

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

**Mr Roy Radford**

**v**

**Equity**

**Date of Decision**

**22 October 2015**

**Date of Review Decision**

**12 November 2015**

**DECISION AS REVIEWED**

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

1. I refuse the claimant’s application for a declaration that on 13 February 2014 Equity breached rule 28.4.2 of the rules of the union by failing to address Mr Radford’s complaint dated 6 December 2013 within two months of its receipt by the General Secretary.

2. I make the declaration sought by the claimant that Equity breached rule 28.4.3 of the rules of the union in that Mr Radford’s complaint to the General Secretary dated 6 December 2013 was not reported to the next meeting of the Council following the preliminary enquiry of the General Secretary.

3. I make the declaration sought by the claimant that Equity breached rule 28.4.3 of the rules of the union in that Mr Radford’s complaint to the President dated 26 August 2014 was not reported to the next meeting of the Council following the preliminary enquiry of the President.

Enforcement orders

4. By 31 December 2015 the General Secretary shall make a report to the Council of Equity on the complaint made by Mr Radford to her on 6 December 2013.

5. By 31 December 2015 the President shall make a report to the Council of Equity on the complaint made by Mr Radford to him on 26 August 2014.

## REASONS

1. Mr Radford brought this application as a member of the Equity ("the Union"). He did so by a registration of complaint form which was received at my office on 16 March 2015.
2. Following correspondence with my office, Mr Radford confirmed his complaints in the following terms:

### **Complaint 1**

On 13 February 2014 Equity breached rule 28.4.2 of the Union's rule book by failing to address Mr Radford's complaint dated 6 December 2013 within two months of its receipt as set out in that rule.

### **Complaint 2**

On or about 13 February 2014 Equity breached rule 28.4.3 of the Union's rule book in that Mr Radford's complaint to the General Secretary was not reported to the next meeting of the Council following the preliminary enquiry of the General Secretary.

### **Complaint 3**

On or about 1 October 2014 Equity breached rule 28.4.3 of the union's rule book in that Mr Radford's complaint to the President dated 26 August 2014 was not reported to the next meeting of the Council following the preliminary enquiry of the President.

3. I investigated the alleged breaches in correspondence and a hearing was listed for 6 August 2015. Following an application by the Union for a postponement of the hearing, a new date was set and the hearing took place on 29 September 2015.
4. At the hearing before me Mr Radford represented himself. Oral evidence for Mr Radford was given by himself, Mr David Cockayne and Mr Tom Emlyn Williams, all three of whom produced written witness statements. Mr Radford also produced written witness statements from Mr David Corden and Mr Daniel York but they did not attend the hearing to give oral evidence. The Union was represented by Ms Rebecca Tuck of counsel, instructed by Ms Anthea Christie of Pattinson & Brewer. Evidence for the Union was given by Ms Christine Payne, General Secretary of the Union, Mr Donald Sinclair, the Union's President, and Mr Graham Hamilton, a member of the Union's Council and the Union's President from 2008 to 2010, all three of whom produced written witness statements. There was also in evidence the rules of the Union and a 417 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the hearing, I accepted an application from the Union for the late submission of copies of e-mail correspondence relating to Mr Radford's original complaint sent to the Union's General Secretary which were inserted into the hearing bundle. I refused an application by Mr Radford for the late submission of information concerning his health problems and a copy of rule 44 of the Union's rules.

## Findings of Fact

5. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
6. Mr Radford has been a member of the Union since about 1967. He is now 76 years of age. He has held a number of lay positions within the Union and was on its Council between 2006 and 2008.
7. The facts immediately relevant to this application are extremely brief and I set them out in paragraph 20 below. However, it is appropriate to give some context to those facts.
8. The rules of Equity relating to disciplinary procedures have evolved over the years. Prior to 2002 a member making a complaint against an officer or another member was to do so by means of a letter to the President marked "Complaint". That letter was not to be opened except in the presence of the Council. In 2002 a more sophisticated procedure was agreed. Under that procedure, by rule 10(2), the General Secretary, upon receipt of a written charge from a member, was to "*cause such preliminary enquiries to be made as the General Secretary ... thinks fit and shall report the matter to the next meeting of the Council*". In 2008 the rules were generally revised, including the rules on disciplinary procedure. After careful consideration and having taken legal advice, the Council proposed a revision of rule 10, amongst others, to a Special Representative Conference which was held in October 2008. At this conference an amendment to the proposed rule 10 was moved and approved. The effect of this amendment was to insert a new rule 10.4.2 into the scheme of rules proposed by the Council. There were no consequential amendments to ensure that the insertion of this new rule created no difficulties. The present application highlights the difficulties of interpretation arising out of the inserted rule 10.4.2. The 2009 rule book reflected the changes made in 2008 and the rule dealing with disciplinary procedures became rule 28. The equivalent rule to former rule 10.4.2 became rule 28.4.2. The relevant rules have not changed since the revision in 2008.
9. The series of events that led to Mr Radford's complaint began in 2012. The Union invited Mr Radford to become a representative defendant, representing the members of the Union, in a Chancery Division action to obtain judicial guidance as to what it could lawfully do with certain "Unknown Funds". The Union was to be represented by one firm of solicitors and, after some discussion, Mr Radford chose to be represented by another firm which was also to be funded, at least initially, by the Union. An issue arose about the fees charged by the firm of solicitors instructed by Mr Radford. In September 2013 the Union's Hon.Treasurer, Mr Bryn Evans, made a verbal report to the Council about the finances of the Union which Mr Radford considered to be slanderous of him and provided the Council with misinformation. At the subsequent Council meeting in October 2013 the Council approved as correct the minutes of the previous meeting which repeated the same comments.

10. On 6 December 2013, Mr Radford wrote to the Union's General Secretary, Ms Christine Payne, to institute a formal complaint against Mr Evans. On 13 December the General Secretary responded to Mr Radford acknowledging receipt of his complaint. She also set out her understanding of the complaint in order to check that she had correctly understood it and asked for any evidence that Mr Radford wished to rely upon.
11. An extensive correspondence ensued between Mr Radford and the General Secretary before the General Secretary completed her preliminary enquires and effectively rejected Mr Radford's complaint on 19 August 2014. Mr Radford submitted documents that he wished to be considered or referred to documents that he wished to be included on 8, 12, 13, and 22 January 2014 as well as on 5 and 9 February. On 19 February, the General Secretary wrote to Mr Radford commenting that as all the documents were now in, she hoped to complete her preliminary enquiry by 24 March. Mr Radford submitted further documents or referred to missing documents on 25 February and 12 March. On 17 March the General Secretary sent Mr Radford a 136 page 'document' of the material she thought Mr Radford wished to rely upon. Mr Radford submitted further documents on 21 and 28 March and on 1 and 4 April. On 8 April the General Secretary sent Mr Radford a 227 page 'document' and asked if this contained all the material he wished to rely upon. On 25 April Mr Radford commented that this should be adequate. The General Secretary commenced her preliminary enquiry on 12 May and wrote to Mr Radford seeking clarification of various matters on 13 May. Mr Radford responded on 28 May. During the first half of June the General Secretary was away from the office with either work commitments abroad or leave. On 9 July the General Secretary wrote to Mr Evans to obtain his comments on the complaint. He replied by 22 July. The General Secretary was on leave for the first 10 days of August before completing her preliminary enquiries on 19 August.
12. On 19 August 2014 the General Secretary sent Mr Radford her preliminary enquiry report. She had decided that, pursuant to rule 28.4.2, his complaints did not merit being forwarded to the Council for discussion and effectively rejected the complaint. Nevertheless, the final paragraph of her report indicated her intention to inform the Council at its meeting on 2 September that she had dealt with a complaint under rule 28 and had decided that it did not merit being forwarded to the Council. The General Secretary commented that she was doing this even though the rules do not require her to report to the Council.
13. On 22 August 2014 Mr Radford responded to the General Secretary. He stated that her decision was totally unacceptable and that he believed she had broken rule 28, which was a matter he would deal with.
14. Arising out of Mr Radford's response, the General Secretary decided that it would not be appropriate for her to report her decision under rule 28.4.2 to the Council and on 27 August she sent Mr Radford a revised report in which the final paragraph was omitted.
15. Meanwhile, on 26 August 2014 Mr Radford had made a formal complaint to the President of the Union, Mr Sinclair, in which he charged the General Secretary with

a breach of rule 28.4.2 by not having dealt with his complaint within two months of its receipt by her and other matters.

16. The General Secretary concluded her preliminary enquiries into four separate disciplinary complaints in August 2014. One was allowed to proceed to the Council. The other three, including that of Mr Radford, were effectively rejected under rule 28.4.2 on the basis that none of them merited being forward to the Council. In all three cases the General Secretary proposed informing the Council that the complaints had been rejected by her but changed her mind about doing so, having regard to the reaction of the complainants when she told them that this was her intention. She explained in evidence that she believed that she should report these matters to the Council irrespective of the rules as it was widely known by the Council that there had been complaints and she saw the question of whether or not to report them to Council as being politically sensitive. She stated that her role is to be politically neutral, that she did not wish to be seen as supporting any one faction and that, if she did not tell the Council about the other two rejected complaints, it might be perceived as being partisan. I was further told in evidence that since 2008, there had been a total of about eight complaints submitted to the General Secretary under rule 28, two of which had proceeded to the Council to be considered further.
17. On 1 October 2014 the President responded to Mr Radford's complaint. He found that no rule had been broken and that the matter did not merit being brought forward to the Council for discussion. He did not report his decision to the Council.
18. The effect of rule 28 was considered by the Council on 24 February 2015 on a motion from the Greater Manchester and Region General branch. The Council was asked for clarification of the rule rather than a binding interpretation under rule 44.2. It concluded that the period of two months referred to in rule 28.4.2 was triggered by the complaint being received by the Council, not by the General Secretary. It further concluded that the determination of whether a complaint merits being brought to the Council is a matter for the judgement of the person conducting the enquiry, as required by rule 28.4.2.
19. Mr Radford commenced this complaint by a registration of complaint form dated 13 March 2015, received at my office on 16 March.

### **The Essential Facts**

20. Set against the above context, the essential and agreed facts for the determination of this case can be described briefly as follows:
  - 20.1 Mr Radford's complaint to the General Secretary is dated 6 December 2013.
  - 20.2 The General Secretary concluded her preliminary enquiry into this complaint on 19 August 2014, more than eight months after its receipt by her.
  - 20.3 Neither the General Secretary nor the President reported the complaints to the Council following the conclusion of their respective preliminary enquiries.

## The Relevant Statutory Provisions

21. 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.**

*(1) – (2) ...*

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

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

## The Relevant Rules of the Union

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

### **28 Disciplinary procedure**

#### **28.1 Disciplinary Sub-Committee**

*28.1.1 A Disciplinary Sub-Committee shall be elected every two years and shall consider any complaints under this Rule referred to it by the Council. It shall consist of seven members of the Council and shall be established by a ballot of the whole of the Council. The ballot shall take place immediately after the election of the Vice Presidents and Honorary Treasurer under Rule 19.*

#### **28.2 Complaints**

*28.2.1 A member or Officer of the Union (or the personal representative of a deceased member or Officer) who considers that another member or members, or any Officer, Council member or Trustee, has been responsible for any one or more of those actions as defined in Rules 28.3 to 28.3.4 may lay charge(s) to that effect by written notice marked "Complaint" sent to the General Secretary by post or delivered to the Union's office, except a charge by or against the General Secretary in which case such notice shall be sent to the President.*

#### **28.3 Charges**

- 28.3.1 Acted in a manner prejudicial to the interests of the Union.*
- 28.3.2 Committed a breach of these Rules.*
- 28.3.3 Failed to obey a lawful instruction of the Union.*
- 28.3.4 Neglected his or her duties to the Union.*

**28.4 Procedure on receipt of a Complaint**

28.4.1 *On receipt of such notice the General Secretary (or, in the case of a complaint by or against the General Secretary, the President) shall cause such preliminary enquiries to be made as the General Secretary (or President) thinks fit.*

28.4.2 *A complaint will be acknowledged within two weeks of its receipt with the further processes communicated at regular intervals to the complainant. If preliminary enquiries show the complaint to merit being forwarded to the Council for discussion the complaint will be addressed within two months of its receipt and the action agreed communicated to both complainant and the subject of the complaint.*

28.4.3 *If during such preliminary enquiries information becomes available which leads to the member bringing the complaint to withdraw it, no further action shall be taken. This does not prevent the Member, or any other member making the same or similar complaint at another time. In any event, a member making a complaint can withdraw such complaint at any time up to the point that the Council either refers the matter to the Disciplinary Sub-Committee or dismisses it. The General Secretary (or, in the case of a complaint by or against the General Secretary, the President) shall, following the preliminary enquiry, report the matter to the next meeting of the Council.*

28.4.4 *Any report made under Rule 28.4.3 shall, where possible, not disclose the identities of the individuals involved.*

28.4.5 *If the Council considers that it has insufficient information properly to consider the complaint it shall direct the appropriate Officers or members of staff to make further enquiries and to report to a subsequent meeting of the Council.*

28.4.6 *If on receipt of the initial or further report the Council believes the complaint is not sufficiently serious or particularised as to justify disciplinary action, or the consideration of the possibility of it, it shall so inform the person laying the complaint. Otherwise the Council shall refer the charge to the Disciplinary Sub-Committee which shall proceed as provided for under the regulations referred to in Rule 28.1.3.*

28.4.7 *Any person who is the subject of or materially affected by the charge shall take no part in the Council's consideration of the complaint, charge or any penalty as provided for in this Rule. In particular any member of the Council laying such charge or involved as above shall not be present at the Council meeting during any discussion of it or at any subsequent Council discussion where penalties are discussed.*

## **CONSIDERATIONS AND CONCLUSIONS**

### **Complaint One**

23. Mr Radford's first complaint is as follows:

*"On 13 February 2014 Equity breached rule 28.4.2 of the Union's rule book by failing to address Mr Radford's complaint dated 6 December 2013 within two months of its receipt as set out in that rule."*

24. Rules 28.4.2 of the rules of the Union provide as follows:

28.4.2 *A complaint will be acknowledged within two weeks of its receipt with the further processes communicated at regular intervals to the complainant. If preliminary enquiries show the complaint to merit being forwarded to the Council for discussion the*

*complaint will be addressed within two months of its receipt and the action agreed communicated to both complainant and the subject of the complaint.*

## **Summary of Submissions**

25. Mr Radford submitted that his complaint of 6 December 2013 had to be addressed within two months of its receipt and that it was clear from the other references to the word 'receipt' in rules 28.4.1 and 28.4.2 that "receipt" means receipt by the General Secretary. Accordingly, Mr Radford argued that by not concluding her preliminary enquiry into his complaint by 19 August 2014, over eight months later, the General Secretary was in breach of rule 28.4.2.
26. Ms Tuck, for the Union, submitted that the period of two months in rule 28.4.2 could only refer to the time from which it was received by the Council. She argued that this is the only possible grammatical reading of the sentence. She further argued that it can only be after a preliminary enquiry has been concluded that a decision can be reached as to whether it is proper to send a complaint to the Council. Ms Tuck observed that the difficulty experienced by the General Secretary in obtaining all the materials considered relevant by Mr Radford demonstrated the impracticability of imposing a two months maximum for the completion of preliminary enquiries. She also observed that the Council normally meets every month and so the choice of a period of two months within which the complaint is to be addressed fits the schedule of Council meetings. In Ms Tuck's submission, the period of two months relates to the period within which Council must address the complaint from the time it is presented to them.

## **Conclusion – Complaint 1**

27. Mr Radford's complaint requires an interpretation of rule 28.4.2 in the context of rule 28 as a whole. The sentence which requires interpretation is as follows:

"If preliminary enquiries show the complaint to merit being forwarded to the Council for discussion, the complaint will be addressed within 2 months of its receipt and the action agreed communicated to both complainant and the subject of the complaint".

It can be seen that the main clause of this sentence for present purposes is "*the complaint will be addressed within 2 months of its receipt*". That clause is subject to the condition precedent in the previous clause, namely "*If preliminary enquiries show the complaint to merit being forward to the Council for discussion*". Accordingly, by the time the clause relied upon by Mr Radford becomes operative, the preliminary enquiry must already have been concluded. The period of two months cannot therefore have been intended to limit the time within which the preliminary enquiry must be conducted. Further, it is clear from the context that the rule requires the same person or body to "address" the complaint and to "agree" any action. As the process of agreeing something applies more readily to a collective body, such as the Council, than an individual, such as the General Secretary, the interpretation of rule 28.4.2 advanced by the Union is given further weight.



28. For above reasons, I find that rule 28.4.2 does not impose a period of two months from the date of receipt of the complaint by the General Secretary for her to conclude her preliminary enquiry. It rather imposes a period of two months from the date the complaint is first considered by the Council for it to address that complaint.
29. Accordingly, I refuse Mr Radford's application for a declaration that on 13 February 2014 the Union breached rule 28.4.2 of its rules by failing to address his complaint dated 6 December 2013 within two months of its receipt by the General Secretary.

## **Complaint Two**

30. Mr Radford's second complaint is as follows:

"On or about 13 February 2014 Equity breached rule 28.4.3 of the Union's rule book in that Mr Radford's complaint to the General Secretary was not reported to the next meeting of the Council following the preliminary enquiry of the General Secretary."

31. Rule 28.4.3 of the rules of the union provides as follows:

*28.4.3 If during such preliminary enquiries information becomes available which leads to the member bringing the complaint to withdraw it, no further action shall be taken. This does not prevent the Member, or any other member making the same or similar complaint at another time. In any event, a member making a complaint can withdraw such complaint at any time up to the point that the Council either refers the matter to the Disciplinary Sub-Committee or dismisses it. The General Secretary (or, in the case of a complaint by or against the General Secretary, the President) shall, following the preliminary enquiry, report the matter to the next meeting of the Council.*

## **Summary of Submissions**

32. Mr Radford submitted that the straightforward meaning of the last sentence of rule 28.4.3 is that the General Secretary shall, following her preliminary enquiry, report the matter to the next meeting of the Council and that she failed to do so. In his submission, the duty to report complaints to Council applies to all the complaints that are received by the General Secretary, whether or not they merit being forwarded to the Council for discussion or are withdrawn. He argued that the Council has a right to be fully informed of the level of concern within the Union at any time and that one of the ways of the Council being kept so informed is by all complaints being reported to it in a timely way, even if rule 24.4.4 requires them to be anonymised.
33. Ms Tuck, for the Union, submitted that the last sentence of rule 28.4.3 is only engaged if the General Secretary finds that the complaint merits being forwarded to Council for discussion in her preliminary enquiry conducted in accordance with rule 28.4.2. She noted that following the insertion of rule 28.4.2 at the Special Representative Conference in 2008, there was no consequential amendment of rule 28.4.3, leaving the mandatory words "*shall ... report the matter*". Counsel argued that nevertheless rule 28.4.3 must be read within the context of rule 28 as a whole and that it was entirely consistent with rule 28.4.2 for "the matter" which is to be reported to the next meeting of Council to be a reference to the matter which has been considered by the General Secretary as meriting being forwarded to the Council for discussion. Ms Tuck further submitted that as rule 28.4.4 requires any

such report to be anonymised a report of a complaint that does not merit being forwarded to Council would be in the briefest of terms and could only be a matter of information, not for discussion.

### **Conclusions – Complaint Two**

34. The words of rule 28.4.3 contemplate there being both a preliminary enquiry and a report to the Council by the General Secretary following her preliminary enquiry. When rule 28.4.2 was inserted in 2008, there could have been a consequential amendment of rule 28.4.3 to make clear that such a report is only required when the preliminary enquiry finds there is merit in the complaint being forwarded to the Council for discussion. There was no such consequential amendment. I have accordingly asked myself if the context requires a meaning being given to the word “matter” which goes beyond the meaning that a straightforward reading of this sentence first suggests. I observe that the word “matter” does not appear in rule 28.4.2. If it had done so, it would have been helpful in establishing the link between the two sub-rules that the Union seeks to make. I also have regard to the history of complaint handling within the Union and the consequential expectation of members. Prior to 2002, all complaints went directly to the Council with no involvement of the General Secretary. Between 2002 and 2008 the General Secretary could cause such preliminary enquiries to be made as she thought fit but was under a duty to report the matter to the next meeting of Council irrespective of the merits of the case. In the rule changes proposed by the Council in 2008, the same would have applied. What difference then, if any, was made by the introduction of rule 28.4.2 by way of a late amendment at the Special Representative Conference in 2008? In my judgement, neither rule 28.4.2 nor 28.4.3 become unworkable or lose effect if the “matter” in rule 28.4.3 retains the same meaning as it had prior to the 2008 amendments. Further, in a process which has hitherto emphasised the role of the Council, it is entirely consistent that the Council should be advised on the decisions reached by the General Secretary, even if the complaint is not being forwarded to it for discussion in accordance with rule 28.4.2. The Special Representative Conference in 2008 considered that it was appropriate to give the General Secretary the power to filter out complaints that did not merit being forwarded to Council for its detailed consideration but it did not remove the obligation of the General Secretary to inform the Council of the fact that a complaint had been received and the outcome of her preliminary enquiry. Such an approach has the virtue of transparency. Otherwise a suspicion may arise that the General Secretary is wrongfully preventing complaints being considered in accordance with the rules. Ms Payne was clearly aware of this risk to her reputation for impartiality as she had proposed informing Council of the three disciplinary complaints she had effectively filtered out in August 2014.
35. For the above reasons I find that rule 28.4.3 requires the General Secretary to report all complaints to the Council following her preliminary enquiry, whether she finds that they merit being addressed by Council or not. Whilst not called upon to determine the point, I consider that once withdrawn, a complaint ceases to exist and that accordingly the General Secretary no longer has the obligation to report to the Council on a complaint that has been withdrawn.
36. Accordingly, I make the declaration sought by Mr Radford that Equity breached rule 28.4.3 of its rules in that his complaint to the General Secretary dated 6 December

2013 was not reported to the next meeting of the Council following the preliminary enquiry of the General Secretary.

37. Where I make a declaration, I am required by section 108B(3) of the 1992 Act to make an Enforcement Order unless I consider that to do so would be inappropriate. On the facts of this case, I consider that it is appropriate to make an Enforcement Order.
38. The Enforcement Order I make is that by 31 December 2015 the General Secretary shall make a report to the Council on the complaint made by Mr Radford to her on 6 December 2013.
39. The precise content of that report is for the General Secretary to determine. As the circumstances of each complaint may vary, I do not consider it appropriate to prescribe what constitutes "the matter" in rule 28.4.3. That is for the Union to determine, should it see fit. I would however anticipate that most reports would include the date of the complaint, the date the member was informed of the outcome of the preliminary enquiry and which head or heads within rule 28.3 the complaint concerned. I note that rule 28.4.4 provides that "*Any report made under rule 28.4.3 shall, where possibly, not disclose the identities of the individuals concerned*". By the matter being reported to it in accordance with rule 28.4.3 the Council is alerted to an event that a member has, rightly or wrongly, found to be of concern and the General Secretary avoids any allegation of lack of transparency. Should the Council require further information on "the matter" it is in a position to request such information.

### **Complaint Three**

40. Mr Radford's third complaint is as follows:

"On or about 1 October 2014 Equity breached rule 28.4.3 of the union's rule book in that Mr Radford's complaint to the President dated 26 August 2014 was not reported to the next meeting of the Council following the preliminary enquiry of the President."

41. Rule 28.4.3 of the rules of the Union provides as follows:

*28.4.3 If during such preliminary enquiries information becomes available which leads to the member bringing the complaint to withdraw it, no further action shall be taken. This does not prevent the Member, or any other member making the same or similar complaint at another time. In any event, a member making a complaint can withdraw such complaint at any time up to the point that the Council either refers the matter to the Disciplinary Sub-Committee or dismisses it. The General Secretary (or, in the case of a complaint by or against the General Secretary, the President) shall, following the preliminary enquiry, report the matter to the next meeting of the Council.*

42. This complaint falls to be determined in accordance with the submissions and conclusions of Mr Radford's second complaint. It is common ground that the President did not report Mr Radford's complaint of 26 August 2014 to the Council after he had concluded his preliminary enquiry on 1 October 2014.
43. For the reasons given in Mr Radford's second complaint, I make the declaration sought by Mr Radford that Equity breached rule 28.4.3 in that his complaint to the

President dated 26 August 2014 was not reported to the next meeting of the Council following the preliminary enquiry of the President.

44. I further make an Enforcement Order that by 31 December 2015 the President shall make a report to the Council of Equity on the complaint made by Mr Radford to him on 26 August 2014. My comments on Mr Radford's second complaint apply equally to this complaint.

### **Observations**

45. Mr Radford invited me to comment generally on the problems of interpretation of rule 28, following the insertion of rule 28.4.2 by the Special Representative Conference in 2008. I do not propose doing so. The Union is well aware of the issues and any adjustment of its disciplinary code should be a matter for the internal democracy of the Union, should it see fit, rather than quasi judicial interpretation of points not directly in dispute in the application before me. The appropriateness of an initial filter in such complaints procedures is well established. However, the nature of that filter or those filters is best left to the Union to determine.



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

### **REVIEW DECISION**

1. In my decision in this matter dated 22 October 2015 I referred to the breaches of complaints 2 and 3 as having occurred on or about 13 February 2014 and 1 October 2014 respectively. There were similar references to these dates at paragraph 36 and at paragraph 43 of the reasons for my decision.
2. By a letter dated 26 October 2015 the solicitors to Equity, Pattinson & Brewer, requested a review of my decision on the grounds that the dates to which reference is made in my decision as being the dates the breaches occurred are inaccurate. The letter asserts that the breaches as found occurred on or about 2 September 2014 and 7 October 2014 respectively.
3. The Union's letter was copied to Mr Radford and his comment was invited and this was received in his e-mail of 3 November 2015.
4. My review decision follows my consideration of both parties' views.

5. The Union's point in the letter of 26 October was not one raised in the skeleton argument of the Union nor in oral argument before me. Nevertheless, I find that it is a valid point and that my decision should be reviewed accordingly. I do not find anything in Mr Radford's comments that have a bearing on my decision to review.
6. In the reviewed decision I delete the words "on or about 13 February 2014" from the decision I made on the claimant's second complaint and from paragraph 36 of the reasons.
7. In the reviewed decision I also delete the words "on or about 1 October 2014" from the decision I made on the claimant's third complaint and from paragraph 43 of the reasons.

A handwritten signature in black ink, appearing to read 'David Cockburn', with a horizontal line underneath the name.

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