

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

**Mr Paul Rowlandson**

**v**

**UNISON: The Public Service Union**

**Date of Decision**

**17 November 2015**

**DECISION**

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

1. By consent, I make a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 4(a) of the rules of its United Utilities branch in that the AGM of that branch in 2015 did not confirm the election by ballot of branch officers and members of the Branch Committee, in that the United Utilities Section of that branch did not elect a convenor in accordance with the branch rules.
2. I refuse the claimant’s application for a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 4(b) of the rules of its United Utilities branch in that the AGM of that branch in 2015 allegedly did not determine the basis of representation in the branch and the number of stewards and other representatives to be elected in each group or workplace.
3. By consent, I make a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 5(b) of the rules of its United Utilities branch in that there had been no election in the United Utilities Section of that branch for a convenor from amongst the stewards in that section.
4. By consent, I make a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 5(c)(ii) of the rules of its United Utilities branch in that nominations for the United Utilities Section convenor of that branch were not invited 12 weeks before the AGM and nomination forms were not made available through the branch secretary and the branch web-site.
5. By consent, I make a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 5(d) of rules of its United Utilities branch in that an election for the position of convenor of its United Utilities Section was not held.

6. I refuse to make the declaration sought by the claimant that UNISON: The Public Service Union imposed disciplinary penalties and/or sanctions on him without following due process as set out in rules 5.1, 5.3 and 7.1 of Section I of its rules.

#### Enforcement Order

7. Pursuant to section 108B(3) of the 1992 Act, I consider it appropriate that I make an enforcement order in respect of the breaches that I have found in complaints one, three, four and five. The order that I make is as follows:

“UNISON: The Public Service Union is to secure that an election is held for the position of convenor of the United Utilities Section of its United Utilities Branch so that the result of that election is available to be confirmed, in accordance with rule 4(a) of the rules of that branch, at the AGM of that branch to be held in March 2016”

### REASONS

1. Mr Rowlandson brought this application as a member of the UNISON: The Public Service Union (“UNISON” or “the Union”). He did so by a registration of complaint form which was received at the Certification Office on 25 March 2015.
2. Following correspondence with my office, Mr Rowlandson confirmed his complaints in the following terms:

#### **Complaint 1**

On or around 12 March 2015 Unison breached rule 4(a) of the Unison United Utilities Branch Rules in that the branch AGM in 2015 did not confirm the election by ballot of branch officers and members of the Branch Committee, in that the United Utilities Section of the Unison Branch did not elect a convenor in accordance with the rules.

#### **Complaint 2**

On or around 12 March 2015 Unison breached rule 4(b) of the Unison United Utilities Branch Rules in that the branch AGM in 2015 did not determine the basis of representation in the branch and the number of stewards and other representatives to be elected in each group or workplace. The non-rule book officer of United Utilities Full Time Representative was ratified at the AGM in 2015 to represent members without the relevant motions and amendments arising at the AGM to approve the Full Time Representative as assuming or superceding the office of convenor for negotiation and consultation with the employer.

#### **Complaint 3**

On or around 12 March 2015 Unison breached rule 5(b) of the Unison United Utilities Branch Rules in that no due process election took place in the United Utilities Section of the Unison Branch for a convenor from amongst the stewards in that section.

#### **Complaint 4**

On or around 12 March 2015 Unison breached rule 5(c)(ii) of the Unison United Utilities Branch Rules in that nominations for the United Utilities Section convenor of the Unison Branch were not invited 12 weeks before the AGM and nomination forms were not made available through the Branch Secretary and the Branch web-site.

#### **Complaint 5**

On or around 12 March 2015 Unison breached rule 5(d) of the Unison United Utilities Branch Rules in that an election for the position of convenor was not held. In particular

nominations for convenor were not invited from section committee/employer groups or any two members employed in that section/group with only members employed in the relevant section/group allowed to participate in the election.

### **Complaint 6**

Unison imposed disciplinary penalties and/or sanctions on Mr Rowlandson without following due process as set out in Section I 5.1, 5.3 and 7.1 of the rules of the union. The penalties applied were those in Section I rule 8.1 and 8.2 of Unison's rules; namely the censuring of Mr Rowlandson and debarring him from events and branch meetings. The dates of the events and branch meeting from which Mr Rowlandson was excluded and censured are as follows:

1. Health & Safety course starting 8 October 2014 one day a week for 10 Weeks
2. Seminar on 10 October 2014 in Harrogate
3. Meeting of Workplace Representatives which was set for 14 October 2014 then postponed to November 2014
4. Seminar on 15 November 2014 in Southport
5. Branch Stewards Meeting on the 28 November 2014

3. I investigated the alleged breaches in correspondence and a hearing took place on 14 October 2015.
4. At the hearing before me Mr Rowlandson represented himself and gave oral evidence. The Union was represented by Mr Andrew Smith of counsel, instructed by Mr Ben Patrick, solicitor, the Union's Legal Officer. Evidence for the Union was given by Mr Kevan Nelson, Regional Secretary of the Union's North West Region. Both witnesses had provided written witness statements. There were also in evidence the rules of the Union, the rules of the UNISON United Utilities branch and a 280 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 Mr Rowlandson for the late submission of the 2011 version of the Employee Relations Framework Agreement. This was added to the bundle as pages 281 to 312. I also accepted an application from the Union for the late submission of the agenda papers for the AGM of the United Utilities Branch in 2015. These were added to the bundle as pages 313 to 342.

### **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 Rowlandson joined North West Water in 1978 as an apprentice electrician. He gained a degree in electrical and electronic engineering and when he left the employment of United Utilities on 30 November 2014 he was employed as a Subject Matter Expert in the Alarm Management Centre. Mr Rowlandson joined UNISON or its predecessor in 1984. In 2012 he was elected as a work place representative, or steward, at his work place in United Utilities, which position he held until he left its employment. On or about 16 September 2014 Mr Rowlandson was also elected as a safety representative. Following a dispute with his employer, Mr Rowlandson was put on gardening leave on or about 16 September 2014 to enable negotiations to take place for an amicable termination of his employment. Mr Rowlandson prefers to refer to this as a period of emergency leave. On 16 September 2014 he was escorted from the premises by his employer. His ability to

access the premises was barred by his employer. His work email account was stopped and colleagues were advised not to contact him. Mr Rowlandson was represented in his negotiations with United Utilities by Colin Baker, Regional Organiser of the Union, and a settlement was agreed on or about 12 December 2014 by which his employment terminated with a compromise agreement and an agreed date of termination of 30 November 2014.

7. United Utilities plc manages the water and waste water for North West England. It was founded in 1995 by the merger of North West Water and Norweb. It has about 5,300 direct employees.
8. UNISON has about 1.3 million members in about 1,100 branches. It is divided into regions. The North West region has about 113 branches of which the United Utilities branch is one. The Regional Secretary of the North West Region is Mr Kevan Nelson.
9. Despite its name, the United Utilities branch of the Union contains more than its members employed at United Utilities. The branch is divided into Sections. Those Sections cover members employed at Capita Customer Management Limited, Electricity North West, E.ON UK, Siemens and Serco as well as United Utilities. The branch has about 1,750 members.
10. The United Utilities section of the United Utilities branch has a collective agreement with United Utilities. It is known as the Employee Relations Framework Agreement (“ER Framework Agreement”). That agreement was made between United Utilities and the four unions it recognises: UNISON, Unite, GMB and Prospect. I was informed that the agreement dates from 2011 and I had before me the versions dated May 2011 and July 2013. This agreement is unusual in one particular respect. The employer retains a right of veto of the person who the Union proposes as its lead representative. The structure to which all the signatory Unions have agreed provides for there to be workplace representatives (or workplace stewards) lead representatives and a full time representative (“FTR”). It also provides that the appointment of the FTR is to be a joint process. The Union is to propose a candidate according to its own internal rules. The company may interview the proposed candidate and may veto that person. Once appointed, the FTR is paid by the company and is treated as being assigned to that role for a period of five years. The FTR is to report directly to the Head of Human Relations at United Utilities and to the full time officer of the relevant Union (although in correspondence the company referred to a dotted line responsibility to the full time officer). All the company’s normal policies and procedures regarding standards of performance and conduct apply to the FTR. Work place representatives within Unison are elected by the members of the workplace. There are then five lead representatives who are elected by the workplace representatives and the person who is to be proposed to the company for the post of FTR is elected by the five lead representatives. In the period up to 2014 the FTR was Tony Goulbourne. He retired in 2014 and was replaced by Brian Scrutton.
11. The United Utilities branch of UNISON has its own rules. These cover the five or so sections within the branch. Branch rule 8 provides for there to be sections and for sections to be led by a convenor who is elected in accordance with branch rule 5(d).

Branch rule 5(d) provides for the method of election, which shall be by the members employed in that section, and for the procedure for the election of branch officers which shall be in accordance with branch rule 5(c). This procedure includes nominations being invited 12 weeks before the branch AGM and nominations being received at least seven weeks before that AGM. The vote is to be conducted by postal ballot. Branch rule 5(b) provides that *“Each section within the branch shall elect a convenor (Senior Steward) from amongst the Stewards in that section in accordance with rule 5(d)”* [misleadingly written in the branch rules before me as rule 6(d)].

12. The role of the branch AGM is provided for in branch rule 4. By branch rule 4(a) the AGM is to “confirm the election by ballot of branch officers and members of the branch committee” as well as other matters. By branch rule 4(b) the AGM is to *“determine the basis of representation in the Branch and the number of Stewards and other Representatives to be elected in each work group or workplace.”* The branch committee is provided for in rule 6. This provides that the branch committee will include, amongst others, the “Convenors for each section”.
13. The Union gave evidence that the practice of the five senior stewards electing the Convenor has been carried out in the United Utilities section of this branch since about 1993 without complaint from any other member. I find that the practice of this section was for the person elected by the lead representative as the FTR to be also recognised as the elected Convenor. Accordingly, the Union concedes that the branch rules relating to the direct election of that Convenor have not been applied.
14. The complaints of Mr Rowlandson fall into two categories. One category relates to the failure of the section to elect its Convenor and the role of the branch AGM. The other category relates to the Union’s alleged disciplinary action in not allowing Mr Rowlandson to attend various courses or meetings between September and November 2014. I shall deal with the facts of each of these categories of complaint separately.

### **The election of section Convenor and the branch AGM**

15. In early August 2014 the then FTR, Tony Goulbourne, indicated that he was going to retire. There followed some email discussion between some branch members about the possible role of a deputy Convenor and the roles of the FTR and Convenor respectively. Mr Rowlandson joined in these discussions. This was at a time when Mr Rowlandson was in dispute with the company and about to be sent on gardening leave. On 19 August, the Branch Secretary, John Jones, invited those workplace representatives interested in becoming the FTR to put themselves forward for consideration at a meeting of UNISON representatives following an upcoming Joint Trade Union Forum meeting. By an email to Mr Jones of 20 August, Mr Rowlandson expressed his concern that they were moving to an election before there had been a debate on the role of the FTR, which he considered lacked transparency. Nevertheless, by an email to the Branch Chair, Mr McDermott, of 21 August Mr Rowlandson submitted his nomination for the FTR role together with an election address. In the election address he stated that he hoped to gain the support of members “as Convenor and FTR”.

16. The Joint Trade Union Forum met on 26 August 2014 but the voting for the position of FTR was not completed for a few days afterwards by email. On 1 September, Mr Jones sent an email to the Regional Organiser, Mr Baker, informing him that Brian Scrutton had been elected. This email recorded Mr Jones' thanks to Paul Rowlandson and Barry Fidler for their contributions. They were the other candidates.
17. On 16 September 2014 Mr Rowlandson was both accredited by the Union as a safety representative and escorted from the premises by his employer to commence a period of gardening leave.
18. On 14 October 2014 there was to be a meeting of the workplace representatives of the United Utilities section at which Mr Rowlandson proposed to raise his concerns over the selection of the FTR and the approaching ratification of the FTR as Convenor. This meeting was postponed to 28 November. Mr Rowlandson did not attend the meeting on 28 November. The minutes of that meeting record that Brian Scrutton was elected as Convenor.
19. The AGM of the whole United Utilities branch took place in Warrington on 12 March and Whitehaven on 13 March 2015. The agenda papers for the AGM contained schedules of those elected to branch office. There were 23 branch officers elected (including Brian Scrutton as Branch Treasurer). In addition, the schedules show the elected workplace Stewards at each of the six different employers within the branch. Within the United Utilities section there were 35 elected workplace stewards and 35 separately elected safety representatives. The minutes of the AGM record that the AGM ratified the election of branch officers, workplace stewards, safety representatives and union learner representatives.

#### **The alleged discipline of Mr Rowlandson**

20. Mr Rowlandson alleges that he was disciplined by the Union by being excluded from the various courses and meetings which he has particularised in his sixth complaint. There was not a great deal of evidence about these alleged disciplinary events but I set out below the main facts that were before me. It must be remembered that these occurred against the background of Mr Rowlandson's dispute with the company, his exclusion from the company's premises on 16 September 2014 and the termination of his employment on 30 November, with a compromise agreement.
21. **The health and safety course starting 8 October 2014, one day a week for ten weeks.** This was a course at the Wirral Metropolitan College. Mr Rowlandson submitted his application for this course on 12 September 2014. On 24 September Mr Ian Cole, the branch health & safety officer, cancelled his place on it following advice that he had been placed on indefinite gardening leave. Mr Cole provisionally reserved a place for Mr Rowlandson on the next available course due to begin on 19 January 2015.
22. **The seminar on 10 October 2014 in Harrogate.** This is described in correspondence as being a Water Environment and Transport (WET) course between 10-12 October. In an email of 1 September 2014 Mr Jones informed Mr Rowlandson that they had had a cancellation and, as Mr Rowlandson was the first

substitute, he was asked if he was still available to attend. Mr Jones later informed Mr Rowlandson that his place had been withdrawn, following him having been put on gardening leave.

23. **The meeting of workplace representatives set for 14 October 2014 and then postponed to 28 November** Mr Rowlandson confirmed at the hearing that the meetings to which he refers in the third and fifth particular of his sixth complaint are in fact the same meeting which was postponed. Mr Rowlandson relies upon an email to him from Brian Scrutton on 3 October 2014 in which Mr Scrutton states “You are unable to attend this meeting or any other trade union meetings or events as you are currently suspended”. Mr Rowlandson maintains that this is evidence that he was suspended by the Union and therefore disciplined. I find this to be a misreading of Mr Scrutton’s email, which is clearly a reference to Mr Rowlandson having been suspended by the company. Indeed, this was the initial reading of Mr Rowlandson as, by an email of the same date to Mr Scrutton, he stated “To my understanding, I am taking emergency leave as directed by Paula Steer and Julie McGovan and am not suspended”. As to the postponed meeting on 28 November, Mr Baker, the Regional Organiser, sent Mr Rowlandson an email on 27 November stating that “Given the circumstances it would not be appropriate for him (Brian Scrutton) to invite you”.
24. **The seminar on 15 November 2014 in Southport.** This was a Branch Development Seminar held on 14 and 15 November. A general invitation to the seminar was made to all workplace representatives on 14 August 2014, which Mr Rowlandson accepted on 20 August. After Mr Rowlandson was sent on gardening leave, Mr Jones withdrew this invitation, explaining that the seminar was being facilitated by external trainers and was designed to assist the branch moving forward. He stated that Mr Rowlandson’s place on this course should go to another person who would be in a position to put the outcomes immediately into practice in the work place, unlike Mr Rowlandson whose absence could be for a considerable period.
25. Mr Rowlandson made a formal complaint about his exclusion from some of these meetings by way of an email to Mr Jones of 14 October 2014. His complaint was examined by Ms Lynne Morris, the regional manager in the North West Region, who conducted a number of interviews and invited written responses. She presented an eight page report on 2 March 2015 in which she concluded that Mr Rowlandson had not been treated unfairly by the branch. By a letter to Mr Rowlandson dated 6 March 2015, Mr Nelson rejected his complaint stating that he was satisfied that the branch officers concerned had acted appropriately and in the best interests of the branch. Mr Rowlandson appealed this decision to the Membership Liaison Unit, which rejected his appeal by a letter dated 27 July 2015.
26. Mr Rowlandson commenced this application to me by a registration of complaint form received at the Certification Office on 25 March 2015.

## The Relevant Statutory Provisions

27. 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

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

### **UNISON rules**

#### **I Disciplinary action**

1 All members of the Union have a duty to follow the Rules of the Union.

2 Disciplinary action may be taken against any member who:

2.1 disregards, disobeys or breaks any of the Rules or regulations of the Union applicable to her or him, or any instruction issued in accordance with the Rules;

2.2 acts in a manner prejudicial or detrimental to the Union, her/his branch, Region or Service Group;

2.3 commits

(i) any act of discrimination or harassment on grounds of race, gender, marital status, sexuality, gender identity, disability, age, creed or social class; or

(ii) any other discriminatory conduct which is prejudicial to the Aims and Objects set out in Rule B.1, B.2 and B.3.

2.4 misappropriates any money or property belonging to the Union which is under her or his control, or fails properly to account for money which was, is or should be under her or his control or defrauds the Union in any way.

3 The National Executive Council shall have the power to exclude or expel, as the case may be, from membership of UNISON any individual who gives encouragement to, or participates in the activities of, or is a member of, a political party or organisation whose constitution, aims or objectives is/are expressly or impliedly contrary to the equality



objectives of UNISON set out in Rules A3 and/or B1.2 and/or B1.3 of the UNISON Rule Book. This specifically includes the British National Party, the National Front and similar parties or organisations as decided from time to time by the National Executive Council.

4 Any disciplinary penalty imposed by any of COHSE, NALGO or NUPE shall continue in effect as if it had been imposed in the first instance by the Union.

5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,

- 1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;
- 2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.

5.2 It shall be open to the General Secretary to delegate all or part of the investigation to such person or persons as she/he thinks fit.

5.3 In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.

6 Disciplinary charges may be brought against a member by the member's Branch, Service Group Executive or by the National Executive Council or the General Secretary acting on its behalf.

7 The following arrangements shall apply for the hearing of disciplinary charges:

7.1 a disciplinary charge brought by a branch shall first be heard by its Disciplinary Sub-Committee unless the member belongs to the Branch Committee in which Disciplinary action case it shall first be heard by a Disciplinary Sub-Committee of the National Executive Council;

7.2 a disciplinary charge brought by a Service Group Executive or the National Executive Council (or the General Secretary acting on its behalf) shall be heard first before a Disciplinary Sub-Committee of the National Executive Council; provided always that the Disciplinary Sub-Committees referred to at 1.7.1 and 1.7.2 above shall consist of no less than three members.

8 Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the Branch

- .1 censure of the member;
- .2 debarring the member from attending any branch meeting for a period not exceeding 24 months;
- .3 referral of the matter to the National Executive Council for consideration of a more serious penalty including suspension or expulsion;

By the National Executive Council

- 4 censure of the member
- 5 debarring the member from holding any Union office for whatever period seems to it to be appropriate, up to a maximum of 36 months;
- 6 suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate, up to a maximum of 36 months;
- 7 expulsion of the member from the Union.

## **UNISON United Utilities Branch Rules**

### **4 Branch Structure**

- a] *There will be an Annual General Meeting (AGM) of the Branch held between the 1<sup>st</sup> January and 31<sup>st</sup> March, to confirm the election by ballot of Branch Officers and members of the Branch Committee, to receive the Branch accounts and report on Branch development from the Branch Committee.  
The AGM may comprise one meeting or a series of aggregate meetings based on sections or geographical areas in order to maximise the active participation of members.*
- b] *The AGM will determine the basis of representation in the Branch and the number of Stewards and other Representatives to be elected in each work group or workplace.*
- c] *The tenure of office for Branch Officers and Stewards will commence once ratified and will run until the next years AGM.*
- .....
- f] *Sections will be established for each bargaining group covered by the Branch to provide for the participation and representation of members in that section in accordance with Rule 8 below.*
- g] *The Branch Committee will comprise all Branch Officers (see rule 6 below), and Stewards and will be responsible for the general organisation and development of the Branch and for policy and decision making on matters affecting all members within the Branch between general meetings.*
- h] *The Core Officers Group will be responsible for the day to day management of the Branch in accordance with the decisions and authority delegated by the Branch Committee. Its membership and role is as described in Rule 7 below.*

### **5 Branch Officers**

a] *The Branch shall elect the following Officers annually in accordance with rule 5c:*

- Chairperson*
- Vice Chairperson*
- Secretary*
- Assistant Branch Secretary*
- Treasurer*
- Assistant Treasurer*
- Education Co-ordinator*
- Lifelong Learning Co-ordinator*
- Equality Officer(s)*
  - a) *Black Members Officer*
  - b) *Disabled Members Officer*
  - c) *Lesbian, Gay, Bi-sexual & Transgender Members Officer*
  - d) *Women's Officer*
- Health and Safety Officer*
- Communications Officer*
- Magazine Editor*
- International Officer*
- Membership Officer*
- Young Members Officer*
- Welfare Officer*
- Labour Link Officer (elected by the members who pay the political levy only)*
- Retired Members' Secretary (elected by the retired members)*
- Auditors [2] [who will not have a seat on the Branch Committee]*
- Others to be determined as necessary for the effective operation of the Branch*

b] Each section within the Branch shall elect a Convenor (Senior Steward) from amongst the Stewards in that section in accordance with Rule 6d.

c] Election of Branch Officers:

- i. Branch Officers may be nominated by the Branch Committee or any two members, with the exception of the Labour Link Officer and Retired Members Secretary as in Rule 5a.
- ii. Nominations will be invited 12 weeks before the AGM and nomination forms will be made available through the Branch Secretary and the Branch web-site. All nominations must be received in writing at least 7 weeks before the AGM.
- iii. Each nominee will be notified and given the right to withdraw not later than 6 weeks before the AGM.
- iv. If there is more than one candidate, a vote will be held.
- v. The vote will be conducted by postal ballot in accordance with the procedure and timescales contained in the Code of Good Branch Practice.
- vi. Where no valid nomination has been received before the deadline, nominations may be called for and candidate elected at the AGM, or endorsed by the Branch Committee subject to ratification by the next general meeting.

d] Election of Convenors

The process for nomination and election shall be as in (c) save that the nomination may be by the section committee/employer groups or any two members employed in that section/group, and only members employed in the relevant section/group may participate in the election.

#### **6 Branch Committee**

a] Representation on the Branch Committee will be agreed by the AGM and will include:

- Branch Officers
- Representatives of Self-Organised Groups
- Convenors for each section
- All Stewards

#### **7 Core Officers Group**

a] The Core Officers Group shall comprise the Branch Secretary, Branch Chairperson, Branch Treasurer, Section Convenors and others as appropriate.

#### **8 Sections**

a] Sections comprise all members within the relevant Service Group and/or Bargaining Group and will have autonomy within the Branch in respect of collective bargaining with their employer(s) only, subject to the policies and any guidelines and procedures of the Branch, Region and or National Union.

b] Sections will be led by a Convenor elected in accordance with Rule 5d and who will be the senior accredited Representative within the section, and a committee of all accredited Representatives within the section.

## **CONSIDERATIONS AND CONCLUSIONS**

### **Complaint One**

29. Mr Rowlandson's first complaint is as follows:

#### **Complaint 1**

"On or around 12 March 2015 Unison breached rule 4(a) of the Unison United Utilities Branch Rules in that the branch AGM in 2015 did not confirm the election by ballot of branch officers and members of the Branch Committee, in that the United Utilities Section of the Unison Branch did not elect a convenor in accordance with the rules."

30. Branch rule 4(a) of the rules of the United Utilities Branch of the Union provides as follows:

**4 Branch Structure**

a] *There will be an Annual General Meeting (AGM) of the Branch held between the 1<sup>st</sup> January and 31<sup>st</sup> March, to confirm the election by ballot of Branch Officers and members of the Branch Committee, to receive the Branch accounts and report on Branch development from the Branch Committee.*

*The AGM may comprise one meeting or a series of aggregate meetings based on sections or geographical areas in order to maximise the active participation of members.*

31. The Union concedes liability in this complaint. It accepts that it failed to elect a Convenor for its United Utilities section in accordance with the branch rules so that the Convenor's election could be confirmed at the branch AGM in 2015. I find that this concession was correctly made.
32. For the above reasons and by consent, I make a declaration that on or around 12 March 2015 the Union breached rule 4(a) of the rules of its United Utilities branch in that the AGM of that branch in 2015 did not confirm the election by ballot of branch officers and members of the branch committee, in that the United Utilities section of that branch did not elect a Convenor in accordance with the branch rules.

## Complaint Two

33. Mr Rowlandson's second complaint is as follows:

**Complaint 2**

"On or around 12 March 2015 Unison breached rule 4(b) of the Unison United Utilities Branch Rules in that the branch AGM in 2015 did not determine the basis of representation in the branch and the number of stewards and other representatives to be elected in each group or workplace. The non-rule book officer of United Utilities Full Time Representative was ratified at the AGM in 2015 to represent members without the relevant motions and amendments arising at the AGM to approve the Full Time Representative as assuming or superceding the office of convenor for negotiation and consultation with the employer."

34. Branch rule 4(b) of the rules of the United Utilities Branch of the Union provides as follows:

**4 Branch Structure**

b] *The AGM will determine the basis of representation in the Branch and the number of Stewards and other Representatives to be elected in each work group or workplace.*

## Summary of Submissions

35. Mr Rowlandson submitted that branch rule 4(b) requires the AGM to determine the basis of representation and the number of representatives (in addition to workplace stewards) to be elected at each workplace. In his submission, the FTR under the ER Framework Agreement was a representative of workers elected for these purposes and that accordingly the position of the FTR was one that should be

determined by the AGM, in the sense that the AGM should expressly approve it following a fully informed debate by the members present. He observed that the ER Framework Agreement was signed by the FTR as representing UNISON and that it could not therefore be argued that he was not a representative for the purposes of branch rule 4(b). He further noted the places in the ER Framework Agreement in which there was a reference to the FTR being elected. He argued that the purpose of branch rule 4(b) was to ensure that no one purports to act on the behalf of members without being sanctioned to do so by the branch. He further argued that the FTR is elected in a workplace as he is elected by the five lead representatives who vote for the person to be proposed to the company as the FTR. He further observed that the minutes of the branch AGM in 2015 contained no reference to motions or amendments to accept Brian Scrutton as the UNISON FTR to represent members or to the post of FTR taking precedence over the section Convenor.

36. Mr Smith for the Union, submitted that branch rule 4(b) does not require the branch AGM to ratify the FTR post, as the FTR post is not one which falls within the 'branch officer' or 'branch committee' category of representation. He noted that the AGM in 2015 did in fact ratify the election of branch officers as well as those of the workplace stewards, safety representatives, union learner representatives and equality representatives. Mr Smith stated that in 2011 the workplace representatives at United Utilities had approved the ER Framework Agreement and with it the role of the FTR. He further observed that the role of the FTR was not that of a branch representative whose elections are provided for in the branch rules. In his submission, the role of the FTR is unique. It is not one open to the Union to elect as it is subject to a veto by the employer. He argued that the role of the FTR is not covered by the rules. Mr Smith observed that this is not surprising as it was created after the rules were adopted. He also noted that the ER Framework Agreement and the FTR are specific to the United Utilities section, whereas the branch rules relate to all the sections in the branch.

### **Conclusion**

37. The reality of the situation is that four unions agreed the ER Framework Agreement with United Utilities on the basis that it was advantageous to their members. This agreement provided for there to be an FTR for each participating union, irrespective of whether such a position was reflected in the rules or branch rules of each union. In the case of UNISON, there was no clear fit for the FTR within the branch rules of the United Utilities branch. The branch rules do not provide for an employer veto nor do they provide for a period of office of five years. I find that the position of FTR operated outside the branch rules of the United Utilities branch. The outcome of this arrangement was predictably messy. The person who became FTR was treated as the de factor Convenor of the United Utilities section and some constitutional façade was given to this by the workplace stewards declaring the person as having been elected as section Convenor, as happened at the meeting on 28 November 2014. The branch rules provide for no such indirect election of the Convenor by the workplace stewards. Nevertheless, I am informed that this arrangement was well known in the United Utilities section and no one took exception to it until the present complaint.

38. Applying the reality of the situation to the present branch rules, I find that branch rule 4(b) applies only to those representative positions which are provided in the branch rules. The position of FTR is not provided for in the branch rules and accordingly branch rule 4(b) creates no obligation on the branch AGM to recognise or “determine” that position. Whilst the pragmatic course taken by the Union may have had many merits, it did so at the expense of strict compliance with the branch rules. However, the branch rules with which that course conflicted are those relating to the election of the section Convenor (which is admitted) not branch rule 4(b).
39. For the above reasons I refuse Mr Rowlandson’s application for a declaration that on or about 12 March 2015 the Union breached rule 4(b) of the branch rules of its United Utilities branch in that the branch AGM in 2015 allegedly did not determine the basis of representation in the branch and the number of Stewards and other representatives to be elected in each group or work place.

### **Complaint Three**

40. Mr Rowlandson’s third complaint is as follows:

#### **Complaint 3**

“On or around 12 March 2015 Unison breached rule 5(b) of the Unison United Utilities Branch Rules in that no due process election took place in the United Utilities Section of the Unison Branch for a convenor from amongst the stewards in that section.”

41. Branch rule 5(b) of the rules of the United Utilities Branch provides as follows:

#### **5 Branch Officers**

*b) Each section within the Branch shall elect a Convenor (Senior Steward) from amongst the Stewards in that section in accordance with Rule 6*

42. The Union concedes liability in this complaint. It accepts that it failed to elect a Convenor of its United Utilities section in accordance with the branch rules. I find that this concession was correctly made.
43. For the above reasons and by consent, I declare that on or around 12 March 2014 the Union breached branch rule 5(b) of the rules of its United Utilities branch in that there had been no election in the United Utilities Section of that branch for a Convenor from amongst the stewards in that section.

### **Complaint Four**

44. Mr Rowlandson’s fourth complaint is as follows:

#### **Complaint 4**

“On or around 12 March 2015 Unison breached rule 5(c)(ii) of the Unison United Utilities Branch Rules in that nominations for the United Utilities Section convenor of the Unison Branch were not invited 12 weeks before the AGM and nomination forms were not made available through the Branch Secretary and the Branch web-site”.

45. Branch rule 5(c)(ii) of the rules United Utilities Branch provides as follows:

**5 Branch Officers**

*c] Election of Branch Officers:*

*i. ....*

*ii. Nominations will be invited 12 weeks before the AGM and nomination forms will be made available through the Branch Secretary and the Branch web-site. All nominations must be received in writing at least 7 weeks before the AGM.*

46. The Union concedes liability in this complaint. It accepts that it failed to elect a Convenor for its United Utilities section in accordance with branch rule 5(c)(ii). I find that this concession was correctly made.

47. For the above reasons and by consent, I declare that on or around 12 March 2015 the Union breached branch rule 5(c)(ii) of the rules of its United Utilities branch in that nominations for the Convenor of the United Utilities section of that branch were not invited 12 weeks before the AGM and nomination forms were not made available through the Branch Secretary and the Branch website.

### **Complaint Five**

48. Mr Rowlandson's fifth complaint is as follows:

**Complaint 5**

"On or around 12 March 2015 Unison breached rule 5(d) of the Unison United Utilities Branch Rules in that an election for the position of convenor was not held. In particular nominations for convenor were not invited from section committee/employer groups or any two members employed in that section/group with only members employed in the relevant section/group allowed to participate in the election."

49. Branch rule 5(d) of the rules of the United Utilities Branch provides as follows:

**5 Branch Officers**

*d] Election of Convenors*

*The process for nomination and election shall be as in (c) save that the nomination may be by the section committee/employer groups or any two members employed in that section/group, and only members employed in the relevant section/group may participate in the election.*

50. The Union concedes liability in this complaint. It accepts that it failed to elect a Convenor for its United Utilities section in accordance with branch rule 5(c)(ii). I find that this concession was correctly made.

51. For the above reasons and by consent, I make a declaration that on or around 12 March 2015 UNISON: The Public Service Union breached rule 5(d) of rules of its United Utilities branch in that an election for the position of Convenor of its United Utilities Section was not held.

### **Complaint Six**

52. Mr Rowlandson's sixth complaint is as follows:

**Complaint 6**

"Unison imposed disciplinary penalties and/or sanctions on Mr Rowlandson without following due process as set out in Section I 5.1, 5.3 and 7.1 of the rules of the union."

The penalties applied were those in Section I rule 8.1 and 8.2 of Unison's rules; namely the censuring of Mr Rowlandson and debarring him from events and branch meetings. The dates of the events and branch meeting from which Mr Rowlandson was excluded and censured are as follows:

1. Health & Safety course starting 8 October 2014 one day a week for 10 Weeks
2. Seminar on 10 October 2014 in Harrogate
3. Meeting of Workplace Representatives which was set for 14 October 2014 then postponed to November 2014
4. Seminar on 15 November 2014 in Southport
5. Branch Stewards Meeting on the 28 November 2014

53. Rules 5.1.5.3, 5.7, 8.1 and 8.2 of Section I of the rules of the Union provide as follows:

***I Disciplinary action***

*5.1 Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,*

*.1 the member's Branch Committee or Service Group Executive will investigate whether the charges are justified;*

*.2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.*

*5.3 In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.*

*7 The following arrangements shall apply for the hearing of disciplinary charges:*

*7.1 a disciplinary charge brought by a branch shall first be heard by its Disciplinary Sub-Committee unless the member belongs to the Branch Committee in which Disciplinary action case it shall first be heard by a Disciplinary Sub-Committee of the National Executive Council;*

*8 Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:*

*By the Branch*

*1 censure of the member;*

*2 debarring the member from attending any branch meeting for a period not exceeding 24 months;*

## **Summary of Submissions**

54. Mr Rowlandson submitted that he was excluded from or prevented from attending each of the courses or meetings set out in the particulars of this complaint and that the detriment so imposed on him could only be properly imposed under the rules if the Union's disciplinary procedures in section I of the main rules of the Union were followed. In establishing that he was disciplined Mr Rowlandson relied upon Mr Scrutton's email to him of 3 October 2014 in which Mr Scrutton stated that he was suspended and Mr Baker's email to him of 27 November 2014 in which Mr Baker stated that it was not appropriate for him to be invited to the meeting of workplace representatives on 28 November. Mr Rowlandson further relied upon the conclusions in the report of Ms Lynne Morris of 2 March 2015 in which she stated:

*"... colleagues expressed genuine concern that they believed he [Mr Rowlandson] was in danger of bringing UNISON into disrepute and once suspended from work he sought to use his position within the branch to cause further disruption. I am aware that this*



*may have influenced some of the thinking of Mr Rowlandson's exclusion from both Harrogate and Southport events. Although the branch were able to highlight similar occasions when the same logic had been previously applied to other stewards."*

Mr Rowlandson submitted that his exclusion from these courses and meetings was done with a punitive intent to prevent discussion of the rules of the FTR and Convenor and to prevent him from being considered for election as Convenor.

55. Mr Smith, for the Union, submitted that the Union had no reasonable grounds to think that Mr Rowlandson might be guilty of a disciplinary offence and so did not carry out any form of disciplinary investigation or subject Mr Rowlandson to any disciplinary charge or disciplinary proceedings. Counsel referred to the case of **UNISON v. Gallagher (2005) EAT/0280/05** in which he noted that the Employment Appeal Tribunal held that in order for the disciplinary rules of a union to be engaged, the union had to act with a disciplinary purpose or take action which was punitive in nature. In Mr Smith's submission, Mr Rowlandson was excluded from the relevant courses and/or meetings for reasons which were within the Union's discretion and which, in any event, were not for a disciplinary purpose or punitive in nature. He referred to the known fact of Mr Rowlandson's dispute with his employer, his exclusion from the employer's premises on gardening leave, his representation by Colin Baker in the negotiations that led to his compromise agreement and to the reasonably held belief that Mr Rowlandson would not be returning to work. In these circumstances, counsel argued that it was clearly more appropriate for a member to attend a training course who could apply the skills learned for the benefit of fellow employees at United Utilities than for someone to attend who was about to leave the employment of United Utilities. Mr Smith argued that the decisions taken to exclude Mr Rowlandson from the courses and the meeting were taken in good faith, were within the range of reasonable responses and were not taken with disciplinary intent. He went on to submit that if the Union acted in breach of rule in excluding Mr Rowlandson from the workplace meeting on 28 November 2014, it did not do so with a disciplinary intent and that accordingly the disciplinary rules of the Union were not engaged.

### **Conclusions- Complaint Six**

56. I have found in previous cases that not all acts taken by a union which result in detriment to a member amount to disciplinary action taken by the union against that member. In many cases, a union will exercise a discretion which results in such a detriment. This is inevitable in a situation in which the interests of many members have to be balanced and the finances of the union used to the greatest effect. On the other hand, a union cannot circumvent its own disciplinary rules by taking disciplinary action against a member under the guise that it is merely exercising an administrative discretion. Such cases will be extremely rare and will require evidence sufficient to establish the bad faith that it would be necessary to prove.
57. On the facts of this case, in my judgement, Mr Rowlandson falls a long way short of establishing such bad faith. Undoubtedly action was taken against him to his detriment. However there were obvious reasons why that action was taken. I find that all those who took the action of which Mr Rowlandson complains had a reasonable belief that his employment would shortly terminate. Indeed, Mr Rowlandson accepted in evidence that the negotiations with his employer

proceeded on the basis that the only prospect of his employment continuing was if an Employment Tribunal ordered his reinstatement of reengagement. Against that background, the branch officers had to decide how to allocate the Union's relatively scarce training resources. I accept the Union's evidence that Mr Rowlandson's exclusion from the various training courses was not a disciplinary act to punish him but was a recognition that he was unlikely to be able to apply the training for the benefit of Union members at United Utilities. The Union's position with regard to the meeting of workplace representatives on 28 November 2014 is less sustainable. Mr Rowlandson remained a Union representative and was therefore entitled to attend that meeting, especially as he could do so by video link. However, I observe that this meeting took place just two days before his employment terminated when his continued participation in the future affairs of the section was of questionable value. On balance, I find that whilst his exclusion from this meeting may or may not have been a breach of a rule relating to attendance at meetings, it was not an action taken with disciplinary intent or to punish Mr Rowlandson. Accordingly, it is my judgement that the actions about which Mr Rowlandson complains were not disciplinary actions which should have engaged section I of the main rules of UNISON. There were therefore no breaches of the individual rules within section I as alleged by Mr Rowlandson.

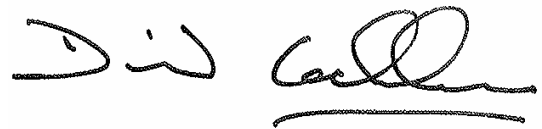
58. For the above reasons I refuse to make the declaration sought by Mr Rowlandson that the Union imposed disciplinary penalties and/or sanctions on him without following due process as set out in rules 5.1, 5.3 and 7.1 of section I of its rules.

### **Enforcement Order**

59. Where I make a declaration I am required by section 108B(iii) of the 1992 Act to make an Enforcement Order unless I consider that to do so would be inappropriate. I have made a declaration in respect of Mr Rowlandson's complaints one, three, four and five.
60. I was invited by the Union not to make an Enforcement Order on the basis that the United Utilities branch had agreed at a meeting on 12 October 2015 to amend the branch rules to reflect the current practice of indirectly electing the FTR and not directly electing a Convenor. I was informed that the necessary amendments were currently being drafted and would be put to the branch AGM to be held in March 2016.
61. Whilst commending the Union for making the appropriate concessions in this case and for proposing to change the branch rules, I find the proposed rule changes to be too speculative at this stage on the material before me. The best intentions of the branch officers may not be realised or may not be sufficient to deal with the problem. In these circumstances I find it appropriate to make a single Enforcement Order in respect of the four complaints that I have upheld.

62. The Enforcement Order that I make is as follows:

“UNISON: The Public Service Union is to secure that an election is held for the position of convenor of the United Utilities Section of its United Utilities Branch so that the result of that election is available to be confirmed, in accordance with rule 4(a) of the rules of that branch, at the AGM of that branch to be held in March 2016”

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

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