

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

**Mr Ian Murray**

**v**

**Unite the Union**

**Date of Decision**

**2 October 2015**

**DECISION**

Upon application by Mr Ian Murray ("the claimant") under section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

1. Unite the Union having conceded that the election of Mr Davy Brockett to its Executive Council in 2014 was in breach of rule 16.11 of its rulebook, I so declare.
2. 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. The Enforcement Order I make is that Mr Brockett shall forthwith cease to be a member of the Executive Council of Unite the Union and that Unite the Union shall hold a further election for the position on its Executive Council from its Scottish Territorial Constituency vacated by Mr Brockett so that the result of that election is declared no later than 10 January 2016.

**REASONS**

1. Mr Murray brought this application as a member of Unite the Union ("Unite" or "the Union"). He did so by a registration of complaint form which was received at my office on 21 April 2015.
2. Following correspondence with my office, Mr Murray confirmed his complaint in the following terms:

"On or about 23 April 2014 Unite the Union breached rule 16.11 of the Union's rules by allowing Mr Davy Brockett to stand for election to the Executive Committee as a regional representative for the Scotland region at a time when he was employed in Gateshead and was therefore ineligible to stand in that election."
3. I investigated the alleged breach in correspondence. In a letter to my office dated 15 June 2015 the Union acknowledged that Mr Brockett's election in April 2014 was in breach of rule 16.11 of its rules. In a further letter of 22 June 2015 the Union

confirmed that it conceded liability and agreed that I need merely determine what remedy (if any) I considered appropriate. The parties were invited to submit their views on an appropriate Enforcement Order. Mr Murray's submission was received on 7 July 2015 and the Union's submission was received on 5 August 2015. I caused my staff to write to the parties asking if they each consented to the issue of an Enforcement Order (if any) being determined on the basis of the written material before me, without an oral hearing. Both parties did so consent and accordingly this decision is made without there having been an oral hearing.

4. My staff prepared a 72 page bundle of documents for me from the material and correspondence submitted by the parties which I considered together with the rules of the Union.

### **Findings of Fact**

5. Having considered the documentation submitted by the parties and their written representations, I find the facts to be as follows:
6. The Union held elections to its Executive Council ("EC") in 2014 for the electoral period 2014 to 2017. The close of balloting was 23 April 2014. This complaint concerns the election for the Scottish Territorial Constituency on the EC. Mr Davy Brockett was declared elected. The runner up was Mr Eddie Cassidy, the convenor of the Glasgow City Council branch.
7. At the time of his election Mr Brockett was employed in Gateshead, as he had been since February 2011. However, he was a member and a branch officer of the General Services branch in Glasgow.
8. By an email to the General Secretary of 27 September 2014 Ms Agnes Tolmie, a Union member questioned Mr Brockett's employment status at the time of his election to the EC. In a response of 20 October Mr Andrew Murray, the Union's Chief of Staff, responded to this point as follows:

*"It is however the case that his (Mr Brockett) employer is based in Gateshead and that Davy should therefore, under Rule 17.2, be in an appropriate branch based in that region, rather than his present branch in Glasgow, and should have been since commencing his employment in Gateshead. I have raised this with the Regional Secretary.*

*Rule 16.11 specifies that "Executive Council candidates must be members of the electoral constituency they wish to represent. Rule Six and associated EC guidelines require that a candidate for election to the Executive Council be either a workplace representative or a branch officer in employment. Davy qualified at the time of election by virtue of being a branch officer in employment. Had he been in a branch outside Scotland, rule 16.11 would have meant he could not have sought election as a Territorial Representative in that region."*

9. At its meeting on 28 October 2014, the Scottish Regional Committee considered the validity of Mr Brockett's election. It concluded that Mr Brockett had been ineligible to stand as the Scottish Territorial Representative as he worked in Gateshead and by rule 17.2 he should have been in an appropriate branch in the relevant region, the

North East Yorkshire and Humberside region (“the NEYH region”). A number of members of the Regional Committee asked for the matter to be submitted to the EC for its consideration.

10. This matter was considered by the EC at its meeting in December 2014. The EC had before it a paper presented by the General Secretary which concluded there had been a technical breach of the rules and that accordingly Mr Brockett should be required to stand down from the Council and a by-election should be held to fill the vacancy. The General Secretary referred to the investigation that had been carried out by his Chief of Staff, Mr Andrew Murray, and set out the conclusions of that investigation as follows:

“Eligibility to hold lay office is first of all governed by Rule Six which sets out the criteria for a member to be considered an accountable representative of workers. Satisfying these criteria, as interpreted by EC guidance, is essential for all members of constitutional committees, including the Executive Council. The criteria include being a Branch Officer in employment.

At the time of the 2015 Executive Council election Bro Brockett was Secretary of his branch in Glasgow, and had also provided evidence he was employed, so the basic criteria set down by Rule Six were satisfied. Prior to that election Bro Brockett could have been considered to have been covered by the rule book requirement offering protection of members who had been dismissed or victimised as a result of their trade union activity. However, Guidance 6.4.3.1 makes it clear that such protection can extend to the end of the representative's elected term of office, but not beyond, so this consideration could not affect his eligibility to seek re-election to the Council.

Bro Brockett was nevertheless eligible to stand for the Executive Council in general. However, attention must also be drawn to two other rules. Rule 17.2 requires that a member's branch should be allocated on the basis of work place or, in the absence of a work place branch to ‘the local branch most appropriate for their workplace’. Bro Brockett was employed in Gateshead at the time of his re-election, and should therefore have been in a branch in the NEYH region appropriate to his work place (in the food industry) rather than in a Glasgow branch.

Had his branch membership been properly allocated, as it should have been, he would not have been a member of the Scottish Region where he was seeking election as a Regional Representative. Rule 16.11 stipulates that candidates for election to the Executive Council “must be a member of the electoral constituency they wish to represent”. Therefore, had he been in a branch in the NEYH region as he should, Bro Brockett would have been eligible to seek election to the Council as a sectoral representative, or a regional representative for the NEYH region, but not as a regional representative for the Scotland region.”

Notwithstanding the recommendation of the General Secretary, the EC unanimously decided that Mr Brockett should be allowed to remain on the EC. It did so following representations from Mr Brockett and an extensive debate which had regard to the fact that Mr Brockett had since obtained employment in Scotland and to an argument that Mr Brockett's employment in Gateshead was as a result of him having been victimised by his former employer.

11. The present complaint to me by Mr Murray was made by a registration of complaint form dated 17 April 2015, which was received at my office on 21 April 2015.

### **The Relevant Statutory Provisions**

12. 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**

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

#### **RULE 6**

##### **Lay Office**

*6.2 In order to be eligible to be a candidate for election to, or hold office on, the Executive Council and/or any committee, council, or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers, with the exception of Area Activists Committees and Regional Political Committees as specified elsewhere in these rules.*

*6.3 The definition of the term “accountable representative of workers” shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique nature of some industries (e.g. construction, contracting, leisure, rural etc) in formulating such a definition. It must nevertheless include Branch officeholders who are in employment, shop stewards, health & safety, equalities and learning representatives.*

*6.4 It is further required that a fair procedure be developed by the Executive Council to deal sympathetically with cases where a member’s eligibility to stand for election or continue to hold office may be affected by employer victimisation.*

## **RULE 16**

### **Election of Executive Council Members and the General Secretary**

16.1 Subject to the provisions of these rules and the powers of the independent scrutineer, the election of members of the Executive Council and the General Secretary shall be organised and conducted in accordance with the directions of the Executive Council.

.....

16.11 Executive Council candidates must be a member of the electoral constituency they wish to represent.

## **RULE 17**

### **Branches**

17.1 Wherever possible, Branches shall be based on the workplace, although provision shall also be made for local Branches, including local industrial sector branches, and National Industrial Branches as appropriate and as approved by the Executive Council.

17.2 Branch membership shall be allocated on the basis of the workplace if there is a workplace branch at the member's workplace, or the local branch most appropriate for their workplace if there is not a workplace or National Industrial branch.

## **RULE 6 – LAY OFFICE EC GUIDANCE**

### **RULE 6 - EXECUTIVE STATEMENT CARRIED AT THE JUNE 2011 RULES CONFERENCE**

6.4.1 In the event of a workplace representative being sacked due to victimisation for trade union activity, or a union activist being denied employment, a report will be submitted by the Regional Secretary after consultation with the RISC, to the Executive Council which will rule on whether that member should continue to hold office as an accountable representative of workers.

6.4.1.1 Victimisation, including blacklisting, shall be defined as a member being able to show, to the satisfaction of the Executive Council (or such body or person as the Executive Council shall authorise from time to time), that he or she, for reasons of membership of this Union, has been excluded from employment or prevented from obtaining employment by an employer.

## **CONSIDERATIONS AND CONCLUSIONS**

14. Mr Murray's complaint is in the following terms:

*"On or about 23 April 2014 Unite the Union breached rule 16.11 of the Union's rules by allowing Mr Davy Brockett to stand for election to the Executive Committee as a regional representative for the Scotland region at a time when he was employed in Gateshead and was therefore ineligible to stand in that election".*

### **Summary of Submissions**

15. As liability is conceded by the Union, I invited the representations of the parties on whether I should make an Enforcement Order and, if so, on the terms of any such order.
16. Mr Ian Murray, the claimant, submitted that the most appropriate Enforcement Order would be that the unsuccessful candidate in the relevant election, Mr Cassidy, should be declared as having been elected. He considered that there was a precedent of this having been done previously in the Union. Mr Murray argued that this would be in the best interests of everyone in that it would save the expense of a re-run election and would save the division and rancour that there would be should Mr Brockett wish to stand again.

17. By a letter to my office from Mr Andrew Murray dated 5 August 2014, the Union invited me not to make an Enforcement Order, having regard to the views expressed by the EC when rejecting the General Secretary's proposal that the election in question be re-run. He noted the reliance of the EC on the fact that Mr Brockett's employment situation had since changed and that Mr Brockett was now eligible to serve on the EC as a Scottish Territorial Representative as well as "*the circumstances, including employer victimisation, which had let Mr Brockett to temporarily seek employment outside Scotland, the factor which occasioned the breach of Rule 16.11.*" The Union went on to submit that, if I was minded to make an Enforcement Order, I should reject Mr Murray's proposal that the runner up be declared elected. It argued that if Mr Brockett had been debarred from standing in the 2014 election, other candidates may have come forward to contest the election in his place and Mr Cassidy's election could by no means be regarded as automatic. The Union further denied that there was any relevant precedent to the runner up being declared elected in such circumstances. In the Union's submission the only appropriate Enforcement Order would be that the disputed election in the Scottish Territorial Constituency presently held by Mr Brockett should be re-run – in effect a by-election.

## Conclusions

18. The Union having conceded that the election of Mr Brockett to its EC in 2014 was in breach of Rule 16.11 of its rules, I so declare. This decision is reached on the basis of the Union's concession without having heard detailed argument on the correct interpretation of the relevant rules. Should the meaning of those rules be a matter of dispute in any future case, the present decision should not be regarded as providing any authoritative guidance on their interpretation or application.
19. I now consider whether it is appropriate to make an Enforcement Order on the basis of the admitted breach of rule 16.11 and the concession that a person not eligible to seek election has been elected to and remains a member of the EC. In my judgement it is not appropriate that such a situation should continue and I find that an Enforcement Order should be made.
20. As to the terms of the Enforcement Order, I reject the claimant's submission that the losing candidate should be declared elected. Had Mr Brockett not stood in that election there may well have been other candidates. It is by no means certain that Mr Cassidy would have been declared elected unopposed. The Enforcement Order I make is that:
- 20.1 Mr Brockett shall forthwith cease to be a member of the Executive Council of Unite the Union.
  - 20.2 Unite the Union shall hold a further election for the position on its Executive Council from its Scottish Territorial Constituency vacated by Mr Brockett so that the result of that election is declared no later than 10 January 2016.

21. Should there be practical difficulties which render it not possible for the Union to declare the result of the re-run election by 10 January 2016, the parties have liberty to apply.

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

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