

D/24/19-20

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

Dunham

v

Society of Radiographers

Date of Decision

14 November 2019

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Decision

1. Upon application by Mr David Dunham (“the Applicant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

I refuse Mr Dunham’s application for a declaration that on or before 24 May 2018 the Union breached its rules by judging the behaviour of Mr David Dunham without adherence to its standards, rule 6 of its handbook, and, subsequent to those judgments, applied disciplinary sanctions without accordance with the Membership Disciplinary procedure at appendix 4 of its handbook. The judgments were made apparent by the sanctions set out in Mr Warren Town’s letters of 24 May and 5 June as follows:-

- a. Unless Mr Dunham is able to confirm that his attitude and behaviour change the Union is reluctant to provide him a place on future programmes, and;
- b. That the Union will monitor future interactions that Mr Dunham may have with staff or at public meetings.

Reasons

2. Mr Dunham brought this application as a member of the Society of Radiographers (“the Union” or “SoR”). He did so by a registration of complaint received at the Certification Office on 28 March 2019.
3. Following correspondence with my office, Mr Dunham, confirmed the complaint as follows:-

Complaint

That on or before 24 May 2018 the Union breached its rules by judging the behaviour of Mr David Dunham without adherence to its standards, rule 6 of its handbook, and, subsequent to those judgments, applied disciplinary sanctions without accordance with the Membership Disciplinary procedure at appendix 4 of its handbook. The judgments were made apparent by the sanctions set out in Mr Warren Town’s letters of 24 May and 5 June as follows:-

- a. Unless Mr Dunham is able to confirm that his attitude and behaviour change the Union is reluctant to provide him a place on future programmes, and;
 - b. That the Union will monitor future interactions that Mr Dunham may have with staff or at public meetings.
4. At the hearing before me Mr Dunham represented himself and was supported by Ms Ranjena Verma. He provided two witness statements and gave oral evidence. The Union was represented by Mr Jack Murphy of Counsel. A written witness statement and oral evidence for the Union was given by Mr Richard Evans and Mr Warren Town. There was also in evidence a bundle of documents consisting of 191 pages containing correspondence and the Rules of the Union, Handbook for Accredited Representatives and an exchange of emails dated 25 October 2019 between Mr Dunham and Mr Paul Bromley. Both the Union and the Mr Dunham provided skeleton arguments. Mr Dunham had updated his skeleton arguments ahead of the Hearing and asked that I rely on the version dated 29 October 2019.
5. Prior to the Hearing Mr Dunham sought to include an exchange of emails between himself and Mr Paul Moloney. At the Hearing the Union objected on the grounds that the emails had been submitted late and were not relevant to the complaint before me. Mr Dunham withdrew his request and I did not take the emails into account when reaching my decision.

Findings of fact

6. Mr Dunham is a member of the Society of Radiographers.
7. Mr Town, Director of Industrial Strategy at the Society of Radiographers, wrote to Mr Dunham on 24 May 2018. The letter explained that, following a Union Representatives' Training Course, Officers had contended that Mr Dunham's behaviour and attitude, at the training course, fell short of that which the Union would expect from a Representative. The letter went on to say that it had been reported that Mr Dunham had been overly aggressive and uncompromising during joint debates and that he was not willing to engage with Officers or fellow

participants. It also recorded that similar concerns had been expressed in relation to a recent meeting on pay.

8. Mr Town explained that given the concerns that had been expressed, the Union would be reluctant to provide Mr Dunham with a place on future programmes unless he was able to confirm that his attitude and behaviour would change. He added that he trusted that Mr Dunham would have had time to reflect on how he was perceived by others and sought assurance that the Union would not see further repetition of the behaviour.
9. Mr Dunham replied, on 31 May 2018, explaining that he was disappointed by the accusations and also because Mr Town accepted them without question. He sought a meeting with Mr Town so that he could explain the matter from his point of view. Mr Dunham also sought information about the accusations that had been put to Mr Town.
10. Mr Town replied on 5 June 2018. He explained that his earlier letter was not intended as a formal list of accusations but was intended to bring verbal comments made about Mr Dunham's behaviour and attitude to his attention. He explained that Mr Dunham's reply had done no more than re-enforce the opinions and concerns that had been brought to his attention and that he would monitor future interactions that Mr Dunham may have with staff or at public meetings. He told Mr Dunham that he did not think a meeting would be sensible and explained that he could take up the matter through the Union's complaints procedure.
11. On 13 June 2018 Mr Dunham made a complaint to the Chief Executive, Mr Evans, about Mr Town's behaviour. Mr Evans investigated the complaint and replied on 20 July 2019. He explained that whilst he had investigated Mr Dunham's complaint about Mr Town's behaviour he had not investigated the original concerns about Mr Dunham's behaviour.
12. Mr Evans did not uphold the complaint but did acknowledge that there were a number of points to consider in the review of training which was already under way. He also explained that he did not think the reference to the Union being

reluctant to provide a place on training programmes in the future constituted a formal sanction or action against Mr Dunham.

13. Mr Dunham was not satisfied with Mr Evan's reply and his appeal against the findings of the investigation was considered by the Union's President, Ms Sue Webb. Ms Webb replied on 13 November 2018. She dealt with a number of issues raised by Mr Dunham including whether Mr Town's letter of 24 May 2018 constituted disciplinary action. She concluded that it did not.

The Relevant Statutory Provisions

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

64 Right not to be unjustifiably disciplined

(1) An individual who is or has been a member of a trade union has the right not to be unjustifiably disciplined by the union.

(2) For this purpose an individual is "disciplined" by a trade union if a determination is made, or purportedly made, under the rules of the union or by an official of the union or a number of persons including an official that—

- (a) he should be expelled from the union or a branch or section of the union,
- (b) he should pay a sum to the union, to a branch or section of the union or to any other person;
- (c) sums tendered by him in respect of an obligation to pay subscriptions or other sums to the union, or to a branch or section of the union, should be treated as unpaid or paid for a different purpose,
- (d) he should be deprived to any extent of, or of access to, any benefits, services or facilities which would otherwise be provided or made available to him by virtue of his membership of the union, or a branch or section of the union,
- (e) another trade union, or a branch or section of it, should be encouraged or advised not to accept him as a member, or
- (f) he should be subjected to some other detriment;

and whether an individual is "unjustifiably disciplined" shall be determined in accordance with section 65.

(3) Where a determination made in infringement of an individual's right under this section requires the payment of a sum or the performance of an obligation, no person is entitled in any proceedings to rely on that determination for the purpose of recovering the sum or enforcing the obligation.

(4) Subject to that, the remedies for infringement of the right conferred by this section are as provided by sections 66 and 67, and not otherwise.

(5) The right not to be unjustifiably disciplined is in addition to (and not in substitution for) any right which exists apart from this section; and, subject to section 66(4), nothing in this section or sections 65 to 67 affects any remedy for infringement of any such right.

65 Meaning of "unjustifiably disciplined"

(1) An individual is unjustifiably disciplined by a trade union if the actual or supposed conduct which constitutes the reason, or one of the reasons, for disciplining him is—

(a) conduct to which this section applies, or

(b) something which is believed by the union to amount to such conduct;

but subject to subsection (6) (cases of bad faith in relation to assertion of wrongdoing).

(2) This section applies to conduct which consists in—

(a) failing to participate in or support a strike or other industrial action (whether by members of the union or by others), or indicating opposition to or a lack of support for such action;

(b) failing to contravene, for a purpose connected with such a strike or other industrial action, a requirement imposed on him by or under a contract of employment;

(c) asserting (whether by bringing proceedings or otherwise) that the union, any official or representative of it or a trustee of its property has contravened, or is proposing to contravene, a requirement which is, or is thought to be, imposed by or under the rules of the union or any other agreement or by or under any enactment (whenever passed) or any rule of law;

(d) encouraging or assisting a person—

(i) to perform an obligation imposed on him by a contract of employment, or

(ii) to make or attempt to vindicate any such assertion as is mentioned in paragraph (c);

(e) contravening a requirement imposed by or in consequence of a determination which infringes the individual's or another individual's right not to be unjustifiably disciplined.

(f) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership,

(g) or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union,

(h) working with, or proposing to work with, individuals who are not members of the union or who are or are not members of another union,

(i) working for, or proposing to work for, an employer who employs or who has employed individuals who are not members of the union or who are or are not members of another union, or

(j) requiring the union to do an act which the union is, by any provision of this Act, required to do on the requisition of a member.

(3) This section applies to conduct which involves the Certification Officer being consulted or asked to provide advice or assistance with respect to any matter whatever, or which involves any person being consulted or asked to provide advice or assistance with respect to a matter which forms, or might form, the subject-matter of any such assertion as is mentioned in subsection (2)(c) above.

(4) This section also applies to conduct which consists in proposing to engage in, or doing anything preparatory or incidental to, conduct falling within subsection (2) or (3).

(5) This section does not apply to an act, omission or statement comprised in conduct falling within subsection (2), (3) or (4) above if it is shown that the act, omission or statement is one in respect of which individuals would be disciplined by the union irrespective of whether their acts, omissions or statements were in connection with conduct within subsection (2) or (3) above.

(6) An individual is not unjustifiably disciplined if it is shown—

(a) that the reason for disciplining him, or one of them, is that he made such an assertion as is mentioned in subsection (2)(c), or encouraged or assisted another person to make or attempt to vindicate such an assertion,

(b) that the assertion was false, and

(c) that he made the assertion, or encouraged or assisted another person to make or attempt to vindicate it, in the belief that it was false or otherwise in bad faith,

and that there was no other reason for disciplining him or that the only other reasons were reasons in respect of which he does not fall to be treated as unjustifiably disciplined.

(7) In this section—

“conduct” includes statements, acts and omissions;

“contract of employment”, in relation to an individual, includes any agreement between that individual and a person for whom he works or normally works;

“employer” includes such a person and related expressions shall be construed accordingly;

“representative”, in relation to a union, means a person acting or purporting to act—

(a) in his capacity as a member of the union, or

(b) on the instructions or advice of a person acting or purporting to act in that capacity or in the capacity of an official of the union.

“require” (on the part of an individual) includes request or apply for, and “requisition” shall be construed accordingly and.

“wages” shall be construed in accordance with the definitions of “contract of employment”, “employer” and related expressions. 108A Right to apply to Certification Officer.

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

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

6.0 STANDARDS

Members adhere to the conditions of this handbook and rules governing representation and adhere to the following standards;

6.1 All Members are of equal standing and will extend all courtesy and consideration for others.

6.2 Members shall exercise honesty, objectivity and diligence in the performance of their duties and responsibilities.

6.3 Members shall exhibit loyalty in all matters pertaining to the affairs of the Society and shall not knowingly be party to any illegal or improper activity.

6.4 Members shall not knowingly engage in acts or activities that are discreditable to the Society.

6.5 Members shall refrain from entering into any activity which may be in conflict with the aims or interests of the Society or which would prejudice their ability to carry out objectively their duties and responsibilities.

6.6 Members of the Society acting on behalf of the Society shall declare any potential conflict of interests.

6.7 Members of the Society shall undertake only those roles or activities for which they are adequately prepared and that they can reasonably expect to complete competently.

6.8 Members shall be prudent in the use of information acquired in the course of being a part of the Society. They shall not use confidential information for any personal gain. Where Members hold information about any other individual in the course of undertaking any role or activity, they will ensure that they do not

pass the information to others without the consent of the individual and will in all respects comply with the application provisions of the Data Protection Act 1988.

Any member who is judged as having failed to comply with these conditions will be subject to investigation and may be called to account for their actions in accordance with the SoR membership disciplinary procedure. Sanctions applied could include expulsion from the SoR in accordance with procedure in Appendix 4.

It is important to note that to access all these benefits members will need to subscribe to the SoR and for the purposes of individual representation, professional indemnity insurance or personal injury claim be in membership at the time of the complaint and also the incident.

Appendix 4 Membership Discipline Procedure

The draft procedure outlined below is for use to discipline SoR members for breach of SoR rules, not for professional misconduct which should either use a different procedure or, preferably, be left to the HCPC. Of course, one of the rules of the SoR is to behave in a manner appropriate to the profession and Council may wish to invoke the disciplinary procedure in certain instances.

1. The Procedure

This procedure is to be used only for disciplining SoR members for conduct which may have breached the rules of the organisation or brought it into disrepute. It is not to be used for complaints about the service provided by the SoR, its accredited representatives or its officers or other matters of concern. It is not to be used to discipline staff.

Complaints can be made through this process by SoR members or other parties.

2. Complaint Process

- (i) The Chief Executive will appoint a member of staff to act as Complaints Secretary in all aspects of the complaints procedure. All complaints about member conduct should be made to the Complaints Secretary clearly stating the reason for the complaint and which SoR rules have allegedly been breached¹ •
- (ii) Upon receipt of a complaint the Complaints Secretary will send a copy of

the complaint to the member who shall, within 10 days of the date it was sent to her/him, notify the Complaint Secretary in writing whether the complaint is admitted or denied.

- (iii) Upon receipt of a denial, or upon the expiry of 10 days if there is no response from the member is received, the Complaints Secretary will refer the complaint to the Director of Industrial Relations who will appoint an Investigating Officer.
- (iv) The Investigating Officer will be a senior member of staff who will be directed by the Chief Executive. The Investigating Officer will not be the member's own RO or Council member or have had any prior involvement with the member or the case. The Council member cannot be a member of the Appeals Committee (see 4(iv)).
- (v) The Investigating Officer will carry out a thorough investigation of the complaint and decide whether there is a prima-facie case against the respondent. The Investigating Officer will lodge a report with the Complaints Secretary.
- (vi) If the Investigating Officer finds that there is no case to answer the Complaints Secretary will write to the member to inform them of this decision. If the Investigating Officer finds that there is a prima facie case against the member, or the member admits the complaint, the Complaints Secretary will set up a disciplinary hearing.
- (vii) The initial hearing shall be in front of the Chief Executive assisted by the Complaints Officer. Further advice may be sought as appropriate.

¹ It is advised that this is a member of staff who is used to dealing with complaints or disciplinary procedures and is of sufficient seniority to carry respect among staff, members and Council. It is not anticipated that the number of complaints will make this an onerous task.

3. The Disciplinary Hearing

- (i) No later than 21 days before the disciplinary hearing, the member shall be sent a written notice of the disciplinary hearing including the information listed in Appendix 1 below.
- (ii) The member will be entitled to submit, not later than 7 days before the hearing, any written material in support of her/his case and the names of any witnesses.
- (iii) The member shall be entitled to be represented at the hearing by another person of her/his choice (subject to the approval of the Director of Industrial Relations, such approval will not be unreasonably refused).
- (iv) No accredited representative or officer is under any obligation to

undertake representation but equally, if asked, they should be allowed to undertake the task if they believe it is the right thing to do.

- (v) At the hearing the member will be asked whether she/he admits or denies the charge. If the member admits the charge she/he will be given the opportunity to raise any points of mitigation before the Chief Executive adjourns the meeting to consider her/his decision.
- (vi) If the member denies the charge the Investigating Officer will present the case against the member and call any witnesses. The member or their representative will have the opportunity to question the SoR witnesses.
- (vii) The Investigating Officer will have the opportunity to re-examine the SoR witnesses.
- (viii) The member or her/his representative will have the opportunity to present the member's case and call witnesses. The Investigating Officer will have the opportunity to question the member, the member's representative and their witnesses.
- (ix) The member and/or her/his representative will have the opportunity to re-examine their witnesses.
- (x) The Chief Executive is entitled to ask questions of any party at any time prior to the final summing up.
- (xi) The Investigating Officer will give their final summing up first. The last word will be given to the respondent or her/his representative.
- (xii) The Chief Executive will retire to consider her/his decision. Normally the decision will be given to the member on the same day and confirmed, with reasons, in writing within 5 days of the hearing. Exceptionally the Chief Executive may decide to defer a decision. In this case the member will be informed as soon as possible of the decision and within 10 days, with reasons, in any event.
- (xiii) The Chief Executive may decide to suspend membership, suspend the right to hold office, suspend the right to be an accredited representative or may permanently exclude the member.
- (xiv) Any penalty imposed on the member will not take effect until the expiry of the time limit within which the member may appeal, or until the appeal has been heard.

4. Right of Appeal

- (i) There will be a right of appeal against the Chief Executive's decision.
- (ii) The appeal will be lodged through the Complaints Secretary within 10 days of the letter confirming the decision in 3(xi) above being sent specifying the grounds of the appeal.
- (iii) Upon receipt of the appeal the Appeals Secretary will convene a meeting

- of the Appeals Committee to hear the appeal.
- (iv) The Appeals Committee is a sub-committee of UK Council. This will include the President, Vice-President, President Elect, Immediate Past President and one other nominated by Council. There will be a quorum of three for each appeal.
 - (v) The Appeals Committee may resolve to: dismiss the case against the member; uphold or reduce the penalty imposed by the Chief Executive.
 - (vi) The appeals committee will be advised by the Director of Industrial Relations.
 - (vii) The decision of the Appeals Committee will be final.

5. Complaints Against UK Council Members

- (i) Complaints against UK Council Members will be investigated by the Chief Executive and heard by the Appeals Committee in the first instance. The Appeals Committee will not include the President and will be assisted by the Complaints Secretary.
- (ii) Appeal against the Appeals Committee's decision will be to the President assisted by the Director of Industrial Relations.
- (iii) The President's decision will be final.

Appendix 1- Convening of Hearings

Whenever a hearing is convened under paragraph 3 above the procedure set out below shall be followed:

- (i) The Complaint Secretary shall send the member written notice of the hearing to the last known address no less than 21 days before the date of the hearing.
- (ii) The notice of the hearing sent to the member shall be dated and will specify:
 - (a) The date, time and place of the hearing
 - (b) The purpose of the hearing
 - (c) The details of the complaint sufficient to enable the member to appreciate the nature of the case against her/him.
 - (d) Her/his right to attend, make verbal submissions, call witnesses and submit documentary evidence.
 - (e) The right to make written submissions
 - (f) That reasonable travel expenses will be met
 - (g) That the hearing may ultimately lead to her/his expulsion from membership of the SoR
 - (h) That the meeting may proceed in her/his absence unless she/he submits written reasons why she/he cannot attend.
 - (i) That she/he is required to acknowledge receipt and state within 10

days of the date of the notice whether she/he intends to attend the meeting.

- (j) That she/he is requested to forward copies of any documents to which she/he will refer to the Complaints Secretary

A copy of the investigating officer's report will be enclosed.

Considerations and Conclusions

16. There is little, if any, disagreement as to the facts in this case. The core area of dispute is whether, in writing to Mr Dunham on 24 May 2018 and 4 June 2018 Mr Town was making a judgment about his behaviour, and applying sanctions to his Membership without following the Union's Rules. It is also worth noting that Mr Dunham accepts that the Union was right to consider whether to initiate action under the Rules having received reports of poor behaviour. He does not accept, however, that the Union followed its Rules when writing to him.

Summary of Submissions

17. Mr Dunham told me that the Union was only permitted to act within its Rules. Consequently, it could not take any action or reach any judgments about a member's behaviour unless it was empowered to do so by the Rules.

18. In his view, Rule 6 set out the standards required of a Union member and provided a route to discipline a member should there be a potential breach of the Union's standards. He described this as a 'beautiful Rule' which protected members from acts of discipline without a process being followed which enabled the decision maker to hear their views. He also argued that it was an underlying principle and policy of the Union that, where a member was facing action by an employer, there should be an opportunity for informal resolution before formal action was taken and that the member should be able to represent themselves or be represented. He referred me to Appendix 2 of the Union Rules and to the Handbook for Accredited Representatives.

19. Mr Dunham believed that Rule 6 is a Disciplinary Rule and, therefore, within my jurisdiction. He explained that Rule 6 required the Union to reach a judgment as to whether there was a possibility that the standards had been breached and, where it did so, to undertake an investigation before reaching a decision as to whether to engage the MDP at Appendix 4. His view was that Appendix 4 was not in itself a Rule but that, when the MDP was engaged under Rule 6, it became part of Rule 6 and the Union must follow it.

20. He told me that the letters addressed to him were clearly formal letters and demonstrated that a judgment had been made about him without his views having been taken into account. He referred me to Ms Webb's letter of 13 November 2018 which included the following:

'In particular I have found that the letter dated 24 May 2018 does imply that Warren had already concluded that the behaviour he had been made aware of had been displayed without allowing you the opportunity to put forward your version of events. I also accept that by telling you to change your behaviour he was essentially asking you to either admit the behaviour or to have to disagree, which in this case then led to further conflict between you'.

21. Mr Dunham's view was that this demonstrated that his appeal to the Union had resulted in the President agreeing that Mr Town had not adhered to the Union's Rules when he wrote on 24 May 2018. Mr Dunham also told me that the President had recommended that the letter of 24 May 2018 should be retracted; however the Union had not yet actioned this.

22. Mr Dunham explained that, in his view, the Union had placed sanctions on his membership because they had deprived him of his benefits. He described these as follows:

- a. That he had been deprived of the protection given to him as a member by the Union Rules. Specifically, Mr Town had not extended courtesy and consideration to him as a Member under Rule 6.1;

- b. That he had been denied the opportunity to put forward his case as provided for in Rule 6 through the MDP which is an underlying principle and policy of the Union when representing its members;
- c. That Mr Town's letters contained a threat of further sanction; and
- d. That Mr Town intended to monitor his behaviour

He added that he believed that he suffered detriment because he had lost his faith in the Union and its leadership as a result of the correspondence from Mr Town and the sanctions described above.

23. Mr Dunham told me that the sanctions demonstrated that he had been disciplined by the Union because he had been deprived of Union benefits to which he was entitled and had been subjected to detriment. He referred me to s64 of the 1992 Act to support this. He explained, however, that he accepted that these were light sanctions and added that the focus of his complaint was the judgment made by Mr Town and the fact that there had been no investigation as required by Rule 6. For him, the sanctions demonstrated that a judgement had been made; if no judgment had been made under Rule 6 then there would be no need for sanctions.

24. Mr Murphy had asked me, in writing in his skeleton argument, to strike out this complaint. His view was that Rule 6 was not a disciplinary Rule within my jurisdiction and that, even if it was, Mr Town's evidence was clear that he had not made a judgment about Mr Dunham's behaviour under Rule 6. He added that the MDP had not been engaged and no sanctions had been applied.

25. He also argued that Mr Dunham was a vexatious complainant and referred to emails from him to the Union in December 2018 and January 2019 as evidence of this. Mr Murphy helpfully explained, however, that he was content for me to consider the case on its merits as we were now at the Hearing stage and confirmed that the Union's view was that no disciplinary action had been taken and consequently there was no breach of Rule 6. He referred to Mr Evans' letter of 20 July 2018 and Ms Webb's letter of 13 November 2018 as evidence of this.

He also agreed that, as the test for determining someone to be a vexatious complainant was high, the Union was not actively pursuing this line of argument. I have not, therefore, considered whether Mr Dunham could be considered to be a vexatious complainant. I would add, however, that in my view Mr Dunham had genuine concerns about how the Union handled the issues which had been raised about his behaviour.

26. Mr Murphy agreed with Mr Dunham that, where the MDP had been engaged, Rule 6 might be considered to be a disciplinary rule and Appendix 4 might be considered to be part of that Rule. In this case, however, no decision had been taken under Rule 6 and the MDP had not been engaged. Nor had any sanctions been applied which could be considered to fall within Rule 3(xiii) of Appendix 4 of the Handbook or s64 of the 1992 Act.

Conclusions

27. I agree with Mr Dunham and Mr Murphy that, where a judgment is made under Rule 6 about a Member's conduct or behaviour, Rule 6 is capable of being a disciplinary rule within my jurisdiction. In those circumstances the Union must follow the MDP set out in Appendix 4 to the Rules. The question here is whether Mr Town made a judgment, under Rule 6, about Mr Dunham's behaviour.

28. It is clear that Mr Dunham believes that he was judged by Mr Town and that Mr Town did not offer him the opportunity to make his views known about the incidents detailed in Mr Town's letter of 24 May 2018. It is less clear, however, whether this amounts to a breach of Rule 6.

29. Mr Town's written evidence is that he did not reach a judgment as to whether Mr Dunham's behaviour amounted to a breach of standards. He told me that he considered that behaviour of the sort reported to him could tend towards a breach of Rule 6.1 which requires members to "extend all courtesy and consideration for others". He explained that his aim in writing his letter was to make an informal request to Mr Dunham to consider his behaviour. He explained that, whilst his intention was to monitor future interactions that Mr Dunham may have with staff or

at public meetings in the future, he was not imposing a disciplinary sanction, and had not intended the letter to be interpreted as such. In written, and oral evidence, he confirmed that he did not implement any form of surveillance or monitoring regime.

30. There was much discussion at the Hearing as to whether Mr Town's letter was, in fact, informal. Whilst I understand Mr Dunham's point that the letter appeared formal and had a significant impact on him I cannot see that Rule 6 requires there to be an informal approach ahead of a formal approach. The formality of the approach is not, therefore relevant to my decision.
31. Mr Dunham referred me to the Union's Handbook for Accredited Representatives and to Appendix 2 to the Rules which explain how the Union will represent members engaged in individual and collective representation. These do not, however, appear to form part of the Rules of the Union and, in any event, are relevant to member representation. It may be incongruous for the Union to take a different approach when operating its own disciplinary process than when it is representing a member as part of an employment disciplinary process but that does not mean that there is a breach of the Rules.
32. Mr Dunham also argued that the Union could only address the concerns, which were reported to Mr Town, under Rule 6. He told me that once the concerns had been received the Union had no option other than to make a judgment under Rule 6. In his view this would have required the Union to reach a conclusion as to whether there were grounds to consider whether there was a breach, and if so, begin an investigation and then, potentially, engage Appendix 4. Mr Dunham is right that the Rules offer no other route to disciplinary action; however, nor do they prevent the Union from making members aware of concerns that have been raised or seeking assurances as to future behaviour. I am not persuaded by Mr Dunham's argument that a Union may only act where there is express provision in its Rules to do so. In any event my powers are limited, in this case, to considering whether there has been a breach of Rule 6 as this is the complaint before me.

33. Mr Town gave evidence that he did not make a judgement under Rule 6. I have been offered no evidence which demonstrated that he did, and I note that his letters make no reference to Rule 6. Consequently, I can only reach the conclusion that he did not make such a judgement and that the Union did not breach Rule 6, by making a judgement about Mr Dunham's behaviour without adherence to its standards. I note, however, Mr Dunham's very real concerns about how the situation was handled and the tone of Mr Town's letters. This is not within my jurisdiction but I understand that those concerns were considered by the Union through its complaints process which resulted in Ms Webb's letter of 13 November 2018.
34. That leaves me to consider whether Mr Town's letters of 24 May 2018 and 4 June 2018 imposed sanctions on Mr Dunham. Mr Dunham explained at the Hearing that his core complaint was about the judgment which he believed was made by Mr Town. The wording of his complaint makes reference to the sanctions as evidence that a judgment had been made.
35. Mr Dunham's view is that Mr Town's letters placed sanctions on him. His view is that he has suffered a detriment and that his membership benefits have been restricted in a manner which is consistent with s64 of the 1992 Act. I have described at paragraph 22 what benefits he believes have been restricted and why he believes he has suffered a detriment.
36. Mr Murphy drew my attention to section 3 (xiii) of Appendix 4 to the Union Rules. It is clear that the sanctions identified by Mr Dunham do not fall within that section. Consequently, I am satisfied that the Union has not applied sanctions which should only properly flow from the MDP. That leaves me to consider whether they fall within s64 of the Act. It is worth noting here that the definitions set out in s64 are intended to clarify the scope of a Union member's right not to be unjustifiably disciplined which is defined in s65 of the 1992 Act. Mr Dunham's complaint does not fall within s65 and so, on a strict interpretation of the Act, the definitions in s64 are not relevant to his complaint. However, s64 provides a useful framework for identifying disciplinary sanctions. I find it difficult to see how

a failure to protect a member from discourteous behaviour by another member, a failure to take into account a member's views, the threat of a possible sanction in the future and the loss of faith in the Union could amount to disciplinary action within the framework described in s65. On that basis I do not agree with Mr Dunham that he was subjected to a sanction and that the actions taken by Mr Town demonstrated that a judgment had been made under Rule 6.

37. Consequently, I do not uphold Mr Dunham's complaint.

Observations

38. Mr Dunham properly pursued his complaint, about the Union's approach to the concerns which had been raised about him, through the Union's complaints procedure. His complaint was concluded with a letter from the Union's President, Ms Webb, on 13 November 2018. Ms Webb reached a number of conclusions including that no disciplinary action had been taken against Mr Dunham. She also made a number of recommendations about how the Union should deal with similar situations and, perhaps most importantly for Mr Dunham, recommended that Mr Town's letter of 24 May 2019 should be retracted.

39. Mr Evans told me that because Mr Dunham was unhappy with the outcome of his complaint and as he was making a complaint to me the Union had not yet retracted Mr Town's letter. The Union's complaints process is, of course, outside my jurisdiction; however, I would encourage them to implement the recommendations as soon as possible. As Mr Dunham explained at the Hearing, acting on Ms Webb's recommendation and retracting the letter may have resulted in there being no need for the Hearing before me. It may also have restored some of his faith in the Union.

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

Sarah Bedwell

The Certification Officer