

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

**Mr D Clarke**

**V**

**Public and Commercial Services Union**

**Date of Decision:**

**19 December 2012**

**DECISION**

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

And pursuant to section 256ZA of the Trade Union and Labour Relations (Consolidation Act 1992.

I strike out the claimant's application that the Public and Commercial Services Union allegedly breached rule 32 of the "Health Group Elections Regulation 2012 – Postal Balloting" rules of the Union on or about 10 August 2012 on the grounds that his complaint has no reasonable prospect of success or is otherwise misconceived.

**REASONS**

1. Mr Clarke brought this application as a member of the Public and Commercial Services Union ("the Union") or ("PCS"). He did so by a registration of complaint form which was received at my office on 2 October 2012. In essence Mr Clarke complained that the Union had breached rule 32 of the "Health Group Elections Regulation 2012 – Postal Balloting", which form part of the rules of the Union.

2. Mr Clarke's complaint was confirmed by him in the following terms:

*"That on or around 10 August 2012, the Union breached its Rule 32 (of the Health Group Elections Regulations 2012 – Postal Balloting) by the Group Secretary not investigating or referring the complaint made by Mr D Clarke on 7 August 2012 to the General Secretary with her recommendation. The complaint related to balloting for the Health Group Assistant Secretary post of the Department of Health London Branch of the PCS."*

3. On the correspondence and documentation before me the background to this complaint appears is as follows:

4. Mr Clarke is a member of the Union in the Department of Health, London Branch.
5. On 6 July 2012 the claimant's nomination for election to the post of PCS Health Group Assistant Secretary was confirmed.
6. On 19 July 2012 ballot papers were sent to all members of the PCS Health Group. The ballot paper contained words to the effect 'vote by marking an 'X' in the box next to your chosen candidate'. However, the ballot papers contained no checkbox against the names of each of the candidates.
7. On 24 July 2012 the claimant e-mailed Alexis Edwards, London Health Branch Secretary, informing her that a number of members had complained to him about the missing 'checkbox' and that he could envisage a number of spoilt ballot papers. He asked her to look into the matter and get back to him suggesting that 'it might be worth sending something out to our members letting them know what's happened and what they need to do'.
8. On the same day, 24 July 2012, the Group Secretary, Jayne Craven, responded to the claimant having been informed of Mr Clarke's concerns by Ms Edwards. She informed him that she had been advised that a ballot paper would not be deemed to be spoilt if a cross is placed against a candidates name even if there is no checkbox. Given the absence of any checkbox, the votes in this election were to be counted manually by the outside scrutineers, Electoral Reform Services Ltd ("ERS"). Also on the same day, the Branch Secretary e-mailed a circular from the Group Executive Committee to all relevant members advising them how to fill out the ballot paper and informing them that the ballot papers would be counted manually.
9. On 26 July 2012 the claimant sent an e-mail to Ms Craven raising a query over the biographical details contained in the election addresses. Later that afternoon Ms Craven responded to the claimant confirming that she was satisfied that the statements received from all the candidates complied with the regulations and with the requirement to contain no more than 400 words.
10. On 3 August 2012 the results of the ballot were announced. The claimant lost by 2 votes.
11. On 6 August 2012 the claimant e-mailed the General Secretary suggesting amendments to Regulation 31 and Regulation 32, which would have the effect of consolidating them.
12. On 7 August 2012 the claimant sent an e-mail to Ms Craven stating '*It is with dismay that I feel that I have to make yet another complaint about a Health Group Election*'. In this e-mail Mr Clark raised the following issues:-

- a) There was no checkbox for placing the "X".
- b) The short period of the ballot (19 July to 2 August).
- c) He had been refused permission to scrutinise ballot papers.
- d) The report from the ERS giving the result of the election did not include the number of ballot papers that were sent out.

The e-mail ended, *'So because of the above reasons and the (sic) mainly the incorrectly laid out ballot paper I am submitting this Regulation 32 complaint.'*

13. On 10 August 2012 Ms Craven wrote to the claimant addressing the points raised by him. She stated that she had consulted a Senior National Officer, Graham Steel, and a senior officer in the Union's balloting department about the points he had raised in his e-mail of 7 August. Ms Craven's also informed Mr Clark that as the election result was very close ERS had counted the votes twice and each time the result was the same. She also advised Mr Clarke that if he continued to remain dissatisfied with the conduct of the ballot he could make representations to the Certification Officer. On the same day the claimant wrote to Ms Craven making observations and also to the General Secretary enclosing a copy of his e-mail to the Group Secretary on 7 August and her response of 10 August.
14. Mr Clarke submitted a registration of complaint form to my office which was received on 2 October 2012.
15. After Mr Clarke had confirmed the precise nature of his complaint, my office put his complaint to the Union on 12 October 2012.
16. The Union responded on 22 October 2012. It accepted that in this election the Union had not produced ballot papers to their usual standards. However, it stated that the balloting regulations had not been breached and that the ballot paper had been accepted by ERS who are completely independent of PCS. The Union accepted that the Group Secretary had not referred Mr Clarke's email of 7 August to the General Secretary but maintained that there was no requirement for her to have done so under regulation 32 as it gave no indication of what, if any, of the Balloting Regulations had been breached. It maintained that none of the areas identified in his e-mail were covered by the Regulations.
17. My office sent a copy of the Union's letter to Mr Clarke. He replied by e-mail on 13 November 2012, stating that as his complaint involved the ballot paper and running of the election he felt he had justification to complain under Regulation 32.

## The Relevant Statutory Provisions

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

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

1. *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*
2. *The matters are -*
  - a) *the appointment or election of a person to, or the removal 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.*
3. *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

.....

### **Section 256ZA Striking out**

- (1) *At any stage of proceedings on an application or complaint made to the Certification Officer, he may-*
  - (a) *order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,....*
- (3) *An order under this section may be made on the Certification Officer's own initiative and may also be made*
  - (a) *If the order sought is to strike out an application or complaint, or to amend or strike out anything in an application or complaint, on an application by the respondent, or*
  - (b) *if the order sought is to strike out any response, or to amend or strike out anything in any response, on an application by the person who made the application or complaint mentioned in subsection (1)*
- (4) *Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.*

## The Relevant Rules of the Union

19. The rule of the Union which is relevant for the purposes of this application is as follows:-

## **Health Group Elections Regulations 2012 – Postal Balloting**

### **Complaints other than those concerning, solely or mainly, the validity of nominations, supplying of acceptances or election addresses.**

*32. Any complaint as to an alleged breach of these regulations otherwise than concerning, solely or mainly, the validity of nominations and submission of acceptances or election address shall be made in writing to the Group Secretary. Any such complaint must be submitted within seven days of the declaration of the results of the election. The Group Secretary will investigate the complaint and refer it with their recommendations to the General Secretary. If the General Secretary upholds the complaint that a candidate by their own act or through the act or acts of those supporting the candidate, has caused a breach of these regulations, the candidate, has caused a breach of these regulations, the candidate may be debarred from the election and/or their election may be declared null and void. The decision of the General Secretary shall be final and binding on all members. The Group Secretary shall publish the decision, together with the reasons for it, to branches of the Group.*

## **Conclusions**

20. At the heart of Mr Clarke's complaint is an allegation that the election for the position of Health Group Assistant Group Secretary within PCS in July 2012 had been mishandled.
21. Ms Craven's e-mail to Mr Clarke of 10 August 2012 explained the outcome of her investigations. She explained not only the errors that had occurred but also the steps the Union had taken to ensure no candidate had been disadvantaged. The Union's response to this complaint argued that there could only be a breach of the obligation in Regulation 32 to forward Mr Clarke's complaint to the General Secretary if his email of 7 August had made a complaint that one of the specific provisions in the Regulations had been breached, which it did not.
22. By a letter dated 21 November 2012, Mr Clarke was invited to comment on the Union's response to his complaint. In his reply, Mr Clarke failed to engage with the Union's submission that he had not alleged a breach of a specific provision in the Regulations. As this was potentially fatal to Mr Clarke's complaint, I caused a 'show cause' letter to be sent to him seeking an explanation as to why his complaint should not be struck out on the grounds that it had no reasonable prospect of success or was otherwise misconceived. Mr Clarke responded by an e-mail dated 4 December 2012. He submitted that his complaint should not be struck out as Regulation 32 was the correct paragraph of the Regulations to raise issues arising out of an election, that he had raised genuine concerns about the ballot and that the Group Secretary had not investigated those issues and referred them to the General Secretary with her recommendations, in breach of Regulation 32.
23. In order for Mr Clarke to make good his complaint of a breach of Regulation 32 in the manner alleged, he would first need to establish

that Regulation 32 was engaged. To do this, he needed to ensure that the first sentence of Regulation 32 was met. That sentence provides;

*“Any complaint as to an alleged breach of these regulations otherwise than concerning, solely or mainly, the validity of nominations and submission of acceptances or election address shall be made in writing to the Group Secretary. (my emphasis).”*

The effect of this sentence is that, in order to engage Regulation 32, Mr Clarke had to bring to the Group Secretary an alleged breach of the Regulations. There is no doubt that Mr Clarke did raise issues connected with the ballot in question but I have not been shown any evidence that he made an allegation that a particular provision of the Regulations had been breached. I therefore find that Mr Clarke has not established that Regulation 32 was engaged on the facts of this case and accordingly, in my judgment, his complaint has no reasonable prospect of success or is misconceived.

24. On the above grounds, I strike out Mr Clarke’s application that the Union allegedly breached Regulation 32 of the “Health Group Elections Regulation 2012 – Postal Balloting” rules of the Union on or about 10 August 2012 by its Group Secretary not investigating or referring the complaint made by Mr D Clarke on 7 August 2012 to the General Secretary with her recommendations.



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