

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

Ms C Athis

v

National Association of Schoolmasters Union of Women Teachers

Date of Decision

18 October 2013

DECISION

Upon an application by Ms Claire Athis ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I refuse Ms Athis's application for a declaration that on or around 13 March 2013 the National Association of Schoolmasters Union of Women Teachers, by an email from John Rimmer of that date, breached rule 27 of its rules by allegedly disciplining Ms Athis and imposing a disciplinary reprimand on her without following the disciplinary procedures as set out in rule 27.
2. I refuse Ms Athis's application for a declaration that on or around 20 March 2013 the National Association of Schoolmasters Union of Women Teachers, by an email from Paula Roe of that date, breached rule 27 of its rules by allegedly disciplining Ms Athis and imposing a disciplinary reprimand on her without following the disciplinary procedures as set out in rule 27.

REASONS

1. Ms Athis brought this complaint as a member of the National Association of Schoolmasters Union of Women Teachers ("the Union" or "NASUWT"). She made her complaint by an email of 11 April 2013 which raised a number of issues in relation to the Union including allegations that it had breached its disciplinary rules, specifically rule 27.
2. Following correspondence, Ms Athis confirmed the complaints she sought to pursue in the following terms:

Complaint 1

"That on 13th March 2013 NASUWT breached Rule 27 of its rules by finding that complaints against me (of disciplinary offences under Rule 27 (1) (c) and (g)) were justified and by imposing a penalty upon me without any of the due process set out in Rule 27 being followed (this was communicated to me in an email from John Rimmer, Ex-President). The penalty imposed was a reprimand."

Complaint 2

"That on 20th March 2013 NASUWT breached Rule 27 of its rules by confirming the previous findings of 13th March 2013 and also by finding that further disciplinary complaints against me were justified and imposing a further penalty on me, again without following any of the due process set out under Rule 27 (this was communicated to me in an email from Paula Roe, President). The penalty imposed was a public reprimand."

3. I investigated the alleged breaches in correspondence and a hearing took place on 25 September 2013. At the hearing, Ms Athis represented herself and gave oral evidence, having previously produced a written witness statement. Mr Jon Schofield Treasurer of the Liverpool Association of NASUWT gave oral evidence in support of Ms Athis, having also submitted a written witness statement. The Union was represented by Mr Edward Cooper of Slater & Gordon Solicitors. Oral evidence for the Union was given by Ms Paula Roe, President of NASUWT and Mr John Rimmer, Ex-President of NASUWT, who both also submitted written witness statements. Ms Athis and Mr Cooper each provided skeleton arguments. There was in evidence a 212 page bundle of documents consisting of letters and other documentation supplied by the parties, together with the rules of the Union. At the hearing Ms Athis made an application for the late inclusion of three additional documents. I permitted the inclusion of two by consent and refused one, having regard to its lack of direct relevance to the issues to be determined. I was also referred to seven legal authorities by the parties.

Findings of Fact

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. Ms Athis teaches history at the Blue Coat School Liverpool. She has been a teacher since 1994. She joined the Union in about 1997 and was elected to the Executive Committee of its Liverpool Local Association in 2006. In 2009 Ms Athis was elected to the position of Negotiating Secretary of that Local Association, a position similar to that of Branch Secretary in other unions. The Liverpool Local Association has about 3,500 members and a budget of about £34,000. It is one of nine local associations in District 6 of the Union's administration.
6. The Treasurer of the Liverpool Local Association for about 14 years prior to January 2013 was John Hayes. Ms Athis had originally enjoyed a good working relationship with Mr Hayes but by November 2011 this relationship had broken down. Ms Athis suspected Mr Hayes of breaking local rules and improper accounting practices. The details of this disagreement are not relevant to the present case and I express no view on them. However, the disagreement escalated. Mr Hayes questioned the facility time that Ms Athis was claiming from her school in order to perform her Union

role. On 20 November 2011, Ms Athis made a formal complaint against Mr Hayes to the National Executive Members for District 6, Mick Burrows and Kim Jamson. After a colleague had examined a number of accounting records at the Union's head offices in Rednal, Birmingham, Ms Athis raised additional matters with the National Executive Members on 27 November and in December she presented Brian Cookson, the National Treasurer, with evidence of what she considered to be 'secret spending' by Mr Hayes and requested that it be dealt with as a disciplinary matter under rule 27 of the rules of the Union.

7. The Union responded by asking Mr Cookson to provide a report on the situation. On 21 March 2012 Mr Cookson presented his report at a meeting with the officers of the Liverpool Local Association ("the Liverpool Officers"), albeit that they were not allowed to retain copies of the document. Ms Athis was surprised and disappointed by the report which she considered avoided any detailed examination of Mr Hayes's activities. Instead, she noted that the report looked more at the operation of the Liverpool Local Association, commenting on its 'poor practices', 'difficult relationships' and labelling the whole association as being 'dysfunctional'.
8. On 28 March 2012, having discovered further evidence of alleged misconduct by Mr Hayes, Ms Athis commenced rule 27 disciplinary proceedings against Mr Cookson for having acted in a way prejudicial to the interests of the Union. This complaint was withdrawn on 16 April after Ms Athis had discussed the matter with the General Secretary, Ms Chris Keates.
9. On 6 April 2012, the National Executive of the Union met and decided to apply National Directions to the Liverpool Local Association on the basis that it "*had become essentially dysfunctional and unable to operate effectively in the best interests of its members*". National Directions take the form of written instructions to a local association from the National Executive as to how it is to conduct its affairs. They are issued under rule 7(j) which gives the National Executive "*full power and authority to take such action as it deems necessary for the conduct of the Union's affairs and the realisation of the objects set out in Rule 3*", subject to the rules and the decisions of Conference. These National Directions dealt with such matters as the financial administration of the Liverpool Local Association, the purchase of equipment and services, expense payments, honoraria and benevolent payments. They also provided that the National Executive members for District 6 "*shall make the final decision on the dates and times of meetings and the agenda to ensure that at least one of them is able to be present at any meeting*". The National Executive members were also to be provided with all documentation relating to such meetings. The National Directions dealt specifically with facility time, the issue at the centre of the present complaints. Significantly, facility time is dealt with in the section which comes under the heading 'The Role of the National Executive Members'. Paragraph 6(vii) of the National Directions provides as follows:

6 The role of the National Executive Members:

(vii) the National Executive Members for District 6 shall be responsible for convening a meeting of the Liverpool Officers to discuss and seek to reach agreement on the allocation of the NASUWT facility time. The recommendations on the allocation of facility time should be authorised by a meeting of the Liverpool Executive. If these matters cannot be resolved by the Liverpool Association then the matter shall be referred to the National Officers Committee;

10. With the benefit of hindsight, paragraph 6(vii) of the National Directions might have been better drafted. Ms Athis and the Union came to different views as to its correct construction and it is those different views which have given rise to these complaints. It is not necessary for me to determine the construction of this paragraph in order to deal with Ms Athis's complaints, but the more likely construction is that of the Union. It maintained that paragraph 6(vii) should be seen in three parts, each sentence being taken separately. On this construction, it is only if the agreement of the National Executive Members is obtained to the facility time arrangements that the recommendations are capable of being authorised by the Executive of the Liverpool Local Association. In the event of disagreement between the National Executive Members and the Liverpool Officers, it is directed that the matter be referred to the National Officers Committee, a point supported in paragraph 7(iii) of the National Directions. I deal with Ms Athis's construction of paragraph 6(vii) at paragraph 20 below.
11. On 25 April and 21 May 2012 the General Secretary found it necessary to write to Ms Athis to emphasise that the effect of the National Directions was that the National Union was now running the Liverpool Local Association. The General Secretary cautioned that if Ms Athis continued to fail to abide by the direction to communicate through the National Executive Members, it may be necessary for the National Executive to impose further Directions in relation to the Liverpool Officers. In September 2012 further Directions were added to those of April 2012, *"to ensure the expectations of the National Executive are clear with regard to how the Directions should operate"*.
12. Ms Athis became increasingly frustrated with how this matter was being dealt with at head office. For example, it had been decided that the Local Association elections for 2012 should be discontinued as Mr Cookson's enquiry was in process. It had also been suggested that the meeting between the National Executive Members and Liverpool Officers to sort out facility time should be arranged in time for implementation in September 2012 but the meeting had not been so arranged. Ms Athis suspected a conspiracy to maintain the status quo until September 2013 in order to enable Mr Hayes to continue to receive facility time until his planned retirement from his school and involvement with the Liverpool Local Association.
13. In relation to the issues facing the Liverpool Local Association, the National Executive Member, Mr Burrows, presented a paper to the meeting of the Liverpool Executive Committee on 3 December 2012 entitled "Moving Liverpool Forward", which was agreed unanimously, subject to more precise timings and the inclusion of a reference to facility time.
14. The AGM of the Liverpool Local Association was held on 16 January 2013. Mr Schofield was elected as Treasurer and, of the ten persons elected to the Executive, four were new to it. Mr Schofield has been described by Ms Athis in correspondence as being one of the three whistle blowers who were concerned about the conduct of Mr Hayes, together with herself and one other.

15. On 25 January 2013, the meeting between the National Executive Members of District 6 and the Liverpool Officers to discuss facility time (as contemplated in paragraph 6(vii) of the National Directions of April 2012) eventually took place. Agreement was reached on the distribution of the facility time between various posts within the local association for recommendation to the Liverpool Executive Committee for immediate adoption but there was no unanimity on the suggestion that the review of personnel would be best left to the end of the 2012 academic year. The minutes of that meeting record, "It was agreed to take the decision to the Executive Committee".
16. Following this meeting, Mr Burrows sought guidance from the National Officers and General Secretary. It was their recommendation that *"based on avoiding disruption to service provision, succession planning within the Union and the ACAS guidelines and Model Facilities Agreement, the 'facility time year' should mirror the academic year i.e 1 September – 31 August"*.
17. At the next scheduled meeting of the Liverpool Executive Committee on 5 February 2013 there was a discussion of facility time. Mr Burrows informed the meeting of the recommendation of the National Officers but this was rejected. Ms Athis's brief note of the decisions that were taken records that *"Vote taken on date of implementation; September or post-AGM. Post-AGM decided by majority vote"*. The note goes on to record an agreement to hold an extraordinary Executive meeting on 26 February with facility time distribution being the single item on the agenda.
18. The outcome of the meeting of 5 February 2013 was reported back to the National Officers who held a special meeting on 7 February. Mr Rimmer, the Ex-President of the Union, who had been given responsibility for this matter by the National Officers, gave an oral report and it was resolved, *"that the status quo be maintained until further information had been provided by the Liverpool Association on the impact of any change on individuals' contracts and salary"*.
19. On 12 February 2013 Mr Burrows sent an email to all Liverpool Officers reporting on the resolution approved by the National Officers. He informed them of the further material that was required and stated, *"Officers say that until they have received all the evidence ... the status quo has to prevail, i.e there can be no change to the pattern as it currently stands"*.
20. Neither Ms Athis nor any other of the Liverpool Officers responded to this email request for further evidence. At the hearing before me, Ms Athis explained that she considered that the decision of the Liverpool Executive to implement the changes to facility time as from January 2013, the date of the 2013 AGM had been taken in accordance with the National Directions and that accordingly the National Officers had no authority for requiring that the status quo should prevail. In Ms Athis's opinion, if the National Officers wished this to be the case, they should have amended the National Directions, as they had done in September 2012. On Ms Athis's construction of paragraph 6(vii) of the National Directions, the decision of the meeting of the National Executive Members and Liverpool Officers on 25 January 2013 to leave the decision on timing to the Liverpool Executive Committee was sufficient delegation by that meeting to satisfy paragraph 6(vii). As noted above, however, I consider that the better reading of paragraph 6(vii) is that the role of the

Liverpool Executive is limited to authorising an agreed recommendation of the National Executive Members and Liverpool Officers. In the absence of any agreement, the matter can only be resolved by the National Officers, not by the Liverpool Executive.

21. It is from this time that the seeds of the present complaint are set. The Union pursued a course consistent with its interpretation of paragraph 6(vii) of the National Directions and Ms Athis pursued a course consistent with her interpretation. I find that both interpretations are tenable and, on the evidence before me, I do not question the good faith of either party.
22. On 26 February 2013, an Extraordinary Meeting of the Liverpool Executive Committee was convened, in the words of the summary minute, *"to consider recommendations on the distribution of facility time within Liverpool Association"*. This meeting appears to have been somewhat chaotic and no clear decision was taken. Ms Athis later commented in correspondence that following this meeting, *"I certainly believed that the issue was closed and that the current facility time allocation would have to remain until September 2013"*.
23. Notwithstanding Ms Athis's above belief, the matter was again raised at the scheduled meeting of the Liverpool Executive Committee on the 6 March 2013. Facility time was not on the agenda for that meeting, but under "Matters Arising", Mike McAteer proposed a motion that the Liverpool Secretary (Ms Athis) be granted authority *"to allocate facility time to willing qualified members within the structures laid down by the Executive on an annual basis AGM to AGM to best reflect the needs of the Local Association"*. The motion was approved by 11 votes with one person having abstained on the grounds that the Liverpool Local Association was under National Directions. Neither of the National Executive members were present. Mick Burrows had flu and Kim Jamson had sent her apologies.
24. Ms Athis acted upon this decision to implement the revised facility time arrangements from 15 April 2013. On 8 March 2013 Ms Athis wrote to the head teacher of the Whitefield Primary School to inform her that one of her teachers, Mr Schofield, would now be entitled to more facility time following his election as Treasurer of the Local Association and that this would be from the 15 April. On 11 March Ms Athis spoke to the head teacher at Broad Green Secondary School to inform her that Mr Hayes would no longer be entitled to facility time from 15 April.
25. Mr Rimmer was informed of the withdrawal of Mr Hayes' facility time and wrote to Ms Athis on 13 March 2013. This email is the subject of Ms Athis' first complaint. The email provides as follows:

From: John Rimmer

To: Claire Athis

Date: 13 March 2013 at 14:34

Subject: LIVERPOOLNASUWT – SERIOUS BREACH OF DIRECTIONS (PRIVATE & CONFIDENTIAL NOT FOR DISTRIBUTION)

CC: Paula Roe

Dear Claire

I am saddened and disappointed to have to contact you over this matter. It has come to the attention of National Officers and your General Secretary that you have seriously breached the directions implemented by National Officers to protect the best interests of NASUWT and its members.

I have endeavoured to contact you today, March 13th 2013 on four separate occasions and have left voice mails on two occasions for you indicating the urgency of the matter and for you to contact me at your earliest convenience. I am still available by telephone to clarify the facts of the matter.

The specific breaches of directions are that;

1. You proceeded with a Liverpool NASUWT executive meeting without the presence of a National Executive member and against the clear instruction given by the NEM not to proceed with meeting until such time as a mutually agreed time date and venue could be sought

2. You further breached directions regarding facilities time allocation. You had been directed by officers to maintain the "status quo". Further you then contacted the head teacher of Broad Green School without a mandate from a properly convened NASUWT meeting regarding facilities allocation.

To resolve this matter

- You must immediately contact the Head teacher of the school in question and explain that you acted in error and that the facilities time will remain as it was. (Officers had previously directed that the "status quo" should prevail).*
- You should apologise to the Head.*
- You must contact the employer/ local authority to ensure the "status quo" is maintained if you have given any advice to the employer/ local authority regarding changes to the current facilities allocation.*

Officers are giving you the opportunity to remedy your actions but if we do not receive confirmation that you have completed the above bullet points we will be forced to intervene.

The NASUWT must not be in a position where our decisions make another teacher redundant. You acted without a mandate in direct breach of directions and ignored the sound counsel of your NEM. The Liverpool NASUWT Meeting was held without the presence of an NEM and consequentially you contravened the directions. Furthermore your actions and conversation with the Head have brought NASUWT into disrepute and have questioned publically our use of facility time potentially to the detriment of future facilities agreements with the employer.

Please confirm you have followed the outlined course of action by 4.00 pm tomorrow.

Considering the gravity of these latest breaches Officers will be discussing this matter at our next meeting to consider an appropriate course of action. We will consider all sanctions available to us under our rules including Rule 27, "Internal Union Discipline".

*John Rimmer
EX NASUWT NATIONAL PRESIDENT*

26. On 14 March 2013 Mr Rimmer emailed Katie Smith at the Local Authority to inform her that Ms Athis did not have a mandate to alter the facility allocation and that the status quo should prevail. Mr Rimmer and Ms Smith exchanged emails on 15 March about who should inform the relevant schools. In his email of 15 March, Mr Rimmer

commented, "The internal Union disciplinary procedure will resolve and address matters regarding lay officers in Liverpool who have breached Union rules".

27. Katie Smith of the Local Authority subsequently contacted the Union's President, Paula Roe. Ms Smith was concerned about the conflicting messages she was receiving from the Union about facility time. This caused Ms Roe to email Ms Athis on 20 March 2013, which email is the subject of Ms Athis's second complaint. Ms Roe's email was copied to the other four Liverpool Officers and the two National Executive members for District 6. It was marked 'Private & Confidential. Not for distribution'. The email provides as follows:

*"From: Paula Roe
To: Claire Athis
Date: 20 March 2013 at 09:34
Subject: LIVERPOOL NASUWT – SERIOUS BREACH OF DIRECTIONS (PRIVATE & CONFIDENTIAL NOT FOR DISTRIBUTION)
CC: John Hayes; Jon Schofield; Huw Edmunds; Pamela Rotheroe-Hay; Mick Burrows; Kim Jamson*

Dear Claire

As you are already aware you have acted in breach of National executive directions implemented to ensure the best interests of NASUWT members were protected. This was set out in an e-mail to you from the Ex-President dated March 13th 2013.

You have subsequently contacted two Liverpool head teachers Sally Beevers, Broad Green Comprehensive and Nadine Carroll at Whitefield Primary in writing on March 10th 2013. In both cases you have contacted the respective head teachers without a mandate from the National Executive members who are managing the national directions on behalf of the National Executive and informed them of changes to the existing facilities arrangement. This is not the first occasion on which directions have been breached. You were given clear instructions from both your NEM and National Officers to:

- Maintain the status quo regarding facilities allocation*
- Cancel the executive meeting (NB: under directions meetings can only be convened with an NEM present)*

You have exacerbated the situation further by apparently putting the head teacher at Broad Green under duress through contacting her inappropriately. In addition you may well have potentially put NASUWT facilities time at risk.

In the absence of you carrying out the request made to you, as you were advised would be the case, the NASUWT Ex President, John Rimmer has contacted the head of Liverpool LA HR, Katie Smith to clarify the situation. At the behest of the head of HR, the Ex-President has contacted the respective head teachers. All the parties in question have been made absolutely clear that you have acted without a mandate from NASUWT and the existing status quo regarding facilities allocation will prevail until the start of the academic year September 2013. Liverpool LA has confirmed they will be drafting a TUFAs for consultation with trade unions to ensure such a situation does not arise in future.

Officers and the National Executive members are acting to ensure the integrity of NASUWT is maintained in all communications with the employer and that there is no detriment to service delivery in those schools where there are NASUWT activists in receipt of facilities time. All parties have been assured that they will be informed in the summer term of those officers in Liverpool NASUWT who have been allocated facilities time, to commence at the start of the forthcoming academic year. All parties agreed this

was in the best interests of good employer/ employee relations and that there would be no detriment to service delivery so head teachers could manage curricular and timetable requirements for the forthcoming academic year in good time.

Considering the gravity of these latest breaches Officers will be discussing this matter at our next meeting to consider an appropriate course of action.

*Regards,
Paula Roe
National President NASUWT*

28. Notwithstanding the receipt of Ms Roe's email, Ms Athis spoke with Katie Smith that morning and then sent her an email in which she declared that she did have authority to deal with all matters relating to facility time within the Liverpool Authority. Ms Athis gave Ms Smith her assurance that she had followed the National Directions to the letter in all her actions. Ms Athis also emailed the General Secretary that day to reject the judgement of Mr Rimmer and Ms Roe and to express her outrage at having had no opportunity to answer "*the allegations of wrong-doing before judgements were made and acted upon*". Also on 20 March 2013, Ms Roe emailed Katie Smith to confirm the Union's position on facility time.
29. On 8 April 2013 Ms Athis informed Katie Smith that on 15 April she was going to action the facility time that she had proposed. This caused Katie Smith to contact the General Secretary for clarification. On the same day the General Secretary informed Katie Smith that the position was as had been explained to her by Mr Rimmer and Ms Roe.
30. On 11 April 2013 Katie Smith emailed Ms Athis to state that the local authority would continue to fund facility time for the duration of the summer term based on the then current facility time arrangements.
31. Later that day, 11 April, Ms Athis commenced this complaint by an email to my office.

The Relevant Statutory Provisions

32. 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) 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.*

The Relevant Rules of the Union

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

3. Objects

The Objects of the Union shall be:

(a) *to represent the interests of its members collectively and individually in negotiations with and submissions to employers, local and central government, and other relevant bodies;*

...

7. The National Executive

(a) (i) *The National Executive shall comprise the members of the National Officers' Committee and not more than forty-two members elected to represent Districts of the Union.*

...

(b) *The Districts of the Union for the purposes of membership of the National Executive shall be:*

England:

...

District 6 *Cheshire, Halton, Isle of Man, Knowsley, Liverpool, Sefton, St. Helens, Warrington, and Wirral*

...

(c) *Each District shall be represented by one member of the National Executive save that Districts 1, 4, 6, 7, 13, 23, 33 and 34 shall be represented by two members.*

...

(j) *The National Executive shall, subject to these Rules and to the decisions of Conference, have full power and authority to take such action as it deems necessary for the conduct of the Union's affairs and the realisation of the objects set out in Rule 3.*

8 Local Associations

(a) *The National Executive shall have power to form, dissolve or amalgamate such Local Associations as it sees fit subject to such criteria as are approved by Conference from time to time. Any decision taken by the National Executive in accordance with this paragraph shall be reported for ratification to the Conference immediately following that decision.*

...

13. National Officers' Committee

(a) *Membership of the National Officers' Committee shall be:*

- (i) *the Junior Vice-President;*
- (ii) *the Senior Vice-President;*
- (iii) *the President;*
- (iv) *the Ex-President;*
- (v) *the Honorary Treasurer;*

which Officers shall be known as the National Officers of the Union.

...

(d) *Between meetings of the National Executive the National Officers' Committee shall conduct the business of the Union.*

(e)

(f) *The National Officers' Committee shall be bound by decisions of the National Executive.*

(g)

(h) The National Officers' Committee shall report to the National Executive such decisions as it makes for the conduct of the business of the Union between meetings of the National Executive.

Rule 27

Internal Union Discipline

(1) Offences

A member of the Union commits a disciplinary offence if that member:

- (a) wrongly or fraudulently receives or misapplies funds of the Union;
- (b) fails to participate in official industrial action;
- (c) acts contrary to or fails to carry out lawful instructions of the National Executive;
- (d) harasses another member or discriminates against another member on the grounds of gender, ethnic origin, disability, sexuality, religion or age;
- (e) fails to pay any fine imposed under this Rule within two months of the conclusion of proceedings, without good and sufficient reason;
- (f) acts contrary to or fails to carry out the policies of the Union;
- (g) acts in any way prejudicial to the interests of the Union.

(2) Complaints

Complaints relevant to Internal Union Discipline may be made against any member of the Union by:

- (a) any member of the Union;
- (b) resolution of the National Officers (excluding the Ex-President).

(3) Secretariat

(a) The General Secretary shall nominate a member of staff to act as secretary in all aspects of the administration of Rule 27. In the absence of the member of staff so nominated by the General Secretary, another member of staff nominated by the General Secretary may act in his/her place. The General Secretary's Nominee undertaking the role of secretary during Rule 27 proceedings will be known as the "Complaint Secretary".

(b) If a member or the National Officers (excluding the Ex-President) believes that a member of the Union (known in this Rule as the "Respondent") has committed a disciplinary offence then they shall submit their complaint in writing setting out the details of the Respondent's conduct to the Complaint Secretary.

(c) The Complaint Secretary shall seek to ensure that all proceedings under Rule 27 are progressed in accordance with Rule 27 and any protocol relevant to Rule 27 which has been approved by National Executive.

(4) Disciplinary Complaint

(a) Upon receipt of a complaint the Complaint Secretary shall send a copy of the complaint to the Respondent who shall within ten days of the date it was sent to him/her notify the Complaint Secretary in writing whether the complaint is admitted or denied.

(b) (i) Upon receipt of a denial under (a) above, or upon the expiry of ten days if no response to the complaint from the Respondent is received, the Complaint Secretary shall refer the complaint to the Ex-President who will carry out a preliminary investigation.

(ii) If the Ex-President is of the opinion that the complaint is suitable for conciliation then s/he may offer conciliation between the parties to the complaint in accordance with such protocol as may be determined by the National Executive.

(iii) If the Ex-President is of the opinion that conciliation is not appropriate then s/he shall instruct the Complaint Secretary to convene a Disciplinary Committee Meeting for the purpose of the hearing to consider the complaint, save that if the Ex-President is of the view that the complaint is frivolous or vexatious s/he shall instruct the Complaint Secretary to notify the member who submitted the complaint and the Respondent that no further action will be taken.

(c) Upon the conclusion of the preliminary investigation under (b)(i) above, or of conciliation under (b)(ii), the Ex-President shall report in writing to the Complaint Secretary that in the opinion of the Ex-President, either:

(i) there are insufficient grounds to proceed with the complaint further (or in the case of a matter which has been the subject of conciliation, that the complaint has been resolved) whereupon the Complaint Secretary shall notify the member who submitted the complaint and the Respondent that no further action will be taken; or

(ii) the complaint should proceed further whereupon the Complaint Secretary shall convene a Disciplinary Committee Meeting for the purpose of hearing to consider the complaint.

(d) Upon receipt of an admission under (a) above, the Complaint Secretary shall convene a Disciplinary Committee Meeting for the purpose of a hearing to consider the complaint.

(5) Discipline at Disciplinary Committee Level

(a) The Disciplinary Committee shall be a Committee of the National Executive and shall comprise three members of the National Executive excluding the National Officers as nominated by the National Executive. The members of the Disciplinary Committee shall elect a Chair from among their number.

(b) The Disciplinary Committee may resolve to:

(i) dismiss the complaint; or

(ii) find the complaint justified.

(c) If the Disciplinary Committee passes a resolution in accordance with (5)(b)(ii) above, or the Respondent has admitted the complaint under (2)(b) above, the Disciplinary Committee shall resolve:

(i) to impose no penalty; or

(ii) to penalise the Respondent.

(d) The penalties available to the Disciplinary Committee shall be:

(i) a reprimand;

(ii) a fine not exceeding five times the full annual subscription of a Full Member of the Union;

(iii) to suspend the Respondent from membership of the Union for a specified period not exceeding one year;

(iv) to debar the Respondent from holding office in the Union either permanently or for a specified period;

(v) to expel the Respondent from membership of the Union.

(e) As soon as is practicable, the Complaint Secretary shall notify the Respondent in writing of the resolution(s) of the Disciplinary Committee and of any right of appeal.

(6) Appeals

(a) There shall be a right of appeal from the Disciplinary Committee to the Appeals Committee when the Disciplinary Committee has imposed any of the penalties in Rule 27(5)(d).

(b) ...

The relevant rules of the Liverpool Local Association

34. The rules state:

2 Object

(a) The object of the Local Association shall be to further the objects of the NASUWT as set out in Rule 3 of the National Rules in the area represented by the Local Association as specified in the resolution of the National Executive forming this Local Association.

(b) In furtherance of this object the Local Association may communicate and negotiate with employers, other unions and organisations representing teaching and other educational staff, and the local authority within its boundaries but shall not communicate or negotiate with such bodies outside its boundaries or nationally

or with any government department or body without the authority of the National Executive.

8 Executive Committee

(d) Subject to these Rules, the National Rules, and the decisions of any General Meetings of the Local Association, National Executive and National Conference, the Executive Committee shall have full power and authority to take such action as it deems necessary for the conduct of the Local Association's affairs and the realisation of the object set out in 2.

National Executive Directions - Liverpool Local Association

35. The Directions state:

6 The role of the National Executive Member:

(vii) the National Executive Members for District 6 shall be responsible for convening a meeting of the Liverpool Officers to discuss and seek to reach agreement on the allocation of the NASUWT facility time. The recommendations on the allocation of facility time should be authorised by a meeting of the Liverpool Executive. If these matters cannot be resolved by the Liverpool Association then the matter shall be referred to the National Officers Committee;

7 National Officers:

(iii) if any matters regarding the conduct of any business of the Liverpool Association cannot be resolved through the processes described above, the National Officers shall make the final decision in the interests of ensuring that the Liverpool Association functions effectively in the interests of Liverpool members.

Consideration and Conclusions

Complaint One

36. Ms Athis's first complaint is in the following terms;

"That on 13th March 2013 NASUWT breached Rule 27 of its rules by finding that complaints against me (of disciplinary offences under Rule 27 (1) (c) and (g)) were justified and by imposing a penalty upon me without any of the due process set out in Rule 27 being followed (this was communicated to me in an email from John Rimmer, Ex-President). The penalty imposed was a reprimand."

Summary of Submissions

37. Ms Athis submitted that I had jurisdiction to determine both her complaints as the Union had in effect disciplined her – by imposing a disciplinary sanction within its rules (namely, a reprimand) – without purporting to invoke its rule concerning discipline (rule 27). In making this submission, she relied upon paragraph 50 in the case of **Corrigan v GMB (No.2) (D/35-36/07)** to establish that such circumstances fall within section 108(A) of the 1992 Act. Further, Ms Athis noted that in **UNISON v Gallagher (UKEAT/0280/05)** the EAT had stated that if a union can establish that its primary purpose was not to discipline then any action it might take which resulted in a detriment to a member would fall outside my jurisdiction. However, Ms Athis maintained that this decision could be distinguished on its facts, as in *Gallagher* the detriment that had been imposed was not a disciplinary sanction within the rules of UNISON, whereas the emails about which she complains each constituted a reprimand, which is a disciplinary sanction under rule 27(5)(d)(i) of the rules of the NASUWT. On the facts of this case, Ms Athis submitted that Mr Rimmer's email of

13 March 2013 amounted to a judgement that she had seriously breached the National Directions, thus committing disciplinary offences under rules 27(1)(c) and (g), and that this judgement had been made public. She argued that there had been no investigation of the circumstances, that her views had not been sought and that none of the safeguards for an accused member that are found in rule 27 had been applied to her. Ms Athis maintained that the effect of Mr Rimmer's email, read as a whole, was to reprimand her, which is a disciplinary sanction under the rules. She submitted that the meaning of "discipline" is "to correct" and the purpose of Mr Rimmer's email was to correct her actions. Further, she submitted that the usual meaning of "reprimand" is "an official rebuke" and that Mr Rimmer's email cannot be interpreted as being anything else. Ms Athis maintained that Mr Rimmer's email was sent with a disciplinary intent, as any other reason for having done so was untenable. In particular, the purported reason to maintain the status quo could have been achieved by a further amendment to the National Directions and the purported reason to avoid the escalation of various disputes within the local association is not supported by the fact that by January 2013 there were no outstanding disputes, the proposals contained in the paper 'Moving Liverpool Forward' having been accepted. Ms Athis further argued that discipline is a matter of substance not form and that Mr Rimmer's email was disciplinary in both intent and effect. She maintained that the reference in the email to possible disciplinary action being taken against her in the future did not detract from the disciplinary effect of the email itself.

38. Mr Cooper, for the Union, conceded that if I found that the email of Mr Rimmer constituted the imposition of a disciplinary penalty on Ms Athis, the complaint would be well founded as the rule 27 disciplinary procedure had not been followed. However, he submitted that Mr Rimmer's email was not disciplinary in either intent or effect. He argued that the issue of facility time affected the Union's relationship with the local authority and there was a distinction between acts taken by a Union to protect itself vis-a-vis third parties and disciplinary action against one of its own members. On the facts of this case, Mr Cooper submitted that the Union's interpretation of paragraph 6(vii) of the National Directions was correct and that Ms Athis had acted in breach of them. However, he maintained that he need not put his case so high as, even if the Union's interpretation of the National Directions was wrong, it would suffice for him to establish that the Union genuinely believed its interpretation was correct and had not acted with a disciplinary intent. Mr Cooper argued that Mr Rimmer's email, properly read, was one which gave Ms Athis the opportunity to put right the consequences of her earlier breach of the National Directions and threatened disciplinary proceedings under rule 27 if she did not do so. Mr Cooper noted that Ms Athis had ignored the resolution of the National Officers of 7 February 2013 on the basis of her belief that they had acted beyond their powers, but he argued that Ms Athis was plainly wrong in her belief, having regard to the terms of the National Directions and the powers of the National Officers Committee. As to the correct legal approach, Mr Cooper submitted that 'discipline' for the purposes of section 108A of the 1992 Act is a matter of substance not form but that particular care should be taken when examining cases which do not concern an alleged breach of a specific disciplinary rule, in which cases a cautious approach to my jurisdiction should be adopted (**Dennison v UNISON (D/12/03)** at paragraph 23). He further relied upon **UNISON v Gallagher** as establishing the need for there to be a disciplinary intent or purpose. In applying that approach to the facts, Mr Cooper submitted that the Union was focussed upon addressing the practical problem of regularising its relationship

with the local authority in accordance with its understanding of the National Directions and its general approach as to why facility time should begin at the start of each academic year. He argued that Mr Rimmer's references to Ms Athis being in breach of the National Directions were clearly not disciplinary findings against her but were the basis for Mr Rimmer's insistence that she should resolve the problem she had created by contacting the local authority and the head teachers. Mr Cooper submitted that Mr Rimmer's letter did not come to a disciplinary finding nor did it impose a sanction. He argued that being critical of another official is not equivalent to there being a disciplinary reprimand. By analogy, he argued that an employer who points out that an employee has acted wrongly towards a customer is not to be treated as having breached its disciplinary procedure if it points out the problem to the employee and requires the employee to apologise to the customer.

Conclusion

Complaint One

39. Despite the somewhat complex factual background, the issue for determination is essentially straightforward. As was agreed at the outset of the hearing, I must decide whether one or both of the emails in question constitute a disciplinary finding and the imposition of a disciplinary sanction that could only be properly imposed following the procedures in rule 27 of the Union's Rules. I am required to make this finding of fact.
40. In approaching this task I accept the submissions of both parties that what is 'discipline' for the purposes of section 108A of the 1992 Act is a matter of substance not form. I have also had regard to the decision of the EAT in **UNISON v Gallagher** in respect of the care that should be taken to identify a disciplinary intent when considering the position of a member on whom there has been imposed a detriment. Further, I remain of the view that I expressed in **Dennison v UNISON** that my jurisdiction under section 108A(2)(b) of the 1992 Act must be examined with particular care in those cases in which the disciplinary rules of the Union have not been engaged prior to the imposition of the alleged detriment.
41. Having considered Mr Rimmer's email to Ms Athis of 13 March 2013, both textually and having regard to the circumstances in which it was written, I find as a fact that it was not written with a disciplinary intent nor did it have a disciplinary effect. I accept Mr Cooper's submissions in this regard. In my judgement, Ms Athis so convinced herself of the correctness of her position that she was not receptive to the criticism of her in that email and the requirement on her to take corrective action. On the other hand, the Union did not seek very hard to find out why Ms Athis was so convinced that she was acting constitutionally or to explain why she was wrong. Be this as it may, the issue before me is not whether the Union could have approached Ms Athis differently, it is whether she was disciplined by the Union. The stance taken by Ms Athis on her mistaken construction of the National Directions and on the powers of the National Officers placed the Union in a difficult position, not only internally but also with regard to the local authority. I find that the purpose of Mr Rimmer's letter was to resolve those difficulties and not to discipline Ms Athis. This is demonstrated by his statement that the Union would intervene with the local authority if she did not correct the situation herself and his express reference to a consideration of disciplinary action against her under rule 27 in the future. Even if the Union's construction of paragraph 6(vii) of the National Directions had been wrong, I find that the Union acted in good faith on its understanding of its powers and that its actions

towards Ms Athis were taken to regularise a situation that was potentially confusing to the schools involved and an embarrassment to the Union. In my judgment, examined in context, the email of Mr Rimmer of 13 March 2013 was not disciplinary in nature.

42. For the above reasons I refuse Ms Athis's application for a declaration that on or around 13 March 2013 the Union, by an email from John Rimmer of that date, breached rule 27 of its rules by allegedly disciplining Ms Athis and imposing a disciplinary reprimand on her without following the disciplinary procedures as set out in rule 27.

Complaint Two

43. Ms Athis's second complaint is in the following terms,

"That on 20th March 2013 NASUWT breached Rule 27 of its rules by confirming the previous findings of 13th March 2013 and also by finding that further disciplinary complaints against me were justified and imposing a further penalty on me, again without following any of the due process set out under Rule 27 (this was communicated to me in an email from Paula Roe, President). The penalty imposed was a public reprimand."

Summary of Submissions

44. Ms Athis repeated the submissions she had made with regard to her first complaint insofar as they were relevant. She then dealt specifically with Ms Roe's email of 20 March 2013. She noted that Ms Roe did not repeat the allegation made by Mr Rimmer that she had acted in contradiction of express instructions from Kim Jamson or Mick Burrows not to hold the meeting on 6 March 2013. However, Ms Athis asserted that other complaints were added and the primary purpose was the same as that of Mr Rimmer, namely to discipline her. Ms Athis was particularly concerned that Ms Roe's email had been copied to the other Liverpool Officials and to the two National Executive members. She argued that this put her rebuke in the public domain, given how easy it would have been for the email to have been forwarded to others. She further complained that the act of informing the local authority and the two head teachers that her allocation had been countermanded was to further publicise the discipline that had been imposed on her by Ms Roe's email.
45. Mr Cooper, for the Union, similarly repeated the submissions he had made with regard to the first complaint, insofar as they were relevant. He then dealt specifically with Ms Roe's email of 20 March 2013. He submitted that the immediate purpose of Ms Roe's email was to update Ms Athis as to the steps taken further to her failure to comply with Mr Rimmer's email of 13 March but that its overall purpose was to restore the Union's relationship with the local authority to a proper footing. Mr Cooper relied particularly on the final paragraph of the email as showing that the National Officers would be discussing the matter at their next meeting to consider an appropriate course of action. He submitted that this indication of future disciplinary action against Ms Athis was incompatible with the email itself being disciplinary in nature.

Conclusion
Complaint 2

46. There is a considerable overlap between this complaint and Ms Athis's first complaint and I adopt for the purposes of this complaint so much of my reasoning in the first complaint as is relevant.
47. I have considered Ms Roe's email of 20 March 2013 both textually and having regard to the circumstances in which it was written. I find as a fact that Ms Roe's email was not written with a disciplinary intent nor did it have a disciplinary effect. I accept Mr Cooper's submissions in this regard. I find that Ms Athis's misunderstanding of her position under the National Directions and her single minded determination to disregard the authority of the National Officers (for reasons she considered to be within the rules) placed the Union in a difficult position at the time of Mr Rimmer's email of 13 March. Ms Roe's subsequent email of 20 March was not only appropriate but also necessary to inform Ms Athis of the steps the Union had taken to restore the authority of the National Officers following her failure to comply with what had been required of her in Mr Rimmer's email. Ms Athis's criticism of the Union for informing the other Liverpool Officials and the local authority of the steps that the Union had taken is without foundation. As a matter of practical reality, the local authority had to be informed in order for the Union to act upon its decision to retain the status quo until such time as a different decision was correctly reached. Further, the Liverpool Officers had a legitimate interest in knowing what had been decided. Indeed, there would have been grounds for more substantial criticism of the Union if it had not informed the Liverpool Officials.
48. For the above reasons I refuse Ms Athis's application for a declaration that on or around 20 March 2013 the Union, by an email from Ms Roe of that date, breached rule 27 of its rules by allegedly disciplining Ms Athis and imposing a disciplinary reprimand on her without following the disciplinary procedures as set out in rule 27.
49. Having regard to the experience of this case, the Union may wish to reconsider the drafting of paragraph 6(vii) of these National Directions, should they still be relevant, so that they more clearly express the construction for which it argued in this case.



David Cockburn
The Certification Officer