

DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 55 (1) AND 108A (1) OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

Mr S Mace

V

**National Union of Mineworkers
(No.2)**

Date of Decisions

18 July 2013

DECISIONS

Upon application by Mr Mace ("the claimant") under section 55(1) and (108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")

1. I dismiss Mr Mace's complaint that the National Union of Mineworkers breached rules 5.A(i)-(viii), rules 5.D(i), rule 14.C and Schedule One of its rules on or about 19 December 2011, by its Yorkshire Area putting forward a nomination for Mr Wilson as a candidate in the election for the position of National President in 2012.
2. I declare that the National Union of Mineworkers breached section 47(1) of the 1992 Act on or around 19 December 2011 by unreasonably excluding members, in particular Mr Mace, from standing as a candidate for the position of NUM National President in 2012.
3. I declare that the National Union of Mineworkers breached section 46(1) of the 1992 Act and rule 14.A of its rules on or around 19 December 2011 in that the election for the position of National President in 2012 was not carried out in accordance section 47(1) of Chapter IV of the 1992 Act.

Enforcement Orders

4. I order that the result of the election of the NUM National President 2012 declared by Electoral Reform Services on 6 January 2012 and accepted by the National Executive Committee on 29 February 2012 be set aside and that Mr Wilson shall forthwith cease to hold office.
5. I further order that an election for the office of National President so vacated shall take place so that the result is declared no later than 18 November 2013. The election shall be conducted so as to comply with Chapter IV of the 1992 Act and the rules of the Union, excluding the requirement in rule 14.C that nominations are made by Areas and the requirement that at the close of nominations only those candidates shall be eligible for election who have received the nominations of Areas the total

membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the Union for the twelve months ending on the preceding 31st December.

REASONS

1. Mr Mace joined the National Union of Mineworkers (the "NUM" or "the Union") upon starting work in the mining industry in about 1991. By an application received at the Certification Office on 18 May 2012, Mr Mace made complaints against the NUM of breaches of statute and breaches of the rules of the Union regarding the 2012 election of National President. Following correspondence with the claimant, three complaints were confirmed by his representative, Mr Scargill, in the following terms.

Complaint 1

On or about 19 December 2011 the NUM acted in breach of Rules 5.A (i)-(viii), Rule 5.D (i), Rule 14.C and Schedule One of its National Rules by accepting a nomination for Mr. N Wilson as a candidate for the office of National Lay President 2012.

Complaint 2

The decision to exclude Mr Mace's nomination to stand as a candidate for the position of NUM National Lay President taken on or about 19 December 2011 was an unreasonable exclusion and is a breach of Rule 14.A and Section 46(1) and Section 47(1) of the 1992 Act.

Complaint 3

On or about 19 December 2011 the NUM acted in breach of National Rule 14.A and in breach of Section 46(1) and Section 47(1) of the 1992 Act in relation to the nomination and election for the Office of National Lay President.

2. These complaints allege multiple breaches within the same complaint, some of breach of rule and some of breach of statute. As Mr Mace's representative insisted on the complaints being set out in this way, I attempted to have the parties agree a list of issues and provided them with a possible first draft. Mr Scargill did not engage with this proposal. The Union stated that the issues contained in the draft list were the relevant ones to be determined. Having considered whether a Case Management Discussion would be appropriate, I decided to proceed to a hearing and identify the issues at the beginning of the hearing. I set these out in my conclusions on each of the above complaints.
3. The complaints are in essence relatively straightforward, although they appeared to become increasingly complex as they were developed in correspondence with my office. They concern the election for the position of National President of the Union in 2012. The Yorkshire Area of the Union was entitled to nominate one candidate. At a meeting on 19 December 2011, it considered whether to nominate Mr Mace or Mr Wilson. It chose to nominate Mr Wilson. Arising out of that decision, Mr Mace complains that:
 - 3.1 Mr Wilson was wrongly nominated by the Yorkshire Area in breach of rule.
 - 3.2 Mr Mace was unreasonably excluded from standing as a candidate in breach of statute.

4. At the hearing on 18 April, Mr Mace was represented by Mr Arthur Scargill. Mr Mace had presented a written witness statement but, shortly before the hearing, he informed Mr Scargill that he was unable to attend for medical reasons. He authorised Mr Scargill to continue with his case in his absence. The Union was represented by Mr Harry Eyre of Raleys solicitors. The Union produced written witness statements by Mr N Wilson, whose roles include that of President of the NUM, and Mr Skidmore, Chairman of the NUM (Yorkshire Area). Only Mr Wilson was called upon to give oral evidence. There was in evidence the 2011 rules of the Union and a 176 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the hearing, I gave Mr Scargill leave to adduce further documents, totalling 34 pages, which became Bundle 2. Both the Union and Mr Scargill provided skeleton arguments.
5. At the hearing I refused an application by Mr Scargill for the late inclusion of a number of other documents that had been received at the Certification Office on 11 and 17 April, in breach of my direction that all documents for inclusion in the hearing bundle must be lodged by 28 March. Mr Scargill advanced no good reason for the late production of those documents received on 11 April and I did not accept the reason given by Mr Scargill for the late production of the documents on 17 April, namely the receipt by him of the witness statement of Mr Wilson. I nevertheless read the documents that had been submitted to assess their relevance and, after hearing submissions, I admitted those referred to in paragraph 4. I refused to admit the remainder having regard to their late submission, the absence of good cause for their late submission and their degree of relevance to the issues that are in dispute.

Findings of Fact

6. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows:
7. The determination of Mr Mace's first complaint requires a finding as to whether Mr Wilson satisfied the requirements in rule 14.C for nomination for the position of National President. One of these requirements is that a potential candidate must be entitled to full financial membership of the Union at the time of nomination. This in turn requires a finding whether he satisfied the criteria for membership provided for in rule 5.A. In particular, I must determine if Mr Wilson was employed "*by the Union or by an Area including National or Area Officials/Agents*", in accordance with rule 5.A(iii). At the relevant time Mr Wilson was employed by a trade union listed at the Certification Office as the National Union of Mineworkers (Scottish Area). Mr Mace disputes that employment by the National Union of Mineworkers (Scottish Area) qualifies a person for membership of the NUM under rule 5.A(iii). I must therefore deal with the formation and status of the NUM (Scottish Area).

The NUM (Scottish Area)

8. The documentary evidence before me relating to the origins and status of the NUM (Scottish Area) was neither extensive nor compelling and the witness statement of Mr Wilson did not deal with the matter at any length. Perhaps understandably, Mr Wilson considered it self evident that he worked for the NUM, having joined in 1967 and having worked in the mining industry or on behalf of Scottish miners ever since. I

must however decide the point as a matter of fact and law. I do so on the evidence before me, as set out below.

9. Before turning to the specific history of the NUM (Scottish Area) it is appropriate that I give some context to what follows. Both Mr Mace and Mr Scargill had previously brought complaints against the NUM before me. In my decisions on their complaints in June 2009 I commented that the structure and constitution of the NUM are not straightforward and that its rules have given rise to a number of constitutional uncertainties over the years. There is nothing in this case to suggest that those difficulties have been resolved, even though the membership of the Union has continued to fall from over 100,000 at its zenith to a little over 1000 now. Indeed, part of the present difficulties may derive from the fact that rules drafted for a large organisation are now being applied to a much smaller organisation.
10. The NUM was originally composed of a national union and a number of individual area unions, each of which was a union in its own right. The NUM (Yorkshire Area) was one such union. It had its own rule book and an existence separate from the NUM, though with a constitutional link. The constitutional link was achieved by the NUM (Yorkshire Area) being named as the Constituent Association for an Area known simply as 'Yorkshire'. In 1994 the NUM (Yorkshire Area), then a separately listed trade union, transferred its engagements in accordance with the 1992 Act to the NUM. It thus lost its separate legal status and its status as a Constituent Association. However, it retained a distinct identity within the NUM as an Area with its own standing orders. The current rules of the NUM dealing with Areas and Constituent Associations are as follows:

17 Areas

17.A The members of the Union shall for the purposes of administration be organised into divisions of the Union known as "Areas" listed in Schedule One hereto as amended from time to time.

17.B The membership of any Areas may but need not be members of one or more Constituent Associations.

17.C A "Constituent Association" means a registered trade union other than the Union itself comprising of members of the Union and which has been approved for that purpose by Conference. A Constituent Association may with the approval of the Union dissolve itself, merge, combine, amalgamate with or transfer engagements to any other Constituent Association, or merge, combine, amalgamate with or transfer engagements to the Union. Conference shall have the power to admit and expel a constituent Association.

11. Rule 17.A refers to Schedule One of the rules, which is as follows:

SCHEDULE ONE

Constituent Association	Area
National Union of Mineworkers (Cokemen's Area)	COKEMEN'S

National Union of Mineworkers (Derbyshire Area)	DERBYSIRE
National Union of Mineworkers (Leicester Area)	LEICESTER
National Union of Mineworkers (South Wales Area)	SOUTH WALES
National Union of Mineworkers (Colliery Officials' and Staffs' Area)	COLLIERY OFFICIALS' AND STAFFS
	LANCASHIRE
	NORTH EAST
	NOTTINGHAM
	SCOTLAND
	YORKSHIRE

NOTE

For the purpose of NEC representation the Nottingham and Derbyshire Areas are regarded as one Area and South Wales and Cokemen's Areas are regarded as one Area.

It will be seen that both Yorkshire and Scotland are now listed as Areas but they are not associated with any Constituent Association.

12. In the 1987 rules of the Union the equivalent schedule showed that Nottingham was the only Area which was not associated with a Constituent Association. At that time, Scotland was named as an Area and its corresponding Constituent Association was the NUM (Scottish Area). It mainly represented working miners in Scotland. The craft workers in the mining industry in Scotland were members of a different union within the NUM family, the full title of which was the National Union of Mineworkers (Group 2, Scottish Colliery Engineman, Boilerman and Tradesmens Association) although it is generally known by its acronym 'SCEBTA'. In the 1987 rules of the Union, SCEBTA was listed in schedule one as a Constituent Association and the Area against which its name appears was simply "Group No. 2".
13. Mr Wilson has considerable knowledge and experience of how the Union has operated in practice in Scotland and I accept his evidence in this regard. However, his view of the legal position is no more than that of an informed lay person. Mr Wilson started work in the mining industry in Scotland in 1967 when he joined the NUM. He worked as an electrician and therefore became a member of SCEBTA. He was elected to his branch committee in 1972 and to the Executive Committee ("the EC") of SCEBTA in 1979. In 1987 he became the General Secretary of three Unions within the NUM family in Scotland: SCEBTA, NUM (Scottish Area) and NUM (Scotland Area) in the circumstances set out below. In 2003 he was elected to the National Executive Committee ("the NEC") of the NUM where he continues to sit. In 2010 he became the Acting President of the NUM and was formally elected to that position in 2012 in the election contested in these proceedings.

14. Mr Wilson gave evidence that in 1987 the National Conference of the NUM decided that the two Constituent Associations in Scotland (i.e. NUM (Scottish Area) and SCEBTA) should come together and be operated as one Area, to be known as the NUM (Scotland Area). It was a time when the NUM were attempting to achieve savings through administrative reorganisation. An attempt was made to achieve a merger of the NUM (Scottish Area) and SCEBTA through the relevant statutory procedure but the members of SCEBTA rejected this proposal in a ballot. Nevertheless, the NEC of the NUM pressed ahead to achieve administratively what it had failed to achieve by a ballot. The events that followed are evidenced by the minutes of the EC of the NUM (Scottish Area).
15. The minutes of the meeting of the EC of the NUM (Scottish Area) in May 1988 record that the NUM President, Mr Scargill, had visited Scotland to outline proposals for the merger of the two Areas.
16. The minutes of the meeting of the EC of the NUM (Scottish Area) of August 1988 record that the national NEC had all the requisite powers under the national rule book to compel the process and that the Scottish EC would be advised of the rules which would apply to the new NUM (Scotland Area) arising from the negotiations between the NUM (Scottish Area), SCEBTA and national officials. They go on to record that the officials of the NUM (Scottish Area):

"...had secured the clear understanding in the new rules themselves, and in correspondence from Mr Scargill, that all the property and assets of the old NUM Scottish Area would remain the property of the old Scottish NUM Area, and therefore with the formation of the new Area from 1st January 1989, Trustees would require to be appointed to administer the funds and property of the old Area, the new "NUM (Scotland Area)" being financed solely from the contributions of the members of the NUM and SCEBTA."
17. The NUM (Scottish Area) held a Delegate Conference in September 1988. Its minutes record that the NEC were compelling a merger of the NUM (Scottish Area) and SCEBTA and that the new NUM (Scotland Area) which would operate from 1 January 1989 would be funded from contributions from members of the NUM (Scottish Area) and SCEBTA. It also records that the funds and assets of the old NUM (Scottish Area) and SCEBTA would remain the property of those organisations; trustees being appointed to administer them.
18. The minutes of the meeting of the EC of the NUM (Scottish Area) of October 1988 record that officials of the NUM (Scottish Area) had met with Robin Thompson & Partners, solicitors, in order to devise a new rule book to allow for the continuation of these constituent bodies under the new Scotland Area without there being a breach of the law.
19. Mr Wilson gave evidence that the new structure that came about on 1 January 1989 was as a result of an agreement with the NEC, which agreed the new rule books and the officials who could be retained. He was uncertain if this agreement was approved at a National Conference but he was quite sure that it had been agreed by the NEC.

20. The current rules of the NUM (Scotland Area) begin as follows:

"Following the review of the NUM organisation, accepted by the NEC on the 9th October 1986, and adopted by the NUM Annual Conference in July 1987, agreement has been reached between the National Union of Mineworkers (hereinafter referred to as the 'National Union' and the National Union of Mineworkers (Scottish Area) and National Union of Mineworkers (Group 2, Scottish Colliery Enginememen, Boilermen and Tradesmen Association) (hereafter referred to as the 'Former Constituent Associations'). In accordance with the said decision of the NEC and Annual Conference, the said former Constituent Associations will combine for the purpose of administration and be organised into a new Area of the National Union of Mineworkers (Scotland Area) in accordance with Rule 17 of the National Union.

1 NAME

The Area Union shall be called 'National Union of Mineworkers (Scotland Area) and is in these rules referred to as 'The Area Union' and its offices shall be at 3D Hercus Loan, Musselburgh, East Lothian EH21 6AU. The Area Union shall be an Area of the National Union of Mineworkers (hereinafter referred to as the 'National Union')"

21. The current rules of the NUM (Scottish Area) begin as follows:

Rule 1 – Name

The Union shall be called "The National Union of Mineworkers (Scottish Area) and is in these rules referred to as 'The Union' and its registered office shall be 3D Hercus Loan, Musselburgh, East Lothian. The Union shall be a constituent part of the National Union of Mineworkers.

Rule 2 – Constitution

The Union shall be composed of those members of the National Union of Mineworkers (Scotland Area) who are described as 'Scottish miners' in Appendix II of the Rules of the National Union of Mineworkers (Scotland Area).

Rule 3 – Objects

The objects of the Union shall be:

- i. to protect and advance the interests of the Union in relation to opportunities for, and the terms and conditions of their employment;*
- ii. to support the objects of the National Union of Mineworkers (Scotland Area)*

...

Rule 4 – Membership and Entrance Fees

- (a) members of Trade Unions (affiliated to the TUC) who become employed as Miners (within the meaning given to that term by Appendix II of the Rules of the National Union of Mineworkers (Scotland Area)) and in the coal mining industry in the Area of the National Union of Mineworkers (Scotland Area) shall be admitted membership of the Union ...*

Rule 5 – Arrears of Contributions

...

If any member ceases to be a member of the National Union of Mineworkers (Scotland Area) as a consequence of allowing his contributions, levies and fines to fall into arrears, he shall thereupon cease to be a member of the Union ...

Reference is also made in these rules to the NUM (Scotland Area) in rules 6,7,9,10,11 and 13.

22. The current rules of SCEBTA are in similar terms to the rules of the NUM (Scottish Area).

23. The NUM (Scotland Area) appears in the schedule to the list of trade unions that I maintain. As such, it is a union with a separate existence to the NUM but it is not named as a Constituent Association of the Union in Schedule One of its current rules. The first meeting of its EC took place in January 1989 when it endorsed the appointment of three officials of the new Area. Mr Bolton was to be President. He had previously been the full time paid Agent (union officer) for NUM (Scottish Area) and continued to perform similar duties. Mr Crawford was to be its Vice President. He had previously been the full time General Secretary/Agent of SCEBTA and continued to perform similar duties. Mr Clarke was to be its General Secretary. He had previously been the full time paid General Secretary of NUM (Scottish Area) and continued to perform similar duties.
24. The NUM (Scotland Area) held its first conference in June 1989. Mr Clarke and Mr Crawford left the employment of the Union under a redundancy scheme. At or about that time Mr Wilson sought nomination for and was elected as the General Secretary of the new NUM (Scotland Area). At about that time he was also elected General Secretary of the NUM (Scottish Area) and SCEBTA.
25. On the evidence before me, it appears that the members of NUM (Scottish Area) and SCEBTA became dual members of both their former union and what Mr Wilson called the new NUM (Scotland Area). Their subscriptions, however, were now paid into the NUM (Scotland Area) which remitted a percentage to the National NUM. The funds of the NUM (Scotland Area) and SCEBTA remained with those unions and the representation of their respective members continued to be conducted mainly in the names of those unions. Mr Wilson stated that any new members who joined the NUM (Scotland Area) were allocated to either the NUM (Scottish Area) or SCEBTA as branches of the NUM (Scotland Area). One practical change was that the number of representatives sent from Scotland to the NEC and National Conference was reduced. Previously the NUM (Scottish Area) and SCEBTA each sent their own representative but after the 'merger', representatives were only sent from the NUM (Scotland Area), thus achieving some savings. There was also a rationalisation of premises and other administrative matters; for example, there was a shared head office for the three unions. Viewed from a distance, the reorganisation led to an untidy result as a result of the 'merger' having been forced through following the failed ballot. From Mr Wilson's point of view, the reorganisation worked perfectly well on a practical level.
26. Mr Wilson gave evidence that until 1997 he worked as an electrician at his colliery for three days a week and was given release by his employer to carry out union duties for the remaining two days a week. When carrying out his union duties, Mr Wilson claimed the appropriate daily "loss of earning allowance" set by the Union. In 1997 Mr Wilson failed to be re-elected as General Secretary of the three unions and was out of office for two years. However, in 1999, he was re-elected and has since then remained the General Secretary of the NUM (Scottish Area), SCEBTA and NUM (Scotland Area). Mr Wilson also gave evidence that the colliery at which he worked, Longannet Colliery, closed in 2002 and he lost his job. He maintains that it was then agreed that the NUM would take him on full time. This was after the time in 2002 that Mr Scargill had ceased to be the President of the Union. Mr Wilson gave evidence that he was then employed by and paid out of the funds retained by the NUM

(Scottish Area) but performed work for NUM (Scottish Area), SCEBTA and NUM (Scotland Area).

27. To bring the situation up to date, Mr Wilson gave evidence that the NUM (Scottish Area) had recently helped fund a series of test cases to obtain compensation for members and former members suffering from osteoarthritis of the knee. These test cases had failed and the cost consequences of this failure now threaten to totally deplete the funds of the NUM (Scottish Area). In these circumstances, Mr Wilson transferred his employment from the NUM (Scottish Area) to NUM (Scotland Area) in January 2013. Mr Wilson gave evidence that there are now only a handful of members of NUM (Scottish Area). He stated that SCEBTA is the working branch within Scotland with about 90 members. However, it now appears that even this membership may be in jeopardy, as the day after this hearing the administrators of Scottish Coal announced 590 redundancies.

The Election of NUM President in 2012

28. On 28 November 2011 the Secretary of the National NUM, Mr Kitchen, sent a circular to all NUM Branch Secretaries inviting nominations for the position of National President. Nominations were to close on 5 January 2012 and the ballot results were to be approved at a meeting of the NEC on 29 February. The circular reproduced the qualifying criteria for election contained in rule 14.C. This rule provides

14.C Each Area shall nominate one candidate for the position of National President and National Secretary, provided that such nomination is confined to a person who is a member of the National Executive Committee in full financial membership and has been for a least 12 months. At the close of nominations, only those candidates shall be eligible for election who have received the nominations of Areas the total membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the Union for the twelve months ending on the preceding 31st December.

29. On or about 6 December 2012 the Maltby branch of the Yorkshire Area of the Union nominated Mr Mace for the position of National President. It later emerged that Mr Wilson had been nominated by the other two branches in the Yorkshire Area, Kellingly and Hatfield.
30. As at 31 December 2010, the Yorkshire Area had 969 of the Union's 1,713 members (56.5%). At that time the Yorkshire Area had only three working pits: Maltby, Kellingly and Hatfield. Each was constituted as a branch of the Yorkshire Area. The Maltby branch had about 350 members (36.2% of the members of the Yorkshire Area and 20.4% of the National Union). In my decision in **Scargill v. NUM (D26-30/09)** I recorded that at the time of the NEC elections in 2008 Maltby had 28.8% of the membership of the Yorkshire Area, Kellingly had 52.6% and Hatfield 10%. Some members were not then allocated to branches. For completeness, I should record that the Maltby colliery closed on or about 31 March 2013.
31. On 19 December 2011 there was a meeting of the Yorkshire Area Council (which had previously been known as the Area Executive Committee). It contained delegates from each of the three branches in the area. There was a vote by the Branch Delegates to decide who should be nominated by the Yorkshire Area for the position

of National President. The meeting decided that Mr Wilson should be nominated. The minutes of that meeting are as follows:

"The Area Secretary said he had received a letter from Mr N. Wilson asking for the support and nomination of the NUM Yorkshire Area for the position of National President. He said nomination forms had been received from the Hatfield Branch supporting Mr N. Wilson and also from the Maltby Branch in support of Mr S. Mace.

The Kellingly delegate confirmed that his branch had submitted their nomination form in support of Mr N. Wilson.

...

The Area Chairman asked Mr S. Mace if he had written to the Yorkshire Area seeking its nomination. Mr Mace confirmed that he had written to other Branches asking for their support.

The Area Chairman asked Council if they had had sight of the letter from Mr N. Wilson, they had not. The Area Chairman proceeded to read out the letter to Council. He said to Mr Mace that unfortunately two Branches from the Yorkshire Area were in support of Mr N. Wilson and only one in support of himself. The Kellingly delegate proposed that the Yorkshire Area nominate Mr N. Wilson for National President position, this was seconded by the Hatfield delegate.

It was therefore agreed by a majority vote that the NUM (Yorkshire Area) would nominate Mr N. Wilson for the position of National President."

32. I was informed that Mr Wilson had also been nominated for the position of National President by most of the other Areas of the Union. Mr Mace received nominations from no other Areas.
33. On 6 January 2012 Electoral Reform Services (ERS) reported that there had been only one nomination for the position of National President, namely Mr Wilson, and that therefore there was no need for an election.
34. On 29 February 2012 the NEC considered the report of the ERS. It declared Mr Wilson the successful candidate and accordingly the President of the National Union.
35. Whilst the membership of the NUM has continued to decline in recent years, it remains in a strong financial position with reported net assets at 31 December 2011 of about £7 million.
36. Mr Mace commenced his complaint to me by a complaint received at my office on 18 May 2012.

The Relevant Statutory Provisions

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

46. Duty to hold elections for certain positions

(1) A trade union shall secure –

- (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
- (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.

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.

55. Application to Certification Officer

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

(2) On an application being made to him, the Certification Officer shall -

- (a) make such enquiries as he thinks fit, and
- (b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.

(5A) 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 more of the following requirements -

- (a) to secure the holding of an election in accordance with the order;
- (b) to take such other steps to remedy the declared failure as may be specified in the order;
- (c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

(5B) Where the Certification Officer makes an order requiring the union to hold a fresh election, he shall (unless he considers that it would be inappropriate to do so in the particular circumstances of the case) require the election to be conducted in accordance with the requirements of this Chapter and such other provisions as may be made by the order.

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)

....

108B. Declarations and orders

(2) If he accepts an application under section 108A the Certification Officer -

- (a) shall make such enquiries as he thinks fit,
- (b) shall give the applicant and the union an opportunity to be heard,
- (c) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
- (d) may make or refuse the declaration asked for, and
- (e) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

(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.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

The Relevant Rules of the Union

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

5. Membership

It shall be the duty of every member to comply with the Rules, policy and objects of the Union with all directions thereunder.

5.A Full Membership

The following categories of persons are eligible for full membership of the Union and in these Rules the expression "members" means a full member unless otherwise stated.

- (ii) *All persons employed in the coalmining industry and its ancillary undertakings.*
- (iii) *All persons employed in those sections of Energy industries and such other industries and undertakings or sections thereof, specified by Conference.*
- (iv) *All persons employed by the Union or by an Area including National or Area Officials/Agents.*
- (v) *All members who become Members of Parliament, Scottish Parliament, Welsh Assembly or of the European Parliament as long as they remain so.*
- (vi) *With the express permission of the NEC, all members formerly employed in any of the above categories and who are temporarily engaged in undertakings or institutions in which the Union does not organise and who continue to pay full contributions.*
- (vii) *All members whose employment has been terminated by the employer, where the Union considers that a member has been unfairly dismissed, as long as the member continues to be unemployed.*
- (viii) *All members retiring early on grounds of ill-health, incapacity or sickness as long as the member continues to be unemployed.*
- (ix) *With the express permission of the NEC to include all members victimised as a result of the 1984/85 strike and any future disputes in accordance with Rule 6.G any other person not falling within one of the above categories and who continues to pay contributions.*

5.D Eligibility

- (i) *A person ceasing to fulfil the qualifications for his or her category of membership shall cease to be a member unless given dispensation by the NEC.*

14. Election of National Officials

14.A *The National President and National Secretary shall be elected in line with legislation.*

14.C *Each Area shall nominate one candidate for the position of National President and National Secretary, provided that such nomination is confined to a person who is a member of the National Executive Committee in full financial membership and has been*

for a least 12 months. At the close of nominations, only those candidates shall be eligible for election who have received the nominations of Areas the total membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the Union for the twelve months ending on the preceding 31st December.

14.D President

- (i) The President shall be Chairman of the National Delegate Meeting in accordance with Rule 8.1.
- (ii) The President shall hold office for a period of five years and shall be eligible to be re-elected to the next successive term of office without the need to be a representative member of the NEC at any time prior to, during, or otherwise at the conclusion of the election process.

17 Areas

17.A The members of the Union shall for the purposes of administration be organised into divisions of the Union known as 'Areas' listed in Schedule One hereto as amended from time to time.

17.B The membership of any Areas may but need not be members of one or more Constituent Associations.

17.C A "Constituent Association" means a registered trade union other than the Union itself comprising of members of the Union and which has been approved for that purpose by Conference. A Constituent Association may with the approval of the Union dissolve itself, merge, combine, amalgamate with or transfer engagements to any other Constituent Association, or merge, combine, amalgamate with or transfer engagements to the Union. Conference shall have the power to admit and expel a constituent Association.

Schedule One to the Rules of the Union

SCHEDULE ONE

Constituent Associations

Areas

National Union of Mineworkers (Cokemen's Area)

COKEMEN'S

National Union of Mineworkers (Derbyshire Area)

DERBYSHIRE

National Union of Mineworkers (Leicester Area)

LEICESTER

National Union of Mineworkers (South Wales Area)

SOUTH WALES

National Union of Mineworkers (Colliery Officials' And Staffs' Area)

COLLIERY OFFICIALS' AND STAFFS

LANCASHIRE

NORTH EAST

NOTTINGHAM

SCOTLAND

YORKSHIRE

NOTE

For the purpose of NEC representation the Nottingham and Derbyshire Areas are regarded as one Area and South Wales and Cokemen's Areas are regarded as one Area.

Consideration and Conclusions

Complaint One

39. Mr Mace's first complaint is as follows:-

"On or about 19 December 2011 the NUM acted in breach of Rules 5.A (i)-(viii), Rule 5.D (i), Rule 14.C and Schedule One of its National Rules by accepting a nomination for Mr. N Wilson as a candidate for the office of National Lay President 2012".

40. As this complaint contains an allegation of breaches of three rules and a schedule, I considered it necessary at the beginning of the hearing to identify those issues that I had to determine. The parties accepted that the issues were as follows:

40.1 Was Mr Wilson a full financial member of the Union for at least 12 months prior to his nomination, as required by rule 14.C?

40.2 In order to determine that issue, was Mr Wilson entitled to full financial membership under rule 5.A? In correspondence, the Union had relied upon both rule 5.A(iii) and 5.A(viii). At the hearing, the Union stated that it no longer relied upon rule 5.A(viii).

40.3 Accordingly, the core point to determine was whether Mr Wilson came within rule 5.A(iii) as a person "employed by the Union or by an area including national or area official/agents".

40.4 Mr Scargill did not seek to make good any breach of rule 5.D(i) of the rules, either in his skeleton argument or at the hearing. His skeleton argument omits any reference to rule 5.D(i) in the declarations that he was seeking on behalf of Mr Mace.

Summary of Submissions

41. Mr Scargill, for Mr Mace, submitted that Mr Wilson lost his membership of the Union when he ceased working in the mining industry (as per rule 5.A(i)), without ever becoming employed by the National Union or an Area (as per rule 5.A(iii)). He argued that this occurred in 1988 or 1989 when SCEBTA ceased to be a Constituent Association of the National Union and was removed from Schedule One of the rules. Mr Scargill maintained that SCEBTA members who were employed in the mining industry had become members of the NUM (Scotland Area) and had thus retained membership of the National Union. In advancing this argument Mr Scargill relied upon a comparison of the extracts of the Union rules of 1987 and 1988 as they appeared in the bundle. The extract of Schedule One in the 1987 rules showed both the NUM (Scottish Area) and SCEBTA as Constituent Associations, whereas the extract of Schedule One in the 1988 rules showed neither of them as a Constituent Association or at all. The only relevant reference in the 1988 rules was to 'Scotland' as being an Area. He further argued that Mr Clarke, Mr Crawford and Mr Bolton (the full time paid officials in Scotland before 1989) remained members of the Union after the merger in 1989 as they were employed by the National Union. Mr Scargill submitted that Mr Wilson was never similarly employed by or his employment authorised by the National Union. He also submitted that whilst the NUM (Scotland

Area) could have employed Mr Wilson and paid him from its own funds, this did not happen and that his actual employer, NUM (Scottish Area) was neither an Area nor a Constituent Association of the National Union after 1988.

42. Mr Scargill contrasted the position of Mr Wilson with his own removal from full financial membership of the Union in or about January 2011. He asserted that he had been an employee of the Yorkshire Area Trust Fund and the Lancashire Area Trust Fund until 31 December 2011, when he also ceased to be Honorary President of the Union. Prior to that date he considered that he was entitled to full financial membership of the Union by virtue of rule 5.A(iii). However, the NEC had upheld the decision of the Yorkshire Area officials that he was not so entitled on the grounds that the Yorkshire and Lancashire Area Trust Funds did not appear in Schedule One of the rules as either an Area or Constituent Association of the Union. Mr Scargill submitted that if this approach was correct in his case (which he disputed) it must also be correct in Mr Wilson's case, with the effect that Mr Wilson did not qualify for membership of the Union. Mr Scargill had argued that as the Trust Funds were considered assets of the Union he had been an employee of the Union and it was immaterial that they did not appear in Schedule One.
43. Mr Eyre, for the Union, submitted that Mr Wilson was employed by the Union or by an Area within the meaning of rule 5.A(iii) as he was employed at the relevant time by the NUM (Scottish Area). He argued that in or about 1988/89 the NUM (Scottish Area) and SCEBTA had combined for administrative purposes so as to reduce the Union's overall expenditure. He pointed out that there was no rule requiring all Constituent Associations and Areas to be listed in Schedule One and that it was therefore permissible for the NUM (Scotland Area) to have a Constituent Association not listed in Schedule One. He argued that the NUM (Scottish Area) was still a Constituent Association of NUM (Scotland Area) and that Mr Wilson's contract of employment with NUM (Scottish Area) was administered by the National Union through the NUM (Scotland Area). In Mr Eyre's submission, the NUM (Scottish Area) was a part of the NUM (Scotland Area) and consequently Mr Wilson was employed by an Area of the Union specified in Schedule One of the rules of the Union.
44. Mr Eyre further submitted that the 'Area' referred to in rule 5.A(iii) was not limited to the Area set out in Schedule One to the rules. He noted that rule 17.A provided that, *"The members of the Union shall, for the purposes of administration, be organised into divisions of the Union to be known as 'Areas' listed in Schedule One hereto as amended from time to time"*. He argued that rule 17.A established that Areas are *"for the purposes of administration"*, which was the purpose of the merger of the NUM (Scottish Area) and SCEBTA. He further relied upon the phrase *"Areas listed in Schedule One"* to argue that rule 5.A(iii) could similarly have restricted the meaning of Areas to those listed in Schedule One, if that had been the intention of the draftsman. In this alternative submission, Mr Eyre maintained that the NUM (Scottish Area) is an Area within the meaning of rule 5.A(iii), even though it does not appear in Schedule One.
45. Mr Eyre also submitted that any construction which removed Mr Wilson from membership was absurd, as it meant that once elected by the members to the position of General Secretary of the NUM (Scottish Area), the person elected would

no longer be eligible for membership of the Union. He further argued that Mr Wilson's position had been known to the NEC when he was first elected to it in 2003, was known to it when he became the Vice President of the NEC in 2010 and was known to it when nominated for President in 2011. He submitted that the NEC thereby acknowledged and accepted Mr Wilson's membership of the Union.

Conclusion – Complaint One

46. The determination of this complaint requires that I address the issues set out in paragraph 40 above, as agreed by the parties at the hearing.
47. I firstly dispose of the reference to rule 5.D(i) in the complaint. Rule 5.D(i) provides as follows:

5.D Eligibility

- (i) *A person ceasing to fulfil the qualifications for his or her category of membership shall cease to be a member unless given dispensation by the NEC.*

As already noted in paragraph 40.4, this alleged breach was not pursued at the hearing nor in Mr Scargill's skeleton argument. In my judgement, rule 5.D(i) is not a rule which in itself is capable of being breached. Further, it is not in itself a rule within my jurisdiction under section 108A of the 1992 Act. It is a rule relating to membership status, the absence of which status may lead to a breach of some other rule within my jurisdiction. Mr Mace's complaint of a breach of rule 14.C would be made out if Mr Wilson does not satisfy the membership requirements of rule 5.A(iii). It is not in dispute that he ceased to fulfil the qualification of being a working miner in 2002 when his colliery closed, but it is in dispute whether he was then able to continue in membership as a person employed by the Union or an Area in accordance with rule 5.A(iii). As to any dispensation given by the NEC, I note that the Union is no longer relying upon rule 5.A(viii) and any express permission having been given by the NEC. For these reasons I dismiss the complaint of a breach of rule 5.D(i) of the rules of the Union.

48. As stated in paragraph 40.3 above, the core point for me to determine in this complaint is whether Mr Wilson was "employed by the Union or by an Area including National or Area Officials/Agents" in accordance with rule 5.A(viii).
49. This is not an easy point, like so many that arise from the rules and practices of the NUM. The agreed fact is that Mr Wilson was employed at the relevant time by the NUM (Scottish Area) but the consequences and legal effect of that employment are in dispute.
50. In construing the rules of a trade union it has frequently been found that it is not appropriate to approach them as one would a commercial contract or tax statute. One of the most commonly quoted examples of this approach is that of Warner J in **Jacques v. AUEW (1986) ICR 683**. He said at page 692:

"The effect of the authorities may, I think, be summarised by saying that the rules of a Trade Union are not to be construed literally or like a statute, but so 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."

51. Applying that approach to the facts of this case, it is difficult to envisage an untutored member of the Union believing that Mr Wilson was anything other than a member of the Union. He had been a member since he started work at a colliery as an apprentice electrician in 1967 when he joined SCEBTA. He served SCEBTA in various capacities and in 1989 became its General Secretary as well as the General Secretary of the miners section (the NUM (Scottish Area)), and the NUM (Scotland Area), whilst still employed at a colliery. It was only when his colliery closed in 2002 that he ceased qualifying for membership of the Union as a person employed in the coal mining industry (as per rule 5.A(i)). He then continued to serve the interests of the miners in Scotland as its main representative. He also secured positions on the NEC before becoming the Union's Vice President and then President. Throughout this period it can be presumed that he paid subscriptions to the Union or its relevant Area/Constituency Association in accordance with rule 6.A. In any event, there was no evidence of his subscriptions having been rejected by or on behalf of the Union. In these circumstances it appears counter intuitive that, in such a Union as the NUM, a person could have served for so long with no previous objections having been taken to his membership of the Union if he did not in fact qualify for membership. It would seem that an ordinary member of the Union would be surprised by an interpretation of the rules which declared that Mr Wilson had not been a member of the Union since 2002.
52. On the other hand, employment is usually viewed as a legal relationship based on a contract of employment which suggests that a more strict, legalistic approach is to be preferred. On this basis, it can be argued that I should identify the relevant legal entities and then apply rule 5.A(iii). The NUM (Scottish Area), SCEBTA and NUM (Scotland Area) are each trade unions listed at the Certification Office. As such, they have quasi-corporate status by section 10 of the 1992 Act. They are unincorporated associations that can make contracts as well as sue and be sued in their own names. Mr Mace submits that as the NUM (Scottish Area) is not a Constituent Association of the National NUM nor an Area referred in Schedule One of the rules, employment by it falls outside rule 5.A(iii).
53. Analysing rule 5.A(iii), it might appear strange that a distinction is made between employment by the Union and employment by the Area. It would seem that employment by the Area is employment by the Union. This would certainly seem to be the case for those Areas in which there is no Constituent Association. However, read in context, this distinction is, in my judgement, intended to separate those employed with the direct authority of the NEC and paid out of national funds from those employed by an Area, not being paid of the funds of the National Union. On this construction, I find that Mr Wilson was not directly employed by the National Union in the sense of him being paid out of the funds of the National Union, although its NEC was aware of his employment in Scotland. I further find that the National NUM impliedly, and probably expressly, consented to that employment.
54. The question that remains is whether Mr Wilson was employed by an Area within the meaning of rule 5.A(iii), which expressly includes employment as an Area Official. In this connection, I observe that rule 1 of the rules of the NUM (Scottish Area) describe it as being a constituent part of the NUM and that, in correspondence with my office, Mr Scargill described the NUM (Scottish Area) as a Constituent Association of the

NUM (Scotland Area). I further observe that all three Scottish unions have the same registered office, the same General Secretary and share a common membership in the manner I have described. The rules of the NUM (Scotland Area) are intrinsically linked to those of the NUM (Scotland Area). The work performed by Mr Wilson for the NUM (Scotland Area) was paid for by the NUM (Scotland Area). I have also had regard to the origins of the current structure of these unions in Scotland. They arose out of a failed attempt at legal merger under the statutory procedures and a "forced" merger imposed by the National Union which, following negotiations, resulted in rule books and arrangements which were agreed by the NEC. The NUM (Scotland Area) and SCEBTA had sought to protect their funds from being transferred to the NUM by retaining them within separate unions, but for all other purposes the NUM (Scotland Area) and SCEBTA operated as branches of the NUM (Scotland Area), with a common membership and leadership as well as common interests. Having regard to all the circumstances, I find that Mr Wilson entered into an employment relationship with the NUM (Scotland Area) in 2002, shortly after the retirement of Mr Scargill as National President, with the consent and approval of the NEC. On the particular and unusual facts of this case, I find that Mr Wilson agreed to perform work as an Area Official of NUM (Scotland) with responsibilities for all NUM members in Scotland and that NUM (Scotland) agreed to provide that work. I find that his contract with the NUM (Scotland Area) was the means by which he was to be remunerated for the performance of his duties for the NUM (Scotland Area). I find that he was integrated into the organisation of NUM (Scotland Area) and that it controlled his work. The reality of the situation is that Mr Wilson was required (expressly or impliedly) to work on behalf of all the NUM members in Scotland in the capacity of an Area Official in the sense that he was a full time officer with regional responsibilities. In finding that there was at least an implied contract of employment between Mr Wilson and the NUM (Scotland Area), I have stood back from and apportioned weight to all the details of the case in accordance with the guidance of Mummery LJ in **Hall (Inspector of Taxes) v Lorimer (1994) IRLR71**. He considered that the determination of employment status

"...is not a mechanical exercise of running through items on a check list to see if they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture that has been painted, by viewing it from a distance and making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail which is not necessarily the same as the sum of the individual situation. Not all details are of equal weight or importance in a given situation".

Looking at the overall effect of Mr Wilson's relationships with the three NUM bodies in Scotland, the work he performs and the evolution of the present structure of the Union, it is apparent that Mr Wilson comes within the intended meaning of rule 5.A(iii) of the rules of the Union as an Area Official performing duties for the NUM (Scotland Area) but paid by a body considered to be a Constituent Association of NUM (Scotland Area).

55. On the basis of my finding that Mr Wilson satisfied the requirements of membership in rule 5.A(iii) of the Union's Rules, I find that he also satisfied the requirements of rule 14.C to stand for nomination for the position of National President, namely that

he was at the relevant time a person in full financial membership and had been for at least 12 months.

56. For the above reasons I dismiss Mr Mace's first complaint. I find that rules 5.A(i)-(viii) and Schedule One are not rules which are capable of being breached in themselves, as I have already found in relation to rule 5.D(i). They therefore do not require to be considered other than as rules which are relevant to a consideration of whether there had been a breach of rule 14.C.

Complaint Two

57. Mr Mace's second complaint is as follows:-

"The decision to exclude Mr Mace's nomination to stand as a candidate for the position of NUM National Lay President taken on or about 19 December 2011 was an unreasonable exclusion and is a breach of Rule 14.A and Section 46(1) and Section 47(1) of the 1992 Act."

58. As with Mr Mace's first complaint, this also alleges multiple breaches. Further, some of the alleged breaches overlap with his third complaint. In a discussion of the issues at the beginning of the hearing, I ruled that this complaint should proceed in two parts. Firstly, I would consider the personal position of Mr Mace and whether the Union breached section 47(1) of the 1992 Act by unreasonably excluding him from standing as a candidate in the 2012 election for National President. Secondly, I would consider the allegation that the process for the exclusion of candidates in the election for National President 2012 generally was in breach of section 47(1) of the 1992 Act by reason of rule 14.C. I further ruled that the alleged breaches of rule 14.A and section 46(1) of the 1992 Act in this complaint should be considered under complaint three.

59. Section 47 of the 1992 Act provides as follows:-

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

60. Rule 14.C of the Rules of the Union provides as follows

14.C Each Area shall nominate one candidate for the position of National President and National Secretary, provided that such nomination is confined to a person who is a member of the National Executive Committee in full financial membership and has been for a least 12 months. At the close of nominations, only those candidates shall be eligible for election who have received the nominations of Areas the total membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the Union for the twelve months ending on the preceding 31st December.

The Exclusion of Mr Mace

Summary of submissions

61. Mr Scargill, for Mr Mace, submitted that Mr Mace had secured the nomination of the Maltby branch of his Union, the membership of which constituted about 36.2% of the membership of the Yorkshire Area and 20.4% of the membership of the Union. He argued that it was unreasonable to exclude from nomination a member who had secured such a high level of support. Mr Scargill noted that Mr Mace had stood successfully for election for a position on the NEC in 2009, which, it was argued, further demonstrated Mr Mace's popularity amongst the membership. Mr Scargill submitted that where an Area had to decide which of two or more candidates it wished to nominate, it should not leave that decision to be made by the Area Council, but should ballot all the members in that Area. In Mr Scargill's submission, Mr Mace had been excluded from nomination by the operation of rule 14.C as a whole.
62. Mr Eyre, for the Union, submitted that Mr Mace had not been excluded from nomination by the operation of rule 14.C as a whole. He argued that Mr Mace qualified for nomination under each of the conditions in rule 14.C. It was noted that Mr Mace was a sitting member of the NEC, that he had been in full financial membership for at least 12 months and that, if selected by the Yorkshire Area Council, he would have had the support of 30% or more of the total membership of the Union. Mr Eyre submitted that the only reason why Mr Mace was not nominated is that, of the two applications for nomination under consideration, the Area Council preferred that of Mr Wilson. He argued that there was nothing unlawful in that process, as affirmed by the Court of Appeal in the case of **Rees v. NUM (unreported - (1989) R No. 1965)**. Mr Eyre observed that branches were at liberty to put names forward to the Area Council for consideration and that the National Union had issued a circular inviting branches to do so. He noted that branches could call branch meetings at which this could be discussed and that branches could send delegates to the Area Council to discuss the Area's nomination. Mr Eyre submitted that the decision not to nominate Mr Mace was taken in accordance with the rules of the Union and that Mr Mace was not unreasonably excluded from standing as a candidate.

Conclusions – the Exclusion of Mr Mace

63. On this aspect of the complaint, I consider only if it was a breach of section 47(1) of the 1992 Act for the Yorkshire Area Council to have decided not to accept Mr Mace to stand as a candidate in the 2012 National President election, preferring instead to nominate Mr Wilson. I accept the submissions of Mr Eyre that the other qualifying conditions in rule 14.C are not relevant, as they were each met by Mr Mace.
64. Mr Eyre's position appeared to be that the Yorkshire Area Council had done what was required of it by rule 14.C in deciding between those who had sought nomination. He asserted that in applying the rules as it did, the Area Council had not acted unreasonably in that the branches had been invited to put forward candidates for nominations and there was no suggestion that the Area Council had acted arbitrarily or capriciously. In my judgement, however, section 47 is not satisfied by mere compliance with the rules of a union. Section 47 introduces a statutory test of

reasonableness, which prevails over the rules of the Union, save to the extent that section 47(3) applies. I have therefore to ask myself if section 47(3) applies to the provision in rule 14.C that each Area shall nominate just one candidate.

65. I note firstly that Mr Eyre did not rely upon section 47(3) of the 1992 Act for this part of the complaint. I nevertheless observe that by section 47(3) a rule of a union only operates to deem an exclusion to have been reasonable if the person excluded belongs to a class of which all the members are excluded by the rules of the union. This would be the case where, for example, members with less than 12 months membership are excluded from standing by the rules. However the rule by which Mr Mace was excluded does not, in my judgment, establish any such class. The membership of such a class would ordinarily be objectively ascertainable in advance of any nomination procedure. Furthermore, the process of selection by the Area Council would fall foul of the requirement in section 47(3) that a class may not be determined by reference to whom the union chooses to exclude. Accordingly, I find that section 47(3) does not apply on the facts of Mr Mace's case and I must determine whether his exclusion was unreasonable under section 47(1), even though it may have been in accordance with the rules.
66. The premise of section 47(1) of the 1992 Act is that all members of a trade union should have the right to stand as a candidate in any of the elections required by section 46(2), a statutory election. Subject to section 47(3), any restriction on that right has to satisfy the test of reasonableness. Each case must be considered on its own facts. On the facts of this case, Mr Mace not only had a prima facie right to stand as a candidate in this election as a member of the Union but he also satisfied all the criteria in rule 14.C and had the support of his branch, which accounted for 36.2% of the membership of his Area and 20.4% of the membership of the Union. I was informed that the decision of the Area Council to reject his application for nomination was left to the three branch delegates at the Area Council. In my judgement, any decision upon whether a person may stand in a statutory election which is left to a committee within the Union is likely to be unreasonable. No matter how such a committee carries out its task, it is unreasonable that a person's right to stand as a candidate is dependant upon the views of others who sit as a committee determining whether to accept a nomination. Accordingly, I find that the exclusion of Mr Mace from standing in the 2012 election for National President was unreasonable and in breach of section 47(1) of the 1992 Act.

The Exclusion Criteria Generally

67. Mr Mace's third complaint raises the issue of whether rule 14.C, read generally, breached section 47(1) of the 1992 Act but I ruled at the outset of the hearing that this should be considered together with his second complaint, which also concerns section 47(1).

Summary of submissions

68. Mr Scargill, for Mr Mace, submitted that two of the requirements to qualify for nomination contained in rule 14.C amounted to an unreasonable exclusion to stand as a candidate in breach of section 47(1), notwithstanding that both these requirements were met by Mr Mace. The requirements that Mr Scargill argued were unreasonable are that (i) any candidate must be a member of the NEC and (ii) that

“at the close of nominations, only those candidates shall be eligible for election who have received the nomination of Areas, the total membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the Union for the 12 months ending on the preceding 31st December”. I will refer to this as the 30% requirement.

69. As to the requirement that a candidate must already be a member of the NEC, Mr Scargill submitted that, as there were only nine members on the NEC, this requirement excluded 99% of members from seeking to be a candidate. He further argued that the position was made worse by there being a cut-off date for the application of this requirement, which had the effect that even those who might subsequently be elected to the NEC were disqualified. Mr Scargill further referred to the unfairness of rule 14.D(ii) which enabled the outgoing President to stand for re-election, even if no longer a member of the NEC.
70. As to the 30% requirement, Mr Scargill relied upon the case of **Scargill v. NUM**, referred to above (paragraph 30), both as decided by myself in 2009 and as upheld by the EAT in 2010. In that case I decided that a similar 30% requirement in the procedure to obtain nomination for election to the NEC was in breach of section 47(1) of the 1992 Act. Mr Scargill noted the distribution of members between the Areas and the fact that the overwhelming majority of members at the relevant time were in the Yorkshire Area (56.5%). He commented that if a member did not obtain the nomination of the Yorkshire Area, he or she would have to obtain the nomination of at least four other Areas and that the sum total of the members in the six smallest Areas only amounted to about 8.7% of the total membership. Mr Scargill further commented that, as it happened, Mr Wilson had received the nomination of all but one of the Areas and therefore met the 30% requirement without needing the nomination of the Yorkshire Area.
71. Mr Eyre, for the Union, submitted that the requirements for nomination for election for the National President contained in rule 14.C were both reasonable in themselves and deemed reasonable by section 47(3). He argued that the position of President of the National Union is self-evidently an important one. He noted that despite the Union's diminishing membership it still had net assets of about £7 million. Mr Eyre maintained that it was reasonable for the Union to require candidates to have both previous experience of the NEC and to have the support of a substantial number of members. He noted that the NEC was elected biennially and that members therefore had every opportunity of obtaining a seat on the NEC. He further observed that the 30% requirement test was not a requirement that the candidate had to have 30% support of an Area or of the whole Union, but only a requirement that the Area(s) nominating the candidate had a total membership that was not less than 30% of the Union as a whole. Mr Eyre submitted that the case of **Scargill v. NUM** was irrelevant as it mainly concerned a breach of rule complaint about elections to the NEC which were held under different rules.

Conclusions – exclusion criteria generally

72. I must first determine whether I have jurisdiction to consider a complaint from Mr Mace which does not relate to his personal position. The requirements in rule

14.C about which he complains in this aspect of his case are ones that he met. He was on the NEC and, if he had secured the nomination of the Yorkshire Area, his nomination would have met the 30% requirement. For this reason, my office had referred to this aspect of Mr Mace's complaints in correspondence as being 'hypothetical'.

73. I observe that a complaint of a breach of section 47 of the 1992 Act can be brought to me under section 55(1) which provides as follows:

(1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.

I accept that Mr Mace satisfies the requirement in section 54(2) as being a person having a sufficient interest. I observe from section 55(1) that there is no restriction on a complaint having to relate to the personal circumstances of the complainant or other named union member. Looking at the requirements of Chapter IV of the 1992 Act, I note that they are predicated on an election taking place or having taken place. Accordingly, in my judgement, I do have jurisdiction to consider a complaint under Chapter IV which does not relate to the personal circumstances of the complainant or other named union member but I find that the complaint must relate to an election which is taking place or has taken place.

74. As to the substance of this complaint, I note again that the starting point of section 47 of the 1992 Act is that all members should have the right to stand as a candidate in a statutory election. It is recognised within section 47, however, that there may be legitimate restrictions on that right. Firstly, a union may exclude a person's nomination if to do so is not unreasonable. Secondly, the members of the union may collectively decide upon exclusion criteria if those criteria are set out in the rules of the union and meet the requirements of section 47(3). Such exclusion criteria are deemed to be reasonable.

75. I accept Mr Eyre's submission that the position of President within the NUM is an important one and that the members of the Union have a considerable interest in ensuring that the person elected to that position is up to the job. Accordingly, I accept that some exclusion criteria may be reasonable. For example, it is not contested that the criterion that candidates must have been in financial membership for 12 months is reasonable. The President of the Union may be required to have some experience of it. However, any such criterion or condition must balance the right of all members to seek nomination against the reasonable needs of the Union in having an appropriately qualified President. The conditions imposed must be proportionate.

76. The condition imposed by rule 14.C that nominations are restricted to only members of the NEC at the time that nominations close has the attraction of being analogous to a board which appoints a Chairman from amongst its number. However, that is not the model predicated in the 1992 Act. Unfettered by section 47(3) of the 1992 Act, I would find it unreasonable for the pool of potential nominees for the position of President of this Union to be restricted to nine or ten persons. However, I find that rule 14.C does establish a class of members, all of whom are excluded from nomination by the rules of the Union; namely those not on the NEC. The identity of

those in the class is objectively ascertainable at the time nominations are invited. I further find that this is not a rule which provides for such a class to be determined by reference to whom the Union chooses to exclude. Accordingly, I find that the Union may rely upon section 47(3) to uphold its condition that candidates for the position of National President must be members of the NEC. By section 47(3) that condition is deemed not to be unreasonable.

77. The operation of the 30% rule does not similarly qualify for the protection of section 47(3) of the 1992 Act. In my judgement, that part of rule 14.C does not create a class within the meaning of section 47(3). I find that to constitute such a class, the rules must sufficiently identify those excluded so that a person interested in standing for election will know at that stage whether he or she is a member of the excluded class. The 30% rule only operates when a member has sought nomination from one or more Areas of the Union and the relevant Area Council(s) have chosen their nominee.
78. As I have found that section 47(3) of the 1992 Act does not apply to the 30% rule, I must determine, on the facts before me, whether it is an unreasonable exclusion in breach of section 47(1). I note that the 30% rule was introduced when the Union had considerably more than the 1,000 or so members that it has now and when the distribution of members between Areas was probably much different to what it is today. I was informed that at the time of this election, the Yorkshire Area had about 56.5% of the membership of the Union, that a person who was not nominated by the Yorkshire Area would need the nominations of at least the next four most well subscribed Areas and that a person who secured nominations from the six Areas with the least number of members would have only secured nominations from Areas with 8.7% of the total membership. Whilst I accept that a member can seek the nomination of an Area other than his or her own, I find that as a matter of practical reality, a member's best chance is to secure nomination from that Area. Having failed to secure the nomination of the Yorkshire Area, Mr Mace's task in securing the nomination of sufficient other Areas would have been extremely difficult. Having considered the operation of the 30% rule on the facts of this case, I find that it did unreasonably exclude from standing as a candidate those who did not secure nominations from Areas, the total membership of which was 30% or more of the total membership of the Union.
79. For the above reasons, I declare that the Union breached section 47(1) of the 1992 Act by unreasonably excluding members from standing as a candidate in the 2012 National President elections.

Complaint Three

80. Mr Mace's third complaint is as follows:-

"On or about 19 December 2011 the NUM acted in breach of National Rule 14.A and in breach of Section 46(1) and Section 47(1) of the 1992 Act in relation to the nomination and election for the Office of National Lay President".

81. When determining the issues to be decided at the outset of the hearing, I decided that the section 47(1) aspect of this complaint should be determined as a part of

Complaint Two and that this complaint should proceed on the basis of a complaint of a breach of rule 14.A and section 46(1) only.

82. Rule 14.A of the rules of the Union provides as follows:

14.A The National President and National Secretary shall be elected in line with legislation.

83. Section 46(1) of the 1992 Act provides as follows:-

46(1) A trade union shall secure –

(a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and

84. The Union correctly conceded at the hearing that if I found that the 2012 National President election had been conducted in breach of section 47(1) of the 1992 Act, the person elected would not have been elected in line with legislation. There would therefore have been a breach of rule 14.A of the rules of the Union. Similarly, if there had been a breach of section 47(1), the Union would not have secured that the President had been elected by virtue of having been elected to it at an election satisfying the requirements of Chapter IV of the 1992 Act. There would therefore also have been a breach of section 46(1) of the Act.

85. I have found that the 2012 National President election was conducted in breach of section 47(1) of the 1992 Act and accordingly I find that the Union thereby breached rule 14.A of the rules of the Union and section 46(1) of the 1992 Act.

Enforcement Orders

86. Section 55(5A) of the 1992 Act deals with breaches of statute and provides as follows:

(5A) 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 more of the following requirements -

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

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

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

The Certification Officer shall in an order imposing any such requirement as is mentioned in paragraph (a) or (b) specify the period within which the union is to comply with the requirements of the order.

87. Section 108B(3) and (4) of the 1992 Act deal with breaches of the rules of a union and provides as follows:

(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.

(4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.

88. I have made a declaration that the Union breached section 47(1) of the 1992 Act and rule 14.A of the rules of the Union in the 2012 National President elections and must therefore make an enforcement order unless I consider that to do so would be inappropriate. I have had regard to all the facts of this case and to my finding that Mr Mace failed to be nominated as a candidate in that election by operation of rule 14.C which was found to be in breach of section 47(1). Further, the unlawfully restrictive nature of rule 14.C may have deterred others from seeking nomination, although I have no evidence of any specific individual member who was so deterred. Further, I note that Mr Mace is presently serving a three year period of disciplinary suspension from the Union, which decision he may or may not be appealing, and that he is not presently working in the mining industry, following the closure of the Maltby Colliery in March 2013. Having considered all the facts of this case, I consider that it is appropriate that I make an enforcement order. I do so in the following terms:

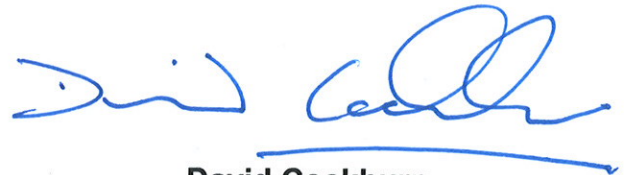
88.1 I order that the result of the election of the NUM National President 2012 declared by Electoral Reform Services on 6 January 2012 and accepted by the National Executive Committee on 29 February 2012 be set aside and that Mr Wilson shall forthwith cease to hold office.

88.2 I further order that an election for the office of National President so vacated shall take place so that the result is declared no later than 18 November 2013. The election shall be conducted so as to comply with Chapter IV of the 1992 Act and the rules of the Union excluding the requirements in rule 14.C that nominations are made by Areas and the requirement that at the close of nominations only those candidates shall be eligible for election who have received the nominations of Areas the total membership of which together amounts to 30% or more of the total membership of the Union on the basis of the number of members for which contributions have been paid to the UNION for the twelve months ending on the preceding 31st December.

89. In framing this enforcement order I have considered the meaning of the requirement in rule 14.C that each Area shall nominate one candidate. In particular, I have considered what constitutes an Area for this purpose. In this regard, I have had regard to the decision of the Court of Appeal in **Rees v NUM (unreported – 1989 R. No.1965)** in which Stocker LJ considered the meaning of rule 14.D(i) of the then rules of the Union which provided as follows:

“On the occasion of the election of the Vice President, each Area shall be entitled to nominate one candidate provided that such nomination be confined to a person who is a full financial member and has been for at least 12 months”

The Court of Appeal was called upon to consider the meaning of the word 'Area', having been invited to find that there was no sufficiently precise statement as to how, or by what method, the choice of person to be nominated was to be decided. It was held that the word 'Area' was used as a reference to the structural organ of the Area, namely the Area Council or Area Executive Committee. As I have found that a decision to exclude a member from being a candidate made by the Area Council is unreasonable, I have ordered that the re-run election need not comply with the requirements of rule 14.C that each Area shall nominate one candidate. The Union is to devise a mechanism for nomination which complies with section 47 of the 1992 Act and the rules of the Union which I have not disapplied.



David Cockburn
The Certification Officer