

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

Dr C Elliott & Dr A Borbora

v

British Medical Association

Date of Decision

5 December 2017

DECISION

Upon application by Dr Elliott and Dr Borbora ("the Claimants") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"):

1. I refuse Dr Elliott's application for a declaration that on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the Union by the Interim Measures Panel wrongly convening and considering Dr C Elliott for suspension when she was no longer an office holder and that the Interim Measures Panel does not have jurisdiction to suspend non office holders.
2. I refuse Dr Elliott's application for a declaration that on or around 23 September 2016, the Union breached rule 14(3)(d) of its Articles and Byelaws by not providing Dr C Elliott the right to appeal the decision of the Chief Executive to suspend her. Despite requests on numerous occasions, on behalf of Dr C Elliott, for clarity in respect of her suspension and despite evidence being submitted to the Chief Executive, the BMA had not informed Dr C Elliott of what she was suspended from within the 21 day time limit for an appeal to be made under rule 14 (3) (d), thus frustrating her right of appeal.
3. I refuse Dr Elliott's application for a declaration that on or around 23 September 2016, the Union breached paragraph 6 of the Interim Measures Panel Process by not according Dr C Elliott the right to appeal the decision of the Interim Measures Panel. The Union declined requests on behalf of Dr C Elliott to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr C Elliott's right of appeal.
4. I refuse Dr Elliott's application for a declaration that on or around 22 September 2016 the BMA breached clause 6 of the Interim Measures Panel Process when it delayed communicating its decision with regard to Dr C Elliott until 23 September 2016.
5. I refuse Dr Borbora's application for a declaration that on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the Union by the Interim Measures Panel wrongly convening and considering Dr A Borbora for suspension when he was no longer an office holder and that the Interim Measures Panel does not have jurisdiction to suspend non office holders.

6. I refuse Dr Borbora's application for a declaration that on or around 23 September 2016, the Union breached paragraph 6 of the Interim Measures Panel Process by not according Dr A Borbora the right to appeal the decision of the Interim Measures Panel. The Union declined requests, on behalf of Dr A Borbora, to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr A Borbora's right of appeal.
7. I refuse Dr Borbora's application for a declaration that on or about 12 April 2017 the BMA and its Chief Executive breached the rules of the Union by failing to open Article 14 investigations into members of the JDC Executive Subcommittee following the receipt of a complaint against those members under Article 13 of the Rulebook.

REASONS

8. Drs Elliott and Borbora brought these applications as members of the British Medical Association ("the BMA" or "the Union"). They did so by a registration of complaints which were received at the Certification Office on 22 December 2016 and 5 January 2017 respectively. Dr Borbora made a further application on 5 September 2017.
9. Following correspondence with my office, Drs Elliott and Borbora confirmed their complaints as follows:-

Dr Elliott's Complaints

Complaint 1

That on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the union by the Interim Measures Panel wrongly convening and considering Dr C Elliott for suspension when she was no longer an office holder. That the Interim Measures Panel does not have jurisdiction to suspend non office holders.

Complaint 2

That on or around 23 September 2016, the union breached rule 14(3)(d) of its Articles and Byelaws by not providing Dr C Elliott the right to appeal the decision of the Chief Executive to suspend her. Despite requests on numerous occasions on behalf of Dr C Elliott for clarity on her suspension and despite evidence being submitted to the Chief Executive the BMA had not informed Dr C Elliott of what she was suspended from within the 21 day time limit for an appeal to be made under rule, thus frustrating her right of appeal.

Complaint 3

That on or around 23 September 2016, the union breached paragraph 6 of the Interim Measures Panel Process by not according Dr C Elliott the right to appeal the decision of the Interim Measures Panel. The union declined requests on behalf of Dr C Elliott to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr C Elliott's right of appeal.

Complaint 4

That on or around 22 September 2016 the BMA breached clause 6 of the Interim Measures Panel Process when it delayed communicating its decision with regard to Dr C Elliott until 23 September 2016.

Dr Borbora's Complaints

Complaint 1

That on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the union by the Interim Measures Panel wrongly convening and considering Dr A Borbora for suspension when he was no longer an office holder. That the Interim Measures Panel does not have jurisdiction to suspend non office holders.

Complaint 2

That on or around 23 September 2016, the union breached paragraph 6 of the Interim Measures Panel Process by not according Dr A Borbora the right to appeal the decision of the Interim Measures Panel. The union declined requests on behalf of Dr A Borbora to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr A Borbora's right of appeal.

Complaint 3

That on or about 12 April 2017 the BMA and its Chief Executive breached the rules of the Union by failing to open Article 14 investigations into members of the JDC Executive Subcommittee following the receipt of a complaint against those members under Article 13 of the Rulebook.

10. At the hearing before me, Drs Elliott and Borbora were represented by Mr Paul Powlesland of Ely Place Chambers. Written witness statements and oral evidence was given by Drs Elliott and Borbora. Additionally, written witness statements were also provided by Mr Richard Stephenson, Dr Tim Yates and Dr David Sharpley. The Union was represented by Mr John Hendy QC of Counsel. Oral evidence for the Union was given by Mr Gareth Williams and Ms Sheridan Hammond. Additionally written witness statements were provided by Ms Joanne Alliston and Ms Norah Cox. There was also in evidence two bundles of documents, one bundle consisting of 431 pages containing correspondence and a second bundle containing the rules of the Union, The Interim Measures Panel process and other policy papers supplied by the parties for use at the hearing. Both the Union and the Claimants provided skeleton arguments.

Findings of Fact

11. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
12. On 7 May 2016 Dr Elliott wrote to Johanne Malawana (Chairman National BMA Junior Doctor's Committee) resigning from the Junior Doctors Executive Committee.
13. Andrew Dearden, BMA Treasurer and Director wrote to Keith Ward, BMA Chief Executive on 13 September 2016. In it he said, *'It is with deep regret that I feel I am duty bound as a Director of the Association to write to you with regard to a complaint I have as to the conduct of four members of the BMA'*. He went on to name four people including Dr Borbora and Dr Elliott. He said that, *'In each case I have reason to believe the members in question have, in breach of Article 13 of the BMA's Articles & Bye-Laws:*
 - *Breached obligations of confidentiality owed to the BMA and its members;*
 - *Actively undermined the work of the JDC to the detriment of its members;*
 - *and*
 - *Brought the BMA into disrepute'*.

He went on to ask for an investigation to be commenced under Article 14 and consideration given to suspending the members with immediate effect.

14. Keith Ward, BMA, Chief Executive, sent letters to Dr Borbora and Dr Elliott on 14 September informing them that he had, *'received a very serious complaint that your conduct has been detrimental to the honour and interests of the medical profession and the British Medical Association.....'* He went on to say, *'I have therefore, initiated an immediate investigation of this complaint as I am required to do pursuant to Article 14'... I have decided to exercise the power under Article 14(3)(d) to suspend you temporarily from all BMA offices pending a hearing.'* Further he said, *'I will shortly be convening the BMA's Interim Measures Panel to consider the allegations made against you. Part of the panel's work will be to determine whether it is appropriate for the suspension to continue throughout the duration of the investigation or whether it needs to be lifted.'*
15. On 16 September Adam Bonney of Robert Lizar solicitors wrote to Gareth Williams, BMA's Senior Solicitor, informing him that Robert Lizar Solicitors was now representing Dr Borbora and Dr Elliott. He asked for full details of the allegations and says that both Dr Bobora and Dr Elliott wished to exercise their right of appeal against their suspension.
16. Gareth Williams sent two letters to Adam Bonney on 19 September regarding Dr Borbora and Dr Elliott. In the letter he set out the investigation process, his role in it and the role of the Interim Measures Panel (IMP) which was due to meet at 3pm on 22 September. Attached to each letter was a report to be put before the IMP and schedules setting out the allegations against Dr Borbora and Dr Elliott.
17. Adam Bonney replied to Gareth Williams on 21 September acknowledging receipt of Mr Williams letter of 19 September 2016. In relation to Dr Elliott he said, *'I question why Dr Elliot's case has been referred to the Interim Measures Panel. Article 14(8) states that 'where the member concerned is also a director, office holder or any person holding any office of the Association, the chief executive shall report the matter to an interim measures panel.'* He goes on to say, *'Dr Elliott holds no such office and did not do so when the complaint was raised by Andrew Dearden. I should be grateful if you would confirm the reason you believe Dr Elliott's case falls within the remit of the Interim Measures Panel'*. In relation to both Dr Borbora and Dr Elliott he says that, *'they wish to refute the allegations but that there is not adequate time to consider the allegations in full and prepare submissions in defence'*. He asks for the hearing to be deferred.
18. At 14.40 on 21 September Gareth Williams sent an email to Adam Bonney. He refers to Dr Elliott's email detailing her resignation from the Junior Doctors Committee (JDC). The signature included the following, *'Mersey BMA Junior Doctor Rep'*. He said that this *'appeared to imply that she was continuing to hold some BMA offices. We would be grateful for your clarification upon the same.'*
19. On 22 September Dr Borbora wrote to Dr M Porter, Chair of BMA Council tendering his resignation as both Deputy Chair of the Junior Doctors Committee and Chair of the Mersey Junior Doctors Committee. He says, *'My resignation is effective from 11.00am this morning.'*
20. Adam Bonney sent an email at 10.22 to Gareth Williams attaching an email dated 2 September 2016 from Dr Elliott to Karly Jose of the BMA it stated, *'Yes I am resigning/have resigned.'*

21. At 11.20 on 22 September Adam Bonney sent a further email to Gareth Williams. It stated, *'I write to inform you that as of 11.00am this morning Dr Bobora has resigned all his BMA offices. His resignation has been communicated to the Chair of the BMA Council.'*
22. On 22 September Dr Elliott cancelled her BMA subscription.
23. The IMP met on 22 September among other things it resolved, *'That Dr Bobora and Dr Elliott continue to be suspended from any and all BMA offices, pending the outcome of an investigation and/or hearing.'*
24. At 17.16 on 22 September Gareth Williams sent an e-mail to another BMA member whose suspension had also been considered by the IMP on 22 September. Mr Williams informed him that the decision to suspend had been upheld by the IMP. Mr Williams also explained that he was letting the member know ahead of others who were suspended because of that member's specific request that he was due to attend an important meeting with his employer on 23 September when he was required to provide an update in relation to his suspension.
25. On 23 September Gareth Williams sent emails timed at 09.33 to Adam Bonney confirming the outcome of the Interim Measures Panel relating to Dr Bobora and Dr Elliott. The email confirms the right of appeal under Article 14(9).
26. Dr Elliot's BMA membership ended by virtue of non-payment of subscription on 30 September.
27. In October 2016 Dr Bobora cancelled his BMA subscription. His membership ceased on 31 October 2017.
28. Adam Bonney sent an email to Karishma Shah-Tanna (BMA Legal) and Gareth Williams on 4 November. In it he says, *'I wish to inform you that Dr Charlotte Elliott will not be participating in your investigations. You have no power to compel her to do so.'*
29. Gareth Williams replied to Adam Bonney on 11 November confirming that the BMA intended to pursue the investigations.
30. On 23 December 2016 a redacted version of the minutes of the 22 September IMP meeting was provided to the complainants after they made a Subject Access Request.
31. On 28 December 2016 a complaint was received by the Certification Office from Dr Elliott.
32. On 6 January 2017 a complaint was received by the Certification Office from Dr Bobora.
33. The report arising out of the investigation of Andrew Dearden's complaint of 13 September 2016 was produced on 13 January 2017.

34. Dr Elliott confirmed the terms of her four complaints to the Certification Office on 13 March 2017.
35. Dr Borbora submitted a complaint to Mr K Ward, BMA Chief Executive on 16 March 2017 regarding the use of profanities by members of the 2015/16 Junior Doctors Committee.
36. On 22 March 2017 Settlement agreements between the BMA and Dr Elliott and the BMA and Dr Borbora, agreed that:
 1. *The member shall permanently leave the BMA and never apply to re-join, or in fact re-join, the BMA in the future or otherwise participate in any of its committees.*
 2. *The internal procedures that have been brought against the Member under Articles 13 and 14 of the BMA Articles of Association pursuant to a complaint against the Member of 13 September 2016 are stayed, not to be reactivated unless there is a breach of these settlement terms.*
37. Dr Borbora confirmed the terms of his first two complaints to the Certification Office on 22 March 2017.
38. Keith Ward, CEO BMA replied to Dr Borbora's complaint of 16 March 2017 by email of 12 April 2017. In his reply he said, '*Unfortunately our records show that, as at 16 March 2017, you were in significant arrears with regard to your membership subscriptions. As such, while you were a member of the BMA at that time, you were not entitled to the benefits of membership, such as the right to vote, by virtue of your non-payment of subscriptions. Accordingly, you did not at the time of your complaint satisfy the eligibility criteria to lodge an Article 13 complaint.*'
39. On 5 September 2017 Dr Borbora submitted a further complaint to the Certification Officer the terms of which were confirmed on 6 September.

The Relevant Statutory Provisions

40. 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.*

The Relevant Rules of the Union

41. The rules of the Union which are relevant for the purposes of this application are BMA Rules:-

Part 2 Membership

3. There shall be the following categories of membership:-

- (1) Voting members
 - a. Ordinary members;
 - b. Medical student members;
- (2) Non-voting members
 - a. Honorary members.

Eligibility for voting membership

4. The following persons shall be eligible for voting membership of the Association

- (1) As ordinary members (not being overseas members):
 - a. Any person who is registered under the Medical Act;
 - b. Any person who is registered under the Medical Act and whose erasure from the Medical Register was not as a consequence of disciplinary actions;
 - c. Any person who, although not registered under sub-paragraph (a) and (b) hereof, is possessed of any medical qualification the holding of which is a condition precedent to their being eligible to be so registered, provided that this sub-paragraph shall not apply in the case of a person whose name has been erased from the Medical Register in consequence of disciplinary action;
 - d. Any person who is a member of a class of persons whom the council may from time to time specify as eligible for ordinary membership upon such conditions as the council may specify.

Provided always that:

- (i) a person whose registration under the Medical Act or equivalent overseas legislation has been suspended as a consequence of disciplinary action for a period not exceeding 12 months shall, notwithstanding anything contained in the Medical Act or equivalent overseas legislation, continue to be eligible for overseas membership of the Association; and
- (ii) a person whose qualification for membership arises under paragraph 2 (d) of this Article and who has been suspended as consequence of disciplinary action for a period not exceeding 12 months shall continue to be eligible for overseas membership of the Association; and
- (iii) The address of the member as held on the Association's register of members is outside the United Kingdom of Great Britain and Northern Ireland.

Duration of Voting Membership

8. Every voting member shall remain a member until their membership is terminated in accordance with the provisions of the articles and bye-laws.

Termination of Voting Membership and members' conduct

12. Voting membership of the Association may be terminated in any of the following ways, namely

- (1) *by resignation, subject to such notice as may be prescribed by the articles and subject to the provisions of the next succeeding article;*
- (2) *by default in the payment of a due subscription beyond the end of the subscription period to which the due subscription relates;*
- (3) (a) *upon erasure or suspension for a period of more than 12 months, in consequence of disciplinary action, from the Medical Register, save that members who are suspended under an order of suspension in advance of their case being heard by a final determining fitness to practise panel shall continue as members and shall continue to enjoy all the privileges of membership;*
 - (b) *upon forfeiture, in consequence of disciplinary action, of the medical qualification by virtue of which the member was eligible for membership;*

Members' conduct

13. *The grounds upon which a member, officer or member of any committee may be investigated are that: -*
 - (1) *their conduct has been*
 - (a) *detrimental to the honour and interests of the medical profession or the Association; or*
 - (b) *likely to bring the profession into disrepute; or*
 - (2) *They have wilfully and persistently refused to comply with the articles, bye-laws or the rules of any division or branch of which they may be a voting member.*
14. (1) *Where a director, chief officer, voting member, division, branch or committee or a member of the official staff of the Association believes that a member, officer or member of any committee has contravened the provisions of article 13 the allegation must be submitted in writing to the chief executive.*
 - (2) *The chief executive shall investigate the allegation and in doing so shall inform the member concerned of the allegation and invite the member to comment on the allegation. The chief executive may, in accordance with article 57, delegate all or part of the investigation to such person or persons as they think fit.*
 - (3) *The chief executive (or those persons appointed by them to conduct the investigation) may:*
 - (a) *dismiss the allegation with no further action upon concluding the investigation;*
 - (b) *issue an oral or written warning upon concluding the investigation;*
 - (c) *refer the allegation to go to a hearing upon concluding the investigation; or*
 - (d) *during or after the investigation and in consultation with the council chair, representative body chair or treasurer, temporarily suspend a member from some or all BMA offices pending a hearing. Such a suspended member shall have the right of appeal against the decision to suspend within 21 days to an appeal panel of three members appointed annually by the council. Any appeal hearing shall take place within 21 days of the appeal being received.*

Where the chief executive considers that a warning is appropriate the member concerned shall be invited to comment on the sanction before it is finalised and may request that the matter be dealt with by a hearing instead.

- (4) *If the chief executive is satisfied that a hearing is necessary, or if the member requests a hearing in accordance with sub-section (3), the chief executive*

shall request the council to set up a panel of three or more members of the Association to hear the case. The member may appear before the hearing and may be accompanied by a friend or representative who may be legally qualified, or they may make a submission. The chief executive or their appointed delegate shall present the case on behalf of the Association. The hearing shall be held in public unless the panel considers that there is good reason not to do so.

(5) The decision of the panel shall be reported to the council but council shall not have the power to overturn the decision.

(6) The panel shall have the power to:

- (a) expel the member from the Association;*
- (b) suspend the member from membership of the Association for such period and on such terms as it considers appropriate;*
- (c) suspend the member from some or all of the BMA offices held by them for such period and on such terms as it considers appropriate;*
- (d) issue a public censure in respect of the member's conduct on such terms and through such medium as it considers appropriate;*
- (e) issue an oral or written warning.*

(7) The sanction imposed by the panel shall take effect 21 days after the decision of the panel unless the member appeals against the decision of the panel. The member shall have the right of appeal against the decision of the panel within 21 days to a panel of three members appointed annually by the council. Any appeal hearing shall take place within 21 days of the appeal being received.

(8) Where the member concerned is also a director, office holder or any person holding any office of the Association, the chief executive shall report the matter to an interim measures panel (established annually by council), who shall have the power to suspend temporarily the member from all of the BMA offices which they hold with immediate effect pending the outcome of the investigation and/or hearing.

(9) A director, office holder or any person holding any office of the Association who is suspended from all or any BMA offices shall have a right of appeal to a panel appointed by council.

....

- 15. The council of each branch having membership of not less than 30, upon the representation of any two members of such branch, shall have power at a special meeting if the branch council convened at not less than one month's notice and after due inquiry of which not less than 28 days' notice in writing specifying the time and place at which they may be heard in their defence, shall have been given to the voting member, to expel from membership of the Association such person whose conduct shall be held by the branch council to be such as to render them liable to expulsion under article 14. The council of each branch exercising such powers shall inform the chief executive of the Association of the outcome of any enquiry.*
- 16. A majority of two-thirds of those present and voting at a meeting of a branch council shall be required for the purpose of exercising the powers conferred by articles 14 and 15.*
- 17. No voting member in regard to whom a representation as aforesaid has been made, or whose conduct is under investigation, or is the subject of inquiry by a branch council, or by any council or committee of a division, or by any committee authorised in that behalf by any such council as aforesaid, shall be capable of effectively resigning their voting membership of the Association nor shall their voting membership be terminated in pursuance of article 1496) until the investigation or inquiry is completed and the decision thereunder is made known.*

A member's conduct shall be deemed to be under investigation from the date of the letter of complaint.

Subscriptions

20. (1) *Save as otherwise provided by the articles every voting member shall pay to the Association a subscription for such subscription period as the Council shall from time to time determine and of such sums as the representative body shall determine.*

(2) *Subscriptions shall be considered due in advance.*

21. *The payment of each subscription shall during its currency entitle the member to all privileges of membership of the Association and to the ordinary privileges of membership of division or branch of which they are an ordinary member. The privileges of membership include that of receiving the Journal or in the case of a student member the student edition of the Journal (except that a spouse/partner member shall not be entitled to receive the Journal unless they so request in writing and where the member is entitled to receive the student edition of the Journal the spouse member may not elect to receive an edition other than the student edition).*

Arrears of Subscription, Cessation of Membership

24. (1) *If the subscription of a voting member for any subscription period shall not have been paid on or before such date in any subscription period as the Council may from time to time determine they shall, with prejudice, to their liability to the Association, cease to be a voting members as from that date. Provided that upon payment before the end of such subscription period of all subscription due from them they shall, if eligible, be restored to membership in the appropriate category without re-election. The payment of subscription arrears shall not entitle the member to receive the Journal or student edition of the Journal during the period covered by the arrears unless they so request in writing.*

(2) *No voting members shall (except in the case of their expulsion, or of their ceasing to be a member, or medical student members, under the provisions of article 14 or under the previous provision of this article) cease to be a member or medical student members (as the case may be) without having notified the Association immediately and in writing at the registered office of their resignation and having paid all arrears of subscriptions (if any) due from them. Such notice of resignation shall be acknowledged by the registered office.*

Interim Measures Panel Process

6. *The Chairman of the Panel will communicate the decision, and where appropriate, the right of appeal, without delay to the individual concerned, to the CEO and to the Officer who will be responsible for handling any operational implications of suspension.*

CONSIDERATIONS AND CONCLUSIONS

42. *Since Dr Elliott's and Dr Borbora's first complaints are identical and relate to the same issue I will set out the submissions, consideration and conclusions together. Additionally, Dr Elliott's and Dr Borbora's third and second complaints respectively are in similar terms I will deal with these in the same manner.*

Dr Elliott and Dr Borbora's Complaint One

43. *The Claimants' first complaints are as follows:*

Complaint 1 (Dr Elliot)

That on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the union by the Interim Measures Panel wrongly convening and considering Dr C Elliott for suspension when she was no longer an office holder. That the Interim Measures Panel does not have jurisdiction to suspend non office holders.

Complaint 1 (Dr Borbora)

That on or around 22 September 2016, the Union breached rule 14(8) of the Articles and Bylaws of the union by the Interim Measures Panel wrongly convening and considering Dr A Borbora for suspension when he was no longer an office holder. That the Interim Measures Panel does not have jurisdiction to suspend non office holders.

44. The relevant Union rule is :

14 (8) Where the member concerned is also a director, office holder or any person holding any office of the Association, the chief executive shall report the matter to an interim measures panel (established annually by council), who shall have the power to suspend temporarily the member from all of the BMA offices which they hold with immediate effect pending the outcome of the investigation and/or hearing.

Summary of Submissions

45. For the applicants Mr Powlesland submitted that the wording of Article 14(8) is expressed in the present tense. Given this wording, he said that the IMP's powers were predicated on a member being an office holder at the time those powers are exercised. He said that Union's case was based on both Claimants still being office holders at the time the IMP convened and exercised its powers of suspension.
46. He submitted that both Claimants dispute the fact that they were office holders at the relevant time. He said that Dr Elliott had resigned her position on the Junior Doctors Committee ("JDC") on 2nd September 2017. On the 22nd September 2016 at 10:22 she confirmed her resignation from her BMA roles to Mr Williams (via her lawyer) and requested confirmation that she was not an office holder and therefore not within the scope of the IMP. Dr Elliott also resigned her membership of the BMA on 22nd September 2017, by cancelling her direct debit payment. Dr Borbora resigned all BMA Offices in a letter to the Chair of Council at 11am 22nd September 2016. He went on to address the issue of whether the two complainants were members of their Local Negotiating Committees (LNC) at the time of their suspension, its referral to the IMP and the IMP's deliberations. He submitted that the key issue was, whether the LNC is an "office of the association" for the purposes of Article 14(8). He submitted that it was not for the following reasons:
- The LNC is not a BMA Committee. The LNC is an occupational sub-committee of the Trust's Joint Staff Committee (or equivalent) for collective bargaining between NHS (Foundation) Trusts and their medical and dental staff.
 - Membership of the LNC is governed by local agreements, known as the Constitution, and not by the BMA.

- BMA membership is not a requirement in order to be on the LNC. Members of the staff-side of the LNC can be affiliated to the BMA, HCSA, Doctors in Unite (formally the MPU), or indeed no Union whatsoever.
- Nothing in the Articles and Byelaws of the BMA states that the LNC is considered a BMA committee. Schedule 1 of The Articles and Byelaws gives a list of "BMA Committees". It does not mention the LNC.
- The LNC does not appear anywhere in the BMA's Rulebook.
- Both Claimants continued to sit on the LNC, after the 22nd September 2017, when they had been suspended from BMA offices by the IMP. This was further evidence that the LNC was not a BMA office or committee. In relation to Dr Elliott, he submitted that at some point in September she had notified David Sharpley (Former BMA Local Representative and Member of the Wirral University Teaching Hospitals Joint Local Negotiating Committee) that she had left the BMA and would continue sitting on the LNC as an independent member. Although Mr Sharpley provided a witness statement he did not give oral evidence and it is not possible to say exactly when in September this had occurred.

Mr Powlesland also referred me to the fact that Norah Cox, a BMA IRO Industrial Relations Officer (IRO) had said in an email to Dr Elliott of 5 October, '*There is no reason why you cannot attend the JLNC as a junior doctors representative at the trust*'.

47. For the Union Mr Hendy accepted that LNCs were not expressly provided for in the BMA's rules. However, he submitted that they had been in existence for some time and had been established and run by the BMA. He referred to the evidence of Sheridan Hammond (Head of Local Member Engagement Relations for the BMA) Ms Hammond said that the LNCs were established by the BMA in 1991 as the means by which the BMA would negotiate locally with NHS/Hospital management. She said that there were approximately 260 LNCs. These were supported by the BMA by the provision of 246 BMA appointed and funded Industrial Relations Officers, training for BMA LNC reps and honorariums for the payment of secretarial support for the LNCs. Ms Hammond said that the cost of BMA support to LNCs amounted to some £1.3 million per annum.
48. Mr Hendy accepted that in recent times it was the case that LNCs had included representatives of other unions. Indeed in her evidence Ms Hammond said that non-members of the BMA had on occasion been accredited by the BMA as LNC representatives. However, he submitted that this would only mean that such representatives would be office holders in their own unions.
49. Turning to the positions of Dr Borbora and Dr Elliott, he referred to documents in evidence showing that both had in fact applied to the BMA to become BMA local representatives and their subsequent accreditation by the BMA with their employer as representatives for, '*junior medical, and where appropriate dental staff employed within your trust*.' He submitted that this established that both Dr Elliott and Dr Borbora held the BMA office of BMA representatives on their respective LNCs at the points at which they were suspended by the BMA Chief Executive on 14 September 2016 and that the IMP reconsidered their suspension on 22 September.

50. Mr Hendy submitted that in the case of Dr Borbora his resignation letter of 22 September to Dr M Porter (Chair of the BMA) related only to the positions he held of Deputy Chair of the Junior Doctors Committee and the Chair of the Mersey Doctors Committee. Mr Hendy said that neither this letter nor a subsequent email from Mr Borbora's solicitor on the same day to Gareth Williams dealt with or amounted to a resignation from his position as an LNC Rep. He said that the email referred directly to Dr Borbora's resignation communicated to the Chair of the BMA Council. The reference in the email to Dr Borbora having, '*resigned all his BMA offices*' did not constitute a broadening of the terms of his earlier resignation letter.
51. Mr Hendy submitted that Dr Elliott, had resigned the Junior Doctors Executive Committee on 7 May 2016. She had continued to attend her LNC and emails that she sent after that date continued to have the title 'Arrowe Park BMA Junior Doctor Rep' as part of her signature.

Conclusions Complaints One

52. I agree with Mr Powlesland that the terms of Article 14(8) are such that in order for it to be operative, a person needs to be a, '*a director, office holder or any person holding any office of the Association*'. That would appear to mean that at the point that the CEO reported the matter to the IMP or at the very latest at the point the IMP considered it the person being reported would need to be a director, office holder or any person holding any office of the Association. It was the case that at no point did the Union say to either Dr Borbora or Dr Elliott that they were being referred to the IMP on the basis that they were office holders of the association by virtue of them being BMA representatives on their LNCs. However, in order to establish a breach of rule 14(8) it would have to be shown either that the position of representative on the LNC, held by Dr Borbora and Dr Elliott, was not such as to make it an office holder of the association, or at the material time Dr Borbora and/or Dr Elliott didn't hold such a post.
53. Dr Borbora and Dr Elliott argued that LNCs were not BMA Committees. I can see why they might say this given the lack of reference to it in the BMA Articles and Bye-laws. I also accept that the constitution of LNCs is far from clear – given the fact that it would appear that non BMA representatives sit on them and that the BMA apparently provides accreditation to non-members of the BMA to sit on them. In addition, I heard evidence from Dr Elliott that in the case of her LNC it may be that people other than the BMA purport to make appointments to the LNC. Be that as it may, my task is to determine whether Dr Borbora and Dr Elliott were, at the material time holding any office of the association.
54. Dr Borbora and Dr Elliott accepted that they were at 'some point' BMA representatives on their LNCs, I think they were right to do so. The evidence before me was that they had both applied to be BMA local doctor representatives and had been accredited as such by the BMA. In my view, this establishes that they were at some point holding an office of the association. It remains only for me to determine whether they were no longer in such a post by the time the IMP met on 22 September.
55. It is clear that, faced with the prospect of an investigation relating to the 13th September complaint by Dr Dearden and the subsequent referral to the IMP, Dr Elliott and Dr Borbora wished to make it clear that they held no office of the association. The impact of this would have been that the IMP would have had no jurisdiction to consider

the matter. However, it became clear in evidence that Dr Borbora and Dr Elliott either did not accept that being a BMA Representative on their LNC was an office of the association or that their resignations submitted, up to and including on the day of the IMP hearing, included resignations from that office. Clarity in this regard was not aided by the Union at no point setting out clearly which office of the association they considered Dr Borbora or Dr Elliott to hold.

56. I do not find that Dr Elliot's questioning of whether she held any office of the association or Dr Borbora's resignation on 22 September amounted to them resigning their BMA offices on their LNC. Further, I find that on the balance of probabilities the Union were right to consider that both Dr Borbora and Dr Elliott held an office of the association at the point at which the IMP met to consider their respective suspensions.
57. For the above reasons I dismiss both Dr Borbora and Dr Elliot's first complaint .

Dr Elliott's Complaint Two

58. The Claimant's second complaint is as follows:

Complaint 2

That on or around 23 September 2016, the union breached rule 14(3)(d) of its Articles and Byelaws by not providing Dr C Elliott the right to appeal the decision of the Chief Executive to suspend her. Despite requests on numerous occasions on behalf of Dr C Elliott for clarity on her suspension and despite evidence being submitted to the Chief Executive the BMA had not informed Dr C Elliott of what she was suspended from within the 21 day time limit for an appeal to be made under rule, thus frustrating her right of appeal.

59. The relevant Union rule is:

14. (3) The chief executive (or those persons appointed by them to conduct the investigation) may:

(d) during or after the investigation and in consultation with the council chair, representative body chair or treasurer, temporarily suspend a member from some or all BMA offices pending a hearing. Such a suspended member shall have the right of appeal against the decision to suspend within 21 days to an appeal panel of three members appointed annually by the council. Any appeal hearing shall take place within 21 days of the appeal being received.

Summary of Submissions

60. For the applicants Mr Powlesland submitted that, the decision to suspend Dr Elliott by letter dated 14th September 2016 from Keith Ward, Chief Executive of the BMA did not set out Dr Elliott's right of appeal or what office of the association she was being suspended from. He referred to the complaint from Andrew Dearden, giving rise to the suspension letter, which he said did not give sufficient information of what was being alleged. Further, he said it failed to set out what Dr Elliott was being suspended from and the evidence supporting it. In those circumstances, he submitted that Dr Elliott did not have enough information to make an effective and proper appeal against the decision.

61. Mr Hendy for the Union submitted that the letter from Keith Ward to Dr Elliott on 14 September had made it clear that Dr Elliott was being suspended 'temporarily from all BMA offices'.

Conclusions Complaint Two

62. At paragraph 55 above I refer to the lack of clarity as to exactly what offices of the association Dr Elliott was being suspended from. I accept that Dr Elliott did request clarification from the BMA on this point by way of a letter from her solicitor on 21 September 2016 in which he made it clear that he did not think Dr Elliott held a relevant office. In that letter the solicitor said '*I should be grateful if you would confirm the reason you believe Dr Elliott's case falls within the remit of the Interim Measures Panel*'. Responding by email on 21 September Gareth Williams referred to an email sent by Dr Elliott the signature of which included '*Arrowe Park Hospital BMA Junior Doctor Rep.*' He went on to say that this '*appeared to imply that she was continuing to hold some BMA offices*'.
63. Whilst I accept that there was a lack of clarity provided by the Union on this issue, I also take the view that Dr Elliott was wrong about her status as a Junior Doctor Representative on her LNC (see finding at para 56). I do not consider that the uncertainty as to what Dr Elliott was being suspended from amounted to a frustration of Dr Elliott's right of appeal. Put simply, it was open to Dr Elliott to appeal, on this particular issue, on the basis of her assertion that she held no office of the association.
64. For the above reasons I dismiss complaint two.

Dr Borbora's Complaint two and Dr Elliott's Complaint three

65. Dr Borbora's complaint two is as follows:-

Complaint 2

That on or around 23 September 2016, the union breached paragraph 6 of the Interim Measures Panel Process by not according Dr A Borbora the right to appeal the decision of the Interim Measures Panel. The union declined requests on behalf of Dr A Borbora to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr A Borbora's right of appeal.

66. Dr Elliott's third complaint is as follows:-

Complaint 3

That on or around 23 September 2016, the union breached paragraph 6 of the Interim Measures Panel Process by not according Dr C Elliott the right to appeal the decision of the Interim Measures Panel. The union declined requests on behalf of Dr C Elliott to be provided with the minutes of the IMP meeting or rationale for its decision, or the names of the individuals present. This blocked Dr C Elliott's right of appeal.

67. The relevant Union rule is:-

Interim Measures Panel Process

6. *The Chairman of the Panel will communicate the decision and where appropriate, the right of appeal, without delay to the individual concerned, to the CEO and to the Officer who will be responsible for handling any operational implications of suspension.*

68. As explained at paragraph 41 I intend to deal with these complaints together.

Summary of submissions

69. Mr Powlesland, for the Claimants, said that Dr Borbora and Dr Elliott were informed about the decision of the IMP on the morning of the 23rd September 2016, in the following terms:

'I am instructed to inform you that the Interim Measures Panel met yesterday and resolved that your client continue to be suspended from any all BMA offices, pending the outcome of an investigation and/or hearing and that they be informed of their right of appeal against the decision under Article 14(9) if [sic] the BMA's Articles of Association. The decision was unanimous.'

70. Mr Powlesland submitted that although the Claimants were informed of their right to appeal, this was of little or no value, given that they were not informed of:

- Who the decision was taken by.
- The evidence used as the basis of the decision.
- The details of the allegations against them.
- What parts of the allegations were relied upon in upholding the suspension.
- Why the decision to suspend was upheld.

71. He submitted that this information could easily have been supplied to the Claimants, for instance in the form of the minutes from the IMP hearing.

72. Given the lack of information with which the Claimants were supplied, Mr Powlesland submitted that they were denied any effective right of appeal, in breach of the Union's Articles and Byelaws and the usual principles of natural justice.

73. For the Union Mr Hendy submitted that Article 14(9) did not oblige the Union to provide any of the information, the lack of which, the complainants said 'blocked' their right of appeal. He pointed out that by letters dated 19 September from the BMA to the applicant's solicitor they were provided with a copy of the report to be considered by the IMP outlining what decisions needed to be made and a schedule containing details of the allegations against them. He said that they were informed that it was the IMP would be making the decision. He submitted that the panel was established under the Articles and Bye-laws of the Union. In addition he said that on the 23rd of December 2016 the applicants were provided with a redacted copy of the IMP Report, following a Subject Access Request from the applicants. He submitted that this was sufficient information on which the applicants could have based an appeal. He further noted that there was no time limit for submitting an appeal against the suspension, but that the applicants had not submitted such an appeal even after they came into possession of the IMP Report.

Conclusions Dr Borbora's Complaint two and Dr Elliott's Complaint three

74. In considering these complaints I observe that the purpose of the IMP was to determine whether to lift the suspension that had been imposed by the BMA Chief

Executive. It was not to reach a determination on the allegations made against Dr Borbora and Dr Elliott – they would be the subject of an investigation, to which they would be able to contribute and if necessary a hearing would be held. If a hearing was deemed to be necessary Dr Borbora and Dr Elliott would be able to appear before it and they or their friend or legal representative would be able to make submissions on their behalf. This is provided for in Article 14(4). I consider that the level of information and process required for a decision about a precautionary suspension is significantly lower than that required for a full determination of a disciplinary issue.

75. The decision of the IMP was that the suspension was to continue. I consider that at the point the IMP arrived at this decision and communicated it, and the right of appeal to the applicants, it was not the case that a lack of information had in effect blocked the Claimants' appeal. They were aware of the allegations, they had had the opportunity, not taken up, to make representations and they were aware that it was the IMP making the decision. The provision of the IMP Report, the identities of the members of the IMP and an explanation of the basis on which the IMP had made its decision may have given the applicants more material to consider. Potentially this could have led to more grounds on which to base an appeal. However, I do not consider its absence to have blocked the right of appeal.
76. For the above reasons I dismiss Dr Borbora's second complaint and Dr Elliott's third complaint

Dr Elliott's Complaint four

77. The Claimant's fourth complaint is as follows:-

Complaint 4

That on or around 22 September 2016 the BMA breached clause 6 of the Interim Measures Panel Process when it delayed communicating its decision with regard to Dr C Elliott until 23 September 2016.

78. The relevant Union rule is:-

Interim Measures Panel Process

6. *The Chairman of the Panel will communicate the decision and where appropriate, the right of appeal, without delay to the individual concerned, to the CEO and to the Officer who will be responsible for handling any operational implications of suspension.*

Summary of submissions

79. For the applicant's Mr Powlesland submitted that the Union's IMP Process, at paragraph 6, states: "*the Chairman of the Panel will communicate the decision...without delay to the individual concerned.*" He pointed out that the IMP took place at 3pm on 22nd September 2016. He said that it was accepted that by email on 22nd September 2016, at 17:16, Gareth Williams, wrote to another doctor whose case had been considered at the same hearing to inform him of the outcome of the IMP hearing.
80. He submitted that in contrast Dr Elliott was told the outcome of the IMP at 09:33 on the 23rd September 2016 via an email to from Mr Williams to her lawyer. Mr

Powlesland said that, given that Mr Williams had been able to communicate the decision to another of the persons whose case had been considered at the hearing the previous evening, it was an unnecessary delay to not tell Dr Elliott about the decision until the next morning. He submitted that this was a clear breach of the Union's obligation to communicate the decision 'without delay'.

81. For the Union Mr Hendy relied on Mr Williams' evidence. He had said that the IMP delegated to him the task of notifying the applicants of its decision. However, due to time constraints, surrounding Mr Williams' need to pick up his child after work, he was unable to send out the decisions to all of the four people whose cases the IMP had considered that afternoon. However, he had received an email from one of the suspended members requesting notice of the outcome of the IMP prior to a meeting he was scheduled to have with a senior colleague at 08.30 the following morning. Mr Williams dealt with this by sending one email only to the member concerned giving an indication of the outcome. He followed this up the next day with a further email in the same terms as that sent to Dr Elliott. Mr Williams sent an email to Dr Elliot's solicitor informing him of the IMP's decision and of Dr Elliot's right of appeal at 09.33 on 23 September 2016.

Conclusions Dr Elliott's Complaint four

82. Dr Elliott's complaint here is that the IMP delayed in communicating its decision and Dr Elliott's right of appeal following its hearing on 22 September. As a matter of fact it can be seen that there was some delay between the IMP reaching its decision and communicating it to Dr Elliott. The evidence was that the IMP meeting was concluded by 17.00 on 22 September, Dr Elliott was not informed until 09.33 on the following day. In addition one of the members whose suspension was being considered by the IMP had the decision communicated to them at 17.16 on 22 September. However, the Union have explained the reason for this delay, the applicants didn't dispute the facts of the Union's explanation, rather they maintained that in any event there was a delay.
83. I do not consider that when Clause 6 of the IMP Procedures refers to 'without delay' the intention was for decisions to be communicated instantaneously; there will always be time taken up with the writing of an email or letter and its despatch. In this case, the person charged with the communication made a decision to let one of the suspended members know of the outcome ahead of the others, I accept that he had good reason to do so. I do not consider the 15 hour delay or the fact of one suspended member knowing of the outcome of the IMP before Dr Elliott to amount to a breach of Clause 6 of the IMP Procedures.
84. For the above reasons I dismiss complaint four.

Dr Borbora's Complaint three

85. The third complaint is as follows:-

Complaint 3

That on or about 12 April 2017 the BMA and its Chief Executive breached the rules of the Union by failing to open Article 14 investigations into members of the JDC Executive Subcommittee following the receipt of a complaint against those members under Article 13 of the Rulebook.

86. The relevant union rule is:-

Members' conduct

13. *The grounds upon which a member, officer or member of any committee may be investigated are that: -*

(1) *their conduct has been*

- (a) *detrimental to the honour and interests of the medical profession or the Association; or*
- (b) *likely to bring the profession into disrepute; or*

(2) They have wilfully and persistently refused to comply with the articles, bye-laws or the rules of any division or branch of which they may be a voting member.

14. (1) *Where a director, chief officer, voting member, division, branch or committee or a member of the official staff of the Association believes that a member, officer or member of any committee has contravened the provisions of article 13 the allegation must be submitted in writing to the chief executive.*

(10) The chief executive shall investigate the allegation and in doing so shall inform the member concerned of the allegation and invite the member to comment on the allegation. The chief executive may, in accordance with article 57, delegate all or part of the investigation to such person or persons as they think fit.

Summary of submissions

87. For Dr Borbora Mr Powlesland submitted that on 16th March 2017, Dr Borbora made a complaint to the BMA's Chief Executive regarding the behaviour of various members of the BMA Junior Doctors Committee Executive ("JDCE"). The complaint was submitted in writing by email. Mr Powlesland submitted that at that time Dr Borbora was a voting member. This was on the basis that despite having ceased paying BMA subscriptions in October 2016 under the terms of Article 17 of the BMA Rules, he was not capable of effectively resigning his voting membership whilst his conduct was under investigation. Therefore, under Article 14(2) the BMA should have accepted and investigated it in the way prescribed by the rulebook.
88. Mr Powlesland said that the BMA's Chief Executive responded to Dr Borbora's complaint by email on 12th April 2017. In his response he refused to accept the complaint under Article 13, although he did appear to acknowledge there were serious issues with the behaviour and language used by members of the JDCE. Mr Powlesland submitted that as Dr Borbora was a member who had submitted in writing a complaint that members had contravened the provisions of Article 13, the terms of Article 14(2) were very clear '*The Chief Executive shall investigate*'. That the Chief Executive had not done so was a clear breach of Article 14(2).
89. For the Union Mr Hendy argued that the right to bring a complaint against a member to the Chief Executive under Article 14(1) was only available to 'a director, chief officer, voting member, division, branch or committee or a member of the official staff of the Association'. He submitted that the only category that applied to Dr Borbora was that of voting member. However, he said that by virtue of his non-payment of subscriptions he had ceased to become a voting member by virtue of the provisions of Article 24(1). Dr Borbora had cancelled his BMA membership subscription in October 2016 and had therefore ceased to be a voting member on 31 October 2016. Mr Hendy went on to submit that the provisions of Article 17 did not apply in Dr Borbora's circumstances, to prevent him effectively resigning his voting membership. He explained this by reference to Article 17:

17. *No voting member in regard to whom a representation as aforesaid has been made, or whose conduct is under investigation, or is the subject of inquiry by a branch council, or by any council or committee of a division, or by any committee authorised in that behalf by any such council as aforesaid, shall be capable of effectively resigning their voting membership of the Association nor shall their voting membership be terminated in pursuance of article 1496) until the investigation or inquiry is completed and the decision thereunder is made known.*

90. He submitted that the words 'to whom a representation as aforesaid has been made' was a reference to Article 15. Which says:

15. *The council of each branch having membership of not less than 30, upon the representation of any two members of such branch, shall have power at a special meeting of the branch council convened at not less than one month's notice and after due inquiry of which not less than 28 days' notice in writing specifying the time and place at which they may be heard in their defence, shall have been given to the voting member, to expel from membership of the Association such person whose conduct shall be held by the branch council to be such as to render them liable to expulsion under article 14. The council of each branch exercising such powers shall inform the chief executive of the Association of the outcome of any enquiry.*

91. Mr Hendy submitted that no such representation had been made and therefore the provisions of Article 17 did not apply to Dr Borbora. The implication of this was, he said, clear, Dr Borbora ceased to be a voting member on 31 October 2016 and therefore had no right to bring an Article 14 complaint in March 2017.

92. Mr Hendy submitted that in any case an investigation of the allegations made by Dr Borbora had been delegated by the Chief Executive to Gareth Williams. Mr Hendy referred to Mr Williams' written and oral evidence that he had carried out the investigation '*entirely in accordance with the provisions of Articles 13 and 14*'. In response to questions from Mr Powlesland Mr Williams declined to give further details citing data protection and confidentiality concerns.

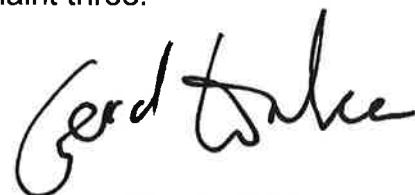
Conclusions Dr Borbora's complaint 3

93. Key to this complaint is whether Dr Borbora was, at the relevant time a voting member of the BMA. Prior to the hearing, the Union's position appeared to be that Dr Borbora remained a member of the BMA as he was not capable of effectively resigning his voting membership due to the provisions of Article 17. They had submitted that due to his non-payment of subscriptions since October 2016 he retained only the obligations of membership and not the benefits. At the hearing Mr Hendy put forward a new argument that suggested the previous position of the Union was incorrect and in fact Dr Borbora had ceased to be a member on 31 October 2016. I will deal with this latter argument first.

94. I consider that Mr Hendy's submissions that the provisions of Article 17 did not apply to Dr Borbora are incorrect. It relies on the wording of Article 17 and specifically on the reference to, '*No voting member in regard to whom a representation as aforesaid has been made,*' Mr Hendy correctly points out that no such '*representation as aforesaid*' had been made – this is a reference to Article 15. However the phrase is followed by a comma and the words '*or whose conduct is under investigation, or is the subject of inquiry by a branch council, or by any council or committee of a division, or by any committee authorised in that behalf by any such council as aforesaid,*' Correctly read I consider that Article 17 sets out a number of circumstances in which a member is not capable of effectively resigning their voting membership. One of those circumstances, '*whose conduct is under investigation*',

applies to Dr Borbora. I therefore do not accept that Dr Borbora was not a voting member at the time he submitted his complaint.

95. I now need to consider whether there is any merit in the Union's argument that although retaining membership Dr Borbora retained only the obligations and not the benefits by virtue of the fact that he had ceased paying subscriptions.
96. Mr Powlesland submitted that the types of BMA membership were set out in the BMA's Articles and Bye-laws. He rightly, in my view said that the only category into which Dr Borbora could fall was that of voting membership. Whilst acknowledging that voting membership could be terminated on the basis of non-payment of subscriptions that could not be the case in Dr Borbora's circumstances by virtue of the operation of Article 17.
97. At the hearing I asked Mr Powlesland whether it could be right for a member of the BMA, subject to a misconduct investigation, who ceased paying subscriptions, to be in a better position than a member who just ceased paying subscriptions i.e. they retained all the rights of a voting member. Mr Powlesland said that this may be the case and might be a result of the bad drafting of the Rules. In such circumstances, he submitted that should I conclude that it was necessary to interpret the rules I should do so on the basis of 'maxim contra proferentem'. I understand this to mean against the one bringing forth. In this case, he was submitting that I resolve any ambiguity between Articles 17 and 24(1) in favour of the complainant on the basis that the Union should not derive a benefit from their alleged poor drafting. I understand why he would make such a submission. However, an ambiguity in rules is only one factor that I need to consider. Another consideration is having appropriate regard to the need to ensure any interpretation of the rules is rational and effective and meaningful.
98. In this case, I am minded that I was told in evidence that the BMA had not for the last 10 years at least, operated the disciplinary processes that were the subject of these complaints. In evidence, Gareth Williams was quite candid about the fact that in operating the procedures he was having to rely both on his interpretation of the rules and an element of the application of common sense. I am also minded that at the time Dr Borbora put in his 16 March complaint to the BMA Chief Executive he was less than a week away from agreeing to permanently leave the BMA. In such circumstances, I struggle to see what benefit my construing the ambiguity between Articles 17 and 24(1) in Dr Borbora's favour could provide him. I therefore find that the purpose of Article 17 is clear, it is to prevent a member charged with misconduct from frustrating the consideration of that charge by resigning their membership. It is not intended to preserve all other membership rights should that member chose to cease making subscriptions
99. For the above reasons I dismiss Dr Borbora's complaint three.



Gerard Walker
The Certification Officer

