

D/19/19-20

Decision of the Certification Officer on an application made under Section 55(2) of
the Trade Union and Labour Relations (Consolidation) Act 1992

Parlour

v

National Association of Schoolmasters Union of Women Teachers (NASUWT)

Date of Decision

21 October 2019

Contents

Decision 3
Reasons 3
Findings of fact 4
The Relevant Statutory Provisions 4
The Relevant Rules of the Union 6
Considerations and Conclusions 6

Decision

1. Upon application by Mrs Susan Parlour (“the applicant”) under section 46 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) I make the following declaration:

The Union breached Section 46 (1) (a) and (b) of the Act between 3 June 2019 and a date on or before 5 July 2019 because the General Secretary continued to hold the post of General Secretary for more than five years without being re-elected.

Ms Keates’ term of office as General Secretary ended on 2 June 2019. She remained in post until a date on or before 5 July 2019 when she was appointed as Acting General Secretary. The Union began an election to appoint a new General Secretary in July 2019. The ballot will close on 31 January 2020. I am satisfied that, as Ms Keates no longer holds the post of General Secretary, the ongoing process to elect a General Secretary is sufficient to remedy the Union’s breach of s46 (1) (a) and (b) of the Act.

I do not consider it appropriate to make an enforcement order for the reasons explained at paragraphs 35 to 38 of this decision.

Reasons

2. Mrs Parlour brought her application as a member of NASUWT (or “the Union”). She did so by an application dated 18 June 2019.
3. Following correspondence with my office, Mrs Parlour confirmed her complaint as follows:-

On or around 3 June 2019, the union breached Section 46 (1) (a) and (b) of the Trade Union Labour Relations 1992 because the General Secretary, Chris Keates continued to hold the post of General Secretary for more than five years without being re-elected.

4. At a hearing before me on 9 October 2019, Mrs Parlour was represented by Mr Richard Harris. A written witness statement and oral evidence was given by Mrs Parlour. The Union was represented by Mr Stuart Brittenden of counsel instructed by Mr Edward Cooper of Slater and Gordon. A written witness statement and oral evidence for the Union was given by Mr Russ Walters, National Treasurer. There was in evidence a bundle of documents consisting of 214 pages containing correspondence. Both the Union and Mr Harris provided skeleton arguments.

Findings of fact

5. Mrs Parlour is a Member of NASUWT.
6. Ms Chris Keates was re-elected to the position of General Secretary of NASUWT in 2014. The result of the election was announced on 3 June 2014.
7. The NASUWT National Executive Committee met on 7 June 2019. At that meeting it was reported that, on 21 May 2019, Ms Keates had informed the National Officers of NASUWT that she intended to retire and would not be standing for re-election as General Secretary. The National Treasurer reported that he would bring an election timetable to the NEC at its meeting in July 2019.
8. The NEC agreed that pending the outcome of the process, and in the interim, the role of General Secretary would continue to be carried out by Ms Keates, in accordance with her permanent contract and the position in Rule, including the administration of the process.
9. Mr Dave Kitchen, NASUWT National President, emailed the National Executive Committee and local and negotiating secretaries on 11 June 2019 to explain to them that Ms Keates was not standing for re-election, that the process to elect her successor had begun and that, in the interim, Ms Keates remained in post.

The Relevant Statutory Provisions

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

46 Duty to hold elections for certain positions.

- (1) A trade union shall secure—
 - (a) that every person who holds a position in the union to which this Chapter applies does so by virtue of having been elected to it at an election satisfying the requirements of this Chapter, and
 - (b) that no person continues to hold such a position for more than five years without being re-elected at such an election.
- (2) The positions to which this Chapter applies (subject as mentioned below) are—
 - (a) member of the executive,
 - (b) any position by virtue of which a person is a member of the executive,
 - (c) president, and
 - (d) general secretary;

55 Application to Certification Officer

- (1) A person having a sufficient interest (see section 54(2)) who claims that a trade union has failed to comply with any of the requirements of this Chapter may apply to the Certification Officer for a declaration to that effect.
- (2) On an application being made to him, the Certification Officer shall—
 - (a) make such enquiries as he thinks fit, and
 - (b) give the applicant and the trade union an opportunity to be heard, and may make or refuse the declaration asked for.
- (3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.
- (4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.
- (5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.
- (5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—
 - (a) to secure the holding of an election in accordance with the order;
 - (b) to take such other steps to remedy the declared failure as may be specified in the

order;

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

The Relevant Rules of the Union

11. The rules of the Union which are relevant for the purposes of this decision are:-

Rule 7 The National Executive

- (k) Without prejudice to the generality of the power set out in Rule 7(j) the National Executive shall:
- (i) subject to ratification at the Conference immediately following such decision, make such bye-laws and regulations as to the management of the Union not inconsistent with these Rules as the National Executive may consider desirable and to rule upon any question as to the construction of any Rule, bye-law or regulation;
 - (ii) determine the remuneration and duties of the General Secretary;
 - (iii) appoint such officials, other than the General Secretary, as the National Executive considers necessary for the good conduct of the affairs of the Union;
 - (iv) determine the remuneration and duties of such officials as are appointed under (k)(iii) above;
 - (v) enter into deeds, guarantees and agreements in accordance with these Rules as agents of the Union;
 - (vi) appoint such Committees with such powers and duties as the National Executive shall from time to time consider necessary;
 - (vii) whether by itself or on the advice or with the assistance of agents invest or cause to be invested such of the assets of the Union and the income arising therefrom as shall not be required for the administration or other purposes of the Union in accordance with these Rules provided that the National Executive shall not be liable for the defaults of agents whom it may employ for this purpose;
 - (viii) make such arrangements as the National Executive deems to be necessary and appropriate to fill any vacancy to any elected office in the Union arising from suspension or removal from office.

Considerations and Conclusions

12. The Union conceded that there had been a breach of section 46 (1) (a) and (b) of the Act because Ms Keates remained in post as General Secretary until 7 June 2019 or 5 July 2019. There was, however, a disagreement between the parties as to how I should interpret the complaint. The Union's view was that the complaint relates only to the period up until Ms Keates was appointed as Acting General Secretary. Mrs Parlour's view was that Ms Keates remains in the role of General Secretary and consequently the complaint relates to a continuing breach of the Act.

13. I noted the Union's concession and the disagreement between the parties about the interpretation of the complaint. I explained that I did not require evidence to be presented which was relevant only to the breach which had been conceded. I

invited both parties to offer evidence which was relevant to a continuing breach and the need for any enforcement order, before making submissions which should also address how the complaint should be construed. I noted the Union's objections that doing so may result in prejudice to them if they had not had sufficient time to provide evidence or argument as to the continuing breach and asked them to identify, during the hearing, any areas where they believed that prejudice may arise. I indicated that I would address such issues with directions, if appropriate, after the Hearing and before I reached my decision.

Summary of Evidence

14. Mrs Parlour told me that she was aware, in 2018, that Ms Keates' term of office as General Secretary was coming to an end. From August 2018, she and others, including a past President, sought information from NASUWT as to the timetable for electing her successor. They received only brief replies which provided no indication of the election timetable. Ms Anne Thompson, another Union member, made a complaint about the election timetable to the Northern Ireland Certification Officer (NICO), in May 2019. This complaint was shared with the Union on 30 May 2019. During her evidence Mrs Parlour explained her view that the complaint to the NICO was the reason that the NEC addressed the question of the election at its meeting on 7 June 2019.
15. In cross examination, Mrs Parlour agreed that she had not attended the meeting of the Union's National Officers on 21 May 2019. She had been at the NEC meeting on 7 June 2019 but had left at 16:30 before the issue of the General Secretary election had been discussed. She agreed that, given the reference to the National Officers' Report in the discussion around the General Secretary election and to the retirement of the General Secretary, it was likely that the meeting on 21 May 2019 had discussed the General Secretary's retirement. She also agreed that the timetable for the election which had been distributed in July 2019 was genuine and that the election was going ahead.

16. Mrs Parlour told me, in her written statement and when giving evidence, that whilst it appeared that Ms Keates had resigned she had, in fact, continued in the role of General Secretary. She told me that the fact that Ms Keates undertook the same functions and remained on the same terms and conditions demonstrated that she continued in the post of General Secretary even if she was referred to as the Acting General Secretary or the General Secretary (Acting). She described this as “acting for herself”. She explained that, in her experience, you could act into a role which had been occupied by somebody else who was not available (because of illness for instance) or who had resigned but that you could not act in the role which you held immediately prior to your resignation. She suggested that, in her view, the NEC had power to appoint a person to act as a General Secretary. That appointee could be a current employee of the Union or someone external; however, it could not be Ms Keates.
17. Mrs Parlour told me that she did not think that Ms Keates had, in fact, resigned but had simply rebranded or re-labelled herself. She was asked whether she stood by her comment in her letter of 25 July 2019 to my office that Ms Keates had resigned. She repeated that she believed that she had not, but had simply rebranded herself.
18. Mrs Parlour relied on a number of emails and letters which had been issued after 5 July 2019 but which included reference to Ms Keates as “General Secretary”. In her view, this demonstrated that Ms Keates remained in the post of General Secretary and was holding herself out to be General Secretary. She denied that she had been selective in providing these examples without also providing copies of correspondence in which Ms Keates was described as the Acting General Secretary. She told me that it was not possible to include copies of everything.
19. Mr Walters explained in his written witness statement, and when giving oral evidence, that the Union had made an honest and genuine mistake as to the timing of the statutory election which was required at the end of Ms Keates’ term

of office. The Union knew that Ms Keates' term of office was coming to an end. Their view was that, as Ms Keates intended to retire, the statute allowed them an additional six months to hold an election. This had been the case when a previous General Secretary had retired. Mr Walters explained, however, that there had been a subsequent change to the relevant statute and the Union had not amended its Rules accordingly. Once Ms Keates had formally indicated her intention to stand down the NEC began the process to elect her successor. He explained that this had been discussed at the National Officers' meeting on 21 May 2019 and had not been prompted by a complaint to the NICO.

20. Mr Walters explained that the Union had given only brief replies to the questions raised about the timetable because they genuinely believed that they were acting within the relevant statute. He also gave evidence that the Union's annual planner included details of all regular business, including elections. It did not include details of the General Secretary election because this was not part of routine business as it occurred every five years. The General Secretary election timetable had been planned, however, to take into account the fact that local associations would be holding meetings earlier than normal this year, as set out in the planner, for other elections.

21. Mr Walters confirmed that Ms Keates' term of office as General Secretary should have ended on 3 June 2019. He could not say when she would end her term of office as Acting General Secretary as that will depend on the outcome of the election. The Union will consider what, if any, transition period is necessary once they are appraised of the successful candidate's circumstances, including any relevant notice period. It will also depend on whether the election is contested. In his witness statement, he explained that new General Secretaries had traditionally been introduced at the Union's annual conference. He expanded on this by saying that, whilst it was the usual practice, there was no requirement in the Rules for this to happen and that the appointment itself, and the term of office, did not need to be linked to the conference.

22. Mr Walters provided copies of correspondence and emails in which Ms Keates was described as General Secretary (Acting). He explained there had been errors on some documents which, in his view, was not surprising bearing in mind that Ms Keates was General Secretary for approximately 15 years and staff were used to describing her in this way. The Union had taken steps, however, to rectify errors quickly by reissuing correspondence using the correct title. He referred to one example of an email to Northern Ireland members which had been produced using an old template. The email was reissued as soon as the error was spotted, approximately one hour after the original had been sent.

Scope of Complaint

23. Mr Harris told me that, in his view, the scope of the complaint was clear in that the statutory term of office was for a period of five years. Once that statutory period ended there was a breach which could not be rectified other than through the resignation or re-election of the General Secretary. Mrs Parlour believed that there was a continuous breach whilst Ms Keates remained in post, even if she was described as Acting General Secretary. He agreed that there was scope for some interim appointments to be made through Rule 7(k) but that it was tendentious to suggest that the rule could be used to appoint Ms Keates.

24. Mr Brittenden told me that it was clear that the complaint was limited to a point in time on or around 3 June 2019. The complaint wording was agreed by Mrs Parlour on 5 July 2019. She could not have anticipated the outcome of the NEC meeting, on the same day, at which Ms Keates was appointed as Acting General Secretary. Consequently, she could not have intended that the complaint should include the period in which Ms Keates was Acting General Secretary. If she had wished to widen her complaint, so as to include the role of Acting General Secretary, then she should have sought to amend the complaint to include that role. Mr Brittenden also noted that neither Mr Harris nor Mrs Parlour had advanced an argument that there had been a breach of Rule 7(k)(iii). The Union could not respond to any such allegation without knowing the nature of the breach.

25. Neither Mr Harris nor Mrs Parlour argued that the NEC would be in breach of Rule 7(k) simply by appointing an Acting General Secretary. Nor did they suggest that the NEC did not have a power to appoint an Acting General Secretary. In fact when giving evidence, Mrs Parlour agreed that they could do so; her view was that they could not appoint Ms Keates into the role. It is not open to me, however, to consider whether there had been a breach of Rule 7(k). This is not part of Mrs Parlour's complaint as set out above and I have not considered this point.
26. It seems to me that the relevant question is whether Ms Keates stood down as General Secretary on either 7 June 2019 or 5 July 2019 and was then appointed as Acting General Secretary. If she was so appointed, and she no longer fills the role of General Secretary then the fact that the Union have conceded that there was a breach up until those dates limits the scope of the complaint. The only remaining question, in those circumstances, is whether it is appropriate for me to make an enforcement order. If, however, Ms Keates did not stand down on 7 June 2019 or 5 July 2019 then she remains in post and the Union continues to be in breach of Section 46 of the Act.
27. I have set out below the position as recorded in the minutes of the meetings of 7 June 2019 and 5 July 2019. It is worth reflecting that there has been no challenge to the accuracy of the minutes.

Minutes of the Meeting of the NEC on 7 June 2019

'16. b) Report of the National Officers meeting held on 21 May 2019

To consider item (e), The General Secretary Election, from the National Officers' Report which had been deferred to Any Other Business when the Report had been moved and adopted.

The General Secretary advised the National Executive of her retirement plans and that she would not be standing for re-election.

The National Treasurer gave an oral report that:

As a result of the announcement of the process had to be taken forward to elect the next General Secretary.

A timetable would be brought by the Officer to the July 2019 meeting of the National Executive for approval by the Executive. The timetable would reflect the procedure adopted by Conference for the election of the General Secretary and would include:

- the advertising of the post and the timetable for applications;
- the date of the meeting of the Staff Review Committee to shortlist the applicants and prepare interview questions;
- the date of the Special Executive at which the shortlisted candidates would be interviewed to determine a National Executive recommended candidate for the ballot;
- the timetable for the ballot, including time for local association nominations;
- the period of transition for the person elected to the role.

Once approved by the National Executive, the timetable would be issued to local associations.

Pending the outcome of the process, and in the interim, the role of General Secretary will continue to be carried out by Chris Keates, in accordance with her permanent contract and the position in Rule, including the administration of the process.

The National Treasurer also reported that a complaint had been lodged about the General Secretary election to the Northern Ireland Certification Officer

The Report was ADOPTED'

Minutes of the Meeting of the NEC on 5 July 2019

'18 REPORT OF THE STAFF REVIEW COMMITTEE

18 a) Timetable for the election of the General Secretary

The National Treasurer presented, on behalf of the Staff Review Committee, the draft timetable circulated to the National Executive.

The timetable was AGREED.

Chris Keates formally announced that she was standing down from the role of General Secretary with a view to retirement.

The following recommendation was proposed by the National Treasurer on behalf of the Staff Review Committee:

The National Executive, having determined the timetable for the election of the new General Secretary, and in light of Chris Keates now standing down from the office of General Secretary, under their powers in Rule 7(k) resolve that:

pending the implementation of the outcome of the election, and in the interim, Chris Keates act in the role of General Secretary.

A vote was taken and the recommendation was CARRIED.

The Acting General Secretary gave a report on the TUC General Council discussions on the role of the Certification Officer and complaints to the Certification Officer.

The Report was ADOPTED.

The National Treasurer gave an oral report on behalf of the Staff Review Committee on the GMB dispute.

The report was ADOPTED.'

28. The only conclusion I can reach, having read those minutes, is that Ms Keates stood down from her role as General Secretary on or before 5 July 2019. It is difficult to see how they can be interpreted in any other way.

29. It is also clear that the NEC appointed Ms Keates as Acting General Secretary on 5 July 2019. I have already reflected that there has been no challenge to the NEC's ability to appoint an interim General Secretary. Mr Harris's challenge, however, is that, notwithstanding the minutes of the NEC meetings identified above, Ms Keates remains in post as General Secretary. His first argument is that Ms Keates should not have been appointed to act into the role she held previously; however, the complaint before me does not make any reference to the appointment of an Acting General Secretary. I cannot, therefore, consider this issue but I would comment that I have not been referred to any rule, case law or statute which might prevent the Union from appointing Ms Keates into this role.

30. Mr Harris's second argument is that the Union continues to describe Ms Keates as General Secretary in correspondence. This, in his view, demonstrates that she was not appointed as Acting General Secretary but remained in post as General Secretary. I have been provided with correspondence which shows that there have been occasions when Ms Keates was described by the Union and by the press as General Secretary. I have also been provided with copies of correspondence where she is described as General Secretary (Acting). Mr Walters was very candid in evidence on this point (see paragraph 22). He explained that Ms Keates was General Secretary for a significant period of time and so staff are accustomed to referring to her as General Secretary. Consequently, there have been occasions where her previous title has been used as a result of what Mr Walters' described as "muscle memory". Mr Harris disagreed that this was the case; however, he did not provide any evidence to demonstrate that there was anything other than human error involved in referring to Ms Keates as General Secretary rather than Acting General Secretary. Nor did he provide any evidence to demonstrate that Ms Keates or the Union believed that, after 5 July 2019, she remained in post as General Secretary rather than Acting General Secretary. On that basis, the only conclusion open to me is that Ms Keates has, since 5 July 2019, held the post of Acting General Secretary.

31. I should mention that I have not been provided with the date at which Ms Keates actually stood down from the role of General Secretary; however, it is clear from the minutes of the NEC meeting on 5 July 2019 that she was appointed as Acting General Secretary at that meeting.

32. Consequently, I make the following declaration

The Union breached Section 46 (1) (a) and (b) of the Act between 3 June 2019 and a date on or before 5 July 2019 because the General Secretary continued to hold the post of General Secretary for more than five years without being re-elected.

33. There is no need for me to make Directions to enable the Union to provide any additional evidence as to a continued breach as described at paragraph 13 above. This is because I have found that Ms Keates stood down as General Secretary and was subsequently appointed as Acting General Secretary. She no longer holds the position of General Secretary. Mrs Parlour has not made a complaint to me about the appointment of an Acting General Secretary under Rule 7(k) and I have not, therefore, considered that issue.

Enforcement Order

34. Having found that the NASUWT breached Section 46 (1) (a) and (b) of the Act between 3 June 2019 and a date on or before 5 July 2019 I must consider whether it is appropriate for me to make an enforcement order to remedy the breach. In doing so, I must also consider whether the steps taken by the Union are sufficient to remedy the breach and, where, I believe that they are sufficient, include those within my declaration.

35. Mr Harris made submissions as to enforcement on the understanding that Ms Keates remained in post as General Secretary because he believed that her role as Acting General Secretary was a sham. It is clear to me, however, that Ms Keates was appointed as Acting General Secretary at the NEC meeting on 5 July 2019. I have seen no evidence to suggest that this was a sham. The evidence

from Mr Walters was clear and convincing that this was an honest and genuine mistake and any continuing references to Ms Keates as General Secretary arise only from the fact that, having served as General Secretary for 15 years, her colleagues are used to referring to her as the General Secretary. I found him to be a credible witness and have no reason to doubt his evidence. Having satisfied myself that Ms Keates has stood down from the General Secretary role, my powers, as to enforcement, are limited.

36. The only remaining pertinent question is whether the Union are taking steps to hold an election to appoint a new General Secretary. The Union have already begun that process and have provided me with a timetable. That process began in July 2019 with an advert seeking applications for the role and will end when the ballot closes on 31 January 2020. Mr Harris has suggested that I cannot rely on the Union's assertions that they will complete this timetable because they ignored the need to call an election before the end of Ms Keates' term of office. He drew my attention to the fact that Union Members had received assurances that the Union would comply with legislation previously but had still breached the Act. Mr Harris told me that it was not credible that senior officers within the Union misunderstood the legislation and took no steps to check their understanding once queries had been raised. His view was that the only reasonable inference which could be drawn was that the Union had no intention of holding an election for the role of General Secretary so that Ms Keates could remain in post.

37. I have already recorded that I found Mr Walters' evidence to be convincing as to the reason why an election was not called earlier and I am satisfied that this was a genuine error. The responses which assured Members that the Union would hold an election within the statutory time period were based on a misunderstanding of the legislation. There is no evidence that they deliberately misinterpreted the legislation or that they intended not to comply with what they believed the legislation required. It is regrettable that the Union laboured under this misunderstanding for so long. The issue could have been more speedily resolved had they checked the position or sought legal advice earlier. That is easy

to say in hindsight, however, and I have no reason to doubt Mr Walters' candour on this point.

38. Consequently, I have no evidence which leads me to doubt that, as the election is already underway, the Union will complete that electoral process and appoint a new General Secretary.

39. When I make a declaration, I am required by Section 55(5A) of the 1992 Act to make an enforcement order unless I consider that to do so would be inappropriate. On the facts of this case I consider that it would not be appropriate, or proportionate to make an enforcement order. For the purposes of section 54(4) of the Act I make the following declaration.

Ms Keates' term of office as General Secretary ended on 2 June 2019. She remained in post until a date on or before 5 July 2019 when she was appointed as Acting General Secretary. The Union began an election to appoint a new General Secretary in July 2019. The ballot will close on 31 January 2020. I am satisfied that, as Ms Keates no longer holds the post of General Secretary, the ongoing process to elect a General Secretary is sufficient to remedy the Union's breach of s46 (1) (a) and (b) of the Act.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', with a horizontal line underneath it.

Sarah Bedwell

The Certification Officer