

**DECISIONS OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER
SECTIONS 108A(1) AND 31(1) OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

Mr Miguel Angel Fernandez Castillo and Ors.

V

Unite the Union

Date of Decisions

17 May 2016

**PRELIMINARY HEARING
AND
CASE MANAGEMENT DISCUSSION**

Upon an application by Mr Fernandez Castillo and others (“the claimants”) under sections 108A(1) and 31(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”)

PRELIMINARY HEARING DECISIONS

1. I find that the Constitution adopted by the BASSA branch of Unite the Union (“Unite” or “the Union”) (Branch LE/2000) in 2012 was valid and binding at the time of the alleged breaches.
2. I find that the Balloting Protocol for representatives and BASSA branch elections (“the Balloting Protocol”), which appeared on the BASSA website at the relevant time contained rules of the Union within my jurisdiction.

CASE MANAGEMENT DISCUSSION ORDERS

3. Following a Case Management Discussion, I decide that those complaints made by the claimant which will proceed to a full hearing are as follows:

Complaint 1

During the 2015 elections of the LE/2000 branch of Unite the Union, the Union breached bullet point 5 of the branch Balloting Protocol by not publishing on the branch website the electoral addresses of the candidates.

Complaint 2

During the 2015 elections of the LE/2000 branch of Unite the Union, the Union breached bullet point 10 of the branch Balloting Protocol by permitting the publication of literature which promoted a candidate, Valdemar Gomes, by publicising his branch work in raising issues faced by workers in Colombia

Complaint 3

During the 2015 elections of the LE/2000 branch of Unite the Union, the Union breached bullet point 11 of the branch Balloting Protocol by permitting the bulk emailing of material which was critical of a candidate, Ms June Freeman, and damaging to her prospects of success. The bulk emails are those dated 30 April 2015 and 5 May 2015, as they appear on the branch website.

Complaint 4

During the 2015 elections of the LE/2000 branch of Unite the Union, the Union breached paragraph 6.5.4 of Appendix 1 of its rules when the branch followed an unfair procedure by applying the experience or qualification requirements in rule 1.5 of the branch rules to the election for the positions of Agreements Secretaries, Industrial Director, Deputy Industrial Director and Chief of Staff.

Complaint 5

In breach of sections 30(2)(a), 30(2)(b) and 30(2)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992, Unite the Union failed to comply with Mr Fernandez Castillo's request of 11 August 2015 to Andrew Murray, Chief of Staff, to inspect the individual accounting records of subscriptions paid by BASSA members between 1 April 2015 to 1 August 2015

REASONS

1. Mr Fernandez Castillo is a member of Unite the Union ("Unite" or "the Union"). By an application received at the Certification Office on 14 July 2015, Mr Fernandez Castillo made on behalf of himself and 30 other members of the Union a number of complaints against the Union. He alleged that the Union had breached its rules in relation to the 2015 BASSA branch election.
2. Following an exchange of correspondence, my office wrote to both Mr Fernandez Castillo and the Union to inform them that I had decided to stay proceedings pending the completion of the internal complaints procedure of the Union. This preliminary hearing was further delayed by a number of the claimants seeking anonymity which applications I rejected. This resulted in the claimants being Mr Fernandez Castillo and 20 others, namely Anne Charlet, Mr Antonio Larranga Loreto, Ms Christine Coleman, Ms Daniela Vinci, Mr Darren Hamer, Ms Fernanda Murphy, Ms Fiona Mcdougall, Mr Frank Michon, Ms Gail Jones, Ms Karen Mills, Ms Linda Baker, Mr Loizos Christodoulides, Ms Olivia Kerr, Ms Paula Nunez Alvarez, Mr Peter Kessner, Mr Sunday Odesanya, Mr Thierry Dedron, Ms Tracey Ward, Mr Victor Teixeira and Mr Matthew Kilkenny. All the claimants agreed to be represented by Mr Fernandez Castillo.
3. On 8 October 2016, Mr Fernandez Castillo informed my office that he wished to bring a further complaint against the Union under section 30(1) of the 1992 Act.
4. Following extensive correspondence with my office, Mr Fernandez Castillo identified the following complaints which he wished to go forward:-

Complaint 1

During the BASSA Branch LE/2000 elections that were held between 13 April 2015 and 24 July 2015, the BASSA Branch Committee breached the provisions of the Balloting Protocol for representatives and BASSA branch elections ("the Balloting Protocol"). This was for the following reasons:

- (a) In breach of bullet point 2 of the Balloting Protocol, the positions that were vacant were not clearly publicised on the BASSA website and were only published as 'news releases'.
- (b) In breach of bullet point 3 of the Balloting Protocol, the relevant rules of the BASSA Branch Constitution that dealt with and governed the branch elections were not publicised to all members.
- (c) In breach of bullet point 5 of the Balloting Protocol, Electoral addresses were not published on the BASSA website.
- (d) In breach of bullet point 9 of the Balloting Protocol, the candidate to re-election for Branch Chair, Sean Beatty, included in his election address an endorsement for Shaun Loveland as Vice Chair, another candidate who was standing for the position of Representative. In doing so, the Branch Chair included his proposal/seconding of a candidate in his election address. (The Vice Chair position is appointed by the Committee once the Representatives have been elected)
- (e) In breach of bullet point 10 of the Balloting Protocol, bulk emailing was used to publish biographical details of the candidate Valdemar Gomes' work as a Representative, in the context of publicising Branch work in raising issues faced by workers in Colombia.
- (f) In breach of bullet point 11 of the Balloting Protocol, bulk emailing was used by the Committee to campaign against June Freeman, who was one of the candidates to Branch Chair.

Complaint 2

During the BASSA Branch LE/2000 elections that were held between 13 April 2015 and 24 July 2015, the Union breached Rule 6.5.4. of Appendix 1 Rule 6 - Lay Office EC Guidance of Unite Book of Rules, when the Branch Committee followed an "unfair procedure" in the mechanics of informing the members and the way of dealing with the nominations and the elections. This was so for the following reasons:

- (a) The Committee strictly enforced the Balloting Protocol to the members while not complying with it themselves.
- (b) The Committee applied a Constitution that is neither valid nor legally binding, since it was never properly ratified.
- (c) The Committee did not inform the members about the relevant rules to be applied for the nomination and the elections of candidates for the positions of Industrial Director, Deputy Industrial Director, Chief of Staff and Agreements Secretaries ("the disputed positions")
- (d) The Committee applied such methods that prevented the members from electing their representatives for the disputed positions.

Complaint 3

During the BASSA Branch LE/2000 elections that were held between 13 April 2015 and 24 July 2015, the Union breached Rule 18.1 of Appendix 3 Rule 18 Workplace Representation EC Guidance when the Branch Committee prevented the members from electing their representatives for the disputed positions.

Complaint 4

During the BASSA Branch LE/2000 elections that were held between 13 April 2015 and 24 July 2015, the Union breached Rules 6.2, 6.2.1, and 6.3.1 of Appendix 1 Rule 6 - Lay Office EC Guidance when the Branch Committee appointed the disputed positions to people that were not "accountable representatives of workers" since the members had been prevented from electing them.

Complaint 5

During the BASSA Branch LE/2000 elections that were held between 13 April 2015 and 24 July 2015, the Union breached Rule 18.3 of Appendix 3 Rule 18 Workplace Representation EC Guidance when the Branch Committee did not follow the relevant guidance of the Executive Council as explained in complaints 2 to 4.

Complaint 6

On or around 8th July 2015, the Union breached the Fundamental Principle 4) of the T&GWU BASSA Branch 1/2000 Constitution; or should the Certification Officer consider this Constitution to have been legally amended, then the Union breached Fundamental Principle 5) of the 2012 BASSA Branch LE/2000 Constitution, when it did not comply with Mr Fernandez Castillo's request to Mr Adrian Smith, Branch Secretary, to access the BASSA Branch LE/2000 membership database.

Complaint 7

In breach of sections 30(2)(a), 30(2)(b) and 30(2)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992, Unite the Union failed to comply with Mr Fernandez Castillo's request of 11 August 2015 to Andrew Murray, Chief of Staff, to inspect the individual accounting records of subscriptions paid by BASSA members between 1 April 2015 to 1 August 2015.

5. On 16 February 2016, I decided to hold a preliminary hearing followed by a case management discussion in order to identify such complaints as would proceed to a full hearing. The Union was informed of the complaints and invited to attend the hearing, which was set for 30 March 2016. The agenda was to be as follows:-
 - a) **To identify which BASSA Branch Constitution was valid and binding at the time of the alleged breaches in 2015. The BASSA Branch LE/2000 Branch Constitution ("the 2012 Constitution"), which was adopted in 2012, or the Transport and General Workers' Union Branch 1/2000 Branch Constitution ("the pre-2012 Constitution") which was in force before the 2012 Constitution.**
 - b) **Whether the Balloting Protocol for representatives and BASSA branch elections ("the Balloting Protocol"), which appears on the BASSA website, contained rules of the Union.**
 - c) **Case management hearing to identify the claimants' complaints and their formulation in a manner that the Union was able to understand and respond to and which were capable of judicial determination and, in the process of doing so, to not accept or strike out any complaints that it is appropriate for me to dispose of in these ways.**
6. Following two postponements, one at the request of Mr Fernandez Castillo and the other at the request of the Union, this hearing eventually took place on 25 April 2016.
7. At the hearing on 25 April 2016, Mr Fernandez Castillo represented himself. Oral evidence for the claimants was given by Mr Fernandez Castillo himself and Ms June Freeman, a BASSA branch member. The Union was represented by Mr Michael Potter of counsel, instructed by Mr Neill Gillam, the Union's in-house solicitor. Oral evidence for the Union was given by Mr Sean Beatty, Chairman of branch LE/2000, and Mr Nigel Stott, Industrial Director of branch LE/2000. Mr Andrew Murray, Chief of Staff of Unite the Union, presented a witness statement but did not give oral evidence. I accordingly gave Mr Murray's evidence appropriately less weight. There were two bundles of documents in evidence at this hearing. The first bundle of 259 pages contained the correspondence and other documentation as supplied by the parties. The second bundle contained 71 pages and comprised those documents that both Mr Fernandez Castillo and the Union had submitted late and which, before

the hearing, I had admitted. At the hearing, Mr Fernandez Castillo made an application for the late submission of two documents. I admitted one of them (which was added to the second bundle) and rejected the other on the grounds of its lack of relevance to the issues I had to determine. There was also in evidence the current rules of the Union and the 2009 rules of the Union. The Union presented a bundle of authorities which included, *Hicks v Unite the Union (No. 2) (D/32-39/14-15)*, *Rawlins v British Medical Association (D/1-5/07)* and *AB v CD [2001] IRLR 808*.

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, in so far as it is necessary or appropriate for me to make findings of fact for this preliminary hearing. I make no finding of fact in respect of those matters which remain to be determined in the complaints at a full hearing.
9. Mr Fernandez Castillo started work for BA or its predecessor in 1999 and at the same time joined the Transport & General Workers Union ("TGWU"), the predecessor union to Unite.
10. Unite has about 1.4 million members and about 3,440 branches. Its branch based at Heathrow Airport for cabin crew is known as the British Airlines Stewards & Stewardesses Association ("BASSA"). It is in the Union's London and Eastern Region. Its official number is LE/2000. BASSA is one of the largest branches in the Union. It has about 8,600 members and the subscription income from its members is in excess of £2 million a year. British Airways has three "fleets" at Heathrow. These are the "Worldwide Fleet", "Euro Fleet" and "Mixed Fleet". The UNITE members in the Worldwide Fleet and Euro Fleet are in the BASSA branch. The members in the Mixed Fleet are in a different branch. The branch constitution currently operated by the branch provides for eight branch officers; Branch Chair, Branch Secretary, Agreements Secretary Worldwide, Agreements Secretary Euro Fleet, Chief of Staff, Industrial Director, Deputy Industrial Director and Regional Executive General Position. The electoral period to hold lay office is three years. This application concerns the branch elections held between 13 April and 24 July 2015. At that election the members of BASSA were to elect 36 lay representatives and branch officers. There were to be elected 16 worldwide representatives, 11 Euro Fleet representatives and 7 of the branch officers together with an Equalities Officer and the Health & Safety Officer.
11. The history of BASSA is long, complex and difficult. Unite was formed by the amalgamation of the TGWU and Amicus in 2007. Prior to 2007, BASSA was a 'brand' name given to the TGWU branch in BA which was made up of cabin crew from the numerous airlines BA had taken over at Heathrow, Gatwick, Manchester, Birmingham, Belfast and Glasgow with representatives from each base. AMICUS members employed by BA were in a further two branches. The major AMICUS branch was based mainly on a group of workers who had broken away from the TGWU in 1989 to form a union known as Cabin Crew 89. This was later absorbed into AMICUS but which continued to be known as Cabin Crew 89. Relations between the branches was, to say the least, not always amicable. Upon the formation of Unite, its inaugural rules provided for two sections which were in effect the former unions which were to continue working under their old rules for the time being. The

task of bringing the two sections together was not an easy one and it was not until 2009 that a single rule book was agreed for all members of Unite. The current rule book is the one that was effective from the Rules Conference 2011, updated by the Executive Council ("EC") to December 2013.

12. Since the formation of Unite in 2007, it has embarked upon a long and difficult process of reorganising its internal structures. This has included the creation, merger or deletion of many branches. The situation at Heathrow was complicated by a long and bitter industrial dispute with BA between 2009 and 2011. During this period the whole focus of the airport membership was on the dispute, rather than any internal reorganisation. One of the reasons the dispute was hard to resolve was that the former TGWU and AMICUS parts of the Union were different bargaining units and had different reporting structures. BA had to seek agreement with seven or eight different lay individuals as well as full time officials. As part of the settlement in 2011, the Union gave assurances that it would streamline its branch and negotiating structure, which the members accepted in a vote in May 2011.
13. It is against this background that the former AMICUS branches and the former TGWU branch came together in or about August 2011. The BASSA members at Gatwick Airport were transferred to another branch which was in fact in another region of the Union. The history of antagonism between BASSA and Cabin Crew 89 was such that the negotiations to bring these branches together were difficult. The former TGWU branch was to have about 80% of the new combined membership but its representatives were sensitive to the concessions necessary for the success of the new combined organisation. Further, the settlement of the industrial dispute required a different structure which moved away from the different convenors and different methods of reporting of BASSA and Cabin Crew 89. BA had insisted upon a single point of ultimate responsibility, which led to the creation of the posts of Industrial and Deputy Industrial Directors. The basic division in the new structure was to be between Worldwide and Euro Fleet, not BASSA and Cabin Crew 89. The post of Chief of Staff and Equality Officer were created. Financial matters were transferred from the Branch Secretary to a Treasurer. Such structural changes went alongside and supplemented the work that was done on the 'soft changes' to bring about changes of attitude, remove hostility and encourage working together.
14. In order to implement this new structure, work began on a new branch constitution. Mr Stott, who was to draft the document, gave evidence that the negotiations to agree this constitution were as difficult as those to settle the major industrial dispute. The objective was to agree rules which would give effect to the settlement of the industrial dispute and were compatible with the Unite rules, as amended in 2011. To achieve this, it was considered necessary that the election of representatives and branch officials in 2012 should be conducted in accordance with the rules which reflected these changes. The new constitution was discussed by the Branch Committee on 5 March 2012, which agreed to seek views on it from their representatives by 14 March so that it could be in operation for the elections to be held in April. The constitution was not put to the members of the branch in a ballot. Mr Stott gave evidence that it was not necessary or feasible to do so. He commented that it was not a requirement of the main Unite rules, which merely provided that branch rules were to be compatible with the Union rules unless the EC permitted otherwise. The feed back on the constitution was put to a full branch meeting on

16 April. The constitution was agreed and published on the BASSA website that day. On 24 April the branch issued its invitations for nomination for election under the branch rules and the 2012 elections were carried out under those rules.

15. Rule 17.9 of the rules of Unite provides that “The EC shall issue standing orders to regulate the conduct of branch meetings and business ... Those standing orders may only be varied in respect of a branch with the prior approval of the EC.” The EC published “Unite Model Branch Standing Orders” in March 2013. These are brief and intended to set minimum standards for the conduct of branch business.
16. On 7 October 2013 a branch meeting considered an email from a member, who complained that the present constitution had not been voted upon by the members. The branch chair, Ms Malone, informed the meeting that the constitution had been passed by the membership at a branch meeting and then ratified by the EC. The new constitution had not in fact been ratified by the EC. Ms Malone later wrote to the Union and Mr Fernandez accepted that the constitution was ratified by its Chief of Staff Mr Andrew Murray on 7 January 2014, under powers delegated to him by the EC.

The Balloting Protocol

17. An issue arose as to the rules under which the election of BASSA representatives and branch officers takes place. There are no detailed provisions setting out such balloting rules in either the main rules of the Union or in the branch constitution. However, the BASSA website has a section dealing with constitutional matters. Within that section there is a ‘document’ entitled “Balloting Protocol for Representatives and BASSA Branch Elections”. An issue for me to determine is whether the contents of this document are rules of the branch (and therefore rules of the Union within my jurisdiction) or merely a code of practice or non-binding guidance. The complete text of the Balloting Protocol is set out at paragraph 35 below.
18. The origins of the Balloting Protocol are in 1995 when the TGWU commissioned a report to be prepared by a committee led by Mr Roger Goodier, a solicitor in private practice, on the internal elections of BASSA. There existed at that time, and at the present, a concern that the elections of BASSA may be corrupted by the actions of BA which it was feared might fund or support certain candidates and provide them with expensively produced literature and the opportunity to distribute it through workplace channels. The so-called Goodier Report produced a number of recommendations which remain the basis of the present Balloting Protocol and which have been applied, in one form or another, in all branch elections since they were made. These elections were as follows:-
 - 18.1 The 2009 Elections. In the invitation for nomination for the branch elections in 2009, it is stated “May we also refer prospective candidates to the Goodier Report, which is accepted by the branch as the agreed procedure/code of practice by which BASSA elections will be conducted ... by submitting an election nomination you agree to be bound by these principles in full ... failure to comply with these rules ... will result in candidates being ineligible to stand for this election”.

- 18.2 The 2012 Elections. Similar wording appeared in the invitation for nominations for the branch elections in 2012.
- 18.3 A By-Election in 2014. There was a by-election for the position of Branch Chair in 2014. In the invitation for nominations for that position there was a different formulation. It stated *“Should you wish to view a full copy of the Branch Election Rules, they will be available to prospective candidates directly from the regional official”*. It concludes, *“The Balloting Protocol for representatives and BASSA branch elections can be found on the BASSA website under “Us”*. There are three other references in this document to the rules, branch rules or branch election rules under which the election is being run. These appear to be references to the Balloting Protocol. Elsewhere there are repeated the words *“Any member submitting an election nomination will be bound by these principles in full”*. A candidate in this by-election, Ms Jane Freeman, sought clarification on whether the rules applicable to this election had been published. The Branch Secretary, Mr Adrian Smith, responded on 4 April 2014 that *“By publishing those guidelines on the BASSA website, we have published them”*.
- 18.4 The 2015 Elections. The invitation for nominations in 2015 contained the following passages. First, *“May we also refer prospective candidates to the code of conduct “Goodier Report” which has governed for many years all elections by the branch and is the agreed procedure/code of practice by which Unite branch BASSA 1/2000 elections will be conducted.”* Secondly, it states *“Should you wish to view a full copy of the code of conduct it is permanently available to all members on the BASSA website under the “Us” section and is entitled ‘Ballot Protocol for Representatives and BASSA Branch Elections’*. By submitting an election nomination you agree to be bound by these principles in full.” Thirdly, it states *“Failure to comply with these rules from the opening of nominations to the closing of the ballot will result in candidates being ineligible to stand in this election”*.
19. It was agreed that whilst the substance of what is now the Balloting Protocol has remained unchanged over the years, it has been amended to reflect changes in society; for example to include references to social media, Twitter, Flickr, Facebook and MySpace.

The Branch Elections in 2015

20. The branch issued an invitation for nominations on 13 April 2015.
21. On 30 April 2015 Ms Freeman submitted a nomination for the position of Branch Chair.
22. Also on 30 April 2015 the branch posted an email to members on the news page of its website under the heading “Democracy Has Spoken”. It is alleged that this email is critical of Ms Freeman and damaging to her electoral prospects. The branch sent a further email to members which it posted on its website on 5 May under the heading “Democracy still has not spoken” which is alleged to have been deliberately damaging to Ms Freeman’s electoral prospects.

23. Mr Sean Beatty also stood for election as branch chair. As part of his 150 word election address he included the following words, *'In the spirit of transparency, should we both be re-elected I have asked Shaun Loveland from Eurofleet to be the new Vice-Chair of BASSA'*. These words are the subject of complaint 1(d) as an alleged breach of bullet point 9. This provides that, *'Proposer and Seconders are required by candidates but will not form part of any published address and may not be advertised'*.
24. On 22 May 2015 voting papers were despatched to members. The positions up for election were stated to be the Branch Chair and Branch Secretary, as well as 16 Worldwide representatives and 11 Euro Fleet representatives. The clear implication from this is that the other seven specific positions listed in the invitation for nominations were uncontested, so no election was required. This is in accordance with paragraph 6.5.5 of Appendix 1 to the rules of the Union. However, the email to members posted on the website gave no express explanation as to why ballot papers were not being distributed for these seven positions.
25. On 16 June 2015 Mr Fernandez made a formal complaint to his full time officer, Mr Matt Smith, about a number of matters. His first complaint related to the decision of the Branch Committee to ballot all members of the relevant workforce for certain positions, as opposed to electing them by means of an electoral college comprising the elected representative of those areas in accordance with rule 1.5 of the branch constitution. The balloting of the whole of the relevant membership is known as "the alternative method", and is also provided for in rule 1.5 of the branch constitution. Mr Fernandez complained that by choosing the alternative method, whilst at the same time keeping the requirement to have three years experience as a representative was unfair as it created a situation in which the pool of candidates is severely reduced and, if there is only one nomination, the membership end up having no participation in the election of their primary representatives. He also complained about a change that had been made to the Balloting Protocol and various alleged breaches of the Protocol itself.
26. On 19 June 2015 Electoral Reform Services ("ERS") reported on the election results. It is unusual for a branch to go to the expense of commissioning ERS to be the scrutineer of its elections. The fact that this branch did so is an indication of its financial strength and the potential controversy of its elections. For the position of Branch Chair Mr Beatty beat Miss Freeman and for the position of Branch Secretary Mr Adrian Smith beat Mr Duffy. Sixteen Worldwide representatives were declared as having been elected. It appears that these results were not announced immediately as complaints had been made about the electoral process. These resulted in the election of the Euro Fleet representatives being re-run.
27. On 29 June 2015 Mr Fernandez emailed Mr Adrian Smith stating, "Under BASSA branch Fundamental Principles 5 I would like to request access to the branch membership database." He had done this to check a discrepancy he had noticed between two sets of ballot results. On 6 May, the result of a consultative ballot conducted by email showed a combined Worldwide and Eurofleet electorate eligible to vote of 8,056 members. He compared this to the ERS figure of members entitled to vote in the election of Branch Chair and Branch Secretary of 8,691, as contained in the ERS report of 19 June.

28. On 14 July 2015 Mr Adrian Smith emailed Mr Fernandez to inform him that the members present at a branch meeting had declined his request for access to the branch membership database.
29. Mr Fernandez commenced this complaint to me by a registration of complaint form dated 14 July 2015.
30. On 24 July 2015 the final results of the 2015 branch elections were announced.
31. On 11 August 2015 Mr Fernandez emailed Mr Andrew Murray, the Union's Chief of Staff, requesting access to certain accounting records of the Union, namely the individual subscription records paid by BASSA members between 1 April and 1 August 2015.
32. On 11 September 2015 Mr Matt Smith wrote to Mr Fernandez rejecting the formal complaint that Mr Fernandez had made on 16 June.
33. On 21 October 2015 Mr Murray emailed Mr Fernandez to reject his request for access to the accounting records he had sought. Mr Murray stated, "If it is the membership records including details of subscriptions paid by individuals, I do not believe these are accounting records". He stated that he was not therefore required to produce nor indeed, under data protection laws, at liberty to provide them.

The Relevant Statutory Provisions

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

30 Right of access to accounting records.

- (1) *A member of a trade union has a right to request access to any accounting records of the union which are available for inspection and relate to periods including a time when he was a member of the union. In the case of records relating to a branch or section of the union, it is immaterial whether he was a member of that branch or section.*
- (2) *Where such access is requested the union shall—*
 - (a) *make arrangements with the member for him to be allowed to inspect the records requested before the end of the period of twenty-eight days beginning with the day the request was made,*
 - (b) *allow him and any accountant accompanying him for the purpose to inspect the records at the time and place arranged, and*
 - (c) *secure that at the time of the inspection he is allowed to take, or is supplied with, any copies of, or of extracts from, records inspected by him which he requires.*

31 Remedy for failure to comply with request for access

- (1) *A person who claims that a trade union has failed in any respect to comply with a request made by him under section 30 may apply to the court or to the Certification Officer.*

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.
- ...
- (8) The reference in subsection (1) to the rules of a union includes references to the rules of any branch or section of the union.

The Relevant Rules of the Union

35. The rules of the Union relevant to this application are as follows:-

**RULE 6
LAY OFFICE**

- ...
- 6.2 In order to be eligible to be a candidate for election to, or hold office on, the Executive Council and/or any committee, council, or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers, with the exception of Area Activists Committees and Regional Political Committees as specified elsewhere in these rules.
- 6.3 The definition of the term “accountable representative of workers” shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique nature of some industries (e.g. construction, contracting, leisure, rural etc) in formulating such a definition. It must nevertheless include Branch officeholders who are in employment, shop stewards, health & safety, equalities and learning representatives.
- ...
- 6.5 The electoral period to hold lay office shall be three years unless otherwise provided for under these rules.

**RULE 17
BRANCHES**

- ...
- 17.7 Each Branch shall have for its management a Chair, a Treasurer, an Equality Officer and a Secretary and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place and be completed not later than June 30 in each third year, and the elected candidates shall take office the following July for three years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the Branch so chooses.
- 17.8 The Regional Committee shall be required to ensure that branches meet at regular intervals; at a minimum they shall convene an Annual General Meeting of all members. Where a branch fails to convene such a meeting the branch will be suspended and members of the branch shall be allocated to a branch which meets the requirements of rule subject to the right of the branch to appeal to the Executive Council. Branches, shall, with the assistance of the Region advise their members of the venue, time and date of branch meetings, this may be by post or by posting the

information on the union's website. It shall be the responsibility of the branch secretary to ensure that up to date information about branch meetings is held by the Union.

17.9 The Executive Council shall issue standing orders to regulate the conduct of Branch meetings and business and may amend the standing orders from time to time. Those standing orders may only be varied in respect of a Branch with the prior approval of the Executive Council. The quorum for a Branch meeting to make a decision on any matter shall be 5 members and all matters should be decided by a simple majority of those voting. If the votes are equal the proposition before the meeting shall fail.

RULE 18

WORKPLACE REPRESENTATION

18.1 At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives:

18.1.1 Shop stewards/workplace representatives

18.1.2 Safety representatives

18.1.3 Learning representatives

18.1.4 Equality representatives

18.1.5 Environment representatives

The election shall take place and be completed not later than June 30 in each third year, and the elected candidates shall take office the following July for three years.

...

18.3 The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

Appendix 1 Rule 6 – Lay Office EC Guidance

(The Rules are in bold. The guidance is not in bold)

...

2) EC GUIDANCE - RULE 6: LAY OFFICE

...

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

6.2.1 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 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 (i.e. construction, contracting, leisure, rural, etc) in formulating such definition. It must nevertheless include branch office holders who are in employment, shop stewards, health and safety, equalities and learning representatives.

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.

...

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

6.5.4 Prior to any election, the members in the workplace should be informed of the pending election and invited to volunteer for election or nominate a colleague for election. The precise mechanics of informing the members on the workplace, and dealing with nominations and the election, may vary from

workplace to work place, but any such case will be a fair procedure. In the event of dispute the Regional Officer should be contacted and the Regional Secretary should be informed.

...

6.5.5 In the event of nominations having been invited from the relevant workplace, and only one candidate having been nominated, or volunteered, that candidate may be declared elected unopposed.

Appendix 3 Rule 18 – Workplace Representation EC Guidance

...

18.3 The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

18.3.1 See also EC Guidance on Rule 6 re Lay Office.

THE BALLOTING PROTOCOL FOR REPRESENTATIVES AND BASSA BRANCH ELECTIONS

- (1) Postal balloting and conduct of elections through the ERBS (or similar organisation) to be continued. An electronic ballot through the ERBS may be utilised if agreed by the branch committee for a by-election.
- (2) All positions for which there are vacancies will be advertised clearly on the BASSA website and any other associated electronic media or publication or notice board. Equal, uniform and consistent prominence given to all vacancies.
- (3) All relevant Rules governing Rep/Branch elections to be publicised to all members no later than 2 weeks prior to the commencement of election process.
- (4) Branch Election Rules (consistent with any Unite Rules and Guidelines) be made available before the election process begins. Such rules to be approved by the Unite chief of staff.
- (5) Candidates' biographical details and elections address to be distributed by the ERBS with voting paper as well as published on the BASSA website.
- (6) Such biographical details and elections address are not to exceed 150 words. They are not to attack any other candidate, member or Officer to the Branch and Union, and are not to contain comments which are likely to cause offence and/or embarrassment to BASSA.
- (7) All electoral addresses to be reviewed by the Branch Secretary (or Chair) and Regional Officer. Only the first 150 words will be published if there is an over run and any offending sections in line with above point they will be edited out entirely.
- (8) Election addresses must be truthful and accurate.
- (9) Proposer and Seconders are required by candidates but will not form part of any published address and may not be advertised.
- (10) No literature other than the biographical details and election address distributed by the ERBS (or similar organisation) and published on the BASSA website is to be permitted. No other distribution or display of such biographical data is permitted.
- (11) No bulk emailing/texting/ mailing/picture messaging or phone calls or non unique use of social media is permitted.
- (12) No website/facebook/tweet or other social feeds are to be used in campaigning.
- (13) Unique exchanges by text, email, phone and internet forum are allowed.
- (14) Any breach in the rules will be subject to a review by the Branch Secretary (or Chair), Regional Officer and an independent party appointed through the Unite legal director.
- (15) Failure to comply with the Branch Election rules from the opening of nominations to the closure of the ballot will result in candidates being ineligible to stand for this election.
- (16) Any decision reached may be subject to appeal or otherwise. Any appeal is to be notified to the National Officer.

Preliminary Hearing

36. The first issue for me to determine at this preliminary hearing was put to the parties in the following terms:

To identify which BASSA Branch Constitution was valid and binding at the time of the alleged breaches in 2015. The BASSA Branch LE/2000 Branch Constitution (“the 2012 Constitution”), which was adopted in 2012, or the Transport and General Workers’ Union Branch 1/2000 Branch Constitution (“the pre-2012 Constitution”) which was in force before the 2012 Constitution.

37. Mr Fernandez submitted that the relevant branch constitution at the time of the alleged breaches in 2015 was the one entitled “Transport & General Workers Union Branch 1/2000 Branch Constitution”. He argued that a new branch was not created in 2011 with the merger of the former TGWU and the former AMICUS branches but rather the AMICUS members were transferred into the existing former TGWU branch. Accordingly, he maintained that the provisions of the former TGWU branch constitution had to be complied with in order to effect the amendments required by the main rules of the Union, as amended in 2011, and the settlement of the industrial action. Mr Fernandez referred in particular to the rules which required any amendment to be by a two thirds majority at a biennial general meeting and subject to the approval of the branch in a postal ballot and the approval of the Regional Committee. He argued that as this procedure had not been followed, the branch rules that came into existence in 2012 were null and void.

38. Mr Potter, for the Union, submitted that a new branch had come into existence in 2011, which was comprised of the members of the former TGWU branch and the former AMICUS branches. He noted that, after the formation of Unite in 2007, there remained two distinct sections of the merged union which were allowed to continue operating under their former rules, pending the assimilation of those sections under a single rule book. He further observed that whilst Unite achieved a single composite rule book in 2009, the branches at Heathrow and Gatwick Airports were locked in a bitter industrial dispute between 2009 and 2011 and only addressed this matter in 2011. He argued that the solution that was adopted was the creation of a new branch which brought together the former TGWU and AMICUS branches but which excluded the members at Gatwick and introduced a new internal structure to satisfy the requirements of the settlement of the industrial dispute. Accordingly, he submitted that there was no requirement to satisfy the rules regarding amendment, contained in the rules of the former TGWU branch, as those rules fell away on the formation of the new branch. He also noted that it was common ground that the new rules had been ratified by the EC under delegated powers.

Conclusion – Preliminary Point 1

39. It is the claimant’s submission that the correct analysis of relevant events is that in or about 2011 there was a transfer of members from Cabin Crew 89 to the former TGWU branch and that the combined membership continued to operate under the rules of the former TGWU branch. This is a straightforward view of what occurred and has some support in the documentation. However, I find that the situation that existed after the conclusion of the industrial dispute in 2011 was much more complex. The absorption of the former Cabin Crew 89 members into the old TGWU branch is not compatible with what I have been told about the continuing antipathy between

some members. Indeed, Mr Stott, who was a good witness, gave evidence that it was like beginning again at year zero and likened the old and new situation to being as dramatic as the difference between the years BC and AD. On the evidence before me, I find as a matter of fact and practical reality, that what the parties intended and what occurred was the merger of the former TGWU and AMICUS branches to form a new combined branch in which the interests of both sides were to be respected. It was to be a new start, which would not have occurred if the former AMICUS members were to have been merely absorbed into the more numerous and powerful BASSA branch.

40. Accordingly, in my judgement, the constitution of branch LE/2000 negotiated in 2011 and 2012 and published on 16 April 2012 is the constitution of a newly created branch which belatedly followed the amalgamation of the TGWU and AMICUS. This branch replaced the former TGWU and AMICUS branches. I find that it was under the rules of this constitution that the 2015 branch elections should have been conducted, as indeed they were.
41. The second issue for me to determine at this preliminary hearing was put to the parties in the following terms:

Whether the Balloting Protocol for representatives and BASSA branch elections (“the Balloting Protocol”), which appears on the BASSA website, contained rules of the Union.

42. Mr Fernandez submitted that by section 108A(8) of the 1992 Act, the rules of a Union for the purposes of section 108A include references to the rules of a branch of the union. He accepted that the recommendations made in the Goodier Report were imprecise and not extensive but contrasted these with the Balloting Protocol which he described as being concise and containing a more comprehensive set of direct prohibitions and obligations. He further observed that non-compliance with the Balloting Protocol carried with it the sanction of disqualification from that election and so the Balloting Protocol would be understood by members as being rules of the branch. He noted that the Union itself had referred to the Balloting Protocol as rules and/or branch rules for the election and that bullet points 3, 14 and 15 of the Balloting Protocol also refer to those provisions as being rules. Mr Fernandez stated that he was unaware how the Balloting Protocol had come into existence but that it had never been put to the branch members in a ballot. He observed that the balloting protocol had first appeared on the branch website for the by-election for Branch Chair in 2014. He further observed that in 2012 Mr Matthew Kilkenny had been disqualified from an election for an alleged breach of the Goodier principles but shortly afterwards reinstated as a candidate in that election. He asserted that others had done or refused to do things on the basis that they may be disqualified from a particular election for having breached the Balloting Protocol. He argued that the Goodier principles had evolved from being guidance at the beginning into being rules by the time of the 2015 branch elections. Mr Fernandez submitted that it was unfair for the Union to tell members that the Balloting Protocol contained rules that they must comply with and then argue in these proceedings that they are not rules.

43. Mr Potter, for the Union, submitted that the Union rules governing branch elections are rules 17.7 and 17.8 and that paragraph 6.5.4 of Appendix 1 of the Union rules gives relevant guidance, whilst not in itself a rule for the purposes of section 108A of the 1992 Act. He argued that the Balloting Protocol is mere guidance or a code of good practice, not rules of the Union. He observed that its purpose is to avoid unfairness in branch elections and to comply with the rules of the Union. He noted that it is regularly revised and so the regular application of the Goodier principles and/or the Balloting Protocol has not given rise to a rule of the Union by custom and practice. He argued that its terms had not become sufficiently certain or notorious, even if reasonable. Mr Potter referred to the case of **Hicks v. UNITE the Union (No 2) D/32-39/14-15** and **Rawlins v. BMA (D/1-5/07)** as examples of cases in which I had considered the validity of alleged rules in similar circumstances. He agreed with the approach I had adopted in those cases which was to examine each alleged rule on a case by case basis and look at its particular circumstances. On the facts of this case, he pointed to the fact that the Balloting Protocol is not part of the rule book, that it had not been approved by the EC, that its focus is on fairness, that it includes some broad guidelines as well as precise terms, that it is not strictly enforced and that there is no rule enabling the branch to make such ballot rules.

Conclusions – Preliminary Point 2

44. The rules of trade unions are ordinarily and principally to be found in the rules that have been approved by the members of that union in general meeting. However, those rules may not be the only rules with which union members and the union itself must comply. The rules of a union form a contract of membership between the members inter se and with the union itself. The terms of that contract may be created in a number of other ways, such as by custom and practice, by necessary implication or by express or implied incorporation. The circumstances of each case require individual consideration and, being cases which involve trade unions, the relevant history and context usually repay attention.
45. There are factors which point towards the Balloting Protocol being rules of the Union and which point towards them not being rules of the Union. I have considered these both individually and as a whole. The factors that point against the Balloting Protocol being a rule of the Union include the name itself. It is a protocol, not a rule. It arose from a set of recommendations in a report which was clearly not a set of rules. It has never been approved by the EC nor is there a minute of the Branch Committee approving it as a rule, let alone the approval of the members of the branch in a ballot. There is no rule of the Union which enables the branch to devise such a balloting protocol. There is no evidence as to how exactly the current Balloting Protocol came about. There are references in the documentation to the Balloting Protocol as a code of conduct and/or set of principles. No person has been permanently disqualified from an election for having breached it.
46. On the other hand, there are factors that point towards the Balloting Protocol being a rule of the Union. These include the fact that its content has existed in one form or another since about 1995 with the knowledge and ostensible support of, first, the TGWU branch and, since 2012, the Unite branch. Further, it now appears on the branch website in the section dealing with constitutional matters. It also regulates an important part of the democratic structure of the Union. The balloting process is important in any democratic organisation but it is an issue of particular sensitivity in

BASSA. I was told at the hearing that this branch has not only a history of factionalism and dissent but also a concern that BA may interfere in an internal election to support a favoured candidate. In such circumstances, it can reasonably be anticipated that the branch would wish to regulate and safeguard its electoral procedures more rigorously than might other branches to ensure fairness and a level playing field. The individual provisions of the Balloting Protocol have been refined over the years to become more certain and capable of precise application. Any provision that lacks such certainty may only have effect as guidance. It is a trite proposition that the status of a document or a relationship is not determined by its title but by its content or nature. The title is merely a relevant consideration. The approach taken to the interpretation of the Union rules in **Jacques v. AUEW (1986) ICR 683** is that regard must be had to the meaning of the disputed rule which was intended by its author, its purpose and the readership to which it is addressed. Applying that approach to this different situation, I observe the particular importance of balloting to this branch and the consequence of non compliance with the Balloting Protocol. Bullet point 15 provides, "Failure to comply with the Branch Election rules from the opening of nominations to the closure of the ballot will result in candidates being ineligible to stand for this election". Bullet point 16 provides, "Any decision reached may be subject to appeal or otherwise. Any appeal is to be notified to the National Officer". The Balloting Protocol therefore goes beyond mere guidance or a code of practice to provide not only for a sanction, but for an appeal procedure. I find that this, taken together with the mandatory use of language throughout the Balloting Protocol would give rise to an understanding by a reasonable member that the terms of the Protocol are mandatory, have consequences and, as such, are rules of the Union. That view is reinforced by the description of the Protocol (on some but not all occasions) as being rules. This together with the equivocal answers given by the branch when questioned on this subject suggest a wish to be able to argue both ways; that the Protocol was mere guidance when it suited and that it contains enforceable rules when it suited.

47. I have not found the determination of the legal status of the Balloting Protocol an easy matter. I was not assisted by the failure of Mr Murray, the Union's Chief of Staff, to attend at the hearing to give evidence in accordance with his witness statement. Mr Murray is a person with considerable knowledge of the rules and constitution of the Union and its constituent parts. However, having regard to the subject matter of the Protocol, the mandatory way in which it is expressed, the inclusion of a significant sanction and appeal process, the ability of the branch to create branch rules which do not conflict with the main rules of Unite, together with the history of the way in which the Balloting Protocol has evolved and its context, I find that the Balloting Protocol is a rule of the Union.
48. Section 108A(8) of the 1992 Act provides that the rules of a union over which I have jurisdiction include reference to the rules of any branch. Accordingly I find that the complaints which allege a breach of the Balloting Protocol of the branch may proceed to a full hearing as breaches of rules of the Union.

CASE MANAGEMENT DISCUSSION

49. Having heard submissions on the two preliminary issues, I invited clarification of each of the complaints made by the claimants with a view to identifying the relevant issues which would require adjudication at a full hearing and to possibly striking out any complaints or parts of complaints under section 256A(1) of the 1992 Act that were misconceived or had no reasonable prospects of success. The claimants had been informed in correspondence before the hearing that I would be considering their complaints in this way. I consider each complaint individually.

Complaint One

50. The first complaint is of a breach of the Balloting Protocol that I have found to be a rule of the Union. It is in effect a complaint of six breaches of that Protocol.

50.1 Complaint 1(a) is a complaint of a breach of bullet point 2 of the Balloting Protocol in that it is alleged that the positions that were vacant were not clearly publicised on the BASSA website. I find that the posting on the BASSA website on 13 April 2015 headed "Elections for representatives 2015" does clearly publicise the vacancies by way of a request for nominations for them. Accordingly, I strike out this complaint on the grounds that it has no reasonable prospects of success.

50.2 Complaint 1(b) is a complaint of a breach of bullet point 3 of the Balloting Protocol in that the relevant rules dealing with branch elections were not publicised to all members. I find that both the branch constitution and Balloting Protocol were posted on the branch website and that these contained the rules dealing with the branch elections. Accordingly I strike out this complaint on the ground that it has no reasonable prospect of success.

50.3 Complaint 1(c) is a complaint of a breach of bullet point 5 of the Balloting Protocol. The issue to be adjudicated is whether the election addresses of candidates were published on the branch website. This complaint may proceed to a full hearing.

50.4 Complaint 1(d) is a complaint of a breach of bullet point 9 of the Balloting Protocol in that one candidate in the branch election allegedly proposed or seconded another candidate in his election address. I find that the election address in question does not propose or second the proposal of any other candidate. In my judgement the meaning of this bullet point is related strictly to the electoral procedure of proposing or seconding a person and is not engaged by a favourable reference to that person or to a position that the person may subsequently be offered. Accordingly I strike out this complaint on the grounds that it is misconceived and/or has no reasonable prospect of success.

50.5 Complaint 1(e) is a complaint of a breach of bullet point 10 of the Balloting Protocol and it may proceed to a full hearing. The issues to be adjudicated are whether there was a bulk emailing as alleged and whether information concerning the work of a candidate in raising issues faced by workers in Colombia amounted to a breach of the provision that "no literature ... is to be permitted".

50.6 Complaint 1(f) is a complaint of a breach of bullet point 11 of the Balloting Protocol and it may proceed to a full hearing. The issue to be adjudicated is whether a relevant bulk emailing took place in breach of the provision that “No bulk emailing ... is permitted”. One of the alleged bulk emails was sent on 30 April 2015, the same day that Ms Freeman submitted her nomination to run for Branch Chair. It may be relevant to determine if that alleged bulk email was sent before Ms Freeman became a candidate in the election.

Complaint Two

51. The second complaint concerns an alleged breach of paragraph 6.5.4 of Appendix 1 of the rules of Unite, in that the 2015 branch election was allegedly carried out unfairly or followed an “unfair procedure”. The claimants specify four ways in which the election was carried out unfairly. Sub-paragraph (b) of this complaint is that the branch constitution under which the election was conducted was not valid. I have already determined that the branch constitution was valid and so this ground of complaint cannot be sustained in any event and is struck out.
52. In considering this complaint a preliminary issue arises as to whether paragraph 6.5.4 of Appendix 1 of the Unite rules is indeed a rule of the Union. Appendix 1 reproduces the relevant rules and then provides guidance from the EC on the meaning and application of those rules. Guidance does not become a rule simply by being contained in the rule book. However, it is arguable that paragraph 6.5.4 is a rule of the Union by virtue of rule 18.3 which provides that the election of work place representatives shall be by such means as authorised by relevant guidance issued by the EC. Paragraph 18.3.1 of Appendix 3 provides such guidance in the words, “See also EC guidance on rule 6 re lay office”.
53. Should paragraph 6.5.4 of Appendix 1 be a rule of the Union, a second preliminary issue arises as to what enforceable obligation it imposes on the Union. The first sentence clearly imposes an obligation to inform members of a pending election and requires there to be an invitation for nomination. The second sentence, however, imposes no prescriptive procedure. It enables branches to have different election procedures but requires in “any such case will be a fair procedure”. The requirement of having a fair procedure is so vague that there is an issue as to whether it imposes an enforceable obligation as opposed to being mere encouragement or words of aspiration. I was informed that paragraph 6.5.4 has since been removed from the Appendix.
54. In any event, paragraph 6.5.4 of Appendix 1 looks to the procedure that has been adopted by a branch in elections for lay office. In BASSA, the procedure is provided for in the branch constitution and Balloting Protocol. Paragraph 6.5.4, if applicable, enables the branch’s procedure to be challenged on the basis that its unfairness is in breach of the rules of the Union. The grounds of unfairness advanced by the claimants at sub-paragraphs (a) and (c) relate to the way in which the Branch Committee applied the procedure, not the alleged unfairness of the procedure. Accordingly, these are not complaints that are comprehended by the rule allegedly breached and I strike them out as having no reasonable prospect of success.

55. Sub-paragraph (d) of complaint two is expressed obliquely. Mr Fernandez explained at the hearing that the claimants had two concerns. First, whether the Branch Committee informed the membership that the elections for the position of Agreements Secretaries, Industrial Director, Deputy Industrial Director and Chief of Staff were to be conducted by a ballot of all relevant members or by an electoral college. I find that this argument has no reasonable prospect of success as the invitation for nomination, properly read, makes it clear that the election shall be by the relevant crew, namely by the relevant membership, not by an electoral college. The claimants' second concern is whether the experience requirement or qualifications to become a candidate for the relevant positions made it virtually impossible for any member to stand for those positions. This complaint is reasonably arguable but should be plainly expressed so that the Union may know the case it has to meet. The complaint that I allow to go forward as complaint two is as follows:

“During the 2015 BASSA branch elections, the Union breached paragraph 6.5.4 of Appendix 1 of its rules when the branch followed an unfair procedure by applying the experience of qualification requirements of rule 1.5 of the branch rules to the elections for the position of Agreements Secretaries, Industrial Director, Deputy Industrial Director and Chief of Staff”

56. An issue that arises in the consideration of this complaint is whether the guidance issued pursuant to rule 18.3 has any relevance to the election of branch officers. Rule 18.1 is expressed to be a rule dealing with the election of workplace representatives, not branch officers.

Complaint Three

57. The third complaint concerns an alleged breach of rule 18.1. The reference to Appendix 3 in the complaint is otiose. I observe that the substance of the complaint is the same as complaint 2(d), which is to proceed. This complaint alleges a breach of a different rule on the same facts. However, on its face, rule 18.1 is not engaged by the complaint that the claimants seek to bring. The branch is conducting a relevant election in the relevant timescale. Accordingly I strike out this complaint on the grounds that it has no reasonable prospect of success.

Complaint Four

58. The fourth complaint concerns an alleged breach of rule 6.2 and paragraphs 6.2.1 and 6.3.1 of Appendix 1 to the rules. It alleges that the persons who were elected to the positions of Agreement Secretaries, Industrial Director, Deputy Industrial Director and Chief of Staff were not “accountable representatives of workers” within the meaning of rule 6.2. In discussion with Mr Fernandez, however, it became clear that this complaint was premised upon those elected not being ‘accountable representatives of workers’ at the time they assumed office after the 2015 elections. This is a misunderstanding of rule 6.2. The opening words of that rule are “In order to be eligible as a candidate for election ...”. The crucial time is therefore the time a person seeks to be and becomes a candidate. The persons who were elected were previous branch office holders and rule 6.3 provides that the definition of who is an ‘accountable representative of workers’ must include “branch office holders who are in employment ...”. This provision applies to the contested provisions. Accordingly this complaint is misconceived. It is based on a misunderstanding and I strike it out as having no reasonable prospect of success.

Complaint Five

59. The fifth complaint concerns an alleged breach of rule 18.3 of the rules of the Union in respect of an alleged breach of the relevant guidelines as complained about in complaints 2 to 4. However, rule 18.3 is an enabling provision. It provides that the method of election of work place representatives shall be by such means as authorised by relevant EC guidance. As an enabling provision, it does not, in my judgment, impose an obligation on the Union which is capable of being breached. Should there be any breach connected with rule 18.3 it would be of any guidance made pursuant to it, which guidance is found to have taken effect as a rule of the Union. Accordingly, this complaint of a breach of rule 18.3 is misconceived and I strike it out.

60. In any event, as I have already struck out the first three sub-paragraphs of complaint 2 as well as complaints 3 and 4, the only part of complaint 5 which could have proceeded relates to the guidance that appears in paragraph 6.5.4 of Appendix 1. However, I have allowed that part of complaint 2 to go forward that alleges a breach of the guidance in paragraph 6.5.4 of Appendix 1. The thrust of this complaint is therefore comprehended within that part of complaint 2 that will proceed to a hearing and which will be litigated.

Complaint Six

61. The sixth complaint concerns an alleged breach of Fundamental Principle 5 of the branch constitution. This principle requires the branch to make the branch membership database available to a member upon request to a member of the Branch Committee. My jurisdiction as regards breaches of the rules of a trade union is limited. It extends only so far as section 108A(2) as the 1992 Act permits. I find that Fundamental Principle 5 of the branch rules does not relate to any of the matters set out in section 108A(2) nor does it clearly or directly related to them. Accordingly an alleged breach of Fundamental Principle 5 is outside my jurisdiction and I strike out this complaint as being misconceived and/or having no reasonable prospect of success.

Complaint Seven

62. The seventh complaint concerns a breach of section 30 of the 1992 Act. I allow this complaint to go forward to a full hearing. The issue to be determined in this complaint is whether the records sought by the claimants are accounting records within the meaning of section 30 or whether they are membership records not within the meaning of accounting records in section 30. Should the records sought be accounting records, a further issue to consider is whether an order should be made for access to them having regard to Article 8 of the European Convention on Human Rights and the Human Rights Act 1998.



David Cockburn
The Certification Officer