

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

**Mr Anthony Sweeney**

**v**

**Union of Construction, Allied Trades and Technicians**

**Date of Decisions**

**27 November 2014**

**DECISIONS**

Upon application by Mr Anthony Sweeney (“the claimant”) under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I refuse the claimant’s application for a declaration that on or around 26 August 2013, the Union of Construction, Allied Trades and Technicians breached rule 26.1 of its rules by Mr Winstanley having charged him with acting against the interests of the union in breach of rule 25.1(i).
2. I refuse the claimant’s application for a declaration that on or around 26 August 2013, the Union of Construction, Allied Trades and Technicians breached rule 26.4 of its rules in that the charge made by Mr Winstanley against the claimant was allegedly not based on the discovery of the relevant facts.
3. I refuse the claimant’s application for a declaration that in breach of rule 26.8 of its rules the Union of Construction, Allied Trades and Technicians allegedly did not give him a full and fair hearing before its Executive Council on 15 January 2014 or its General Council on 18 March 2014.
4. I declare that, in breach of rule 27.8 of its rules, the Union of Construction, Allied Trades and Technicians (“the Union”) failed to cause the General Council of the Union to meet within 20 working days of the Executive Council’s decision to expel Mr Sweeney.

**Enforcement Order**

Where I make a declaration I am required by section 108B(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. In the circumstances of this case I consider that it would be appropriate to do so. The enforcement order I make is as follows

- (a) The decision of the General Council of the Union of 18 March 2014 to reject the claimant’s appeal from the decision of the Executive Council of 15 January 2014 and to impose a lesser sanction is forthwith set aside and of no

effect. The decision of the Executive Council of 15 January 2014 that the claimant be expelled from the Union for life shall stand, subject to the determination of the claimant's appeal made by his letter of 17 February 2014.

(b) The claimant's appeal against the decision of the Executive Council of 15 January 2014, unless withdrawn, is to be reconvened and his appeal re-heard on or before 27 January 2015 in accordance with the rules of the Union, save for the rules relating to the time within which such appeals are to be heard. The parties are given leave to apply for an extension of time upon proof of exceptional circumstances.

5. I refuse the claimant's application for a declaration that, in breach of the principles of natural justice which were said to be implied into rules 26 and 27 of its rules, the sanctions applied to him by the Executive Council on 15 January 2014 and the General Council on 18 March 2014 were allegedly disproportionate.

6. I refuse the claimant's application for a declaration that, in breach of the principle of natural justice which was said to be implied into rules 26 and 27 of its rules that a member has a right to be heard by an unbiased tribunal, the Executive Council on 15 January 2014 and the General Council on 18 March 2014 reached disciplinary decisions against him which were biased.

## **REASONS**

1. Mr Sweeney brought this application as a member of the Union of Construction, Allied Trades and Technicians ("UCATT" or "the Union"). He did so by a registration of complaint form which was received at my office on 21 July 2014.
2. Following correspondence with my office, Mr Sweeney confirmed his complaints in the following terms:

### **Complaint 1**

On or around 26 August 2013, the Union breached Rule 26, clause 1 of UCATT's Rules by Mr. J. Winstanley having charged Mr. A. Sweeney with conduct against the interests of UCATT / breach of Rule 25, clause 1, sub-clause (i). Mr. Winstanley complained that Mr. Sweeney had called for him to be removed from the Blacklist Support Group meeting on 3 August 2013. The chairperson of the meeting, which was held on private premises, was entitled to have Mr. Winstanley, or anyone else for that matter, removed from the meeting. The chairperson's authority to do so was further endorsed by a conclusive vote of those present. UCATT's Rules hold no jurisdiction under such circumstances.

### **Complaint 2**

On or around 26 August 2013, the Union breached Rule 26, clause 4 of UCATT's Rules in that Mr. J. Winstanley's charge had no basis in fact as required by Rule – 'discovery of the relevant facts'. His accusation that Mr. Sweeney launched a highly personal and vitriolic attack on both himself and UCATT on 3 August 2013 was a total fabrication.

### **Complaint 3**

In breach of rule 26(8) of the rules of the Union, the Union did not give Mr Sweeney a full and fair hearing before the Executive Council on 15 January 2014 or the General Council on 18 March 2014 for the following reasons:

- (a) the Executive Council did not properly and fairly consider the evidence before it;

- (b) the letter dated 20 December 2013, which invited Mr Sweeney to attend a hearing before the Executive Council had an intimidating tone and thereby undermined the fairness of this hearing;
- (c) in reaching its decision, the Executive Council improperly took into account that Mr Sweeney supports an independent inquiry into the way that UCATT is run; and
- (d) in setting out its findings in a letter dated 19 March 2014, the General Council gave disproportionate weight to Mr Winstanley's evidence.

#### **Complaint 4**

In breach of Rule 27, clause 8 of UCATT's Rules, the General Council did not meet within 20 working days of the Executive Council's decision to expel Mr. Sweeney for consideration of his appeal. The Executive Council's decision to expel Mr. Sweeney for life from UCATT was conveyed to him by letter dated 22 January 2014 and received by him on 24 January 2014. The General Council met to consider Mr. Sweeney's appeal on 18 March 2014. The period of 20 working days expired on 21 February 2014.

#### **Complaint 5**

On or around 15 January 2014 the Executive Council decided to expel Mr Sweeney for life from the Union and on or around 18 March 2014 the General Council decided to suspend Mr Sweeney from the Union for 15 years. These sanctions were in breach of the principle of natural justice, which is implied into rules 26 and 27 of the rules of the Union, that any sanction that is imposed by the Union needs to be proportionate to the offence or offences that the member is deemed to have committed.

#### **Complaint 6**

On or around 15 January 2014 and 18 March 2014, the Executive Council and General Council respectively reached disciplinary decisions against Mr. Sweeney which were biased and thereby in breach of the principle of natural justice that a member has a right to be heard by an unbiased tribunal, which is implied into Rules 26 and 27 of UCATT's Rules. The bias shown to Mr. Sweeney was the result of him being known to be critical of UCATT's leadership and supportive, with others, of an independent inquiry into the Union's affairs. He has also been the target of previous, spurious charges, intent on expelling him from UCATT. One such charge dated 23 April 2013 was again from Mr. Winstanley.

- 3. I investigated the alleged breaches in correspondence and a hearing took place on 5 November 2014.
- 4. At the hearing before me Mr Sweeney was represented by Mr Terry Brough, a friend. Oral evidence for Mr Sweeney was given by himself, Mr John Flanagan, Mr Barry Scragg and Mr Paul Filby, all of whom also presented written witness statements. Mr Sweeney also produced a written witness statement from Mr Roy Bentham who did not attend the hearing to give oral evidence. The Union was represented by Mr Deshpal Panesar of counsel, instructed by Mr Steve Cottingham of OH Parsons. Evidence for the Union was given by Mr Neil Vernon, President of the UCATT Executive Council and Mr Patrick Dowling, member of the Union's General Council, both of whom produced written witness statements. There was also in evidence the rules of the Union and a 127 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. Before the hearing, I accepted an application from Mr Sweeney for the late submission of extracts of the Union's rules in 1982 and 1988, which were added to the bundle as pages 128-132. I refused the claimant's application for the late submission of two other documents on the grounds of their lack of relevance to the issues I had to decide.

## Findings of Fact

5. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
6. Mr Sweeney is a 65 year old retired joiner. He first joined the Union in 1969 and has held intermittent membership since then. At the relevant time he was a member of the Huyton UD119 Branch. Whilst working, he had been a site steward and convenor. Mr Sweeney states that before he retired he was blacklisted by employers in the construction industry for his trade union activities, arising out of which he is now a participant in a group legal action against McAlpines and others. He is also known to be critical of the leadership of the Union and to have called for an enquiry into their conduct.
7. This case concerns the events that took place at a meeting of the Blacklist Support Group on 3 August 2013 and the subsequent disciplinary action taken against Mr Sweeney under the rules of the Union that led him to being excluded from the Union for 15 years. In order to understand Mr Sweeney's case, however, it is necessary to explain some background matters.
8. In 2009, it was revealed that a blacklist of trade union activists was being kept by an organisation known as the Consulting Association. The blacklist led to a considerable number of union members being denied employment in the construction industry. The existence of this blacklist remains a matter of the greatest importance to UCATT and other trade unions. It is the subject of ongoing litigation and its use has been raised on a number of occasions in Parliament. Shortly after the discovery of the blacklist, there was established the Blacklist Support Group ("the BSG") by rank and file building workers. This is now a significant body in the pursuit of remedies for those affected by the blacklisting. It holds an AGM at which officers are elected and holds regional meetings to publicise current issues and inform members of both legal and political developments. Mr Bentham convenes such meetings in the North West. Mr Sweeney and others maintain that the BSG took a greater initial interest in pursuing this issue than did UCATT which, he says, only latterly began supporting members in taking legal action. He stated that the BSG is the leading organisation on the blacklisting issue and it is where he and his colleagues go for updates.
9. As noted above, Mr Sweeney is known to be critical of the current leadership of the Union and to have called for an independent enquiry of the Union. Similar views have been accredited, amongst others, to Mr Bentham, Mr Brough, Mr Filby and a former UCATT member Mr Flanagan. The events of early 2013 gave rise to a concern by Mr Sweeney that the leadership of the Union was looking for an opportunity to discipline their opponents and possibly expel them from the Union. He noted that Mr Flanagan had been expelled in 2013 and that another opponent of the current leadership, Mr Dooley, had also been disciplined and expelled. As evidence of his concern, Mr Sweeney referred me to an alleged physical assault of an opponent of the current leadership in January 2013, to a threatened defamation action by a former North West Regional Secretary against a member of the BSG and internal disciplinary charges brought by Mr Winstanley, the Everton Branch Secretary of the Union, against himself, Mr Filby, Mr Bentham and Mr Flanagan on

23 April 2013 for allegedly having distributed leaflets outside a Branch Officers' and Shop Stewards' ("BOSS") meeting on 27 March. In these circumstances, Mr Sweeney considered that the words and actions of himself and others were being reported back to the Union with a view to possible future disciplinary action being taken against them.

10. On 3 August 2013, there was a meeting of the BSG held in the offices of Unite the Union in Liverpool. This was a public meeting that had been advertised in the Liverpool Echo and by flyers. The meeting was to be addressed by a Liverpool councillor, Mr Nick Small, and by a representative from Gunay, Clark & Ryan, solicitors who were acting for a number of building workers, including Mr Sweeney, in the group action against McAlpine and others. Mr Winstanley attended this meeting. Mr Sweeney stated that it was the first such meeting that Mr Winstanley had attended. Mr Flanagan was elected Chairman but before the start of business, Mr Sweeney objected to the continued presence of Mr Winstanley. The precise words he used and the tone of his objection are in dispute. Mr Sweeney maintains that he objected to Mr Winstanley's presence on the basis that he had brought charges against four people in the room and that members would be inhibited from speaking freely if they felt that someone was present who might report back on their behaviour and perhaps bring charges. Mr Winstanley later described Mr Sweeney as having made a highly personal and vitriolic attack on both him and UCATT. Mr Filby spoke in support of Mr Sweeney's objection to Mr Winstanley's continued presence. Mr Winstanley addressed the meeting briefly, stating that in UCATT everyone was charging everyone else and he had been charged himself. Mr Flanagan put the matter to a vote and it was decided that Mr Winstanley should be excluded from the meeting by 21 votes for, four against, with four abstentions. Mr Winstanley did not immediately leave the room. Security was called and Mr Winstanley left the room voluntarily with the encouragement of the security officer. Mr Brough voted against this motion and later told Mr Sweeney that he did so because he feared that any action taken against Mr Winstanley would be used against him and possibly other Union members also.
11. On 20 August 2013 Mr Winstanley wrote to the General Secretary, Mr Steve Murphy, to make a formal charge against Mr Sweeney for his conduct at the BSG meeting on 3 August. Mr Winstanley referred to the language used by Mr Sweeney at the meeting and to the fact that he had been expelled from it. He charged Mr Winstanley with breaching rule 25(1)(i) of the rules of the Union, which relates to actions against the interests of the Union. Mr Winstanley's manuscript letter is dated ambiguously. His notation could be read as 20 or 26 August. A number of Mr Sweeney's complaints to me refer to 26 August. However, it is clear from a date stamp at the foot of the letter that the correct date was 20 August. I therefore take no point on Mr Sweeney's incorrect references to 26 August.
12. On 30 September 2013, the General Secretary wrote to Mr Sweeney informing him of the charge that had been made against him and that the Executive Council ("EC") would be hearing the charge as soon as practicable.
13. On 4 December 2013, a further charge was made against Mr Sweeney. The North West Regional Council charged him with breaches of rule 25 for having acted

against the interests of the Union by the contents of his election address in relation to the election of delegates to the National Delegate Conference 2014.

14. On 20 December 2013, Mr Sweeney was sent three letters by the General Secretary, separately informing him that the three different charges that had been made against him would be heard by the EC on 15 January 2014 at the Union's North West Regional Office in Liverpool. It had been decided to hear the cases in Liverpool as the EC had seven disciplinary cases to consider that day involving members in the North West Region. Mr Sweeney has made a separate complaint about the General Secretary's letter to him of 20 December and so I set this out in full:

*"Mr A Sweeney,*

*Dear Colleague,*

**Mr J. Winstanley's Charge Under Rule 26**

*Further to my letter of the 30 September 2013, this is to advise you that arrangements have now been made for Mr J Winstanley's charge against you to be heard by the Executive Council.*

*I am attaching a further copy of the charge against you and would confirm that the Executive Council will be hearing the charges made against you on **Wednesday 15<sup>th</sup> January 2014 at the North West Regional Office in Liverpool commencing at 2pm.** I must add that should you decide not to attend the hearing, the charges will be heard in your absence.*

*You are charged under General Rule 25 Clause 1(i) 'By his or her conduct acts against the interests of the Union'.*

*You may be accompanied by such witnesses as are considered appropriate to this hearing but in accordance with the provisions of General Rule 26, Clause 7 you are required to notify me of the names and addresses of the witnesses you wish to be in attendance.*

*Yours sincerely,*

*Steve Murphy General Secretary"*

15. The EC is composed of nine members, one elected from each region of the Union. At its meeting on 15 January 2014 one member was absent and the member elected from the North West Region recused himself. The seven cases considered by the EC were disposed of as follows:

**15.1 *The charge brought by Mr Winstanley against Mr Sweeney arising out of the BSG meeting on 3 August 2013.***

Mr Sweeney was accompanied (but not represented) by Mr Brough. Mr Filby gave evidence in support of Mr Sweeney. Mr Winstanley gave evidence that he had seen the meeting advertised in the Liverpool Echo and had gone to the meeting to ask Councillor Small a number of questions. Mr Winstanley had himself been blacklisted and his legal claim, unlike that of Mr Sweeney, had been taken up by the Union. He stated that Mr Sweeney had got up at the beginning of the meeting and ranted about there being a spy in the room who should be asked to leave. Towards the end of the hearing, Mr Sweeney stated that if certain other UCATT members attempted to attend any future BSG meetings, they would also be asked to leave. He named these as Messrs Parry, Bramwell and Shepherd. They are each members of the North West Regional Council. Mr Parry is also a member of the General Council. The EC decided that the charge was proven and that Mr Sweeney should be excluded from the Union for life.

15.2 *The charge brought by the North West Regional Council against Mr Sweeney in relation to his election address in the election to the NDC 2014.*

The EC decided that the charge was proven but imposed no sanction. It stated that no action should be taken against Mr Sweeney on this occasion but that he should be warned about any future conduct.

15.3 *The charge brought by Mr Winstanley against Mr Sweeney arising out of his alleged distribution of leaflets on 27 March 2013.*

At this hearing Mr Winstanley explained that he was concerned about the contents of the leaflets, which related to the business of his Everton branch, being distributed generally. Mr Winstanley stated that the leaflet he was given had been handed to him by Mr Flanagan. Mr Sweeney explained that by the time he joined the group standing outside the venue of the meeting all the leaflets had gone. In the absence of any evidence that Mr Sweeney had distributed any of the leaflets, the EC dismissed the charge.

15.4 *The charge brought by Mr Winstanley against Mr Flanagan arising out of his alleged distribution of leaflets on 27 March 2013*

This charge was discontinued on the ground that Mr Flanagan was no longer a member of the Union.

15.5 *The charge brought by Mr Winstanley against Mr Bentham arising out of his alleged distribution of leaflets on 27 March 2013*

This charge was postponed at the hearing and was later withdrawn.

15.6 *The charge brought by Mr Winstanley against Mr Filby arising out of his alleged distribution of leaflets on 27 March 2013*

This charge was postponed at the hearing and was later withdrawn.

15.7 *The charge brought by Mr Sweeney against his Regional Secretary, Mr Fisher.*

This charge was ruled inadmissible as there was no provision in the rules to charge the Regional Secretary.

16. On 22 January 2014, the General Secretary sent three separate letters to Mr Sweeney informing him of the outcome of the three different charges against him that had been considered by the EC on 15 January. In relation to the charge concerning the BSG meeting on 3 August 2013, the letter states, as an apparent finding by the EC, that Mr Sweeney had verbally attacked not only the Union but Mr Winstanley and had persisted in his demand for Mr Winstanley to leave the meeting. It also records that Mr Sweeney was quite defiant of his actions and had stated that certain other UCATT members would also not be allowed at future meetings. The letter states that the EC had unanimously decided to uphold the charge and Mr Sweeney was expelled for life as from the date of the hearing. Mr Sweeney received this letter on 24 January.

17. On 30 January 2014, Mr Sweeney prepared and dated a Notice of Appeal from the decision of the EC in the form of a four line letter to the General Secretary.

However, Mr Sweeney understood that such an appeal had to be submitted through his Branch Secretary and be read out to the branch in accordance with rules 27.2 and 27.6. He intended to present his appeal at the next meeting of the branch on 11 February. Unfortunately, that branch meeting was cancelled as the Branch Secretary had to go into hospital.

18. In the above circumstances, Mr Sweeney hand delivered his appeal letter to the North West Regional Office on 12 February 2014. His letter was forwarded to the Union's head office the same day and it was received at head office on 13 February.
19. By a letter to Mr Sweeney of 17 February 2014, the General Secretary confirmed that Mr Sweeney's appeal had been received at head office on 13 February and asked for his confirmation when the letter had been delivered to the regional office. The General Secretary explained that this confirmation was necessary as he had to convene the hearing before the General Council ("the GC") in accordance with rule 27.8, within 20 working days of the decision of the EC.
20. By a letter to Mr Sweeney of 25 February 2014, the General Secretary informed him that his appeal would be heard on 18 March at head office. It also confirmed that by rule 27.2 no evidence other than that which was before the EC was admissible.
21. On 4 March 2014, Mr Sweeney sent an email to the General Secretary expressing his concern at the date set for the hearing. He stated that it fell outside the 20 working day period allowed by rule 27.8 and continued, "*I am unwilling to be party to a clear breach of rules which would occur if I were to comply with your proposal*". He suggested that he be provided with an alternative date within the 20 working day period. This suggestion would only have been capable of providing an appeal date that was in time if the start date for the 20 working day period was to be taken as the date the Union received Mr Sweeney's appeal, the 12 or 13 February, and not the date of the decision of the EC as provided for in rule 27.8.
22. On 5 March 2014, the General Secretary wrote to Mr Sweeney informing him that it was a practical impossibility for his appeal hearing to have been arranged within four days of receipt of his appeal at head office. This appears to have been calculated on the basis that the start date for the 20 working day period was 22 January, the date of the General Secretary's letter informing Mr Sweeney of the result of the EC hearing. The General Secretary continued that, "*Members of the GC are lay members and not only are they required to have time off work, they are also to travel from all over the country*". He concluded by advising Mr Sweeney that if he did not attend the appeal hearing, the GC may adjudicate his appeal in his absence.
23. Mr Sweeney submitted a one page manuscript document to the Union dated 8 March 2014 setting out his appeal in more detail.
24. The GC considered Mr Sweeney's appeal on 18 March 2014. The GC consists of nine lay members, one elected from each of the nine regions of the Union. Its principal purpose is to hear appeals but it also elects three of its members to be the trustees of the Union. It also has the power to suspend the EC if it decides that *'it is*



*indispensable for the effective maintenance of the Union'*, whereupon it shall appoint four of its number to temporarily perform the duties of the EC. Mr Sweeney's appeal was considered by seven members of the GC, one member being absent and the member for the North West Region, Mr Parry, being recused.

25. The GC was addressed by the President of the EC, Mr Vernon, who explained what had happened at the hearing before the EC and that in setting the sanction, the EC had regard to Mr Sweeney's stated intention to have other UCATT members excluded from future meetings of the BSG, should they seek to attend. Mr Winstanley then made a statement to the GC in which he repeated what he had said to the EC and answered questions. The GC considered Mr Sweeney's written statement. Having regard to all the material before it, the GC decided to endorse the decision of the EC, dismissing Mr Sweeney's appeal. However, it also decided that the expulsion should be reduced to 15 years, rather than being for life.
26. By a letter dated 19 March 2014, the General Secretary informed Mr Sweeney that the EC had decided to uphold the decision of the EC and dismiss his appeal, setting out its reasons for doing so in six numbered paragraphs. Mr Sweeney was also informed of the revised sanction.
27. Mr Sweeney commenced this application to me by a registration of complaint form received at my office on 21 July 2014.

### **The Relevant Statutory Provisions**

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

**108A Right to apply to Certification Officer.**

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

*(2) The matters are -*

- (a) the appointment or election of a person to, or the removal of a person from, any office;*
- (b) disciplinary proceedings by the union (including expulsion);*
- (c) the balloting of members on any issue other than industrial action;*
- (d) the constitution or proceedings of any executive committee or of any decision-making meeting;*
- (e) such other matters as may be specified in an order made by the Secretary of State.*

**108B Declarations and orders.**

*(1) – (2) ...*

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing 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.*

## The Relevant Rules of the Union

29. The rules of the Union which are relevant for the purposes of this application are:

### **RULE 25**

#### **Disciplinary Powers**

1. The EC shall have power to impose a fine not exceeding £75, suspend from all or any benefits or from holding any office, or exclude from the Union, any member who, in the opinion of the EC:

- (i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour;
- (ii) refuses to carry out any decision of any governing body of the Union made in virtue of the Rules, or disregards such decision, or acts against it;
- (iii) wilfully or otherwise breaks or evades any provision of the Rules of the Union;
- (iv) wilfully or otherwise breaks the working rules and conditions of employment applicable to the industry in which s/he is working;
- (v) misappropriates or fraudulently receives any money, funds or other property of the Union, or make any false declaration in regard thereto.

2. The EC shall have power to take all or any of the measures specified in the preceding clause against all or any of the members of any Branch, council, or committee, who in the opinion of the EC is or are guilty of any offence specified in the preceding clause.

3. The powers specified in Clause 1, shall also be exercisable, within their jurisdiction, by any Regional Council or Branch at any specially summoned Branch meeting, acting against any member who, in its opinion, is guilty of any of the offences specified in Clause 1.

*Provided always that no decision of a Regional Council or Branch involving the exclusion of any member under this or any other Rule of the Union except Rule 7, Clause 18, shall become operative until it has been confirmed by the EC, except in the case of full-time officials who shall be subject to discipline by the EC under Rule 18, Clause 16.*

4. No decision shall be taken by virtue of the provisions of Clauses 1, 2 or 3 of this Rule unless and until the requirements as to procedure in rule 26 have been complied with.

### **RULE 26**

#### **Procedure for Dealing with Charges**

1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the union.

2.-3. ...

4. Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts.

5. The Secretary of the Union authority before whom the charge is made shall give to the member charged written notice of the charge, specifying the facts on which the charge is based and the Rule or Rules of the Union under which the charge is made. S/he shall notify in writing the complainant and the member charged of the date and place of the hearing and of their right to address the Union authority and to produce evidence, including a witness or witnesses, in order to support or rebut the charge or charges. Such notice shall constitute a summons to the complainant and to the member charged to attend at the time and place stated in the notice.

6-7...

8. The union authority before whom the charge is made shall give to the complainant and

to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides.

## **RULE 27**

### **Appeals of Members, Branches and Regional Councils**

1. Any member or members excepting regional full-time officials or national organisers aggrieved at a decision of the Branch, Regional Council, or Executive Council shall have a right of appeal against any such decision as set out hereafter. Such right of appeal shall similarly apply to the Branch or Regional Council. In the case of appeals concerning the working rules the appeal in the first instance shall be dealt with by the Regional council. Any other appeals shall be directed to the Executive Council. Any appeal against the decision of the EC shall be to the GC whose decision shall be final and binding, subject to any power vested in any court or tribunal.

2. In all cases, appeals must be made in writing through the Branch Secretary or Regional Secretary in the case of Regional Council appeals. The appellant or appellants in all cases shall have the right to appear at all levels of the appeals procedure if s/he so wishes and be accompanied by a member. No evidence other than that which was before the council which made the decision appealed against will be admitted or accepted by any council dealing with an appeal. Appeals must be lodged to reach the appropriate council within 28 days of receipt by the member or members of the decision appealed against, failing which such decision shall be final and binding, subject to any power vested in any court or tribunal. The BS shall forward the appeal without delay. In no case shall a Branch withhold the appeal of a member or members.

3. Any council dealing with appeals shall have power to alter, amend or modify any decision appealed against and shall set out clearly the reasons upon which a decision or decisions were based.

A fine which has been quashed, and any amount by which a fine has been reduced on appeal shall be repaid forthwith. Except where in cases of emergency the authority of the Union making the decision rules to the contrary, a fine, a suspension or exclusion of a member and a suspension or removal from office shall not take effect until the appeal has been dismissed or the time for appeal has expired.

4.-5. ...

6. All correspondence or copies of correspondence sent or received by the Branch Secretary in connection with the appeals of member(s) must be read to the Branch. The member or members who are appealing shall be notified to the effect, in order that they may attend and hear the same read.

7. All provisions in these rules as to appeals of members shall apply also to excluded members and to persons claiming on account of members.

8. Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the GS and the Chair of the GC. In the case of any decision of the EC involving the expulsion of a member the GC shall meet within 20 working days of such a decision for consideration of the appeal.

## **CONSIDERATIONS AND CONCLUSIONS**

### **Complaint One**

30. Mr Sweeney's first complaint is as follows:

#### **Complaint 1**

"On or around 26 August 2013, the Union breached Rule 26, clause 1 of UCATT's Rules by Mr. J. Winstanley having charged Mr. A. Sweeney with conduct against the interests of UCATT / breach of Rule 25, clause 1, sub-clause (i). Mr. Winstanley complained that Mr.

Sweeney had called for him to be removed from the Blacklist Support Group meeting on 3 August 2013. The chairperson of the meeting, which was held on private premises, was entitled to have Mr. Winstanley, or anyone else for that matter, removed from the meeting. The chairperson's authority to do so was further endorsed by a conclusive vote of those present. UCATT's Rules hold no jurisdiction under such circumstances."

31. Rules 25.1(i) and 26.1 of the rules of the Union provide as follows:

**RULE 25**

**Disciplinary Powers**

1. The EC shall have power to impose a fine not exceeding £75, suspend from all or any benefits or from holding any office, or exclude from the Union, any member who, in the opinion of the EC:

(i) by his or her conduct acts against the interests of the Union; such conduct to include racist or sexist behaviour;

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1. The EC, any Regional Council, any Branch, Branch Committee or member of the Union may charge any member with any offence alleged to have been committed against Rule 25 or against any other Rule of the union.

**Summary of Submissions**

32. Mr Brough, for Mr Sweeney, submitted that Mr Winstanley's charge against Mr Sweeney had two strands. One was the fact of Mr Winstanley's removal from the BSG meeting on 3 August 2013 and the other was Mr Sweeney's alleged rant against him and the Union. Mr Brough argued that it was the attendees at the meeting who had voted to exclude Mr Winstanley. It was not Mr Sweeney's decision to make. He also argued that Mr Sweeney's remarks to the meeting were considered and reasoned. Mr Brough noted that Mr Winstanley was known to be hostile to the BSG and had never before been to one of its meetings. Further, Mr Brough noted that Mr Winstanley was a part of the UCATT group legal action, not that of the BSG. He asked rhetorically why Mr Winstanley was at the BSG meeting, other than to gather information to launch further disciplinary complaints. He noted that Mr Winstanley had already taken out disciplinary complaints against Mr Sweeney, Mr Flanagan, Mr Filby and Mr Bentham, who were all present at the meeting. Mr Brough further noted that there had been three members of the North West Regional Council present at previous BSG meetings, Messrs Parry, Bramwell and Shepherd and explained that Mr Sweeney considered that Mr Winstanley was there in place of them. Further, he argued that the Union rules had no jurisdiction over what occurred at a public meeting on private premises and that the general law, as explained in 'The ABC of Chairmanship' by Walter Citrine, prevailed over the rules of the Union.

33. Mr Panesar, for the Union, submitted that the jurisdiction of the Union's rules was not limited by where the offending behaviour occurred and that the rules govern more than just conduct at UCATT meetings. He argued that it was perfectly compatible for Mr Winstanley to have been required to leave the BSG meeting on 3 August 2013 in a manner which was lawful under the Public Order Act and/or the law of trespass but for Mr Sweeney to have acted contrary to the interests of the Union by what he did and how he did it. Mr Panesar noted that Mr Sweeney did not personally exclude Mr Winstanley from the meeting but argued that he caused Mr Winstanley's exclusion, as without his intervention and what he had said to the

meeting Mr Winstanley would not have been excluded. Mr Panesar further commented that Mr Winstanley clearly had an interest in being at the meeting, given the importance of the blacklisting issue generally to the Union and the fact that he had personally been blacklisted and his family had suffered hardship as a consequence.

### **Conclusions – Complaint One**

34. Mr Sweeney's complaint refers to the alleged breaches having occurred on or about 26 August 2013. This is a mistaken reference to 20 August 2013, the date of Mr Winstanley's charge against him (see paragraph 11 above). This complaint therefore looks to the charge brought by Mr Winstanley and appears to argue that the bringing of such a charge is in itself a breach of rule 26.1.
35. Firstly, my jurisdiction in respect of alleged breaches of rules under section 108A of the 1992 Act is generally understood as relating to actions taken by or on behalf of a union or actions in breach of specific duties imposed on individuals by the rules of a union. Understood in this way, the decision of a member to charge another member under a discretionary power contained in the rules does not come within my jurisdiction. Whether a member charges another member is not a matter over which the Union has any control. The duty of a union in such circumstances is to process that charge in accordance with the rules. It seems to me that Mr Sweeney's complaint is really against the way the charge was dealt with by the Union but this is not a matter with which rule 26.1 is concerned.
36. In any event, I accept Mr Panesar's submission that, whether or not Mr Winstanley's exclusion from the BSG meeting of 3 August 2013 was lawful under statute or common law, it was still capable of being the foundation of a charge under the rules of the Union. The two are not incompatible. It is not a matter of the Union's rules prevailing over the general law. They clearly do not, as the Union readily accepted.
37. The thrust of Mr Brough's argument was that the purpose of Mr Winstanley's presence at the BSG meeting was mischievous, that Mr Sweeney had acted rationally in seeking to have him excluded in order to promote a discussion that was free from the fear of recrimination, that he went about this constitutionally by seeking a vote of those present and that he spoke in a balanced and considered manner. In such circumstances, Mr Sweeney considered that he should not even have been charged let alone found guilty. However, that approach is to ignore the rules. The rules provide for a process in which two opposing positions can be considered. Rule 26.1 provides for the beginning of that process. I find that by Mr Winstanley having commenced that process by his letter of 20 August 2013 the Union was not in breach of rule 26.1.
38. For the above reasons, I refuse Mr Sweeney's application for a declaration that on or around 20 or 26 August 2013 the Union breached rule 26.1 by Mr Winstanley charging him with acting against the interests of the Union in breach of rule 25.1(i).

## Complaint Two

39. Mr Sweeney's second complaint is as follows:

### Complaint 2

On or around 26 August 2013, the Union breached Rule 26, clause 4 of UCATT's Rules in that Mr. J. Winstanley's charge had no basis in fact as required by Rule – 'discovery of the relevant facts'. His accusation that Mr. Sweeney launched a highly personal and vitriolic attack on both himself and UCATT on 3 August 2013 was a total fabrication.

40. Rule 26.4 of the rules of the union provides as follows:

### **RULE 26**

#### **Procedure for Dealing with Charges**

4. Any such charges must be made and received by the appropriate council within 28 days of the discovery of the relevant facts

## Summary of Submissions

41. Mr Brough, for Mr Sweeney, submitted that rule 26.4 had been breached as Mr Winstanley's charge against Mr Sweeney was not factual, in the sense that it was not based on the correct facts. He argued that the charge relied entirely on what Mr Winstanley had said but that Mr Winstanley had been shown to be untruthful by having brought a complaint against Mr Sweeney for distributing leaflets and then having admitted that he had not seen Mr Sweeney distribute any such leaflets. Mr Brough further argued that Mr Winstanley had been unable to give the hearing before the EC any detail of Mr Sweeney's alleged attack on UCATT. He submitted that the thrust of his argument was that Mr Winstanley had brought the charge with vindictive intent and that it was not based on *'the discovery of the relevant facts'*.
42. Mr Panesar, for the Union, submitted that Mr Winstanley's charge made allegations which the Union was under an obligation to process. He observed that the evidence before the Union contained much common ground but that there were important differences which needed to be resolved. Mr Panesar argued that the Union could not disregard the possibility that Mr Sweeney used stronger language than he now says he used. He also noted that Mr Winstanley's disputed reference to being a called a spy by Mr Sweeney was not much different to Mr Sweeney's position, in that Mr Sweeney said he was concerned that Mr Winstanley would report back on any words or actions that he thought could be the subject of a disciplinary charge. Mr Panesar submitted that there was no basis for finding that Mr Winstanley's allegations were 'a complete fabrication' and that accordingly this complaint is misconceived.

## Conclusion – Complaint Two

43. Mr Sweeney alleges a breach of rule 26.4 by Mr Winstanley's letter of 20 August bringing the charge against him. Rule 26.4 sets the period within which any complaint must be received by the appropriate council. It was not alleged that Mr Winstanley's charge was made out of time and accordingly rule 26.4 is not engaged on the facts of this case.
44. Mr Brough argued that rule 26.4 was relevant if emphasis is given to the words *'discovery of the relevant facts'*. He submitted that there were no relevant facts which gave rise to an arguable case against Mr Sweeney. I find this submission to

be an attempt by Mr Brough to shoehorn Mr Sweeney's overriding complaint that the decisions of the EC and GC were perverse into a rule within my jurisdiction. Rule 26.4 imposes no preliminary sieve on the nature of any charge that the Union must process beyond whether the charge has been made in time. Accordingly, I find this complaint is misconceived.

45. For the above reasons I refuse Mr Sweeney's application for a declaration that on or around 20 or 26 August 2013, the Union breached rule 26.4 in that the charge made by Mr Winstanley against the claimant was allegedly not based on the discovery of the relevant facts.

### **Complaint Three**

46. Mr Sweeney's third complaint is as follows:

#### **Complaint 3**

In breach of rule 26(8) of the rules of the Union, the Union did not give Mr Sweeney a full and fair hearing before the Executive Council on 15 January 2014 or the General Council on 18 March 2014 for the following reasons:

- (a) the Executive Council did not properly and fairly consider the evidence before it;
- (b) the letter dated 20 December 2013, which invited Mr Sweeney to attend a hearing before the Executive Council had an intimidating tone and thereby undermined the fairness of this hearing;
- (c) in reaching its decision, the Executive Council improperly took into account that Mr Sweeney supports an independent inquiry into the way that UCATT is run; and
- (d) in setting out its findings in a letter dated 19 March 2014, the General Council gave disproportionate weight to Mr Winstanley's evidence.

47. Rule 26.8 of the rules of the Union provides as follows:

#### **RULE 26**

##### ***Procedure for Dealing with Charges***

*8. The union authority before whom the charge is made shall give to the complainant and to the member charged a full and fair hearing of their case at the time and place stated in the notice. It shall consider such documentary and, in so far as it is reasonably practicable, oral evidence as is produced by both sides.*

### **Summary of Submissions**

48. Mr Brough, for Mr Sweeney, submitted that the weight of the evidence was so much in Mr Sweeney's favour that any reasonable EC or GC was obliged to have dismissed the charge. He argued that the Union was set on excluding Mr Sweeney regardless of the evidence and accordingly the EC did not properly or fairly consider the evidence and improperly took into account Mr Sweeney's support for an enquiry into the Union. Mr Brough further argued that the GC gave Mr Winstanley's evidence undue weight. He described Mr Winstanley's evidence as being 'featherweight' and that it was inappropriate for Mr Winstanley to have addressed the GC. Mr Brough objected to the Union's letter to Mr Sweeney of 20 December 2013 because it referred to the charges being heard in Mr Sweeney's absence if he decided not to attend the hearing. He submitted that rule 26.5 prescribes the content of such a letter from the General Secretary and does not require the person charged to be given such a warning. He further argued that rules 26.9 and 26.10 deal sufficiently with the situation of a person who is unable to attend a hearing. In Mr Brough's submission this additional sentence in the letter of 20 December was consistent with the Union seeking to remove a known opponent of the leadership.

He also argued that the Union could not claim that it had acted fairly having regard to the way it had dealt with the other two charges against Mr Sweeney on 15 January 2014, having dismissed one charge and having imposed no sanction in the other. Mr Brough argued that the evidence in those cases was so strong that the EC had no other option. Further, Mr Sweeney's view was that the decision to exclude Mr Winstanley from the BSG meeting meant that as far as the Union was concerned, it was 'job done' and there was no need to impose any further sanction in relation to these other two complaints.

49. Mr Panesar, for the Union, submitted that Mr Sweeney was given a full and fair hearing. He noted that Mr Sweeney had had an opportunity to give evidence, call witnesses and make representations. He noted the evidence of Mr Vernon and Mr Dowling that all the material before the EC and GC was carefully considered. Mr Panesar argued that the EC and GC properly came to their decisions on the evidence before them and the fact that Mr Sweeney disagreed with their decisions does not amount to a breach of the rules. He noted that there was nothing inappropriate or intimidating about the letter from the General Secretary to Mr Sweeney of 20 December 2013, which was in any event a standard form letter sent to all persons against whom a disciplinary charge was being processed. Mr Panesar submitted that the Union's evidence of how it dealt with the three different charges against Mr Sweeney showed that they had considered each charge on its merits. He further argued that the fact that Mr Winstanley told the EC that he had not seen Mr Sweeney hand out leaflets on 27 March 2013 demonstrated his credibility. Mr Panesar maintained that there was no evidence that the EC or GC had had regard to irrelevant matters. In his submission, the EC heard clear evidence from Mr Winstanley which it was entitled to accept in preference to the evidence of Mr Sweeney and Mr Filby. Similarly, the GC were entitled to conclude that the decision of the EC should be upheld. Mr Panesar noted Mr Dowling's evidence that it was common for both the person who made the charge and for the person charged to appear before the GC and there was no rule that prevented the person who had made the charge from being present. Mr Panesar submitted that Mr Sweeney was dressing up his disagreement with the decisions of the EC and GC as various breaches of rule but his complaint was really one of perversity. He noted the different ways that the appeal courts had expressed the test of perversity and submitted that this case did not come near any of them. In his submission, the EC and GC heard eye witness evidence of the event in question and it cannot be said to have reached a perverse decision by preferring the evidence of Mr Winstanley.

### **Conclusion – Complaint Three**

50. Rule 26.8 requires the EC to give the member charged a full and fair hearing. Mr Sweeney does not complain that he was unaware of the charge he had to face or that he was unable to make representations or call witnesses. His core complaint is that the EC, and subsequently the GC, came to a wrong decision on the evidence before it. Significantly, Mr Sweeney, when asked in cross examination if the EC was biased, replied *"I'm not saying the EC was biased. I am saying they made the wrong decision on the evidence before them"*. On the other hand, Mr Flanagan gave evidence that he considered the bodies to be biased and Mr Brough expressed a similar view. A finding of bias on the part of a disciplinary tribunal is a serious matter and requires convincing evidence. Whilst there is evidence that



Mr Sweeney was a thorn in the side of the leadership of the Union and has been the subject of an unusual number of disciplinary complaints, that evidence is insufficient in itself to establish bias. I take into account in particular that both the EC and GC are made up of nine elected lay members. The GC only meets infrequently and is unlikely to be subservient to the EC, the body that it in effect supervises. To successfully argue that both these bodies are biased against a person charged with a disciplinary offence would require more convincing evidence than was before me in this case. The terms of the letter from the General Secretary to Mr Sweeney of 20 December 2013 are of no material assistance to Mr Sweeney. I find that the words to which objection is taken are standard form words in all such letters to persons accused of a disciplinary offence and therefore not evidence of bias or victimisation of Mr Sweeney. I further find that the invitation to the hearing before the GC of both Mr Sweeney and Mr Winstanley is not evidence of bias. On the contrary, it is an indication that the GC sought to come to its own view on the competing versions of the events at the BSC on 3 August 2013 and thereby test the conclusion of the EC. In my judgement, the decisions of the EC and GC in this matter were not legally perverse. They were decisions to which the bodies were entitled to come on the evidence before them and are not in themselves evidence that Mr Sweeney was not accorded a full and fair hearing of his case.

51. For the above reasons I refuse Mr Sweeney's application for a declaration that in breach of rule 26.8 of its rules the Union allegedly did not give him a full and fair hearing before the EC on 15 January 2014 or the GC on 18 March 2014.

#### **Complaint Four**

52. Mr Sweeney's fourth complaint is as follows:

##### **Complaint 4**

In breach of Rule 27, clause 8 of UCATT's Rules, the General Council did not meet within 20 working days of the Executive Council's decision to expel Mr. Sweeney for consideration of his appeal. The Executive Council's decision to expel Mr. Sweeney for life from UCATT was conveyed to him by letter dated 22 January 2014 and received by him on 24 January 2014. The General Council met to consider Mr. Sweeney's appeal on 18 March 2014. The period of 20 working days expired on 21 February 2014.

53. Rule 27.8 of the rules of the Union provides as follows:

##### **RULE 27**

##### **Appeals of Members, Branches and Regional Councils**

*8. Consideration of an appeal by the General Council shall constitute the final stage of the appeals procedure of the Union, and its decisions shall be final and binding upon all members of the Union. Appeals shall be considered by consultation on timing between the GS and the Chair of the GC. In the case of any decision of the EC involving the expulsion of a member the GC shall meet within 20 working days of such a decision for consideration of the appeal.*

#### **Summary of Submissions**

54. Mr Brough, for Mr Sweeney, sought to pursue this complaint with the greatest vigour and at the greatest length. He argued that rule 27.8 required the Union to organise Mr Sweeney's hearing before the GC within 20 working days of the decision to expel him. It was common ground that the EC decided to expel Mr Sweeney on 15 January 2014 and that the period of 20 working days thereafter expired on 12 February 2014. He noted that the GC met on 18 March 2014 and

that accordingly the appeal was clearly convened out of time and in breach of rule 27.8. Mr Brough refuted the Union's argument that this breach had been caused by Mr Sweeney's delay in submitting his appeal. He noted that by rule 27.2 appeals had to be lodged within 28 days of receipt of the decision appealed against, which meant that Mr Sweeney had until 21 February to lodge his appeal. He commented that Mr Sweeney's appeal was received well before the time limit for lodging appeals had expired, having been received at the regional office on 12 February and at head office on 13 February. In these circumstances, Mr Brough argued that Mr Sweeney could not be criticised for delay. He further argued that by rule 27.2 all such appeals must be made through the Branch Secretary and by rule 26.6 all correspondence relating to such an appeal must be read to the branch. In Mr Brough's submission, these rules mean that appeals can only proceed if read out at a branch meeting. He observed that this was not possible in Mr Sweeney's case, due to the hospitalisation of Mr Sweeney's Branch Secretary at the time of the branch meeting due to be held on 11 February, and that Mr Sweeney had acted very promptly in submitting his appeal to the regional office on the following day, 12 February. In response to the Union's argument that it was not possible to summon the GC any earlier and that the GC often met more than 20 working days after the decision appealed from, Mr Brough submitted that the Union had to comply with the rules and should perhaps have made contingency plans as soon as the decision was made because it was obvious that Mr Sweeney would wish to appeal. Mr Brough further argued that any custom and practice could not prevail over an express rule. Relying on the case of **Braithwaite v. Electrical, Electronic Telecommunications and Plumbing ("EETPU") (1969) 2 All ER 849**, Mr Brough submitted that where union rules provide for an appeal against expulsion, the member is entitled to have his or her appeal heard strictly in accordance with those rules and a failure to do so will make the expulsion void, even if the failure was accidental.

55. Mr Panesar, for the Union, submitted that the 20 working day period to convene the GC expired on 12 February 2014 which was the same day that Mr Sweeney submitted his appeal to the regional office. He argued that in these circumstances compliance with rule 27.8 was impossible and that, where compliance is impossible, there is no breach of rule. In his submission, the ability to comply with the rule was frustrated. Mr Panesar observed that Mr Sweeney could have given notice of intention to appeal at any time after 24 January 2014, when he received the decision of the EC, but that he had failed to do so, thereby contributing to the impossible position in which the Union found itself. Mr Panesar further observed that any disadvantage suffered by Mr Sweeney in not attending the GC hearing was self-inflicted. He noted that Mr Sweeney was invited to the hearing and could have attended. Mr Panesar suggested that Mr Sweeney's decision not to attend the GC was a tactical one, preferring to take a procedural point rather than facing the substance of the case against him.

#### **Conclusion – Complaint Four**

56. Rule 27.8 of the rules of the Union provides that in the case of any decision of the EC involving the expulsion of a member, the GC shall meet within 20 working days of such a decision for consideration of the appeal. In this case, it is common ground that the decision of the EC to expel Mr Sweeney from membership was taken on 15 January 2014. It is also common ground that the period of 20 working

days from 15 January expired on 12 February. Mr Sweeney submitted his appeal to his regional office on 12 February and it was received at head office on 13 February. I find that in these circumstances, compliance with rule 27.8 was plainly impossible. The GC is not a standing body. It is made up of working people who come from around the UK. Arrangements must be made for them to have time off work, prior commitments may have to be honoured, travel and accommodation must be arranged and both sides must have a fair opportunity to prepare their cases.

57. On the above facts, I am called upon to determine the legal effect of the incompatibility between rule 27.2 and rule 27.8 and the situation of impossibility to which this has given rise. Rule 27.2 provides for a period of 28 days (not working days) from the date of the EC decision for the appeal to reach the appropriate council, whereas rule 27.8 provides for the GC to meet within 20 working days of the EC decision. The member is entitled to wait until the 28th day before submitting his or her appeal and in these circumstances, it would be rare, if not impossible, for the GC to be able to meet to consider an appeal within 20 working days of the EC decision. The position is made even more difficult by the apparent necessity for the appeal to be submitted to the Branch Secretary and read out at a branch meeting before being submitted to head office. In considering rules which give rise to so many practical difficulties, I remind myself of the approach which the courts have applied to the interpretation of the rules of trade unions over many years. This was expressed by Warner J in **Jacques v AUEW (1986) ICR 683** in the following terms:

*“The effect of the authorities may I think be summarised by saying that the rules of a trade union are to be construed as to give them a reasonable interpretation which accords with what in the court’s view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they were addressed.”*

I also bear in mind the previous rules of the Union relating to the relevant limitation period, before the present 20 working day limit was introduced in rule 27.8. The previous rules provide only that *‘The General Secretary shall summon a special meeting of the GC for consideration of the appeal’*. It would therefore seem that the purpose of the rule amendment was to require there to be a time limit within which appeals against expulsion must be heard, rather than leaving it open ended.

58. Against this background, I am invited by Mr Brough to find that whenever an expelled person exercises his or her right to delay putting in an appeal to the GC with the effect that it is impossible for the GC to meet within 20 working days of the EC decision, the decision to expel should be declared void on the basis that the member has been denied a right of appeal. I find that this is unlikely to have been the intention of those who agreed the rule change or the understanding of the ordinary members of the Union. I also find that the physical impossibility of convening the GC in accordance with rule 27.8 has the effect that strict compliance with that rule has become frustrated.
59. In my judgement, the rules must firstly be read with their ordinary literal meaning. The timetable that is set may be tight, but it is the one that has been agreed at a general delegate conference. Whilst not necessary for my decision, I comment in passing that the additional delay that would be incurred by making the appeal to the Branch Secretary and for it to be read out at a branch meeting appears to me to be

directory rather than mandatory. In other words, they are steps which should be taken but a failure to take them does not invalidate an appeal which reaches the appropriate council within 28 days of the EC decision in any event. I note that the Union did not attempt to take this point by arguing that Mr Sweeney's appeal had not been validly made through his branch. I further note that the reason given by Mr Sweeney for not having gone through his Branch Secretary and branch meeting amounts to an argument of impossibility in itself; the branch meeting did not occur because of the hospitalisation of the Branch Secretary. Mr Brough would therefore appear to be arguing that Mr Sweeney could take advantage of 'impossibility' with regard to one rule whereas the Union could not similarly rely on 'impossibility' with regard to a different rule.

60. If the rules, read literally, give rise to a situation of impossibility, I find that it is permissible for them to be interpreted consistently with what I was told was ordinary practice and in a manner necessary to give efficacy to the right of appeal. In my judgement, it would not be permissible to interpret the rules as giving the General Secretary an open ended period to convene the GC. To do so would be contrary to the intended effect of the amendment which brought in the current rule 27.8. I find that, faced with the situation of impossibility, the rules are to be read as requiring the GC to meet within 20 working days of receipt by a regional office or head office of the member's appeal from the expulsion decision.
61. Applying my above finding to the facts of this case, Mr Sweeney's appeal was received at his regional office on 12 February 2013 and at head office on 13 February. A period of 20 working days after 13 February expires on Thursday 13 March 2014. The EC met to consider Mr Sweeney's appeal on Tuesday 18 March. Accordingly the Union failed to comply with rule 27.8, correctly interpreted, in dealing with Mr Sweeney's appeal.
62. For the above reasons I declare that in breach of rule 27.8 of its rules, the Union failed to cause the GC of the Union to meet within 20 working days of the EC's decision to expel Mr Sweeney.

### **Enforcement Order**

63. Where I make a declaration I am required by section 108B(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. In the circumstances of this case, and for the following reasons, I consider that it would be appropriate to make an enforcement order.
64. Mr Brough argued that, if I found there to be a breach of rule 27.8, I should make an enforcement order setting aside the decisions of both the EC and GC, thereby enabling Mr Sweeney to continue in membership as if no charges had been made against him. In making this submission Mr Brough relied upon **Braithwaite v. EETPU (1969)**. I have of course given this decision of the Court of Appeal careful consideration. I observe firstly that it was decided at the time that many members of the EETPU were employed in closed shops and to be expelled from that union would mean being unable to find work. I also observe that the finding of Lord Denning, with which Salmon LJ and Winn LJ agreed, is that Mr Braithwaite's right to appeal the decision of the ETU to expel him was effectively removed by the amalgamation of the ETU and the Plumbing Trade Union. There were no

transitional provisions in the rules of the newly amalgamated union which provided for there to be appeals in such cases. Accordingly, Mr Braithwaite found himself with no right of appeal under the rules of the union that expelled him as it no longer existed and no right of appeal under the rules of the newly amalgamated union. These were unusual facts from which the facts of the present case can be distinguished. I have found that Mr Sweeney did have a right of appeal under the rules of UCATT. Accordingly, I am not constrained by the decision in Braithwaite to find in favour of Mr Brough's submission and can consider the exercise of my discretion more broadly.

65. The overlap and potential inconsistency between the time periods in rule 27.2 and rule 27.8 gives rise to a problem which the Union had never before considered. In the present case, this inconsistency has caused confusion and misunderstanding to both the Union and Mr Sweeney. I note that Mr Sweeney stated that he was only alerted to this point when he received the General Secretary's letter of 17 February 2014 asking him to confirm the date he delivered his appeal to the regional office. The General Secretary explained that he needed to convene the GC within 20 working days in accordance with rule 27.8, thereby demonstrating his misunderstanding of the rule. Whilst I accept that the Union acted in good faith in setting up the GC at the earliest convenience to the members of the GC, I find that in doing so it misapplied rule 27.8. I also find that by misapplying rule 27.8 the Union gave Mr Sweeney the opportunity to refuse to attend the appeal on the grounds that it had been convened out of time. This purported reason for not attending may or may not have been Mr Sweeney's true reason as he was gravely suspicious that the GC would find against him in any event. However, be this as it may, I find that he was prejudiced by not attending the appeal, especially as Mr Winstanley was present to put the case against him. Had the appeal not been held out of time, Mr Sweeney may have attended and the GC may have come to a different decision on liability and/or sanction. In order to remedy this breach in a way which is equitable to both Mr Sweeney and the Union, having regard to my findings of general confusion and good faith, I find that Mr Sweeney should have an opportunity of attending before a reconvened hearing of his appeal before the GC. Accordingly, I make enforcement orders in the following terms:

- (a) The decision of the General Council of the Union of 18 March 2014 to reject the claimant's appeal from the decision of the Executive Council of 15 January 2014 and to impose a lesser sanction is forthwith set aside and of no effect. The decision of the Executive Council of 15 January 2014 that the claimant be expelled from the Union for life shall stand, subject to the determination of the claimant's appeal made by his letter of 17 February 2014.
- (b) The claimant's appeal against the decision of the Executive Council of 15 January 2014, unless withdrawn, is to be reconvened and his appeal re-heard on or before 27 January 2015 in accordance with the rules of the Union, save for the rules relating to the time within which such appeals are to be heard. The parties are given leave to apply for an extension of time upon proof of exceptional circumstances.

## **Complaint Five**

66. Mr Sweeney's fifth complaint is as follows:

### **Complaint 5**

On or around 15 January 2014 the Executive Council decided to expel Mr Sweeney for life from the Union and on or around 18 March 2014 the General Council decided to suspend Mr Sweeney from the Union for 15 years. These sanctions were in breach of the principle of natural justice, which is implied into rules 26 and 27 of the rules of the Union, that any sanction that is imposed by the Union needs to be proportionate to the offence or offences that the member is deemed to have committed.

## **Summary of Submissions**

67. Mr Brough, for Mr Sweeney, submitted that the sanction of being expelled for life, although reduced on appeal to being expelled for 15 years, was disproportionate to the offence that Mr Sweeney was found to have committed and thereby a breach of the principles of natural justice to be implied into rules 26 and 27. He argued that the lack of evidence of the misconduct alleged by Mr Winstanley was alarming, that the EC and GC were in cosy agreement and that the GC had compounded the position by eulogising Mr Winstanley in its decision. In Mr Brough's submission, any humiliation felt by Mr Winstanley on being removed from the meeting of the BSG was caused by his refusal to leave voluntarily as soon as the meeting had voted for him to do so.
68. Mr Panesar for the Union, submitted that there was no breach of the principles of natural justice nor any breach of rule by the sanction imposed on Mr Sweeney of a 15 year ban from membership. He argued that the issue of blacklisting was a matter of the utmost importance to the Union and its members and that Mr Sweeney's conduct in initiating Mr Winstanley's removal from the meeting of the BSG was an attack on a blacklisted worker, a branch officer, the Union's work regarding blacklisting and the Union generally. He also observed that the EC and GC were entitled to take into account the fact that Mr Sweeney was entirely unrepentant for his conduct and indicated that he would similarly seek the exclusion from the BSG of three others, who were each members of the Regional Committee. Mr Panesar noted that exclusion is a permissible sanction under rule 25.1.

## **Conclusion – Complaint Five**

69. This complaint is expressed as a breach of the principles of natural justice to be implied into rules 26 and 27. However, I find that the proportionality of a sanction is not a matter of natural justice as it is commonly understood in the law. Mr Sweeney clearly feels aggrieved at the sanction imposed on him and considers it to be unfair but that does not make it a matter within my jurisdiction. My statutory jurisdiction in this regard is limited to breaches of certain types of rules. I have no jurisdiction akin to unfair dismissal in employment law. The highest that Mr Sweeney can put his case is that in the exercise of its discretion in imposing a sanction on him, the EC and GC imposed a sanction that no reasonable EC or GC could have imposed, directing themselves correctly on the rules. This is an extremely high test, especially when applied to the discretion exercised by two bodies of lay members, each elected and each body being independent of the other. Discretionary decisions by trade unions on disciplinary matters reached by such bodies should not readily be interfered with.

70. Whilst I consider the sanction of expulsion for 15 years on someone who is already 65 years of age to be harsh, I do not consider that it is so outside the range of sanctions open to the GC so as to render it an unlawful decision. The EC and GC were entitled to have regard to Mr Winstanley's personal and trade union interest in blacklisting and to accept Mr Winstanley's evidence as to the manner in which Mr Sweeney sought his expulsion from the BSG meeting. They were also entitled to have regard to Mr Sweeney's failure to accept that he had done anything wrong and his stated intention to seek the removal of three members of the North West Regional Council, should they attempt to attend any future BSG meeting. I find that the decision of the EC and GC fell within the wide discretion these bodies are afforded by the rules.
71. For the above reasons I refuse Mr Sweeney's application for a declaration that in breach of the principles of natural justice said to be implied into rules 26 and 27, the sanctions applied to him by the EC on 15 January 2014 and the GC on 18 March 2014 were allegedly disproportionate.

### **Complaint Six**

72. Mr Sweeney's sixth complaint is as follows:

#### **Complaint 6**

On or around 15 January 2014 and 18 March 2014, the Executive Council and General Council respectively reached disciplinary decisions against Mr. Sweeney which were biased and thereby in breach of the principle of natural justice that a member has a right to be heard by an unbiased tribunal, which is implied into Rules 26 and 27 of UCATT's Rules. The bias shown to Mr. Sweeney was the result of him being known to be critical of UCATT's leadership and supportive, with others, of an independent inquiry into the Union's affairs. He has also been the target of previous, spurious charges, intent on expelling him from UCATT. One such charge dated 23 April 2013 was again from Mr. Winstanley.

### **Summary of Submissions**

73. Mr Brough for Mr Sweeney, submitted that Mr Sweeney had the right for the charges against him to be considered by an unbiased tribunal and that both the EC and GC were biased against him. He accepted the difficulties of establishing bias and acknowledged that he had no evidence of bias beyond the circumstances of the case and the strongly held belief of both himself and Mr Sweeney. He stated that they both believed that the EC and GC had made up their minds on the case before they had entered the room. He stated that this was because Mr Sweeney was a known opponent of the leadership of the Union, had openly called for enquiry into it and had previously been the subject of spurious disciplinary complaints.
74. Mr Panesar for the Union, submitted that this complaint was misconceived from the outset but was made impossible by the statement by Mr Sweeney in cross-examination that he was not saying that the EC was biased, only that they had made the wrong decision on the evidence before them. He argued that there was no evidence of bias by either the EC or GC and that there was ample material for them to have reached the decisions which they in fact reached.

### **Conclusion – Complaint Six**

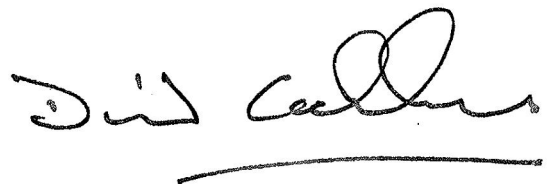
75. Mr Brough correctly accepted that the burden of showing that a tribunal is biased is a high one and requires convincing evidence. I do not doubt the sincerity of the

beliefs of Mr Sweeney and Mr Brough but their beliefs are not evidence. The circumstantial matters upon which they rely set a context in which there may or may not have been bias but they fall well below the standard of proof that is necessary for me to reach the extremely serious finding that these two senior bodies of elected lay members were biased. In the absence of convincing evidence to the contrary, I accept the evidence of Mr Vernon and Mr Dowling that they were not biased. The matter was taken beyond doubt by the concession by Mr Sweeney in cross-examination before me that the EC was not biased, only that it had made the wrong decision on the evidence before it.

76. For the above reasons I refuse Mr Sweeney's application for a declaration that, in breach of the principles of natural justice said to be implied into rules 26 and 27 that a member has a right to be heard by an unbiased tribunal, the EC on 15 January 2014 and the GC on 18 March 2014 reached disciplinary decisions against him which were biased.

### **Observations**

77. Mr Panesar, in his skeleton argument, states that the rules of the Union are currently under review in respect of an amendment 'to deal with the circumstances where a member's actions or delay prevent the carrying out of a GC meeting within the stipulated time period'. I commend the Union for undertaking a review which will examine the incompatibility of rules 27.2 and 27.8 with a view to their amendment. It is preferable that the present unsatisfactory rules are considered by the Union itself and the rules made clear to its members by amendment to the published rules rather than their correct interpretation being dependent upon their interpretation by the Certification Officer.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath it.

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