

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

**Mr I Street & Mrs F Street**

**v**

**UNISON: The Public Service Union**

**Date of Decision**

**8 February 2013**

**DECISION**

Upon an application by Mr Ian Street and Mrs Frances Street (“the claimants”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

1. I uphold Mr and Mrs Street’s application for a declaration that in or about December 2011 UNISON breached rule G.3.2 of its rules by failing to hold an Annual General Meeting of its Derbyshire County Branch in the January-March quarter of 2012.

2. I refuse Mr and Mrs Street’s application for a declaration that on or around early June 2011 UNISON breached rule C.2.6.2 of its rules by allegedly denying the retired members of its Derbyshire County Branch the opportunity to stand as and/or vote for delegates to the National UNISON Retired Members Conference held in October 2011.

**REASONS**

1. Mr and Mrs Street brought these complaints as members of UNISON – the Public Service Union (“the Union” or “UNISON”). Their applications were received at the Certification Office on 17 May 2012 and alleged breaches of the rules of the Union in relation to the failure of the Union to hold an Annual General Meeting of the Derbyshire County Branch in 2012 and to them not being not permitted to stand as and/or vote for the position of Derbyshire County Branch delegates to the Union’s National Retired Members’ Conference in 2011.
2. Following correspondence, the claimants confirmed the complaints they sought to pursue in the following terms:

**Complaint 1**

*"That in or about December 2011 UNISON breached rule G.3.2 by failing to hold an annual general meeting of Derbyshire County Branch of the Union in the January-March quarter of 2012".*

**Complaint 2**

*"That in or around early June 2011 the Union breached rule C.2.6.2 by denying the retired members of the Derbyshire County Branch the opportunity to stand as and/or vote for delegates to the National UNISON Retired Members Conference held in October 2011."*

3. I investigated the alleged breaches in correspondence and a hearing took place on 17 January 2013. At the hearing, Mrs Street represented the claimants. Mr and Mrs Street each produced a written witness statement and gave oral evidence. They also produced a letter from Mr Graham Skinner, Retired Members Secretary of the Derbyshire County branch, by way of an additional witness statement. Mr Skinner was not at the hearing. The Union was represented by Mr Oliver Segal QC of counsel, who was instructed by Mr Ben Patrick, a Legal Officer of UNISON. The Union submitted a written witness statement from Mr Kevan Nelson, Regional Secretary of UNISON North West Region, who also gave oral evidence. At the relevant time Mr Nelson was employed at the Union's Head Office and was responsible for constitutional matters. Mr and Mrs Street and Mr Segal provided skeleton arguments. There was in evidence a 628 page bundle of documents consisting of letters and other documentation supplied by the parties. At the hearing I admitted into the bundle an additional document adduced by the claimants. There was a second, equally large, bundle consisting of the rules of the Union as at Vesting Day 1993, various internal guidance documents for officers of the Union and the current rules of the Union.

**Findings of Fact**

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. Mrs Street retired from her employment as an administrative worker in the voluntary sector in 2001. She had joined NALGO in 1992 and had become a member of UNISON in 1993, upon the amalgamation of NALGO, COHSE and NUPE to form the Union. Whilst in work, she played no significant role in the Union but, upon retirement, she was more active in its Retired Members Section, being the Minutes Secretary of the Derbyshire County Retired Members Section and a co-opted member of the East Midlands Regional Retired Members Committee. Mr Street retired from his job as a school technology technician in 2010. He had similarly joined NALGO in 1992 and had become a member of UNISON in 1993. He had held a number of positions within the Derbyshire County branch before his retirement, including Branch Committee Member and Chair of the Chesterfield area.
6. UNISON has about 1.3 million members who are divided into about 1,150 branches in 12 regions. This case concerns the East Midlands region of which Ms Helen Black is the Regional Secretary. The Derbyshire County branch is one of the 50 largest UNISON branches. It has about 11,000 members of which about 1,500 are retired members. The others work for over 230 employers at hundreds of work places. The core employer is Derbyshire County Council but members also work for many

voluntary, independent and private sector employers. The branch has an office in Matlock and five employees. The Union made the point that this branch is larger than many other entire unions. The claimants referred to the retired members in their branch as forming the Derbyshire County Retired Members Section of the branch.

7. Before setting out the facts which gave rise to this complaint, I deal briefly with three aspects necessary to set the scene; the Retired Members Section of the Union, the concept of Regional Supervision and the position of the Development and Organisation Committee of the Union.

### **The Retired Members Section**

8. By paragraph 6 of schedule A of the rules of the Union, retired members pay £15 for life membership, compared to up to £22.50 a month for full members. Rule D6 provides for there to be a Retired Members Organisation. The retired members in any branch have the right to elect a branch Retired Members Secretary annually. In this case, the Retired Members Secretary of the Derbyshire County branch was Mr Graham Skinner. The Retired Members Secretary may attend and speak at all meetings of the Branch Committee but only on issues not related to the terms and conditions of members in work. Further, the retired members in a region are entitled to form a Regional Retired Members Committee and elect a representative to attend and speak at the Regional Council on a similarly restricted range of issues. The Regional Retired Members Committee may formulate proposals or motions on those restricted issues for discussion by the Regional Council or Committee. At national level, the National Executive Council ("NEC") shall establish a Retired Members National Committee composed of representatives of regional retired members' organisations. It may hold an annual conference of retired members and may elect two representatives to attend the National Delegate Conference to which it may submit two motions. The retired members delegates to the National Delegates Conference may speak on a similarly restricted range of issues.
9. Mrs Street commented that, apart from rule D6, there is very little express guidance on how the Retired Members Organisation is to operate. I note that it is sometimes referred to in the documentation as a 'Self-Organised Group' but such groups are dealt with elsewhere in the rules, namely rule D4, which refers to members who are women, black, disabled or lesbian, gay, bisexual and transgender. The Union has a handbook for Branch Retired Members Secretaries which sets out those rules which may impact on retired members. The handbook makes clear that any such group is to be financed by the branch, a levy of its members or it may ask the region for assistance. It states that a retired members group does not need its own rules but, to avoid disagreements, it is useful to agree a brief constitution which should be endorsed by the Branch Committee. The Derbyshire County Retired Members Section has no such constitution or written rules.
10. Mrs Street gave evidence that the Derbyshire County Retired Members Section usually sends four delegates to the National Retired Members Conference, normally held in October each year. She understood that the retired members of each branch were entitled to send one delegate, with an additional delegate for every 500 members. I was informed that about 300-400 delegates attend the National Retired Members Conference, which means that many branches do not send any delegates. Mrs Street stated that at some time in the summer of each year, the Derbyshire

County Retired Members Section would meet to elect its delegates and discuss any proposed resolutions. After the National Retired Members Conference, the delegates would report back to the section.

### **Regional Supervision**

11. The Union maintains that the reason why there was no AGM of the Derbyshire County branch in 2012 was that the branch was in Regional Supervision. The claimants dispute the right of the Union to impose Regional Supervision.
12. Regional Supervision is not an expression that can be found in the rules of the Union. When asked at the hearing to define what it meant, Mr Nelson referred to the words which now introduce the section in the minutes of the Development and Organisation Committee under the heading, "Branches under Regional Supervision". These words state "*In exceptional circumstances NEC powers have been exercised under rules D2.1 and G9 to authorise a Regional Secretary to supervise the day to day running of a branch*". He commented that Regional Supervisions are only agreed in the case of a seriously dysfunctional branch.

13. Rule D 2.1 is in the following terms:

#### **D 2.1 FUNCTIONS AND AUTHORITY**

*The general management and control of the Union between National Delegate Conferences shall be vested in the National Executive Council, which shall comprise representatives elected from the Regions and Service Groups plus four national black members' seats and a young members' seat. It shall have full power and authority to act on behalf of the Union in every respect and for every purpose falling within the objects of the Union. It shall not do anything that is inconsistent with these Rules or the policy of the Union as laid down by the National Delegate Conference.*

14. Rule G9 is in the following terms:

#### **G 9 VISITS BY EMPLOYED OFFICIALS TO BRANCHES**

*9.1 An employed official of the Union may visit a branch at the request of either the branch or the official, provided that no such visit will be made without agreement of the Branch Committee or Branch Officers.*

*9.2 The National Executive Council or the General Secretary or other official acting with the authority of the National Executive Council is entitled to request an employed official to visit a branch where it is necessary to further the interests and policies of the Union.*

*9.3 An employed official is also entitled to visit a branch:*

*.1 for the purpose of financial checks and inspection*

*.2 in the event of industrial action*

*.3 where it appears to the General Secretary or the Regional Secretary that a branch may no longer be functioning effectively.*

15. I was informed that the Regional Supervision of branches has occurred since the late 1990s. I was also told that in recent years the Development & Organisation Committee has conducted a greater scrutiny of Regional Supervisions so as to minimise their number and restore a branch to normal operation as soon as possible. Mr Nelson gave evidence that since 2007 there has been a new reporting arrangement whereby at all full meetings of the Development & Organisation Committee there is a written report on the branches under supervision in accordance with a template which includes the view of a lay regional convenor.

16. Mr Nelson gave evidence that the extent and nature of any Regional Supervision (and the degree of normal functioning) varies from case to case, according to the severity of the organisational problems of the branch. He referred to cases in which branches have completely ceased to function, have no effective governance and no branch officers, commenting that in these cases the Regional Organiser will effectively carry out the Branch Secretary's and Branch Committee's responsibilities whilst rebuilding branch structures from scratch. In less acute cases of branch dysfunction, Mr Nelson stated that the regional officer would often work in liaison with elected branch officers to bring the branch back to normal functioning.
17. Mr Nelson pointed out that rule F3.3 requires each region to "encourage the development and maintenance of a strong and flexible branch structure in accordance with principles laid down by the NEC". He also noted that rule G1.2 provides for branches to be established in accordance with a Scheme approved by the NEC. The latest version of this Scheme is dated October 2010 and governs the establishment and restructuring of UNISON branches. It calls on regions to carry out an annual appraisal of branches and provides that restructuring may be proposed where there is a planned employer restructuring, a branch has ceased to exist, a persistent failure to achieve development targets set out in an appraisal and a persistent failure to maintain organisation for a specified group of members. Mr Nelson said that the main use of the Scheme is to ensure members are in the correct branch for their employment, having regard to the frequent reorganisations in the NHS, local authorities and other employers.

### **The Development & Organisation Committee**

18. There is no reference to the Development & Organisation Committee in the Rules of the Union. Its constitutional position derives from rule D2.8, which provides:

#### **2.8 COMMITTEES**

*The National Executive Council shall have the right to appoint such Committees from amongst its membership as it shall see fit, and shall have the power to delegate to such Committees any of its functions as it considers appropriate.*

19. As noted above, UNISON was formed by the amalgamation of three major unions in 1993. I heard evidence that the transition towards a unified UNISON was a process, not an event. It originally had an NEC of 125 members. An Organisation Development Panel was established to consider the best structure for delegating NEC powers to subsidiary committees. In July 1995 the NEC agreed a new structure for the Union which involved the creation of separate committees, including the Development & Organisation Committee. The Development & Organisation Committee met for the first time in August 1995 and resolved that its terms of reference would include dealing with constitutional matters including branch mergers. On the following day, the NEC received the report from the Development & Organisation Committee and others. It was reported that the committee had identified seven areas of work 'which had been allocated to this committee'. One of these was 'constitutional/ballot issues'. The decision of the NEC was that "*The Reports were NOTED*". The Union relies upon this meeting as the effective delegation to the Development & Organisation Committee by the NEC of the right to put branches into Regional Supervision.

20. It is not disputed that since 1995 the Development & Organisation Committee has put many branches into Regional Supervision, that their decisions have been reported to the NEC and that the authority of the Development & Organisation Committee to perform this delegated function has never been questioned.
21. It has similarly not been questioned that the chairman of the Development & Organisation Committee has had the right to exercise the powers of that committee between its meetings on the basis that any such decision must be endorsed at the next meeting of the committee.

### **The relevant events**

22. In 2011, the Derbyshire County branch of the Union had an AGM as usual, although evidence was given that it was a difficult and ill disciplined meeting.
23. On 5 April 2011 the Regional Organiser of the East Midland Region, Mr Scott Kingswood, completed a 29 page report entitled, 'UNISON Derbyshire County Local Government Branch: Branch Reform and Development; a Case for Regional Intervention'. Amongst the problems identified in its executive summary were '*in fighting amongst many of the branch leadership*', '*aggression and unacceptable behaviour between many of the leadership including racist remarks and attempts to instigate physical fights*', '*lack of respect for leadership decisions by key officers*', '*dysfunctional financial processes and dealings*', '*lack of consultation mechanisms with membership*', and '*no joined up strategy for recruitment, campaigning or engagement with membership*'. Mr Kingswood concluded that "*The branch cannot effectively make decisions, cannot dynamically or flexibly respond to protecting the membership's best interests in an efficient or effective way and cannot guarantee the stability of organisation or finance between its elected leadership*". He considered that the way forward would be "*best achieved through intervention which aims to break old and unacceptable cycles of behaviour and customs and aims to replace this with a culture of unity and community*".
24. On 20 April 2011 Ms Black, Regional Secretary, wrote to Mr Nelson in his capacity as the person responsible for constitutional matters. She enclosed a copy of Mr Kingswood's report and summarised the issues raised in it under the following headings; 'Bullying/Aggressive behaviour; Finance; Structure and Organisation; and Representation'. She commented on the inability of the branch to function properly at the time when 2,000 members were potentially facing redundancy. She concluded by stating

*"I do not believe wholesale regional supervision is necessary because key branch officers – the branch secretary, assistant secretary, branch chair, vice chair, along with some of the lead convenors have worked closely together and with the region to try and improve things and I am confident they will continue to do so. Rather I am asking for authority to suspend the current branch committee, the finance committee and all the various stewards committees that exist – for the reasons outlined in the report and summarised above. In the absence of these committees, the branch would instead be run by the elected lay leadership, the branch secretary, chair, treasurer, equalities officer and lead convenors – who would form a branch management committee. The branch management committee would, with*

*support from the Regional Organiser, Regional Head of Local Government and one of the joint Regional Convenors:*

- *manage the day to day running of the branch, representation of members and negotiations with the employer;*
- *development and implement a plan under the Joint Assessment process to improve branch organisation – including a review of the administration and financing of the branch;*
- *develop a new branch structure – to put members for their approval no later than the next AGM in March 2012.”*

25. On 4 May 2011 the Chair of the Development & Organisation Committee, Ms Sue Highton, agreed with the request for Regional Supervision, as appears from Mr Nelson's email to Ms Black of the same date. Ms Black appointed Mr Andy Belfield, Regional Head of Local Government, to oversee the day to day running of the branch and make regular progress reports to the NEC.
26. On 13 May 2011 Ms Black wrote to all branch officers and representatives. She stated that she had sought and received approval from the NEC to put the Derbyshire County branch under Regional Supervision until such time as she was satisfied that it was functioning effectively once more. She went on to state that the branch would be run by a Leadership & Management Committee, made up of branch representatives and regional staff, which would be convened by Mr Belfield. She also stated that with immediate effect all current branch meetings are suspended, including the Branch Committee, the Finance Committee and Stewards Committees.
27. On 18 May 2011 the Development & Organisation Committee met and considered a report on the Derbyshire County branch which was in virtually identical terms to Ms Black's letter of 13 May, together with a view from the Regional Convenor. He considered that the branch was "in complete disarray and that there appeared to be little or no respect for the Branch Secretary or Chair". The minute of the relevant decision of the Development & Organisation Committee is in what would appear to be standard form. It set out the names of the 11 branches under Regional Supervision, now including 'East Midlands – Derbyshire County Local Government branch' and it notes that the Committee "*endorsed recommendations regarding future actions*". It also lifted Regional Supervision from seven of the eleven listed branches.
28. On 24 May 2011 Mr Skinner, the secretary of the Retired Members Organisation in the Derbyshire County branch, proposed to circulate to the retired members an agenda for a meeting to be held on 7 June at which there would be an election of delegates to the National Retired Members Conference to be held on 11/12 October 2011 and a consideration of any resolutions to be submitted. Mr Skinner submitted this agenda to the branch office for distribution to the retired membership, but later discovered that it had not been circulated. He telephoned the branch office to find out the problem and was told that Mr Belfield had stopped its distribution, as the branch was in Regional Supervision. Nevertheless, notification of the meeting on 7 June had appeared briefly on the branch's website and had been seen by Mr and Mrs Street, before the whole website was taken down for reconstruction. Mrs Street was also told on the telephone by the branch office that the meeting of 7 June had been cancelled.

29. On 21 June 2011 Mr Skinner met with Mr Belfield to complain about the retired members not having a meeting prior to the National Retired Members Conference. This meeting was not entirely amicable.
30. On or about 6 July 2011 Ms Jeannette Lloyd, the Branch Secretary of the Derbyshire County branch, wrote to all retired members in an undated letter. The letter informed members that the National Retired Members Conference was to be held in Chester on 11/12 October 2011 and stated that the branch could send "a delegate". She also asked for volunteers who should write in with a couple of paragraphs explaining why they would like to go and, if there was more than one request, the Branch Leadership Committee would then elect a delegate. Mr and Mrs Street took objection to this letter. They objected to the branch being restricted to a single delegate and they objected to the delegate being chosen by the Leadership Committee, not by election of the retired members.
31. On 14 July 2011 Mr and Mrs Street wrote a letter of complaint to the General Secretary of the Union. The letter is headed 'Age related discrimination within UNISON'. They complain about the above two matters and comment that there appears to be little in the rules to protect the position of retired members.
32. In line with the Union's complaints procedure, Mr and Mrs Street's complaint letter was passed to their region for investigation and Mr Belfield was appointed to investigate and respond to them. He responded to Mr and Mrs Street by a letter dated 10 August 2011. In this letter Mr Belfield referred to the Regional Supervision and informed Mr and Mrs Street that only two members had volunteered to be delegates to the National Retired Members Conference. He went on to comment that if there had been four volunteers, they would have been able to attend. Mr and Mrs Street saw this as a concession that Ms Lloyd had been wrong to refer to 'a delegate' in her letter of the 6 July. Mr Belfield stated that the Union was working on getting the retired members meeting up and running again and could not agree that there had been any form of age discrimination. He stated that Mr and Mrs Street could appeal his response to the Members Liaison Unit.
33. Mr and Mrs Street appealed to the Members Liaison Unit by a letter dated 14 August 2011, again heading the letter "Age Related Discrimination within Union".
34. On 19 August 2011 Ms Lloyd wrote to all branch members with an update on the Regional Supervision. She reported that there had been improvements but more work still needed to be done. The sentence to which Mr and Mrs Street took most exception was as follows, "*There are still some problem areas we are trying to fix, Retired Members Self Organised Group being one of them, but we have offered to meet the Retired Members Officer to try and move this group forward so they can also be meeting again as soon as possible.*" Mr and Mrs Street do not consider there were any problems with the Retired Members section.
35. On 11/12 October 2011 the National Retired Members Conference took place in Chester and two delegates from the Derbyshire County Retired Members Section attended.



36. On 18 November 2011 the Members Liaison Unit wrote to Mr and Mrs Street, effectively rejecting their appeal. In accordance with its procedure, the appeal had been considered by way of a review of the process to date. The Members Liaison Unit concluded that the region had dealt with the issues appropriately.
37. On 7 December 2011 the Development & Organisation Committee met and, in accordance with the pro forma minute, endorsed the recommendations regarding future actions. The report on the Derbyshire County branch states that the branch was working to a set of rules that had not been agreed at a quorate AGM and were not compatible with the core branch rules (as agreed by the NEC in 2009 and now to be found in the UNISON Code of Good Branch Practice). The report commented that there were no plans at present to hold an AGM in 2012 and that *"there is some way to go to ensure that the bullying and intimidating atmosphere is permanently removed and that the branch can function independently of regional support"*.
38. On 16 May 2012 the Development & Organisation Committee met again and agreed to lift the Regional Supervision on three branches. The report on the Derbyshire County branch stated that the branch had agreed a new set of rules and that it was hoped the branch would be in a position to commence branch meetings later in 2012 and, as a result, hold an AGM in 2013.
39. Mr and Mrs Street commenced this complaint to me on 17 May 2012.
40. On 1 August 2012 there was a meeting of the Retired Members Section of the Derbyshire County branch to discuss the National Retired Members Conference to be held in Cardiff in October 2012. The meeting elected delegates to the National Conference and considered the preliminary agenda. Six members were nominated. Four members were elected, including Mrs Street. The other two members were allowed to attend the conference as visitors. Mr Street attended as a facilitator for Mrs Street, who has mobility difficulties.
41. On 19 September 2012 the Development & Organisation Committee met and noted a progress report on those branches under Regional Supervision. The report on the Derbyshire County branch noted that HR consultants had been called in to help break down communication barriers, that it was still the intention to recommence branch meetings later in 2012 and hold an AGM in 2013.
42. In October 2012 the National Retired Members Conference took place in Cardiff, attended by both Mr and Mrs Street.
43. On 7 November 2012 the Development & Organisation Committee met and noted a progress report on the branches in Regional Supervision. The report on the Derbyshire County branch noted that the new branch rules had been endorsed by the region and implemented in May 2012, that it was proposed to hold a branch committee meeting in November and an AGM in March 2013.
44. As at the date of this hearing, Mr Nelson understood that it was still proposed to hold a branch AGM in March 2013 and that, if all went well, the Development & Organisation Committee would then consider lifting the Regional Supervision.

## **The Relevant Statutory Provisions**

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

### **Section 108A Right to apply to Certification Officer**

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

*(2) The matters are -*

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

### **Section 108B Declarations and orders**

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements –*

- (a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
- (b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*

## **The Relevant Rules of the Union**

46. The rules of the Union which are relevant for the purposes of this application are as follows:-

### **Rule C**

#### **Membership**

##### **2.6 RETIRED MEMBERS**

*2.6.1 A member may apply at any time for retired membership if she/he has had at least two years' continuous membership immediately prior to their retirement from employment within those areas of work set out in Rule C.1 and who are in receipt of a pension and who are not in other paid employment.*

*2.6.2 Retired members shall be entitled to attend branch meetings and to vote on issues not relating to the pay and conditions of members in employment. They will be entitled to stand for office and vote only for positions in the Retired Members' Organisation unless otherwise determined by the National Executive Council or as otherwise provided for in these Rules.*

### **Rule D**

#### **D2 NATIONAL EXECUTIVE COUNCIL**

##### **2.1 FUNCTIONS AND AUTHORITY**

*The general management and control of the Union between National Delegate Conferences shall be vested in the National Executive Council, which shall comprise representatives elected from the Regions and Service Groups plus four national black members' seats and a young members' seat. It shall have full power and authority to act on behalf of the Union in every respect and for every purpose falling within the objects of the Union. It shall not do anything that is inconsistent with these Rules or the policy of the Union as laid down by the National Delegate Conference.*

## **D2.8 COMMITTEES**

*The National Executive Council shall have the right to appoint such Committees from amongst its membership as it shall see fit, and shall have the power to delegate to such Committees any of its functions as it considers appropriate.*

## **D2.9 POWERS**

*As part of its general power in Rule D.2.1 above, and without limiting the scope of that power, the National Executive Council shall have the following powers:*

- 2.9.1 to provide for any case in which the Rules are silent;*
- 2.9.2 to augment the Rules by making regulations subject to their approval by Annual Conference;*
- 2.9.3 to interpret the Rules in event of doubt, conflict or dispute;*
- 2.9.4 to bring or defend legal proceedings of any type;*
- 2.9.5 to issue a protocol on devolved administration and union governance;*
- 2.9.6 to give directions to the Trustees of the Union as to their management of the funds and property of the Union, including the power to give directions binding on the Trustees that, in the execution of any investment policy, the Trustees should have regard to considerations of Union policy irrespective of conflict with possible financial return;*
- 2.9.7 to affiliate to any other appropriate body or council;*
- 2.9.8 to approve the formal association with the Union of appropriate professional and sectional bodies;*
- 2.9.9 to convene meetings, and in particular Delegate Conference meetings, if it should appear to the National Executive Council that there is a need;*
- 2.9.10 to open or close any branch of the Union following consultation with the appropriate Regional Council, Service Group, branch or branches;*
- 2.9.11 to allocate branches to appropriate Service Groups and Regions;*
- 2.9.12 to issue a Code of Good Branch Practice;*
- 2.9.13 to enter into, and approve, reciprocal membership arrangements with appropriate trade unions within the European Union;*
- 2.9.14 to enter into a transfer of engagements from other organisations to the union and to make such arrangements as may be necessary for this purpose;*
- 2.9.15 to take all such action as shall seem to them to be necessary to ensure that the income, property and funds of the Union are safeguarded, and the objects and purposes of the Union achieved.*

## **D6 RETIRED MEMBERS' ORGANISATION**

*6.1 A retired member as defined in Rule C.2.6 may belong, at the member's option, either to the last branch of which she/he was a member or the branch which is based closest to her/his place of residence.*

*6.2 The retired members in any branch shall have the right to elect a Branch Retired Members' Secretary annually.*

*6.3 The Branch Retired Members' Secretary may attend and speak at all meetings of the Branch Committee as determined by the Branch Committee Rules, and may vote on any issue or matter other than one which concerns the pay and conditions of work of members of the Union in employment.*

*6.4 The retired members of a Region shall be entitled to form a Regional Retired Members' Committee and elect a representative to attend and speak at all meetings of the Regional Council, and shall be entitled to vote on any issue or matter other than one which concerns the pay and conditions of work of members of the Union in employment.*

*6.5 The Regional Retired Members' Committee may formulate proposals, motions or other proposals to the appropriate Regional Council and Regional Committee. Such proposals or motions may be on any issue or matter other than one which concerns the pay and conditions of work of members of the union in employment.*

*6.6 The National Executive Council shall establish a Retired Members' National Committee composed of representatives of Regional Retired Members' Organisations which may hold an annual conference of retired members and may elect two representatives to attend the National Delegate Conference. The National*

Retired Members' Organisation may submit two motions to the National Delegate Conference.

6.7 The retired member delegates to the National Delegate Conference shall be entitled to speak on any issue which does not concern the pay and conditions of work of members of the Union in employment.

## **Rule G Branches**

### **G1 BRANCH ORGANISATION**

1.1 Every member, excluding employees of the Union, shall be in membership of a branch established under these Rules. Disputes concerning the branch to which it is appropriate for a member to belong will be determined by the National Executive Council.

1.2 Branches will be established in accordance with a scheme approved by the National Executive Council.

1.3 Each branch shall submit to the Regional Secretary current branch email and postal addresses for communications with the Union.

### **G2 THE BRANCH COMMITTEE**

2.1 Each branch shall establish a Branch Committee, which shall consist of:

.1 where appropriate, taking into account the Code of Good Branch Practice, one or more stewards for each work group as the branch meeting may approve, considering the size of the membership in that work group; and the steward or stewards shall be elected annually by the members in that work group;

.2 such representatives of self-organised groups within the branch as the branch may determine;

.3 the Branch Chairperson, Secretary, Treasurer, Equality Officer(s), Welfare Officer and Health and Safety Officer and other officers elected in accordance with the Union's Rules.

2.2 The Branch Committee shall administer branch business in accordance with the branch Rules and any guidelines issued by the National Executive Council, and in particular:

.1 shall co-ordinate local negotiations conducted by stewards in the branch;

.2 shall establish effective representation of members' interests by stewards in each work group;

.3 shall organise around workplace learning and co-ordinate the activities of learning representatives;

.4 shall recruit and organise members in all employers and workplaces within the scope of the branch;

.5 shall co-ordinate health and safety activities conducted by health and safety representatives;

.6 shall maintain a record of membership showing the work group in which each member is employed;

.7 shall ensure that the branch officers are properly exercising their functions.

2.3 The Branch Committee shall meet as necessary.

2.4 Meetings of the Branch Committee shall be convened by the Branch Secretary or in her/his absence by the Branch Chairperson.

2.5 In addition to the elected branch officers, the Branch Committee may co-opt additional members for special purposes, but such members shall not thereby have the right to vote at Branch Committee meetings.

### **G3 BRANCH MEETINGS**

3.1 All members of the branch shall be entitled to attend branch meetings.

3.2 Branches will hold an annual meeting in the January - March quarter. Additional meetings shall be held in line with the agreed branch Rules or when summoned by the Branch Committee to discuss any matter affecting the branch.

3.3 The purposes of the branch meeting shall be to:

.1 provide a means of communication between the Branch Officers and the membership

.2 enable the membership to take decisions on matters of branch policy

- .3 ensure that the Branch Officers are accountable to the membership for conducting the affairs of the branch.
- 3.4 At the annual meeting of the branch, the following business shall be transacted:
  - .1 the receiving of reports from the Branch Officers and the Branch Committee, including a report on the branch's finances and presentation of branch accounts;
  - .2 the election or confirmation of election of Branch Officers for the coming year;
  - .3 the election or confirmation of election of branch representatives to other levels of the Union and to external bodies;
  - .4 such other business as may be required by the branch Rules.
- 3.5 Meetings of the branch shall be convened by the Branch Secretary or in her/his absence by the Branch Chairperson.
- 3.6 Branch meetings can be requisitioned by the appropriate number of members, in accordance with the Code of Good Branch Practice.

#### **G4 BRANCH OFFICERS**

- 4.1.1 General Branch Officers shall be the Chairperson, Secretary, Treasurer, Education Co-ordinator, Lifelong Learning Co-ordinator, Equality Co-ordinator(s), Health & Safety Officer, Communications Officer, International Officer, Membership Officer, Young Members' Officer, Welfare Officer and such other officers as approved by the Branch.
- 4.1.2 The Branch Officers shall be elected annually.
- 4.1.3 The Branch Chairperson shall preside at all meetings of the branch and the branch committee and shall ensure that business is properly conducted.
- 4.1.4 In the absence from a meeting of the Branch Chairperson, the members present shall elect one of their number to chair the meeting.
- 4.1.5 Each branch office may be shared between two or more members, subject to the approval of the branch meeting.
- 4.1.6 A member shall hold only one of the branch secretary or branch treasurer posts at any one time, unless otherwise determined by the National Executive Council.

#### **G4.2 THE BRANCH SECRETARY**

The Branch Secretary shall:

- .1 convene and attend all meetings of the branch and branch committee and shall arrange for the minutes and other branch records to be kept in a proper manner;
- .2 co-operate with the Union's Head Office in keeping a record of all members' names, addresses and work groups and in communicating any changes in these matters to the Head Office
- .3 be responsible for communicating with members and with the Union's Regional and Head Offices on behalf of the branch
- .4 in conjunction with the Branch Committee, ensure that the branch observes Union Rules
- .5 at the end of her/his appointment (and at any other time when so required by the General Secretary) deliver to the Branch Chairperson or to such person as the General Secretary may appoint all minute books, records and other property belonging to the Union.

#### **G4.3 THE BRANCH TREASURER**

The Branch Treasurer shall:

- .1 conduct the branch's financial business and keep accounts in accordance with the Rules
- .2 at the end of her/his appointment (and at any other time when so required by the General Secretary) deliver to the Branch Chairperson or such person as the General Secretary may appoint all accounts, financial records and money belonging to the Union.

**G9 VISITS BY EMPLOYED OFFICIALS TO BRANCHES**

9.1 An employed official of the Union may visit a branch at the request of either the branch or the official, provided that no such visit will be made without agreement of the Branch Committee or Branch Officers.

9.2 The National Executive Council or the General Secretary or other official acting with the authority of the National Executive Council is entitled to request an employed official to visit a branch where it is necessary to further the interests and policies of the Union.

9.3 An employed official is also entitled to visit a branch:

.1 for the purpose of financial checks and inspection

.2 in the event of industrial action

.3 where it appears to the General Secretary or the Regional Secretary that a branch may no longer be functioning effectively.

**Consideration and Conclusions**

**Complaint 1**

47. Mr and Mrs Street's first complaint is in the following terms;

*"That in or about December 2011 UNISON breached Rule G.3.2 by failing to hold an annual general meeting of Derbyshire County Branch of the Union in the January-March quarter of 2012."*

48. Rule G.3.2 of the Rules of the Union provides as follows:

**Rule G Branches**

3 Branch Meetings

3.2 Branches will hold an annual meeting in the January - March quarter. Additional meetings shall be held in line with the agreed branch Rules or when summoned by the Branch Committee to discuss any matter affecting the branch.

**Summary of Submissions**

49. Mrs Street, for both claimants, submitted that rule G3.2 requires each branch to hold an AGM in the January-March quarter in each year but that the Derbyshire County branch did not hold an AGM at any time in 2012. She noted the Union's argument that the relevant rule had effectively been set aside because the branch was in Regional Supervision but did not accept that the Union had the authority to impose Regional Supervision. Mrs Street submitted that rule D2.1 and D2.9 did not give the Union the authority to suspend the rules of the Union, as the final sentence of rule D2.1 provides that the NEC "*shall not do anything that is inconsistent with these Rules ...*". She argued that by setting aside those rules which provide for the internal democracy of a branch, the NEC was acting inconsistently with the rules. Mrs Street considered that if the Union wanted to have Regional Supervision, the rules should be amended to provide for it more clearly.

50. Mr Segal QC, for the Union, accepted that there had been no AGM of the Derbyshire County branch in 2012 but contended that this did not cause there to be a breach of rule G3.2. He submitted that the provisions of rule G apply subject to there being a normally functioning branch in respect of which the NEC had not made alternative arrangements. He argued that the obligations in rule G2 were directory to branches and could only apply if the branch was functioning. He relied upon the provisions in rule D2.1 which gives the NEC the responsibility for the general management and

control of the Union and rule D2.8 which gives the NEC the right to delegate functions to such committees as it thinks fit. He referred in particular to the powers in rule D2.9 for the NEC:-

- 2.9.1 to provide for any case in which the Rules are silent.*
- 2.9.3 to interpret the Rules in the event of doubt, conflict or dispute...*
- 2.9.10 to open or close any branch of the Union following consultation with the appropriate Regional Council, service group, branch or branches...*
- 2.9.15 to take all such action that shall seem to them to be necessary to ensure that the income, property and funds of the Union are safeguarded, and the objects and purposes of the Union achieved."*

51. Mr Segal QC submitted that, as a matter of common sense, all the provisions of rule G cannot apply if a branch has in fact ceased to function; where, for example, there are no branch officers and no effective governance. He argued that equally rule G cannot apply where the NEC has taken lawful action to take over the functioning of the branch; where, for example, the NEC believes that the officers of the branch are misusing Union funds and have been suspended from office with no willing replacements. He argued that it would be an unlikely interpretation of the rules that did not allow such a situation to be addressed. He submitted that it cannot be correct that the NEC has the express power to close or merge a branch which is not functioning properly, but does not have the lesser power to suspend for a period some of the functions of such a branch.
52. Mr Segal QC further submitted that the NEC would not be complying with its duties if it allowed a branch to hold an AGM in breach of its own rules and noted Mr Nelson's evidence that the Regional Supervision was directed to securing a compliant AGM which was capable of carrying out the duties in rule G3.3. He commented that the actions taken by the Regional Secretary were not excessive noting that, in keeping with Ms Black's original recommendation to the Development & Organisation Committee, the Management & Leadership Committee was composed mainly of the existing branch representatives. He also noted that safeguards existed against the abuse of Regional Supervision as it required detailed reports to be submitted to the committee, including the views of a lay convenor, that the level of supervision was kept to a minimum and all decisions of the Development & Organisation Committee were reported to the NEC.
53. In as far as any doubt exists as to the proper construction of rule D.2 and rule G, Mr Segal QC submitted that I should have regard to custom and practice. He noted that the power to suspend some or all of the functions of the branch, or to hand them over to regional officers, whilst normal functioning of the branch is restored, has been exercised frequently by the NEC/Development & Organisation Committee in the last 18 or so years. He further noted that since 2007 there had been a regular report to the Development & Organisation Committee on the branches in Regional Supervision and that neither successive Delegate Conferences nor the NEC had ever questioned the appropriateness of using this power. Mr Segal further observed that no other UNISON member had previously challenged the practice of Regional Supervision, even though some had brought complaints to me against a background of Regional Supervision.

## Conclusion

54. It is common ground that the Derbyshire County branch of the Union did not hold an AGM in 2012. It is also clear that rule G3.2 states "*Branches will hold an annual meeting in the January - March quarter.*" There is therefore a primary facie breach of rule G3.2, unless other considerations compel a different outcome. The Union maintains that the fact of Regional Supervision is just such a compelling consideration.
55. I accept Mr Segal's submission that there would be no breach of rule G3.2 in the circumstances of physical impossibility, for example if there were no branch officers and no interest by any member in participating in branch organisation. I find, however, that this is not a case of physical impossibility. There is no evidence to suggest that the branch would not have held an AGM in 2012 were it not for the Regional Supervision.
56. I also have great sympathy for Mr Segal's submission that, if possible, the rules should be construed purposefully so as to allow the Union to impose Regional Supervision in appropriate circumstances. I am aware of the real practical difficulties that trade unions have in ensuring the proper functioning of their branches, especially large trade unions. UNISON has about 1,100 branches. Each is dependent on members giving their time and efforts voluntarily, often in stressful and sometimes in political circumstances. Internal disputes, personality conflicts, mismanagement and financial problems are inevitable in some branches some of the time. It is important that those with overall responsibility for a union are able to manage those difficulties, especially where they impact significantly on the interests of the ordinary branch member.
57. On the other hand, a union must operate within its rules which are made and amended by its members in general meeting. An activity which is not permitted expressly or impliedly by the rules, no matter how laudable, is likely to be in breach of rule.
58. There is no provision within the rules of UNISON which provides expressly for Regional Supervision. Indeed, I was shown no written definition of what constitutes Regional Supervision, other than the introductory words to the usual minute of the Development & Organisation Committee dealing with this issue. This minute states "*In exceptional circumstances NEC powers have been exercised under Rule D2.1 and G9 to authorise a Regional Secretary to supervise the day to day running of a branch*". There is nothing in this formulation which provides for the suspension of a number of the rules of the Union, yet it is the union's case that Regional Supervision has that effect. Notwithstanding Ms Black's statement that she did not believe wholesale Regional Supervision was necessary, Mr Nelson replied to her by stating that her recommendation that the branch be placed in Regional Supervision was approved. I have seen no evidence of whether the decision of the Development & Organisation Committee to impose Regional Supervision was nuanced as suggested by Ms Black. It appears more that Regional Supervision is imposed or it is not. If it is imposed, it is then up to the Regional Secretary how interventionist that supervision is to be. The nature of the request may of course influence the decision of the Development & Organisation Committee whether to impose Regional Supervision at all. Once imposed, however, it appears to be the Union's case that any rule which



prevents or inhibits the Regional Secretary from the task of restoring the branch to full functionality no longer has effect.

59. The Union maintains that the NEC has the power to set aside rules in these circumstances by virtue of rule D2.1 which provides:

**2.1 FUNCTIONS AND AUTHORITY**

*The general management and control of the Union between National Delegate Conferences shall be vested in the National Executive Council, which shall comprise representatives elected from the Regions and Service Groups plus four national black members' seats and a young members' seat. It shall have full power and authority to act on behalf of the Union in every respect and for every purpose falling within the objects of the Union. It shall not do anything that is inconsistent with these Rules or the policy of the Union as laid down by the National Delegate Conference.*

60. I note firstly that the powers given to the NEC relate to the 'general management and control of the Union'. I find that these are powers which can only be exercised subject to the rules of the Union. The position is made even clearer by the words "It shall not do anything that is inconsistent with these Rules ...". I note that this requirement does not merely prohibit the NEC from acting contrary to the Rules, but prohibits it acting inconsistently with them. In my judgement, rule D2.1 does not authorise the NEC to set aside other rules of the Union, no matter how laudable the purpose.

61. The Union also relies upon rule D2.9 and the following sub-rules in particular:

**2.9 POWERS**

*As part of its general power in Rule D.2.1 above, and without limiting the scope of that power, the National Executive Council shall have the following powers:*

*2.9.1 to provide for any case in which the Rules are silent;*

*...*

*2.9.3 to interpret the Rules in event of doubt, conflict or dispute;*

*...*

*2.9.10 to open or close any branch of the Union following consultation with the appropriate Regional Council, Service Group, branch or branches;*

*...*

*2.9.15 to take all such action as shall seem to them to be necessary to ensure that the income, property and funds of the Union are safeguarded, and the objects and purposes of the Union achieved.*

I note, however, that the introductory words of rule D2.9 are "As part of its general power in rule D2.1". In my judgement, these words have the effect of imposing upon the specific powers granted by D2.9 the same limitation that is imposed on the NEC's powers generally in Rule D2.1. I further find that none of the specific powers relied upon by the Union can properly be construed as permitting the NEC to set aside other rules of the Union. For example, I find that the power to take all such action as shall seem to the NEC necessary to ensure the income, property and funds of the Union are safeguarded is to be exercised within the existing rules and not just some of the existing rules. Mr Segal argued that as the NEC has the power to open and close branches, it must be inferred that it has the lesser power to suspend for a period some of the functions of the branch. I disagree. I find there is a substantive difference between closing a branch and Regional Supervision. By rule G1.1 all members must belong to a branch. Only by belonging to a branch can a member participate in some of the democratic processes of the Union, such as the election of

branch delegates and the submission of branch resolutions. The branch is an important first building block in a union's constitution. If a branch is closed, the members must be reallocated to another branch (or branches) and thus they retain their rights of democratic participation. If a branch is put in Regional Supervision, the members of that branch lose those rights which derive from the rules that have been set aside. This can be for a substantial period. I heard evidence of one Regional Supervision lasting over four years and another over five years. In the present case the Regional Supervision commenced in May 2011 and it is hoped it will end after March 2013, a period of nearly two years. These are substantial periods for members to be deprived of certain basic rights contained in the contract of membership for which they signed up.

62. It is suggested by the Union that without Regional Supervision it will be unable to react appropriately to the very real problems I alluded to in paragraph 55 above and that those who will suffer most are the ordinary members of the branch considered to be dysfunctional. I am not unsympathetic to this submission but I do not consider that Regional Supervision is the only way that this problem can be tackled. It is not for me, however, to recommend alternative strategies. In any event, it is open to the Union to amend the rules so as to provide expressly for Regional Supervision. The issue for me to determine is whether rule G3.2 is to be disapplied in the circumstances of the branch having been put into Regional Supervision. I find that even on a purposive approach to the construction of rules D2.1 and D2.9, the NEC does not have the power to set aside rules of the Union to give effect to Regional Supervision.
63. For the above reasons I uphold Mr and Mrs Street's application for a declaration that in or about December 2011 the Union breached rule G3.2 by failing to hold an AGM of Derbyshire County branch of the Union in the January-March quarter of 2012.
64. Had I found that the NEC did have the authority to set aside rules of the Union for the purpose of imposing Regional Supervision, I would have gone on to consider whether the NEC had effectively delegated its authority to the Development & Organisation Committee in 1995 and whether the Development & Organisation Committee had effectively delegated its authority to impose Regional Supervision to its Chair between meetings. It is not now necessary for me to determine these issues but my provisional conclusions were that the less than satisfactory delegation of the NEC's powers in 1995 was probably a sufficient delegation, having regard to the course of conduct between those two committees since then. It is also my provisional view that on the specific facts of this case the Chair of the Development & Organisation Committee probably did have the authority to make decisions regarding Regional Supervision on behalf of that committee between its meetings and subject to them being endorsed at its next meeting.
65. By section 108B(3) of the 1992 Act, where I make a declaration I must make an Enforcement Order unless I consider that to do so would be inappropriate. On the facts of this case I find that it would be not be appropriate to make an Enforcement Order regarding the failure to hold an AGM in 2012. As a matter of clear fact, there cannot now be an AGM in 2012. Further, I note that the Union's present intention is to hold an AGM of the Derbyshire County branch in 2013, as indeed it is required to

do by rule G3.2. I have no reason to believe that the Union will not comply with its rules as they have been construed by me in this decision.

## **Complaint 2**

66. Mr and Mrs Street's second complaint is in the following terms;

*"That on or around early June 2011 the Union breached Rule C.2.6.2 by denying the retired members of the Derbyshire County Branch the opportunity to stand as and/or vote for delegates to the National UNISON Retired Members Conference held in October 2011."*

67. Rule C.2.6.2 of the Rules of the Union provides as follows:

*Rule C Membership*

*2.6 Retired Members*

*2.6.2 Retired members shall be entitled to attend branch meetings and to vote on issues not relating to the pay and conditions of members in employment. They will be entitled to stand for office and vote only for positions in the Retired Members' Organisation unless otherwise determined by the National Executive Council or as otherwise provided for in these Rules.*

68. Mrs Street, for the claimants, submitted that by custom and practice the Derbyshire County Retired Members Section had elected its own delegates to the National Retired Members Conference each year since the days of NALGO. She also asserted that the Derbyshire County Retired Members had formulated motions to go to this conference, had submitted amendments to other motions and had received a report back from Conference. She argued that this procedure, whilst not expressly within the rules, was in keeping with the Union's democratic principles as illustrated in its publication 'UNISON Guide to Organising for Equality'. Mrs Street relied on the following paragraph:

*"UNISON is a representative democracy. Members elect other members to represent their interests, views and concerns in branch, regional and national forums as well as to external bodies. Branches should make sure that election of all representatives is on the basis of the widest possible participation and must ensure elected representatives take their role as spokesperson for the wider membership seriously, by identifying members' views, expressing these and reporting back."*

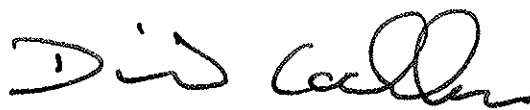
Mrs Street submitted that by not allowing the Derbyshire County Retired Members Section to elect its own delegates in 2011, the Union had breached rule C2.6.2.

69. Mr Segal QC, for the Union, submitted that this claim was misconceived. He noted that the provisions of rule D6, which relate directly to the Retired Members Organisation, contain no reference to 'delegates' nor to any requirement (express or implicit) that any such delegate need to be elected. Mr Segal submitted that the reference in rule C2.6.2 to retired members being entitled to stand for office in the Retired Members Organisation was not a reference to the process of selecting delegates to the National Retired Members Conference. He further argued that the claimants had adduced insufficient evidence of a custom and practice to establish a

rule of the Union that such delegates must be elected by the retired members of a branch; such evidence as they had produced being restricted to a NALGO branch in 1991 and their own experience of Derbyshire County branch. Mr Segal noted that there was no evidence of what happened in other branches of UNISON, many of which did not send a delegate to the Conference.

### **Conclusion**

70. Mr and Mrs Street feel strongly that it was wrong for them to have been prevented from voting for delegates for the Derbyshire County Retired Members Section to the National Retired Members Conference in 2011 but, at the hearing, they accepted that they had difficulty in finding a rule which was allegedly breached. In claiming a breach of rule C2.6.2, they had to establish that they had been denied an entitlement to stand for office and vote for a position in the Retired Members Organisation.
71. I accept Mr Segal's submission that there is no position within the rules of the Union known as a delegate to the National Retired Members Conference. The only references in the rules to that Conference to which I was referred are rules D6.6 and D6.7. Neither of these provisions refers to delegates to that conference and, for completeness, neither refers to the right to elect such delegates. Mrs Street accepted this position and confirmed that the Retired Members Section of the Derbyshire County branch had no rules nor constitution of its own. Nevertheless, Mrs Street argued the breach of a right established by custom and practice. To establish such a right requires strong evidence of a common usage that is certain, notorious and reasonable. The only evidence of a custom and practice that was adduced by the claimants was a letter evidencing a similar practice in NALGO in 1991 and the claimants' own experience in the Derbyshire County branch. Such evidence is insufficient to establish a custom and practice of a rule of the Union as a whole or even of the Derbyshire County branch. Mrs Street was unaware if the retired members of COHSE or NUPE had had a similar right to elect delegates and was unaware of any similar rights of retired members in other branches of the Union. In these circumstances I find that there was no right established by custom and practice upon which Mr and Mrs Street could rely in making this complaint.
72. For the above reasons, I refuse Mr and Mrs Street's application for a declaration that in or around early June 2011 UNISON breached rule C2.6.2 by denying the retired members of the Derbyshire County branch the opportunity to stand as and/or vote for delegates to the National UNISON Retired Members Conference held in October 2011.



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