

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

Mr Edwin Dinsdale

v

GMB

Date of Decision

9 May 2018

DECISION

1. Upon application by Mr Edwin Dinsdale (“the claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):
2. I refuse to grant the claimant’s application for a declaration that on or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB rulebook by electing the Branch Secretary and Branch President for the Sellafeld Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting.
3. I refuse to grant the claimant’s application for a declaration that on or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB rulebook by electing the Branch Secretary and Branch President for the Sellafeld Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting and in doing so the Union denied the candidates the opportunity to address members.

Background

4. Mr Dinsdale brought this application as a member of GMB (“the Union”). He did so by a registration of complaint which was received at the Certification Office on 12 December 2017.
5. Following correspondence with my office, Mr Dinsdale confirmed his complaints as follows:-

Complaint 1

On or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB rulebook by electing the Branch Secretary and Branch President for the Sellafeld Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting

Complaint 2

On or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB rulebook by electing the Branch Secretary and Branch President for the Sellafield Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting. In doing so the Union denied the candidates the opportunity to address members.

6. At a hearing before me on 19 April 2018 Mr Dinsdale represented himself. A written witness statement and oral evidence was given by Mr Dinsdale. The Union was represented by Mr Edward Cooper of Slater and Gordon. Written witness statements for the Union were given by Ms Diane Robertson, Mr Christopher John Jukes, Mr William Coates and Mr Joseph Murdock. Ms Robertson, Mr Jukes and Mr Coates also gave oral evidence. There was also in evidence a bundle of documents consisting of 263 pages containing correspondence and the rules of the Union. Both the Union and Mr Dinsdale provided skeleton arguments.
7. Prior to the hearing, the Union gave notice that they wished to apply that I use my powers under Section 256ZA of the 1992 Act to strike out:
 - i. The whole of a witness statement provided for the claimant by Mr Kevin Carton
 - ii. A portion of Mr Dinsdale's own witness statement

The Union argued that these were irrelevant to the determination of the two complaints. Having considered written representations in advance from Mr Dinsdale on the above, upon application at the hearing I decided to strike out the whole of the witness statement provided by Mr Carton as it did not contain any material that was relevant to the issues to be determined by me in this case. Mr Carton's statement was, therefore, not considered nor did he provide oral evidence. I declined to use my powers to strike out part of Mr Dinsdale's witness statement. These decisions were accepted by both parties without further application.

Findings of Fact

8. Having considered the written and oral evidence and the representations of the parties, I find the facts to be as follows:
 - a. Edwin Dinsdale is a member of the Sellafield Branch of the GMB Union.
 - b. On 15 November 2016 there was a meeting between Mr Dinsdale, Carl Lewthwaite, Diane Robertson, Joe Murdock, Chris Jukes and Billie Coates.
 - c. At that meeting they discussed the upcoming elections for Sellafield Branch officials and whether the elections should be held by post rather than by a show of hands or ballot at the meeting.
 - d. The ballot went ahead in May 2017 and was conducted by post. It was managed by Electoral Reform Services and closed on Monday 19 June. Mr Dinsdale was a candidate for Branch Secretary.
 - e. Candidates were not allowed to canvass, produce or circulate literature.

The Relevant Statutory Provisions

9. 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;*

The Relevant Rules of the Union

10. The rules of the Union which are relevant for the purposes of this application are GMB rules:-

RULE 3: CHANGING AND AMENDING RULES

No new rules can be made, or any of these rules changed, amended or cancelled, unless agreed by a majority vote at Congress (Ordinary or Special), or by a ballot of members.

RULE 6 COMPLAINTS PROCEDURE FOR MEMBERS

1. *Any member who wants to complain must do so to their branch secretary, who will take the matter to the branch. If the member is not satisfied with the branch's decision or the branch decides it does not have the authority to deal with the matter, the member can appeal in writing to the regional committee within one month of the branch meeting. The regional committee will make the final decision. The Regional Committee may order a complaint to be struck out for scandalous, vexatious or unreasonable behaviour by the complainant or for excessive delay in proceeding with the complaint. Before making such an order the complainant will be sent notice giving them an opportunity to show why the order should not be made.*
2. *At each hearing before the branch or the regional committee, the member will have a reasonable opportunity*
 - *to present their case orally or in writing*
 - *to support their case with written statements or by using witnesses*
 - *to hear the evidence against their complaint, to answer it and to question witnesses.*

RULE 19: REGIONS AND HOW THEY ARE MANAGED

1. The union will be divided into regions, the geographical boundaries of which will be decided by the Central Executive Council when necessary. A region can be made

up of any number of members and branches. Each region will be run from a regional office.

RULE 23: REGIONAL SECRETARY

1. The Regional Secretary will be responsible to the Regional Committee and Regional Council for delivering the objectives of the GMB.

2. The Regional Secretary will be responsible for the good governance of the Region, including the maintenance of high standards of administrative efficiency, financial management and probity.

RULE 35: BRANCHES

1a. The purpose of each branch is to help us achieve the aims set out in these rules, giving priority to recruiting, organising, providing services and keeping members. As the basic unit of the union, branches will encourage members to take part in its democracy.

7. All branch officers, and the Branch Committee, will be elected at the last meeting in June every four years. Nominations can be made at any of the three meeting nights before the general meeting, and should be displayed clearly in the meeting rooms. If no nominations (or not enough nominations) are made at any of the three meeting nights before the general meeting, nominations can be made at the general meeting. However, if enough nominations have been made, nominations for that particular office will not be accepted at the general meeting.

8. Voting will be by way of show of hands or a ballot of those members taking part in the general meeting.

13. Members or branches must not issue any addresses or circulars without getting approval from the regional council, regional committee or central executive council.

14 The regional secretary will have the power to close any branch or merge any branches for any reason they consider reasonable or necessary.

RULE 42: DISSOLVING BRANCHES

1. Branches can only be dissolved (closed down) if the regional committee chooses to do so. When considering this, the regional committee must take account of the views of that branch's members

RULE 60 ELECTION DISPUTES

1. With any complaint or dispute about any election – whether this is for the Central Executive Council, general secretary and treasurer, organisers or otherwise – this rule will apply.

2a. The Central Executive Council may rule that, before making a decision about the complaint, the candidate appearing to have the highest number of votes should take office or be excluded from taking office.

2b. The Central Executive Council may also rule that, before a decision is made about the complaint (or complaints), the person should hold office and exercise the powers relating to that office, as if they had been validly elected without any complaint or dispute being made.

3. If, as in paragraph 2a above, the Central Executive Council rule that the candidate appearing to have the highest number of votes should take office, they will

automatically be classed as having ruled as in paragraph 2b above, unless it makes another ruling against this.

RULE 65: VOTING OPTIONS

1. *Wherever in these rules officials or other representatives need to be chosen by the votes of members, when important questions have to be settled by that kind of vote, the Central Executive Council (or with regions, the Regional Committee) can decide:*
(a) *whether the vote is held by an individual ballot or by a show of hands;*
(b) *whether the voting should take place in the workplace, at branch meetings or by post (or by a combination of these); and*
(c) *whether the votes should be counted in total, or by the majority vote of financial members in a branch carrying the total financial membership of the branch."*

CONSIDERATIONS AND CONCLUSIONS

Summary of Submissions

Mr Dinsdale

11. Mr Dinsdale told me that the decision to hold the election by post was taken by Mr Coates, the Regional Secretary. Mr Dinsdale's view was that, under Rule 65, the decision should have been taken by the Central Executive Committee. He submitted that Rule 65.1 reserves this power to the Central Executive Committee, or with regions, to the Regional Committee. He submitted that the Union had breached their Rules because Mr Coates had taken that decision.
12. On the second complaint Mr Dinsdale made the point that, had the election gone ahead under Rule 35 he would have been able to address members.

The Union

13. Mr Cooper submitted that Mr Coates had implied authority, under Rule 23 and Rule 35.1a, to take the decision as to whether to hold the election by post. And, even if he did not, Mr Coates had raised the issue of the postal ballot with the Regional Committee and it had been dealt with as part of Mr Dinsdale's complaint about the conduct of the elections. Mr Cooper submitted that the Regional Committee had endorsed and/or ratified the decision taken by Mr Coates. He argued that, where powers are reserved to a Committee or to a specific role such as Regional Secretary this should be read as including those Union officials who work on the relevant committee or with the post-holder. He also submitted that, even if the Union had breached its Rules, the Union were entitled to rely on a defence of Estoppel by Convention because Mr Dinsdale had agreed to the election being held by postal vote and therefore should be estopped from reneging on his agreement by calling for a re-election by a show of hands.
14. Mr Cooper referred me to *Dixon v Blindley Heath Investments Limited* and *Central London Property Trust v High Trees House Limited*. He argued that the principle of Estoppel by Convention meant that where an individual had rights under a contract (which, in his view, included the rights given to union members under a union's rules) and there was a shared understanding between the union and that member to waive that right, the union member could not seek to enforce that right at a later date. He

argued that this was contrary to the principle of fairness and equity. To find against the Union on complaint 1, or to enforce Mr Dinsdale's right, to an election under the Rules now, would result in an unjust position. He explained that the unfairness that would result would include those who had been successful in the election who would be required to stand again whilst Mr Dinsdale who had at the very least, acquiesced in the decision, without demonstrating any objection or opposition until he was unsuccessful, would have a second opportunity to stand in the election. He also argued that allowing the Union to rely on an estoppel defence would prevent the Claimant from benefitting from his poor behaviour.

15. Mr Cooper told me that the postal ballot had resulted in a significant increase in the number of voters, thus broadening democracy in line with Rule 35.1a. Any decision which resulted in the election being considered void would have a negative impact on democracy within the branch.

16. Mr Cooper submitted that, on the second complaint, the Rules did not give candidates a right to address members and so no rule had been breached. The opportunity was there for Mr Dinsdale to have addressed Members at a Branch meeting or to have sought approval from the Regional Committee to canvass members under Rule 35.13 but he did not do so. Further, there was no evidence of an established custom and practice for candidates to address members and the witnesses who gave evidence were only able to identify one previous election within the branch where such an opportunity had been afforded to candidates.

Evidence

Relationships within the Branch

17. All witnesses told me that there had been disagreements within the Branch leading up to the period in which the Branch elections were due to be held. Mr Dinsdale told me that the relationship between him and the Branch Secretary, Mr Murdock, had broken down and that he and Carl Lewthwaite, another potential candidate in the Branch elections, had been prevented from taking up nominations as shop stewards.

18. Ms Robertson, Mr Jukes and Mr Coates also described difficulties within the Branch at this time.

The meeting on 15 November 2016

19. On 28 October 2016 Mr Dinsdale requested a meeting, on behalf of Mr Lewthwaite and himself, with Mr Coates to discuss the ongoing issues within the Branch. That meeting went ahead on 15 November 2016 at the Carlisle office of the Union. Mr Jukes described this as an informal meeting at Mr Dinsdale and Mr Lewthwaite's request; consequently the Union did not take a note of the meeting.

20. The first part of the meeting was attended by Mr Dinsdale, Mr Lewthwaite, Mr Jukes and Mr Coates. Mr Jukes explained that this was to allow Mr Dinsdale and Mr Lewthwaite to air their concerns. Mr Coates explained that he wanted to discuss the issues they had with Mr Murdock and Ms Robertson with a view to those matters being put to Mr Murdock and Ms Robertson. It is clear from their witness statements that

neither Mr Jukes nor Mr Coates felt that the concerns were substantive. Mr Jukes said that he was not overly impressed by their concerns. Mr Coates said that it became clear to him that what they (Mr Dinsdale and Mr Lewthwaite) said had no substance. He also told them that this was his view and that the constant disruption (from Mr Dinsdale and Mr Lewthwaite) was totally inappropriate and was hampering GMB's relationship with the employer and membership.

21. Mr Murdock and Ms Robertson subsequently, joined the meeting. The concerns which had been raised by Mr Dinsdale and Mr Lewthwaite were put to them. There is no record of that meeting but Mr Dinsdale, said in evidence, that it was heated. Mr Coates explained, in his witness statement, that the allegations were not substantiated.
22. Mr Jukes explained that Mr Coates was looking for a settled position within the Branch. He said that both he and Mr Coates were concerned that the infighting within the Branch was having a negative impact on the Union's relations with the Employer.
23. Mr Coates told me that, during this part of the meeting, Mr Dinsdale said he wanted to be a shop steward but Mr Coates asked him to defer applying as part of the process of improving relationships within the Branch. Mr Coates had originally suggested that this would be for a period of one year and agreement was reached with Mr Dinsdale that this should be for a six month period. Mr Dinsdale construed this as an attempt to prevent him from standing as a shop steward. He also described what he perceived to be threats from Mr Coates that, if he did not comply with requests from Mr Coates, the Branch would be closed down.
24. When giving evidence, Mr Coates explained that he told Mr Dinsdale and Mr Murdock that if the difficulties between them continued to disrupt the Branch he may have to close down the Branch. Ms Robertson agreed with Mr Coates's recollection of what was said at the meeting on 15 November 2016.
25. The meeting then moved on to discuss the upcoming elections. There was a proposal to conduct these elections by postal ballot because of the issues which had arisen within the Branch. Mr Coates told me in his witness statement that he had made the proposal. Ms Robertson said, when giving evidence, that Mr Dinsdale had raised the issue of a postal ballot at the Branch meeting in September 2016. This was consistent with Mr Murdock's witness statement where he explained that he believed that Mr Dinsdale and Mr Lewthwaite had raised this at an earlier Branch meeting. Mr Dinsdale was clear that this was not the case and that the proposal had come from Mr Coates at the meeting on 15 November 2016.
26. On reading the relevant documents within the hearing bundle it appears that all six people at that meeting agreed with the proposal that the election should go ahead by post. In giving evidence Mr Dinsdale, however, has been very clear that he did not agree to the proposal. Under cross examination and in reply to my questions he said that he did not express any agreement, or objection, to the proposal. He told me that he was silent at that stage of the meeting and that he did not give any consideration to the proposal; he neither supported nor objected to it and expressed no view. This is in contrast with evidence given by Ms Robertson, Mr Jukes and Mr Coates at the hearing and with Mr Murdock's witness statement. The Claimant did not produce any evidence in support from Mr Lewthwaite.

27. It is clear from papers provided at the hearing that, whatever view Mr Dinsdale held on 15 November 2016, he subsequently expressed his support for the proposal. For instance in his email of 10 April 2017 to Mr Coates he explains that he (and Mr Lewthwaite) totally agree with the proposal to elect via a postal vote and then goes on to request that the Electoral Reform Service manage the elections. Additionally, in his email to the General Secretary, Mr Tim Roache, on 17 July 2017 he describes the instruction given by Mr Coates to use a postal ballot as “brave and courageous”.
28. In his witness statement, Mr Dinsdale explained that he believed that Mr Coates had authority to instruct him as to how the election would be conducted and that he did not complain about any part of the process before the election because he was under “duress” from Mr Coates. He said that, during the meeting on 15 November, Mr Coates told him that he would have problems if he decided to complain. He also said that the constant threat of the Branch being shut down placed him under duress.
29. During cross-examination, Mr Dinsdale agreed that Mr Coates had used the threat of closing down the Branch at the meeting on 15 November 2016 in the context of the difficult relationships within the Branch. He agreed that this was the only time that the threat was made. Ms Robertson and Mr Jukes gave evidence that this was the case. Mr Coates gave evidence that this was the only time that he made reference to the option of closing down the Branch and that it was made only in the context of the relationship issues at that time.

Authority for the decision to hold a postal ballot

30. Mr Coates and Mr Dinsdale agree that Mr Coates took the decision to hold the election by postal ballot. Ms Robertson told me that there was an agreement about the postal ballot by everyone at the meeting. Mr Jukes told me that he believed that the decision was taken by the six people at the meeting; he could not, however, explain to me how this was consistent with Rules 35.7, 35.8 and 65.
31. Mr Coates was clear that it was his decision to hold the ballot and that he reported this, verbally, to the Regional Committee and that he would have raised it with the Regional President. Mr Coates also told me that the authority for the decision was part of Mr Dinsdale’s complaint to the Regional Committee. That appeal was dismissed by the Regional Committee in November 2017.
32. At the hearing Mr Dinsdale told me that he had previously been involved in only one Branch election in 2013. He told me that the process was to seek nominations at the three Branch meetings ahead of the Branch General Meeting. The election would take place by a show of hands at the general meeting. Candidates had the opportunity to make an address to members at the meeting before the show of hands took place. Mr Dinsdale told me that the issue of direct canvassing with members was not an issue he gave any consideration to at the time. He did not know whether it would have been allowed. Ms Robertson told me that she was also present at the 2013 Branch meeting when the election took place and agreed that Mr Dinsdale had described the process which had taken place. She had acted as an auditor at that meeting. She had not been present at any other Branch elections.

33. Mr Jukes told me that he was aware of one other Branch election which had taken place by a postal ballot. This was the Northumberland local authority Branch and followed the resignation of a Branch Secretary. His understanding was that the proposal had come from Branch members and he had discussed this with them and agreed that it should go ahead. Mr Coates gave similar evidence about this election but explained that he took the decision that the election would be by postal ballot.

Canvassing

34. Mr Dinsdale told me that the decision to go ahead with the election by postal ballot meant that he had no opportunity to canvass the Branch membership. He said that this meant that the election was nothing more than an opinion poll. Mr Dinsdale had raised the question of canvassing with Mr Coates by email on 10 April 2017; Mr Coates replied on 28 April 2017 to say that there would be no canvassing. Mr Dinsdale told me that there had been no communication between himself and Mr Coates on this point between 10 and 28 April.

35. Mr Coates told me that he had taken the decision that there would be no canvassing and that this was consistent with Rule 35. 13. He agreed that Rule 35. 13 enabled the Regional Committee to consider an application for approval for canvassing. He told me that this meant that canvassing could have gone ahead with the approval of the Regional Committee. He said that this was not covered in any correspondence with Mr Dinsdale, or other candidates, because they had not made an application under that Rule.

36. Mr Coates told me that the prohibition on canvassing did not prevent the candidates from other forms of electioneering. He explained that they could have used Branch meetings to address members in the same way they would have done if the vote had been at a Branch meeting. The only difference would be that the canvassing would not take place at the same time as the vote.

Mr Dinsdale's complaint to the Union

37. The election closed at noon on 19 June 2017. Mr Dinsdale was unsuccessful in the election; Mr Murdock was successfully elected as Branch Secretary. The margin was five votes with Mr Murdock receiving 352 votes and Mr Dinsdale 347 votes. 14 Votes were found to be invalid or blank.

38. Mr Lewthwaite contacted Electoral Reform Services on 22 June with some questions around the conduct of the ballot. Mr Dinsdale then contacted Mr Coates on 26 June to inform them that he and Mr Lewthwaite intended to complain about the ballot because they believed that the list of members provided to Electoral Reform Services was incorrect. There is a great deal of correspondence around the handling of the complaint, and the complaint itself, before it was eventually resolved by the Regional Committee. Most of that is not relevant to this decision; however, there are some key issues.

39. Mr Dinsdale and Mr Lewthwaite put the complaint to Mr Roache, the General Secretary of the Union, on 17 July 2017. The complaint, which was made under Rule 60 at the time, included the following:

“The instruction Billy Coates gave to ballot all members to their home address, and broaden democracy within the Sellafeld branch was a brave and courageous move. With hindsight this move has proved to be extremely hard to manage.”

40. Mr Dinsdale gave evidence on this under cross examination and in response to questions from me. He accepted that he must, at the time of writing the email in July 2017, have agreed, in principle, with the decision to hold the election by post. He said that his concern at that time was about the practicalities of the conduct of the election rather than the principle. He denied that, at this stage, he would have been embarrassed to complain about the authority for the decision because he had been part of the decision making process.
41. For reasons which are not relevant to this issue, the complaint was not heard under Rule 60 and was made again on 7 August 2017 under Rule 6. At that stage it did not include a complaint about the authority for the decision. The Regional Committee considered the complaint at its meeting on 17 November 2017. Ahead of the meeting, on 9 November 2017, Mr Dinsdale and Mr Lewthwaite emailed Mr Coates and asked for supporting information to be provided to the Regional Committee. This included a complaint that the election was held by postal ballot and was, therefore, outside the Rules of the Union. This is the first documented evidence that Mr Dinsdale was not happy that the election had gone ahead by postal ballot. Mr Dinsdale told us that he had raised it at the Branch meeting in September 2017 when the complaint was read to the Branch. Ms Robertson could not recall whether she was at that meeting so could not add to our understanding on this.
42. Under cross-examination, Mr Dinsdale confirmed that this point was an addition to the complaint at a late stage and that the earliest he had raised it was in September 2017.
43. The Regional Committee considered the complaint on 17 November 2017. The notes of the meeting are extensive and a record of the discussion. They show that the discussion focused on the conduct of the election and contain very little information about the authority for holding a postal ballot. The Committee’s decision was that there was no case to answer. I have not been provided with a record of the Committee’s reasons for the decision.

Conclusion

44. The nature, and reasons for, the disagreements are not directly relevant to this complaint but it is important to note the atmosphere within the Branch during the period running up to and including the election period. There had been a breakdown in relationship between Mr Dinsdale, who had been active in the Branch for a number of years, and Mr Murdock, the Branch Secretary.
45. Mr Dinsdale’s written evidence was that he had been put under duress by Mr Coates to accept the proposal to hold the election by postal ballot. There is, however, no evidence to support this within the papers before the hearing. On the contrary, Mr Dinsdale’s emails of 10 April 2017 and 17 July 2017 suggest that he supported the decision. Under cross-examination, Mr Dinsdale agreed that the threat, made by Mr Coates, to close down the Branch, was made only at the meeting on 15 November 2017 and only in context of repairing the relationship between Mr Dinsdale and Mr

Murdock. I do not agree, therefore, that Mr Dinsdale was put under duress by Mr Coates to agree to a postal ballot.

46. As to the decision itself, Mr Coates made it clear that he was responsible for that decision. Mr Dinsdale agrees that this was the case. Ms Robertson and Mr Jukes take a different view as their evidence, at the hearing, was that all six people at the meeting on 15 November participated in that decision. On balance, however, I am satisfied that having reached, he thought, agreement on the principle of the proposal Mr Coates took responsibility for the decision and putting it into practice. I can see nothing in the Union Rules which requires any consultation, or agreement, with Union members, officials or potential candidates. Whether, or not, Mr Dinsdale agreed to the decision is not, therefore, relevant to my decision as to whether the Union complied with Rule 35. 7 and 35. 8. It is worth noting, however, that on his own evidence, Mr Dinsdale did not object to it at that meeting and raised no issue with the principle of the decision until some time after the election result was declared.
47. It is not clear to me that Mr Coates had the authority to make that decision. Rule 65 enables the Central Executive Committee or, with Regions the Regional Committee, to decide on the methodology of voting. I can see nothing in the Union Rules which explicitly delegates this power to the Regional Secretary; nor have I been provided with any evidence that such a delegation has been made.
48. Mr Cooper and Mr Coates explained that the Regional Secretary had implicit power to make the decision through Rules 23 and 35.1. Rule 23 makes the Regional Secretary responsible to the Regional Committee for delivering the Union's objectives and, amongst other things, gives responsibility for good governance and high standards of probity. Rule 35. 1 describes branches as the basic unit of the union and that branches will encourage members to take part in its democracy. During submissions Mr Cooper also argued that the Regional Secretary is akin to a Chief Executive and that, where the Union Rules assign authority to a role or committee that should be read to include those who work with that role or committee including the Regional Secretary.
49. I do not find this argument to be very persuasive. The Rules are clear about assigning authority to the Central Executive Committee or, with Regions, the Regional Executive Committee and I cannot see how this can be set aside by a broad description of the Regional Secretary's responsibility. Rather, it reads to me as if Rule 65 is reserving the power to decide on the voting methodology to the relevant Committee thus preventing any implicit delegation. Additionally, during evidence Mr Coates referred us to Rule 35. 13 and told me that canvassing could not go ahead without the approval of the Regional Committee. If the Rules give Mr Coates, as Regional Secretary, broad power to take decisions on behalf of the Regional Committee then surely this would include Rule 35.13.
50. I agree with the Union that, as Rule 19 describes a region as being comprised of branches, the reference to the Region in Rule 65 includes branches. Consequently, I agree with Mr Cooper that the Regional Committee has the power to reach a decision as to the voting methodology for branch elections. I do not, therefore, accept Mr Dinsdale's argument that only the Central Executive had authority to take this decision.

51. Mr Coates gave evidence that he raised the issue of the postal ballot with the Regional Committee, but that no paper was produced and the discussion was not recorded in the minutes. Mr Cooper has submitted that this should be taken as the Committee having endorsed or ratified the decision. I have not been provided with any evidence from any other member of the Regional Committee.
52. Both Mr Coates and Mr Cooper told me that, as the decision to hold a postal ballot was included in Mr Dinsdale's complaint to the Regional Committee, and the Committee did not uphold the complaint, the Committee had endorsed or ratified the decision. I have read the notes from that meeting and can see that the issue of the decision to hold an election by postal ballot was briefly discussed. The notes do not record any objections to the principle of the postal ballot. I have not been provided with any record of the reasons for the decision; all that I have is the notes of the meeting and the decision letter which was sent to Mr Dinsdale. Both simply record the decision as no case to answer
53. Consequently, I do not know the nature of the discussions with the Regional Committee before or after the election. However, I do have evidence from Mr Coates that he raised the issue with the Regional Committee and I have evidence that the Committee did not uphold the complaint from Mr Dinsdale. This evidence has not been contested and supports the Union's position that the Committee approved the decision to hold the election by post.
54. Whilst it would have been helpful to have heard direct from the Committee, I have no reason to believe that Mr Coates did not raise it with the Committee. I have no record of the Committee's discussion or decision before the election took place. However, had the Committee decided that the election should have taken place at the Branch Meeting then the postal ballot would not have gone ahead. Consequently, I can infer that the Committee agreed that there should be a postal ballot in this election. On that basis, I conclude that there was authority from the Regional Committee for the decision to hold the election by postal ballot.
55. I would add that it is the discussion with the Regional Committee, ahead of the ballot, that has been the most important factor in my decision. I would have found it more difficult to treat the decision as having the Regional Committee's approval if the only evidence before me was the Committee's consideration of the complaint after the election had taken place. Additionally, the position would have been much clearer, and this complaint and hearing could have been avoided, if the Committee's discussion of the decision to hold a postal ballot had been recorded within the minutes.
56. Complaint two falls automatically because I have found that the decision to hold a postal ballot was not in breach of the Rules. As this was discussed at the hearing, however, I think it would be helpful to look at the issue of canvassing. I agree with the Union that there is no right to canvassing within the Rules. This is not quite Mr Dinsdale's point. His complaint is that the decision to move to a postal ballot prevented him from addressing those members who would vote in the election. Such opportunity would normally arise at the Branch meeting at which the vote would take place (as was the case in the 2013 elections). Mr Coates explained that electioneering could have taken place at the regular Branch meetings and that candidates could have applied to issue election addresses to members under rule 35. 13. This is clearly the case; however, I am surprised that when Mr Coates was approached by Mr Dinsdale

and other candidates he did not draw this to their attention. Bearing in mind how infrequent postal elections appear to be, I would have thought it part of his role to ensure that candidates were aware of their options. His approach here also appears to be inconsistent with his views on delegated authority. This is, however, a matter for the Union rather than me.

57. In terms of the complaints before me, I do not agree with Mr Dinsdale that the decision to hold the election by postal ballot was in breach of the Union Rules. Nor do I agree that candidates were denied the opportunity to address members.

Declaration

58. I refuse to grant the claimant's application for a declaration that on or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB rulebook by electing the Branch Secretary and Branch President for the Sellafeld Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting.

59. I refuse to grant the claimant's application for a declaration that on or around 20 June 2017, the Union breached rule 35 parts 7 and 8 of the GMB Rulebook by electing the Branch Secretary and Branch President for the Sellafeld Branch by a postal vote of all members rather than by a show of hands or a ballot by those members taking part in the general meeting and in doing so the Union denied the candidates the opportunity to address members.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a long horizontal flourish extending to the right.

Mrs Sarah Bedwell
The Certification Officer

