

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION
MADE UNDER SECTION 31, SECTION 55 AND SECTION 108A OF THE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992**

(1) MS S HAYNES

(2) MR C POTTER

(3) MR C MULLEN

(4) MR W McLINDEN

v

SOLIDARITY

Date of Decisions:

22 July 2009

DECISIONS

Upon application by Ms Haynes, Mr Potter, Mr Mullen and Mr McLinden (“the Claimants”) under section 31(1), section 55(1) and section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

Haynes

- (i) I dismiss the complaint of Ms Haynes, upon its withdrawal by her, that on 28 May 2007, Solidarity breached section 30(2)(a) of the 1992 Act by failing to make arrangements for her to inspect accounting records of the Union.

Potter

- (ii) I dismiss the complaint of Mr Potter that on or around 22 October 2007, Solidarity breached section 47(2) of the 1992 Act by allegedly requiring candidates in its National Executive elections to be a member of a political party.
- (iii) I dismiss the complaint of Mr Potter that on or around 22 October 2007, Solidarity breached rule 6(a) of the rules of the Union by Mr Patrick Harrington allegedly taking office within the Union without having been re-instated by the Executive Committee.

Mullen

- (iv) I dismiss the complaint of Mr Mullen that on or around 9 November 2007, Solidarity breached rule 13(i) of the rules of the Union by allegedly

appointing scrutineers for its National Executive elections who had not been so elected by the Executive Committee.

- (v) I dismiss the complaint of Mr Mullen that on or around 19 November 2007, Solidarity breached rule 16(a) of the rules of the Union by the Executive Committee allegedly failing to send out written requests for nomination in connection with its National Executive elections.
- (vi) I dismiss the complaint of Mr Mullen that on or around 19 November 2007, Solidarity breached section 49(2)(b) of the 1992 Act by appointing Silver and Co as the scrutineer for its National Executive Committee elections when the Union allegedly had grounds for believing that the independence of that scrutineer might reasonably be called into question.

McLinden

- (vii) I dismiss the complaint of Mr McLinden that on or around 14 July 2007, Solidarity breached rule 13(l) of the rules of the Union by allegedly holding an Extraordinary General Meeting not called by the Executive Committee.
- (viii) I dismiss the complaint of Mr McLinden that on or around 14 July 2007, Solidarity breached rule 13(m) of the rules of the Union by abolishing the post of Vice-President at an Extraordinary General Meeting, which was allegedly not called in accordance with its rules.

REASONS

1. **Ms Sian Haynes** was a member of Solidarity (“the Union” or “Solidarity”) at the relevant time. By a letter dated 14 November 2007, and by a Registration of Complaint form received in my Office on 30 April 2008, Ms Haynes made various allegations against Solidarity. The complaint that was pursued to a hearing was identified and confirmed by her in the following terms:-

“that Solidarity breached section 30(2)(a) of the 1992 Act, by failing to make arrangements with Ms Haynes to inspect the accounting records to which she had requested access within twenty eight days of the day the request was made. Ms Haynes’ request was made on 28 May 2007 and was for access to the accounting records of the Union, namely - the books of the Union containing the information as provided by rule 12(g) of the Union; the income and expenditure report as provided by rule 12(g) of the Union.”

2. On the second day of the hearing Mr Potter, as Ms Haynes’ representative, withdrew her complaint on the basis that the Union had agreed to give Ms Haynes access to the accounting records of the Union in accordance with section 30 of the 1992 Act. I accordingly dismiss Ms Haynes’ complaint upon withdrawal by her.
3. **Mr Clive Potter** was a member of Solidarity at the relevant time. By a Registration of Complaint form received in my office on 12 February 2008, Mr Potter made various allegations against Solidarity. The two complaints that Mr Potter pursued to a hearing were identified and confirmed by him in the following terms: -

Complaint 1

“that on or around 22 October 2007 in elections to its National Executive, Solidarity breached section 47(2) of the 1992 Act, by requiring candidates in that election to be a member of a political party.”

Complaint 2

“that on or around 22 October 2007, Solidarity breached rule 6(a) by Mr Patrick Harrington taking office within the Union without having been reinstated by the Executive Committee.”

4. **Mr Craig Mullen** was a member of Solidarity at the relevant time. By a letter received in my office on 9 April 2008, Mr Mullen made various allegations against Solidarity. The three complaints that Mr Mullen pursued to a hearing were identified and confirmed by him in the following terms:-

Complaint 1

“that for elections held on or around 19 November 2007, Solidarity breached rule 13(i) by appointing scrutineers who had not been elected by the Executive Committee.”

Complaint 2

“that for elections held on or around 19 November 2007, Solidarity breached rule 16(a) by the Executive Committee failing to send out written requests for nomination.”

Complaint 3

“that on or around 19 November 2007 Solidarity breached section 49(2)(b) of the 1992 Act by appointing Silver and Co as scrutineer for its NEC elections when the Union had grounds for believing that the independence of the scrutineer might reasonably be called into question.”

5. **Mr William McLinden** was a member of Solidarity at the relevant time. By an email of 25 July 2007, and a subsequent Registration of Complaint form, received in my office on 18 September 2007, Mr McLinden made various allegations against Solidarity. The two complaints that Mr McLinden pursued to a hearing were identified and confirmed by him in the following terms:-

Complaint 1

“that on or around 14 July 2007 Solidarity breached rule 13(l) by holding an Extraordinary General Meeting not called by the Executive Committee.”

Complaint 2

“that on or around 14 July 2007 Solidarity breached rule 13(m) by abolishing the post of Vice-President and thereby removing the incumbent, Mr Hawke, at an Extraordinary General Meeting not called in accordance with its rules.”

6. I investigated the alleged breaches in correspondence and a hearing took place on 25 and 26 June 2009.
7. At the hearing, Mr Potter represented himself and the other three Claimants. Mr Potter produced witness statements for himself, Ms Haynes, Mr Mullen, Mr Hawke, Mr Wood and Mr Smith. Only Mr Potter gave oral evidence and was cross-examined. The Union was represented by Mr Kerr, Executive Committee Member. Mr Kerr produced witness statements in advance of the hearing for himself, Mr Harrington, Mr Molloy, Mr Williamson and Ms Foster. At the hearing, he produced additional witness statements for Mr Adam Walker and Mr Mark Walker. Only Mr Kerr, Mr Harrington and Mr Adam Walker gave oral evidence and were cross-examined. A separate bundle

of documents for each Claimant had been prepared by my office. Each bundle contained the documents considered relevant by the parties to that case. At the hearing, I allowed Mr Potter's application to admit a further four documents in the case of Ms Haynes, which I added as pages 158-161 of her bundle. I declined Mr Potter's application to admit further documents on the grounds of relevance, which Mr Potter accepted. The rules of the Union were also in evidence. The Claimants and the Union submitted written skeleton arguments. Mr Potter submitted a bundle containing nineteen authorities.

Findings of Fact

8. Having considered the oral and documentary evidence and the submissions of the parties I find the facts to be as follows:-
9. Solidarity was formed in 2005 and on 5 December 2005 was added to the list of Trade Unions, which I keep pursuant to section 2 of the 1992 Act. It is not a large Union. Upon listing, it had 55 members. In December 2006, it had 42 members. In December 2007, it had 124 members and, at its AGM in February 2008, it had 211 members. Mr Potter played a significant role in founding the Union, which he promoted mainly through the British National Party ("BNP") and the Third Way/National Liberal Party ("Third Way"). The BNP was described by Mr Potter as being the Union's main sponsor. He stated that the Union needed to recruit from the ranks of the BNP as it was "*our first clientele and an existing captive audience*". In 2005, the Treasurer of the Union was Mr J Walker, who was also the Treasurer of the BNP.
10. The Union's first Annual General Meeting ("AGM") was held on 24 February 2007. At this meeting, Mr Potter was elected as President, Mr Hawke as Vice-President and Mr Harrington as General Secretary/Treasurer. These three constituted the Executive Committee ("EC") and by rule 13(d) of the Rules of the Union, meetings of the EC required a quorum of three. It was the Union's intention to hold elections which complied with Chapter IV of the 1992 Act by the time of the next AGM in February 2008.
11. By Easter 2007, however, there was friction between Mr Potter and Mr Hawke on the one hand and Mr Harrington on the other. This emerged following Mr Harrington's request to be supplied with a laptop computer and, in particular, following a meeting that Mr Potter and Mr Hawke had with Mr Griffin, the Chairman of the BNP, in which Mr Griffin pressed Mr Harrington's case to be provided with not only a laptop but also a small Union salary. Mr Potter considered this to be an unwarranted and unwanted interference in the affairs of the Union. At about the same time there was also an issue about Mr Harrington's alleged failure to make certain financial information available to the other members of the EC prior to the submission of the Union's first Annual Return to my office.
12. On 20 May 2007, the Union's EC met in London. The issues set out in paragraph 11 were discussed. Mr Potter and Mr Hawke agreed that there would be a formal investigation into the activities of Mr Harrington as General Secretary, with a view to his suspension. The minutes of this meeting are in

dispute and Mr Harrington denies being present when any such resolution was approved.

13. Mr Potter sought advice from a Mr McLinden as to how the EC should proceed in these circumstances. Mr McLinden was known to Mr Potter as an experienced trade unionist and he produced for Mr Potter an 11 page plan of action which included the following passage:

“... unless you stick without question to the BORDERS, I present to you in this Agenda, completely in sequence and wording. YOU WILL fail in this struggle with the political animal you worry may escape investigation of his conduct in the Union. This SPECIAL EXECUTIVE MEETING is in fact the cage to harness such an animal and if you try to design the cage on anything MORE OR LESS, than I have presented it to you for such a purpose. This ANIMAL WILL CHEW through your bars and be free to breed its own species in our Union, which at all times must be protected from any factions within our body...”

14. The Special EC meeting to which Mr McLinden referred took place in Liverpool on 3 June 2007. Mr Harrington was not invited and did not attend. The minutes of that meeting describe Mr McLinden as the Acting-General Secretary, although there is no actual minute appointing him to such a position. The minutes do record that Mr Harrington was suspended from office. Mr Harrington was informed of his suspension later that day by telephone and his suspension was subsequently confirmed in a letter from Mr Potter dated 4 June.
15. The difficulty for the Union at that meeting and thereafter was that it was unable to hold a meeting of the EC which was quorate.
16. Mr Potter asserts that during June 2007, the BNP continued to exert unwarranted and unwanted pressure on him and the Union. By way of example, he referred to an email from Mr Griffin of 12 June in which Mr Griffin asked him to co-operate “*with a confidential BNP enquiry into the Patrick Harrington affair*”. He also referred to an email of 19 June from the Treasurer of the BNP, in which Mr Potter was asked to accept a compromise whereby the size of the EC would be expanded to seven members with one of the additional posts going to a member of Third Way and another three posts to BNP members. Mr Potter further pointed to a BNP newsletter of 20 June, in which there was a call on all members of Solidarity to demand an emergency general meeting (“EGM”) to be held on 14 July to enlarge the EC from three members to seven. Mr Griffin also sent an email to Mr Potter on 21 June asking him to support the call for an EGM.
17. During this period, Mr Harrington continued to regard himself as being the General Secretary of Solidarity on the basis that his alleged suspension on 3 June 2007 was effected at an inquorate EC. He maintained control of the Union’s website, mailing lists and other records. He informed members that the mailing address had been changed from Leicester (where Mr Potter lives) to Edinburgh (where Mr Harrington lives). On the other hand, Mr Potter regarded Mr Harrington’s activities as being unconstitutional and that only he, Mr Hawke and Mr McLinden could act in the name of Solidarity. There was,

in effect, an impasse and it has been said that from about this time there were two Unions in existence, both claiming to be Solidarity.

18. Recognising this impasse, Mr Harrington wrote to all members of the Union, on or about 24 June 2007, asking them to complete a form calling for an EGM. He stated:

“If two thirds of our members request an EGM it will take place on July 14. Details of venue will be sent in advance of the meeting. If you wish to propose motions or constitutional amendments please submit them at least seven days prior to the meeting. Motions will need a seconder who is also a Solidarity member.”

Mr Harrington posted a similar notification on the Solidarity website and sent an email circular to members in similar terms.

19. By 5 July 2007, Mr Harrington had announced that more than two thirds of the members had by then written or emailed their backing for an EGM and that Solidarity members had been notified that the meeting would take place in Brentwood on 14 July. By 10 July, Mr Harrington had announced that members had submitted motions which proposed increasing the Executive to seven places, creating a dedicated role of Treasurer, changing the registered office of the Union and creating a committee to examine the Union’s constitution. In evidence, Mr Harrington stated that motions had also been received to delete the position of Vice-President.
20. In the meantime, Mr Potter had arranged an Extraordinary EC meeting in Liverpool for 8 July 2007. This meeting was attended by Mr Potter, Mr Hawke and Mr McLinden and they considered an investigation report on Mr Harrington that had been prepared by Mr McLinden. The meeting resolved to expel Mr Harrington from the Union. On 9 July, Mr Potter wrote to Mr Harrington confirming his expulsion.
21. The EGM took place at Brentwood on 14 July 2007. Mr Harrington gave evidence that between 30 to 35 members attended. He further stated that the meeting decided not to remove the existing members of the EC but to increase its size from three members to seven. Having done so, it elected four new EC members; Mr Adam Walker (as President), Mr Kerr, Ms Clarke and Ms Nieuwhof, in addition to Mr Harrington, Mr Potter and Mr Hawke. The meeting also decided, amongst other things, to remove the post of Vice-President and to establish a separate post of Treasurer.
22. On 17 July 2007, Mr Potter was expelled from the BNP.
23. On 18 August 2007, Mr Potter convened another Special EC in Leicester. The attendees are listed as Mr Potter and Mr Hawke with a guest attendee listed as Mr Mullen. The minutes record that Mr Mullen was appointed as Acting-General Secretary. According to the witness statement of Mr Mullen, Mr McLinden had retired on personal grounds.
24. Also in or about August 2007, the Union’s main bank, HSBC, had frozen the Union’s bank account on the basis of the conflicting information it had

received as to which faction represented its client. Mr Potter gave evidence that from about this time he was unable to provide services to members. This culminated on 9 December 2007 with a posting on the website, which was still within Mr Potter's control, which stated:

“Solidarity Members: Cancel your Standing Orders. Following on from the December Executive Meeting it was decided that due to the limbo state of the Union all Solidarity members must be advised to cancel their membership payments. The President has stated that these individuals will still be effective members of the Union but that until further notice the membership fee is effectively £0.”

25. In September 2007, the EC which had been appointed at the EGM on 14 July, decided to hold elections in November 2007 for the position of President, General Secretary and membership of the EC. Notifications were sent to members that nominations must be received by Solidarity at a PO Box in Spennymoor, County Durham, by 22 October. At a meeting of this EC on 30 September there was a discussion about the appointment of a scrutineer. Mr Harrington had made enquiries with a number of potential scrutineers but found that the controversial nature of Solidarity, with its links to the BNP, reduced the number of those willing to take on this function. The EC decided to appoint Mr Hogarth of Silver & Co, a firm of accountants which acted as the auditors to the BNP.
26. At the close of nominations on 22 October 2007, Mr Harrington was the only nominee for the post of General Secretary and Mr Adam Walker was the only nominee for the post of President. There were six nominations for the five remaining positions on the EC, for which an election was organised. On 5 November, the membership was informed that Mr Harrington and Mr Adam Walker had been elected unopposed.
27. The ballot closed on 19 November 2007, and the scrutineer, Mr Hogarth, issued his report on 20 November. He announced the election of Mr Aronsson, Ms Clarke, Mr Durant, Mr Kerr and Mr Mark Walker.
28. In January 2008, Mr Hawke resigned as Vice-President of the EC of which Mr Potter was President and was replaced by a Mr Hadley.
29. In February 2008, Mr Harrington organised the second AGM of Solidarity, which was held in Birmingham. At this meeting the decisions and resolutions of the EGM, or Special Conference, held on 14 July 2007 were “*endorsed and confirmed*”.
30. In May 2008, I appointed an Inspector to investigate the financial affairs of Solidarity, following allegations made to me by Mr Potter and others. The present complaints were not listed pending that investigation. The report of the Inspector was published on 28 November 2008.

The Relevant Statutory Provisions

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

Requirements to be satisfied with respect to elections

s.47 Candidates

(1) No member of the trade union shall be unreasonably excluded from standing as a candidate.

(2) No candidate shall be required, directly or indirectly, to be a member of a political party.

(3) A member of a trade union shall not be taken to be unreasonably excluded from standing as a candidate if he is excluded on the ground that he belongs to a class of which all the members are excluded by the rules of the union.

But a rule which provides for such a class to be determined by reference to whom the union chooses to exclude shall be disregarded.

s.49 Appointment of independent scrutineer

(1) The trade union shall, before the election is held, appoint a qualified independent person ("the scrutineer") to carry out –

- (a) the functions in relation to the election which are required under this section to be contained in his appointment; and*
- (b) such additional functions in relation to the election as may be specified in his appointment.*

(2) A person is a qualified independent person in relation to an election if -

- (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and*
- (b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.*

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Breach of Rules

s.108A Right to apply to Certification Officer

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b)- (c)-*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e)-*

(3) The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.

The Relevant Union Rules

32. The Rules of the Union which are relevant for the purpose of this application are as follows:-

Rule 6 Members to Hold Office

(a) Any member found guilty of misappropriation or attempted misappropriation of funds or property of the Union shall be barred or dismissed from holding office or delegateship of the Union. Reinstatement in any office shall be vested in the Executive Committee only.

(b) Any member who is already or becomes an Officer of any other Trade Union shall not be eligible to hold any office or delegateship within this Union.

Rule 12 General Secretary

(k) In the case of a sudden and unforeseen vacancy it shall be necessary for the Executive Committee to take steps for the government of the Union in the interim before the election.

Rule 13 Executive Committee

(a) There shall be an Executive Committee elected under the Rules to manage Solidarity.

(b) Vacancies occurring between elections may be filled by the Executive Committee from its own number until the next election are held unless at the date of when the vacancy occurs there shall be more than 12 months before the next scheduled elections in which event an election shall be held and the successful candidate shall hold office for the balance of the outstanding term.

(d) Three shall form a quorum for a meeting of the Executive Committee.

(i) The Executive Committee shall elect Scrutineers to examine and record all votes received from members entitled to vote for the election of the Executive Committee or other matters. Scrutineers are to be nominated from within the District or Division that conference is being held. Scrutineers shall be elected on the basis of one from each Region or Division.

(l) The Executive Committee shall be empowered to call a Special Conference at any time if in their opinion circumstances warrant.

(m) The Executive Committee or any members may be removed by a two-thirds majority vote of the delegates present at a Special Conference called for that purpose upon a request being called to the General Secretary and signed by two-thirds of those entitled to attend the Annual Conference.

Rule 16 Elections

(a) For each election, candidates must be nominated and this will be achieved through the Executive Committee sending out a written request for nominations.

Complaints

Mr Potter - Complaint One

33. Mr Potter's complaint is in the following terms:
"that on or around 22 October 2007 in elections to its National Executive, Solidarity breached section 47(2) of the 1992 Act, by requiring candidates in that election to be a member of a political party."
34. Section 47(2) of the 1992 Act provides as follows:
No candidate shall be required, directly or indirectly, to be a member of a political party.

35. Mr Potter conceded that the Union had not imposed any direct requirement that any candidate in the October/November 2007 elections to the EC must be a member of a political party. However, he submitted that there was an indirect requirement that any candidate must be a member of the BNP or Third Way/ National Liberal Party. Mr Potter based this submission on the inference he drew from the fact that the BNP had tried to exert influence on the Union in 2007 through Mr Griffin, the BNP's Chairman, and Mr J Walker, its Treasurer. He also relied on the witness statements of Mr Smith and Mr Wood as evidence that the BNP were seeking to exert influence over Solidarity in an attempt to seize control of it. Mr Potter relied particularly on assertions by them that the EGM on 14 July would place various members of the BNP and Third Way on the EC in shadow roles pending an election. He went on to argue that at about the same time, the BNP had publicly stated its intention to have the four new members of the EC made up of one from Third Way and three from BNP, which is what he asserts turned out to be the case. Mr Harrington and Mr Kerr were members of Third Way. Mr Potter asserted that all the other members of Mr Harrington's EC were members of the BNP. However, there was disputed evidence about whether the unsuccessful candidate, Ms Nieuwhof was a member of the BNP.
36. Mr Kerr, for the Union, submitted that there was no case to answer on the basis that there was clearly no direct requirement on candidates to be a member of a political party and there was also no indirect requirement. He accepted that the BNP had lobbied its members over this period, but he maintained that this was because the Union was in serious difficulties and the BNP wanted to help sort things out. Mr Kerr referred to the notice to members inviting them to seek nomination and pointed out that it contained no requirement of membership of a political party. He stated that some candidates included reference to their political party in their election addresses but that this was a matter entirely for them. He also submitted that persons nominated were not subject to any vetting procedure and no nominee was prevented from being a candidate. He argued that political parties are free to advise their members whom to vote for but that members remain free to cast their votes as they wish.

Conclusion

37. I find that the Union imposed no direct requirement that candidates in the October/November 2007 elections to the EC must be a member of a political party, as indeed was conceded by the Claimant. The notice seeking nominations invited nominations from "*any member*" and was not subject to later qualification.
38. I further find that there was no, or no sufficient, evidence of an indirect requirement to a similar effect. The evidence adduced by the Claimant is evidence of a political party seeking to influence the views and actions of its members who were also members of the Union. As the Union targeted its recruitment on members of the BNP it should have come as no surprise that the BNP might seek to influence those of its members who joined the Union. However, this complaint concerns any direct or indirect requirement that the

Union might have imposed on candidates to be a member of a political party. The lobbying by a political party of its members to vote in a particular way is not evidence of such a requirement being imposed by the Union on candidates in an election.

39. For the above reasons, I refuse to grant a declaration that the Union breached section 47(2) of the 1992 Act by allegedly requiring candidates in the October/November 2007 EC elections to be a member of a political party.

Mr Potter - Complaint 2

40. Mr Potter's second complaint is in the following terms:
"that on or around 22 October 2007, Solidarity breached rule 6(a) by Mr Patrick Harrington taking office within the Union without having been reinstated by the Executive Committee."
41. Rule 6(a) of the Rules of the Union provides:
Any member found guilty of misappropriation or attempted misappropriation of funds or property of the Union shall be barred or dismissed from holding office or delegateship of the Union. Reinstatement in any office shall be vested in the Executive Committee only.
42. Mr Potter submitted that Mr Harrington had been suspended from his position as General Secretary of the Union at the Special EC meeting on 3 June 2007 and expelled from membership at the Extraordinary EC meeting on 8 July. In these circumstances, he asserted that Mr Harrington had no right to continue to hold himself out as General Secretary. He argued that the EGM of 14 July had not been called in accordance with the rules of the Union and that accordingly its decisions had no effect. Mr Potter submitted that the EGM could not and did not re-instate Mr Harrington as General Secretary. He further argued that the elections in October/November 2007 were called by an improperly elected EC and were therefore null and void, with the result that Mr Harrington's election as General Secretary was ineffective. In Mr Potter's submission, rule 6(a) has the effect that only the EC of which he was the President, could re-instate Mr Harrington as General Secretary and it had not done so. In response to the argument that the meetings of the EC which suspended and then expelled Mr Harrington were inquorate, Mr Potter argued that a quorum is organic and that the EC had the power to co-opt additional members by rules 12(k) and 13(b). He submitted that there was a quorum of three at these meetings, having regard to the presence of Mr McLinden.
43. For the Union, Mr Kerr submitted that Mr Harrington was not suspended or expelled from the Union, as the meetings at which these actions were allegedly taken were inquorate. He argued that the actions of Mr Potter and Mr Hawke were an attempted "palace coup", as shown by the action plan prepared by Mr McLinden. Mr Kerr submitted that following the breakdown on the EC, the Union was in serious difficulties and the members petitioned the only General Secretary they knew. He stated that it was not Mr Harrington who called the EGM, but rather that Mr Harrington had invited members to make such a call, which they had done in the required numbers with proposed motions. He pointed out that Mr Potter could have attended the EGM but

chose not to do so. He further pointed out that the decisions taken at the EGM were later ratified at the AGM in February 2008.

Conclusion

44. The determination of this complaint requires an analysis of the events from the time of the EC meeting on 20 May 2007. It also requires a determination of which body was the EC of the Union in the period preceding 22 October 2007, the date that nominations closed for the October/November elections.
45. The difficulties in which the Union found itself arose from the fact that rule 13(d) of the rules of the Union provides that the EC shall have a quorum of three and that in February 2007 the AGM elected an EC of three. This required an element of goodwill amongst the members of the EC, which had dissipated by May 2007.
46. I find that the meeting of the EC on 20 May 2007 was quorate, with Mr Potter, Mr Hawke and Mr Harrington each being present. At that meeting Mr Potter and Mr Hawke decided that Mr Harrington's actions should be investigated with a view to his suspension. I find that it is significant that Mr Harrington was not actually suspended at that meeting.
47. I also find that Mr Harrington was neither invited to, nor did he attend, the Special EC held by Mr Potter in Liverpool on 3 June 2007. Mr Potter maintains that this meeting was quorate as he and Mr Hawke co-opted Mr McLinden as the Acting-General Secretary. Notwithstanding the fact that the minutes do not record any such co-option, in my judgment any co-option can only be agreed at a quorate meeting of the EC. Even on Mr Potter's account, the meeting which co-opted Mr McLinden was not quorate. Accordingly, Mr McLinden did not become a member of the EC in June 2007 and its subsequent decisions were those of an inquorate body. They were void and of no effect. Mr Harrington therefore remained the General Secretary of Solidarity after the time of his purported suspension and expulsion.
48. Given the above circumstances, the Union was ungovernable by either Mr Harrington on the one side or by Mr Potter and Mr Hawke on the other. In such a case it is appropriate to look to the membership to resolve the impasse at a General Meeting. Mr Potter chose not to do so, stating that he did not have the necessary funds, following the freezing of the Union's bank account, and because he was sure he would be the subject of what he described as "black propaganda" from the BNP. However, having chosen to recruit mainly BNP members, this second concern was one of Mr Potter's own making. Mr Harrington decided to invite members to call for an EGM.
49. The rules of the Union provide for two methods whereby an EGM (or, more properly, a Special Conference) may be called. These are:

13(l) The Executive Committee shall be empowered to call a Special Conference at any time if in their opinion circumstances warrant.

(m) The Executive Committee or any members may be removed by a two-thirds majority vote of the delegates present at a Special Conference

called for that purpose upon a request being called to the General Secretary and signed by two-thirds of those entitled to attend the Annual Conference.

50. It was clearly not possible for a Special Conference to be called under 13(l) as there was no functioning EC. Rule 13(m) provides for a Special Conference to be called upon request to the General Secretary signed by two thirds of those entitled to attend the Annual Conference. I find that such a request was made to Mr Harrington in his capacity as General Secretary by the required number of members. However, the provisions of rule 13(m) appear to restrict the business that can be conducted at such a Special Conference to the removal of the Executive Committee or any of its members. Mr Kerr, for the Union, submitted that the EGM did discuss the removal of members of the EC but decided not to do so and that other motions had been submitted by members. In my judgment, the powers of a Special Conference called under rule 13(m) are not restricted to the removal of members of the EC. The Special Conference is the constitutional safeguard of the Union where problems not capable of resolution within the rules of the Union can be sorted out. The instant case is a classic example of the role of the general meeting in a membership organisation. I find the reference in rule 13(m) to the removal of members of the Executive Committee is for the avoidance of doubt and without prejudice to the wider powers of the Special Conference to determine those matters for which the Special Conference was called. Accordingly, in my judgment, the EGM held on 14 July was lawfully called within the rules of the Union.
51. Exercising the same powers of appointment as the AGM in 2007, the EGM on 14 July validly appointed a seven-person EC, including Mr Potter and Mr Hawke, with Mr Harrington as General Secretary.
52. It was this EC which decided to hold elections in October/November 2007 for the position of President, General Secretary and members of the EC. I find that it was entitled to do so under the rules of the Union.
53. On 22 October 2007, the nominations for those elections closed. Mr Harrington was the only person nominated for the position of General Secretary and he was therefore declared elected unopposed. In my judgment, Mr Harrington was properly elected as General Secretary in October/November 2007.
54. For the above reasons, I refuse to grant a declaration that the Union breached rule 6(a) of its rules by Mr Harrington taking office within the Union without having been re-instated by the Executive Committee.

Mr Mullen - Complaint One

55. Mr Mullen's first complaint is in the following terms:
"that for elections held on or around 19 November 2007, Solidarity breached rule 13(i) by appointing scrutineers who had not been elected by the Executive Committee."

56. Rule 13(i) of the rules of the Union provides as follows:
The Executive Committee shall elect Scrutineers to examine and record all votes received from members entitled to vote for the election of the Executive Committee or other matters. Scrutineers are to be nominated from within the District or Division that conference is being held. Scrutineers shall be elected on the basis of one from each Region or Division.
57. Mr Potter, for Mr Mullen, submitted that the only EC which had the authority to appoint or elect a scrutineer was the EC of which Mr Potter was President. He argued that as the scrutineer was appointed or elected by the EC appointed by the EGM of 14 July 2007, the appointment was ineffective.
58. Mr Kerr, for the Union, submitted that after the EGM of 14 July 2007, the EC of the Union was the one that had been appointed at that EGM and that accordingly the scrutineer had been appointed by the lawful EC of Solidarity.

Conclusion

59. I find that the scrutineer of the October/November 2007 election was elected at a meeting of the EC on 30 September 2007. The EC which elected the scrutineer was the one appointed at the EGM on 14 July and, as I have found above, was the lawful EC of the Union at the relevant time. I reject Mr Potter's argument that the only EC which could elect the scrutineer in accordance with rule 13(i) is the EC of which he held himself out as President.
60. For the above reasons, I refuse to grant a declaration that on or around 19 November 2007 Solidarity breached rule 13(i) of its rules by appointing scrutineers not elected by the EC.

Mr Mullen - Complaint 2

61. Mr Mullen's second complaint is in the following terms:
"that for elections held on or around 19 November 2007, Solidarity breached rule 16(a) by the Executive Committee failing to send out written requests for nomination."
62. Rule 16(a) of the rules of the Union provides as follows:
"For each election, candidates must be nominated and this will be achieved through the Executive Committee sending out a written request for nominations."
63. Mr Potter, for Mr Mullen, made a similar submission to that in Mr Mullen's first complaint; namely, that the EC which made the request for nominations for the elections in October/November 2007 was not the lawful EC, in that it was not the EC of which he was President.
64. Mr Kerr, for the Union, submitted that after the EGM on 14 July 2007, the EC of the Union was the one that had been appointed at that EGM and that accordingly the request for nominations had been made by the lawful EC of Solidarity.

Conclusion

65. I find that written requests for nominations for the October/November 2007 elections were sent out by the EC appointed at the EGM on 14 July. As I have found above, this was the lawful EC at the relevant time. I reject Mr Potter's argument that the only EC which could send out written requests for nominations in accordance with rule 16(a) was the EC of which he held himself out as President.
66. For the above reasons, I refuse to grant a declaration that on or around 19 November 2007, Solidarity breached rule 16(a) of the rules of the Union by the Executive Committee allegedly failing to send out written requests for nomination in connection with its National Executive elections

Mr Mullen - Complaint Three

67. Mr Mullen's third complaint is in the following terms:
"that on or around 19 November 2007 Solidarity breached section 49(2)(b) of the 1992 Act by appointing Silver and Co as scrutineer for its NEC elections when the Union had grounds for believing that the independence of the scrutineer might reasonably be called into question."
68. Section 49(2) of the 1992 Act provides as follows:
A person is a qualified independent person in relation to an election if -
(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
(b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the election otherwise than competently or that his independence in relation to the union, or in relation to the election, might reasonably be called into question.
69. Mr Potter, for Mr Mullen, submitted that the scrutineer, Mr Hogarth of Silver & Co, was not independent in relation to the Union as Silver & Co were known to be the auditors of the BNP, which was seeking to seize control of the Union. Mr Potter also alluded to freemasonry connection between Silver & Co and Mr Edgar Griffin, the father of Mr Nick Griffin, but stated that he did not wish to dwell on that argument. He also referred to the fact that Mr Griffin senior was formerly an accountant.
70. Mr Kerr, for the Union, stated that Mr Hogarth was not a member of Solidarity and that Silver & Co were appointed to do a straightforward professional job. He further stated that the only relevance of Silver & Co being the auditors of the BNP was that it demonstrated their willingness to take on such work when others were not prepared to do so. He submitted that Mr Potter had produced no evidence of any freemasonry link between the Union and the scrutineer.

Conclusion

71. The test of independence in section 49(2)(b) of the 1992 Act is a lower one than actual objective independence. It is whether the Union has no grounds for believing that the independence of the scrutineer in relation to the Union or the election might reasonably be called into question. In my judgment, Mr Potter

has not adduced evidence sufficient to overcome even this test. I find that his references to Mr Griffin senior and to freemasonry were made without any solid foundation or even conviction. I further find that the fact of Silver & Co being the auditors to the BNP is not sufficient in itself for the Union to have grounds for believing that the scrutineer's independence might reasonably be called into question. This is especially so as the statutory test refers to the scrutineer's "*independence in relation to the Union or in relation to the election*". There was no evidence that Mr Hogarth's independence in relation to either of these matters might reasonably be called into question, beyond Mr Potter's speculation.

72. For the above reasons, I refuse to grant a declaration that on or around 19 November 2007 Solidarity breached section 47(2)(b) of the 1992 Act by appointing Mr Hogarth of Silver & Co as scrutineer of its EC election.

Mr McLinden - Complaint One

73. Mr McLinden's first complaint is in the following terms:
"that on or around 14 July 2007 Solidarity breached rule 13(l) by holding an Extraordinary General Meeting not called by the Executive Committee."
74. Rule 13(l) of the rules of the Union provides as follows:
The Executive Committee shall be empowered to call a Special Conference at any time if in their opinion circumstances warrant.
75. Mr Potter, for Mr McLinden, submitted that the EC of which he was President, had not called a Special Conference in accordance with rule 13(l) nor did it receive a request from members to do so. He argued that, in the relevant circumstances, a Special Conference could only have been called under rule 13(l), as rule 13(m) only permitted one to be called for the purpose of removing the EC or any of its members.
76. Mr Kerr, for the Union, submitted that there was no breach of rule 13(l) as the call that had been made for a Special Conference was made pursuant to rule 13(m). He argued that the call that had been made under rule 13(m) had been made lawfully, in accordance with rule, and did not require the involvement of the EC.

Conclusion

77. In paragraphs 48 to 50 above I have analysed the application of rules 13(l) and 13(m) to the facts of this case. In my judgment, the Special Conference or EGM held on 14 July 2007 was not called pursuant to rule 13(l) but pursuant to rule 13(m). Rule 13(l) was not therefore engaged by the calling of this Special Conference. As I have found, the Special Conference was, in my judgment, lawfully called within the rules of the Union.
78. For the above reasons I refuse to grant a declaration that Solidarity breached rule 13(l) of the rules of the Union by holding an EGM not called by the Executive Committee of which Mr Potter was President.

Mr McLinden - Complaint Two

79. Mr McLinden's second complaint is in the following terms:
"that on or around 14 July 2007 Solidarity breached rule 13(m) by abolishing the post of Vice-President and thereby removing the incumbent, Mr Hawke, at an Extraordinary General Meeting not called in accordance with its rules."
80. Rule 13(m) of the Rules of the Union provides as follows:
The Executive Committee or any member may be removed by a two-thirds majority vote of the delegates present at a Special Conference called for that purpose upon a request being called to the General Secretary and signed by two-thirds of those entitled to attend the annual Conference.
81. Mr Potter, for Mr McLinden, repeated the submissions he had made in respect of Mr McLinden's first complaint. He argued that the removal of the post of Vice-President went beyond the powers of an EGM called under rule 13(m), the powers of which were restricted to the removal of the EC or any of its members.
82. Mr Kerr, for the Union, repeated his earlier submissions. He argued that the EGM had not removed Mr Hawke from the EC, although he agreed that it had deleted the post of Vice-President. Mr Kerr maintained that an EGM had all the powers of an AGM to amend the rules of the Union, including the power to delete the post of Vice-President. He further submitted that, even if Mr Potter's arguments were correct, the decisions reached at the Special Conference on 14 July 2007, were ratified by the AGM in February 2008 and were therefore given both retrospective and prospective effect.

Conclusion

83. In paragraphs 48-50 above I have analysed the application of rules 13(l) and 13(m) to the facts of this case. In my judgment, the Special Conference or EGM held on 14 July 2007, was properly called in accordance with rule 13(m) and had the power to amend the rules so as to delete the requirement to have a Vice-President.
84. For the above reasons I refuse to grant a declaration that Solidarity breached rule 13(m) of its rules by abolishing the post of Vice-President at the EGM held on 14 July 2007.

David Cockburn
The Certification Officer