

D/26/19-20

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

Crew

v

Aegis the Union

Date of Decision

17 December 2019

Decision

Contents

Decision	3
Reasons	3
Findings of fact	4
The Relevant Statutory Provisions	4
The Relevant Rules of the Union	6
Considerations and Conclusions	11

Decision

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

I uphold the complaint that Aegis the Union held an election for the post of Assistant General Secretary for the Aegon Branch of the Union in August 2018 which did not meet the requirements of Chapter IV of the Trade Union and Labour Relations (Consolidation Act) 1992. In doing so it breached section 46(1)(a) of the 1992 Act.

2. I consider that it would be appropriate to make an enforcement order. I order that:

The Union shall, by 30 June 2020, ensure that any person undertaking the role of Assistant General Secretary for the Aegon Branch of the Union has been:

- a. elected to the National Council of the Union; or
- b. directly elected as Assistant General Secretary,

following an election which meets the requirements of Chapter IV of the Trade Union and Labour Relations (Consolidation) Act 1992.

Reasons

3. Mr Crew 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 19 May 2019.
4. Following correspondence with my office, Mr Crew confirmed his complaint on 25 July 2019 as follows:

Aegis the Union held an election for the post of Assistant General Secretary for the Aegon Branch of the Union in August 2018 which did not meet the requirements of Chapter IV of the Trade Union and

Labour Relations (Consolidation Act) 1992. In doing so it breached section 46(1)(a) of the 1992 Act.

5. At a hearing before me on 4 December 2019, Mr Crew represented himself. Mr Crew submitted a witness statement and gave oral evidence.
6. The Union was represented by Ms Fiona Steele, the Union's Deputy General Secretary. Written witness statements for the Union were given by Ms Steele and Mr Brian Linn, the Union's General Secretary. Mr Linn and Ms Steele also gave oral evidence. There was in evidence a bundle of documents consisting of 176 pages containing correspondence and the rules of the Union. Both the Union and Mr Crew provided skeleton arguments.

Findings of Fact

6. The National Council is the Executive Committee of Aegis the Union which is "the executive" for the purposes of section 46(2)(a) and (b) of the Act.
7. The Assistant General Secretary for the Aegon branch of the Union is a member of the National Council.
8. In August 2018 the Union held an election for the post of Assistant General Secretary for the Aegon branch of the Union.
9. Candidates in that election were required to meet certain criteria set by the National Council. This included that they must be a member of the National Council.
10. The electorate was the Aegon Branch Central Council.
11. Mr Crew was a candidate in that election. He was not elected.

The Relevant Statutory Provisions

12. 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

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

2014 Rules

10. The National Council

(a) The National Council shall be the principal policy making body of the union when it is sitting. It is responsible for the overall government of the union, for the determination of policy and of the rates of subscription payable by members, for the maintenance and upholding of the union's Constitution and Rules, for ensuring that the union's policy is consistent with the objectives of the union as stated in Rule 2, and for any other purpose consistent with the Rules of the union.

In particular the National Council shall be responsible for

- (i) Appointing scrutineers to supervise ballots as and when necessary to act in conjunction with the General Secretary.
- (ii) Consider and approve the accounts of the union for the previous year.
- (iii) Recommend auditors to the Annual General Meeting.

- (iv) Consider all matters affecting the members brought to its attention in writing, by any resolution passed at a Branch Central Council or by representatives attending the meetings.
 - (v) Debate and approve any deletions, additions or alterations to the Rules of the union in accordance with rule 14
 - (vi) Have power to borrow such monies as may be required by the union from time to time and for this purpose may deposit or pledge any or all of the union's assets.
 - (vii) The National Council only shall have power to authorise industrial action by some or all of the union's members. In all cases, a secret ballot of the members concerned shall be held for the specific purpose of determining whether industrial action should be authorised, and such action shall only be authorised if a simple majority (or higher level of acceptance as determined at the time by the National Council) of those voting so determine.
 - (viii) The National Council shall be responsible for the appointment of a Consultant(s), trade union officials and the employment of the union's staff and full-time officials, for financial controls and budgets and for the auditors as may be required under these rules.
- (b) The National Council shall be comprised of the following:
- (i) The General Secretary*
 - (ii) The Deputy General Secretary*
 - (iii) The Assistant General Secretaries*
 - (iv) A Treasurer*
 - (v) Branch Central Council members
(As at the date of these Rules there shall be one member per 500 members of any recognised company up to a maximum of four delegates per branch)

[*]These Officers shall also comprise the Trustees of the union

- (c) In addition, the Consultant (and any other full-time officials of the union or other professional advisor) may be required to attend meetings of the National Council in a non-voting capacity for the purpose of providing factual information or technical and professional advice to the committee.

(d) The National Council shall meet as and when required, but in any event not less than once a year. Meetings of the National Council shall normally be called by the General Secretary. However, the General Secretary can, in the event of urgent business call additional meetings. In addition the General Secretary shall be required to call a meeting of the National Council within twenty-eight days, upon receipt of a written request to this effect, signed by a majority of the current members of the National Council, and setting out the matter requiring discussion.

(e) Every member of the National Council as defined in Rule (b) above shall have a vote at meetings of the National Council. This will be on a one member one vote basis.

(f) Meetings of the National Council shall normally be presided over by the General Secretary. However, in his or her absence, the committee shall appoint a deputy chair for that meeting only from the members present. The General Secretary or deputy chair shall not exercise a casting vote at meetings of the National Council.

(g) The General Secretary shall be directly elected by the total membership for a period of four years, although an interim election shall be held if the position becomes vacant for whatever reason or if a resolution to this effect is carried by a majority of two thirds or more of the elected National Council members entitled to attend and vote at a meeting of the National Council. National Council will determine eligibility conditions for nominations for the position of General Secretary in recognition of the professional and technical attributes and qualifications required for this position. Eligibility conditions will be determined separately in respect of each election for General Secretary.

(h) The Deputy General Secretary, Assistant General Secretaries shall be elected for a period of 4 years, although an interim election shall be held if the position becomes vacant for whatever reason or if a resolution to this effect is carried by a majority of two thirds or more of the elected National Council members entitled to attend and vote at a meeting of the National Council. Nominations for these positions shall be restricted to members of the union with at least two years' current experience as a member of the National Council or such other criteria set by the National Council.

(i) Other members of the National Council, as specified in (b) above), shall be elected for a period of four years, although an interim election shall be held if the position becomes vacant for any reason or if a resolution to this effect is carried by a majority of two thirds or more of the elected National Council members entitled to attend and vote at a meeting of the National Council. Nominations for these positions shall normally be restricted to members of the union with at least one years' current experience as a member of a branch committee. However, the experience criterion may be reduced or waived altogether if in the judgment of the

National Council its application would unduly restrict the number of members eligible to stand for election.

(j) The National Council shall have power to appoint such sub-committees and working parties as it shall deem necessary in connection with any purpose consistent with the objectives of the union, as stated in Rule 2, including union members of joint sub-committees or working parties established in consultation with an employer.

In all cases, the National Council shall have power:

- i. To remove a member or members of the sub-committee or working party
- ii. To appoint new members
- iii. To determine if necessary the terms of reference under which the sub-committee or working party shall operate
- iv. To wind up any sub-committee or working party.

(k) The National Council shall be deemed quorate if one more than half of those holding office as stated in (b) above are present.

...

12. Voting, Elections and Ballots

(a) Unless otherwise prescribed in these Rules any member of any committee of the union may propose or second a motion at a meeting of that committee, and all voting members present at that meeting shall have one vote.

(b) Except where otherwise prescribed in these Rules, voting shall normally be conducted by a show of hands of the voting members then present of the committee concerned. However, if a resolution is carried requiring a secret ballot, the chair of the committee concerned shall provide for such a ballot to be conducted. Members not present may give a proxy vote (in writing) on any resolution that appears on the Agenda.

(c) Supervision of elections

Such elections are to be considered as workplace ballots. The National Committee shall appoint an independent scrutineer(s) to supervise the issue of and scrutiny of nomination papers. In the event of there being the same number or a lesser number of nominees as vacancies then the nominees will be considered duly elected. In the event of there being more nominations than vacancies, then the Scrutineers will supervise an electronic or paper based ballot

(d) Administration

Workplace ballots can be carried out by either an electronic or paper based ballot

- i. No voting paper or form shall identify the member to whom it is issued.
- ii. All those entitled to vote must be given voting rights.
- iii. Voting must be by the marking of a ballot paper or form in secret.
- iv. Every member must be allowed to vote without interference or constraint.
- v. The ballot paper or form will be distributed electronically or by using an internal postal system and returned by an internal postal system in a sealed envelope to await counting by the independent Scrutineer. In the event of an electronic ballot then the system used must mimic the postal system.
- vi. So far as practicable, every Member must be allowed to vote without incurring any costs.
- vii. The names of the candidates must be printed on the ballot paper or form or on a separate document annexed to the ballot paper. Each candidate will be afforded the opportunity of addressing the membership by way of an election address (not to exceed 200 words) which will accompany the ballot paper.

(e) Other Ballots and the election of the General Secretary

In the case of all ballots that are specified by statute, then the National Council shall take those steps necessary to comply with the relevant statute(s).

2006 Rules

12. Divisional & Central Councils

(a) Constitution

Divisional Council

- (i) Each Business Unit of the Company shall have Divisional Council with sufficient representatives to maintain a ratio of between 1:50 and 1:100 members. Each Divisional Council shall elect representatives to the Central Council to maintain a ratio of not less than 1:200 members. Divisional Council representatives will be empowered to consult, but not negotiate, with their own management, supported by Officers or Officials or Officials of Aegis. The Divisional Council will recommend items to be discussed at the Central Council.

...

12(d) (viii) (under Election of Divisional Committees)

The Divisional Council shall elect from amongst their number Central Council Representatives in accordance with 12 (a) (i).

12(e) Functions of the Central Council

The Central Council is the policy making body of the Association and as such shall:

- (i) Elect from amongst their number an Executive Committee comprising of the following Officers– General Secretary, Asst General Secretary Strategic, Asst General Secretary (Tactical), Communications Officer and Treasurer, together with three others (who are not Officers) and any co-options to form the Executive Committee.

Considerations and Conclusions

Summary of Evidence

14. The national policy making body, and executive committee, of the Union is the National Council. All National Council members, apart from the General Secretary, are elected by the relevant Branch Central Committee and must be a member of that Branch Central Committee. The Branch Central Committees are all Divisional Representatives and are elected by the Divisional Representatives in each Branch. Divisional Representatives are elected by the members of each Branch.
15. As is the case for many Unions, there are challenges in securing sufficient volunteers to fill Representative and Committee roles. Many roles are filled without a ballot because only one nomination for a position is received.

16. Mr Crew was first elected onto the Union's policy making body, then called the Central Council in 2008. There were further elections in 2010; Mr Crew was not initially elected onto the Central Council; however, for reasons which were not explained at the Hearing, the election was re-run and Mr Crew was successful.
17. Following amalgamations with two other unions and consequent changes to the Union's Committee structure the National Council was created as the Union's policy making body and the necessary changes were made to the Union's Rules. Whilst Mr Crew could not recall seeking nomination to the National Council, he accepted that there must have been some process and recalled seeking support for his candidature. He became a member of the National Council in 2014.
18. In 2010 Mr Crew was elected as Assistant General Secretary Aegon Branch (AGS). Initially, his appointment did not go forward because he had not been elected on to the Central Council; however, the elections were re-run and he was elected on to the Central Council and took up the AGS role.
19. He was elected again as AGS in 2014. There were two candidates in that election. The electorate was the Aegon Branch Central Council. The election in 2018, which is the subject of this complaint, was conducted using the same electoral process as the 2014 election i.e. under the 2014 Rules. Mr Crew stood down from the role of AGS on 31 December 2018 when his term of office ended.
20. Mr Crew believed that he also ceased to be a member of the National Council on 31 December 2018. Whilst the Union had not informed him that he had ceased to be a Member of the National Council they did not invite him to any meetings in 2019, or provide any papers.
21. Both Ms Steele and Mr Linn told me that, although the Union had not invited Mr Crew to the National Council meetings in 2019, they now believed that he should have remained on the National Council even though he was no longer AGS. Ms Steele told me that her understanding was that Mr Crew had not been included in

the mailing list for the National Council meetings. She explained that this appeared to be because he no longer had access to the email account which he had previously used as AGS. She could not, however, be certain that this was the reason. She also told me that no one at the National Council, including herself, had questioned why Mr Crew was not present at the National Council meetings in 2019. Mr Linn told me that he had assumed that Mr Crew lost his position on the National Council when his term of office as AGS ended. Having read Mr Crew's witness statement and skeleton argument he had now come to the conclusion that Mr Crew should have remained a member of the National Council until the end of his term of office as a National Council Member.

22. Mr Linn, as General Secretary, made proposals for the conduct of the AGS elections for the Aegon branch and the Skipton branch of the Union. The National Council accepted those proposals. Ms Steele told me that the electoral procedures mirrored the process in previous AGS elections. She agreed that those procedures did not comply with the requirements of Chapter IV of the 1992 Act. Her view was that they did not need to do so because the election was open only to members of the National Council who had, in the Union's view, already been elected on to the National Council through a process which met the requirements of Chapter IV of the Act.

Summary of Submissions

23. Mr Crew told me that, under Rule 10(b), the AGS was a member of the National Council by virtue of their election to the position of AGS. He explained that this must be the case because he had ceased to be a member of the National Council when his term of office as AGS came to an end. He had not been invited to National Council meetings in 2019 and had not been provided with any papers. He drew my attention to the requirements of Chapter IV and pointed out that the election did not comply with many of the statutory requirements. He also told me that, previously, the Union's Treasurer had resigned their role and, as a consequence, had left the National Council.

24. Mr Crew acknowledged that he had been part of the Union leadership team which had responsibility for elections and had not previously queried the process. He had not realised that the AGS elections should have been compliant with Chapter IV of the 1992 Act until it was drawn to his attention by his Aegis Rep. He raised the issue with the Union as soon as it was drawn to his attention.
25. Ms Steele told me that the Union's Rules were originally drafted in 2006. They had been drafted by a consultant as part of the Union's application, to my predecessor, for a certificate of independence. The Union had understood that those Rules were compliant with the 1992 Act and had relied on them in subsequent elections. The Rules were revised in 2014 following the merger of two smaller unions with Aegis.
26. Ms Steele told me that the 2014 Rules contained less detail about electoral processes than the 2006 Rules. They do not, for instance, explain how the National Council should be elected, nor how the AGS roles should be filled. Ms Steele could not explain to me why the Rules were silent on these points. She told me that, where the Rules were silent, the Union reverted to the 2006 Rules for guidance and followed the processes set out in those Rules. She described this as the Union's "custom and practice".
27. It is clear to me, and accepted by Mr Crew and the Union, that the National Council is the Executive Committee of the Union. Consequently, any person on the National Council must have been elected to that position by an election satisfying the requirements of Chapter IV of the 1992 Act.
28. Mr Crew and the Union agree that the AGS election, held in 2018, did not comply with Chapter IV of the 1992 Act. The Union's view is that it was not required to do so because the position of AGS was open only to National Council Members. Mr

Crew believes, however, that Rule 10(b) requires the AGS to automatically sit on the National Council. He believes that this is further demonstrated by the fact that he was not invited to National Council meetings after his term of office as AGS ended. He cited a similar example, which was not challenged by the Union, of the Union's Treasurer having stood down and, as a consequence, no longer being considered to be a Member of the National Council.

29. Ms Steele acknowledged that Rule 10(b) could be read so as to infer that the AGS is an ex officio member of the National Council; however, she told me that this was not in fact the case and that his seat on the National Council was a consequence of his election to that Council. I agree with her that the Rule could be read in this way. My difficulty with the Union's position, however, is that the Union effectively removed Mr Crew from the National Council when his term of office as AGS ended. If Mr Crew was a member of the National Council regardless of his position as AGS then he should have retained his position on the National Council after his term of office expired. He was not, however, invited to any meetings in 2019. Ms Steele had told me that this may have been because a mailing list did not include an up to date email address. However, no one on the National Council, including Ms Steele, asked why Mr Crew was not present at meetings. Had he retained his position on National Council then the Union would have expected Mr Crew to attend meetings or to respond to invites. As Mr Linn, explained, however it appears that everyone at the Union assumed that Mr Crew was no longer a member of the National Council. He was not invited to meetings and nor was he expected at meetings. Similarly, Mr Crew appeared to have understood that he was not a member of the National Council. Consequently, from the evidence provided to me, I can only come to the conclusion that Mr Crew was a member of the National Council by virtue of his role as AGS. This is consistent with what had Mr Crew told me had previously happened when a Treasurer resigned. I, therefore, agree with Mr Crew that the election for the role of AGS should have been conducted in a manner which was compliant with Chapter IV of the 1992 Act and I uphold his complaint.

30. I would add that, even if I am wrong on this point, I have been offered no evidence which demonstrates that the elections to the National Council had been conducted in compliance with the 1992 Act. Members of the National Council are elected by the Branch Central Councils who are elected by the Divisional Representatives. Only the Divisional Representatives are elected by the Members of the Union. The elections to the National Council have not, of course, been challenged by Mr Crew; however Ms Steele explained to me that the Union's Rules have been updated so that, in the future, elections to the National Council will be conducted in accordance with the statute.

31. It is also worth noting that neither the Union nor Mr Crew suggested that Mr Crew's term of appointment as a member of National Council would have ended on 31 December in any event. I was told that he was elected to the National Council at some point in 2014 and so it is possible that this would have been the case as the Rules provide for a term of office of four years. I have not been told, however, when the term of office began and, as explained above, there appears to have been an assumption that membership of National Council ceased when Mr Crew's term of office as AGS ended. I have not been offered any evidence to suggest that nominations for National Council were sought in 2018. If that were the case and Mr Crew had been unsuccessful at an election to the National Council then he would not have been able to continue in the role of AGS in any event. Conversely, had he been successful in any election to National Council he should have remained on National Council whether or not he was successful in the AGS election. The absence of evidence here supports my view that both the Union and Mr Crew understood that his position on National Council flowed from his role as AGS.

32. Consequently, I make the following declaration:

Aegis the Union held an election for the post of Assistant General Secretary for the Aegon Branch of the Union in August 2018 which did not meet the requirements of Chapter IV of the Trade Union and Labour Relations (Consolidation Act) 1992. In doing so it breached section 46(1)(a) of the 1992 Act.

Enforcement Order

33. Having found that the Union breached section 46(1)(a) of the 1992 Act 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.

34. Mr Crew sought an Order to require the elections for the AGS role, held in 2018, to be run again. Ms Steele explained to me that the Union had already taken steps to remedy the breach by amending the Rules of the Union so that future elections to National Council would be conducted in accordance with Chapter IV of the 1992 Act. I agree that this should prevent future breaches of the Act but it does not remedy the breach in the 2018 election for AGS.

35. Ms Steele asked me not to make an Order requiring the Union to re-run the election and gave three reasons. The first was that Mr Crew had not asked the Union to rerun the election when he first raised it with them. She told me that, had he done so, they would have considered his request. I do not agree that the fact that Mr Crew did not initially ask the Union to rerun the election should prevent me from making an Order to do so. It is possible that a swift response from the Union and an acknowledgement of the breach would have been sufficient at that time to prevent the complaint from coming to me. Even if that were not the case, however, Mr Crew is entitled to seek such an Order from me as it will remedy the breach which has occurred. Additionally, as the Union believed that the procedures were compliant with Chapter IV of the Act it seems

unlikely that they would have acceded to a request to re-run the election. Indeed, had they done so they would have been open to a challenge from the successful candidate or any other Union member.

36. The second was that a new ballot would be unlikely to deliver a different result. It is not for me to anticipate the results of any election. This is especially true here because the Union has adopted new Rules which will result in the National Council members being elected by the membership of the Union rather than the Branch Central Committee. That is quite a significant change in the number of people eligible to vote and, potentially, the result could be affected even if only a small number of candidates are eligible to stand.
37. Finally, Ms Steele argued that, were I to make an order requiring an AGS election in which all eligible members were entitled to vote, the cost would be disproportionate for a small Union such as AEGIS. I have some sympathy with this point but have no discretion to waive the requirements of Chapter IV of the 1992 Act and believe that the only option open to me to remedy the breach is to make an Order requiring the Union to re-run the AGS election.
38. If the Union are right that their new Rules will ensure that the election to the National Council is conducted in accordance with the statute and that the AGS must be a member of a properly elected National Council then this would ensure that the breach which I have identified will be remedied. In doing so, however, they must be clear that the role of AGS is not an ex-officio member of the National Council. If the Union follow this approach and Mr Crew wishes to stand as AGS he would need first to be elected on to National Council and then seek nominations for the AGS role. The other route, which I understand may carry an additional cost, would be to hold an election for the AGS role which is itself compliant with the Act. It is for the Union to decide which approach to take and to ensure that its Rules, and their implementation, meet the requirements of the

statute. I have drafted my Order so as to enable the Union to agree the approach most suited to their circumstances. Whilst no submissions were made about timing, I believe that the Union will need a period of time in which they can decide on the best approach, ensure that their Rules are appropriate and conduct the necessary elections. Balancing this with the need to remedy the breach as swiftly as possible my view is that the electoral process should be completed within six months. Consequently, I make the following Order:

The Union shall, by 30 June 2020, ensure that any person undertaking the role of Assistant General Secretary for the Aegon Branch of the Union has been:

- a. elected to the National Council of the Union; or
- b. directly elected as Assistant General Secretary,

following an election which meets the requirements of Chapter IV of the Trade Union and Labour Relations (Consolidation) Act 1992.

39. Mr Crew has not asked me to declare the results of the previous election to be null and void and so I have not considered whether to require the successful candidate in the previous election to stand down until the Union have complied with my Enforcement Order.

Observations

40. At the Hearing, and in witness statements, the Union asked that I give advice on the Union's new rules which were adopted in November 2019. I explained that it is not my role to do so and this decision can relate only to the complaint before me. I would recommend, however, that before undertaking the election required by my Order, the Union takes steps to ensure that its Rules and the conduct of the election are compliant with statute. They should also ensure that there is clarity about the status of all of the Executive positions on the National Council.

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

Sarah Bedwell

The Certification Officer