

Our ref: CO/696T/8/99

31 July 2001

### **Allegation of Financial Irregularity in the Manufacturing Science and Finance Union**

1. On 21 July 1999 I issued a letter setting out the reasons why I had decided not to appoint inspectors to investigate the financial affairs of the Manufacturing Science and Finance Union (“MSF”) in spite of six allegations drawn to my attention by several members of the union and by articles in the press.
2. Subsequently in the summer of 2000 several members of the union including some who had not contacted me before wrote to me asking me to reconsider that decision.
3. Under section 37E of the Trade Union and Labour Relations Act 1992 (“the Act”) where I receive such a complaint to the effect that the state of affairs specified in section 37B(2)(a) to (d) exist I must consider if it is appropriate to exercise my power to appoint inspectors. If I decide not to exercise that power, I must notify the complainants of my decision and if I think fit give my reasons.
4. In this case, after much investigation and deliberation, I have decided not to appoint inspectors and to give reasons for that decision. In this report I have endeavoured to deal with and give a view on all of the allegations of which I am aware. I have tried to do so

in a way that is both fair and will enable the union, Mr Lyons and the accusers to draw a line under these issues which I know have plagued them for nearly 3 years.

5. The complainants came to me initially for several reasons. First they were unhappy that my letter of 21 July 1999 and the report of H W Fisher and Co. on which it was largely based had, they alleged, been presented by the union's General Secretary (Mr Lyons) as giving him and the union a clean bill of health. Secondly during the hearing of an unfair dismissal claim by Ms Solomon, who had been one source of the original allegations, a number of new points had arisen including some critical views on the way H W Fisher had investigated the allegation that both Mr Lyons and its Finance Officer (Mr. N. Mendes) had been made substantial payments from two MSF accounts. Thirdly that the union was not letting members have access to H W Fisher's full report and fourthly that substantial payments had been made to Ms Solomon, Mr Chowcat and a Regional Officer, Mr H John, which had the appearance of "buying their silence".
  
6. Subsequently, further grounds were adduced for the appointment of inspectors under section 37B of the 1992 Act. It became clear that the Finance Officer, Mr N Mendes, had submitted some improper expense claims. This meant that the authentication of those claims, that initially convinced both H W Fisher and me, was based on several members of the union providing corroboration that was inconsistent with subsequent evidence. Further the General Secretary's ex chauffeur, Mr Keegan, made claims of the misuse of union resources by Mr Lyons. Separate allegations were made against Mr Gardner (the Chair of the General Purposes and Finance Committee) to whom my letter of 21 July 1999 was addressed. Finally, I was aware that allegations of corruption in MSF were

being published on the internet and in certain newspapers and that those newspapers still had concerns about the financing of Mr Lyons' house purchase.

7. These certainly amount to very strong reasons for me to consider the appointment of inspectors as requested by members of the union. Before reaching my decision though I decided to talk further with the union (usually with Mr Gardner) and H W Fisher. I also interviewed Ms Solomon, Mr Chowcat and Mr John. I saw Mr Lyons twice (at his request). Mr Mendes did not take up an invitation to talk to me. I obtained the witness statements prepared by both sides for the Tribunal cases initiated by Ms Solomon, Mr John and Mr Keegan, the last two of which were settled before they reached a Tribunal hearing.
8. During the course of my enquiries I used the powers under section 37B to require documents on two occasions. I did so not because of any reluctance on the part of anyone to provide the documents. Indeed the union and others were generally very ready to provide me with any information I requested. However by using my powers I secured my right to ask questions relating to the documents and protected the giver against any accusation of bad faith in providing them to me. I should add at this point that I commend Mr Lyons and his family for their willingness to allow H W Fisher access to their private bank accounts.
9. In discussion with me the union asked H W Fisher's forensic department to carry out a substantial programme designed to expand the ambit of their earlier report and the implications for the findings in that report of the discovery of Mr Mendes' improper

expense claims. At my insistence the further work by H W Fisher was done according to a detailed Work Programme agreed by me and drawn up with Davidsons, an independent firm of forensic accountants. This programme concentrated on those allegations where subsequent developments suggested further work was required. The final report on that work programme that was presented to me was dated 24 July 2001. The substance of the report had however been with me since mid-June.

10. I have now received confirmation from Davidsons that H W Fisher properly performed the work set out in the Work Programme; that the areas covered by, and the results of, the Work Programme are fairly stated in the Supplemental Report<sup>1</sup> dated 24 July; and that the conclusions reached in the Supplemental Report are consistent with and properly reflect the results of the Work Programme.
11. The union has signalled its intention to make the Supplemental Report (excluding the appendices) widely available within the union. With my agreement one substantial section will be withheld and possibly certain other small passages will be blanked out because they contain information made available to H W Fisher and to me the wider dissemination of which would, in my judgement, offend Mr Lyons' and his family's right to privacy.
12. Against that background I turn now to the six original allegations of financial irregularity within MSF and to the subsequent allegations concerning Mr Gardner. I should stress

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<sup>1</sup> It is referred to as the Supplemental Report to distinguish it from the original report on which my letter of July 1999 was based, and which was disclosed in connection with Ms Solomon's Tribunal hearing.

that in what follows I have drawn on all of the sources mentioned above not just the report from H W Fisher. Indeed paragraphs 29-31 discuss issues that have never been put to H W Fisher.

13. I shall not comment separately on Mr Keegan's claims and Mr Lyons' responses to them contained in the papers prepared for the Tribunal. The claims were struck out by the Tribunal considering Ms Solomon's case and were withdrawn in the settlement of Mr Keegan's claim before it was considered by a Tribunal. I will though comment below on Mr Lyons' approach in regard to expenses and the use of union resources.
14. Allegation One. Unauthorised interest free loans. In my letter of 21 July I effectively endorsed H W Fisher's conclusion that while no rules had been broken and that loans had been made to other full time officials it would have been more appropriate for the General Secretary to have sought approval from the Chair of the GPFC for these advances.
15. The only thing I would add now is that Mr Lyons has consistently referred to these as salary advances and therefore at the time denied the existence of any loans. I do not think a sum of £4,000, the equivalent of five weeks pay after tax, repaid over a 12 month period would normally be described as an advance of salary. In most people's eyes both the £4,000 and £2,000 were interest free loans. As H W Fisher said in their first report it would have been more appropriate if these loans had been approved by the Chair of General Purposes and Finance Committee. However they had been repaid before the allegations were first raised in February 1999 and also before the union's procedures had been tightened.

16. Allegations Two and Three and Six. Private use of union credit cards, claims for sustenance at meetings and other expenses by Mr Lyons. On these H W Fisher's first report concluded that proper justification had been made for the credit card expenses except insofar as a few items - totalling £357 - involved a degree of personal use. These they said should have been cleared with the Chair of the General Purposes and Finance Committee. They also noted that there existed significant variations between individual officer's interpretation of the appropriate category and level of expense claims that should be submitted for reimbursement. They recommended some codification of policies. New procedures were introduced from 1 January 2000 and these are being followed through and developed further in conjunction with the annual audit.
17. I did not then, and do not now, question H W Fisher's findings or judgement on these matters and accept that the role of General Secretary brings with it heavy and unpredictable demands and responsibilities. I note that Mr Lyons has said he "fully accepts [his] judgement and [the union's] systems have not been flawless". In so far as this relates to his expense claims I would put it somewhat more strongly in that I was extremely surprised to see the detailed items for which Mr Lyons claimed as expenses incurred on union business. Many of these have been the subject of adverse comment in the press and the media. Based on H W Fisher's report I can see why the impression has been created that Mr Lyons treated the union's expense system and his chauffeur as one of the perks of office and he pushed the concept of claims to be using them on union business to the limit. That though is a matter for the union and its members. It does not appear to me that he went beyond any limit that existed at the time and therefore it does not amount to circumstances that suggest I should appoint inspectors.

18. One matter that would justify the appointment of inspectors would be if claims were made for expenditure which was not incurred. The investigation of this possibility was one of the major parts of the Work Programme agreed with Davidsons and dealt with in H W Fisher's Supplemental Report.
19. H W Fisher examined expense claims made by, and paid to Mr Lyons, for 20 months during 1997 and 1998. These totalled just over £10,000. Approximately £3,300 of these expenses were either backed by some form of documentary evidence that they had been incurred or related to engagements eg. in the bars in the Palace of Westminster or in broadcasting studios, where the systems operated gave credibility to the claims. In connection with the claim for internal meetings, the value of which is incorporated within the £3,300 referred to above, I note that H W Fisher have commented as follows. "We have some concern that the amounts claimed for sustenance are higher than we would have expected given the type of food that RAL (Mr Lyons) said that he generally purchased. However RAL has subsequently provided explanations regarding purchases of beer, wine and other beverages with his meals that account for such additional sums."
20. H W Fisher also carried out an important series of tests on the £4,000 worth of claims in 1997. These tests were to see if Mr Lyons drew sufficient cash from his bank to pay for all of the items for which he subsequently claimed on the union. They found on first analysis that Mr Lyons appeared to consistently claim more in expenses than cash that he had withdrawn from his bank account. Mr Lyons produced a variety of explanations as to where he got the extra cash to meet these expenses. The most significant of these were cash transfers within his family, for which some corroboration was provided. Having

plotted Mr Lyons' expenses against hypothetical cash flows, modified to take account of his explanations of the alternative sources of cash, H W Fisher were unable to draw conclusions one way or another from the occurrence of the few small deficits arising within the final and more detailed financial analysis.

21. Against this background I do not believe that any inspectors I appointed would be able to add much to what H W Fisher have found. The events happened four years ago, the total sum involved is not huge and is made up of very many small items in the region of £5 to £20. The explanations given could remove the discrepancies reported and I therefore propose to take no further action on this matter.
22. Allegation Four. Nelson Mendes' expense claims. In their initial report H W Fisher concluded that most of Mr Mendes' expense claims to which they had access were supported by actual vouchers and that all significant discrepancies relating to meetings and journeys had been adequately explained and independently verified. Like me they had been deceived. It is now clear that Mr Mendes' claims for rail expenses to attend meetings around the country were backed by false documents (tickets or receipts issued at destination station not departure station).
23. Several of the meetings to which these claims were related were confirmed to H W Fisher by union officials and/or members. (It was partly this that led me to describe their investigation as thorough). Allegations were made to me that this stemmed from a co-ordinated effort to protect Mr Mendes and avoid giving credence to other allegations. This was denied by those named in the alleged cover-up operation. There is no



independent corroborative evidence on these matters and no indication that further investigation would determine or deal with the allegations of a coordinated cover up. However there remains a problem in relation to those individuals who were reported by H W Fisher as confirming meetings with Mr Mendes that it now seems he did not attend. I note, and welcome, the fact that the union is investigating these matters under its internal procedures.

24. When these improper claims came to light H W Fisher re-examined Mr Mendes expense claims for 1997. In total Mr Mendes claimed £12,089. The claim forms made available to them totalled £4,743 of these they concluded £3,797 were improper.
25. Mr Mendes has left the unions employment but the union is pursuing him for return of the money he was paid in respect of his improper claims.
26. Allegation Five. Payments to Mr Lyons and Mr Mendes from undisclosed bank accounts. This was and is much the most serious of all the allegations. Mr Chowcat who originally put it to the union's president subsequently withdrew it. However Ms Solomon and others have not. The payments were alleged to have been of over £29,000 and of £5,000. They were drawable on Unity Trust Bank accounts called either "MSF Guildhall" or "MSF Daxo". In my first letter I recorded and endorsed H W Fisher's conclusion that there was no evidence to support the allegation that the two accounts concerned actually exist or ever existed. H W Fisher's work on this allegation was attacked at Ms Solomon's Tribunal hearing which is why further investigation was needed.

27. Now that work is complete I would add that I am satisfied that MSF accounts at Unity Trust Bank in 1997, (the year to which the allegations relate) have again been thoroughly investigated (whether or not they had MSF in the title). The recipient of every cheque for £4,000 or more has been identified and it has been demonstrated that none were payable to either Mr Lyons or Mr Mendes and none were written on any account by the name of MSF Daxo or MSF Guildhall. H W Fisher also examined all non-cheque payments of £4,000 or more and confirmed that none were paid to Mr Lyons or Mr Mendes or anyone with their surnames. Some large payments were made by BACS in respect of payroll and expenses and these were tested on a restrictive sample basis. None of these payments could be those mentioned in the allegations. Moreover the bank accounts of Mr Lyons and his family show no unexplained receipts of £4,000 or more. Although I found Ms Solomon's evidence to me straight forward and plausible, I have to conclude that the payments to Mr Lyons and Mr Mendes which are the substance of Ms Solomon's allegation were not made.
28. In both the initial investigation by H W Fisher and during this latest round allegations were made that Mr Lyons used union resources to improve his properties in both England and France. In their first report H W Fisher were satisfied that Mr Lyons financed these improvements from separately identified personal borrowings. A view which I continue to accept and these issues have not been examined further.
29. It has also been put to me that there is a question about whether Mr Lyons has ever repaid the union for the loan he received for house purchase when he was Assistant General Secretary of ASTMS in 1988. At one stage it was proposed that this loan be converted

into a 16.5% share in the equity of Mr Lyons house. This conversion does not appear to have been effected. However I have seen clear evidence that Mr Lyons repaid part of the loan through deductions from his salary until November 1992 when he cleared the balance.

30. I turn now to the allegation directed at Mr Gardner's involvement with a company called Causeway Travel. This company, which no longer exists, received a considerable amount of business from MSF and Mr Gardner was on its board. Given that Causeway provided travel services for MSF members and that this was the bulk of its business it is neither surprising nor sinister that Mr Gardner was on the board of that company, nor that he was paid for that participation - a fact which I understand was covered in Causeway's reports to Companies House.

31. A more specific allegation was that an invoice for £2,000 submitted to MSF Whitehall College for work for Causeway Travel in March 1999 was not paid because the College knew nothing about the commissioning of the work. Subsequently the person who submitted it claims he was told to submit it again to MSF without any mention of it being for Causeway. This he did and the invoice was paid. I am satisfied with the explanation given by the union that the work concerned was a training programme for one of the union's IT trainees. It was meant to be, but turned out not to be, of use to Causeway, and hence it was appropriate to require an invoice for payment by MSF rather than Causeway.

## **Conclusion**

32. My enquiries have revealed a number of disturbing features in the financial stewardship of this union among full time officials in and around 1997. Mr Lyons received what I consider to have been interest free loans and which H W Fisher and some others in the union believe should have been authorised by lay officers of the union. Although no rules were broken my impression is that Mr Lyons appeared to treat the expenses system of the union and its provision of a chauffeur as one of the perks of office - pushing the claim to have been using them on union business to the limit. An extensive and detailed examination of his expense claims in relation to cash availability has failed to determine whether or not he claimed more in expenses than he actually spent. Mr Mendes (a former employee of the union) made and was paid for improper expense claims. An allegation that members of the union appear to have corroborated Mr Mendes improper claims is now being investigated by the union.
33. These are now largely matters to be resolved between the union and its members. The issue of improper claims and their corroboration is more serious but in my view the appointment of inspectors would add little to our knowledge of what happened. Moreover the union is seeking to recover its lost funds, is investigating the position of those who seem to have corroborated Mr Mendes improper claims and has tightened its procedures on handling expense claims.
34. The lack of transparency on the issue of loans and the extent of Mr Lyons expense claims probably increased the feeling that there might be something substantial in the other more serious allegations.

35. I am now as sure as I can be that neither of the accounts “MSF Guildhall” nor “MSF Daxo” exist or existed in 1997 when payments from them to Mr Lyons and Mr Mendes were alleged to have been made. I am similarly sure that no such payments were made from other MSF accounts.
36. I am also clear that the allegations relating to Mr Lyon’s house purchases and house improvements are ill-founded. As are the allegations relating to Mr Gardner and Causeway Travel.
37. It is for these reasons that I have decided not to appoint inspectors to formally investigate the financial affairs of this union.

A handwritten signature in black ink, appearing to read 'E G Whybrew', with a large, sweeping flourish at the end.

E G Whybrew  
Certification Officer