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

IN THE MATTER OF COMPLAINTS MADE AGAINST THE ASSOCIATED SOCIETY OF LOCOMOTIVE ENGINEERS AND FIREMEN (ASLEF)

APPLICANTS: MR CALLAGHAN; MR GLOVER; MR MACKENZIE; MR WORBOYS; MR BALLARD AND MR CARRIGAN

Date of Decisions: **2 March 2001**

DECISIONS

1.1 Under section 55 of the Trade Union and Labour Relations (Consolidation) Act ("the1992 Act") any person having sufficient interest who claims that a trade union has failed to comply with any of the requirements of Chapter IV of Part I of the 1992 Act concerning the need for, and conduct of, elections to certain positions may apply to me for a declaration to that effect. Similarly under section 108A of the 1992 Act 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 108A (2) may also apply to me for a declaration to that effect. The matters mentioned in subsection 108A(2) 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.

1.2 Sections 55 and 108B 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. In both sections, I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

1.3 In making a declaration under either of these sections of the 1992 Act I am required to specify the provisions with which the trade union has failed to comply. Where I make a declaration under either section I am required, unless I consider to do so would be inappropriate, to impose an enforcement order on the union. Under section 55(5A) my enforcement order should impose one or more of the following requirements on the union-

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

1.4 Under section 108B (3) my enforcement order should impose on the union one or both of the following requirements -

(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

1.5 On the 2 June 2000, I received complaints from Mr Callaghan a member of the Associated Society of Locomotive Engineers and Firemen (ASLEF/the union). Mr Callaghan made a number of complaints of alleged breaches by the union of its rules. Following correspondence with Mr Callaghan his complaints were clarified and, on the 25 July 2000, eight complaints of alleged breaches of the union's rules were put to the union. The eight complaints were:

Complaint 1: That a meeting which took place on the 23 March and which took decisions to suspend the Executive Committee and to bring forward the Special Assembly of Delegates had no authority to take such decisions and therefore acted outside of the rules of the union.

Complaint 2: As a result of the action taken at the meeting on the 23 March the control of the Society was removed from the Executive Committee and passed to General Secretary and Vice President thus breaching Rule 20 Clause 1.

Complaint 3: That, in respect of the Special Assembly of Delegates, the General Secretary was in breach of Rule 20 Clause 5 in appointing substitute delegates to the Special Assembly. That Rule 16 Clause 22 was breached in that there were less than three members of the Executive present at the Special Assembly. That Rule 21 Clause 11 was breached in that the Executive failed to submit a report to the Special Assembly although a Report was submitted by the General Secretary, again in breach of Rule 21 Clause 11. In addition the Report from the General Secretary was not distributed to Branches until after 14 days before the Special Assembly.

Complaint 4: That a series of Rules regarding rules changes were breached as proposed rule changes had not been submitted to the Special Assembly by either the Executive or Branches.

Complaint 5: That the debate on the General Secretary's Report and the suspension of certain members of the Executive amounted to a breach of the disciplinary rules of the union, namely Rule 29.

Complaint 6: That, in reappointing those members of the Executive who had previously resigned, Rule 16 Clause 9 has been breached.

Complaint 7: That, in adopting section 4 of the General Secretary's Report, the General Secretary has gained control of the Society between Executive Committee meetings, thus breaching Rule 13 Clause 1.

Complaint 8: The Executive Committee are in breach of Rule 16 Clause 1 because they are conducting meetings with a quorum of less than five as required by the rules.

Complaints 1 to 4, 7 and 8 were accepted by me as complaints relating to matters specified in section 108A (2) (d) of the 1992 Act. Complaint 5 was treated as a complaint relating to a matter specified by (b) of the same subsection, while complaint 6 was treated as a complaint relating to a matter specified in (a) of section 108A(2).

1.6 The union responded to each of the eight complaints by letter to me dated10 August 2000.

1.7 On the 3 October 2000, following correspondence with two recently retired members, Mr Mackenzie and Mr Worboys, (who wrote to me by joint letter) and with Mr Glover another member of the union, five further complaints were put to the union. Mr Mackenzie and Mr Worboys jointly made four complaints. These were:

Complaint 1: A complaint under section 55 of the 1992 Act that the union had breached section 48(1)(b) of the Act by not distributing (to each of those persons (entitled to vote) by post along with the voting papers for the election) the election address of Mr J Glover:

Complaint 2: that the union had breached its Rule 13 Clause (1) in that the " Vice President suspended the Executive Committee and handed power and total control to the General Secretary ..."

Complaint 3: that the union had breached its Rule 16 Clause (1) in that " Disciplinary hearings held with only 3 members present."

Complaint 4: that the union had breached its Rule 10(A) Clauses (8) and (9) in that " Mr J Glover's election address was not published."

I accepted complaints 2), 3) and 4) as complaints under section 108A(1) of the 1992 Act that these matters fell within section 108A(2) (a) (complaint 4)) and (d) (complaints 2) and 3)).

1.8 Mr Glover's complaint was accepted by me as a complaint made under section 108A -(1) of the above Act, and was that the union had breached its rule 10(10) by not sending a copy of his election address, with the voting papers to all the members who were entitled to vote in the election, and that this is a matter referred to in section108A(2)(a) of the 1992 Act.

1.9 As Mr Mackenzie and Mr Worboys complaints related to the same matters as complaints 7 and 8 made by Mr Callaghan and that of Mr Glover (see para 1.8), I decided to hear argument on all of the complaints at a two-day hearing on the 6 and 7 December.

1.10 Before the hearing was held and following correspondence with two further members of the

union, Mr Ballard and Mr Carrigan, nine further complaints were accepted by me as complaints related to matters falling within section 108 (A) (2) of the 1992 Act. Mr Ballard made one complaint. This was: that the union had breached its rule 29(6) in that his disciplinary hearing was before three members of the executive committee instead of five.

The eight complaints made by Mr Carrigan were:

Complaint 1. That Rule 16 Clause1 was breached between March and October 2000 due to insufficient members (of the executive) being present whist carrying out and making policy decisions on behalf of the membership.

Complaint 2. That Rule 20 Clause 3 was breached on the 23 March 2000 and the 18 April 2000 by the union suspending him from his elected office position.

Complaint 3. That Rule 20 Clause5 was breached on the 18 April 2000 due to delegates to conference being appointed outwith rules and procedures.

Complaint 4. That Rule 16 Clause 9 was breached on the 18 April 2000 due to " ... *no election taking place in members' constituency's and 2 members holding office outwith the rules of the union.*"

Complaint 5. That Rule 15 Clause 1 was breached on 18 April 2000 due to seven full time officers attending conference with the sanction of the General Secretary/Vice President, and without the instructions of the Executive Committee.

Complaint 6. That Rules 21 Clauses 1, 2, 3, 4 and 5 were breached on the 26 June 2000 by the union's resolution 528/408 which is in effect was a rule change, without being placed in front of Branches and Conference.

Complaint 7. That Rule 16 Clause1 was breached on the 6 September 2000 due to only 3 members (of the executive committee) being present at the hearing.

Complaint 8. That Rule 29 Clause 6 was breached on the 6 September 2000 by his not being allowed witnesses to attend his disciplinary hearing thereby not affording him a full and fair hearing before the executive committee.

1.11 These nine further complaints were put to the union on the 14 November 2000 and I informed the parties that I would hear argument on these further complaints at the hearing already arranged for the 6/7 December 2000.

1.12 Before the hearing, I listed the complaints (some of which related to the same matters) from the six applicants as follows:

Complaint 1. That the meeting which took place on the 23 March and which took decisions to suspend the Executive Committee and to bring forward the Special Assembly of Delegates had no authority to take such decisions and therefore acted outside of the rules of the union. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan.)

Complaint 2. As a result of the action taken at the meeting on the 23 March the control of the Society was removed from the Executive Committee and passed to General Secretary and Vice President thus breaching Rule 20 Clause 1. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan.)

Complaint 3. That, in respect of the Special Assembly of Delegates, the General Secretary was in breach of Rule 20 Clause 5 in appointing substitute delegates to the

Special Assembly outwith the rules and procedures. That Rule 16 Clause 22 was breached in that there were less than three members of the Executive present at the Special Assembly. That Rule 21 Clause 11 was breached in that the Executive failed to submit a report to the Special Assembly although a Report was submitted by the General Secretary, again in breach of Rule 21 Clause 11. In addition the Report from the General Secretary was not distributed to Branches until after 14 days before the Special Assembly. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan and Mr Carrigan.)

Complaint 4. That a series of Rules regarding rules changes were breached as proposed rule changes had not been submitted to the Special Assembly by either the Executive or Branches. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan.)

Complaint 5. That the debate on the General Secretary's Report and the suspension of certain members of the Executive amounted to a breach of the disciplinary rules of the union, namely Rule 29. (Section 108A (2)(b) of the Act). (Complaint made by Mr Callaghan.)

Complaint 6. That, in reappointing those members of the Executive who had previously resigned, Rule 16 Clause 9 has been breached due to no election taking place in members' constituency's and 2 members holding office outwith the rules of the union. (Section 108A (2)(a) of the Act). Complaint made by Mr Callaghan and Mr Carrigan.)

Complaint 7. That, in adopting section 4 of the General Secretary's Report, the General Secretary had gained control of the Society between Executive Committee

meetings, thus breaching Rule 13 Clause 1. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan.) And that the union had breached the same rule in that the " Vice President suspended the Executive Committee and handed power and total control to the General Secretary ..." (Section 108A (2)(d) of the Act). (Complaint made by Mr Mackenzie and Mr Worboys.)

Complaint 8. The Executive Committee were in breach of Rule 16 Clause 1, between March and October 2000, because they conducted meetings with a quorum of less than five as required by the rules. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan and Mr Carrigan.). And that the same rule was breached in that " Disciplinary hearings were held with only 3 members present.". (Section 108A (2)(b) of the Act). (Complaint made by Mr Mackenzie, Mr Worboys and Mr Carrigan.).

Complaint 9. That the union had breached its Rule 10 Clause 10 by not sending a copy of Mr Glover's election address, with the voting papers, to all the members who were entitled to vote in the election. (Section108A(2)(a) of the Act). (Complaint made by Mr Glover.)

Complaint 10. Complaint under section 55 of the 1992 Act that the union had breached section 48(1)(b) of the Act by not distributing (to each of those persons (entitled to vote) by post along with the voting papers for the election) the election address of Mr J Glover: (Complaint made by Mr Mackenzie and Mr Worboys.)

Complaint 11. That the union had breached its Rule 10(A) Clauses (8) and (9) in that " Mr J Glover's election address was not published.". (Section108A(2)(a) of the Act). (Complaint made by Mr Mackenzie and Mr Worboys.)

Complaint 12. That the union had breached its Rule 29 Clause 6 in that the disciplinary hearing of Mr Ballard was before three members of the Executive Committee instead of five. (Section 108A (2)(b) of the Act). (Complaint made by Mr Ballard.). Also that the same rule was breached on the 6 September 2000 by Mr Carrigan not being allowed witnesses to attend his disciplinary hearing thereby not affording him a full and fair hearing before the Executive Committee. (Section 108A (2)(b) of the Act). (Complaint made by Mr Carrigan.)

Complaint 13. That Rule 20 Clause 3 was breached on 23 March 2000 and on 18 April 2000 by the union suspending Mr Carrigan from his elected office position. (Section 108A (2)(b) of the Act). (Complaint made by Mr Carrigan.)

Complaint 14. That Rule 15 Clause 1 was breached on 18 April 2000 due to seven full time officers attending Conference with the sanction of the General Secretary/Vice President, and without the instructions of the Executive Committee. (Section 108A (2)(d)of the Act). (Complaint made by Mr Carrigan.)

Complaint 15. That Rules 21 Clauses 1, 2, 3, 4 and 5 were breached on the 26 June 2000 by the union's resolution 528/408 which was in effect a rule change, without being placed before Branches and Conference. (Section 108A (2)(d)of the Act). (Complaint made by Mr Carrigan.).

1.13 At the hearing, to hear argument on the complaints, the union was represented by Mr B Langstaff QC. The applicants all attended the hearing, spoke for themselves and some of them gave evidence. The applicants called Mr L Adams (a former General Secretary of the union) to give evidence on their behalf. The union called Mr M Samways to give evidence. Mr Samways was a former Vice President, and the current President, of the union's Executive

Committee (EC). I found all the contributions helpful in my determination of the complaints.

Declaration and Order

1.14 After careful consideration of the documents, evidence, arguments put to me, the union's rule book and the relevant legislation:

> "I declare that the Associated Society of Locomotive Engineers and Firemen (ASLEF) in suspending its Executive Committee (EC) on 23 March 2000 without the power to do so (complaint 1), did act outwith the rule of the union.
>
> I also declare that between 23 March 2000 and 18 April 2000 the General Secretary was not under the control of the EC and that therefore Rule 13 Clause1 was breached (complaint7).
>
> I further declare that in reappointing a member of the executive who had resigned (complaint 6) the union had breached its Rule 16 Clause 9.".

The reasons for my decisions are set out below.

1.15 In respect of these breaches I do not propose to make an enforcement order. The reasons for this are, in respect of the first two breaches (complaint 1 and 7), the union's Special Assembly of Delegates (SAD) subsequently endorsed the decision of 23 March 2000 to suspend the union's Executive Committee. In respect of the third breach (complaint 6), although the union should have held an election, there was an unexpired part of the individual's term of office both in terms of Statute and rule and the union's SAD sanctioned the reappointment.

1.16 In short the union was in a mess, the executive was not functioning properly. The Vice President suspended the executive and called a meeting of the union's Parliament. That meeting endorsed his actions and other proposals for making the union operative. The union now appears to be working normally. It has sorted out its own problems. It is not necessary for me to intervene further on these matters. I cannot apply the principles of Foss v Harbottle to refuse a declaration under section 108B but I can and will have regard to it in determining any remedy in the case of complaints I uphold.

1.17 Also, for the reasons set out below I refuse to make the declarations sought in respect of all the other complaints of breaches of the union's rules and the alleged breach of section 48(1)(b) of the 1992 Act.

1.18 The legislation under which the breaches of union rule complaints were brought is referred to above.

Facts

2.1 In accordance with its rule 20(1) the union is under the control of its Annual Assembly of 46 delegates (AAD) who normally meet in May or June of each year. Special meetings of the delegates (Special Assembly of Delegates (SAD)) are held as determined by the Annual Assembly or by the union's Executive Committee (EC). The delegates to the Annual Assembly are elected by branches using a block voting system.

2.2 The day to day running and control of the union is vested in its principle executive body, the Executive Committee (EC). This consists of eight members elected, (for a three year term of office) by the union's membership, in accordance with the statutory requirements of the 1992 Act and as required by the union's rule 10 Section A. Each member of the EC represents one of the union's eight Districts. From amongst its number, the EC appoints, in accordance with

union rule 16(1), a President and Vice-President of the EC. Under the same rule, five members of the EC form a quorum for its meetings.

2.3 The union's General Secretary (GS) and Assistant General Secretary (AGS) work under the control of the EC. The GS, the President, Vice-President and one other member of the EC are required to attend the union's Annual Assembly of Delegates (AAD) but may not attend as delegates. The GS is also required by the union's rules to attend all meetings of the EC.

2.4 The EC is required, by rule, to meet once a quarter with special meetings being called if necessary by the President in consultation with the GS. The EC again, as required by the union's rules, is required to publish an Annual Report which is subject to the approval of the Annual (or Special) Assembly of Delegates.

2.5 On 17 January 2000 the President of the EC, Mr D Tyson, submitted his resignation, both as the EC member for District 5 and as President, to the union's GS stating that his position had became untenable. He was requested to reconsider his decision and, on 26 January, by letter again gave the reasons for his decision to resign (from all offices in the union) and stated that he would attend the EC session on Wednesday 26 January and tender his written resignation. This he did.

2.6 At a subsequent meeting of the EC, on 16 February 2000, it was proposed that Mr S Madden be elected as President for the year 2000. The proposal was carried.

2.7 On 7 March 2000 the EC, with Mr Madden absent and Mr Samways (the Vice-President) voting against, passed a resolution (EC resolution 147/407) calling a special AAD to be convened as a matter of urgency. The reason, given in the resolution, was "*... due to failure*

of the General Secretary to answer any questions to this EC... ".

2.8 On 22 March 2000 (the union's minutes show) at a meeting of the union's officers (these being the Secretaries of each of the union's eight Districts), the union's General and Assistant General Secretary gave a verbal report "*... on issues concerning the deteriorating relationship between the General Secretary and the Executive Committee and the devastating effect this is having on the membership and the working of the Society's Head Office.*". It was reported, to the District Secretaries (DS), that Mr Tyson had resigned from the post of President (and from the EC) as "*... he could not continue given the hostile atmosphere within the Executive Committee room.*".

2.9 The minutes of the meeting continued by showing that the GS had also "*advised that with immediate effect the newly elected President Mr S Madden had also resigned for similar reasons.*". It was further reported that the EC had decided to resolve matters by instructing the GS to arrange a special AAD and the minutes show that "*Considerable concern was expressed by all officers present in respect of the seemingly untenable position between some members of the Executive Committee and the General Secretary.*".

2.10 The following day, 23 March 2000, at a meeting at the Head Office of the union the GS, the AGS and Mr Samways (the EC Vice-President) discussed the situation facing the union at national level and in light of the forthcoming recall AAD. Following the discussion, the Vice-President (VP) stated he would phone all EC members and tell them the sessions (of the EC) are suspended until the recall AAD. Following an adjournment, a circular " *to all Branches/Representatives etc ...* " was produced by the GS and agreed by the AGS and VP. The VP also requested the GS to bring forward the recall AAD in order for " *... this sorry mess ...*" to be resolved.

2.11 Two union circulars, dated 23 March 2000, to "*All District Secretaries, Executive Committee M embers, Delegates to the Special AAD and all Branches and Representatives*" were issued. Circular 115/2000 stated that following receipt of a letter of resignation from Mr Madden a meeting had been held, that day. It was pointed out that this was the second EC President to resign in the last two months. The circular continued by stating that the VP found the situation totally intolerable and to the detriment to the normal running of the union and he therefore had made the following ruling "*That all EC duties, which include EC Sessions, special or normal, functions, meetings and all other duties etc. are suspended forthwith until a decision is made by the Parliament of our Society at the Special Assembly of Delegates.*". The circular, issued in the name of the GS, concluded by stating that the VP had instructed the GS to look after the best interests of the membership, officers and staff of ASLEF.

2.12 Circular 116/2000, also issued in the name of the GS and sent to the same recipients, advised that the Special Assembly of Delegates (SAD) had been brought forward to 18 and 19 April 2000.

2.13 Following an exchange of letters from solicitors acting for the union and for Mr Carrigan, Mr Glover and Mr Ballard (who were all members of the EC). The three took the matter to the Queen's Bench Division of the High Court of Justice seeking (in the words of Mr Justice Rougier) "*...various declarations and, more importantly, injunctive relief:-*

1. *To undo and notify that it is undone that part of the ruling which suspended all duties, functions etc. of the Executive Committee.*
2. *Declarations that Vice-President had no power to suspend meetings. Authorising a meeting of the 10th April 2000 and various matters that the circular of 23rd March cancelled to go forward.*"

2.14 In his judgment of the 7 April 2000 [Case no: HQ0002017], Mr Justice Rougier commented

that "*Regrettably and horribly quarrelling has broken out amongst delegates of the Associated Society of Locomotive Engineers and Firemen (ASLEF) Executive Committee. In statements before me accusations and counter accusations are flying like bullets at the Somme.*

The Executive Committee is suffering from clashes of personality and policy. A great deal of personal acrimony has arisen. No fewer than 2 presidents have resigned in the past 2 months with a detrimental affect on the effectiveness of the Executive Committee.".

2.15 Mr Justice Rougier was satisfied that the VP had the power to cancel any EC meeting because; (1). The VP had the power to call meetings and, therefore, by inference he had power to cancel or postpone meetings and (2). He stated it was common ground that in the past history of the union EC proceedings, dates were suggested at the beginning of the year. These dates were flexible and, in the past the President had juggled the dates to suit the convenience of EC members. On the broader issue, his Justice stated, he had greatest doubt whether it was within the power of the VP to suspend the EC Committee.

2.16 Mr Justice Rougier in dismissing the application concluded that the application was misconceived, the claimants had tried to make capital and that the application was not in the best interest of the union. He stated, in his decision, that the balance of convenience went one way. That was, that in respect of the quarrelling, and the best interests of the union, the sensible way forward was to get matters sorted out by the SAD. He commented that the fact that EC meeting had had to be postponed was no great hardship.

2.17 The judge continued by stating that actions speak louder than words and that, although the union's circular (115/2000) was dated 23 March 2000, the claimants' application (to the Court) was not made until the last working day of the Court. He also commented that he

remained wholly unsatisfied that anything urgent needed to be decided and that there was not sufficient time to consider the application.

2.18 Finally, the judge commented that the claimants had indicated that they had wished to postpone the SAD despite the fact that they had voted for it. In what way this benefited the union, he added, he did not know. He thought that this cast considerable doubt on the good faith of the claimants. He added that he had doubt whether cancelling would not be without considerable inconvenience and expense (to the union) and that it was for the union to put its house in order. He recoiled, he stated, at making at interlocutory level a decision in union affairs, a decision, he said, which was based on Foss and Harbottle [(1843) 2 Hare 461].

2.19 The SAD went ahead on 18 April 2000 and a full report was placed before it. That Assembly considered the report and debated a number of motions (and amendments to motions) arising out of it.

2.20 Following the SAD a circular (no.155/2000) was sent out addressed to "*All Branches and Representatives*". The circular advised that the decision of the SAD, carried by a large majority, was that section 1 to 3 of the report be noted and that sections 4 and 5 be adopted (section 5 with appreciation). Further, the circular added that the SAD charged Mr Carrigan, Mr Glover and Mr Ballard (who were all members of the suspended EC) with:

1. Bringing the Society into disrepute
2. Failing to act in the best interests of the Society and our membership.
3. Failing to attend EC Sessions and carry out their elected duties.
4. Behaviour unbecoming of holding office in the Society.

The circular continued by advising that the SAD had decided that the three be suspended from

office until the provisions of its rule 29 (Disciplinary Action) had been carried out by the Society. It continued by showing SAD's decision to instruct the GS to contact Mr Madden and Mr Tyson and to ask them to take up their elected positions with immediate effect and further that, if either member failed to take up their elected positions, the SAD instructed that the union's rule 16, (1) be suspended until the vacant offices were advertised and elections concluded at which time rule 16 (1) was to be reinstated. It added that the interim quorum shall be three EC Members.

2.21 The EC next met on 25 April 2000. Mr Madden attended the meeting and the VP advised the Committee that Mr Tyson would attend on 26 April. The SAD decisions were proposed and carried by the EC. On the 26 April 2000 Mr Tyson attended the EC. An election for President (of the EC) took place, Mr Madden proposed Mr Samways and this was seconded by Mr Tyson. The proposal was carried.

2.22 The EC continued to carry out the union's business, meeting at regular intervals. At its 6 June 2000 meeting, a proposal was passed that the General Secretary be instructed to seek applications for the post of Assistant General Secretary.

2.23 The union's Annual Assembly of Delegates (AAD) took place in June 2000 and, at its meeting on the 26 June, the EC carried a proposal that a number of agenda items from the AAD's Decisions Agenda "*be adopted and the General Secretary instructed to make the necessary arrangements to implement the rule changes forthwith.*".

Complaint One: That the meeting which took place on the 23 March and which took decisions to suspend the Executive Committee and to bring forward the Special Assembly of Delegates had no authority to take such decisions and therefore acted outside the rules of the union. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan.)

The Applicant's Case

2.24 In correspondence Mr Callaghan stated that the basis of his complaint was that the EC of the union had passed resolution 147/407 on 7 March 2000 calling for a SAD and this was arranged and was to be a one day conference. However he stated that events of an internal nature then took place and that the meeting of 23 March 2000, at which the VP of the EC, the GS and AGS made the decision to suspend the EC and to bring forward the conference and to make it into a two day conference, was against union rule and that the meeting had no authority to make such decisions. He added that the EC required a quorum of 5 EC members for the meeting to be held within rule.

2.25 In commenting on the union's written response (to me), Mr Callaghan stated he found the union's statement, that the EC was not suspended, to be unbelievable. He referred me to various documents which, he argued, confirmed that the EC was suspended. He referred to the union's circular 115/2000, issued on 23 March, which stated "*That all EC. duties, which include EC Sessions, special or normal, functions, meetings and all other duties etc. are suspended forthwith until a decision is made by the Parliament of our Society at the Special Assembly of Delegates.*". Mr Callaghan also referred me to letters from the union's solicitors, Thompsons, dated 31March 2000 (to solicitors acting for the suspended EC members) and to a letter of 5 April 2000 from the VP, Mr Samways, to Thompsons. The letter of 31 March stated " ... *the Vice President of the union, acting as President authorised the General Secretary to suspend all EC. duties forthwith until the Union's Special Assembly of Delegates* ...". Mr Samways' letter, of 5 April 2000 stated "... *I gave the following instruction to the General Secretary:-" all special or normal, functions, meetings and all other duties etc. are suspended forthwith until a decision is made by the Parliament of our Society at the Special Assembly of Delegates.".* These documents, Mr Callaghan stated, confirmed that the EC was in fact suspended.

2.26 Mr Callaghan argued that it was quite clear and unambiguous, the EC was suspended and that the VP was acting in breach of rule 16(1) in suspending the EC.

2.27 At the hearing of this complaint the applicants called Mr Adams to provide details of his experience as a former AGS, GS and EC member. In answer to questions put, he stated he had never known of the suspension of the EC by one of its number and stated that he was not aware of a rule that allowed this to happen. He added that EC meetings, in accordance with rule, were called by the President in conjunction with the GS.

The Union's Response

2.28 In its written response to this complaint the union informed me that the EC decision of 7 March 2000 called for a Special Delegate Conference to "be convened as a matter of urgency" and that no date was specified.

2.29 The union stated that it was the GS duty to be responsible for the arrangements for the Conference and that this included setting the date. The union argued that neither the EC nor any of its members were suspended, but that meetings of the EC between the 23 March and the Special Conference (held 18 April) were in effect cancelled. In the period between the 23 March and 18 April the union stated that other members of the EC did carry out union business. The union contended therefore that any such meeting (such as the meeting on 23 March) which varied the date of the Conference was lawful in the event that the GS approved a variation to the date. The union added that Mr Justice Rougier in his decision had found the actions of the VP and the GS, in agreeing to suspend meetings of the EC pending the Conference, to be: a) lawful, b) in the interests of the Society and its members and c) "eminently sensible". The union argued therefore that there was no breach of rule.

2.30 At the hearing, in answer to a question from Mr Langstaff, Mr Adams confirmed he had never, in his experience, had an occasion where one, let alone two, Presidents of the EC had resigned in a short period of time.

2.31 It was argued that the EC, on 7 March, had called the SAD but had not specified a date. What had then happened, it was stated, was that the VP as acting President, in conjunction with the union's GS, had agreed a date for the SAD and had exercised his powers under rule, as President, as to whether or not to call meetings of the EC. Having set the date for the SAD as 18 April, it was argued that meetings of the EC after 23 March until 18 April had been cancelled or postponed.

2.32 For the union it was agreed that the GS did not have powers to suspend meetings of the EC and, it was stated, he did not do so in this case. Meetings of the EC were cancelled but, it was argued, the work of the EC continued beyond the 23 March.

2.33 In summing up the union's response to this complaint, Mr Langstaff argued that the President of the EC had the right under rule to call or not to call meetings of the EC. Also that decisions on the timing of EC meetings took into account forthcoming AAD or SAD's of the union. I was further reminded by Mr Langstaff of the comments of the judge who had heard the application for an injunction that what can be called can be uncalled.

Reasons for my Decision

2.34 After consideration of the arguments put to me and examination of the documentation submitted and the union's rule book, I find that the union did have the powers to postpone meetings of the EC. This is established both in rule and the practice of the union. However, I also find that the union in fact suspended the EC on 23 March 2000, did not have the power to do so and, as such, it acted outwith the rules of the union.

2.35 However, in view of the events following the meeting of the 23 March and the endorsement given at the SAD, I decline to make any enforcement order in respect of this breach.

Complaint 2: As a result of the action taken at the meeting on the 23 March the control of the Society was removed from the Executive Committee and passed to General Secretary and Vice President, thus breaching Rule 20 Clause 1. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan.)

The Applicant's Case

2.36 Mr Callaghan argued that, as a result of the suspension of the EC on 23 March 2000 and the calling of Conference by the GS, this effectively cancelled the EC resolution (147/407 of 7 March, see para 2.7) and that the union was then under the control of the GS and VP and that this was in breach of rule 20 (1).

2.37 He argued that if the EC had called for a meeting of the Special Assembly to be held then the EC must then meet to formulate a report to put before that Assembly and to appoint substitute delegates to attend if necessary. It followed, Mr Callaghan argued, that as the EC was suspended it was impossible for the EC to meet and take these required actions and therefore the Special Assembly was under the control of the GS and VP who submitted a report to the Assembly. He also pointed out that the VP was in fact in attendance at the Assembly even though he had, in effect, suspended himself when suspending the EC.

The Union's Response

2.38 In response to this complaint the union, in correspondence, referred me to the judgment of Mr Justice Rougier in the High Court (see paras 2.13-2.18). In any event, the union argued, rule

20(1) related to the need for Conference to be attended by 46 delegates (and that this occurred). Therefore, it was argued, there was no breach of rule 20(1).

2.39 It was argued that this complaint was about the control of the union between the 23 March and 18 April 2000. Mr Langstaff put forward the view that meetings of the EC had been cancelled but that the EC was still functioning with expense claims being submitted by members of the EC after 23 March. He reminded me that the SAD, on 18 April, subsequently endorsed Mr Samways' decision of the 23 March and the actions that were taken.

Reasons for my Decision

2.40 Rule 20(1) states that "*The Society shall be under the control of an assembly of 46 delegates who shall meet in May or June of each year, and special meetings shall be held as may be determined by the Executive Committee or Annual Assembly of Delegates. ...*".

2.41 I find as a matter of fact, that the EC, at its meeting on 7 March 2000 (para 2.7), called for a special AAD and that that meeting (although brought forward by the GS) did take place with the delegates present according to rule. That assembly of delegates debated motions, and amendments to motions, and voted on those issues.

2.42 I am satisfied that no action took place on 23 March which took powers away from the delegates to the union's Assembly. I therefore find that rule 20(1) was not breached and for these reasons, I decline to make the declaration sought.

Complaint 3: That, in respect of the Special Assembly of Delegates, the General Secretary was in breach of Rule 20 Clause 5 in appointing substitute delegates to the Special Assembly outwith the rules and procedures. That Rule 16 Clause 22 was breached in that there were less than three members of the Executive present at the Special Assembly. That Rule 21 Clause 11 was breached in that the Executive failed to submit a report to the Special Assembly although a Report was submitted by the General Secretary, again in breach of Rule 21 Clause 11. In addition, the Report from the General Secretary was not distributed to Branches until after 14 days before the Special Assembly. (Section 108A (2)(d)of the Act). (Complaint made by Mr Callaghan and Mr Carrigan.)

The Applicant's Case

2.43 It was argued, by Mr Callaghan, rule 20(5) required the EC to make special arrangements to ensure that branches in the AAD Districts concerned were represented at AAD or at Special Assembly. The GS (in appointing substitute delegates to the SAD), it was argued, had breached rule 20(5).

2.44 In developing his argument, Mr Callaghan stated that it was the rule and practice of the union that the EC exercised its power under rule 20(5) to fill delegate positions vacant at Special Assemblies. In support of this argument he referred me to the minutes of Special Assemblies of the union held in 1994, 1996, 1998 and 1999. All these variously showed he argued, that

it was the EC that, "*exercised powers under rule 20 ...*", "*under EC. Resolution ...*" or "*Under EC powers ..*", which had the authority under rule to take such action and that the GS had no such power.

2.45 In response to the union's argument that the GS did not appoint delegates and that delegates were elected by branches, who, when a delegate subsequently withdraw, were approached in order for the branch to appoint a substitute delegate. That the appointed delegates are subject to further approval by the EC and/or the Conference itself, Mr Callaghan stated that as the EC was suspended it could not have appointed substitute delegates to the Assembly. It also followed, he argued that as the substitute delegates had not been appointed under rule, that they could not take part in the Assembly and therefore the Assembly was inquorate as it had less than the 46 delegates present as required by rule.

2.46 Mr Callaghan also complained that rule 16(22) had been breached. This rule required the President, VP and one other (EC member) to attend the Annual Assembly. He argued first, that the EC was suspended and yet two EC members attended the SAD and questioned on what authority they (the two EC members) were appointed to attend the SAD, and secondly, he stated that only the VP and one other EC member, Mr Reed, attended the SAD on 18 April whereas rule 16(22) required three EC members to be in attendance.

2.47 He further argued that the same procedure applied to a Special Assembly as it did to an Annual Assembly and in support of this argument he submitted correspondence from previous Special Assemblies which showed three members of the EC present.

2.48 It was also argued that rule 21(11) had been breached because the EC did not, as required by this rule, submit a report to the SAD. Instead, it was argued, the GS submitted the report and the same rule was further breached as the delegates did not receive the report 14 days prior to the Conference as the rule requires.

The Union's Response

2.49 The union, in responding to this complaint stated that neither rule 20(5) nor any other rule of the union specifically stated that the GS could not appoint substitute delegates to any Assembly of Delegates. In any event, however, the union stated that the GS did not appoint delegates to the Special Assembly. It explained that delegates, were elected by branches, who, when a delegate subsequently withdraw, were approached for the branch to appoint a substitute delegate and that the appointed delegates were subject to further approval by the EC and/or the Conference itself.

2.50 This rule, and procedure, the union argued was followed in relation to the Conference on 18 April 2000. The union commented that Mr Callaghan was a delegate to the Conference and pointed out that the substitute delegates were approved by Conference as its first business on 18 April and that this was in accordance with union rule 20(7) which states " *The Annual or Special Assembly of Delegates shall have power: ... (c) It shall govern the Executive Committee and exercise all or any of the powers and authorities vested in the Executive Committee to put such powers and authorities, or any of them, into operation.*".

2.51 In response to the alleged breach of rule 16(22) the union stated that the rule related to the Annual Assembly and, by implication, to the Special Assembly. However, the union stated,

in any event, at the time of the SAD there was no President of the EC (in post) and that the VP attended with one other member of the EC. The union added that the rule does not state that the SAD would be inquorate if less than three members of the EC attended.

2.52 Regarding rule 21(11), the union commented that that rule applied to the Annual Delegate Conference and did not apply to a SAD which may be required to be called urgently and at short notice. The union also argued there was no GS' report. However, it was also argued, that a report, by the GS and other EC members, was made to the Conference, that "Officers" of the union, including the GS, are permitted to make reports to Conference and that the report was made in accordance with rule. It was added that the EC was not suspended prior to the 18 April only that EC sessions between 23 March and 18 April were cancelled or suspended.

Reasons for my Decision

2.53 It was clear that all but five delegates to the SAD were appointed within the union's rules and procedures. In relation to the five, not so appointed, the union used emergency powers consistent with past practice (although not normally for this number).

2.54 I established, as a matter of fact, that three members of the EC were present at the SAD on 18 April 2000.

2.55 The union's rule 21(11) does not say the report to the SAD should be submitted by the EC. It was clear, from what I have seen and heard, that usually it was, but it is not required to be

so by the rules.

2.56 Rule 21(11) relates to reports of officers and the EC being sent to delegates at least 14 days prior to the AAD and that a copy of the EC report (to the AAD) should also be sent to branches. It does not say that such reports should be submitted before an SAD. However a report was provided to the delegates to the SAD (but not to the branches) and, although not submitted 14 days prior to the SAD, the delegates were given the opportunity to read the report before the proceedings at the SAD.

2.57 I therefore find that rules 20(5), 16(22) and 21(11) have not been breached and I decline to make the declaration sought.

Complaint 4: That a series of Rules regarding rules changes were breached as proposed rule changes had not been submitted to the Special Assembly by either the Executive or Branches. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan.)

The Applicant's Case

2.58 Mr Callaghan argued that the SAD had breached a series of rules with regard to rules of the union being altered as they (the rule changes) had not been submitted to either the branches or the EC. He argued that the SAD had changed a quorum for the EC from five to three if the resigning members (the two ex-presidents) did not resume their former positions and that this was an interim measure taken until such time as elections (to the EC) had taken place. To change the number forming a quorum, he argued, required a rule change under rule 21(1).

The Union's Response

2.59 The union, in response to this complaint, stated that no rule changes were made by the SAD.

Reasons for my Decision

2.60 It was established that the past practice of the union had been that amendments arising from reports of officers had not been taken unless put to branches first, according to the rule book. The requirement to send amendments to branches does not apply in relation to amendments arising out of reports of officers. Also the SAD does have the power, under rule, to make new rules and alter, amend or rescind any existing rule but, unless the Assembly is a Bi-annual Assembly, only on the prior recommendation of the EC.

2.61 However, it was not established that the SAD had, in fact made any rule changes and it is for that reason that I decline to make the declaration sought.

Complaint 5: That the debate on the General Secretary's Report and the suspension of certain members of the Executive amounted to a breach of the disciplinary rules of the union, namely Rule 29. (Section 108A (2)(b) of the Act). (Complaint made by Mr Callaghan.)

The Applicant's Case

2.62 The union's disciplinary action is contained in rule 29. This provides that any member failing to comply with a decision of the EC or an Annual or Special Assembly of Delegates relating

to certain matters expressed within the rule, shall be subject to disciplinary action by the EC. Mr Callaghan argued that the debate on the GS' report and the suspension of three members of the EC amounted to a breach of the union disciplinary rules.

2.63 He commented that the GS did put a report to the SAD and, as the chief administrator of the Society he was responsible for that report. He argued that the report was one of initial disciplinary proceedings against the three suspended EC members and that, in their absence, they were not afforded a right of reply and were found guilty. He stated that proof of this was the SAD decision to ask the two EC members who had resigned to take up their former positions. The disciplinary action taken at the SAD was, he argued, in breach of rule 29.

The Union's Response

2.64 In response to this complaint, the union commented that the report to the SAD was by the GS together with other members of the EC and that there was no "General Secretary's Report". The report, the union added, was made in accordance with rule.

2.65 Rule 29, the union said, must be read in conjunction with rules 16(8) and 20(7)(c). I was informed that the EC has the power under rule 16(8) to exclude any member who is guilty of misconduct or of violating any of the union's rules. Rule 20(7)(c), the union commented, allows the AAD or SAD to govern the EC and exercise all or any of the powers or authorities vested in it or the union's rules. It followed, the union argued, that the SAD acted in accordance with rule 16(8) in excluding three members of the EC.

2.66 It argued, that the three EC members were not suspended prior to 18 April 2000, but that EC sessions between 23 March and 18 April were cancelled or suspended. At Conference, which the union informed me was the supreme authority within the Society, the decision of the Conference (which, it added, was passed with a significant majority) was to the effect that the three EC members should have charges brought against them and that disciplinary proceedings be set in motion under rule 29. In the meantime, the union added, the three were suspended from office until the proceedings under rule 29 were carried out. Those proceedings, the union informed me, had been conducted since the Conference. There was, the union argued, no breach of rule.

Reasons for my Decision

2.67 It was clear, from what I had seen and heard, that the SAD had debated and carried a motion to charge and suspend the three EC members. It was established in evidence that it was the practice of the union to suspend before disciplinary proceeding started.

2.68 The union said the SAD operated under rule 20(7)(c). This appears to be a catch all rule, whereas the union could have operated under rule 16(8). The fact that the union used an all embracing rule where there was a specific rule does not make the union's actions contrary to rule and the suspensions (the motion for which was carried at the SAD) were to enable action under rule 29 to be implemented. I therefore find that there was no breach of rule and dismiss this complaint.

Complaint 6: That, in reappointing those members of the Executive who had previously resigned, Rule 16 Clause 9 has been breached due to no election taking place in member's constituency's and 2 members holding office outwith the rules of the union. (Section 108A (2)(a) of the Act). Complaint made by Mr Callaghan and Mr Carrigan.)

The Applicant's Case

2.69 Both Mr Callaghan and Mr Carrigan argued that the union, by reappointing the two EC members (Mr Tyson and Mr Madden) who had resigned both as President of the EC and as EC members, had breached union rule 16(9).

2.70 Rule 16(9) calls for every (EC) vacancy, whether by death, removal, expulsion or resignation to be filled by an election complying with the rules of the union (and statute). It was argued, that the SAD, by passing a motion inviting Mr Tyson and Mr Madden to take up their elected office (on the EC), which the two men subsequently did, breached rule 16(9) as no election for either vacancy took place.

The Union's Response

2.71 In response to this complaint, the union agreed that the two EC members who had resigned had been invited by the SAD to retake their positions (on the EC). This, it stated, was to improve the democracy of the Society in the absence of three members of the EC.

2.72 The union informed me that both Mr Tyson and Mr Madden had (originally) been elected to the EC under rule. This had not been disputed by the applicants. The SAD, the union argued, had refused to accept the resignation of either man and, in this unusual situation, they had both been persuaded to withdraw their resignation and return to the EC. The union accepted that it could be argued that Mr Tyson's resignation had been accepted by the EC, but stated that Mr Madden's resignation had not.

2.73 It was argued that the union could (and did) assert a technical validity to re-instate Mr Tyson to the EC since the SAD was entitled under rule 20(7)(c) to call on him to reconsider his resignation. The union added that it was faced with very particular and unusual circumstances and, bearing in mind the powers which the EC exercised under rule 20(7)(c), the SAD (as the supreme body of the union) acted as was necessary and desirable in the interests of the union and its members had requested Mr Tyson to re-consider his decision to resign.

2.74 The position of Mr Madden, the union said, was different. Although he had offered to resign, that offer was never formally accepted by the EC prior to the SAD. The union therefore argued that Mr Madden's resignation had not been formally accepted (and he therefore officially remained in post as an EC member) and that the SAD belatedly accepted a retraction of Mr Tyson's resignation. It was stated to me, that the union believed that the decision on Mr Tyson's retraction would be endorsed (if necessary) by the membership of the District that he represented on the EC. It therefore argued that, in respect of both positions on the EC, no breach of rule had taken place.

Reasons for my Decision

2.75 It was clear to me that Mr Madden's offer to resign had not been accepted. Mr Tyson's resignation had been accepted. The SAD asked both men to reconsider their decisions to resign which they both did. This was clearly the wish of the SAD which the union had reminded me was the Supreme Governing body of the union.

2.76 I find that the union, having accepted Mr Tyson's resignation, by reappointing him without the

requirements of an election did breach its rules and statute. However due to the fact that Mr Tyson had an unexpired term of office both in terms of statute and union rule, and that the SAD sanctioned the reappointment, I make the declaration sought by the applicants but decline to make an enforcement order in respect of this breach.

Complaint 7: That, in adopting section 4 of the General Secretary's Report, the General Secretary had gained control of the Society between Executive Committee meetings, thus breaching Rule 13 Clause 1. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan.) And that the union had breached the same rule in that the " Vice President suspended the Executive Committee and handed power and total control to the General Secretary ..." (Section 108A (2)(d) of the Act). (Complaint made by Mr Mackenzie and Mr Worboys.)

The Applicant's Case

2.77 Mr Callaghan argued, by the SAD adopting part 4 of the GS report, that the GS had gained control of the Society between EC meetings and that this breached rule 13(1). In a joint complaint to me, Mr Mackenzie and Mr Worboys argued that the same rule had been breached because the VP suspended the EC and thus control of the union passed to the GS.

2.78 Mr Callaghan argued that the GS does not, under rule, have executive powers. The role of the GS, he stated, was purely an administrative one and that, under rule 13(1), at all times he is under the control and power of the EC. Mr Mackenzie and Mr Worboys argued that the

VP by suspending the EC, on 23 March 2000, had passed control of the union from the EC to the GS.

The Union's Response

2.79 In reply to these complaints the union stated that the GS was (and is) the senior officer in the union. He was, the union stated, responsible for the running of the union particularly when the EC or the Conference was not in session and that in theory, under rule he could do so for a period of up to three months between meetings of the EC. In practice, it was pointed out, the EC meetings occurred more frequently. It argued that there was no complaint or allegation that the GS had not sought to obey the EC. This, the union pointed out, was the requirement of rule 13(1). It was stated that the GS had always sought to act in the best interests of the Society.

2.80 The union had already argued it said (see complaint 1) that the EC had not been suspended between the 23 March and 18 April but that its meetings had been postponed or cancelled. It denied that control of the union had passed to the GS (in breach of rule) and stated that between those dates (and at all times) the GS had operated under the control and direction of the EC in accordance with rule 13(1). The breach of rule was therefore denied.

Reasons for my Decision

2.81 I had effectively dealt with this complaint in my decisions on complaints 1 and 2. I found that the EC was suspended, by the VP, on the 23 March and that he did not have the power to do so (complaint 1). However, I also found that nothing that occurred on that date took power

away from the delegates to the union's Assembly (complaint 2).

2.82 The SAD, on the 18 April 2000, sanctioned the actions taken (on 23 March 2000) in the circumstances where the EC, because of its internal disputes, was functioning less than effectively. I therefore find that control of the union did not pass to the GS with the adoption of part of the report to the SAD, but by the suspension of the EC on 23 March 2000, the GS was no longer, until the SAD on 18 April, under the control of the EC. I therefore find that rule 13(1) was breached in this respect and make the declaration sought. However the actions of the VP on the 23 March were subsequently endorsed by the SAD as the Supreme Governing Body of the union and, from that date, the EC effectively operated and the GS was again, as required by rule, operating under EC control. I therefore decline to make an enforcement order in respect of this breach of rule.

Complaint 8: The Executive Committee were in breach of Rule 16 Clause 1, between March and October 2000, because they conducted meetings with a quorum of less than five as required by the rules. (Section 108A (2)(d) of the Act). (Complaint made by Mr Callaghan and Mr Carrigan.). And that the same rule was breached in that " Disciplinary hearings were held with only 3 members present.". (Section 108A (2)(b) of the Act). (Complaint made by Mr Mackenzie, Mr Worboys and Mr Carrigan.).

The Applicant's Case

2.83 Mr Callaghan and Mr Carrigan alleged that meetings of the EC held between March and October 2000 were inquorate because less than five members of the EC were present and that

this breached rule 16(1). That ruled stated the EC should consist of eight members and that "*...five members to form a quorum.*".

2.84 The applicants submitted daily minutes of the EC, for dates in April, June and August. Some of these it was alleged, showed meetings of the EC were held with less than five members of the EC being present. It was also alleged that disciplinary hearings by the EC with Mr Carrigan and Mr Glover were also held with less than five members of the EC present.

The Union's Response

2.85 The union argued that there was (and is) no prohibition on members of the EC meeting in the absence of a total of five of them. It was argued for the union that, with three of the eight members suspended and subsequently expelled (with appeals pending), it was inevitable that meetings would and did take place with less than five members present. This, the union stated, happened from time to time. In those circumstances, I was informed, it was arranged for any decisions made at meetings with less than five members present to be ratified at full meetings of the five members at later dates. It was therefore argued that there was no breach of this rule, as in effect when less than five members were present, they met as a sub committee whose decisions were ratified by the EC at meetings where there was a quorum.

2.86 It was further stated that this situation was reported to and approved by the Annual Delegates Conference.

Reasons for my Decision

2.87 I decline to make the declaration sought in respect of this alleged breach. The union were faced with an unusual and difficult situation with three of the eight members of the EC suspended. A number of meetings of the EC were subsequently held with all five remaining officers present but it was inevitable that, at times, less than five would be present.

2.88 I believe there is nothing in the union's rules to prevent inquorate meetings being held, and decisions made, as long as those decisions are subsequently authorised at a quorate meeting of the EC. It was established in evidence that the union has a long history of operating through small sub committees. It is for these reasons that I decline to make the declaration sought.

Complaint 9: That the union has breached its Rule 10 Clause 10 by not sending a copy of Mr Glover's election address, with the voting papers to all the members who were entitled to vote in the election. (Section108A(2)(a) of the Act). (Complaint made by Mr Glover.)

The Applicant's Case

2.89 Mr Glover complained about the election procedures used by the union in the election for the post of its Assistant General Secretary (AGS). He stated that he was a candidate in the election and complained that his submitted election address had not been printed, and issued to members voting, along with those of other candidates. He stated that he became aware of this first, when he received numerous calls from members asking why there was no election address from him, and secondly, when he opened his ballot envelope received from Unity Ballot Services (UBS) and found it to be empty. After contacting UBS he received another envelope and found that his photograph had been published but that his submitted election address had not.

2.90 Mr Glover argued that the rules concerning ballots had been broken and stated, in correspondence, that he wrote to the official scrutineer for the election, UBS, and the union to complain. The union responded stating that they had sent him a letter on 8 August 2000 explaining that an EC resolution was in place which covered his election address not being published. No other explanation was given and, Mr Glover stated, he therefore complained to me.

2.91 He complained that the only restrictions on an election address within the union's rules was in rule 10 Section A clauses 5 and 6. These clauses stated that a candidate's election address must not exceed 400 hundred words and that, additionally a candidate may submit for inclusion one photograph not exceeding given size details(clause 5). Clause 6 indicated that if the election addresses exceeding the number of words (ie 400 as in clause 5) or if the photograph exceeded the given size, then both the election address and photograph would be returned to the candidate and not published to the electors. Neither of these clauses applied, and he therefore argued that rule 10 section A clause 10 had been breached. This rule provided:

> "*So far as reasonably practicable, copies of every Election Address received before any deadline set and which comply with the requirements set out in Rule 10, Section A, Clause 5, will be sent by post, with the voting papers, to all the members who are entitled to vote in the Election.*".

2.92 Mr Glover further argued that whether the election address was libellous or believed by the union to be so, it was required by the union's rules to be published. He referred me also to

rule 10 Section A Clause (9) which states:

"*Any Civil or Criminal liability in respect of publishing or copying an Election Address for the purposes of the election rests solely with the Candidates concerned.*".

The Union's Response

2.93 In response to this complaint, the union confirmed that Mr Glover's proposed election address had not been circulated to members. It took the decision, not to issue Mr Glover's election address, the union stated, because the union believed it to be libellous.

2.94 The union argued that in a statutory election (under the 1992 Act) where material is defamatory, it was open to the union to seek the discretion of the Court to order the candidate to withdraw or modify the intended election address. The union added that, in such a case, the time scales were such that the union would have time to take such a matter to Court. However, it stated, in the case of this election, it was not an election covered by statute. The AGS was not, the union stated, a member of the EC. In those circumstances, I was informed, the election was run in accordance with the union's own rules and timetable as set out in its rules.

2.95 I was informed that Mr Glover's proposed election address arrived with the union on 8 August 2000, two days before the candidates election addresses were due to be sent out to members. This left no time to apply to Court or to write to Mr Glover to seek modification.

2.96 The union added, that Mr Glover's election address was received the day before a letter of action was sent from the union's solicitors to Mr Glover complaining about libels in a circular dated 1 July 2000. The union stated that its difficulty with the election address was that it perpetuated and aggravated that libel, and it was argued that the style and authorship of the election address meant it to be read as a continuation of the earlier more obviously defamatory document.

2.97 The union argued that the question arose as to whether the election procedure set out in its rule book imposed an absolute obligation on the union to publish an election address even if it was libellous, racist or otherwise repugnant. The union thought that its rules, on non statutory elections, must be subject to implied qualifications. These were, it argued, first, that the union cannot by its rule 10(9) efficiently exclude liability to a third party for either civil or criminal liability and that the union had a duty to take proper care of its financial affairs and thus it was required to refrain from publishing an election address which might expose the union's funds in taking, or defending, Court action.

2.98 Also, the union argued, where third parties (such as the union's GS and President) were further libelled by the repetition of an earlier accusation (as in Mr Glover's proposed election address), the union was technically exposed to action by the two officials.

2.99 The decision whether or not to refrain from publication was, the union informed me, taken by the full EC of the union on legal advice.

3.0 Finally, the union asked me to note that rule 10 Section A would not require publication (of the election address). Rule 10(8), the union argued, simply required that an election address

would not be changed unless the change was a necessary part of the production process.

Reasons for my Decision

3.1 I am confident that the election in question was not a statutory election covered by the 1992 Act. On a proper interpretation of the facts and of statute the Assistant General Secretary is not a member of the EC.

3.2 In a statutory election there is absolute protection for unions against action being taken against them for something published by a candidate in his or her election address. Therefore unions can have no excuse, in a statutory election, for not publishing such an address. In this case (in a non statutory election) the union have a rule requiring an election address to be published (I would add that I have not, often, come across such a union rule).

3.3 I accept the union's argument that its rules do not give it sufficient protection from a third party in an action for libel. This would mean that a candidate could issue an election address, which might contain a libel, with impunity. In my view the members of the union would view the rule as subject to an implied qualification that this type of material in an election address would not be published. I take that view with some trepidation as this could be open to abuse by unions. My decision is partly related to the circumstances of this case where I know that the union have taken direct action in the Courts for the alleged libel.

3.4 It is for these reasons that I dismiss this complaint.

Complaint 10: Complaint under section 55 of the 1992 Act that the union had breached section 48(1)(b) of the Act by not distributing (to each of those persons (entitled to vote) by post along

with the voting papers for the election) the election address of Mr J Glover: (Complaint made by Mr Mackenzie and Mr Worboys.)

The Applicant's Case

3.5 Mr Mackenzie and Mr Worboys, in effect, made the same complaint as Mr Glover (complaint 9) but argued that by not publishing Mr Glover's election address, the union had breached section 48(1)(b) of the 1992 Act. This states:

> " *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.*
>
> *(2) ...*
>
> *(3) ...*
>
> *(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.

(5) ...

(6) ...

(7) ...

(8) No-one other than the candidate himself shall incur any civil or criminal liability in respect of the publication of a candidate's election address or of any copy required to be made for the purposes of this section."

3.6 They argued that the GS and the union's EC took the decision not to send the election address of Mr Glover because they did not like its content. This Mr Mackenzie and Mr Worboys contended, was in breach of the Society's rules and "... *more importantly the law.*".

3.7 In correspondence Mr Mackenzie argued that the Society changed its rules (on the election of the AGS) to comply with the Act. The AGS, Mr Mackenzie informed me, was placed under rule 10A because the advice received by the union at the time was that the rule should be changed because of the requirement of the AGS to substitute, as required, for the GS and to attend EC meetings.

The Union's Response

3.8 The union's response to this complaint is given in its response to complaint 9 (see above). The AGS, it was argued, was not a member of the EC and therefore the requirements of section 48(1)(b) did not apply to Mr Glover's election address and therefore the union denied that any

breach of that section of the 1992 Act had occurred.

Reasons for my Decision

3.9 As stated in the reasons for my decision on complaint 9, I consider that the election of the union's AGS was not an election covered by the statutory requirements of the 1992 Act. The fact that the AGS may occasionally substitute for the GS does not make him a member of the Executive. It may have been prudent for the union to provide for the direct election of the AGS but there was no statutory requirement for it to do so. It is for this reason that I dismiss this complaint.

Complaint 11: That the union has breached its Rule 10(A) Clauses (8) and (9) in that " Mr J Glover's election address was not published.". (Section108A(2)(a) of the Act). (Complaint made by Mr Mackenzie and Mr Worboys.)

The Applicant's Case

3.10 Mr Mackenzie and Mr Worboys also argued that by not publishing Mr Glover's election address, the union had breached its rules 10(A) (8) and (9). Clause (9) is quoted in paragraph 2.92 above. Clause (8) states:

> "*Any Election Address will not be changed unless the change is a necessary part of the production process.*".

3.11 It was argued that the union, by not publishing Mr Glover's election address, along with his

photograph, had in effect changed the election address of Mr Glover. Also, as with the complaint made by Mr Glover (complaint 9), they argued that whether the election address was libellous or not, the union's rules required it to be published.

The Union's Response

3.12 The union's response to this complaint is given in its response to complaints 9 and 10 above. Additionally, in response to this complaint, the union argued that rule 10 Section A clause (8) would not require publication. Clause (8) it was stated, simply requires the union not to change an election address unless that change is a necessary part of the production process. The union denied that any breach of clause (8) or (9) of rule 10 Section A had occurred.

Reasons for my Decision

3.13 Clause (9) of rule 10 is a statement, that liability in respect of publishing or copying an election address rests solely with the candidate. That rule, I find was not breached. Clause 8 raises a more difficult issue. I agree with the union that clause (8) of rule 10 Section A requires that the election address will not be changed. I have sympathy with the complainants view that circulating a blank sheet of paper constituted a change in Mr Glover's election address. However, in the context of this case the rule "not to change" is a second order rule compared with clause 10 of rule 10A which "requires circulation of the address with ballot papers". In dealing with complaint 9 I have accepted (for the reasons given) that the union was not in breach of its rules when it refused to circulate the address. The same reasons apply in respect of the second order rule "not to change". So complaint 11 falls for exactly the same

reasons as complaint 9.

3.14 It is for these reason that I dismiss this complaint.

Complaint 12: That the union had breached its Rule 29 Clause 6 in that the disciplinary hearing of Mr Ballard was before three members of the executive committee instead of five. (Section 108A (2)(b) of the Act). (Complaint made by Mr Ballard.). Also that the same rule was breached on the 6 September 2000 by Mr Carrigan not being allowed witnesses to attend at his disciplinary hearing thereby not affording him a full and fair hearing before the executive committee. (Section 108A (2)(b) of the Act). (Complaint made by Mr Carrigan.)

The Applicant's Case

3.15 Mr Ballard, who had been a member of the union's EC complained, that following his suspension from the EC, his disciplinary hearing (and that of the other two suspended members of the EC) had been conducted (at individual hearings) before the remaining members of the EC. He stated his hearing had been held before three members of the EC and not five and that this totally contravened rule 29(6) which required " *The member shall be afforded a full and fair hearing before the Executive Committee. ...*".

3.16 He argued that his disciplinary hearing on 10 August 2000 was before a sub committee of three (EC members) and that no mention was made, in the minutes, of the absence of the two remaining EC members who should have been at the hearing.

3.17 Mr Carrigan in quoting the same rule argued that his disciplinary hearing was unjust because that rule stated he was entitled to question the union's witnesses and had not been given the opportunity to do so. Also that he had not been allowed witnesses in his defence and that the proceedings had been unconstitutional in that only three members of the EC had been present and that no witnesses had been called, thus denying him the opportunity to defend himself.

The Union's Response

3.18 In response to this complaint, the union argued that the disciplinary hearings of both Mr Ballard and Mr Carrigan had been conducted fairly and in accordance with rule. The hearings of both men, following a decision of the Executive Committee, had been before sub committees of three members of the EC. Both hearings had, after their conclusions, been reported to full meetings (of the remaining members) of the EC who had ratified the actions taken. The union further argued that it would have been unfair to the complainants (facing the disciplinary hearing) if Mr Tyson and Mr Madden had been members of the disciplinary panel. This was because the behaviour of the three charged members had been a major factor in the original resignation of Mr Tyson and Mr Madden, both from the EC and from the post of President of the union.

3.19 The union denied Mr Carrigan's hearing was in any way unfair. The union informed me that Mr Carrigan had been given the opportunity to produce witnesses in his defence but had not done so on the day and time required.

Reasons for my Decision

3.20 I am satisfied that the union's EC under rule 16(16) had the power to determine any issue upon which the rules were silent. The EC, faced with the suspension of three of its eight members, decided to operate with a number of sub committees. It did so (these included sub committees to conduct the disciplinary hearings of Mr Ballard and Mr Carrigan). It is not uncommon for unions to set up sub committees and to delegate responsibility.

3.21 Both sub committees in due course reported their decisions back to full meetings of quorate meetings of the (remaining) five members of the EC who ratified the actions taken and the decisions reached.

3.22 I am therefore satisfied that both hearings, conducted before three members of the EC as sub committees of the EC, were conducted within rule.

3.23 I find also that, at his disciplinary hearing, Mr Carrigan was given the opportunity for witnesses, on his behalf, to attend. He opted not to produce those witnesses on the day and time necessary. I find he was given the opportunity but did not take it (for which he offered to me his own explanations). It is not the union's responsibility at a disciplinary hearing to produce the witnesses the charged member may want present in his defence. That responsibility lies with the charged member, in this case Mr Carrigan. Other aspects of Mr Carrigan's comments to me, in presenting his complaint of a breach of this rule, could be the subject of any appeal he may wish to bring against the union's decision to expel him. I have not therefore reported his comments in these reasons.

3.24 It is for these reasons that I dismiss these complaints.

Complaint 13: That Rule 20 Clause 3 was breached on the 23 March 2000 and the 18 April 2000 by the union suspending Mr Carrigan from his elected office position. (Section 108A (2)(b) of the Act). (Complaint made by Mr Carrigan.)

The Applicant's Case

3.25 Mr Carrigan argued that rule 20(3) had been breached. He stated that he had been appointed as the EC member to attend the Conference and sit as the ex officio member of the union's Arrangements Committee. He argued that the actions of the GS and the VP in suspending him from office (as an EC member), and in notifying his employer that he was not to be released from his duties to attend Conference, thus prevented him from attending Conference.

The Union's Response

3.26 The union explained that as part of the union's Annual Assembly, the union elect an "Arrangements Committee". The duties of the committee include deciding the order of business at Conference, the marrying of items of a like nature and the determination of associated proposed rule changes.

3.27 The committee is made up of elected delegates, from the delegates to the union's Annual Assembly, together with one EC member appointed by the EC as an ex-officio member. The EC member of the Arrangements Committee is not allowed to vote on any issue.

3.28 The union informed me that Mr Carrigan was the EC member appointed by the EC to be the

EC member of the committee. However, following the meeting of 23 March 2000 the duties of the EC were suspended and, at the SAD on the 18 April, three members of the EC, including Mr Carrigan were suspended pending disciplinary action against them.

Reasons for my Decision

3.29 Rule 20(3) clearly refers to membership of the union's Arrangements Committee. The union's GS and VP, on 23 March 2000, may not have had the power to suspend Mr Carrigan from that office, but the SAD that suspended the three EC members on 18 April (and, with that, Mr Carrigan's membership of the Assembly Committee) did have the power to do so as the supreme governing body of the union.

3.30 For this reason, I dismiss this complaint.

Complaint 14: That Rule 15 Clause 1 was breached on 18 April 2000 due to seven full time officers attending Conference with the sanction of the General Secretary/Vice President, and without the instructions of the Executive Committee. (Section 108A (2)(d)of the Act). (Complaint made by Mr Carrigan.)_____

The Applicant's Case

3.31 Mr Carrigan argued that seven officers (of the union) were in attendance at the union's SAD on the 18 April 2000 in breach of Rule 15(1) and that this effectively hindered the proper operation of the union in the field on that day.

The Union's Response

3.32 In response to this complaint the union explained that rule 15(1) was concerned with the duties of District Secretaries. It stated that each District Secretary is to act under the direction of the EC and the GS. They are required to attend branch meetings, organized meetings of members, inquests and various other duties. The rule also provides that they shall attend the Annual Assembly of Delegates when instructed.

3.33 What the rule does not do, the union argued, is to state the number of union officers who should attend Conference.

Reasons for my Decision

3.34 In answer to my questions of Mr Samways, at the hearing, he confirmed that full time officers under rule 15(1) attended both the AAD and meetings of the EC when instructed. He added that, regardless of numbers (of such officers) attending the union's AAD or SAD it did not effect the validity of decisions taken at those conferences and there was, he stated, nothing unconstitutional in those officers attending the SAD. Indeed, he added, he would be somewhat disappointed if they were not in attendance. The matters in question, at the SAD, were crucial to the operation of the union and it was important that full time officers had a first hand view of business of the SAD.

3.35 I agree with the union's submission, that this rule does not specify the number of officers of the union who are required to attend the union's conference. Rule 15(1) is concerned with the duties of the District Secretaries but does not specify how many of their number, or of other officers of the union, should attend the union's conference.

3.36 It is for these reasons that I dismiss this complaint.

Complaint 15: That Rules 21 Clauses 1, 2, 3, 4 and 5 were breached on the 26 June 2000 by the union's resolution 528/408 which was in effect a rule change, without being placed before Branches and Conference. (Section 108A (2)(d)of the Act). (Complaint made by Mr Carrigan.)

The Applicant's Case

3.37 Mr Carrigan argued that the first five clauses of union rule 21 were breached on 26 June 2000 by the union's resolution 528/408. It was argued that this resolution, that an EC sub-committee be created to deal with matters of discipline and report back to the EC, was in effect a rule change without the proposed changes, as required by the union's rules, being placed before the union's branches and Conference.

3.38 He argued that clauses (1) to (5) of rule 21 were breached by the reduction, by the union, of the number of EC members present whilst carrying out unconstitutional disciplinary hearings.

The Union's Response

3.39 The union's argument on this complaint was similar to that on complaint 8. It was argued that by resolution 528/408 of 26 June 2000 a quorate meeting of the EC, with five of the eight members present (the other three being suspended), met and passed the resolution that the report (by the GS re: discipline) be noted and an EC sub - committee be created to deal with matters of discipline and report back to the Executive Committee.

3.40 This, it was argued, was within the powers of the EC so to do under rule 16(16) and was not a rule change. It was argued that for many years the union's EC had formed a range of sub committees dealing with a wide range of issues.

Reasons for my Decision

3.41 Mr Carrigan quoted the first five clauses of rule 21 in arguing that the union's resolution 528/408 was a rule change without going through the union's normal rule change procedures. However, clause (7) of that same rule states "*Resolutions or amendments arising out of reports of Officers, and the Executive Committee shall not be subject to the foregoing clauses.*".

3.42 It is quite clear therefore that clauses (1) to (5) of rule 21 do not, and cannot, apply to a resolution of the union's EC. It was also quite clear from the comments made by both sides to the complaints that the union's EC had, over the years, set up many such sub committees. Indeed I was told by one of the complainants, that a standing joke in the union was that " it had more subs than the German Navy".

3.43 I am satisfied that the actions taken by the EC on 26 June 2000 in forming a sub committee was within its powers so to do and was not a rule change. It is for these reasons that I dismiss this complaint.

E G WHYBREW

Certification Officer