

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

**Mr Craig Stevens**

**v**

**Union of Democratic Mineworkers**

**Date of Decision**

**3 June 2015**

**DECISION**

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

1. I refuse Mr Stevens’ application for a declaration that on or about 13 June 2013 the Union of Democratic Mineworkers (“the Union”) breached standing order 2 of the standing orders for branch general meetings in Appendix III of the rules of the Nottingham Section of the Union by allegedly failing to post the full agenda of the Thoresby Branch General Meeting of 13 June 2013 at the Head Office of the Union.
2. I refuse Mr Stevens’ application for a declaration that on or about 27 November 2013 the Union of Democratic Mineworkers breached rule 19b of the rules of the Nottingham Section of the Union when a branch delegate from Thoresby branch allegedly failed to exercise his vote at a meeting of the Council of the Nottingham Section.
3. I make the declaration sought by Mr Stevens that the Union of Democratic Mineworkers breached rule 6(2)(b) of its rules by Mr S Norwood being a member of its National Executive Committee without having been elected to that position.
4. I make the declaration sought by Mr Stevens that the Union of Democratic Mineworkers breached rule 14(5) of its rules by Mr D McGarry being a member of its National Executive Committee whilst a trustee of the Union.

**REASONS**

1. Mr Stevens brought these complaints as a member, at the relevant time, of the Union of Democratic Mineworkers (“the UDM” or “the Union”). After having made initial enquiries of a general nature, Mr Stevens made his applications in what are now his first three complaints and complaint five by way of an email received at the

Certification Office on 18 March 2014 and in respect of his fourth complaint by an email received on 7 April 2014.

2. Following correspondence, Mr Stevens confirmed that the complaints he sought to pursue were in the following terms:

**Complaint 1**

*“That on or around 13 Jun 2013 the union breached standing order 2 of the Standing Orders for Branch General Meetings in Appendix III of the Nottingham Section rules, which is a rule of the union under rule 13e of the Nottingham Section Rules. Standing Order 2 was breached because the full agenda of the Thoresby Branch General Meeting was not posted in full at the Branch HQ. In particular, the agenda that was posted did not include as an item the vote that was scheduled for the meeting on 13 June 2013. This vote was taken to remove a director of Vendside Ltd (the union being the shareholder), it was included in the agenda posted at the colliery but not on the agenda at HQ. There was a different poster on display at the colliery to the one at HQ.”*

**Complaint 2**

*“That on or around 27 November 2013 the branch delegate from Thoresby branch failed to exercise his vote at a meeting of the union’s Council, as the branch had previously mandated him to do. This is a breach of the Nottingham Section Rule 19b.”*

**Complaint 3**

*“That on or around April 2006 until present the union breached rule 6(2)(b) of its National Rules because no vote was held for the period of 3 years from 8 April 2011 when Mr P Clampett finished as a union member and the period of 5 years of Mr Clampett’s tenure as a NEC member prior to this date or longer. The Nottingham Section never therefore attempted to have a ballot vote in accordance with the rules and was never required to do so by the National Union. This is a breach of National Rule 6(2)(b).”*

**Complaint 4**

*“That on or around February 2007 until October 2013 the Union breached Rule 14(5) of its National Rules because Mr David McGarry who was at the time a trustee of the Union attended the NEC meetings throughout the period.”*

**Complaint 5**

*“On or around August 2012 the union breached rule 11(3) of the 2010 National rules because the union purported to change the rule in or around August 2012 when the three sections of the union (Nottingham, South Derbyshire and CSS each had fewer than 500 members for more than six months prior to the purported change and therefore had no constitutional standing.”*

3. I investigated the alleged breaches in correspondence. Following which, I caused a letter to be sent to Mr Stevens dated 29 September 2014, pursuant to section 256ZA(4) of the 1992 Act, requiring Mr Stevens to show cause why I should not strike out his fifth complaint on the grounds that it had no reasonable prospect of success or was otherwise misconceived. It was my provisional view that this complaint had been presented out of time and that, as rule 11(3) provides the Union with a power to act in certain specified circumstances, but not a duty to act in those circumstances, there was no breach of the rule by the Union not exercising its discretion to so act. Rule 11(3) of the rules of the Union which applied in 2010 was in the following terms,

*“If after the 1st January 1988 the number of members in a Section falls below 500 for a period of six months or more (which Section is hereinafter called “the Specified Section”) the National Executive Committee may with the consent of Conference, direct*

*the Specified Section, and such Section shall then be obliged to make all reasonable endeavours in accordance with the wishes of the members of such Section to amalgamate with one or more other Sections in the Union. The National Executive Committee may then after agreement between the Sections in question authorise such amalgamation whereupon it will become effective subject to such terms and conditions in relation thereto as shall have been agreed between the Specified Sections and approved by the National Executive Committee. In the event of the Specified Section failing either to amalgamate with another Section or to increase the number of its members to 500 or more within a period of six months of the aforesaid direction then the National Executive Committee shall be entitled to suspend the voting rights (save at Conference) under the general rules of the Union of the Specified Section until such time as the Section shall either amalgamate with another Section or have increased the number of its members, for the period of at least six months, to 500 or more."*

Mr Stevens' response did not contest the striking out of this claim and, by a letter dated 11 November 2015, I struck out Mr Stevens' fifth complaint on the grounds that it had no reasonable prospect of success or was otherwise misconceived.

4. The hearing of the remaining four complaints was held on 7 May 2015. By a letter dated 5 May, BRM Solicitors, acting for the Union, stated that the Union had decided not to appear nor to be represented at that hearing. They asked me to consider the Union's case on the basis of the correspondence, witness statements and other documentation which had been submitted. Accordingly, the hearing proceeded in the Union's absence. At the hearing Mr Stevens represented himself. The claimant, Mr Michael Stevens, the claimant's father and a former General Secretary of the UDM Nottingham Section and Mr David McGarry former member and trustee of the UDM Nottingham Section produced written witness statements for the claimant. The claimant and Mr McGarry were called to the witness table and asked questions by me. Mr Michael Stevens was not required to go to the witness table. The Union submitted written witness statements from Mr P Clampett, Mr I Bircumshaw and Mr R Blenkinsopp. There was in evidence a 197 page bundle of documents consisting of letters and other documentation supplied by the parties. The above letter from BRM Solicitors and the reply from my office of 6 May were added to the bundle at the start of the hearing. The rules of the UDM National Union and the UDM Nottingham Section, for the relevant period, were also in evidence. Mr Stevens produced a written skeleton argument. The Union did not produce a skeleton argument. Subsequent to the hearing, I caused a letter to be sent to the Union's solicitors requesting their client's comments on the proposed enforcement order suggested by Mr Stevens at the hearing in respect of his third complaint, should it be upheld. The Union's solicitors responded by a letter dated 21 May. Mr Stevens was invited to comment on the Union's response and his reply was received on 27 May.

### **Findings of Fact**

5. Having considered the oral and documentary evidence and the oral and written representations of the parties, I find the facts to be as follows:
6. Mr Craig Stevens was an electrician who, between 1991 and 2002, worked at Bilsthorpe and at Thorseby collieries. Between 2003 and 2013 he worked for Vendside Limited, a claims management company set up in 1997 by the Nottingham Section ("the Notts Section") of the UDM, which had office accommodation at the

head office of the Union in Berry Hill Lane, Mansfield. Whilst working for Vendside Limited, Mr Stevens was a member of the UDM, allocated to its branch at the Thorseby colliery. The claimant's father, Mr Michael Stevens, had been a member of the NUM and was a founder member of the UDM in 1984/85. From 1987 he was a full time official of the UDM until his dismissal in August 2014, arising out of which he has made an application to the Employment Tribunal. Mr Michael Stevens had been the Vice President of the National NUM and, from about 1992 to 2014, General Secretary of the Notts Section.

7. The essential background to this case is the decline in the deep coal mining industry in the UK and, with it, the steep decline in membership of the mining unions. At its peak, the UDM had some 28,000 members. I was informed at the hearing that its membership was then probably less than 500. Further, I was informed that the last remaining colliery at which the UDM had members, Thorseby Colliery, was due to close in or about July 2015 with the probable loss of another 200/300 members. This decline has clearly had an impact on the finances of UDM but it has also had an impact on its organisation. Its rules were agreed for the management of a union with many thousand members who worked at over 30 collieries. Such rules are unlikely to be a practical basis for the management of a union with relatively few members and soon to have no collieries.
8. The UDM at national level operates through Sections. Rule 4 provides for there to be a Notts Section, South Derbyshire Section, a Clerical and Supervisory Staff Section ("CSS") and a Colliery Trades & Allied Workers Association ("CTAWA"). These Sections generally mirror those parts of the NUM which broke away to form the UDM. The CTAWA appears to have been short lived. By 2013, the other Sections were in decline. I was informed that the CSS had not had 500 members since about 1996 and was disbanded in 2013. By 2013, the South Derbyshire Section had only one colliery, Daw Mill, which closed in August 2013 after a serious fire. The Notts Section historically had the most members. In the present case, I was referred to its collieries at Welbeck, Harworth and Thorseby, as well as a colliery in the Yorkshire area, Maltby, where the UDM had some members. However, the Welbeck colliery closed in about 2007. The Harworth colliery was mothballed in about 2008 and closed in 2012. The Maltby colliery closed in 2013.
9. At national level, the UDM has an elected National Executive Committee ("NEC"), a President, Vice President and Trustees. For many years the President was Mr Neil Greatrex and the Vice President was Mr Michael Stevens. At the relevant time, however, its President was Mr Jeff Wood and the Vice President Mr R Blenkinsopp. Mr D. McGarry was one of the four National Trustees.
10. The Sections are to have an elected Council, President and General Secretary. The rules of the Notts Section provides for there also to be an Executive Committee but this consisted of the same members as Council and, with the diminished circumstances of the Union, it was decided by early 2014 to do away with this additional tier. In 2013, the President of the Notts Section was Mr Jeff Woods and its General Secretary was Mr Michael Stevens.
11. The branches are to have an elected Branch Committee, a Branch President and Branch Secretary. Each branch was ordinarily based at a colliery. In 2013, the

Thorseby branch President was Mr Kevin Eyre and its Branch Secretary was Mr Stephen Norwood. Mr Norwood had taken over from his predecessor, Mr Clampet in 2011.

12. The 2012 rules of the UDM record the addresses of the National Office, the Notts Section and the CSS Section as being the Miners Offices, Berry Hill Lane, Mansfield, the same address from which Vendside Limited principally operated. The office of the South Derbyshire section is recorded as being at Swadlincote, Derbyshire.
13. For the purposes of these complaints, it is necessary to trace the involvement of Mr McGarry on the NEC of the Union as the chronology develops.
14. In the minutes of the meeting of the NEC on 14 August 2003, it is noted that there was a request that *“Mr D McGarry be invited as a guest at future NEC meetings as Harworth colliery being the only colliery not represented on the NEC”*. Mr McGarry was at that time the Branch Secretary of the Harworth branch. In or about 2009, Mr McGarry also became Branch Secretary to those UDM members working at the Maltby colliery. Mr McGarry had previously been elected as a National Trustee in 2001, which position he retained until he left the Union in 2013.
15. In the minutes of the meeting of the NEC on 19 February 2004, Mr McGarry is listed as having attended that meeting as part of the Notts Section contingent together with Mr Wood and Mr Clampet. It is also noted that the CSS Branch Secretary requested a rule change to allow Mr McGarry to be a bona fide member of the NEC in the future.
16. On 10 June 2004, the Biennial Conference of the UDM was held and rule 6(2)(b) was amended to read as it does currently in the 2012 Rules. On its face, rule 6(2)(b) provides that one member of the NEC is to be chosen from each colliery every five years by the members of each Section on a ballot of such members. Notwithstanding the wording of the rule, the Union, in its written response to these complaints, stated, *“In 2003 when Mr Neal Greatrex was President of the UDM, the National Executive of the UDM agreed that it would make more practical sense for all future NEC members to be the branch secretary from each branch/colliery of the UDM. This would negate the requirement for 5 yearly elections.”* It appears to be common ground that this policy was adopted and that there were no further ballots held under rule 6(2)(b) when a vacancy occurred on the NEC.
17. On or about 8 April 2011, Mr P. Clampet ceased being the Branch Secretary at the Thorseby branch and Mr Norwood was elected as his successor. Mr Norwood was then invited to be a member of the NEC representing the membership of the UDM at the Thorseby colliery.
18. The minutes of the NEC meeting of 1 August 2012 record Mr McGarry’s name with those of the Notts Section but with the description *“National Trustee”*. They also record it having been agreed that *“Following the demise of the Harworth branch, Mr McGarry could still attend NEC meetings as a National Trustee”*. Mr McGarry explained at the hearing that he has a law degree and it appeared that his contribution to the NEC was considered helpful.

19. Mr Stevens' first complaint concerns events surrounding a meeting of the Thorseby branch on 13 June 2013. It would appear that on each agenda of the Thorseby branch meetings there was an item 'Vendside' which enabled members to be generally updated on events concerning that claims-handling company. On this occasion, the meeting voted on a motion dealing with the possible removal of Mr Michael Stevens as a director of Vendside. In addition to his role within the Union, Mr Michael Stevens was also the Operations Director of Vendside Limited. Nothing came of this motion. Mr Michael Stevens was not removed from his position in the company pursuant to the motion.
20. Mr Stevens' first complaint however relates not to the substance of what was agreed at that meeting but to its agenda. The Thorseby branch at that time had about 300 members working at the colliery and about seven members working at the Union's offices at Berry Hill Lane. Mr Stevens was then working for Vendside Limited at the Berry Hill Lane offices. He maintains that a differently worded agenda was posted on the notice board in the lobby of the Berry Hill Lane offices to that posted on the Union's notice board at the colliery. This much appears to be agreed. However, neither version of the agenda was available for me to consider and I am unable to make any conclusive findings as to the differences between these two versions of the agenda. Mr Stevens maintains that the version at the Berry Hill Lane office merely stated 'Vendside' but that the version at the colliery also contained words indicating that a vote would be taken. He was unable to be more precise as he had not seen the agenda posted at the colliery himself. On the balance of probabilities and in the absence of evidence from the Union on this point, I find that the two agendas did differ and there was an indication on the version posted at the colliery that there would be a vote taken. Mr Stevens considered this to be significant as it was well known that more members attended meetings where votes were taken on contentious issues and he would have attended if he had known that there was a call for the removal of his father as a director of Vendside.
21. On 24 June 2013, the claimant wrote to his Branch Secretary, Mr Norwood, raising a number of formal complaints which Mr Norwood broke down into twelve separate complaints, including a complaint about the agenda for the branch meeting of 13 June.
22. In an undated letter, the Thorseby Branch President, Mr Eyre, replied to the claimant informing him that the Branch Committee had decided there was no case to answer on the twelve points.
23. The claimant appealed from the decision of the Branch Committee and sought for his appeal to be dealt with by the NEC as he considered that some members of the Notts Section Council and/or Executive Committee might be conflicted. Notwithstanding this request, the claimant was invited to address the next meeting of the Notts Section Executive Committee on 7 October 2013. He in fact addressed the Executive Committee on 2 December 2013.
24. In the meantime, Mr McGarry continued to attend meetings of the NEC. The last meeting of the NEC that he attended was on 16 October 2013.

25. On 5 November 2013, the Executive Committee of the Notts Section considered the possible sale of the offices at Berry Hill Lane. Present were Mr Wood, Mr Bircumshaw and Mr Michael Stevens. An issue arose concerning the ownership of a parcel of land adjacent to the Union's offices which the Union had maintained for a number of years. The ownership of this land was uncertain. Mr Michael Stevens wished to obtain legal advice about whether the Union had a claim on it. In the meantime, an application was made by the Berry Hill Park Social Welfare Centre ("BHPSWC") to the Land Registry for the land to be vested in the Official Custodian for Charities on behalf of BHPSWC. Further, the land is subject to a lease to the Coal Industry Social Welfare Organisation ("CISWO") and the claimant informed me that the Nottinghamshire Miners Pension Fund also has an interest in it. In this process, the position of Mr Wood came under scrutiny, having regard to him being not only the President of the UDM but also allegedly the Chair of Trustees of the BHPSWC and a Trustee of CISWO.
26. In September 2013 an application was made to put Vendside Limited into administration and administrators were appointed in or about November 2013. At about that time most employees of Vendside, including the claimant, were dismissed. Mr McGarry, as the Operations Manager, stayed on for about six months to assist the administrators.
27. On 21 November 2013 there was a meeting at the Thorseby branch at which it was agreed that the branch delegate to the Notts Section Council, Mr Bircumshaw, would be instructed to raise the issue of Mr Woods' potential conflict of interest with regard to the parcel of land and seek clarification of his role.
28. The next meeting of the Notts Section Council took place on 27 November 2013. Mr Bircumshaw did not raise the issue of Mr Woods' potential conflict of interest. In his witness statement for this hearing Mr Bircumshaw gave the following explanation; *"Unfortunately at this time myself and my family were going through a very traumatic time as my son had been a witness to his best friend being stabbed to death in front of him. The court case was due on 7 December 2013 and during the month of November 2013, my family had received death threats from individuals who were friends of the man who had been charged with the murder. As you can appreciate, my mind was on the trial and worrying about the safety of my family when I was away from home. Due to this I had forgotten to take my written notes with me from the Thorseby branch meeting on 21 November 2013 to the council meeting on 27 November 2013, subsequently I forgot to mention the issue on the land conflict."*
29. On 2 December 2013 there was a meeting of the Executive Committee of the Notts Section at which the claimant put his case on the formal complaints that he had brought in his letter of 24 June 2013.
30. On 4 December 2013 the NEC of the National Union met at the offices in Berry Hill Lane. Mr McGarry happened to be in the building. He had not been invited to the meeting and had no prior knowledge that it was to take place. Nevertheless he entered the meeting and the minutes record as follows *"Mr D McGarry then entered the meeting late. The Chairman explained to Mr McGarry that now he was no longer a Union member he was not entitled to attend the NEC meeting, he then read*

*out the National Rule pertaining to Trustees, that he shall automatically be treated as being resigned if he ceases to be a member of the Union, he then asked Mr McGarry to leave.”*

31. Rule 14(3) of the National Rules provides, “...[A trustee] shall automatically be treated as being resigned if he ceases to be a member of the union”. Rule 14(5) provides “No Trustee shall at the same time be both a trustee and a member of the NEC”.
32. On 3 February 2014 Mr Wood wrote to the claimant with the outcome of the first three complaints he had presented on 2 December 2013. It upheld the first complaint on the grounds that the branch “*should have agenda’d any vote which was going to be held on an agenda item*”.
33. On 12 February 2014 Mr Wood, as National President, wrote to all Branch Secretaries inviting nominations for the position as a member of the NEC, referring to rule 6(3) in respect of the period of office and rule 6(6) in respect of qualifications for nomination.
34. Mr Stevens commenced this application to me in respect of complaints one, two and three on 18 March 2014 and in respect of complaint four on 7 April.
35. On 7 April 2014 the claimant wrote to Mr Wood seeking to escalate his complaints to the NEC of the National UDM.
36. On 29 April 2014 Mr Wood responded to the claimant informing him that his appeal to the NEC was out of time.
37. On 6 May 2014 the claimant wrote to Mr Wood stating that he may have made a mistake in seeking to escalate his complaints to the NEC. He asked that instead his appeal be considered by the Council of the Notts Section.
38. On 12 May 2014 Mr Wood informed the claimant that his complaint would be dealt with at the next Notts Section Council meeting on 28 May. Mr Stevens was not specifically invited to that meeting.
39. On 30 May 2014, Mr Wood wrote to the claimant noting that he did not attend the Council meeting on 28 May. He stated that the Council had dealt with the appeal and had upheld the decisions of the Executive Committee. Mr Stevens was advised of his right to appeal to the NEC within 14 days.
40. On 2 June 2014 Mr Stevens informed Mr Wood of his wish to appeal to the NEC and, by an undated response, Mr Wood told the Claimant that his appeal would be dealt with by Mr Blenkinsopp.
41. On 20 August 2014 Mr Blenkinsopp wrote to Mr Stevens informing him that the NEC had dealt with his appeal but had upheld the decisions of the Notts Section Executive Committee and Council.



## The Relevant Statutory Provisions

42. 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 within 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.

(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.

(9) In subsection (2)(c) "industrial action" means a strike or other industrial action by persons employed under contracts of employment.

(10) For the purposes of subsection (2)(d) a committee is an executive committee if—

(a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,

(b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or

(c) it is a sub-committee of a committee falling within paragraph (a) or (b).

(11) For the purposes of subsection (2)(d) a decision-making meeting is—

(a) a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or

(b) a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.

(12) For the purposes of subsections (10) and (11), in relation to the trade union concerned—

(a) a constituent body is any body which forms part of the union, including a branch, group, section or region;

(b) a major constituent body is such a body which has more than 1,000 members....

### **108B Declarations and orders**

- (1) *The Certification Officer may refuse to accept an application under section 108A unless he is satisfied that the applicant has taken all reasonable steps to resolve the claim by the use of any internal complaints procedure of the union.*
- (2) *If he accepts an application under section 108A the Certification Officer—*
  - (a) *shall make such enquiries as he thinks fit,*
  - (b) *shall give the applicant and the union an opportunity to be heard,*
  - (c) *shall ensure that, so far as is reasonably practicable, the application is determined within six months of being made,*
  - (d) *may make or refuse the declaration asked for, and*
  - (e) *shall, whether he makes or refuses the declaration, give reasons for his decision in writing.*
- (3) *Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements—*
  - (a) *to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*
  - (b) *to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.*
- (4) *The Certification Officer shall in an order imposing any such requirement as is mentioned in subsection (3)(a) specify the period within which the union is to comply with the requirement.*

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

43. The rules of the Union which are relevant for the purposes of this application are as follows:-

### **UDM National Rules**

#### **NATIONAL EXECUTIVE COMMITTEE**

*6.(1) Responsibility for the administration of the affairs and business of the Union shall reside in a National Executive Committee which shall at all times act in accordance with (and at no time contrary to) the lawful resolutions of Conference.*

*(2) The National Executive Committee shall consist of:*

- (a) *ex-officio members namely the President, Vice President and Section Secretaries of the Union*
- (b) *one member chosen from each colliery every five years by the members of each Section on a ballot of such members; and*
- (c) *in the case of any Section having more than 7,000 members one further member for each 7,000 members in that Section such additional member or members to be chosen every five years by the members of that Section on a ballot of such members.*

*(3) The members referred to in (2)(b) and (c) of this Rule shall be chosen in elections.*

...

*(13) In the event of a member referred to in sub-Rule (2)(b) or (c) of this Rule resigning, dying or becoming and continuing to be mentally or physically incapable of performing his duties for a period of more than six months then the Section in question may hold a specially convened ballot for the purpose of, electing a successor and such successor shall then hold office for the remainder of the period or office of his immediate predecessor.*

#### **NATIONAL OFFICIALS**

*7.(1) The Officials of the Union shall be the President and the Vice-President.*

## **THE SECTIONS**

11. (1) *Each of the Sections shall have its own Rules for the regulation of the affairs of the Section and the implementation for the benefit of the members of the Section or the objects of the Union.*

## **TRUSTEES AND INVESTMENTS**

14. ...

(5) *No Trustee shall at the same time be both a trustee and a member of the National Executive Committee.*

## **UDM Nottingham Section Rules**

### **4 THE COUNCIL**

(a) *The General Management of and incidental to the affairs of the Section shall be vested in Council which shall be constituted in manner hereinafter mentioned (and is herein referred to as "the Council").*

(b) *The Council shall consist of the Section Officials and representatives appointed by the Branches to represent such Branches at the Council Meetings.*

(c) *Each Branch (consisting of more than 39 members) shall from time to time appoint one of its members to be its representative and to act as its Delegate at meetings of the Council.*

(d) *No Branch shall be represented by more than one Delegate, who subject as hereinafter provided shall be elected by the members of the Branch in accordance with the Rules.*

(c) *Provision shall be made for the Executive Committee to arrange for the grouping of Branches where membership of such Branches is under 40. For the purpose of rules dealing with this particular question, half members shall be considered equal to full members.*

### **5 MEETINGS OF THE COUNCIL**

...

(c) *Voting on any question before the Council except on a question of Alteration of Rules under Rule 24, shall in the first instance be by show of hands, but at the close of voting and before any further business is proceeded with, it shall be competent for one or more Delegates to demand a card vote on such question, and thereupon such a vote shall forthwith be taken and on such vote being taken, each Delegate shall have and exercise the number of votes to which he is entitled under Rule 20(a).*

*Whichever method of voting shall be adopted, the manner in which each Branch Delegate shall cast his vote or votes shall be recorded in the minutes.*

### **6 SECTION OFFICIALS, VICE-PRESIDENT AND EXECUTIVE COMMITTEE**

(b) *The Section Officials shall consist of a President and a General Secretary who shall also carry out the duties of Financial Secretary and Treasurer.*

(c) *The President shall be appointed by the Council from amongst the Section Officials of the Section. Each Branch representative to Council shall, at a branch general meeting to be held prior to the meeting of the Council at which such appointment of President is made, obtain instructions in accordance with Rule 13(c) as to the manner in which he is to vote on such appointment and shall vote accordingly.*

...

*He shall have no power to vote except when those present at the meeting and entitled to vote have cast their votes and the voting is equal, in which case he shall have power to give a casting vote.*

(d) *The General Secretary shall be appointed by the Council from amongst the Section Officials of the Section. Each Branch representative to Council shall, at a Branch General Meeting to be held prior to the meeting of the Council at which such*

appointment of General Secretary is made, obtain instructions in accordance with Rule 13(c) as to the manner in which he is to vote on such appointment and shall vote accordingly.

### **12 BRANCHES**

(b) Branch Officials and members of Branch Committees shall hold office for a period of three years.

At midnight on the 30th day of June at the end of this term of office, the Branch Officials and members of each Branch Committee shall retire from Office and arrangements shall be made for a Branch election to be held. Such election shall be by ballot/postal vote of the financial members of the Branch, and shall be conducted in accordance with the regulations made by the Council. Such election shall be held during the period 15th May to 29th June inclusive, on a date to be fixed by the Branch Committee for the purpose.

### **13 DUTIES OF THE BRANCH COMMITTEES**

(e) Each Branch of the Section shall adopt standing orders for the more efficient conduct of business at all Branch General Meetings.

Model standing orders shall be prepared from time to time by the Executive Committee and laid before Council and Branches for approval. Such model standing orders, in the form approved by Council and Branches, shall then be adopted by each Branch at the first General Meeting of the Branch to be held following the date of such approval by Council and Branches and they shall supersede any existing standing orders that may previously have been adopted. (See Appendix III).

Any breach by any member of the Branch of any standing order adopted in compliance with the provisions of this Rule shall be deemed to constitute a breach of the Rules of the Section.

### **19 DUTIES OF DELEGATES**

(a) The Delegate of a Branch shall duly and punctually attend each Meeting of the Council and shall at the monthly Branch Committee and General Meetings of his Branch, held next after each Council Meeting, report to such Meetings upon the work of the Council. In the event of a card vote, the Delegate of a Branch having not more than 40 financial members shall have one vote, and the Delegate of a Branch having over 40 financial members shall have one vote in respect of each complete 50 financial members.

(b) It shall be the duty of a Delegate to exercise his vote or votes on all questions coming before the Council and in no event shall he remain neutral.

## **APPENDIX III STANDING ORDERS FOR BRANCH GENERAL MEETINGS**

### **2 AGENDA AND ORDER OF BUSINESS**

The Branch President and Secretary shall prepare the Agenda, which shall be posted on the Union Notice Board not less than three days before the Meeting. The order of business shall be as prescribed by the Agenda and subject to these Standing Orders.

## CONSIDERATION AND CONCLUSIONS

### Complaint One

44. Mr Stevens' first complaint is in the following terms:

*"That on or around 13 Jun 2013 the union breached standing order 2 of the Standing Orders for Branch General Meetings in Appendix III of the Nottingham Section rules, which is a rule of the union under rule 13e of the Nottingham Section Rules. Standing Order 2 was breached because the full agenda of the Thoresby Branch General Meeting was not posted in full at the Branch HQ. In particular, the agenda that was posted did not include as an item the vote that was scheduled for the meeting on 13 June 2013. This vote was taken to remove a director of Vendside Ltd (the union being the shareholder), it was included in the agenda posted at the colliery but not on the agenda at HQ. There was a different poster on display at the colliery to the one at HQ."*

45. Standing Order 2 of Appendix III of the rules of the Nottingham Section of the Union provides as follows:

*The Branch President and Secretary shall prepare the Agenda, which shall be posted on the Union Notice Board not less than three days before the Meeting. The order of business shall be as prescribed by the Agenda and subject to these Standing Orders.*

### Summary of Submissions

46. Mr Stevens submitted that rule 13(e) of the rules of the Notts Section provides that the Standing Orders for branch general meetings are to be treated as rules of the Union and that the Union breached Standing Order 2 in relation to the agenda for the meeting of the Thorseby branch on 13 June 2013. He argued that the agenda which was posted on the Union notice board at the colliery indicated that there would be a vote on the 'Vendside' item whereas the agenda posted at the Berry Hill Lane office indicated that merely 'Vendside' was on the agenda. Mr Stevens noted that both the Executive Committee of the Notts Section and its Council had accepted his complaint in this regard. He further observed that branch members working at Berry Hill Lane who might have wished to vote on the possible removal of Michael Stevens as a director were prejudiced. He submitted that this was a breach of Standing Order 2.

47. In correspondence, the Union accepted that there was material missed off one agenda item on the poster that was sent to the Union's head office but maintained that this was an administrative error. It argued that nothing arose from this error as no director was removed from Vendside Limited as a result and that they all remained in post until the company went into administration. The Union observed that Mr Stevens' complaint had been upheld by the Executive Committee and the Council of the Notts Section on the basis that the agendas on the two posters should have contained the same wording, rather than it having been admitted that there had been a breach of rule. The Union also observed that the Thorseby Branch Secretary had been informed/rebuked that this type of administrative error should not happen again. Nonetheless, the Union submitted that the difference

between the two agendas was not technically a breach of the rules and that Mr Stevens' complaint was not within my jurisdiction.

### Conclusion Complaint One

48. Before considering the merits of this complaint, I must determine whether it was presented in time and whether it is one within my jurisdiction.
49. On the issue of time, section 108A(6) of the 1992 Act provides a primary limitation period of six months from the date on which the breach occurred and a secondary limitation period should a complaint be presented outside the primary period. The secondary limitation period applies should any internal complaints procedure of the Union have been invoked to resolve the claim within the primary limitation period of six months. In such an event, the application must be made within six months of either the day on which that procedure is concluded or the period of one year beginning on the day on which the procedure was invoked.
50. On the facts of this case, the last date on which the breach could have occurred is the date of the branch meeting, 13 June 2013. Accordingly, the primary limitation period in this matter expired on 12 December 2013. Mr Stevens made his application on 18 March 2014 and it therefore falls outside the primary limitation period. The secondary limitation period depends upon whether Mr Stevens invoked an internal complaints procedure of the Union to resolve his claim. Such procedures can be found at rule 20(a) and 25 of the rules of the Notts Section and were clearly applied in this case. I note the extensive correspondence about the different levels of escalation and appeals. Mr Stevens' original complaint to the Executive Committee was rejected by Mr Eyres' undated letter of about July 2013. His appeal from that decision was concluded by Mr Wood's letter of 3 February 2014 in which Mr Stevens' first complaint regarding the agenda was effectively upheld. Nevertheless, Mr Stevens took the matter further with an appeal to the NEC, which was concluded by Mr Blenkinsopp's letter of 20 August 2014. Having regard to this time line, I find that Mr Stevens' complaint to me made on 18 March 2014 was plainly in time, whether it be judged by the date of the decision of the Notts Section Council on 3 February 2014 or the date of the decision of the NEC of 20 August 2014.
51. On the issue of jurisdiction, Section 108A(1) and (2) of the 1992 Act provides that my jurisdiction is restricted to only some union rules. There must be an alleged breach or threatened breach of a rule which relates to any of the matters set out in section 108A(2). In this case, Mr Stevens' submits that Standing Order 2 of the Branch Standing Orders is a rule relating to "*the constitution or proceedings of any Executive Committee or of any decision making meeting*". This expression is further defined in Section 108A(10), (11) and (12), which provide as follows:
- (10) For the purposes of subsection (2)(d) a committee is an executive committee if—
- (a) it is a committee of the union concerned and has power to make executive decisions on behalf of the union or on behalf of a constituent body,
  - (b) it is a committee of a major constituent body and has power to make executive decisions on behalf of that body, or
  - (c) it is a sub-committee of a committee falling within paragraph (a) or (b).

- (11) *For the purposes of subsection (2)(d) a decision-making meeting is—*
- (a) *a meeting of members of the union concerned (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union, is final as regards the union or which, under the rules of the union or a constituent body, is final as regards that body, or*
  - (b) *a meeting of members of a major constituent body (or the representatives of such members) which has power to make a decision on any matter which, under the rules of the union or the body, is final as regards that body.*
- (12) *For the purposes of subsections (10) and (11), in relation to the trade union concerned—*
- (a) *a constituent body is any body which forms part of the union, including a branch, group, section or region;*
  - (b) *a major constituent body is such a body which has more than 1,000 members....*

In the above circumstances, I must consider the status of the Thoresby branch of the UDM. In particular I must consider if it is an “executive committee” or if it is a “decision-making meeting”.

52. In my judgement, the Thorseby branch does not fall within the definition of an executive committee in section 108A(10) and (12) of the 1992 Act. To do so it must be a committee of the whole Union or a committee of a body which has more than 1,000 members. The Thorseby branch falls into neither of these categories.
53. Similarly, in my judgement, the Thorseby branch general meetings do not fall within the definition of “a decision-making meeting” in section 108A(11) and (12) of the 1992 Act. The branch is not a body with more than 1,000 members. Further, branch meetings do not have the power to make a decision on any matter which, *under the rules of the Union*, is final as regards the Union or which, *under the rules of the Union or a constituent body*, is final as regards that body. Mr Stevens argued that by reason of the Thorseby branch being the only extant branch of the UDM, any decision of a branch meeting must be followed by the branch delegate to the Notts Section Council and/or NEC. He further argued that as only lay delegates to Council and/or the NEC can vote on such matters, the decision of the branch translates de facto into the decision of the Council and/or NEC and so falls within the statutory definition of a “decision-making meeting”. Ingenious though this argument may be, it is flawed as the statute expressly states in two places that the final and binding nature of the decision-making of such a meeting must be in accordance with the rules of the Union. Mr Stevens’ argument is advanced on the de facto position, not the de jure position, and must therefore fail. There is no rule of the Union which provides that the decisions of the Thorseby branch have such a final effect as required by the statute.
54. Should I be wrong on the question of jurisdiction, I also find, on the facts of this case, that there was no breach of Standing Order 2. On its true construction, Standing Order 2 does not require all copies of an agenda for a branch meeting to be exhibited on a Union notice board to be in identical terms so long as they inform the relevant members of the items to be discussed in general terms. The purpose of an agenda is to set out the nature of the matters to be discussed, not how that discussion is to be conducted or concluded. Whether a matter is to be the subject of a vote will be decided at the meeting by the meeting. Anyone with an interest in an item on the agenda runs the risk that by not attending he or she will miss a

decision that is taken on that agenda item. I find that the agenda for the branch meeting on 13 June 2013 was posted on the Union notice boards at the Thorseby colliery and at the Union offices in Berry Hill Lane.

55. For the above reasons I do not uphold Mr Stevens' application for a declaration that on or about 13 June 2013 the Union breached Standing Order 2 of the branch Standing Orders by allegedly failing to post the full agenda of the Thorseby branch general meeting of 13 June 2013 at the head office of the Union.

## **Complaint Two**

56. Mr Stevens' second complaint is in the following terms:

*"That on or around 27 November 2013 the branch delegate from Thoresby branch failed to exercise his vote at a meeting of the union's Council, as the branch had previously mandated him to do. This is a breach of the Nottingham Section Rule 19b".*

57. Rule 19b of the rules of the Nottingham Section of the Union provides as follows:

*It shall be the duty of a Delegate to exercise his vote or votes on all questions coming before the Council and in no event shall he remain neutral.*

## **Summary of Submissions**

58. Mr Stevens submitted that at a branch meeting on 21 November 2013 Mr Bircumshaw, as the branch delegate to the Notts Section Council had been mandated to raise a certain matter at the next meeting of Council that he attended. The matter to be raised was the position of Mr Wood with regard to the parcel of land adjacent to the Union's premises in Berry Hill Lane and how this was affected by Mr Wood being the President of the UDM, the Chair of Trustees of BHPSWC and the Trustee of CISWO (see paragraph 25 above). Mr Stevens noted that it was not disputed that Mr Bircumshaw had not raised this matter at the meeting of the Notts Section Council on 27 November 2013 and submitted that this was a breach of rule 19b of the rules of the Notts Section.
59. In correspondence, the Union accepted that at the branch meeting on 21 November 2013 Mr Stevens requested that Mr Bircumshaw raise his concerns regarding Mr Wood and the land issue at the Council meeting on 27 November and that Mr Bircumshaw did not do so. It explained the reasons for him not having done so, as I have set out at paragraph 28 above. Mr Bircumshaw was suffering from a period of acute family related stress. The Union argued that this complaint was a further attempt by Mr Stevens to resurrect the land issue which had already been explained to my office under a different process and that, in any event, Mr Bircumshaw was due to be made redundant when Thorseby colliery closed later in 2015. The Union originally submitted that this complaint is not within my jurisdiction but later withdrew that comment.



## Conclusion – Complaint Two

60. As with the previous complaint, I have to consider the preliminary issues of time and jurisdiction, having regard to the statutory provisions I have described in paragraphs 49 and 51 above.
61. On the issue of time, Mr Stevens raised this complaint on 18 March 2014. His complaint concerns the event of 27 November 2013, which is within the period of six months from the date the complaint was made. Mr Stevens' complaint was therefore made within the primary limitation period and I find that it was made in time.
62. On the issue of jurisdiction, I find that the Council of the Notts Section is not an "executive committee" within the definition of section 108A(10) and (12) of the 1992 Act. However, in my judgement, the meetings of Council are a "decision-making meeting" within the definition of section 108A(11) and (12). I find that they are meetings which have the power to make decisions on matters which, under the rules of the Union, are final as regards the Notts Section. Accordingly, I have jurisdiction under section 108A(1) and (2) to consider this complaint.
63. As to the merits of this complaint, I find that the admitted failure of Mr Bircumshaw to raise the matter with Council, as required by his branch, is not a breach of rule 19b of the rules of the Notts Section. Rule 19b does not require a delegate to vote in any particular way, let alone require him or her to raise a matter for discussion by Council. Its purpose is exclusively to require a delegate to vote on all questions on which a vote is held and not remain neutral. Mr Stevens may or may not have a genuine grievance as to the failure of Mr Bircumshaw to raise his concerns about Mr Wood but he has not identified an appropriate rule to ventilate that grievance. As an alleged breach of rule 19b of the rules of the Notts Section, this complaint is misconceived.
64. For the above reasons I do not uphold Mr Stevens' application that on or about 27 November 2013 the Union breached rule 19b of the rules of the Notts Section when a branch delegate from Thorseby branch allegedly failed to exercise his vote at a meeting of the Council of the Notts Section.

## Complaint Three

65. Mr Stevens' third complaint is in the following terms:

*"That on or around April 2006 until present the union breached rule 6(2)(b) of its National Rules because no vote was held for the period of 3 years from 8 April 2011 when Mr P Clampet finished as a union member and the period of 5 years of Mr Clampet's tenure as a NEC member prior to this date or longer. The Nottingham Section never therefore attempted to have a ballot vote in accordance with the rules and was never required to do so by the National Union. This is a breach of National Rule 6(2)(b)."*

66. Rule 6(2)(b) of the rules of the Union provides as follows:

*(2) The National Executive Committee shall consist of:*

(a) *ex-officio members namely the President, Vice President and Section Secretaries of the Union*

(b) *one member chosen from each colliery every five years by the members of each Section on a ballot of such members; and*

## **Summary of Submissions**

67. Mr Stevens submitted that rule 6(2)(b) of the rules of the UDM requires members of the NEC to be elected to office on the basis of one from each colliery on a ballot of members of the relevant Section. He stated that Mr Clampet had left the NEC on 8 April 2011 when he finished as a Union member and was replaced on the NEC by Mr Norwood without there having been an election. He maintained that Mr Norwood remains on the NEC without having been elected to it. Mr Stevens argued that the policy of putting Branch Secretaries automatically on the NEC deprived ordinary members of the opportunity of ever standing for the NEC as the rules clearly intended.

68. In correspondence, the Union stated as follows:

*“In 2003 when Mr Neil Greatrex was President of the UDM, the National Executive of the UDM agreed that it would make more practical sense for all future NEC members to be the Branch Secretary from each branch/colliery of the UDM. This would negate the requirement for five yearly elections. Thus when Mr Clampet retired and finished as Branch Secretary at Thorseby colliery, his successor Mr Stephen Norwood automatically took his place as NEC member for Thorseby colliery. The NEC and Section secretaries ... all supported this adopted procedure”.*

The Union further maintained that this complaint is out of time as it relates to a procedure that was adopted in 2003, well beyond the six month limitation period.

## **Conclusion – Complaint Three**

69. The Union submits that Mr Stevens’ complaint is out of time as it relates to a policy that was adopted in 2003 and a decision to invite Mr Norwood onto the NEC in 2011. In my judgement, this submission is misconceived. Rule 6(2) provides how the NEC is “to consist”, which is a continuing state of affairs. It is to consist, so far as rule 6(2)(b) is concerned, of persons who have been elected. If at any stage, the NEC consists of persons other than those permitted by rule 6(2), there is a breach of that rule. Mr Stevens’ complaint in this regard was presented on 18 March 2014, so rendering in time any breach that occurred after 19 September 2013. During this period Mr Norwood was allegedly an unelected member of the NEC and the Union was potentially in breach of rule 6(2)(b). Accordingly, Mr Stevens’ third complaint was made in time.

70. As to the merits of this complaint, there appears to be no dispute that Mr Norwood gained his position on the NEC in or about April 2011 without having been elected to it and that he remains on the NEC without ever having been elected to it. The Union admits having adopted a policy of appointing Branch Secretaries to the NEC which, in its words, “*would negate the requirement for five yearly elections*”.

71. In my judgement, rule 6(2)(b) of the UDM rules requires there to be a ballot of members of each Section every five years in order for one member from each colliery to become a member of the NEC. This is the plain meaning of rule 6(2)(b) and is supported by the further reference to persons elected to the NEC pursuant to rule 6(2)(b) in rules 6(3) and 6(12) . I note in particular that rule 6(13) provides for there to be interim elections if the incumbent resigns or becomes mentally or physically incapable of performing his duties.
72. As Mr Norwood was not elected to his position on the NEC, I find that the Union breached rule 6(2)(b) in the manner of his appointment to it.
73. For the above reasons, I uphold Mr Stevens' complaint that the Union breached rule 6(2)(b) of its rules by Mr Norwood being a member of its NEC without having been elected to that position.
74. When I make a declaration, section 108B(3) of the 1992 Act provides that I shall also make an Enforcement Order unless I consider that to do so would be inappropriate. Any such Order may impose of the Union a requirement to take such steps as to remedy the breach as may be specified in the Order or to abstain from such acts as may be specified with a view to securing that a breach of the same or a similar kind does not occur in the future. Mr Stevens applied for an Enforcement Order that Mr Norwood be removed forthwith from membership of the NEC and an election conducted for a replacement member of the NEC in accordance with rule 6
75. I find that it may well have been appropriate to make an Enforcement Order requiring the removal of Mr Norwood from the NEC, should he have continued to occupy his seat without having been elected to it. However, in the bundle of documents prepared for the hearing, the Union had requested the inclusion of a circular that it had sent to all branch secretaries (copied to branch delegates, presidents and treasurers for information) dated 12 February 2014 inviting nominations for a vacancy for an member of the NEC. This caused me consider whether Mr Norwood remained on the NEC in an unelected capacity. As it would have been neither practical nor in the interests of justice to make an Enforcement Order which ignored present realities, I caused a letter to be sent to the Union's solicitors dated 15 May 2015 inviting its client's comments on the Enforcement Order sought by Mr Stevens in relation to this complaint. In their response of 21 May, the Union's solicitors stated that the NEC, at its meeting on 12 February 2014, had decided to hold an election for the position of NEC member; hence the circular of the same date. The solicitors went on to state that only one nomination was forthcoming, that of Mr Norwood. Accordingly, Mr Norwood was declared elected at a meeting of the NEC on 18 June. Copies of the relevant minutes were provided. The solicitors commented that the members of the NEC are now elected and that therefore no Enforcement Order should be made. Mr Stevens was asked to comment on the letter from the Union's solicitors but, by a letter dated 27 May, he declined to do so. In these circumstances, I do not consider that it is appropriate that I make an Enforcement Order removing Mr Norwood from the NEC and/or requiring there to be an election to the NEC conducted in accordance with rule 6 of the rules of the Union. I make no Enforcement Order in respect of the breach of rule 6(2)(b) that I have upheld.

## **Complaint Four**

76. Mr Stevens' fourth complaint is in the following terms:

*"That on or around February 2007 until October 2013 the Union breached Rule 14(5) of its National Rules because Mr David McGarry who was at the time a trustee of the Union attended the NEC meetings throughout the period".*

77. Rule 14(5) of the rules of the Union provides as follows:

*No Trustee shall at the same time be both a trustee and a member of the National Executive Committee.*

## **Summary of Submissions**

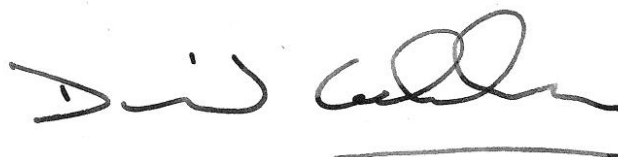
78. Mr Stevens submitted that Mr McGarry had been a member of the NEC of the Union between 2003 and 2013 and had been a trustee of the Union between 2001 and 2013. He argued that rule 14(5) was clear in preventing any trustee being at the same time a trustee and a member of the NEC and that accordingly the Union was in breach of rule 14(5) in permitting a sitting trustee to also be a member of the NEC. Mr Stevens asked me to reject the Union's assertion that Mr McGarry was merely an observer on the NEC and not a full voting member. He noted that Mr McGarry had attended the hearing in person and that he had given credible evidence that he had throughout his time on the NEC been considered a full voting member. Mr Stevens commented that the Union's actions with regard to membership of the NEC demonstrated a deliberate willingness to ignore the rules of the Union.

79. In correspondence, the Union observed that Mr McGarry was the Branch Secretary at Harworth colliery from 2007 to 2012 and therefore, in its view, an NEC member and entitled to attend NEC meetings. In 2012 the Harworth and Maltby collieries closed and so therefore their branches also closed through lack of members. The Union noted that the NEC agreed at its August 2012 meeting that Mr McGarry could still attend NEC meetings, but not as an NEC member, given that he was still a Union member and was at that time a National Trustee. In its submission, the NEC was acting entirely properly and can invite anyone to attend NEC meetings, albeit that they cannot vote on issues. The Union asserts that Mr McGarry did not vote. Further, the Union argued that this complaint is out of time on the basis that it refers to the breach having commenced in 2007, more than six months before Mr Stevens made this complaint to me on 7 April 2014.

## **Conclusion – Complaint Four**

80. The Union submits that Mr Stevens' complaint is out of time as it relates to Mr McGarry's position on the NEC from 2007. In my judgement, this submission is misconceived. Rule 14(5) provides for a continuing state of affairs. At no stage should a trustee be at the same time both a trustee and a member of the NEC. This rule has an application beyond the date upon which a trustee may wrongly become a member of the NEC. Accordingly, I find that Mr Stevens' fourth complaint was made in time.

81. As to the merits of this complaint, I must firstly determine an issue of fact. Although it is common ground that Mr McGarry attended meetings of the NEC between 2007 and 2013, the Union dispute that he did so as a full voting member. The Union chose not to attend the hearing and so the evidence of its witnesses was only available in the form of their written witness statements. The witnesses were not available for cross-examination. Mr McGarry attended the hearing and gave oral evidence specifically on this point. He stated that he did attend and vote at meetings of the NEC. I accept Mr McGarry's evidence that he attended the NEC throughout as a full voting member.
82. Rule 14(5) is expressed in clear terms. No Trustee shall at the same time be both a Trustee and a member of the NEC. I find that Mr McGarry was a trustee and that the Union accepted him at the same time as a full member of the NEC. In so doing, I find that the Union breached rule 14(5) of its rules.
83. For the above reasons, I uphold Mr Stevens' complaint that the Union breached rule 14(5) of its rules by Mr McGarry being a member of the NEC whilst at the same time being a trustee.
84. When I make a declaration, section 108(b)(3) of the 1992 Act provides that I also shall make an Enforcement Order unless I consider that to do so would be inappropriate.
85. I observe that Mr McGarry ceased being a trustee of the Union and ceased sitting on its NEC in 2013. In these circumstances, I do not consider it appropriate that I make an Enforcement Order in respect of the breach of rule 14(5) that I have upheld.

A handwritten signature in black ink, appearing to read 'David Cockburn', written over a horizontal line.

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