

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

MR D BEAUMONT

V

AMICUS

Date of Decision

26 March 2003

DECISION

Upon applications by the Applicant under section 55(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”): -

1. I refuse the three declarations sought by the Applicant that Amicus (“the Union”) breached section 48(6) of the 1992 Act in the course of the by-election conducted in 2001 for a position on the National Executive Council of MSF (“the NEC By-Election”).
2. I refuse the declaration sought by the Applicant that the use by Ms Cooper of a personal website in the course of the NEC By-Election in 2001 constituted a breach of Rule 30 and/or the Regulations on canvassing contained in Appendix C of the rules of MSF.
3. I make a declaration that the branch newsletter edited and published by Mr Paul Matz in 2001 which gave notification of that branch’s nomination of Ms Cooper in the NEC By-Election constituted a breach of Rule 30 and the Regulations on canvassing contained in Appendix C of the rules of MSF.

4. I make a declaration that the letter dated April 2001 from Mr McKenna to all members of Metropolitan Branch (0755) which gave notification of that branch's nomination of Ms Cooper in the NEC By-Election constituted a breach of Rule 30 and the Regulations on canvassing contained in Appendix C of the rules of MSF.
5. I do not consider that it is appropriate that I make an enforcement order.

REASONS

1. By an application dated 21 February 2002, the Applicant made a number of complaints against the MSF Section of his Union, Amicus ("the Union"). Following correspondence with my Office, the Applicant agreed the precise terms of the complaints to be put to the Union. As required by sections 55(2) and 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 27 February 2003. Mr Beaumont acted in person and called Ms J Stewart, the unsuccessful candidate in the NEC By-Election, to give evidence on his behalf. The Union was represented by Mr S Pinder of EAD Solicitors. Mr A McKenna, Assistant to the General Secretary of the MSF section of the Union, was present but did not give evidence. A bundle of documents was prepared for the hearing by my Office which consisted of documents submitted by the parties.
2. At the beginning of the hearing, the Applicant stated that he had decided the previous evening that he no longer wished to pursue the two complaints he had made of breaches of section 48(3) of the 1992 Act but that he wished to reformulate those complaints as breaches of section 48(6). The Union was taken by surprise and objected to what was in effect an application to amend. I allowed the Applicant's amendment. I did so on the basis that these complaints as reformulated concerned essentially the same factual matters as they had originally and that, in preparing its case, the Union had needed in any event to consider section 48(6) of the 1992 Act in relation to another of the Applicant's complaints. I nevertheless indicated that if the union wished an adjournment to consider its position I would be sympathetic to any such application. After consideration, the

Union expressed its willingness to proceed. Accordingly, the terms of the complaints which were considered at the hearing were as follows: -

- 2.1 [As amended] In the May 2001 NEC Elections, National Womens' By-Election, the Union breached section 48(6) of the 1992 Act by allowing the inclusion of a website address in the election address of Ms Leonie Cooper which then effectively exceeded the Union's 200-word limit.
 - 2.2 [As amended] In the May 2001 NEC Elections, National Womens' By-Election, the Union breached section 48(6) of the 1992 Act by allowing the inclusion for one candidate only (Ms Leonie Cooper) of a website address in her election address which provided a link to other material (textual and photographic).
 - 2.3 In the May 2001 NEC Elections, National Womens' By-Election, the Union, by providing facilities for the promotion, registration, hosting and construction of a website for one candidate only (Ms Leonie Cooper), has breached Section 48(6) of the 1992 Act.
 - 2.4 In the May 2001 NEC Elections, National Womens' By-Election, the Union breached its Rule 30 and Appendix C (Regulations for the Administration of Rule) in that Ms Leonie Cooper's personal website was used by her to advertise her election address to all voting members of the union, using union resources and finances to do so.
 - 2.5 In the May 2001 NEC Elections, National Womens' By-Election, the Union allowed the use of its finances and resources to Mr Paul Matz to produce a glossy brochure containing textual and photographic promotion material relating to Ms Leonie Cooper that was circulated to the membership in breach of its Rule 30 and Appendix C (Regulations for the Administration of Rule).
 - 2.6 In the May 2001 NEC Elections, National Womens' By-Election, the Union allowed the use of its resources and finance to facilitate the circulation to the membership of a document promoting Ms Leonie Cooper and containing the name of Mr Alex McKenna, in breach of its Rule 30 and Appendix C (Regulations for the Administration of Rule).
3. There was a further preliminary matter. In accordance with written guidance issued by my Office, the parties are required to submit any documents upon which they wish to rely at least two weeks before the date of the hearing for inclusion in the bundle. My Office did not receive from the Applicant a copy of the relevant page of the branch newsletter published by Mr Matz until the morning before the hearing, when it was received as an attachment to an e-mail. A copy of the document was printed and sent forthwith by fax to the Union's solicitors by my Office. At the hearing the Applicant asked for leave for the relevant page of the newsletter to be admitted in evidence. He had not brought to the hearing either the original newsletter or a copy of the relevant page. The Applicant explained that he had previously sent the extract to my Office by means of an e-mail which had included a hyperlink to a website which contained the relevant newsletter. My Office had been unable to access this hyperlink and had requested that the Applicant

submit all the documents upon which he wished to rely in hard copy form, not electronically. My Office made this request on three occasions before the Applicant submitted a number of documents in hard copy form. A copy of the relevant newsletter was not amongst these documents. The Union stated that it had been disadvantaged by the late submission of this document but did not object to its inclusion. I accordingly gave leave for the extract of the branch newsletter to be admitted in evidence.

4. I further gave leave to the Union to admit in evidence its letter to the Applicant of 21 February 2003 with enclosures. This letter enclosed copies of various invoices from the Union's suppliers of computer services which the Applicant had requested in an e-mail to the Union of 23 January 2003. The Applicant did not object to the inclusion of these documents in evidence.

Findings of Fact

5. Having heard the oral representations and considered the documents I find the following facts: -
6. Amicus was formed on 1 January 2002 as a result of the amalgamation of the Amalgamated Engineering and Electrical Union (AEEU) and the Manufacturing Science and Finance Union (MSF). At the time of the by-election in question MSF was an autonomous union, the rights and obligations of which transferred to Amicus by virtue of the amalgamation. In this decision I use the expression "the Union" to refer to MSF or Amicus as the context requires.
7. In January 2001 the Union called for nominations for a by-election on its National Executive Council (NEC). There was a vacancy for one of the four seats that were reserved for women members. The timetable and administrative arrangements for the election were notified to the members in a circular. Two candidates were nominated, Leonie Cooper and Jane Stewart. With regard to the election addresses of the candidates, the circular provided: -

“Each candidate will be entitled to submit an Election Address of not more than 150 words and a Statement of History of not more than 40 words. Photographs of the candidates will not be permitted. The closing date for receipt of acceptances, Statements of History and Election Addresses will be First Post: Friday 13 April 2001.”

8. The election address of Ms Cooper, as contained in the document circulated with the ballot papers, contained no more than 150 words but concluded as follows, “*For more information - www.leonicooper.com*”.
9. Ms Cooper’s website is headed “*MSF Executive Council Election 2001*”. It contained the same information as was printed in the election address she submitted to the union, together with a further section of about 164 words describing her employment and record as a trade union activist.
10. The Union did not dispute that Ms Cooper’s website was created on 21 March 2001, that it had been registered by William Martin Productions, the same organisation which had designed the Union’s website, that it was hosted by Community Internet plc, the same organisation which hosts the Union internet site, that it shared the same physical internet server as the Union and that it shared substantially the same header source code as the Union’s website. In this decision I will, in the interests of brevity and convenience, refer to William Martin Productions and Community Internet plc as being the Union’s internet service providers.
11. One of the branches which nominated Ms Cooper was the Metropolitan Branch (0755). It did so at a branch meeting on 14 February 2001. The minutes of that meeting are in the following terms:-

**“MINUTES OF METROPOLITAN BRANCH
MEETING
held on Wednesday 14 February 2001 at the MSF Centre,
Moreland Street, London, EC1**

Following the Annual General Meeting the Branch AGREED to convene an emergency meeting to consider Branch nominations to the National Executive Council - Women’s Seat (By-Election) Trustee and Appeals Court.

The Branch agreed to urge members [i.e. relevant delegates attending Conference] to vote for all of the candidates listed below.

The Branch considered the circular from Head Office inviting nominations for the National Executive Council. It was agreed to nominate as follows:

National Women's Seat (By-Election): Leonie Cooper (Executive Staffs No 1 (0623)

National Trustee: Frank Barry (Education and Research - 0308)

Appeals Court Staff Section: Dave Smith (Southampton General 9829)
Dave Cooke (Leamington Spa - 0933)

The Branch considered that these candidates had the right mix of industrial and union experience and made substantial, outstanding contributions to the work of the union and could be relied upon to work for an open democratic and modern union.

The meeting closed at 9.15pm”

12. Mr McKenna was and remains the Branch Secretary of the Metropolitan Branch of the Union. In April 2001 Mr McKenna sent a letter to all members of that branch concerning the NEC By-Election. That letter is in the following terms: -

“Letter to all Members of Metropolitan Branch (0755)

April 2001

Dear Member

Re: National Executive Council Elections

Next week you will be receiving through the post a ballot paper for you to decide on which members you want to elect to represent you on the MSF National Executive Council.

This is a **very important** election for the future of our union and the Branch urges all it's members to participate and use their votes **for all of the candidates listed below**.

At a recent Branch meeting when the nominations were considered, the branch recorded the following decision:

The Branch considered the circular from Head Office inviting nominations for the National Executive Council. It was agreed to nominate as follows:

National Women's Seat (By-Election) ; Leonie Cooper (Executive Staffs No.1 (0623)

The Branch considered that these candidates had the right mix of industrial and union experience and made substantial, outstanding contributions to the work of the union and could be relied upon to work for an open democratic and modern union.

Remember

It only takes a minute to complete and return your Ballot form, and is the only way your union really knows the type of candidates you want representing you on the union's highest decision-making committee.

Don't throw away your chance of influencing your union's direction and work.

If you do not receive a ballot form at the same time as your work-mates or at the latest by Tuesday 1 May 2001 let me and/or your shop steward know and arrangements will be made for you to receive the necessary ballot forms.

A. MCKENNA
BRANCH SECRETARY

IMPORTANT: THIS IS NOT A CIRCULAR PLEASE KEEP UNTIL YOUR BALLOT FORM ARRIVES. BOTH MEN AND WOMEN CAN VOTE IN THIS ELECTION”

13. The Southern Voluntary and Community Sector Branch also nominated Ms Cooper. Its Branch Secretary was Mr Paul Matz. At some time during the electoral process Mr Matz edited and published a four page branch newsletter on glossy paper. The front page of this newsletter contains a photo of Ms Cooper and the following text: -

“NEC by-election

There is shortly to be a by-election for a vacant seat on MSF’s National Executive Council - the ruling body of the union.

At our meeting we agreed to nominate Leonie Cooper for Women’s Seat vacancy and to record our view that she will make an excellent NEC member in view of her extensive experience of the voluntary and not-for-profit sectors.”

14. The ballot papers for the by-election were distributed on 30 April 2001 and the ballot closed on 25 May. The result was declared on 9 June. Ms Cooper was the successful candidate.

The Relevant Statutory Provisions

15. The provisions of the 1992 Act which are relevant for the purpose of these applications are as follows: -

Section 48(1) The trade union shall -

- (a) provide every candidate with an opportunity of preparing an election address in his own words and of submitting it to the union to be distributed to the persons accorded entitlement to vote in the election; and
- (b) secure that, so far as reasonably practicable, copies of every election address submitted to it in time are distributed to each of those persons by post along with the voting papers for the election.

Section 48(3) The trade union may provide that election addresses submitted to it for distribution -

- (a) must not exceed such length, not being less than one hundred words, as may be determined by the union, and
- (b) may, as regards photographs and any other matter not in words, incorporate only such matter as the union may determine.

Section 48(4) The trade union shall secure that no modification of an election address submitted to it is made by any person in any copy of the address to be distributed except -

- (a) at the request or with the consent of the candidate, or
- (b) where the modification is necessarily incidental to the method adopted for producing that copy.

- Section 48(6) The trade union shall, so far as reasonably practicable, secure that the same facilities and restrictions with respect to the preparation, submission, length or modification of an election address, and with respect to the incorporation of photographs or other matter not in words, are provided or applied equally to each of the candidates.
- Section 55(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer shall -
- (a)
- (b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.
- Section 108A. 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).
- (1)
- (2) The matters are -
- (a) the appointment or election of a person to, or the removal of a person from, any office;
- (b)
- (c)
- (d)
- Section 108B(2) If he accepts an application under section 108A the Certification Officer -
- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c)
- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

16. Sections 55(2) and 108B(2) of the Act empower me to make such enquiries as I think fit and, after giving the applicant and the Union an opportunity to be heard, to make or refuse to make the declarations asked for. I am required, whether I make or refuse the declarations sought, to give reasons for my decision in writing.
17. By section 55(5A) and section 108B(3) of the 1992 Act, I am required to make an enforcement order where I make a declaration unless I consider that to do so would be inappropriate.

The Relevant Union Rules

18. The Union rules relevant to the Applicant's complaints are as follows: -

Rule 30 Canvassing

No written material of any kind may be circulated in support of a candidate in any national election within the Union without the approval of the NEC.

APPENDIX C

REGULATIONS FOR THE ADMINISTRATION OF RULE

Canvassing - Rule 30 (AC 1992)

Branches may inform the members of the Branch nomination only by circulation of the Minute of the Meeting at which the relevant decision was taken.

No MSF funds or resources may be used for the circulation of material other than for the circulation of the Minute as above.

Complaints One, Two and Three

19. I shall consider these three complaints together as they each concern a breach of section 48(6) of the 1992 Act. They are in the following terms, as amended by the Applicant at the hearing.

19.1 [As amended] In the May 2001 NEC Elections, National Womens' By-Election, the Union breached section 48(6) of the 1992 Act by allowing the inclusion of a website address in the election address of Ms Leonie Cooper which then effectively exceeded the Union's 200-word limit.

19.2 [As amended] In the May 2001 NEC Elections, National Womens' By-Election, the Union breached section 48(6) of the 1992 Act by allowing the inclusion for one candidate only (Ms Leonie Cooper) of a website address in her election address which provided a link to other material (textual and photographic).

19.3 In the May 2001 NEC Elections, National Womens' By-Election, the Union, by providing facilities for the promotion, registration, hosting and construction of a website for one candidate only (Ms Leonie Cooper), has breached Section 48(6) of the 1992 Act.

20. The Applicant's prime submission was that the reference in Ms Cooper's election address to her website effectively incorporated within her election address all that material which was contained on her website and that accordingly the Union had given Ms Cooper a facility with respect to the preparation, submission, length or modification of her election address which it had not given equally to the other candidate, Ms Stewart. Conversely it was argued the Union had applied a restriction to Ms Stewart which it had not applied to Ms Cooper. The Applicant's first complaint went specifically to the length of Ms Cooper's election address which he claimed exceeded the maximum permitted number of words when considered together with her website. His second complaint was in two parts. First, he argued that the website address was not made up of words but was to be considered more like a logo. As such, he argued that it constituted a facility or restriction that had not been provided or applied equally to Ms Stewart. Secondly, he argued that Ms Cooper's election address had incorporated, through her website, a photograph, the inclusion of which the Union had expressly prohibited. He submitted that this was a further facility or restriction that the Union had not provided or applied equally. The Applicant's third complaint alleged that the Union had set up, financed and organised Ms Cooper's website and that accordingly the Union had provided a facility to one candidate which it had not provided to the other. The Applicant accepted that he had no evidence to establish that the Union had set up, financed or organised Ms Cooper's website but he submitted that this was an inference that could fairly be drawn from the evidence that he had adduced about the date of the creation of her website and her use of the same internet service providers as were used by the Union.
21. Mr Pinder, for the Union, submitted that the Union had provided or applied the same facilities and restrictions equally to both candidates in the election. He argued that the relevant statutory provisions refer throughout to "*words*" and that a website address is nothing more than words. In his submission, the words which constitute a website address may not have an independent dictionary definition but they are nevertheless words, in the same way that a person's name is constituted of words. Accordingly, it was the Union's case that Ms Cooper's election address did not incorporate from her website either the additional words or her photograph and that the Union had treated both

candidates equally. With regard to the third complaint, Mr Pinder accepted that Ms Cooper's website used the same service providers as the Union but, on instructions, he denied that the Union had set up, financed or organised her website. He stated that the Applicant had submitted a formal request to the Union for access to the relevant accounting records, pursuant to section 30 of the 1992 Act, and the Union had provided copy invoices between the Union and the relevant companies over the last two years. These invoices were put in evidence and Mr Pinder submitted that they contained no suggestion that the union had financed Ms Cooper's website. He further submitted that there was nothing surprising in the fact that Ms Cooper had used the same internet service providers as the Union as she was a Union activist and there was no secret about the companies used by the Union for these services. Mr Pinder also submitted that even if Ms Cooper received informal advice from someone within the Union (about which the union made no admissions) there was no evidence that the advice given to Ms Cooper was given for the purposes of her election. Mr Pinder further argued that the duty on the Union was to secure equal treatment of the candidates as regards their election addresses "*so far as reasonably practicable*" and that the Union was not responsible for informal communications between staff and members.

Conclusion: Complaints One, Two and Three

22. Section 48 of the 1992 Act provides a self contained code setting out the statutory requirements regarding election addresses in relevant trade union elections. It proceeds on the basis that the election address will be a document, copies of which the Union will distribute by post to those entitled to vote. The Union has a limited power to restrict the length of the election address but it has no power to restrict the words a candidate may wish to use within that overall limit. Section 48(4) provides that the Union shall secure that there is no modification of an election address once submitted, without the consent of the candidate. Furthermore, section 48(8) restricts any civil or criminal liability for the publication of an election address to the candidate. The only restrictions that a Union may impose on the content of an election address are "*... as regards photographs and other matter not in words ...*" (section 48(3)(b)). The statute does not deal with the treatment

of numbers, in the form of dates or otherwise, which would therefore appear to fall to be considered in accordance with section 48(3)(b).

23. In my judgement, section 48 of the 1992 Act provides that the content of an election address is to be the property of the candidate, subject only to any restrictions properly imposed by the Union on length or as regards the incorporation of photographs and other matter not in words. The candidate may choose to refer the voter to obscure publications in support of a particular proposition or to use the allotted words to give an address to which the voter might write for more information. Each candidate must decide whether such an invitation is likely to be to his or her benefit or would be a waste of valuable words. In neither case, however, could it be said that the information to which reference was made forms part of, or is incorporated into, the election address. I do not consider that any different principle applies to a website address. The voter does not have immediate access to the information on the website from the election address but must take active steps to gain access to it, just as a voter who wishes to research any other reference in the election address. If a candidate chooses to use some of his or her word allocation for a website address, that is a matter for the candidate. I accordingly find that the contents of Ms Cooper's website did not form part of her election address and that, in this regard, no facility or restriction was provided or applied to Ms Cooper which was not provided or applied equally to Ms Stewart.
24. I reject the Applicant's submission that a website address is not constituted of words and should be treated in the same way as a logo. Many addresses are composed of proper names, often made-up names, which are not in the dictionary. Such addresses are nevertheless constituted of words. Accordingly, in respect of this complaint, I find that no facility or restriction was provided or applied to Ms Cooper which was not also provided or applied equally to Ms Stewart. In any event, section 48(3) of the 1992 Act does not operate by prohibiting from election addresses photographs and other matter not in words and by then giving unions a discretion to permit the inclusion of such material. Section 48(3) operates by giving a discretion to unions to provide that such material shall not be allowed. Accordingly, unless a union does so provide, such material is *prima facie*

admissible as part of the election address. On the facts of this case, therefore, even if the website address were to be treated as if it were a logo, the Union had not prohibited such material and there was therefore no facility or restriction provided or applied to one candidate which was not provided or applied equally to the other.

25. The force of the Applicant's third complaint, that the Union provided facilities for the creation of Ms Cooper's website, is much diminished by my findings that her website did not form part of her election address. Nevertheless, the Applicant maintained that Ms Cooper was only able to include her website address in her election address by virtue of those facilities. In this connection, I find that the fact that Ms Cooper's website shared the same internet service providers as the Union is insufficient evidence in itself to establish a breach of section 48(6) of the 1992 Act. I am not persuaded on the balance of probabilities that the Union set up, financed and organised Ms Cooper's website, having regard to the denials of the Union and to the copy invoices provided by the Union to the Applicant. On the other hand I do not consider it probable that Ms Cooper came upon these internet providers by chance. In the absence of any direct evidence on the point, I find that it is more likely than not that Ms Cooper became aware of the identity of these providers from a source within the Union. However, the identity of these providers was not a confidential matter and there was no evidence before me of the precise circumstances in which Ms Cooper became aware of them. I find that both candidates were equally entitled to include a website address in their election address. There is no evidence that Ms Cooper was given any different information by the Union about the content of her election address than Ms Stewart and I do not consider that it was reasonably practicable for the Union to have prevented Ms Cooper from discovering the identity of its internet service providers, when that information was not regarded as confidential within the Union and was in any event publically available on relevant websites.
26. For the above reasons, I refuse to make the declarations sought by the Applicant that the Union breached section 48(6) of the 1992 Act in the course of the by-election conducted in 2001 for a position on the National Executive Council of MSF.

Complaint Four

In the May 2001 NEC Elections, National Womens' By-Election, the Union breached its Rule 30 and Appendix C (Regulations for the Administration of Rule) in that Ms Leonie Cooper's personal website was used by her to advertise her election address to all voting members of the union, using union resources and finances to do so.

27. The Applicant submitted that, in breach of Rule 30, Ms Cooper's website constituted written material circulated in support of her candidature. He further submitted that there was a breach of both parts of Appendix C (Canvassing), namely that (a) only branches may circulate information about the candidate they have nominated and (b) MSF funds had been used to distribute Ms Cooper's election address, which included her website address.
28. Mr Pinder, for the Union, stated that the rules of the Union were adopted in 1988, with the most recent relevant revision being in 1992. He commented that the present rules were not drafted with internet electioneering in mind but that a new rule book was in the process of being drafted for Amicus with a view to adoption in June 2003. In Mr Pinder's submission the circulation of material involved the sending of material and would include, for example, the sending of e-mails. He argued that an internet site was more analogous to a notice board, which could not be described as involving the sending or circulating of material. He further argued that the first paragraph of Appendix C (Canvassing) provided an exemption to Rule 30 to allow branches to inform their members of the candidate nominated by the branch and was therefore irrelevant to this complaint. He also argued that there had been no breach of the second paragraph of Appendix C as no Union funds had been used to resource Ms Cooper's website.

Conclusion: Complaint Four

29. Rule 30 was adopted by the Union before there was any widespread use of the internet by candidates. It is therefore necessary to look to the underlying purpose of the rule to determine how the rule should be applied in these changed circumstances. In my judgement, the prohibition by Rule 30 of written material being circulated in support of a candidate was intended to prevent members being sent or given unsolicited election

material. It in effect prohibits canvassing by written circulars. It does not, however, prohibit verbal canvassing nor the use of written material which is not circulated, for example, an individual written response to a query from a potential voter. I find that it is significant that material which is posted on the internet does not automatically appear before potential voters in an unsolicited manner. In order to access that material the voter must make an active decision to access it and then take appropriate action with the appropriate equipment. This distinguishes information posted on the internet from unsolicited information which is simply placed before voters whether they wish it to be before them or not. Accordingly, I find that the posting of material on a website does not in itself circulate that material and that Ms Cooper's website did not in itself breach Rule 30 of the rules of the Union.

30. The first paragraph of Appendix C (Canvassing) deals with the obligation of branches and is not therefore a rule which is capable of being breached by Ms Cooper. I would comment in passing, however, that I accept Mr Pinder's submission that the effect of this paragraph is to allow an exception for branches to the strict application of Rule 30, which would otherwise prevent them from informing their members in writing of the person nominated by the branch. The second paragraph of Appendix C (Canvassing) deals with the use of MSF funds or resources for the circulation of election material. I find that there was no breach of this provision by Ms Cooper in the use of her website both on the grounds that it was not used to circulate material, as I have found above, and on the grounds that I am not persuaded that Union funds or resources were used to set up or operate her website.
31. For the above reasons I refuse the declaration sought by the Applicant that the use by Ms Cooper of a personal website in the course of the NEC By-Election in 2001 constituted a breach of rule 30 and/or the Regulations on canvassing contained in Appendix C of the rules of MSF.

Complaint Five

In the May 2001 NEC Elections, National Womens' By-Election, the Union allowed the use of its finances and resources to Mr Paul Matz to produce a glossy brochure containing textual and photographic promotion material relating to Ms Leonie Cooper that was circulated to the membership in breach of its Rule 30 and Appendix C (Regulations for the Administration of Rule).

32. The Applicant submitted that the branch newsletter edited and published by Mr Matz contained written material in support of a candidate in a National Election and was therefore in breach of Rule 30. He also argued that it was in breach of Appendix C (Canvassing) in that it informed members of the branch of that branch's nomination other than by means of circulation of the minute of the relevant meeting and that it was circulated using the funds and resources of the Union.
33. Mr Pinder, for the Union, argued that the information contained in the newsletter was essentially the minute of the branch meeting at which Ms Cooper was nominated as a candidate and that accordingly there was no breach of Rule 30 or Appendix C (Canvassing).

Conclusion: Complaint Five

34. It is not disputed that the newsletter published by Mr Matz contained written material in support of a candidate in a National Election and that it was produced using MSF funds or resources. The only issue for me to determine is whether the Union could avail itself of what is effectively the defence contained in the first paragraph of Appendix C (Canvassing).
35. The first paragraph of Appendix C (Canvassing) refers in terms to "... *the Minute of the Meeting...*". I find that these words require the notification to the members to be in the precise words of the minute of the meeting. The most unobjectionable method of notification would be to send each member a photocopy of the actual minute but a permissible alternative method would be for the Union to copy out in a letter or other publication the precise words of the minute, without embellishment. Mr Matz's branch

chose neither of these options. It published the fact that Ms Cooper had been chosen as the candidate on the front page of its newsletter in words which I find, on the balance of probabilities, were not the precise words used in the branch minute. I note that the Union did not adduce in evidence the actual minute of the branch meeting in question nor call a branch official to give evidence of the terms of that branch minute. The relevant part of the branch newsletter may have faithfully reported what occurred at the branch meeting at which Ms Cooper was nominated as a candidate, but I am not persuaded that it reproduced the relevant passage from the minute of that meeting.

36. Accordingly, I declare that the branch newsletter edited and published by Mr Paul Matz in 2001 which gave notification of that branch's nomination of Ms Cooper in the NEC By-Election constituted a breach of rule 30 and the Regulations on canvassing contained in Appendix C of the rules of MSF.

Complaint Six

In the May 2001 NEC Elections, National Womens' By-Election, the Union allowed the use of its resources and finance to facilitate the circulation to the membership of a document promoting Ms Leonie Cooper and containing the name of Mr Alex McKenna, in breach of its Rule 30 and Appendix C (Regulations for the Administration of Rule).

37. The Applicant submitted that the letter circulated to all members of the Metropolitan Branch by Mr McKenna in April 2001 was in breach of Rule 30. He argued that it was written material, was circulated, was in support of a candidate in a National Election and was without the approval of the NEC. The Applicant further submitted that this letter was a breach of the first paragraph of Regulation C (Canvassing). He argued that the terms of the letter were unlikely to have been the words used at the meeting, having regard to the fact that another branch, the Bristol Health Services Branch, had used virtually identical wording in a similar letter. He contended that it was extremely unlikely that two branches would have minuted a nomination in virtually identical terms. The Applicant stated his belief that the minute of the meeting contained in the bundle was false. With regard to the second paragraph of Appendix C (Canvassing), the Applicant submitted that the letter from Mr McKenna purported to be an authorised branch circular and that the cost of it would therefore have been met in the normal way by MSF funds or resources,

in breach of that paragraph. The Applicant further submitted that Mr McKenna's letter had been given a wider circulation than the members of Metropolitan Branch. The only evidence of this adduced by the Applicant was an undated copy of a minute of a meeting of the Management Committee of the London Regional Council. This minute recorded someone as having complained to the meeting that he had received a copy of a circular letter from the Bristol Health Services Branch and believed that this was far from being an isolated incident of canvassing.

38. Mr Pinder, for the Union, explained that Mr McKenna's branch had nominated candidates for three different elections at its meeting on 14 February 2001. Of these, two candidates were to stand for election at National Conference for other offices. Ms Cooper was the only candidate to stand in an election to be conducted by membership ballot. Mr Pinder stated that Mr McKenna's letter had copied out exactly the operative part of the branch minute of 14 February and that accordingly, even if it did not reproduce the full minute, it fell within the first paragraph of Appendix C (Canvassing). In Mr Pinder's submission the letter informed members of the Metropolitan Branch of the candidate nominated by their branch by circulating to them the minute of the meeting at which the nomination was made and that it was therefore not in breach of either Rule 30 or Appendix C (Canvassing). Mr Pinder further argued that there was no evidence that Mr McKenna's letter had been given a wider circulation than the membership of his branch.

Conclusion: Complaint Six

39. As I have found above, a branch may satisfy the first paragraph of Appendix C (Canvassing) when giving notification of its nominee by either providing the members with a photocopy of the minute of the meeting at which the nomination was made or by copying out the precise words of the minute in the text of a letter or other publication to members. Providing a photocopy of the minute is clearly the safer alternative. Reproducing the content of the minute in another publication may be problematical if the whole minute is not produced verbatim, without embellishment.

40. In this case, Mr McKenna reproduced faithfully in his circular letter that part of the branch minute relevant to Ms Cooper's nomination but he did not purport to reproduce the whole minute. Amongst the parts he excluded was the heading, the introductory paragraph and the time the meeting closed. One paragraph in the minute was not reproduced verbatim. The paragraph in the minute states, "*The Branch agreed to urge members [ie relevant delegates attending Conference] to vote for all of the candidates listed below*". Mr Pinder explained that this exhortation was aimed only at those branch members who were to attend Annual Conference who were being urged to vote for the two candidates who were to stand for election as National Trustee and for the Appeals Court respectively. However, Mr McKenna's letter paraphrased that paragraph in the following way: -

"This is a **very important** election for the future of our union and the Branch urges all it's members to participate and use their votes **for all of the candidates listed below.**"

Although Mr McKenna referred to candidates in the plural (as in the branch minute) the only candidate whose name appeared in the circular letter was that of Ms Cooper.

41. I find that by the inclusion of the paragraph set out above Mr McKenna's circular letter of April 2001 went beyond the mere reproduction of the relevant minute of the branch meeting of 14 February and urged members to vote for Ms Cooper. In doing so, the letter lost the protection of the first paragraph of Appendix C (Canvassing) and accordingly breached Rule 30 and both parts of Appendix C.
42. I find that there was no sufficient evidence to support the Applicant's allegation that Mr McKenna's letter was given any wider circulation than the members of the Metropolitan Branch. The person who reported this matter to the Management Committee of the London Regional Council was not called to give evidence, nor were any post marked envelopes with their election addresses produced.
43. Accordingly I declare that the letter dated April 2001 from Mr McKenna to all members of Metropolitan Branch which gave notification of that branch's nomination of Ms Cooper in the NEC By-Election constituted a breach of Rule 30 and the Regulations on canvassing contained in Appendix C of the rules of MSF.

Enforcement Order

44. The Applicant seeks an order removing Ms Cooper from the NEC and an order that the by-election in question be re-run. The Union opposes the making of any such orders. No evidence has been placed before me about the extent of Ms Cooper's majority in the election and no argument has been addressed to me on the likely impact on the election of Mr Matz's branch newsletter or Mr McKenna's branch circular. I note that both documents were circulated to relatively small sections of the membership and that both purported to be notifications of a decision of a branch meeting, albeit with embellishments. In the case of Mr McKenna's letter, the breach occurred as a result of his failure to faithfully reproduce a particular sentence and even the Applicant accepted in his submissions that this may have been an accidental breach. In all the circumstances of this case, I do not consider that it is appropriate that I make an enforcement order.

Observations

45. The Guidance issued by my Office with regard to the timely submission of documents should be adhered to by the parties. The timely submission of documents is not only necessary for the production of the bundle for the hearing but, more importantly, it is necessary to ensure fairness. Documents produced by one party shortly before or at the hearing can seriously disadvantage the other party. Any application to submit documents out of time will be considered on its facts. However, parties should be aware that such documents may be excluded or that fairness may require an adjournment to allow proper consideration by the other side.
46. The parties should also be aware that it is their responsibility to provide legible copies of the documents upon which they wish to rely for inclusion in the bundle. Although my Office accepts routine correspondence by e-mail, it is preferable that any document or correspondence for inclusion in the bundle should be sent in hard copy form. When such material is submitted electronically, my Office may require that it is resubmitted as hard copy.

D Cockburn
Certification Officer