

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

**Mr A Parsons**

**v**

**National Union of Teachers**

**Date of Decision**

**6 October 2014**

**DECISION**

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

1. I refuse the claimant’s application for a declaration that on or about 19 June 2013, the National Union of Teachers (“the Union”) breached paragraph 3(1) of Appendix III of its rules by accepting a complaint dated 18 June 2013 that was not accompanied by any supporting evidence made against the claimant by Lesley Thacker and Christine Gibbon.

2. I refuse the claimant’s application for a declaration that on or about 27 September 2013, the National Union of Teachers breached paragraph 3(10) of Appendix III of its rules by the Regional Secretary of its Yorkshire and Midland Region not having convened a meeting of the Disciplinary Committee to consider the case against him within 40 school days of the formal making of the complaint or submission.

3. I refuse the claimant’s application for a declaration that on or around 19 June 2013, the National Union of Teachers breached paragraph 3(8) of Appendix III of its rules, in that it was submitted that the Chair of the Disciplinary Committee did not have any discretion to extend time limits.

4. I make a declaration that the National Union of Teachers breached paragraph 1(f)(i) of Appendix III of its rules on or about 21 January 2014 by processing a disciplinary case against the claimant for sending an email to members of the Nottinghamshire Division of the Union on 15 June 2013, which email was an expression of his opinion on a matter of Union management.

Enforcement Order

5. The decision of the National Disciplinary Committee of 13 March 2014 to uphold the charge against Mr Parsons arising out of his email of 15 June 2013 to members of the Nottinghamshire Division and the corresponding decision of the National Appeals Committee of 17 September 2014 are forthwith set aside and of no effect

and any sanctions imposed by those bodies are similarly forthwith set aside and of no effect.

## **REASONS**

1. Mr Parsons brought this application as a member of the National Union of Teachers (“the NUT” or “the Union”). He did so by a registration of complaint form which was received at my office on 26 February 2014.
2. Following correspondence with my office, Mr Parsons confirmed his complaints in the following terms:

### **Complaint 1**

On or around 19 June 2013, in breach of Appendix III section 3 (1) of the rules of the Union, a complaint made by Lesley Thacker and Christine Gibbon about the email sent by Andy Parsons to members of Nottinghamshire NUT on 15 June 2013 was not accompanied by any supporting evidence.

### **Complaint 2**

On or around 27 September 2013, in breach of Appendix III section 3 (10) of the rules of the Union, the Regional Secretary did not convene the meeting of the Disciplinary Committee to consider the case within 40 school days of the formal making of the complaint or submission nor did it give the parties 10 school days’ notice of the date of this meeting. The complaint against Andy Parsons by Lesley Thacker and Christine Gibbon was made on 19 June 2013. The Union did not arrange a meeting of the formal Disciplinary Committee to consider this complaint within 40 school days of this date; neither did it give Andy Parsons 10 school days’ notice of the date of this meeting. The Union informed Andy Parsons of its intention to proceed with the complaint against him on 21 January 2014.

### **Complaint 3**

On or around 19 June 2013, the Union breached Appendix III section 3 (8), in that the Chair of the Disciplinary Committee did not have any discretion to extend time limits. This discretion can only be exercised in exceptional cases on application by any of the parties. This was not such an exceptional case and no application was made by any of the parties.

### **Complaint 4**

On or around 21 January 2014, the Union breached Appendix III section 1 (f) (i) of the rules of the Union by processing a disciplinary case against Andy Parsons for sending an email to members of Nottinghamshire NUT on 15 June 2013, which alleged that financial irregularities were taking place in the Division. Andy Parsons’ act in sending this email was protected from disciplinary action by Appendix III section 1 (f) (i), which provides that disciplinary action may not be taken for ‘opinions expressed by members on matters of Union policy and management’.

3. I investigated the alleged breaches in correspondence and a hearing took place on 18 September 2014.
4. Mr Parsons did not attend the hearing on 18 September 2014 but had previously presented a written witness statement. I was informed that he was on holiday. He was represented at the hearing by a friend, Mr John Illingworth. Oral evidence for the claimant was given by Mr Liam Conway, who also presented a written witness statement. The Union was represented by Mr Clive Romain, its in-house Senior Solicitor. Oral evidence for the Union was given by Ms Marian Darke, retired Regional Secretary of the South East Region, and Ms Kathy Monah, Data Protection Officer, both of whom presented written witness statements. There was

also in evidence the rules of the Union and a 172 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. I accepted applications by both Mr Parsons and the Union for the late submission of additional documents and a further 11 pages were inserted into the bundle by consent. Both sides provided skeleton arguments.

### **Findings of Fact**

5. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
6. Mr Parsons joined the NUT in 1974 and has been a member of the Central Nottinghamshire Association since 1983. He has held numerous local positions, including Local Association President. Between 2008 and 2011 he was the Joint Deputy Divisional Secretary and Joint Membership Secretary. As the Membership Secretary, Mr Parsons had access to the membership database of local members. In about March 2014 Mr Parsons again became Membership Secretary.
7. The Union is organised in regions. This case concerns the Yorkshire & Midland Region which is based in Doncaster. The Regional Secretary is Mr Ian Stevenson. Within the region there are Local Associations, which may combine to form Divisions. The Central Nottingham Association and the South Nottingham Association have combined to form the Nottinghamshire Division. There is also a separate Nottingham City Association. Mr Romain has described the Union as being established as a federation of its Constituent Associations which are given a large degree of autonomy. At the relevant time, the Joint Secretaries of the Nottinghamshire Division were Mr Ivan Wels and Mr Liam Conway. The Treasurer was Ms Louise Regan. Mr Wels and Ms Regan are partners who live together. The lay auditors of the Nottinghamshire Division were a Mr and Mrs Tollervey.
8. From early 2012, Mr Conway, Mr and Mrs Illingworth and others had concerns about the conduct of the financial affairs of the Nottinghamshire Division. They were particularly critical of the activities of Ms Regan, Mr Wels and Mr and Mrs Tollervey who, for their part, felt that they were being unfairly bullied and harassed by Mr Conway and the others. The dispute between these two respective groups and their supporters has proved to be both lengthy and intractable, notwithstanding internal enquiries by the head office of the Union, the use of two firms of external auditors, an enquiry by my office and an attempt at ACAS conciliation. The dispute has also resulted in two previous cases before me with a further case yet to be heard. It has further led to a number of complaints under the rules of the Union against Mr Conway and his colleagues by members of the opposing faction. Mr Conway asserts that eight complaints have been made against him and 18 complaints in total have been made against him and his colleagues. As these are complaints that are made by members against other members under the rules, the Union has the task and expense of administering them. The facts of the current case must be seen against this background.
9. Following concerns expressed by Mr Conway and his colleagues in early 2012 about the conduct of the financial affairs of the Nottinghamshire Division, the Union arranged for a report to be prepared by its internal accountant which, by July 2012, had concluded that no improper or unacceptable behaviour or practice had been

found. Mr Conway and his colleagues did not accept this conclusion. Resolutions supporting their position were approved by the Central Nottinghamshire Association and the Nottinghamshire Division in November and December 2012 respectively. At the AGM of the Nottinghamshire Division in March 2013 a vote of no confidence in Ms Regan and Mr Wels was carried. Mr Conway and Mr and Mrs Illingworth, having concluded that they could not resolve this matter internally, made an allegation of financial irregularities within the Nottinghamshire Division to my office in April 2013. I caused enquiries to be made to inform my decision whether to appoint a formal inspector under my statutory powers. To its credit, the Union instituted a further and more in depth enquiry of its own, involving a further firm of auditors. However, by this time, a number of member on member complaints had been commenced under the rules of the Union against Mr Conway and his colleagues which were being processed by the Union.

10. It is against this background that Mr Parsons sent an email to all members of the Nottinghamshire Division on 15 June 2013 which is at the core of this case. It has been found by the Union that, for this purpose, Mr Parsons misused a database of members' email addresses, which he had wrongfully retained. I set out this email below, despite its length, having regard to its central importance to some of the issues I must determine.

*From: Andy Parsons  
To: <redacted>  
Sent: Saturday, 15 June 2013, 22:14  
Subject: Urgent - serious financial irregularities in Notts NUT branch*

*Dear Notts NUT member.*

*For your information:*

*I am writing to you because I believe your union subscriptions have been misappropriated by some officers of Nottinghamshire NUT. We have union meetings to decide how we spend membership fees - ie your money - in order to get the best outcome for you, the members. These decisions are meant to be proposed and voted in democratically. It appears to be the case that Notts Division union officers Ivan Wels and Louise Regan, a married couple, spent your membership fees on items that had not been voted on. And the people who have tried to sort out this matter have been accused of bullying by the alleged fraudsters. So the whistleblowers are being victimised and the alleged perpetrators are getting away with this. On March 21 2013, the AGM of the Nottinghamshire Division Council passed a vote of no confidence in the Treasurer of Nottinghamshire Division NUT, Louise Regan, in relation to the management of Notts NUT finances between 2006 and 2012. I was not at the meeting but am writing this email as a retired officer of Notts NUT in order to protect those who supported this vote. They did so for the following reasons.*

*Hours worked payments*

*Hours worked payments at £25 were never approved by a meeting of the Division Council or subject to any democratic discussion at a meeting open to you the members, or even known about beyond the Treasurer and the three recipients, (two of whom were the Division auditors). Financial records finally released for our scrutiny after challenge record that between 2008 and 2011 more than £12,000 of branch funds was paid out in such payments to Ivan Wels, a retired teacher who is a Joint Secretary of Notts NUT.*

*The £12,000 worth of payments do not appear transparently in any Treasurer's report or accounting records presented to a Union meeting at any point during these years.*

*If it was the authorised policy of Notts NUT to pay lay officers who were no longer serving teachers then I, as an officer of Notts Division NUT between 2008 and 2011, should have been informed of this and been in receipt of such payments for the work I did on behalf of the Union. However, I was not informed and nor did I receive any payments. I believe this is because there was no agreed policy in the Nottinghamshire Division or the Central or South Notts Associations to make such payments. I wish to be very clear that on principle, had I ever known of such payments, I would not have accepted them and would have raised the proposal to make any such payments to anyone else as a matter of urgency at a Divisional Council meeting.*

#### *Signatories to the Notts NUT account*

*The three signatories to the Notts NUT account were Liam Conway (Joint Secretary of Notts NUT), Ivan Wels (Joint Secretary of Notts NUT) and Louise Regan (Treasurer of Notts NUT). All cheques need to be signed by 2 of the 3 signatories.*

*At no point during this three year period was Liam Conway either asked to or signed any cheques - nor has he had any access to the cheque book of the Divisional accounts - all of which have been in the possession of Louise Regan.*

#### *Other payments*

*Unlike other officers, Ivan Wels and Louise Regan claimed more than £2,100 in 2011 alone for two mobile phone accounts, a landline phone/broadband account. These payments were not identified clearly in the accounts they were never subject to any approval or at a meeting open to members. In other years they claimed similar amounts.*

#### *Membership fees*

*The local membership fee paid by you into the Notts NUT account was increased significantly during this time. On the recommendation of the Treasurer, Association Members' Meetings voting to increase the fee did so because our funds had reached a worryingly low level. Members voted unaware that unauthorised spending decisions were being made during this time.*

#### *New financial regulations for Treasurers 2013*

*The NUT Annual Conference 2013 passed new guidelines following an investigation into issues raised by officers of Notts NUT. These guidelines include:*

#### *Hours payments must be clearly identified in the account books*

*Signatories should not sign their own cheques unless a second signatory, not connected to the first signatory, also signs the cheque. The term 'connected to' includes by law (Income and Corporation Tax Act 1988) a spouse or civil partner. (This is relevant in our Division because I believe that Ivan Wels and Louise Regan are a married couple)*

#### *Further developments*

#### *Disciplinary action*

*A number of members who originally raised concerns about the issues highlighted above were subjected to a charge of bullying and unprofessional conduct. The 2013 Notts Division AGM passed a resolution requesting that those who had initiated this disciplinary action withdraw the allegations. This resolution was carried with no votes against. To date the charges have not been withdrawn. The original case has now ended but a new charge of unprofessional conduct and bullying has been brought against Liam Conway by the former auditors of the Notts NUT account books.*

#### *2013 AGM decisions*

*A series of proposals were put forward to enable the Division to move forward in a cooperative way, including:-*

- A committee to look at the issue of redress regarding local union funds*
- The withdrawal of the charge of bullying*
- A consensus that future financial accounting in Notts NUT would be done in line with the best financial practice and that our books be audited by an independent professional auditor.*

*To date, contrary to the Division Council vote of approval, none of these proposals has been enacted by the Treasurer.*

*Finally, I wish to stress that those concerned about the above matters have sought and are seeking to resolve this in the best interests of Nottinghamshire NUT and the 2,600 members it represents. In particular I would like to commend the efforts of Liam Conway who, despite being subjected to false accusations of bullying by those who had taken the money, has steadfastly refused to submit to the pressure. Members have a lot to thank Liam for.*

*The next NUT meetings open to members are on June 20th, Central Notts at the White Post Pub, 4.45pm, South Notts at the NUT Office, 5.30pm. Soon there will be elections in Nottinghamshire. Remember the facts above when voting in those elections.*

*Yours sincerely,*

*Andy Parsons - Former Joint Deputy Division Secretary of Nottinghamshire NUT Division*

11. The Head Office of the Union was soon alerted to this possible misuse of personal data and Ms Monah, the Head of Information Services & Data Protection Officer of the Union, was asked to investigate. The Union takes its responsibilities under the Data Protection Acts very seriously. It informed the Information Commissioners' Office of this potential breach and the steps it was taking. Ms Monah wrote to Mr Parsons on 17 June 2013 seeking his comments but he did not reply. Mr Parsons also failed to reply to a similar letter from the General Secretary of 18 June and from the President of 21 June.
12. On 18 June 2013 Ms Christine Gibbon and Ms Lesley Thacker, Joint Secretaries of the Central Nottinghamshire Association, made a formal complaint against Mr Parsons to their Regional Secretary Mr Stevenson. Their email was sent at 8.06pm and opened on 19 June. They complained that Mr Parsons' email had brought the Union into disrepute and gave four grounds for their complaint. Two of these grounds related to the data protection aspect. The other two complaints were that the email was one sided, not giving the full facts, and that it was an attempt to influence voters. Mr Stevenson took this to be a formal complaint made under Appendix III of the rules of the Union which deals with "Union Discipline".
13. On 25 June 2013 the General Secretary sent a circular to members of the Nottinghamshire Division commenting on Mr Parsons' email. She explained the steps that had been taken subsequent to the investigation by the internal accountant in 2012 and that another investigation was now taking place into the further allegations that had been made, in the course of which the previous allegations would be re-examined.
14. On 27 June 2013 Mr Stevenson emailed Mr Parsons to notify him of the complaints that had been made against him. Mr Stevenson attached a copy of the complaint by Ms Gibbon and Ms Thacker and asked Mr Parsons to submit any response he might wish to make within 10 days. Mr Parsons did not respond.
15. Contemporaneously, a different complaint was being processed against Mr Conway that had been made by Mr and Mrs Tollervey on 22 May. On 4 July 2013, the National Disciplinary Committee ("the NDC") decided to stay that complaint in the

light of the investigations being carried out into the alleged financial irregularities both internally and by my office. By this time, Mr Stevenson had relinquished the administration of all such complaints, having regard to his previous involvement in seeking to resolve the underlying dispute. By consent, their administration was taken over by Ms Darke, as Secretary to the NDC. Ms Darke was at that time the Regional Secretary in the South East region. She continued with the role of Secretary to the NDC after her retirement from the Union in June 2013. Ms Darke spoke with Mr Conway and she understood him to have accepted the Committee's decision to stay the complaint against him. However, Mr Conway gave evidence that he did not give consent to the case against him being stayed.

16. On 14 September 2013 Ms Darke emailed Mr Parsons to inform him that, as the complainants had declined the opportunity of seeking conciliation, the complaints against him would go to a hearing and accordingly, she would arrange a pre-meeting of the NDC.
17. The pre-meeting of the NDC took place by way of various telephone calls over the next few days. The members of the NDC agreed that the complaints against Mr Parsons should be treated in the same way as the complaint against Mr Conway and stayed, pending greater clarity arising out of the various investigations into the alleged financial irregularities.
18. On 20 September 2013 Ms Darke emailed Mr Parsons to inform him of the decision of the NDC. In that email, she also confirmed that the charges against him had been split. The charges relating to the data protection issues were to be considered separately to those relating to the content of the email of 15 June. The rules of the Union provide for data protection issues to be dealt with by a Data Protection Committee which, by Section Two of Appendix III, has the power to determine complaints and impose penalties similar to those of the NDC. The data protection issues would continue to be processed but the issues that would be considered by the NDC would be stayed. The email explained that this was *"in light of issues arising from the earlier National Disciplinary process and currently under investigation by the Certification Officer."* It stated that it would not be possible to address the complaint against Mr Parsons in isolation from these issues and so the complaint will be suspended *"pending the outcome of the Certification Officer investigation ... when all relevant information and evidence is available and no longer subject to external investigation"*. The email concludes that Ms Darke would be in touch again when the Certification Officer's report is available. Mr Parsons was invited to meet with Ms Darke and/or the Chair of the NDC if he wished for any further explanation of the Committee's decision. No objections to this stay were received from Mr Parsons and he did not request a meeting with Ms Darke or the Chair of the NDC.
19. If this stay had not been imposed, paragraph 3(10) of Appendix III of the rules provides that the hearing of the complaint against Mr Parsons must have been heard within 40 school days of the date of the complaint. This meant that the hearing of Mr Parsons' complaint must have taken place by 27 September 2013.
20. The second internal audit of the finances of the Nottinghamshire Division concluded on or about 4 October 2013. It had carried out interviews with those making the

allegations of irregularities and those complained against. It had reviewed all relevant minutes since 2004 and all transactions since 2006. It had employed the services of a further firm of auditors. It concluded that *“whilst there are matters of procedure that could be improved, no evidence was found of fraud or of money being used for a purpose other than the proper activities of the Division.”*

21. The Data Protection Committee met to consider the data protection complaint against Mr Parsons on 11 October 2013. Mr Parsons was not present nor was he represented. The charges against him were upheld and he was suspended from membership of the Union for 12 months. Mr Parsons appealed this decision.
22. In the meantime, Mr Conway had vigorously objected to the case against him being stayed and the NDC had decided to lift the stay. The complaints against Mr Conway were heard on 27 and 28 November 2013.
23. Mr Parsons' appeal from the data protection aspects of the complaint were heard by the National Appeals Committee on 10 January 2014. Mr Parsons had previously stated that he would not attend but he authorised Mr Conway to represent him. After a lengthy rehearing, the National Appeals Committee upheld the complaints against Mr Parsons but reduced the penalty to a reprimand and a warning as to future conduct. In doing so, it recognised Mr Parsons' long and dedicated service to the Union and accepted his contention that he may not have been fully aware of the Union's data protection procedures. It also accepted Mr Parsons' undertaking not to use unauthorised data in the future.
24. On 13 January 2014 the Union submitted the second audit report to my office.
25. On 21 January 2014 Ms Darke emailed Mr Parsons to inform him that the stay on the outstanding aspects of the complaints against him had been lifted. She explained that she and the Chair of the NDC believed that, as Mr Conway's case had now been heard, it was only right and proper to proceed with the case against him, unless the parties objected. No objections were received.
26. On 23 January 2014 Mr Parsons emailed Ms Darke, having consulted with Mr Illingworth who assisted him in the drafting of this email. He commented that the Union would be in breach of its rules if it continued with the complaints to the NDC and referred specifically to paragraphs 1(f)(i), 3(1) and 3(10) of Appendix III, as in this complaint. Mr Parsons said that it was his intention not to cooperate with the process but that future correspondence may be with Mr Illingworth.
27. On 13 February 2014, the NDC met in a telephone conference call for a pre-hearing assessment. It decided that Mr Parsons did have a prima facie case to answer and that a hearing date should be sent.
28. On 14 February 2014 Ms Darke emailed Mr Parsons to inform him that his case would be heard on 13 and 14 March. She also informed him that when considering whether there was a prima facie case, the NDC only had before it his emails of 15 June 2013 and 23 January 2014, together with the complaint of 18 June 2013.



29. On 17 February 2014 Mr Illingworth emailed Ms Darke to inform her that Mr Parsons would not be attending the hearing on 13 and 14 March and it his intention to submit an application to the Certification Office.
30. On 26 February 2014 the present complaint from Mr Parsons was received at my office.
31. The NDC considered the complaint against Mr Parsons on 13 March 2014. At the outset of the hearing Mr Illingworth raised a number of procedural issues, including the matter of the hearing not being held within 40 school days of the complaint. The NDC considered that the stay had been correctly imposed as it understood that it had the discretion to impose a stay in appropriate circumstances. It also considered the documentary evidence that should be allowed. It admitted three appendices which had been submitted by Mr and Mrs Tollervey which contained documents pre-dating the complaint but excluded three other documents which post-dated the complaint. It also admitted a document submitted by Mr Illingworth containing copies of a number of emails. At the conclusion of the hearing, the NDC upheld the complaint that Mr Parsons had brought the Union into disrepute. It found that *“the tone and content of the email could reasonably have been expected to bring the Union into disrepute”* and *“felt that the vindictive and venomous language used in parts of the email about named individuals went beyond the normally accepted bounds of Union communications.”* It acknowledged Mr Parsons’ right to voice his opinions *“but not his right to denigrate individuals publicly as his email had done”*. As a sanction, the NDC imposed a *“severe reprimand and censure, plus, under Section 4.3, removal from office and exclusion from standing for Union office for a period of 12 months”*. Mr Parsons appealed this decision.
32. On the same day, 13 March 2014, at the AGM of the Nottinghamshire Division, Ms Regan and Mr Wels were not re-elected to the positions they formerly held.
33. On 20 March 2014, my office informed the Union and the parties of my decision on the matter of the alleged financial irregularities. I decided that it would not be proportionate nor an appropriate use of public funds to appoint an inspector under my statutory powers. However, the Union was advised that my decision should not be interpreted as my unqualified approval of how the Union had dealt with the matter. I considered that the enquiries made by the Union were not conducted with the rigour that the complainants would have wished and that the Union, faced with an absence of clear local procedures and questionable practices, had chosen to adopt a benevolent approach aimed at putting in place future good procedures and practices rather than allocating responsibility. I found that the enquiries made by the Union were not such that the report could reach a firm conclusion that there was no evidence of fraud or of money being used for purposes other than the proper activities of the Union. I was troubled by some of the conclusions reached by the Union and its lack of readiness to find fault on some of the issues raised by the complainants. Nevertheless, I observed that the Union had devoted a considerable amount of time and energy in looking into the matters raised by the complainants and had put in place reforms to avoid the repetition of similar concerns. I also acknowledged that the Union accepted that the disputed payments were authorised

and considered by it to have been incurred for the benefit of the Division, either at the time they were incurred or, following its enquiries, retrospectively.

34. On 17 September 2014, the day before this hearing, the National Appeals Committee considered Mr Parsons' appeal from the decision of the NDC by way of a full re-hearing. I was informed at the hearing before me that the Appeals Committee had concluded that Mr Parsons had acted contrary to the interests of the Union. As to sanctions, the situation was not entirely clear. However, since the hearing, I have been informed by Mr Romain that the intention of the Appeals Committee was not to impose any sanction for this breach. It considered that the sanction of 'a reprimand and a warning as to future conduct' it had imposed in respect of the data protection aspect was sufficient.

### **The Relevant Statutory Provisions**

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

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

- (1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).
- (2) The matters are -
- (a) the appointment or election of a person to, or the removal of a person from, any office;
  - (b) disciplinary proceedings by the union (including expulsion);
  - (c) the balloting of members on any issue other than industrial action;
  - (d) the constitution or proceedings of any executive committee or of any decision-making meeting;
  - (e) such other matters as may be specified in an order made by the Secretary of State.

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

- ...
- (3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements -
- a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;
  - b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.
- (4) The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement

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

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

### **APPENDIX III - UNION DISCIPLINE**

#### **SECTION ONE - NATIONAL DISCIPLINARY PANEL AND NATIONAL APPEALS COMMITTEE**

##### **1 JURISDICTION**

*The rules and procedures set out in this Appendix shall apply in the following cases of discipline of members, with the exception of cases under Rules 37(c) and 56(c) and those referred to the Data Protection Committee, that is to say:*

- (a) a complaint made by the Officers of the Union of breach of Union Rule 8;*
- (b) a complaint made by a local Association, a single Association Division or the Officers of the Union that a member has refused to comply with a lawful instruction of the Union;*
- (c) a complaint that a member has been guilty of conduct detrimental to the interests of the Union;*
- (d) an application for re-admission to membership by a person previously expelled by a decision of a Disciplinary Committee other than the Professional Conduct (Criminal Convictions) Committee;*
- (e) a case arising under Rule 37(e) (cases arising from a decision of the TUC Disputes Committee).*
- (f) professional conduct cases under Rule 56(b).*

*It is expressly provided that the following may not be the subject of disciplinary action:*

- (i) opinions expressed by members on matters of Union policy and management;*
- (ii) statements or actions of members in the course of Union elections or in the context of the conduct of the democratic processes of the Union unless such statements or actions may be seen to bring the Union into disrepute generally.*
- (iii) statements or actions of members in the course of representation of members' interests otherwise than upon a complaint endorsed by a local association that the statements or actions of the member complained against have brought the Union into disrepute generally.*

...

##### **3 PROCEDURE**

*(1) A complaint or submission calling for a matter to be considered by a Disciplinary Committee shall be made in writing, specifying the charge or issue within the jurisdiction of the Disciplinary Committee with supporting evidence, to the Regional/Wales Secretary for the Region to which the member complained against belongs. The Regional Secretary for that Region or the Wales Secretary in Wales shall act as secretary to the Committee in the case.*

...

*(8) The Chair of the Disciplinary Committee in consultation with the Secretary shall have discretion to extend time limits in exceptional cases on application by any of the parties. A failure on the part of the complainant to comply with the time limits may result in the complaint being dismissed by the Committee without further hearing. Any such failure on the part of the person complained against may result in the case being considered on the evidence available as the Committee decides.*

*(9) On application by either of the parties or on its own initiative, a Disciplinary Committee may consider the charge and observations with any supporting evidence by way of a pre-hearing assessment...*

*(10) Subject to paragraph 8 above, the Regional or Wales Secretary shall convene the meeting of the Disciplinary Committee to consider the case within 40 school days of the formal making of the complaint or submission and 10 school days' notice of the date of the meeting to be given to the parties. The procedure at the hearing shall be at the discretion of the Committee except that:*

- (i) *Each party shall be entitled to attend the hearing by the Committee accompanied by a friend who shall be a member of the Union with the right to call and examine witnesses;*
- (ii) *No persons other than the parties, their friends, and their witnesses when required shall be present at the hearing.*

## **SECTION TWO - DATA PROTECTION COMMITTEE**

*(1) The Executive shall appoint from its own members a Committee to be known as the Data Protection Committee with responsibility for maintaining oversight of the Union's compliance with the data protection principles and all other obligations relating to and arising from the Union's licence under the Data Protection Acts.*

*(2) The Committee shall have the power to receive and examine complaints from members about whom data is maintained by the Union in any form protected by the data protection principles under the Data Protection Acts. The Committee may if it thinks fit impose upon members found guilty of misuse of protected data contrary to the Union's licence, disciplinary penalties similar to those which may be imposed by a Disciplinary Committee of the Union under these rules.*

*(3) No members shall be subjected to disciplinary penalty under this rule without his or her having been afforded the right to be heard by the Data Protection Committee with all the privileges to which members appearing before a Disciplinary Committee are entitled. A member upon whom a disciplinary penalty is imposed by the Data Protection Committee shall have a right of appeal to the National Appeals Panel in the same manner as appeal lies from the decision of a Disciplinary Committee.*

## **CONSIDERATION AND CONCLUSIONS**

### **Complaint One**

37. Mr Parsons' first complaint is as follows:

*"On or around 19 June 2013, in breach of Appendix III section 3 (1) of the rules of the Union, a complaint made by Lesley Thacker and Christine Gibbon about the email sent by Andy Parsons to members of Nottinghamshire NUT on 15 June 2013 was not accompanied by any supporting evidence."*

38. Paragraph 3(1) of Appendix III of the Rules of the Union provides as follows:

*3(1) A complaint or submission calling for a matter to be considered by a Disciplinary Committee shall be made in writing, specifying the charge or issue within the jurisdiction of the Disciplinary Committee with supporting evidence, to the Regional/Wales Secretary for the Region to which the member complained against belongs. The Regional Secretary for that Region or the Wales Secretary in Wales shall act as secretary to the Committee in the case.*

### **Summary of Submissions**

39. Mr Illingworth, for Mr Parsons, submitted that paragraph 3(1) of Appendix III requires the complaint to be made in writing, to specify the charge and to be made "with supporting evidence". He noted that the complaint of Ms Gibbon and Ms Thacker was not made "with supporting evidence", even though the letter of complaint referred to emails from other members "which would be forwarded" and that the decision of the NDC that there was a prima facie case was therefore made before any evidence was submitted. In Mr Illingworth's submission, this complaint should not have been considered by the NDC without any evidence being presented in support of it.

40. Mr Romain, for the Union, submitted that Mr Stevenson was the person who first considered the validity of this complaint and that when he sent it to Mr Parsons, he accepted that it satisfied the requirements of paragraph 3(1) of Appendix III of the rules. Mr Romain argued that Mr Parsons' email was itself all the evidence necessary to constitute the basis of a charge. In his submission, paragraph 3(1) was intended to exclude a complaint that amounted to no more than an allegation of, say, harassment or bullying. He further maintained that paragraph 3(1) cannot be interpreted to mean that every piece of evidence that may eventually go before the NDC must be sent to the member being complained about at the outset. He also noted that this argument had been considered by the NDC at its pre-hearing assessment on 13 February 2014 and rejected.

### **Conclusions – Complaint One**

41. This complaint refers to the breach having occurred on 19 June 2013, in which event, the complaint that was brought to me on 26 February 2014 would have been out of time. However, Mr Romain elected not to take this point. I indicated that, properly understood, this complaint appears to relate to the decision of the NDC on 13 February 2014 that there was a prima facie case for Mr Parsons to answer and that it was arguable that the breach occurred by the NDC having accepted a complaint on 13 February 2013 which allegedly did not satisfy paragraph 3(1) of Appendix III. As Mr Romain did not seek to take any point on whether the complaint was brought within time, the possibility of formally amending this complaint, as above, was not considered further.
42. I note that Mr Illingworth accepted in correspondence that not every piece of evidence need be sent to the Respondent at the outset of the complaint. His case was rather that there should have been some supporting evidence submitted with the complaint, as otherwise the words in the rule would be meaningless and the accused would not know the evidence upon which the charge was based. I agree with Mr Illingworth that the reference to "supporting evidence" does not require all the evidence in support of the charge(s) to be presented with the charge, to the exclusion of any later evidence.
43. In my judgement, the reference to supporting evidence in paragraph 3(1) of Appendix III is a reference to such supporting evidence, if any, which is necessary to give rise to a prima facie case. On the facts of this case, the letter of complaint of Ms Gibbons and Ms Thacker had attached to it Mr Parsons' email of 15 June 2013. I find that this in itself was sufficient evidence to give rise to a prima facie case. Indeed, Mr Parsons' letter was the whole basis of the charge; the task of the NDC being to determine whether its circulation amounted to conduct detrimental to the interests of the Union in accordance with paragraph 1(c) of Appendix III. Analysed in this way, the existence of emails from other members saying whether or not they found Mr Parsons' email brought the Union into disrepute was not of fundamental importance to the task of the NDC. Such letters may or may not have been written in good faith and, at best, represented the views of a relatively few members. They cannot in themselves determine the NDC's conclusions on this matter or be anything more than of tangential significance. Accordingly, I find that the email of 18 June 2013 from Ms Gibbon and Ms Thacker did contain supporting evidence sufficient for the purposes of paragraph 3(1) of Appendix III and that the

NDC acted properly in not excluding this complaint for not having been presented with supporting evidence.

44. For the above reasons, I refuse the claimant's application for a declaration that the complaint made by Ms Gibbon and Ms Thacker on 18 June 2013 and received by the Union on 19 June did not satisfy the requirements of paragraph 3(1) and Appendix III of the rules of the Union.

### **Complaints Two and Three**

45. Complaints two and three are in the following terms:

2. *"On or around 27 September 2013, in breach of Appendix III section 3 (10) of the rules of the Union, the Regional Secretary did not convene the meeting of the Disciplinary Committee to consider the case within 40 school days of the formal making of the complaint or submission nor did it give the parties 10 school days' notice of the date of this meeting. The complaint against Andy Parsons by Lesley Thacker and Christine Gibbon was made on 19 June 2013. The Union did not arrange a meeting of the formal Disciplinary Committee to consider this complaint within 40 school days of this date; neither did it give Andy Parsons 10 school days' notice of the date of this meeting. The Union informed Andy Parsons of its intention to proceed with the complaint against him on 21 January 2014".*

3. *"On or around 19 June 2013, the Union breached Appendix III section 3 (8), in that the Chair of the Disciplinary Committee did not have any discretion to extend time limits. This discretion can only be exercised in exceptional cases on application by any of the parties. This was not such an exceptional case and no application was made by any of the parties".*

46. Paragraph 3(10) and 3(8) of Appendix III of the Rules of the Union provide as follows:

*3 (10) Subject to paragraph 8 above, the Regional or Wales Secretary shall convene the meeting of the Disciplinary Committee to consider the case within 40 school days of the formal making of the complaint or submission and 10 school days' notice of the date of the meeting to be given to the parties. The procedure at the hearing shall be at the discretion of the Committee except that:*

- (i) Each party shall be entitled to attend the hearing by the Committee accompanied by a friend who shall be a member of the Union with the right to call and examine witnesses;*
- (ii) No persons other than the parties, their friends, and their witnesses when required shall be present at the hearing.*

*3(8) The Chair of the Disciplinary Committee in consultation with the Secretary shall have discretion to extend time limits in exceptional cases on application by any of the parties. A failure on the part of the complainant to comply with the time limits may result in the complaint being dismissed by the Committee without further hearing. Any such failure on the part of the person complained against may result in the case being considered on the evidence available as the Committee decides.*

47. I take these two complaints together as they logically flow from one to the other. Paragraph 3(10) of Appendix III provides that the NDC shall be convened within 40 school days of the formal making of the complaint. The formal making of the complaint was on 18 or 19 June 2013. It was agreed that the period of 40 school days expired on 27 September 2013. The NDC hearing was convened on 13 March 2014, outside the period of 40 school days. Accordingly, it was common ground that the alleged breach of paragraph 3(10) should be upheld unless the

Union could claim the benefit of the first few words of the paragraph, namely “*Subject to paragraph 8 above*”. Therefore both complaints two and three fall to be decided upon the issue as to whether the NDC acted within paragraph 3(8) of Appendix III in staying the complaint against Mr Parsons on 20 September 2013, which is the third complaint.

### **Summary of submissions**

48. Mr Illingworth, for Mr Parsons, submitted that the only permissible way of extending the 40 school day time limit was in accordance with paragraph 3(8) which requires there to be exceptional circumstances and an application by one or more of the parties. In his submission there were no exceptional circumstances on the facts of this case and neither of the parties had requested that the 40 school day time limit be extended. Accordingly, Mr Illingworth argued that the time for holding a hearing had expired on 27 September 2013 and no hearing could lawfully be held thereafter. He maintained that this rule was intended to secure speedy hearings to ensure that charges were not left hanging over the accused for unreasonably long periods. With regard to the reasons given by Ms Darke for staying the complaint in September 2013, Mr Illingworth submitted that the continuing enquiries into the financial irregularities were irrelevant to the charges against Mr Parsons. He argued that the charges against Mr Parsons stood alone or they would be grounds for him to claim ‘unjustifiable discipline’ under section 64 of the 1992 Act. If they stood alone, there was no reason for a stay. Further, Mr Illingworth criticised the link that the NDC had made with Mr Conway’s case as he stated that Mr Conway had not consented to that stay, contrary to what the Union alleged. He also cast doubt on the justification given by the Union that it must postpone Mr Parsons’ hearing until the conclusion of my enquiries as the Union did eventually hear the complaint against Mr Parsons prior to the conclusion of my enquiries. Mr Illingworth submitted that the Union had neither the justification to stay the hearing nor had any party requested that the 40 school day time period be extended. Accordingly, he argued that the Union had breached both paragraph 3(8) and 3(10) of Appendix III of the rules of the Union.
49. Mr Illingworth explained that his reference to the requirement to give 10 school days notice of the hearing in the complaint was to cover the possibility that the Union would argue that the pre-hearing assessment held over the telephone in the few days prior to 20 September 2013 was the meeting or hearing for the purposes of paragraph 3(10). Upon being informed that the Union was not arguing that this was the meeting or hearing of the complaint against Mr Parsons, he stated that he no longer relied upon his references to the requirement to give 10 school days notice of the meeting in paragraph 3(10).
50. Mr Romain, for the Union, submitted that the NDC has the inherent implied power to regulate the pre-hearing procedure in the interests of justice, just as paragraph 3(10) gives it the express power to regulate the proceeding at hearings. He argued that it would be bizarre if, in such exceptional circumstances as these, time limits could be extended on application by the parties but not by the NDC itself. He noted the evidence of Ms Darke that a similarly constituted NDC had made the decision to stay the complaint against Mr Conway for the same reasons and argued that it would have been perverse if the case against Mr Parsons had been treated differently. He also noted Ms Darke’s evidence explaining the removal of the stay

in January 2014 and observed that the removal of the stay in this case followed the removal of the stay in the complaint against Mr Conway, the disposal of the data protection case against Mr Parsons and the completion of the second audit report. He noted that the second audit had reported that no evidence could be found of fraud or of money being used improperly. Mr Romain argued that these circumstances were sufficient for the NDC to have removed the stay, even though my investigations were not then complete. He also observed that Mr Parsons did not make any point about time until his email of 23 January 2014, long after the period of 40 school days had expired on 27 September 2013 and it had been open to him to apply to have the stay lifted at any time. Mr Romain further submitted that the imposition of the stay had not caused Mr Parsons any injustice.

### **Conclusions – Complaints Two and Three**

51. The core issue to be addressed is whether Ms Nash, as Chair of the NDC, in consultation with Ms Darke, as the Secretary of the NDC, had the discretion to extend the 40 school day time limit in paragraph 3(10) of Appendix III of the rules within which the hearing of the complaint must take place. The power to extend the 40 school day time period is found in paragraph 3(8) and is made expressly subject to two prior conditions. Time can only be extended (i) in exceptional circumstances and (ii) on application by any of the parties.
  
52. I must therefore address the question whether this was an exceptional case such as to merit the extension of the 40 school day time period. The complaints of Ms Gibbon and Ms Thacker fall into two categories; those relating to the data protection aspects and those relating to what the Union has described as being “the content” of Mr Parsons’ email of 15 June 2013. The data protection hearing took place on 11 October 2013, which is outside the period of 40 school days from the date of the complaint but no complaint is made about that. The hearing of the “content” aspects of Mr Parsons’ email took place on 13 March 2014. In my judgement, the assessment of whether a situation is exceptional for the purposes of this rule is essentially one to be made by the Union and should only be susceptible of a successful legal challenge if legally perverse, in the sense that no Union acting reasonably on the material that was or should have been before it could have reached that decision. In making that assessment, I find that the Union was entitled to take into account not only the facts of the instant case but all the relevant circumstances and context. Accordingly, I find that the Union was entitled to have regard to the second internal audit that did not report until October 2013 and the ongoing enquiries by my office. Had either of these enquiries fully supported the content of Mr Parsons’ email, they would have been very relevant to his defence. The Union was also entitled to have regard to the now controversial staying of Mr Conway’s case. The application of a consistent procedure to apparently similar cases is an acceptable principle to consider when exercising a discretion. Further, the entire context of the dispute within the Nottinghamshire Division created circumstances that are hopefully exceptional in the Union’s normal experience and give rise to a degree of caution in its approach to the case management of the complaints that arose out of that dispute. In my judgement, the Union was entitled to treat this as an exceptional case for the purpose of exercising any discretion to extend time.



53. The Union accepts that neither party applied to extend time in this case and that it cannot be regarded as a party itself. In these circumstances the Union has argued that the Chair, in consultation with the Secretary, has an implied or inherent power to extend time in the interests of justice. Mr Illingworth has substantial arguments against this proposition. The rules deal expressly with the right to extend time and have chosen to limit the circumstances in which time can be extended. It is highly arguable that these circumstances should not be extended by the implication of any additional power. Further, I note that paragraph 3(9) gives the NDC the power to hold a pre-hearing assessment “on application by either of the parties or on its own initiative”. Thus, where the rules wish the NDC to be able to act independently of an application by the parties, it is seen to be given that right expressly. Against that, however, I am mindful of the nature of these proceedings. They are not proceedings brought by the Union against a member. They are proceedings brought by one member against another member, a member on member complaint. Such proceedings are, in my experience, frequently difficult and require delicate handling if longer term relationships are to be maintained so far as is practicable. This aspect is recognised in the rules of the NUT by the emphasis that is given to conciliation. I have also had regard to the reality of the management of such complaints between unrepresented parties and the many circumstances that might arise which would prevent adherence to the 40 school day time period. Such circumstances might vary from outside events, including the availability of NDC members, to tactical manoeuvring by the parties but their effect could be that unfairness or injustice might result from the time limit being adhered to strictly. Valid complaints may be time barred for no fault of the complainant. Against this background I have reminded myself of the approach to the rules of a trade union that has been adopted in a number of legal authorities. One of the most quoted is **Jacques v. AUEW (1986) ICR 683** in which Warner J stated:

*“The rules of a Trade Union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court’s view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they were addressed.”*

Adopting this approach, I find that a limited discretion is to be read into paragraph 3(8) which permits the Chair of the NDC in consultation with the Secretary, to extend time limits in exceptional cases. I find that such an implication is necessary to allow the disciplinary procedure to function effectively and that its absence would be viewed with considerable surprise by any bystander member.

54. Accordingly, I find that the stay or extension of time agreed by the NDC on or about 20 September 2013 was granted in accordance with paragraph 3(8) and that the 40 school day period in paragraph 3(10) must be read subject to any extension of time in paragraph 3(8). There was therefore no breach of either paragraph 3(8) or 3(10) of Appendix III of the rules of the Union as alleged by the claimant.
55. For the above reasons I refuse the claimant’s application for a declaration in his second and third complaints.

## Complaint Four

56. Mr Parsons' fourth complaint is as follows:

*" On or around 21 January 2014, the Union breached Appendix III section 1 (f) (i) of the rules of the Union by processing a disciplinary case against Andy Parsons for sending an email to members of Nottinghamshire NUT on 15 June 2013, which alleged that financial irregularities were taking place in the Division. Andy Parsons' act in sending this email was protected from disciplinary action by Appendix III section 1 (f) (i), which provides that disciplinary action may not be taken for 'opinions expressed by members on matters of Union policy and management'.*

57. Paragraph 1(f)(i) of Appendix III of the Rules of the Union provide as follows

1(f) .....

*It is expressly provided that the following may not be the subject of disciplinary action:*

*(i) opinions expressed by members on matters of Union policy and management;*

## Summary of Submissions

58. Mr Illingworth, for Mr Parsons, submitted that Mr Parsons' email of 15 June 2013 was an expression of Mr Parsons' belief and, as such, it was his opinion within the meaning of paragraph 1(f)(i) of Appendix III. Mr Illingworth further submitted that the email was critical of Union management. Accordingly, it was argued that the email was an expression of Mr Parsons' opinion on a matter of Union management and thereby protected by paragraph 1(f)(i) of Appendix III, which provides that such matters "may not be the subject of disciplinary action". Mr Illingworth noted that the opinion expressed by Mr Parsons in his email was consistent with the policy of the Nottinghamshire Division and was to some extent supported by the comments in the letter to the Union from my office of 20 March 2014 at the conclusion of my enquiries. He further took issue with the description of the email in the findings of the NDC as including "*vindictive and venomous language*" and that "*the tone and content of the email could reasonably have been expected to bring the Union into disrepute*". Mr Illingworth also noted the evidence of Mr Conway about the origins of paragraph 1(f)(i) and the role that Mr Conway had played in securing its adoption by conference in 1993 against the opposition of the National Executive of the Union. He observed that the mischief that paragraph 1(f)(i) was introduced to overcome was disciplinary action taken in similar circumstances to the disciplinary action taken against a Mr Murch in 1992. Mr Murch had been the Treasurer of the National Union who had appeared on a Channel 4 Despatches TV programme entitled 'Class Action' in which he made claims about financial irregularities within the Union, arising out of which he was suspended from the Union. Mr Illingworth considered that the email of Mr Parsons to Union members was much less controversial than the TV appearance of Mr Murch and must be protected by a provision which was intended to protect even the actions of Mr Murch.

59. Mr Romain, for the Union, submitted that whether Mr Parsons was entitled to rely upon paragraph 1(f)(i) of Appendix III was a matter of judgement for the NDC using its experience of NUT culture and industrial common sense. In his submission, the decision of the NDC to proceed with the hearing, notwithstanding paragraph 1(f)(i) having been brought to its attention, was a matter of discretion and the decision to proceed was one that could be reached within the proper exercise of that discretion. Mr Romain distinguished this case from that of Mr Murch in 1992 in that, so far as he was aware, Mr Murch had not named individuals. He also raised for the first time the Code of Professional Conduct in Appendix I of the rules of the Union and rule 56, which provides that any question as to professional conduct of any member is to be referred to the NDC. In the Code of Professional Conduct Mr Romain

referred to the passage which provides that all actions which are alleged to be injurious to the interests of the profession or the professional honour of any member can be referred to the Committee. He argued that the duty of the NDC was to balance the right of members to express their opinions against its duty to protect the professional interests and honour of members. Mr Romain submitted that the NDC was entitled to have regard to the offensive language used by Mr Parsons against named individuals in the context of the Code of Professional Conduct and that it was a matter for its discretion whether this case was afforded the protection of paragraph 1(f)(i). He argued that, in all the circumstances of the case, the NDC was entitled to reach the decision that Mr Parsons' email brought the Union into disrepute and was not protected by paragraph 1(f)(i).

#### **Conclusion – Complaint Four**

60. Properly read, there is no paragraph 1(f)(i) in Appendix III to the rules of the Union. Paragraphs 1(a) to (f) list the types of complaints that may be brought to the NDC. The words that follow are a rider to the whole of what goes before and are not a part of paragraph 1(f). Accordingly the complaint is of a breach of the rider itself, relying on paragraph (i) as the basis on which to argue that Mr Parsons' email could not be the subject of disciplinary action. However, as there is no confusion caused by this incorrect description of the rule breached, I shall continue to refer to it by the description given by the parties in correspondence and at the hearing.
61. Paragraph 1(f)(i) of Appendix III is expressed in plain and forthright language. In applying this provision to the facts, I have had regard not only to the words of paragraph 1(f)(i) but to the circumstances of its adoption as explained in Mr Conway's uncontested evidence and Mr Illingworth's submissions. The fact that this provision was approved against the wishes of the Executive causes me to be alert as to the diligence with which it has been applied in practice.
62. In my judgement, Mr Parsons' email of 15 June 2013 was an expression of opinion by a member of the Union on a matter of Union management. The email begins "*I am writing to you because I believe your Union subscriptions have been misappropriated by some officers in the Nottinghamshire NUT*". He later refers to persons who have been accused of bullying by the "*alleged fraudsters*". He states that the letter is written to support those who were being victimised for voting at the 2013 AGM of the Nottinghamshire Division to approve a motion of no confidence in the Treasurer of the Division "*in relation to the management of Nottinghamshire NUT finances ...*". The email then goes on to give Mr Parsons' understanding of the facts on which that belief was founded.
63. The Union has argued before me that the disciplinary action taken against Mr Parsons was not on account of the substance of his email but how it was expressed. In particular, it was concerned that individuals were named and serious allegations made. The NDC also commented that a number of non-Union members had been included in the circulation and described Mr Parsons as having used "*vindictive and venomous language*" in parts of the email. It was argued that such factors enabled the NDC to exercise a discretion whether or not paragraph 1(f)(i) should be applied to this email.

64. In general, I accept that egregious and public criticism of a Union by a member may amount to conduct detrimental to the interests of that Union and be capable of rendering the individual subject to a disciplinary charge, even if there is some substance in the criticisms made of the Union. Further, the fact that local officials of a union are alleged to have acted badly does not prevent disciplinary action being taken against a member who is critical of those local officials but who expresses those criticisms or acts in a way which would otherwise expose him or her to disciplinary proceedings. However, the facts of this case are somewhat different.
65. Most significantly in this case, the Union has included paragraph 1(f)(i) of Appendix III in its rules. It may be that this provision could have been drafted with more refinement if it had enjoyed the support of the Executive but its meaning is clear from its straightforward language and its language is consistent with the uncontested evidence of its genesis. Paragraph 1(f)(i) cannot be ignored. Nor can the NDC balance the detrimental effect of the opinion expressed by the maker against the application of paragraph 1(f)(i). In my judgement, if paragraph 1(f)(i) applies at all, the member concerned cannot be the subject of disciplinary action no matter how detrimental to the interests of the Union his or her opinion might have been. Accordingly, in as much as the NDC carried out such a balancing exercise, it fell into error.
66. Further, I find that the description by the NDC of parts of Mr Parsons' email as being "*vindictive and venomous*" to be so inappropriate as to cast doubt as to its approach generally. Similarly, the reference to non Union members is misleading, if not strictly inaccurate. It was agreed at the hearing that the only non members who may have received Mr Parsons' email were those former members of the Union whose names had not been removed from the database retained by Mr Parsons and would be relatively few in number. I also note the finding that "*the tone and content of the email could reasonably have been expected to bring the Union into disrepute*". The reference to the "content" of the email mirrors the reference in Ms Darke's email to Mr Parsons of 20 September 2013 in which she distinguished the data protection aspects of his email from "*the allegations relating to the content of the email*". In my judgement these references to the content of the email demonstrate the weight given by the NDC to the substance of Mr Parsons' criticism of certain officers of the Nottinghamshire Division. The substance of Mr Parsons' criticisms clearly fell within the description of being his opinion on a matter of Union management and thereby not capable of being subject to disciplinary action in accordance with paragraph 1(f)(i).
67. Having regard to the above factors and having considered Mr Parsons' email of 15 June 2013 as a whole, I find that the email in question is an expression of Mr Parsons' opinion on a matter of Union management and that, by virtue of paragraph 1(f)(i), should not have been the subject of disciplinary action. I further find that the manner in which Mr Parsons' opinion was expressed and its distribution to almost exclusively existing members of the Union was not such as to enable an NDC, properly directing itself on the rules and the facts, to find that this case fell outside the protection afforded by paragraph 1(f)(i) of Appendix III of the rules.

68. For the above reasons, I uphold this complaint and make a declaration that by processing disciplinary action against Mr Parsons on the basis of his email of 15 June 2013 to members of the Nottinghamshire Division the Union breached paragraph 1(f)(i) of Appendix III to the rules.

### **Enforcement Order**

69. When I make a declaration I am required by section 108B(3) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. In this case I consider that it is appropriate to make an enforcement order.
70. Mr Parsons' appeal to the National Appeals Committee was heard on 17 September 2014, the day before the hearing before me, and I have been informed that the complaint that he acted contrary to the interests of the Union was upheld. As to sanctions, the situation at the hearing before me was not entirely clear. However, since that hearing, I have been informed by Mr Romain that the intention of the Appeals Committee that sat on 17 September was not to impose any sanction for this breach. It considered that the sanction of 'a reprimand and a warning as to future conduct' that the Appeals Committee had imposed in respect of the data protection aspect on 10 January 2014 was sufficient.
71. The enforcement order I make is that the decision of the National Disciplinary Committee of 13 March 2014 to uphold the charge against Mr Parsons arising out of his email of 15 June 2013 to members of the Nottinghamshire Division and the corresponding decision of the National Appeals Committee of 17 September 2014 are forthwith set aside and of no effect and any sanctions imposed by those bodies are similarly forthwith set aside and of no effect.

### **Observations**

72. I commented in paragraph 8 above that this case arose out of a larger dispute between different factions within the Nottinghamshire Division of the Union which has proved to be particularly intractable. I have been informed of different attempts to resolve the underlying problems which have not so far succeeded. The dispute has now persisted since 2012. It has absorbed an enormous amount of the time and energy of the participants on both sides. It has been a distraction from the normal activities of both local and national officers from their work on behalf of Union members. It has no doubt involved the Union in considerable cost, a cost that must be met by the members generally. It has also cost the public purse through the involvement of my office. I call upon the parties to do their utmost to bring this dispute to an end by further negotiation rather than incur further expenditure of time and money pursuing aspects of the dispute through the internal procedures of the Union and the law.



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