

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

**Professor Anne Barron**

**v**

**University and College Union**

**Date of Decision**

**19 December 2017**

**DECISION**

Upon application by Professor Barron ("the Claimant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

1. Pursuant to s.108B I refuse the Claimant's request for a declaration that the Union breached s.108A(2) in respect of complaints 1, 3, 4, 5, 6, 7 and 9. Complaint 3 is dismissed as it falls outside the jurisdiction of the Certification Officer; Complaint 5 is dismissed on the Claimant's concession that it is out of time, no formal complaint having been made until 5<sup>th</sup> May 2017; and Complaints 1, 4, 6, 7 and 9 are dismissed since there has been no breach, or threatened breach of the rules of the Union.
2. I declare that there has been a breach of the Union's rules pursuant to s.108A(2) in respect of complaints 2 and 8.
3. Pursuant to s.108B(3) I refuse the Claimant's request for an Enforcement Order, since it would be inappropriate to make any such order.

**REASONS**

1. Professor Barron brought this application as a member of the University and College Union ("the UCU" or "the Union"). She did so by a registration of complaints which were received at the Certification Office on 31 January 2017. Additional complaints (2, 5, 8 and 9) were made by email on 5 May 2017.

2. Following correspondence with my office, Professor Barron confirmed her complaints as follows:-

**Complaint 1**

The UCU has breached rule 7.4 of the LSE branch rules by failing to ensure that a negotiating committee was elected from members of the branch committee elected at the 2016 AGM. That breach is ongoing.

**Complaint 2**

The UCU has breached rule 9.1 of the LSE branch rules by failing to ensure that the branch committee elected at the 2016 AGM appointed a returning officer for elections. That breach is ongoing.

**Complaint 3**

Between March 10, 2016 and December 20, 2016, and from March 21 2016 to date, the UCU has been in breach of rule 8.3 of the LSE branch rules by failing to ensure that the powers of the Branch Secretary specified by rule 8.3 are only exercised by a person entitled to exercise them under rule 8.3.

**Complaint 4**

On or around 11 July 2016, the UCU breached rule 8.7 of the LSE branch by appointing David Morris as Chair and Shakuntala Banaji as Vice-Chair otherwise than by a decision of the branch committee to fill those vacant positions. That breach is ongoing.

**Complaint 5**

On or around September 30, 2016, the UCU breached rule 8.7 of the local rules of the LSE branch by appointing David Morris as Health and Safety Officer otherwise than by a decision of the branch committee to fill that vacant position. That breach is ongoing

**Complaint 6**

On or around 2 November 2016, the UCU breached rule 9.4 of the LSE branch rules when it failed to call an election for the position of Chair of the branch at a time when the position had not been filled in accordance with the branch rules and there were two eligible candidates for the vacancy. The eligible candidates were Anne Barron, who announced her intention to stand on 1 November 2016; and David Morris, who purported at that time to hold the position of Chair of the Branch but had neither been elected to that position by the branch members, nor appointed to that position by the branch committee.

**Complaint 7**

On or around 9 February 2017, the UCU breached clause 5.1 of its Rule 13.1 Procedure for the Regulation of the Conduct of Members, when the General Secretary failed to appoint an Investigating Officer to carry out a preliminary investigation into Anne Barron's complaint against Angela Roger that the latter had breached Clauses 6.1.2 and 6.1.3 of the Rule 13.1 Procedure in her role as the Investigating Officer appointed to investigate a complaint against Anne Barron submitted by Shakuntala Banaji, Veronique Mizgailo and David Morris; and when the General Secretary incorrectly proceeded to reject Anne Barron's complaint against Angela Roger summarily and without giving reasons.

**Complaint 8**

On or around March 14, 2017, the UCU breached rule 11 of the LSE branch rules by failing to ensure that delegates to the 2017 Congress were elected from members of the LSE branch

**Complaint 9**

On or around March 30, 2017 the UCU breached rule 9.4 of the LSE branch rules when it failed to call an election for the position of Secretary of the branch at a time when the position was vacant and there were two eligible candidates for the vacancy. The eligible candidates were Anne Barron, who announced her intention to stand on March 28, 2017; and Mike Cushman, whose intention to stand was announced on March 30, 2017.

3. The Certification Office investigated the alleged breaches in correspondence and a hearing took place on 3 October 2017. At the hearing, the Claimant represented herself. The Union was represented by Tom Brown of counsel instructed by Ms Victoria Phillips of Thompsons Solicitors. The Claimant submitted a written witness statement and gave oral evidence. The Union submitted written witness statements from Mr Paul Cottrell, Head of Democratic Services and Mr Barry Jones, the Regional Official (Higher Education, London North) who both also gave oral evidence. Professor Barron and Mr Brown each provided skeleton arguments.
4. There was a bundle of documents in evidence consisting of 543 pages and the applicable rules and procedures of the Union. The Union made an application to include further documents (minutes of meetings 23 May 2016, 4 October 2016, 23 January 2017 and 5 May 2017). The Claimant objected to the inclusion of both the minutes of the meetings in 2017 because they were either incomplete or inaccurate. The Union has had plenty of time to submit documentation in advance of the hearing and there was no explanation of why the documents were served late. The Claimant's objection to the draft minutes of the 23 January 2017 meeting is upheld – she was not present at the meeting and raised concerns at the time, however in relation to the minutes of the 2017 AGM held on 5 June, where the Claimant had been present and accepted that the draft minutes were reasonably accurate the Union is permitted to include them in the bundle and rely on them.
5. In addition to the skeleton arguments, there was a joint bundle containing 21 authorities which had been agreed between the parties.
6. It was not reasonably practicable to determine the application within six months, pursuant to s.108B(2)(c), because of the time sought by all sides to prepare

appropriately and identify a suitable hearing date, and, subsequently, the time necessary to consider and draft this decision.

7. In broad terms, the 9 complaints specific aspects of the adherence to the rules of a Union branch (complaints 1-6 and 8-9) and the manner in which the Union national office had dealt with a complaint about the conduct of a member pursuant to its national rules and procedures (complaint 7).

**Preliminary issues (1): Time limits**

8. It had not been practicable for the Certification Officer to deal with time limits and jurisdiction points as preliminary issues either on paper or at a preliminary hearing. It was agreed that they would be considered at this hearing.
9. It was common ground that s.108A(6) provides that an application must be made (1) within the period of six months starting with the day on which the breach or threatened breach is alleged to have taken place, or, (2) if within that period any internal complaints procedure of the union concerned is invoked to resolve the claim, within the period of six months starting with the earlier of the day on which the procedure is concluded, and the last day of the period of one year beginning with the day on which the procedure was invoked.
10. It was also common ground that complaints 1,3,4,6 and 7 were submitted on 31 January 2017 and complaints 2,5,8 and 9 on 5 May 2017. The Claimant accepted that complaint 5 was out of time and it is accordingly dismissed. It was never in doubt that complaints 3,6,7,8 and 9 were in time and the Union conceded during the course of the hearing that complaint 1 4 was also in time.
11. Time limits in relation to complaints 1 and 2 remained in dispute. There were two questions: from when did the primary time limit run and had the Claimant invoked an internal complaints procedure within six months of that date?
12. Complaints 1 and 2 alleged that the branch committee elected at the AGM on 23 May 2016 had failed thereafter to elect a negotiating committee and appoint a returning officer. They were alleged as acts continuing throughout the life of the

year of the committee's office, not ones that crystallized on the date of the AGM and are, accordingly in time.

**Preliminary issues (2): Jurisdiction**

13. Both sides agreed that the Certification Officer and an Assistant Certification Officer such as myself, may only consider allegations within the scope of the matters listed at s.108A(2). The Union argued that complaint 3 – the allegation that some of the powers of Branch Secretary set out in Local Rule 8.3 had been exercised by the branch administrator rather than the elected Branch Secretary - fell outside the scope of the Act.

14. I agree that the complaint that the branch administrator acted beyond her remit does not fit within the language of the matters listed at s.108A(2)(a)-(d). The complaints are of, for example, minutes being drafted by the branch administrator and of letters being sent in her name, rather than in the name of the branch secretary or chair, and of emails being sent from her email address which should have been authored by an office holder. In the period from 21 March 2017 onwards when there was no branch secretary, it is alleged that the branch administrator acted without authority. They are therefore not allegations concerning "the appointment or election of a person to, or the removal of a person from, any office". It is in effect an allegation concerning the work performance of an employee of the Union which is not within the scope of Chapter VIIA of the Act, which is entitled Breach of Rules. I dismiss the complaint as falling outside my jurisdiction. However, as I have heard the evidence concerning the allegation and to the extent the jurisdiction issue could be fact sensitive, I will also deal with it substantively, in the alternative, as set out below.

**Findings of Fact**

15. There were limited areas of factual dispute, but where it has been necessary to make factual findings, I direct myself that it is for the Claimant to prove her case to the civil standard and I therefore make the following findings of fact on the balance of probabilities from the evidence before me. I have sought to restrict my

findings to those necessary for the determination of the identified complaints and issues.

16. The Union has approximately 105,000 members in adult, further and higher education in the UK and was formed on the merger of the Association of University Teachers (AUT) and the National Association of Teachers in Further and Higher Education (NATFHE) in 2006. The Union's national rulebook, as amended from time to time, by the Union's Congress, applicable at the material time is the rulebook adopted in 2016 (the Rules).

17. Rule 13 provides as follows:

**13 The conduct of members**

**13.1** The National Executive Committee shall (by the same procedure as it establishes its own Standing Orders) establish a procedure to censure or bar a member from holding any office for a specified period not exceeding three years or suspend from membership for a period not exceeding 1 year or expel a member from membership if it finds their conduct to be in breach of the Rules or is deemed to be a matter of significant detriment to the interest of the Union. The procedure, inter alia, shall include an appeals process.

18. The Rule 13 Procedure was drawn up by the National Executive Committee on 30 March 2012. It is not part of the Rules of the Union. The preamble to the Rule 13 Procedure states as follows:

The Rules of the University and College Union require the National Executive C Committee to establish a procedure to regulate the conduct of members:

*The National Executive Committee shall (by the same procedure as it establishes its own Standing Orders) establish a procedure to censure or bar a member from holding any office for a specified period not exceeding three years or suspend from membership for a period not exceeding one year or expel a member from membership if it finds their conduct to be in breach of the Rules or is deemed to be a matter of significant detriment to the interests of the Union. The procedure, inter alia, shall include an appeals process. (Rule 13.1)*

All members are required to abide by the Rules of the Union:

*All members and student members have an obligation to abide by the Rules of the University and College Union, and shall refrain from conduct detrimental to the interests of the Union, from any breach of these Rules, Standing Orders or directions (properly made in accordance with these Rules or Standing Orders) and from all forms of harassment, prejudice and unfair discrimination whether on the grounds of sex, race, ethnic or national origin, religion, colour, class, caring responsibilities, marital status, sexuality, disability, age, or other status or personal characteristic. (Rule 6.1)*

*UCU will... expel from existing membership, any person who is a known member or activist of any extreme right wing political organisation, including the BNP and National Front, where the organisation's aims, objectives and principles are contrary to those of UCU as outlined in*

6.1 above. (Rule 6.1.1)

## **The Procedure**

### **1 Scope**

- 1.1 Complaints under Rule 13.1 may be brought by any member or employee of UCU.
- 1.2 The Procedure does not apply to disagreements or disputes between members, unless there is evidence of conduct which comes under Rule 13.1, namely, conduct in breach of the Rules or of significant detriment to the interests of the Union.
- 1.3 The Procedure shall not be applied where the matters complained of concern members in capacities unrelated to their UCU membership.
- 1.4 The Procedure does not cover complaints about the provision of union services by UCU employees. Such complaints are covered by the Membership Complaints Procedure. This can be accessed by members on the UCU website ([www.ucu.org.uk](http://www.ucu.org.uk)).
- 1.5 The Procedure deals with complaints against individual members. If the complainant believes that more than one member has infringed Rule 13.1, separate complaints must be lodged.

19. There are a number of procedural requirements for a Rule 13 complainant to follow under the Procedure and clause 5 provides as follows:

### **20. Appointment of Investigating Officer**

5.1 When a complaint is received the General Secretary shall appoint a senior officer of the Union ("the Investigating Officer") to carry out a preliminary investigation. Suitable officers are: the Immediate Past President, the President-Elect, and the Vice-President. Should none of these be available, the General Secretary shall appoint an experienced member of the National Executive Committee (NEC), preferably with previous presidential experience

#### **6 Preliminary investigation**

6.1 The Investigating Officer shall, upon referral of the complaint, and normally within seven working days, first determine:

6.1.1 Whether it has been received in time.

6.1.2 Whether it is set out in the correct form.

6.1.3 Whether the subject matter is within the scope of Rule 13.1.

1.2 If the Investigating Officer determines that the complaint is not in time, or in the correct form, or outside the scope of Rule 13.1 s/he shall recommend to the General

Secretary that the complaint be dismissed. If the General Secretary decides to accept this recommendation, the complainant shall be informed.

- 1.3 The complainant may appeal the decision to the President. Appeals must be submitted within seven working days of the receipt of the General Secretary's decision. The President shall rule on the appeal within two working weeks of its receipt on the basis of the appeal and the documentation considered by the Investigating Officer. The decision of the President shall be final.

20. The Procedure goes on to set out the process to be followed if the complaint proceeds to a full investigation.
21. Members of the Union are allocated to a branch or local association of the Union, of which there are currently 612 branches. Each branch is required to adopt its own local rules which are to be consistent with model local rules agreed by Congress (Rule 12.6) and supply a copy to the Union.
22. The London School of Economics and Political Science, London University (LSE) has its own Union branch (the branch or the LSE branch) which has around 545 members, which is a relatively large and well resourced branch. The local rules of the LSE branch were adopted on 30 June 2009 (the Local Rules).
23. Relevant Local Rules include the following:

#### **7 Committee**

- 7.1 There will be a committee responsible for conducting the day-to-day business of the branch. The committee will meet not less than once every four months. Not less than one third of those who are at that time members of the committee must be present to form a quorum at any meeting.
- 7.2 ....
- 7.3 The committee will consist of:
  - 7.3.1 the officers as specified below
  - 7.3.2 up to 10 ordinary members elected annually from members of the branch. [Note: ordinary members of the committee may be elected to represent categories of members such as departments, management grades or part-time staff as appropriate, and those categories should be identified in the branch rules]
  - 7.3.3 up to 10 members co-opted by the annual general meeting or by the committee who will serve to the end of the term of office of other committee members
  - 7.3.4 any member of the branch/association who is a member of the National Executive Committee of UCU
- 7.4 Where there is one branch in the institution, the committee shall elect (from amongst its own members) a negotiating committee to conduct negotiations. Where more than one branch exists in the institution, the negotiating committee shall consist of representatives elected by the committees of all of the branches in proportion to their membership.



7.5 The negotiating committee is the only body empowered to conduct negotiations with the institution. The negotiators may include the regional official, under circumstances determined by the general secretary. The negotiating committee shall make appropriate arrangements for the appointment of its officers from among its membership.

## **8. Officers of the branch**

8.1 Members will be elected to the following officer roles within the branch: The chair, the vice-chair, the treasurer, the secretary, the membership secretary, the equality officer, Fixed term and hourly paid staff officer, and health and safety officer.

These positions will be declared elected annually at the annual general meeting from members of the branch in accordance with Rule 9.

### **8.2 Chair**

The chair will chair all general meetings and all committee meetings of the branch and perform such other duties as are laid upon the chair by any rule or are decided by the committee. In the absence of the chair these duties will be performed by the vice-chair, failing which another officer as the committee decides. In accordance with normal practice, the chair may, between meetings of the committee, take any action on behalf of the committee which is both urgent and necessary. Such chair's action must be reported for approval to the next committee meeting

### **8.3 Secretary**

The duties of the secretary are to call general and committee meetings of the branch; to ensure that minutes of those meetings are kept; to organise membership circulations as the committee deems necessary; to arrange notification of local election and ballot results to all members; and to perform such other duties as are laid on the secretary by any rule or are decided by the committee. In the absence of the secretary, the secretary's duties will be performed by another officer as the committee decides.

.....

### **8.7 Casual vacancies**

If an office is vacant and no ballot is being held for that office, the committee is empowered to fill the vacancy, either from members of the committee itself or from the general membership of the branch. Officers so appointed will retire at the same time as if they had been duly declared elected at the last annual general meeting.

## **9 Elections of ordinary members of the committee and officers**

### **9.1 returning Officer**

The local committee will appoint a returning Officer for elections who is neither a candidate for any office in the branch nor a member of the committee

### **9.2 Nominations**

All nominations will be received in writing by the returning Officer no later than the day that is 28 days before the date of the annual general meeting. Nominations must be accompanied by the written consent of the nominee and supported by the identifiable signatures of two members of the branch.

Nominations may be accepted at the AGM for any post when no nominations have been received prior to the meeting.

### 9.3 Eligibility to stand for election

Retiring officers will be eligible for re-election, except that the chair and vice-chair may normally hold office for not more than five successive years in any one capacity.

A member may not normally be declared elected to more than one officer or ordinary position of the committee membership except where the AGM decides to combine posts.

### 9.4 Elections

Subject to rule 10.4, if there is only one eligible candidate for any officer vacancy that candidate will be declared elected.

If the number of candidates to be ordinary members of the committee does not exceed the number of vacancies those candidates will be declared elected.

If there is either more than one eligible candidate for any officer vacancy or more candidates than there are vacancies of ordinary members of the committee a ballot of the members of the branch will be conducted in accordance with rule 10.

### 9.5 Term of Office

The term of office of an officer or ordinary member of the committee elected under this rule 9 will be the academic year following the annual general meeting, or such other period of approximately 1 year as the AGM determines.

## 10 Conduct of ballots

10.1 Unless decided otherwise by the NEC all ballots will be conducted in accordance with this rule, other than industrial action ballots which will be conducted in accordance with national rules.

10.2 If required, a ballot for officer posts will be held in accordance with 10.3. A ballot for ordinary committee members will be held by a vote at the AGM.

10.3 Not later than the end of the day that is 14 days before the date fixed for counting the ballot the ballot forms will be sent to each member of the branch. The returning Officer will supervise the conduct of the ballot including the distribution of ballot forms and will fix the date and time for starting the count of the ballot. The ballot will be secret. Ballots will be counted in accordance with the method determined by the returning Officer. Where appropriate and practicable, the single transferable vote system will be used

10.4 .....

## 11 election of Congress representatives

11.1 Congress representatives will be elected annually from members of the branch. The election shall be held at the branch meeting prior to the closing of notification of delegates. Any ballot that

is necessary will be conducted in accordance with the rule 10. Where an elected representative is unable to attend a particular Congress, a substitute may be elected by a general meeting. If this is not possible, a substitute may be elected by the committee. The names of the representatives will be notified to the general secretary in accordance with published procedures.

24. The Claimant has been a member of the Union since 1984, when she joined what was then the AUT. She has been allocated to the LSE Branch since at least 1994 when she became a lecturer in Law at the LSE. Since then she has been promoted to a Senior Lecturer in Law in 2003, a Reader in Law in 2006 and an Associate Professor of Law in 2013.
25. The activists and branch officers and committee members are a lay volunteer network undertaking their Union work in their own time, juggling their Union work with their professional and personal lives and any other commitments they may have. It can be time consuming and onerous. I was not given details of the amount of facility time provided by the LSE for Branch officials<sup>1</sup>, but it would be unlikely to compensate fully for the time spent on Branch activities, especially for academics, given the nature of their work. The Union is dependent on the willingness of its members to participate in the running and organisation of the Branch for the benefit of its members. The Claimant mentions in several of her letters and emails how time consuming and thankless Union work has been for her and distracted her from other activities.
26. In 2013 the Claimant decided to become more active in her Union Branch and attended its Annual General Meeting on 22 June 2013. She described herself as having been a loyal, but fairly inactive member up till that point. She was surprised at its informality and the poor attendance at the meeting. There seemed to be very few active members and a small number of individuals who had managed between them to cover most of the officer positions for a number of years in an informal rotation. Without dissent from any of those present at the meeting, some of the posts were filled at the Branch AGM in 2013 by individuals who either put themselves forward, or were put forward by others. By that process the Claimant was made a

---

<sup>1</sup> There is a reference to it being generous at one of the meetings where members were being encouraged to take up officer posts and become more involved.

member of the LSE Branch committee and representative for the LSE Law Department. The Local Rules enable a committee of up to 28 individuals to be formed in addition to any NEC members who were members of the branch. In the words of the then Secretary, Mike Cashman, there was an acute awareness that “we need new blood to keep the branch running.” The Local Rules had been drafted in the anticipation, or possibility at least, of competition for posts, whereas the reality at that time was that the branch was struggling to find enough volunteers to fill the various positions.

27. From the Union’s perspective, the LSE Branch was functioning well enough with a few very experienced and dedicated local Branch officers who between them made sure the key posts were filled and were undemanding of the Union’s London Regional Office, and there was little perceived need to provide assistance or guidance, in keeping with the tradition of considerable branch autonomy and independence within the Union.

#### **AGM 2015**

28. At the AGM of 23 June 2015, two years after she had first joined the LSE Branch Committee, the Claimant volunteered for the position of Vice-Chair and was elected unopposed. The Chair, Pat McGovern had decided to stand down for personal reasons and there were no volunteers to replace him. The Claimant agreed to become acting Chair. The Branch Secretary was Veronique Mizgailo. The Claimant was dissatisfied with the handover and disappointed that a copy of the LSE Branch Rules that she had requested to see for herself, and to be circulated to the committee, was not received until 23 September 2015.
29. The Claimant then decided to step down as both acting chair and vice-chair on 24 September 2015, but no-one came forward for appointment or election to either post and the positions remained unfilled throughout the year.

#### **Branch administrator appointed**

30. In the autumn of 2015 Isobel Holroyd was appointed as a paid branch administrator for 1.5 days per week based in the Union’s LSE Branch office. She was employed by the national Union to work three days a week, splitting her time equally between

LSE UCU Branch and the Kings College London UCU branch. The LSE branch reimbursed the Union for Ms Holroyd's staff costs. The role of the branch administrator, as the title suggests, is to relieve the branch of the administrative burden of some of the activities of its elected committee members. The branch secretary gave Ms Holroyd day to day instructions and she sent out notices for meetings, took minutes of meetings and generally sorted out the branch administration. In the absence of the branch secretary the Claimant agreed that it was the role of the Chair to direct the branch administrator, which is what occurred after the branch secretary had stood down.

31. The branch had a long history of direct mailings to members from a range of branch officers – such as the chair. It had been a long standing custom and practice that had been established for many years for communications to come not just from the branch secretary, but also others. The Claimant was critical of the practice but acknowledged it had operated for many years, at least since 2008, without criticism or complaint.
32. Barry Jones, the regional paid official for higher education, London North was Ms Holroyd's line manager, but in practice instructions and direction was provided by branch officers to their administrator. Many of the branch communications were sent out in the name of the officer, some was sent in Ms Holroyd's own name as branch administrator. Ms Holroyd was at all times acting under the supervision and direction of the branch officials.
33. I have studied the emails in the bundle sent to and from Ms Holroyd but do not conclude, as suggested by the Claimant, that they demonstrate Ms Holroyd was acting independently of the Branch and using her position to exert the influence of the London Regional office over the LSE Branch. The emails show her conducting administrative functions, such as consulting Branch committee members to arrange meetings, and setting up doodle polls to that end, and booking meeting rooms. It is an appropriate task for the branch administrator to draft minutes at the request of the branch secretary for discussion and amendment or approval at a subsequent meeting. In the absence of a Chair or Vice-chair to share the administrative burden that might otherwise fall on a branch secretary. In the later period from March 2016,

after the branch secretary had resigned, the tasks conducted by Ms Holroyd are still consistent with her role and do not subvert the responsibilities of the branch officers. Nor was she acting to the dictat of the paid Union officials in the London Regional office. I accepted the evidence of Mr Jones at the hearing which was consistent with the documentary evidence.

34. It was clearly a difficult time for the LSE Branch with a shortage of volunteers for key posts. There is no evidence of Ms Holroyd subverting her position or acting beyond her remit. She has been attending to administrative matters at the direction of the branch officers and subject to committee approval. For example draft minutes are just that until they have been approved by the next committee meeting. I note that the Claimant considered the draft minutes did not fully record some of the points she had made at the meeting of 16 March 2016, and emailed her proposed amendments to the branch administrator on 20 April 2016 (pp52-6). The Claimant was of course entitled to do that, but the minutes would always be subject to approval by the next committee meeting which could decide whether the branch administrator or the Claimant's wording more accurately reflected the discussion at the meeting.

#### **Branch AGM 2016**

35. The Branch AGM was held on 23 May 2016. The Claimant and 28 others attended (minutes at pp544-550). The Branch still had no chair and the Branch Secretary reported that the Branch needed more people to get involved as officers, negotiators and caseworkers. There was considerable discussion about the need for greater numbers of members to get involved with the committee and those present at the meeting were invited to put their names down to get more involved. Encouragement was given by a number of members who described how fun and rewarding it could be and the generous facility time provided by the LSE. However no-one agreed to stand for the position of chair and all those who were nominated for positions were declared elected unopposed. The Claimant was declared the Law Department representative.
36. There was, in other words, a shortage of candidates for the officer posts. There was no need for a returning officer as no elections were required since there was no competition for any of the positions. It was agreed by the meeting that the branch

administrator would be directed to write to the previous year's individual departmental reps and officers who were not present and who had not responded to the call for nominations and report back to the committee with final listings (p546). Since no other nominations had come forward it was very much hoped that they would continue in their role from the previous year in the forthcoming year, as otherwise the position would be vacant – there had been no nominations either before or during the AGM. Mr Morris had been the Health and Safety Officer the previous year and was not present at the AGM. Neither the Claimant, nor anyone else dissented from the proposal that the Branch Administrator contact those officers who were not present and ask them to continue in role for the following year. Mr Morris would have been included in those to be contacted in that way.

37. On one issue – a proposed Local Rule change, a vote had been required and the meeting agreed that Andy Young, the Union Regional Support Officer, who was in attendance at the meeting as was usual practice, acted as returning officer and accurately counted the show of hands and received guidance from the Claimant on the status of the abstentions and accepted her advice.
38. The Claimant had the opportunity to stand for any position on the committee at the AGM of 2016. She chose not to do so, other than continue as Law Department Rep. She knew that there would be strenuous efforts to find someone willing to be Chair and Vice-Chair and it was a weakness for the Union that there was no-one willing to fill the leadership positions. The Branch Secretary had informed the meeting that she would stand down if the position was not resolved after a four month handover period, which increased the pressure on the branch to find volunteers for the posts that the Claimant had stood down from.
39. After the meeting two people were persuaded to take the roles: Dave Morris as Chair and Shaku Banaji as Vice-Chair and the Branch Administrator informed the committee by email on 11 July 2016 explaining that Mr Morris and Ms Banaji had agreed to take on these roles. The Union paid officials did not solicit individuals to put themselves forward for these roles, but the individuals came forward following discussions with other committee members. Mr Morris also agreed to continue to be Health and Safety Officer. Most of the committee was delighted and relieved that the

vacancies had been filled and were grateful to both Mr Morris and Ms Banaji for giving up their time and agreeing to take the posts on.

40. The Claimant, however, did not agree with their being Chair and Vice Chair – both how it had happened and who they were. Nor did she agree with Mr Morris holding positions as both Health and Safety officer and Chair of the branch. She did not raise any objection at the time and decided it “would not be fruitful to signal” her own dissent. In her witness statement she explains that she feared it would provoke a backlash from the dominant group that included Mr Morris.

#### **Branch committee meeting 4 October 2016**

41. A Branch Committee meeting was held on 4 October (approved minutes at pp.551-4). The Claimant was in attendance as was Mr Morris as chair, who chaired the meeting without objection from anyone present. Once again the Claimant did not signal her objection or raise an issue about Mr Morris chairing the meeting and she participated in the meeting on matters such as LSE Studentship holders and employment status (see p.551, item 8(e)).
42. Item 5 of the agenda for 4 October 2016 concerned the forthcoming JNCC/JNICC meeting on 10 November 2016 JNCC/JNICC and the need for delegates from the committee to represent the Branch at the meeting with management. The JNCC is a bilateral body between the LSE and UCU. The Local Rules do not require the JNCC/JNICC representatives to be elected at the Branch AGM but do require the composition of the trade union side to be put in place before the JNCC/JNICC meeting for obvious reasons. Four names were put forward – Ms Mizgailo, Fran Tonkiss, Andrea Mennicken, and Mr Morris, plus one of either Linda Pickard or Pat McGovern if they were willing to attend. The Claimant’s name was not suggested and she did not put herself forward: she did not volunteer or offer to be part of the team and did not object to the proposed composition of the negotiating team. At one point in the Branch Committee meeting Mike Cashman volunteered to be a delegate to the meeting, but then realised that he could not do it. Ms Banaji asked the committee for items for discussion at the forthcoming JNCC. It is not recorded if any



were forthcoming either at the meeting of before the JNCC. The negotiating team was elected nem com.

43. The Claimant had an opportunity to express an interest in being part of the JNCC delegation, but she did not raise it at the meeting. The Local Rules enable the branch committee to decide the composition of the Union staff side delegation to the JNCC and this is what occurred on 4 October 2016. The Claimant raised the matter subsequently on 9 November 2016 by email, the day before the JNCC meeting. By then it was too late for the next day.
44. However, no doubt in light of the Claimant's email of 9 November 2016, at the next branch Committee meeting on 23 January 2017 which the Claimant did not attend, an election for delegates to the JNCC/JNICC was planned. However it could not take place as the meeting was not quorate, and in those circumstances the meeting agreed that Mr Morris, Ms Banaji, Ms Mizgailo and Vikas Chandra (who had been nominated by the Claimant) would be the representatives until elections could be held at a quorate branch committee meeting.
45. An election for negotiators from the Branch Committee is not needed if there are an insufficient number of volunteers that exceed the number of places on the team. Since the Claimant did not come forward to express an interest at the 4 October meeting, no election was necessary as the number of individuals interested matched the number of positions available.
46. On 16 October 2016, in correspondence with Mr Morris, Ms Banaji and Ms Mizgailo (in other words the ostensible or purported Chair and Vice-Chair as well as the Branch Secretary), copied to the Branch Administrator, the Claimant first raised her concerns about the process resulting in the Chair and Vice-Chair positions being filled. The correspondence became increasingly unproductive and frustrating on both sides. From the perspective of the Union Regional Office and the majority of the other committee members they were delighted that the posts were now filled and that volunteers had been found after the unsatisfactory AGM. Since no-one had agreed to be put forward, or had put themselves forward at the AGM there had been no democratic deficit, and no-one had been disadvantaged. Put simply: it was not as if

anyone else wanted the roles. Neither was anyone else uncomfortable with Mr Morris being the Health and Safety Officer as well.

47. At the time of the AGM, the Claimant did not want to be Chair or Vice-Chair and decided not to put herself forward, or allow herself to be nominated at the AGM. However, on 1 November 2016, some 4 months after Mr Morris and Ms Banaji had become Chair and Vice-Chair respectively, the Claimant informed the committee and the London UCU Regional Officials that she had decided she would like the opportunity again to chair the branch (p102). Her offer was rejected as there was no vacancy and a Chair and Vice-Chair were now in place (Barry Jones' email reply 2 November 2016 p103). He set out the Union's thinking on the matter which was that as the AGM had ended with the posts of Chair and Vice-Chair unfilled, they amounted to casual vacancies in accordance with Local Rule 8.7 which empowered the committee to fill the vacancy either from members of the committee itself or from the general membership of the branch and that the process of finding willing volunteers had been endorsed by the AGM. The Claimant disagreed and set out her views, with detailed reasons in an email exchange that continued the following day. The Claimant did not succeed in persuading Mr Jones that her interpretation of the Local Rules was correct and Mr Jones did not persuade the Claimant that his interpretation was correct.
48. Mr Jones considered that the spirit of the rules had been observed and posed the question "Whether anybody has in fact been denied the opportunity to join the committee or otherwise participate in the business of the branch who would otherwise have wanted to do so?" The Claimant considered that it was of vital importance that the Local Rules were adhered to and that an election for Chair should now be held, since she had now declared an interest in standing. Mr Jones and the committee refused the request and considered that the branch already had a chair in Mr Morris and thought that she had missed the opportunity to stand at the AGM.
49. Mr Jones also believed that it would not be helpful to the branch for an election to be held several months after Mr Morris had been undertaking the role of Chair. Mr Morris and Ms Banaji had agreed to take on the roles since no-one else had volunteered and for the good of the branch. It would demotivate them, and a significant number

of other committee members if an election were to be held when the Claimant had been at the AGM and had had a chance to put herself forward three and a half months previously. It would send out an unhelpful message to putative branch activists and office holders.

50. The Claimant frankly explained that she did not want Mr Morris to be chair. She considered that she had not had the co-operation of the branch, including Mr Morris, when she was chair, which had contributed to her decision to stand down mid-term leaving both the chair and vice-chair positions vacant. She was affronted that he had been solicited to be chair (as she saw it) and she was not, and she wanted anyone but Mr Morris to be chair. She considered that he was not interested in the branch in the way that she was.
51. Mr Morris continued acting as chair and as Health and safety officer throughout the academic year until the AGM in 2017.

**Branch secretary stands down in March 2017**

52. On 21 March 2017 the branch secretary stood down with immediate effect (p.440). A week later in an email of 28 March 2107 entitled "Improving relationships in our branch" the Claimant explained that she was keen to take on the role of branch secretary and that if anyone else was interested in the post there would need to be an election. On 30 March Mike Cashman was nominated and seconded for the position of branch secretary. At that stage the Claimant had not been nominated, or seconded, for the position of branch secretary. However she emailed the committee to say that there must now be an election since there were two nominations for the post and she had views as to who should be the returning officer.
53. The Chair and vice-chair considered that since the branch could not immediately co-opt or confirm another branch officer as secretary through a consensual committee process, then if the vacancy was to be filled, there had to be an election in which all branch members would have the opportunity to stand – not just the committee members. In any event the process stalled because the committee could not agree on the identity of a returning officer and it was by now the Easter holidays. A London Regional official had previously always been the returning officer (we have seen how the system operated at the previous AGM, without objection by the Claimant on that

occasion). The Chair and Vice-Chair anticipated this would not meet with the Claimant's approval given the deteriorating relationship between the Claimant and the London region (see below) and suggested a regional officer from another region of the Union. The Claimant objected to any employee of the Union acting as branch secretary "for reasons which I am not at liberty to disclose" (p443).

54. The Chair and Vice-Chair decided that given the short space of time before the forthcoming AGM, the amount of correspondence and division that had been caused already, and the time that it would take to organise an election, that they would carry on without a branch secretary for the next couple of months and the matter could be done more tidily at the AGM along with any other elections. They covered the branch secretary functions between them in accordance with the Local Rules.

#### **Returning officer**

55. Where there is no competition for a position because either no-one wants to stand for it, or there is only one candidate and only one post, a returning officer is not necessary for the declaration of the appointment of the only candidate. Self evidently, if there is no contest and no choice of candidates for the branch members, or committee members to choose from, there is no need for a returning officer as the matter is purely academic.
56. At the 2016 AGM there were no nominations for some posts and no posts were contested. No returning officer was appointed.
57. At the 2017 AGM a returning officer was appointed, Amanda Sackur who is a regional support official and employee of the Union. Her appointment was in accordance with the Local Rules.

#### **Congress representatives**

58. The Union's Congress is the supreme policy making body on all matters that are not particular to any Sector (as defined in the Rules). Congress meets annually and each Branch is entitled to send one member for every 400 members (or part thereof)<sup>2</sup> and the LSE Branch was therefore entitled to send 2 members to Congress each year.
59. Local Rule 11, set out above, provides the mechanism for election of Congress Representatives. No mention is made in the Claimant's witness statement of her

---

<sup>2</sup> Rule 17.2

interest in attending the Union's Congress, but it is accepted by the Union in Mr Cottrell's statement that on 25 April 2017 the Claimant mentioned in an email that she would have been interested in "going up for election as a delegate". His unchallenged evidence was that no delegate from the LSE UCU Branch attended UCU's 2017 Congress and no branch election was held to select potential delegates since no expressions of interest by members to attend as delegates had been received. Every year there are many unfilled seats at the Congress with attendance at approximately 25% of those entitled to attend or send delegates.

60. At p438 of the bundle we see that Ms Holroyd reminded all committee members on 25 April that if they wished to register as a delegate to the Union's Congress in 2017 they needed to register by the next day, Wednesday 26 April. She provided the link for registration. The Claimant replied querying why no election had been held meaning that no-one would therefore be entitled to attend, and that the link was duff. Ms Holroyd replied sending the correct link. In a following email the Claimant explained that she would have been interested in going and wondered if anyone else was going. She received one reply from Mike Cashman who explained that he had not sought, and would not accept delegacy. She appears to have taken no steps to register herself.

#### **Membership complaints procedure and staff complaints**

61. On 14 December 2016 the Claimant submitted a formal complaint to the Union's General Secretary, Sally Hunt (pp41-44, with annexes pp45-91) about the standard of service provided to the branch by the branch administrator, Isabel Holroyd and the regional officer, Andy Young. She sought a number of outcomes: a declaration that nothing she had written about Ms Holroyd, Mr Young or Mr Jones constituted inappropriate criticism within the meaning of the Union's Dignity at Work policy; the permanent removal of Ms Holroyd from her position of branch administrator; and, the permanent removal of Mr Jones from his position as regional official for the LSE UCU branch. On the same date the Claimant wrote a second letter of complaint to the Union's General Secretary about the standard of service provided to the branch by the Regional Officer, Barry Jones (pp.91 – 194 inclusive of annexes). In that letter

she sought a complete retraction of remarks she considered were defamatory of her and an unreserved apology; a declaration that the purported appointment of Mr Morris as chair and branch committee member was invalid; damages for breach of contract and discriminatory and oppressive treatment and aggravated damages of £18,300 and a reimbursement of her Union subscriptions for the period since she had been raising her concerns about malpractice; and, the removal of Mr Jones from his position of responsibility for UCU's support of the LSE branch.

62. Paul Cottrell, Head of Democratic Services, was asked by the General Secretary to investigate both complaints and prepare reports to the General Secretary. He concluded that large parts of the complaints fell outside the membership Complaints procedure and recommended the complaints be dismissed. He also considered that the Claimant's actions had caused considerable damage to the branch and significant detriment to the Union and that the Claimant failed to appreciate the effect of her behaviour and the tenor of her correspondence on others. Two members of staff had been accused of bullying and harassment, had been accused publicly of lying and falsifying minutes, and it had effected them considerably to the point of fearfulness. He considered the complaints to be unjustified and without merit. The General Secretary accepted Mr Cottrell's findings and dismissed the complaints and enclosed a copy of Mr Cottrell's three reports in her letter to the Claimant (pp258-283).
63. From the Complaint's perspective she told the hearing that she considered herself to be a valuable asset to the branch with her extensive legal expertise and attention to procedural detail. She described herself to be mystified as to why she was seen as a difficulty to be managed rather than a treasure to be embraced.
64. On 12 January 2017 Mr Morris, Ms Banaji and Ms Mizgailo submitted a complaint under the Dignity at Work policy and invoked Rule 13 of the Union's Rules about the Claimant's actions which they considered contradicted their right to be treated with courtesy and dignity in their capacity as voluntary branch officers, and they asked for her to be suspended from holding branch office given the deleterious effect her

behaviour was having on them personally, and the branch more widely. (pp194-253 inclusive of enclosures) ("the Branch Officers' Complaint").

65. The Union's Dignity at Work policy covers complaints from staff of bullying by members of the Union and its elected representatives. It has a Code of Conduct for UCU employees and elected members as an appendix. The Union also has a procedure for dealing with complaints under Rule 13.1: The Procedure for the Regulation of the Conduct of Members - as set out above (the Procedure or Rule 13 Procedure).
66. Mr Cottrell has responsibility for the operation of the Procedure. He informed the Claimant of the Branch Officers' Complaint on 16 January 2017 and invited her to submit her response by 25 January 2017 and offered to meet her if she wished. The Claimant did not wish to do so and perceived his letter as threatening. Mr Cottrell played no part in the investigation of the Branch Officers' Complaint because of his involvement in the Claimant's complaint against the three employees of the Union.
67. On 23 January, the Union head office wrote to the Claimant to explain that Dr Angela Roger, the Union's Honorary Treasurer had been appointed by the General Secretary to investigate the Branch Officers' Complaint pursuant to paragraph 5 of the Procedure. She had conducted a preliminary investigation as required by paragraph 5 of the Procedure and found it to fall within the criteria at paragraph 6.1 and asked for a written response to the complaint from the Claimant with supporting evidence by 6 February (pp296-7).
68. 23 January 2017 was also the date of the Branch committee meeting. The meeting was not quorate (see above).
69. On 25 January 2017 the Claimant then submitted a complaint to the General Secretary under Rule 13.1 against Dr Angela Roger (p254-257) complaining that the decision that the Branch Officers' Complaint was admissible was perverse and could not reasonably be regarded as an allegation of misconduct by the Claimant. She sought disciplinary action against Dr Roger to disqualify her permanently from any role in investigating this or any other complaint under Union Rules and procedures.

The letter also made data protection complaints that have been dealt with elsewhere and are not relevant to these proceedings.

70. On 9 February 2017 the General Secretary considered the complaint and decided to summarily dismiss it without referring it to an investigating officer on the ground that the complaint disclosed no breach of Rule.
71. However notwithstanding the dismissal of the Claimant's Rule 13 complaint against Dr Roger, a new investigating officer was appointed, David Anderson. He looked at the Branch Officers' Complaint afresh and decided it did not give rise to a valid Rule 13 complaint and dismissed it. The Claimant has not therefore been subject to Rule 13 proceedings against her.
72. To complete the chronology, as set out above, in March 2017 the branch secretary announced she was no longer willing to continue in post. The position was therefore vacant and the decision of the chair was to hold the post in abeyance pending the forthcoming AGM when an election or appointment could be made (depending on the number of candidates coming forward). The Claimant announced her intention to stand on 28 March 2017 and two days later Mike Cashman also indicated his intention to stand. Instead of an election the position was held over. However after Mr Cashman had announced his intention to stand at the AGM, the Claimant withdrew her candidacy and chose not to stand for election for the post at the AGM. Mr Cashman became the new branch secretary and was elected unopposed.
73. The 2017 AGM was held on 5 June 2017 and a new committee was elected and declared. Mr Morris and Ms Banaji stood down as chair and vice-chair respectively and Fran Tonkiss was elected as Chair. The branch secretary post remains unfilled as does the vice-chair. There was only one nomination for some of the posts, and



others had no nominations. The Chair noted that there was a lot of work to be done to fill the gaps still remaining for officers and ordinary members of the committee.

74. The Claimant has now been appointed as a JNCC rep and is part of the branch negotiating team at JNCC/JNICC meetings. She remains the Law department rep.

## The Law

### The Relevant Statutory Provisions

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

#### **108A Right to apply to Certification Officer**

*(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*

*(2) The matters are –*

*(a) the appointment or election of a person to, or the removal of a person from, any office;*

*(b) disciplinary proceedings by the union (including expulsion);*

*(c) the balloting of members on any issue other than industrial action;*

*(d) the constitution or proceedings of any executive committee or of any decision-making meeting;*

*(e) such other matters as may be specified in an order made by the Secretary of State.*

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

*(1) – (2) ...*

*(3) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or both of the following requirements–*

*(a) to take such steps to remedy the breach, or withdraw the threat of a breach, as may be specified in the order;*

(b) to abstain from such acts as may be so specified with a view to securing that a breach or threat of the same or a similar kind does not occur in future.

### **The Law**

76. This scope of s.108A(2) is discussed in the preliminary points section above, insofar as is necessary in this case. The Union did not submit that a delegate to Congress does not come within the definition of “any office” of the Union in s.108A(2)(a), and have not questioned the jurisdiction of the Certification Office to consider the allegation, so nor have I. However the Union’s evidence from Mr Cottrell that the Rule 13 Procedure does not form part of the Rules was not challenged by the Claimant. But the Union also addressed the substance of the complaint, and it was not entirely clear if the jurisdiction point was being taken by the Union. I have therefore considered the matter in the alternative.
77. Both parties agree that my task is to construe the rules “so as to give them a reasonable interpretation which accords with what, in the court [or in this case the ACO]’s opinion must have been intended” (*British Actors Equity Association of the Goring* [1978] ICR 791 at pp794-5).
78. It is also common ground that, as per *Heaton’s Transport (St Helens) Limited v Transport and General Workers Union* [1973] AC 15 at 101A – D that:
- “... It is not to be assumed, as in the case of a commercial contract which has been reduced into writing, that all the terms of the agreement are to be found in the rulebook alone: particularly as respects the discretion conferred by the members upon committees or officials of the union as to the way in which they may act on the union’s behalf.”
- And at 100H–101A:
- “trade union rulebooks are not drafted by Parliamentary draughtsmen. Courts of law must resist the temptation to construe them as if they were; for that is not how they would be understood by the members who are the parties to the agreement of which the terms, or some of them, are set out in the rulebook.”
79. The task of the ACO therefore is to construe the Union rules “so as to give them a reasonable interpretation which accords with what must have been intended” in light

of the material facts in the case. The parties had made lengthy submissions as to whether different complaints fell to be decided differently – depending on whether the rule to be interpreted was constitutional or contractual, and which was which. For the purposes of this decision, however, as will later be seen, it is not necessary to determine the doctrinal dispute of law between the parties as to the distinction, if any, between a constitutional or contractual rule when it comes to construction.

80. The parties also disagreed about the extent to which terms could be implied into the Union's Rules, and the Local Rules – the Union arguing a broad brush, purposive approach was appropriate, especially in the context of the difficulties in the branch in finding volunteers to fill officer and committee member posts. The Claimant argued that a more classical approach to construction of contracts was required: the express terms should be interpreted firstly, in accordance with *Marks & Spencer plc v BNP Paribas Securities Trust Company (Jersey) Ltd* [2015]UKSC 72, para 28 and terms may only be implied where it is the presumed intention of the parties, or a custom and practice which is notorious, long established and certain has emerged. An implied term cannot override a clear and unambiguous express term, the Claimant submitted, and placed further reliance on the *Marks & Spencer* judgment in this regard.
81. But as already stated, in spite of their doctrinal differences, both parties helpfully agreed with the summary in *Jacques v AUEW* [1986] ICR 683 that “The effect of the authorities ... may be summarised by saying that the rules of a trade union are to be construed as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they were addressed” and that that principle is subject to well-established generic contractual law principles.

## **CONSIDERATIONS AND CONCLUSIONS**

### **Complaint 1**

82. The branch committee acted in accordance with its Local Rules in electing nem com from amongst its number a negotiating committee at its branch meeting of 4 October

2016. The Claimant was present at that meeting, there were no more candidates than the number of places on the negotiating committee and in accordance with Local Rule 9.4 the candidates were declared. If the Claimant had wanted to be considered as a member of the negotiating committee she could have put herself forward at that meeting, but for whatever reason decided not to express an interest. Nor did she object to the procedure followed. The negotiating committee was validly elected in accordance with the Local Rules at that meeting, in good time before the JNCC/JNICC.

83. The branch committee cannot be criticised if the Claimant did not signal her interest in being part of the negotiating committee at that meeting. Following the concerns raised by her about the process the committee addressed the matter again at their January meeting, in advance of the JNCC/JNICC meeting and although the meeting was not quorate the negotiating team was unanimously agreed and included a person nominated by the Claimant and there has been no breach of the Local Rule 9.4 – it was again agreed without dissent.

## **Complaint 2**

84. It is common ground that a returning officer was not appointed in advance of the 2016 AGM. It was not clear whether a returning officer had been appointed before the 2015 AGM when the Claimant became vice-chair and acting chair and none of the posts were contested as far as I am aware. I heard no evidence to suggest that the Claimant put in hand the appointment of a Returning Officer during her short chair-ship of the branch. It is common ground that none of the posts were contested at the 2016 AGM.
85. The issue between the parties is whether the obligation under Local Rule 9.1: “The local committee will appoint a returning officer for elections” requires the branch committee to do so, even when one is not necessary because of a shortage of candidates.
86. I agree with the Claimant’s submission that the appointment of a returning officer is an important role and since nominations are to be sent to the returning officer in advance of an election it is not possible to predict before the election whether the post will be filled by competition between candidates with a voting procedure, or by

operation of Rule 9.4. Who would receive the nomination if there is no returning officer? Presumably if more than 1 candidate is nominated the branch would move quickly to appoint one, and one of the regionals would have agreed to fulfil the role. But the Local Rule requires the returning officer to be in post in advance of any election, and it is good practice, sensible and reasonable that it be done. Whether on the Union or the Claimant's interpretation methodology the branch was in breach in this regard and the complaint is well-founded.

### **Complaint 3**

87. As set out above, complaint three falls outside the jurisdiction of s.108A(2). However, if I am wrong about that I would have dismissed the complaint. There is insufficient evidence to establish that the branch administrator was acting outside the scope of her role or that she subverted the role of the branch secretary. Local Rule 8.3 make express the ultimate responsibility of the branch secretary but does not preclude delegation. The branch secretary calls the general and committee meetings, as in decides that one must be held, but is not required by the rules personally to make the arrangements. The Local Rule makes that clear by, for example use of the passive tense: "to ensure that minutes ... are kept", and the phrase "to arrange" clearly envisages that the practical details are done by someone else – the branch secretary is to arrange that it happens: making the arrangement is different from doing the work.
88. In the absence of the branch secretary it is clear from the narrative above that the committee decided that the chair, Mr Morris would perform the branch secretary's functions after Ms Mizgailo stood down. The branch administrator has been careful to act as a conduit, rather than a decision taker, and even if there are a few emails where she has not specifically said that a task is being performed at the request of the branch secretary or other officer, it is self evident. It is also abundantly clear from the job title which was generally used in signing off correspondence. In any event the Claimant accepted that it was a long standing branch practice for correspondence about meetings , membership circulations and upcoming elections to be sent by any one of a number of branch officials and it was an implied term by custom and practice

that this could be done. On any interpretation the complaint would fail, if it had been in the Certification Officer's jurisdiction to consider it.

#### **Complaints 4 and 6**

89. Complaints four and six fall to be dealt with together, since complaint 6 is parasitic on complaint 4. They both concern the issue of Mr Morris being appointed, and then after the Claimant expressing an interest, his remaining as branch chair for the year 2016/7.
90. The problem for the branch going back several years was the difficulty in finding individuals willing to serve as office holders. As explained in the facts above, trade unions such as the Union rely on volunteers giving up their time to become involved in running the branch and it can be a thankless task. Increasingly at the LSE Branch individuals were unwilling to make this commitment. The Claimant had become vice-chair as the only candidate and became acting chair because there were no candidates at all. She stood down a few months later and nobody at all came forward to stand for the remaining term of that committee. At the 2016 AGM still no-one was willing to stand. It was a great disadvantage for the branch to have no leadership and was most unusual for a branch of this size. Everyone was agreed that it would be in the best interests of the branch if both posts were filled, and of the two, the position of chair was the most crucial.
91. The AGM itself agreed the process by which the post of chair and vice-chair would be filled – members and previous committee members would be canvassed to see if they would be willing to step up to the plate. The Claimant was at that meeting and did not dissent to the process agreed. She did not put herself forward and I infer that she was not solicited to stand since it was known that she had chosen to stand down 9 months earlier, after having been appointed at the previous year's AGM.
92. After the meeting, two people came forward or were press ganged: Mr Morris and Ms Banaji, in accordance with the process agreed by the branch AGM. No other candidates came forward at that time. I find that both on a literal and reasonable in accordance with the members' and authors' intentions construction, the procedure followed complies with Local Rule 8.7: the filling of a casual vacancy. The committee at the AGM was empowered to fill the vacancy. The branch was more transparent

than the rules required, since the process was set out at the AGM itself when ordinary branch members were in attendance.

93. When Mr Morris and Ms Banaji came forward, they were validly appointed under Local Rule 8.7 and notification was given on 11 July 2016. The Claimant did not object at that time, but did in November signalling her interest in becoming chair again. She was honest enough to explain to the hearing that she only did so in order to block Mr Morris. The Claimant was in a minority on the committee in objecting to Mr Morris being chair.
94. The Union regional officials were correct in their analysis that by November 2016 there was no vacancy for the post of either Chair or Vice-Chair and the Claimant could not at that stage seek to declare her candidacy.
95. Both complaints 4 and 6 are dismissed.

#### **Complaint 7**

96. The issue in complaint seven does not concern the branch, but the Rule 13 Procedure of the Union. The issue is whether the General Secretary was obliged to appoint an Investigating Officer after she had received the Claimant's Rule 13 complaint against Angela Rogers. To recap, Dr Rogers, the Union's national honorary treasurer and a member of the Union (not an employee), had been appointed by the General Secretary as the Investigating Officer of the Branch Officers' Complaint about the Claimant under Rule 13, following Mr Cottrell's report that concluded the Claimant's conduct to be a significant detriment to the Union. Rule 13 is the procedure by which a member may be expelled or suspended. Dr Roger's preliminary investigation concluded that there was a case to be answered by the Claimant. In response, the Claimant initiated a Rule 13 complaint against Dr Rogers. The General Secretary dismissed her allegation before appointing an Investigating Officer on grounds that it disclosed no breach of rule. In any event a different Investigating Officer was appointed instead of Dr Roger and he dismissed the Rule 13 complaint against the Claimant.
97. The difficulty for the Claimant is that the Rule 13 Procedure is not part of the Rule itself and therefore would appear to fall outside the scope of s.108A(1) of the Act and

I would reject it on that ground alone. But if I am wrong about that, I shall consider the matter in the alternative.

98. The Union is correct to say that the Claimant's purported Rule 13 complaint, does not fall within Rule 13 – even if correct in its allegation, it is outside the scope of Rule 13. I agree that it is utterly misconceived and without merit. The difficulty however in the General Secretary deciding to reject the complaint without referring it to an investigating officer is that the Procedure specifically entrusts the task of deciding whether the complaint is within the scope of Rule 13 to the investigating officer under paragraph 6. The General Secretary has thus taken upon herself the task of the preliminary investigation, which the Procedure does not provide for. The Procedure is drafted so that the General Secretary does not appear to have any discretion in the matter.
99. Under the Rules and the Procedure it is mandatory for an Investigating Officer to be appointed. The General Secretary therefore exceeded her powers in this regard and the complaint is well-founded. It is not possible, as a matter of construction, to imply into the Rule and Procedure a power that if the subject matter is not within the scope of Rule 13 the General Secretary may dismiss it without appointing an Investigating Officer, when express provision is made for the investigating officer to do exactly that. If the Union wants to include such a provision, it needs to be in the procedure. If, therefore, the Rule 13 Procedure had formed part of the Union Rules, the complaint would have succeeded, but as it did not, it does not and I refuse the declaration sought.

### **Complaint 8**

100. Where there are no volunteers for delegates to Congress the branch need not arrange an election. It would be well known to all branch activists that Congress met annually over the late May bank holiday each year and that they should indicate their interest in attending if they wished to go along. It would also have been well known that attendance at Congress was not as the Union might hope and members were encouraged to put themselves forward to attend. The Claimant had never put herself forward, but on 25 April 2017, the day before the cut off time for informing the national Union of the names of delegates, she mentioned that she would have liked to have



put herself forward. It was therefore not too late for her attendance to be arranged, and all she need have done was registered herself as a delegate. However, she chose not to do so, but brings it as a complaint to the Certification Office. As set out in the facts above, no delegates from the branch attended the Union's Congress of 2017.

101. The Claimant is correct to refer to Local Rule 11 which states that representatives will be elected annually from members of the branch and correct to point out that this did not occur in 2017. The Local Rule anticipates that members would be interested in attending and that there will be competition for places. The Local Rule provides that the opportunity to attend Congress is not restricted to committee members, but the whole branch and I agree that the possibility of attending should be open, and drawn to the attention of all branch members. Congress is the supreme decision making body of the Union and attending the Union's Congress is an important way of encouraging participation and reward for activism as well as having the chance to vote on important matters of policy and direction of the Union. I accept the Claimant's submission that there has been a breach in this regard. The complaint is well-founded.

#### **Complaint 9**

102. In relation to the vacant branch secretary position in March 2017, the branch chair was entitled to take the view that there was no need to arrange an election so close to the AGM and it would not be a good use of Union and individuals' time and resources. It is evident from the contemporaneous correspondence that the arranging of an election would be fraught with difficulty and extremely time consuming. Local Rule 8.7 empowers the committee to fill a casual vacancy from the committee itself, or from the general membership of the branch. It did not oblige the committee to accept the Claimant's offer and the committee clearly did not agree to it: as can be seen by the speed at which Mr Cashman was nominated following the Claimant's expression of interest. It is noteworthy that no-one on the committee came

forward to nominate, or second, or in any way support the Claimant's offer to be the branch secretary in the email trail.

103. Nor do the Local Rules (by any accepted method of interpretation) require the position of Branch Secretary to be filled immediately by an election. Local Rule 8.3 envisages the possibility that there will be periods of absence of the branch secretary and enables another officer to perform their duties. The Chair was acting within his discretion to decide that the election should be conducted at the AGM, rather than a very few weeks before. Given that the committee could not agree on the returning officer, and that issue alone would have resulted in lengthy email exchange, possibly the need to call an additional branch committee meeting to resolve the matter, it is most unlikely that an election would have been concluded before the AGM, even if one had been called. The Branch Chair was entitled and acting within his authority conferred by the Local Rules to decide not to call an election for Branch Secretary in advance of the forthcoming AGM, and there has been no breach of the rules. It is interesting to note that the Claimant did not stand for the post at the AGM when she had the opportunity to do so.

#### **Declarations and Orders**

104. In summary, in respect of allegations 1, 3, 4, 5, 6, 7 and 9 I refuse to make the declaration requested. In relation to complaint 2, I declare that there has been a breach of Local Rule 9.1 and in relation to complaint 8, I declare that there has been a breach of Local Rule 11.

105. S108B(3) of the Act, set out above, contains the provisions concerning enforcement orders. An enforcement order must be made, unless it is inappropriate, and the enforcement order shall require the Union to take the steps to remedy the breaches found.

106. There is therefore a rebuttable presumption that an enforcement order is made where a Union has been found to be in breach of its own rules, but it is a formulation that gives a wide discretion based on the facts and particular circumstances in each case, and the knowledge and understanding that comes from having seen and heard the witnesses. It is an important principle that the Certification Officer's (or in this case the Assistant Certification Officer's) discretion should not be fettered and that every

case be considered on its facts and the particular circumstances of the case. In any case, as noted by the Employment Appeal Tribunal in *GMB v Stokes* (UKEAT/769/03) by Rimer J “the making of an enforcement order is essentially a matter of judgment for the [Certification] Officer.” I also bear in mind that whilst it is also no part of the ACO’s role to trivialise unlawful conduct, it must be balanced against the impact of such conduct and the actions already taken in mitigation and those planned.

107. In this case, the Claimant has behaved in a way that has alienated and antagonised her branch committee colleagues and behaved in an uncollegiate and inappropriately confrontational way, seemingly out of personal pique. By standing down from the Chair and Vice-Chair positions mid term, she created great difficulty for the branch in continuing to function effectively. The Claimant then remained carping on the sidelines acting in a way that was disruptive and undermining of the branch. There was no apparent ideological or political divide, but something more personal from the Claimant’s behaviour. It was extraordinary to decide to show an interest in once again being the branch chair only after someone she disapproved of had agreed, or more likely been persuaded, to stand for the good of the branch. Likewise, her extraordinary behaviour in announcing her intention to stand for the post of branch secretary in March 2017 and agitate for an election, only to decide not to stand when she then had the chance to participate in an election that she had previously insisted was necessary. Her behaviour appears as petty point-scoring and disruptive for the sake of making life difficult for the branch, as a reaction to a perceived slight.

108. It is difficult for organisations such as trade unions, reliant on the time and commitment freely and voluntarily given without remuneration or much recognition to function effectively in the face of such behaviour. Unfortunately the Claimant either was, or affected to be, unaware of the effect of her actions on others, and the effect of the tone of her correspondence.

109. Turning to the specific complaints where I have found the Union to have been in breach of rules. In complaint 2, the Claimant seeks a declaration that the returning officer for 2017 was not validly appointed; a requirement on the branch to appoint a new returning officer in compliance with Local Rule 9.1, and the appointment of a

new returning officer who is independent within the meaning of s.51A of the Act. She acknowledges in her submissions that such an order would be exceptional.

110. I agree however with the Union's submissions. The requirements of a returning officer are set out in Local Rule 9.1. The appointment of a full time regional officer is perfectly appropriate for the role and complies with the requirement that the returning officer is neither a candidate for any office nor a member of the committee. A returning officer has now been appointed and the branch is in order in this regard and an enforcement order would be inappropriate. There is nothing in either the statute, the case law or the facts in this case to suggest that the requirements of an independent scrutineer or equivalent pursuant to s.51A should be imported into the role of a returning officer in a branch election.

111. Since I have considered complaint 7 in the alternative, for the sake of completeness I shall set out my reasoning, had I found in the Claimant's favour. I would nonetheless have declined to make an enforcement order. The order sought required the General Secretary to appoint an Investigating Officer to investigate the Claimant's complaint against Dr Roger and to undertake to abide by her responsibilities under clause 5.1. of the Rule 13 Procedure in future.

112. Such an order would have been inappropriate, principally for two reasons. Firstly, the Claimant's complaint under Rule 13 against Dr Roger was wholly without merit and misconceived. Her argument is that Dr Roger's preliminary investigation decision that the Branch Officers' Complaint was in time, in the correct form and within the scope of Rule 13 was perverse. As Investigating Officer, the initial assessment that Dr Roger was required to make of the Branch Officers' Complaint about the Claimant's behaviour could not possibly amount to a breach of the Rules or be deemed to be a matter of significant detriment to the Union. It was clearly a decision open to Dr Roger.

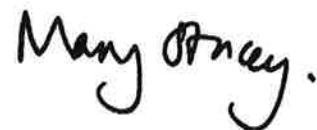
113. The Claimant's behaviour in response to Dr Roger exemplified the type of behaviour that the Union found so challenging and inappropriate. Secondly, the perceived mischief has already been resolved in the Claimant's favour. A new investigating officer was appointed anyway – the Claimant got what she wanted in this regard - Dave Anderson, and he decided the complaints did not give rise to a valid Rule 13

complaint and dismissed them. No Rule 13 Procedure has, at present, been brought against the Claimant.

114. An enforcement order would therefore have been inappropriate, if the complaint had been well-founded.

115. In complaint 8 the Claimant seeks an order requiring the Union to ensure that a breach of the same kind does not occur in the future. It would be inappropriate to make such an order since it is clear that the branch has already taken steps to ensure that its members know about the Union's annual Congress and have the chance to put themselves forward if they would like to go. Furthermore I am not at all sure that being a Congress delegate comes within the definition of "office" under the Act and would have required further argument on the point if I was to make such an order.

116. But I also have concerns about the genuineness of the Claimant's desire to be a Congress delegate. If she had truly wanted to spend the late May bank holiday at the Union's Congress in 2017 she could have done so. Instead she appears to have used Ms Holroyd's notification about the impending deadline, as a stick to beat the committee with.



**Mary Stacey**  
**Assistant Certification Officer**