

DECISION OF THE CERTIFICATION OFFICER ON COMPLAINTS MADE UNDER
SECTION 3(2) OF THE TRADE UNION ACT 1913

E M L PARKIN

AND

ASSOCIATION OF SCIENTIFIC, TECHNICAL AND MANAGERIAL STAFFS

DATES OF HEARING	5, 6 and 9 August 1982
DATE OF DECISION	23 February 1983

The complainant appeared in person.

Mrs Muriel Turner, Assistant General Secretary, appeared for the Union.

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INTRODUCTION

1. Mr E M L Parkin has made a number of complaints to me under section 3(2) of the Trade Union Act, 1913, ("the 1913 Act"), alleging that his Union, the Association of Scientific, Technical and Managerial Staffs (ASTMS), ("the Union"), has breached its political fund rules. In correspondence an attempt was made to establish exactly what his complaints were and they were eventually listed under twelve separate headings. To assist identification I have retained in these decisions the numbering in that list because it was used at the hearing and is familiar to the parties. Mr Parkin withdrew the complaints numbered 8 and 11 before the hearing; the complaints numbered 2 and 3 were, with the agreement of the parties, taken together because of similar features and are covered by a single decision. An index to the complaints and the nine decisions is provided on the facing page.

2. At the hearing Mr Parkin conducted his own case and Mrs Muriel Turner, the Assistant General Secretary of the Union, conducted the case for the Union. I pay tribute to their courtesy and to their stamina during three days of evidence on legal issues of extreme complexity. I shall comment below on the wisdom of presenting complaints of this kind in this way.

3. Mr Parkin's complaints, if they were to be heard by me, had to allege one or more breaches of the political fund rule of the Union. This is rule 36 of the Union's rule book. The complaints relate variously to rule 36(a), (b) and (h). These sections are set out in full on the back page; they are not reproduced in the separate decisions unless there is good reason.

4. Before proceeding to the decisions I have some comments to make on some of the procedural issues raised by Mr Parkin's complaints and the way in which he presented them to me.

5. Section 3(2) of the Trade Union Act, 1913, as amended, states:

"If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Certification Officer, and the Certification Officer, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such an order for remedying the breach as he thinks just under the circumstances;"

Section 5A of the Act provides a right of appeal to the Employment Appeal Tribunal on a question of law.

6. I take it to be the purpose of section 3(2) to provide an individual trade union member - and also the trade union concerned - with a simple method, avoiding the expenses of the courts, to obtain an impartial judgment on a complaint; and for the member where appropriate to secure an order to remedy his grievance. However, it is not easy for a trade union member - or for a trade union official - to find and to marshal the appropriate arguments to bear directly on the correct aspect of the political fund rules and the frequently narrow point of law which are his targets.

7. It is therefore my practice - as it has doubtless been the practice of my predecessors since 1913 - to conduct a hearing with a degree of informality to allow a trade union member presenting his own case the opportunity to put forward that case as clearly and effectively as possible - and to extend the same facility to the trade union on the few occasions when the union is not represented by counsel. This informality, preceded by an exchange of correspondence with the parties, usually ensures an adequate presentation of the complaint and the defence on which to reach a decision. I wish to preserve this degree of informality.

8. However, there is a limit to the latitude which I can extend in this way. The 1913 Act requires me to make a legal decision on the operation of a trade union rule derived from the Act. The decision is nowadays subject to appeal. It may involve an order which can profoundly affect the operation of the trade union. In practice many of the complaints under the Act are single complaints, of which many are concerned with the personal predicament of a trade union member, particularly in relation to his or her exemption from payment of the political levy. They are inherently amenable to the procedures which I have described because they are based on facts known to both parties. Mr Parkin's complaints are of a different order.

9. None of Mr Parkin's complaints concerns his personal predicament or a self evident breach of the Union's rules, although there has been a previous decision related to complaint No.5. Each probes the limits of the law itself in its application in this difficult field and an adequate presentation of the issues involved would stretch the abilities of counsel. Mr Parkin is an experienced and successful litigant; but I think that in presenting this number

of complaints to me he was either out of his depth or insufficiently prepared. Despite my attempts before and during the hearing to give Mr Parkin every opportunity to introduce some precision into them and to relate them to the Union's rules, I am bound to record that in my view his presentation of some of those complaints at the hearing was inadequate for the purpose of the hearing.

10. If trade union members are inclined to fire another salvo of this kind at me - as they are quite entitled to do - I request them to give more attention to the best way to present their cases.

11. It has been a considerable task to sort out and assess the evidence and arguments put to me by both parties and this has contributed to the time taken to reach my decisions. I am satisfied that the nine decisions which follow and the orders which I have made are just to both parties. I find two complaints and a substantial part of a third complaint justified and I have made orders to the Union to remedy the breaches in these cases by the transfer of appropriate payments from the Union's political fund to the general fund.

COMPLAINT 1

12. Mr Parkin's first complaint is that the Union was in breach of its rule 36(h) because members who were not exempt from contributing to the political fund of the Union were not paying the political levy.

13. When Mr Parkin made his complaint, rule 36(h) read as follows:-

"36(h) The contribution to the Political Fund of the Association shall be 10p every calendar month, payable on the first day of each month. The Executive Council shall give effect to the exemption of members to contribute to the Political Fund of the Association of Scientific, Technical and Managerial Staffs by making a separate levy of contributions to that Fund from the members of the Union who are not exempt. No monies of the Association of Scientific, Technical and Managerial Staffs other than the amount raised by such separate levy shall be carried to the Political Fund of the Association of Scientific, Technical and Managerial Staffs. The first levy shall not come into force until the expiration of one month from the publication of the notice to members under clause (d) hereof, nor shall any levy come into force as respects a new member until the expiration of one month from his being supplied with

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construed as having the effect of placing the Union in breach when an individual non-exempt member fails, for whatever reason, to pay the levy, or fails to pay on the first day of the month.

18. I draw support for my conclusion from the decision of the Chief Registrar of Friendly Societies in *Edwards* and *National Federation of Insurance Workers*, reported in the Chief Registrar's Report for 1949. On that occasion the rule under scrutiny was similar to rule 36(h), but the facts were different because no political payments had ever been collected by the union concerned. The Chief Registrar said:-

"I cannot see that any duty to make a separate levy is imposed upon the executive committee except by way of giving effect to the exemption and no political contributions having been demanded by the union or executive committee it becomes otiose to give "effect to the exemption" My conclusion must therefore be that Rule 13 nowhere imposes upon the union or the executive committee an unqualified and unconditional duty to make the collection of political contributions from members who are otherwise bound to contribute. The most that the rule does in this direction is to give to the union a power which, having satisfied certain conditions, it may exercise and which it could not exercise but for that rule".

Commenting on this decision in his *"Modern Trade Union Law"* (Second edition, 1966, at page 259), Professor Grunfeld observes that

"It would appear to be a logical corollary of this discretionary power that a union (or its branches) may collect contributions from part of its membership only and is not obliged to universalise the levy among those members who have not claimed exemption from the obligation to contribute".

I agree with that observation.

19. For these reasons I dismiss this complaint.

COMPLAINTS 2 & 3

20. The complaints which at the hearing were referred to as the second and third complaints concern expenditure related to previous disputes between Mr Parkin and the Union about political or allegedly political matters. Because

of these similarities and with the agreement of both parties they were taken together at the hearing and I shall deal with them together here as one complaint.

21. The extent of the complaints had not, as it turned out, been made clear before the hearing. However, the facts are not in issue.

THE FACTS

22. The disputes to which Mr Parkin referred centre on a series of legal actions brought by Mr Parkin against the Union. The first action was a complaint under section 3(2) of the 1913 Act alleging that the Union had acted in breach of its political fund rules. This was heard by my predecessor on 11 April 1979. On that occasion Mr Parkin's complaint related to the exclusion by the Union of members who did not pay the political levy from proposing amendments to or voting on motions which had been proposed on the agendas for annual delegate conferences of the Union and which the Union had designated as political motions. My predecessor upheld Mr Parkin's complaint in part.

23. The second action was brought by Mr Parkin in the Queen's Bench Division of the High Court and heard by Mr Justice Woolf in February 1980. Mr Parkin's branch of the Union wanted the National Executive Council of the Union to refund to it some of the political levy money collected by the branch so that it could give the money to the Conservative Party for certain purposes. The National Executive Council refused. Mr Parkin's court action was successful in part in that he obtained a declaration to the effect that the fact that the Union was affiliated to the Labour Party did not impose an additional limitation on the branch as to the use which it might make of a grant out of the political fund of the Union. He did not however obtain a declaration that the branch was entitled to the refund, because one of the particular purposes for which the money was to be given to the Conservative Party fell outside the political objects in rule 36(a). No order as to costs was made.

24. Following that case the National Executive Council proposed that the Union should change its rules. The effect of the proposed change was to prevent branches giving money to other political parties when the Union's policy was to support the Labour Party and when the Union was itself affiliated to the Labour Party. Preparatory to this change in the rules, a circular letter

(GS297) dated 13 February 1980 and written by the Union's General Secretary, Mr Clive Jenkins, was sent to all branches and divisional councils of the Union. It enclosed the proposed amendments and notified branches and divisional councils that they were entitled to submit amendments to the proposals. The circular letter said that legal advice had been sought as to the manner in which the rules could be changed. It also said that, since the amendments were to the political fund rules and related precisely to the control and management of the funds, only those members who paid the political levy could participate in the debate at branch level and vote.

25. In view of this circular Mr Parkin again took legal action. He sought an injunction in the Queen's Bench Division of the High Court to restrain the Union from instructing branches to disallow participation or voting on any amendment or proposed amendment to rule 36 by members who do not pay the political levy. He also sought to restrain the Union from ordering a conference vote on any amendment to rule 36 to be taken by card vote showing branch political membership only.

26. On 7 March 1980 a further circular letter (G710) written by Mrs Turner was sent to all branch secretaries and divisional council secretaries advising recipients of Mr Parkin's further court action. It went on to say that on legal advice all consideration of the rule change motions and amendments to the motions had to be suspended until 31 March when the action would be heard.

27. Mr Parkin succeeded in his application for an injunction at the interlocutory stage: on 31 March 1980 Mr Justice Boreham granted a temporary or interim injunction in the terms requested pending a full trial of the issues by the Court at a later date.

28. On 2 April 1980, after the granting of the injunction, a third circular letter (GS323), written by Mr Jenkins, was sent to all National Executive Council members, to branches, divisional councils and the Standing Orders Committee. This set out the terms of the injunction but did not refer to legal advice. It said that branches must now discuss the amendment without restricting the discussion to members who paid the political levy. It also set out the new timetable, made necessary by the legal action, for the tabling of proposed amendments.

29. The Union's Annual Delegate Conference in 1981 decided which way the Union should cast its vote in the election for the post of Deputy Leader of the Labour Party on a vote which was not confined to the political levy paying membership. An appendix to the Annual Report of the Union presented to the 1982 Annual Delegate Conference stated that the decision to allow an open vote to all members was taken on legal advice.

MR PARKIN'S CASE

30. Mr Parkin submitted that the following costs incurred by the Union should have been paid out of its political fund:-

- (i) the legal costs incurred in relation to the complaint heard by the Certification Officer (paragraph 22), the case heard in the High Court (paragraph 23) and the application for an injunction heard in the High Court (paragraph 27);
- (ii) the legal costs incurred in preparing and issuing circular letters GS297 (paragraph 24); G710 (paragraph 26) and GS323 (paragraph 28); and specifically the cost of the legal advice referred to in circular letter GS297, the cost of drafting the proposed amendments to rule 36 that were enclosed with circular letter GS297, and the cost of the advice of legal experts required for the drafting of the circular letters G710 and GS323;
- (iii) the costs of printing, circulating and distributing circular letters GS297, G710 and GS323;
- (iv) the cost of legal advice regarding the voting at the 1981 Annual Conference on the question of the Deputy Leadership of the Labour Party (paragraph 29).

31. He included amongst the legal costs that he was complaining about the cost of advice and representation by solicitors and counsel; the cost of the

time spent on the matters in paragraph 30 above by the General Secretary and Mrs Turner (the Assistant General Secretary); and the cost of the involvement of the Union's own legal department on those matters. This embraced staff time, letters, phone calls, travelling, subsistence and "other ancillary expenses".

32. Mr Parkin was not able to put a figure on the amount which he was alleging had been spent from the wrong fund. He referred me to a figure in the annual return for 1980* which shows that £216,111 was paid from the general fund in respect of "legal costs", but he was not able to say how much of that should have come from the political fund. Nor did he point me to any other expenditure by the Union or put any figure on the cost of printing, circulating and distributing the circular letters. However, he said he was thinking in terms of £3,000 to £5,000 if an order was made on this complaint.

33. The complaint which emerged was that these legal and related costs were paid out of the general fund in breach of rule 36(b), but should have been paid out of the political fund because they were payments in furtherance of the political objects in rule 36(a).

34. Mr Parkin did not submit that the payment of the expenses he was referring to was a direct payment on any of the objects in rule 36(a). His argument was that it was an indirect payment on those objects. The particular object that he mentioned was the object in rule 36(a)(ii). In his view all the expenses were incurred because of the Union's wish to support the Labour Party. He submitted that the legal expenses should have been paid for out of the political fund because they were paid with the object of furthering a political cause and ensuring that money did not go to the Conservative Party and that it only went to the Labour Party; it would therefore be available for the support of Labour Party candidates and Members of Parliament. It would not have been necessary, he said, to change rule 36 or to issue the circular letter GS297 without the political motive which was to ensure that political fund money could only go to one political party, namely the Labour Party. Mr Parkin did not make it clear whether he was arguing that any payment of the expenses was an indirect payment in any other way.

* Under section 11(2) of the Trade Union and Labour Relations Act 1974, as amended, a trade union must send me each year a return relating to its financial affairs. The return must contain audited accounts.

35. Mrs Turner submitted that the costs that Mr Parkin was complaining about were properly charged to the general fund. She commented on some of the allegations about the Union's legal expenditure. She said that the whole of the proceedings before the Certification Officer was conducted on behalf of the Union by herself and that no external legal fees were incurred. A great deal of the argument in the case before Mr Justice Woolf had been about the powers of the National Executive Council under the general rules of the Union to require branches to conform to the policy of the Union. The Union decided to change its rules after Mr Justice Woolf made it clear that the National Executive Council did not have the powers that it thought it had and that the rules could be changed to give it those powers. She could not remember how much professional legal advice the Union had sought on circular letter GS297; she knew she had done the original draft although she might well have discussed it with the Union's lawyers. This circular letter was issued, she said, as part of the Union's normal procedures to provide branches with the opportunity to debate the proposed amendments. Mrs Turner argued that the issue of the other two circular letters (G710 and GS323) was a direct consequence of the injunction granted to Mr Parkin, with which the Union had complied. None of the circular letters was issued in pursuance of rule 36. As for the question of the Deputy Leadership of the Labour Party, she said that the decision that any vote on that issue should be open to every member resulted from the Union's experiences in court and discussions with its lawyers.

DECISION

36 It seems to me that Mr Parkin is complaining about two distinct types of legal expenditure:-

- (i) internal expenditure, covering the proportion of officers' and staff salaries and general and office expenses which relates to the time spent on legal matters; and
- (ii) external expenditure, covering the fees paid to solicitors for legal advice and representation by solicitors and by counsel.

In my view the "internal" expenditure at (i) falls within the category of general administrative expenditure which is the subject of another of Mr Parkin's

complaints to me.* Since the submission that it should be paid for from the political fund therefore stands or falls with that complaint, I shall exclude the internal expenditure from my consideration of this complaint. Accordingly, this decision will deal, as far as legal expenditure is concerned, only with the contention at (ii) that the legal fees paid to the Union's solicitors in respect of the Union's disagreements with Mr Parkin should have been met from the political fund. It will also cover the complaint about the costs of printing, circulating and distributing the three circular letters.

37. As I understand it Mr Parkin's general point about the legal expenses is that the fees paid to solicitors should have been paid from the political fund because they were incurred by the Union in the course of disputes with him which were concerned with the support of political parties. That point does not of itself assist Mr Parkin since the only payments which rule 36(b) prohibits the Union from making out of the general fund are payments in furtherance of the political objects in rule 36(a). There is no restriction on the making of other payments, however political in nature they may be. Accordingly, Mr Parkin cannot succeed in this complaint unless the legal fees were payments in furtherance of one or more of the political objects in rule 36(a).

38. Mr Parkin did not submit that the payment of legal fees was a direct payment on any of the political objects in rule 36(a), and in my view it is clear that it was not. He did, however, submit that it was an indirect payment on those objects - he mentioned rule 36(a)(ii) in particular - apparently on the basis that it was incurred "in furtherance" of them because it was spent to ensure that political fund money would go to the Labour Party and not the the Conservative Party. If my understanding of his submission is correct Mr Parkin's argument is therefore in substance that the payment of legal fees was indirectly a payment on the political objects because the reason why the payment was made - or to put it another way the Union's motive for, or intention in, making the payment - was to provide money for the Labour Party.

39. As I made clear in paragraph 16 of my decision in *Coleman and Post Office Engineering Union*, 1981 IRLR 427, I agree with the view my predecessor expressed in paragraphs 11 and 12 of *Richards and National Union of Mineworkers*, 1981 IRLR 247, that the intention or motive of the Union is not the correct test to apply to determine whether the payment was made in the furtherance of the political objects; the correct test is whether the payment that was made

* See paragraph 131.

considerations behind each decision to take legal advice in relation to Mr Parkin's actions, and that not the least of these considerations was the wish to ensure that the Union's actions were within its rules and the law and that the orders of the courts were obeyed and the requirements of the legal process were observed. Thus while I could accept Mr Parkin's submission that the Union wanted the money in its political fund to go to the Labour Party I would hesitate to conclude from that that the legal advice was sought for that reason alone.

41. As I have said above, Mr Parkin did not make it clear whether he was arguing that the payment of legal fees was an indirect payment on the political objects in any other way. However, it does not seem to me that a payment of legal fees is a payment in furtherance of the objects in rule 36(a) either directly or indirectly, even where the advice or representation has been sought in relation to the Union's political activities. I cannot accept that a payment of legal expenses is a payment in furtherance of those objects just because the remote end result may be that more money is available to be spent on those objects. The connection between the payment for legal advice and any payment that is ultimately made on the political objects is tenuous. Accordingly, I hold that the payment of solicitors' fees from the general fund was not a payment in furtherance of the political objects and was therefore not a breach of rule 36(b).

42. The only outstanding element of Mr Parkin's complaint concerns his submission that the costs of printing, circulating and distributing the three circular letters should be borne by the political fund. His argument about indirect expenditure on the political objects, discussed above, appeared to apply to these costs also, but in addition he submitted that these costs were expenditure, presumably direct expenditure, on the holding of meetings in support of candidates or prospective candidates to Parliament and that they therefore fell within the object in rule 36(a)(ii). The meetings to which he

was referring were branch meetings and divisional council meetings and the annual conference at all of which the proposed rule changes were to be discussed. There is no support from the facts for the argument that these meetings were meetings in support of Parliamentary candidates and in my view there is no substance in it. Accordingly, whether or not the expenditure on printing and distribution was expenditure on the holding of meetings - and I do not need to decide that issue although I very much doubt that it was - the expenditure was not expenditure on the holding of meetings in support of a Parliamentary candidate. I would add, although Mr Parkin did not argue this point, that neither were the circulars literature in support of any such candidate. Accordingly, the expenditure was not on the political object in rule 36(a)(ii).

43. For these reasons I dismiss this complaint.

COMPLAINT 4

44. Mr Parkin complains that expenses of the Union's "Parliamentary Committee" have been met from the Union's general fund when they should have been charged to the political fund. He says that this was a breach of rule 36(b).

45. The facts are not in dispute. The Parliamentary Committee of the Union consists of a group of members of both Houses of Parliament who are members of the Parliamentary Labour Party and also members of the Union. Some of the Members of Parliament who are on the Committee are sponsored by the Union. There are no separate meetings of the Parliamentary Committee itself, but the Committee meets members of the National Executive Council of the Union once a month during the parliamentary session. These meetings take place over lunch and are usually held in the House of Commons. The General Secretary and other senior officials of the Union normally attend along with research officers. Representatives of other unions sometimes attend.

MR PARKIN'S CASE

46. The substance of Mr Parkin's complaint is that the expenses of these

lunches, that is, food, drink and tobacco, should have been paid from the political fund of the Union because they were expenditure on the Union's political objects. He cited the objects in rule 36(a)(ii), (iii) and (v). He said that the expenses amounted to approximately £400 for each lunch and asked me to consider the complaint as relating to the years 1978-1981 inclusive. He did not produce any exact figure or any documentary evidence in support of the approximate figure he gave.

47. Mr Parkin submitted that any meeting which is organised and arranged to be held in the House of Commons must be political if it involves legislation or a change in the law. He said that the discussion which takes place across the table and over the meal would be of a political nature. He produced extracts from various journals which he claimed showed that the Parliamentary Committee frequently discussed political matters. He referred to a statement by Mr Jeff Hooker MP reported in the Union's journal of May/June 1982 that, more or less, the Thatcher Government chose the agenda for the Parliamentary Committee meetings. He also referred to minutes of a meeting of the National Executive Council in Harrogate on 21 May 1982 which listed three items under the heading "Political Session" and the sub-heading "Parliamentary Committee: minutes of 7 April and 5 May 1982". These items were "P110: Military Aircraft"; "Ten Minute Rule Bill"; and "Labour Party Conference 1982". Mr Parkin said that this last item must be political. He also produced an extract from the Union's diary for 1978 which described the Parliamentary Committee on the same page as a boxed paragraph which outlined the value of the Parliamentary Committee to members of the Union and exhorted members to pay the political levy.

THE UNION'S REPLY

48. Mrs Turner explained how the Parliamentary Committee came to be formed. She said that it acts in an advisory capacity to the National Executive Council on a whole range of issues affecting the Union generally, which on occasion might involve an attempt to change legislation. She pointed out that the page in the diary to which Mr Parkin referred says, under the heading "ASTMS Parliamentary Committee", that "the issues raised are industrial matters of great importance to various sections of our membership."

49. Mrs Turner produced a set of minutes of the meetings with the Parliamentary Committee. She described some of the matters that were discussed

at the last meeting, which she said had a fairly representative agenda:-

"We discussed science policy and the union's policy in relation to science and technology. We discussed the problem we have of public health laboratory services in Elstree, some difficulties affecting members of the Agricultural Training Board, the question of helicopter safety which arose as a result of some of our members being involved in an accident during the course of their employment. We discussed the matter of university cuts, something which affects the livelihood of members working in the university service. We discussed junior hospital doctors and attempts we have been making to reduce the number of hours that junior hospital doctors who are members of the union have to work. We discussed on behalf of the Commercial Travellers' Association, UCTA, the matter of employer provided cars and whether they should be taxed as a "perk" or whether they should be regarded as a tool of the trade by commercial travellers. We discussed redundancies at a firm called Ransome, Hoffman and Pollard. We discussed genetic engineering. Some discussions had been proceeding in relation to our members employed in genetic engineering, and a visit to St Mary's Hospital Medical School in Paddington was arranged. We discussed an EEC Commission proposal to amend the Community wine regulation which will also have some effect on the livelihood of our members; and a matter which is always before the committee, the matter of patient health hazards. At that meeting we also discussed the petro-chemical industry and the difficulties that are arising there, and arrangements were made to see the Secretary of State for Energy about problems affecting our members".

50. Mrs Turner agreed that the cost of the lunches would be of the order described by Mr Parkin. She argued that these expenses did not constitute expenditure of money on the holding of any meeting in support of candidates within rule 36(a)(ii); the Members of Parliament who attended the meetings were not "candidates" as they had already been elected to Parliament. She went on to say that the expenses were not "maintenance" within rule 36(a)(iii) either, because it was only a question of the occasional lunch and in any event not all the people who attended were Members of Parliament. Thirdly, the minutes show that the meetings were concerned with the ordinary industrial functions of the Union and therefore the expenses did not fall within rule 36(a)(v).

DECISION

51. The question for me is whether the payment of the expenses of the lunches was a payment on any of the three objects that have been cited by

Mr Parkin, that is the objects in rule 36(a)(ii), (iii) and (v).

52. I have no hesitation about agreeing with Mrs Turner that the payment of these expenses was not a payment on the object in rule 36(a)(ii). That object covers payments on the holding of any meeting in support of a candidate or prospective candidate to Parliament or to any public office, and is clearly directed to expenses on election meetings. The lunches were not meetings in support of any candidate.

53. Nor do I think that the payment of the luncheon expenses was expenditure on the maintenance of Members of Parliament within the meaning of rule 36(a) (iii). The provision of an occasional lunch for a Member of Parliament attending a meeting does not in my view amount to expenditure on the maintenance of that Member. The position might be different if the Union was paying for the Member's lunch every day.

54. The object in rule 36(a)(v), which covers expenditure on the holding of political meetings of any kind, contains a proviso which excludes expenditure on meetings whose main purpose is the furtherance of the statutory objects. The statutory objects are defined to include, broadly speaking, all the normal industrial activities of a trade union. Whether or not the luncheon meetings were political meetings of any kind, any expenditure on the holding of them would not be a payment on the object in rule 36(a)(v) if the main purpose of the meetings was the furtherance of the statutory objects.

55. It seems to me that the matters discussed at the luncheon meetings are a good indication of the main purpose of those meetings. I have studied the minutes which Mrs Turner produced and these show that at each meeting - as with the meeting which she used as an example at the hearing - the great majority of matters discussed were matters of direct concern to union members in relation to their employment. They were not matters relating to elections or to the support of a political party or otherwise to the party political objectives with which all the objects in rule 36(a) are concerned. In these circumstances I am satisfied that the main purpose of the luncheon meetings was the furtherance of the statutory objects. In view of this finding there is no need for me to consider whether the expenses of the luncheon meetings were expenditure "on the holding" of meetings, or whether the lunches were political meetings of any kind.

56. For these reasons I find that the payment of the luncheon expenses was not a payment in furtherance of the political objects in rule 36(a)(ii), (iii), or (v), and that therefore there was no breach of rule 36(b). Accordingly, I dismiss this complaint.

COMPLAINT 5

57. Mr Parkin complains that the Union acted in breach of its rule 36(b) by making a contribution of £42,952 from its general fund towards the purchase of property at Walworth Road to be used as a headquarters by the Labour Party.

MR PARKIN'S CASE

58. Mr Parkin alleged that the contribution was a payment in furtherance of the Union's political objects, and that it should therefore have been made out of the political fund. He cited as authority the recent decision of my predecessor in *Richards and National Union of Mineworkers*, 1981 IRLP 247 ("the Richards decision").

59. Mr Richards was a witness for Mr Parkin at the hearing of this complaint and Mr Parkin relied on his evidence and submissions. Mr Richards said that he accepted the findings in the decision on his own complaint although he submitted, contrary to one of them, that the contribution to the consortium was not a commercial investment. In support of this submission he produced various documents which he said had been produced at the hearing of his own complaint. These included a letter which showed that the yearly rent which the Labour Party was asked to pay for the Walworth Road property for the first five years was £160,000, and that this was a reduction of £34,000 from the figure of £194,000 which an independent firm of valuers had advised was the figure at which the current rental value could reasonably be put.

THE UNION'S REPLY

60. Mrs Turner said that the Union did not dispute either that an investment of £42,952 had been made in the Walworth Road property or that it had been made from the general fund and not the political fund. She made it

clear that the Union was and is a member of the consortium of trade unions which purchased the Walworth Road property and that one of the objects of the consortium was to acquire property which would then become a headquarters for the Labour Party. It was not disputed, she said, that the investment was made on a sympathetic basis, but she maintained that it was nevertheless a commercial investment.

61. Mrs Turner said that it seemed to the Union that a commercial investment was not a payment on any of the political objects in rule 36(a) which, she submitted, are very restricted indeed. The Union's experience from the judgment of Mr Justice Woolf in the high court action that Mr Parkin had brought against the Union showed that the courts took a narrow view of these objects.

62. Mrs Turner explained that the Union had made the investment from the general fund in good faith after receiving legal advice and she produced a copy of a summary of an opinion of Mr Anthony P Lester, QC. She said that the opinion had been sought by the National Union of General and Municipal Workers and that the main point in the summary - and this was the only point to which she specifically drew my attention - was the paragraph which read:-

"In conclusion, the only possible course, presenting the smallest practicable element of risk, is for the union's involvement in the Project to be on the basis only of a commercial investment supported by qualified advice."

63. She submitted that the Union had therefore not acted in breach of its political fund rules. Indeed, the Union had no power to make the investment from the political fund because under rule 36(b) a payment can only be made from that fund if it is a payment in furtherance of the political objects in rule 36(a).

64. Mrs Turner emphasised that the Union was not happy with the Richards decision and took issue with it. In effect, her argument was that the Richards decision was wrong. She is, of course, quite entitled to make that argument to me.

DECISION

The facts

65. It is clear that the relevant facts relating to the consortium and the purchase of the property are the same as those set out by my predecessor in the Richards decision. Mrs Turner confirmed that the Union's contribution was made from the general fund. The Union's annual returns for 1978, 1979 and 1980 were produced in evidence at the hearing and the 1978 return shows that the contribution of £42,952 was made in that year. It carries this statement under the heading "Wholly Owned Companies and Property Investments":-

"Deposit in respect of proposed consortium property investment (Note i)

1978	1977
£42,952	- "

Note (i) reads:-

"(i) The Association intends to invest as a member of a consortium in a Freehold Property and in a Management Company being formed to manage the property. Pending the purchase of the property the Association has placed £42,952 on deposit with the leader of the consortium."

Under the same heading the 1979 and 1980 returns both state:-

"Consortium investment in Leasehold Property - Walworth Road £42,952. Shares in Walworth Road Trade Union Management Co Ltd: £42".

I need not consider the £42 because Mr Parkin only complained about the £42,952.

66. There are therefore no factual differences between this complaint and Mr Richards' own complaint which might affect my decision. The question for me is whether I agree with Mrs Turner's contention that the contribution of £42,952 from the general fund was not a breach of rule 36(b). She referred me to the judgment of Mr Justice Woolf in Parkin and Association of Scientific, Technical and Managerial Staffs, 1980 ICR 662, and to the summary of the opinion of Mr Lester in support of this contention.

67. Although Mrs Turner did not ask me to consider any specific passages from the judgment, she said that the decision of Mr Justice Woolf shows that the courts take a narrow view of the political objects in rule 36(a).

68. It seems to me that this decision is support for the proposition that a payment from the general fund on political objects is only a breach of rule 36(b) if it is a payment in furtherance of the limited, or restricted, political objects which are listed in rule 36(a). As Mr Justice Woolf put it (at p670):-

"Now, I would stress that while both the rule and section 3 have to be liberally construed, they use the term "political objects" in a restricted sense."

69. However, I do not think that the precedent is of any assistance to Mrs Turner in this complaint. Mr Justice Woolf was concerned with a proposed payment by Mr Parkin's branch of the Union to the Conservative Party which was to be used for two specific purposes. I take it that the learned judge considered that therefore the Conservative Party would in law either have to return the donation or, if it accepted it, would have to use it for the specified purposes. He decided that one of the two purposes fell within the objects in rule 36(a) and the other did not; accordingly the proposed donation, which was to be used for both the purposes, would only in part be a payment in furtherance of the political objects in the rule.

70. The word "purpose" was clearly used in a different sense in the High Court from the sense in which it was used in the Richards complaint. In the former case, it was the purposes for or on which the money was to be spent by the recipient that were important and in the latter, the subjective purpose or intention of the Union in making the payment. Mr Justice Woolf did not consider the issue discussed in the Richards decision as to whether the word "furtherance" should be given a subjective interpretation, but nor did he in effect apply the subjective interpretation. He did not consider what the intention of Mr Parkin's branch would have been when it made the proposed payment. Rather, he considered whether a payment for use on the specified purposes would have been a payment on the political objects. Mr Justice Woolf's judgment therefore does not run counter to my predecessor's view that the subjective test is not the correct test. Indeed it is, if anything, support for it. As

I have already said in my decision on an earlier complaint*, I agree with my predecessor's view on this point, although this issue is not directly relevant to this complaint because Mrs Turner did not argue her case on the basis of the subjective test.

71. Nor are Mr Justice Woolf's reasons for finding that one of the purposes fell outside the political objects applicable to my decision in this complaint. This is because the relevant facts are different. The purpose which fell outside the objects was "ensuring the co-operation and help of Conservative trade union MPs who are not at present allowed to be represented on the Union's Parliamentary Committee". Here, I am dealing with a contribution towards the purchase of property to be used as a headquarters by the Labour Party.

The summary of Mr Lester's opinion

72. The summary which Mrs Turner produced is a summary of an opinion written by Mr Lester for the National Union of General and Municipal Workers, as it then was. The opinion itself must have been written before the investment was made and therefore before Mr Richards brought this complaint to my predecessor. It is not clear from the summary whether the opinion was couched in general terms and based on hypothetical circumstances - although I think it likely that it was - or whether Mr Lester was asked to advise on the legality of the investment in the form that it was finally made. The summary of the opinion is not dated or signed and I was not told who prepared it. It begins:-

"This summary has been prepared in general terms. Each union should in considering this Summary and the Opinion ensure that its own rules are not contrary to the action to be taken".

I take it from this that the compiler of the summary felt that the summary should be read together with the opinion and not on its own.

73. Although I have not had the benefit of reading the opinion I have studied the summary with great care. In my view it is open to several interpretations and I could not be confident from reading it that the effect of Mr Lester's advice was that the Union could make the particular investment

* See paragraph 39.

that it did make with any certainty that it would not be acting in breach of its political fund rules. I cannot say whether or not I disagree with Mr Lester's advice, nor can I consider that advice or the reasoning on which it was based, because it is not clear from the summary what the advice was and it is not possible to detect with any precision Mr Lester's reasoning about section 3 of the 1913 Act.

74. For instance, the first sentence of paragraph B7 of the summary says:-

"The general conclusion reached in regard to the use of the general fund is that provided the payments are supported by a commercial investment approach divorced from a political approach, the general fund may be used with only a small risk, for the building."

I do not know whether either Mr Lester or the writer of the summary would argue that there was a commercial approach in this case which was "divorced from a political approach" in such a way as to satisfy the proviso in that passage. In these circumstances I have not been able to obtain any assistance from the summary.

The Richards decision

75. For myself, I find the arguments of my predecessor in the Richards decision compelling and I agree with and intend to follow that decision. For the purposes of this complaint I therefore endorse the Richards decision and adopt all its relevant paragraphs as part of my decision. Paragraphs 6 to 12, 27 and 28, 52 to 84 and 87 to 89 are particularly relevant and it may be helpful if I go through them briefly pointing out some similarities and differences.

76. Paragraphs 6 to 12 deal with the interpretation of the Act and the rules made in pursuance of it. Paragraph 10 sets out Counsel's argument that the word "furtherance" (which is in the Union's rule 36(b)) should be given a subjective interpretation with the result that the decisive question would be whether the union made the payments with the purpose of furthering the political objects. My predecessor rejected this argument for the reasons given in paragraphs 11 and 12, and in this case Mrs Turner did not advance the same argument. Indeed, she did not conceal the Union's intention to help the Labour Party.

77. Paragraphs 52 to 61 set out the facts. The Union (ASTMS) was among the twenty contributing trade unions referred to in paragraph 57. I note that in paragraph 61 my predecessor took account of the fact that the rent charged was less than the rental value of the property. Mr Richards, on behalf of Mr Parkin, relied heavily on this reduction at the hearing before me in arguing that the payment was not a commercial investment.

78. Mrs Turner has, in essence, repeated in her argument before me the submission of Counsel that is in paragraph 62. She did not, however, make the submission that is in paragraph 64 which relies on the subjective test of the word "furtherance". She did contend that an investment is not an expenditure of money on the expenses of a candidate, the holding of political meetings and so on, and I take it that some of the thoughts in the submission in paragraph 65 may have been behind this contention.

79. In paragraph 67 my predecessor found that the contribution of the union in that case was an investment and indeed a commercial investment. Although I have not had the benefit of hearing the oral evidence about the establishment of the consortium that was presented to my predecessor, or of seeing all the documents relating to it, I have no hesitation in agreeing on the evidence that has been placed before me that the contribution was an investment. As for whether the investment was commercial I have considered all Mr Richards' arguments to me and in particular his argument that the rent reduction for the first five years of the lease showed that the contribution was not a commercial investment. However, since that reduction was related to the fact, which was taken into account by my predecessor, that no premium was paid to the Labour Party in respect of the site value of the property, I am not persuaded that there is any reason to question my predecessor's finding that the investment was correctly described as a commercial investment.

80. Mrs Turner's submission that an investment is not the same as a payment is the argument considered and discussed in paragraphs 68 to 72. I entirely agree with the views of my predecessor on this issue and I hold that in this case there was a payment or expenditure of the £42,952.

81. Paragraphs 73 to 78 deal with the purpose of the union in making the investment. Paragraphs 27 and 28 are also important in this context. Since Mrs Turner did not seek to advance similar arguments to those in paragraph 73, I shall not comment on these paragraphs, but I note for the record that

Mr McKie, the Union's National Officer, Finance, said in evidence that he did not disagree with paragraph 78 as far as this Union is concerned.

82. Paragraphs 79 to 83 consider, on the basis that there was an expenditure of money, whether the payment in that case had in fact been made on any of the listed political objects. My predecessor concluded on two grounds that the payment was in the furtherance of the object that is in this Union's rule 36(a)(v) and on one ground that it was in the furtherance of some if not all of the other objects. I agree with the reasoning in those paragraphs and for those reasons I find that the investment of £42,952 was a payment in furtherance of the political objects in rule 36(a).

Restriction on use of the political fund

83. In addition to the submissions considered in the Richards decision, Mrs Turner submitted that this Union was prohibited from making the investment in Walworth Road from its political fund because of the second sentence of rule 36(b). This reads:-

"No payment shall be made out of the Political Fund, without the consent of the NEC and other than in furtherance of such political objects and subject to the policy of the Association for the time being in force."

The provision in this sentence which has the effect that the political fund can only be spent on the political objects is not a provision which is required by the 1913 Act to be included in the political fund rules of each trade union with a political fund. It is unusual if not unique among the provisions in the political fund rules of trade unions and it necessarily means that the Union has to be more careful than other unions before spending money from its political fund. However, I do not think that it has any bearing on this case. Although it would have had the effect of forbidding the making of the investment of £42,952 from the political fund if the investment had not been a payment in furtherance of the political objects, it cannot be relevant where, as I have found, the investment was a payment and was a payment in furtherance of the political objects.

84. For these reasons I find that there was a breach of rule 36(b) and that this complaint is justified.

85. Paragraphs 87 to 89 of the Richards decision deal with the making of orders. Mr Parkin argued that a similar order would not be appropriate in this case because the political fund is already in deficit. He asked for an order forbidding any payments out of the political fund until the deficit had been cleared and £42,952 could be transferred to the general fund. I am not convinced that such an order would be justified or necessary to remedy the breach. It seems to me that it is for the Union to arrange its finances in such a way as to ensure that £42,952 is transferred from the political to the general fund, and I shall not restrict it as to how it may do this.

86. Mrs Turner was offered the opportunity to address me about any difficulty for the Union that she might foresee, because the Union's political fund is in deficit, in an order similar to that which was made in the Richards decision. She declined this opportunity. I therefore order the Union to transfer the sum of £42,952 from its political fund to its general fund.

COMPLAINT 6

87. Mr Parkin initially made his next complaint to me in these terms in a letter:-

"Running the political fund into deficit is surely not permissible as the rule states that contributions from the fund must be from the political levy at the rate of 10p (now 25p) per member per month. An overdraft must be a charge on the general fund either directly or indirectly and is illegal. Rule 36(h)."

More formally, his complaint is that the bank overdraft presently covering the deficit in the political fund has been charged to the general fund either directly or indirectly in breach of rule 36(h).

88. The Union's annual returns for 1979 and 1980, which were produced in evidence, show that the Union's political fund went into deficit in 1979 and that the deficit stood at £71,288 at the end of 1980.

89. At the hearing Mr Parkin explained that he believed that a union should not run a fund like the political fund into overdraft; that an overdraft means that money other than levy money has been used to fund political activity and that this money has been carried into the political fund from the bank and not from the levies of the members. He alleged that there had therefore been a breach of the third sentence of rule 36(h) which reads:-

"No monies of the Association of Scientific, Technical and Managerial Staffs other than the amount raised by such separate levy shall be carried to the Political Fund of the Association of Scientific, Technical and Managerial Staffs."

THE UNION'S REPLY

90. Mr J McKie, the Union's National Officer, Finance, gave evidence about the financial position. He explained that the political fund has a separate account at the Union's bank, the Co-operative Bank, and that an arrangement had been made with the bank to allow the Union an overdraft facility for the political fund account up to a limit which was currently £90,000. The overdraft was unsecured and all the interest that accrued was charged to the political fund. The general fund was not used to back the overdraft and there was no charge on the general fund in respect of the overdraft.

DECISION

91. It seems to me to be beyond doubt that rule 36(h) only prohibits the transfer of the Union's money to the political fund. It does not prevent other persons or organisations from contributing to the political fund or from providing money for it. Accordingly there would not be a breach of rule 36(h), nor as far as I can see of any other political fund rule, if a bank was providing an overdraft for the political fund unless the overdraft was being financed by the general fund.

92. Mr Parkin and his witness Mr Howard Wilson, a chartered accountant, alleged that money which had not been raised by the political levy was transferred from the general fund to the political fund while the political fund was in deficit. The transactions to which they referred are themselves

covered by another of Mr Parkin's complaints to me and I shall consider them in their own right in my decision on that complaint.* However, those transactions were not related to the overdraft itself and there was no evidence to show that they occurred as a result of the overdraft or that they would not have taken place if the political fund had been in surplus. It therefore seems to me that they do not assist Mr Parkin in this complaint.

93. This complaint turns on the facts. No evidence was produced by Mr Parkin or his witness to challenge Mr McKie's account or to show that any general fund money has been used to finance the political fund overdraft.

94. I therefore dismiss this complaint.

COMPLAINT 7

95. Mr Parkin initially made his next complaint in these general terms:-

"Donations made by the wholly owned companies to the Labour Party have not been made from the Political Fund and comprise monies paid in good faith by opted out members."

In correspondence before the hearing the Union explained that certain companies had been formed in conjunction with a firm of insurance brokers in order to sell insurance to ASTMS members and others. The directors of these companies had decided that some of the profits from the sale of insurance should go to the Union's political fund.

96. I only have jurisdiction, under section 3(2) of the Act, to deal with a complaint brought by a member of a trade union if it is a complaint alleging a breach of one of that union's political fund rules. Accordingly, I cannot deal with Mr Parkin's complaint about the activities of the companies except insofar as he is alleging that there has been a breach or breaches of the Union's rule 36. The two sentences of that rule which are relevant are the first sentence of rule 36(b), which prohibits the Union from making any payments in furtherance of the political objects from any fund except the political fund,

* See paragraphs 95 - 120.

and the third sentence of rule 36(h) which provides that no monies of the Union other than the amount raised by the political levy shall be carried to the political fund.

MR PARKIN'S CASE

97. At the hearing Mr Parkin with the help of his witness Mr Howard Wilson explained and particularised his complaint by reference to the Union's annual returns for 1978, 1979 and 1980.

98. First, he drew my attention to a sum of £5,000 which the 1978 return shows to have been added to the political fund account during that year as "Prior Year Adjustments". The £5,000 was part of a figure of £54,753 removed from the general fund account under the same heading. A note to the accounts says that the £5,000 related "to a donation of £5,000 from a wholly owned company which was specifically for political purposes". Mr Parkin alleged that this £5,000 was monies of the Union which had been carried to the political fund in breach of the third sentence of rule 36(h).

99. Second, the 1978 return shows that a sum of £20,000 was transferred from the general fund account to a political purposes fund account which was set up to receive it. A note to the accounts in that return reads:-

"The transfer to the Political Purposes Fund comprises donations to the Association by directors of the wholly owned companies which have now been designated by them as donations for use at the direction of the National Executive Council, for political purposes."

The political purposes fund accounts in the 1978, 1979 and 1980 returns show that interest payments of respectively £41, £1,863 and £1,556 were made to that account during those years. A sum of £4,305 was spent from the account in 1978 and £89 remained in the account at the end of 1980. The balance, amounting to £19,066, was transferred to the political fund account in 1980. Mr Parkin alleged that monies of the Union other than the amount raised by the political levy had therefore been carried to the political fund in breach of rule 36(h). He was not sure whether the political purposes fund was part of the political fund or not; if it was, the allegation would concern the transfer of £20,000 in 1978; if not, it would concern the transfer of £19,066 in 1980.

100. Third, Mr Parkin referred to a sum of £4,305 which appears as an item of expenditure from the political purposes fund account in the 1979 return under the description "Political Grant Affiliation (see Note 5)". Note 5 is headed "Political Grants and Affiliations" and includes the item "European Election payments £4,375". Despite the discrepancy of £70, it is clear that the £4,305 was spent on the election expenses of the Labour Party during the 1979 elections to the European Parliament. Mr Parkin alleged that if the political purposes fund was not part of the political fund the payment of £4,305 was made in breach of the first sentence of rule 36(b) because it was a payment in furtherance of the Union's political objects.

101. Mr Parkin also pointed out that the annual returns of the Union contain a number of statements to the effect that the directors of the relevant companies proposed to make various donations to the Union's political fund. However, he said that he could not find out from the accounts whether these proposed transfers took place and that he had no evidence as to whether money was transferred or not. His witness Mr Edward Barnett had looked into the accounts of the relevant companies at Companies House and he told me that he had found several references to proposed donations but that he could not find any record that any of these donations had in fact been made. Mr Parkin said that it seemed odd that the accounts should mention proposals to transfer rather than what had actually happened. However, he did not refer me to any transfers of money from the companies to the Union - either to its general or to its political fund - which I could consider in addition to the three specific items to which he drew my attention; so his complaint is restricted to those three items.

THE UNION'S REPLY

102. The background to the transactions was explained by the Union's witnesses. Mr Alan Bannister, a registered insurance broker and a senior partner of the firm of Hurst and Partners, said that the first of the insurance companies had been established around 1916 by an arrangement between Hurst and Partners and the Medical Practitioners' Union, which had later merged with the Union. The company provided an insurance service for all doctors. During the 1960's ASSET, one of the founder unions of ASTMS, had set up another company with Hurst and Partners to do the same thing for ASSET members. After the merger to form ASTMS, other companies were set up. Hurst and Partners provide all the services for these companies from their offices in Chelmsford. The

Union provided no capital for these companies apart from the initial payments for the subscriber shares in the new companies, and it makes no contributions whatsoever to office overheads.

103. Mr Bannister, who is not a member of the Union, was himself a director of two of these companies, ASTMS Insurance Selection Limited and MPU Insurance Selection Limited, which were both incorporated in 1974. He said that there are six directors of ASTMS Insurance Selection Limited, two from his firm and four who are members of the Union. This company has a contractual arrangement with a company in which Mr Bannister is involved as a share-holder whereby the latter company runs the insurance organisation and a specific percentage of the commission is to be paid to ASTMS Insurance Selection Limited. For a number of years the directors of ASTMS Insurance Selection Limited made payments to the Union and in 1978 the directors unanimously decided to earmark the donations for political purposes. Mr Bannister said that he could not definitely confirm whether the decision that the money was to go to the political fund was made when the payments were made or at some time afterwards. His recollection was that the intention was to provide money for political purposes but that the method of doing that at that point was not clear. In other words, he said, £20,000 was going to go for political purposes but how to transfer the £20,000 in the most efficient way from the company's point of view was not clear.

104. Mr J McKie, the Union's National Officer, Finance, told me about the political purposes fund. He said that this fund was kept separate from the political fund because the Union's National Executive Council thought at the time that the Union's rules precluded the use of the political fund for EEC elections. A donation of £20,000 from the directors of the wholly owned companies was therefore made direct to the National Executive Council and put into the political purposes fund to be used for political purposes at the direction of the National Executive Council. The £4,305 was spent supporting Labour Party candidates at the 1979 European Parliament elections. Subsequently the balance that remained in the political purposes fund was transferred to the political fund.

105. On behalf of the Union, Mrs Turner submitted that the companies were quite separate organisations registered under the Companies Act and that there is no restriction on the way in which companies may dispose of their funds for political purposes. She gave an example of company donations to the Conservative Party. However, on this occasion in 1978 the company directors -

who, she said, are legally quite entitled to make donations to political parties - decided to make donations to the Union to be used for political purposes. Mrs Turner argued that this money was not money of the Union because a company is a separate entity which operates under a separate piece of legislation - the Companies Act - and which does not operate under the 1913 Act at all. She said that a lot of the evidence which was put before me was quite irrelevant to the 1913 Act and had relevance only to the Companies Act.

106. Mrs Turner also submitted that the specific items with which I am dealing in this complaint were not monies of the Union contributed in accordance with the rules but money which came from an outside source which is an independent organisation. The Union had acted quite legitimately within its rules. It is entitled to receive donations to its political fund and when the National Executive Council received the money from the directors with the specific instruction that it should be used for political purposes, they had every right to set up the political purposes fund for the European elections and then to transfer the remainder to the political fund. Mrs Turner said that as she understood it there was not a great deal of time between the payment in of the money and the allocation to the political purposes fund. Indeed, her recollection was that when the Union was told what the directors wanted to do, the allocation was made more or less immediately.

DECISION

107 Having considered carefully all the submissions made to me and all the evidence - both oral and documentary - that was produced for and at the hearing, I have concluded that the evidence has not explained with any clarity the facts relating to the companies and the donations made by them. In particular, and this is a matter to which I shall return, the donations that were made and when they were made and their amount were not established.

108 In addition, it is not clear which companies made the donations. Mr Edward Barnett had investigated ten companies - one now dissolved - which according to him were wholly owned by the Union, but he had not found any record that donations had been made to the Union apart from donations made in 1972-73 by companies called ASTMS Insurance Services and MPU Insurance Society. However, he did find references to proposed donations by a holding company called ASTMS Holding Company Limited, which itself received money from other

companies including ASTMS Insurance Selection Limited and MPU Insurance Selection Limited. Mrs Turner appeared to assume that the donations had been made direct to the Union by ASTMS Insurance Selection Limited and MPU Insurance Selection Limited, but there was no firm evidence to show that this was the case.

109. Further, the ownership and constitution of the companies was not made clear. Mr Bannister spoke of some of the companies as being limited by guarantee, while ASTMS Insurance Selection Limited and MPU Insurance Selection Limited were registered with a share capital of £100. I was told that Mr Clive Jenkins, the Union's General Secretary, held one share in each of these companies - although I was not told in what capacity he held the share - but it was not clear whether the other 99 shares were owned by the Union itself or by the ASTMS Holding Company Limited: nor was the ownership of the shares of the ASTMS Holding Company Limited explained.

110. These factual uncertainties do not, however, affect the decision that I have to reach. I agree with Mrs Turner that a lot of the evidence about the companies that was put before me is irrelevant to the complaint alleging breaches of the Union's rule 36. The relevant questions are whether the transfers of £5,000 and £20,000 (or £19,066) were breaches of rule 36(h), and whether the payment of £4,305 was a breach of rule 36(b).

111. I shall take the £5,000 first. It is quite clear that this money was transferred to the political fund in 1978. The sole issue for my decision is whether the money was money of the Union at the time of the transfer. If it was, the transfer was a breach of the third sentence of rule 36(h).

112. The evidence does not show that the money was transferred from the general fund as soon as it was donated. The transfer was called a "Prior Year Adjustment" and this must mean that the £5,000 was previously part of the surplus in the general fund account at the end of 1977. Any donations to which the transfer related must therefore have been made in 1977 or earlier and not in 1978. The note to the 1978 accounts says that the transfer did relate to a donation, although it does not specify whether the donation was of £5,000 or of some other amount. Donations from wholly owned companies amounting to £5,450 are shown in the general fund account for 1978, but the transfer of £5,000 cannot relate to those donations, assuming as I do that it was properly called a "prior year" adjustment. It follows that whatever the intention of the

company or companies was in making any donation, and whenever any donations were made, the money did not pass straight through the general fund but rather lay in that fund for a period. Accordingly, its appearance in that fund was more than an accounting formality.

113. However, my main reason for concluding that the £5,000 was money of the Union at the time when it was transferred to the political fund is simply that it was money in the Union's general fund, as the general fund account shows. The third sentence of rule 36(h) seems to me to be quite unambiguous. It prohibits the transfer of any Union money to the political fund, except for money raised by the political levy. The prohibition is absolute and applies to all Union money, wheresoever it comes from.

114. This means that, if an individual or body wishes to donate money to the Union's political fund, it must do so directly and not by sending the money to the general fund to be transferred at a later stage. It may be, as Mrs Turner argued, that the companies involved in this complaint were entitled to make donations to the political fund. I do not need to decide that issue because the donations were not made to the political fund. The money was put into the general fund and in transferring it to the political fund the Union was acting in breach of rule 36(h). I therefore find Mr Parkin's complaint about the transfer of the £5,000 justified.

115. The same reasoning applies to the other transfer to the political fund. The money that was transferred was in my view money of the Union, whether it was the £20,000 which was transferred from the general fund in 1978 or the £19,066 which was transferred from the political purposes fund in 1980. It was money in one of the Union's funds and it appears as such in the accounts sent to me. As with the £5,000, and even if the earlier date is taken, the evidence does not support Mrs Turner's argument that the money was transferred out of the general fund as soon as it was received. Indeed, no donation or donations to the general fund capable of accounting for the £20,000 transfer from that fund are shown in the general fund accounts in the annual return for 1978. The only recorded donations in 1978 are the donations of £5,450 to which I have already referred. The annual returns for the years before 1978 were not referred to at the hearing and I can therefore take no account of them. However it is interesting that no donations to the general fund from any source are recorded in the annual return for 1977, although unspecified donations amounting to £20,937 are recorded as being received during the three

years 1974, 1975 and 1976. Nevertheless I do take account of the note to which I have already referred in the 1978 annual return about the transfer to the political purposes fund. This says that the transfer comprises donations which have now been designated by the directors for use for political purposes. The word "now" is, I think significant. It suggests that the donations may have been received before they were designated for that use. This interpretation is not contradicted by Mr Bannister's evidence that he could not confirm whether the decision that the money was to go to the political fund was made when or after the payments were made. His recollection was that the method of providing money for political purposes was not clear at that point. Accordingly, I cannot rule out the possibility that the £20,000 which was transferred may, even in 1978, have been in the general fund for a considerable length of time.

116. However that may be, my view is that the political purposes fund was not a part of the political fund and that therefore the relevant transfer is the transfer of £19,066 in 1980 and not the transfer of £20,000 in 1978. Mr McKie said in giving evidence that the political purposes fund was kept separate from the political fund and he explained the reasons for this. The Union's annual returns confirm that the accounts of the two funds were separate. Accordingly, I find that the transfer of £19,066 from the political purposes fund was a transfer to the political fund in breach of the third sentence of rule 36(h) and that Mr Parkin's complaint about this transfer is justified.

117. It follows from my finding that the political purposes fund is not part of the political fund that the payment of £4,305 on the elections to the European Parliament was not made out of the political fund. Mr Parkin alleged that this payment was a payment in furtherance of the political object in rule 36(a)(i) and was therefore a breach of the first sentence of rule 36(b).

118. The object in rule 36(a)(i) relates to expenses on elections to Parliament or to any public office. Other elections do not fall within this object. I have no doubt that "Parliament" in a rule based on a 1913 statute of the United Kingdom Parliament refers to the United Kingdom Parliament and to no other. "Public Office" is no doubt included primarily to cover members of local councils; it is defined in rule 36(a) as meaning, apart from the offices specified in that rule, the office "of any public body who have power to raise money, either directly or indirectly, by means of a rate". I incline

to the view that "rate" in the 1913 Act and in rule 36(a) is intended to mean only a United Kingdom rate, but in any event the European Parliament does not, as far as I know, have power to raise money by any means at all.

119. Accordingly, it seems to me that elections to the European Parliament are not elections to Parliament or to any public office within the meaning of the object in rule 36(a)(i). I therefore dismiss Mr Parkin's complaint that the payment of £4,305 was a payment in furtherance of that object, in breach of rule 36(b).

ORDER

120. I have found that the transfers of £5,000 and £19,066 were breaches of rule 36(h). I think that these breaches can only be remedied by an order for the return of the monies. It is clear that the £5,000 should be returned to the general fund. In the circumstances I think that the £19,066 should also be transferred to that fund. I therefore order the Union to transfer £24,066 from its political to its general fund.

COMPLAINT 9

121. The next complaint is that some of the costs of the Union's 1980 and 1981 annual conferences should have been paid from the political fund and that the payment of those costs from the general fund was in breach of the Union's rule 36(b).

122. The figures for expenditure relating to the 1981 conference were not produced at the hearing. The annual return for 1980, which was produced, shows that £109,415 was spent on the annual conference from the general fund in that year. Mr Parkin said that a proportion of that cost - he estimated the appropriate proportion to be about 20 per cent - should have been paid from the political fund because approximately that proportion of conference time was taken up with political discussion. He gave two examples. He cited, first, the time taken in 1980 to discuss and pass a proposed amendment to

the Union's rule 36(b) and (c). This amendment was tabled by the National Executive Council following the decision of Mr Justice Woolf in the high court action brought by Mr Parkin against the Union, which had the effect that unless such an amendment was passed, a branch of the Union like Mr Parkin's branch would be entitled to a grant of money from the Union's political fund which it could then pay to the Conservative Party despite the Union's policy of support for the Labour Party. His second example was the time taken at conference in 1981 to discuss how the Union's delegation to the Labour Party Conference should cast its vote in the election for the position of deputy leader of that party.

123. In formal terms, Mr Parkin's complaint is therefore that since part of the payment of the expenses of the annual conferences was, given the political nature of the discussions, a payment in furtherance of the Union's political objects, the payment of that part of the expenses from the general fund was a breach of rule 36(b). Specifically, he alleged that the expenses were payments in furtherance of the objects in rule 36(a)(i), (ii) and (v).

DECISION

124. The argument that the expenditure on the annual conferences was expenditure in furtherance of the objects in rule 36(a)(i) and (ii) is not, in my view, sustainable. The object in rule 36(a)(i) covers expenditure on the payment of election expenses and is clearly inappropriate. The object in rule 36(a)(ii) covers, inter alia, expenditure on the holding of meetings in support of candidates to Parliament or to public office. Mr Parkin argued that this object is relevant because of the discussion at the 1981 conference about the election to the position of deputy leader of the Labour Party. However, that election was not an election to Parliament or to public office as that term is defined in rule 36(a). The object in rule 36(a)(ii) is inappropriate for that reason and also because the annual conferences were not meetings in support of any candidate.

125. The complaint therefore turns on the object in rule 36(a)(v). This object covers payments on the holding of political meetings of any kind, but it does not cover payments on meetings, even if they are political, if their main purpose is the furtherance of statutory objects. Statutory objects are defined in the rule to embrace, broadly speaking, all the Union's normal industrial activities. Annual conference is stated to be the governing body

of the Union in rule 24(1), and it exercises control - subject to the rule book - over all the Union's activities. Even on Mr Parkin's estimate that 20 per cent of the discussion at conference is political as he understands the term, there can be no doubt that the main purpose of annual conference is the furtherance of statutory objects.

126. Mr Parkin attempted to surmount this hurdle by arguing in effect that annual conference was not one meeting but a series of meetings and that the purpose of each of the meetings must be considered separately. He said that conference is divided up into sessions and that delegates do not have to attend right through but can come in for particular items of discussion on specific topics. He submitted that each of these items - for instance the discussion on the proposed amendment to rule 36 in 1980 and the discussion on the election of the deputy leader of the Labour Party in 1981 - was a meeting within a collection of meetings. His case was therefore that some of the meetings within conference did not have the furtherance of statutory objects as their main purpose and that the political fund should have borne the cost of that proportion of the overall conference expenses which corresponded to the proportion of conference time taken up by those meetings.

127. Mrs Turner contended that the Union's annual conference is not a collection of separate meetings as Mr Parkin had argued. Annual conference is called under Union rule 24, and is not regarded as a series of separate sessions. She agreed that at every conference people make political statements but thought that Mr Parkin was putting a much wider interpretation on "political" than was justified by a close reading of rule 36. She described annual conference as the policy-making body of the Union which is not a political meeting of any kind within the meaning of rule 36(a)(v).

128. In my judgment the individual items of business at conference are not separate meetings. Annual conference is organised and arranged as one meeting and delegates are elected to conference as a whole in accordance with rule 24. Although the programme of business for conference shows a morning and an afternoon session each day and divides business within each session into numbered items under general headings showing the time at which discussion on each item is due to begin, the numbered items are no more than individual items on the agenda of business for the meeting and I do not consider that they can be taken as constituting separate meetings within the meaning of rule 36(a)(v).

129. Accordingly, it is in my view the main purpose of annual conference as a whole and not the main purpose of each individual item of discussion which is relevant to this complaint. As I have already said, that purpose is the furtherance of statutory objects. Indeed, it seems to me that the statutory objects proviso in rule 36(a)(v) was included to cover precisely the sort of arguments that Mr Parkin has advanced in this complaint in relation to the expenses of the Union's own conference. It is extremely unlikely that any annual conference of a union would be a "political meeting of any kind" under the rule, but, in case there might be room for argument on that point in certain special circumstances, the proviso makes it clear that the main purpose of the conference as a whole is decisive. Since the main purpose of these conferences was the furtherance of statutory objects the payment from the general fund of all the conference expenses was not a breach of rule 36(b).

130. I therefore dismiss this complaint.

COMPLAINT 10

131. When he first made his next complaint, Mr Parkin wrote:-

"No payments from the Political Fund appear to be recorded for such expenses as International Conferences, or the use of cars or transport charges to the numerous political meetings held".

He subsequently dropped his allegation about international conference expenses, but he expanded on the rest of his complaint in this way:

"No expenses for travel, apportionment of officers' time, subsistence etc. arise in the political fund account as a result of discussions of a political kind taking place by the NEC, various divisional councils and delegations to the Labour Party Regional Councils, GLRC and meetings within and without ASTMS which take up the time of ASTMS staff. I particularly refer to the very lengthy discussions which arose in the struggle for the deputy leadership of the Labour Party."

132. In an attempt to discover exactly what his complaint was, Mr Parkin was asked in correspondence whether it was accurately described in these words:-

"(10) Expenses (cars and transport charges, subsistence and apportionment of officers' time) incurred on political meetings,

- (a) outside ASTMS; and
- (b) inside ASTMS,

have been paid out of a fund other than the political fund and should have been paid out of the political fund."

and he was asked to specify the meetings (eg. those in which the deputy leadership of the Labour Party was discussed) he was referring to. He was also told that if he did not let me know to which meetings he was referring I would be unable to hear this complaint. His reply to me was:-

"I do not have specific details with regard to the many items which would comprise (10): I am only requesting that a sum of money should appear in the accounts as it does with other unions eg. the TGWU accounts have such an item and it might be appropriate to assume that roughly the same proportion of officers' time, travel and expenses are incurred within ASTMS."

133. Mr Parkin did not send me any further details. Nevertheless, I gave him the opportunity to explain his complaints to me on the third day of the hearing, after telling Mrs Turner earlier that I would not expect her to reply to individual items that had not been put to her beforehand. In the event, Mrs Turner was able to answer Mr Parkin fully on all but one of the items raised by him.

MR PARKIN'S CASE

134. At the hearing Mr Parkin made it clear that he was complaining about expenses which, he said, would be incurred whenever any activity of a political nature took place. He called these "administrative expenses" and the items which he mentioned under this general head included office expenses such as accommodation, rent, rates, heating, lighting, stationery, postage, telephone, printing; the cost of organising meetings or back-up to meetings; and staff and officers' time such as the time taken discussing, drafting, printing and checking circulars and documents with a political content and going to or organising conferences which involve political activity.

135. He referred to some specific meetings and documents which he used as examples of activities of a political nature. These were:-

- (i) certain meetings of the Union's delegation to the Labour Party Conference: he produced evidence of a meeting which took place at the Union's head office on 14 August 1980, and of meetings which took place at the Crest Hotel, Wembley on 23 January 1981;
- (ii) a meeting at the Union's College at Bishops Stortford of a group called "Trade Unions for a Labour Victory";
- (iii) a circular letter, which he produced, written in August 1978 by the secretary of the Union's No.8 Divisional Council, a Mr Brandon, to all the branches in that division asking for contributions from the branches' political funds to allow the division to help the Labour Party in the constituencies within its area at the forthcoming general election;
- (iv) an extract, headed Appendix 2, a copy of which he produced, from a document which he described as the Union's annual report. The extract concerned the proceedings of, and the Union's participation at, the 1980 Labour Party Conference and also at a Special Conference of the Labour Party held on 24 January 1981 at the Wembley Centre;
- (v) a passage, a copy of which he produced, appearing on pages 23, 24 and 25 of the 1980 edition of an eighty-page booklet produced by the Union as a handbook for the guidance of its representatives. The passage included items under these headings: "Political Punch"; "The Parliamentary Committee"; "Labour Party Affiliation"; "Parliamentary Candidates"; and "Political Levy";
- (vi) an extract, a copy of which he produced, from the minutes of the meeting of the National Executive Council in July 1982, containing an item numbered 2518, which was headed: "General Secretary's Report - Economic Situation". The second paragraph of this item informed the Council that a joint TUC/Labour Party document was to be launched at a press conference.

136. Mr Parkin was not able to point to any particular administrative expenses incurred on these specific activities, or on others, which had been paid from the general fund, and which, in his view, should have been paid from the political fund. He said that it was not possible to itemise all the costs to which he was referring. His argument was that a proportion of the total administrative costs of running the union each year was incurred on political activities such as those he had mentioned and should be charged to the political fund. He said that the proportion should in his opinion be somewhere between 1 per cent and 5 per cent of the total, but that the only fair way of allocating the costs and deciding on the proportion would be for an independent accountant to look at the accounts and make a recommendation. He and his witness, Mr Edward Barnett, said that the annual returns of other trade unions showed that some of them made a payment from their political fund in respect of administrative costs. Mr Parkin mentioned the Transport and General Workers Union in this context and Mr Barnett talked particularly about the Union of Shop, Distributive and Allied Workers.

137. The complaint that emerged at the hearing was therefore that the Union was acting in breach of rule 36(b) in paying these administrative expenses out of the general rather than the political fund.

THE UNION'S REPLY

138. Replying for the Union about the specific meetings and documents mentioned by Mr Parkin, Mrs Turner stressed that all the expenses for all meetings of the Union's delegates to Labour Party Conferences are met from the political fund, whether those meetings are special meetings called by the Union or meetings of the Labour Party Conference itself. These expenses include the travelling and overnight expenses of delegates attending the meetings. The costs of the meeting of the "Trade Unions for a Labour Victory" group of trade unions which was held at the Union's College at Bishops Stortford were paid for, she said, by that group and not by the Union.

139. Mrs Turner was not able to say whether the cost of the circular letter sent out by Mr Brandon had been met from the political fund of the division. It was not a head office document and she had been unaware of its existence until the hearing. She had not investigated the financing of the document because she had been given no notice that it was to be relied upon.

140. Mrs Turner did not deny that the Union's annual report, the handbook for the guidance of its representatives, and the minutes of the National Executive Council had been paid for out of the general fund, but she argued that rule 36(b) did not require the Union to pay the costs of those publications from the political fund. She pointed out that the report of the Labour Party Conference in the annual report, the passage in the handbook and the item from the minutes of the National Executive Council, to which Mr Parkin had referred, were extracts from much longer documents.

141. As regards general administrative expenses Mrs Turner explained that the Union does not apportion the cost of staff or officers' time or the cost of producing its normal publications between the general and the political funds. She submitted that this is not required by rule 36(b).

DECISION

142. Although Mr Parkin did not point to any particular payments from the general fund, his allegation was that money must have been spent from that fund on the expenses which he was complaining about. The Union did not contest that payments on administrative expenses such as salaries and office expenses are made from the general fund.

143. Rule 36(b) requires payments to be made out of the political fund only if they are payments in furtherance of the political objects listed in rule 36(a). The payment from the general fund of the expenses which are the subject of this complaint would therefore not be a breach of rule 36(b) unless those expenses were payments in furtherance of one or more of the listed political objects. Accordingly, I must consider first whether any or all the expenses were direct expenditure on the political objects and second, if not, whether they amounted to indirect expenditure on the political objects in such a way as to constitute payments in furtherance of those objects.

Direct expenditure

144. This is clearly not a complaint about direct spending on the first four objects listed in rule 36(a), which cover expenditure on, in broad terms,

election expenses, election meetings, election literature, the maintenance of Members of Parliament and the selection of candidates. However, payments on the organising of meetings and payments on documents with a political content were among the items of expense mentioned by Mr Parkin. These could have amounted to direct spending on the fifth object (rule 36(a)(v)) if they were expenditure on the holding of meetings or the distribution of documents, and if the meetings or documents were political and if the main purpose of the meetings or the distribution was not the furtherance of statutory objects.

145. I cannot accept that the normal running costs of the Union, such as staff salaries and office expenses, amount to direct expenditure on the holding of meetings or the distribution of documents within the meaning of rule 36(a)(v). In my view, there could only be direct spending on that object if expenditure additional to the normal running costs of the Union was incurred on such meetings or documents. This can only be assessed by looking at specific meetings or specific documents, and it was for this reason that Mr Parkin was asked before the hearing to specify the meetings to which he was referring. I shall now consider the meetings and documents to which he referred at the hearing.

146. The only meetings which Mr Parkin specifically mentioned were the meetings of the Union's delegation to the Labour Party Conference and the meetings of the "Trade Unions for a Labour Victory" group. Additional expenditure, such as delegates' travel and overnight expenses, was incurred on the meetings of the Labour Party Conference delegation, but I accept Mrs Turner's evidence that this expenditure was paid out of the political and not the general fund. There is no evidence that any additional expenditure was incurred by the Union on the meetings of the "Trade Unions for a Labour Victory" group. On the contrary, it appears that the Union was paid by that group for the use of its College. There is therefore no evidence that there was any additional expenditure from the general fund on any of the meetings to which Mr Parkin referred.

147. It is possible that there was some expenditure, in addition to the Union's normal running costs, on the distribution of the documents to which Mr Parkin referred. However, I feel that I must exclude the circular letter written by Mr Brandon from this complaint because Mrs Turner was not given a proper opportunity to look into its financing. The other documents referred

to were extracts from much longer documents - the Union's annual report, the handbook and the minutes - which were produced and distributed as part of the Union's normal industrial activities. It follows that, whether or not the extracts were "political", the main purpose of the distribution of the documents in which they appeared was the furtherance of statutory objects. Any additional expenditure on them was not, therefore, expenditure on the object in rule 36(a)(v), even if it amounted to expenditure on distribution.

148. For all these reasons, my conclusion is that there is no evidence that there were any payments from the general fund on the items mentioned by Mr Parkin which were direct expenditure on any of the political objects in rule 36(a).

Indirect expenditure

149. I therefore turn to consider whether some of the normal running costs of the Union were indirect expenditure on the political objects. This is, in effect, Mr Parkin's contention. If I have understood him correctly, his argument is that, just as the Union incurs expenses in carrying out its normal industrial activities, so it incurs expenses in carrying out its political activities. Put another way, it is necessary to spend money internally in order to make payments on the political objects from the political fund. These are Mr Parkin's "administrative expenses".

150. As far as I have been able to ascertain from the decisions of my predecessors only two forms of indirect expenditure have been viewed as payments in the furtherance of political objects since the Act was passed in 1913. In *Forster and the National Amalgamated Union of Shop Assistants, Warehousemen and Clerks*, reported in part 4 of the Chief Registrar of Friendly Societies' Annual Report for 1925, the view of the Chief Registrar seems to have been that payments on the political objects through intermediaries are payments in the furtherance of the political objects unless the union is unaware that the intermediary is likely to make a payment on those objects. In *Richards and the National Union of Mineworkers*, 1981 IRLR 247, at paragraph 82, one of my predecessor's grounds for upholding the complaint about the contribution towards the purchase of the Walworth Road property was that there is a payment in furtherance of the political objects where a payment is made upon something - like the headquarters of a political party - which will be used in carrying on the activities mentioned in the political objects. The internal administrative

expenses with which I am concerned fall within neither of these forms of indirect expenditure and, accordingly, if I am to uphold Mr Parkin's complaint I can only do so on the basis that there is another, hitherto undiscovered, form of indirect expenditure which amounts to a payment in furtherance of the political objects.

151. One indication that internal administrative expenses should not be held to be expenditure in furtherance of the political objects is the line of cases, starting with Forster's case and including Mr Parkin's case against the Union heard by Mr Justice Woolf in the High Court, reported in 1980 ICR 662, in which the political objects have been strictly construed. Indeed, although the point has not directly arisen before, I have not found any support in any previous decision in this area for the suggestion that administrative expenses of the sort with which I am concerned should be paid for out of the political fund. Nor have I found any academic support for the suggestion.

152. Of particular interest is a passage from the decision of the Certification Officer in *McCarthy and Association of Professional, Executive, Clerical and Computer Staff (APEX)*, 1980 IRLR 335. When considering the meaning of the term "distribution" (of literature or documents) - which appears in this Union's rule 36(a)(ii) and 36(a)(v) - my predecessor said at paragraph 34 that it could be argued:-

"that since distribution is impossible unless the matter distributed has first been written, prepared and printed, "distribution" should be taken to include those costs which are essential in order to distribute as well as the costs of actual circulation. Further, it may seem strange that Parliament should not have covered all the expenditure necessary to produce as well as to circulate literature or documents. However, the fact remains that the 1913 Act and the Union's rules refer simply to expenditure on distribution and if the intention had been to include preparation costs it would have been a simple matter to do so in specific terms. I therefore conclude that it is only expenditure on actual distribution (eg. postal and packaging costs) which is covered."

That decision is, so far as it goes, a direct precedent because the costs of writing, preparing and printing literature are among the administrative expenses about which Mr Parkin is complaining. In *McCarthy* such expenses were held to be outside the term "distribution" even though they were essential in

order to distribute, and there was no suggestion that they fell within the political objects in any other, more indirect, way.

153. There is also a precedent relating to the payment of a union official's salary. In *McCarthy and the National Association of Theatrical and Kine Employees*, reported in part 4 of the Chief Registrar of Friendly Societies' Annual Report for 1957, it was claimed that the salary of the general secretary of a union should have been paid out of the union's political fund because the general secretary in question was a Member of Parliament. The main question in the case was whether the salary amounted to maintenance of a Member of Parliament. The Chief Registrar of Friendly Societies held that it did not but in the context of this complaint it is notable that neither he nor the complainant suggested that any portion of that salary should have been paid from the political fund as relating to the general secretary's duties in connection with the trade union's political activities.

154. However, my main reason for coming to the conclusion that these expenses are not payments in furtherance of the political objects is the existence of the list of political objects in section 3 of the Act and in rule 36(a). In my view there would have been little purpose in the use of such a detailed list if the intention was that the words "in furtherance" should be interpreted so as to ensure that all payments of whatever nature in respect of the Union's political activities should be made from the political fund or so as to ensure that a proportion of the Union's overall administrative expenses should be paid from that fund as representing the broad proportion of the Union's energies which are spent on political matters. I bear in mind that the 1913 Act allows unions, where their normal rules permit them to do so, to engage in political activities and to do so by means of expenditure from their general funds unless the expenditure is on one or more of the listed political objects.

155. It seems to me from a detailed consideration of the objects in rule 36(a) that payments which are part of the normal running costs of the Union are not the sort of payments which the rule, and the Act before it, requires to be made from the political fund. The payments which must come from the political fund are, broadly speaking, payments which are made by the Union upon something external to the Union, such as payments on the expenses of a parliamentary candidate or on the holding of a party political meeting. They are not those payments which are made so that the Union can function and engage

in its activities as a union, even though some of those activities may be and are political activities in the widest sense of the term - and even though some of those payments may be preparatory, ancillary or incidental to the payments which must be made from the political fund. Indeed, they may be necessary before payments can be made from that fund. In other words I do not think that the Act requires - and it is clear that it has never been interpreted as requiring - unions to pay a proportion of their running costs from the political fund, such as salaries, office equipment costs and establishment costs.

156. I draw support for my view that unions are not required to apportion expenses in this way from rule 36(a)(v) itself. This says in effect that all the expenditure on the holding of a political meeting or the distribution of political literature must come from the political fund unless the "main" purpose of the meeting or distribution is the furtherance of statutory objects. It follows that if that is the main purpose, all the expenditure may be charged to the general fund. There is no provision for apportionment in an area where such a provision might naturally have appeared had that been Parliament's intention.

157. Further, I have noted that Mr Parkin could not identify the proportion of the total administrative costs of the Union which, on his argument, would have to be charged to its political fund. He suggested that it should be "somewhere between" one per cent and five per cent. His hope was that an accountant would be able to decide the proportion. For myself, I do not see how an accountant would be able to decide the proportion which Mr Parkin has in mind. If it were possible readily to distinguish between activity on the political objects and other activity, it might just be conceivable that the introduction of a complex time - card procedure for the Union's officials could allocate time, telephone calls, etc., but it is difficult to conceive any method of accurately allocating items such as rent, rates, heating and lighting. In practice, the accountant's proportion would be an approximation based on the experience of a previous period or on a forecast of the year ahead. Any proportion would be open to challenge by an aggrieved member; the Union could not guard against making a payment from the wrong fund. I cannot believe that such a state of affairs was intended by Parliament in 1913.

158. Finally, although Mr Parkin and Mr Barnett claimed that the annual returns of other trade unions show that some of them make a payment from their political funds in respect of administrative costs - Mr Parkin mentioned the Transport and General Workers' Union and Mr Barnett the Union of Shop, Distributive

and Allied workers - they were not able to explain which items of expenditure were included by those unions under that head. The most that I am able to conclude is therefore that a small number of other unions may pay certain unknown types of expenditure from their political fund which this Union pays out of its general fund. However, unions can and do make payments out of their political funds which their political fund rules do not require them to make from that fund. Accordingly, it does not follow from the payment of any administrative costs out of the political funds of other unions that this union is acting in breach of its political fund rules in not paying such costs from its political fund.

159. For these reasons I dismiss this complaint.

COMPLAINT 12

160. Mr Parkin's final complaint concerns a payment of £2,000 which appears in the Union's annual return for 1980 as a donation from the general fund to the "Leader of the Opposition's Office at Parliament". He alleged that this payment was a breach of rule 36(b) because it was a payment on the political object in rule 36(a)(iii). That object is the expenditure of money:-

"on the maintenance of any person who is a Member of Parliament or who holds a public office".

MR PARKIN'S CASE

161. Mr Parkin said that the Union had stated in correspondence that the donation was specifically for research, but he submitted that any money paid by the Union to the Leader of the Opposition, who is a Member of Parliament, from anywhere other than the political fund is a breach of the rule.

Otherwise, it would be possible for a union to make payments to Members of Parliament from the general fund by suitably wording the letters going with the cheques so as to specify what the payments should be used for. He argued that once a person has received a payment there is no guarantee that he will use it only for the specified purpose.

THE UNION'S REPLY

162. Mrs Turner admitted that the £2,000 was paid from the general fund and explained that the Union had made the payment to the office account of Mr James Callaghan when he was Leader of the Opposition. She said that a group of unions wanted Mr Callaghan to have a rather more specialist knowledge of union and industrial questions and it was felt that it might be a good idea to establish research facilities for him.

163. The Union took legal advice at the time and was told that the matter of payments from the general fund to the office of the Leader of the Opposition was a "grey area". This advice was put down in writing later, in a letter of 19 October 1981 written by the Union's solicitors, Messrs Robin Thompson and Partners, which Mrs Turner produced at the hearing. The letter was concerned with the general objects of the Union, which are set down in rule 3. However, it did not consider the political objects in rule 36(a) and in particular it did not consider the meaning of the word "maintenance" in rule 36(a)(iii) and I shall therefore make no further reference to it.

164. In correspondence before the hearing Mrs Turner stated that the donation was specifically for research and her argument at the hearing was that the payment was for research and was not on the "maintenance" of a Member of Parliament within the meaning of that term in rule 36(a)(iii). She said that in 1913 expenditure on maintenance meant and was intended to mean something very different from a donation of this kind. At that time very little money, if any, was available for Members of Parliament and, indeed, she thought that salaries were only paid to Members of Parliament from about 1911 or 1912.

DECISION

165. It is not disputed that the £2,000 was paid from the general fund. The question I have to decide is whether the donation was a payment on the object in rule 36(a)(iii). This will turn on whether the payment was a payment "on the maintenance of any person who is a Member of Parliament" since the post of Leader of the Opposition is not a "public office" within the meaning of that term as defined in rule 36(a).

166. Mr Parkin's submission to the effect that any payment to a Member of Parliament is a payment on the political object in rule 36(a)(iii) runs counter

to the approach of the Chief Registrar of Friendly Societies in a previous complaint under section 3(2) of the Act, where the capacity in which the Member of Parliament received the money was considered to be relevant. In McCarthy and National Association of Theatrical and Kine Employees, reported in part 4 of the Chief Registrar's report for 1957, a union's General Secretary, Sir Tom O'Brien, was a Member of Parliament and the complaint was that his salary as General Secretary should therefore have been paid out of the political fund as "maintenance". The Chief Registrar held that the salary was not maintenance and said:-

"After careful consideration I am of the opinion that the complaint is not well founded. I am not satisfied that the Association has expended money on the maintenance of Sir Tom O'Brien, whether in his capacity as a Member of Parliament or as General Secretary. The money which the Association has paid him was salary paid for the purpose of obtaining his services. He has sold his services to the Association, which has paid the purchase price. I therefore hold that Sir Tom O'Brien has maintained himself out of his earnings as General Secretary and not out of the funds of the Association and his salary is rightly paid out of the general funds of the Association."

167. I agree with the Chief Registrar's decision and accordingly my view, contrary to Mr Parkin's submission, is that it is possible for a union to pay money to a Member of Parliament without the payment being a payment on the "maintenance" of that member. However, the reason why the salary paid to Sir Tom O'Brien was not maintenance was because it was a contractual payment made to obtain services which Sir Tom was required to supply as consideration. The payment to the Leader of the Opposition's office, with which I am concerned, was not a payment of this kind. It was a gift and not a contractual payment to Mr Callaghan to obtain his services.

168. In the absence of indications to the contrary I would assume that an unconditional gift to a Member of Parliament is expenditure on the "maintenance" of that member. This complaint, however, has been argued on the basis that the donation was specified as being for research, and the question that arises is whether in the light of that specification the donation was a payment on the "maintenance" of a person who is a Member of Parliament.

169. Mr Parkin asked me not to follow the ruling of Mr Justice Woolf in Parkin and Association of Scientific, Technical and Managerial Staffs, 1980 ICR

602. That decision (which I have already considered in dealing with the fifth of Mr Parkin's complaints to me)* is, as I see it, authority for the proposition that if a trade union gives money to a political party to be spent on a matter which falls outside the political objects, the donation may come from the general fund. Mr Parkin was, I think, concerned that his complaint would be dismissed because I would hold that, by extension, a donation to a Member of Parliament to be spent on a matter which falls outside the political objects could come from the general fund. However, even if that second proposition is a logical extension of Mr Justice Woolf's decision, it cannot of itself decide this complaint because in applying it the question that again arises is the question that I have already posed, that is, whether the donation that was to be spent on research was a payment on the "maintenance" of the person who is a Member of Parliament so as to fall within the political object in rule 36(a) (iii).

170. Whatever maintenance may mean in other contexts, I have to consider the narrow question of its meaning in a rule made under the 1913 Act. I do not think that the term "maintenance" in rule 36(a)(iii) covers or was intended to cover only personal expenditure such as expenditure on food, drink, housing and clothing. It seems to me that it also covers expenditure incurred in acting as a Member of Parliament or in performing the duties of a Member of Parliament, including expenditure which enables a Member of Parliament to engage in those activities or perform those duties more effectively. My view is that a contribution towards secretarial or research facilities for a Member of Parliament is expenditure of this kind and is therefore expenditure on the maintenance of that member within the meaning of the rule.

171. The £2,000 was not, of course, paid to Mr Callaghan for research specifically in his capacity as a Member of Parliament, but rather to his office account because he was Leader of the Opposition. However, I do not think that the object in rule 36(a)(iii) applies to a payment to a Member of Parliament only in his capacity as a constituency representative and not in his party political capacity, or only in his capacity as a backbencher and not his capacity as a frontbencher. That would be an artificial restriction of the scope of the rule and, indeed, an artificial division of the activities of a Member of Parliament. Accordingly, my view is that the payment to the office account of the Leader of the Opposition for research was a payment "on the maintenance of a person who is a Member of Parliament" and was therefore a payment on the political object in rule 36(a)(iii).

* Paragraphs 67 to 71.

172. For these reasons I hold that the payment of £2,000 which was made from the Union's general fund was a breach of rule 36(b) and that Mr Parkin's complaint is justified.

ORDER

173. In my view an order for a transfer of money is appropriate to remedy the breach, and I therefore order the Union to transfer £2,000 from its political fund to its general fund.

EXTRACTS FROM RULE 36,
THE POLITICAL FUND RULE OF
THE ASSOCIATION OF SCIENTIFIC, TECHNICAL AND MANAGERIAL STAFFS
(AS AT THE DATE OF THIS HEARING)

36.

- (a) The objects of the Association of Scientific, Technical and Managerial Staffs shall include the furtherance of the political objects to which Section 3 of the Trade Union Act 1913 applies, that is to say the expenditure of money:
- (i) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his/her candidature or election; or
 - (ii) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
 - (iii) on the maintenance of any person who is a Member of Parliament or who holds a public office; or
 - (iv) in connection with the registration of electors of the selection of a candidate for Parliament or any public office; or
 - (v) on the holding of political meetings of any kind or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of literature or documents is the furtherance of statutory objects within the meaning of the Act, that is to say, the regulation of the relations between workmen and employers, or between workmen and workmen, or between employer and employer, or the imposing of restrictive conditions on the conduct of any trade or business and also the provision of benefits to members.

The expression "public office" in this rule means the office of member of any county, county borough, district, or parish council, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(b) Any payments in furtherance of such political objects shall be made out of a separate fund (hereinafter called 'the Political Fund'). No payment shall be made out of the Political Fund without the consent of the NEC and other than in furtherance of such political objects and subject to the policy of the Association for the time being in force. Such consent not to be withheld where a branch decides by a majority vote of its political levy paying members at a properly constituted branch meeting to make a grant (or grants), not exceeding 30% of its contributions to the Political Fund, to a branch or constituency Labour Party or to a district or county Labour Party, as under (c) below.

(h) The contribution to the Political Fund of the Association shall be 25p every calendar month, payable on the first day of each month. The Executive Council shall give effect to the exemption of members to contribute to the Political Fund of the Association of Scientific, Technical and Managerial Staffs by making a separate levy of contributions to that Fund from the members of the Union who are not exempt. No monies of the Association of Scientific, Technical and Managerial Staffs other than the amount raised by such separate levy shall be carried to the Political Fund of the Association of Scientific, Technical and Managerial Staffs. The first levy shall not come into force until the expiration of one month from the publication of the notice to members under clause (d) hereof, nor shall any levy come into force as respects a new member until the expiration of one month from his being supplied with a copy of this rule under clause (m) hereof on admission to the Union.