

**DECISIONS OF THE CERTIFICATION OFFICER ON APPLICATIONS  
MADE UNDER SECTION 55 AND SECTION 108A(1) OF THE TRADE UNION AND  
LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**Mr K Ross**

**v**

**Fire Brigades Union**

**Date of Decision**

**1 March 2012**

**DECISION**

Upon applications by Mr Ross ("the claimant") under section 55 and section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. Upon withdrawal by Mr Ross, I dismiss his complaint that on or around 12 April 2011 the Fire Brigades Union ("the Union") breached section 51(4)(a) of the 1992 Act by holding an election for the position of Executive Council Member for Region 1 of the Union in which allegedly not every person, so far as is reasonably practicable, who was entitled to vote received by post a voting paper.
2. I refuse Mr Ross's application for a declaration that on or around 13 April 2011 the Union breached rule 19A(1) by allegedly publishing in hard copy and on its website a Fire Brigades Union Newsletter which contained material which constituted canvassing on behalf of one of the candidates in the above election.
3. I refuse Mr Ross's application for a declaration that on 27 May 2011 the Union breached rule 19A(3) of its rules by the General Secretary allegedly failing to hold a preliminary enquiry into the complaint which Mr Ross had submitted under rule 19A(2).
4. I refuse Mr Ross's application for a declaration that on 27 May 2011 and on 2 June 2011 the Union breached rule 19A(3) of its rules by the General Secretary allegedly forming an unreasonable belief, based on the information available to him, that no offence contrary to rule 19A(1) had occurred as had been put to him by Mr Ross.

**REASONS**

1. Mr Ross is a member of the Fire Brigades Union ("the Union" or "the FBU"). By an application received at the Certification Office by email on 24 August 2011, Mr Ross alleged a breach of section 51(4) of the Trade Union and Labour Relations

(Consolidation) Act 1992 and breaches of the rules of the Union in relation to an election for the position of Executive Council ("EC") member for the Scottish Region of the FBU (Region 1) which took place in April/May 2011.

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

**Complaint 1**

On or around 12th April 2011, and for a subsequent period of five weeks, the Fire Brigades Union breached section 51(4)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 by holding an election for the position of Executive Council Member for Region 1 of the Union which, so far as is reasonably practicable, not every person who was entitled to vote had sent to him/her by post a voting paper. For example, the members of the Polmadie Branch and the Calton Branch of the Region who did not receive a voting paper by post were: David Boyle, Stephen Fox, James Barton, Colin Gibson, Stewart Paterson, Angus Young, Scott Sweeney and Stephen Walsh.

**Complaint 2**

On or around 13th April 2011, the Union breached Rule 19A(1) by publishing a Fire Brigades Union Newsletter for the Scottish Region (Region 1), dated April 2011, that was issued to Scottish Fire Brigades Union members by hard copy to FBU Branches, on or shortly after 13th April 2011, and placed on the Fire Brigades Union Scotland website at the same time, which contained material that constituted canvassing on behalf of Roddy Robertson, who was a candidate in the election for the Executive Council Member for Scotland (Region 1) for which voting had begun on 12th April 2011.

**Complaint 3**

On 27th May 2011, the Fire Brigades Union breached Rule 19A(3) by the General Secretary failing to hold a preliminary enquiry into the complaint submitted by Mr Ross under Rule 19A(2).

**Complaint 4**

On 27th May 2011 and 2nd June 2011, the Fire Brigades Union breached Rule 19A(3) by the General Secretary forming an unreasonable belief, based on the information available to him, in the absence of a preliminary enquiry, that no offence contrary to Rule 19A(1) had occurred as had been put to him by Mr Ross.

3. I investigated the alleged breaches in correspondence. A hearing took place on 14 February 2012. At the hearing, the claimant represented himself. Mr Ross produced a written witness statement and gave oral evidence. The Union was represented by Mr Peter Edwards of counsel instructed by Mr Neil Johnson of Thompsons. The Union submitted written witness statements from Mr Matt Wrack, General Secretary of the FBU, and Mr Gavin Barrie, former Treasurer of Region 1 of the Union, who both gave oral evidence. Mr Ross and Mr Edwards each provided skeleton arguments. There was in evidence a 300 page bundle of documents consisting of letters and other documentation supplied by the parties which included the 2010 rules of the Union and further correspondence and documents which were added during the hearing.
4. At the hearing, Mr Ross confirmed that he withdrew his first complaint, as he had previously indicated in correspondence.

5. On the day prior to the hearing, Mr Ross applied to amend his second complaint to add the words “officials of” immediately after the opening words, “On or about 13 April 2011”. After discussion at the hearing, Mr Ross did not seek to pursue this application. I stated that, if he wished, he could renew his application at any time during the hearing as the argument developed. He did not do so.

### **Findings of Fact**

6. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
7. I set out the facts in two parts; dealing with the general background and then with the events which gave rise to these complaints.

### **General Background**

8. Mr Ross stood unsuccessfully for election as the EC member for the Scottish Region of the FBU. In these complaints he alleges that during the course of that election there had been canvassing for his opponent in breach of the rules of the Union. The principle rule which he alleged had been breached was rule 19A(1), which provides as follows:

19A      Canvassing

(1)      Canvassing for nomination or votes by a candidate for election under this Rule whether in person or by letter, circular or any other means or on behalf of a candidate for election under this Rule by letter, circular, or other written communication shall constitute a disciplinary offence.

9. This rule, and possibly its predecessors, have been the subject of much controversy within the Union. It was considered in depth in 1981 by a Committee of Inquiry consisting of Lord Wedderburn, Lord McCarthy and Mr Doughty. Its terms of reference were to consider the circumstances of an election for the position of Assistant General Secretary and to report with recommendations. It met eight times over three months, heard oral evidence from 24 witnesses and received 15 additional written statements. Amongst its recommendations were the adoption of election guidelines and the establishment of an Election Appeals Committee. These recommendations were not acted upon.
10. In 2004 and 2005 there were two elections; one for Assistant General Secretary and the other for General Secretary. These elections gave rise to a great many complaints of improper canvassing. An independent inquiry was established to consider them. It was composed of two eminent Trade Union leaders, Mr John Sheldon and Mr Ken Jones. They examined rule 19A(1) in depth and explored different potential meanings of the word ‘canvassed’. They considered that it might have a broad definition, a narrow definition or a common sense definition. A drastically summarised version of their view is that the more appropriate definition would be the broad one, which they considered was more compatible with the common sense view. By this definition canvassing would include not only specific canvassing for a named individual but also a wide range of other actions designed to influence the way members vote in an election. Their report debated the pros and cons of the different definitions over 28 pages. It concluded that there was no settled, official definition of what canvassing consists of and that any reformulation

would continue to give rise to considerable operational difficulties. It therefore recommended that in the long term the rule on canvassing be repealed. As to the short term, it stated as follows:

“56. In the short term, our view is that guidelines issued by the Union should reflect the official position adopted by it (that is, by the responsible officers) since November 2004 – in other words, on those complaints made in respect of the Assistant General Secretary election in particular. We can see little practical alternative to this, if only because the Union needs to be able to show that it administers its rules in a consistent way – both over time, and as between different cases.

57. A definition of canvassing derived in this way would be a ‘narrow; definition, along the lines of the one referred to in paragraph 54 above. Canvassing would be defined (within the terms of the existing rule) as any direct, explicit, appeal for members to nominate, or vote for, a named candidate; or any statement in relation to a named candidate expressed in such terms as to be tantamount to an attempt to influence electoral support for them.”

11. The report of this Inquiry was considered by the EC on 13 January 2006. I was not shown a copy of the minutes of that meeting, but in a circular to all members of 9 March 2006 the General Secretary reported on the outcome as follows:

“Following this consideration the Executive Council has concluded that there will be no such interim arrangement put in place and that rule 19(A) should continue to operate without any further guidance being issued. Effectively this maintains the status quo. All members are therefore reminded of the Union’s rules in relation to canvassing.”

12. The evidence before me as to the operation of rule 19A(1) demonstrated that since at least 2000 no disciplinary action has been taken against any member based on the broad definition of canvassing, as referred to in the 2005 Inquiry Report. Any such disciplinary action has been in relation to canvassing in favour of a named candidate in a specific election. Mr Wrack was elected as the Assistant General Secretary in or about February 2005 and as General Secretary in or about May 2005. In those elections he was party to complaints about canvassing which were, with others, considered by the 2005 Inquiry. He gave evidence that none of those complaints resulted in disciplinary action being taken against a member. Mr Wrack also gave evidence of an occasion in 2008 when he had submitted a canvassing complaint to the EC arising from an email which stated that an election was in progress and gave the nomination details of only one of the candidates. He stated that the EC had dismissed the complaint, criticised him for wasting their time and told him to apologise to the sender of the email. Mr Wrack further stated that in 2010 he had submitted a canvassing complaint to the EC arising from a text message which had stated that it was a reminder that the recommendation of the Regional Committee was to support his re-election as General Secretary. The EC upheld the complaint, albeit that its decision was later set aside “on a technicality”.
13. Mr Wrack gave evidence that he had always applied the so called narrow definition of canvassing and, as far as he is aware, so had the EC.

### The events in question

14. Mr Ross has been a member of the FBU for about 24 years. He is a member of the Polmadie branch, Glasgow, which is a part of the Strathclyde Brigade. Between 1990 and 2009 Mr Ross has held various positions within his branch, division, brigade and region. Between 2003 and 2009 he was the Regional Secretary in Scotland (Region 1).
15. The regions within the FBU have Regional Committees which meet every 2 months or so. Each region also has a Regional Executive. At the relevant time the Regional Executive in Scotland consisted of Mr Duffy as Regional Secretary, Mr Paterson as Regional Chair, Mr Robertson as the EC member for Scotland, Mr Wilson as Regional Treasurer and Mr Malone as the Regional Official. Elections for four of these positions had been conducted in 2009 and 2010. The position of EC member for Scotland was due to be contested in April/May 2011 (and is the election in question), after which the next election would be in 2013 in respect of the post previously contested in 2009. At the relevant time, the Scottish region of the Union was much concerned by a proposal of the Scottish Government to reduce the number of brigades in Scotland from eight to one.
16. Nominations for election to the position of EC member for Scotland were open between 8 February and 15 March 2011. Mr Ross was nominated by his branch and submitted his election address as required. The period for voting was between 12 April and 17 May. Mr Ross was informed of the election result whilst attending the Union's Annual Conference in Southport on 17 May. There were two candidates in the election. The incumbent, Mr Robertson, received 684 votes and Mr Ross 449 votes out of an electorate of 5,535.
17. However, on 8 April 2011 the Regional Secretary, Mr Duffy, had sent out an email to the members of the Regional Executive and Mr Barrie which stated, "*Subject: Newsletter. Guys, I think given all what's going on in the next few weeks it might be appropriate for us to put out a newsletter raising the profile of what we have all been doing recently and what our thoughts are for the future. Can you each give me an article for inclusion please and I will put the thing together etc.*"
18. Mr Barrie had been the Regional Treasurer, and thus on the Regional Executive, until his resignation from the Fire Service and from the Union on 31 March 2011. Notwithstanding his resignation, Mr Barrie had remained on the Union's email system and was included as a recipient of Mr Duffy's email of 8 April. Mr Barrie had made it known that he wished to write a valedictory piece to mark his retirement.
19. Mr Barrie's replacement as Treasurer was elected in December 2010 to enable a period of hand-over until 31 March 2011. By the early part of 2011 the Treasurer-elect had effectively taken over the functions as Treasurer and Mr Barrie rarely attended the Union office. By this time Mr Barrie had accepted a new responsibility. He had been seconded by his employer, the Lothian & Border Fire and Rescue Service, to work part time for the Scottish Government on the restructuring of the Fire and Rescue Service in Scotland. Mr Barrie agreed that, after his resignation from the Union and after leaving the Fire Service, he would cease this secondment for one month and resume it in May 2011. One of his specific tasks for the Scottish Government was to liaise with the FBU. To give effect to this arrangement, Mr Barrie

was co-opted to the Scottish Regional Committee. As a condition of this co-option, Mr Barrie should have rejoined the Union as an “out of trade” member. However, he gave evidence that he forgot to do so and ceased to be a member of the Union on 31 March 2011. Mr Ross tested this proposition in cross-examination but I accept Mr Barrie’s evidence, supported as it was by documentation from the Union, that he ceased to be a member of the Union on 31 March.

20. Upon receipt of Mr Duffy’s email of 8 April 2011, Mr Barrie agreed to write an article for the regional newsletter. He stated that he found this the perfect opportunity for the reflective piece that he had always wanted to write. Mr Barrie’s article appeared on page two of the newsletter which was circulated on 13 April. A copy of the newsletter was sent to all FBU branches in Scotland, to all members of the Regional Committee and it appeared on the website of FBU Scotland. The newsletter consisted of four sides, being a piece of folded A3 paper. The whole newsletter is reproduced as an appendix to this decision. The article that has given rise to this complaint is headed “Farewell but not Goodbye” and is divided into three sections; the past, the present and the future. Mr Ross’s complaint relates to the first paragraph under the heading “The Future”. This paragraph states:

“The Future

In the recent past there have been a number of Union Officials resigning or retiring in Scotland. The Regional Office alone has seen one sudden resignation and three new officials out of five in the past two years or so. As always these posts are decided by the votes at the membership but as one of the retired members I would urge a period of stability. There is now a fine balance of youth (relative) and experience leading the Union in Scotland. The Officials you have elected at present are the strong, considerate, listening, educated people that your Union needs at this time. The days of the shoot from the hip or lip Trade Unionism is a relic of the past. You can still influence the tact [sic] they take through resolutions or motions via your Branch and Brigade Committees. You’ll do this best by getting involved in a positive manner.”

21. On 23 May 2011 Mr Ross sent a letter of formal complaint to the General Secretary. In this complaint he named the five members of the Regional Executive and Mr Barrie. He alleged that they had “*either directly or indirectly and collectively breached rule 19A(1)*” during the recent election. In particular he complained that Mr Barrie had canvassed for members to support Mr Robertson by calling for “... a *period of stability*” within Regional Office and by his comment that “*The officials you have elected at present ... your Union needs at this time*”.
22. The General Secretary replied to Mr Ross on 27 May 2011. He stated that, having considered the complaint, he had concluded that the comments to which Mr Ross had referred did not amount to canvassing.
23. On 1 June 2011 Mr Ross requested a further explanation why his complaint had been rejected. In a letter dated 2 June the General Secretary stated:

“You should be aware that I have considered several such allegations in the past and have on occasion brought the matter to the Executive under rule 19A. On this occasion there was no mention of any election nor was there any call to vote for a candidate (or even mention of a candidate) in any such election. It is clear therefore that there cannot be any complaint of canvassing under rule 19A.”

24. Mr Ross commenced this application to me on 24 August 2011.

### **The Relevant Statutory Provisions**

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

#### **Section 108A Right to apply to Certification Officer**

- (1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).
- (2) The matters are -
  - (a) ...
  - (b) disciplinary proceedings by the union (including expulsion)
  - (c) the balloting of members on any issue other than industrial action
  - (d) – (e)

#### **Section 108B Declarations and Orders**

- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements –
  - (a) To take such steps to remedy the breach , or withdraw the threat of a breach, as may be specified in the order;
  - (b) To abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

### **The Relevant Rules**

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

#### **19A Canvassing**

- (1) Canvassing for nomination or votes by a candidate for election under this Rule whether in person or by letter, circular or any other means or on behalf of a candidate for election under this Rule by letter, circular, or other written communication shall constitute a disciplinary offence.
- (2) If a member believes that another member (“the defendant”) has committed a disciplinary offence contrary to (1) above, he/she shall submit a written complaint setting out details of the defendant’s conduct to the General Secretary to be received by him/her not later than 28 days after the declaration of the result of the election by the Returning Officer.
- (3) If the General Secretary believes (which belief he/she may form after a preliminary inquiry has been held) that the defendant has committed an offence contrary to this Rule:
  - (a) if the result of the election for which canvassing is alleged has not been declared, the election shall be suspended;

(b) if the result of the election has been declared and the defendant was the successful candidate he/she shall be suspended from the office to which he/she was elected or re-elected pending the outcome of proceedings under this Rule. If a Full Time Official is suspended, that suspension shall be on full pay. A suspended defendant shall not attend or call meetings of the Union or represent the Union in any capacity as the holder of the office from which he/she is suspended but may continue to receive such honoraria and allowances and such Union papers marked “for information only” as he/she would have received but for his/her suspension;

(c) the General Secretary shall convene a meeting (which may be an ordinary meeting) of the Executive Council in accordance with Rule 26(5) for the purposes of a hearing to consider the complaint. In addition to the matters referred to in that Rule the notice of the meeting sent to the defendant shall also inform him/her that the proceedings may lead to him/her being disqualified from standing for election to the office concerned. Save as appears below the hearing shall be in accordance with Rule 26(6) and the complainant shall be the General Secretary or a member nominated by the General Secretary; and

(d) the General Secretary may take such steps as he/she considers necessary to ensure the good management of the Union pending the outcome of proceedings under this Rule.

#### **24 Duties of members**

(4) Any member who wishes to dispute the decision or action of an Official of the Union, shall make a written report to his/her appropriate Committee and await investigation.

### **Consideration and Conclusions**

#### **Mr Ross's Complaint One**

26. Mr Ross's first complaint is as follows:

“On or around 12th April 2011, and for a subsequent period of five weeks, the Fire Brigades Union breached section 51(4)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 by holding an election for the position of Executive Council Member for Region 1 of the Union which, so far as is reasonably practicable, not every person who was entitled to vote had sent to him/her by post a voting paper. For example, the members of the Polmadie Branch and the Calton Branch of the Region who did not receive a voting paper by post were: David Boyle, Stephen Fox, James Barton, Colin Gibson, Stewart Paterson, Angus Young, Scott Sweeney and Stephen Walsh.”

27. Mr Ross withdrew this complaint in correspondence before the hearing. I accordingly dismiss this complaint upon withdrawal by the claimant.

#### **Mr Ross's Complaint Two**

28. Mr Ross's second complaint is as follows:

“On or around 13th April 2011, the Union breached Rule 19A(1) by publishing a Fire Brigades Union Newsletter for the Scottish Region (Region 1), dated April 2011, that was issued to Scottish Fire Brigades Union members by hard copy to FBU Branches, on or shortly after 13th April 2011, and placed on the Fire Brigades



Union Scotland website at the same time, which contained material that constituted canvassing on behalf of Roddy Robertson, who was a candidate in the election for the Executive Council Member for Scotland (Region 1) for which voting had begun on 12th April 2011.”

29. Rule 19A(1) provides as follows:

“19A Canvassing

(1) Canvassing for nomination or votes by a candidate for election under this Rule whether in person or by letter, circular or any other means or on behalf of a candidate for election under this Rule by letter, circular, or other written communication shall constitute a disciplinary offence.”

**Summary of Submissions**

30. Mr Ross submitted that this complaint is within my jurisdiction as the actions of Mr Barrie and the Regional Executive in writing and causing the newsletter in question to be circulated were the actions of the Union. He argued that, accordingly, the Union, by the actions of Messrs Barrie, Duffy, Robertson, Patterson, Wilson and Malone, had breached rule 19A(1) by canvassing for votes on behalf of Mr Robertson. Mr Ross went on to argue that the offending paragraph in the newsletter was clearly canvassing and that rule 19A(1) encompasses all persons involved in the canvassing, not just the author of the offending words. Mr Ross maintained that the article in question amounted to canvassing as it urged a period of stability at regional office and the only way to achieve stability, given the election that was then underway, was to vote for the incumbent, Mr Robertson. He also maintained that it was canvassing for the article to state *“The officials you have elected at present are the ... people your union needs at this time”*, as this also supports the candidacy of Mr Robertson. In Mr Ross’s submission, there could be a breach of rule 19A(1) even if the article in question does not refer by name to the candidate being preferred or even to the particular election. He argued that these elements can be inferred from the context and that in this case there was only one election being run at the time of the newsletter’s distribution and there were only two candidates in that election, one of whom was the incumbent who worked at regional office. In these circumstances, Mr Ross argued that it would be clear to any member in Scotland that the article was supporting the candidacy of Mr Robertson over his own. Mr Ross submitted that the broad or common sense interpretation of the word ‘canvassing’ should be adopted, as was the preferred position of the Inquiry in 2005 and that canvassing should include any material which seeks to influence the voting of members.

31. Mr Edwards, for the Union, stated that his primary submission was that rule 19A(1) was not a rule over which the Certification Officer had jurisdiction. He argued that rule 19A(1) creates a disciplinary offence applicable only to individual members and is therefore not a rule which is capable of being breached by the Union. He maintained that rule 19A is a self-contained code for matters dealing with canvassing but that it operates by means of the disciplinary mechanisms of the Union. In his submission, the responsibility of the Union with regard to rule 19A(1) was restricted to the processing of any complaint there might be that a disciplinary offence had been committed. Accordingly, Mr Edwards maintained that this complaint was misconceived. He argued that in as much as it was a complaint against the Union, it did not make sense as it was impossible for the Union to be guilty of this disciplinary offence. He further argued that in as much as it was a complaint against individuals, it was outside my jurisdiction, as it is not for the Certification Officer to determine

internal disciplinary matters, in particular where the members in alleged breach are not and cannot be parties to the proceedings before me. Mr Edwards commented in passing that by section 108(B)(3) of the 1992 Act an Enforcement Order can only be made against a trade union. If I were to be against Mr Edwards on his primary submission, he also argued that the article in question, correctly construed, did not amount to canvassing within the meaning of rule 19A(1). He submitted that in construing rule 19A(1) I should have regard to the consistent approach that had been taken to it since 2000, to the view of the EC and to the view of Mr Wrack as General Secretary. Mr Edwards also invited me to accept the evidence of Mr Barrie that the article was not intended to canvass for anyone and that the words seized upon by Mr Ross were rather intended to call for a period of calm at a time when emotions were running high over the restructuring of the Fire and Rescue Service in Scotland. Mr Edwards argued that for there to be canvassing within the meaning of rule 19A(1) there must be a reference to a specific election and that any broader interpretation would put at risk the ability of members to praise or criticise candidates over the period of an election. He further argued, by reference to **Douglas v GPMU (1995) IRLR 426**, that the words “on behalf of” in rule 19A(1) required that the person accused of canvassing must have been acting as the agent of or be the ‘authorised person’ for the candidate allegedly being supported and there was no evidence of this. He also noted that at the time the article was published Mr Barrie was no longer a member of the Union and therefore not subject to its disciplinary provisions.

### **Conclusion – Complaint Two**

32. Rule 19A(1) is clearly a rule within my jurisdiction. Section 108A(1) of 1992 Act provides in effect that I have jurisdiction over those union rules which relate to any of the matters set out in sub-section (2). Sub-section (2)(b) includes amongst those matters “*disciplinary proceedings by the Union (including expulsion)*”. I find that rule 19A(1) does relate to disciplinary proceedings.
  
33. There is, however, a separate question as to whether rule 19A(1) is a rule which is capable of being breached at all or in a manner justiciable before me on the facts of this case. In considering this question I have had regard to both the wording of the rule and the context. The context is the internal disciplinary process of the Union. In my judgement, it would be unlikely for Parliament to have intended the Certification Officer to become involved in determining internal disciplinary complaints, beyond determining if any rule relating to the process has been breached. At the hearing, there was discussion, by way of example, of a potential rule which made it a disciplinary offence to swear at branch meetings. Should it be alleged that a member had broken this rule, it was common ground that the complaint would not be to me. A complaint would be made against the member under the union’s disciplinary procedure, the facts investigated and a decision reached in accordance with that procedure. Mr Ross was unable to suggest why the facts of the present case should be analysed differently, notwithstanding the more controversial nature of the disciplinary offence in question. Turning to the actual words of rule 19A(1) I observe that, stripped of its detailed provisions, the rule states simply, “*Canvassing ... shall constitute a disciplinary offence*”. As such, I find that it is in effect a rule which provides a definition of one type of disciplinary offence and is not in itself a rule capable of being breached by the Union. A member who commits the disciplinary offence in question may be subject to the Union’s internal disciplinary processes and

these will of course examine whether the disciplinary offence created by rule 19A(1) has been committed but this does not in itself constitute a breach of rule 19A(1).

34. For the above reasons I refuse to make the declaration sought by Mr Ross that on or around 13 April 2011 the Union breached rule 19A(1) by allegedly publishing in hard copy and on its website a Fire Brigades Union Newsletter which contained material which constituted canvassing on behalf of one of the candidates in the above election.
35. On the grounds on which I have determined this complaint there has been no need for me to construe what is meant by 'canvassing' in rule 19A(1), an issue which has troubled two internal inquiries of the Union. I do not express any view on this issue.

### **Mr Ross's Complaint Three**

36. Mr Ross's third complaint is as follows:

"On 27th May 2011, the Fire Brigades Union breached Rule 19A(3) by the General Secretary failing to hold a preliminary enquiry into the complaint submitted by Mr Ross under Rule 19A(2)."

37. Rules 19A(2) and 19A(3) provide as follows:

"(2) If a member believes that another member ("the defendant") has committed a disciplinary offence contrary to (1) above, he/she shall submit a written complaint setting out details of the defendant's conduct to the General Secretary to be received by him/her not later than 28 days after the declaration of the result of the election by the Returning Officer.

(3) If the General Secretary believes (which belief he/she may form after a preliminary inquiry has been held) that the defendant has committed an offence contrary to this Rule:

(a) ...

...

(d) ..."

### **Summary of Submissions**

38. Mr Ross stated that this complaint turned upon the correct interpretation of rule 19A(3). In his submission rule 19A(3) requires the General Secretary to undertake a preliminary enquiry before forming a belief whether the defendant had committed an offence contrary to rule 19A(1). He argued that Mr Wrack plainly did not undertake any such inquiry. Mr Ross's skeleton argument set out the various steps that Mr Wrack could have taken but did not. Mr Ross observed that Mr Wrack had rejected his complaint after merely reading the article by Mr Barrie in the April 2011 newsletter, which he argued was insufficient to meet the requirements of rule 19A(3). Mr Ross further argued that his complaint warranted a preliminary inquiry, having regard to its substance and the level of the people involved. He maintained that Mr Wrack's approach was too simplistic and not sufficiently systematic.
39. Mr Edwards for the Union, submitted that on a plain reading of rule 19A(3) the General Secretary had a discretion to hold a preliminary inquiry but was under no obligation to do so. He argued that, in any event, Mr Wrack's consideration of the article in question and his consideration of his own knowledge of past practice could be considered a preliminary inquiry in itself. Mr Edwards queried what further inquiry

was necessary on the facts of this case and contrasted it with enquiries that might have to be made if a complaint about an anonymous leaflet was being considered.

### **Conclusion – Complaint Three**

40. I agree with Mr Ross's submission that this complaint turns on the correct construction of rule 19A(3). I also agree with him that Mr Wrack's consideration of his complaint did not amount to a preliminary inquiry in and of itself. I find, however, that the construction given to this rule by Mr Ross is unsustainable and verges on the unarguable. In my judgement, rule 19A(3) gives the General Secretary a discretion to hold a preliminary inquiry, as is apparent from the use of the word 'may'. The duty of the General Secretary is to form a belief. In forming this belief he or she may or may not hold a preliminary enquiry. Mr Wrack exercised his discretion not to hold an enquiry and in deciding to proceed in this way he did not act in breach of rule 19A(3).
41. For the above reasons I refuse to make the declaration sought by Mr Ross that on 27 May 2011 the Union breached rule 19A(3) of its rules by the General Secretary failing to hold a preliminary enquiry into the complaint which Mr Ross submitted under rule 19A(2).

### **Mr Ross - Complaint Four**

42. Mr Ross's fourth complaint is as follows

“On 27th May 2011 and 2nd June 2011, the Fire Brigades Union breached Rule 19A(3) by the General Secretary forming an unreasonable belief, based on the information available to him, in the absence of a preliminary enquiry, that no offence contrary to Rule 19A(1) had occurred as had been put to him by Mr Ross.”

43. Rules 19A(1) and 19A(3) provide as follows:

“19A(1) Canvassing for nomination or votes by a candidate for election under this Rule whether in person or by letter, circular or any other means or on behalf of a candidate for election under this Rule by letter, circular, or other written communication shall constitute a disciplinary offence.

19A(3) If the General Secretary believes (which belief he/she may form after a preliminary inquiry has been held) that the defendant has committed an offence contrary to this Rule:

- (a) ...  
...  
(d) ...”

### **Summary of Submissions**

44. Mr Ross argued that the belief that the General Secretary formed about whether a disciplinary offence under rule 19A(1) has been committed was unreasonable having regard to the information that was available to him or could have been available to him had he conducted a preliminary enquiry. He submitted that Mr Wrack was wrong to have proceeded on the basis of his understanding that if the article did not name a candidate, it could not amount to canvassing. Mr Ross argued that for him to have proceeded on that basis was unreasonable. In Mr Ross's submission, it was irrelevant to consider the past practice of the Union, as the purpose of the rule was to stop canvassing and achieve a level playing field. Mr Ross argued that the only reasonable belief the General Secretary could have formed was that the five defendants and Mr Barrie had in fact committed the disciplinary offence of

canvassing. Nevertheless, Mr Ross stressed that he was not alleging that the General Secretary had formed his belief in bad faith.

45. Mr Edwards for the Union, submitted that rule 19A(3) does not contain the word “reasonable” and it was inappropriate to imply a measure of objective assessment of the General Secretary’s belief at this stage of the procedure. Mr Edwards accepted that a belief formed in bad faith would be in breach of this rule as it would not be the actual belief of the General Secretary. Beyond that, he argued that there were no implied limitations on the belief formed by the General Secretary. On the facts of this case, Mr Edwards submitted that there was no dispute that the General Secretary had formed his belief in good faith and that his belief was consistent with both his understanding of the rule and the way in which the rule had been operated by the Union since 2000. He argued that whilst Mr Wrack was not obliged to form a belief that was reasonable, he had in fact done so.

#### **Conclusion – Complaint Four**

46. Rule 19A(3) plainly does not contain the word “reasonable” as a restriction on the belief that the General Secretary may form. Nevertheless the implication of reasonableness occurs not infrequently and is often difficult to resist. In this rule, however, the drafter has chosen to set the standard to be reached by the General Secretary before submitting a disciplinary matter to the EC at an unusually low level. He or she must only form a “belief”. In my judgement, the purpose of doing so was to allow a degree of subjectivity and for matters to be processed or rejected on less than full evidence. Such a purpose would not be unusual in the context of member against member disciplinary complaints within trade unions. Other unions with similar rules give the General Secretary a general discretion whether such complaints should be progressed, given the vast range of potential complaints and complainants and a concern that a union’s expensive and time consuming disciplinary procedures should be abused. Whilst there is no suggestion that Mr Ross has attempted to abuse the disciplinary procedure of the FBU, it is relevant in construing a rule to have regard to the nature of the rule, its supposed purpose and its anticipated effect. In my judgement, rule 19A(3) deliberately gives the General Secretary a wide discretion in forming his belief. It is not, however, an unconstrained discretion. I find that rule 19A(3) would be breached not only by the General Secretary forming a belief in bad faith but also if he formed a belief that no General Secretary acting reasonably could have reached. In other words, the test is not whether the General Secretary came to the correct decision, but whether he came to one which was open to him, acting as a reasonable General Secretary, on the information which was or could reasonably have been made available to him.
47. Applying this construction of rule 19A(3) to the facts of this case, I find that Mr Wrack formed a belief which was reasonably open to him in all the circumstances of the case. He formed the belief that Mr Barrie had not committed the disciplinary offence created by rule 19A(1) by having written the article “Farewell but not Goodbye” in the April 2011 newsletter and that the five members of the Regional Executive had not done so by allegedly being jointly responsible for its publication. Mr Wrack gave evidence that he formed his belief having regard to the nature of the article in question, the absence of any reference in it to the then current election and the absence of any reference to either Mr Robertson or Mr Ross. He also formed his belief having regard to the considerable history of the Union’s difficulty in dealing with

alleged canvassing, the recommended action of the inquiry in 2005 as to the short term and the Union's practice of dealing with such complaints since 2000. Against this background, I find that the belief formed by the General Secretary was neither a belief formed in bad faith (as was common ground) nor a belief to which no General Secretary acting reasonably could have come.

48. For the above reasons I refuse to make the declaration sought by Mr Ross that on 27 May 2011 and on 2 June 2011 the Union breached rule 19A(3) of its rules by the General Secretary allegedly forming an unreasonable belief, based on the information available to him, that no offence contrary to rule 19A(1) had occurred as had been put to him by Mr Ross.
49. On the basis that I have determined this complaint, it has not been necessary for me to determine what constitutes canvassing within the meaning of rule 19A(1) and I express no view on that issue.



**David Cockburn**  
**The Certification Officer**



## Fire Service Reform

What is the cost if we do not consider restructure?

The FBU have been involved in discussions for a number of years regarding the future structures of the FRS in Scotland. The Union objected strongly when the Scottish Central Fire Brigades Advisory Council was wound up following the introduction of the Fire (Scotland) Act 2005. Also lost at this time were appointments and promotions regulations and the national standards of fire cover.

The arguments put forward by the Union have always been for more central standards, as with our conditions of service we have maintained that there should be a minimum for all other matters and that this should be set once.

The Fire Conveners along with the CFO's have put forward a 4 year strategy which promised cuts, followed by cuts, then more cuts and in year 4 consider merging. The options facing us are few and

not the choices that you would want, the financial crisis is not the making of our members or families yet we are being told we must pay the price.

The values of commodities may go up and down but the price of fire remains constant, we can not and must not allow our service to the public to be attacked in this way. The risks have not changed. If anything they will have become greater. Our service needs to be able to adjust and manage this risk and this will not be done by making cuts.

Both main political parties in Scotland are suggesting a restructure of the FRS, this is a decision for the people we elect to represent us, however we have taken the opportunity to position the FBU into areas where we may be able to influence the decision makers. We are also watching for some of the more crazy ideas and trying to stop them from progressing.

Clearly as the discussions develop, areas of contention will appear. Your Union has been clear in these discussions, we will fight for all our members jobs, we will oppose the rush to the lowest common denominator and we will oppose any worsening of the service we provide to the public.

If we were not to consider restructuring then what would be the likely outcome? You need to look no further than Fife or Grampian to see the cuts being implemented, £800,000 shortfall in Grampian and a 4.9% cut in Fife, so much so that Fife are looking to other FRS's to take firefighters off their hands to avoid redundancies.

Emergency Controls being offered up by managers with out any consideration of future requirements. This is not the picture that we want to see, nor is one that the public should have to accept. Your union is fighting— and will continue to fight for you and the service you provide.

## What is the Alternative?

Politicians at the Scottish level are clearly of the view that both Police and Fire services must be provided in a different way if the frontline delivery is to be protected. Fire Conveners and Chief Fire officers agree. However there are those who advocate that restructure is not the best way to do this. Is there an alternative and what might it be?

The facts of the matter are that the UK Govt has cut the Scottish budget and will continue to do so. The Police are working on an assumed cut of 15% by 2016, so it would be prudent for the FRS to assume at least that level of cut. That being the case, the choice is where do you spend the money?

There are clues in what has happened in the past, and what is happening in some areas now. "Efficiency measures" is another term for job cuts. We already have one area actively getting rid of firefighters whilst employing brigade level managers. Other services are facing major budget cuts and can be expected to "resort to type" and to cut firefighter posts.

What the FBU is suggesting is using retirements and the sharing of department functions to reshape the service, away from the top and the backroom and back to the frontline.

Those that are promoting the retention of the current structure must be honest and tell us how

many jobs it will cost to protect the 8 corporate structures. The only alternative is the Conveners strategy, where we will lose significant jobs and then by year 4 be exactly where we are now, considering a restructure.

We believe that the service needs to avoid those job losses and the potential for industrial action that would follow, by making an early decision on the way forward. By protecting the ability to deliver the front line and by protecting you the members of the service.

Your Brigade and Regional Officials are actively considering all of the positives and negatives of restructure and will continue to work hard and advocate strongly on your behalf.

*The Fire Brigades Union is the Voice of  
Professional Firefighters & Emergency Fire Control Operators Throughout Scotland*

## Farewell, but not Goodbye

by Gavin Barrie, recently retired Regional Treasurer

Fourteen days short of thirty four years of service I decided it was time to retire and enter a new phase in my life. The 31<sup>st</sup> of March saw me finish as both a firefighter and FBU Official. Free from what can sometimes be the shackles of collective responsibility I am grateful for the opportunity to share a few thoughts with you on the past, present and future of the FBU and the Fire Service.

### The Past.

Joining the service in the Spring of 1977 saw pay at less than a pound per hour (probationer's pay of £38 per week) and a forty eight hour week. Little wonder that industrial action took place later that year which saw FBU members on the picket lines from November of that year for eleven straight weeks.

There were a whole load of reasons that made me get involved as a union official but one abiding one is the knowledge that strong, considered, well educated officials can argue the members case and avoid the degeneration into painful industrial action that is not without hurt to all parties. For the past 20 years, in one role or another, whether at Branch, Brigade or Regional level I have seen my responsibility as an official to not only represent the members, whether collectively or individually, but to do so in a way that sees them getting the best deal available, and achieved as painlessly as possible. Whether the approach taken to a pay claim in 2003 was the right strategy at the right time is still open to debate, I for one am more than willing to apologise for my part as a Brigade Official for any shortcomings during that period.

### The Present.

Currently, in Region 1 you are seeing proposed the biggest shake up and re-organisation of the Fire Service that Scotland has ever seen. The public consultation is ongoing and members will probably be aware that in the run up to the Holyrood elections both Labour and the SNP manifestos

have indicated their preference for a single FRS in Scotland.

This created a dilemma but after careful consideration over more than a year the view is that of the realistic options possible, a single service for Scotland, where any saving made can be used to ensure the ability to respond to emergencies, as the public expect, is probably the best option. To that end your Officials have developed strong relationships with the leaders of both the major political parties in Scotland to try to ensure that any change is managed in such a way that the impact on FBU member, and to the public, is minimally affected.

There are some, and they are entitled to their opinion, who believe that you should fight for the status quo or resist change at all costs. My cautionary warning regarding this is that if you want to fight change, please take stock of the size of the opponent before getting in to the ring. As previously mentioned, both main political parties, Fire Convenors and the Chief Fire Officers Association, have all indicated that they believe this type of change is inevitable. Currently there is also a commission looking in to public service reform in Scotland. This does not and will not mean that if any proposals that come forward are unacceptable to the members that the ultimate weapon, industrial action, will still be available to the Union members. I know that your current Officials are perfectly aware of this but also the pain that also comes if things get to that stage.

If you have concerns about this the way to address them is to get involved with the Union. Contribute to the debate but please do so in considered and positive manner. Carping from the sidelines or attacking those that are working extremely hard on your behalf to try to manage this situation does nothing to improve either your or the wider memberships future. Those that do so in a negative way do a disservice to both the Union

and the wider membership.

### The Future

In the recent past there have been a number of Union Officials resigning or retiring in Scotland. The Regional Office alone has seen one sudden resignation and three new officials out of five in the past two years or so. As always these posts are decided by the votes of the membership but as one of the retired number I would urge a period of stability. There is now a fine balance of youth (relative) and experience leading the Union in Scotland. The Officials you have elected at present are the strong, considerate, listening, educated people that your Union needs at this time. The days of the shoot from the hip or lip Trade Unionism is a relic of the past. You can still influence the tact they take through resolutions or motions via your Branch and Brigade Committees. You'll do this best by getting involved in a positive manner.

For my part I have the opportunity to stay involved due to being able to work with the Civil Servants looking at change in the fire service from St Andrews House. I am grateful to my Service, Lothian & Borders for facilitating this and allowing me to continue my secondment until December, despite my retirement. Given the timing of the Scottish election I should still be in post whichever Party(s) comes out victorious on May 6<sup>th</sup>.

In retirement I intend to continue to work and promote the FBU and the membership. I have no doubt there will be battles ahead. What I want to see is a strong and active membership supporting the officials who give both their time and energy to the cause, sometimes at great personal sacrifice. As an Official I was always grateful for that support, I know the current post holders would be every bit as grateful, especially now when the workloads they face are ever increasing.

Log onto [www.fbScotland.org](http://www.fbScotland.org) for Regular Updates and Information



## Debates Through Structures

The whole area around the topic of restructure has been on the agenda of the Scottish Regional Committee for well over a year now. During that time there has been considerable debate and discussion around the subject. Your Brigade Officials are aware of the many issues, concerns, pitfalls and problems that a major service restructure might bring. During these debates they reflect the views and opinions of the various branches from around Scotland. This is why it is important that you take part in the process, by attending your local branch meetings.

The debate and discussion will not end with the completion of the Government consultation. Your local officials will continue to contribute through the FBU structure, bring your opinion, concerns, contributions and suggestions forward, influencing the policies and positions of your union.

We believe that our members are the fire and rescue service. If it is changing, then you must influence that change. You can do that best by being active in your branch, contributing, taking on a post and putting positive ideas forward through the FBU.

## A Consistent Message

Long before the real debate on fire and rescue service restructure was underway the FBU had been arguing for more consistency, commonality and joined up working across the services in Scotland. In many of our submissions to the 2004 Fire (Scotland) Bill we argued that line. Throughout the existence of the current Advisory Structure we have raised concerns that there is actually no-where for Scotland wide agreements to be reached. Each good idea must be introduced 8 times over, where 8 interpretations can lead, ultimately to 8 very different policies or procedures.

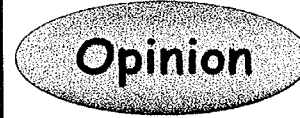
Things like IRMP and IPDS which identify the range of work that firefighters might be expected to face and set out how to develop firefighters competent to face them, underpin the whole service, but are not being applied or implemented consistently. These have a direct bearing on firefighter safety and are fundamental to the service. This does not mean that every firefighter must be trained in exactly the same way, to do exactly the same things, but that the training they receive should be to the same standard.

This message is one that has been put forward on your behalf by

brigade and regional officials for many years. We have produced briefing papers for MSP's, we have lobbied, argued, pleaded and cajoled. There have been debates in Parliament, working groups, meetings and more meetings but still there is a resistance from the services to working to a single common standard.

Many of these documents, including the 2008 Fire Framework response are available on the FBU website. They show a consistent message from the FBU. If you want the best from firefighters they must be treated fairly and consistently from recruitment to retirement.

The work that we do can be dangerous, but with training and experience firefighters should be confident in their ability to deal with every incident. Given the financial future we must consider that we do not need less firefighters, we need more; we do not need less skills, we need more; we do not need less training, we need more. How will that be paid for? Well it certainly cannot be bought with the 4 years of cuts and then mergers as being advocated by the Fire Converters. It requires the consistent position of the FBU.



### Why does the FBU do politics?

The simple answer is to benefit our members. The longer answer is that when the FBU decided following our pay dispute, to disaffiliate from the Labour party it did not decide to disaffiliate from politics. As public servants, all of our working lives are determined by politicians. For example fire boards are made up of councillors who should determine what the services do within their authority area. At a Scottish level the service is a devolved matter and comes under the auspices of MSP's at the Scottish Parliament and of course the UK Government determines such things as pensions as well as crucially how much the Scottish Government gets to spend on providing all of the services you receive.

As long as politicians are making decisions on your service and your future it is essential for the FBU to be able to speak to them, lobby them and advocate on your behalf. We have had significant input into the work of the Scottish Parliament, in particular the debates on water rescue and the Framework Review, we made considerable contribution the Damages Bill and have given submissions on numerous issues including the Justice Budget.

Presently the future for the service is unclear. There has been a significant reduction in the budget given to Scotland. The incoming Government will have its priorities and we need to make sure that protecting our ability to deliver a top quality service is amongst them. As part of the Scottish elections the FBU will be sponsoring specific individual candidates from various parties as recommended by your Brigade Officials. These represent key candidates who already have a positive relationship with the FBU and will be vital in maintaining the fire and rescue service and safeguarding our member's future.

Log on to <http://update.fbucotland.org/blogs> to see our blog

## Commonality and Consistency

The Single Service debate has been at the forefront of discussions within the SFRS for many months. The current consultation on the issue by the Scottish Government has concentrated minds and has given opponents, supporters and those undecided an opportunity to take part in the most important decision to effect the delivery of the FRS in Scotland for decades.

The FBU have been involved in the debate at all levels, externally through the Ministerial Advisory Group (MAG), MAG sub group, Fire Reform, CoSLA and giving evidence and responses to the Christie Commission. Internally the union has debated the issue at some length, with debate occurring at branch, brigade, sectional and regional level over the last 15 months.

Ever since the last meeting of the Scottish Central Fire Brigades Advisory Council in July 2004, the FBU have consistently argued for National policy direction for the SFRS.

The union's submission document to the Scottish Executives Framework Consultation in April 2005 asks for 'common minimum standards' and 'National Resilience'.

In the FBU briefing note provided to our MSP's in Oct 2005, we called for a 'National Service Delivery Standard' in Scotland. Throughout the intervening years the message has been the same. Through briefing papers for MSP's, debates and contributions to whichever forum would listen the FBU have advocated consistency and commonality.

These issues are at the heart of the FBU's response to the current consultation, Scotland wide Service Delivery Standards in emergency response (IRMP), Training and Workforce Development (IPDS) delivered locally, and robustly and annually quality assured by a restored and empowered HMI.

Where did this all come from?

- The UK Con/dem Government cuts the budget to the Scottish Government
- Scottish Govt restricts cuts to revenue budget (2.6%) for 2010/11 but predicts long term budget reductions.
- Fire Conveners submit their National Strategy;
  - Y1-efficiency savings
  - Y2-efficiency savings
  - Y3-efficiency savings
  - Y4-mergers, either service/service or service/ other service
- Scottish Govt establishes group to identify options
- 3 broad choices;
  - 8 services with more collaboration
  - Regional model with 3 or 4 independent services.
  - A single service
- Scottish Govt establish Phase 2 Reform to look at each option in more detail.
- Public Consultation announced
- FBU outline response circulated to Brigade officials
- Scottish Committee consider the response
- Draft FBU Consultation response online. Regional Committee final consideration 28 April

The best way to get your voice heard is to attend your branch meeting.

FBU Web – [www.fbuscotland.org](http://www.fbuscotland.org)

FBU Blog – <http://update.fbuscotland.org/blogs>

FBU Twitter page– <http://twitter.com/FBUScotland>

FBU Draft Consultation Response is available at [www.fbuscotland.org/campaigns/restructure.htm](http://www.fbuscotland.org/campaigns/restructure.htm)

### FBU Scotland Legal Services

Don't forget that a comprehensive list of Legal Services are available to members and their families.

The Services are detailed in the 'Legal Services Leaflet' which was sent to all members' home addresses in January 2008.

This leaflet is also available on the Union's legal website.

Our new Car Replacement Scheme has just been launched to provide members with a vehicle following a non-fault accident.

Information leaflets are available and details can be found on the legal services website.

[www.fbu4u.org.uk](http://www.fbu4u.org.uk)

### Services Include

Accidents & Diseases at Work  
 Accidents Outside Work  
 Accidents to Family Members  
 Criminal Law  
 Employment Protection  
 Family Matters  
 Free Wills for All  
 Health & Safety  
 House Selling & Purchase  
 Pensions Investment & Financial Advice  
 Executor Support, Advice & Assistance  
 Road Traffic Claims

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