

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

Mr David Beaumont (No. 4)

and

Ms Lesley Mansell

v

Unite the Union

Date of Decisions

15 May 2015

DECISIONS

Upon application by Mr David Beaumont and Ms Lesley Mansell (“the claimants”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

1. I make a declaration that Unite the Union (“the Union”) breached rule 6.2 of its rules in allowing Ms Malone to hold office on the Executive Council of the Union from about 1 May 2014 to about 15 December 2014 when she was not eligible to do so as she was not then an “accountable representative of workers” according to rule 6.2.
2. I make a declaration that Unite the Union breached rule 16.8 of its rules on or about 13 January 2014 when branch LE/2000 convened a nomination meeting without having given correct notice of that meeting.
3. I refuse the claimants’ application for a declaration that on or about 19 April 2014 and/or on or around 22 May 2014 Unite the Union breached rule 16.24 of its rules by the Union’s General Secretary and its Chief of Staff having not passed a complaint made by member Kevin Cook to the Executive Council.
4. I refuse the claimants’ application for a declaration that on or about 23 July 2014 Unite the Union breached rules 16.23 and 16.28 of its rules by the Union's Election Commissioner allegedly failing to adjudicate and/or failing to endeavour to adjudicate on a complaint made by Ms Mansell.
5. I refuse the claimants’ application for a declaration that on or about 23 July 2014 Unite the Union breached rule 16.3 of its rules by allegedly having failed to ensure that its Election Commissioner adjudicated on the complaint brought by Ms Mansell

and/or failed to appoint a replacement Election Commissioner when the existing one allegedly declined to adjudicate.

REASONS

1. Mr Beaumont made two separate applications to me as a member of Unite the Union (“the Union” or “Unite”).
2. His first application was made by a registration of complaint form which was received at my office on 10 August 2014 (“Mr Beaumont’s first application”). Following correspondence with my office, Mr Beaumont confirmed his complaint in the following terms:

Complaint 1

In breach of Rule 6.2 of the Rules of the Union, Lizanne Malone held office on the Executive Council of the Union from about 12 March 2014 to 15 December 2014 when she was not eligible to do so as she was not an “accountable representative of workers” according to Rule. Lizanne Malone resigned as Branch Chair of BASSA LE/2000 on or around 12 March 2014 and also retired from her work shortly after this date. This meant that Lizanne Malone was no longer a branch officer in employment and had ceased working within the industry of her branch. For these reasons she was not eligible to sit on the Executive.

3. Mr Beaumont made a second application by a registration of complaint form which was received in my office on 21 August 2014 (“Mr Beaumont’s second application”). On 15 October 2014, a registration of complaint form was received from Ms Lesley Mansell. Ms Mansell made the same complaints, in the same terms, as did Mr Beaumont in his second application and named Mr Beaumont as her representative.
4. On 28 November 2014, I directed that the complaints made in Mr Beaumont’s second application and those made in Ms Mansell’s application should be consolidated and heard together. Following correspondence with my office, these complaints were agreed in the following terms:

Complaint 2

On or around 13 January 2014 the Union breached Rule 16.8 when Branch LE/2000 made invalid nominations which were taken as valid by the union and used in the Executive Council election held on 23 April 2014. The nominations were not valid because a) the meeting wasn’t on the normal date and seven days notice was not given as required by paragraph 2.3 of the EC Guidelines; b) ‘Nominations’ did not appear on the meeting agenda; c) according to the minutes of the meeting there was no request for endorsement or vote taken on the nominations; and d) there were only six names ‘read out’ at the meeting whereas the Branch is recorded as having made seven nominations.

Complaint 3

On or around 19 April 2014 the Union breached Rule 16.24 by the Union’s General Secretary and its Chief of Staff failing to pass a complaint made by member Kevin Cook to the Executive as required by Rule 16.24. Furthermore the union’s chief of staff refused to pass the complaint to the Executive on 22 May 2014, claiming wrongly that the complaint was ‘out of time’.

Complaint 4

On or around 23 July 2014 the Union breached Rules 16.23 and 16.28 by the Union's Election Commissioner failing to adjudicate and/or failing to endeavour to adjudicate on a complaint, saying incorrectly that the complainant "is not entitled to inherit, acquire, revive, continue or pursue a complaint made by someone else...Nor does she have any right under the Rules to complain about the handling of such a complaint".

Complaint 5

On or around 23 July 2014 the Union breached Rule 16.3 by the Union failing to ensure that the Election Commissioner adjudicated on the complaint brought by a member under Rule 16.23 of the Union's Rules and/or failed to appoint a replacement Election Commissioner when the existing one declined to adjudicate.

5. On 11 February 2015, I directed that the single complaint arising from Mr Beaumont's first application should be combined with the four complaints arising from Mr Beaumont's second application and Ms Mansell's application.
6. I investigated the alleged breaches in correspondence and a hearing took place on 22 April 2015.
7. At the hearing before me, Mr Beaumont represented himself and Ms Mansell. Ms Mansell did not attend the hearing. Oral evidence for the claimants was given by Ms Florence Pinaud, who also presented a written witness statement. Mr Beaumont also produced a written witness statement from Mr Adam Marley, but he did not attend the hearing to give oral evidence. The Union was represented by Mr Michael Potter of counsel, instructed by Mr Neil Gillam, a Unite in-house solicitor. Evidence for the Union was given by Mr Adrian Smith, Branch Secretary of Unite Branch LE/2000, who also presented a written witness statement. In addition, the Union produced a written witness statement from Mr Andrew Murray, the Union's Chief of Staff. Mr Murray did not attend the hearing to give oral evidence. There was also in evidence the rules of the Union, the Union's Ballot Rules and Guidelines for the conduct of the statutory elections (Executive Council Elections 2014) (the "EC Guidelines") and a 337 page bundle of documents containing correspondence and other documentation as supplied by the parties for use at the hearing. At the hearing, I accepted applications from the claimants and the Union for the late submission of various documents, which were added to the bundle as pages 338-364.

Findings of Fact

8. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
9. Mr Beaumont has been a member of Unite and its predecessor unions since about 1984. He works in the field of IT and computer consultancy. Since about 1999 he has worked as a self-employed computer consultant. He was a Branch Secretary and/or Chair of his branch between 1984 and 2013 and is currently a member of the West London SGI Branch. Ms Mansell is a member of the Bristol NHS Branch of the Union and stood for election in the 2014 Executive Council ("EC") elections as the Lesbian Gay Bisexual and Transsexual (LGBT) representative for the South West Region.

10. This case concerns a branch of the Union based at or about Heathrow Airport London which is known as BASSA, the British Airlines Stewards and Stewardesses Association, and is in the Union's London and Eastern Region. It is Branch LE/2000. It is a large and important branch with some 9,000 members and was engaged in a long and much publicised industrial dispute with British Airways in or about 2010.
11. In 2013/2014 the Chair of the BASSA branch was Ms Lizanne Malone. She had previously been elected to the Union's EC in 2008 and 2011 as the Women's Territorial Representative for the London and Eastern Region. She stood for re-election in 2014. In such a large branch it is perhaps not surprising that there are different factions. One faction was extremely critical of Ms Malone and they did so in such a way that, by late 2013 and early 2014, she was considering her position as Branch Chair.
12. On or about 1 November 2013, the Branch Committee of BASSA decided to reschedule its next branch meeting that had been arranged for Monday 6 January 2014. It did so having regard to the proximity of 6 January to the Christmas break and the upcoming EC elections, of which the branch had been given informal notice. To make nominations, each branch must hold a meeting within a specific period. For this election, the meeting at which nominations were to be endorsed had to take place between 13 January and 11 February. BASSA decided to rearrange its next branch meeting for Monday 13 January.
13. The BASSA Branch Secretary, Mr Adrian Smith, posted the date of the re-arranged meeting on the branch website or portal. It was also the practice of the BASSA branch to post its branch meeting details on the Union's computerised membership system, using the branch portal. Further, Mr Smith sent an email to all branch members on 1 November 2013 stating, "Due to logistical reasons, we have to move the January quarterly branch meeting to Monday 13 January 2014 ...".
14. On 6 January 2014, the Union officially notified branches that the nomination period for the EC election 2014 would be 13 January to 11 February, that voting would be between 26 March and 23 April and the count would be held on 24 and 25 April.
15. On Friday 10 January 2014, the BASSA Branch Committee determined the agenda for the branch meeting on Monday 13 January. The agenda is normally set close to the date of the meeting as members may submit items for inclusion on the agenda up to seven days before the meeting. On Sunday 12 January Mr Smith sent an email to members as a reminder of the meeting and with the agenda. The agenda does not contain an item relating to the nomination of candidates for the EC election.
16. At the branch meeting on 13 January 2014, Mr Smith read out the names of those who the Branch Committee had recommended for nomination in the EC elections. Ms Malone was recommended for the Women's Territorial Position again. There is a dispute about the way in which this matter was handled. The claimants' witnesses accept that the names were read out but assert that there was no request for other nominations, no request for objections and no vote. I find that this item was dealt with relatively quickly by Mr Smith. He read out the names of the seven

persons being recommended for nomination and afforded an opportunity for anyone to object or suggest further names for the meeting to consider for nomination. There were no objections nor further names suggested. I find that in these circumstances Mr Smith was entitled to consider that the meeting had accepted the recommendations of the Branch Committee and thereby endorsed the seven named nominees. I accept the evidence of Mr Smith that this is the way in which the branch ordinarily dealt with such matters. The subsequent minute of this meeting records there being six positions available for nomination whilst the names of seven potential nominees are recorded. It is now accepted by all parties that the reference to six positions was a clerical error by the minute taker.

17. On 12 March 2014, Ms Malone issued a circular to branch members. It begins "*I am writing to let you know that I am resigning as Branch Chair of BASSA 1/2000 with immediate effect*". It goes on to thank her colleagues and explain how she no longer wished to deal with the handful of individuals who were making life intolerable for her. She went on to state "*I will of course continue as Chair until an election has taken place to find a successor. Hopefully this can be done quite quickly because with the Eurofleet review looming on the horizon we will need to stick together more than ever before*". The Union maintains that Ms Malone in fact vacated her position of Branch Chair on 1 May 2014 as her resignation was put on hold following complaints concerning the election of her successor. Despite the clear inconsistency in Ms Malone's circular email about the date of her resignation, I accept the Union's evidence on this point. I find that Ms Malone resigned as Branch Chair on 1 May 2014. I observe that the circular to members was not her formal letter of resignation to the Union but a notification to members of her decision to resign as Branch Chair. Reconciling the inconsistency in her circular letter, I find it probable that Ms Malone was explaining to members that it was her intention to leave her position mid-term and not merely her intention to stand down at the end of her term of office.
18. On 19 April 2014, Mr Kevin Cook, a member of the BASSA branch, wrote to Mr McCluskey, the Union's General Secretary and the Returning Officer for this election. The letter begins:

"Dear Mr McCluskey

Subject: Executive Council Ballot Irregularities

I have been informed that as Chief Returning Officer for the current Unite Executive Council elections, I should send a copy of this to you. It is a complaint that I have already sent to the ERBS regarding irregularities in the Executive Council nominations.

I wish to make a formal complaint that nominations for the Executive Council were not carried out in accordance with the election Rules by my Branch of Unite BASSA/2000. ..."

The letter goes to complain that the issue of nominations to the EC was not on the agenda for the relevant branch meeting and that seven days notice of the meeting had not been given. Mr Cook also stated that six names were read out, although

the branch is listed as having nominated seven candidates. Mr Cook did not attend the branch meeting on 13 January 2014. On 29 April, Mr Andrew Murray, the Unite Chief of Staff, responded to Mr Cook by email. He informed Mr Cook that he had looked into his complaint at the request of the Returning Officer. He explained that the BASSA branch did not need to give a specific notice for meetings at which nominations were made as they advertise their regular meeting times on the Union's computerised membership system. He further observed that, if there was a problem with the agenda, that was not a breach of the Election Guidelines but a matter to be raised with the branch. Mr Murray concluded by stating that in any case all the candidates nominated by BASSA had sufficient nominations from other branches to stand in the election, irrespective of BASSA. By rule 16.6, nomination by three branches is required.

19. Also on 29 April 2014, Mr Cook responded to Mr Murray's email. He stated that he thought Mr Murray had made a mistake. He asked if he would pass his complaint to the Returning Officer and reconsider his decision.
20. Also on 29 April 2014, the results of the election were declared. All but one of the seven nominees of the BASSA branch were elected, including Ms Malone. Ms Mansell was not elected.
21. On 30 April 2014, Mr Murray responded to Mr Cook giving an explanation as to why he had stated that BASSA had not needed to give specific notice of the nomination meeting. He considered that this was dealt with in the Ballot Rules and Guidelines for the 2014 EC election. He referred in particular to the second paragraph or bullet point of paragraph 2.3 of the Election Guidelines, observing that Mr Cook was probably relying upon the first paragraph or bullet point, which was wrong. The final sentence of the second paragraph or bullet point of paragraph 2.3 refers to branches, such as BASSA, that keep their branch meeting details on the Union's computerised membership system. It reads, "*Such branches need not give notice to members of their nominating meeting*". Mr Murray concluded his email by stating "*We will not be taking this matter further*".
22. To retain the chronology, I repeat that Ms Malone resigned as Branch Chair on 1 May 2014.
23. On 4 May 2014, Mr Cook resigned as a member of the Union.
24. On 21 May 2014 Mr Cook wrote again to Mr Murray. In this email he stated "*I would please ask that you bring my complaint to the attention of the Executive as per Rule 16.24*". This is the rule which enables a member who is not a candidate in an election to bring forward a complaint to the Union's Election Commissioner.
25. Unusually, the rules of Unite provide for an independent person to adjudicate on any complaints made under rule 16.23 relating to the conduct of an election for EC members or the General Secretary. This person is known as the Election Commissioner. At the relevant time the Unite Election Commissioner was Professor Keith Ewing, a distinguished academic and expert in trade union law.

26. On 22 May 2014, Mr Murray responded to Mr Cook stating that he would not be forwarding his complaint to the Election Commissioner as it had become time barred by rule 16.25. This rule provides that the Election Commissioner shall not consider any complaint made more than 28 days after the date on which the EC declared the outcome of the election. It was accepted by the Union at the hearing that Mr Cook's complaint was not in fact time barred under this provision. A period of 28 days from the date the election results was declared, expired on 27 May.

27. Ms Mansell entered the case on 27 May 2014 when she wrote to the General Secretary complaining about the elections in question. She headed the letter, "*For the attention of the Unite Election Commissioner*". The letter begins by stating her complaints as follows:

"Dear Returning Officer

In accordance with Union Rule 16.3 as a candidate, I submit two complaints about this election:

- 1) That a complaint submitted by Member Kevin Cook to Andrew Murray Unite Chief of Staff was not passed to the executive or to you, in breach of Rule 16.24. Much of the information is appended but Andrew Murray already has all the documentation on this. Please review it.*
- 2) That candidates of the United Left Grouping had fake nominations. The branch agenda did not notify that candidates would be nominated.*

I ask that the election commissioner undertakes random checks of nominating branches/work places for the United Left candidates listed below and for Jenny Douglas, the United Left candidate who won my constituency."

28. On 27 May 2014, the Union sent Ms Mansell's complaint to Professor Ewing for him to deal with. On the same day, Professor Ewing sought clarification from Ms Mansell about her complaints. It was necessary for Ms Mansell to write to Professor Ewing on three occasions to clarify her complaints, on 1, 11 and 16 June.

29. On or about 11 June 2014, Ms Malone left the employment of British Airways. There was little evidence before me as to the circumstances of the termination of her employment. In his untested witness statement Mr Murray, who did not attend the hearing to give oral evidence, referred to her leaving "*pursuant to a termination agreement*". I further observe that in an email to the General Secretary of 25 September 2014 Mr Murray comments on the actions of British Airways towards Miss Malone and then continues "*I understand that this and other matters were covered by legal proceedings eventually resolved in Lizanne's favour*".

30. Over this period, Ms Malone continued to act as a member of the EC. She attended a meeting of the EC between 9-11 June, she attended a policy conference between 30 June and 4 July and she attended a meeting of the EC between 15-17 September. She was no longer active as an EC member after, or shortly following, the September 2014 EC meeting.

31. Mr Beaumont entered this case on 16 June 2014 when he sent an email to Mr Murray. He stated that it had come to his attention that Lizanne Malone was no longer an “accountable representative of workers” and therefore should not be holding office on the EC according to rule 6.2 and the EC Guidance on that rule. He considered that Ms Malone has resigned as Branch Chair on 12 March 2014. He also commented that, in a previous election, he had been refused as a candidate for election to the EC on the basis that he was not an “accountable representative of workers”. Mr Beaumont had complained to me about his exclusion but I upheld the Union’s position in decision D/50-54/11-12 of 1 September 2011.
32. Rule 6.2 of the rules of the Union provides that in order to be eligible to hold office on the EC a member must be “an accountable representative of workers”. Rule 6.3 provides that it shall be in the exclusive power of the EC to formulate such a definition but that certain positions, such as branch office holders, must automatically give a member that status. Rule 6.4 provides that the EC is to develop a fair procedure to deal sympathetically with cases where a member’s eligibility to continue to hold office may be affected by employer victimisation. The Union asserted that the fair procedure in question is to be found in the EC Guidance to Lay Office, in Appendix 1 of the printed rule book.
33. On 13 July 2014, Mr Beaumont again wrote to Mr Murray, pointing out that not only had Ms Malone resigned as Branch Chair but that she no longer worked for British Airways and is retiring, commenting that she apparently now lived in Los Angeles. Mr Beaumont also commenced a separate but parallel line of enquiry seeking to inspect the accounting records of the Union relevant to these events.
34. On 23 July 2014, Professor Ewing published his decision on the two complaints that had been brought to him by Ms Mansell. He dismissed both complaints. It is the first of these complaints which is most relevant to the present decision and, as it is short, I set it out in full.

“Complaint One

3. *The essence of this complaint is that Mr Cook had complained to Mr Murray about procedures in his branch (LE/2000, I understand), and that Mr Murray did not refer the complaint to the Executive Council under Unite Rule 16.24. The latter provides that:
If the Returning Officer or a member who is not a candidate considers that there are grounds for a complaint to the Election Commissioner, he/she should refer the matter to the Executive Council.
I understand that Mr Cook is no longer a member of Unite. I have not spoken to or had any communication with Mr Cook.*
4. *This complaint was the subject of much of my correspondence with Ms Mansell, Mr Murray and Mr Smith. I have taken the view, however, that whatever the merits or otherwise of Mr Cook’s complaint, these were a matter between him and Unite. If Mr Cook was unhappy about the way in which his complaint was handled, it was for him to pursue the matter under the Rules or Union or otherwise. In any event, if Mr Cook’s complaint was regarded as live at the time of his apparent resignation he must be regarded as having been abandoned by that resignation. The only person with rights in relation to Mr Cook’s complaint is Mr Cook himself.*

5. *In my view, Ms Mansell is not entitled to inherit, acquire, revive, continue or pursue a complaint made by someone else, where that complaint has self-evidently been abandoned. Nor does she have any right under the rules to complain about the handling of such a complaint¹. My view is fortified by the fact that it is not necessary for her to do so. As a candidate in the election Ms Mansell is entitled in her own right to bring a complaint that rules relating to the conduct of the election have not been followed; not only is she entitled to this under Unite Rule 16.3, she has in fact done so (see below)².*

Footnote 1: For the avoidance of doubt, such a complaint does not in my view fall within Unite Rule 16.23.

Footnote 2: Although not wishing to prejudge Mr Cook's apparently abandoned complaint, I should add that the Executive Council is not bound to refer Rule 16.24 complaints to me, and I would not have been surprised if in the exercise of its discretion under the Rules it had decided not to do so in Mr Cook's case. ..."

35. On 10 August 2014, Mr Beaumont again wrote to Mr Murray. He noted that Mr Murray had not responded to either of his previous queries and, as two months had now elapsed, he was submitting a complaint to the Certification Office.
36. My office received Mr Beaumont's first application on 10 August 2014 and his second application on 21 August.
37. Ms Mansell first raised her complaint with my office on 11 September 2014 and submitted a Registration of Complaint Form on 15 October.
38. On 25 September 2014, Mr Murray sent an email to the General Secretary by way of a report with recommendations as to whether the EC should consider exercising its discretion to deem Ms Malone "an accountable representative of workers" on the grounds of employer victimisation despite no longer being Branch Chair or an employee of British Airways. He concluded that he believed it would be appropriate to treat her as falling within the scope of paragraph 6.4.1.1 of the EC Guidance on Rule 6 "*notwithstanding the exact terms of her departure from BA*".
39. The EC next met on 1 to 4 December 2014. Ms Malone did not attend. I was informed that the EC did not consider whether Ms Malone was entitled to rely on rule 6.4 to retain eligibility on the EC as it was then known that she had decided to resign from it in any event.
40. Ms Malone resigned her membership of the EC on 15 December 2014.

The Relevant Statutory Provisions

41. 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

42. The Rules of the Union and the EC Guidelines which are relevant for the purposes of this application are:

RULE 6

LAY OFFICE

6.1 The Executive Council shall make provision to ensure accountability of Regional and Industrial Executive Council members and those Executive Council members elected pursuant to Rule 14(3.3) shall meet with their respective National Committees at least four times per year.

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 office-holders 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.

6.5 The electoral period to hold lay office shall be three years unless otherwise provided for under these Rules.

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.

16.2 The Executive Council shall appoint an independent scrutineer to supervise the production, storage and distribution of voting papers, to receive and count the voting papers, to report on the election, to retain the voting papers for an appropriate period and to perform such other duties as the Executive Council may specify.

16.3 The Executive Council shall appoint a suitable, independent person to act as Election Commissioner to adjudicate on any complaints made under clause (23) of this Rule relating to the conduct of the election. In the event that the Electoral Commissioner finds it necessary to carry out an investigation in the conduct of his or her duties under Rule all members and employees of the Union are required to afford him or her every assistance in this regard.

16.4 The Executive Council shall appoint a Returning Officer to deal with the conduct of the election between the Executive Council meetings and may delegate to him/her its powers relating to the conduct of that election provided that the Returning Officer shall not act inconsistently with any decision of the Executive Council and shall report to the next meeting of the Executive Council all actions taken and decisions made in respect of that election.

16.5 A candidate in an election shall play no part in any deliberations of or decision by the Executive Council which relates specifically to the conduct of an election in the constituency in which an individual is a candidate.

16.6 Executive Council candidates for election to represent a Region shall be nominated by at least three Branches within that Region or that part of a Region as the case may be. A branch shall be entitled to make only such number of nominations as there are members to be elected from that Region or part thereof.

16.7 Executive Council candidates for election to represent a particular Industrial Sector constituency shall be nominated by branches and workplaces consisting of members of the particular Industrial Sector constituency concerned.

16.8 In every case no nomination shall be valid unless a meeting of the Branch, or workplace, has been convened and that nomination has been endorsed by the meeting. The Executive Council guidance shall state whether and how a nomination may be made by a workplace, or Branch (in relation to Industrial Sector seats).

16.9 A member is required to receive at least three nominations. On receipt of such nominations the candidate shall be invited to confirm in writing that she/he accepts the nomination. Each member who does so and who is otherwise eligible shall be a candidate in the election for that constituency.

16.10 Executive Council candidates for election to represent a constituency under any equalities provision of these Rules shall be nominated by Branches and workplaces within the particular constituency concerned.

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

16.12 Nominations of Candidates for election of General Secretary may be made by each branch and each workplace. A candidate must be eligible to vote in the election; have at least 10 years continuous membership of the union; and have received at least 50 branch nominations or workplace nominations (where there is no workplace branch), subject to the total including nominations from more than one region. In every case no nomination will be valid unless a meeting of the branch, or workplace, has been convened and that nomination has been endorsed by the meeting. The Executive Council guidance will state whether and how a nomination may be made by a workplace, or branch.

16.13 If the number of candidates does not exceed the number of vacancies to be filled by that constituency, the candidate(s) shall be declared elected. If there are more candidates than vacancies, the election shall be conducted by a secret postal ballot.

16.14 The election shall not be concluded until the Executive Council has received the independent scrutineer's report and declared which candidate(s) has been elected. This should take place as soon as reasonably practicable after the votes have been counted. If the Election Commissioner advises the Executive Council that it should not declare the outcome of an election until he/she has adjudicated on a complaint, it shall comply with that request.

16.23 If at any stage during an election or within 28 days of the declaration of the outcome a candidate in an election or the Executive Council considers that there has been a breach of these Rules or of any other legal requirement relating to the conduct of the election or any other interference with the conduct of the election and that the breach or interference may materially affect or may have materially affected the outcome of the election, he/she or the Executive Council may submit a complaint to the Election Commissioner.

16.24 If the Returning Officer or a member who is not a candidate considers that there are grounds for a complaint to the Election Commissioner, he/she should refer the matter to the Executive Council.

16.25 A complaint to the Election Commissioner should be made as soon as is reasonably practicable. The Election Commissioner shall not consider any complaint made more than 28 days after the date on which the Executive Council declared the outcome of the election.

16.26 A complaint to the Election Commissioner shall be made in writing addressed to the Election Commissioner care of the Returning Officer and accompanied by all the supporting evidence which the complainant wishes to be taken into account.

16.27 If when the Election Commissioner receives a complaint the independent scrutineer has not yet reported on the election and the Election Commissioner considers that the complaint raises matters which fall within the jurisdiction of the independent scrutineer, he/she shall refer the complaint (or the part thereof which raise such matters) to the independent scrutineer unless it is not reasonably practicable to do so. When the Election Commissioner has referred a complaint (or part thereof) to the independent scrutineer he/she shall not adjudicate on the complaint until the independent scrutineer has expressed a view on that complaint.

16.28 The Election Commissioner may adjudicate on a complaint on the basis of written material submitted with the complaint or, at his/her complete discretion, call for such further information as he/she shall think fit and/or conduct a hearing of the complaint. Subject to the provisions of this Rule, the Election Commissioner shall decide his/her own procedures for investigating and adjudicating upon the complaint provided that he/she shall endeavour to adjudicate on the complaint as quickly as is reasonable practicable.

16.29 If after considering a complaint the Election Commissioner considers; that there has been a material breach of these Rules or of any other legal requirement relating to the conduct of the election or any other material interference with the conduct of the election; and that the breach or interference may materially affect or has or may have materially affected the outcome of the election; the Election Commissioner may recommend that the Executive Council should take one or more of the following measures:-

16.29.1 Declare the ballot and, if it has been declared, the outcome of the election void and call for a fresh ballot to be held;

16.29.2 Disqualify a candidate or candidates and permit the remaining candidates to go forward in the ballot or in any fresh ballot that may be ordered; or

16.29.3 Such other remedial measures as the Election Commissioner considers appropriate.

16.30 Subject always to any decision to the contrary by a court, the Certification Officer or any other lawful authority, the Executive Council shall give effect to any recommendation by the Election Commissioner made in accordance with clause (29) of this Rule.

16.31 If an election is delayed as a result of action taken pursuant to a recommendation by the Election Commissioner, an order of a court, the Certification

Officer or other lawful authority, a member who holds the office which is the subject of that election shall be entitled to continue in that office until the election is concluded.

Appendix 1

Rule 6 – Lay Office EC Guidance

1) RULE 6 - EXECUTIVE STATEMENT CARRIED AT THE JUNE 2011 RULES CONFERENCE

The Executive Council supports the principle set out in Rule Six that those who seek to serve on Unite's constitutional committees and as delegates to constitutional conferences should be accountable representatives of workers. The union is stronger and more representative for the application of this principle.

Rule Six rightly gives the Executive Council broad scope in determining the definition and implementation of the criteria set down in Rule to ensure that those who serve on constitutional committees are genuinely representative of the membership at work but that no-one is unfairly barred from participation in the union's life. The Executive Council carries out its responsibilities in this respect by drawing up Guidelines for the implementation of the Rule. The EC may vary these guidelines at its own discretion, by a simple majority, in the light of its appreciation of changing industrial circumstances affecting the membership, and in the light of issues raised by the application of the Rule and the Guidelines.

For example, the Executive Council accepts that membership of Area Activist Committees should not be restricted in the way prescribed by Rule Six and should be open to all activists, including those who cannot be workplace representatives because of their circumstances. Additionally, membership of Regional Political Committees should not be denied to Unite members playing an active part within the Labour Party at all levels, whatever their other circumstances.

In relation to other bodies within the union, the EC will continue to take into account particular circumstances in particular industries, including but not confined to those identified in Rule (construction, contracting, leisure and rural). The definition of what constitutes an accountable representative of workers as set out in the Guidelines is under regular review and will be reviewed by the EC before the next round of elections within the union. It will also take particular care to ensure that those members victimised or blacklisted for their trade union activities are not denied the right to serve on the union's constitutional committees. The EC recognises that particular measures need to be taken to ensure the proper representation of activists in the construction industry and to monitor the impact of the Rule in relation to Unite's equalities Rules, with the intention of ensuring strong representative equalities committees. The definition of an accountable representative of workers is vested exclusively in the Executive Council, which shall establish a mechanism to ensure that members denied the right to hold office under Rule Six and its associated Guidelines shall be able to appeal to a sub-committee of the executive.

...

2) EC GUIDANCE - RULE 6: LAY OFFICE

6.1-6.3...

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.

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.

6.4.2 In the event of the dismissed representative taking up alternative employment they shall cease to hold office in relation to their former workplace with immediate effect.

6.4.3 Where the dismissed representative ceases to hold office as a representative for their former workplace, the Executive Council shall consider whether the dismissed former representative should be entitled to continue to attend any such conferences or committees that they would have attended for the remainder of their elected term even if they are replaced within the workplace by a new elected representative.

6.4.3.1 In the event that the Executive Council sees fit to grant such entitlement, the dismissed former representative will be counted for the purposes of this Rule as an 'accountable representative of workers' until the expiry of their three-year term.

6.4.3.2 In the event that the dismissed former workplace representative wins a case and gets their job back, they will be entitled to resume their elected office in the workplace for the remainder of the three years since their last election.

Rule 18:8 underscores the points made in the guidance to 6.4 above:

Shop stewards/workplace representatives shall receive the fullest support and protection from the union, and an immediate inquiry shall be undertaken by the appropriate regional industrial sector or regional committee into every case of dismissal of a shop steward with a view to preventing victimisation, either open or concealed. If it is deemed necessary, a ballot for industrial action will be convened.

BALLOT RULES AND GUIDELINES FOR THE CONDUCT OF THE EXECUTIVE COUNCIL ELECTIONS 2014

2. NOMINATION

Please read the following instructions carefully before completing any nomination paper.

2.1 In accordance with Rule 16, clause 8 nominations will be invited from branches and workplaces. Nomination forms for branches will be posted. Nomination forms for workplaces will be available on request from Regional Secretaries. Regional Secretaries will only issue workplace nomination forms to workplace representatives registered in the Union's membership records, where there is no workplace branch.

2.2 Only nominations made in accordance with these ballot Rules and guidelines will be accepted. It is the responsibility of the branch secretary or workplace representative to ensure that the nomination form is completed properly. If it is not then the branch or workplace's nomination may be invalid. The timetable for this ballot will not permit the return of incorrect forms to branches or workplaces for verification. Valid nominations must be received by the Returning Officer at Unite the Union, Unite House, 128 Theobalds Road, London WC1X 8TN, not later than noon on 18th February 2014.

2.3 Convening meetings to make Nominations.

- Workplace representatives must give at least seven days notice to the members of their workplace that the nomination for the Unite Executive Council will be included in the business of a meeting convened during the nomination period. You may adapt the sample notice included as appendix 1 for this purpose.
- Branch secretaries should ensure that their branch meeting details are up to date on the membership system using the branch portal which can be accessed at <http://branch.unitetheunion.org>. Members can access details of their branch meeting using the Member Login facility on the Unite website. Such branches need not give notice to members of their nominating meeting.
- Branches whose details are not registered on the membership system or who need to change the date of their meeting must give at least seven days notice to the members of their branch that the nomination for the Unite Executive Council will be included in the business of a meeting convened during the nomination period. You may adapt the sample notice included as appendix 1 for this purpose.
- A copy of any notice calling a nomination meeting must be retained by the branch secretary or workplace representative convening the meeting, as the

Returning Officer may request that the notice be produced should any query regarding the conduct of the nomination meeting be received by him. Failure to produce such a notice in these circumstances may result in the branch or workplace nomination(s) being declared invalid.

• The person acting as chair of a meeting should not be the same person as the secretary in the case of a branch or the workplace representative convening the meeting in the case of a workplace.

The central administration may be contacted by e-mail elections@unitetheunion.org.

CONSIDERATIONS AND CONCLUSIONS

Complaint One

44. Complaint One is as follows:

Complaint 1

In breach of Rule 6.2 of the Rules of the Union, Lizanne Malone held office on the Executive Council of the Union from about 12 March 2014 to 15 December 2014 when she was not eligible to do so as she was not an “accountable representative of workers” according to Rule. Lizanne Malone resigned as Branch Chair of BASSA LE/2000 on or around 12 March 2014 and also retired from her work shortly after this date. This meant that Lizanne Malone was no longer a branch officer in employment and had ceased working within the industry of her branch. For these reasons she was not eligible to sit on the Executive.

45. Rule 6.2 of the rules of the Union provides as follows:

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.

Summary of Submissions

46. Mr Beaumont submitted that Ms Malone resigned as Branch Chair with immediate effect by her circular to branch members of 12 March 2014 and that therefore, under rule 6.2, and the definition of ‘accountable representative of workers’ in the relevant EC Guidance, she was no longer eligible to hold office on the EC. He argued that she was doubly ineligible to hold office when she left the employment of British Airways as rule 6.3 requires branch office holders to be “in employment”. Mr Beaumont rejected the Union’s argument that Ms Malone could take advantage of the “victimisation” provision in rule 6.4 as he considered that Ms Malone had retired rather than been dismissed and that, in any event, she had not been victimised by British Airways for her trade union activities or at all. He presented evidence to establish that Ms Malone was on good terms with her employer. Mr Beaumont also pointed out that the “fair procedure” referred to in rule 6.4, as contained in the EC guidance, had not been followed by the Union as illustrated by its failure to involve Ms Malone’s Regional Secretary or Regional Committee. It was Mr Beaumont’s case that the Union’s reliance on rule 6.4 and the victimisation argument was just an excuse to keep Ms Malone on the EC as the Union wished to keep the goodwill of such a large and powerful branch as BASSA.

47. Mr Potter, for the Union, accepted that Ms Malone was not an accountable representative of workers in accordance with rule 6.2 after she resigned as branch chair, which he maintained was on 1 May 2014. He nonetheless submitted that she remained eligible to sit on the EC by virtue of rule 6.4 and having been victimised by her employer for her trade union activities. Mr Potter noted that Mr Murray had been asked to look into this question and had reported to the General Secretary on 25 September 2014. He had recommended that Ms Malone should remain on the EC pursuant to the victimisation provisions. I was informed that this recommendation was to be put to the EC at its next meeting in December 2014. Mr Potter observed that this did not happen as Ms Malone resigned from the EC on 15 December. He submitted that between 1 May and 15 December, it was in order for Ms Malone to remain on the EC, pending the EC's consideration of Mr Murray's recommendation.

Conclusions – Complaint One

48. I have found in paragraph 17 above that Ms Malone resigned as Branch Chair on 1 May 2014. It is common ground that between 1 May and the date she resigned from the EC on 15 December, Ms Malone was not an accountable representative of workers in accordance with the definition of that expression in rule 6.3 of the rules of the Union. The issue for me to determine is whether she was able to benefit from the so called 'victimisation' provision in rule 6.4.
49. First, I observe that the EC had not considered whether to grant her such an entitlement. Accordingly, there is a preliminary issue as to whether a member of the EC remains eligible for membership of the EC in the period between his/her dismissal and the formal determination of the position under rule 6.4 by the EC. Mr Beaumont accepted that in principle a person should be protected in this way, if all the proper procedures are undertaken. In considering this matter I have regard to the approach I should adopt to the proper interpretation of union rules. In particular I have regard to the words of Warner J in **Jacques v. AUEW (1986) ICR 683**. He commented:

"The effect of the authorities may I think be summarised by saying that the Rules of a trade union are not to be construed literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose and the readership to which they are addressed."

50. The purpose of rule 6.4 is to protect union members who an employer seeks to victimise. Should a member be dismissed in such circumstances, it is counter intuitive that the employer should succeed in not only removing a union activist from his/her employment, but also from holding a position on the union's EC. I find that rule 6.4 and its relevant guidance must be read as affording a member victimised by his/her employer a period of continuing eligibility to hold office on the EC pending the consideration of the member's position by the EC and its determination of the matter. However, in my judgement, such a period of 'interim protection' cannot be open ended. The EC is obliged to consider and determine any such issue at the earliest practicable opportunity. In reaching this conclusion, I am conscious of the uncertainty of the expression 'earliest practicable opportunity'. That would be a matter to be determined on the facts of the particular case, having regard to the

Union's duty to establish that the alleged victimisation has indeed been put before the EC at the earliest practicable opportunity. A more attractive alternative may be for the EC to reconsider the guidance that it has given with regard to rule 6.4 and make such amendments as it considers appropriate in the light of this case.

51. On the basis that Ms Malone may in principle have a right to continued but interim eligibility on the basis of her alleged victimisation, I have to consider her position on the facts of this case.
52. First, I consider Ms Malone's position between 1 May 2014, when she resigned as Branch Chair and 11 June 2014 when she left the employment of British Airways. Rule 6.4 refers quite broadly to a position in which a member's eligibility to hold office may be 'affected by employer victimisation'. However, the 'fair procedure' established under rule 6.4 and found in the EC Guidance to rule 6.4, applies "in the event of a work place representative being sacked due to victimisation for trade union activity (see paragraph 6.4.1). Further, paragraph 6.4.1.1 provides that victimisation occurs where a member "has been excluded from employment". Paragraph 6.4.2 also refers to "the dismissed representative". Accordingly, I find that the protection offered by rule 6.4 applies only in the case of a member who has been dismissed by his/her employer by way of victimisation. Ms Malone continued in employment from the date she ceased to be Branch Chair, 1 May 2014, until 11 June 2014. Accordingly, I find that during this period she lost eligibility for office as, for that period, she was no longer an accountable representative of workers for the purposes of rule 6.2 and her position was not protected by rule 6.4.
53. I now consider Ms Malone's position between 11 June 2014 and 15 December 2014, when she resigned from the EC. At the hearing, this issue was argued as a question of fact. Mr Beaumont submitted that Ms Malone resigned from her employment with BA and that she was not victimised. The Union submitted that her employment terminated with a Termination Agreement covering legal proceedings that were resolved in her favour and that she was victimised. My task in determining this issue has not been made easier by the lack of relevant evidence on this point put before me by the Union and the absence of Mr Murray as a witness. Any evidence on this point would have been more available to the Union than to Mr Beaumont and, as a general consideration, a party's failure to adduce evidence which is available to it without good reason may be taken as an indication that the evidence does not exist.
54. After further consideration, however, I find that the Union's submission has a more fundamental difficulty. It relies on rule 6.4 which enables the EC to have a procedure to deal with "*cases where a member's eligibility to ... continue to hold office may be affected by employer victimisation*". In my judgement this restricts the EC's discretion to a situation in which a member who is an accountable representative of workers is victimised by an employer. The only victimisation which is relied upon on the facts of this case is Ms Malone's dismissal on or about 11 June 2014 and even the circumstances of that alleged dismissal are far from clear. However, as I have found in paragraph 52 above, Ms Malone was not an accountable representative of workers on or about 11 June and accordingly any victimisation which removed her from employment did not impact on her as an accountable representative of workers but as an ordinary member of the Union.

55. The importance of being in employment for the purposes of rule 6.2 appears in the expression “branch office holders who are in employment” in rule 6.2. They must be included in any definition of ‘accountable representative of workers’ that the EC may devise. However, by the time of her alleged dismissal, Ms Malone was a former branch officer and no longer within this protected description of members.
56. For completeness, I observe that there is no allegation that Ms Malone’s resignation as Branch Chair was by reason of employer victimisation. Indeed, the evidence suggests that her resignation as Branch Chair was mainly the result of the personal attacks that had been made against her by certain members of the branch.
57. For the above reasons, I uphold Mr Beaumont’s complaint that the Union breached rule 6.2 of the rules of the Union in allowing Ms Malone to hold office on the Executive Council of the Union from about 1 May 2014 to about 15 December 2014, a period during which she was not eligible to do so as she was not then an ‘accountable representative of workers’ in accordance with rule 6.2.
58. Section 108B(3) of the 1992 Act provides that when I declare that a union has breached a relevant rule, I shall also make an Enforcement Order unless I consider that to do so would be inappropriate. An Enforcement Order is defined as being an order that the Union “*takes such steps to remedy the breach as may be specified in the Order or withdraw the threat of a breach as may be specified in the Order*” and/or “*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 the future*”. Mr Beaumont requested an Enforcement Order requiring Ms Malone to repay any expenses wrongly paid to her as a member of the EC, that the votes on any motions in which she voted after May 2014 be adjusted and that the relevant minutes of the EC be amended to read that she was not a valid member.
59. The breach of rule that I have found relates to Ms Malone’s eligibility to hold office on the EC. If she had remained on the EC I would have ordered that she be removed from it. However, as she resigned from the EC before this application was brought, the breach is not of a continuing nature. I have no power to order Ms Malone to repay expenses and I consider that the declaration that I have made is sufficient public explanation of the events in question. I have no evidence that Ms Malone’s votes on the EC after 1 May 2014 were determinative of any issue. For the above reasons, I do not consider it appropriate to make an Enforcement Order.

Complaint Two

60. The claimants’ second complaint is as follows:

Complaint 2

On or around 13 January 2014 the Union breached Rule 16.8 when Branch LE/2000 made invalid nominations which were taken as valid by the union and used in the Executive Council election held on 23 April 2014. The nominations were not valid because a) the meeting wasn’t on the normal date and seven days notice was not given as required by paragraph 2.3 of the EC Guidelines; b) ‘Nominations’ did not appear on the meeting agenda; c) according to the minutes of the meeting there was no request for endorsement or vote taken on the nominations; and d) there were only

six names 'read out' at the meeting whereas the Branch is recorded as having made seven nominations.

61. Rule 16.8 of the rules of the Union and paragraphs 2.1 to 2.3 of the Ballot Rules and Guidelines to the 2014 EC elections provide as follows:

16.8 In every case no nomination shall be valid unless a meeting of the Branch, or workplace, has been convened and that nomination has been endorsed by the meeting. The Executive Council guidance shall state whether and how a nomination may be made by a workplace, or Branch (in relation to Industrial Sector seats).

Ballot Rules and Guidelines

2. NOMINATION

Please read the following instructions carefully before completing any nomination paper.

2.1 In accordance with Rule 16, clause 8 nominations will be invited from branches and workplaces. Nomination forms for branches will be posted. Nomination forms for workplaces will be available on request from Regional Secretaries. Regional Secretaries will only issue workplace nomination forms to workplace representatives registered in the Union's membership records, where there is no workplace branch.

2.2 Only nominations made in accordance with these ballot Rules and guidelines will be accepted. It is the responsibility of the branch secretary or workplace representative to ensure that the nomination form is completed properly. If it is not then the branch or workplace's nomination may be invalid. The timetable for this ballot will not permit the return of incorrect forms to branches or workplaces for verification. Valid nominations must be received by the Returning Officer at Unite the Union, Unite House, 128 Theobalds Road, London WC1X 8TN, not later than noon on 18th February 2014.

2.3 Convening meetings to make Nominations.

- Workplace representatives must give at least seven days' notice to the members of their workplace that the nomination for the Unite Executive Council will be included in the business of a meeting convened during the nomination period. You may adapt the sample notice included as appendix 1 for this purpose.*
- Branch secretaries should ensure that their branch meeting details are up to date on the membership system using the branch portal which can be accessed at <http://branch.unitetheunion.org>. Members can access details of their branch meeting using the Member Login facility on the Unite website. Such branches need not give notice to members of their nominating meeting.*
- Branches whose details are not registered on the membership system or who need to change the date of their meeting must give at least seven days' notice to the members of their branch that the nomination for the Unite Executive Council will be included in the business of a meeting convened during the nomination period. You may adapt the sample notice included as appendix 1 for this purpose.*
- A copy of any notice calling a nomination meeting must be retained by the branch secretary or workplace representative convening the meeting, as the Returning Officer may request that the notice be produced should any query regarding the conduct of the nomination meeting be received by him. Failure to produce such a notice in these circumstances may result in the branch or workplace nomination(s) being declared invalid.*
- The person acting as chair of a meeting should not be the same person as the secretary in the case of a branch or the workplace representative convening the meeting in the case of a workplace.*

The central administration may be contacted by e-mail elections@unitetheunion.org.

Summary of Submissions

62. Mr Beaumont, for the claimants, accepted that the notice of the change of date of the meeting given by Mr Smith on 1 November 2013 was sufficient notice of the change of date but maintained his submission that the notice was still defective as it did not inform members that nominations for the EC elections were to be considered at that meeting, as required by the third bullet point of paragraph 2.3 of the Ballot Rules and Guidelines. Mr Beaumont argued that even though BASSA was a branch whose details were registered on the Union's computerised membership system, the third bullet point applied to it as the word "or" introduces a second category of branches to which that paragraph applies; namely branches which need to change the date of their meeting. He maintained that this would mainly affect branches which, unlike BASSA, always held meetings on, say, the first Monday of the month but chose to move the date of a particular meeting. He observed that it was not attractive for the Union to require members to visit its website to find out the date of important meetings. As a separate point, Mr Beaumont argued that the agenda that was circulated on 12 January 2014 also contained no references to nominations for the EC elections. He relied upon the 'Unite Model Branch Standing Orders' which he argued incorporated into the rules of the branch "*The normal rules of debate as laid down by Walter Citrine in the ABC of Chairmanship*" and that these require that members are informed in advance through the agenda of all important business to be conducted at this meeting. Mr Beaumont further submitted that at the meeting of 13 January 2014 the nominations were not endorsed by the meeting, as required by rule 16.8. Mr Beaumont formally abandoned the fourth ground upon which his complaint was made; namely that six names were read out by Mr Smith whereas seven nominations were made. He accepted that this misunderstanding arose out of an error by the minute taker.
63. Mr Potter, for the Union, submitted that the third bullet point of paragraph 3 of the Ballot Rules and Guidelines was not relevant as it applied exclusively to those branches whose details were not registered on the Union's computerised membership system. He argued that BASSA's details were so registered and that accordingly bullet point 2 was the one that is applicable in this situation. He pointed out that this bullet point contains the sentence "*Such branches need not give notice to members of their nominating meeting*" and that accordingly the absence of any reference to nominations and the change of date email was not a breach of any rule of the Union. In the alternative, Mr Potter submitted that I should not adopt a literal interpretation of bullet point 3 but rather look to the mischief it sought to avoid. He submitted that the mischief was that the date of a meeting should not be changed so as to interfere with a member's right to participate in that meeting and that Mr Smith's email of 1 November 2013 gave members notice of the change of date of the meeting so enabling them to participate in it. Mr Potter also observed that it was common ground that Mr Smith did read out to the meeting the names of those recommended as the nominees of the branch in the election and invited me to accept the evidence of Mr Smith as to the normal way that BASSA deals with such matters, the absence of any objection to the names which were read out and the implied endorsement of those names by the branch in accordance with its usual procedures.

Conclusions – Complaint Two

64. The claimants allege a breach of rule 16.8 of the rules of the Union. At its simplest, this rule requires a branch meeting to be convened and nominations to be endorsed at that meeting. There is no doubt that a meeting was convened but it is questioned whether nominations were endorsed in accordance with the rule. This is a question of fact. Having considered the oral and documentary evidence, I find that Mr Smith did read out the names of those that the Branch Committee had decided to put forward at its meeting on 10 January 2014 and that he explained to the branch meeting on 13 January that these were being recommended to them by the Branch Committee. I find that there was an opportunity for members to object to the recommendations and/or suggest alternative names and there were no such objections or suggestions. I further find that this method of proceeding was the way in which similar matters are dealt with at the branch and that Mr Smith was entitled to take from the reaction of the members that there was a general consensus. In my judgement, that consensus was sufficient endorsement for the purposes of rule 16.8 and the seven names recommended by Mr Smith were duly endorsed by the meeting.
65. I must also consider whether rule 16.8 incorporates a requirement that the meeting at which nominations are to be endorsed is properly convened. I find that such an implication is hard to resist but the case for doing so is enhanced by the express reference in rule 16.8 to the EC Guidance and the directions given in paragraph 2.3 of the EC Guidance on the convening of such meetings. Accordingly, I find a failure by a branch to comply with the requirements of paragraph 2.3 of the EC Guidance may result in a ‘nomination meeting’ being improperly convened in breach of rule 16.8.
66. The second and third bullet points of paragraph 2.3 of the Ballot Rules & Guidelines appear to be in conflict on the facts of this case. Mr Beaumont relies on the third bullet point to establish an obligation on those branches which change the date of their meeting to give at least seven days notice to members that nominations to the EC will be included in the business of that meeting. However, the Union relies upon the second bullet point to establish that branches whose details are on the membership system, such as BASSA, “*need not give notice to members of their nominating meeting*”. In my judgement this conflict is reconciled by taking as the starting point the proposition that branches on the membership system are not ordinarily required to give notice of their nominating meeting. However, the rules may go on to provide that in certain circumstances that proposition is not to apply. One such circumstance is that provided for in bullet point three, namely where such a branch needs to change the date of its meeting. Such an interpretation has the attraction of common sense. No organisation would wish or should wish a meeting to be convened to discuss an issue of importance at which some members will be unaware of that issue before the meeting, in a situation where the item has not been included out of necessity as an emergency motion. On the facts of this case, BASSA did need to change the date of its meeting and it was aware that the meeting of 13 January 2014 was to be a nominating meeting. Accordingly, I find that it was bound by the third bullet point in paragraph 2.3 to give at least seven days notice that nominations would be included in the business of that meeting. The branch gave notice of much more than seven days of the changed date of the

hearing but did not give notice that nominations would be included in the business of that meeting. Accordingly, there was a breach of the third bullet point of paragraph 2.3 and I find that the BASSA branch meeting of 13 January 2014 was not properly convened in breach of rule 16.8.

67. For the above reasons I find that the Union breached rule 16.8 of its Rules when the BASSA branch convened a nomination meeting without having given correct notice of that meeting.
68. Section 108B(3) of the 1992 Act provides that where I make a declaration that a union has breached a relevant rule, I shall also make an Enforcement Order unless I consider that to do so would be inappropriate. In respect of this complaint, Mr Beaumont does not seek an Enforcement Order. Further, I note that all those nominated by the BASSA branch were in receipt of sufficient nominations from other branches to stand in the 2014 EC elections. In all the circumstances I do not consider that it is appropriate to make an Enforcement Order in respect of the breach that I have found. However, should the Union consider that the Ballot Rules & Guidelines for the 2014 EC elections do not express its intentions with sufficient clarity, it is in a position to reconsider them prior to any future relevant election.

Complaint Three

69. The claimants' third complaint is as follows:

Complaint 3

On or around 19 April 2014 the Union breached Rule 16.24 by the Union's General Secretary and its Chief of Staff failing to pass a complaint made by member Kevin Cook to the Executive as required by Rule 16.24. Furthermore the union's chief of staff refused to pass the complaint to the Executive on 22 May 2014, claiming wrongly that the complaint was 'out of time'.

70. Rule 16.24 of the Rules of the Union provides as follows:

16.24 If the Returning Officer or a member who is not a candidate considers that there are grounds for a complaint to the Election Commissioner, he/she should refer the matter to the Executive Council.

Summary of Submissions

71. Mr Beaumont, for the claimants, submitted that Mr Cook considered he had grounds of a complaint to the Election Commissioner and should have been able to pursue that complaint by submitting it to the General Secretary and/or the Chief of Staff for onwards transmission to the Election Commissioner. He argued that Mr Cook could not write directly to the 60 plus members on the EC and that he did his best to get it to them by writing to the General Secretary. In Mr Beaumont's submission, the EC never considered Mr Cook's complaint as Mr Murray decided not to allow the complaint to be referred to it. He noted that Mr Cook repeated his request for his complaint to be put to the Election Commissioner on 21 May 2014 only to be told wrongly by Mr Murray that his complaint had been made out of time. Mr Beaumont noted that Mr Cook had resigned from the Union on 4 May 2014 but argued that once a complaint had been properly made by a member, it must be

determined in accordance with the procedure and is not to be treated as having been abandoned should the member leave the Union or even should he or she die.

72. Mr Potter, for the Union, submitted that the General Secretary, acting as the Returning Officer, was under no duty to refer Mr Cook's complaint to the EC because, inter alia, his complaint was premised on a misunderstanding of the relationship between bullet points 2 and 3 of paragraph 2.3 of the Ballot Rules & Guidelines to the 2014 EC elections and it is doubted if the Election Commissioner would have deemed the complaint to be serious. Mr Potter further submitted that Mr Cook's complaint of 22 May 2014 was made at a time after he had left the Union and therefore at a time he had no right to bring the complaint.

Conclusions – Complaint Three

73. Rules 16.23 to 16.30 deal with complaints to the Election Commissioner. Rule 16.24 provides that if either the Returning Officer or a member who is not a candidate in the election considers there to be grounds for a complaint to the Election Commissioner, the member should refer the matter to the EC. Therefore, the member who is not a candidate has no direct access to the Election Commissioner. A complaint by such a member is put to the EC which must then decide whether to submit the complaint to the Election Commissioner under rule 16.23.
74. In order to engage rule 16.23 and 16.24 it is necessary that there is a complaint to the Election Commissioner. In the case of the Returning Officer and a member who is not a candidate, they must communicate to the EC their wish to involve the Election Commissioner. In any trade union election a number of problems may emerge which are clearly best sorted out as quickly and as locally as possible. By rule 16.4 the EC is to appoint a Returning Officer and may delegate to him/her its powers relating to the conduct of elections. In this election, the General Secretary was appointed as Returning Officer. By rule 16.2, the EC is to appoint an independent scrutineer and in this election Electoral Reform Ballot Services ("ERBS") was appointed. Both the Returning Officer and ERBS are persons to whom it would be appropriate to address certain complaints and who would or might deal with them if appropriate. The Election Commissioner is appointed under rule 16.3 and sits as the final arbiter of the complaints procedure under the rules. It is clearly not intended that the Election Commissioner becomes involved in all complaints made in the course of an election.
75. Turning to the facts of this case, I note that Mr Cook first raised his complaint with ERBS. Then, on 19 April 2014, he wrote to Mr McCluskey as the Chief Returning Officer. He stated that he wished to make a formal complaint that nominations for the EC were not carried out in accordance with election rules by BASSA and then set out the substance of his complaint. He did not state that he wished to make a complaint to the Election Commissioner. The General Secretary asked Mr Murray to look into it. Mr Murray did so and, on his reading of paragraph 2.3 of the Ballot Rules and Guidelines, there was a complete answer to the complaint which he explained to Mr Cook. Mr Cook did not accept that explanation and asked if the matter could be passed to the Returning Officer. He did not ask that it be forwarded to the Election Commissioner. Mr Murray responded by explaining which precise bullet point in paragraph 2.3 he was relying upon. On these facts, I find that Mr

Cook did not raise a complaint to the Election Commissioner. If he had wished to do so, he should have stated so expressly. The Union attempted to deal with his complaint at an appropriate level and, when it was not resolved to Mr Cook's satisfaction, he did not attempt to escalate it to the next level. Accordingly, in my judgement, the General Secretary and/or Mr Murray were not under any obligation to process Mr Cook's original complaint towards the Election Commissioner under rule 16.24.

76. On 21 May 2014 Mr Cook raised his complaint again. This time he asked for his complaint to be brought to the attention of the attention of the EC "as per rule 16.24". Although this email contains no express reference to the Election Commissioner, I consider that it is apparent from the reference to rule 16.24 that Mr Cook was seeking to engage the procedure which could lead to his complaint being considered by the Election Commissioner. For the Union not to process such a complaint might in other circumstances constitute a breach of rule 16.24. However, on the facts of this case, Mr Cook had resigned from the Union on 4 May and so by the time he sought to make a complaint to the Election Commissioner he was no longer a member of the Union and was not entitled to bring such a complaint. Accordingly, the failure of the General Secretary or Mr Murray to place this communication before the EC was not a breach of rule 16.24.
77. For the above reasons I dismiss the Claimants' application for a declaration that on or about 19 April 2014 and/or on or around 22 May 2014 the Union breached rule 16.24 of its rules by the General Secretary and its Chief of Staff not passing a complaint made by Mr Cook on 21 May to the EC.

Complaint Four

78. The claimants' fourth complaint is as follows:

Complaint 4

On or around 23 July 2014 the Union breached Rules 16.23 and 16.28 by the Union's Election Commissioner failing to adjudicate and/or failing to endeavour to adjudicate on a complaint, saying incorrectly that the complainant "is not entitled to inherit, acquire, revive, continue or pursue a complaint made by someone else...Nor does she have any right under the Rules to complain about the handling of such a complaint".

79. Rules 16.23 and 16.28 of the Rules of the Union provide as follows:

16.23 If at any stage during an election or within 28 days of the declaration of the outcome a candidate in an election or the Executive Council considers that there has been a breach of these Rules or of any other legal requirement relating to the conduct of the election or any other interference with the conduct of the election and that the breach or interference may materially affect or may have materially affected the outcome of the election, he/she or the Executive Council may submit a complaint to the Election Commissioner.

16.28 The Election Commissioner may adjudicate on a complaint on the basis of written material submitted with the complaint or, at his/her complete discretion, call for such further information as he/she shall think fit and/or conduct a hearing of the complaint. Subject to the provisions of this Rule, the Election Commissioner shall decide his/her own procedures for investigating and adjudicating upon the complaint provided that he/she shall endeavour to adjudicate on the complaint as quickly as is reasonable practicable.

Summary of Submissions

80. Mr Beaumont, for the claimants, submitted that Professor Ewing was wrong to find that “*Ms Mansell ... does not have any right under the rules to complain about the handling of [Mr Cook’s] complaint*”. He argued that Ms Mansell did have a right under rule 16.24 to make a complaint about not only a breach of the Union’s rules but also about “*any other legal requirement relating to the conduct of the election or other interference with the conduct of the election*”. He observed that by rule 16.23 the test as to whether the breach or interference may have materially affected the outcome of the election was one for Ms Mansell to make, not the Union nor the Election Commissioner. He further observed that Ms Mansell was not restricted to complaining about her own election for LGBT position in the South West Region. Mr Beaumont argued that by the Election Commissioner declining to adjudicate upon the substance of Ms Mansell’s first complaint, the Union denied Ms Mansell the opportunity of making a complaint and thereby breached rule 16.23. Mr Beaumont considered that Professor Ewing should have determined the substance of Ms Mansell’s first complaint and not dismissed it on procedural grounds. He further submitted that the Union had breached rule 16.28 on the basis that it provides that the Election Commissioner “*shall endeavour to adjudicate on the complaint as quickly as is reasonably practicable*” and that, in this case, Professor Ewing did not endeavour to adjudicate the substance of this complaint at all.
81. Mr Potter, for the Union, submitted that Professor Ewing had adjudicated upon the procedural validity of Ms Mansell’s first complaint and the substantive validity of her second complaint. He observed that Professor Ewing had reached four findings; namely (a) that by resigning from the Union Mr Cook had abandoned his complaint, (b) that Ms Mansell’s first complaint fell outside rule 16.23, (c) that there is no right to complain about the handling of someone else’s complaint and (d) that, in any event, Mr Cook’s complaint appears groundless. Mr Potter argued that Ms Mansell’s first complaint was based on a complaint made by a former member which had no substance and did not materially affect the outcome of the election. As to the alleged breach of rule 16.28, Mr Potter submitted that Professor Ewing did in fact adjudicate on Ms Mansell’s first complaint and gave written reasons for his decision. He observed that the Election Commissioner is given a wide discretion under the rules and that Professor Ewing came to a decision that was open to him within that discretion.

Conclusions – Complaint Four

82. Mr Beaumont submits that the Election Commissioner came to a wrong decision in relation to Ms Mansell’s first complaint. That may or may not be the case but I am not the appellate body for appeals from the Election Commissioner of Unite. My jurisdiction in respect of the rules of trade unions is provided for by section 108A(1) and (2) of the 1992 Act. This complaint is misconceived. I find on the facts of this case that there is plainly no breach of either rule 16.23 or 16.28. Ms Mansell did submit her complaints to the Election Commissioner, as she was entitled to do, and the Election Commissioner determined those complaints as is apparent from his decision which I have set out in full at paragraph 35 above. Mr Beaumont makes a false distinction between the case being dismissed on its merits or for want of

jurisdiction or on other grounds. Professor Ewing considered and determined this case as he was entitled to do. The parties must abide by the outcome.

Complaint Five

83. The claimants' fifth complaint is as follows:

Complaint 5

On or around 23 July 2014 the Union breached Rule 16.3 by the Union failing to ensure that the Election Commissioner adjudicated on the complaint brought by a member under Rule 16.23 of the Union's Rules and/or failed to appoint a replacement Election Commissioner when the existing one declined to adjudicate.

84. Rules 16.3 and 16.23 of the Rules of the Union provide as follows:

16.3 The Executive Council shall appoint a suitable, independent person to act as Election Commissioner to adjudicate on any complaints made under clause (23) of this Rule relating to the conduct of the election. In the event that the Electoral Commissioner finds it necessary to carry out an investigation in the conduct of his or her duties under Rule all members and employees of the Union are required to afford him or her every assistance in this regard.

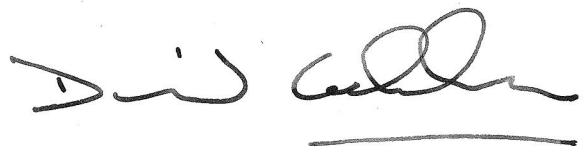
16.23 If at any stage during an election or within 28 days of the declaration of the outcome a candidate in an election or the Executive Council considers that there has been a breach of these Rules or of any other legal requirement relating to the conduct of the election or any other interference with the conduct of the election and that the breach or interference may materially affect or may have materially affected the outcome of the election, he/she or the Executive Council may submit a complaint to the Election Commissioner.

Summary of Submissions

85. Mr Beaumont, for the claimants, submitted that this breach also arises out of the Election Commissioner having failed to adjudicate on Ms Mansell's first complaint. He argued that rule 16.3 obliges the EC to appoint someone to adjudicate on any complaint made under rule 16.24. As Ms Mansell had made a valid complaint and as the Election Commissioner did not adjudicate upon it, Mr Beaumont submitted that the EC should have appointed someone else to do so as otherwise the complaint would go unconsidered. He compared the situation to that which would occur should the Election Commissioner become ill or die, in which case he argued the EC would appoint a replacement.
86. Mr Potter, for the Union, submitted that rule 16.3 provides that the EC shall appoint an Election Commissioner but must then leave the Election Commissioner to perform his or her role independently without direction or influence from the Union. He argued that Professor Ewing had undertaken his duties in a bona fide manner and had adjudicated upon Ms Mansell's complaints. He argued that the Union cannot be responsible for any decision made by the Election Commissioner. He accepted that it must live with any decision reached by the Election Commissioner.

Conclusions – Complaint Five

87. Rule 16.3 provides that the EC shall appoint a suitable independent person to act as Election Commissioner. It did so. There is no breach of this rule. This complaint is also misconceived. It would be unhelpful to the clear objective of rule 16 if members who were unhappy with decisions of the Election Commissioner were encouraged to shoehorn complaints to me into inappropriate rules, as in the present case.
88. For the above reasons I refuse the claimants' application for a declaration that on or about 23 July 2014 the Union breached rule 16.3 of its rules by allegedly having failed to ensure that its Election Commissioner adjudicated on the complaint brought by Ms Mansell and/or failed to appoint a replacement Election Commissioner when the existing one allegedly declined to adjudicate.

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

David Cockburn
The Certification Officer