

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

**Mr Brian Traynor
Mr Stephen Bostock
Mr Glen Birchall
Mr Stephen Baines
Mr Dean Acaster**

V

POA

Date of Decisions

22 May 2014

DECISIONS

Upon applications by Mr Traynor, Mr Bostock, Mr Birchall, Mr Baines and Mr Acaster ("the claimants") under section 108A(1) of the Trade Union & Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

1. I refuse the claimants' applications for a declaration that the POA on or around 21 November 2012 breached rule 28.3(b) of its rules when the letter from full time officer Joe Simpson dated 21 November 2012 allegedly requested Mr Traynor to attend an area office of the POA in Leeds for interview rather than the Investigating Committee attending his branch.
2. I refuse the claimants' application for a declaration that on 14 May 2013 the POA breached rule 12.7(b) of its rules by allowing Mr Finlay Spratt to address its Annual Conference as he was allegedly not entitled to speak in accordance with the rules.
3. I refuse the claimants' application for a declaration that the POA breached rule 27.2 of its rules on 28 March 2013 by the letter suspending Mr Traynor dated 28 March 2013, having been sent by full time officer Joe Simpson and not by the Deputy General Secretary as allegedly required under rule 27.2.
4. I refuse the claimants' application for a declaration that the POA breached rule 28.5(j) of its rules on 30 April 2013 by a letter dated 30 April 2013, to which the Disciplinary Panel's written decision was attached, having been circulated by full time officer Joe Simpson not by the Deputy General Secretary as allegedly required by rule 28.5(j).

5. I refuse the claimants' application for a declaration that the POA breached rule 25.6 of its rules on or around 16 November 2012 by Mr Simpson having acted as secretary to the Conduct Committee and having dealt with administrative matters on behalf of the Conduct Committee, not the Deputy General Secretary as allegedly required under rule 25.6
6. I refuse the claimants' application for a declaration that the POA breached rule 27.1 of its rules on 28 March 2013 by allegedly suspending Mr Traynor from attending branch meetings.
7. I refuse the claimants' application for a declaration that the POA breached rule 27.5 of its rules on 18 April 2013 by a letter dated 18 April 2013, informing Mr Traynor that his appeal against suspension was unsuccessful, having been sent by Mr Simpson, not the Deputy General Secretary as stated in rule 27.5.
8. I refuse the claimants' application for a declaration that the POA breached rule 27.2 of its rules on 9 May 2013 by a letter dated 9 May 2013, allegedly amending the terms of Mr Traynor's suspension, having been sent by Mr Gillan, General Secretary, and not by the Deputy General Secretary as allegedly required by rule 27.2.
9. I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on 12 March 2013 by the Conduct Committee having published the draft copy of the National Executive Committee minutes dated 24 October to all POA members without the approval of the National Executive Committee as required by paragraph 4 of Annex H.
10. I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on 12 March 2013 by the Conduct Committee having published the handwritten minutes of the National Executive Committee meeting dated 24 October to all POA members without the approval of the National Executive Committee.
11. I refuse the claimants' application for a declaration that the POA breached rule 28.7 (iii) of its rules on or around 12 March 2013 by failing to include in the documentation circulated for the purposes of the claimants' appeal to Annual Conference the "relevant written representations" which had been submitted by Mr Traynor.
12. I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H of its rules on or around 26 October when Mr John Hancock revealed how he voted at a meeting of the National Executive Committee in his letter of 26 October 2012.
13. I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on or around 8 May 2013 when the Conduct Committee published a letter from Mr Hancock of 26 October 2012 which revealed how he voted at a meeting of the National Executive Committee.

REASONS

1. Mr Traynor, Mr Bostock, Mr Birchall, Mr Bains and Mr Acaster brought these complaints as members of the POA ("the Union" or "POA"). It describes itself as the 'Professional Trade Union for Prison, Correctional and Secure Psychiatric Workers'. The claimants were members of its National Executive Committee ("NEC"). They and two other members of the NEC were disciplined by the Union and, on 23 April 2013, were banned from holding national or local office for five years. They appealed against that decision and their appeal was heard at the Union's Annual Conference in May 2013. The appeals were unsuccessful. The present complaints were brought by the claimants individually in July and August 2013. Each submitted his own Registration of Complaint Form. However, all the complaints were essentially on the same facts and in relation to the same process. In these circumstances, the claimants sensibly decided to be represented by one of them, Mr Traynor, through whom all correspondence was subsequently conducted. Mr Traynor agreed, on behalf of himself and the other claimants, the terms of the 13 complaints which the claimants wished to pursue to a hearing. At the hearing, Mr Traynor, in the presence of the other claimants, confirmed that he represented all the claimants and that the 13 complaints that had been put to the Union were those that each of the individual claimants now wished to pursue.
2. The complaints that the claimants sought to pursue are in the following terms:
 1. On or around 21 November 2012 the POA breached rule 28.3(b) of the rules of the union by the letter from full time officer Joe Simpson dated 21 November 2012 which requested Mr Traynor to attend an area office of the POA in Leeds for interview rather than the Investigation Committee attending his branch as required by the rule
 2. On 14 May 2013 the POA breached rule 12.7(b) of the rules of the union by allowing Mr Finlay Spratt to address conference as he was an observer at conference and not a delegate of any branch.
 3. On the 28 March 2013 the union breached rule 27.2 of the rules of the union when it suspended Brian Traynor because the letter dated 28 March 2013, by which he was suspended was sent by full time officer Joe Simpson on behalf of the Disciplinary Panel and not by the Deputy General Secretary as required under rule 27.2.
 4. On the 30 April 2013 the union breached rule 28.5(j) of the rules of the union as the letter dated 30 April 2013 to which was attached the Disciplinary Panel's written decision was circulated by full time officer Joe Simpson not by the Deputy General Secretary as required by rule 28.5(j)
 5. On or around 16 November 2012 the union breached rule 25.6 of the rules of the union as Joe Simpson acted as secretary to the Conduct Committee and dealt with administrative matters on behalf of the Conduct Committee not the Deputy General Secretary as required under rule 25.6
 6. On 28 March 2013 the union breached rule 27.1 of the rules of the union when it suspended Brian Traynor from branch meetings as this sanction is not set out within rule 27.1 or any other rule within the POA rulebook.

7. On 18 April 2013 the union breached rule 27.5 of the rules of the union as Brian Traynor was informed by Joe Simpson full time officer that his suspension appeal was unsuccessful, not the Deputy General Secretary as stated in rule 27.5.
 8. On 9 May 2013 the union breached rule 27.2 of the rules of the union because the letter dated 9 May 2013 by which the terms of Mr Traynor's suspension were amended was sent by Mr Steve Gillan General Secretary and not by the Deputy General Secretary as required under rule 27.2.
 9. On 12 March 2013 the union breached paragraph 4 of Annex H and thus rule 25.1 (b) of the rules of the union when the Conduct Committee published the draft copy of the NEC minutes dated 24 October in Conduct Case No136 against Brian Traynor to all POA members without the approval of the National Executive Committee as required by paragraph 4 of Annex H.
 10. On 12 March 2013 the union breached paragraph 4 of Annex H and thus rule 25.1 (b) of the rules of the union when the Conduct Committee published the handwritten minutes of the NEC meeting dated 24th October in Conduct Case No136 against Brian Traynor to all POA members without the approval of the National Executive Committee.
 11. On or around 12 March 2013 the union breached rule 28.7 (iii) of the rules of the union by failing to include in the final conference Agenda "relevant written representations" submitted by Mr Traynor's, namely his proposed amendments to the minutes of the meeting of 24 October 2012 Memo from Steve Gillan to the NEC, private and confidential letter from Don Wood chair of conduct committee to Steve Gillan, responding letter from Steve Gillan to Don Wood, POA Circulars 83/2010 and 75/2009, extract from the Key Magazine June 2011, letter from former Chairman and General Secretary Colin Moses and Brian Caton dated 9th October 2008, letter from former General Secretary Brian Caton dated 13 February 2007, extracts from the Certification Officer Case W G Turbin v Prison Governors Association as required by the rule.
 12. On or around 26 October the union breached Annex H of the rules of the rules of the union when Mr John Hancock revealed his voting position in his letter of 26 October 2012 when responding to Mr Steve Gillan's Memorandum of 26 October 2012.
 13. On or around 8 May 2013 the union breached Annex H and thus Rule 25.1 (b) of the rules of the union when the Conduct Committee published a letter from Mr Hancock in response to the memorandum sent by Mr Gillan. Mr Hancock's letter revealed his voting position in relation to a vote taken by the Executive Committee on item 10 of its agenda relating to a request for a special delegate conference by the Kennet Branch
3. I investigated the alleged breaches in correspondence and a hearing took place on Thursday 24 April 2014.
 4. At the hearing, Mr Traynor represented himself and the other claimants. Mr Traynor produced a written witness statement and gave oral evidence. He also presented a witness statement by Mr Lyon, the branch chair at HMP ('Her Majesty's Prison') Kennett. Mr Lyon did not attend the hearing. The Union was represented by Mr Peter Edwards of counsel, instructed by Mr Neil Johnson of Thompsons solicitors. The Union presented written witness statements by Mr Steve Gillan, POA General Secretary and Mr Don Woods, Chair of its Conduct Committee, who both gave oral evidence. There was in evidence two bundles of documents. Bundle One, the main bundle, contained about 600 pages of correspondence and other documentation as supplied by the parties for use at the hearing, together with the 2013 rules of the Union. Bundle Two contained about 176 pages, consisting of the Registration of Complaint Forms and related

correspondence of Mr Bostock, Mr Baines, Mr Birchall and Mr Acaster. Both the Union and Mr Traynor provided skeleton argument.

Findings of Fact

5. Having considered the oral and documentary evidence and the submissions of the parties, I find the facts to be as follows.
6. In 2012 the public body responsible for the Prison Service, the National Offender Management Service ("NOMS") expressed concern that those POA officials on paid facility time should not be using it for Union work in private prisons. The National Chairman of the Union, Mr McParlin, advised the NEC that NOMS was entitled to seek an assurance as to how facility time was spent and used his powers under rule 9.4(c) to remove facility time at HMP Oakwood.
7. At a meeting of the NEC on 13 June 2012, those opposed to Mr McParlin's position on facility time in private prisons had him removed from the Chair on two occasions and reversed his decision about HMP Oakwood. On 15 June, the General Secretary, Mr Gillan, wrote to all officers of the Union expressing his view that the NEC's decision was in breach of the rules, that it was a very serious situation and that he would not stand by and watch the Union implode. The decision of Mr McParlin was subsequently reinstated.
8. On 12 October 2012 the branch Chair of HMP Long Lartin, Jane Noon, wrote to the General Secretary suggesting that Mr McParlin be referred to the Conduct Committee for an investigation with regard to possible disciplinary action being taken against him. His alleged offence was attending a conference or other function of the Prison Governors Association ("PGA") without direction/agreement from the NEC.
9. Also on 12 October 2012 Steve Baines, an NEC member, emailed the General Secretary requesting that the attendance of the National Chairman at the PGA conference should be put on the agenda of the next meeting of the NEC.
10. On or about 16 October 2012 the branch Chair of HMP Manchester, Paul Fearn, wrote to the General Secretary making a formal complaint about Mr McParlin in respect of his attendance at an all party Penal Affairs Parliamentary Group on 24 April 2012.
11. On the 17 October 2012 the General Secretary wrote to Ms Noon and Mr Fearn informing them that he had passed their complaints to the Deputy General Secretary who would be instructing the Conduct Committee to investigate Mr McParlin's alleged misconduct. The Chair of the Conduct Committee at the time was Mr Tom Wood. He appointed two members of his committee as an investigating team and the case was given an official number, Conduct Case 135. The Conduct Committee eventually decided that there was no case to answer on either the complaint of Ms Noon or Mr Fearn.
12. Also on 17 October 2012, the branch Chair at HMP Kennet, Jimmy Lyon, emailed the General Secretary to inform him that his branch had passed a vote of no confidence in Mr McParlin and had agreed to request that a Special

Delegate Conference be convened on three matters; namely, to debate Mr McParlin's attendance at the PGA conference, to ask him to explain his attendance at a select committee meeting in the House of Commons in April 2012 and to hold a vote of confidence in him. Mr Lyon spoke with the General Secretary that day and the General Secretary agreed to put the matter on the agenda of the NEC meeting on 24 October.

13. The meeting of the NEC of 24 October 2012 began with a vote of confidence in Mr McParlin as National Chairman. The motion was lost. This had the effect of a motion of no confidence. However, Mr McParlin stated that he was elected by the membership, not by the NEC, and continued with the meeting. Item 9 of the meeting was to discuss Mr McParlin's attendance at the PGA conference but this item was removed from the agenda by the NEC. Item 10 called upon the NEC to support the call by HMP Kennet for a Special Delegate Conference and was carried. The accuracy of the minutes of this meeting was subsequently questioned.
14. On 25 October 2012, the General Secretary actioned the call for a Special Delegate Conference. He issued a circular to branch secretaries (BSC 23/2012) setting out the three proposed motions to be considered by the Special Delegate Conference. In accordance with rule 12.2(c), a Special Delegate Conference must be convened if, within any period of four weeks of a formal request for one, branches representing a majority of the affected membership support that request. In this case, insufficient branches indicated their support by the due date, 22 November and so no Special Delegate Conference was convened.
15. On 26 October 2012, before it was known that the call for a Special Delegate Conference had not succeeded, the General Secretary sent a memo to all members of the NEC. He considered that to subject Mr McParlin to a Special Delegate Conference when the same issues were before the Conduct Committee for investigation and possible disciplinary action was an abuse of process, being a breach of the rules and constitution and an interference with natural justice. He stated that he considered the matter to be so serious that he had contemplated resignation but had instead decided to rely upon this memo as a record that he had warned the NEC of its actions.
16. Also on 26 October 2012, Mr Wood wrote to the General Secretary about Conduct Case 135. He considered that the NEC's decision to support a call for a Special Delegate Conference had seriously undermined the Conduct Committee's consideration of case 135 and had prejudiced the National Chairman as any appeal he might have from a disciplinary finding against him would be to a Special Delegate Conference.
17. On or about 29 October 2012 the General Secretary received emails from three members of the NEC who expressed their concern that the decision of the NEC to support a call for a Special Delegate Conference may potentially have breached the rules and constitution of the Union and denied the National Chairman natural justice. The emails from Mr Valerio and Mr Chapple are dated 29 October but the one from Mr Hancock is undated. Mr Hancock's

email is the subject of a specific complaint in these proceedings. It is marked "Private and Confidential" and in it Mr Hancock states that he shares the General Secretary's concerns. He goes on, "*You will recall that I did not vote in favour of supporting the call for a Special Delegate Conference and I was disappointed with the outcome of the vote*". He concludes, "*I can give you my assurance that I will observe 'corporate confidentiality ...'*". Complaint 12 alleges that, by Mr Hancock having revealed his voting position in this letter, the Union breached paragraph 4 of Annex H of the rules, which prohibits any member of a committee from revealing his or her voting position except when authorised by the committee.

18. On 7 November 2012, Mr Wood wrote a private and confidential letter to the General Secretary requesting that he directs the Kennet branch, on behalf of the Conduct Committee and in accordance with rule 25.4, to retract its call for a Special Delegate Conference and provide the investigation team with any evidence it may have so that the Conduct Committee could do its work under the rules.
19. The NEC met on 14 November 2012. Mr Hancock was the only absentee. The meeting began with a motion that "*..... due to the vote of no confidence in the Chair, the Chair be removed*". After it was decided that this would require only a simple majority, a motion to remove the Chair was carried. Mr McParlin did not stand aside and the meeting continued. The next item on the agenda was the approval of the minutes at the meeting of 24 October. Different members of the Committee had proposed amendments, including Mr Traynor and Mr Baines. Mr McParlin had submitted a written response to the proposed amendments. Some amendments were agreed and the minutes of the meeting of 24 October were subsequently signed by the National Chairman (on 15 November) and by the General Secretary (on 16 November). The NEC then continued with its agenda, which included three motions on Conduct Case 135. Under the first of these motions, it was decided not to instruct the General Secretary to write to the Kennet branch as Mr Wood had requested in his letter of 26 October. Under the second motion, the NEC asserted its belief that the Special Delegate Conference would not impact on any investigation carried out by the Conduct Committee due to the fact that no date had then been set for the Special Delegate Conference. Under the third motion, it was decided not to seek legal advice in relation to rule 25 and the role of the Conduct Committee. The minutes of this meeting were also subsequently questioned but the final version was signed by the National Chair (on 4 December) and by the General Secretary (on 3 December).
20. In the meantime, on 12 November 2012, the branch Chair and branch Secretary of the Holme House branch had responded to branch circular 23/2012 by calling upon the General Secretary to refer the whole of the NEC to the Conduct Committee to answer a complaint that by supporting the call for a Special Delegate Conference the NEC had acted outside the rules and constitution. The branch sought that each member of the NEC should explain his actions individually.

21. On 16 November 2012, the General Secretary emailed every member of the NEC informing them that he had referred the Holme House complaint to the Conduct Committee for investigation. Rule 25.6 provides that the Deputy General Secretary shall be the Secretary to the Conduct Committee and responsible for assisting the Committee in all administrative matters relating to its work. However, as the Deputy General Secretary was a member of the NEC, the General Secretary's letter states, "*It would be inappropriate for the Deputy General Secretary to administer this issue, therefore Joe Simpson will administer the administration (i.e. letter sending) whilst the investigation takes place*".
22. Also on 16 November 2012, Mr Simpson wrote to the members of the Conduct Committee attaching a copy of the Holme House complaint for them to process. This letter is the subject of complaint 5, in that it is alleged that the letter should have been sent by the Deputy General Secretary in accordance with rule 25.6. Similar complaints have been made in respect of the letters sent by Mr Simpson acting in this capacity on 28 March, 18 April and 30 April 2013. Mr Simpson's letter is headed, Conduct Case 136, which is the official number given to the case which originated from the Holme House branch.
23. On 21 November 2012, Mr Simpson wrote to each member of the NEC to inform them that the Investigation Committee, Mr Wood and Mr Boddington, wished to interview each of them. It asked them to advise Mr Simpson of their availability so that a mutually convenient date can be arranged. On 22 November a similar letter was sent to Glyn Travis, the full time officer who acted as a note taker at meetings of the NEC.
24. The Investigation Committee had completed a substantial number of its interviews by the end of January 2013. In an undated letter, probably sent in the first week of February 2013, Mr Wood informed the General Secretary that on the evidence the Investigation Committee had received from a number of NEC members and full time officers, there was reason to be concerned that the amendments to the minutes of the meetings of the NEC of 24 October and 14 November were at variance to such a degree with what was actually said that a number of witnesses had been unable to accept them. Mr Wood suggested that this matter could be incorporated into Conduct Case 136.
25. On 8 February 2013 the General Secretary responded to Mr Wood agreeing that the issue relating to the accuracy of the NEC minutes could be incorporated into Conduct Case 136. The Investigation Committee then re-interviewed some of those members who it had seen previously in connection with the extended scope of Conduct Case 136.
26. The Investigation Committee found difficulty in arranging a mutually convenient time to interview Messrs Traynor, Baines, Acaster and Merricks. In Mr Traynor's case, different dates were suggested by both sides in London, Leeds and Warrington (HMP Risley). Mr Traynor's home branch is HMP Liverpool but his then representative, Mr Pimblett, was based at HMP Risley. Mr Wood gave evidence that he verbally offered to Mr Traynor that he would go to see him in Liverpool, which is denied by Mr Traynor. Mr Wood also gave

evidence that he visited other members of the NEC at their own branches and would have had no problem in interviewing Mr Traynor at his branch if a suitable date could have been found for him and his representative. Be this as it may, the Investigation Committee was concerned that its work might become unduly protracted and agreed with those who had not been seen personally that they would respond to a questionnaire prepared by the Investigation Committee. A questionnaire was sent to them on 14 February 2013. Mr Traynor's returned questionnaire refers to "Annex A" and elsewhere to "attached Annexes". Annex A is a private and confidential letter from Don Wood to the General Secretary of 7 November 2012, referred to in paragraph 18 above. The other "attached Annexes" appear as a response to the question "What was the POA policy in relation to meeting with the PGA and where can this policy be found?".

27. On 12 March 2013, the Investigation Committee produced its report which incorporated the material it had collected during its investigations. The Committee recommended that a Disciplinary Panel should consider whether it was necessary to hold a disciplinary hearing on four matters; namely whether the NEC, collectively or individually,
 - (a) were in breach of the rules by taking the decision on 24 October 2012 to support a call for a special delegate conference;
 - (b) acted against the interests of the membership by taking that decision;
 - (c) were in breach of the rules by taking the decision on 14 November 2012 not to allow the General Secretary to write to the Kennet branch as requested by the Conduct Committee; and
 - (d) were in breach of the rules in respect of amending and agreeing the minutes at the meetings of the NEC of 24 October and 14 November 2012.
28. Mr Traynor asserts that the report of the Investigation Committee, whilst incorporating his response to the questionnaire, did not contain the Annexes he had included with that response. I find on the balance of probabilities that the private and confidential letter from Mr Wood to the General Secretary of 7 November 2012 was included in the report as it formed an essential ingredient of the third charge that the Investigation Committee was proposing that the Disciplinary Panel should consider. As to the "attached Annexes", it appears to be common ground that these were not contained in the report of the Investigation Committee. Mr Wood explained this principally on the grounds of their relevance. He maintained that the Union's policy regarding engagement with the PGA was a matter for Conduct Complaint 135, not Conduct Complaint 136. Mr Wood further contended that Mr Traynor's researches into this point came after the issues in question.
29. The Disciplinary Panel that was selected to deal with conduct complaint 136 consisted of Mr Freel, Mr Renton and Mr McDade.
30. On some date between the publication of the investigation report (12 March 2013) and 28 March, Mr Freel wrote to the General Secretary. He stated that it was their conclusion that certain members of the NEC had attempted to stay within the rules and constitution and as such do not need to be included in any

charges. Having regard to the way these members voted, the panel decided that Messrs Gillan, Freeman, Chapple and Valerio, Fullerton and Hancock had no case to answer. Mr Freel proposed that the hearing against the remaining members of the NEC commenced on 15 April and would take a week.

31. On 28 March 2013 the Disciplinary Panel decided that the seven members of the NEC who remained a part of Conduct Case 136 should be temporarily suspended from office on the four grounds outlined by the Investigation Committee. POA Forms DHF3 were completed in respect of each of the four grounds/charges for each relevant member of the NEC and signed by all three members of the Disciplinary Panel.
32. Also on 28 March 2013, Mr Simpson wrote to each NEC member who remained a part of Conduct Case 136. He informed them that as from 9.30am that day they were temporarily suspended "*from National and Local Office and any branch meetings under Rule 27*". Mr Simpson copied his letter to the relevant branch secretaries and the General Secretary. I find that he also enclosed copies of the relevant forms DHF3. The reference to the members being suspended from attending branch meetings was an error on the part of Mr Simpson and was corrected at a later stage after being raised by Mr Traynor.
33. On 2 April 2013, Mr Simpson wrote to each of those facing disciplinary charges informing them of the rules allegedly breached and the date and time of the hearings. Each person had been allocated half a day.
34. On Monday 15 April 2013, the seven persons charged appealed against their temporary suspension. This appeal was made to a committee composed of the three remaining members of the Conduct Committee who had not already been involved in either the Investigation Committee or the Disciplinary Panel. They rejected the appeal on the grounds that there had been no significant change to the circumstances which led to their appeal. Mr Simpson wrote to the persons charged on 18 April to inform them that their appeal had been rejected.
35. The disciplinary hearings began on Tuesday 16 April 2013. The persons charged were represented by Mr Jim Dawson. The Disciplinary Panel found all the charges established against each of the persons charged and imposed a sanction that they each be banned from Local or National Office for five years on each of the four individual breaches of the rules. Mr Freel confirmed the decision in writing by a letter dated 23 April.
36. On 24 April 2013 Mr Dawson wrote to the General Secretary on behalf of the seven members who had been disciplined. He stated that they wished to appeal to Annual Conference and that he was attaching the main grounds for appeal in accordance with rule 28.7(a)(iii). He continued, "*Assuming you will be circulating the required documents in accordance with rule 28.7(a)(i) and (ii), we have no further documents we would wish to include*". He further stated that he would address conference as the representative of the suspended members.

37. On 25 April 2013, Mr Traynor emailed Mr Simpson to ask him under which rule he had been temporarily suspended from attending branch meetings. On the next day, 26 April, the General Secretary, having spoken to Mr Wood, emailed Mr Traynor to inform him that he was not restricted from attending branch meetings as a member, as the terms of his suspension related only to Local and National Office. The General Secretary went on to say that he had recently given a similar response in reply to a query from Mr Traynor's branch representative. In the meantime, Mr Wood had contacted each member of the Disciplinary Panel and obtained their confirmation that those suspended could continue to attend branch meetings. Mr Wood confirmed this information by an email to the General Secretary in the afternoon of 26 April. On Monday 29 April, the General Secretary emailed Mr Traynor to inform him that Mr Wood had confirmed his previous advice and that Mr Simpson was only administering the process and was not a decision maker. On 9 May 2013, Mr Simpson emailed Mr Traynor confirming that he could attend branch meetings and enclosed a copy of Mr Wood's email to that effect. Also on 9 May 2013, the General Secretary emailed Mr Traynor in response to a formal complaint that Mr Traynor had made on 26 April about being suspended from branch meetings. The General Secretary refused to process the complaint on the grounds that it did not fall within the remit of rule 25. In so doing, he confirmed that he had clarified the position with Mr Traynor as soon as the issue had come to light.
38. In the meantime, on 30 April 2013, Mr Simpson had written to each of those disciplined, enclosing the written decision of the Disciplinary Panel. Mr Traynor's witness statement states, "I confirm that the précis of the disciplinary meeting is reasonably accurate".
39. On 8 May 2013, the General Secretary circulated to branches the papers for the appeals to Conference by the seven persons disciplined. He attached the report of the Investigation Committee (in accordance with rule 28.7(a)(i)), the findings of the Conduct Committee (in accordance with rule 28.7(a)(ii)) and the written representations from Mr Dawson on each charge (in accordance with rule 28.7(a)(iii)). The documents referred to in the circular were also placed on the members only section of the POA website.
40. The Annual Conference in 2013 was held in Southport between 14 and 16 May. The appeal of those disciplined occupied most of the morning of 14 May and covers 26 pages of transcript. Amongst the many who participated in the proceedings was Mr Finlay Spratt, the Chair of the Northern Ireland Area of the Union, whose contribution is recorded in less than one page. Mr Spratt has been a POA representative for 36 years and has participated in debates at Annual Conference as Chair of the Northern Ireland area since about 1986. At the Annual Conference in 2002 an issue arose as to Mr Spratt's entitlement to address Conference. The Chair of Conference then ruled that as he had been allowed to speak for many years as a matter of custom and practice, it was only right that he should continue. The Chair ruled that the Northern Ireland delegates are allowed to speak on motions. Mr Spratt has continued to address Conference in the years since 2002. At the conclusion of this agenda

item, Conference voted in favour of ratifying the decision of the Conduct Committee by 17,570 votes to 11,115 votes.

41. On 17 May 2013, the results of the NEC elections 2013 were declared by Electoral Reform Services. Of the 16 candidates, Mr Traynor came second and Mr Acaster came third and so would have been elected. However, when the results were published on 20 May they were not included in the list of successful candidates. The circular states, "*They are unable to take up their positions following Conference ratification of Conduct Case 136 of the Conduct Committee at Annual Conference to ban them from Local and National Office for five years*".
42. These applications to me were made by registration of complaint forms received from Mr Thompson on 17 July 2013, from Mr Birchell on 21 July, from Mr Bostock and Mr Bains on 2 August and from Mr Acaster on 19 August.

The Relevant Statutory Provisions

43. 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

- (2) If he accepts an application under section 108A the Certification Officer –
 - (i) shall make such enquiries as he thinks fit,
 - (ii) shall give the applicant and the union an opportunity to be heard,
 - (iii) shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,
 - (iv) may make or refuse the declaration asked for, and
 - (v) shall, whether he makes or refuses the declaration, give reasons for his decision in writing.

The Relevant Rules of the Union

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

**RULE 9
ORGANISATION AND MANAGEMENT**

Rule 9.3 Officers

- (a) The Officers of the Union comprise:
- i The Chairman,
 - ii The General Secretary,
 - iii The Vice Chairmen,
 - iv The Deputy General Secretary

RULE 9.4

- (a) ...
(b) ...
(c) The National Chairman will be responsible for the deployment of the Vice Chair and NEC members, ensuring the work of the Union is maintained and facility time appropriately used.

**RULE 12
CONFERENCE**

Rule 12.2

A Special Conference will be summoned by the Chairman and General Secretary for the whole of the Union or individually for England and Wales, Scotland or Northern Ireland.

- (a) ...
(b) ...
(c) Within any period of 4 weeks, branches representing a majority of the affected membership support the request for a Special Conference.

Rule 12.7 Conference Proceedings

Each Branch will send up to 2 delegates funded by the Union to Conference and may determine to fund observers from the Branch Funds:

- (a) Unless the Branch determines differently, the delegates will normally be the Branch Chair and Secretary of the Branch;
- (b) Only the 2 delegates representing the Branch may speak for the Branch on any matter at Conference, if any observer speaks in place of the delegates, this will be dealt with as a breach of the Rules & Constitution;

(c - e)

Rule 12.9

The Chairman of the Conference:

- (a) Will be the Chairman, or the Vice Chair authorised by the Chairman;
- (b) ..
- (c) ..
- (d) May make rulings on procedure or points of order which are binding unless challenged;
- (e) ..
- (f) The Chairman may allow invited guests to address Annual Conference

Rule 12.10

A ruling by the Conference Chairman may only be challenged by a motion, supported by at least 10 Branches, that "the Chairman vacates the Chair". Such a motion requires a two-thirds majority of those voting to be passed, in which event the Chairman's ruling will be reversed, however the Chairman will continue to preside.

**RULE 25
DISCIPLINE**

Rule 25.1 Matters which may give rise to Disciplinary action

Subject to any statutory restrictions in force at the time, any member may be disciplined who:

- (a) Acts against the interests of the Union's membership
- (b) Acts contrary to or fails to carry out or comply with the policies of the union, its rules or the annexes to the rules.
- (c)-(i).....

Rule 25.4

The Conduct Committee has power to direct a Branch to cease a disciplinary investigation (at whatever stage that has been reached) and to proceed itself under Rule 28.

Rule 25.6

The Deputy General Secretary shall be the secretary to the Conduct Committee and shall be responsible for:

- (a) assisting the Conduct Committee in all administrative matters related to their work;
- (b) keeping all relevant records of complaints to the General Secretary and in relation to disciplinary cases;
- (c) ensuring that all matters referred to the conduct Committee are dealt with expeditiously and within any prescribed time limits

RULE 27

TEMPORARY SUSPENSION BY CONDUCT COMMITTEE

Rule 27.1 Powers

Where the Conduct Committee:

- (a) is investigating whether a member is to be subject to action under the rules or where a decision or an appeal is pending; and they
- (b) believe that it is prudent for the protection of the Union or any Branch then the Disciplinary Panel, appointed for that case under Rule 28.2, has power to:
 - (i) suspend the member from local or national office (or both) until the final decision on the case or until the outcome of any appeal; and where appropriate;
 - (ii) amend or cancel the suspension at any time.

Rule 27.2

The Deputy General Secretary will give written notice of the imposition, amendment or cancellation of any suspension:

- (a) to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known); and
- (b) to the member's Branch and to the General Secretary

Rule 27.5

At the end of the appeal hearing the Deputy General Secretary will inform the member in writing of the outcome of the appeal. If the appeal is not successful the Conduct Committee will be instructed by the General Secretary to hear the case as soon as possible

RULE 28

SANCTIONS BY CONDUCT COMMITTEE

Rule 28.3

The Investigation Committee shall:

- (a) appoint a date for the conduct of the investigation giving at least 14 days notice;
- (b) visit the member's branch and investigate the allegations;
- (c) interview such parties as is necessary to properly consider the complaint;
- (d) provide a written report of their findings which shall contain such recommendations as they deem appropriate to the Disciplinary Panel;
- (e) (provide copies of its report to the member who is subject to the complaint, the complainant, the member's branch and the Deputy General Secretary.

The Disciplinary Hearing

Rule 28.5

(a)-(i)

(j) Within 14 days of the hearing the Deputy General Secretary will circulate the written decision of the Disciplinary Panel.

Appeal

Rule 28.7

On appeals to Conference under Rule 28.6(b) and 28.8):

(a) the General Secretary will distribute with the final Conference agenda:

- (i) the report of the Investigation Committee
- (ii) the findings by the Conduct Committee; and
- (iii) any relevant written representations of the member or complainant which shall not exceed 10 pages of submissions and 50 pages of documents.
- (iv) where appropriate the National Chairman's reasons for believing that the decision is contrary to law or a policy ordered to be annexed to the Rules by Conference.

(b) - (c)

RULE 29

CONSTITUTION

Rule 29.1 Amendments to Rules

These Rules may only be amended by a two-thirds majority of votes cast at Conference.

ANNEX H

CORPORATE RESPONSIBILITY IN THE POA

1. Members in seeking, accepting and being elected to the Committees must respect and accept a collective responsibility for decisions democratically taken by the members of the Committees.

2. Members of "the Committees" shall uphold and defend the collective decisions made and shall not express dissent from, or campaign against, such decisions made by the Committee

3. Minutes of the Committees and such Reports are produced are to be treated as "**private and confidential**" to the Committees. These Minutes and Reports will remain "**private and confidential**" until approved as correct and sanctioned for publication by the Committees.

4. No Member of the Committees shall reveal the proceedings of the Committees, nor publish extracts or voting positions, except when authorised and approved by the Committees.

5. Members of the Committees may explain policy and discuss approved and published Minutes or Reports with any POA Members.

6. Full Time Officers of the POA will maintain the same standards of confidentiality as that required by elected Members of the Committees.

7. Any member of the Committee or Full Time Officer of the POA may be disciplined for any breach of the above protocol.

8. It is recognised that where members do not agree with the corporate position the option exist for them to tender their resignation, however no member should on resignation release to the membership any information until approved to do so by the Committee

Consideration and Conclusions

Complaint One

45. The claimants' first complaint is in the following terms:

"On or around 21 November 2012 the POA breached rule 28.3(b) of the rules of the union by the letter from full time officer Joe Simpson dated 21 November 2012 which requested Mr Traynor to attend an area office of the POA in Leeds for interview rather than the investigation committee attending his branch as required by the rule"

46. Rule 28.3(b) of the rules of the Union provides as follows:

The Investigation Committee shall:

(a) appoint a date for the conduct of the investigation giving at least 14 days notice;

(b) visit the member's branch and investigate the allegations;

(c) interview such parties as is necessary to properly consider the complaint;

(d) provide a written report of their findings which shall contain such recommendations as the deem appropriate to the Disciplinary Panel;

(e) provide copies of its report to the member who is subject to the complaint, the complainant, the members branch and the Deputy General Secretary.

Summary of Submissions

47. Mr Traynor, for the claimants, submitted that the Union had breached rule 28.3(b) as the Investigation Committee did not visit his branch in Liverpool to investigate the allegations against him. He maintained that this was important as the claimants' Union representatives were likely to be at their branches. He argued that the claimants were put at a disadvantage as no expenses were to be paid to the claimants or their representatives in attending elsewhere for interview. At the hearing, Mr Traynor stated that it was himself, Mr Bains and Mr Acaster that complained about this.

48. Mr Edwards, for the Union, submitted that this complaint was misconceived both on a factual basis and on the basis of the proper construction of the rule. First, he noted that the complaint alleges that the breach occurred by Mr Simpson's letter of 21 November 2012 requesting Mr Traynor to attend an area office of the POA in Leeds for interview. He pointed out that, upon examination of this letter, it is clear that it merely notifies Mr Traynor of the complaint and asks him to advise Mr Simpson of his availability so that a mutually convenient date can be arranged. Secondly, Mr Edwards commented that this complaint is worded so as to apply only to Mr Traynor's position, not that of the other complainants. Thirdly, he argued that the substantive requirement of the rule was that the Investigation Committee investigates the allegation and that there is no complaint that it did not do so. Fourthly, he noted that the rule does not require all interviews to take place in the member's branch. Fifthly, Mr Edwards argued that Mr Wood had offered to interview Mr Traynor in his branch but that Mr Wood's offer had not been accepted. Further, he commented that the Investigation Committee had been very flexible in attempting to meet with Mr Traynor, even agreeing to meet at HMP Risley (Warrington) where Mr Traynor's representative worked but, even then, no arrangement could be made. He stated that Mr Traynor had then agreed for the investigation to proceed by written questions which he would answer. Sixthly, he noted that Mr Traynor had not protested about the Investigation Committee not visiting his branch at any stage prior to these proceedings. Seventhly, he noted Mr Traynor's observation that the NEC was itself a branch and argued on this basis that the Investigation Committee had visited the places where the NEC usually sits, namely the Union's premises in London and Leeds. Eighthly, Mr Edwards observed that it would have been pointless for the Investigation Committee to have visited Mr Traynor's branch on the facts of this case as there was nothing at the branch which related to the charges. He submitted that rule 28.3(b) must be read subject to the implied limitation that the Investigation Committee shall only visit the member's branch if it is reasonably necessary for them to do so.

Conclusions – Complaint One

49. My task is to determine the complaint as it appears before me, in the terms that were put to the Union for it to prepare its defence, subject to any application for an amendment of that complaint. This complaint relates to Mr Simpson's letter dated 21 November 2012, which letter merely notifies Mr Traynor of the complaint against him and asks to be advised of Mr Traynor's availability so that a mutually convenient date for an interview can be arranged. On any view, this letter does not constitute a breach of rule 28.3(b) of the rules of the Union. That is sufficient to dispose of this complaint. However, I also observe that the rule dealing with interviews is rule 28.3(c) which provides that the Investigation Committee shall "interview such parties as is necessary to properly consider the complaint". The rules impose this obligation on the Investigation Committee separately from the obligation to visit the member's branch and investigate the allegations. Accordingly, the interviews need not be at the member's branch. In interpreting these provisions I am mindful of the approach that the courts have taken to the interpretation of Union rules. The commonly quoted authority is that of **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 courts view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed."

Applying this approach to rule 28.3, I find an inconsistency between the apparently absolute obligation to visit the member's branch and the conditional obligation to interview the parties. I find that the only absolute obligation in sub paragraphs (b) and (c) is that the Investigation Committee must investigate the allegations. Properly construed, the obligation to interview the parties and visit the member's branch are subject to the same limitation, namely where "it is reasonably necessary to properly consider the complaint". Further, I accept the evidence of Mr Wood that he verbally offered Mr Traynor the option of being visited at his branch but this was not taken up for whatever reason.

50. For the above reasons, I refuse the claimant's application for a declaration that the POA on or around 21 November 2012 breached rule 28.3(b) of the rules when the letter from full time officer Joe Simpson dated 21 November 2012 allegedly requested Mr Traynor to attend an area office of the POA for interview rather than the Investigating Committee attending his branch.

Complaint Two

51. Complaint two is in the following terms:

"On 14 May 2013 the POA breached rule 12.7(b) of the rules of the union by allowing Mr Finlay Spratt to address conference as he was an observer at conference and not a delegate of any branch"

52. Rule 12.7(b) of the rules of the Union provides as follows:

12.7 Each Branch will send up to 2 delegates funded by the Union to Conference and may determine to fund observers from the Branch Funds:

(a)

(b) Only the 2 delegates representing the Branch may speak for the Branch on any matter at Conference, if any observer speaks in place of the delegates, this will be dealt with as a breach of the Rules & Constitution;

Summary of Submissions

53. Mr Traynor, for the claimants, submitted that rule 12.7 of the rules of the Union deals with the proceedings at Annual Conference and rule 12.7(b) provides that only branch delegates may speak to motions before Conference. He observed that Mr Spratt is the Chair of the Northern Ireland Area of the Union but that he is not a branch delegate. In these circumstances, Mr Traynor argued that Mr Spratt was not entitled to speak at the Annual Conference in 2013 and the Union had breached rule 12.7(b) in allowing him to do so. Mr Traynor rejected the argument that Mr Spratt had spoken so often at previous conferences that there was now a custom and practice that he was entitled to speak. He argued that custom and practice cannot prevail over an express rule.
54. Mr Edwards, for the Union, argued that Mr Traynor had misconstrued rule 12.7(b) as prohibiting any observer from speaking at Conference. In his submission, the rule permits only branch delegates to speak "for the branch" and prohibits an observer who "speaks in place of" a branch delegate. He argued that Mr Spratt was not speaking at Conference as a branch delegate but as the Northern Ireland Area Chairman who had spoken at numerous previous conferences and whose participation in the 2002 Annual Conference had been debated and permitted.

Conclusions – Complaint Two

55. I find that Mr Spratt has spoken at many previous Annual and Special Conferences. I further find that his participation at the Annual Conference in 2002 was questioned by a delegate at which time he stated that he had attended Conference for 16 years and had always been given the right to speak when he thought it was necessary. The Chairman of that Conference considered that Mr Spratt had the right to speak as a matter of custom and practice but wished to reflect on the issue overnight. The next day he gave a ruling that recognised that Mr Spratt had been mandated by the branches in Northern Ireland and permitted him to continue to address Conference. Mr Gillan gave evidence that the rules of the Union were subsequently changed to introduce rule 12.9(f), by which, "the Chairman may allow invited guests to address Annual Conference".
56. In my judgment, rule 12.7 is concerned exclusively with the position of branch delegates and specifies who can speak at Conference on behalf of branches. The rule acknowledges that branches may sometimes bring observers to Conference but makes plain that such observers may not speak "for the branch". I observe that there is no other rule which states expressly who is and who is not entitled to speak at Conference. As with other Unions, it would not be surprising if members of the NEC spoke at Conference to explain the position of the NEC on motions initiated by the NEC and others. Indeed, I note that the NEC has a right to submit 10 motions to Conference and yet there is no express right of NEC members to address Conference on behalf of the NEC. I further observe the wide powers of the Chairman of Conference who may make rulings on procedure which are binding unless challenged and who may allow invited guests to address Conference. Having regard to past practice, the express ruling on this matter at the 2002 Annual Conference and the

subsequent rule change, I find that the rules enable the Chairman of Conference to allow any speaker to address Conference whose participation is not forbidden by an express rule (e.g. branch observers who seek to speak for the branch). As Mr Spratt could probably not be correctly described as an invited guest for the purposes of rule 12.9(f), his participation in the 2013 Conference was at the discretion of the Chairman and subject to challenge at the time. Mr Spratt's participation was not challenged at the time and accordingly it was within the rule for him to have contributed to that particular debate at the discretion of the Chairman.

57. For the above reasons, I refuse the claimant's application for a declaration that on 14 May 2013 the POA breached rule 12.7(b) of its rules by allowing Mr Findlay Spratt to address the Annual Conference, as he was allegedly not entitled to speak in accordance with the rules.

Complaint Three

58. The claimants' third complaint is in the following terms:

"On the 28 March 2013 the union breached rule 27.2 of the rules of the union when it suspended Brian Traynor because the letter dated 28 March 2013, by which he was suspended was sent by full time officer Joe Simpson on behalf of the disciplinary panel and not by the Deputy General Secretary as required under rule 27.2".

59. Rule 27.2 of the rules of the Union provides as follows:

The Deputy General Secretary will give written notice of the imposition, amendment or cancellation of any suspension:

- (a) to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known); and
(b) to the member's Branch and to the General Secretary*

Summary of Submissions

60. Mr Traynor, for the claimants, submitted that this complaint is based on the same legal arguments as Complaints 4, 5 and 7 and he agreed that they would all succeed or fail together. He observed that rule 27.2 states expressly that it shall be the Deputy General Secretary who gives written notice of any suspension but argued that the notification of his suspension came in a letter dated 28 March 2013 from Mr Simpson. Mr Traynor commented that there is no rule permitting the delegation of the role of secretary of the Conduct Committee to another person and that he had not even seen any letter from the General Secretary asking Mr Simpson to perform this role. He also argued that from the time in March 2013 when the decision was taken to exclude the Deputy General Secretary and five others from the disciplinary proceedings, there was no longer any valid reason for Mr Simpson remaining as the secretary or administrator to the Conduct Committee.
61. Mr Edwards, for the Union, submitted that in the circumstances of this case, it was not appropriate for the Deputy General Secretary to act as the secretary of the Conduct Committee as the charges had been brought against all members of the NEC, including the Deputy General Secretary. He further argued that a more substantial complaint might have been made against the Union if the Deputy General Secretary had acted as the administrator in breach of the principle of natural justice that no individual should be involved in an

investigation into their own alleged misconduct. Mr Edwards observed that the NEC had been informed of his decision to give this responsibility to Mr Simpson and neither the claimants nor any member of the NEC had objected. As to whether the role of administrator should have been restored to the Deputy General Secretary when he ceased to be subject to the disciplinary process, Mr Edwards argued that the Deputy General Secretary, Mr Freeman, was still precluded as he remained a witness to the events in question and that there was always a possibility that facts may emerge which would implicate him.

Conclusions – Complaint Three

62. It is axiomatic that an accused person cannot normally participate in the process by which charges against that accused person are being brought. I find that there is an implied rule of the Union to the effect that a person may be substituted for the Deputy General Secretary in his or her capacity as the secretary of the Conduct Committee if the Deputy General Secretary is personally involved in any disciplinary process, be it as an accused or a witness or any other capacity which might reasonably prejudice the impartiality of the Conduct Committee. Accordingly, I find that the General Secretary did not act in breach of the rules in appointing Mr Simpson, a full time officer, to substitute for Mr Freeman, the Deputy General Secretary, as the secretary of the Conduct Committee for the duration of the complaint against all members of the NEC instituted by the Holme House branch, including the time after Mr Freeman and five others on the NEC were removed from that complaint.
63. For the above reasons I refuse the claimant's application for a declaration that the POA breached rule 27.2 of its rules by the letter dated 28 March which suspended Mr Traynor having been sent by full time officer Joe Simpson and not by the Deputy General Secretary as allegedly required under rule 27.2.

Complaint Four

64. The claimants' fourth complaint is in the following terms:
" On the 30 April 2013 the union breached rule 28.5(j) of the rules of the union as the letter dated 30 April 2013 to which was attached the disciplinary panel's written decision was circulated by full time officer Joe Simpson not by the Deputy General Secretary as required by rule 28.5(j)"
65. Rule 28.5(j) of the rules of the Union provides as follows:
28.5(j) Within 14 days of the hearing the Deputy General Secretary will circulate the written decision of the Disciplinary Panel
66. It was agreed by the parties that this complaint would succeed or fail on the same ground as complaint three. I have rejected the claimants' third complaint on the grounds given in paragraph 62 above and accordingly I reject this complaint also.
67. For the reasons given in paragraph 62 above, I refuse the claimants' application for a declaration that the POA breached rule 28.5(j) of its rules on 30 April 2013 by a letter dated 30 April 2013, to which the Disciplinary Panel's written decision was attached, being circulated by full time officer Joe Simpson not by the Deputy General Secretary as allegedly required by rule 28.5(j).

Complaint Five

68. The claimants' fifth complaint is in the following terms:

"On or around 16 November 2012 the union breached rule 25.6 of the rules of the union as Joe Simpson acted as secretary to the Conduct Committee and dealt with administrative matters on behalf of the Conduct Committee not the Deputy General Secretary as required under rule 25.6"

69. Rule 25.6 of the rules of the Union provides as follows:

The Deputy General Secretary shall be the secretary to the Conduct Committee and shall be responsible for:

(a) assisting the Conduct Committee in all administrative matters related to their work;

(b) keeping all relevant records of complaints to the General Secretary and in relation to disciplinary cases;

(c) ensuring that all matters referred to the conduct Committee are dealt with expeditiously and within any prescribed time limits

70. It was agreed by the parties that this complaint would succeed or fail on the same ground as complaint three. I have rejected the complainants' third complaint on the grounds given in paragraph 62 above and accordingly I reject this complaint also.

71. For the reasons given in paragraph 62 above, I refuse the claimants' application for a declaration that the POA breached rule 25.6 of the rules of the union on or around 16 November 2012 by Mr Simpson acting as secretary to the Conduct Committee and dealing with administrative matters on behalf of the Conduct Committee, not the Deputy General Secretary as allegedly required under rule 25.6.

Complaint Six

72. The claimants' sixth complaint is in the following terms:

" On 28 March 2013 the union breached rule 27.1 of the rules of the union when it suspended Brian Traynor from branch meetings as this sanction is not set out within rule 27.1 or any other rule within the POA rulebook"

73. Rule 27.1 of the rules of the Union provides as follows:

Where the Conduct Committee:

(a) is investigating whether a member is to be subject to action under the rules or where a decision or an appeal is pending; and they

(b) believe that it is prudent for the protection of the Union or any Branch then the Disciplinary Panel, appointed for that case under Rule 28.2, has power to:

(i) suspend the member from local or national office (or both) until the final decision on the case or until the outcome of any appeal; and where appropriate;

(ii) amend or cancel the suspension at any time.

Summary of Submissions

74. Mr Traynor, for the claimants, submitted that he received notification of his suspension in a letter dated 28 March 2013 from Mr Simpson and that the letter stated:

"I write to inform you that I have been advised by the Disciplinary Panel that they have determined as of 09:30am Thursday 28 March 2013, to temporarily

suspend you from National and Local Office and any branch meeting under Rule 27 with immediate effect."

That letter was copied to Mr Traynor's branch Secretary at HMP Liverpool. Mr Traynor maintains that the effect of that letter was to suspend him from attending any branch meeting and that the power of the Conduct Committee to suspend a member under rule 27.1 is restricted to suspending the member from Local or National Office (or both). He therefore submitted that the Union had handed out a sanction not in its power and that the Union did not correct its mistake until the letter from the General Secretary to Mr Traynor of 9 May 2013.

75. Mr Edwards, for the Union, submitted that the Conduct Committee did not suspend Mr Traynor from attending branch meetings. He maintained that the Conduct Committee decided to suspend him from Local and National Office, as is clear from the forms DHF3 that it completed on 28 March 2013, copies of which were sent to Mr Traynor together with Mr Simpson's letter. Mr Edwards explained that the reference by Mr Simpson to Mr Traynor being suspended from attending branch meetings was an error which Mr Traynor had brought to the General Secretary's attention on 25 April 2013 and had been corrected by the General Secretary's response of 26 and 29 April and Mr Simpson's response of 9 May.

Conclusions – Complaint Six

76. I find that Mr Simpson's letter to Mr Traynor of 28 March 2013 was capable of misleading Mr Traynor into believing that he had been suspended from attending branch meetings and that such a notification is capable of constituting the imposition of a suspension if it had that effect on the minds of the member and his branch secretary and had effectively excluded him from attending branch meetings, irrespective of whether the letter was written in error. However, this letter must be read in context and I take the following four factors into account. First, Mr Traynor and his colleagues are members of the NEC and their correspondence discloses a more than average knowledge of the rules of the Union. Secondly, I accept the evidence of Mr Wood that the actual decisions of the Conduct Committee on Forms DHF3 were included with Mr Simpson's letter of 28 March. The Conduct Committee came to a separate decision on each of the four charges and issued four separate notices of suspension for each member. These decisions all referred to rule 27 and state that, for example, "*Mr B Traynor should be suspended from office until further notice for the following reasons ...*". They do not state that Mr Traynor should also be suspended from attending branch meetings. Thirdly, I heard no evidence that Mr Traynor had in fact been prevented from attending any branch meeting he wished to attend. Fourthly, Mr Traynor appealed against the suspension. His appeal was considered by the Appeals Panel on 15 April and he was notified by Mr Simpson that his appeal had been dismissed by a letter dated 18 April. I heard no evidence that Mr Traynor had taken up with the Appeals Panel his allegedly unlawful suspension from branch meetings. The first evidence of Mr Traynor taking this matter up with the Union is his email of 25 April, to which the General Secretary responded on 26 April confirming that the terms of his suspension related only to Local and National Office. In these circumstances, I find that Mr Traynor was aware from or about the time of

receipt of Mr Simpson's letter of 28 March, with its accompanying forms, that he was not suspended from attending branch meetings and that the mistake made by Mr Simpson did not have the effect of so suspending him.

77. For the above reasons I refuse the claimants' application for a declaration that the POA breached rule 27.1 of its rules on 28 March 2013 by allegedly suspending Mr Traynor from attending branch meetings.

Complaint Seven

78. The claimants' seventh complaint is in the following terms:

"On 18 April 2013 the union breached rule 27.5 of the rules of the union as Brian Traynor was informed by Joe Simpson full time officer that his suspension appeal was unsuccessful, not the Deputy General Secretary as stated in rule 27.5."

79. Rule 27.5 of the rules of the Union provides as follows:

At the end of the appeal hearing the Deputy General Secretary will inform the member in writing of the outcome of the appeal. If the appeal is not successful the Conduct Committee will be instructed by the General Secretary to hear the case as soon as possible

80. It was agreed by the parties that this complaint would succeed or fail on the same grounds as complaint three. I have rejected the complainants' third complaint on the grounds given in paragraph 62 and accordingly I reject this complaint also.

81. For the reasons given in paragraph 62 above, I refuse the claimants' application for a declaration that the POA breached rule 27.5 of its rules on 18 April 2013 by a letter dated 18 April 2013, informing Mr Traynor that his appeal against suspension was unsuccessful, being sent by Mr Simpson, not the Deputy General Secretary as stated in rule 27.5.

Complaint Eight

82. The claimants' eighth complaint is in the following terms:

" On 9 May 2013 the union breached rule 27.2 of the rules of the union because the letter dated 9 May 2013 by which the terms of Mr Traynor's suspension were amended was sent by Mr Steve Gillan General Secretary and not by the Deputy General Secretary as required under rule 27.2."

83. Rule 27.2 of the rules of the Union provides as follows:

The Deputy General Secretary will give written notice of the imposition, amendment or cancellation of any suspension

- (a) to the member by registered or recorded delivery post to the member's last known home address (or work address if the home address is not known); and*
- (b) to the member's Branch and to the General Secretary*

Summary of Submissions

84. Mr Traynor, for the claimants, submitted that the General Secretary's letter to him of 9 May 2013 amended the terms of his suspension by removing his suspension from attending branch meetings and yet rule 27.2 provides that it is for the Deputy General Secretary to give written notice of the amendment of any suspension. Mr Traynor argued that if the responsibility of being secretary of the Conduct Committee was removed from the Deputy General Secretary

and given to Mr Simpson because the Deputy General Secretary was a member of the NEC, the General Secretary was similarly tainted as he too was a member of the NEC. He argued that in these circumstances, the General Secretary should not have written to him to amend the terms of his suspension. Mr Traynor maintained that as there were no rules permitting the delegation of these functions, they should all have been carried out by the Deputy General Secretary.

85. Mr Edwards, for the Union, submitted that there was no amendment to the decision as actually made by the Conduct Committee. The letter from Mr Simpson of 28 March 2013 had mistakenly referred to Mr Traynor having been suspended from branch meetings. Counsel's skeleton argument stated that the letter of 9 May had been sent by the General Secretary as the Deputy General Secretary was unavailable due to work commitments and that by rule 9.3 the General Secretary outranked the Deputy General Secretary in any event.

Conclusions – Complaint Eight

86. Mr Traynor complains that the letter to him from the General Secretary of 9 May 2013 amends the terms of his suspension. However, properly examined, this letter does not amend the terms of Mr Traynor's suspension, or even purport to do so. The letter is headed, "Formal Complaint dated 26 April 2013" and is a response to Mr Traynor's request to commence a formal complaint about his suspension. By his letter of 9 May, the General Secretary refused to refer Mr Traynor's complaint to the Conduct Committee as he did not believe it fell within rule 25. Accordingly, Mr Traynor's complaint refers to the wrong letter. This letter does not amend his suspension and therefore this complaint must fail.
87. Further, in my findings on complaint six, I concluded that Mr Traynor's suspension, either as made by the Conduct Committee or as communicated by the inconsistent documents of 28 March, did not include a suspension of him from attending branch meetings. Accordingly, the General Secretary could not notify an amendment of a decision which was never taken by the Conduct Committee.
88. In my judgment, on the balance of probabilities, the events in question were as follows. On 28 March 2013 Mr Traynor was notified of his suspension by documents which were mutually contradictory. Mr Simpson's letter imposed a broader suspension than the terms of the Forms DHF3 that accompanied that letter and which were signed by the members of the Committee. Mr Traynor appealed that decision and there is no evidence that he took the point about him being suspended from attending branch meetings at the appeal. He was informed on 18 April that his appeal against his suspension was unsuccessful. A disciplinary hearing took place on 16 April and he was formally informed of its outcome on 23 April. On 25 April Mr Traynor sent Mr Simpson an email asking what rule prevented him from attending branch meetings. The General Secretary responded on 26 April informing Mr Traynor that his suspension was only from Local and National Office and he confirmed that response on 29 April, after having written confirmation from Mr Wood. Also on 26 April, Mr Traynor made a formal complaint about his suspension. On 9 May, the General

Secretary wrote to Mr Traynor refusing his complaint against suspension. Also on 9 May, Mr Simpson wrote to Mr Traynor, enclosing the email from Mr Wood confirming that he was not suspended from membership and could therefore attend branch meetings. On these facts, there is clearly no breach of rule 27.2, as alleged, by the General Secretary's letter to Mr Traynor of 9 May.

89. For the above reasons, I refuse the claimants' application for a declaration that the POA breached rule 27.2 of its rules on 9 May 2013 by a letter dated 9 May 2013, allegedly amending the terms of Mr Traynor's suspension, being sent by Mr Gillan, General Secretary, and not by the Deputy General Secretary as required under rule 27.2.

Complaint Nine

90. The complainants' ninth complaints is in the following terms:

" On 12 March 2013 the union breached paragraph 4 of Annex H and thus rule 25.1 (b) of the rules of the union when the Conduct Committee published the draft copy of the NEC minutes dated 24 October in Conduct Case 136 against Brian Traynor to all POA members without the approval of the National Executive Committee as required by paragraph 4 of Annex "

91. Paragraph 4 of Annex H and rule 25.1(b) of the Union provides as follows:

Paragraph 4 of Annex H No Member of the Committees shall reveal the proceedings of the Committees, nor publish extracts or voting positions, except when authorised and approved by the Committees.

Rule 25.1 Subject to any statutory restrictions in force at the time, any member may be disciplined who:

(a) Acts against the interests of the Union's membership

(b) Acts contrary to or fails to carry out or comply with the policies of the union, its rules or the annexes to the rules.

(c)-(i).....

Summary of Submissions

92. Mr Traynor, for the claimants, submitted that paragraph 4 of Annex H is a rule of the Union within my jurisdiction and that it was clearly breached when the Investigation Committee published its report on 12 March 2013 as its report included the draft minutes of the NEC meeting of 24 October. Mr Traynor argued that it was a fundamental principle within the POA that the internal discussions of the NEC and the voting position of its members should not be divulged to anyone without the consent of the NEC and that, by including the draft minutes of the NEC meetings in its report, the Investigation Committee had breached this principle.

93. Mr Edwards, for the Union, submitted that Annex H does not contain rules of the Union and that accordingly I have no jurisdiction to consider these complaints. He supported this submission by reference to rule 25.1(b) which he observed made a distinction between the rules of the Union, its policies and the annexes to the rules. He observed that the expression 'annexes to the rules' suggests that the annexes are not themselves rules. Expressed simply, Mr Edwards invited me to find that only the rules which are expressed to be rules should be accepted as being the rules of the Union for the purposes of section 108(A)(1) of the 1992 Act. He also argued that there is nothing in the content of the annexes which give them the characteristics of a rule. In the

alternative, were I to find that the annexes are rules within my jurisdiction, Mr Edwards submitted that paragraph 4 of Annex H imposes an obligation on individuals only, not on the Union itself. He argued that the Union cannot be held responsible for the actions of an individual member of the NEC in breach of paragraph 4 and that, in such circumstances, the appropriate course would be for the Union to take disciplinary action against that member. Mr Edwards also relied upon Mr Gillan's evidence to the effect that it would not have been right to seek to prevent the Conduct Committee from having sight of the NEC minutes if it were to comply with its obligations under the rules to investigate complaints properly.

Conclusions – Complaint Nine

94. I considered the status of the annexes to the rules of the POA in **Bostock v. POA (D/2/14-15)** which was published on 11 April 2014. In that case I stated at paragraph 29:

“As to Annex A of the rules, I note that Mr Bostock relies upon paragraph 1 and 2 of that Annex. I accept that the Annex forms part of the rules of the Union but whether any particular provision in the rules is capable of constituting a legal obligation on the Union within my jurisdiction depends on the correct construction of that provision. In my judgment, paragraphs 1 and 2 of Annex A of the Union's rules are aspirational in nature and state the general policy of the Union. I find that they are not rules which create an obligation on the Union which is justiciable before me under section 108(A)(1) and (2) of the 1992 Act”.

In that decision I struck out Mr Bostock's complaint without a hearing. Mr Edwards seeks to persuade me that, upon reflection, I should now come to a different conclusion about the status of the annexes to the rules.

95. Having had the benefit of oral submissions in this case and having reconsidered the annexes as a whole, I have concluded that Annex H does not form a part of the rules of the Union. Indeed, it is arguable that none of the annexes are rules of the Union, with the exemption of Annex F which sets out the political fund rules of the Union. I find that the purpose of Annex H is to establish policies and guidance on corporate responsibility that may change from time to time and that it cannot have been the intention that such policies and guidance could only be changed by a two thirds majority at Conference as required by rule 29.1. Whilst many of the provisions within the annexes are legally unenforceable (being aspirational in nature, lacking sufficient precision or not relating to matters within section 108(A)(2) of the 1992 Act) they are not all without legal significance. Many set standards the breach of which may result in disciplinary action being taken against individual members under rule 25. For example, paragraph 7 of Annex A (the equal opportunities policy) states expressly that the POA may take disciplinary action “in accordance with its Rules and Constitution” if someone commits an act of harassment, victimisation or discrimination. Similar provisions can be found in Annex B (race relations policy), Annex C (disability discrimination policy), Annex D (tackling unacceptable behaviour) and Annex I (religious tolerance). Other annexes are more obviously aspirational, such as Annex G (lifelong learning). Considered against the annexes as a whole, I find that the provisions of Annex H are not to be considered as rules of the Union but as establishing a protocol of expected behavioural standards which may form the basis of disciplinary

action. Whilst not a wholly accurate comparison, the annexes have similarities to a non-contractual disciplinary procedure in the employment context. Employees may be disciplined for breaching the disciplinary rules even though the disciplinary rules are not part of the contract of employment. Examined in this way, it can be seen that Annex H imposes obligations on individual members of committees whilst not itself a rule of the Union. The consequence of any member of a committee breaching these obligations is the possibility of disciplinary action being taken against him or her. It is not the possibility of a complaint to me of a breach of the rules by the Union.

96. As is clear from the different view I have reached in this case to the view I expressed in Bostock, the status of provisions ancillary to the main rules of a union may be a difficult matter to determine. Different ancillary provisions may have a different status. Each case will turn on its own facts.
97. On the basis of my above finding, paragraph 4 of Annex H is not a rule within my jurisdiction. Further, Mr Traynor cannot rely on rule 25.1(b) as this rule does not impose an obligation on the Union which is capable of being breached. Rather, rule 25.1(b) is permissive in the sense that any member may be disciplined if he or she acts in breach of any of the obligations contained within that rule. This claim is therefore dismissed
98. Should I be wrong about the status of paragraph 4 of Annex H to the rules, I find that this provision imposes an obligation on individual members of committees not to reveal the proceedings of the committees on which they sit. On the facts of this complaint, it is alleged that disclosures were made by the Conduct Committee itself and accordingly paragraph 4 of Annex H is not engaged. Further, in as much as Mr Traynor is asserting that the Conduct Committee should not have been given access to the draft NEC minutes, the consequence of any such assertion is that the draft minutes may never be the subject of a disciplinary action or that the Conduct Committee are to be denied access to material necessary for its decision. Both propositions are fundamentally unattractive and would require rules expressed in the clearest terms were this to be the intention of the Union and the effect of the rules.
99. For the above reasons I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on 12 March 2013 by the Conduct Committee having published the draft copy of the NEC minutes dated 24 October to all POA members without the approval of the National Executive Committee as required by paragraph 4 of Annex H.

Complaint Ten

100. The complainant's tenth complaint is in the following terms:

" On 12 March 2013 the union breached paragraph 4 of Annex H and thus rule 25.1 (b) of the rules of the union when the Conduct Committee published the handwritten minutes of the NEC meeting dated 24th October in Conduct Case 136 against Brian Traynor to all POA members without the approval of the National Executive Committee"

101. Paragraph 4 of Annex H and rule 25.1(b) of the rules of the Union provide as follows:

Paragraph 4 of Annex H: No Member of the Committees shall reveal the proceedings of the Committees, nor publish extracts or voting positions, except when authorised and approved by the Committees.

Rule 25.1: Subject to any statutory restrictions in force at the time, any member may be disciplined who:

(a) Acts against the interests of the Union's membership

(b) Acts contrary to or fails to carry out or comply with the policies of the union, its rules or the annexes to the rules.

(c)-(i).....

102. This complaint was dealt with in the submissions of the parties together with complaint nine. The only difference between the two complaints is that this complaint refers to the manuscript notes of the NEC meeting of 24 October whereas complaint nine refers to the draft minute prepared from those manuscript notes. It was agreed that this case fell to be determined in the same way as complaint nine.

103. Accordingly, for the reasons given in paragraphs 94 to 99 above, I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on 12 March 2013 by the Conduct Committee having published the handwritten minutes of the NEC meeting dated 24 October to all POA members without the approval of the National Executive Committee.

Complaint Eleven

104. The complainants' eleventh complaint is in the following terms:

" On or around 12 March 2013 the union breached rule 28.7 (iii) of the rules of the union by failing to include in the final conference Agenda "relevant written representations" submitted by Mr Traynor's, namely his proposed amendments to the minutes of the meeting of 24 October 2012 Memo from Steve Gillan to the NEC, private and confidential letter from Don Wood chair of conduct committee to Steve Gillan, responding letter from Steve Gillan to Don Wood, POA Circulars 83/2010 and 75/2009, extract from the Key Magazine June 2011, letter from former Chairman and General Secretary Colin Moses and Brian Caton dated 9th October 2008, letter from former General Secretary Brian Caton dated 13 February 2007, extracts from the Certification Officer Case W G Turbin v Prison Governors Association as required by the rule"

105. Rule 28.7(iii) of the rules of the Union provides as follows:

28.7 On appeals to Conference under Rule 28.6(b) and 28.8

(a) the General Secretary will distribute with the final Conference agenda

(i) the report of the Investigation Committee

(ii) the findings by the Conduct Committee; and

(iii) any relevant written representations of the member or complainant which shall not exceed 10 pages of submissions and 50 pages of documents

(iv) where appropriate the National Chairman's reasons for believing that the decision is contrary to law or a policy ordered to be annexed to the Rules by Conference

(b) - (c)

Summary of Submissions

106. Mr Traynor, for the claimants, explained that when he had submitted his written responses to the questionnaire he had attached a number of documents as annexes. He explained that when the Investigation Committee published its report on 12 March 2013, the appendices to that report included his written responses but not his annexes. Mr Traynor argued that his responses made no sense without the annexes and that he was further prejudiced by the annexes not being included with the documentation circulated to branches before Annual Conference for prior consideration by members.
107. Mr Edwards, for the Union, submitted that rule 28.7(iii) only requires "relevant written representations" to be included in the documents to be circulated with the final Conference agenda and invited me to accept the evidence of Mr Wood that the annexes to Mr Traynor's written responses to the Investigation Committee were not relevant as they related to the different disciplinary case that was being pursued as Conduct Case 135, relating to the National Chairman's contacts with the Prison Governors Association. Mr Edwards also observed that Mr Traynor's representative, Mr Dawson, had stated expressly when submitting the notice of appeal to Conference on 24 April 2013 that he had no further documents to be circulated pursuant to rule 28.7(a)(iii) beyond his grounds of appeal.

Conclusions – Complaint Eleven

108. The claimants' complaint is alleged to concern an event on or around 12 March 2013. That is the date of publication of the Investigation Committee report and therefore cannot engage rule 28.7(a)(iii) which concerns the documents to be circulated to Conference. The documents for Conference were circulated with a memo dated 8 May 2013. I will, however, assume in Mr Traynor's favour that he had meant to refer to 8 May 2013 as the date of the alleged breach.
109. Rule 28.7(a)(i), (ii) and (iii) provide that the General Secretary will circulate with the final Conference agenda the report of the Investigation Committee, the findings of the Conduct Committee and any relevant written representations of the member which shall not exceed 10 pages of submissions and 50 pages of documents. Mr Traynor alleges a breach of the third of these requirements. However, the memo of the General Secretary of 8 May 2013 refers expressly to documents under each of these three heads and I find that he did circulate the report of the Investigation Committee, as completed on 12 March 2013, the written decision of the Disciplinary Committee, as circulated by Mr Simpson on 30 April 2013, and the grounds of appeal submitted by Mr Dawson in his letter of 24 April 2013. In that letter, Mr Dawson states expressly that the grounds of appeal were being submitted in accordance with rule 28.7(a)(iii) and that, assuming that the report of the Investigation Committee and the findings of the Disciplinary Committee were circulated, the claimants had no further documents they would wish to include. By the date of that letter, 24 April, Mr Dawson had already represented the claimants before the Disciplinary Committee. He had done so on or about 16 April. Accordingly, he was aware or should have been aware from the documents before the Disciplinary Committee that the so-called 'attached Annexes' to Mr Traynor's written responses had not been reproduced in the investigation report. Yet he made

no request in his letter of 24 April that they be included as part of the claimants' documentation. Mr Wood also gave evidence that the claimants did not object to the papers that were circulated for the 2013 Annual Conference prior to this complaint to me.

110. On the above facts, I find that rule 28.7(a)(iii) is not engaged by the complaint that Mr Traynor now seeks to bring. Rule 28.7(a)(iii) relates to the documents that the persons appealing wish to submit and I find that the Union circulated all the documents that Mr Dawson submitted to it for circulation under rule 28.7(a)(iii).
111. An alternative way of putting this complaint may have been that the investigation report was incomplete. However, a complaint framed in this way would also not have succeeded. The investigation report that the General Secretary was obliged to circulate was the one completed on 12 March 2013 and that is the one that was circulated. If Mr Traynor considered that incomplete documentation was being placed before the Disciplinary Committee or Annual Conference he should have raised the matter at the appropriate time and, as a last resort, could have included his annexes as part of the 50 pages of additional documents provided for by rule 28.7(a)(iii).
112. As to the exclusion of Mr Traynor's annexes from the report of the Investigation Committee, I observe that Mr Traynor's written responses to the questionnaire refer to an 'Annex A' in the second paragraph and a general reference to 'attached Annexes' at the conclusion of numbered paragraph 4. Annex A was the private and confidential letter from Mr Wood to the General Secretary dated 7 November 2012 that had been sent to all members of the NEC requesting the General Secretary to direct the Kennet branch to retract its call for a Special Delegate Conference. As this was central to one of the charges against the claimants and as it is referred to in the findings of the Investigation Committee, I find on the balance of probabilities, that it was available to the disciplinary hearing and Annual Conference. As to the other 'attached Annexes', they appear under the question, "What was the POA policy in relation to meeting with the PGA and where can this policy be found?". Mr Traynor responded in detail to this question and supplied the annexes in question. Mr Wood gave evidence that he considered these annexes were relevant to Conduct Case 135, dealing with the National Chairman's contacts with the PGA, but irrelevant to Conduct Case 136 which related mainly to the matter of principle as to whether a Special Delegate Conference could properly be called to deal with the matter already before the Conduct Committee. Having regard to Mr Wood's evidence as to the reason for the exclusion of these documents and noting that their absence was not made an issue until these proceedings, I conclude that their exclusion from the report of the Investigation Committee does not assist Mr Traynor's allegation of a breach of rule 28.7(a)(iii).
113. For the above reasons I refuse the claimants' application for a declaration that the POA breached rule 28.7(a)(iii) of its rules on or around 12 March 2013 by failing to include in the documentation circulated for the purposes of the claimants' appeal to Annual Conference allegedly "relevant written representations" which were submitted by Mr Traynor.

Complaint Twelve

114. The complainants' twelfth complaint is in the following terms:

"On or around 26 October the union breached Annex H of the rules of the rules of the union when Mr John Hancock revealed his voting position in his letter of 26 October 2012 when responding to Mr Steve Gillan's Memorandum of 26 October 2012"

115. Paragraph 4 of Annex H and rule 25.1 of the rules of the Union provides as follows:

Paragraph 4 of Annex H - No Member of the Committees shall reveal the proceedings of the Committees, nor publish extracts or voting positions, except when authorised and approved by the Committees.

25.1 Subject to any statutory restrictions in force at the time, any member may be disciplined who:

(a) Acts against the interests of the Union's membership

(b) Acts contrary to or fails to carry out or comply with the policies of the union, its rules or the annexes to the rules.

(c)-(i).....

116. Mr Traynor, for the claimants, clarified in his submissions that this complaint and complaint thirteen related to paragraph 4 of Annex H, as did his previous similar complaints. He repeated the submissions he had made with regard to complaints nine and ten but explained that Mr Hancock was a member of the NEC and thus his actions represented the Union. He asserted that Mr Hancock had published this undated letter by sending it to the General Secretary, even though it was marked 'private and confidential'. Mr Traynor criticised Mr Hancock for stating in writing the way he had voted on whether to support the call for a Special Delegate Conference.

117. Mr Edwards, for the Union repeated his submissions with regard to complaints nine and ten. He argued that Annex H did not constitute a rule of the Union and that in any event a personal letter sent by Mr Hancock could not amount to a breach of paragraph 4 of Annex H by the Union.

Conclusions – Complaint Twelve

118. I have found at paragraph 94 to 97 above that paragraph 4 of Annex H is not a rule of the Union within my jurisdiction and that rule 25.1(b) does not impose an obligation on the Union which is capable of being breached by it. Accordingly this complaint must be dismissed.

119. Should I be wrong about the status of paragraph 4 of Annex H, I find that a letter by Mr Hancock to the General Secretary does not constitute a breach of paragraph 4 by the Union itself. At its highest, it may be the basis of disciplinary action against Mr Hancock but such an action would appear to be without foundation as the General Secretary is also a member of the NEC and accordingly a letter to him was not an unauthorised disclosure.

120. For the above reasons I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on or around 26 October when Mr John Hancock revealed how he voted at a meeting of the National Executive Committee in his letter of 26 October 2012.

Complaint Thirteen

121. The complainant's thirteenth complaint is in the following terms:

" On or around 8 May 2013 the union breached Annex H and thus Rule 25.1 (b) of the rules of the union when the Conduct Committee published a letter from Mr Hancock in response to the memorandum sent by Mr Gillan. Mr Hancock's letter revealed his voting position in relation to a vote taken by the Executive Committee on item 10 of its agenda relating to a request for a special delegate conference by the Kennet Branch"

122. Paragraph 4 of Annex H and rule 25.1 of the rules of the Union provides as follows:

Paragraph 4 of Annex H - No Member of the Committees shall reveal the proceedings of the Committees, nor publish extracts or voting positions, except when authorised and approved by the Committees.

25.1 Subject to any statutory restrictions in force at the time, any member may be disciplined who:

(a) Acts against the interests of the Union's membership

(b) Acts contrary to or fails to carry out or comply with the policies of the union, its rules or the annexes to the rules.

(c)-(i).....

123. Mr Traynor, for the claimants, repeated the submissions that he had made in relation to complaints nine, ten and twelve but argued that the publication of Mr Hancock's letter as part of the report of the Investigation Committee constituted a further breach of paragraph 4 of Annex H and rule 25.1(b) by the Union, as no member of a committee shall reveal a voting pattern unless authorised by that committee.

124. Mr Edwards, for the Union, also repeated his earlier submissions. He argued that paragraph 4 of Annex H did not constitute a rule of the Union and that the publication of the report of the Conduct Committee in accordance with its obligations under the rules to do so could not be the basis for an allegation of an unauthorised disclosure in breach of a rule which was specifically framed so as to impose obligations on individual members of committees.

Conclusions – Complaint Thirteen

125. I have found at paragraph 94 to 97 above that paragraph 4 of Annex H is not a rule of the Union within my jurisdiction and that rule 25.1(b) does not impose an obligation on the Union which is capable of being breached by it. Accordingly, this complaint must be dismissed.

126. Should I be wrong about the status of paragraph 4 of Annex H, I find that the inclusion of Mr Hancock's letter in the report of the Investigation Committee forms part of its obligation to compile and submit such a report for the Disciplinary Committee and the discharge of its duty under the rules cannot form the basis for a breach of a separate rule relating to disclosure.

127. For the above reasons I refuse the claimants' application for a declaration that the POA breached paragraph 4 of Annex H and thus rule 25.1 (b) of its rules on

or around 8 May 2013 when the Conduct Committee published a letter from Mr Hancock of 26 October 2012 which revealed how he voted at a meeting of the NEC.

A handwritten signature in black ink, appearing to read 'David Cockburn', written in a cursive style.

David Cockburn
The Certification Officer