of EIS rules which related to disciplinary proceedings taken against him by the union. Following correspondence with the Claimant, five complaints were confirmed by him in the following terms:-

Complaint 1

In breach of the Constitution of the EIS Rule II 10(i)(i) and Stage 1 of the Procedures of the Operation of the Disciplinary and Appeals Committee the notification by the union of the Disciplinary Hearing on 30 January 2009 did not contain a copy of the allegations against him.

Complaint 2

That between the dates of 9 July 2008 and 30 January 2009 the General Secretary of EIS breached the Constitution of the EIS Rule II 10 (i) and the second paragraph of the 'Procedures for the Operation of the Disciplinary and Appeals Committee' by not expediting the Disciplinary Procedures against Mr Quigley speedily.

Complaint 3

In breach of the Constitution of the EIS Rule II 10 (i)(i) and the first paragraph in the section headed 'Stage Two – Hearing a complaint' of the Procedures for the Operation of the Disciplinary and Appeals Committee the EIS failed to provide Mr Quigley with the allegations against him at least 5 working days prior to the Disciplinary Hearing on 30 January 2009.

Complaint 4

That on or around July 2008 and on or around September 2008, in breach of the Constitution of the EIS Rule II 10 (i)(i) and paragraph one of the section headed 'Stage One - Receipt and investigation of a complaint' of the 'Procedures for the Operation of the Disciplinary and Appeals Committee', Mr Quigley was not informed of the complaints made against him when they were received by the General Secretary.

Complaint 5

That in breach of the Constitution of the EIS Rule II 10 (i)(iii) the letter containing Notification of Outcome of the Disciplinary Hearing dated 6 February failed to record the decision made in respect of any allegation(s) against Mr Quigley – whether upheld or dismissed; failed to set out an explanation for each decision; and failed to ensure that each explanation was both "full" and "clear".

2. I investigated the alleged breaches in correspondence. A hearing took place on 29 April 2010 in Edinburgh. At the hearing, the Claimant represented himself and called no witnesses. The Union was represented by Ms Amanda Jones of Maclay, Murray and Spens, solicitors. The Institute did not call any witnesses. There was in evidence a 312 page bundle of documents consisting of letters and other documentation supplied by the parties for use at the hearing. Both parties provided a written skeleton argument.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
4. Mr Quigley retired as a teacher of English in August 2008, after 40 years in the teaching profession. He had been the Secretary of the Fife Local Association of the EIS for 18 years. He had also been the National Vice President between June 2005 and 2006, the President between 2006 and 2007 and the ex-President between 2007 and 2008. The President, Vice President and ex-President are designated by the rules as 'the Office Bearers'.

5. The EIS is a trade union which is also a special register body within the meaning of section 117 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). It is a body created by a Royal Charter of 1851. The Royal Charter provides for there to be Rules, Regulations and Byelaws which are to be consistent with the Charter and 'the laws of the realm'.
6. This case concerned disciplinary action taken against Mr Quigley by the Institute. Mr Quigley was found to have brought the Institute into disrepute and disrupted its work following a hearing on 30 June 2009. He was removed from any representative position within the Institute and debarred from standing for office for two years. Mr Quigley alleged that the Institute breached certain of its rules in that disciplinary process.
7. The circumstances that led to that disciplinary action can be summarised as follows. In 2007, Mr Quigley expressed his concern about a number of internal issues within the Institute. These concerns culminated in him writing to the President on or about 28 September 2007 stating, inter alia, "*I am standing down as a National Office Bearer ... until such time as the answers to my questions ... are presented to Council.*" This was treated by the General Secretary, Mr Smith, as a letter of resignation. Mr Quigley did not consider that he had resigned. The matter was considered by the EIS Council on 23 November 2007, at which time the Council rejected an amendment which would have reinstated Mr Quigley. Notwithstanding this decision, Mr Quigley attempted to attend a meeting of the Executive Committee of the Institute on 11 January 2008. That meeting was abandoned after Mr Quigley refused to leave. On 22 January 2008, the Institute obtained an interim interdict prohibiting Mr Quigley from attending further such meetings for a certain time. An application for the recall of that interdict was refused by Lord McEwan in the Court of Session on 19 February 2008. In the meantime, a panel of ex-Presidents of the Institute was convened, as an extraordinary measure, to consider Mr Quigley's position and concluded that he had resigned in September 2007. Mr Quigley was entitled to attend this meeting but did not do so.
8. In May 2008 Mr Quigley was re-elected to the Council of the EIS for the constituency of Fife. He subsequently attended the Institute's AGM in Dundee in June 2008, at which he learned, in a private session, that the legal costs incurred in obtaining the interdict against him were £47,300.
9. On 19 June 2008, Mr Quigley wrote a letter which proved contentious and gave rise to complaints against him. The letter concerned the interdict that had been obtained against him, in particular its cost, and a strike of EIS office staff that was about to take place the following day. This letter was circulated by Mr Quigley by email to approximately 60 EIS representatives, mainly at the email addresses of their schools. It was on notepaper headed "Educational Institute of Scotland" but contained Mr Quigley's home address and was signed by him as "Past President EIS".
10. The EIS received two complaints about Mr Quigley's above letter. By a letter dated 25 June 2008 (received by the EIS on 4 July) a Mr Lavery considered that Mr Quigley's letter was damaging to the EIS and that it should be considered by the disciplinary committee. Mr Lavery noted that Mr Quigley's letter had been seen by some head teachers because of the email addresses to which it had been sent. A second complaint was received from a Ms Lambert by an email dated 7 July. She objected both to the content of the letter and to

the fact that it was received by her via her head teacher and that some head teachers could 'make good use of such a communication'.

11. On 9 July 2008, the General Secretary wrote to Mr Quigley informing him that he had "*received complaints relating to a document which appears to have been circulated to a number of recipients*". The General Secretary stated that he was referring the matter to the investigator under 'the Procedures for the Operation of the Disciplinary and Appeals Committee' (the 'Disciplinary Procedure'). The General Secretary included a copy of the Disciplinary Procedure, but not copies of the letters of complaint.
12. On 14 July 2008 the General Secretary wrote to Ms Helen Connor, the EIS Vice President, in her capacity as the investigator under the Disciplinary Procedure. He enclosed copies of the letters of complaint and asked her to investigate.
13. On 10 September 2008, Mr Quigley wrote a further letter which proved contentious and which gave rise to a further complaint against him. This letter and its enclosure was sent to all members of the EIS Executive. The letter purported to raise a formal complaint about the way Mr Quigley had been treated and stated that if the matter was not taken up internally, he would take the breach of the Royal Charter up with the Crown by writing directly to Her Majesty. He also indicated that he was contemplating a complaint against the Union's solicitors for their role in his case.
14. By a letter dated 26 September 2008 (received by the EIS on 29 September) a Mr Fowler wrote to the General Secretary seeking to lodge a formal complaint against Mr Quigley under the Disciplinary Procedure. This complaint was specifically about Mr Quigley's letter of 10 September, but Mr Fowler considered the whole of his conduct to be relevant. Mr Fowler contended that the actions of Mr Quigley had brought the affairs of the Institute into disrepute and had frustrated the efficient conduct of business. He made seven specific points of complaint.
15. On 30 September 2008 the General Secretary wrote to Mr Quigley informing him that the Institute had received a formal complaint relating to his letter of 10 September and its accompanying paper. He stated that the complaint had been referred to the Vice President in her capacity as investigator under the Disciplinary Procedure but he did not enclose a copy of the letter from Mr Fowler. On the same day the General Secretary wrote to Ms Connor enclosing a copy of Mr Fowler's letter and asking her to investigate.
16. On 10 November 2008 Ms Connor wrote to Mr Quigley enclosing copies of all three letters of complaint and asking him for his comments before she concluded her assessment of them.
17. Mr Quigley responded to Ms Connor by a letter dated 25 November 2008. Mr Quigley did not comment on the letters of complaint but asked Ms Connor to list the allegations being laid against him under the disciplinary rules. By a letter to Mr Quigley dated 26 November, Ms Connor noted that he had not provided any comments and stated that she would now complete her investigations.
18. The investigation report compiled by Ms Connor had six appendices, including the letters of complaint. It was set out in numbered paragraphs under various headings. The headings were Background, The Complaints, Evidence, Findings and Recommendations. In the

Findings section Ms Connor concluded that Mr Quigley "*had potentially brought the Institute into disrepute and continues to threaten to do so*", taking into account his actions and the allegations he had made as described in her investigation report. Ms Connor recommended that a disciplinary hearing be convened.

19. By a letter dated 22 December 2008, the officer administering the disciplinary process, Mr Gray, wrote to Mr Quigley informing him that a disciplinary hearing was to take place on 30 January 2009. The letter enclosed a copy of the investigator's report and asked Mr Quigley to submit any documents that he wished to be before the disciplinary committee by 19 January.
20. On 7 January 2009, Mr Quigley wrote a 7 page letter to Mr Gray stating, inter alia, that Mr Gray's letter of 22 December lacked a copy of the allegations that he was entitled to receive under the constitution. Mr Quigley stated that the constitution makes a distinction between complaints and allegations. He further indicated that he would be seeking information from the Assistant Certification Officer for Scotland.
21. The disciplinary hearing took place on 30 January 2009. It was composed of five members and was chaired by the EIS ex-President, Mrs Devaney. The disciplinary committee reserved its decision and reconvened on 3 February to conclude its considerations. Mr Quigley was informed of its decision by a letter from Mrs Devaney dated 6 February 2009. The disciplinary committee decided that Mr Quigley had brought the Institute into disrepute and had disrupted its work. It decided not to expel him but to remove him from any representative position and barred him from standing for any office or representative position for two years. Mr Quigley is critical of the process which gave rise to this decision and complains that he was not given an explanation of the decision which was sufficiently "full and clear". Accordingly, I set out Mrs Devaney's letter of 6 February in full.

"Dear Mr Quigley

DISCIPLINARY HEARING – NOTIFICATION OF OUTCOME

I write on behalf of the Disciplinary Committee, to advise you of the Committee's decision on the matters considered at the Disciplinary Hearing, which you attended on Friday 30 January 2009. The Committee reconvened on Tuesday 3 February 2009 to conclude its consideration.

The Hearing was convened under the Procedures for the Operation of the Disciplinary and Appeals Committees, as provided to you prior to the Hearing.

Prior to considering the allegations against you the Committee would wish to respond to the procedural points you raised.

(1) Preliminary Points

1. *You raised an issue regarding witnesses in that you claimed that you did not know that it was your responsibility to make the necessary arrangements for witnesses you wished to call. It is the view of the Committee that this was made absolutely clear to you in the letter calling you to the Hearing dated 22 December 2008.*
2. *You raised a further issue that witnesses you may have called would find it difficult to agree time off with their employer and that the Institute could have facilitated the attendance of witnesses. However, you presented no evidence to suggest either that you had contacted any potential witnesses or that they would have been likely to have been refused*

time off work. The Committee would point out that the Institute can neither compel a witness to attend or an employer to provide time off for attendance at a Disciplinary Hearing.

3. *You made further representations relating to a distinction, drawn by you, between a complaint and an allegation. While it is acknowledged that a complaint and an allegation may not be the same, and that it might have been helpful if the investigation report had been set out in a different format, it is the view of the Committee that the allegations regarding your conduct were clear in the complaints provided to you and the substance of the Investigating Officer's report. In addition, it was clear to the Committee during the hearing itself that you were well aware of the nature of your conduct which it was suggested amounted to misconduct.*
4. *In your opening remarks, your questions to the Investigator, your presentation and in your summing up, you made reference to the timescale involved in terms of progressing the complaints against you. You also raised a concern that three complaints had been dealt with in one report. The Investigator explained some of the delay and also her reasons for producing one report on all three complaints against you, rather than separate reports. While the delay is regrettable, the Committee is of the view that this has not prejudiced your opportunity to present your case. Indeed, you did not submit any evidence which would suggest that your case had been prejudiced. In any event, the Committee is satisfied with the Investigator's reasoning for producing one report into all three complaints against you. It should be noted that the Investigator was clear that, had she produced separate reports, her recommendation relating to the complaints would still have been to call a Disciplinary Hearing.*

(2) Complaints

Moving to the substance of the complaints made against you the Committee considered the allegation that your conduct has brought the Institute into disrepute. The following matters were specifically considered.

1. *That you sent a communication which appeared to be official EIS correspondence which in fact was a personal letter from you.*
2. *That this correspondence was not issued through normal channels, that is, to EIS representatives in schools but was issued by you to Headteachers and administrative staff in schools.*
3. *That in this correspondence you made public information that you should have reasonably known to be a matter private to the Institute and its members.*
4. *That you have disregarded the democratic decision making processes of the Institute in the way you have sought means outside the mechanisms established by the Institute for members to raise concerns.*
5. *That in so doing you have caused unreasonable disruption to the work of the Institute, resulting in the Institute having to take action to prevent continued disruption to EIS business.*
6. *That you have denigrated duly elected committees of the Institute.*
7. *That you have made accusations relating to the General Secretary's and an Assistant Secretary's conduct including accusations that they had lied or misled the Executive Committee, Council and the Court of Session.*

(3) Findings

1. *Having considered the submissions made by you, the Committee is of the view that you did not offer any reasonable or mitigating explanation for your actions.*
2. *In relation to allegations 1, 2 and 3 it is the view of the Committee that the evidence provided by you in relation to the style of letter does not support your view that this could not have been viewed as anything other than a personal letter.*
3. *The Educational Institute of Scotland heading at the top of the page and your designation given as Past President made this letter appear to be official correspondence.*
4. *Sending this correspondence to Headteachers and administrative staff in schools further compounds the seriousness of your actions, and it is clear that information private to the Institute and its members was made public by you.*
5. *Your assertion that every teacher who understood how to write a letter would know this was a personal letter and that the Investigator was implying that Headteachers and administrative staff in schools were not trustworthy was not accepted as credible.*
6. *In relation to allegation 4, as a long serving member of the Institute, the mechanisms for raising concerns are well known to you. Despite this you have continued to seek further means outside these established mechanisms to raise issues that have already been dealt with.*
7. *One of the key principles of the Institute, indeed of Trade Unionism, is that of accepting the views of the majority in determining the Institute's position on a matter. This does not preclude a member from raising concerns or dissenting from the position but it does facilitate the progression of the work of the Institute.*
8. *In relation to allegation 5, you have attempted to reintroduce matters that have been dealt with by the relevant Committee and Council. You have ignored the decisions of Council, such as the decision that you had resigned your position, by still attempting to attend the Executive Committee. On the basis of this it is the view of the Committee that you have unreasonably disrupted the work of the Institute.*
9. *In relation to allegation 6, that you have denigrated duly elected Committees of the Institute, the Committee is of the view that you have belittled the Emergency Committee and have ignored decisions made by it. The Committee was of the view that your suggestion that the Executive Committee may be party to fraud, specifically in relation to salary increases to officials made in accordance with the existing agreement, despite your knowledge of this agreement, was a spurious claim.*
10. *In relation to allegation 7, regarding allegations relating to the General Secretary and an Assistant Secretary, the Committee does not have access, nor is it minded to seek access, to the outcome of the examination of your complaint and therefore cannot draw further conclusions on this matter. However your use of such emotive and intemperate language is of concern to the Committee. In addition, the Committee does have some concerns that your complaints were not made in good faith.*

Decision

It is the decision of the Committee that you have brought the Institute into disrepute and have disrupted the work of the Institute through your actions.

The Committee gave serious consideration to your expulsion from membership of the Institute. However the Committee is mindful of the many years you have dedicated to the work of the Institute and to supporting individual members and has therefore decided to impose a lesser sanction than expulsion. The Committee has decided that with immediate effect you should be removed from any representative positions you hold and should be debarred from standing for

or holding any office or representative position of any kind within, or on behalf of, the Educational Institute of Scotland for a period of two years from the date of this letter.

You have the right to appeal the determination of the Disciplinary Committee. Should you wish to exercise this right you must write to the General Secretary within ten working days of receipt of this letter. In lodging such an appeal you must state the grounds of appeal. On receipt of such request the General Secretary will make arrangements for a meeting of the Appeals Committee. You should note that the decision of the Disciplinary Committee will hold unless and until altered by the Appeals Committee.

Institute Procedure requires that this letter be copied to all interested parties. In addition the decision of the Committee will be issued to relevant individuals who need to be informed that you do not represent the Institute from the date of this letter and those who need to be advised that they cannot accept a nomination or appoint you to any position. However, each recipient is asked to treat the content in confidence. You are asked to also treat the detailed content of this letter in confidence, other than as may be necessary to progress an appeal should you wish to pursue one.

Yours sincerely
Kirsty Devaney
Ex President
On behalf of the Disciplinary Committee”

22. On 16 February 2009, Mr Quigley faxed a letter to, and spoke on the telephone with, the Assistant Certification Officer for Scotland, Mrs Stuart. Mrs Stuart subsequently wrote to Mr Quigley on 19 February enclosing a copy of the booklet on how to make a complaint to the Certification Officer. Mrs Stuart referred specifically to the importance of identifying exactly which rule is alleged to have been breached, by whom and when and stated that careful regard should be had to the relevant statutory time limitations.
23. On 20 February 2009, Mr Quigley appealed against the decision of the disciplinary committee. I set out in full the terms of that appeal.

“Disciplinary Appeal.

1. The EIS failed to provide me with **allegations** “which may lead to suspension from or expulsion from membership” as required by Section II 10(i) (i) of the EIS Constitution at least 5 working days before the Disciplinary Hearing of 30th January 2009.

This was confirmed by the statement made by the Vice president’s in her summing up at the Disciplinary Hearing that it was not her job “to clarify the allegations for Mr Quigley.

2. The Chairperson of the panel, Ex-President Kirsty Devaney, was a participant in and witness to a number of events discussed with Disciplinary Panel at the hearing of 30th January 2009. This is particularly noted with reference to Section 4.3 of the Investigating Officer’s report and Section (3) 8 of the Notification of Outcome both of which refer to the Executive meeting of 11th of January 2008 which according to complaint was allegedly disrupted by me. Ms Devaney chaired this meeting and exchanged views with me in the course of this meeting. Ms Devaney is neither independent nor neutral and should not have chaired the Disciplinary Hearing.

The EIS failed to put into place an independent or neutral Chair for the Panel for the Disciplinary Hearing of the 30^o of January.

3. The EIS denied my rights under the investigatory procedure to meet, accompanied, with the Investigating Officer, draw up an agreed statement, review

and amend the statement, sign and date the statement and have the statement included in the papers for the hearing of 30th January.

4. *The Investigating Officer failed to meet with the complainants, to draw up an agreed statement with each of the complainants, to have that statement reviewed and amended, signed and dated. I was denied my rights under the procedure to receive copies of these signed statements at least 5 days prior to the hearing of 30th January 2009.*
5. *With relation to 4 above. Ms Christina Lambert never submitted a complaint in terms of section 10 of the constitution. What she sent in was an unsigned email. Whether this was intended as a complaint in terms of Section II 10 (i) (i) was never established.*

The EIS failed to take any steps to ensure that Ms Lambert was invoking the complaints procedure under Section 10. Had the Vice President interviewed Ms Lambert in terms of section 4 above, this point may have been clarified. In the event the Vice President did not interview Ms Lambert or clarify the status of the unsigned email.”

24. The appeal hearing took place on 24 March 2009. It was composed of five members and was chaired by the EIS President, Mr Drever. Mr Quigley did not attend. By a letter dated 24 March, Mr Drever informed Mr Quigley that his appeal had not been upheld. I set out Mr Drever’s letter of 24 March in full.

“Dear Peter

APPEAL HEARING – NOTIFICATION OF OUTCOME

I write on behalf of the Appeals Committee, to advise you of the Committee’s decision on the matters considered at the Appeal Hearing, which was convened on Tuesday 24 March 2009.

The Hearing was convened under the Procedures for the Operation of the Disciplinary and Appeals Committees, as provided to you prior to the Hearing. The Committee noted that you did not exercise your right to appear in person at the Hearing and to present your case either in person or through your representatives. Nevertheless, the Appeals Committee considered your grounds of appeal and the supporting documentation which you submitted.

In terms of Section II 10 (i) (iii) of the EIS Constitution I now provide you with a full and clear explanation of why the Appeals Committee made its decision.

(1) The Grounds of Appeal.

The Appeals Committee considered the 5 grounds of appeal which you lodged in your letter to the General Secretary dated 20 February 2009.

1. *The first ground of appeal was that the EIS failed to provide you with the allegations “which may lead to suspension from...or expulsion from membership” as required by Section II 10 (i) (i) of the EIS Constitution at least 5 working days before the Disciplinary Hearing of 30 January 2009.*
2. *The second ground of appeal was that the EIS failed to put in place an independent or neutral Chair for the Disciplinary Committee at its meeting on 30 January 2009. You are of the view that Ms Devaney is neither independent nor neutral and should not have chaired the Disciplinary Hearing.*
3. *The third ground of appeal was that the EIS denied you rights under the investigation procedure to meet, accompanied, with the Investigating Officer, draw up an agreed statement, review and amend the statement, sign and date the statement and have the statement included in the papers for the hearing of 30 January 2009.*

4. *The fourth ground of appeal was that the Investigating Officer failed to meet with the complainants, to draw up an agreed statement with each of the complainants, to have that statement reviewed and amended, signed and dated. You are of the view that you were denied your rights under the procedure to receive copies of these signed statements at least 5 days prior to the Hearing of 30 January 2009.*
5. *The fifth ground of appeal is that Ms Christina Lambert never submitted a complaint in terms of Section II 10 of the constitution. You are of the view that she sent an unsigned e mail and that it was not established whether this was intended as a complaint in terms of Section II 10 (i) (i) of the Constitution. Accordingly, the EIS failed to take steps to ensure that Ms Lambert was invoking the complaints procedures under Section II 10 of the Constitution. Your argument is that had the Vice-President interviewed Ms Lambert this point may have been clarified.*

(2) The Findings of the Appeals Committee.

With regard to the first ground of appeal, the Appeals Committee is unanimous in the view that "complaints" and "allegations" are synonymous. The Appeals Committee is satisfied that the allegations regarding your conduct were clear in the complaints provided to you and in the Investigating Officer's report. The Appeals Committee is also of the view that you received a full and clear explanation regarding this from the Disciplinary Committee at its meeting on 30 January 2009 and in the letter from the Chair of the Disciplinary Committee to you dated 6 February 2009. The Appeals Committee is also satisfied from the evidence presented by the Chair of the Disciplinary Committee that you were fully aware of the allegations against you and that you were able to present your case at the Disciplinary Hearing.

Accordingly, it is the view of the Appeals Committee that this ground of appeal has not been substantiated and this ground of appeal is not upheld.

With regard to the second ground of appeal, the Appeals Committee is satisfied that the Procedures for the Operation of the Disciplinary and Appeals Committees were followed along with the constitutional provisions of Section II 10 (c) which stipulates that "The Ex-President will convene the Disciplinary Committee." In addition, you presented no evidence to suggest that you had objected to the Ex-President convening the Disciplinary Committee either before or during the Hearing of 30 January 2009. The Appeals Committee is also satisfied from the evidence presented by the Chair of the Disciplinary Committee that on 30 January 2009 you acknowledged that the Disciplinary Committee was able to give you a fair hearing.

Accordingly, it is the view of the Appeals Committee that this ground of appeal has not been substantiated and this ground of appeal is not upheld.

With regard to the third ground of appeal, the Appeals Committee is satisfied that this ground of appeal relies on procedures which do not exist in the Procedures for the Operation of the Disciplinary and Appeals Committees.

The procedures state "The Investigator will investigate the complaint, gather evidence and, unless recommending to the Disciplinary Committee that a complaint should proceed no further, will present a report to a subsequent Hearing meeting of the Disciplinary Committee." There is no provision in the agreed procedures for you "to meet, accompanied, with the Investigating Officer, draw up an agreed statement, review and amend the statement, sign and date the statement and have the statement included in the papers for the hearing." The Appeals Committee is satisfied that there has been no breach of the agreed procedures.

Accordingly, it is the view of the Appeals Committee that this ground of appeal has not been substantiated and this ground of appeal is not upheld.

With regard to the fourth ground of appeal, the Appeals Committee is satisfied that this ground of appeal relies on procedures which do not exist in the Procedures for the Operation of the Disciplinary and Appeals Committees.

The procedures state "The Investigator will investigate the complaint, gather evidence and, unless recommending to the Disciplinary Committee that a complaint should proceed no

further, will present a report to a subsequent Hearing meeting of the Disciplinary Committee." The Investigator is not required "to meet with the complainants, to draw up an agreed statement with each of the complainants, to have that statement reviewed and amended, signed and dated." The Appeals Committee is satisfied that you have not been denied rights under the procedures since there is no requirement for the Investigator or the Disciplinary Committee to act in the way you describe.

Accordingly, it is the view of the Appeals Committee that this ground of appeal has not been substantiated and this ground of appeal is not upheld.

With regard to the fifth ground of appeal, the Appeals Committee notes that this was not a matter raised by you either prior to or during the Disciplinary Hearing. The Appeals Committee is satisfied that the e mail submitted by Ms Lambert constituted a complaint which was capable of consideration by the Disciplinary Committee. The Appeals Committee further considered the context in which that e mail was sent and the fact that the content of this e mail supported other complaints made against you and over which you expressed no such concerns.

Accordingly, it is the view of the Appeals Committee that this ground of appeal has not been substantiated and this ground of appeal is not upheld

(3) Decision of the Appeals Committee

It is the decision of the Appeals Committee not to uphold any of the grounds of appeal.

As a result, the decision of the Disciplinary Committee that with immediate effect you should be removed from any representative positions you hold and should be debarred from standing for or holding any office or representative position of any kind within, or on behalf of, the Educational Institute of Scotland for a period of two years from the date of the letter of 6 February 2009 remains unaltered.

Institute Procedure requires that this letter be copied to all interested parties. However, each recipient is asked to treat the content in confidence. You are asked to also treat the detailed content of this letter in confidence.

In terms of Section II 10 (g) of the EIS Constitution the decision of the Appeals Committee is final and binding on all concerned.

*Yours sincerely
David Drever
President
On behalf of the Appeals Committee"*

25. On 25 June 2009, Mr Quigley presented a complaint to an Employment Tribunal claiming that he had been unjustifiably disciplined by the EIS, contrary to section 64 of the 1992 Act. On the same day Mr Quigley faxed a letter to the Certification Office which is headed "Application to register a complaint against a Trade Union". This 5 page letter is in identical terms to the grounds contained in Mr Quigley's application to the Employment Tribunal, except for the concluding few lines.
26. The Certification Office responded to Mr Quigley's above letter on 30 June 2009 but this letter appears not to have been received by him. A copy was sent to Mr Quigley on 11 September, when it was brought to the attention of the Certification Office that the original letter had not been received.
27. Mr Quigley's complaint to the Employment Tribunal went to a Case Management Discussion at which a Pre-Hearing Review ("PHR") was listed to determine whether the

claim had been submitted in time. On or about 21 September 2009, prior to the PHR, Mr Quigley withdrew his claim.

28. At about 10pm on 23 September 2009 Mr Quigley sent an email to the Certification Office to which he attached a registration of complaint form with a 21 page letter and, together with emails sent shortly thereafter, 138 pages of background documents.

The Relevant Statutory Provisions

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

108A Right to apply to Certification Officer

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

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

(6) An application must be made -

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

(7) 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.*

The Relevant Union Rules

30. The Rules of the Institute and the Disciplinary Procedure which are relevant to this application are as follows:-

Rule II 10. Suspension and Expulsion of Members

- (a) There shall be appointed a Disciplinary Committee which shall, consistent with the terms of relevant legislation, have power to suspend any member from the exercise of any or all of the privileges of membership. It shall also have the power to expel any member. It shall be the function of the Disciplinary Committee to consider and make a determination on complaints referred to it.*
- (b) The Disciplinary Committee will consist of five members, namely the Ex-President and four other members elected annually by the AGM as follow:.....*
- (e) The Appeals Committee will consist of five members, namely the President and four other members elected annually by the AGM as follow:.....*

(i) The procedures of the Disciplinary Committee and the Appeals Committee will be as set out in a scheme approved by Council, but will ensure that at each stage the member

(i) shall have the right to receive at least five working days notice of any meeting to consider any allegations which may lead to suspension of the member from the exercise of any or all of the privileges of membership or expulsion from membership and the right to appear before that meeting; and

(ii) shall be entitled to representation at the meeting of the Disciplinary Committee and/or Appeals Committee and to have representations made in his or her own defence before such suspension or termination of membership shall be operative; and

(iii) shall be entitled to a full and clear explanation of why the Disciplinary and/or Appeals Committee made their decision.

Procedures for the Operation of the Disciplinary and Appeals Committees

[As agreed by the Executive Council and the Institute's legal advisers, October 2001.]

Rule II 9 of the Institute sets out the constitutional basis for disciplinary action being taken against a member or members of the Institute. This paper sets out the procedures to give operational effect to this Rule.

It should be noted that all stages under these procedures should be expedited speedily and with due sensitivity to those concerned.

Stage One – Receipt and investigation of a complaint

Any formal complaint against a member or members of the Institute should be made in writing to the General Secretary. Any member or members of the Institute complained against will be informed of the complaint at this stage.

The General Secretary will refer any formal complaint to the Investigator. The Investigator will be the Vice-President (or nominee who is not a member of either the Disciplinary or Appeals Committees), who will be supported by a designated Officer or Official (who is not the serving Official of either the Disciplinary or Appeals Committees).

The Investigator will investigate the complaint, gather evidence and, unless recommending to the Disciplinary Committee that a complaint should proceed no further, will present a report to a subsequent Hearing meeting of the Disciplinary Committee.

It will be open to the Investigator to recommend to the Disciplinary Committee, following investigation and prior to any Hearing being called, that a complaint should proceed no further. Where the Investigator offers such a recommendation, it will be open to the Disciplinary Committee to take no further action on that complaint or to proceed to call a Hearing meeting to consider any allegations which may lead to suspension of the members(s) from the exercise of any or all of the privileges of membership or expulsion from membership. Any papers relating to the recommendation of the Investigator will be copied to the member of the Institute complained against.

Stage two – Hearing a complaint

Where a Disciplinary Hearing is convened, all documentation relating the Hearing will be circulated in advance to all parties concerned at least five working days before the date of the Hearing meeting. Evidence presented by either party at a Hearing meeting may include, where appropriate, oral evidence or witnesses.

The member or members, against whom the complaint has been made, will have the right to appear at a Hearing of the Disciplinary Committee, to be accompanied by a representative, and to have

representations made in their defence. Either the member or members or their representative may speak at the Hearing.

The procedure to be followed will be as follows:

- a. The members of the Disciplinary Committee will convene and discuss any preliminary business in camera;*
- b. The Investigator and the party against whom a complaint has been made will join the meeting;*
- c. The Investigator will present evidence, answer questions from the Committee, answer questions from the party against whom a complaint has been made, answer any further questions from the Committee;*
- d. The party against whom a complaint has been made will be invited to present evidence, answer questions from the Committee, answer questions from the Investigator, answer any further questions from the Committee;*
- e. For the avoidance of doubt, it should be noted that the Disciplinary Committee may choose to seek further evidence or information, on the day or at a subsequent date, before proceeding to make determination on the complaint;*
- f. The Investigator will sum up;*
- g. The party against whom a complaint has been made will sum up;*
- h. The Investigator and the party against whom a complaint has been made will leave the meeting;*
- i. The Disciplinary Committee will then proceed to make a determination on the complaint.*

The determination of the Disciplinary Committee will be communicated to all interested parties in writing within 10 working days of the determination being made.

Stage Three – Appeals procedure

The determination of the Disciplinary Committee will be open to appeal to the Appeals Committee. The request should state the grounds of appeal, and must be received by the General Secretary within 10 working days of the communication of the determination of the Disciplinary Committee.....

Conclusions

Preliminary Issues

31. Before examining individually each of Mr Quigley's complaints, it is appropriate that I determine three preliminary points, which impact on a number of the complaints.
32. Firstly, the EIS argued that my jurisdiction under section 108A of the 1992 Act is to consider only the rules of the Institute and that the Disciplinary Procedure that Mr Quigley complains has been breached is not a part of those rules. Ms Jones, for the EIS, submitted that there is sufficient substance in rule II 10 (i) to render it unnecessary for the Disciplinary Procedure to be considered as a part of the rules. On the other hand, Mr Quigley argued that the Disciplinary Procedure had effect as a rule of the Union, having regard to the terms of rule II 10 (i) and the preamble to the Disciplinary Procedure.
33. I note that rule II 10 (i) begins with the words "*The procedure of the Disciplinary Committee and Appeals Committee will be set out in a scheme approved by Council*". I further note that the Disciplinary Procedure records that it is to give effect to rule II 9. However, it was agreed that this was in fact a reference to rule II 10. In my judgement, these two references are sufficient to incorporate the document headed "Procedures for the Operation of the Disciplinary and Appeals Committee" into the rules of the Institute as being the scheme referred to in rule II 10 (i).

34. The second preliminary point is whether rule II 10 (i) grants specific rights to individuals which are enforceable by them as such or whether rule II 10 (i) merely imposes an obligation on the Institute to create a scheme which grants those rights to members. This issue is clearly one of form rather than substance. On both views, members have the rights which are set out in sub-paragraphs (i) to (iii) of rule II 10 (i). In my judgement, however, the clear words of rule II 10 (i) impose an obligation on the EIS to include within its scheme the rights set out in sub-paragraphs (i) to (iii). I find that a breach of those rights is not a breach of rule II 10 (i) itself. However, members may complain of a breach of the Disciplinary Procedure and I find that the rights set out in rule II 10 (i) are to be implied into that disciplinary procedure insofar as they are not expressly reproduced therein.
35. The third preliminary point is whether this application was made in time. Ms Jones, for the EIS, argues that Mr Quigley's registration of complaint form was received on 23 or 24 September 2009 and that accordingly only those breaches of rules which occurred on or after 24 or 25 March 2009 would be in time. She submitted that his complaints all relate to the procedures leading up to the notification of the outcome of the disciplinary hearing on 6 February 2009 and that therefore each of Mr Quigley's complaints is out of time.
36. Mr Quigley maintained that all his applications were made in time. Contrary to the arguments he had advanced in his earlier correspondence and in his Skeleton Argument, Mr Quigley stated expressly at the hearing that he did not rely on his letter to the Certification Office of 26 June 2009 as being the making of his complaint. Instead, he relied on his email of about 10pm on 23 September and the attached registration of complaint form. In my view, Mr Quigley was well advised not to rely upon his letter of 26 June. This was a virtual copy of the grounds of his application to the Employment Tribunal and, as such, it was appropriate to a claim of unjustifiable discipline against a Trade Union, but not a complaint of breach of rules. Mr Quigley submitted that, even though his application of September 2009 was more than 6 months after the notification of the outcome of his Disciplinary Hearing in February 2009, it was still in time by virtue of his internal appeal, which was determined on 24 March 2009.
37. The provisions which deal with whether an application has been made in time are contained in section 108A(6) and (7) of the 1992 Act. These provide as follows:

108A Right to apply to Certification Officer

(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.*

38. The application made by Mr Quigley on 23 September 2009 is clearly outside the primary limitation period provided for in section 108A(6)(a) of the 1992 Act, being more than 6 months starting with the day on which the breach is alleged to have taken place.

Accordingly, the issue is whether Mr Quigley's complaints can be brought within the extended limitation period in sub-section (6)(b).

39. In order to come within the extended limitation period, Mr Quigley must have invoked any internal complaints procedure of the Union to resolve the claim. Mr Quigley did appeal the decision of the Disciplinary Committee, but the appeal procedure is not obviously an internal complaints procedure. In this regard I have considered the guidance of the Employment Appeal Tribunal (EAT) in the case of **Bakhsh v. UNISON (EAT/0375/08)**. At paragraph 14 of the judgment of the EAT, Mr Justice Underhill stated: "*We accept that the phrase "invocation of an internal complaints procedure" can properly be given a fairly wide meaning, so as – for example – to cover an appeal procedure*". Having regard to this guidance, I find, on the facts of this case, that Mr Quigley's appeal against the disciplinary decision was the invocation by him of an internal complaints procedure.
40. Mr Quigley instituted his appeal on 20 February 2009. By so doing he potentially brought within time any alleged breach in the preceding 6 months, that is any such breach on or after 21 August 2008.
41. To be within time, however, the application relating to any such breach must be made within 6 months of the day on which the procedure was concluded. In this case the appeal was concluded on 24 March 2009. Accordingly, Mr Quigley's complaint had to have been made by 23 September. It was in fact received in the Certification Office at 10pm on 23 September. It was therefore received within the prescribed period.
42. The remaining issue on time is whether the appeal lodged by Mr Quigley, on the five grounds set out at paragraph 23 above, is sufficient to bring within time whatever breach of rule he wishes, so long as it is related to the disciplinary action taken against him. Mr Quigley maintains that this is the correct interpretation at section 108A(6)(b) and that, as his internal appeal was against the disciplinary action taken against him, he can now bring any complaint before me of a breach of rule relating to that disciplinary action. I do not accept that submission. In my judgement, it does not give sufficient or any weight to the words "*to resolve the claim*" in the expression "*any internal complaints procedure of the Union is invoked to resolve the claim*" in subsection (6)(b). The apparent purpose of the extended limitation period is to give the Union an opportunity to consider the matter which might be brought before me and resolve that matter amicably without the need for legal proceedings. This purpose cannot be achieved if the particular alleged breach of rule is not raised with the Union as part of the complaints procedure or, in this case, appeal. Accordingly, I find that the appeal lodged by Mr Quigley only brings within time those alleged breaches of rule which were raised by him as a ground of appeal for consideration by the Appeals Committee.
43. Having examined Mr Quigley's grounds of appeal against the decision of the Disciplinary Committee, I find that the only complaints before me which were also before the Appeals Committee are those which related to the failure of the EIS to provide Mr Quigley with details of the allegations against him. This is raised in Mr Quigley's first ground of appeal to the Appeals Committee and it is the basis of his first and third complaints to me. I therefore find that these complaints were made within time but that the remainder of his complaints were made out of time.

44. I will now deal individually with each of Mr Quigley's complaints to me. Before doing so, however, I record two general observations made by Ms Jones at the beginning of her submissions. She commented that Mr Quigley was in effect seeking to bring a claim of unjustifiable discipline in the guise of an application of breach of rule and it is for that reason that his complaints are not easily understood or analysed. Ms Jones further commented that Mr Quigley's submissions went beyond asking for the rules to be interpreted to asking for them to be effectively rewritten.

Complaint One

45. Mr Quigley's first complaint is as follows:

"In breach of the Constitution of the EIS Rule II 10(i)(i) and Stage 1 of the Procedures of the Operation of the Disciplinary and Appeals Committee the notification by the union of the Disciplinary Hearing on 30 January 2009 did not contain a copy of the allegations against him."

46. Rule II 10 (i) of the rules of the EIS provides as follows:

10 (i) The procedures of the Disciplinary Committee and the Appeals Committee will be as set out in a scheme approved by Council, but will ensure that at each stage the member

- (i) shall have the right to receive at least five working days notice of any meeting to consider any allegations which may lead to suspension of the member from the exercise of any or all of the privileges of membership or expulsion from membership and the right to appear before that meeting; and*

47. Mr Quigley had difficulty identifying which precise words of Stage One of the Disciplinary Procedure had allegedly been breached. He eventually referred to the following sentence, being the one containing the word "allegation".

"Where the Investigator offers such a recommendation, it will be open to the Disciplinary Committee to take no further action on that complaint or to proceed to call a Hearing meeting to consider any allegations which may lead to suspension of the member(s) from the exercise of any or all of the privileges of membership or expulsion from membership."

48. In Mr Quigley's submission, it is a basic requirement of the law of the land that accused persons must have allegations put against them if they are to be subject to a sanction. He argued that rule II 10 (i) gives members individual rights and that I should interpret both this rule and Stage One of the Disciplinary Procedure as giving him the right to receive detailed allegations before going to a disciplinary hearing. Mr Quigley submitted that the material provided him by the EIS in its letter of 22 December 2008, notifying him of the disciplinary hearing, did not amount to detailed allegations.

49. For the Union, Ms Jones submitted that this complaint had been made out of time. She also submitted that even if rule II 10 (i) could be interpreted as giving members an enforceable right, a plain reading of the rule did not give Mr Quigley the right that he was asserting. She argued that it only gave him a right to receive five working days notice of the Disciplinary Hearing. Ms Jones also submitted that Stage One of the Disciplinary Procedure imposes no obligation on the EIS to provide the sort of detailed allegations for which Mr Quigley contends. Notwithstanding these submissions, Ms Jones argued that Mr Quigley was not only given sufficient information of the conduct for which he was being disciplined but that

he was actually aware of the conduct for which he was being disciplined, as demonstrated by his responses to the Disciplinary Committee and as was found by that Committee.

50. For the reasons set out in paragraphs 36 to 43 above, I find that this complaint was made within time.
51. I also accept the general premise upon which Mr Quigley advanced this complaint, namely that persons accused of a disciplinary offence must be informed of the matters of which they stand accused in sufficient detail for them to prepare their defence. Indeed, the EIS did not dispute that proposition as a matter of general fairness. In my judgment, such an obligation is so basic that I would have little difficulty in finding it to be an implied provision of the Disciplinary Procedures and therefore a rule of the Union.
52. As to Mr Quigley's detailed submissions, I reject his argument that rule II 10 (i) gives each member an enforceable right to be provided with detailed allegations of the sort he required prior to any disciplinary hearing. As I have found in paragraph 33 above, rule II 10 (i) imposes an obligation on the EIS to introduce a scheme setting out its disciplinary procedures. It does not give members individual rights. I further find that the obligation in rule II 10 (i) is clearly expressed. I find that its words should be given their ordinary literal meaning, not the strained construction for which Mr Quigley contends. I further find that there are no words within Stage One of the Disciplinary Procedure which can be properly interpreted as giving Mr Quigley a right to the type of detailed allegations for which he contends.
53. The remaining issue for me to determine is whether the EIS was in breach of the provision to be implied into Stage One of the Disciplinary Procedure, that persons accused of a disciplinary offence are entitled to know the matters of which they stand accused in sufficient detail that they can prepare their defence. Whether a person facing disciplinary action by a voluntary association has been given sufficient material to prepare his or her defence depends on the fact of each individual case. Mr Quigley submitted that detailed charges or allegations should have been put to him by Ms Connor as part of her investigations, that these should have been listed in numbered paragraphs in her report, that they should subsequently have been put to him in writing and that the Disciplinary Committee should have dealt with them by reference to the same paragraph numbering as used in the investigation report. Whilst the EIS could have proceeded in this way, I find that it was not the only way for it to have properly conducted Stage One of the Disciplinary Procedure.
54. The process that was in fact adopted by the EIS for informing Mr Quigley of the material to be considered by the Disciplinary Committee was as follows. As part of her investigation, Ms Connor sent Mr Quigley the three letters of complaint on 10 November 2008, seeking his comments as part of her investigation. He declined to comment on them. On 22 December 2008 Mr Quigley was sent Ms Connor's investigation report, which included the complaint letters in the appendices. The three letters of complaint set out the conduct which the complainants wished to bring to the attention of the EIS. Mr Lavery and Mr Fowler expressly sought a reference to the Disciplinary Committee. Mr Fowler describes the conduct as potentially bringing the affairs of the Institute into disrepute and frustrating the efficient conduct of business. The investigation of Ms Connor was conducted without interviewing the complainants or Mr Quigley. Ms Connor reported on the conduct described in the letters of complaints. There was, therefore, little dispute as to

the material facts under consideration, namely the conduct of Mr Quigley and the letters he wrote. It is Mr Quigley's contention that neither his conduct nor his letters merited disciplinary action, let alone a disciplinary sanction. Ms Connor formed the view that the complaints raised in the three letters should go to a disciplinary hearing and explained, in the Findings section of her report, why she had come to this conclusion. She also concluded that, by his actions and the allegations he had made in his letters, Mr Quigley had potentially brought the Institute into disrepute and continued to threaten to do so. All this information was before Mr Quigley on or about 22 December 2008, prior to the Disciplinary Hearing on 30 January 2009. I find that this information not only enabled Mr Quigley to know the substance of the case against him but that he in fact knew the substance of that case. He knew that the case related to the conduct described in the letters of complaint and he knew the particular events which were the subject of that complaint. He further knew that it was being alleged that his conduct had brought the institute into disrepute. In my judgement, on the facts of this case, the Institute did inform Mr Quigley in sufficient detail of the matters of which he was accused for him to be able to properly prepare his defence. Accordingly, there was no breach of an express or implied term of Stage One of the Disciplinary Procedure in this regard.

55. For the above reasons, I refuse to make a declaration that the EIS breached rule II 10 (i) (i) of its rules and Stage One of its Disciplinary Procedure by its notification of the disciplinary hearing on 30 January 2009 allegedly not containing a copy of the allegations against him.

Complaint Two

56. Mr Quigley's second complaint is as follows:

"That between the dates of 9 July 2008 and 30 January 2009 the General Secretary of EIS breached the Constitution of the EIS Rule II 10 (i) and the second paragraph of the 'Procedures for the Operation of the Disciplinary and Appeals Committee' by not expediting the Disciplinary Procedures against Mr Quigley speedily."

57. I have set out above the terms of rule II (10) (i). The second paragraph of the Disciplinary Procedure provides as follows:

"It should be noted that all stages under these proceedings should be expedited speedily and with due sensitivity to those concerned".

58. I have found in paragraph 44 above that the only claims which were brought within time were Mr Quigley's first and third complaints. I accordingly dismiss this complaint on the grounds that it was brought out of time.

59. Should I be wrong about whether this claim was submitted in time, I also deal with the substance of Mr Quigley's claim. He alleges that from the time the complaints of Mr Lavery and Ms Lambert were put to him on 9 July 2008, the Institute did not 'expedite speedily' all stages of the procedure so as to secure a disciplinary hearing before 30 January 2009. It was not in dispute that from 10 November 2008, when Ms Connor put the complaint letters to Mr Quigley, matters proceeded with appropriate speed but there is an issue as to the period between 9 July and 10 November 2008. The Institute explains this period by reference to the school holidays in July/August and in October, noting that Ms Connor is a full time teacher, and by reference to the fact that Mr Fowler's complaint was only made by his letter of complaint of 26 September. The Institute also argued that Mr

Quigley's complaint refers specifically to the conduct of the General Secretary and that he discharged his obligations under the Disciplinary Procedure very promptly by notifying Mr Quigley of the complaints and appointing an investigator. It was submitted that any subsequent delay was a potential breach of rule by the investigator, not by the General Secretary.

60. I do not accept the Institute's submission that this complaint, properly understood, applies only to the duties given to the General Secretary personally under the Disciplinary Procedure. I find that the General Secretary has a general responsibility for the administration of the Institute and the reference to him in this complaint is to be understood as a reference to the alleged failure of the Institute to ensure that the disciplinary process was 'expedited speedily'. Indeed, this is how it was first understood by the Institute when submitting its original response to the complaints. I am also not persuaded that the process could not have been proceeded with more speedily between 9 July and 10 November 2009. However, the expression 'expedite speedily' must be considered in the context of a voluntary association and in the context that fairness, not speed, is at the heart of the process. I further note Mr Quigley's observation in his letter to members of the Executive of 10 September 2008 that "*The holidays of EIS members are normally regarded as sacrosanct*". In all the circumstances I conclude that the delay in this case, whilst not wholly explained to my satisfaction, was not so long as to constitute a breach of the requirement that all stages of the procedure should be expedited speedily. Had I so found, I would not have found that Mr Quigley was so prejudiced by the delay as to make it appropriate that I make an enforcement order in this regard.
61. For the above reasons, I refuse to make the declaration sought by the Claimant that between 9 July 2008 and 30 January 2009 the EIS breached rule II 10 (i) of its rules and the second paragraph of its Disciplinary Procedure by not expediting the Disciplinary Procedures against him speedily.

Complaint Three

62. Mr Quigley's third complaint is as follows:
In breach of the Constitution of the EIS Rule II 10 (i)(i) and the first paragraph in the section headed 'Stage Two – Hearing a complaint' of the Procedures for the Operation of the Disciplinary and Appeals Committee the EIS failed to provide Mr Quigley with the allegations against him at least 5 working days prior to the Disciplinary Hearing on 30 January 2009.
63. I have set out above the terms of rule II 10 (i). The first paragraph of Stage Two of the Disciplinary Procedure provides as follows:
Where a Disciplinary Hearing is convened, all documentation relating to the Hearing will be circulated in advance to all parties concerned at least 5 working days before the date of the Hearing meeting.
64. I have found in paragraph 43 above that this application was made in time.
65. Mr Quigley accepted that the substance of this complaint is the same as in complaint one. Mr Quigley maintained that he was entitled to receive detailed written allegations, not merely the letters of complaint and the investigator's report. I rejected this submission in my decision on complaint one.

66. For the reasons set out in paragraphs 48 to 55 above, I refuse to make the declaration sought by the Claimant that the EIS breached rule II 10 (i) (i) of its rules and paragraph one of Stage Two of its Disciplinary Procedure by failing to provide him with the allegations against him at least five working days prior to the disciplinary hearing on 30 January 2009.

Complaint Four

67. Mr Quigley's fourth complaint is as follows:

That on or around July 2008 and on or around September 2008, in breach of the Constitution of the EIS Rule II 10 (i)(i) and paragraph one of the section headed 'Stage One - Receipt and investigation of a complaint' of the 'Procedures for the Operation of the Disciplinary and Appeals Committee', Mr Quigley was not informed of the complaints made against him when they were received by the General Secretary.

68. I have set out above Rule II 10 (i). Paragraph one of Stage One of the Disciplinary Procedure provides as follows:

"Any formal complaint against a member or members of the Institute should be made in writing to the General Secretary. Any member or members of the Institute complained against will be informed of the complaint at this stage."

69. I have found at paragraph 44 above that the only claims which were brought within time were Mr Quigley's first and third complaints. I accordingly dismiss this complaint on the grounds that it was brought out of time.
70. Should I be wrong about whether this claim was submitted in time, I also deal with the substance of Mr Quigley's claim. He argued that the General Secretary's obligation under the Disciplinary Procedure was to supply him with a copy of the written complaints that had been made against him. It was not his case that the General Secretary had not informed him speedily enough. The Institute submitted that the General Secretary had discharged his duty under this paragraph of the Disciplinary Procedure by informing Mr Quigley of the fact that a complaint or complaints had been received.
71. I find that the word 'complaint' throughout Stage One of the Disciplinary Procedure is used in the sense of the substantive complaint that had been made against a member and not in the sense for which the Institute contends. In my judgement, once a complaint is identified as being 'a formal complaint' within the meaning of the Disciplinary Procedure, being one which is appropriate to refer to the investigator, the member is to be informed of the substance of that complaint, whether by providing the member with a copy of the letter of complaint or otherwise. If this were not to be the case, the member need not necessarily be informed of the substance of the complaint until he or she receives a copy of the papers relating to the recommendation of the investigator. I do not find that this is the natural meaning of the word 'complaint' in this context. Accordingly, had the complaint not been out of time, I would have found that Mr Quigley had not been informed of the complaint "at that stage". The phrase "at that stage" is to be understood as being the time that a complaint has been recognised as a formal complaint appropriate to be put to an investigator. However, I would also have found that Mr Quigley was not so prejudiced by this breach as to make it appropriate that I make an enforcement order in this regard. It is significant that when the letters of complaint were provided to Mr Quigley on 10 November 2008 he declined to comment upon them.

72. For the above reasons, I refuse make the declaration sought by the Claimant that, on or around July 2008 and September 2008, the EIS breached rule II 10 (i) (i) of its rules and paragraph one of Stage One of its Disciplinary Procedure by not informing him of the complaints made against him when they were received by the General Secretary.

Complaint Five

73. Mr Quigley's fifth complaint is as follows:

That in breach of the Constitution of the EIS Rule II 10 (i)(iii) the letter containing Notification of Outcome of the Disciplinary Hearing dated 6 February failed to record the decision made in respect of any allegation(s) against Mr Quigley – whether upheld or dismissed; failed to set out an explanation for each decision; and failed to ensure that each explanation was both "full" and "clear".

74. EIS Rule II 10 (i) (iii) provides as follows:

"Rule II 10 (i). The procedures of the Disciplinary Committee and the Appeals Committee will be as set out in a scheme approved by Council, but will ensure that at each stage the member:-

(i) ...

(ii) ...

(iii) shall be entitled to a full and clear explanation of why the Disciplinary and/or Appeals Committee made their decision."

75. I have found in paragraph 44 above that the only claims which were brought within time were Mr Quigley's first and third complaints. I accordingly dismiss this complaint on the grounds that it was brought out of time.

76. Should I be wrong about whether this claim was submitted within time, I also deal with the substance of Mr Quigley's claim. His argument in this regard followed his argument that he had not been provided with detailed allegations. He submitted that the Institute was in breach of this rule because it did not set out the detailed allegations against him and that the Disciplinary Committee did not deal with these allegations one by one with a full and clear explanation in relation to each allegation. The EIS submitted that Mrs Devaney's letter to Mr Quigley of 6 February 2009 did give him a full and clear explanation of the decision of the Disciplinary Committee.

77. In paragraphs 48 to 55 above I have already found against Mr Quigley's submission that the rules and/or Disciplinary Procedure require a member to be provided with detailed allegations as required by Mr Quigley in all disciplinary cases. It follows that the full and clear explanation which rule II 10 (i) (iii) requires the Institute to include in the Disciplinary Procedure need not necessarily deal with such detailed allegations one by one. In my judgment, the effect of rule II 10 (i) (iii) being incorporated into the Disciplinary Procedure is that any decision of the Disciplinary Committee should be supported by a full and clear explanation as to how that decision was reached. Such an explanation is to be consistent with it being a disciplinary decision of a voluntary organisation. It is not to be compared with a decision of the Court of Session. In this case, the explanation of the decision was given in Mrs Devaney's four page letter of 6 February which I reproduce at paragraph 21 above. This was set out under the headings of Preliminary Points, Complaints, Findings and Decision. I find this letter to be both full and clear. Indeed it is much more so than the majority of such letters I have encountered. Accordingly even if this complaint had been in time, I would have found against Mr Quigley.

78. For the above reasons I refuse to make the declaration sought by the Claimant that the EIS breached rule II 10 (i) (iii) of its rules by its letter of 6 February 2009 having failed to provide a full and clear explanation of the decision of the Disciplinary Committee, following the Disciplinary Hearing on 30 January 2009.

A handwritten signature in black ink, appearing to read 'David Cockburn', written in a cursive style. The signature is positioned above a horizontal line.

David Cockburn
The Certification Officer