D/13-18/19-20

Decision of the Certification Officer on an application made under Section 108A (1) of the Trade Union and Labour Relations (Consolidation) Act 1992

Watkins

v

British Medical Association

Date of Decision 14 October 2019

Decision

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Decision

1. Upon application by Dr Stephen Watkins ("the applicant") under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") I make the following declaration:

    I do not uphold Complaints 2 to 6 as set out in the appendix to this decision.

    Complaint 1 is conceded by the Union and is upheld.

    I decline to make an enforcement order for the reasons explained at paragraphs 178 and 179.

Reasons

2. Dr Watkins brought this current application as a member of the Union. He did so by a registration of complaint form received at the Certification Office on 26 July 2018.

3. Following correspondence with my office, Dr Watkins confirmed his seven complaints on 22 January 2019. I struck out the seventh complaint by way of a decision dated 29 July 2019. The remaining six complaints are set out at in the appendix to this decision.

4. At a hearing before me on 25 and 26 September 2019, Dr Watkins represented himself and was assisted by Dr Ron Singer. Dr Watkins submitted a witness statement and gave oral evidence. Written witness statements were also provided by Dr Jackie Applebee, Mrs Elizabeth Watkins, Dr Thabo Miller, Ms Caren Evans and Professor Allyson Pollock. Of these, Dr Miller, Ms Evans and Professor Pollock did not attend the hearing. Mrs Watkins attended and Dr Applebee made herself available to give evidence by telephone but, as neither party nor I had any questions to put to them, they were not asked to give oral evidence. As stated at the hearing, I am giving their witness statements (but not those of Dr Miller, Ms

Evans and Professor Pollock) the same weight as if they had given evidence at the hearing.

5. The Union was represented by Mr John Hendy QC of Counsel, instructed by Ms Karishma Shah-Tanna, consultant solicitor of the Union's legal department. Written witness statements for the Union were given by Ms Nicky Jayeshinghe, the Union's Director of Corporate Development; Ms Debra Jones, a human resources consultant and chair of the 'Living our Values' panel that heard the original complaint against Dr Watkins (set out in more detail below); and Ms Helga Breen, partner in national Employment team DWF LLP and Head of London Employment Team and chair of the Union's panel that heard Dr Watkins' appeal of the original decision. All three also gave oral evidence. There was in evidence a bundle of documents consisting of 603 pages containing correspondence, and the rules of the Union. Both the Union and Dr Watkins provided skeleton arguments.

Findings of fact

6. On 17 August 2017 Dr Andrew Dearden made a complaint about the conduct of Dr Stephen Watkins. The complaint was made to Ms Nicky Jayesinghe, Director of Corporate Development at the BMA.

7. The BMA considered the complaint under the Living Our Values ('LOV') Support and Sanctions Process. A Panel chaired by Ms Debra Jones, considered the complaint on 12 October 2017. Dr Watkins attended the panel session.

8. The Panel concluded that Dr Watkins had failed to meet the standards of behaviour required by the BMA Code of Conduct and that a sanction should be applied. It determined that Dr Watkins should be suspended from all BMA Committees and other elected roles for a period of 12 months, beginning 24 October 2017. The suspension extended to access to listservers and Dr Watkins'

right to stand for elected positions within the BMA. Dr Watkins was informed of the decision by letter on 24 October 2017.

9. Dr Watkins appealed the decision on 12 November 2017.

10. An Appeals Panel was convened for 23 January 2018. Dr Watkins had requested that each member of the Panel should be female; the BMA met this request.

11. The Panel met on 23 January 2017. Dr Watkins attended the Hearing.

12. The Panel rejected Dr Watkins' grounds of appeal and upheld the Decision of the original panel, except in relation to the finding concerning his motivation.

13. The Panel concluded that the sanction applied by the original Panel was proportionate, reasonable and appropriate.

14. On 9 January 2018, Sir Sam Everington made a complaint to the BMA about Dr Watkins's conduct. Ms Jayesinghe sent a copy of the complaint, on 12 January 2018, to Dr Watkins.

15. Ms Jayesinghe wrote, on 30 January 2019, to Dr Watkins to explain that the BMA was satisfied that Sir Sam's complaint did not raise an issue which should be pursued further and that the BMA would not be taking any further action.

16. On 12 February 2018, Dr Watkins submitted a nomination for the BMA Council. On the same day Mr Alex Lonie, Associate Director of Electoral Reform Services, told Dr Watkins that the Returning Officer had decided that Dr Watkins was ineligible to stand and so his nomination had not been accepted.

The Relevant Statutory Provisions

17. 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

18. The Rules of the Union which are relevant for the purposes of this application are:-

> **BMA Living our Values support and sanctions process**
>
> **Principles**

2. The process is fair, documented and applied consistently to all members.

…

17. The process should not be used to stifle constructive debate or deter members from seeking election.

Tackling poor behaviours informally

Panel to decide on appropriate action

7.1 Where misconduct is confirmed, it is usual to give the member a verbal or written warning. A further act of misconduct would normally result in a first or final written warning. If a member's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the actions have had, or are likely to have, a serious or harmful impact on the Association.

7.2 A first or final written warning should set out the nature of the misconduct and the change in behaviour required (with timescale). The member should be told how long the warning will remain current and the consequences of further misconduct within the set period of the warning.

7.3 Where a panel has decided that an individual should be suspended or expelled, the BMA CE should be made aware of and approve the decision. The BMA CE would normally be expected to uphold the decision of the panel but should safeguard against the sanction being applied inconsistently or disproportionately. The member should then be informed as soon as possible of the reasons for the suspension or dismissal, the date on which it takes effect and their right of appeal.

7.4 Some acts, termed gross misconduct (see 7.6), are so serious in themselves or have such serious consequences that they may call for suspension or expulsion without notice for a first offence.

7.5 A fair complaint process should always be followed, before suspending or expelling a member.

7.6 Acts likely to be viewed as gross misconduct at the BMA are likely to include theft, fraud, physical violence, sexual assault/harassment, gross negligence or serious breaches of confidentiality.

7.7 Where a member has been suspended from representing their constituents or expelled, their constituents should be consulted as a part of the process to agree an alternative means of representation.

7.8 Suspension should have a set time limit.

7.9 Suspended members may be asked to meet agreed conditions before resuming their responsibilities. At the end of suspension, the member will be welcomed back to their role, except in circumstances where their term of office has expired.

7.10 Where a member is persistently unable or unwilling to attend a complaint hearing without good cause the BMA will make a decision on the evidence available.

Choice of sanctions

8.1 If the complaint is upheld, the panel (see section 4) has a range of sanctions available to them, which should be proportionate to the issue being investigated. These include but are not limited to:

8.1.1 Member is required to attend relevant training.

8.1.2 Verbal warning.

8.1.3 First written warning.

8.1.4 Final written warning (prior to application of 8.1.5).

8.1.5 Stripping of BMA honours – time bound.

8.1.6 Suspension from listserver – time bound.

8.1.7 Suspension from participating in committee business – time bound.

8.1.8 Suspension from some or all of the BMA offices held by them – time bound

8.1.9 Suspension from membership of the BMA – time bound. This can include issuing a public censure in respect to the member's conduct.

8.1.10 Expulsion from some or all of the BMA offices held by them – right to represent the BMA.

8.1.11 Expulsion from membership of the BMA – right to be represented by the BMA.

BMA Articles of Association

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.

(10) Suitable legal advice will be available to the panels appointed by council.

(11) Council shall have the power to determine the detailed procedures appropriate for the investigation and hearing process under this article.

PART 6 - COUNCIL AND COMMITTEES

Powers and Duties

72. The council is the body responsible for the lawful conduct of the Association as a recognised trade union and as a professional association. The council shall exercise such powers and do such acts and things as may be exercised or done by the Association or are conferred on it pursuant to the articles and bye-laws and are not, by the provisions of any statute or of the articles, directed to be exercised or done by the board, a general meeting or by the representative body. In particular the council shall have power, in the interval between successive meetings of the representative body, to formulate and implement policies (not being inconsistent with any policy already laid down by the representative body and subject to article 77(2)) on any matter affecting the Association.

Bye-laws of the British Medical Association

58. Mode of Nomination and Election of Elected Members of Council

(1) All candidates shall be voting members of the Association.

(2) A candidate's UK nation or region shall be determined by their address on the Association's register of members at the time when nominations in the election open.

(3) A candidate's primary branch of practice shall, save for medical students and retired members, be determined by that category of medical work in which, at the time when nominations in the election open, the candidate spends the majority of their remunerated medical time.

(4) In the event of a dispute as to a candidate's eligibility to stand for election, the decision of the returning officer shall be final.

(5) In the event of a tie in the election, the result will be decided by drawing lots in the presence of the chief executive and the independent scrutineer for the election.

(6) A candidate may nominate themselves for only one of the following categories: (i) Geographical, (ii) BoP and (iii) Direct UK. All candidates who have nominated themselves in the Geographical, BoP or Direct UK categories will also be automatically entered into the General UK-wide ballot.

(7) A candidate who is elected to a seat in the Direct UK category shall be removed from the ballot for the General UK seats, and their votes shall be redistributed.

(8) If a candidate who is elected to a seat in the Geographical or BoP categories is also elected to a General UK seat, this shall have the effect of reducing the number of General UK seats by one.

(9) There shall be no age restriction on membership of council.

Background

The BMA's disciplinary process

19. The BMA is a Special Register Body and so, unusually for a trade union, is incorporated as a limited company, registered with Companies House as well as being included in the List of Trade Unions maintained by my office. Consequently, the BMA must be compliant with the law relating to limited companies and to the law relating to trade unions.

20. Its Articles of Association include provisions for investigating the conduct of BMA members. Article 14 sets a process for investigating members whose conduct has been called into question under Article 13. This includes conduct which is detrimental to the honour and interests of the medical profession or the Association or is likely to bring the profession into disrepute. It also includes any allegations that a Member has wilfully and persistently refused to comply with the articles, bye-laws or rules of any division or branch of which they may be a voting member.

21. Article 14 sets out, in broad terms, the process which should be followed including the investigations, hearings (including an appeal) and sanctions. Article 14(11) contains a provision which enables the Council "to determine the detailed procedures appropriate for the investigation and hearing process under this article".

22. In May 2017, BMA Council adopted the Living Our Values (LOV) Code of Conduct and Support and Sanctions Process to enable the BMA to deal with conduct and behaviours which may not fall within Article 13.

Dr Watkins' Behaviour

23. In summer 2017, the BMA Council held elections for its Deputy Chair. Following the announcement of the results Dr Watkins made a post on the BMA Council listserver which was addressed personally to the successful candidate. The text of the post is set out below:

> "Dear X
>
> As you know I have a very deep respect for you. I regard you as a friend – not one of my closest friends but certainly a friend.
>
> I am not therefore going to offer you my congratulations because you also know that I believe Y deserved to be re-elected, that you have been used as an instrument to remove him and that I am angry with you for standing. You know this because I have told you so. I have told you so because you are my friend. I do not intend to mar that friendship with insincerity. I am disappointed by your election and you know that.
>
> Amongst those who voted for you there are those who share my deep regard for you. They share my regard for your courage and determination and vision and especially for the immense amount of work you have put into the cause of women's equality. They believe that you can bring those qualities to the role of deputy chair and make a great success of it.
>
> However amongst those who voted for you there are others whose votes were cast for a different reason. They voted for you because they do not think you had the same courage as Y. In that respect they were wrong – they made the mistake of not recognising quiet courage. But they also thought you were inexperienced and that it would take you time to work

your way into the role. As I told you at the ARM I think they may have a point.

The more malevolent group of your voters are not the majority of your voters. But they are the group who formed your majority. They voted for you because they know that Z recognises the need for change in the BMA – the need to make it less centralist, less corporatist, more inclusive, more open, more supportive of its members. They know also that there is a majority of Council who support that view. So they thought the best way to deprive Z of support in that endeavour was to vote for the candidate who they thought was the least determined and least experienced.

They are wrong in the first part of that judgment but unfortunately they are right in the second. If you are to prove that they miscalculated then you will need to summon every ounce of your courage, vision and determination to overcome your inexperience and the naivety that flows from it.

I hope that you can prove them wrong. I know that you can do so eventually. I do not know whether you can do so in time. I urge you to summon every ounce of the qualities for which I admire you and to prove me wrong in my doubts.

One of the good outcomes of this election result is that Y will now be able to give to UNITE that huge amount of time, effort and energy that over the last year he has given to the BMA. As his Vice-President I certainly expect a quicker reply to my e mails in future. If you can prove me wrong in my doubts and if you can show that the more malevolent amongst your voters seriously miscalculated then those of us on the left who are deeply unhappy at the moment may yet come to thank you for your work and to thank you for giving us our President back.

So X, when you find out to your shock what it is that you have let yourself in for, summon up every ounce of that quiet determination and courage for which I have befriended you and prove to me that my doubts about your election were wrong.

I look forward to being able to tell you that I regret the harsh words I used to you in our conversation at the ARM and that I was mistaken.

In affection and solidarity

Steve”

24. The nature of the listserver meant that the post was copied to all Council Members. Dr Watkins told me that he had always agreed that he was wrong to make the posting. His position is that he had not intended the posting to be interpreted as being critical of the successful candidate. He told me that, once he realised that it was being interpreted in that way he retracted his post, apologised to the successful candidate in private and posted, on the listserver, that he had made a private apology.

25. Following Dr Watkin’s posting, Dr Andrew Dearden, Treasurer of the BMA, responded to it on the listserver and then made a complaint to Ms Jayesinghe about Dr Watkins. Ms Jayesinghe dealt with it as a complaint made about Dr Watkin’s compliance with the LOV Code of Conduct and handled the complaint according to the LOV Support and Sanctions process.

26. Shortly after Dr Dearden’s complaint, Dr Watkins also made a complaint about Dr Dearden to Ms Jayesinghe who also followed the LOV Support and Sanctions process in dealing with this complaint. Dr Watkins subsequently withdrew his complaint.

Considerations and Conclusions

Adoption of Living our Values

27. A significant area of dispute between Dr Watkins and the BMA is how the disciplinary process should operate where a Council Member faces the prospect of suspension from Council Membership. The impact of this is material in deciding whether the BMA breached its Rules and so I will deal with this point before dealing with each complaint.

28. In evidence both Dr Watkins and Ms Jayesinghe told me that Council believed that it needed a process to deal with conduct which might not fall with the criteria set out in Article 13. Dr Watkins said that this arose because of divisions on Council and it was felt, by Council, that there should be a way of resolving issues of conduct without resorting to the "nuclear option" of Article 14. Ms Jayesinghe told me that the Council discussions arose in the context of the Junior Doctors' strike in 2015. It was felt, at that time, that there should be a way of resolving issues of poor behaviour from Council Members as well as the conduct outlined in Article 13.

29. The procedure was agreed by Council in May 2017 and came into force on 1 July 2017. It comprised two documents; a Code of Conduct and the Support and Sanctions process. At the time it was introduced it did not apply to ordinary members of the BMA but was limited to those in elected or appointed positions, including Directors. The process has since been revised and is now known as the BMA Resolutions process which Ms. Jayesinghe told me applies to all BMA members in the same way as Article 13 and 14. For the avoidance of doubt, however, it is worth noting that the BMA and Dr Watkins agree that Dr Watkins was subject to the Code of Conduct and Support and Sanction process, adopted by Council on 1 July 2017, at the time that Dr Dearden's complaint was made.

30. In adopting LOV, Council expressly incorporated the provisions of Articles 13 and 14 into the Support and Sanctions Process. I have set out below the minute from the Council meeting on 17 May 2017 which adopted LOV.

> **“105. BMA living our values**
> (Agenda item 5)
>
> Considered: Report and recommendations from the living our values working group on recommendations arising from the 'Living our values' consultations including a code of conduct and sanctions process (Doc C63AD).
>
> The board of directors at their meeting on 20 May 2016 meeting, endorsed the need for an integrated and coordinated approach that brought together various strands of work, including: clarifying the responsibilities and expected behaviours of members in elected positions; updating the existing code of conduct so that it applied to all committees; ensuring the appropriate sanctions and associated processes were in place. This was in response to staff and member feedback that included the views that:- there had been an increasing incidence and culture of poor behaviours amongst members; members did not afford one another the same duty of care and/or respect that they displayed towards their patients; staff had been increasingly feeding back that they did not feel respected by all members; there had also been individual high profile instances of poor member behaviours (eg confidentiality breaches, personal insults on listservers, shouting at one another during committee meetings and misconduct at BMA events).
>
> A UK wide working group of staff and members had been responsible for steering the work, with drafts reviewed and approved by the working group.

A series of member engagement workshops were held from December 2016 to February 2017, across the UK. Over 200 elected and appointed members and representatives attended, including many council members. Members engaged readily and contributed many ideas which had informed the desired culture and shaped the ·outcomes. On 22 March 2017, the BMA board of directors approved the updated BMA behaviour principles, code of conduct and support and sanctions process and recommended them to BMA council for adoption.

To ensure that council members were given as many opportunities to contribute to the development of this work as possible, a council co-production session was held on 26 April 2017. Council members provided helpful feedback on the updated BMA behaviour principles, existing code of conduct and support and sanctions process, and these comments had been incorporated into the versions presented to council. The code of conduct was intended to supplement existing BMA council and board codes of conduct. The sanctions process incorporated the existing member to member complaint process as set out in articles 13 and 14. The code and sanctions process would come into effect on 1 July 2017. The code and processes would be reviewed in May 2018.

Members welcomed the code and sanctions process and made suggestions for a few minor amendments which were noted by the Representative Body chair for further consideration and amendment. It was confirmed that the documents would form part of the induction processes for committees and would be helpful for chairs to add to their first meeting business in a new session. These would be 'living' documents and be amended and reviewed as the processes and culture was embedded within the BMA. Members welcomed the additional processes which could be used other than the 'nuclear option' of Articles 13 and 14.

RESOLVED: (i) That the BMA code of conduct (Doc C63B) to come into effect 1 July 2017 be approved with minor amendments in the light of comments made at the meeting;
(ii) That the BMA support and sanctions process to come into effect 1 July 2017 with minor amendments in the light of comments made at the meeting (Doc C63C) be approved."

31. Dr Watkins and the BMA agree that Council created one process for dealing with the conduct or behaviour of Council Members. They disagree, however, on the impact of this. Dr Watkin's view was that there was a hierarchy of Rules within the BMA so that the Articles of Association took priority over the Bye-Laws and both took priority over any process, including the LOV Code of Conduct and the Support and Sanctions process. He also argued that, as the BMA was also a registered company, the Articles should be read in that context so that the case law relating to trade unions had less significance.

32. Dr Watkins told me that, where the LOV process is used to impose a suspension Article14 must also be followed. He explained that the consequence of this was that the Appeal Panel, created under paragraph 9 of the LOV Support and Sanction process, must also be compliant with Article 14 (7) and that the only route to suspending a Council Member was through Article 14.

33. He also made the point that, when considering a suspension for a first offence, the Panel should have regard to paragraphs 7.4 and 7.6 and that neither his original LOV Panel nor his Appeal Panel did so. I have dealt with this point at paragraphs 145 to 151 below.

34. The BMA's position is that, by incorporating Articles 13 and 14 into the LOV process, Council created one process for dealing with the conduct or behaviour of Council Members. The Council had adopted the process unanimously, and the process has been applied consistently since adoption. Mr Hendy told me that

there are only two areas of conflict between the Articles and the Support and Sanctions process; the first is the composition of the Panels and the second is the period governing when an appeal should be held. He also identified that Article 14 provides for a sanction to come into effect after the Appeal period (21 days) has closed unless an Appeal has been made.

35. He referred me to **Chadwick J in Wise v USDAW [1996] ICR 691,705**:

> That the rules of a trade union are not to be applied literally or like a statute, but so as to give them a reasonable interpretation which accords with what in the court's view they must have been intended to mean, bearing in mind their authorship, their purpose, and the readership to which they are addressed.

36. His view was that it was clear that, by incorporating Articles 13 and 14 into the LOV process, Council had intended that the process should be used to deal with all complaints or issues which had arisen about the conduct or behaviour of members. In his view it was clear, applying the principles in **Wise v USDAW**, that any reasonable Union member would take the view that this was Council's intention.

37. Mr Hendy did not agree that a more restrictive interpretation of the Rules, as might be required under Company Law, was the right approach in this case. In his view, Dr Watkins' complaint is about the disciplinary process of a trade union rather than, for instance, the responsibilities of the BMA Directors. By way of example, he cited the requirement in Article 14(7) that an Appeal should be heard within 21 days. This was impractical because of the availability of working doctors, whose clinics are usually agreed six weeks in advance, and had rarely been followed in practice. The LOV process contained a more practical provision that the panel would be heard as soon as possible, taking into account, the availability of any panel members who may be doctors.

38. I do not find Dr Watkins' arguments about the application of Company Law to this case convincing. The issue at the heart of his complaints is the application of a disciplinary process which had been adopted by the BMA Council. That process resulted in his suspension from office as a Council Member, and his exclusion from standing in elections to be a Council member. This is a core area of trade union law. I agree, therefore, with Mr Hendy that it is right to read the Union's disciplinary process, the LOV process, in line with Chadwick J's decision in **Wise v USDAW**.

39. It is clear to me, from the Council Minutes from May 2017, that there was widespread consultation before the LOV process was adopted and that this included Council Members being given an opportunity to contribute to the development of the Code of Conduct and the Support and Sanctions process. Both Dr Watkins and the BMA have acknowledged this and reflected that Dr Watkins himself had a significant involvement in drafting part of the Code of Conduct.

40. It is also apparent, as argued by Mr Hendy and Dr Watkins, that Council intended that the sanctions process would incorporate the existing member to member complaints process as set out in Article 13 and 14. This is consistent with the shared view that there is only one disciplinary process to deal with all aspects of conduct and behaviour (and I note in particular that one of the examples given in the Council minute was personal insults on listservers).

41. I am satisfied, therefore that Council had the power to adopt the LOV process under Article 72 and Article 14(11) and that its intention was to adopt one process to deal with all accusations of poor conduct or behaviour. That leads me on to the question as to whether Dr Watkins is right that, if this is the case, the only route to suspend a doctor is through a Panel whose membership is consistent with Article 14.

42. My reading of Article14 is that it provides a route to dealing with allegations which raise issues under Article 13. One of the outcomes of a process under Article 14 may be suspension but Article 14 does not claim to be the only route by which a Member may be suspended (or indeed have their Membership terminated). Nor did Council, when setting out the LOV Support and Sanction process consider it necessary to clarify that, where suspension may be an option, the Panel should be constituted as set out in Article 14. In fact, it appears to me to have done the opposite. It set out explicit requirements for an LOV Panel and an Appeal Panel without identifying any limits on the nature of cases which those Panels could consider. It also set out the range of sanctions, which includes suspension, without any additional reference to Panel composition.

43. On that basis I am satisfied that Mr Hendy's reading of the Rules is correct and that Council intended, and any reasonable reader would agree, that the LOV process is one disciplinary process and that a panel constituted under paragraph 4.2 or 9.4 had access to the full range of sanctions set out in paragraph 8. This is the context in which I have reached decisions on the complaints brought by Dr Watkins.

44. I would add that I was not assisted by what appeared to be inconsistent argument from Dr Watkins. He offered me two differing positions when making his submissions. The first was that the only route to a suspension was through a Panel comprised under Article 14(4) considering an allegation under Article 13. If he is right about this then the Panel would need to comprise three BMA members and be convened by Council at the request of the Chief Executive. The LOV Panel in his case comprised five members, appointed by the BMA's Corporate Development team; two of those members were external to the BMA.

45. The second was that he had no complaint regarding the composition of the LOV Panel. His issue was that, in his view, they did not take into account the

requirements of paragraphs 7.4 and 7.6 in reaching a decision on whether he should be suspended. In making this argument, he confirmed to me to me that he believed the original Panel, as constituted, did have the option to suspend him but only where they were satisfied that he was guilty of gross misconduct. His view was that, having reached a decision to suspend, the Appeal Panel should then have comprised three members of Council. My difficulty with this argument is that it is not clear why an Appeal Panel must be consistent with the Article if the original Panel, which imposed the sanction, were not.

46. I have dealt with Dr Watkins' points about the test considered by both Panels at paragraphs 145 to 151.

Complaint 1

On 24 October 2017, 29 January 2018 and 12 February 2018 and other dates the British Medical Association breached Article 14(7) of its rules by applying a suspension from office to Dr. Stephen Watkins before his appeal had been heard by an appeal panel properly constituted under the Article.

47. The Union conceded this complaint. Mr Hendy told me, when making his submissions, that the LOV Support and Sanctions process made no mention of the point at which any sanction could be implemented. Consequently, the Union, accepted that the provision in Article 14 which delayed the implementation of any sanction until the end of the appeal period or the conclusion of the Appeal precluded the imposition of an immediate suspension. It should be noted that this point was conceded only because the LOV process was silent on the point.

Complaint 2

For the whole of the period from 9 January 2018 to 30 January 2018 the Union breached Principle 17 of the BMA Living our Values Support and Sanctions process which states, *The process should not be used to stifle constructive debate or deter members from seeking election.* The breach occurred in that the Union continued to entertain a complaint by Sir Sam Everington about Dr Watkins' involvement in preparing the document *Manifesto for a Better BMA* and that the Union also declined opportunities to confirm that the complaint could not be extended to co-authors not under suspension. The effect of this was to deter the co-authors of the document from continuing with their intention to distribute it widely and use it as a basis for negotiating consensus about various issues and influencing the contents of election manifestos. The rule was also breached because there was a significant risk that individuals would be deterred from seeking election. One member did tweet that he had been deterred although he later changed his mind and stood anyway.

48. On 9 January 2018, Sir Sam Everington, a BMA Council Member, made a complaint about Dr Watkins. The complaint was made to Ms Jayasinghe and to the BMA Chief Executive. Sir Sam complained about the circulation, by Dr Watkins, of documents, known as a Manifesto for a better BMA, relating to the upcoming BMA elections to Council. He questioned whether Dr Watkins, who at that time was suspended from Council, should be involving himself in Council business. Sir Sam also complained about the content and tone of the documents circulated.

49. Ms Jayesinghe gave evidence that she had considered the complaint under the LOV process. Having shared the complaint with Dr Watkins on 12 January 2018 she sought advice from the BMA legal team before concluding that the complaint did not raise any issues which needed to be considered further. She informed Dr Watkins of her decision on 30 January 2018.

50. Dr Watkins told me that, having been made aware of the complaint, he felt duty bound to share the fact of the complaint with his Manifesto co-authors. He considered that the part of the complaint which related to the nature and tone of the documents could also be made about his co-authors. He believed that he had no choice other than to warn his co-authors of the potential for a complaint to be made about them. This is supported by the written evidence of Dr Miller who states that Dr Watkins warned him that "it was being said that this (the circulation of the documents) was improper and he (Dr Watkins) was the subject of disciplinary action for having circulated our manifesto". It is important to note, however, that the BMA had not decided whether to take a complaint forward at this stage. Rather Ms Jayasinghe was considering whether the complaint was one which should be taken forward.

51. I was given no evidence that anybody other than Dr Watkins shared the fact of Sir Sam's complaint with the co-authors of the Manifesto. Ms Jayasinghe told me that she was unaware of the identity of the co-authors and so she could not have contacted any of them.

52. Dr Watkins told me, and Ms Jayasinghe agreed, that he contacted her to raise issues about whether the complaint, and the BMA's handling of it, might interfere with the co-authors' right, under the 1992 Act, to make election addresses. He also sought assurances that, should Sir Sam's complaint be extended to the co-authors of the document, the complaints would not be entertained. In the absence of those assurances, he believed he had an obligation to share the fact of the complaint with them.

53. Dr Watkins argued, in submissions, that Sir Sam was a senior member of the BMA and that his complaint was not only intended to interfere with the election processes, but that it did so. In his view, BMA should be liable for

Sir Sam's actions in making the complaint and for its own actions in being slow to close the complaint.

54. Mr Hendy did not agree that the BMA should be liable for Sir Sam's actions in making the complaint and drew my attention to the lack of evidence as to Sir Sam's motives. He also argued that Principle 17 of the LOV Support and Sanctions Process required that the process should not be used to stifle debate. It was not, therefore, the impact of the complaint but the intention which was relevant. Dr Watkins' view was that the wording of Principle 17 should be interpreted flexibly and reasonably to include the impact as well as the intention.

55. I have no evidence to enable me to reach a conclusion as to Sir Sam's motive in making the complaint. Nor do I have any evidence to suggest that Ms Jayasinghe delayed her consideration of the complaint beyond what was reasonable to reach a decision.

56. As far as I can see, it took almost three weeks for the complaint to be dismissed. It is better to dismiss complaints quickly, where dismissal is appropriate; however, a period of three weeks does not seem to me to be unreasonable in the context of the queries raised. Similarly, it seems reasonable for Ms Jayasinghe to refuse to reply to hypothetical questions about the likely response to complaints which had not been made.

57. That leaves me to consider whether Principle 17 should be interpreted sufficiently widely so that, whether or not Sir Sam or the BMA intended to stifle debate, the fact that debate was stifled was sufficient for there to have been a breach of that Principle.

58. Firstly, Dr Watkins has not demonstrated that debate was stifled. Dr Miller did not attend to give oral evidence and so neither Mr Hendy nor I were able to ask him questions. Paragraph 50 above records that Dr Miller's statement reflects that he was contacted by Dr Watkins who warned him about the potential for disciplinary action, was very upset by this and that he tweeted about that. It appears from his statement that he and his co-authors stood for Council but ran individually rather than on their joint Manifesto. What is not clear from that evidence, however, is whether, and if so how, debate was stifled. I would have been able to explore this if Dr Miller had attended the hearing to give evidence. I would add that there is no suggestion, in any of the evidence before me, that anybody other than Dr Watkins shared the fact of the complaint with Dr Miller or others.

59. Secondly, in my opinion the wording of Principle 17 is clear in that it seeks to ensure that the LOV process is not used to stifle debate. In my view there must, therefore, be an intention to stifle debate for this principle to be breached. I cannot see how a Union Member or a Council member could infer any other interpretation of the words used.

60. In my view, I do not need to consider whether the BMA should be liable for Sir Sam's actions in making the complaint. It seems to me that the liability of a Union for any member's activities will depend on the circumstances of each individual case. In this case, I have no evidence of motivation on the part of Sir Sam Everington, I have evidence from Ms Jayasinghe that she was attempting to reach a conclusion as quickly as possible and did so within a reasonable timescale, and I have not been able to test the written evidence as to whether, and if so how, debate was stifled. Consequently, I do not believe that there is any question of liability on the part of the BMA.

61. For these reasons I refuse to make the declaration requested by Dr Watkins.

Complaint 3

On or around 12 February 2018 the British Medical Association breached bye law 58 by not accepting Dr. Stephen Watkins' nomination for Council even though it met the criteria set out in that bye law.

62. Dr Watkins sought to be elected to Council on 12 February 2018. The Returning Office refused to accept his nomination because the Appeal Panel had upheld the LOV Panel's sanction that he should be suspended from Council for a period of one year and that this should be extended to his right to stand for any elected BMA role.

63. There are two parts to this complaint. The first is that neither the LOV nor the Appeal Panel had power to apply this sanction. I have dealt with this at paragraphs 145 to 151 below and reached the view that the sanction was available to the Panels and that their decisions were within the bounds of reasonableness.

64. The second is that the Process for both Panels was unfair and so any decisions by those Panels were in breach of Principle 17 and paragraph 7.5 of the LOV process. I have dealt with this when considering Complaints 4 and 5 below and reached the view that the issues complained about do not raise issues of fairness, either individually or cumulatively.

65. On that basis, I can only conclude that the decision to suspend Dr Watkins and to extend that suspension to his right to stand for an elected position rendered him ineligible for the Council election for which he submitted a nomination.

66. Consequently, I refuse to make the declaration requested by Dr Watkins.

Complaint 4

On 12 October 2017, and also on various earlier dates on which procedural decisions were made which affected the hearing on 12 October 2017, the BMA breached Principle 2 of the Living our Values ('LOV') Support and Sanctions Process (which requires that the process is fair, documented and applied consistently to all members) and also rule 7.5 of the Support and Sanctions Process (which requires a fair process to be followed before suspension) and also an implied rule to similar effect within Article 14 and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct. The BMA breached these rules by operating an unfair process. The rule was breached because the process was unfair as a result of the cumulative impact of the following irregularities.

67. At the Hearing, Dr Watkins made it clear that he believed that, other than complaint 4.3, his view was that none of the issues identified below amounted in themselves to a breach of Rule 7.5 of the Support and Sanctions Process (which requires the BMA to follow a fair process before reaching a decision to suspend a Council Member) or the overall principle of fairness implied by the link to the ACAS Code of Conduct and as explicitly set out in Principle 17. His view was that the cumulative impact of the issues he has raised undermined the fairness of the process.

68. With that in mind, I have addressed each point separately below, noting the increased significance which Dr Watkins has placed on Complaint 4.3. I have considered whether each could contribute to an overall finding that the process was unfair as a result of the cumulative impact of what Dr Watkins alleges to be procedural irregularities. In all cases, I have found

that they could not, although I have identified some points which the BMA might wish to consider as good practice. On that basis I refuse to make the declaration requested by Dr Watkins.

69. In reaching my decision, I have taken into account the evidence presented by both parties and their submissions. I have taken particular account of the decision letter which Ms Jones, the Chair of the LOV Panel wrote to Dr Watkins on 24 October 2017 and have referred to the relevant part of the letter, where appropriate. It is helpful, however, to set out the full text of Ms Jones' letter to give some context to each extract.

> "Dr Stephen Watkins
>
> BY EMAIL
>
> 24 October 2017
>
> **BMA 'Living our values' Panel meeting of 12 October 2017 - outcome**
>
> Dear Dr Watkins
>
> On behalf of the members of the BMA 'living our values' Panel, I would like to thank you for coming to speak with us on 12 October. We appreciate you addressing the Panel in person with the support of Professor Savage.
>
> The Panel carefully deliberated on the case in private. The BMA staff who had been present left the room at the same time you and Professor Savage did. The Panel considered all of the evidence relevant to the case, both that provided by the investigation and by you at the hearing.

It was mindful that you had acknowledged that your posting of 10 August had been inappropriate although you stated that you had not intended it to have the impact it did.

Nonetheless, the Panel was of the firm view that, given the central message of the posting, its timing, and the fact that it was placed in writing on the listserver, which is essentially a public forum, it was a deliberate and manipulative action that was calculated or very likely to undermine an individual new to their office and to cause damage, that could not easily be undone, to their reputation and ability to effectively execute their duties. As well as this, it risked damaging confidence in the democratic process.

The Panel took note of the fact that you have a long record of service in the BMA and other organisations, much of it at senior, officer, level. In the Panel's view, given that you had the benefit of this experience, your decision to make the points that you did on the listserver in the manner which you did, was particularly culpable.

In light of all of this, the Panel came to the conclusion that you had failed to meet the standard of behaviour required by the BMA code of conduct, specifically points 2.3 (Personal Conduct) and 3 (Shared Responsibility), and that a sanction should be applied. It determined that, pursuant to point 8.1.8 of the BMA support and sanctions process, you should be suspended from all BMA committees and other elected roles for a period of 12 months from the date of this letter. This suspension extends to your access to listservers and to your right to stand for election to any BMA committee or other elected BMA role. The Panel will inform Council of the outcome and the fact that you do not have access to the council listserver.

I would be grateful if you could provide acknowledgment of this letter and acceptance of the outcome to Daira Moynihan by 13 November.

Yours sincerely

Debbie Jones
'Living our values' Panel chair"

Complaint 4.1

The inclusion in the complaint of a highly prejudicial attack on UNITE (see para 1 in section VI of 'Appendix A Document 1 – the notice of appeal submitted against the Living our Values Panel decision: Appeal by Dr Stephen Watkins against the findings of a Living our Values Panel held on 12 October 2017', henceforth called 'The Notice of Appeal')

70. The complaint which Dr Dearden made against Dr Watkins included the following paragraph:

> "There is, in my view, an underlying thread here of Unite's place in the BMA and potential attempts to highjack the BMA for personal and/or political purposes not part of the BMA purpose."

71. Dr Watkins believes this to be prejudicial to him and that the Panel, having read this paragraph, may have taken Dr Dearden's view of Unite into account when reaching a decision on the complaint against Dr Watkins. In her witness statement, and in oral evidence, Ms Jones confirmed that Dr Watkins asked the Panel to exclude this paragraph from their consideration. Ms Jones explained that, as the paragraph was not relevant to the incident which Dr Dearden had complained about, the Panel excluded the issue from their decision-making.

72. I asked Dr Watkins to explain why the wording used by Dr Dearden was, in his view, so prejudicial. He told me that the wording itself was prejudicial as it referred to a conflict of opinion within the BMA. I have not seen any evidence, however, as to the impact of the inclusion of the statement in the complaint.

73. Ms Jayesinghe explained, in her written statement and at the Hearing, that it was not the BMA's practice to edit complaints before the Panel Hearing and that Dr Watkins had not asked her to do so in this case. At the Hearing she added that the policy was to ensure that the Corporate Development Team did not take on a wider role than was envisaged by the LOV process. She also explained that she would have considered the request had he, or Dr Dearden, made it.

74. It is clear from the papers before me that Dr Watkins submitted significant evidence on this point to the Panel and that he requested that the Panel exclude the comment about UNITE from their consideration. I have seen no evidence that he made that request of Ms Jayasinghe. It is also clear, from Ms Jones' evidence that the Panel did not consider the issue as it was not, in their view, relevant to the fundamental issue of the post made by Dr Watkins. Nor is it referred to in the Panel decision letter.

75. From the evidence before me, I am satisfied that the Panel were able to exclude the reference to UNITE from their considerations. It is clear from the words of the decision letter that the Panel felt that the core issue was the listserver post made by Dr Watkins, its impact on the newly elected Deputy Chair and the risk to confidence in the democratic process. I have seen no evidence that the reference to UNITE was, in fact, prejudicial nor that it was taken into account by the Panel.

76. My view is that this issue raises no question as to fairness and could not contribute to a cumulative breach of the principle of fairness.

Complaint 4.2

The untrue statement at the start of the complaint that Dr Watkins had previously caused great harm by his e mails – it has been confirmed by the BMA that this is untrue (see para 2 of section VI of The Notice of Appeal)

77. Dr Dearden's complaint included the following paragraph:

"I also know that this is not the first time that Stephen's emails have caused a great deal of harm to individuals including some junior members of staff, this would suggest that Stephen has not learnt from previous experience or advice on considering how he addresses and deals with other members and staff of the BMA. I would suggest looking at organisational committee listserver and personal emails of Stephen's to Council Secretariat Staff".

78. I discussed the BMA's practice of not editing complaints at paragraph 73 above. I have seen no evidence that Dr Watkins asked for this paragraph to be removed before it was sent to the panel. There was, however, an exchange between himself, his wife and Ms Jayasinghe on 27 September 2017. I have set out the text of Ms Jayasinghe's email below:

"Good Morning Steve

In response to below, I can confirm that, with reference to this complaint, you have already been informed of the allegations that will be before the Panel for consideration on 12 October. You are

correct that if there were any other incidents that you would have had notice of them with reasonable time to respond.

Best Nicky"

79. I can understand Dr Watkins' concern that this paragraph may have led the Panel to believe that this complaint followed a series of poor behaviours on his part, that these had been drawn to his attention and that he had not learnt from those. Ms Jayasinghe's email, however, makes it clear that no evidence of this was being presented to the Panel.

80. In his response to the complaint Dr Watkins drew attention to this part of the complaint and explained his actions following one previous incident. He also explained that he was not aware of any other incidents. The Panel were, therefore, aware of Dr Watkins' position on this and had not been provided with any other evidence to support the contention that there had been a series of poor behaviours on the part of Dr Watkins. There is no reference to this in the Panel's Decision letter.

81. In her witness statement Ms Jones explained that the Panel did not consider that Dr Dearden's comments related to the complaint in question and so did not give any weight to this point. She told me that they excluded these comments from their decision-making.

82. Taking into account Ms Jones' comments, and the fact that the decision letter does not refer to Dr Dearden's comment or any previous allegations I am satisfied that the Panel did not give them any weight in their discussions. Consequently, I do not agree that this issue could contribute to a cumulative breach of the principle of fairness.

Complaint 4.3

The submission of prejudicial material to the LOV Panel, which Dr Watkins had not been permitted to see, as a result of a request by Dr. Dearden for advice about his conduct (see para 3 of section VI of The Notice of Appeal)

83. The Panel which met on 12 October also considered other LOV complaints. Dr Watkins told me that the BMA's intention was that it would also hear the complaint which he had made against Dr Dearden. Although Dr Watkins had withdrawn that complaint, Dr Dearden had asked the Panel to review the complaint and offer their view on his personal behaviours, even if informally.

84. It is not clear from the evidence before me what papers were actually seen by the Committee. It is apparent, however, that there was a bundle of papers which included:

    a. Dr Watkins complaint about Dr Dearden
    b. Dr Dearden's response to this complaint dated 18 September 2017 addressed to Ms Jayasinghe
    c. Dr Dearden's response to the withdrawal of Dr Watkins' complaint about him.

85. It is clear, from the papers before me at the Hearing, that Dr Watkins was not aware that the papers relating to his complaint against Dr Dearden, would be seen by the Panel until the day before the hearing. On 11 October 2017, Dr Watkins asked Daira Moynihan, Senior Corporate Development Officer at the BMA, if there were any other documents which had been or would be provided to the Panel other than those which he had seen or provided. Mr Moynihan replied that Dr Watkins had seen everything in relation to the complaint against him. He added that Dr

Dearden had requested that the papers from the withdrawn complaint which Dr Watkins had made about him should be provided to the Panel as he was keen to have the Panel's view as to how he had conducted himself.

86. Dr Watkins told me that he replied, before the Hearing, requesting sight of these documents. I have not been provided with a copy of that email. I have, however, seen a reply from Mr Moynihan, on 24 October 2017 in which he explained that the material had been provided on the understanding that it would only be seen by the Panel. He added that the Panel had decided not to discuss or comment on it and that the Panel only took the documents which Dr Watkins had seen or provided into account when considering the complaint about him. Mr Moynihan also explained that he had not replied to the original email on the day as it was a hectic day and he thought it best not to pick up correspondence whilst the Panel decision was pending. There was a further exchange in which Dr Watkins insisted on disclosure and Mr Moynihan explained why he could not do so and reassured him that, if he appealed, the issue would fall away as a new Panel would be convened.

87. It is not clear to me what, if any documents, the LOV Panel saw in relation to the complaint which Dr Watkins had made about Dr Dearden. Ms Jayasinghe told me that she could not recall whether the documents were circulated in advance of the Hearing. She recalled that they were provided to the Panel on the day of the Hearing but that the Panel declined to consider them. Her recollection was that they were all in separate folders and that the Panel did not open the folder in respect of the complaint made by Dr Watkins.

88. Ms Jones recalled that she had been sent papers in advance of the Hearing which she read. But she could not recall whether this included the complaint against Dr Dearden. She did recall, on the day of the Panel, declining to consider Dr Dearden's request for advice as she did not think that this was the purpose of an LOV Panel.

89. I have some sympathy with Dr Watkins' argument that these papers were potentially prejudicial. Dr Dearden sets out a picture of Dr Watkins which is not flattering. He refers to statements (which I have not seen) that people are afraid of Dr Watkins, that they are afraid of challenging him in public and that they requested that their statements should not be shared with Dr Watkins. He also referred to Dr Watkins of having a pattern of "posting, then apolog(ising) while restating the action". I have no evidence as to whether the statements which are referred to were read by the Panel.

90. Dr Watkins argued, when making submissions, that the content of these papers was so significant that, had the Panel seen these documents they must have been prejudiced to the extent that it would not be possible for the Panel to set aside the comments made by Dr Dearden when considering his complaint against Dr Watkins. He believed that the papers were so prejudicial that they called into question the fairness of the process, especially as he had not had the opportunity to respond. His second witness statement set out how he would have dealt with Dr Dearden's points had he been able to do so.

91. Mr Hendy disagreed. His view was that the Panel were capable of setting aside the contents of the documents and disregarding their contents in reaching a decision on the complaint against Dr Watkins. He did not consider that a fair-minded and reasonable observer would conclude that there was a real possibility of bias on the part of the Panel.

92. The first issue for me is whether the Panel actually saw the documents in question. The second is whether, if that was the case, this created a real possibility of prejudice.

93. My understanding, from the papers before me, is that the papers for the Panel were circulated on or after 28 September 2017. This was after Dr Watkins had withdrawn his complaint and after Dr Dearden had requested that the Papers should be sent to the Panel. I have seen no evidence which demonstrates whether the papers in question were circulated ahead of the Panel. Neither Ms Jones nor Ms Jayesinghe could assist me on this point.

94. Mr Moynihan's email of 11 October 2017 records that Dr Dearden had requested that the Panel be sent the documents but does not identify when they were, or would be, provided. A later email from Mr Moynihan, on 25 October 2017, informs Dr Watkins that a mailing in late September included all of the papers other than those which Dr Watkins sent on 4 October. This was in response to a request from Dr Watkins which specifically asked Mr Moynihan when the papers relating to Dr Dearden's request for advice. I can only assume, therefore, that they were circulated with the other papers ahead of the Panel. I can make no assumptions, however, as to whether they included the statements referred to by Dr Dearden.

95. As to the question of bias, I understand and sympathise with Dr Watkins' position. The documents are critical of him and the lack of disclosure resulted in him being unable to present a case to refute Dr Dearden's assertions. The points raised by Dr Dearden seem to me, however, to be an amplification of the issue covered at Complaint 4.2 above and it is apparent that the Panel disregarded that point in reaching its conclusion.

On that basis, I agree with Mr Hendy that it would have been possible for the Panel to set aside Dr Dearden's comments.

96. I have seen no evidence to suggest that the Panel took them into account in reaching the decision or that they would have taken a different decision had they not seen the papers. There is no doubt as to whether Dr Watkins made the posting, which was the central issue of the complaint, and the Panel were clear as to the reasons why they considered it to be such a serious issue. Those reasons did not include any reference to past behaviour or previous allegations. Dr Watkins himself accepts that the post was a breach of the Code of Conduct.

97. I think it worth reflecting at this point the evidence Ms Jones gave about the reasons for the Panel's original decision. She told me that, when she read the listserver post made by Dr Watkins, she was shocked by its tone and nature and the impact it would have on a woman about to take up the role of Deputy Chair. She also said that she still feels that sense of shock when she reads the post now. She was clear that the core issue was the tone and nature of the listserver posting. Her oral evidence on this point was very convincing and is supported by the wording of the decision letter.

98. I agree, therefore, with Mr Hendy that, even if the Panel had sight of the documents, it was possible for them to disregard Dr Dearden's criticisms of Dr Watkins. Having heard Ms Jones' oral evidence, I am satisfied that they were able to do so. Consequently, my view is that this does not raise an issue of fairness which calls into question the LOV Panel's decision.

99. I would add that, even if I am wrong in reaching this conclusion, Ms Breen and Ms Jayesinghe told me that the documents in question were not sent

to the Appeal Panel. Consequently, any real or perceived bias on this point would have been would have put right at the appeal stage.

100. It is worth noting here, however, that I have been given no reason as to why the request from Dr Dearden was passed to the same LOV Panel that was considering the complaint against Dr Watkins. Bearing in mind the potential for accusations of bias, the BMA may wish to consider whether this is best practice in the future.

Complaint 4.4

The circulation of the complaint together with the prejudicial material to the LOV Panel over a week before the circulation of Dr Watkins' response (see para 4 of section VI of The Notice of Appeal)

101. From the papers before me, I understand that the BMA had asked Dr Watkins to provide his response to Dr Dearden's complaint on 27 September 2017. This would enable the BMA to send all papers to the Panel on 28 September 2017.

102. Dr Watkins sought a request for an extension of the time available to him to submit his response which was granted. This resulted in the complaint being circulated to Panel members one week ahead of his response.

103. Mr Hendy told me that a delay in circulating the papers until Dr Watkins had provided his response might have resulted in the Panel Hearing being delayed as this would have limited the reading time available. He also pointed out that even if the papers were provided at the same time there was no control over the order in which they would be read.

104. I agree with Mr Hendy that this raises no question about the impartiality of the LOV Panel. It is often the case that Panels receive papers for the same issue at different times and, even if they are sent together, it is open to a Panel Member to decide the order in which they read the papers. Consequently, my view is that this could not contribute to a cumulative breach of the principle of fairness.

Complaint 4.5

The process has failed to state coherent and well framed charges (see para 5 of section VI of The Notice, of Appeal)

105. When giving evidence Ms Jayesinghe told me that it is not the BMA's policy to draft charges when considering complaints under the LOV Support and Sanctions Process. As far as I can see there is no requirement within the documented process to do so. The issue is, therefore, one of fairness.

106. It is clear from the papers before me, that Dr Watkins was aware of the nature of the complaint and had seen the complaint which was being seen by the Panel. He accepts that he made the posting, that it was wrong for him to do so and that he breached the Code of Conduct. Apart from the documents discussed at paragraphs 83 to 100 above he had sight of all of the information available to the Panel and was able to provide a clear and detailed response which covered all of the issues raised in the complaint.

107. On that basis, it is difficult to gauge how the lack of a document setting out charges was unfair to Dr Watkins. My view, therefore, is that this could not contribute to a cumulative breach of the principle of fairness.

Complaint 4.6

The LOV Panel asked no questions of Dr Watkins' evidence but appears to have rejected it in its entirety without showing any signs of considering it (see para 6 of section VI of The Notice of Appeal)

108. When giving evidence Ms Jones told me that the Panel had read the documents which Dr Watkins had submitted and had given him the opportunity to address the Panel. They found him to be very clear in his presentation. They had also asked him questions of clarification and had considered meticulously each of the points he had raised. The Panel explained the reasons for their decision in the decision letter and reflected in that letter that they had considered all of the evidence relevant to the case. I have seen no evidence from Dr Watkins to suggest that this was not the case or which undermines Ms Jones' account.

109. I would add that it is always good practice for a decision letter from a disciplinary panel to give the reasons for the decision. The reasons given should be sufficient for the person affected to understand why the decision was made. In my view this decision letter set out the reasons for the decision and the sanction imposed. It also reflected that evidence had been considered and referred to Dr Watkins contribution to the BMA and other organisations.

110. It is not normally necessary for such a decision letter to deal with every argument or point raised by the person affected, provided that it gives sufficient assurance that the points were taken into account. Whilst the LOV Panel's letter gave clear reasons for their decision I believe that it would have been more helpful to Dr Watkins had it included more detail on the LOV Panel's view of the points raised by him in writing or at the

Hearing. I do not believe, that this raises a point of fairness; however, the BMA may wish to consider whether to include more detail in future.

111. My view is that this aspect of the complaint does not raise any issue which could contribute to a cumulative breach of the principle of fairness.

Complaint 4.7

The LOV Panel's reference to "the central message of the posting" is fundamentally misconceived as it fails to address Dr Watkins' evidence as to what it was meant to say. It accepted a particular interpretation based on taking extracts from the posting out of context (see para 7 of section VI of The Notice of Appeal)

112. Dr Watkins has maintained from the outset that the motivation for his posting was not, in any way, malicious and that he did not intend to cause any harm to the Deputy Chair. He told me that he was motivated by a desire to warn Council of a potentially unfair voting practice. It is also clear that many of those who read the post, including Dr Dearden, read it in a different way. For example, Dr Dearden referred to "personal criticism and an attack on the [Deputy Chair]" and to the email as "a perfect example of a passive-aggressive email". And, as Mr Hendy pointed out, the email was addressed personally to the Deputy Chair and copied to the whole of Council.

113. The LOV Panel's role was to decide whether Dr Watkins had breached the code of conduct and, if so, what sanction was appropriate. To do this it would need to resolve any conflicts of evidence and to consider the impact of the posting on the Deputy Chair and other Council members. It was, therefore, open to the Panel to reach a conclusion as to Dr Watkins' intent when making the listserver posting. The fact that they did not

accept Dr Watkins assertions on this point is not in itself sufficient to call into question their fairness in reaching their decision. Nor is the fact that the Appeal Panel took a different view.

114. I have already discussed Ms Jones' evidence as to the impact of the listserver posting at paragraph 97 above. Whilst Dr Watkins has suggested that the core issue here should have been his intent I think it reasonable for the LOV Panel, having considered all of the evidence available to them, including that given by the Deputy Chair, to have reached the conclusion that the listserver posting was a "deliberate and manipulative action that was calculated or very likely to undermine an individual new to their office and to cause damage, that could not easily be undone, to their reputation and ability to effectively execute their duties".

115. My view is that this complaint does not raise an issue which could contribute to a cumulative breach of the principle of fairness.

Complaint 4.8

Preparation of Dr Watkins' defence and preparation for the hearing were disrupted by bullying (see para 8 of section VI of The Notice of Appeal)

116. Dr Watkins gave evidence that he shared information about the complaint against him with a small group of people to assist him in responding to his case. One of those people shared some of that information more widely. This resulted in Dr Watkins being approached by the BMA's Data Protection Officer, an external law firm, during the period in which he was preparing his response to the complaint. He felt bullied by this and told

me that it disrupted his preparation for the LOV Hearing. In evidence, he described the impact of this as him not being able to read through his response for an additional two or three times.

117. Mr Hendy told me that the BMA took any potential data breach seriously and had approached this potential breach in the same way as they would have done any potential breach. Following a complaint from Dr Watkins the Chief Executive had apologised for the tone of the letter and reviewed the BMA's procedures for dealing with such issues. Mr Hendy argued, however, that the BMA was right to deal with the issue seriously and that any impact on Dr Watkins' preparation had been caused by the potential breach rather than the BMA's approach.

118. The core issue for me here is whether Dr Watkins had sufficient time to prepare his response and, if not, whether this resulted in unfairness. I have referred to the fact that he was offered an extension to the time period at paragraph 102 above. This resulted in the deadline for his response being 4 October 2017. The letter from the Data Protection Officer was sent on 2 October 2017 by email and so there would have been an overlap of 2 or 3 days depending on when the email was sent. It is significant, however, that Dr Watkins told me that the only impact was that he was unable to read through his response another two or three times but was able to submit the response on time.

119. It is not for me to reach a decision about whether the BMA's response to the potential data breach was reasonable or whether Dr Watkins felt bullied by the approach. The only decision for me is whether the impact of both or either of these was so significant as to result in unfairness to Dr Watkins. It is difficult to see how the fact that he was unable to read through his response two or three more times could materially undermine the fairness of the proceedings, even if I surmised that other parts of the

proceedings were not fair. On that basis, my view is that this could not contribute to a cumulative breach of the principle of fairness.

Complaint 4.9

Dr. Dearden (the complainant) failed to declare a significant conflict of interest (see para 9 of section VI of The Notice of Appeal)

120. Dr Watkin's position is that Dr Dearden should have declared a conflict of interest to the Panel when making the complaint. The conflict was that Dr Dearden was the BMA Treasurer and that Dr Watkins had been involved in attempts to reduce the number of hours worked by the Treasurer. The BMA's position is that this is only relevant if Dr Watkins' argument is that Dr Dearden's motivation for making the complaint was the fact that Dr Watkins had sought to reduce the number of hours Dr Dearden worked for the BMA. Dr Watkins had not sought to advance that argument before the Panel but did raise it with the Appeal Panel. Dr Watkins conceded this point at the Hearing and so I do not need to reach a decision on this part of the complaint.

121. I would add that there is no evidence before me that this was Dr Dearden's motivation. Even if it was, however, I cannot see how it impacts on the Panel's finding about the listserver post made by Dr Watkins which he accepts was a breach of the Code of Conduct. Consequently, I do not see how this could contribute to a cumulative breach of the principle of fairness.

Complaint 4.10

The LOV Panel failed to consider the considerable evidence that the conduct being considered, interpreted as they interpreted it, was out of character. They should have asked themselves whether this might not suggest that in fact Dr Watkins' motivation was not the one that they described but rather the one that Dr Watkins put forward by way of explanation, which was entirely credible and in character (see para 10 of section VI of The Notice of Appeal)

122. Paragraphs 108 to 110 above address how the LOV Panel considered evidence and how that was reflected in the decision letter. Those paragraphs are also relevant to the issues raised by this complaint. The fact that the Panel, having taken into account the evidence provided by Dr Watkins, took a different view than him as to his intent and considered the impact of his listserver posting does not suggest that their consideration, or the process followed by the BMA, was unfair.

123. Consequently, my view is that this does not raise an issue of fairness which could contribute to a cumulative breach of the overall principle of fairness.

Complaint 4.11

The LOV Panel failed to consider the considerable evidence that Dr Watkins acted in a unifying and conciliatory way towards divisions in Council. This should have alerted them to the fact that the motivation for Dr Watkins' posting was genuinely, as it stated, to support Z and X in addressing disunity, not to undermine them and create disunity (see para 11 of section VI of The Notice of Appeal)

124. This raises similar issues to Complaint 4.11 and I can only add that, in this case, the evidence strongly suggests that the LOV Panel did take

into account Dr Watkins' service on the BMA and they set this out in their decision letter as follows:

> "The Panel took note of the fact that you have a long record of service in the BMA and other organisations, much of it at a senior officer level. In the Panel's view, given that you had the benefit of this experience, your decision to make the points you did on the listserver in the manner which you did, was particularly culpable."

125. This does not, of course, deal with Dr Watkins point about his role in dealing with divisions on Council; however, it demonstrates that his position on Council and his experience as a senior officer were considered to be relevant and were taken into account. On that basis, I cannot see that there was any unfairness in their treatment of the evidence on this point. The fact that they reached a different conclusion as to Dr Watkins' culpability does not mean that they did not take the evidence into account.

126. Consequently, my view is that this could not contribute to a cumulative breach of the principle of fairness.

Complaint 5

On 23 January 2018, and also on various earlier dates on which procedural decisions were made which affected the hearing on 23 January 2018, the BMA breached Principle 2 of the Living our Values) Support and Sanctions Process (which requires that the process is fair, documented and applied consistently to all members) and also rule 7.5 of the Support and Sanctions Process (which requires a fair process to be followed before suspension)

and also an implied rule to similar effect within Article 14 and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct. The BMA breached these rules by operating an unfair process. The rule was breached because the process was unfair as a result of the cumulative impact of the following irregularities:

127. As for Complaint 4 above, Dr Watkins has been clear that his view is that each of the issues he has identified would not, on their own, raise a question as to the fairness of the Appeal procedure. His view is that the unfairness has arisen from the cumulative impact of what he believes to be procedural irregularities. I have, therefore, approached this complaint in the same way as Complaint 4.

128. I have addressed each point separately below, and considered whether each could contribute to an overall finding that the process was unfair. I have found no issue which could contribute to such a finding. Consequently, I refuse to make the declaration requested by Dr Watkins.

129. As for Complaint 4, I have considered all of the evidence which has been provided to me and the submissions made by Dr Watkins and Mr Hendy. I have paid particular attention to the terms of Ms Breen, the Appeal Panel Chair's, decision letter of 29 January 2018. I have set out this letter in full below to give context to the extracts that I have referred to in the following paragraphs.

By email

29 January 2018

Living Our Values Appeal

Dear Dr Watkins

I am writing on behalf of the members of the Living Our Values Appeal panel following the Appeal hearing on 23 January 2018. This letter formally records the result of your appeal against the outcome of the original hearing held on 12 October 2017 which was communicated to you in the letter of 24 October 2017 from Ms D Jones, Chair of the panel, (the Outcome Letter).

Thank you to you and your companions, Caren Evans, Regional Officer of UNITE, and Dr Jackie Applebee, for attending the Appeal hearing.

We carefully reviewed each of the grounds of appeal which you presented, both in your written statement of appeal (which comprised a summary of your grounds of appeal and supporting documentation) and in person. I will address each of these grounds as they were summarised in the first part of your statement. We reached the conclusions and findings set out below unanimously.

"The panel did not have power to impose the penalty"

In your statement of appeal you asserted that the original panel was not empowered under Articles 13 and 14 of the BMA's Articles of Association to impose a 12 month suspension from all BMA committees and other elected roles.

We accepted the evidence of Mr Viv Du-Feu, Director of Legal Services, that the BMA Living Our Values Code of Conduct and Support and Sanction Process had been properly consulted on and had gone through an appropriate approval process, involving the BMA Board of Directors, the BMA Council and the ARM. Independent legal advice was also taken from a senior barrister. Accordingly, we rejected this ground of appeal.

We were disappointed to see this point raised at all, especially given your personal involvement in the composition of a significant section in the Code of Conduct on Shared Responsibility and that you had not previously raised any concerns about the legality of the Code of Conduct and Support and Sanction Process at any point during the drafting, consultation or approval process.

Other [10] points raised in relation to "disproportionality of the sanction"

We were not provided with any information about the thought processes and deliberations of the panel at the original hearing but only with a copy of the Outcome Letter. Accordingly, we cannot opine on the extent, if any, to which that panel considered or took into account the 10 points you raise in your grounds of appeal about the alleged disproportionality of the sanction. However, we considered each of the points you raised in relation to proportionality.

We take the view that the sanction must be proportionate to the conduct or behaviour which was the subject of the complaint. In your case, the behaviour to which the complaint against you related was your posting on the Council listserver timed at 05.08 on 10 August 2017. The damage to X caused by your post (which in our view was considerable) and to confidence in the democratic process was done immediately when you sent your post and could not be undone by anything you did afterwards.

The damage might have been limited by an immediate retraction and a full, unqualified apology on your part; however, for whatever reason, you chose not to do that.

The matters to which you refer in the 10 bullet points on page 1 of your statement of appeal mostly happened after the posting and so were too late to have any remedial effect on the damage you caused by the post. The matters which happened before the post cannot condone or excuse it. We do not accept that these points are relevant to the proportionality of the sanction, a matter to which we refer again below, or that any of the points are grounds for finding that the sanction was disproportionate. Accordingly, we rejected this ground of appeal.

Procedural irregularities

On page 2 of your statement of appeal you set out 11 grounds which you allege are procedural irregularities. We have carefully considered the Support and Sanctions Process and the information submitted to the Appeal hearing in relation to the manner in which the original hearing was convened and conducted. We found no evidence of procedural irregularity in the manner in which the complaint was investigated or the original hearing was conducted. Accordingly, we rejected this ground of appeal.

We considered your request on page 1 of the summary of your grounds of appeal (to "*set aside the factual finding of the original panel relating to my motivation"*) separately from the alleged procedural irregularities and decided to uphold your request. We considered that the question of your true motivation is a subjective one, known only to yourself, and not relevant to the damaging impact of your behaviour on X or on confidence in the democratic process.

New evidence

We do not consider that any of the three bullet points on pages 2 and 3 of your summary amounts to new evidence. Accordingly, we rejected this ground of appeal.

Outcome of your Appeal

For the reasons set out above, we rejected your grounds of appeal and upheld the decision set out in the Outcome Letter except in relation to the finding concerning your motivation. We considered that the wording "*a deliberate and manipulative action that was calculated or*" should be removed from that decision.

We considered that the sanction imposed, a 12 month suspension from elected BMA committees and other elected roles, was proportionate, reasonable and appropriate for the remaining reasons set out in the Outcome Letter and for the following additional reasons:

1. Your posting of 10 August 2017 clearly had a negative impact on X. The panel was saddened by her statement about her feelings when she read the post and afterwards and by the statements of the other witnesses in this respect.

2. We considered your behaviour in the context of Appendix 1 to the Code of Conduct, which outlines examples of positive and poor behaviours associated with each of the BMA's values (to respect others, to be professional, to be accountable, to be representative and to be kind). We felt that, in a significant number of instances, you had displayed behaviours that failed to fulfil each of these values. The panel can provide further detail on this if you feel that it might be helpful to you in completing your PDP.

3. The panel was particularly disappointed, given your claims about your motivation and respect for X, that you did not offer an unqualified and unprompted apology at any point. There were a number of opportunities, including at the Appeal hearing, to apologise and express unalloyed regret for your actions but you did not take them.

4. We considered that your posting risked having a negative impact on the electoral process and the willingness of others to stand for elected office within the BMA. We were particularly concerned about the deleterious effect it could have on the diversity of candidates putting themselves forward in future for senior officer roles and for Council membership in general.

5. We noted that you failed to raise any concerns that you had about the electoral process (as specifically covered in the Code of Conduct under point 2.4 Election Behaviour) through the proper channels, choosing instead to air them in a posting in a public forum.

6. Finally, we were concerned and disappointed that you failed to follow the spirit and letter of the Code of Conduct, particularly given your involvement in its composition.

We also noted a potential breach of confidentiality around the circulation of information regarding the original hearing, which might deter others from commenting on listservers and/or complaining about behaviour that does not comply with the Code of Conduct.

The decision of the Appeal panel is final.

Yours sincerely

Helga Breen
Living Our Values Appeal panel chair

Complaint 5.1

Although at the hearing on 23 January 2018 which preceded and contributed to this decision one member of the Appeal Panel showed an interest in the appeal and seems to have considered it fairly, the Chairman was clearly biased and the third member of the Panel was basically silent. This bias would, on the balance of probabilities, carry forward into the actual decision.

130. In evidence Dr Watkins told me that Ms Breen demonstrated bias toward him at the Hearing and described it as her showing hostility towards him, being dismissive of his points and appearing not to give any consideration to his arguments. He gave the following specific examples:

a. She told him that he should have raised questions about the relationship between LOV and Articles 13 and 14 when the LOV process was being discussed at Council. In Dr Watkin's view this was not possible because nobody could have anticipated that the BMA would interpret the relationship as was now being proposed.

b. She commented that he had only offered to post a retraction of his post after Dr Dearden had made his post. Another panel Member corrected her on this.

131. In evidence Ms Breen told me that all Panel Members contributed to the discussion and decision. Dr Watkins had given a clear appeal statement and presented his points well at the Hearing. Her recollection was that he "held the floor" for most of the time but that all Panel Members contributed equally and showed an active interest.

132. As to the question of bias, she told me that she was not biased and that she could not recall the discussions which Dr Watkins had identified as being examples of her bias. She had subsequently sought the Appeal Panel Members' feedback on her approach and whether she had behaved appropriately in the Hearing. They told her that she had been direct but did not believe that she had shown any bias.

133. This is a difficult argument for Dr Watkins to raise. The evidence of his two supporters, Ms Evans and Dr Applebee is brief but supports his perception that the atmosphere of the appeal was antagonistic, hostile or aggressive. They do not, however, offer any evidence as to how this influenced proceedings. I, therefore, have only the evidence of Dr Watkins who recalls examples of issues which, in his view, demonstrated bias and the evidence of Ms Breen who told me that she does not recall those parts of the hearing.

134. I have no reason to doubt that Dr Watkins and his supporters recall an atmosphere which was challenging to them and have no reason to question that they found this to be hostile, aggressive or antagonistic. That does not, however demonstrate bias. This was the final Appeal Hearing at the end of a process which Dr Watkins believed to have been conducted unfairly and one which had resulted in a sanction which he felt was disproportionate and outside the powers of the original Panel. In those circumstances, many of us would find the atmosphere of an Appeal

Panel to be challenging and we may have felt a level of hostility, aggression or antagonism even if that were not the case.

135. The key question, however, is whether Dr Watkins was offered the opportunity to provide his evidence, to make his points to the Appeal Panel and whether the Panel properly considered those points. All of the evidence before me suggests that this was the case. Dr Watkins had time to submit his Appeal ahead of the Hearing, he had time to address the Appeal Panel and the decision letter shows that the Panel considered each of his points in turn.

136. I cannot agree with him that the examples he has offered of Ms Breen's behaviour towards him demonstrates bias. The first suggests that she believes that he had the opportunity to seek clarity about the relationship between the LOV process and Articles 13 and 14 at Council. It is clear, however, that he did have that opportunity. His point, of course, is that he had one view at Council and had not anticipated that others would take a different view. However, even if that were the case, he could still have sought to ensure that there was a common understanding at Council.

137. The second example suggests that Ms Breen had misunderstood the timing of his offer to retract his original post and so was corrected by another Panel Member. In my experience it is not unusual for a Panel Member to misunderstand a timeline in a complex case. It is only relevant where, the misunderstanding remains uncorrected and it is a key reason for a decision. It is clear that Ms Breen was corrected here.

138. On that basis, I cannot see that a reasonable observer would consider the Panel, or any of its Members, to be biased in their consideration of Dr Watkin's Appeal. Whilst I accept that Dr Watkins may have found the

atmosphere to be aggressive, hostile or antagonistic I cannot see that this perception could contribute to a finding of unfairness.

Complaint 5.2

The Appeal Panel has rejected out of hand the complaints of irregularity and the complaints of disproportionality, although they were carefully argued and deserved a response

139. At the Hearing Dr Watkins suggested that the Panel had misunderstood his point about irregularity. Ms Breen said that she had understood his point, as expressed in his statement of Appeal, to be that the LOV Panel was not constituted in a way that was compliant with Article 14 and so they did not have the power to impose a period of suspension on Dr Watkins. She pointed me to the opening statement of the Appeal:

> "There are two principle objectives to the Appeal.
>
> The first relates to the disproportionality of the sanction:
>
> From Articles 13 and 14 the Panel did not have the power to impose this penalty - it is the Support and Sanctions Process but only subject to articles 13 and 14. The most severe penalty was available was a final written warning."

140. She also highlighted the sections of the Appeal on disproportionality and Procedural Irregularities. In the section headed "Disproportionality" Dr Watkins argues that the LOV Panel could only have suspended him if he had been guilty of gross misconduct under paragraphs 7.4 and 7.6 of the LOV Support and Sanctions Process. At the Hearing before me he advanced this argument by saying that the LOV Panel and the Appeal

Panel both applied a test which was not consistent with Paragraph 7.4 and 7.6 of the LOV process and that, consequently, neither had the power to suspend him. He also clarified to me (see paragraph 45 above) that he believed that the LOV Panel had a power to suspend him if he had been guilty of gross misconduct but that once he had been suspended the Appeal Panel should have been constituted in accordance with Article 14.

141. In the section headed “Irregularity” Dr Watkins argues that his case could not be considered under Article 14 at all because the underlying allegation does not meet the criteria of Article 13 and, therefore, the LOV Panel did not have the power to suspend him.

142. From the papers I have seen Dr Watkins appears to have presented different arguments at different times during the disciplinary process and before me. This may be why he believes that the Appeal Panel misunderstood him. His position on the composition of the LOV Panel is inconsistent and, had he genuinely believed that the Appeal Panel should have been constituted under Article 14 he could, and should, have made that point to Ms Jayesinghe when she was arranging the Panel Hearing. As far as I have seen his only request was that all Appeal Panel Members should be female and the BMA complied with that request. The issue for me, however, is whether the Appeal Panel considered the points he raised in his Appeal statement and at the Hearing.

143. Dr Watkins has not, however, offered me any evidence to demonstrate that the Panel had not taken his points about the application of Article 13 and 14 into account whilst Ms Breen provided significant evidence that they had done so.

144. Ms Breen told me that the Appeal Panel heard evidence, as to the legitimacy of the proceedings under LOV, from the Director of Legal Service at the BMA, and that Dr Watkins was present for that evidence. It is also clear that the Panel considered the points made by Dr Watkins about proportionality and reflected this, together with the points on the procedural irregularities in their decision letter:

> **"The panel did not have power to impose the penalty"**
>
> In your statement of appeal you asserted that the original panel was not empowered under Articles 13 and 14 of the BMA's Articles of Association to impose a 12 month suspension from all BMA committees and other elected roles.
>
> We accepted the evidence of Mr Viv Du-Feu, Director of Legal Services, that the BMA Living Our Values Code of Conduct and Support and Sanction Process had been properly consulted on and had gone through an appropriate approval process, involving the BMA Board of Directors, the BMA Council and the ARM. Independent legal advice was also taken from a senior barrister. Accordingly, we rejected this ground of appeal.
>
> We were disappointed to see this point raised at all, especially given your personal involvement in the composition of a significant section in the Code of Conduct on Shared Responsibility and that you had not previously raised any concerns about the legality of the Code of Conduct and Support and Sanction Process at any point during the drafting, consultation or approval process.
>
> **Procedural irregularities**
>
> On page 2 of your statement of appeal you set out 11 grounds which you allege are procedural irregularities. We have carefully considered the

Support and Sanctions Process and the information submitted to the Appeal hearing in relation to the manner in which the original hearing was convened and conducted. We found no evidence of procedural irregularity in the manner in which the complaint was investigated or the original hearing was conducted. Accordingly, we rejected this ground of appeal.

We considered your request on page 1 of the summary of your grounds of appeal (to "*set aside the factual finding of the original panel relating to my motivation"*) separately from the alleged procedural irregularities and decided to uphold your request. We considered that the question of your true motivation is a subjective one, known only to yourself, and not relevant to the damaging impact of your behaviour on X or on confidence in the democratic process."

145. I have already addressed the relationship between Articles 13 and Article 14 at paragraphs 27 to 43 above. But I also need to address the point about whether either Panel had the power to impose a suspension, taking into account paragraphs 7.4 and 7.6 of the LOV process, and to prevent Dr Watkins from standing for elected positions during his period of suspension.

146. Paragraph 7.1 of the LOV sets out the approach a Panel should take when deciding the appropriate sanction. The approach is that, for a first offence, a verbal written warning would normally be appropriate before moving to a first or final warning for further misconduct. It recognises that there may be serious acts of misconduct where it is appropriate to move to a final warning in the first instance. Paragraph 7.4 outlines that, where gross misconduct has taken place, it may be necessary to move to suspension or expulsion and paragraph 7.6 describes acts which are likely to be viewed as gross misconduct.

147. Dr Watkins' position is that he is not guilty of gross misconduct and so the Panel, however it was constituted, did not have the power to move to suspension under Paragraph 8 of the LOV process. At the Hearing before me he also raised the question as to whether the LOV Panel had a power to prevent him from standing for elected office. I deal with that point at paragraphs 152 and 153 below.

148. As to gross misconduct both Ms Jones and Ms Breen told me that their Panels did not consider whether the Dr Watkins' conduct was on a par with the offences identified at paragraph 7.6 when considering whether the sanction should be an immediate suspension. Ms Jones told me that the LOV Panel took into account the nature of the listserver posting, the impact on the Deputy Chair of Council, the risk of damage to confidence in the electoral process, Dr Watkins' positon on Council and their finding as to intent.

149. On, that basis, they formed the view that suspension was appropriate. Ms Breen told me that, having discounted the LOV's Panel finding as to intent, the Appeal Panel considered whether the sanction remained proportionate. They reached the conclusion that it was appropriate and set out their reasons in their decision letter as follows:

> We considered that the sanction imposed, a 12 month suspension from elected BMA committees and other elected roles, was proportionate, reasonable and appropriate for the remaining reasons set out in the Outcome Letter and for the following additional reasons:
>
> "1. Your posting of 10 August 2017 clearly had a negative impact on X. The panel was saddened by her statement about her feelings when

she read the post and afterwards and by the statements of the other witnesses in this respect.

2. We considered your behaviour in the context of Appendix 1 to the Code of Conduct, which outlines examples of positive and poor behaviours associated with each of the BMA's values (to respect others, to be professional, to be accountable, to be representative and to be kind). We felt that, in a significant number of instances, you had displayed behaviours that failed to fulfil each of these values. The panel can provide further detail on this if you feel that it might be helpful to you in completing your PDP.

3. The panel was particularly disappointed, given your claims about your motivation and respect for X, that you did not offer an unqualified and unprompted apology at any point. There were a number of opportunities, including at the Appeal hearing, to apologise and express unalloyed regret for your actions but you did not take them.

4. We considered that your posting risked having a negative impact on the electoral process and the willingness of others to stand for elected office within the BMA. We were particularly concerned about the deleterious effect it could have on the diversity of candidates putting themselves forward in future for senior officer roles and for Council membership in general.

5. We noted that you failed to raise any concerns that you had about the electoral process (as specifically covered in the Code of Conduct under point 2.4 Election Behaviour) through the proper channels, choosing instead to air them in a posting in a public forum.

6. Finally, we were concerned and disappointed that you failed to follow the spirit and letter of the Code of Conduct, particularly given your involvement in its composition."

We also noted a potential breach of confidentiality around the circulation of information regarding the original hearing, which might deter others from commenting on listservers and/or complaining about behaviour that does not comply with the Code of Conduct.

150. Dr Watkins' position was that neither Panel specifically addressed whether his behaviour was comparable to the offences outlined at paragraph 7.6, therefore, it was not open to them to apply the sanction of suspension. He argued that neither Panel had applied the test for suspension appropriately but had, instead, applied their own test. I do not agree with him. It is clear that both Panels fully considered the impact of Dr Watkins' behaviour, which he has admitted, and considered what sanction was appropriate. It would have been good practice for them to have reflected in their letters that they considered his behaviour to amount to gross misconduct and to explain the reasons why. But the fact that they did not do so does not mean that either Panel acted unfairly.

151. Nor do I agree with Dr Watkins that it was necessary for them to have addressed whether his behaviour was comparable to those offences listed in paragraph 7.6. Paragraph 7.6 is an indicator of offences which are likely to amount to gross misconduct. It is not an exhaustive list and in cases where a Panel finds one of those offences to have occurred I would still expect them to consider, and explain, what sanction might be appropriate. On that basis, I am satisfied that the Appeal Panel

addressed, as far as was necessary, Dr Watkins' points about procedural irregularities.

152. Turning now to Dr Watkins' point that neither Panel had the power to preclude him from standing for office, I understand that he believes that as Article 14 does not include this as a potential sanction it is not open to an LOV or appeal Panel to impose this sanction. His view was that the BMA appeared to be relying on the general powers under Article 14 (11) and Article 72 to introduce a specific, and in his view draconian, sanction which was not provided for in Article 14. He argued that it was not possible to rely on a general power in the absence of a specific power where the impact of the sanction was so significant.

153. Mr Hendy told me that the list of sanctions included under paragraph 8 of the LOV process is not exhaustive and, therefore, it was open to the Panel to apply the sanction. I agree with this approach. I have explained, at paragraphs 27 to 43 above why I accept the BMA's position on the relationship between Articles 13 and 14. Paragraph 8 of the LOV process should be read in this context and is clear that the list of sanctions outlined within that paragraph is not an exhaustive list. Council must have adopted this on the understanding that other sanctions would be available to an LOV Panel and chose not to limit the sanctions in any way.

154. On that basis, I cannot agree that the Appeal Panel did not consider Dr Watkins' arguments as to procedural irregularities. It is clear to me that they took evidence from the BMA's Head of Legal Services as to the adoption of the LOV process and recorded the fact that they had considered both proportionality and Dr Watkins' points about irregularities in the proceedings.

155. It is also worth me reflecting that this complaint appears to flow from the different positions taken by the BMA and Dr Watkins as to the impact of the incorporation of Articles 13 and 14 into the LOV process. It may be that this has led to Dr Watkins' view that the Appeal Panel did not consider his points. In fact, it is clear that they considered them, with appropriate advice.

156. Finally, on this point Dr Watkins told me that he had not taken issue with the composition of the Appeal Panel at the time because he had been told that the Panel had been convened under the LOV Support and Sanctions Process. He was then told, after the Hearing, that the suspension had been made under Article 14. He argued that, had he known that the suspension was under Article 14, he would have challenged the composition of the Appeal Panel ahead of the Hearing. Bearing in mind that he was involved in the development of the process and a Member of Council when it was approved this is a difficult argument for him to sustain. But, even without that involvement, it is clear to me that by incorporating Article 13 and 14 into the LOV process it was open to both Panels to apply the sanction of a suspension.

Complaint 5.3

The Appeal Panel has stated that none of the new evidence is new evidence. In fact it clearly is. The Appeal Panel therefore improperly failed to consider it.

157. Dr Watkins provided three documents which he described as "new evidence" to the Panel. The first was a copy of an article which he had

written in 1987 which, in his view, demonstrated that he had expressed his views about the BMA structure and the misogynistic underestimation of women for over 30 years. He argued that this showed that the position he had taken was not created as an excuse for the LOV process. The second was his record of a conversation between himself and the Chair of the BMA about the divisions on Council. The third was a record of a conversation with a friend about how his statement about the Deputy Chair's qualities of vision, courage and determination had been interpreted by others on Council. In each case he gave his reasons as to why the information was not available at the LOV Panel stage.

158. Ms Breen was clear in evidence that the Panel did not regard these documents as presenting new evidence which was relevant to the complaint being considered which related to the listserver posting. Bearing in mind that Dr Watkins accepted that he made the listserver posting, and that he was wrong to do so I find the Appeal Panel's approach to be reasonable.

159. If these documents are relevant at all, then it could only be with respect to the finding on intent and I note that the Appeal Panel removed from the decision the reference to Dr Watkins' purported intent, without having considered these documents. As to sanction, the Appeal Panel clearly took the view that, even without a finding of intent, the impact of the listserver posting was sufficient to warrant suspension.

160. I cannot see that the Panel's views on these documents contributed to any unfairness in the Appeal process.

Complaint 5.4

Part of the reasoning of the Appeal Panel is that the original Panel did not state its reasons and the Appeal Panel cannot speculate as to what they are. This effectively negates the appeal process.

161. Ms Breen told me, in written evidence, that she believed that Dr Watkins had misunderstood the point in the Appeal Panel's Decision letter which reflected that they did not have access to the LOV Panel's thought processes and deliberations. She said that the Appeal Panel had access to the LOV Panel's decision letter and consequently to the Panel's reasons for their decisions. But that their role was to consider the decision afresh and explain the reasons for their decisions.

162. This seems to be a reasonable approach which ensures that full consideration is given to the Appeal. I agree that Dr Watkins may have misunderstood this point and can see no issue here which could contribute to unfairness in the process. On the contrary, this demonstrates to me that the Appeal Panel showed fairness in their approach to the decision.

Complaint 5.5

The Appeal Panel stated that nothing that Dr Watkins did to make amends after the original conduct was of any relevance. No reasonable Appeal Panel would take that view, certainly in relation to penalty

163. This is not an accurate reflection of the Appeal Panel's decision which I have set out below:

> "We take the view that the sanction must be proportionate to the conduct or behaviour which was the subject of the complaint. In your case, the behaviour to which the complaint against you related was your posting on the Council listserver timed at 05.08 on 10 August 2017. The damage to X caused by your post (which in our view was considerable) and to confidence in the democratic process was done immediately when you sent your post and could not be undone by anything you did afterwards. The damage might have been limited by an immediate retraction and a full, unqualified apology on your part; however, for whatever reason, you chose not to do that.
>
> The matters to which you refer in the 10 bullet points on page 1 of your statement of appeal mostly happened after the posting and so were too late to have any remedial effect on the damage you caused by the post. The matters which happened before the post cannot condone or excuse it. We do not accept that these points are relevant to the proportionality of the sanction, a matter to which we refer again below, or that any of the points are grounds for finding that the sanction was disproportionate. Accordingly, we rejected this ground of appeal."

164. In evidence, Ms Breen explained that the Panel took the view that the damage to the Deputy Chair had been done as soon as Dr Watkins made his listserver posting. The appeal Panel's view was that only an immediate retraction and apology could limit the damage to the Deputy Chair and to confidence in the democratic process. She told me that the

Panel did consider the steps taken by Dr Watkins to be relevant but did not consider them to be sufficient.

165. It is unfortunate that Dr Watkins has chosen to paraphrase the Appeal's Panel decision on this point in this way. Ms Breen has explained how the Appeal Panel approached their decision which is, in my view, a reasonable approach and one which was within their powers. As to the proportionality of the sanctions I can understand that the sanction may seem harsh; however, both the LOV Panel and the Appeal Panel approached their decisions carefully and gave explanations for their decisions. Those decisions appear to me be properly articulated, with clear reasoning and fall within the range of reasonable options, bearing in mind each Panel's view of the content and the impact of Dr Watkins' listserver posting.

Complaint 5.6

The Appeal Panel said that Dr Watkins had not apologised but this is untrue and there was evidence before both the original Panel and the Appeal Panel to show that it was untrue

166. This does not reflect the wording of the decision letter which records that "The damage might have been limited by an immediate retraction and a full, unqualified apology, on your part; however, for whatever reason, you chose not to do this".

167. There was evidence before both Panels, and before me, that Dr Watkins had apologised to the Deputy Chair and that he very much regrets his listserver posting. In my view the Panel was, however, entitled to take into account the nature and extent of any apologies and/or retractions made

by him and the time at which he made them. I cannot see that it was unfair for either Panel to do so.

Complaint 5.7

The Appeal Panel rejected the legal appeal on the Article 14 issue on the basis that Dr Watkins should have queried this when the matter was discussed at Council, but there was no clarity at Council that this was how the matter would be interpreted and in any case this is not a valid ground for rejecting an appeal on the interpretation of the rules

168. I have dealt with the point as to whether Dr Watkins could have raised the legitimacy of the proceedings at paragraph 136 above. Ms Breen gave written evidence that this was a comment in the decision letter rather than a reason for rejecting his appeal. This is consistent with my reading of the decision letter and I cannot see that it demonstrates any unfairness towards Dr Watkins.

169. I would add that it does not seem unreasonable for a Council Member who is actively involved in developing a process such as this to take some responsibility for ensuring its legitimacy and to raise any points at an early stage. That should not preclude them, of course, from raising points should they find themselves subject to the process. It is often only when the process is put into practice that any questions or inconsistencies arise.

Complaint 5.8

The Appeal Panel took into account issues unrelated to the subject matter of the Appeal including a confidentiality issue which was not the subject of the proceedings and on which in any case the BMA has subsequently apologized to Dr Watkins, and also including his raising the legal appeal.

170. Ms Breen gave written evidence that the Appeal Panel decision letter refers to all of the information taken into account by that Panel. Dr Watkins has provided evidence of the confidentiality issue and the legal appeal (which I have interpreted as referring to the issue of the relationship between LOV and Article13 and 14) but on no other issues. On that basis, I can consider this part of the complaint only in respect of the confidentiality issue as I have addressed the legal point at paragraphs 27 to 43.

171. As I have reflected at paragraph 119 above, it is not my role to take a view on the BMA's approach to confidentiality. My reading of the decision letter, however, is that the Panel noted the "potential" breach of confidentiality but have not suggested that this was relevant to their findings of fact or on sanction. On that basis, I do not accept that this issue raises any questions about the fairness of the process.

Complaint 5.9

Having reversed the finding of the original Panel that Dr Watkins had behaved out of a wish to harm X, no reasonable Panel would have failed to reduce the penalty

172. I have addressed this point at paragraphs 163 to 165 above. I consider that the Appeal Panel was entitled to reach the decision which was proportionate and I have seen no evidence of unfairness

Complaint 6

For the whole of the period from 17 August 2017 (when the complaint against Dr Watkins referred to in complaints 1, 3, 4 and 5 above was lodged) to 29 January 2018 (when the purported appeal against Dr Watkins' suspension was purportedly dismissed) the BMA breached Principle 17 of the Support and Sanctions Process and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct by accepting in the complaint, and refusing to strike out from the complaint, a passage attacking UNITE.

173. I have addressed this point at paragraphs 70 to 76 above as part of Complaint 4. I can only repeat that Dr Watkins has not provided any evidence to me which demonstrates that the paragraph in question was, in fact, prejudicial or an attack on UNITE. Nor can I see any unfairness arising from the fact that the paragraph about UNITE was included within the complaint which was seen by the Panel or the Appeal Panel.

174. It is worth noting that Dr Watkins has provided me with a copy of an email, dated 14 July 2017, from the Director of Policy at the BMA to UNITE which records that there is no suggestion that Membership of UNITE is in compatible with the BMA and which goes on to discuss the relationship between the two Unions. He also provided this email to the Appeal Panel. It is difficult to see, however, how that email could contribute to a suggestion that the BMA were acting unfairly by refusing to

strike out, or redact, the relevant paragraph from Dr Dearden's complaint. It predates the complaint which was made by Dr Dearden and is supportive of the relationship between UNITE and the BMA.

175. It is also worth noting that the email appears to be in response to a conversation; however, I do not have any evidence as to what prompted that conversation or the nature of the conversation.

176. I have no evidence to support this complaint and so I refuse to make the declaration requested by Dr Watkins.

Enforcement

177. The Union have conceded complaint 1. The impact of this is that Dr Watkin's suspension, which included his exclusion from standing for any elected posts, began on 24 October 2017 and ended on 23 October 2018. Had the suspension been applied following the outcome of the Appeal it would have begun on 29 January 2018 and ended on 28 January 2018. Elections to Council were held in February 2018 and consequently the timing of the suspension had no bearing on Dr Watkin's exclusion from those elections.

178. Neither Dr Watkins nor the BMA believed that an enforcement order would be necessary on this point alone. As the suspension period ended earlier than it would otherwise have done and had no bearing on Dr Watkins' eligibility for the Council elections in February 2018, I agree with them that no enforcement is necessary.

General Issues

Witness Statements

179. The BMA objected to the inclusion of a number of witness statements provided by Dr Watkins on the basis that they were not relevant to the complaint and were in some cases prejudicial to the BMA. I decided to allow the witness statements to be admitted on the basis that I would consider only those which were relevant to the complaints.

180. Dr Watkins invited me to take into account witness statements, and papers in the bundle of evidence which, in his view, demonstrated that the BMA's approach in his case was consistent with the BMA's approach in other cases. His view was that it demonstrated that Dr Dearden pursued a practice of dealing with an insignificant issue formally and then exaggerating it. Both Ms Jones and Ms Breen, however, provided evidence that the core issue which each Panel considered was Dr Watkins' behaviour and its impact. It is clear that each Panel considered his behaviour to be sufficiently serious to warrant suspension from office. I have not, therefore, taken into account evidence from other cases.

Transparency

181. At the beginning of the Hearing I drew the parties' attention to the fact that I had worked at the General Medical Council from 1998 to 2008. During that time I worked with, or met, some of the doctors named in the papers provided by Dr Watkins. I identified those doctors and explained the nature and extent of my professional relationship. I confirmed that I had no personal relationship with any of those doctors. Neither party objected to my role in deciding this complaint.

Sarah Bedwell

The Certification Officer

Appendix

Complaint 1

On 24 October 2017, 29 January 2018 and 12 February 2018 and other dates the British Medical Association breached Article 14(7) of its rules by applying a suspension from office to Dr. Stephen Watkins before his appeal had been heard by an appeal panel properly constituted under the Article.

Complaint 2

For the whole of the period from 9 January 2018 to 30 January 2018 the Union breached Principle 17 of the BMA Living our Values Support and Sanctions process which states, *The process should not be used to stifle constructive debate or deter members from seeking election.* The breach occurred in that the Union continued to entertain a complaint by Sir Sam Everington about Dr Watkins' involvement in preparing the document *Manifesto for a Better BMA* and that the Union also declined opportunities to confirm that the complaint could not be extended to co-authors not under suspension. The effect of this was to deter the co-authors of the document from continuing with their intention to distribute it widely and use it as a basis for negotiating consensus about various issues and influencing the contents of election manifestos. The rule was also breached because there was a significant risk that individuals would be deterred from seeking election. One member did tweet that he had been deterred although he later changed his mind and stood anyway.

Complaint 3

On or around 12 February 2018 the British Medical Association breached bye law 58 by not accepting Dr. Stephen Watkins' nomination for Council even though it met the criteria set out in that bye law.

Complaint 4

On 12 October 2017, and also on various earlier dates on which procedural decisions were made which affected the hearing on 12 October 2017, the BMA breached Principle 2 of the Living our Values ('LOV') Support and Sanctions Process (which requires that the process is fair, documented and applied consistently to all members) and also rule 7.5 of the Support and Sanctions Process (which requires a fair process to be followed before suspension) and also an implied rule to similar effect within Article 14 and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct. The BMA breached these rules by operating an unfair process. The rule was breached because the process was unfair as a result of the cumulative impact of the following irregularities:

1. The inclusion in the complaint of a highly prejudicial attack on UNITE (see para 1 in section VI of 'Appendix A Document 1 – the notice of appeal submitted against the Living our Values Panel decision: Appeal by Dr Stephen Watkins against the findings of a Living our Values Panel held on 12 October 2017', henceforth called 'The Notice of Appeal')

2. The untrue statement at the start of the complaint that Dr Watkins had previously caused great harm by his e mails – it has been confirmed by the BMA that this is untrue (see para 2 of section VI of The Notice of Appeal)

3. The submission of prejudicial material to the LOV Panel, which Dr Watkins had not been permitted to see, as a result of a request by Dr. Dearden for advice about his conduct (see para 3 of section VI of The Notice of Appeal)

4. The circulation of the complaint together with the prejudicial material to the LOV Panel over a week before the circulation of Dr Watkins' response (see para 4 of section VI of The Notice of Appeal)

5. The process has failed to state coherent and well framed charges (see para 5 of section VI of The Notice of Appeal)

6. The LOV Panel asked no questions of Dr Watkins' evidence but appears to have rejected it in its entirety without showing any signs of considering it (see para 6 of section VI of The Notice of Appeal)

7. The LOV Panel's reference to "the central message of the posting" is fundamentally misconceived as it fails to address Dr Watkins' evidence as to what it was meant to say. It accepted a particular interpretation based on taking extracts from the posting out of context (see para 7 of section VI of The Notice of Appeal)

8. Preparation of Dr Watkins' defence and preparation for the hearing were disrupted by bullying (see para 8 of section VI of The Notice of Appeal)

9. Dr. Dearden (the complainant) failed to declare a significant conflict of interest (see para 9 of section VI of The Notice of Appeal)

10. The LOV Panel failed to consider the considerable evidence that the conduct being considered, interpreted as they interpreted it, was out of character. They should have asked themselves whether this might not suggest that in fact Dr Watkins' motivation was not the one that they described but rather the one that Dr Watkins put forward by way of

explanation, which was entirely credible and in character (see para 10 of section VI of The Notice of Appeal)

11. The LOV Panel failed to consider the considerable evidence that Dr Watkins acted in a unifying and conciliatory way towards divisions in Council. This should have alerted them to the fact that the motivation for Dr Watkins' posting was genuinely, as it stated, to support Z and X in addressing disunity, not to undermine them and create disunity (see para 11 of section VI of The Notice of Appeal)

Complaint 5

On 23 January 2018, and also on various earlier dates on which procedural decisions were made which affected the hearing on 23 January 2018, the BMA breached Principle 2 of the Living our Values) Support and Sanctions Process (which requires that the process is fair, documented and applied consistently to all members) and also rule 7.5 of the Support and Sanctions Process (which requires a fair process to be followed before suspension) and also an implied rule to similar effect within Article 14 and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct. The BMA breached these rules by operating an unfair process. The rule was breached because the process was unfair as a result of the cumulative impact of the following irregularities:

Although at the hearing on 23 January 2018 which preceded and contributed to this decision one member of the Appeal Panel showed an interest in the appeal and seems to have considered it fairly, the Chairman was clearly biased and the third member of the Panel was basically silent This bias would, on the balance of probabilities, carry forward into the actual decision

1. The Appeal Panel has rejected out of hand the complaints of irregularity and the complaints of disproportionality, although they were carefully argued and deserved a response

2. The Appeal Panel has stated that none of the new evidence is new evidence. In fact it clearly is. The Appeal Panel therefore improperly failed to consider it.

3. Part of the reasoning of the Appeal Panel is that the original Panel did not state its reasons and the Appeal Panel cannot speculate as to what they are. This effectively negates the appeal process.

4. The Appeal Panel stated that nothing that Dr Watkins did to make amends after the original conduct was of any relevance. No reasonable Appeal Panel would take that view, certainly in relation to penalty

5. The Appeal Panel said that Dr Watkins had not apologized but this is untrue and there was evidence before both the original Panel and the Appeal Panel to show that it was untrue

6. The Appeal Panel rejected the legal appeal on the Article 14 issue on the basis that Dr Watkins should have queried this when the matter was discussed at Council, but there was no clarity at Council that this was how the matter would be interpreted and in any case this is not a valid ground for rejecting an appeal on the interpretation of the rules.

7. The Appeal Panel took into account issues unrelated to the subject matter of the Appeal including a confidentiality issue which was not the subject of the proceedings and on which in any case the BMA has subsequently apologized to Dr Watkins, and also including his raising the legal appeal.

8. Having reversed the finding of the original Panel that Dr Watkins had behaved out of a wish to harm X, no reasonable Panel would have failed to reduce the penalty

Complaint 6

For the whole of the period from 17 August 2017 (when the complaint against Dr Watkins referred to in complaints 1, 3, 4 and 5 above was lodged) to 29 January 2018 (when the purported appeal against Dr Watkins' suspension was purportedly dismissed) the BMA breached Principle 17 of the Support and Sanctions Process and also a rule to be implied from the fact that the Support and Sanctions Process is stated to be compliant with the ACAS Code of Conduct by accepting in the complaint, and refusing to strike out from the complaint, a passage attacking UNITE.