

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

**Mr D Beaumont**

**v**

**Unite the Union**

**(No.5)**

**Date of Decision**

**21 October 2016**

**DECISION**

Upon an application by Mr David Beaumont ("the claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

1. I refuse Mr Beaumont's application for a declaration that at some time before 14 March 2015 Unite the Union breached rule 6.2 of its then current rules and continued to be in breach of the rule until 10th September (or possibly as late as December) 2015, when the new rule book was produced and approved.
2. I refuse Mr Beaumont's application for a declaration that after 10 September (or possibly December) 2015, Unite the Union breached Executive Guidance to Rule 6, sub section 6.3 and continued to be in breach of the rule at 25 February 2016 and later by reason of its allowing an individual, Mr Lyon, to remain as a member of the union's Executive Council (EC) despite his ceasing to be "an accountable representative of workers", as required by the Guidance to Rule, sometime before 14th March 2015.
3. I refuse Mr Beaumont's application for a declaration that at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.2 and continued to be in breach of the rule at 25 February 2016 and later by reason of the Union allowing an individual, Mr Lyon, to continue to hold office on the union's EC as representative of the Chemical, Pharmaceutical, Process and Textile Sector despite his taking up employment outside that sector before 14 March 2015.
4. I refuse Mr Beaumont's application for a declaration that at some time before 14 March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.3 and continued to be in breach of the rule at 25 February 2016 and later by reason of its not considering whether Mr Lyon should continue to attend the E C, and other conferences following Mr Lyon's dismissal from employment in the Chemical Pharmaceutical Process and Textile sector.

5. I refuse Mr Beaumont's application for a declaration that at some time before 14 March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.5.2 and continued to be in breach of the rule at 25 February 2016 and later by reason of its failing to hold an election for a replacement on the EC for Mr Lyon despite that Mr Lyon changed jobs on or before 14 March 2015.
6. I refuse Mr Beaumont's application for a declaration that at some time before 14 March 2015 Unite the Union breached rule 7.1 of its current and previous rules and continued to be in breach of the rule at 25 February 2016 and later by reason of it allocating Mr Lyon to an 'Industrial Sector' in which he is not employed.
7. I refuse Mr Beaumont's application for a declaration that at some time before 14 March 2015 Unite the Union breached rule 14.2.5 (14.2.3 of its current rules) and continued to be in breach of the rule at 25 February 2016 and later by reason of it allowing an individual, Mr Lyon, to hold office as a member of Unite's EC whilst he was an employee of another trade union.

## **REASONS**

1. Mr Beaumont brought this complaint as a member of Unite the Union. His application was received at the Certification Office on 7 March 2016 and alleged various breaches of the rules of the Union in relation to the position of Mr Lyon on the Union's Executive Council.
2. Following correspondence, Mr Beaumont confirmed the complaints he sought to pursue in the following terms:

### **Complaint 1**

*That at some time before 14th March 2015 Unite the Union breached rule 6.2 of its then current rules and continued to be in breach of the rule until 10th September (or possibly as late as December) 2015, when the new rule book was produced and approved. The Union was in breach of the rule by allowing an individual, Mr Lyon, to remain as a member of the union's Executive Council despite his ceasing to be "an accountable representative of workers", as required by the rule, sometime before March 2015.*

### **Complaint 2**

*After 10th September (or possibly December) 2015, Unite the Union breached Executive Guidance to Rule 6, sub section 6.3 and continued to be in breach of the rule at 25th February 2016 and later. The Union was in breach by allowing an individual, Mr Lyon, to remain as a member of the union's Executive Council despite his ceasing to be "an accountable representative of workers", as required by the Guidance to Rule, sometime before 14th March 2015.*

### **Complaint 3**

*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.2 and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach by allowing an individual, Mr Lyon, to continue to hold office on the union's Executive Council as representative of the Chemical, Pharmaceutical, Process and Textile Sector despite his taking up employment outside that sector before 14th March 2015.*

**Complaint 4**

*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.3 and continued to be in breach of the rule at 25th February 2016 and later. Following Mr Lyon's dismissal from employment within the Chemical, Pharmaceutical, Process and Textile Section the Union should, under this rule, have considered whether Mr Lyon should continue to attend the Executive Council, and other conferences, committees or disciplinary panels which he nevertheless did attend. Instead the Union simply reconfirmed him as a branch officer in (new) employment and thereby "eligible to hold office".*

**Complaint 5**

*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.5.2 and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach of the rule by failing to hold an election for a replacement on the Executive Council for Mr Lyon despite that Mr Lyon changed jobs on or before 14th March 2015 and does not work in the workplace, department or role that he was elected to represent.*

**Complaint 6**

*That at some time before 14th March 2015 Unite the Union breached rule 7.1 of its current and previous rules and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach of the rule by allocating Mr Lyon to an 'Industrial Sector' in which he is not employed. Mr Lyon is allocated to the 'Chemicals, Pharmaceuticals, Process and Textiles Sector' although since before 14th March 2015 he has been employed by the International Transport Federation which is a trade union, or an international federation of transport workers' trade unions, and clearly not in the Chemicals, Pharmaceuticals, Process and Textiles Sector.*

**Complaint 7**

*That at some time before 14th March 2015 Unite the Union breached rule 14.2.5 (14.2.3 of its current rules) and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach of the rule by allowing an individual, Mr Lyon, to hold office as a member of Unite's Executive Council whilst he was an employee of another trade union, namely the International Transport Workers Federation.*

3.I investigated the alleged breaches in correspondence and a hearing took place on 11 October 2016. At the hearing, Mr Beaumont represented himself. He produced a written witness statement and gave oral evidence. The Union was represented by Mr Ben Cooper of counsel, who was instructed by Mr Neil Gillam of the Union's Legal Department. The Union submitted a written witness statement from Mr Andrew Murray, Chief of Staff and Mr Mark Lyon, Vice Chair of the Executive Council, who both also gave oral evidence. Mr Beaumont and Mr Cooper each provided skeleton arguments. There was in evidence a 276 page bundle of documents consisting of letters and other documentation supplied by the parties and another bundle consisting of two different versions of the Rules of the Union and two versions of the Unite EC Guidance on the implementation of rule revised consequential to 2nd Rules Conference.

## Findings of Fact

4. Having considered the oral and documentary evidence and the representations of the parties, I find the facts to be as follows:
5. Mr Beaumont was 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. In August 2014 the union commenced disciplinary action against the Mr Beaumont. This led to his expulsion on 16 March 2016. His appeal against his expulsion was unsuccessful. His application to the Employment Tribunal of unjustifiable discipline by a trade union was due to be heard on 25 October 2016.
6. Mark Lyon was elected to the Executive Committee of the then Transport and General Workers Union (TGWU) in 2004. In 2009 he was elected to the Executive Council of Unite the Union which was formed by the amalgamation of the TGWU and Amicus in 2007. In 2012 he was elected as convenor of Branch (SC126). Branch SC126 is a branch based on the Grangemouth Facility in Scotland. It is not a workplace branch. A large number of the members of the branch are employed by the Ineos group of companies. However, the branch also has members who work for BP, Fortum Power Station, Ondeo water services among others.
7. The post of convenor is a Branch post and is covered by the phrase '*and such other officers as the Branch may elect*' in Rule 17.7 of the union's rules. It is deemed to be Rule 6 compliant by virtue of provision 6.3.2.1 of the EC Guidance.
8. On 4 February 2014 Mr Lyon was dismissed by Ineos. At some point after this he applied to the Employment Tribunal claiming that his dismissal was on grounds related to trade union membership or activities. Although I was not given a date of this application I find that it will have been soon after his dismissal as the Employment Tribunal was able to arrange and hold a preliminary hearing on 7 March 2014.
9. Nominations for 2014 Unite EC Elections closed on 14 February 2014. Mr Lyon was nominated as a candidate for the EC in the Chemicals, Pharmaceuticals, Process and Textiles Industrial (CPPT) Sector Constituency. The ballot in this election closed on 23 April 2014.
10. On 7 March 2014 an Interim Relief Hearing in relation to Mr Lyon's claim of unfair dismissal on grounds related to trade union membership or activities was heard at Employment Tribunal in Edinburgh.
11. The Employment Tribunal issued an Order on 18 of March 2014. In the Order the Tribunal stated that '*it is likely that the claimant will succeed at the full hearing*'. The Tribunal went on to make an order that '*The contract of employment between the claimant and the respondents will continue in force from the 4 February 2014 until the determination or settlement of the complaint*'.

12. On 23 of April 2014 Mr Lyon was elected unopposed to the EC as representative for the electoral constituency of the Chemical, Pharmaceuticals, Process and Textiles Industrial Sector.
13. On 14 November 2014 Mr Lyon settled his employment tribunal claim against Ineos. The terms of the settlement included a provision that Mr Lyon's employment with Ineos terminated with effect from 11 November 2014. At this point Mr Lyon was no longer in employment. The union determined that the issue of his status was to be put to the EC at its meeting in March 2015. Although the EC did have a meeting scheduled for December 2014 the union did not consider it practicable for the issue to be put to that meeting.
14. On 2 March 2015 Mr Lyon commenced employment as an organiser with the International Transport Workers Federation (ITF). Mr Lyon gave uncontested evidence that his main responsibilities were as lead coordinator for the ITF and IndustriAll hub project in Grangemouth. This hub is a cooperation body centred on the oil and chemical sector in the town (Grangemouth).
15. The International Transport Workers Federation is a trade union as defined by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992. It is on the schedule to my list of trade unions. It is made up of constituent or affiliated organisations rather than workers. It therefore meets the statutory definition of a trade union by virtue of section 1(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 because it is an organisation:
 

(b) which consists wholly or mainly of—

  - (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
  - (ii) representatives of such constituent or affiliated organisations,

*and whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations.'*
16. The Unite the Union EC considered Mr Lyon's eligibility to hold lay office at its meeting on 9 March 2015. At that meeting the EC considered Mr Lyon's victimisation by his former employer and his employment with the ITF. Following discussion, the minutes record that *'it was unanimously agreed that Bro Lyon was eligible to hold lay office'*.
17. In July 2015 Mr Lyon was re-elected as a Convenor for Branch SC126.
18. The Unite the Union Rules Conference met between 6 and 10 July 2015. The Conference passed a resolution to amend Rule 6.2 of the Unite the Union Rule Book, The resolution was to remove the words *'or hold office'* from the first line of the rule. The rule as amended reads *'In order to be eligible to be a candidate for election to the Executive Council and/or any committee, council or any other body of the Union provided by these rules, the member in question must be an accountable representative of workers...'*

19. At the EC on 11 September 2015. Mr Andrew Murray, the union's Chief of Staff, introduced item 9.3 entitled '*Rules Conference 2015 9.3.1 Draft Rule Book*'. He drew the EC's attention to the need to amend the Rule Book further in relation to a small number of items. It was agreed that the proposals in relation to these and amendments remitted to the Council would be brought to the December meeting for final approval. I was shown no evidence that the amendment to Rule 6.2 was considered at the September meeting or was among the issues that would need to come back to the December meeting for final approval. After consideration the Council '*RESOLVED: That the Rule Book be approved in line with the preamble to this minute*'.
20. At the December 2015 EC meeting item 9.3 dealt with '*Revised EC Guidance, Standing Orders etc*'. Item 9.5 dealt with Amendments Remitted from 2nd Rules Conference. In the case of both items the minutes record that '*At the close of consideration, the Council "RESOLVED: That the report be accepted"*'. The evidence before me was that these items were dealing with the issues that the September EC had agreed needed to come back to the December meeting for final approval.
21. At his union disciplinary hearing on 25 February 2016 and by email of the same date to Mr Andrew Murray, Mr Beaumont raised his complaints about Mr Lyon's status with the union. Mr Lyon was a member of the panel that was to hear the charges against Mr Beaumont. Mr Beaumont raised the following concerns;
  - about Mr Lyon's having taken employment outside of the Chemicals, Pharmaceuticals, Process and Textiles (CPPT) Sector,
  - that Mr Lyon's may have obtained this employment with assistance from Unite the Union and this could make him conflicted as a lay member of the EC and
  - that the ITF appeared to be a trade union therefore disqualifying Mr Lyon from sitting on the EC by virtue of Rule 14.2.3 (2015 Rule Book).
22. On the 7<sup>th</sup> of March 2016 Mr Beaumont made his complaint to the Certification Officer.

### **The Relevant Statutory Provisions**

23. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

#### **Section 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.*

(3) *The applicant must be a member of the union, or have been one at the time of the alleged breach or threatened breach.*

(6) *An application must be made –*

(a) *within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or*

(b) *if with that period any internal complaints procedure of the union is invoked to resolve the claim, within the period of six months starting with the earlier of the days specified in subsection (7)*

(7) *Those days are –*

(a) *the day on which the procedure is concluded, and*

(b) *the last day of the period of one year beginning with the day on which the procedure is invoked.*

### **The Relevant Rules of the Union**

24. The rules of the Union which are relevant for the purposes of this application are to be taken from the Unite the Union Rule Book Effective From Rules Conference 2011 (“the 2011 Rules”) and the EC Guidance on the implementation of rule revised consequential to 2nd Rules Conference (“the EC Guidance”) and are as follows:

### **The 2011 Rules**

#### ***RULE 6 LAY OFFICE***

6.1 *The Executive Council shall make provision to ensure accountability of Regional, Industrial and Equalities Executive Council members and those Executive Council members elected pursuant to rule 14 shall meet with their respective National Industrial Sector, National Equalities or Regional 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 Labour Party Liaison Committees and the young members’ structure, other than the Young Members’ delegate to the Executive Council and Regional Committees as specified elsewhere in these rules.*

6.3 *The definition of the term “accountable representative of workers” shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique nature of some industries (e.g. construction, contracting, leisure, rural etc) in formulating such a definition. It must nevertheless include Branch officeholders who are in employment when employed by an organisation that is not Unite the union, shop stewards, health & safety, equalities and learning representatives elected at their place of work.*

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.*

6.6 *The Executive Council shall issue guidance to establish the right of recall over members elected to lay office.*

**RULE 7 INDUSTRIAL/OCCUPATIONAL/PROFESSIONAL SECTORS**

*7.1 Members in employment shall be allocated to the Industrial Sector in which they are employed. The term 'Industrial Sector' is a generic term including occupational and professional sectors.*

**RULE 13 RULES AMENDMENT**

*13.1 For the revision of the rules and constitution of the Union there shall be a Rules Conference which shall meet in every fourth year. No member shall be a lay delegate if they are currently employed by the Union.*

*13.2 The Rules Conference shall be constituted in the same way as the Policy Conference.*

*13.3 Amendments to rule may be approved by a simple majority of those voting. Only elected lay delegates shall have the right to vote.*

*13.4 Following the conference any amendment to rule which commits the Union to expenditure of funds must be put to the Executive Council for consideration and ratification before implementation.*

*13.5 The Executive Council shall be entitled to submit motions and amendments to motions to amend the rules to a Rules Conference and if an urgent issue arises it may do so at short notice.*

*13.6 If in the opinion of the Executive Council there is an urgent need to amend the rules between Rules Conferences, the Executive Council may amend the rules by a resolution supported by not less than 75% of its members, provided that amendment shall cease to have effect at the end of the next Rules Conference unless it has been ratified by a resolution of that conference.*

*13.7 The Executive Council shall determine the procedure for nomination, qualification and election of delegates and the constituencies from which they shall be elected.*

*13.7.1 Each Region may nominate one Retired Member as an observer to the Rules Conference.*

*13.8 The Executive Council shall be in attendance at any Rules Conference, and its members may speak upon but may not vote on any subject.*

*13.9 Each delegate shall hold office until the next Rules Conference.*

*13.10 The Executive Council shall determine the number of rules motions which may be submitted by from the Branch; regional; industrial and equalities structures, and from the Executive Council itself.*

*13.10.1 The National Retired Members Committee and Regional Retired Members Co-ordinating Committees may submit one amendment each to the Rules Conference solely pertaining to members in retirement.*

*13.11 The Rules Conference shall be chaired by the Chair of the Executive Council.*

*13.12 The Rules Conference may be recalled by the Executive Council in an emergency. It shall deal only with the business for which it is summoned.*

*13.13 The Executive Council shall draft the standing orders for the Rules Conference. A Standing Orders Committee shall be constituted on the basis of at least one delegate from each Region under a procedure to be agreed by the Executive Council. No member of the Executive Council shall be eligible to serve*



*on the Standing Orders Committee. The Chair of conference may attend the meetings of the Committee and may issue directions prior to the Conference, subject to those directions being upheld by the Conference itself*

*13.13.1 A member of the Standing Orders Committee may not simultaneously be a delegate to the Conference, but for the purpose of electing the next Rules Conference Standing Orders Committee members will be treated as being a delegate to the Conference and may be nominated and elected to serve on the next Standing Orders Committee.*

*13.14 No member of the Executive Council, employee of the Union or retired employee of the Union, or any member who is in receipt of a pension from any of the funds of the Union, no tutor registered for delivery of Unite education by the Education Department, and no member who is employed on Union business on a full-time or part-time basis with remuneration paid from funds which are raised from special contributions paid by Branch members as distinct from Union contributions, shall be eligible for nomination as a delegate to the Rules Conference.*

#### **RULE 14 EXECUTIVE COUNCIL**

*14.2.5 No current or former employee of the Union, nor any current employee of any other union, is eligible to stand for, or hold office on, the Executive Council*

#### **The EC Guidelines**

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

*6.1.1 Members elected to the Executive Council from a regional seat shall attend the Regional Committee for their region when it meets in an ex officio capacity.*

*6.1.2 Members elected to the Executive Council from an industrial seat shall attend the National Committee for their industrial sector when it meets in an ex officio capacity.*

*6.1.3. Members elected to the Executive Council to be a national representative for women, shall attend the National Women's Committee when it meets in an ex officio capacity.*

*6.1.4 Members elected to the Executive Council to be a national representative for Black, Asian and ethnic minority members, shall attend the national Black, Asian & Ethnic Minority Committee when it meets in an ex officio capacity.*

*6.1.5 Members elected to the Executive Council to be a national representative for Lesbian, Bisexual, Gay & Trans members, shall attend the National LGBT Committee when it meets in an ex officio capacity.*

*6.1.6 Members elected to the Executive Council to be a national representative for Disabled members, shall attend the National Disabled Members' Committee when it meets in an ex officio capacity.*

*6.1.7 Where a member is attending a meeting that is not an Executive Council meeting in their capacity as an Executive Council member they shall have the right to speak, but not to vote, at that meeting.*

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.

6.2.1 Only members who are elected to represent workers will be eligible to participate in any body of the union, including any conferences, but with the exception of branch and workplace meetings (which all members can attend) and Area Activists Committees and Regional Labour Party Liaison 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 (i.e. construction, contracting, leisure, rural, etc) in formulating such definition. It must nevertheless include branch office holders who are in employment, when employed by an organisation that is not Unite the Union, shop stewards, health and safety, equalities and learning representatives, elected at their place of work.

6.3.1 An "accountable representative of workers" must have been elected by the Unite members at a Unite branch or workplace. The workplace must contain a minimum of three members. The election must comply with the guidance under 6.5 below.

6.3.2 The range of relevant elected office may be specified by Executive Council guidance in relation to specific rules, however in all cases where the representative has been elected under this guidance to the following roles, such representatives will count as 'accountable representatives of workers':

6.3.2.1 convenor

6.3.2.2 shop steward (or "workplace representative"/"father/mother of-the-chapel", etc., where such phrases are the local colloquial term for such representative as represents members in bargaining and disciplinary and grievance matters)

6.3.2.3 health and safety representative

6.3.2.4 equalities representative

6.3.2.5 learning representative

6.3.2.6 environmental representative

6.3.2.7 branch secretary/treasurer/chair/equalities officer (where that branch officer is a paid employee of a company or organisation which is not Unite the Union), save with the specific permission of the Executive Council, (taking in to account their current employment).

6.3.2.8 appointment as an "accredited support companion" (aka "lay companion") in itself would not confer the status of "accountable representative of workers"; to qualify an accredited support companion would also need to hold office as listed above.

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.*

## **Consideration and Conclusions**

### **Complaints 1 to 5 – Relevant Rule Book**

25. As Mr Beaumont pointed out in his submissions, his case is complicated by a change of rule book during the period in question. The rule referred to in Mr Beaumont's complaint 1 is rule 6.2. In the 2011 Rule book this is set out as:

*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 Labour Party Liaison Committees and the young members' structure, other than the Young Members' delegate to the Executive Council and Regional Committees as specified elsewhere in these rules.*

26. The 2015 Rules Conference amended Rule 6.2 to remove the words 'or to hold office, from the first line of the rule. Complaints 2-5 refer to the guidance issued by the EC in relation to Rule 6 which can be found at Appendix 1 of the 2011 Rule Book.

27. These complaints are complaints brought under section 108A of the 1992 Act. As such they are subject to strict time limits. The primary time limit is contained in section 108A (6). Essentially an application needs to be made to the Certification Officer within six months starting with the day on which the breach or threatened breach is alleged to have taken place. Mr Beaumont first raised his concerns with the union on 25 February 2016 and made his application to the Certification Officer on the 7 March 2016. It is therefore the case that I am unable to consider an allegation of a breach of rule that is alleged to have taken place before the 26 August 2016. I therefore have to determine at what date the amended rule 6.2 became effective.

### **Summary of submissions**

28. Mr Beaumont submitted that the date that the amended rules brought about by the rules conference was far from clear. He accepted that the cover of the 2015 Rule Book stated '*Effective from Rules Conference 2015*'. However, he pointed out that the cover also stated '*(Approved by the Executive Council September 2015)*'. He raised questions about what 'effective from Rules Conference 2015' actually meant. He asked if it was 'the moment they are voted for at conference? Or is it at the end of that days or morning's sessions? Or is it the end of Conference? Is it only when they are checked for typos'? He acknowledged that none of these suggestions are satisfactory and went on to say that 'only the first one is suitably precise and not open to manipulation.
29. Mr Beaumont went on to give examples of the rules, as voted on by the Rules Conference being further amended by the EC following that conference. The examples he gave were not ones where the Executive Council were exercising their right under rule 13.5 to make urgent amendments to the rules between conferences. He referred specifically to Appendix 7 of the 2011 Rule book. This appendix is entitled '*Schedule of rules amended by the Executive Council*'. The preamble to the schedule states:

*"Following the Rules Conference in June 2011, the Executive Council, at its meeting in July 2011 used its powers under the enabling motion agreed by conference which allowed it to take the consequential action in regard to the amendments carried by the Conference for Administrative action and implementation as appropriate".*

30. At the hearing the union provided the terms of the enabling motion passed by the 2015 Rules Conference. The motion was as follows:

*"That the necessary consequential action in regard to the amendments carried by the Conference be referred to the Executive Council for administrative action and implementation as appropriate."*

31. Mr Beaumont also highlighted the process recorded on the EC minutes of September and December 2015. The minutes record that the EC considered the '*draft rule book*' and at the close of consideration it was '*RESOLVED: that the rule book be approved in line with the preamble to this minute*'.  
32. Mr Beaumont said that all of the above pointed to the EC having a role in the making of the union's rules. Specifically this was the approval of rules made by the

Rules Conference. He submitted that this meant the rule changes made at the 2nd Rules Conference did not become effective before the EC approved them and that this was most likely to have been at the September meeting, but could have been as late as the December meeting.

33. For the Union Mr Cooper asked me to accept that there was a distinction to be made between the rules of the union and a Rule Book that was a record of those rules. In terms of the making of the rules he submitted that Rules 13.1 and 13.3 make it clear that the power for the revision of the rules and constitution is vested in the Rules Conference. He submitted that it could be the case that for various reasons, including typographic errors or a delay in producing an amended copy of the rule book, that the rules of the union and the record of those rules (the Rule Book) may not always be identical. However, he submitted that where there was a difference it would be the rules as revised by the Conference that are the rules of the union. He also submitted that the union's rules contained no process by which the Executive Council could amend or hold up rules decided by conference before they became effective. There were some possible exceptions to this including where
- the EC is empowered by the enabling motion to take 'necessary consequential action in regard to the amendments carried by the Conference'.
  - there is a question as to whether the conference itself had the power to make a particular amendment.
34. The above examples appear to explain Appendix 7 of the 2011 Rule Book and the consideration of the Rule Book by the Executive Council at its September and December 2015 meetings.
35. For the above reasons Mr Cooper submitted that the rules, revised by the 2<sup>nd</sup> Rules Conference came into effect at the end of that conference. It was submitted that the end of the Conference was appropriate as prior to that the Conference would have been able to make further amendments.

#### **Conclusion - Complaints 1 to 5 – Relevant Rule Book**

36. I accept the union's submissions in this regard. I note that rule 13.1 states "*for the revision of the rules and constitution of the Union there shall be a Rules Conference which shall meet every fourth year*" and that rule 13.3 provides "*Amendments to rule may be approved by a simple majority of those voting*". I further note that, apart from the exceptions noted above in paragraph 33 and the EC's power to make urgent rules amendments between rules conferences allowed for in Rule 13.5, there is no provision for the EC or any other body of the union to amend the rules. Accordingly, I find that the rules as revised by the 2nd Rules Conference were effective from 10 July 2015. Further I find that the amendment to rule 6.2 was not the subject of any necessary consequential action as envisaged by the enabling motion.
37. The consequences of this finding are initially that I must dismiss Complaint 1 as the alleged breach is of Rule 6.2 before it was amended by the 2nd Rules Conference. I have found that the rule was amended on 10 July 2015. As I have

said in paragraph 27 I am unable to consider any of Mr Beaumont's allegations of a breach of rule that is alleged to have taken place before 26 August 2016. Mr Beaumont accepted that if I found the 2015 rules were effective from the end of the conference his complaint 1 would fail. However, he did not accept the same for his complaints 2-5.

38. Although addressing similar issues and based on the same facts Mr Beaumont submitted that these complaints were of breaches of the provisions of the EC Guidance on implementation of rule revised consequent to 2nd Rules Revision Conference in particular the section on Rule 6: Lay Office: EC Guidance. All of these complaints deal in one way or other with Mr Lyon's ability to continue to hold office. I cannot consider his eligibility to stand for office as the facts show he was last elected to the EC in April 2015.
39. Mr Beaumont submitted that the union did not amend the Rule 6 – Lay Officer EC Guidance to reflect the revised Rule 6.2 until around August 2016. He noted that there have been two published versions of the Rule 6: Lay Office: EC Guidance, one dated March 2016 and one dated August 2016. The March 2016 version does not remove the words '*or hold office*' from the guidance to rule 6.2. The union was not able to provide me with a more specific date of its amendment or a clear reason for the delay in its amendment. Mr Beaumont submits that by not removing the words '*or hold office*' from the Guidance until August 2016 the 'continue to hold office test' had been reintroduced by the union. I do not accept this submission. Rather I find that the union, for whatever reason, did not amend this part of the guidance until around August 2016. However, it is clear that the Rule 6: Lay Office: EC Guidance is just that, guidance in relation to Rule 6. Rule 6 was amended by the 2nd Rules Conference. The amendment to Rule 6.2 is clear – it removes the requirement for a member to be an accountable representative of workers in order to hold office. The rule, as amended by conference, is what informs the guidance not vice versa.
40. The provisions of the guidance referred to in complaints 2 to 5 are 6.3, 6.4.2, 6.4.3 and 6.5.2 respectively. Each of these relates to the requirement to be an accountable representative of workers. As I have found the effect of the change to Rule 6.2 is to require this criteria to be met in order to be a candidate for election but not, as the un-amended rule required, to hold office. In relation to a Branch Office holder the requirement is met if they are in employment as per Rule 6.3. As at 26 August 2015 Mr Lyon met this requirement. In the case of each of the breaches complained of on the facts of this case they did not occur on or after 26 August 2015 and I am therefore unable to consider them.

#### **Conclusion Complaints 1-5 jurisdiction**

41. On the grounds set out above I dismiss Complaints 1-5 on the basis that I have no jurisdiction to hear Mr Beaumont's alleged breaches of rule that could not have occurred on or after 26 August 2015.
42. At the Hearing I reserved my ruling on when the 2015 Rules became effective. Mr Beaumont and Mr Cooper also addressed me on the substantive points of complaints 1-5 I now go on to consider Mr Beaumont's substantive arguments on

his Complaints 1-5 should I be wrong on my finding that the 2015 rules became effective on 10 July 2015.

### **Complaint 1**

43. Mr Beaumont's complaint 1 is in the following terms:

*That at some time before 14th March 2015 Unite the Union breached rule 6.2 of its then current rules and continued to be in breach of the rule until 10th September (or possibly as late as December) 2015, when the new rule book was produced and approved. The Union was in breach of the rule by allowing an individual, Mr Lyon, to remain as a member of the union's Executive Council despite his ceasing to be "an accountable representative of workers", as required by the rule, sometime before March 2015.*

### **Summary of submissions**

44. Mr Beaumont submitted:

- After Mr Lyon left his employment with Ineos he was not 'in employment' and therefore not in compliance with rule 6.2, alternatively
- When Mr Lyon took up employment with the ITF he ceased to be in the CPPT sector of the union
- When Mr Lyon took up employment with the ITF any consideration of his victimisation by the employer ceased to be applicable.

45. Mr Beaumont submitted that the effect of the above was that Mr Lyon could no longer be 'an accountable representative of workers' as required by the rule.

46. In answering these points Mr Cooper for the union submitted that at all times Mr Lyon was within the meaning of an 'accountable representative of workers' expressly required to be included by rules 6.3 and 6.4. In Mr Lyon's case he was a Branch Office holder in employment.

47. There were periods when he wasn't in employment, those being the period of time between his dismissal and the continuation of contract order from the Employment Tribunal and the period of time between the end of his employment, 11 November, and his taking up work with the ITF. The periods of time that he was out of employment, it was submitted, were as a direct result of employer victimisation.

48. Mr Cooper further submitted that the Executive is given wide powers under the rules to determine what is meant by the term 'accountable representative of workers'. He also pointed to a clear objective contained in Rule 6.4, that of dealing sympathetically with cases where a member's eligibility to stand for election or continue to hold office may be affected by employer victimisation.

49. In considering the meaning of the rules Mr Cooper referred me to relevant case law. Among others he referred me to Warner J in *Jacques v. AUEW* (1986) ICR 683. 22

*"The affect of the authorities may I think be summarised by saying that the rules of a trade union are to be construed 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 were addressed."*

50. In terms of the exercise of a discretion conferred on a decision-making body Mr Cooper referred me to cases including *Braganza v BP Shipping & another* [2015] ICR 449, SC para 30 per Baroness Hale.

*'It is clear that, however, that unless the court can imply a term that the outcome be objectively reasonable - for example, a reasonable price or a reasonable term - the court will only imply a term that the decision making process be lawful and rationale in a public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose.'*

51. Applying this thinking to the present case Mr Cooper submitted that Rule 6 and specifically rule 6.3 in saying "*The definition of the term 'accountable representative of workers' shall be in the exclusive power of the Executive Council...*" gave the EC wide powers to interpret and apply the term 'accountable representative of workers'. He went on to submit that whilst the rules may envisage that the EC will publish written guidance about the definition of an accountable representative of workers, the production of such guidance does not preclude the EC, if appropriate in order to meet the specific circumstances of an individual case, from exercising the exclusive power to determine whether a particular individual meets the criterion.
52. Mr Cooper also referred me to rule 14.8.18 of the rules that empowers the EC to "*Decide any question relating to the meaning and the interpretation of these rules or on any matter not expressly provided for by these rules which decision shall be binding on all members of the union*".

### **Conclusion – Complaint 1**

53. I find, that with the exception of the short period between Mr Lyon's dismissal and the order of the Employment Tribunal and the period after his employment contract continuation order ended and his taking up employment with the ITF, Mr Lyon met the criterion of being an accountable representative of workers. This was by virtue of him being a branch office holder in employment as set out in Rule 6.3, a convenor (EC Guidance provision 6.3.2.1). I find that this definition does not require that the branch office holder be in employment in the constituency in which he was elected to represent on the EC. If I am wrong in this I accept the union's evidence that he remained a branch office holder in Branch SC126, which is a branch within the CPPT Industrial sector.
54. Any doubt over Mr Lyon's status was resolved by the EC considering his position, including his employment with the ITF and deciding that he remained an accountable representative of workers. I find that this decision did not go beyond the discretion given to the EC in Rules 6.3 and 6.4.
55. For the above reasons I would not have found that the union breached Rule 6.2. had I the jurisdiction to determine the issue.

### **Complaint 2**

56. Mr Beaumont's complaint 2 is in the following terms:  
*After 10th September (or possibly December) 2015, Unite the Union breached Executive Guidance to Rule 6, sub section 6.3 and continued to be in breach of the rule at 25th February 2016 and later. The Union was in breach by allowing an individual, Mr Lyon, to*



remain as a member of the union's Executive Council despite his ceasing to be "an accountable representative of workers", as required by the Guidance to Rule, sometime before 14th March 2015.

57. Executive Guidance to Rule 6, sub section 6.3 provides as follows:

*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 (i.e. construction, contracting, leisure, rural, etc) in formulating such definition. It must nevertheless include branch office holders who are in employment, when employed by an organisation that is not Unite the Union, shop stewards, health and safety, equalities and learning representatives, elected at their place of work.*

*6.3.1 An "accountable representative of workers" must have been elected by the Unite members at a Unite branch or workplace. The workplace must contain a minimum of three members. The election must comply with the guidance under 6.5 below.*

*6.3.2 The range of relevant elected office may be specified by Executive Council guidance in relation to specific rules, however in all cases where the representative has been elected under this guidance to the following roles, such representatives will count as 'accountable representatives of workers':*

*6.3.2.1 convenor*

*6.3.2.2 shop steward (or "workplace representative"/"father/mother-of-the-chapel", etc., where such phrases are the local colloquial term for such representative as represents members in bargaining and disciplinary and grievance matters)*

*6.3.2.3 health and safety representative*

*6.3.2.4 equalities representative*

*6.3.2.5 learning representative*

*6.3.2.6 environmental representative*

*6.3.2.7 branch secretary/treasurer/chair/equalities officer (where that branch officer is a paid employee of a company or organisation which is not Unite the Union), save with the specific permission of the Executive Council, (taking in to account their current employment).*

58. Mr Beaumont accepted that the arguments in relation to this complaint were much the same as for complaint 1, I agree.

## **Conclusion complaint 2**

59. Therefore, for the reasons set out in paragraphs 53 and 54 I would not have found that the union breached Executive Guidance to Rule 6, sub section 6.3 had I the jurisdiction to determine the issue.

### **Complaint 3**

60. Mr Beaumont's complaint 3 is in the following terms:

*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.2 and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach by allowing an individual, Mr Lyon, to continue to hold office on the union's Executive Council as representative of the Chemical, Pharmaceutical, Process and Textile Sector despite his taking up employment outside that sector before 14th March 2015.*

61. Executive Guidance to Rule 6, sub section 6.4.2 provides as follows:

*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.*

### **Summary of submissions**

62. Mr Beaumont submitted that in taking up employment with the ITF he had taken up alternative employment and should have ceased to hold office in relation to his former workplace with immediate effect. Mr Beaumont submitted that the provision related to any alternative employment and that even if that were at the same workplace Mr Lyon would be required to stand down.

63. Mr Cooper submitted that the provisions 6.4.1 to 6.4.3.2 in the EC Guidance applied to workplace representatives and did not strictly apply to Mr Lyon as he was a branch office holder. He went on to submit that any doubt over the application of provision 6.4.3 was resolved by the EC's decision on 9 March 2015 in exercise of its discretion in rules 6.3 and 6.4. He submitted that the EC's decision in March 2015 was in effect to apply a discretion equivalent to that available to them in relation to dismissed representatives in provision 6.4.3.

64. **Conclusion complaint 3**

I find that provision 6.4.2 did not apply to Mr Lyon as a branch office holder, rather than a workplace representative. I further find that any doubt as to Mr Lyon's status was dealt with by the EC decision on 9 March 2015. I do not find that the EC exceeded its powers of discretion in this regard. In particular I find that in the absence of an established fair procedure in the EC Guidance for dealing with non-workplace representatives such as Mr Lyon, it was open to the EC to establish such a procedure. Their consideration of Mr Lyon's eligibility at the March 2015 meeting represented an ad hoc approach to ensuring the union achieved the purpose of Rule 6.4.

65. For the above reason I would not have found that the Union had breached provision 6.4.2 had I the jurisdiction to determine the issue.

### **Complaint 4**

66. Mr Beaumont's complaint 4 is in the following terms:

*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.4.3 and continued to be in breach of the rule at 25th February 2016 and later. Following Mr Lyon's dismissal from employment within the Chemical, Pharmaceutical, Process and Textile Section the Union should, under this rule, have considered whether Mr Lyon should continue to attend the Executive Council, and other conferences, committees or disciplinary panels which he nevertheless did attend. Instead*

*the Union simply reconfirmed him as a branch officer in (new) employment and thereby "eligible to hold office".*

67. Executive Guidance to Rule 6, sub section 6.4.3 provides as follows:  
*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.*

#### **Summary of submissions complaint 4**

68. Mr Beaumont submitted that Mr Lyon did not cease to hold office therefore the Executive Council did not consider his entitlement '*to continue to attend any such conferences or such committees that they would have attended for the remainder of their elected term....*'
69. Mr Cooper submitted, as set out in relation to complaint 3 above that the EC's decision in March 2015 was in effect to apply a discretion equivalent to that available to them in relation to dismissed representatives in provision 6.4.3.

#### **Conclusion complaint 4**

70. As with complaint 3, and for the same reasons, I find that provision 6.4.3 did not apply to Mr Lyon and that any doubt was dealt with by the EC decision on 9 March 2015. I do not find that the EC exceeded its powers of discretion in this regard.
71. For the above reason I would not have found that the Union breached provision 6.4.3 had I the jurisdiction to determine the issue.

#### **Complaint 5**

72. Mr Beaumont's complaint 5 is in the following terms:  
*That at some time before 14th March 2015 Unite the Union breached Executive Guidance to Rule 6, sub section 6.5.2 and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach of the rule by failing to hold an election for a replacement on the Executive Council for Mr Lyon despite that Mr Lyon changed jobs on or before 14th March 2015 and does not work in the workplace, department or role that he was elected to represent.*
73. Executive Guidance to Rule 6, sub section 6.5.2 provides as follows:  
*6.5.2 They will be elected to hold office for three years, unless one of the following occurs, in which an election will be held for a replacement as soon as is practicable:*
- 6.5.2.1 The elected representative changes jobs so that they no longer work in the workplace (or department or role) that they were elected to represent.*

#### **Summary of submissions**

74. Mr Beaumont's submission in relation to this complaint was very straightforward. It was that Mr Lyon did change his job, he no longer worked in his old workplace, his old department or his old role. He also submitted that he had a representative role for the CPPT sector and that on being employed by the ITF he could no longer be seen as representing that sector. He therefore submitted that there should have been an election and that he was not aware that any such election had been called for.

75. For the union Mr Cooper submitted that Mr Lyon was not elected to represent a particular workplace, or department, or role. Rather he was elected to represent his Branch as convenor.
76. I find that Mr Lyon as a Branch Convenor was not elected to represent a particular workplace, or department or role and therefore Rule 6.5.2.1 does not apply to his taking up employment with the ITF.
77. For the above reasons I would not have found that rule 6.5.2.1 was breached had I the jurisdiction to determine the issue.

### **Complaint 6**

78. Mr Beaumont's complaint 6 is in the following terms:

*That at some time before 14th March 2015 Unite the Union breached rule 7.1 of its current and previous rules and continued to be in breach of the rule at 25th February 2016 and later. The Union is in breach of the rule by allocating Mr Lyon to an 'Industrial Sector' in which he is not employed. Mr Lyon is allocated to the 'Chemicals, Pharmaceuticals, Process and Textiles Sector' although since before 14th March 2015 he has been employed by the International Transport Federation which is a trade union, or an international federation of transport workers' trade unions, and clearly not in the Chemicals, Pharmaceuticals, Process and Textiles Sector.*

79. Rule 7.1 of the rules of the Union provides as follows:

*7.1 Members in employment shall be allocated to the Industrial Sector in which they are employed. The term 'Industrial Sector' is a generic term including occupational and professional sectors.*

### **Summary of submissions**

80. Mr Cooper submitted that the Certification Officer's jurisdiction is restricted to breaches of union rules that are related to the matters listed in subsection 108A(2) of the 1992 Act. In correspondence with the Certification Office Mr Beaumont maintained that Rule 7.1 was a rule relating to section 108(A) 2(a) "*the appointment or election of a person to, or the removal of a person from, any office*". Mr Beaumont submitted that the application of Rule 7.1 is essential to the allocation of members to the correct sector and therefore relates to members' eligibility to stand for election and hold office in each sector. Mr Beaumont went on to say that the operation of the rule could lead to the allocation of members to the wrong sector, either deliberately or through incompetence and that this could have an impact on the ability of a member to stand for office. He suggested that if a member were allocated to a sector in which they had no support it could have this impact.
81. Mr Cooper submitted that in looking at the rules I should first consider whether that rule relates to a subject or topic set out in section 108(A)2. He submitted that as far as rule 7.1 was concerned this was not the case. Rather this was a rule that dealt with the allocation of branches and/or members to industrial sectors. Rule 7.1 therefore is a matter relating to the union's structure and organisation which may then have a subsequent effect on the EC elections. He submitted that it was not enough to show a causal effect that the particular rule may have on one of the areas set out in section 108A(2), there needed to be a close link to the topic concerned.

82. In considering whether I had jurisdiction to hear this complaint I was assisted by my predecessor's consideration of the issue in Lynch v UNIFI (CO/1964/18) where he said;

*"In my judgment, however, the use of the word "relate" does not have the effect of extending my jurisdiction to all those rules which touch upon, no matter how obliquely, the matters set out in section 108A(2). I find that the connection between the rule allegedly breached and the matters set out in section 108A(2) must be clear and direct. Whether a rule is one relating to a matter listed in section 108A(2) is a matter of fact and degree to be determined in the circumstances of the particular case."*

83. On the facts of this case I do not consider that Rule 7.1 is a rule relating to 'the appointment or election of a person to, or the removal of a person from, any office'. In arriving at that view I find that the circumstances of this complaint relate not to the election of a person to any office rather to that person's right to continue to hold office. I accept Mr Cooper's submission that there is nothing in the eligibility criteria in Rule 6 that is dependent on the sector to which a member is allocated. I also find that there are no provisions in the union rule book that require a member of the EC to stand down should they move from the constituency they were elected to represent. In those circumstances I do not find that rule 7.1 has a clear and direct link to one of the matters listed in section 108A(2).
84. I therefore dismiss complaint 6 on the basis that I have no jurisdiction to hear a complaint of a breach of rule 7.1
85. I have further considered this issue on the basis that I did have the jurisdiction to hear a complaint of a breach of Rule 7.1.
86. I note Mr Beaumont's view that, by taking up employment with the ITF, Mr Lyon should no longer have been allocated to the CPPT sector. Mr Beaumont submitted that the ITF is not a chemicals company but a trade union. He further submitted that the fact that his work with the ITF was related to the chemicals sector was not enough to mean that he should remain allocated to the CPPT sector of the union. However, on balance I accept the union's submissions that his continued allocation to that sector was appropriate given his continued membership of a branch within that sector and that the work which he is employed to do for the ITF relates to the chemical sector.
87. In arriving at that view I was influenced by the circumstances and facts of the issue relating to Mr Lyon. I accept that the allocation of members to the industrial sectors within the union is an area in which the E C has some discretion. In other circumstances such as the determination of a person's eligibility to stand for election I might need to consider further the closeness of rule 7.1 to the matters listed in section 108A(2), this could lead me to a consideration of the reasonableness of the exercise of an Executive's Council's discretion.

### **Complaint 7**

88. Mr Beaumont's complaint 7 is in the following terms:

*That at some time before 14th March 2015 Unite the Union breached rule 14.2.5 (14.2.3 of its current rules) and continued to be in breach of the rule at 25th February 2016 and*

*later. The Union is in breach of the rule by allowing an individual, Mr Lyon, to hold office as a member of Unite's Executive Council whilst he was an employee of another trade union, namely the International Transport Workers Federation.*

89. Rule 14.2.5 of the 2011 Rules of the Union provides as follows:

*14.2.5 No current or former employee of the Union, nor any current employee of any other union, is eligible to stand for, or hold office on, the Executive Council.*

### **Summary of Submissions**

90. Mr Beaumont's submissions on this complaint were entirely straightforward. He submitted that the International Transport Workers Federation (ITF) was a trade union and therefore Mr Lyon was ineligible to hold office because the ITF was an "other union". As evidence for this he produced downloads from the Certification Officer's website that showed the ITF was on the schedule to the Certification Officer's list of trade unions and Annual Returns by the ITF to the Certification Officer. At the beginning of the hearing I stated that I accepted that the ITF was a trade union as defined by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
91. Mr Beaumont went on to submit that the ITF was captured by the term 'any other union' in rule 14.2.5. He submitted that this term was intended to mean, and was understood to mean, the statutory definition of a trade union and that had the union intended not to use the statutory definition they should have made this clear in the rule.
92. Mr Cooper submitted that the evidence given by Mr Murray explained the underlying purpose of the provision in rule 14.2.5 in relation to the term 'any other union'. Mr Murray had explained that the purpose of the provision was to prevent employees of those unions potentially in competition with Unite, or who may seek to join for nefarious or destructive reasons, from seeking to serve on the EC. He said that the rule was not intended to prevent those who are working for organisations which do not directly represent members, are not in competition with Unite and indeed work in tandem with Unite or that Unite is affiliated to, from serving on the EC. He explained further that federations such as the TUC and ITF were an integral part of the work of Unite and that Unite works alongside, and affiliates with, such organisations where their principles and objectives are consistent with Unite's.
93. Mr Cooper submitted that in seeking to determine the meaning of the term 'any other union' it should be considered linguistically. In the earlier part of the rule reference to '*the Union*' is made, that being Unite. He submitted that '*any other union*' should be read as meaning any other union like Unite.
94. He further said that given Mr Murray's explanation this should be taken as meaning a union made up of and representing individual members, as Unite does, rather than a trade union such as the ITF that was made up of affiliated organisations. He said that such a distinction is helpful when considering what would have been in the minds of those making rule 14.2.5. He suggested that they were unlikely to have considered that the term "any other union" would have included federated unions such as the ITF.

95. Mr Cooper did not accept Mr Beaumont's submission that if the union had intended the term '*any other union*' to be defined by anything other than the statutory definition of a trade union in the 1992 Act that they should have said so in the rule. He submitted that the context and underlying purposes of the rule did not support an argument that the statutory definition of a trade union, particularly the section that brings federated trade unions within the definition (section 1 (b) of the 1992 Act) should be imported into the union's rule book. Mr Cooper submitted that section 1(b) of the Act was necessary to bring federated unions into the scope of the Act and that this was a further indication that such unions did not come within the ordinary meaning of '*union*'.
96. He further submitted the wording used in the Objects of the Union at Rule 2.1.7, "*To affiliate to the TUC, ICTU, Welsh and Scottish TUCs and other appropriate trade union cooperation/coordination bodies domestically and internationally*", supported this view because it specifically uses a different term other than '*union*' to describe such organisations.
97. Mr Cooper summed up his submissions by saying that the correct construction of Rule 14.2.5 is that the phrase '*any other union*' refers to trade unions whose membership comprises individual workers and does not include organisations whose members are themselves trade unions. In the case of the latter, he submitted, the policy aim of preventing conflicts of interest is not engaged.
98. Mr Beaumont submitted that rule 14.2.5 was intended to be broader than submitted by Mr Cooper and needed to be so. He submitted that it was entirely possible that Unite could be, and had been, instrumental in setting up a federated trade union. He gave as an example Workers Uniting which is a federated trade union created by Unite and the United Steelworkers (USW). He submitted that if Unite supplied staff to Workers Uniting those employees could end up on Unite's EC if not blocked as a '*current employee of any other union*'. Additionally Mr Beaumont submitted that it was quite possible that a federated trade union could be established by a hostile union or unions and that the interpretation of rule 14.2.5 offered by the union would allow a Unite member who was an employee of such a federation to potentially become a member of the Unite EC.

### **Conclusion complaint 7**

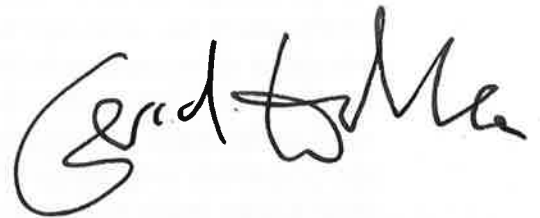
99. In considering the correct interpretation of Rule 14 .2.5 I was mindful of the guidance provided by Warner J in *Jacques v. AUEW* (1986) ICR 683. 22

*"The affect of the authorities may I think be summarised by saying that the rules of a trade union are to be construed 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 were addressed."*

100. In relation to this rule I do not find that I should construe the term '*any other union*' found in the rule as referring to or importing the statutory definition as contained in section 1 of the 1992 Act into the rule. I can perfectly understand why Mr Beaumont would come to such a view based on a plain reading of the rule. I also understand his suggestions as to the potential pit falls of the union's interpretation of the rule. However, these appear more to be counsel of perfection rather than assistance in

construing the rule in terms of what was intended bearing in mind their authorship, their purpose and the readership to which they were addressed. In arriving at that view I am assisted by the terms of rule 2.1.7 in terms of federated trade unions. It is also clear that the issue of Mr Lyon's employment with the ITF and the status of the ITF was discussed in some form at the EC on 9 March 2015 when considering Mr Lyon's eligibility to hold office. Following that discussion the EC unanimously agreed that Mark Lyon was eligible to hold lay office.

101. For the above reasons I dismiss the Claimants application for a declaration that sometime before 14 March 2015 Unite the Union breached rule 14.2.5 (14.2.3 of its current rules) and continued to be in breach of the rule at 25 February and later. The union is not in breach of the rule by allowing an individual, Mr Lyon, to hold office as a member of Unite's EC whilst he was an employee of a federated trade union, namely the International Transport Workers Federation.

A handwritten signature in black ink, appearing to read "Gerard Walker". The signature is written in a cursive, flowing style.

**Gerard Walker**  
**The Certification Officer**