D/30-32/17-18

DECISION OF THE ASSISTANT CERTIFICATION OFFICER ON APPLICATIONS MADE UNDER SECTION 108A OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

Mr Boswell and Ors

V

United Road Transport Union (URTU)

Date of Decision **21 November 2017**

Introduction

1. On 22 February 2017 4 members of the United Road Transport Union (commonly abbreviated to 'URTU'; but I shall refer to it as 'the Union') made a complaint to the Certification Officer for Trade Unions and Employers' Associations, pursuant to Section 108A(2)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992. Those members were Peter Boswell, John Bowen, Dean Jepson and John Marsh. In this decision I shall refer to them together as 'the Complainants' or 'the current Complainants'; if reference is made to any of them individually I shall use their surnames.

2. By their complaints, which were supported by 'Grounds of Complaint' settled by Mr Christian Howells of counsel, the Complainants sought declarations that decisions made on behalf of the Union that they be expelled from Union membership were made in breach of the Union's rules and in breach of the principles of natural justice and orders that they be reinstated as members of the Union and to their positions on the National Executive Committee of the Union. Those complaints were rejected by the Union, who deny any such breach and assert that the decisions which had led to these proceedings were lawfully made. The complaints were in the following terms:

> Complaint 1
>
> On or around 26 August 2016 the union breached rules 32.2, 32.4 and 32.5 of its rulebook when Ms Elizabeth Melville of Counsel rather than the NEC conducted an investigation into the complaints made under rule 32.1 against Peter Boswell, John Marsh, John Bowen and Dean Jepson.

Complaint 2

The investigation by Ms Melville breached the rule of natural justice which is implied into rules 32.2, 32.4 and 32.5 because Ms Melville should have insisted on being instructed by and liaising with an independent member of the NEC and not Mr Robert Monks and Mr Eric Drinkwater, who were amongst two of the approximately 96 complaints. The term of natural justice which is implied in rule 32, is as follows:- *'In investigating a complaint under rule 32, the members of the NEC who have conduct of the investigation should be independent of the complaint, should not have a conflict of interest and must act in good faith and impartiality at all times'.*

Complaint 3

On or around 3 March 2017 the union breached rules 32.8 and 32.9 of its rulebook when an independent Counsel rather than the National Appeals Committee considered the appeal by Peter Boswell, John Marsh, John Bowen and Dean Jepson with regards to the outcome of the Investigation conducted by Ms Melville.

3. I have been appointed as an Assistant Certification Officer to decide upon those complaints. On 11 August 2017 I held a hearing for directions by telephone in which the Complainants were represented by Mr Howells and the Union was represented by Mr Binder Bansel, of Pennington Manches LLP. In an order dated 11 August 2017 (bundle pages 190 to 192) I set out the issues which had been identified in the course of the directions hearing as those which I was to decide and gave the parties directions as to the provision of witness statements, documents and skeleton arguments. Those directions are at appendix 1. These issues were: –

1 Did the complaints under Rule 32 of the Rules of the Respondent, having regard to Rule 15. 7, constitute an emergency for the purposes of Rule 24.4 which applied to the disciplinary and to the appeal processes?

2 Did the Respondent breach Rules 32.2, 32.4 and 32.5 in instructing Ms Melville of counsel to investigate those complaints?

3 It is agreed that some implication as to the investigation of those complaints was necessary because, at the material time, there were fewer than 3 members of the NEC (it being accepted that the Respondent's trustees were not members of the NEC). In that situation,

(i) could a power to instruct counsel be implied into Rule 32.2, Rule 32.4 and Rule 32.5? or

(ii) would it be within the reasonable contemplation of the membership that a disciplinary sub-committee, consisting of any remaining impartial members of the NEC, impartial trustees and/or impartial members of the Respondent would be established?

4 Did the Respondent breach Rules 32.8 and 32.9. When counsel was instructed to conduct the appeal from the decision of Ms Melville?

5 Can a power to instruct counsel be implied into Rules 32.8 and 32.9 in circumstances where the appellants are members of the NEC?

6 Is any failure to apply an express rule permitted so as to avoid any manifest unfairness or breach of natural justice having regard to *Street v Unison UKEAT 0256/13*?

4. The oral hearing thus directed took place on 18 September 2017. The Complainants were again represented by Mr Howells. The Union was represented by Ms Newton. I was provided with an agreed bundle of 196 pages, together with witness statements by Mr Boswell and Mr Marsh of the Complainants and by Mr Monks and Mr Drinkwater on behalf of the Union. To a very substantial extent those witness statements addressed historical issues which, it was agreed by counsel, did not bear on the decisions which I have to make; neither Mr Howells nor Ms Newton sought to call or to cross-examine any of the makers of those witness statements. It was agreed that, if any issue of fact was to be decided, I should decide it on the basis of the documents. I am grateful to Mr Howells and Ms Newton for their good sense in that regard, for the skeleton arguments which they provided and for their concise and able submissions

5. The agreed bundle included, at pages 167 to 189, the decision of the Certification Officer dated 16 November 2016 (Abraham & Others v URTU D/23-25/16-17) which upheld complaints against the Union made by three members (including one of the four present Complainants) relating to the reappointment in March 2016 of Mr Monks as General Secretary of the Union. I shall refer to that decision as 'the 2016 decision'

6. Section 108A of the 1992 Act provides by subsection (1) that 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). The matters mentioned in subsection (2) include the removal of a person from any office and disciplinary proceedings by the Union (including expulsion). The Complainant must, by subsection (3) be a member of the Union or have been a member at the time of the alleged breach. It is not in dispute that the Complainants have properly brought these proceedings under those provisions. I shall come later in these reasons to the statutory provisions in relation to remedies in the event that any of the complaints are upheld.

The Union

7. The Union is a trade union which consists of members following the occupation of road transport, distribution and logistics workers and employees; see the Union's Rules – Rule 1.3. According to the 2016 decision, it had 10,615 members as at 31 December 2015. According to the witness statement of Mr Marsh, dated 11 September 2017, the Union has approximately 13,000 members.

8. The supreme government of the Union is placed by Rule 13 of the Union's rules in the hands of a Triennial Delegates Meeting ("the TDM") which consists of the General Secretary and delegates elected by the Union, on the basis of one delegate for every 400 members of the Union in each geographical grouping. The TDM has power to alter, rescind or make new rules, to determine policy and to hear all appeals under rule by members against a decision of the National Executive Committee ('NEC') and to elect delegates to the National Appeals Committee ('NAC'). See Rule 13.5.

9. Rule 15 provides for the general management of the Union by the NEC which consists of the President, the General Secretary and one representative from each region. I was told that the number of regions has changed over time and that, at the time with which I am concerned, there were six elected regional members of the NEC, including the four Complainants. The president, Mr Brown, resigned during 2016; and Mr Drinkwater, who had been Vice-President, thereafter acted as president. Whether he acted within the rules in doing so appears to be contentious; but that is not relevant to this decision. The vacancy caused by the resignation of Mr Brown had not, so far as I am aware, been filled at the time of the hearing before me. Mr Drinkwater is also an elected representative of his region on the NEC.

10. Rule 15.1(a) provides that three representatives of the NEC in addition to the President shall form a quorum.

11. Rule 15.7 provides as follows:-

> 'No member of the NEC shall be entitled to take part in any discussions or to vote on any matter in which they are personally interested.'

12. Rule 24 provides for the election by a postal ballot by the members of the Union of a General Secretary who must retire at the end of the fifth year of office and is eligible for re-election. Rule 24.3 provides that the General Secretary should attend all TDM or SDM meetings (an SDM meeting is a meeting of the delegates who attended the last TDM summoned by the NEC in the event of an emergency). The General Secretary must attend NEC meetings and act under the orders of the NEC.

13. Rule 24.4 provides as follows:-

> 'The General Secretary shall perform all the duties laid down by the NEC and shall generally supervise the work of the Union in all departments, having full power to deal with all cases of emergency.'

14. Mr Monks was elected as General Secretary of the Union in 2001 and again in 2006, 2011 and 2015. It was the election of Mr Monks to that position in 2015 which was the subject of the 2016 decision, in which the Certification Officer concluded that Mr Monks had been elected in an election which did not satisfy the requirements of the 1992 Act.

15. It is next necessary for me to set out, in full, the provisions of Rule 32 of the Union, which is headed "Membership Complaints". That rule is in these terms:-

Rule 32. - Membership Complaints

1. No member shall knowingly disclose the business of the Union to anyone not connected with the Union, nor make any statement nor do any act (nor fail to do any act) which is intended to prejudice the interests of the Union or damage, injure or mislead any fellow Union member, unless under police caution.

2. Any complaint to the National Executive Committee that there has been a breach of Rule 32(1) above shall be in writing to the National Executive Committee by way of the General Secretary or President and such complaint shall contain or have annexed to it any written evidence or correspondence relevant thereto. On receiving such complaint the National Executive Committee may, at their absolute discretion, summons the member to whom the complaint refers to appear before it to answer such complaint. Any such summons to a member must be in writing and must contain the full details of the grounds of the complaint and must include a copy of the written complaint and any written evidence or correspondence annexed thereto. Such summons must give 3 weeks notice to the member complained of, of the date, time and place and the procedure to be followed at the hearing before the National Executive Committee. The member may be represented by a fellow member of the United Road Transport Union or a member of another trade union and shall be allowed to submit, not later than 10 days prior to the hearing before the National Executive Committee, any written evidence, testimony or other documentation in support of their case.

3. At the hearing before the National Executive Committee no new complaint may be raised.

4. The member complained of shall be afforded a full and fair hearing before the National Executive Committee. The National Executive Committee will consider oral and written evidence submitted to it in support of and in defence of the complaint.

5. In the event of the National Executive Committee finding the complaint proved the National Executive Committee shall have power to impose a fine upon the member complained of up to a maximum of £250 and/or to suspend the member from membership of the Union for such time as the National Executive Committee considers to be appropriate, or to expel the member from the Union.

6. The decision of the National Executive Committee shall be communicated or confirmed to the member in writing within one week of the hearing.

7. Should the member be unable to attend any hearing of the National Executive Committee under this Rule because of illness certified by a medical practitioner, or other reason acceptable to the National Executive Committee, a new date for the hearing will be arranged as soon as practicable and the period of notice as specified in Rule 32(2) will apply.

8. Any decision reached by the National Executive Committee under Rule 32(5) is subject to the right of appeal to the National Appeals Committee (NAC). Any

appeal against a decision of the National Executive Committee reached under Rule 32(5) shall be in writing to the National Executive Committee, by way of the General Secretary or President, within 21 days of the date of the letter sent to the member under Rule 32(6). The letter of appeal shall contain or have annexed to it any written evidence or correspondence relevant to the appeal, upon which the member wishes to rely.

9. Upon receiving notification of the member's wish to exercise their right of appeal, the member will be invited to attend a meeting of the NAC, who will hear their appeal. The NAC will be made up of 3 nominated delegates from the previous TOM. The NAC will have the power to:

(i) Uphold the National Executive Committee's decision.

(ii) Overturn the National Executive Committee's decision on the sanction and impose its own sanction in line with Rule 32(5), but cannot impose a more severe sanction:

(iii) Overturn the National Executive Committee's decision and impose no sanction.

10. The member will be given 21 days notice of the date, time and place of the appeal hearing and the procedure to be followed at the appeal hearing before the NAC. The member will be entitled to representation by a fellow member of the URTU or a member of another trade union. The name of the representative must be notified to the General Secretary or President in the letter from the member notifying the Union of their wish to exercise their right of appeal.

11. The member shall be allowed to submit, not later than 14 days prior to the appeal hearing before the NAC, any further written evidence, testimony or other documentation in support of their case. At the appeal hearing before the NAC, no new complaint may be raised. The NAC will consider oral and written evidence submitted to it in support of the grounds for appeal, together with the reasoning relating to the National Executive Committee's original decision.

12. The decision of the NAC shall be communicated or confirmed to the member in writing within one week of the appeal hearing. The decision of the NAC is final and there will be no further level of appeal within the Union.

13. Should the member be unable to attend the appeal hearing under this Rule because of incapacity certified by a medical practitioner, or other reason acceptable to the NAC, a new date for the appeal hearing will be arranged as soon as practicable and the periods of notice as specified in Rule 32(10)(11) will apply.

The History

16. In 2015 it became necessary for there to be an election for the post of General Secretary; there were three nominees for that position. They were Mr Monks, Mr Keating, who was a full-time officer in the Union, and a Mr Williams who declined his nomination. In December 2015, following advice given by the Union solicitors, the NEC decided not to accept Mr Keating's nomination on the grounds that officers of the Union were not permitted to stand against the incumbent General Secretary. As a result of that decision, Mr Monks was the only nominated candidate and was

re-elected as General Secretary. The decision not to accept Mr Keating's nomination and the consequent unopposed re-election of Mr Monks was the subject matter of the 2016 decision. The Certification Officer concluded that there was no rule or policy of the Union which supported the rejection of Mr Keating's nomination, that the NEC had no power to reject that nomination, that Mr Keating had been unlawfully excluded from the election and that the Union had been in breach of its rules in that Mr Monks had continued to act as General Secretary without being elected by an election which satisfied the requirements of the 1992 Act. The Certification Officer made orders nullifying the election of Mr Monks and requiring the holding of a further election for the General Secretary's position. There has not yet been any such election; Mr Monks, in his witness statement, says that, since that decision, he has been the Union's 'acting General Secretary'.

17. It is apparent from that highly summarised part of the recent history that there has been substantial discord within the Union and that the rejection of Mr Keating's nomination and other steps taken against Mr Keating, into which it is not necessary for me to go, have led to a serious schism within the ranks of at least some persons involved in the management of the Union or parts of it. It is in that context that 96 members of the Union, including Mr Monks and Mr Drinkwater, have made complaints to the NEC under Rule 32 about the conduct of the present four Complainants.

18. I do not need to set out the details of those complaints; but it will assist in an understanding of the history to say that at its heart were allegations that the Complainants had taken part in the summoning and holding of an unscheduled meeting of the NEC on 2 July 2016 which purported to overrule a written warning which had been given to Mr Keating in connection with disciplinary steps taken against him, to resolve that Mr Monks be suspended from his position as General Secretary (this was, of course, months before the Certification Officer's 2016 decision that Mr Monks' re-election had been unlawful) and that Mr Drinkwater be replaced as vice-president by Mr Boswell. It was also alleged that the Complainants caused the locks to the Union's offices to be changed. It was said that the decisions made at that meeting were unlawful under the rules and in breach of the principles of natural justice.

19. On 3 August 2016 Mr Monks sought advice from Mr Bansel as to the complaints against the Complainants. There was an obvious difficulty. The complaints, having been made to the NEC under Rule 32, should, pursuant to that rule, have been considered and decided upon by the NEC after a full and fair hearing; but the present Complainants were all members of the NEC; and they could not take part in any decision on their complaints; see rule 13.7 set out above; nor could Mr Drinkwater who was one of the 96 persons who had presented the complaints against the present Complainants.

20. In his advice letter to Mr Monks, dated 22 August 2016, Mr Bansel said:-

'*The Complainants helpfully confirm that they are made under the provisions set out at R32 of the union's rulebook. I have considered R32 and note the general structure of the process for investigating members' complaints. I am mindful that all of the complaints are against four members other NEC.*

Under 32.2, any complaint of breach of rule has to be made to the NEC, the initial complaint being made either to the General Secretary or President. The remainder

of R32 then sets out the mechanism for the investigation of the complaint by the NEC. In summary the first instance assessment of the complaint is to be made by the NEC and, where appropriate, any appeal to the National Appeals Committee.

I would advise that in the interests of natural justice, the procedural fairness and logistical practicalities, it clearly would not be appropriate for the NEC to investigate complaints against four members of the same committee.

My advice is that the investigation should be carried out by independent counsel.

I should make clear that if my advise is accepted, I would expect any counsel to be instructed to deal with the matter so far as it is possible in accordance with the rule. In effect, counsel will step into the shoes of the NEC and to adopt the same procedure in investigating the complaints.

Rule 24

I am mindful that my suggestion is one that is not ordinarily adopted by the union and I appreciate the union's desire to apply insofar as it is possible, its own rulebook. I have considered your powers under R24. In particular rule R24.4 provides as follows:-

"The General Secretary shall perform all the duties laid down by the National Executive Committee and shall generally supervise the work of the Union in all departments, having full power to deal with all case of emergency" (My emphasis)

Given the seriousness of the complaints raised and the fact that they relate to the activities of individual purporting to act in the name of the NEC, the highest executive function of the Union, I would consider this to be a case of emergency sufficient to invoke the provision of R24.5."

21. For the sake of clarity I should state that although in the bundle there is at least one reference to a Disciplinary Committee, any such reference refers to a subcommittee of the NEC appointed to deal with a disciplinary matter; there was no separate such committee.

22. As a result of that advice, Ms Melville of counsel was instructed to investigate and decide upon the Rule 32 complaints against the present Complainants. She is a member of the Bar experienced in employment and trade union law. In her decision, dated 26 October 2016, she found that many but not all of the allegations made in the Rule 32 complaints against each of the present Complainants were established; and she concluded that the appropriate sanction was expulsion from the Union.

23. As they were entitled to do under Rule 32.8, each of the Complainants exercised his right to appeal to the NAC. According to Mr Monks' witness statement the NAC has only sat once 'over the years'. It is plainly not a permanently constituted body; if an NAC is required, it must be made up, pursuant to Rule 32.9, of three delegates who were nominated at the last TDM to be potential NAC members. I was told that at the material time there were five such members from whom, if an NAC had to be formed, three would be selected (by drawing names from a hat according to Mr Monks, on the only occasion when it had been required).

24. When those appeals were presented, Mr Monks again sought the advice of Mr Bansel. His advice is set out at pages 71 to 72 of the bundle in these terms:-

"The members have exercised their right to appeal under Rule 32(9) and in the ordinary course of events, the appeal would be considered by the union's National Appeal Committee. (NAC). I note in your letter of 1 November that current constitution on of the TDM and consequently the NAC. The NEC members hold this office by virtue of their representative function for the entirely of the region that they represent. This would include all members within a region including those who currently hold a position on the NAC.

I note your comments about adopting a mix and match approach to constituent members of the NAC. While this is a possibility, as you note, it does not address the overriding consideration of whether it is a fair, transparent and proper for an NAC to hear appeals by four members of the NEC. There is a significant risk that in doing so there would be a breach of the rules of natural justice.

Further, and in any event, it can be argued that there is an implied term in the rulebook that any express provision is subject to the implied term that it can be varied and/or dis-applied to ensure natural justice and/or manifestly unfair outcome is avoided. See UNISON v Street UKEAT/0256/13.

Specifically, there is the potential for the NAC in unavoidably influenced (sic) by the fact that these are not merely complaints against members of the union acting in the ordinary course of their membership but specifically complaints about their activities as members of the NEC, the highest principal committee of the union. To avoid the NAC being put in a potentially very difficult position it is preferable if another appellate body can be found.

Separately, I note the actions of John Bowen and in particular the circulation of the findings and his appeal to a significant number of recipients in an email of 2 November. It would appear that not only has this email been sent to individuals who are not members of the union, but that some of the recipients are NAC members. This is a further reason why I do not, in all the circumstances, consider it appropriate in this particular case for the NAC to hear appeals against the findings made against four members of the union acting in their capacity as NEC members.

I would advise that the safer course and one that is consistent with the principle of natural justice is for the appeals against the findings in relation to the rule 32 complaints to be considered by somebody independent of the NAC and indeed the union. I would therefore recommend that the appeals are considered by independent counsel and for that counsel to give his/her assessment of the appeals and to provide a report."

25. That advice was acted on; and Mr Peter Edwards of counsel, also experienced in employment and trade union law, was instructed to determine the appeals. In his decision, dated 21 March 2017, he upheld many but not all of Ms Melville's conclusions and upheld the decision that the Complainants be expelled from the Union.

The Grounds of Complaint

26. It is essential, in my judgment, that I should make it clear that my decision does not require or involve any conclusion or the expression of any view as to the problems within the Union which I have briefly described above or as to the merits of the positions taken by or actions of either the present Complainants or of any other member, members or officers of the Union with whom they may be or have been in

conflict. Nothing in this decision should be taken as expressing, directly or by implication, any such view. My function is to decide whether or not to uphold the specific criticisms of the procedures adopted by or on behalf of the Union which resulted in the expulsion of the present Complainants, as identified in the grounds of complaint and in the issues which arose from those grounds as identified in my directions order of 11 August 2017; see pages 190/191 of the bundle. In their skeleton arguments and orally Mr Howells and Ms Newton sensibly addressed those issues in three separate areas, namely. (1) Was there a case of emergency such as to permit Mr Monks to appoint Ms Melville and subsequently Mr Edwards under the power he had to deal with cases of emergency in Rule 24.4, (2) in the absence of an emergency which permitted the instruction of Ms Melville, was there an implied term in the contracts of membership between the members and the Union i.e. for present purposes in the rules which permitted the Union to instruct her and (3) was there similarly an implied term which permitted the instruction of Mr Edwards.

27. Insofar as it is necessary to construe any of the Union's rules, I have had in mind the direction of Warner J in Jacques v AUEW [1986 ICR683] which has been cited with approval on several occasions, in these terms:-

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

A Case of Emergency

28. Mr Howells submitted that the situation created by the complaints against the four present Complainants did not constitute an emergency. Neither he nor Ms Newton referred me to any authority as to the meaning of emergency; Mr Howells relied upon the definition in the Oxford English Dictionary of emergency as 'a sudden state of change, conflict etc requiring immediate action'. That state, he submitted, did not exist in the present case; for there to be an emergency immediate or urgent action is required; but the provisions of Rule 32 expressly set out how the complaints were to be dealt with under the rules; the fact that there were difficulties in pursuing the Rule 32 procedures did not create an emergency.

29. Mr Howells drew attention to Mr Monks' description of his view of the situation created by the presentation of the 96 complaints under Rule 32 against the present Complainants that the Rule 32 provisions might deny fairness to those who had presented the complaints and that he felt it appropriate to treat the position as a case of emergency and the absence in that witness statement of any reference to the appointment of Mr Edwards as having taken place in a state of emergency as opposed to a state in which he believed it to be appropriate.

30. He further argued that, because Rule 24 set out a series of mandatory obligations upon the general secretary, including in Rule 24.4 a duty to perform 'all the duties laid down by the NEC', the words 'having full power to deal with all cases of

emergency' only entitled Mr Monks to act as he did when instructed to do so by the NEC.

31. Ms Newton submitted that there was a state of emergency. The complaints of the 96 were brought by members under Rule 32; but of the six members of the NEC, four were the present Complainants, Mr Drinkwater was one of the 96 and the sixth member of the NEC, Mr Bellamy, had been routinely copied by the four Complainants or one or more of them into the correspondence relating to the acts which gave rise to the 96 complaints and had been invited to the meeting of 2 July 2016. Although Ms Newton did not expressly say so, the effect of those points was that Mr Bellamy was thought not to be impartial. Therefore, the Rule 32 procedure could not be pursued; at least five of the members of the NEC could not take part in any consideration of the complaints by reason of Rule 32.7. The complaints were, however serious complaints which had to be addressed and resolved; and therefore, there was a state of emergency and the appointment of experienced and specialist counsel, to use Ms Newton's words, (and as Ms Melville and Mr Edwards certainly were) was an appropriate and indeed the only appropriate step to take to enable the complaints to be properly resolved.

32. I am not persuaded by Mr Howells' argument that the express provisions in Rule 24.4 to deal with cases of emergency could only be exercised if the NEC instructed the General Secretary to do so. The words are that the General Secretary should deal with 'all cases of emergency'; it is not difficult to imagine circumstances of emergency or urgency in which a General Secretary would need to act when there was no time or opportunity to call a meeting of the NEC. Mr Howells' submission sought to restrict the application of the words of Rule 24.4 in a manner which, in my judgment, would conflict with the natural meaning of the words and would place an unwarranted limitation upon the use of the power which those words provide. Reference to the principle expounded by Warner J above does not support Mr Howells' arguments; bearing in mind the context of the rules as seeking to govern the relationship between the Union and its members in a pragmatic way, I do not see Mr Howells' argument as putting forward a reasonable interpretation of the relevant provision.

33. However, I accept his submissions that there was not in the situation which I have described a case of emergency. It was accepted on both sides that, whether or not such a state existed was a question of mixed fact and law; and approaching the issues on that basis, I have concluded that there was not a case of emergency. In my judgment, the natural meaning of the word 'emergency' and the Oxford English Dictionary definition, connote the need for immediate or urgent action as an essential feature of an emergency; but I do not find there to have been any such need in the present case. I accept, of course, that the complaints had to be the subject of a decision within a reasonable time, natural justice would so require; but in my view there was no need for greater urgency. It has not been suggested that the resolution of the complaints was necessary to the unravelling of the decisions purportedly taken on 2 July. Nor has it been suggested that Mr Monks did not have power to act as General Secretary. The complaints appear to have been presented at the end of July. Mr Monks sought Mr Bansel's advice on 3 August but did not receive it until 22 August. Ms Melville was instructed on 23 August. I do not suggest delay; but the sequence of events does not appear to me to justify the description of action having to be taken or having been taken in an emergency; and it is to be noted that Mr Bansel's letter of advice of 22 August, when setting out the justification for using the Rule 24.4 power, does not refer to time or urgency at all; it

refers only to the seriousness of the complaints and to the fact that they related to the four members of the NEC as a result of which it would not be appropriate for the NEC to investigate those complaints.

34. In my judgment, therefore, there was not a case of emergency which entitled Mr Monks to act under the power given to him by Rule 24.4. However, that conclusion does not lead the present Complainants to success; in the alternative the Union relies on an implied rule or term in the contracts of membership which permitted the Union to act as it did; and I must now turn to address the arguments on that issue, firstly in relation to the appointment of Ms Melville and secondly in relation to the appointment of Mr Edwards.

Implied Term - Ms Melville

35. In considering this issue it is important to set out as a starting point Mr Howells' acceptance that, in the circumstances described above, some term had to be implied into the rules of the Union to enable the complaints against the present Complainants to be investigated and resolved. He does not dispute that there were insufficient members of the NEC who were not excluded by Rule 15.7. Thus, as he said in his skeleton argument and orally, the issue between the parties is whether in the circumstances in which the Rule 32 process could not be followed as the rules provided but the complaints had to be resolved, a term permitting the Union to appoint an independent and experienced adjudicator to resolve the complaints, as the Union did, was to be implied into the membership contract between the members and the Union - or, as was said in the course of argument, implied into the rules (which for present purposes has the same effect).

36. Mr Howells' submissions as to the term to be implied were succinct. The question, he argued, was what would have been in the reasonable contemplation of the Union and the members as the appropriate way to obtain a resolution of the Rule 32 complaints in circumstances in which the procedure set out in that rule could not be deployed; and the answer to that question was, in his submission, not that the task should be, to use his expression, 'farmed out' but that it should be given to members of the Union who were not members of the NEC. Such members could be members who had a working knowledge of the rules, such as those who were appointed delegates to the previous TDM or other members who had no representative position within the Union. Mr Howells' formulated the implied term for which he contended as follows:-

> '*If it is not reasonably practical for the NEC to decide the complaint, a disciplinary subcommittee of at least three members should be formed from delegates to the last TDM.*'

37. This, he submitted would ensure that a member who faced a complaint would have his complaint decided by members of the Union – by his peers. By contrast, he pointed out, Ms Melville had felt the need to seek information about the operation of the Union and of the history of the use of Rule 32 from Mr Bansel. However, there is nothing to show that delegates to the last TDM or any ordinary member of the Union would have had any knowledge of that history; indeed it appears from the information given to Ms Melville that there was no such history in real terms – Rule 32 had only been used once in recent memory.

38. Ms Newton began her submissions on this issue by reference to the decision of the Employment Appeal Tribunal, on appeal from the Certification Officer in Unison v Street (UKEAT/0256/13/LA, KEITH J presiding). In that case the Certification Officer had upheld the complaint of Mr and Mrs Street that Unison had acted in breach of its rules in failing to hold an AGM of the branch of which they were members in the first quarter of 2012. There had been no such meeting because, in Unison's view, there was such chaos in the affairs of that branch that it was necessary to impose regional supervision on the branch in an attempt to bring its affairs back into order. There was no express provision in the rules which enabled Unison to act in that way; and it was argued that the rules should be treated as subject to an implied term permitting Unison to suspend the operation of the rules relating to the organisation and management of its branches, if intervention in the form of regional supervision was required, provided that the suspension of the rules was necessary and not a disproportionate way of achieving the Union's aims. The Employment Appeal Tribunal accepted that such a term should be implied into the rules; it said, at paragraph 16 of its judgment:-

> '*In our view, a term of the kind contended for by Unison should be implied into the rules. Something has to be done about branches which are dysfunctional, and the term which it sought to imply enabled something to be done about them provided that, where what was involved includes the suspension of some of the rules relating to the organisation and management of the branch, the suspension of those rules which are to be suspended has to be justified. That justification can be met by allowing such rules to be suspended only when they are both necessary and not a disproportionate way of achieving the aims which regional supervision is intended to achieve.*'

39. There was evidence in that case of custom and practice which supported the proposed implied term; there is no evidence of custom and practice in the present case; but (1) it is accepted in this case that there must be an implied term and (2) such a term if not based on custom and practice must be based on the presumed intention of the parties that that is to say what notional reasonable people in the position of the parties would have agreed. That such persons or bodies would have agreed the proposed implied term had it been suggested to them is a necessary but not sufficient ground for implying such a term; no such term can be implied if it contradicts an express term; but there is no such contradiction alleged in this case.

40. In analysing the arguments in that way I have derived considerable support from the recent decision of the Supreme Court in Marks and Spencer plc v BNP Paribas [2016AC742] and in particular paragraphs 18 to 23 of the judgment of Lord Neuberger of Abbotsbury; at paragraph 23 Lord Neuberger said:-

> '*First, the notion that a term will be implied if a reasonable reader of the contract, knowing all its provisions and the surrounding circumstances, would understand it to be implied is quite acceptable, provided that (i) the reasonable reader is treated as reading the contract at the time it was made and (ii) he would consider the term to be so obvious as to go without saying or to be necessary for business efficacy...the first proviso emphasizes that the question whether a term is implied is to be judged at the date the contract is made. The second*

proviso is important because otherwise Lord Hoffmann's formulation may be interpreted as suggesting that reasonableness is sufficient ground for implying a term.'

41. Ms Newton submitted that on the authorities where a Rule 32 complaint could not be determined by the NEC, the term to be implied was that those complaints should be determined by an individual or body independent of the NEC, not tainted by the problems which led to the inability of the NEC to determine the complaints and capable of applying the principles of natural justice.

42. It being accepted that some implied term was necessary, and applying the principle set out above, the question for me appears to be what would, notionally at the time at which the contracts of membership between the members and the Union were formed, have been regarded as a reasonable, equitable and necessary term to give efficacy to the contract so that the Rule 32 complaint could be determined by a neutral body capable of applying the principles of natural justice. In considering the rival implied terms which have been proposed, I am not persuaded that the notionally reasonable member of a Union or the Union itself would have agreed that the decision upon a Rule 32 complaint in the circumstances of the present case could only be made 'in house'; some of such notional and reasonable people might well have regarded that as wholly undesirable or inappropriate; and in my judgment the implied term which it is necessary to imply should not be limited in that way. Nor am I persuaded that the implied term should be expressly limited by the word 'capable of applying the principles of natural justice', as suggested by Ms Newton. Such a limitation would be wholly unnecessary in my view. Any person or body outside the NEC asked to decide on a Rule 32 complaint would be bound to apply the principles of natural justice, just as the NEC would have been if it had been capable of deciding the present complaints. In my judgment the implied term which would meet the need for a person or body to resolve the Rule 32 complaints in the present circumstances in which the NEC could not do so for the reasons set out above would be one which did not require the decision to be made by a body or members of the Union but which permitted the appointment of an untainted person or body independent of the NEC to make that decision.

43. I conclude, therefore, that the appropriate implied term which would be necessary, fair and consistent with the views of notionally reasonable members and a notionally reasonable Union was one which provided, in the circumstances of this case, for the decision upon the Rule 32 complaints against the present Complainants, to be reached by an untainted person or body who was independent of the NEC. It is not and could not be suggested that, if that was the appropriate implied term, the appointment of Ms Melville was not permissible pursuant to that term.

44. Accordingly, pursuant to the implied term, which I hold to have been part of the relationship between the members of the Union and the Union, the Union was entitled to instruct Ms Melville to determine and resolve the Rule 32 complaints against the present Complainants as she did.

45. I should add that I was referred to other authorities which I have not mentioned above. I have read all the passages to which I was directed but have not regarded them as adding to the principles which I have set out or as affecting the conclusion which I have expressed.

The Appeal

46. In respect of the instruction of Mr Edwards of counsel to decide upon the appeals of the Complainants against the decisions of Ms Melville, Mr Howells' primary submission was that there was no need for the Union to resort to an implied term at all. I set out earlier in this decision, Rules 32.8 and 32.9, which provide that any decision reached by the NEC - or, of course, on its behalf by Ms Melville- was subject to a right of appeal to the NAC, which appeal would be determined by three nominated delegates from the previous TDM. It is not in dispute that at the material time there were five such nominated delegates from whom three could have been selected. In the context of those primary facts, Mr Howells submits that there was no need for any implied term. He referred me, as Ms Newton had on the issue of the instruction of Ms Melville, to Marks and Spencer PLC v BNP Paribas where the Supreme Court followed the long established principle that a term can only be implied into a contract if it is necessary for business efficacy - or in the context of a trade union and its members if it is necessary to enable the membership contract to operate effectively. See paragraphs 18 to 21 of the judgment of Lord Neuberger to which I have referred earlier, which embody and establish that principle with clarity; and at paragraph 77 Lord Clarke, who agreed with what Lord Neuberger had said, put the principle in this way, having considered the oft-discussed issue as to whether the implication of a contractual term involves an exercise of construction (an issue which does not arise in the present case) at paragraph 77:-

> 'I agree with Lord Neuberger PSC and Lord Carnwath JSC that the critical point is that in the *Belize* case *[2009 1 WLR 1988]* the Judicial Committee was not watering down the traditional test of necessity. I adhere to the view I expressed in paragraph 15 of my judgment in the Mediterranean *Salvage and Towage* case ... that in the *Belize* case, although Lord Hoffman emphasised that the process of implication was part of the process of construction of the contract, he was not resigning from the often stated proposition that it must be necessary to imply the term and that it is not sufficient that it would be reasonable to do so. Another way of putting the test of necessity is to ask whether it is necessary to do so in order to make the contract work...'

47. Ms Newton submitted that those arguments failed on the facts; it was not possible, she said, to form an impartial panel of three nominated TDN delegates. In considering whether that assertion was made out, it is helpful to look again at the letter which Mr Monks wrote to Mr Bansel, on 1 November 2016, in which he sought advice as to how to proceed with the appeal. That letter is set out in detail earlier in this decision. It is to be noted that in that letter Mr Monks does not identify any nominated member of the TDM as being unable by reason of conflict of interest or bias to sit upon the appeal. He says only that ensuring that there was no such conflict of interest or bias posed a problem. He also suggests later in the letter that each Complainant's appeal might have to be heard by a differently constituted NAC, a point which has not resurfaced. In his witness statement, Mr Monks said at

paragraph 45 and 46 that it was never envisaged that NAC members would have to deal with complaints about the actions of NEC members and that he was concerned that a potential NAC member would be put in an invidious position if asked to determine an appeal by his regional representative and that issues of fairness and transparency would arise. However, he does not state that, while it might be invidious for an NAC member to have to make a conclusion about complaints against an NEC member or members, any of the potential members of the NAC was or were involved in the disputes within the NEC to any material extent or indeed at all.

48. Ms Newton also relied upon paragraph 47 of Mr Monks' witness statement in which he said that Mr Bowen (and possibly other complainants) had been circulating comments and opinions following Ms Melville's decision to a significant number of recipients which included potential NAC members. See pages 68 to 70 of the bundle. I was told that at least two members of the NAC were on the distribution list which appears at page 69 of the document.

49. In my judgment, that material does not establish that it was not possible to form a panel of three of the five nominated TDM delegates. It is not disputed that, of the five potential delegates all or most were members of a region of the Union represented by one of the Complainants; but it does not follow from that or from the fact that one or more of them may have read material circulated by Mr Bowen that they could not be expected or trusted to reach a fair and unbiased decision in accordance with the principles of natural justice if asked to hear the appeals. It would be the duty of any member of the NAC to apply the principles that the decision should be reached in good faith and without being arbitrary, capricious or irrational) see Braganza v BP Shipping [2015 1 WLR 1661] and in Evangelou v McNicol [2016 EWC AC iv 817]. There is no evidence that any of the five had taken sides in the schism within the NEC. The fact that each of the five was a member of a region of which one of the Complainants was the regional representative does not justify the conclusion that there was a real possibility of bias or of incapacity to reach a decision which met the standards to which I have referred.

50. In my view the fact that some of the five were on the circulation list of material distributed by or on behalf of the Complainants does not of itself give rise to any possibility of bias or any evidence of an inability to make a fair and lawful decision. In a dispute within a relatively small trade union, that kind of situation may well arise; but in my judgment it is not sufficient in effect to disqualify a person who under the rules of the Union is potentially qualified to adjudicate upon a complaint or an appeal from acting as the rules provide. As Mr Howells pointed out, the rules expressly require that an appeal shall be determined by three nominated TDM delegates; the selected delegates are required by the rules to fulfil that role; and whether or not those delegates were in an invidious position, it would have been their duty to decide the appeal impartially. There is nothing in the rules which excludes a nominated TDM delegate from being a member of an NAC when the appeal which he or she is required to hear involves a member or member of the NEC representing that region; and, further, there is no provision in the rules relating to the NAC which parallels the express provision in relation to the NEC of Rule 15.7.

51. Mr Howells drew my attention to Rule 15.10 which provides that, if six branches of the region write to the General Secretary expressing dissatisfaction in respect of

the conduct of the NEC member for that region, the General Secretary must refer the matter to an NEC meeting; the NEC must receive representations concerning the conduct of the NEC member and determine if the complaint is well-founded. The persons complaining or the NEC member whose conduct is criticised if dissatisfied with the NEC's decision may appeal; such an appeal is to be referred to a Special Delegate meeting; those attending such a meeting would be the delegates who attended the last TDM; see Rule 13.3. There is no provision that any such delegate who comes from the region or branch from which the complaint emanates or from the region which the NEC member represents should not take part in any such appeal decision. I agree with Mr Howells that those provisions tend to show that it was not intended that regional or branch affiliations should disqualify TDM delegates from taking part in decisions on appeals as provided by the rules.

52. For these reasons I have concluded that there was no necessity in relation to the Complainant's appeals to invoke an implied term permitting the Union to arrange for those appeals to be determined by counsel or by any person or body other than an NAC consisting of three nominated delegates from the previous TDM, as provided by Rule 32.8 and 32.9.

53. If I had reached a different conclusion on that issue and had held that resort to an implied term was justified in relation to the appeal, I would have taken the view that that term should, in respect of the appeal process, have been essentially the same as that in respect of the complaint process. The reasoning I have set out in relation to the complaint process would apply equally to the appeal process. However, it is not necessary for me to say more about that issue, which does not arise for decision.

Remedies

54. The issue of remedies was addressed only briefly at the hearing. In their grounds of complaint, the Complainants seek declarations and enforcement orders relating both to the instruction of Ms Melville and to the instruction of Mr Edwards. In the light of my conclusions the Complainants are not entitled to any remedy in respect of the instruction of Ms Melville. But they are entitled to appropriate remedy or remedies in respect of the instruction of Mr Edwards. Both parties were content that I should be provided with written submissions as to appropriate remedies in the light of my decision on the substantive issues. I therefore invite the parties to submit brief written representations as to appropriate remedies within 7 days of the promulgation of this decision.

55. It might help the parties, however, if I indicate that I can see no reason why I should not make a declaration in these or similar terms:-

> 'In delegating to Mr Edwards of counsel the conduct of the appeals of the Complainants against the decision of Ms Melville upon the complaints brought against them under Rule 32 of the rules of the Union, the Union acted in breach of Rules 32.8 and Rule 32.9; those appeals have not yet been lawfully determined'

56. Whether any enforcement order is necessary, in the light of a declaration as above or in similar terms, may be a matter of doubt; I would be prepared to consider, as necessary, an order that the appeals of the Complainants against the decisions of Ms Melville be heard by the Union's National Appeals Committee constituted as set out in Rule 32.9 of the rules.

57. The Complainants seek an order that they be reinstated as members of the Union and as members of the NEC. Ms Newton agreed that, if the Complainants were to succeed on any issue, they would be entitled to be restored to membership of the Union; whether she wishes to reconsider that in the light of my decision is a matter for her. She submitted that they could not be restored to membership of the NEC for two reasons, first because there exists a newly elected NEC and secondly because by Rule 15.9 it is a requirement for eligibility of the NEC that a member is not a member of any other trade union; and it might be that the Complainants or some of them had, since their expulsion from this Union, probably joined another trade union.

58. I do not propose to make any comment on those points at this stage. They can be canvassed in the written submissions referred to above.

His Honour Jeffrey Burke QC
Assistant Certification Officer

D/30-32/17-18

DECISION OF THE ASSISTANT CERTIFICATION OFFICER ON AN APPLICATION MADE UNDER SECTION 108A 0F THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992

Mr Boswell and Ors

V

United Road Transport Union (URTU)

Date of Decision **5 February 2018**

DECISION AS TO REMEDIES

1. In this case, in my substantive decision of 21 November 2017, I concluded that URTU ("the union") had acted in breach of its rules by having the appeals of the Complainants determined by outside counsel and not by the Union's National Appeal Committee, consisting of three nominated members from the previous Triennial Delegates Meeting ("TDM") held in 2015. At paragraph 54 of that decision, I said that the issue of remedies was addressed only briefly during the hearing which led to that decision and in the written submissions provided to me. The Claimants and the Union are content that I should make a declaration in the terms set out in paragraph 55 of that decision: and I make that declaration pursuant to my powers under section 108B(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended.

2. On behalf of the Claimants, Mr Howells of counsel asks me to make, in addition to that declaration, and enforcement order under section 108B(3) of the 1992 Act. The order he seeks is as follows:-

"The Union shall hold an appeal hearing of the Complainants' appeal against the decision of Ms Melville dated 26 October 2016 in accordance with rules 32.9 to 32.13 within 28 days. For the avoidance of doubt the appeal will be held by the NAC which must be formed of three nominated delegates from the last TDM on 23 October 2015."

3. The Union opposed the making of an enforcement order. Whether I should make such an order that in those terms or other terms was the subject of a telephone hearing between Mr Howells, Ms Newton of counsel on behalf of the Union and me on 15 January 2018. After the hearing was over, I received an email from Mr Howells sent later on the same day containing a further submission and a response from Mr Bansel, the Union's solicitor, dated 19 January. I had not given leave any such further submission; but I have taken them into account.

4. The Union's principal response to Mr Howell's request for an enforcement order has been that such an order would have the effect of ordering the Union to act in breach of its rules. The relevant rules are set out in my substantive decision; but it would be helpful and make this remedies decision easier to understand if I were to repeat them. They are, insofar as directly relevant as follows:-

"32.8 Any decision reached by National Executive Committee under Rule 32 (5) is subject to the right of appeal to the National Appeals Committee (NAC)....

32.9 Upon received notification of the member's wish to exercise their right of appeal, the member will be invited to attend a meeting of the NAC, who will hear their appeal. The NAC will be made up of 3 nominated delegates from the previous TDM...

13.5 The TDM shall have power to .... and will elect delegates to the National Appeals Committee

6. The union's response to the Complaints' request for an enforcement order was set out in a letter from Mr Bansel to the Certification Office dated 27 November 2017 in these terms:-

"Pursuant to paragraph 54 of the decision, the union has considered the issues arising and the practicalities of the complainants' appeal being reconsidered by the National Appeal Committee (NAC).

Pursuant to Rule 14.9 the Triennial Delegates Meeting (TDM) elects delegates to the NAC. Following the previous TDM there were five individual members from which a NAC could be comprised. Since that date, one member has relinquished membership of the union; another is now a newly elected member of the National

Executive Committee. A further two individuals have relinquished their membership of the NAC. This leaves one remaining member of the NAC who is prepared to sit as a member of the NAC in determining the complainants' appeals.

In order to provide for a panel of the NAC to hear these appeals pursuant to Rule 32.9, three nominated delegates are required to sit as the NAC.

The next TDM is expected to be no earlier than October/November 2018. The union would therefore propose, in order to comply with the Assistant Certification Officer's decision, that further members of the NAC are nominated at the 2018 TDM. Thereafter steps will be taken for a NAC to be comprised from the members who accept their nomination and a NAC would then hear the complainants' appeals."

7. The Complainants accept that, if one of the five nominated delegates has left the union, he/she can no longer be part of the NAC. However, as to the other delegates, Mr Howells submits that the union has put forward no evidence to substantiate the assertions made about them, in particular that two of them have "relinquished their membership" of the NAC or to show where and in what circumstance they have done so or whether either of them, if reminded of their duty as nominated delegates – and, one might add informed of the appropriate enforcement order made against the union- would (albeit perhaps with reluctance) take up the role which they hold under the rules, There is nothing in the rules which permits a member who has been elected or appointed as a member of the NAC to renounce that role (although there may, of course, be circumstances such as ill-health in which a member might not be able to person it- which is not suggested here) or provides for a re-appointment process during the three years between one TDM and the next. He submits that, if the union genuinely could not oblige those two members to sit on an NAC in these cases, one would expect clear evidence to be produced, at least in the form of witness statements from them to support Mr Bansel's assertions.

8. Mr Howell's point is made in the context of a bitter dispute between the two sides in these proceeding in which there is, patently, a complete absence of trust. In that context, little which either side says as to fact is readily accepted. Ms Newton submitted that the union was not attempting to frustrate my decision but had to comply with its rules; Mr Howell does not accept that, on the evidence, the union is unable to comply with its rules by holding the appeal as provided for by the rules.

9. In the course of the hearing I canvassed the possibility of adjourning so that the union could provide evidence to support that assertion made in Mr Bansel's letter. Ms Newton did not take up my suggestion.

10. In his email of 15 January, Mr Howells commented that to permit the union to adduce evidence at this stage could provoke a further factual hearing and that, if the union wanted to establish that it could not effectively conduct an appeal, it should have made that point at the substantive hearing; it is certainly the case that, at that hearing, no evidence or argument was put forward that the union had asked outside counsel to conduct the appeal because it was not possible to constitute an NAC. In

his reply, Mr Bansel submitted that the substantive hearing had not considered remedies, which were to be left until my decision on the agreed issues had been made, and asserted that the relevant members of the NAC had declined to sit after the substantive decision. He repeated that I should not make an enforcement order that because to do so would be unproductive as required the union to act in breach of its rules and because the order which could not be complied with would be inappropriate.

11. In my view, it is remarkable that, despite the context of distrust and the points which Mr Howells has made, the union has still not either produced any evidence or asked me to give it an opportunity to produce any evidence to substantiate Mr Bansel's assertion that two members of the NAC have refused to carry out the duties which their membership of that body imposes on them under the rules or that they have taken that stance genuinely. I have no evidence, beyond Mr Bansel's assertions, to support the union's contention that that it cannot form an NAC to hear the Complainants " appeals. While I accept that there is a complex factual history between the parties, as Mr Bansel correctly points out, I do not see any reason why that should affect the decision which I now have to take as to whether it is appropriate in the light of the circumstances set out in my substantive decision and the circumstances set out above to make an enforcement order. Section 108 B (3) of the 1992 Act requires me to make an enforcement order unless I consider that to do so would be inappropriate. There is, in my judgement no or no persuasive evidence that it would be inappropriate to make such an order in the circumstances described; and I have concluded that an enforcement order should be made.

12. In what terms should such an order be made? In his recent email, Mr Bansel asked that if, contrary to the union's case, an enforcement order were to be made, it should not be in the terms proposed by Mr Howells but should consist only of an order which required the determination of the appeal within a time frame. Ms Newton made a similar request during the telephone hearing. However, In my judgment, an order so framed would leave too much uncertainty, It is important that the enforcement order requires the union to proceed according to its rules, which set out the process to be followed. I have therefore concluded that the enforcement order should be made in the terms proposed by Mr Howells and make an order under section 108 B (3) in those terms as set out in paragraph 2 above

13. Accordingly, I grant the following remedies: –

1. A declaration that URTU in delegating to Mr Edwards of counsel the conduct of the appeals of the Complainants against the decision of Ms Melville upon the complaints brought against them under Rule 32 of the rules of the Union, the Union acted in breach of Rules 32.8 and Rule 32.9; those appeals have not yet been lawfully determined'

2. The Union shall hold an appeal hearing of the Complainants' appeal against the decision of Ms Melville dated 26 October 2016 in accordance with rules 32.9 to 32.13 within 28 days. For the avoidance of doubt the appeal will be held by the NAC

which must be formed of three nominated delegates from the last TDM on 23 October 2015

His Honour Jeffrey Burke QC
Assistant Certification Officer